



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/landuse>

NOTICE OF DECISION

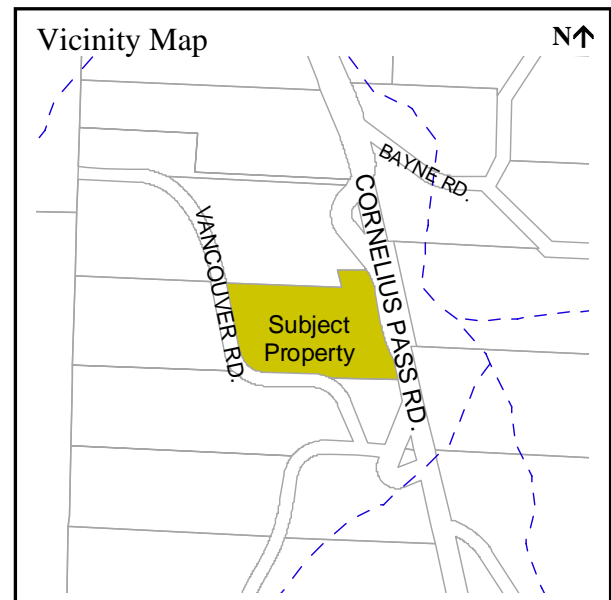
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-06-011

Permit: Significant Environmental Concern for
Wildlife Habitat and Hillside
Development

Location: 2N1W30C
Tax Lot 2600, Section 30C,
Township 2 North, Range 1 West, W.M.

Applicant/ Marc & Marie Sayre
Owner: 13901 NW Cornelius Pass Rd.
Portland, OR 97231



Summary: Request for Significant Environmental Concern for Wildlife Habitat and Hillside Development Permits for a replacement dwelling within the Rural Residential Zone District.

Decision: Approved with Conditions

Unless appealed, this decision is effective October 6, 2006, at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Friday September 22, 2006

Instrument Number for Recording Purposes: #00063484

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George A. Plummer, Staff Planner at 503-988-3043 ext. 29152.

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 October 6, 2006 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administration And Procedures, MCC 33.3100 et. al: Rural Residential, MCC 33.4500 et. al: Significant Environmental Concern, and MCC 33.5500 et. al: Hillside Development and Erosion Control. 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/landuse>.

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 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 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. **Within 30 days of this decision becoming final and prior to building permit sign-off, the applicant shall record the Notice of Decision including the Conditions of Approval (pages 1-4) of this decision) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and filed with Multnomah County Land Use Planning. Recording shall be at the applicant's expense (MCC 37.0670).**

2. The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property [MCC 33.4570(B)(7)]:

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree

Scientific Name	Common Name
<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
various genera	Bamboo sp.

3. Observation of work required by this condition and by the Columbia Geotechnical geological report (Exhibit 1.8) shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the Certified Engineering Geologist or Geotechnical Engineer name shall be submitted to the Planning Director prior to issuance of the Building Permit. The advice recommended in the Columbia Geotechnical geological report by Ruth A. Wilmoth, Certified Engineering Geologist, and Patrick E. Wilmoth, Professional Engineer, shall be implemented and/or as amended by the observing Certified Engineering Geologist or Geotechnical Engineer. Prior to Building Permit final inspection signoff, the property owner shall submit to County Land Use Planning a review by the Certified Engineering Geologist or Geotechnical Engineer for the work subject to recommendations in the geotech report. That report shall indicate that the development meets the recommendations listed in the Columbia Geotechnical Geotechnical Report included as Exhibit 1.8. [MCC 33.5515(F)(3)]
4. As recommended by Columbia Geotechnical geological report by Ruth A. Wilmoth, Certified Engineering Geologist, and Patrick E. Wilmoth, Professional Engineer, (Exhibit 1.8) earthwork and/or soil disturbing activities shall be limited to the period between June 15 and October 15. All earthwork, foundations, and drainage systems shall be completed and footings backfilled in dry weather prior to October 15th. A silt/sediment fence shall be installed (as shown on the site plan Exhibit 1.3) along a contour line downslope of any and all earthwork/soil disturbed areas. If rains result in erosion of disturbed areas straw mulch shall be installed. Exposed cut faces which will remain shall be mulched and seeded prior to project completion. Revegetation/soil stabilization for

all disturbed soil areas shall be accomplished no later than October 15. The property owner shall ensure that Best Management Practices related to erosion control and the measures outlined above are implemented. The property owner shall follow the erosion control advice given in the Columbia Geotechnical Report and/or shall follow the advice of the observing engineer as required by condition # 2[MCC 33.4575(E)(6), MCC 33.5520(A)(2)(a),(b) & (d)]

5. All excavated spoils from the project that are not used to back fill around the dwelling shall be removed from the property. 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 [MCC 33.5520(A)(2)(m)].
6. The Storm Water Certificate stamped and signed by Robert Brower PE (Exhibit 1.9) did not include plans. Prior to issuance of the Building Permit zoning approval the property owner shall submit a stormwater certificate with an attached plan for a stormwater disposal system that certifies the system meets MCC 33.5520(A)(1)(d). The location of the proposed system and excavation necessary to install the system shall be shown on the plans. The storm water drainage control system shall be built according to the design discussed in the Foster Gambee Geotechnical Report Addendum (Exhibit 1.7) or an alternative system that meets the requirements submitted by the geotechnical engineer monitoring the site development prior to building permit final. The stormwater drainage disposal system shall meet MCC 33.5520(A)(1)(d), having adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency.
7. The property owner shall ensure that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters are prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. On-site disposal of construction debris is not authorized under this permit. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires, etc), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects [MCC 33.5520(A)(2)(n)].
8. The property owners are responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality.
9. 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.
10. The erosion control permit notice (attached) is to be posted at the driveway entrance from Cornelius Pass Road in a clearly visible location (print towards the road) prior to any soil disturbance. This notice is to remain posted until such time as the grading/excavating work is completed and the vegetation has been re-established in disturbed areas. In the event this sign is lost, destroyed, or otherwise removed prior to the completion of the grading work, the applicant shall immediately contact the Land Use Planning Office to obtain a suitable replacement.

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.

Note: Once this decision is final, application for building permits may be made with the City of Portland, Building Bureau. When ready for building permit signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043 ext. 29152, for an appointment for zoning review plan check and to sign the building permit form. Please note, Multnomah County must review and sign off the building permit form and plans before the applicant submits building plans to the City of Portland. Six (6) sets the plans and site plan of the building area are needed for building permits signed off. A grading and erosion control inspection fee must be paid at building permit zoning sign off.

FINDINGS AND CONCLUSIONS

This decision is based on the findings and conclusions in the following sections.

Staff Report Formatting Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described.

1. DESCRIPTION OF THE PROPOSAL

Staff: The applicant is requesting a Significant Environmental Concern Permit and a Hillside Development Permit for a replacement dwelling.

2. SITE AND VICINITY CHARACTERISTICS

Applicant: From the Geotech Report: *property is covered by a mixed evergreen and deciduous forest. Based on our observations in the field and the general topographic information shown on Figure 1, the property occupies a generally northeast-sloping hillside in the McCarthy Creek drainage. Property elevations are roughly in the range of 300 to 450 ft. The property is dissected by a small (approximately 40-ft deep) tributary drainage, with proposed development limited to the southeast side of the drainage. The drainage ravine is very steep, with overall slopes in the range of 30 to 40°, and local areas measuring up to 45°. In the vicinity of the proposed, slopes are generally gentle to moderate. Across the footprint of the proposed residence, the slope measures about 15°. Above the residence and extending to the top of the ravine, the slope measures about 20°. Below the residence and extending to Cornelius Pass Road, the slope generally measure 10° or less. With exception to a shallow depression near the bottom of the lot slopes are generally uniform and without significant breaks or anomalies.*

Staff: The subject property is a three acre parcel located within the Rural Residential (RR) Zone District in the West Hills Rural Plan Area. The property is also entirely within the Significant Environmental Concern for Wildlife Habitat (SEC-h) Overlay District and the Hillside Development (HD) Overlay District (Exhibit 1.10). A portion of the front of the property is within Significant Environmental Concern for Streams (SEC-s) Overlay District (Exhibit 1.10). The proposed dwelling and all the development work will be located outside of the SEC-s Overlay, except for the disposal of some spoils material (Exhibit 1.3). Since the applicant did not apply for an SEC-s Permit this decision includes a condition that the spoils not be placed in that area. Additionally the Columbia Geotechnical geological report by Ruth

A. Wilmoth, Certified Engineering Geologist, and Patrick E. Wilmoth, Professional Engineer (Exhibit 1.8) states that spoils should be removed from the property.

The surrounding properties are in a pocket of RR zoning, generally along Cornelius Pass Road, that is surrounded by Commercial Forest Use – 2 zoning. Most of RR properties in the vicinity are generally similar in size to twice the size of the subject property.

3. **OWNERSHIP**

MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment records show the property owners as Orval L. and Eleanor Sayre. (Exhibit 2.1). The applicants Mark and Marie Sayre signed the application as the property owners. Orval L. and Eleanor Sayre have faxed a letter authorizing the application (Exhibit 1.2).

4. **TYPE II CASE PROCEDURES**

MCC 37.0530(B) Type II Decisions

(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 Director's 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 LUBA within 21 days of when the decision is signed.

Staff: The Type II process was applied to this case. An opportunity to comment was mailed to property owners within 750-feet of the property lines March 29, 2006. One letter of comment was received regarding the application.

Kandy Davis, 14135 NW Cornelius Pass Road, submitted a letter of comment on April 10, 2006 (Exhibit 3.1). Ms. Davis expressed concern about septic system not affecting properties to north and that the stormwater be direct to the road verses properties to the north. Septic systems are regulated by the City of Portland, Bureau of Development Services, Environmental Soils Section. The stormwater will be directed to a ground infiltration system designed for stormwater from the new dwelling's impervious surface. The system is designed for the 10 year-24 hour storm requirement as required in conditions of approval.

5. RURAL RESIDENTIAL ZONE DISTRICT

5.1. Allowed Uses:

MCC 33.3120(C) Residential use consisting of a single family dwelling constructed on a Lot of Record.

Staff: The proposal is a three story dwelling with a daylight basement first floor (Exhibit 1.15).

5.2. Dimensional Requirements

MCC 33.3155 (C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The proposed development will meet the minimum yard requirements based on the site plan (Exhibit 1.3). The maximum height requirement will be reviewed at Building Permit sign off.

5.3. Lot of Record

MCC 33.0005(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

MCC 33.3170 (B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The property as it is currently configured was approved through Property Line Adjustment Case LE-3-97. That case found the property to be a Lot of Record originally created as a Bayne Suburban Farm Subdivision lot in 1910. Therefore the subject property is a Lot of Record.

6. SIGNIFICANT ENVIRONMENTAL CONCERN REVIEW

6.1. SEC Permit Required

MCC 33.4510(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.

Applicant: *No area will be affected in the Stream conservation area. The design does not call for any development within a stream conservation area.*

Finding: The proposed development is within the Significant Environmental Concern for Wildlife Habitat Overlay District. While the Significant Environmental Concern for Streams Overlay Zone District is located on the property all the proposed development except a small spoils disposal area is located outside the SEC-s. The applicant has stated an intent to limit the development to outside the SEC-s area. In a phone conversation with the applicant, Mark Sayre, on May 18, 2006, Mr. Sayre stated a preference to not place fill in the SEC-s area, if that would avoid the SEC-s permit requirements. This decision will include a condition that the spoils not be disposed in the SEC-s area as shown on the plans. The SEC-h permitting requirements apply to the proposed dwelling.

6.2. Application for SEC Permit

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 33.4560 through 33.4575.

MCC 33.4520 (A) An application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 33.4560 through 33.4575.
- (2) A map of the property showing:
 - (a) Boundaries, dimensions, and size of the subject parcel;
 - (b) Location and size of existing and proposed structures;
 - (c) Contour lines and topographic features such as ravines or ridges;
 - (d) Proposed fill, grading, site contouring or other landform changes;
 - (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
 - (f) Location and width of existing and proposed roads, driveways, and service corridors.

Staff: The required information was submitted by the applicant and can be found in Exhibits 1.1 through 1.15.

6.3. SEC-h Development standards

MCC 33.4570(A) In addition to the information required by MCC 33.4520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

- (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;
- (2) Location of existing and proposed structures;
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Applicant: *There are no changes to the forested areas and non-forested "cleared" areas as defined as an areas Map remains same as previously approved. The location of existing and proposed locations have not changed either. The location and width of existing and proposed public road, access road and driveways are to remain the same. The driveway was done in 95 up to where the proposed new house will be. This location is rural and no fencing will be installed on the subject property.*

Staff: The applicant refers to a previous approval. A manufactured home was placed on the property in 1995 with the intent of replacing it with a stick built dwelling in a couple of years. The replacement dwelling was postponed several years. No previous approval for this dwelling is still valid. The applicant submitted the required information (Exhibit 1.3).

6.3.1 **MCC 33.4570(B)(1)** Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Applicant: *Where parcel contains non forested areas, development shall only occur in these areas, except as necessary to provide access to meet min. standards for fire safety, No changes will be made here, remains as previously permitted.*

Staff: The proposed addition is in an existing cleared area which was cleared of trees prior to the placement of the existing dwelling in 1995. The clearing predated the enactment of the SCE-h Overlay Zone. On our aerial photos (Exhibit 1.3 and 1.11) the area appears to be vegetated due to a growth of blackberry bushes which have since been removed. This standard is met.

6.3.2. **MCC 33.4570(B)(2)** Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Applicant: *Development shall occur within 200 feet of public road, this parcel is capable of providing access to the developable portion of the site.*

Staff: The proposed dwelling is located less than 200 feet from the Cornelius Pass Road. (Exhibit 1.3). The standard is met.

6.3.3. MCC 33.4570(B)(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Applicant: *The Access road/driveway and service corridor does not exceed 500 feet in length*

Staff: We concur with the applicant (Exhibit 1.3). The standard is met.

6.3.4. MCC 33.4570(B)(4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.

Applicant: *The access road/driveway is located within 100 feet of the property Boundary.*

Staff: The adjacent property to the north has an access driveway within 200 of the property boundary (Exhibits 1.10). The existing driveway for the subject property will continue to be used. It is located within 100 feet of the west property boundary. This standard is met.

6.3.5. MCC 33.4570(B)(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.

Applicant: *There are no structures and developed areas within 200 feet of property boundary.*

Staff: The adjacent property to the north has a structure and development area within 200 feet of the property line. The proposed development is proposed within 300 feet of the property boundary (Exhibit 1.3). The standard is met.

6.3.6. MCC 33.4570(B)(6) Fencing within a required setback from a public road shall meet the following criteria:

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

Applicant: *No fencing will be done (6a, 6b, 6c, 6d, 6e does not apply)*

Staff: No fences are proposed as part of this application. This standard is met.

6.3.7. MCC 33.4570(B)(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property: Plants list Under MCC 33.4570(B)(7).

Applicant: *No new plantings are proposed for the new development. Existing invasive species in the cleared area adjacent to the new development are to be removed. See A1.0 Site Plan.*

Staff: A condition of approval will require that listed nuisance plants shall not be planted and shall be removed. This standard is met through a condition.

7. HILLSIDE DEVELOPMENT PERMIT

7.1. Application Information Required

7.1.1. MCC 33.5515 (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.

MCC 33.5515 (B) An estimate of depths and the extent and location of all proposed cuts and fills.

MCC 33.5515 (C) The location of planned and existing sanitary drainfields and drywells.

MCC 33.5515 (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

Staff: The applicant has submitted a narrative addressing compliance with MCC 33.5520 (A) which will be reviewed in the findings under Section 7.2 of this decision. The applicant has submitted a plan showing the required features in the development area. The application included the supplemental reports or plans relative to: engineering, soil characteristics, stormwater drainage, and erosion control. These requirements have been met.

7.1.2.. MCC 33.5515 (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.

Staff: The applicant submitted a geological report prepared in 1995 by Kevin M. Foster, P.G, C.E.G, PE of Foster Geotechnical, PC indicating the site was suitable for development. The applicants also submitted an addendum to that report, by John E. Gambee, PE, Principal and Mr. Foster, Principal of Foster Gambee Geotechnical PC (Exhibits 1.6 and 1.7) prepared in 2003. The addendum included a recommendation that, “a detailed geotechnical investigation, including subsurface exploration, laboratory testing of soil samples, and engineering analysis

be conducted at the property.” The addendum continued stating that, “Detail geotechnical development criteria (not provided in the Foster Geotechnical’s earlier report) be provided prior to development of the property.”

The applicant submitted a geological report from Columbia Geotechnical prepared by Ruth A. Wilmoth, Certified Engineering Geologist, and Patrick E. Wilmoth, Professional Engineer, (Exhibit 1.8) certifying that the site is suitable for the proposed development meeting requirement MCC 33.5515(E)(2). This report addressed the specific proposed development including development standards.

7.1.3. MCC 33.5515 (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.

Staff: The Columbia Geotechnical geologic report states the following recommendation:

Construction monitoring is known to be key to determining that work is completed according to planned drawings and specifications. We recommend that an engineering geologist/geotechnical engineer be kept involved in the project to review the final engineering plans and specifications prior to construction and to observe all initial steep excavations, subgrade preparation, and drainage behind retaining walls and along the foundations. Subsurface conditions that differ from those encountered in the exploration phase should be evaluated for modifications to the geotechnical recommendations.

The geotechnical investigations included meet these requirements except for number three, requiring observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer, which will be required as a condition of approval.

7.2. Grading and Erosion Control Standards

7.2.1. MCC 33.5520(A)(1)(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: *Fill materials will consist of existing natural material, ¾-gravel from Morse Bros. Fill will be compacted @ maximum 6" increments and for larger areas, Jumping Jack compactor for drench area in 1' increments.*

The Columbia Geotechnical geologic report states the following recommendation addressing fill:

We do not recommend any substantial filling; excavated soil should be removed from the site. With careful attention to construction practices that change the load or drainage in the area, construction of the proposed house can be done without adversely affecting the global stability of the entire slope so long as excavated soil is removed from the site, minimal filling is considered, all cuts are buttressed and drained, and the drainage on the site is improved so that near-surface groundwater seeps and surface water from the structures and all impermeable surfaces are directed to an approved outlet. We recommend that earthwork is attempted only during the dry season (usually June 15th to October 15th), unsupported cuts for retaining walls be limited to 5 vertical feet unless otherwise directed during construction based on the soil conditions encountered, and the time between the initial cut and the retaining wall backfill is limited to no more than one month. Utility trenches should similarly be left open as short a time as possible to reduce the chance of unsupported ground movement. The pipes from the foundation and retaining wall drains should be kept independent from all roof and surface drains.

The retaining wall design for this project has been previously completed by Miller Consulting Engineers. A wall drain (subdrain) should be placed behind all walls at the base, according to the specifications in the *Drainage* section below. We recommend the backfill is benched into any sloping cuts and compacted in horizontal lifts with drain rock (1½"-¾") as the backfill to facilitate drainage for at least the one-foot-wide portion immediately behind the wall above the wall drain to within one foot of the top of the wall. Elsewhere, crushed rock such as ¾"-0 or 1½"-0 can be used. We recommend the actual depth of footing and the soil conditions encountered should be verified and documented by an engineering geologist/geotechnical engineer during the excavation for the wall footing. Retaining wall backfill should be compacted with a hand-held vibrating compactor and completed to grade prior to framing any adjoining structures. The top of the backfill should slope slightly away from the wall and drain to a concrete-lined swale to prevent surface water from entering the backfill.

Staff: The applicant has provided specifications for the fill needed for the development. This standard is met.

7.2.2. MCC 33.5520(A)(1)(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: *Cut and fill slopes will not be steeper than 3:1 other than the back wall which is Engineered for this area and for this location and in the plans as specified by Engineer.*

Staff: The Columbia Geotechnical geologic report addresses cut and fill slopes and the retaining wall design. There will not be any unsupported cuts or fills necessary for the proposed development. The cut for the dwelling will be supported by an engineered wall. This standard is met.

7.2.3. MCC 33.5520(A)(1)(c) Cuts and fills shall not endanger or disturb adjoining property;

Applicant: *We realize that cuts & fills shall not endanger or disturb adjoining properties. All these areas are sufficiently away to perform the work necessary without Involvement.*

Staff: The project includes a cut for the dwelling foundation supported with an engineered wall. This cut will be more than 30 feet from the adjacent property. The cut and work will be designed and monitored by the engineer. This standard is met.

7.2.4. MCC 33.5520(A)(1)(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 Existing upstream flow is minimal due to the location of the new structure on hog back area. Please refer to drainage form calculated by engineer Mr. Bowser.*

Staff: The applicant has submitted a Storm Water Certificate stamped and signed by Robert Brower PE. This certificate states that the project meets this requirement with on-site storm water drainage control (Exhibit 1.9). However a plan for the stormwater system was not submitted with the certificate. The Foster Gambee Geotechnical Report Addendum (Exhibit 1.7) discussed earlier in this decision includes a recommendation that discharge from the rain and foundation drains be transmitted in a closed (non-perforated) drain pipe line that discharges to the base of the drainage, and not into drywells or soakage trenches. The proposed system is a stormwater detention system located near the base of the drainage. This standard will be met through a condition of approval that the on-site storm water drainage control system shall be installed as described, or an alternative system that meets the requirements submitted by the geotechnical engineer monitoring the site development will be installed.

7.2.4. 33.5520(A)(1)(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 natural water courses will be changed or altered due to fills.*

Staff: No fill is proposed to encroach on a natural watercourse or constructed channel as part of this project. This standard is met.

7.2.5. MCC 33.5520(A)(2)(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: *Construction site is over 100 feet away from the stream. No wet lands are in this Area. Approved sediment fences will be placed in appropriate areas to eliminate any possibility of erosion as per OAR 340*

Staff: The subject property is not within the Tualatin River Drainage Basin. This standard is met.

7.2.6. MCC 33.5520(A)(2)(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: *Most of B has been covered in statement a above. Minimal damage is our goal as this is our intended yard.*

Staff: The Columbia Geotechnical geologic report includes the following recommendation addressing erosion control:

The near-surface native soils are generally silt soils that have moderate cohesion. These soils can erode or slopes surficially slump if unprotected and exposed to periods of wet weather or over-irrigation. Erosion protection measures include silt fences constructed on the downhill edge of the building site, straw bales to trap sediment, sediment ponds to let the sediments drop out of suspension, buffer zones to protect adjacent property, seeding and improved vegetation. City/County standard specifications should be regarded as minimum standards for erosion control. Erosion Control plans should be closely followed until the project is complete and proper vegetation is established. Graded slopes should be well compacted and protected from rilling. Slope vegetation on ungraded slopes should be maintained or improved. Native vegetation outside the building area should be maintained and nuisance vegetation (including non-native blackberries, ivy, etc.) should be removed and replaced with deep-rooted native plants that require little to no irrigation. Generally native groundcover with deep root systems (i.e. vine maple, salal, ferns, hooker willow, wax myrtle, cascara, sitka willow, red alder, Douglas fir, etc.) provide the best slope protection and do not require much irrigation which tends to reduce the stability of the slope.

A condition of approval will require the applicant/property owners follow the recommendations of the Columbia Geotechnical geologic report.

7.2.7. MCC 33.5520(A)(2)(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: *Our plan calls for the minimum cuts necessary to accommodate new residence. All fill areas will be adequately protected with sediment fences compaction and Grading. There will be a combination of finish shrubbery and rooted grass established before the beginning of the rainy season.*

Staff: The applicants are proposing a dwelling with a daylight basement limiting cuts necessary to establish the basement for the dwelling. This standard is met.

7.2.8. MCC 33.5520(A)(2)(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

Applicant: *There will be no time or place for temporary vegetation as all materials and areas Will be attended to in immediate fashion. Finished vegetation will be provided As described in C above.*

Staff: A condition of approval will require mulching and reseeding for any disturbed areas related to the development.

7.2.9. MCC 33.5520(A)(2)(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: *All vegetation will be protected and supplemented and minimal damage will occur as mentioned in 2B. The undisturbed buffer will be under 100 feet. Wetlands are not applicable in this area. 2 E2 Not Applicable-We are not within 100 feet*

Staff: No natural vegetation within 100 feet of a stream is proposed to be removed as part of this project. This standard is met.

7.2.10. MCC 33.5520(A)(2)(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

Applicant: *We understand this rule and plan to follow as stated in 2c.*

Staff: A condition of approval will require this standard be met.

7.2.11. MCC 33.5520(A)(2)(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: *The water retention system designed by Mr. Bowser, a certified engineer, will be put in effect at the soonest opportunity directly after the cut is made.*

Staff: A stormwater control system will be required for the processing of runoff from increased impervious surface area. This standard is met through a condition.

7.2.12 MCC 33.5520(A)(2)(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: *A sediment trap will be used prior to the inlet of the above system 2g.*

Staff: The applicant will install silt fences to trap sediments. A condition will require installation of the silt fence prior to soil disturbing activities. This standard is met through a condition.

7.2.13. MCC 33.5520(A)(2)(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: *Any exposed cut face of excavation that hasn't been back filled with proper drainage material and equipment will be seeded.*

Staff: The Columbia Geotechnical geologic report states, "We recommend that earthwork is attempted only during the dry season (usually June 15th to October 15th)..." By limiting the work period to the dry season, the potential for cut face erosion and/or slope failure related to the cut due to stormwater are greatly reduced. A condition of approval will require this and will require mulching and seeding of exposed cut faces which will remain when the project is done. This standard is met through condition of approval which will require earthwork be limited to the period between June 15 and October 15th.

7.2.14. MCC 33.5520(A)(2)(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: *This item is covered and will be followed as per drainage control by the engineer*

Staff: The applicant has submitted a Storm Water Certificate stamped and signed by Robert Brower PE. This certificate states that the project meets this requirement with an on-site storm water drainage control system (Exhibit 1.9). The Foster Gambiae Geotechnical Report Addendum (Exhibit 1.7) discussed earlier in this decision includes a recommendation that discharge from the rain and foundation drains be transmitted in a closed (non-perforated) drain pipe line that discharges to the base of the drainage, and not into drywells or soakage trenches. This standard will be met through a condition of approval that the on-site storm water drainage control system shall be installed as described or an alternative system that meets the requirements submitted by the geotechnical engineer monitoring the site development.

7.2.15. MCC 33.5520(A)(2)(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;

Applicant: *Not applicable, no drainage swales will be used.*

Staff: No drainage swale is proposed. This standard is not applicable to this project.

7.2.16. MCC 33.5520(A)(2)(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: *Construction measures will be used. Control devices will consist of sediment fences, silk traps and engineer drainage systems. Although this will most likely be not applicable any sediment will be moved to designated fill areas for proper grading.*

Staff: The Columbia Geotechnical geologic report (Exhibit 1.8) states, “We recommend that earthwork is attempted only during the dry season (usually June 15th to October 15th)...” By limiting the work period to the dry season, the potential for erosion and/or slope failure related to the cut due to stormwater are greatly reduced. The report also states, “We recommend that all earthwork, foundations, and drainage systems are completed and footings backfilled in dry weather prior to October 15th. The report continues addressing erosion control stating:

The near-surface native soils are generally silt soils that have moderate cohesion. These soils can erode or slopes surficially slump if unprotected and exposed to periods of wet weather or over-irrigation. Erosion protection measures include silt fences constructed on the downhill edge of the building site, straw bales to trap sediment, sediment ponds to let the sediments drop out of suspension, buffer zones to protect adjacent property, seeding and improved vegetation. City/County standard specifications should be regarded as minimum standards for erosion control. Erosion Control plans should be closely followed until the project is complete and proper vegetation is established. Graded slopes should be well compacted and protected from rilling. Slope vegetation on ungraded slopes should be maintained or improved. Native vegetation outside the building area should be maintained and nuisance vegetation (including non-native blackberries, ivy, etc.) should be removed and replaced with deep-rooted native plants that require little to no irrigation. Generally native groundcover with deep root systems (i.e. vine maple, salal, ferns, hooker willow, wax myrtle, cascara, sitka willow, red alder, Douglas fir, etc.) provide the best slope protection and do not require much irrigation which tends to reduce the stability of the slope.

Silt fencing will be required to be installed as shown on the site plan (Exhibit 1.3). While the earthwork for the project will be limited by conditions to between June 15th and October 15th, if wet weather occurs during that period all disturbed soil area will need to be mulched with straw to reduce the impact of the rain reducing the suspension of soil particles in the runoff. These methods will need to be used until vegetation has been reestablished in the exposed soil areas. A condition of approval will require the above mention erosion control and that recommended by the Columbia Geotechnical geologic report. This standard is met through conditions.

7.2.17. MCC 33.5520(A)(2)(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;

Staff: The Columbia Geotechnical geologic report (Exhibit 1.8) states, “We do not recommend any substantial filling; excavated soil should be removed from the site.” Given this recommendation a condition of approval will require all excavated spoils be removed from the site, no disposal of excavated spoil will be allowed on-site except those necessary for back fill around the dwelling. This standard is met through conditions.

7.2.18. MCC 33.5520(A)(2)(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.

Staff: A condition of approval will require this standard be met.

7.2.19. MCC 33.5520(A)(2)(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: *The site is not within the Balch Creek Drainage basin.*

Staff: Property is not in Balch Creek Drainage Basin. This standard is not applicable to this project.

8. CONCLUSION

The applicant has demonstrated the criteria for the Significant Environmental Concern for Habitat Permit have been met or can be met through conditions of approval for the proposed development. The applicant has demonstrated that the standards for a Hillside Development Permit have been met or can be met through conditions of approval.

8. EXHIBITS

8.1. Exhibits Submitted by the Applicant:

- Exhibit 1.1: Application form submitted 1/27/06 (1 page);
- Exhibit 1.2: Property owner's authorization letter submitted 5/18/06 (1 page),
- Exhibit 1.3: Site Plan submitted 3/13/06 (1 page);
- Exhibit 1.4: Narrative submitted 1/27/06 (3 pages);
- Exhibit 1.5: Addendum to the narrative submitted 3/13/06 (4 pages);
- Exhibit 1.6: Foster Gambee geologic report submitted 1/27/06 (4 pages)
- Exhibit 1.7: Addendum to the Foster Gambee geologic report submitted 1/27/06 (2 pages)
- Exhibit 1.8: Columbia Geotechnical geologic report submitted 9/5/06 (13 pages)
- Exhibit 1.9: Storm Water Certificate signed and stamped by Robert C. Bowser, PE submitted 2/8/06 (4 page)
- Exhibit 1.10: Aerial Photos of site showing the SEC and HDP Overlay Districts and location of proposed dwelling submitted 1/27/06 (2 pages)
- Exhibit 1.11: Photographs of the property including proposed development area submitted 1/27/06 & 3/13/06 (5 pages)
- Exhibit 1.12: Certificate of On-site Sewage Disposal submitted 3/3/06 (2 pages)
- Exhibit 1.13: Fire District Review Fire Flow Requirements form submitted 5/27/05 (2 pages).
- Exhibit 1.14: Fire District Access Review form submitted 5/27/05 (3 pages)
- Exhibit 1.15: Dwelling elevation drawings submitted 3/3/06 (1 oversized page)

8.2. Exhibits Provided by the County

- Exhibit 2.1: County Assessment Record and map for the subject property (1page);
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: Memorandum February 13, 2006 from Alison Winter, Transportation Planning Specialist

8.3. Exhibits by Others

- Exhibit 3.1: Letter dated April 4, 2006 from Kandy Davis