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.

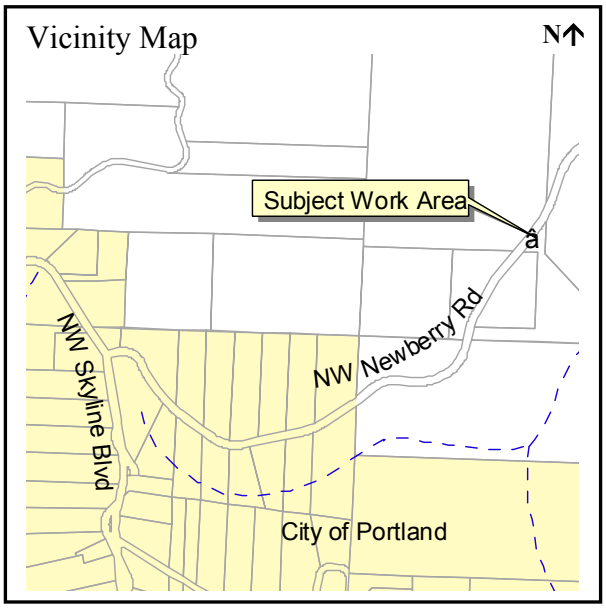
Case File: T2-05-057

Permit: Hillside Development Permit

Location: North of 14140 NW Newberry Road
Sec 33, T2N, R1W, W.M.
North of #971330260

Applicant: Multnomah County Transportation

Owner: Multnomah County Transportation



Summary: Remove a failing wooden structure above an old and structurally deficient 24-inch concrete culvert under NW Newberry Road and replace it with a new 42-inch culvert in the CFU-2 zone.

Decision: Approved with Conditions.

Unless appealed, this decision is effective **Friday, December 23, 2005**, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, December 9, 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 Don Kienholz, 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 Friday, December 23, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 33.5500 through 33.5525: Hillside Development Permit

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. **This land use permit expires 2 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 or 37.0700, as applicable. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. **The applicant shall maintain best erosion control practices through all phases of development. Erosion control measures are to include the installation of sediment fences/barriers at the toe of all disturbed areas and post construction re-establishment of ground cover. Straw mulch, erosion blankets, or 6-mil plastic sheeting shall be used as a wet weather measure to provide erosion protection for exposed soils. All erosion control measures are to be implemented as prescribed in the current edition of the *Erosion***

Prevention Sediment Control Plans Technical Guidance Handbook, **copies of which are available for purchase at our office, our through the City of Portland.**

2. **On-site disposal of construction debris is not authorized under this permit. Spoil materials removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects.**

3. **The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts result from on-site grading work. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion effects.**

4. **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;**

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 and Comprehensive Plan Policies 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. **Project Description**

Staff: The applicant is requesting to remove a failing 24-inch concrete culvert that is topped by an old wooden structure that is also failing.

2. **Site Characteristics**

Staff: The site is located off of McNamee Road in the West Hills near Forest Park. Steep slopes and heavy forest canopy make up much of the surrounding area, which is zoned for Commercial Forest Use. A few properties to the north have been cleared of the forest canopy to make room for dwellings near the roadway. Most properties immediately adjacent are sizeable and over 15-acres in size.

3. **Public Comment**

MCC 37.0530 Summary Of Decision Making Processes.

(B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. 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. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Public notice was mailed out on October 17, 2005. Those that received notice were given 14-days to provide comment. No comments were received on the proposal.

Procedures met.

4. **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 project is to take place in the right-of-way and under the Newberry Road. Multnomah County Transportation is the owner of the site and has granted permission to under go the application process..

Criterion met.

5. **The Proposed Use is Allowed in the CFU-2 Zone**

MCC 33.2220 Allowed Uses

(K) Reconstruction or modification of public roads and highways, not including the addition of vehicular travel lanes, where no removal or displacement of buildings will occur, or no new land parcels result;

Staff: Maintenance and modifications to existing roads that does not add travel lanes or include buildings are allowed uses.

Criterion met.

6. **Hillside Development Permit Approval Criteria**

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 development site is within an area identified on the Slope Hazard Map and therefore the applicant needs a Hillside Development Permit.

MCC 33.5515 Application Information Required

A. **(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.

Staff: The applicant has supplied a Geotechnical report certified by Tim Pfeiffer, Senior Geotechnical Engineer at Foundation Engineering, INC., indicating the site is suitable for development for the proposed repair project. The geotechnical report and submitted exhibits are available for public viewing in the case file.

Criteria met.

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:

B **(A) Design Standards For Grading and Erosion Control**

1. **(1) Grading Standards**

a. **(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: There are no fill areas which apply to this question.

Staff: No additional fill will be brought in for the project. After removal of the failing wooden structure and culvert, a new, larger culvert will be installed and the soil material will be returned. The road will be reconstructed immediately after completion of the culvert replacement. The road will be built to and 2002 Oregon Standard Specifications for Construction standards.

Criterion met.

b. **(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: There are no new cut and fill slopes as demonstrated in the attached project plans. Erosion control measures will be taken as prescribed by the "Erosion Prevention and Sediment Control Plans Technical Guidance Handbook" and are further described in this application.

Staff: The construction drawings show the finished roadway at a slope of 1.5:1. Foundation Engineering, Inc. submitted a geological report signed by Timothy Pfeiffer, Professional Engineer, and Andrew Robinson, Staff Engineer, indicating the finished grade will be safe if their recommendations are followed.

Criterion met.

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

Applicant: No cuts and fills will endanger or disturb adjoining property as demonstrated in the attached project plans, and required of the contractor, and enforced by Multnomah County in accordance with MCC and 2002 Oregon Standard Specifications for Construction, Section 00170.80(a), (b), and (c).

Staff: The geotechnical report indicates that if the construction, compaction, and design recommendations are followed, that there will be no danger or disturbance of adjacent properties.

Criterion met.

d. **(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;**

Staff: David Evans and Associates submitted a drainage memorandum signed by Gregory Kirby and Rock Attanasio, both Professional Engineers, that the drainage capacity of the development will meet the 25-year storm event and the culvert will pass the 100-year storm event without overtopping the roadway.

Criterion met.

e. **(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;**

Applicant: No fills will encroach on natural watercourses or constructed channels as demonstrated in the attached plans, and required by Multnomah County in accordance with MCC and 2002 Oregon Standard Specifications for Construction.

Staff: The culvert allows a seasonal drainage to pass under Newberry Road. During the summer months, the drainage is bare and dry. The road repair will not place any additional fill or structures within the drainage and the development was designed to handle a 25-year storm event.

Criterion met.

2. **(2) Erosion Control Standards**

   a. **(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.**

   Staff: The site is not within the Tualatin River Drainage Basin.

   Criterion met.

   b. **(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: All grading will be performed with all erosion control measures in place in order to minimize soil erosion. Any exposed soil will be stabilized as quickly as practicable, and any soil surfaces exposed will be kept to a minimum at any one time during construction. The contractor will be required to monitor on site daily rainfall using an approved gauge, or otherwise as submitted in the Erosion and Sediment Control Plan, and will report regarding rainfall and effective erosion control measures at regular intervals using the required ODOT Erosion Control Report Form. Multnomah County Inspectors will be on site, enforcing these requirements, in accordance with MCC and the 2002 Oregon Standard Specifications for Construction, Section 00280.

Staff: The work proposed shall be done in the roadway and the immediate adjacent areas. Very little vegetation will be removed because the disturbed area consists of pavement, gravel and drainage ditches. Erosion measures such as silt fencing, geotextiles, and straw bails will be used to trap sedimentation and reduce the potential of erosion. Also, an inspector will be on site to ensure erosion control measures are properly installed and working during the project

Criterion met.

c. **(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: The project's purpose is to create the least erosion potential and to accommodate the volume and velocity of water for the improvement of this failing structure in Multnomah County right-of-way and to ensure the removal of potential harm to properties adjacent. The design is such that the least erosion potential will be ensured.

Staff: The road will be rebuilt back to its existing condition. The project is only removing the wooden structure under the road and replacing a culvert. As such, topography will remain the same. The County Engineer has reviewed the construction design and determined the culvert and project will adequately accommodate the volume and velocity of the surface runoff.

Criterion met.

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

Applicant: Mechanical erosion control devices and/or mulching, such as supported silt fences, geotextile backed with wire mesh, check dams made from straw bale barriers with aggregate weirs, bio-filter bags, sand bags, or triangular silt dikes and further described through the Erosion and Sediment Control Plan (ESCP) to be submitted by the contractor and approved by the Project Manager before construction commences.

Staff: The straw bails and geotextiles meet this standard and will help protect the site from erosion and sedimentation.

Criterion met.

e. **(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: Natural vegetation will experience minimal impact with this project. Minimal impact to existing vegetation within the 100 foot buffer will come to be as a result of this project.

Staff: There are no wetlands or water bodies within 100-feet of the development site as seen on the County's GIS mapping system. While the culvert is in a seasonal drainageway, there is no stream within 100-feet of the project.

Criterion met.

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

Applicant: Structural erosion control devices will be installed immediately upon commencement of construction and are an integral part of this project as required by ODOT in accordance with Standard Specifications.

Staff: The reconstruction of the road requires structural erosion controls in the form of stone embankments and outfalls along the drainage way to help infiltrate stormwater. Revegetation of disturbed soils will be required as soon as practicable as a condition of approval. An inspector will be on site through construction to help ensure erosion controls are properly placed and maintained.

Criterion met.

g. **(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;**

Staff: There will be essentially no alteration. The roadway is being partially removed for a culvert replacement and then returned. The topography will be the same after the project. Stone filled fallouts and embankments will structurally retard stormwater runoff.

Criterion met.

h. **(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: The contractor will submit a detailed Erosion and Sediment Control Plan (ESCP) which will further describe how all sediment will be trapped, as required in Section 00280, 2002 Oregon Standard Specifications for Construction.

Staff: Silt fences, straw bails, geotextiles, bio bags, stoned fall outs and embankments will all be used to remove sediment from runoff.

Criterion met.

i. **(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: check dams made from sand bags, straw bales with aggregate weirs, bio filter bags or triangular silt bags will be utilized.

Staff: Staff concurs that the devices mentioned are in the erosion control manual and will help reduce damage to the face of the newly cut slope. An inspector will be on site during the project to ensure erosion control devices are working properly. If the controls are not adequate, they will be reinforced.

Criterion met.

j. **(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;**

Staff: No additional runoff is being generated from this project. Stormwater will be sent to the Right-of-Way as it always has been. The stormwater system is already adequately designed to handle run-off along Newberry Road. A registered professional engineer has certified that the project will be able to handle a 25-year storm event.

Criterion met.

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

Applicant: Discussed in the Erosion and Sediment Control Plan (ESCP) required to be approved before construction commences.

Staff: No drainage swales are part of the proposal.

Criterion met.

l. **(l) 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: In accordance with the 2002 Oregon Standard Specifications for Construction, Section 00280. Multnomah County Inspectors will be on site to enforce the requirements of Multnomah County Code and the 2002 Oregon Standard Specifications for Construction.

Staff: The applicant has indicated several different erosion control devices shall be included as part of the project. Those measures include: bio bags, silt fencing, geotextiles and straw bails. Additionally, an inspector will be on site during the project to enhance any augment and enhance any erosion control devices should they need improvement.

Criterion met.

m. **(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: No topsoil will be stockpiled in this project, unless otherwise noted in the pre-construction conference, at which point detailed plans must be approved by Multnomah County. Multnomah County Inspectors will monitor the hauling and dumping practices of waste materials as required

and in accordance with the Oregon Standard Specifications for Construction (2002) Section 00330.40 (5), and subsection 00290.20(i).

Staff: No fill materials are proposed to be placed in the seasonal drainageway. The County has provided documentation on several forms of erosion and sedimentation control devices that shall be utilized to help prevent any sedimentation or erosion. Furthermore, the work is proposed to be done during the dry season to help reduce the potential of erosion even more.

Criterion met.

n. **(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: No pesticides or fertilizers will be used on this project. Contractors are required to follow Oregon Standard Specifications for Construction Section 00290.30 Pollution Control which includes stringent minimum required measures to be taken, and includes the submittal of a Pollution Control Plan (PCP) which must be submitted for approval 10 days before the preconstruction conference. A copy of the approved PCP must be maintained on the construction site at all times during construction activities, readily available to employees and inspectors. The full requirements include, among many others, a map showing the locations of proposed hazardous substance storage, spill response equipment, communications equipment, fire suppression equipment and the on-site copy of the PCP. Further information regarding the PCP can be found on page 181, 2002 Oregon Standard Specifications for Construction.

Staff: This criterion shall be met with a condition of approval requiring property handling of the listed materials.

Criterion met.

o. **(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.**

Staff: The property is not within the Balch Creek Drainage Basin.

Criterion met.

Conclusion:

Staff: Based on the findings and other information provided above, this application for a Hillside Development Permit satisfies, with appropriate conditions, the applicable Multnomah County Zoning Code requirements.

Exhibits

1. Grading Plans And Specifications Of The Project.
2. Geotechnical Report