



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
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Findings and Decision

Multnomah County Hearings Officer

Significant Environmental Concern, Hillside Development and Adjustment

Case File: T2-06-111

Location: 13045 NE Hampson Avenue
Lot 8, Tulamette Acres
TL 6100, Sec 10C, T1N, R1W, W.M.
Tax Account #R84600-0430

Base Zone: Rural Residential (RR)

Overlay Significant Environmental Concern for Wildlife Habitat (SEC-h)
Zones: Hillside Development and Erosion Control (HD)

Applicants: Bernard and Amy Nnoli

Applicants' Representatives:

Attorney: Jonathan P. Sushida
Sushida Law Office
2233 Country Club Road
Woodburn, OR 97071

Engineering Consultant:
Dan Symons
Symons Engineering Consultants, Inc.
12805 SE Foster Rd.
Portland, OR 97236

Owners: Benell and Ilene Tindall

Appellant: Hilary Mackenzie

Appellant's Representatives:

Attorney: Dan Kearns
Reeve Kearns PC
610 SW Alder St., Suite 910
Portland, OR 97205

Engineering Consultant:
John McL. Middleton P.E.
ZTec Engineers, Inc.
3737 SE 8th Ave.
Portland, OR 97202

Public Hearing: A public hearing on the appeal was held on November 9, 2007 at the offices of the Multnomah County Land Use and Transportation Program before county Land Use Hearings Officer Christine M. Cook. The following persons testified:

1. Lisa Estrin, planner on behalf of Multnomah County;
2. Jonathan Sushida, attorney on behalf of the applicants;
3. Dan Symons, consulting engineer on behalf of the applicants;
4. Bernard Nnoli, applicant;
5. Fred Bacher, neighbor in support of applicant;
6. Dan Kearns, attorney on behalf of appellant;
7. Hilary Mackenzie, appellant.

Decision Timeline: November 9, 2007 was day 106 of the 150 day schedule during which the county's decision must be made. The applicants requested that the record remain open for submittal of additional materials through November 19, 2007, open for responsive submittals through November 28, 2007, and open for the applicant to submit final argument through December 5, 2007. The applicants explicitly agreed to toll the 150 day period for the decision through the entire open record period through December 5. The timeline for the decision restarted on December 6, 2007.

Impartiality of Hearings Officer: The Hearings Officer stated that (1) she had not had any ex parte contacts prior to the hearing; (2) she had not made a visit to the proposed development site; (3) she had no financial interest in the outcome of the proceeding; and (4) she has no family or financial relationship with any of the parties. She could make a decision that was based up on the evidence in the record and the applicable criteria. No person objected to Ms. Cook serving as hearings officer for this appeal.

Subject of Hearing: The applicants propose to construct a single family dwelling on the subject property. A Significant Environmental Concern permit for wildlife habitat, a Hillside Development permit, and an adjustment to the front yard setback are required.

The planning director approved the permits, with conditions. The planning director's decision was appealed by Ms. Mackenzie.

Grounds for Appeal:

A. First three bases for appeal. The appellant raised several grounds for appeal. The first three, taken from the Notice of Appeal follow:

- "1. The Director's decision misapplies and misinterprets MCC 33.3185 (access) by approving the proposal with a condition of approval that the applicants obtain a permit from the City of Portland to open and develop Hampson Avenue, when such a permit has already been denied.
- "2. The Director's decision misapplies and misinterprets MCC 33.4570(B) (SEC development standards) by approving the proposal with a condition of approval that the applicants obtain a permit from the City of Portland to open and develop Hampson Avenue, when such a permit has already been denied.
- "3. The Director's decision misapplies and misinterprets MCC 33.4570(C) (SEC wildlife conservation plan), because the applicants have not demonstrated compliance with MCC 33.4570(B) (SEC development standards), they are required to prepare and submit a wildlife conservation plan. No such plan was submitted, and the Director erred in failing to require one."

The focus of each of these appeal grounds, and the issue to which most testimony and record submittals at and following the hearing were directed, was whether it was permissible for the Director to approve the application subject to a condition requiring receipt of a permit to develop the dedicated right of way known as NW Hampson Avenue. (Condition of Approval 2, below, and in Planning Director's Decision dated September 14, 2007.) According to the decision, satisfaction of this condition would be sufficient to demonstrate compliance with MCC 33.3185, which requires that the property abut a street or have other safe and convenient vehicular and pedestrian access.

The subject property is roughly trapezoidal. It neither abuts any developed street, nor does it have access to a developed street via an easement. The property fronts on two dedicated, but undeveloped rights of way, NW Hampson Avenue to the north, and NW Hillhurst Drive to the south. The topography of the property between the potential routes for access to a building site is steep and is cut by a creek and an intermittent drainageway that forms a tributary to the creek. Most of the property is under tree canopy, and is vegetated by native plants, trees and shrubs.

The choice of the best route for access to the property therefore has significant implications for the location of the homesite on the property, the degree to which the steep terrain requires or allows cutting, filling, installation of retaining systems, streamside buffers, development or retention of drainage systems, and preservation of the native vegetation onsite. Each abutting right of way is itself steep, vegetated, and

affected by drainage. The application would locate the homesite on the north side of the property, fronting on NW Hampson Avenue. The county's consideration of the application, and all of the ramifications and requirements for developing this challenging site, as governed by applicable standards in the Multnomah County Code (MCC), are based upon that location.

Although the proposed development site is located within county jurisdiction, Hampson Avenue is, in part, located within the jurisdiction of the City of Portland, in the City's environmental conservation zone. The applicants initially applied to the City of Portland for approval to develop the right of way to the northern side of the subject property, but on December 1, 2006, the Portland Hearings Officer sustained an appeal of the City's administrative decision approving the application, thereby denying the applicants' request. Exhibit B.7. The Portland Hearings Officer found that the application to improve the right of way did not comply with section 33.430.250.A.1.a of the Portland Zoning Code, which requires that:

"Proposed development locations, designs, and construction methods have the least significant detrimental impact to identified resources and functional values of other practicable and significantly different alternatives including alternatives outside the resource area of the environmental zone." Exhibit B.7 at 9-13.

After discussing the evidence in the record regarding the proposal to provide access to the lot via Hampson Avenue, and alternatives to that route, the Hearings Officer concluded:

"The Proposed Alternative does not have the least significant detrimental impact on the identified resources and functional values of the conservation zone overlaying NW Hampson Ave. when compared with the applicant's two alternative routes. Neither of the applicant's two alternative routes ha[s] any significant detrimental impact on the identified resources and functional values identified in the conservation zone overlaying NW Hampson Ave., and the applicant has not shown that the two alternatives are impracticable." Exhibit B.7 at 13.

The City Hearings Officer had declined to consider evidence submitted late to the record by the applicants, evidence that purportedly included the analysis of alternative routes of access. Exhibit B.7 at 3. The applicants have provided much evidence in this proceeding that analyzes alternative access routes, and the appellant has provided a significant quantity of her own evidence regarding alternatives. See, e.g., Exhibits A.24, A.26, B.3, H.7, H.9, H.10, H.12, H.14, H.15, H.16, H.17, H.18, H.23, H.24, H.25, H.27, H.32. The applicants' and appellants' competing evidentiary arguments are directed toward demonstrating compliance or not with the Portland Zoning Code requirement that the proposed access route have the least significant detrimental impact on protected resources and functional values.

MCC 33.3185 Access provides as follows:

“All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles, except as provided for Lots of Record at MCC 33.3170(B).”

The Planning Director’s Decision dated September 14 conditions its approval upon the City of Portland approving the construction of Hampson Avenue and actual construction of the roadway access to the site. If approval is not given for access via Hampson Avenue, Condition of Approval 2 states that the county’s approval of the development application shall be void. See Decision at 2.05, page 11. Testimony and evidence in the record indicate that no legal impediment precludes the City of Portland from again considering the applicants’ proposal for improvement of the Hampson Avenue access to their parcel. At that time the applicants could present detailed analysis of alternative access routes. Because the City could then determine that the Hampson Avenue route had been shown to have the least significant detrimental impacts of the alternatives, the City could find that the application complied with Portland Zoning Code 33.430.250.A.1.a, and if other aspects of the City’s decision remained the same, approve the right of way improvements. For this reason, Planner Lisa Estrin testified that it is feasible for the applicants to satisfy Condition of Approval 2, and comply with MCC 33.3185.

Additionally, Ms. Estrin stated her view that the county lacks the authority to decide whether the Hampson Avenue access route complies with the City code requirement to show least significant detrimental impacts among alternatives. She asserted that this decision is for the City to make.

The applicants echo the idea that the decision on access via Hampson Avenue belongs to the City, and that it is feasible for them to obtain the City’s approval. Additionally, they submitted evidence, as noted above, to the effect that their access proposal will comply with the City criteria.

The appellant argues that the City has already denied the Hampson Avenue access proposal, and so as a matter of law, the applicants are precluded from complying with the access requirement via that route. In addition, the appellant submitted evidence regarding several alternative routes, which would lead either to the proposed homesite at the north side of the lot or to a different site on the southwest corner of the property. The appellant argues that any of her alternatives requires less grading, cut, fill, development of retaining structures, and removal of tree canopy and other vegetation than does the proposed access. In addition, the appellant maintains that access along her alternatives would be less steep than along Hampson Avenue. The appellant further criticizes the applicant’s analysis that shows access from Hillhurst Drive going across the entire property to the north side, when it is meant to be only for a southern building site. Appellant argues that a southern site would be less damaging to the native vegetation and the onsite waterways, and would require less cutting and fill to construct a dwelling than would the site accessed via Hampson Avenue.

The applicants and the appellants are both represented by engineering consultants who each dispute the accuracy and adequacy of the other's submittals.

The Hearings Officer has read the submittals by the parties, their attorneys, representatives and supporters, in addition to the materials produced by the county. Much of the evidence that has been entered into this record, however, is not relevant to the county's decision, because the county does not have the authority to determine whether access improvements on Hampson Avenue will be permitted. In this respect, the Planning Director's decision, staff, and the applicants are correct, and the appellant is mistaken.

Portland Zoning Code section 33.430.250.A.1.a, set forth above, calls for a determination by the City of Portland's decision making authority on a question that requires a combined legal and factual analysis. Alternatives analysis, required in this case to comply with requirements that appear derived from state regulations on exceptions analysis, is not a ministerial process for the decision maker. The decision maker must weigh the evidence in the record and employ discretion and legal analysis in arriving at a conclusion. The applicants in this case have already identified evidence that they intend to present to the City of Portland that was not before the City when they applied to it previously. More evidence relevant to the access alternatives may be produced by both sides in coming proceedings before the City. It is not for the county hearings officer to determine in advance precisely what evidence will be in the City's record, and how the City will view the credibility and expertise of the parties' consultants. The appellant is incorrect if she argues that because the access application was denied once, it is a foregone conclusion that the application will be denied again.

This Hearings Officer is not drawing any conclusions about the probable outcome of the City proceedings on Hampson Avenue, let alone making a recommendation as to what the City's decision should be. That decision will be up to the City. This decision is simply that it is feasible – capable of occurring, not legally impossible – that the City will approve the Hampson Avenue right of way. Therefore, the Planning Director's Decision which conditioned approval of the application upon City approval of development of the Hampson Avenue access, neither misapplies nor misinterprets MCC 33.3185. If the City does not approve the Hampson Avenue access, the entire county approval is void, pursuant to Condition of Approval 2, because the county decision assumes development of the homesite off Hampson Avenue.

The appellant's attorney provided in his memoranda citations to a number of LUBA decisions concerning feasibility and conditions of approval. The question was under what circumstances the county could deem it feasible that another jurisdiction would grant an approval necessary to comply with county criteria. These decisions are consistent with the rule that an applicant need show that approval by a different authority would not be precluded as a matter of law. The appellant argues that approval by the City of Portland of the Hampson Avenue access is now precluded as a matter of law. For the reasons set forth above, the Hearings Officer disagrees.

The appeal is denied with respect to the first basis for appeal. The second and third grounds for appeal are derived from the first. The basis for appeal related to the SEC development standards at MCC 33.4570(B)(2) is the asserted lack of compliance with the access standard. The third grounds for appeal states that a wildlife conservation plan must be submitted and approved because the SEC development standard at MCC 33.4570(B)(2) has not been satisfied. Because the Hearings Officer has determined that the access requirement at MCC 33.3185 has been properly applied and interpreted in the Planning Director's Decision, the appeal is denied with respect to the second and third grounds for appeal, as well.

B. Fourth basis for appeal. The fourth of the grounds for appeal states:

“4. The Director's decision misapplies and misinterprets MCC 33.5500, *et seq.* (HDP criteria), because the applicants' geotechnical engineering report is not adequate; the proposal does not minimize cuts and fills or ensure conformity with the topography; the proposed development does not retain or protect natural vegetation to the extent feasible.”

With respect to the Hillside Development permit criteria, the evidence in the record concerning the appellants' assertions conflicts, with the applicants' expert engineer attacking the evidence offered by the appellant's engineer, and vice versa. The major points of contention arise from the choice of the Hampson Avenue access to serve the applied-for development site, on the northern property line. The appellant contended vigorously that a southern site would be more level, and require less cut and fill, and destruction of natural vegetation. The appellant also asserted, based on her expertise as an architect and experience designing such structures, that placing the dwelling structure on piles would require less cutting and filling, and be more protective of vegetation.

The application proposes a house constructed on a level pad created by cutting and filling the hillside just off the Hampson Avenue access. The pad also includes the required space for fire-engine turnaround, as well as parking for the residence. These flat areas would need to be constructed on either the northern or southern portions of the property. The applicants' engineer testified in person, and explained his rationale for choosing cut and fill rather than pilings set into the hillside. He stated that if an earthquake occurred, the level pad on ground would be preferable to a structure supported by pilings.

This site has so many steep slopes and areas of creek buffer, and so much vegetation, that the development of any structure on it will necessitate disturbance of both the topography and the existing vegetation. A dwelling is a permitted use in the RR zone, and on this site, which was platted in 1912. Consequently, although the development proposal may not be the ideal in terms of topographic simplicity or retention of native plants, that is not the requirement of the criteria. The applicant may engage in cutting, filling, and some disturbance of vegetation. With respect to the geotechnical issues, the criteria call for documentation of the existing features onsite, for plans and

discussion of systems and features designed to protect resources onsite, and for certification that the site is suitable for the proposed development.

The applicant retained GeoPacific Engineering, Inc., which submitted Hillside Development Permit application materials on behalf of the applicant. See Exhibits A.1 through A.26. MCC 33.5515(A), (B), (C), and (D) are met through these application submittals. Exhibit A.3 sets forth the certification of James D. Inbrie, Certified Engineering Geologist, that the site is suitable for the proposed development. Also see Exhibit A.15, stating that recommended changes to the plans have been made. MCC 33.5515(E) and (F) are satisfied. In addition, the Planning Director's decision notes how and in what documentation the requirements of MCC 33.5520(A) and (B) are shown to be satisfied. Conditions of Approval 8-18 require a series of further geotechnical tests and observations, as well as construction, installation and maintenance of a number of technical systems designed in detail to protect the hillside, prevent erosion and unstable slopes, protect the creek, and provide for drainage and dispersal of stormwater. Condition of Approval 6 requires removal of nuisance plants and prohibits planting any of the species on the nuisance list.

Given this degree of documentation and the required protection of the resources on the property and adjacent to it, substantial evidence in the record indicates that the criteria governing the Hillside Development permit are satisfied. The applicant is not required to apply for a homesite on the southern part of the site. An engineer, whom the Hearings Officer finds to have been a credible and expert witness, testified as to the reason for placing the home on this property on a level pad created by cut and fill, rather than on pilings. The appeal is denied and the Planning Director's Decision is affirmed with regard to the fourth grounds for appeal.

C. Fifth basis for appeal. The appellant's fifth grounds for appealing the decision is as follows:

"5. The Director's decision misapplies and misinterprets MCC 33.7611 (adjustment criteria), because the impacts of this development are not mitigated to the extent practical, and as proposed, the development will significantly detract from the livability and appearance of the area."

The adjustment approved by the Planning Director was a reduction in the required front yard setback, from 30 feet to 19 feet. The applicants are, however, required to install and maintain a 9-foot vegetative buffer along 70 feet within the public right of way, adjacent to the front yard. See Planning Director's Decision at 5.02, page 26. This vegetative buffer will have a yardlike function. The buffer will thereby reduce the actual impact of the 11-foot setback reduction so that it is more like a 2-foot reduction, and will thus significantly mitigate the setback reduction.

Regarding livability and appearance, several neighbors have participated in the proceedings before the county or the city; only the appellant asserts that the impacts of the proposed adjustment would detract from area livability or appearance. Others

indicated that they did not think that the development would detract from the area. The Planning Director's Decision notes that the adjustment would result in "no discernable impact: to the level of space, light, air circulation, and/or safety from fire hazards that are currently enjoyed by the adjacent neighbors on their properties." The neighbors' dwellings are all somewhat distant from the subject property and from the area affected by the adjustment. Even the property line of the appellant's mother would be 59 feet from the proposed dwelling with the setback reduction. Her house is even more distant. The decision further correctly notes that anyone traveling on Hampson Avenue in the future would perceive that the house had a typical front yard setback.

It is difficult to see how any detrimental impacts to appearance or livability of the residential area would result from the adjustment. In fact, the adjustment enables the house to be set further from the watercourses on the property, and so is protective of the natural resources on the site. It can be said to enhance the livability of the area by affording some added protection to the natural features that are unique to that area.

The appeal is denied and the Planning Director's Decision is affirmed with regard to the fifth grounds for appeal.

Conclusion and Decision: The appeal by Hilary Mackenzie is denied. The Planning Director's Decision dated September 14, 2007 is affirmed, and is adopted and incorporated in its entirety as part of this decision. The applications for a Significant Environmental Concern permit for wildlife habitat, a Hillside Development permit, and an adjustment to the front yard setback are approved, subject to the conditions of approval below.

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 follows in brackets.

1. Prior to land use sign-off for building plan check, the property owners shall record the Notice of Decision and the Revised Overall Site Plan – C1 (Exhibit A.11.a) 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 the Land Use Planning Division, and a copy of the recorded document shall be submitted to the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 37.0670]
2. Prior to the land use approval for building department plan check and prior to commencement of any grading, tree and vegetation removal, site work or construction of the dwelling, the property owners shall apply for and obtain approval of an administrative decision by the City of Portland to utilize the Hampson Avenue right of way for access to Lot 8, Tulamette Acres. The approval shall include permission to construct the 9 ft. wide landscape strip adjacent to the subject site and require its continuous maintenance. The City's approval shall specify that the

landscape planting shall be permanent. Failure to gain approval via Hampson Avenue shall void this decision. [MCC 33.3185 Access, MCC 33.7611 Adjustment]

3. Prior to land use approval for building department plan check, Hampson Avenue shall be improved and found suitable for emergency personnel to access the subject site. The property owners or their representatives shall contact the Fire District to evaluate the condition of the roadway for access. The Fire District will need to indicate in writing to the Land Use Planning section that Hampson Avenue has been brought into compliance with the District's Access Standards. Until such time that Hampson Avenue is accessible to emergency personnel, no work shall commence on the property. This includes grading, tree and vegetation removal, site work or construction of the dwelling. [MCC 33.3185]
4. The property owners shall be responsible for the maintenance of the vegetation within the 9 ft landscape strip within the Hampson Avenue right of way fronting the subject property. If the vegetation becomes diseased or dies, the property owners shall replace the lost vegetation within the next planting season. [MCC 33.7611]
5. Pursuant to MCC 33.4570(B)(6), any fencing constructed within the 30 ft front yard setback shall comply with the following requirements:
 - (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 ration of solids to voids greater than 2:1 are prohibited.
 - (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.
6. The following nuisance plants shall not be planted on the subject property and shall be removed from the development area: [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>	Common Thistle
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convulvulus arvensis</i>	Field Morning-glory
<i>Convulvulus Nyctagineus</i>	Night-blooming Morning-glory
<i>Convulvulus seppium</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
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Waterfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convulvulus</i>	Climbing binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portuguese 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 sarachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<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.

7. No eaves shall encroach into any required yard, including the Adjusted 19 ft Front Yard. The reduction in the 30 ft front yard to a 19 ft front yard is measured from the front property line adjacent to the Hampson Avenue right of way to building eaves. [MCC 33.3160(C)]
8. The following Geotechnical Testing and Observation are required: [MCC 33.5515(F)]

Procedure	Timing	By Whom
	Prior to beginning	Geotechnical & Civil

Preconstruction Meeting	site work	Engineers, Contractor & Contractor/Property Owners
Stripping, aeration, and root-picking operations	During stripping	Soil Technician
Compaction testing of engineered fill (90% of Modified Proctor)	During filling, tested every 2 vertical feet	Soil Technician
Compaction testing of trench backfill (95% of Standard Proctor)	During backfilling, tested every 4 vertical feet for every 200 lineal feet	Soil Technician
Street Subgrade Compaction (95% of Modified Proctor)	Prior to placing base course	Soil Technician
Base course compaction (95% Of Modified Proctor)	Prior to paving, tested every 200 lineal feet	Soil Technician
AC Compaction (91% (bottom lift) / 92% (top lift) of Rice)	During paving, tested every 200 lineal feet	Soil Technician
Final Geotechnical Engineer's Report	Completion of Project	Geotechnical Engineer

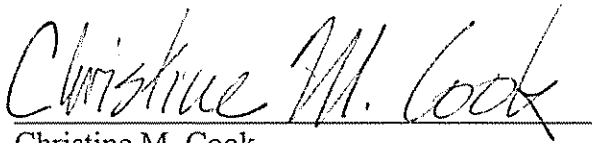
9. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, other than approved by County Right of Way Program, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 33.5520(B)(2)]
10. 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. [MCC 33.5520(B)(2)]
11. 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. On-site disposal of construction debris is not authorized under this permit. Construction debris 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)(n)]
12. The use of absorptive "pillows" shall be utilized in the two different sumps to trap hydrocarbon spills in the event of a spill during construction or dripping of chemicals from vehicles and motors once the dwelling comes into use. These pillows shall be

maintained in compliance with the manufacturer's specifications. [MCC 33.5520(A)(2)(n)]

13. All excavated topsoil and soil shall be stored in the area designated on the erosion control plan. These materials shall be covered with 6-mil plastic or 2" of mulch or straw to prevent movement into undesignated areas. Stored earthen materials shall be backfilled around the foundation of the structure as soon as practical and reseeded with temporary vegetation until permanent plantings are made. [MCC 33.5520(A)(2)(m)]
14. The culvert located in the un-named creek (Exhibit A.11.a) shall be carefully removed and the channel replanted as necessary with native plants appropriate for its location of a Flood Development Permit shall be applied for and approved. The culvert will need to be upsized to handle the carrying capacity of the stream channel. A separate Grading and Erosion Control permit will also be required prior to removal of the culvert as no erosion control has been reviewed for this work. [MCC 29.603]
15. Prior to land use sign-off for building department plan check, the applicants or their representative shall provide a phasing plan for ground disturbing activities. The phasing plan shall minimize the amount of ground disturbance proposed at any one time for the project. The phasing plan shall break the project into smaller ground disturbing events such as installation of the septic drainfield, revegetate, cutting of the dwelling, revegetate, etc. The plan shall expose the smallest practical area at any one time during construction. Upon completion of each area, it shall be covered in 2" of straw or mulch. Temporary vegetation shall be utilized if permanent vegetation will not be installed within 15 days of final ground disturbance for each opened area. [MCC 33.5520(A)(2)(b)]
16. Prior to land use approval for building department check, the property owners shall have Symons Engineering revise the stormwater system plan. The revision to the stormwater system shall remove the riprap outfall from the stream channel and place it north of the channel. The outfall shall be changed from riprap to a soakage trench or other energy absorbing device to return the outflow to a sheet flow condition prior to entering the stream channel. The soakage trench shall be located within 10 ft of the top of the stream bank. If a soakage trench is to be used, it shall be vegetated or protected to minimize potential erosion. [MCC 33.5520(A)(2)(k) & (l)]
17. During the construction of the curtain drain and the retaining wall, the cut face and fill slope shall be completed as soon as possible and temporary stabilization methods such as mulching, seeding or covering with plastic shall be utilized to prevent damage and erosion of these surfaces. [MCC 33.5520(A)(2)(i)]
18. Prior to land use approval for building department plan check, the erosion control plan (Exhibit A.11.b) shall be amended to show the following:

- a. The vegetative filter berm shall be wrapped northward at its ends approximately 10 feet to prevent the traveling of materials along its length to adjacent properties.
- b. An intermediate sediment fence shall be installed just south of the drainfield area in the approximate location of the disturbance limitation dash shown on the Grading and Erosion Control plan.
- c. An intermediate sediment fence shall be installed between the vegetative filter berm and the dwelling location. [MCC 33.5520(A)(2)(a)]

Dated: December 19, 2007.



Christine M. Cook
Multnomah County Land Use Hearings Officer

Exhibits. See Exhibit List, attached.

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.

T2-06-111 Exhibit List
Public Hearing: November 9, 2007

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits
'H' Hearing & Post-Hearing Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	10/17/06
A.2	20	Significant Environmental Concern & Hillside Development Permit with Hillside Residential Variance Narrative	10/17/06
A.3		Geotechnical Engineering Report Dated 4/3/06	10/17/06
A.4	11	Storm Water Certificate	10/17/06
A.5		Plans a. Title Sheet b. Erosion Control Details c. Tree & Nuisance Removal/Mitigation/ Landscaping Plan d. Utility & Drainage Plan e. Grading & Erosion Control Plan f. Overall Site Plan	10/17/06
A.6	1	Special Warranty Deed Recorded in Book 2405, Page 2102 Dated 4/23/1991	10/17/06
A.7	1	Letter of Authorization from Benell & Ilene Tindall for Lot 8, Tulamette Acre	10/17/06
A.8	2	Certification of Water Service	10/17/06
A.9	9	Fire District Access Review & Fire Flow Requirements	10/17/06
A.10	2	Certification of On-Site Sewage Disposal	10/17/06
A.11	7	Amended Plans – Title Sheet (Sheet 1) a. Overall Site Plan – C1 b. Grading & Erosion Control Plan – C2 c. Utility & Drainage Plan – C3 d. Tree & Nuisance Removal / Mitigation / Landscaping Plan – C4 e. Erosion Control Details – C5	5/4/07
A.12	21	Amended SEC, HDP & Adj Narrative	5/4/07
A.13	6	Nnoli Existing Culvert Check	5/4/07
A.14	5	Response to Incomplete Letter from Symons	5/4/07

		Engineering Consultants, Inc.	
A.15	1	Geotechnical Review of Grading Plan by GeoPacific Engineering, Inc. Dated April 23, 2007	5/4/07
A.16	4	Certificate of Water Service	5/4/07
A.17	1	Section 1 at Driveway with 19' Setback Proposed at Closest Point	5/4/07
A.18	1	Section 1-N/A at Driveway with 30' Setback Proposed at Closest Point	5/4/07
A.19	2	Preliminary Hillhurst Alignment Plan / Profile	5/4/07
A.20	3	Fire District Access Review	5/21/07
A.21	4	Fire District Review Fire Flow Requirements	5/21/07
A.22	2	Nnoli Residence Letter from TVFR Dated 5/12/07	5/21/07
A.23	1	Site / Street / Utility Plan	5/21/07
A.24	4	Response to Comment Letters	7/23/07
A.25	18	LU 06-124825 EN EV Staff Decision	7/23/07
A.26	3	Nnoli EA Appointment Summary from the City of Portland Regarding Feasibility of Access from Hampson Avenue Right of Way	9/5/07
'B'	#	Staff Exhibits	Date of Document
B.1	2	A&T Property Information for 1N1W10C – 06100	10/17/07
B.2	1	Tulamette Acre Tract Recorded March, 1911	10/26/06
B.3	5	Comments for Hilary Mackenzie from Reeve-Kearns PC	7/5/07
B.4	1	Comments from Steven Miller & Leslie Hildula	7/5/07
B.5	3	Comments from Hilary Mackenzie	7/5/07
B.6	2	Comments from Jolly & Mohammed Rahman	7/5/07
B.7	33	Decision of the Hearings Officer on Appeal of Administrative Decision – City of Portland (Submitted with Reeve Kearns PC)	7/5/07
B.8	1	Transportation Memo	7/5/07
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	11/3/06
C.2	1	Acceptance of 180 Day Letter	11/30/06
C.3	1	Complete Letter – Day 1 (May 21, 2007)	6/15/07

C.4	11	Opportunity to Comment	6/21/07
C.5	30	Administrative Decision	9/14/07
'H'	#	Hearing & Post Hearing Exhibits	Date
H.1	3	Notice of Appeal	9/28/07
H.2	3	Granting of Clock Extension of 37 days for Public Hearing on November 9, 2007	10/2/07
H.3	3	Notice of Public Hearing	10/18/07
H.4	1	Air Photo of Property & Surrounding Area	11/9/07
H.5	1	Sign-In Sheet	11/9/07
H.6	1	Topographic Information for Proposed Homesite and Nearby Streets	11/9/07
H.7	4	Alternate Routes to Nnoli Residence	11/9/07
H.8	9	Nnoli – T2-06-111 – SEC, HDP and Adjustment Memorandum to the Hearings Officer from Daniel Kearns	11/9/07
H.9	17	Winterbrook Memo for Nnoli – LU 06-124825 EN EV – Dated September 20, 2006 & November 1, 2006	11/9/07
H.10	1	Preliminary NW Hampson Profile	11/9/07
H.11	1	Overall Site Plan for Nnoli Residence Showing Tree Cover	11/9/07
H.12	1	Aerial Photo Showing Alternate Routes 1 – 4 Clear Cut	11/9/07
H.13	2	City of Portland Fire & Rescue Letter to Dan Symons on the Fire Code Appeal Case 06-30: Appeal ID #2922 – Dated 7/24/06	11/9/07
H.14	1	ZTec Engineers, Inc. Letter from John Middleton, P.E. to Hilary MacKenzie Re: NW Hampson / NW Hillhurst Roadway – Dated 11/8/07	11/9/07
H.15	2	ZTec Engineers, Inc. Letter to Hilary MacKenzie Regarding Access Route to Lot 8 Tulamette Acres	11/9/07
H.16	3	NW Nnoli Ct Profile Plan	11/9/07
H.17	4	Letter from Fred Bacher to Hearings Officer Regarding Case File T2-06-111, Under Appeal – Dated 11/14/07	11/15/07
H.18	8	Nnoli – T2-06-111 – SEC, HDP and Adjustment Appellant's First Post Hearing Rebuttal	11/16/07
H.19	1	Letter from Amy & Bernard Nnoli to Hearings	11/19/07

		Officer	
H.20	1	Email from Carl F. Plass, Jr. Supporting the Nnoli's Application to Build – Dated 11/14/07	11/19/07
H.21	1	Letter from Raymond & Tatia Giraud Supporting the Nnoli's Application – Dated 11/14/07	11/19/07
H.22	1	Email from Michelle Seward, City of Portland Regarding Compliance Comments Information - Dated 11/16/07	11/19/07
H.23	1	Alternatives Relative Cost Analysis	11/19/07
H.24	1	Alternate Routes – C2 Revised 11/19/07 Added Route 4	11/19/07
H.25	1	Exhibit "A" Alternative Analysis Road Map	11/19/07
H.26	1	Existing Topography – T1 Revised 11/19/07	11/19/07
H.27	4	Memo from Dan Symons to Hearings Officer Responding to Appellants Evidence	11/28/07
H.28	3	Email from Bernard Nnoli to Hearings Officer, Subject: Response to Appellants Submission: T2-06-111	11/28/07
H.29	1	Letter from Sushida Law Office to Attorney Daniel Kearns Regarding Purchasing a Limited Right of Way Across Mackenzie Property	11/28/07
H.30	3	Nnoli – T2-06-111 – SEC, HDP and Adjustment Rebuttal Comments from Hilary Mackenzie via Reeves Kearns PC	11/28/07
H.31	3	Letter from Dan Kearns, Reeve Kearns, PC to Jonathan Sushida Regarding Nnoli Home Site and Access Proposal	11/28/07
H.32	2	Letter from Hilary Mackenzie to Hearings Officer Regarding Applicant's Alternate Route Submittal – Dated 11/27/07	11/28/07
H.33	2	ZTec Engineers, Inc. to Hilary MacKenzie Regarding Nnoli Residence Alternative Access Analysis	11/28/07
H.34	2	Memo from Dan Symons to Hearings Officer Final Argument – Dated 12/4/07	12/5/07
H.35	2	Letter from Bernard & Amy Nnoli to Hearings Officer with Final Argument – Dated 12/3/07	12/5/07
H.36	3	Memo from Sushida Law Office to Hearings Officer Final Argument	12/5/07