



**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
 1600 SE 190<sup>TH</sup> 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.

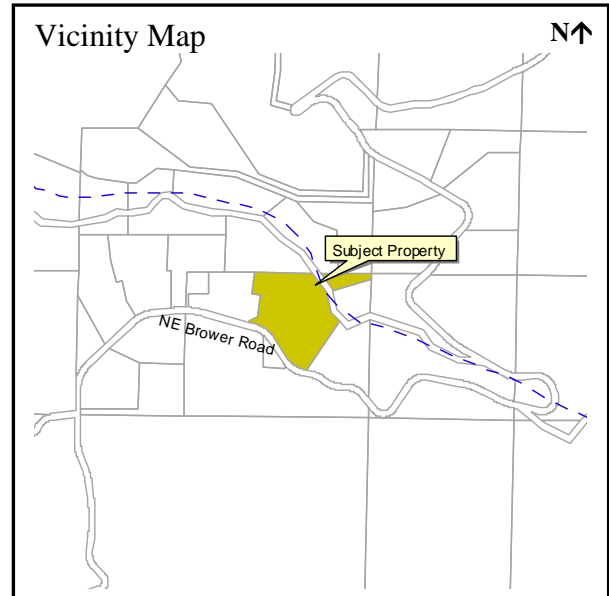
**Case File:** T2-07-016

**Permit:** Administrative Modification of  
Conditions Established in Prior Case

**Location:** 1843 NE Brower Road  
TL 1300, Sec 27, T1N, R5E, W.M.  
Tax Account #R94527-0260

**Applicant:** Dorothy Cofield

**Owner:** Linda Davis



**Summary:** Application to modify a condition of approval from the original decision authorizing the replacement dwelling on the property (NSA12-99). The condition currently prohibits removal of any trees on the property to protect wildlife. The applicant is seeking to selectively harvest timber on the property.

**Decision:** Approved With Conditions

Unless appealed, this decision is effective Friday, July 13, 2007, at 4:30 PM.

Issued by:

By: \_\_\_\_\_  
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, June 29, 2007

Instrument Number for Recording Purposes: 2005185415

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

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. 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 Columbia River Gorge Commission 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 Thursday, July 12, 2007 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 38.7065(C)(1)(c) Wildlife Review Criteria.

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. **Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0690 and 38.0700. Such a request must be made prior to the expiration date of the permit.**

### **Conditions of Approval**

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

1. **The original Condition of Approval C(3) is modified as follows: "Trees may be removed from the site as follows:**

- A) **The Approximately 7.0 acres as shown on staff Exhibit 3 may be thinned, with a mixture of lower canopy trees and mature second growth trees being maintained across the site. A minimum of 40% of the original tree count shall be retained.**

- B) A 50-foot wide buffer shall be retained along Brower Road. Trees may only be harvested in the buffer to provide required fuel breaks to structures.**
- C) A 70-foot wide buffer measuring from the centerline of the creek shall be retained along the creek with no trees harvested within the buffer.**
- D) No harvesting shall be done in the northeast corner of the property, Northeast of Toll Road.**
- E) The total area of harvest activity (“Thinning”) shall only occur on the 7.0 acres identified in Staff Exhibit 3, with all of the harvest activity being thinning.**
- F) Reforestation shall occur in accordance with Oregon State Forest Practice regulations.**

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

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

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

1. **Project Description**

**Applicant:** This is a proposal to modify the above-referenced condition of approval from a previously approved NSA permit (NSA 12-99) which prohibits the removal of trees other than those needed to be removed to meet fuel break requirements or safety reasons.

**Staff:** The applicant is requesting a modification to the National Scenic Area Site review that originally approved the dwelling on the subject property, NSA 12-99. Condition of Approval C(3) prohibited any tree removal other than those necessary for the fuel break as required under the permit.

2 **Site Characteristics**

**Staff:** The property is off of NE Brower Road in the far eastern portion of Multnomah County. The dwelling approved under NSA 12-99 replaced an old home built in 1929 which is still on the property and used as a work shop accessory to the dwelling. The property contains steep drops in elevation towards NE Toll Road. The subject property and surrounding area are heavily forested. The property is zoned Gorge Special Forest-40 (GSF-40). However, the property was offered to the US Forest Service under the Section 8(o) program and was not accepted for purchase. Under the program, the US Forest service may alter what zoning applies if they do not purchase the property. The Forest Service designated the equivalent of the Gorge General Forest – 20 (GGF-20) to the property. The majority of the property is also within the Slope Hazard overlay zone.

3. **Public Comment**

**MCC 38.0530(B) Type II Decisions**

**For all permit types except development eligible for expedited review, upon receipt of a complete application, notice of application and an invitation to comment are mailed to the Gorge Commission; the U.S. Forest Service; the Indian tribal governments; the State Historic Preservation Office; the Cultural Advisory Committee; 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, except for comments regarding Cultural Resources, which will be accepted for 20 days after the notice is mailed. 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 the Columbia River Gorge Commission within 30 days after the decision is final. The decision is final the day the decision is signed by the Hearings Officer.**

**Staff:** An opportunity to comment was mailed to property owners within 750-feet of the property lines and identified government agencies and neighborhood organizations on March 23, 2007. Several comments were received and can be found in the case file.

The Columbia River Gorge Commission wanted to ensure that the Oregon Department of Fish and Wildlife (ODFW) was consulted on the application since they played an integral part in shaping the finding that lead to the condition of approval prohibiting the removal of the tree canopy. The Gorge Commission also stressed the need to ensure protection of the identified wildlife habitat on the property.

The Friends of the Columbia River Gorge sent in comments concerning the application's completeness and wanted to ensure elements listed under MCC. 38.0045(A)(2) were included and ensuring ODFW was consulted on potential impacts to wildlife and wildlife habitat.

The Oregon Department of Fish and Wildlife sent in comments describing the habitat of big game wildlife and what would be necessary to ensure enough cover and shade remained for their protection.

*Procedures met*

4. **Code Compliance**

**MCC 38.0560 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**Staff:** Staff is unaware of any compliance issues associated with the property. No complaints have been filed on the property, the property has not changed configuration since the County last made a finding the property was a legal parcel in case NSA 12-99, and the conditions of approval have been followed.

*Criterion met.*

5. **Proof of Ownership**

**MCC 38.0550 Initiation Of Action.**

**Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** Multnomah County Assessment and Taxation records show Linda Davis listed as the owner of the property (Exhibit 1). Linda Davis has signed the General Application Form authorizing an action on the property (Exhibit 2).

*Criterion met.*

6. **Modification Of Conditions of Approval Authorized**

**MCC 38.0660(G) Modification of Conditions.** Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code. However, the decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

**Applicant:** The planning director has the discretion to limit the review under a modification application to certain, applicable criteria. You have agreed that the application can be limited to the criteria found in MCC 38.7065 (Wildlife review) 0 *See Electronic Mail, Kienholz: to Cofield, 10.10.06.*

**Staff:** The Planning Director is authorized to make a modification of Conditions of Approval under MCC 37.0660 and limit the scope of review to only those findings which affect that change. The proposed action was originally reviewed as a full NSA site review with the current applicable wildlife approval criteria found under MCC 38.7065(C)(1) – GMA Wildlife Review Criteria. The Planning Director is limiting the review for the modification to section of the code since the condition prohibiting the removal of trees was for the protection of wildlife.

*Criterion met.*

7. **GMA Wildlife Review Criteria**

**MCC 38.7065(C) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:**

**(1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will:**

**(c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.**

**In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.**

**Applicant:** The applicant received a replacement dwelling approval on September 15, 1999. *See Attached Decision of Planning Director, NSA 12-99.* The applicant had requested a replacement dwelling (manufactured dwelling) to replace an old dwelling. *See Attached NSA 12-99 Site Plan.* The replacement dwelling building site had been used for residential purposes since 1929. Therefore, the replacement dwelling caused no greater impact on wildlife habitat than previously existed with the dwelling to be replaced. The applicant and owner for NSA 12-99 (Linda Davis and Mary Pauli) filed the land use application and were not assisted by legal counsel.

The property is in the General Management Area (GMA) of the Columbia Gorge and therefore, the criteria of MCC 38.7065(C) (GMA Wildlife Review Criteria) applies. That criteria requires that "Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed by the Oregon Department of Fish and Wildlife (ODFW).

For a replacement dwelling to be allowed under MCC 38.0030(B), it must meet the scenic, cultural, recreation and natural resources provisions, land use designation provisions, fire protection and approval criteria for dwelling siting. As part of the NSA 12-99 review, ODFW found that:

*"We do not believe this project will materially interfere with our interests in wildlife habitat protection if Multnomah County conditions the permit appropriately and the landowner adheres to permit conditions. Blacktail deer and Roosevelt elk are sensitive to visual disturbance. These deer and elk occupy habitat at this proposed project site. Accordingly ODFW recommends Multnomah County condition the issuance of this permit with a requirement the landowner only remove those trees necessary to construct the dwelling." See Attached ODFW Letter, Dated September 16, 1999.*

The applicant agreed to the imposition of Condition No. C3 which incorporated ODFW's recommendation I because at that time the owners did not see a need to harvest timber, However, now the owner needs to harvest trees for income and to protect the quality of the homesite.

Under the Forest Practices Act at ORS 527 and MCC 38.0020(H), in the GMA, forest practices outside an urban growth boundary are exempt from review. Typically, without a development request, Ms. Davis would be free to harvest all of the trees, as her neighbors have done, without any review process. However, because there is an existing condition of approval from the replacement dwelling approval, it is necessary to apply for a permit to remove the condition so the trees may be cut, pursuant to the Forest Practices Act.

The Code allows forest practices under MCC 38.1005(3) as follows: "Forest Practices in the General Management area that do not violate conditions of approval for other approved uses and developments." The applicant is requesting a modification to the "no cut" condition which will allow her to sensibly harvest some of the trees, restock the forest as necessary and provided better wildlife habitat than that which existed due to the thinning of the existing trees.

The applicant acknowledges that there are signs of limited deer and elk wildlife on the property as evidenced by tracks and droppings seen on the property. However, the evidence is less than typically found in many forested areas according to Lofthus Forestry Services. *See Attached Letter.* Due to the close proximity of the property to roads and other residences, the wildlife does not use much of the property for habitat. According to my conversation with the Department of Forestry, harvesting the trees and planting a new buffer, such as arborvitae will result in a better habitat for wildlife. According to DOF, large trees do not provide good habitat because the tree branches are too tall to provide habitat. As is shown on the proposed "Buffer Map" (marked as Exhibit "A"), the applicant is proposing to reduce the buffer by six acres and replant according to DOF restocking rules as required. The trees shown in the buffer area will remain to protect wildlife in a more sensible fashion than is now occurring.

The Applicant has already contacted ODFW regarding the proposed modification, *See Attachment*. The proposed timber harvest on a portion of the property, leaving buffers and nearly four acres of undisturbed habitat will not compromise the integrity of the small amount of wildlife that uses the property. The applicant's cruiser intends to harvest the trees in the late summer which will not impact any nesting or rearing seasons. The applicant understands the factors in subsection (2) may be considered when site plans are reviewed and is available to assist the Director and ODFW in inspecting the existing condition of the wildlife area and the low quality of the site for wildlife habitat.

The applicant lives on the property and does not see much wildlife at all. Her cruiser has confirmed the small amount of wildlife that uses the property for habitat due to its configuration, closeness to roads and adjacent rural residential and forestry uses. The applicant believes (a) above is met and there is no longer any reason to protect an essentially inactive wildlife area.

In the alternative, if ODFW determines (b) is applicable, the applicant's proposed timber harvest will not compromise the integrity of the wildlife area because she will continue to protect key areas of the 10.56 acre property with habitat buffers as explained in the attached site plan and narrative: Across the back of the property there will be a thinned 50' by 500' buffer. Next to Brower Road there will be a thinned 50' buffer along the entire Brower Road. On the six acres planned to be harvested, smaller less valuable trees will be left to mature. A buffer will remain along the creek flowing through the bottom of the property. Approximately four acres of the property will not be logged as shown on the map. The remaining acreage will not be disturbed with this planned harvest and restocking.

**Staff:** The Oregon Department of Fish and Wildlife had originally advised that Big Game were in the area and the tree removal be allowed only for the actual construction of the replacement dwelling thus preserving the remaining portions of the property for wildlife habitat. The property owner agreed to the condition and the application was approved.

Currently, the property owner would like to harvest timber from the property but is prevented by a condition of approval in the original decision that prohibits the removal of any trees except for fire safety breaks. The applicant hired a professional forester, Don Lofthus of Lofthus Forestry Services, to examine the property and propose a harvest that would still protect the wildlife habitat. The proposal included thinning the canopy on the property leaving 'cover' for big game, leaving a 50-foot buffer along Brower Road and a 70-foot buffer along the creek on the property, and leaving a minimum of 40% of the original tree cover. The portion of the property across Toll road would be left alone.

Donald VandeBergh, the District Wildlife Biologist with the Oregon Department of Fish and Wildlife, reviewed the proposed harvest on the property and its potential impact to the big game wildlife in the immediate area. In a letter Dated April 5, 2007 (Exhibit), Mr. VandeBergh states in general, Black-tailed deer and Roosevelt are in the area and utilize a variety of plant communities throughout the year for food and hiding. He states that the site "could provide adequate thermal and hiding cover for deer and elk if thinning were the primary method of timber harvest, a mixture of both lower canopy trees and mature second growth trees ...maintained across the site, and dedicated buffers were maintained."



His statements support the proposed harvest of the property using thinning methods while leaving buffers along the streets and the stream that runs near Toll Road.

The original condition was placed on the property to protect the natural wildlife areas for elk and deer. With ODFW reviewing the proposed harvest and determining that as long as their recommendations were met the habitat would not be impacted, it is appropriate to allow a limited harvest.

*Criterion met.*

### **Conclusion**

**Staff:** Considering the findings and other information provided herein, this application for Modification of Conditions Established in Prior Case satisfies applicable Multnomah County Zoning Ordinance requirements.

### **Exhibits**

1. Multnomah County Assessment and Taxation Information Sheet
2. General Application Form
3. Site Plan Showing 7-Acre Area of Allowed Timber Thinning
4. April 5, 2007 ODFW Letter