

**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.

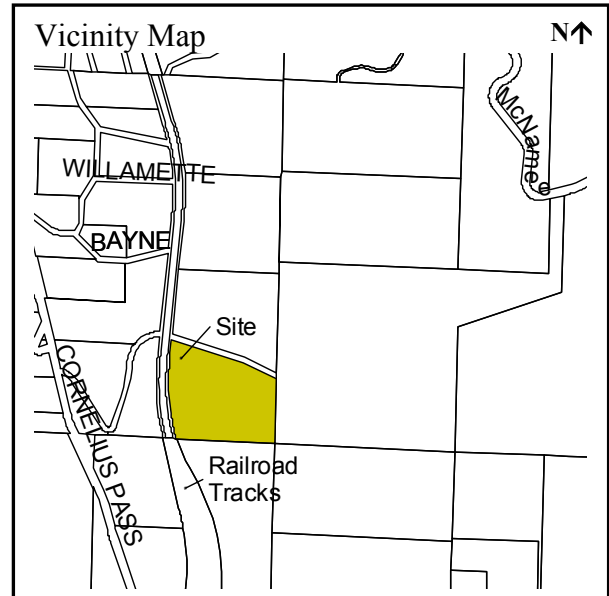
Case File: T2-05-040

Permit: Hillside Development Permit &
Alteration To Nonconforming Use

Location: 14777 NW McNamee Road
TL 400, Sec 30, T 2N, R 1W, W.M.
Tax Account #R05880-0300

Applicant: Eric Miller

Owner: Eric Miller & Mary Dower



Summary: The proposed project is to reposition a driveway approximately 60 feet to the south of the existing roadbed for approximately 300 feet and then loop it so as to reduce the grade of the existing driveway to the dwelling. A Hillside Development Permit and Alteration to a Nonconforming Use is required.

Decision: Approved with conditions.

Unless appealed, this decision is effective Wednesday, August 31, 2005, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, August 17, 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 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, August 31, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

Nonconforming Uses

MCC 33.0005(N)(2) Definitions – Nonconforming Use

MCC 33.7210 Alteration, Expansion or Replacement of Nonconforming Uses

MCC 33.7215 Verification of Nonconforming Use Status

Hillside Development Permit

MCC 33.5505 Permits Required

MCC 33.5510 Exempt Land Uses and Activities

MCC 33.5515 Application Information Required

MCC 33.5520 Grading and Erosion Control Standards

MCC 33.5525 Hillside Development and Erosion Control Related Definitions

Comprehensive Plan Policies

Policy 38 Facilities

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. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

Conditions of Approval

1. The property owner shall replant the 200 ft of old roadway, the portion of the skid road not utilized for access plus the grass shoulders shown on the applicant's cross-sections (Exhibit A.11) with a mixture of native trees and shrubs by June 1, 2006. Upon completion of replanting the applicant shall contact the Land Use Planning section for an inspection. [MCC 33.7210(C)(7)]

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.
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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*.

Project Description:

Applicant: The property concerned by this application for permit is at the end of a 1.25 mile long "driveway" located off of NW McNamee Rd, in an area zoned Commercial Forest Use. The property was partially logged and the access road was created when the house was built in 1995. In the final approach to the house, the road grade increases steeply, from about 12% up to 23-25% for approximately 75 yards, before leveling out at the house site. The road currently approaches the house site from the West.

The permit application addresses a request to reposition the road approximately 20 yards to the South of the existing road for approximately 100 yards, then creating a loop so as to more gradually approach the house from the South. It will add approximately 100 yards to the length of the road, thus reducing the grade in the final approach from 25% to 13%.

The new road will primarily utilize existing skid roads in that area put in by previous logging operations on the property. It is obvious that the area was considered for building the initial road, though anecdotal information from the neighbors indicates that the builder took the "cheap way out" by utilizing the very steep (but shorter) road instead.

1.00 General Provisions

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 April 22, 2005 and was deemed complete as of June 3, 2005. An "Opportunity to Comment" notice was mailed on June 10, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

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 400, Section 30C, Township: 2 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Eric Miller & Mary Dower. Eric Miller has been designated the applicant in this case and has signed the application form (Exhibit A.1). Mary Dower has signed a letter of authorization for the application (A.10). *This criterion has been met.*

1.03 37.0560 Code Compliance And Applications.

Except as provided in subsection (A), the County shall not make a land use decision, or

issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: The work to be permitted as part of this application has already been completed by the applicant without first obtaining the necessary permits. This application will correct the existing violation on the site. No other known violation exists on the site at this time.

2.00 *Nonconforming Use*

2.01 MCC 33.7210 Alteration, Expansion or Replacement of Nonconforming Uses

(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 33.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;

Applicant: Multnomah County Code MCC 29.012(D)(7) indicates that the overall average grade of a road requiring Fire District access shall not exceed 15%. This road clearly exceeded that requirement. In addition, a number of visitors, as well as professional contractors invited to the house, were unable to even get up the road, especially those driving unloaded pick-ups or vans. In winters, when there is ice and snow above 500', this has been somewhat dangerous.

The new road is consistent with the character and history of development in the surrounding area. The road is made of similar material and the slopes of the shoulders are similar to the first one mile of the road.

Staff: In 1990, land use approval was granted to construct a Forest Dwelling on the subject site. The property at the time was zoned Multiple Use Forest – 19. The single family dwelling was completed in 1995 and the driveway has been in use since its occupancy by the dwelling

residents. The alteration of the driveway from a 25% slope to a 13% slope lengthens the driveway, allowing for an easier access situation to the dwelling. The modified driveway will not serve additional dwellings. The character of the physical improvement will continue to access a single family dwelling. *This criterion has been met.*

2.02 (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

Applicant: There is no difference in the comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood.

Staff: Staff concurs. No additional dwellings will be constructed at the end of the modified driveway. Any additional dust generation is limited to the time of construction. *This criterion has been met.*

2.03 (3) The comparative numbers and kinds of vehicular trips to the site;

Applicant: Other than the short period of the development itself (1 week), this development has not precipitated an increase in the comparative numbers and kinds of vehicular trips to the site.

Staff: The number of trips associated with the driveway and single family dwelling will not increase. No additional generation is expected. *This criterion has been met.*

2.04 (4) The comparative amount and nature of outside storage, loading and parking;

Applicant: This development has not increased the comparative amount and nature of outside storage, loading and parking in the area. The old road surface was largely removed in the building of the new road, to allow replanting of trees along the ridge.

Staff: The modified driveway does not in and of itself generate traffic, storage or parking. The driveway will allow better access to an existing single family dwelling. No increases in outside storage, loading or parking will be generated. *This criterion has been met.*

2.05 (5) The comparative visual appearance;

Applicant: The new road has a comparative visual appearance to the old road.

Staff: Staff concurs. A road is a road.

2.06 (6) The comparative hours of operation;

Applicant: N/A

Staff: The driveway currently allows access to the dwelling 24/7. The modified driveway will continue those hours.

2.07 (7) The comparative effect on existing flora;

Applicant: Although building a new road naturally disturbs the existing flora in the area, by re-planting the old road surface, we hope to replant a greater number of trees and other native species of flora than the number or type which had to be cut. In any case, the area affected by the development was clear cut between 10 and 15 years ago by a previous owner who did not replant the area, so the majority of trees in the area were scrub trees, black berries and scotch broom and needed to be pruned. By increasing the access in to this area of the property, we will be better able to maintain the area, managing it as we do the rest of the property.

Staff: The old roadbed was 200 yards in length and was varied from 13 to 16 ft wide (3,200 sq. ft). The new driveway is 300 yards in length and varies from 13 to 16 ft wide (4,800 sq. ft). The applicant has indicated that he will be replanting the old roadbed with native species. No

detailed landscape plan has been submitted. If the old roadway and the skid road plus the grass shoulders shown on the applicant's cross-sections (Exhibit A.11) were replanted with a mixture of native trees and shrubs, the effects to the flora from constructing the new driveway should be mitigated due to the new vegetation. A condition of approval has been included requiring that these areas be replanted with native trees and shrubs by June 1, 2006. *As conditioned, this criterion has been met.*

2.10 (8) The comparative effect on water drainage or quality; and

Applicant: The water drainage in the area has been improved by this development in that we were better able to see the impact of previous development activities in the area, which specifically did not seem to take drainage in to account. In addition, since the new road surface runs parallel to and downhill from the old road, very little additional water comes into the ditches on the new road.

Staff: The old driveway was a gravel surface. The new driveway has also been graveled. Gravel is a pervious surface. The water quality should be improved due to vehicles being better able to access the house without spin outs and other ground disturbing activities that leads to erosion. *This criterion has been met.*

2.11 (9) Other factors which impact the character or needs of the neighborhood.

Applicant: No other factors are present which impact the character or needs of the neighborhood.

Staff: Staff concurs.

2.12 (D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in MCC Chapter 37.

Staff: This application has been processed as a Type II permit. *This criterion has been met.*

2.13 MCC 33.7215 Verification of Nonconforming Use Status

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Applicant: The house on the property was built in 1995 by Mark and Sheila Cleveland. I purchased it in the fall of 1996. It had not been occupied until I purchased the property. Before being purchased by the Clevelands', the property was commercial forest land owned by Anne Matiaco. Several acres of property were clear-cut or commercially thinned by each of those owners.

Staff: In February 1990, the County approved PRE 8-90 for a Forest Related Residence on the subject property in the Multiple Use Forest – 19 zoning district. In January, 1993 the County rezoned the property to Commercial Forest Use (CFU) and granted a 2 year window for property owners with PRE approvals to utilize them. In September, 1994 the County issued a building permit for the construction on the dwelling and the use of the forest practice roadway as the driveway to the home site. With the rezone of the property to CFU, different access requirements were applied to the property making the length and the steepness of the driveway nonconforming to the present day *Development Standards* listed under MCC 33.2305. *This*

criterion has been met.

2.14 (2) Has not been abandoned or interrupted for a continuous two year period.

Applicant: After the house was built and the road improved for residential access, it was vacant for approximately 18 months, though the road was used by realtors and the Clevelands, for property maintenance, throughout that period. Since being purchased by me, the property has been occupied continuously.

Staff: There is no evidence in the record that the driveway was abandoned or that its use was interrupted for a continuous two year period. *This criterion has been met.*

2.15 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

Applicant: This road is used to provide access to a single family residential dwelling.

Staff: As specified above, the single family dwelling and its accessory structures and improvements became nonconforming on January 7, 1993 when the CFU zoning district was applied to the property. The property is currently nonconforming for the Forest Related Residence, Fire Safety Zones, length and physical design of the driveway for turnouts and grade.

2.16 (2) The types and quantities of goods or services provided and activities conducted;

Applicant: No goods or services are provided nor commercial activities conducted on this property.

Staff: The subject property is a single family dwelling and no goods or services are provided from the site.

2.17 (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

Applicant: There is no change in the scope of activities on the property.

Staff: The property has been and will continue to be used as the primary dwelling for the property owner. No change in the scope of use has been documented.

2.18 (4) The number, location and size of physical improvements associated with the use;

Applicant: There is no change in the number, location and size of physical improvements associated with the use.

Staff: The subject property has a 2,586 sq. ft single family dwelling with attached 484 sq. ft garage and a 320 sq. ft covered deck, a on-site sewage disposal system, well and driveway (Exhibit B.2).

2.19 (5) The amount of land devoted to the use; and

Applicant: Although there is a modest increase in the amount of land devoted to the new road, based on its greater length, this is necessary in order to reduce the slope of the road. By replanting the old road and increasing our forest management activities adjacent to the new road, we hope to alleviate the impact of devoting additional land to the new road.

Staff: The Assessment and Taxation Department indicates that 1 acre is devoted to the

homesite and the remaining 9.95 acres is in forest practices (Exhibit B.1).

2.20 (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

Applicant: N/A

Staff: Staff has not determined any other nature or extent of the single family and accessory uses to review.

2.21 (7) A reduction of scope or intensity of any part of the use as determined under MCC 33.7215 (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

Applicant: N/A

Staff: There is no evidence that the intensity or scope of the single family dwelling and its related accessory uses have been reduced. *This criterion is not applicable at this time.*

3.00 Hillside Development Permit Criteria

3.01 MCC 33.5505 Permits Required

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 33.5510.

Staff: The proposed driveway modification is located in an area with average slopes of 25% or more. A Hillside Development Permit is required.

3.02 MCC 33.5515 Application Information Required

An application for development subject to the requirements of this subdistrict shall include the following:

(A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.

(B) An estimate of depths and the extent and location of all proposed cuts and fills.

Staff: The applicant has submitted in plan showing existing vegetation, Site Plan and Slopes and Drainage Plan (Exhibit A.3 & A.4). In addition, information regarding the depth and extent of the cuts and fills on the site has been provided in the geotechnical report (Exhibit A.9). *These criteria have been met.*

3.03 (C) The location of planned and existing sanitary drainfields and drywells.

Staff: The location of the septic system is shown on the Landscape, Site and Slope and Drainage Plans. *This criterion has been met.*

3.04 (D) Narrative, map or plan information necessary to demonstrate compliance with MCC 33.5520 (A). The application shall provide applicable supplemental reports,

certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.

Staff: The applicant has submitted in narrative statements addressing the criteria under MCC 33.5520(A) (Exhibit A.2). *This criterion has been met.*

3.05 (E) A Hillside Development permit may be approved by the Director only after the applicant provides:

(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.

(a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.

(F) Geotechnical Report Requirements

(1) A geotechnical investigation in preparation of a Report required by MCC 33.5515 (E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.

(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.

(3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.

(4) The Director, at the applicant's expense, may require an evaluation of HDP Form– 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.

(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Staff: The applicant has submitted in a geotechnical report from Foster Gambee Geotechnical, P.C. (Exhibit A.9). *This criterion has been met.*

3.06 MCC 33.5520 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:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;

Applicant: See Geotechnical report. No fill areas are intended to support structures of any kind.

Staff: Fill materials were placed over the culvert in the ravine. Compaction of fill materials were completed by running a bulldozer over the 6" to 1' lifts of material several time. The engineer saw no signs of significant erosion. *This criterion has been met.*

3.07 (b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

Applicant: See Geotechnical report for description of cuts and fills.

Staff: Cut slopes run at 1H:1V (45°) for approximately 200 feet. The fill within the ravine was placed over the culvert with a 1.5H to 1V (34°) slope. The engineer Kevin Foster finds that the slopes are safe (Exhibit A.9). *This criterion has been met.*

3.08 (c) Cuts and fills shall not endanger or disturb adjoining property;

Applicant: Cuts and fills do not endanger or disturb adjoining property.

Staff: The new driveway is located 20 ft to the north of the south property line and a minimum of 70 ft to the east property line. The Geotechnical Engineer Kevin Foster has reviewed the cut faces of the realigned driveway and has seen "no indications of instability, such as significant sloughing or sliding." In addition, he reviewed the ravine embankment and found that the "fill slope shows no indications of significant slope instability or erosion." Based upon the engineering report submitted by the applicant (Exhibit A.9) the cuts and fills for the driveway realignment will not endanger or disturb adjoining properties. *This criterion has been met.*

3.09 (d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

Applicant: The proposed drainage system is of adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency.

Staff: The subject site is 10 plus acres in size. The proposed realignment of the driveway will not interfere with the uphill sheet flow from adjacent properties. The drainage system for the realigned driveway is for the road surface only. Sheet flow will continue through the site in a natural pattern. *This criterion has been met.*

(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced

stream flow for a storm of 10-year design frequency;

Applicant: The only fill that encroaches on natural watercourses or constructed channels has a culvert in place that will adequately handle the displaced stream flow for a storm of 10-year design frequency.

Staff: A 12" culvert was placed in the bottom of the filled ravine to bypass the water from the 1 acre watershed to the north of the culvert site. The engineer has analyzed the size of the culvert and finds that the size of the culvert is "suitably sized" (Exhibit A.9). *This criterion has been met.*

3.10 (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.

Applicant: This application is not within the Tualatin Basin.

Staff: The property is located within the Multnomah Channel Basin. *This criterion is not applicable.*

3.11 (b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

Applicant: This project involves a minimum of stripping of vegetation, grading, or other soil disturbance and is done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction; Where soil is exposed, various methods are used for stabilization, including the use of rocks, mulch, and ground cover plantings.

Staff: Staff concurs.

3.12 (c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;

Applicant: This development made every attempt to minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: Based upon the analysis in the geotechnical report the cut and fill modifications to the topography were minimized (Exhibit A.9). *This criterion has been met.*

3.13 (d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

Applicant: Temporary vegetation and/or mulching have been used to protect exposed critical

areas during development and during the recovery of the exposed surfaces.

Staff: Staff concurs.

- 3.14 (e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**
- 1. 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;**
 - 2. The buffer required in 1. 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;**

Applicant: Whenever feasible, natural vegetation shall be retained, protected, and supplemented. N/A -this development does not come within 100 ft of a stream or other body of water. N/A.

Staff: The nearest stream is located over 300 ft to the north of the house. The roadwork occurs south of the dwelling. The water traveling through the ravine is generated solely through rainfall from the surrounding land and does not carry an existing stream flow. It appears to be the headwaters to a small intermittent stream. Water from the impervious surfaces of the dwelling is not placed into the ravine but into another area (Exhibit A.12). Vegetation in the ravine before the project occurred was blackberries, scotch broom and scrub maples/alders less than 6 inches in diameter. The applicant has removed the blackberries and scotch broom and has augmented the native plantings in the ravine.

- 3.15 (f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;**

Applicant: Most of the disturbed property has already been replanted, with a combination of native trees, shrubs, flowers and grasses. In some areas, an annual rye was planted over straw mulch for stabilizing the soil while other (desired) plants have time to take hold.

Staff: A condition of approval has been included requiring the old roadbed, skid road and grass shoulders of the new road be planted with native trees and shrubs by June, 2006. *As conditioned, this criterion has been met.*

- 3.16 (g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;**

Applicant: This development does not increase the runoff of surface water.

Staff: The applicant utilized mulch to retard the impact of precipitation on the soil. The replanted areas and future replanted areas will prevent the rapid movement of moisture from the area by trapping it in their branch structures. *This criterion has been met.*

- 3.17 (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;**

Applicant: Sediment in the runoff water is not an issue and the disturbed area is now stabilized.

Staff: Staff concurs.

- 3.18** **(i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;**

Applicant: Provisions have been made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, as well as by mulching and seeding.

Staff: The cut faces have been reseeded with vegetation. *This criterion has been met.*

- 3.19** **(j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;**

Applicant: All drainage provisions have been designed to adequately carry existing and potential surface runoff to suitable drainageways such as natural watercourses and drainage swales.

Staff: The engineer has reviewed the size of the culvert and finds it is “suitably sized” (Exhibit A.9). *This criterion has been met.*

- 3.20** **(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;**

Applicant: Where drainage swales are used to divert surface waters, they are vegetated or protected with gravel as required to minimize potential erosion.

Staff: Drainage swales have been utilized adjacent to the new roadbed as shown on the cross-sections (Exhibit A.11). The drainage swales have been graveled for protection to minimize erosion potential.

- 3.21** **(1) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:**

- 1. Energy absorbing devices to reduce runoff water velocity;**
- 2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- 3. Dispersal of water runoff from developed areas over large undisturbed areas.**

Applicant: Erosion and sediment control devices are not required, as the new road ties in to the existing culverts and drainage swales which already disperse the water runoff from developed areas over large undisturbed areas.

Staff: The applicant has indicated that no erosion control devices are needed. *This criterion has been met.*

- 3.22** **(m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways;**

or by other sediment reduction measures;

Applicant: There is no additional spoil material or stockpiled topsoil as a result of this development activity.

Staff: Staff concurs.

- 3.23** **(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.**

Applicant: This development did not generate any non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters.

Staff: Staff concurs.

- 3.24** **(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the "*Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)*". All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.**

Applicant: Project is not located in the Balch Creek Drainage Basin.

Staff: Staff concurs.

3.25 **(B) Responsibility**

- (1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;**

Applicant: This project did not create undue sedimentation deposits, although if they do occur in the future, I accept responsibility for the cleanup and removal of said sedimentation.

- 3.26** **(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.**

Applicant: This project did not act on or cross a communal stream, watercourse, or swale, or upon the floodplain or right-of-way thereof.

4.00 ***Comprehensive Plan Policies:***

4.01 **Policy 38**

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection

B. There is adequate water pressure and flow for fire fighting purposes; and

C. The appropriate fire district has had an opportunity to review and comments on the proposal.

Staff: The Tualatin Valley Fire & Rescue Department has reviewed the modified driveway and finds that it is in compliance with the adopted Fire District standards for access (Exhibit A.8).
This policy has been met.

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the *Alteration to the Nonconforming Use and Hillside Development Permit* in the CFU-2 zoning district.

6.00 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	4/22/05
A.2	5	Narrative Statements	4/22/05
A.3	1	Site Map - Landscaping Plan	4/22/05
A.4	1	Site Map – Slopes and Drainage	4/22/05
A.5	1	Site Map – Existing Skid Roads	4/22/05
A.6	2	Photographs of the Site	4/22/05
A.7	1	Approved Site Plan for the Construction of the Roadway and Dwelling in May, 1995	4/22/05
A.8	3	Fire District Access Review form	4/22/05
A.9	3	Review of Driveway Re-Alignment by Foster Gambee Geotechnical	4/22/05
A.10	1	Letter of Authorization from Mary Dower	6/3/05
A.11	2	Cross-Sections	4/22/05
A.12	1	Email Answering Various Questions from Staff	8/8/05
‘B’		Staff Exhibits	Date of
B.1	3	A&T Property Record for 2N1W30C – 00400	4/22/05
B.2	1	A&T Improvement Information	8/5/05
‘C’		Administration & Procedures	Date
C.1	1	Incomplete Letter	5/18/05
C.2	1	180 – Day Response Letter	6/3/05
C.3	1	Complete Letter – Day 1	6/3/05
C.4	5	Opportunity to Comment	6/10/05
C.5	16	Administrative Decision – Day 76	8/17/05