



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.

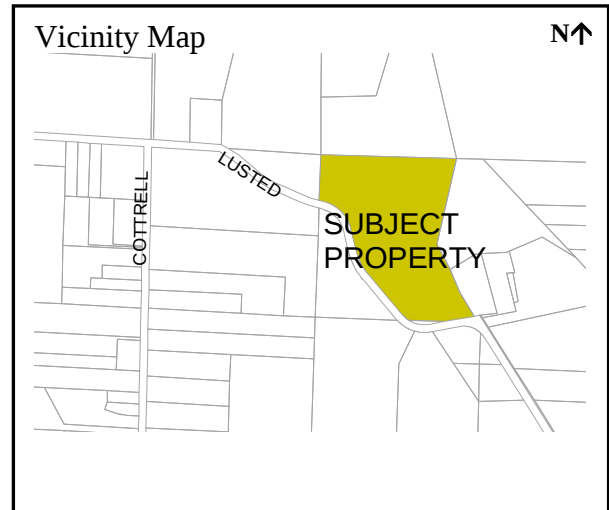
Case File: T2-07-029

Permit: Non-Conforming Use, Hillside Development Permit and Significant Environmental Concern Permit to replace 3 sections of municipal water pipelines.

Project Location: Located on the east side of SE Lusted Rd. between 34835 SE Lusted Rd. and 35649 SE Lusted Rd.
T1S,R4E, SEC 22A – TL 300
R994220410

Applicant: Tim Collins
Portland Water Bureau
1120 SW 5th Ave, #500
Portland, OR 97204

Owners: Samuel Diack Trust, Crofton Diack Trust
& The Sandy River Party Trust
35649 SE Lusted Rd.
Boring, OR 97009



Summary: The applicant proposes replacing a portion of three municipal water pipelines passing through the subject property. The development request is subject to the Significant Environmental Concern permit for wildlife habitat, Hillside Development Permit, and Alteration of a Non-Conforming Use Permit.

Decision: **Approved, with conditions.**
Unless appealed, this decision is effective November 30, 2007 at 4:30 PM.

Issued by:

By:

Kevin C. Cook
Planner

For: Karen Schilling - Planning Director

Date: November 16, 2007

Instrument Number for Recording Purposes: 97163483

Opportunity to Review the Record: A copy of the Planning Director's 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 Kevin Cook, Staff Planner at 503-988-3043 x 26782.

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 costs \$250 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 (LUBA) 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 **November 30, 2007 at 4:30 pm**.

Applicable Approval Criteria: Multnomah County Code (MCC): **MCC 36.5500 – 36.5525**, Hillside Development and Erosion Control; **MCC 36.7210 – MCC 36.7215** Verification and Alteration, Expansion or Replacement of Nonconforming Uses; **MCC 36.4540 – 36.4560**, Significant Environmental Concern (SEC); **MCC 36.2000 – 36.2110**, Commercial Forest Use; **Chapter 37**, Administration and Procedures.

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 (2) years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

Conditions of Approval

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

1. **The property owners shall record a copy of the Notice of Decision cover sheet and conditions of approval (pages 1-4) with the Multnomah County Recorder prior to building permit signoff. A copy of the recorded document shall be submitted to the Land Use Planning Office prior to the building permit sign-off (MCC 37.0670).**

2. All proposed landscaping illustrated in Exhibits A-11 & A-12 shall be installed, and grass seed spread, within 14-days of project completion. The persons controlling the easement areas delineated on sheet 4.12 of Exhibit A-11 are responsible for replacing any landscaping that does not survive with like type species to assure permanent site stabilization (MCC 36.5520(A)(2)(b));
3. Rajiv Ali, P.E., shall periodically observe the site during construction and verify in writing that the geotechnical recommendations outlined in the GeoDesign, Inc. March 4th, 2005 geotechnical memorandum were followed (MCC 36.5515(F)(3)) - (Exhibit A-6). The use of services from a different Oregon Licensed Professional Engineer, or from a certified engineering geologist will first need to be authorized by the County in order to meet this condition of approval.
4. The property owners shall install erosion control measures before the site is disturbed and maintain best erosion control practices through all phases of development (MCC 36.5520(A)(2)(b)). Erosion control measures are to include the installation of sediment fences below the project area, installation of straw bales and bio bag barriers downhill and downstream of the active work area and covering stockpiled soils with straw mulch or 6-mil plastic sheeting. All erosion control measures are to be implemented as prescribed in the current edition of the City of Portland's *Erosion Control Manual*, copies of which are available for purchase at our office, or through the City of Portland.
5. 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 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.
6. On-site disposal of construction debris is not authorized under this permit. Spoil materials removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects.
7. 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.
8. The applicant shall include the addition of eight new native trees on the planting plan .
9. No more than 4,999 cubic yards of fill may be imported as part of this project on the subject lot unless approved through a Conditional Use for Large Fill.
10. All slopes, permanent and temporary shall be no greater than 3:1.

Note

Once this decision becomes final, applications for building permits may be made with the City of Gresham. **When ready to have building permits signed off, call the Staff Planner, Kevin Cook, at**

(503)-988-3043 x 26782 to schedule an appointment. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Four (4) sets each of the site plan and building plans are required at the building permit sign-off as well as a \$77 erosion control inspection fee and \$53.00 Building Permit Review Fee.

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.

DECISION OF THE PLANNING DIRECTOR

Formatting Note: As necessary to address Multnomah County ordinance requirements; Staff provides Findings referenced here. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses by the applicant or their representative are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “Staff” precedes such comments.

Findings of Fact

1.0 Summary of Request

Staff: The Bull Run Watershed is the primary water supply for 800,000 Oregonians living in the Portland Metro area. Three steel pipelines convey water by gravity from the Bull Run Headworks to reservoirs on Powell Butte and Mt. Tabor, east of Portland. Certain exposed, above ground portions of the pipelines have been determined to be at risk to landslides, scour, tree fall, flooding, earthquakes, and other hazards. Occasional failures have occurred since construction of the conduit system in 1925 resulting in lost water supply and emergency repairs.

The City of Portland Bureau of Water Works is undertaking a series of projects to reduce the vulnerability of the conduits. This review concerns three exposed sections of conduit on the subject property. The main purpose of the project is to bury the exposed pipelines where they cross over an unnamed tributary of the Sandy River. The project goal is to reduce the vulnerability of this particular section of water conduit resulting in a more secure municipal drinking water supply.

2.0 Vicinity and Property Description

Staff: The project is located on the east side of SE Lusted Rd. between 34835 SE Lusted Rd. and 35649 SE Lusted Rd. (Exhibit A-9). The vacant property is zoned Commercial Forest Use (CFU) with zoning overlays for Significant Environmental Concern (wildlife habitat) and Hillside Development within the project area. Properties immediately adjacent to the subject parcel are also zoned CFU. Other properties in the vicinity (farther west) are zoned Multiple Use Agriculture-20 and Exclusive Farm Use and are used for farming and residential use.

The construction area is located within a vegetated gully containing an un-named tributary of the Sandy River. The new sections of conduit will be located underground within reinforced material. Construction access will occur through the subject property by way of SE Lusted Road. Existing vaults and access drive will also be upgraded.

3.0 Noticing Requirements

Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract (MCC 37.0530(B)).

Staff: A 14-day opportunity to comment was mailed on July 13, 2007 in accordance with the noticing requirements of **MCC 37.0530(B)**. As of the writing of this report, no comments have been received.

4.0 Lot of Record

MCC 36.2075 and 36.0005(L)(12) states, a Lot of Record, For the purposes of this district is a parcel, lot, or group thereof which when created and when reconfigured satisfied all applicable zoning and land division laws.

Staff: In addition to the CFU Lot of Record requirements a Lot of Record needed to have satisfied all applicable zoning laws and land division laws at the time of creation (**MCC 36.0005(L)(13)**).

A historical 1962 zoning map shows the subject property in a slightly different configuration as it is seen today. Staff has not identified the exact date(s) that the current property configuration came into existence. The question as to whether or not the property is considered to be a Legal Lot of Record as defined in **MCC 36.0005(L)** remains.

Because this public project will be located within an easement on private property, a Lot of Record finding is not necessary in this case.

5.0 Ownership Authorization

Proof of record ownership of the tract and the representative's authorization must be demonstrated to process any land use application (**MCC 37.0590(A) & (C)**). Property owner Samuel Diack has provided written authorization for the project to occur on the subject property. A copy of the written authorization is contained in the permanent case file.

6.0 Access Standards (MCC 36.2073)

All lots and parcels in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 36.2075(C).

Staff: The subject lot abuts a public street (Lusted Road) and no additional accesses are required or proposed.

7.0 Dimensional Requirements

Minimum Yard Dimensions (MCC 36.2056(C)).

<u>Front (feet)</u>	<u>Side (feet)</u>	<u>Street Side (feet)</u>	<u>Rear (feet)</u>
30	130	130	130

Staff: The replaced waterline will be buried underground and therefore these setbacks, which apply to above ground buildings and structures, do not apply.

8.0 Nonconforming Uses (MCC 36.7200(A))

The purpose of this section is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the neighborhood, or changes required for the use to comply with State or County health or safety requirements.

Staff: The current Commercial Forrest Use (CFU) zoning regulations would require a Conditional Use Permit application if the use (regional water distribution lines) were established today (**MCC 36.2030(A)(5)**). However, the first of the three water conduits was installed on the property in 1911 and the last one was completed in 1953. The first comprehensive zoning ordinance affecting the property went into effect in 1955 (Exhibit N).

8.1 Verification of Nonconforming Use Status (MCC 36.7215(A)(1))

The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use: Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

Applicant: “The Zoning Code was enacted in 1955. As described in Part One: Project Description, the pipelines were constructed prior to 1953 with the oldest dating from 1911 and has been in use since construction. Documentation of the pipeline’s construction prior to adoption of the County Zoning Code is shown in Attachment F.”

Staff: Information posted on the City of Portland Water Bureau’s webpage¹ indicates that conduit 2 went into service in 1911, conduit 3 in 1925, and conduit 4 in 1953.

This evidence proves the original structure pre-dates Multnomah County zoning regulations which were first applied to the subject property on April 19th, 1955. Since the use was lawfully established and operating when zoning regulations were first adopted, Staff finds this standard has been met.

8.2 Has not been abandoned or interrupted for a continuous two year period (MCC 36.7215(A)(2)).

Applicant: “Since its construction, the three conduits have been in continuous operation by providing drinking water to Portland from the Bull Run headworks.”

Staff: The applicant’s statement is substantial evidence that conduits have not been discontinued for a continuous two year period. Staff finds this standard has been satisfied.

8.3 The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision

¹ <http://www.portlandonline.com/water/index.cfm?&a=28322&c=29461>, accessed 10/22/07, 13:20.

disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider (MCC 36.7215(B)(1): Description of the use;

Applicant: “Part One: Project Description describes the proposed project. The three conduits within the project area are between 52 and 66 inch steel pipes. The pipelines have generally remained the same since its construction except for periodic maintenance.”

Staff: The nature and extent of the waterline use has not changed since the establishment of all three conduits. The applicant has adequately detailed the nature and extent of the use above. This standard has been met.

8.4 The types and quantities of goods or services provided and activities conducted (MCC 36.7215(B)(2);

Applicant: “No additional goods or services will be provided. The proposed project will replace the existing pipe with the same diameter pipe and will carry the same amount of water as today.”

Staff: The services provided by the use have been the same since 1953, being the conveyance of municipal drinking water.

8.5 The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity (MCC 36.7215(B)(3));

Applicant: “The scope of use would not change under the proposed project.”

Staff: The volume of water conveyed through a closed, gravity fed system would be largely limited to the diameter of the pipe. It is reasonable to assume the volume and intensity of water conveyance has remained relatively constant throughout time because the diameter of the three conduits have not been altered since establishment.

8.6 The number, location and size of physical improvements associated with the use (MCC 36.7215(B)(4));

Applicant: “Part One: Project Description describes the project in detail. In general, the proposed project is to reconstruct a section of conduits #2, #3, and #4 to make them less susceptible the human and natural actions, essentially burying the currently exposed lines where they cross a small unnamed stream. The conduits cross below an earthen dam and cross a small drainage channel at the toe of the dam. This project site lies several hundred feet downstream of the earthen dam that impounds Diack’s Pond on the unnamed stream. The stream is five to 15 feet wide within the project area. The existing three conduits are exposed on a trestle crossing the small stream on the west side of the property. The total span of exposed conduit is approximately 75 feet. The exposed conduits will be replaced with a new 52-inch diameter steel water pipeline for conduit #2, a new 58-inch diameter steel water pipeline for conduit #3, and a new 66-inch diameter steel water pipeline for conduit #4. All three conduits will be located on the existing alignment, but buried to reduce visibility and vulnerability. About 65 feet of the pipe will be encased in concrete to reduce the vulnerability to scour from the stream. Though minor, wetland impacts will be mitigated on a 1.5 to 1.0 ratio. There is approximately a total of 0.12 acres of wetland mitigation located at the southern edge of the

project area and approximately 0.002 acres of wetland mitigation located in the northeastern edge of the project area, as shown in Sheet 4.01 of Attachment C.”

Staff: The applicant has adequately summarized the physical improvements associated with the use which have not changed since original construction. The total length of all three exposed sections of conduit is approximately 160 feet.

8.7 The amount of land devoted to the use (MCC 36.7215(B)(5)); and

Applicant: “The amount of land devoted to the use will not change. The reconstructed pipelines will be located within the same alignment as the existing pipelines.”

Staff: The construction plans confirm that the new waterlines will be in the same footprint as the existing waterlines. No new land will need to be permanently dedicated to the use.

8.8 Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use (MCC 36.7215(B)(6)).

Applicant: “As necessary, the applicant will provide information, if possible, to aid the review of this application.”

Staff: No other factors must be considered because the applicant has demonstrated the nature and extent of the use has not changed since 1953.

8.9 A reduction of scope or intensity of any part of the use as determined under MCC 36.7215 (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered (MCC 36.7215(B)(7)).

Applicant: “No reduction of scope or intensity of use is proposed. This criterion does not apply.”

Staff: Staff has found no evidence indicating the scope or intensity of use has been significantly reduced or discontinued for a period of two years or more.

8.10 In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance (MCC 36.7215(C)).

Applicant: “The existing pipelines were constructed prior to the County’s Zoning Code that was adopted in 1955 and have been in constant use since their construction. The proposed project would not alter the use because no additional capacity is proposed.”

Staff: The applicant has indicated that all three conduits have been in use since 1953. Comprehensive zoning first applied to the property in April of 1955. The scope and intensity of

the use has not changed since construction because the pipe diameter has not changed. Since this is a gravity driven² system, pipe diameter is the limiting factor and is therefore a reasonable benchmark to evaluate the intensity of water conveyance (i.e. the intensity of the use). Staff finds the use is in compliance with all applicable land use procedures and standards.

- 8.11 Except for nonconforming uses considered under MCC 36.7210 (B), the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification (MCC 36.7215(D)).**

Applicant: "The applicant is aware that conditions may be imposed as a part of the approval."

Staff: No such condition is necessary in this case. The project will be considered under the alteration standards of MCC 36.7210(B).

- 8.12 Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37 (MCC 36.7215(E)).**

Applicant: "The applicant is aware that this application will be processed as a Type II application."

Staff: This Type II decision has been processed in accordance with the administrative procedures outlined in Chapter 37 for Type II decisions.

- 8.13 An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application (MCC 36.7215(F)).**

Applicant: "The existing pipelines were constructed in 1911 (#2), 1925 (#3), and 1953 (#4) and have been in constant use since its construction. The City of Portland Water Bureau has used the first pipeline to supply drinking water to Portland residents since it was built 80 years ago."

Staff: The applicant has exceeded the requirements of this Section by demonstrating that the conduits have been supplying drinking water to the Portland metropolitan region continuously since their construction in 1911, 1925, and 1953.

- 8.14 For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application (MCC 36.7215(G)).**

Applicant: "The applicant has not provided this documentation."

Staff: The applicant has supplied adequate documentation. Additional documentation is not necessary.

² <http://www.portlandonline.com/water/index.cfm?&a=29742&c=29924>, accessed 10/22/07, 13:47.

8.15 Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements (MCC 36.7210(A)).

Applicant: “The proposed project would alter the existing nonconforming use by reconstructing the existing pipelines by burying them in an embankment. The reconstructed pipelines would remain within the same alignment as the existing facility located above grade. No expansion of the existing system is proposed as the existing pipelines will be replaced with a conduits of the same diameter.

Burying the existing pipelines will protect the health and safety of the public who rely on the pipelines as a water source. Burying the pipelines, as proposed, will improve the safety of the line by reducing the potential damage from natural events such as flooding, washout, scour, falling trees landslides, and from human disturbances that could result in either contamination of drinking water or damage to the facility itself.

The proposed project will have minor visual or no impact because the existing embankment will be reconstructed over the conduits and the existing exposed conduits will be buried in the embankment.”

Staff: The alteration in this case is a physical change to the structures. This project is necessary to better protect a municipal drinking water system from hazards. The identified hazards and evidence supporting this finding is discussed in more detail in the next finding. This project qualifies as alteration/replacement of a non-conforming use.

8.16 After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that (MCC 36.7210(B)):

(I) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or

Applicant: “MCC 36.7215 requires documentation to verify whether the use in question is a non conforming use, which are addressed in response to those criteria. The submitted material showing the pipelines’ existence prior to 1955 is also included in this application as Attachment F. Supporting documentation includes the easement on which the conduits are located, with the oldest easement dated November 23, 1923, and construction plans dated 1925.

Relocating the existing pipeline below grade will protect the health and safety of the public who rely on the pipeline as a water source, as required by the Water Bureau’s charter to provide a reliable water source to customers. Relocating the pipelines below grade, as proposed, will improve the safety of the line by reducing the potential of damage from natural events such as flooding, scour, falling trees landslides, and from human disturbances that could result in either contamination of drinking water or damage to the facility itself.”

Staff: Concern has been raised by the City of Portland’s Bureau of Water Works that the above ground trestle supported pipe section is subject to significant loads from earthquakes, floods and landslides. The fear is that any number of disasters could result in a failure at this location. A failure could disrupt water supply to the Portland metropolitan region. Staff finds replacement

of this section of the conduit is justified and necessary for health and safety requirements because continued access to potable water is critical after any natural disaster. This standard has been met

(2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.

Applicant: “The alteration is necessary because not doing so could have an adverse impact on the health and safety of the public as described in subsection MCC 36.7210(B)(1), above. The proposed project will reduce potential natural and human threats to the pipeline.”

Staff: According to Rajiv Ali, P.E. of Geo Design, Inc., the proposed alterations are necessary to maintain the existing pipeline structure in the event of significant forces caused by earthquake, flooding or landslide activity. The existing structure was not designed to withstand these forces and is in need of repair and replacement. This standard is met.

- 8.17 After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 36.7215, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood (MCC 36.7210(C)(I)):**

The character and history of the use and of development in the surrounding area;

Applicant: “The proposed project will have minor to no impact to the surrounding area. The exposed pipelines will be buried in an embankment and the existing support trestle will be removed. The proposed project would not affect neighboring development. The project area will be returned to the similar grade and will be replanted with native vegetation.”

Staff: The improvements will be placed below ground and will not be visible to the surrounding neighborhood. Staff finds the project will not change the character of the local area in any negative way. Existing above ground trestle and conduit structures will be removed and plantings and native grasses will be used to rehabilitate the site after construction, reclaiming the natural look to the vegetated gully. This standard is met.

- 8.18 The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood (MCC 36.7210(C)(2));**

Applicant: “Noise and dust from construction equipment may increase during the project’s construction, estimated to take approximately five months. During construction, areas prone to dust creation, such as access roads, will be sprinkled with water. All construction would occur during the day. Post construction, the project would have no adverse impact to area because it would be buried, at minimum, four feet below grade. The area will be regarded and replanted to the same condition prior to the project.”

Staff: The resulting buried waterline is not expected to produce discernable noise, vibration, dust, odor or fumes. Because the structure will be buried underground, glare from the structure will not be possible. This standard is met.

8.19 The comparative numbers and kinds of vehicular trips to the site (MCC 36.7210(C)(3));

Applicant: "When construction is complete, no additional trips are assumed except for periodic maintenance vehicles, which are assumed to occur at the same rate as today. Construction will require heavy equipment operating within the site and construction workers driving and parking within the project area, temporarily increasing traffic to the area, although the number of workers at the site is expected to be small and would have no impact to the surrounding area."

Staff: Staff agrees with the applicant's assessment of this standard above. This standard is met.

8.20 The comparative amount and nature of outside storage, loading and parking (MCC 36.7210(C)(4));

Applicant: "No outside storage, loading, or parking areas are proposed other than temporary construction equipment storage areas located on the west side of the pipeline area. Those areas will be returned to pre-project conditions when construction is complete."

Staff: None of these amenities are proposed. This standard does not apply.

8.21 The comparative visual appearance (MCC 36.7210(C)(5));

Applicant: "When completed, the proposed project will have a beneficial visual impact on the project area because the exposed portions of the pipeline will be buried and not visible with the exception of an access manhole located adjacent to the stream, unlike today where approximately 75 feet of the pipeline and trestle project is exposed."

Staff: The new structure will be buried and will not be visible. The construction area within a gully is only partially visible from the property to the west. This standard is met.

8.22 The comparative hours of operation (MCC 36.7210(C)(6));

Applicant: "No operating hours are proposed. This criterion does not apply."

Staff: The conduits will constantly convey water after construction as is currently occurring through the existing structure. No change to the hours of operation are proposed. This standard is met.

8.23 The comparative effect on existing flora (MCC 36.7210(C)(7));

Applicant: "As described in Part One: Project Description and in response to criteria within this application, the streambed will be preserved to the greatest extent possible. Wetlands will be restored and mitigated at a rate of 1.5 to 1.0. Impacts will be minimized within the project area by implementing the erosion and sediment control and revegetation plans (Attachment C sheet 4.02 and 4.12). Stockpiled streambed material removed during construction will be replaced. The stream will be regraded to match pre-construction grades and will be replanted with species common to the area."

Staff: The applicant has proposed an extensive erosion control plan to minimize both temporary and permanent impacts to existing flora. This plan will be discussed in detail within

the Hillside Development portion of this decision. Staff finds this plan is adequate to protect existing flora as the construction footprint only covers roughly 0.5 acres and because the project will utilize numerous best management practices including work area dewatering, echelon straw bale barriers, sediment fence and biofilter barriers downstream of the project area. Site stabilization by native seed mix at 11.81 pounds per acre application rate and site amendment landscaping totaling 150 native container plants will occur to not only repair but enhance the diversity and density of riparian area vegetation.

The applicant also performed an extensive alternatives analysis which was presented within the Joint DSL/Corps application. This analysis ruled out five other proposed construction alternatives in an attempt to minimize impact to the waterway and surrounding riparian areas (Exhibit A-1). Staff has considered the comparative effects on the existing flora and has determined this project will not have a measurable impact on the site flora and that the project will ultimately create a more diverse and natural riparian area after the trestle structure and above ground conduit are removed and the mitigation plan implemented.

8.24 The comparative effect on water drainage or quality (MCC 36.7210(C)(8)); and

Applicant: "The three existing conduits will be replaced by in kind with three new conduit sections. When construction is complete, the wetland area is expected to function as before construction."

During construction, appropriate measures will be used to trap sediment, including sediment fences placed at the edge of the project area, straw bales along the base and at midstream of the streambank, and biofilter bags across stream, as shown in Attachment C, Sheet 4.02. As needed, erosion and sediment control measures will be upgraded if unforeseen storm events occur to ensure that no sediment or sediment-laden water leaves the site."

Staff: Staff agrees with the applicant's response above. Impacts to water quality have been carefully considered in the design of this project. This standard is met.

8.25 Other factors which impact the character or needs of the neighborhood (MCC 36.7210(C)(9)).

Applicant: "As described, the proposed project would have no adverse effect on the surrounding area, and will have a beneficial impact for the Portland residents who rely on the pipeline for safe drinking water."

Staff: Other factors requiring consideration have not been identified. In conclusion, staff finds the Verification and Alteration to a Non-Conforming Use standards have been satisfied.

9.0 Significant Environmental Concern – Application Information

The following information shall be provided (MCC 36.4540(A)(1)): A written description of the proposed development and how it complies with the requirements applicable to the resource area in which development is proposed as listed in SECsw, SECwr, SECh.

Applicant: "Work must be performed during the winter low water demand period for the city because the pipeline will be disconnected during construction. Accordingly, the work will be

done from September 2007 through May 2008. Activities will include removal of the existing trestle/platform, installation of new culverts passing under the conduits, construction of new flow meter and blow-off vaults, construction of a reno mattress, restoration of wetlands including construction of some wetland areas, site restoration with seeding and plantings, and installation and removal of the temporary in-water work isolation barriers (e.g., sand bags) and revegetation.”

Staff: The applicant has provided a project description above. A detailed evaluation of the SECh standards occurs within this section of the decision.

9.1 A map of the property drawn to scale showing (MCC 36.4540(A)(2));

- (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) Location of natural drainageways, springs, seeps, and wetlands on the site. The Planning Director may require the applicant to provide the location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;**
- (e) Proposed fill, grading, site contouring or other landform changes;**
- (f) 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;**
- (g) Location and width of existing and proposed roads, driveways, parking and maneuvering areas, and service corridors and utilities.**

Applicant: “The applicable information is provided on the Attachment C, Sheets 4.01 – 4.02.”

Staff: Construction plans containing this information are presented as Exhibit A-9. The applicant has submitted the necessary information.

9.2 A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation (MCC 36.4540(A)(3)).

Applicant: “The applicable information is provided on the Attachment C sheet 4.12.”

Staff: Although the applicant is not proposing a building, as defined by Multnomah County Code **(MCC 36.0005(B)(5))**, construction plans show the design, with cross-section views, are presented in Exhibit A-9. This standard does not apply.

9.3 Application for a flood hazard permit, erosion control permit, and/or other required natural hazards permit for the proposed development (MCC 36.4540(A)(4));

Applicant: “A Floodplain Development Permit and Hillside Development Permit are being requested for this proposed project.”

Staff: The applicant has applied for a Hillside Development Permit as part of this review and a Flood Development Permit under a separate review (Case T1-07-020). The applicant has applied for all necessary permits.

- 9.4 In addition to the information required in MCC 36.4540(A) above, an application to develop in SEC-h areas shall also include (MCC 36.4540(D)(1)): 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:**

Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas (MCC 36.4540(D)(2)).

Applicant: "No other properties are within 200 feet of the Project. The project vicinity is generally farmland interspersed with some wooded areas. The nearest access roads/driveways are shown on sheet 4.01. No existing or proposed fencing is located within the project area."

Staff: The required map is presented as Exhibit A-9. This standard is met.

- 9.5 Location and width of existing driveways within 200 feet of the subject parcel's boundaries on all adjacent parcels (MCC 36.4540(D)(3));**

Applicant: "No other properties are within 200 feet of the Project. The project vicinity is generally farmland interspersed with some wooded areas. The nearest access roads/driveways are shown on sheet 4.01. No existing or proposed fencing is located within the project area."

Staff: The required map is presented as Exhibit A-9. This standard is met.

- 9.6 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 (MCC 36.4540(D)(4)).**

Applicant: "No other properties are within 200 feet of the Project. The project vicinity is generally farmland interspersed with some wooded areas. The nearest access roads/driveways are shown on sheet 4.01. No existing or proposed fencing is located within the project area."

Staff: The map illustrating the required information is presented as Exhibit A-9.

10.0 Significant Environmental Concern – General Requirements

- 10.1 Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities (MCC 36.4550(A)).**

Applicant: "Best management practices will be utilized during construction to minimize site erosion during construction activities. As shown in the Attachment C Sheet 4.02, erosion control will include the use of biofilter bags across the channel, straw bales on the base of the banks, and sediment fencing surrounding the project area. Prior to construction completion, the site will be restored to preconstruction contours and all areas previously vegetated will be replanted."

Staff: The applicant has proposed a substantial erosion control plan which is presented as Exhibit A-10. This plan involves dewatering the work area (if necessary), installation of sediment fencing and rows of straw bale barriers and bio bags to help trap mobilized sediment before reaching Beaver Creek. The applicant has also selected an area west of the riparian area for construction equipment staging to limit impact caused by frequent equipment movement. Considering all measures proposed, Staff finds areas of erosion potential will be protected from loss by appropriate means. This standard is satisfied.

- 10.2 Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision (MCC 36.4550(B)).**

Applicant: "Outdoor lighting is not proposed for this project."

Staff: Staff concurs with the applicant. This standard does not apply.

- 10.3 The nuisance plants (listed in this section), in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone (MCC 36.4550(C)):**

Applicant: "The nuisance plants defined in 36.4510 nor the nuisance plants in Table 1 will be used to revegetate the project site."

Staff: None of the plants proposed for mitigation are identified as nuisance or prohibited plants according to the most recent version of the Metro Native Plant List brochure. **Multnomah County Code 36.4510** references this list as the applicable list for this review. This standard has been met.

11.0 Significant Environmental Concern Permit (Wildlife Habitat)

- 11.1 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 (MCC 36.4560(A)(1)).**

Applicant: "The project does not occur within a wooded area. This criterion does not apply."

Staff: The construction will not be located entirely within a cleared area as the existing waterline is located within a forested gully. Because the waterline is an existing linear feature, the location of the proposed replaced section can not be moved to another location. The applicant has submitted a wildlife conservation plan in lieu of meeting this standard as allowed by **MCC 36.4560(B)(1)**. Compliance with the wildlife conservation plan standards is evaluated later in this decision.

- 11.2 Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site (MCC 36.4560(A)(2)).**

Applicant: "This standard applies to new access roads/driveways only and would not apply to this

project. Existing access roads will be used to access the site. No new roads will be required.”

Staff: The construction area is located more than 200 feet from a public road. The work area cannot be relocated closer to the road to meet this standard because it must occur at the existing conduit location within the existing easement. The applicant has submitted a wildlife conservation plan as required by **MCC 36.4560(B)(1)**. Compliance with the wildlife conservation plan standards is evaluated later in this decision.

11.3 The access road/driveway and service corridor serving the development shall not exceed 500 feet in length (MCC 36.4560(A)(3)).

Applicant: “This standard applies to new access roads/driveways only and would not apply to this project. Existing access roads will be used to access the site. No new roads will be required.”

Staff: The construction of new access roads and/or driveways has not been proposed. Existing roads will be used to access the site. Staff finds this standard does not apply to this request.

11.4 Fencing within a required setback from a public road shall meet the standards of MCC 36.4560(A)(4)).

Applicant: “Fencing is not proposed as a component of this project.”

Staff: No new fencing is proposed.

11.5 The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property (MCC 36.4560(A)(5)).

Applicant: “The nuisance plants listed in Table 1 will not be used to revegetate the project site.”

Staff: None of the seeds or container plants proposed for site mitigation is listed within the Nuisance Plan Table 1. Plan Sheet 6.07 within Exhibit A-9 shows the locations and species of plants and seeding proposed.

11.6 Wildlife Conservation Plan. An applicant shall propose wildlife conservation plan if one of two situations exists. (1) The applicant cannot meet the development standards of Section (A) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or (2) The applicant can meet the development standards of Section (A), but demonstrates that the alternative conservation measures exceed the standards of Section (A) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (A) [MCC 36.4570(B)].

Applicant: “The development standards of Section (A) cannot be met because of the fixed location of the conduit alignment and the unique physical characteristics of the property. The wildlife conservation plan below demonstrates that the measures proposed will result in the minimum departure from the standards.”

Staff: The applicant has selected option 1 above as the physical layout of the property in relation to the existing conduits preclude the development from occurring in a cleared area within 200-feet of a public road, as required by **MCC 36.4560(A)(1)** and **(2)** respectively. The existing location of the pipeline trestle in need of replacement is not located in an area meeting these two standards and the conduits cannot be moved to accommodate these two standards.

The wildlife conservation plan attempts to restore the riparian area to a more natural area by removing the above ground conduit pipe, six concrete trestle supports and existing concrete platform on the southeast creek bank. The immediate project area will be rehabilitated with native seed and 150 native container plans, as illustrated on sheet 4.13 in Exhibit A-12.

This plan results in the minimum departure from the approval criteria as is possible as the new sections of conduit will be placed in the same footprint as the existing conduits, minimizing damage to the site. Vertically supported trenching has been proposed to bury the conduits in an attempt to disturb the least amount of soil within the forested area. Only four trees will need to be removed during construction as a result of the construction methods proposed. Staff finds this standard has been met because the construction proposed results in the minimum departure from the protection concepts outlined in **MCC 36.4560(A)**.

11.7 The wildlife conservation plan must demonstrate the following: That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover MCC 36.4560(A)(3)(a).

Applicant: "The area to be cleared for installation of the new buried conduit is limited to the footprint of the armored pipe segment, which is approximately 160 feet long by 240 feet wide. It is anticipated that the proposed construction will require the removal of only four trees and low growing shrub vegetation. Prior to completion, the project area disturbed by construction activities will be restored to preconstruction contours and will be replanted with a variety of grasses and container plants. The revegetation plan is shown as the Surface Restoration Plan (Attachment C, Sheet 4.12)."

Staff: Staff agrees with the applicant's response. In total, a 160-foot long section of the conduits will be replaced which will require clearing of groundcover along the entire 160-foot length. Staff finds this standard is met for the reasons outlined in the previous finding relating to the trenching construction proposed.

11.8 That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary access way required for fire safety purposes MCC 36.4560(B)(3)(b).

Applicant: "The area to be cleared for installation of the new buried conduit is limited to the footprint of the armored pipe segment, which is approximately 160 feet long by 240 feet wide. It is anticipated that the proposed construction will require the removal of only four trees and low growing shrub vegetation. Prior to completion, the project area disturbed by construction activities will be restored to preconstruction contours and will be replanted with a variety of grasses and container plants. The revegetation plan is shown as the Surface Restoration Plan (Attachment C, Sheet 4.12)."

Staff: Less than one acre will be disturbed according to the applicant's development plans (Exhibits A-9, A-10). Only four trees will be removed, with the majority of vegetation removal being ground cover. This standard is met.

11.9 That no fencing will be built outside of cleared areas for the site development except for existing cleared areas used for agricultural purposes MCC 36.4560(B)(3)(c).

Applicant: "Fencing is not proposed as a component of this project."

Staff: No fencing is proposed. This standard does not apply.

11.10 That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property MCC 36.4560(B)(3)(d).

Applicant: "Because there are no cleared areas within the project right-of-way, this criterion is not applicable to the proposed project."

Staff: Although groundcover will be disturbed within an area of roughly 0.5 acres, Staff finds this standard will still be met as tree cover will not need to be removed from the entire 0.5 acre area. In fact, only four trees will need to be removed to replace the exposed conduit sections. Additionally, native seed mix common to wetland prairie environments will be used to further enhance over 6,100 square feet of riparian area along both sides of the creek within and surrounding the active work area. Upland grasses will be used to enhance roughly 7,400 square feet within the staging area to the west of the construction area as illustrated on plan sheet 4.12 in Exhibit A-11 which in aggregate exceeds the minimum 2:1 ratio of this standard. Because four trees will be removed, 8 trees will need to be planted in their place to meet the 2:1 ratio standard (see Condition 8). With the addition of Condition 8, staff finds this standard is met.

11.11 That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property (MCC 36.4560(B)(3)(e)).

Applicant: "Prior to completion, the project area disturbed by construction activities will be restored to preconstruction contours and replanted with a variety of grasses and container plants. The revegetation plan is shown as the Surface Restoration Plan (Attachment C, Sheet 4.12)."

Staff: The 150 native container plants will be contained installed adjacent to the work area within the riparian area bordering the drainage channel. Additionally, native seed mix common to wetland prairie environments will be used to further enhance over 6,100 square feet of riparian area encompassing both sides of the tributary within and surrounding the active work area. Upland grasses will be used to enhance roughly 7,400 square feet within the staging area to the west of the construction area. All planting locations and species are illustrated on plan sheet 4.12, Exhibit A-11. Staff finds the landscaping plan proposed will adequately revegetate and enhance the disturbed portions of the riparian area, and will further enhance other portions of the riparian area not disturbed by construction. Staff finds this standard has been met.

12.0 Hillside Development Permit

- 12.1 An application for development subject to the requirements of this subdistrict shall include the following (MCC 36.5515(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.**

Applicant: "Attachment A includes the assessor's map showing the parcel where the proposed project is located, identified as tax lots 300, 500, and 600. Attachment C, Sheet 4.01 and 4.02 show a general site plan with the location of the proposed improvements. Trees and wetlands within the project area are identified on Sheets 4.01, 4.02, and 4.12. Construction will require removal of 4 trees and some scrub undergrowth, which will be replanted when construction is complete. The erosion control and revegetation plans are included in Attachment C, Sheet 4.02 and 4.12."

Staff: The required information is contained within the construction plans presented as Exhibit A-9.

- 12.2 An estimate of depths and the extent and location of all proposed cuts and fills (MCC 36.5515(B)).**

Applicant: "About 2,000 cubic yards of excavation in the project area will occur for the following:

- *Installation of culverts.*
- *Installation of vaults and conduits.*
- *Installation of the reno mattress.*
- *Removal of existing embankment across ravine and creation of wetland.*

All excavated top soil will be stockpiled on-site in an upland area and re-used. All suitable excavated material will be stockpiled in an upland area and used for backfill. All excess excavated material will be removed and disposed of in a location permitted for acceptance of such material.

About 5,000 cubic yards of fill will be placed in the project area for the following:

- *Culverts.*
- *New Embankment to bury conduits.*
- *Installation of the reno mattress with one-foot of top soil cover."*

Staff: The applicant has detailed the depths and extends of all proposed cuts and fills in the response above. Locations of cuts and fills are identified within the construction plans presented as Exhibit A-13 The applicant indicates that approximately 5,000 cubic yards of fill will be utilized for the proposal. Approximately 2,000 cubic yards of this will be back fill from cuts on site. An additional 3,000 cubic yards will be imported to the site. If 5,000 cubic yards

or more of fill is imported onto the site, a Conditional Use for Large Fill will be required per **MCC 36.2830(E)** (see Condition 9). **MCC 36.0005** defines Large Fill as the addition of more than 5,000 cubic yards of material to a site.

12.3 The location of planned and existing sanitary drainfields and drywells (MCC 36.5515(C)).

Applicant: “No sanitary drainfields or drywells are proposed or are known to exist in the project area.”

Staff: There are no planned drainfields or drywells planned with this project. None are known to exist in the immediate project area.

12.4 Narrative, map or plan information necessary to demonstrate compliance with MCC 36.5520 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting (MCC 36.5515(D)).

Applicant: “The information necessary to demonstrate compliance with MCC 34.5520 (A) is provided in response to that criterion, below. Supplemental information has also been provided and is included as a part of this application packet.”

Staff: The applicant’s narrative responses to the approval criteria are presented as Exhibit A-1. The construction plans submitted (Exhibit A-9), also provide information necessary to demonstrate compliance with the applicable standards. Staff finds all necessary information has been provided.

12.5 A Hillside Development permit may be approved by the Director only after the applicant provides (MCC 36.5515(E)(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

Applicant: “The proposed project will require development on land with grades greater than 25 percent. This criterion does not apply.”

Staff: Requiring additional information was not necessary in this case as the applicant submitted a very detailed application clearly explaining how and where the construction would occur. Attached to this decision are professional reports including a wetland delineation report prepared by David Evans and Associates, Inc. (contained in the permanent record) and geotechnical report prepared by Geo Design, Inc. (Exhibit A-6). These reports adequately describe site conditions, construction limitations and site specific recommendations. The applicant has submitted the necessary information.

12.6 A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development (MCC 36.5515(E)(2)); or,

Applicant: “A Geotechnical report has been completed showing the site is suitable for construction of the project. This report is included as Attachment E.”

Staff: A geotechnical memorandum drafted by Rajiv Ali, P.E. of Geo Design, Inc on March 4th, 2005 has been submitted to the record (Exhibit A-6). This report recommends particular construction methods in order to assure a suitable design. The scope of this approval is drafted such that work may only be conducted in accordance with these geotechnical recommendations.

- 12.7 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 (MCC 36.5515(E)(3)).**

Applicant: “A geotechnical report has been completed (Attachment E), therefore, an HDP –1 form is not required. This criterion does not apply.”

Staff: The geotechnical report presented in Exhibit A-6 contains the relevant information and has been stamped by Rajiv Ali, P.E. This document verifies the site appears to be stable and that the proposed development will not cause stability problems. Staff finds the information presented in the geotechnical report verifies the site is suitable for the proposed development. Identified stability issues in this case relate to the existing water conduit structure itself rather than to the property surrounding the conduit.

- 12.8 If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted (MCC 36.5515(E)(1)(a)).**

Applicant: “A geotechnical report has been completed (Attachment E), therefore, an HDP -1 form is not required. This criterion does not apply.”

Staff: The geotechnical report (Exhibit A-6) does not recommend a need for further investigation.

- 12.9 A geotechnical investigation in preparation of a report required by MCC 36.5515 (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 (MCC 36.5515(F)(1)).**

Applicant: “A geotechnical report has been completed for the proposed project that shows the site’s suitability for the proposed project (Attachment E).”

Staff: The geotechnical report submitted by the applicant includes the required information (Exhibit A-6).

- 12.10 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 (MCC 36.5515(F)(2)).**

Applicant: “No alteration of the site is proposed prior to completion and approval of the geotechnical report. This criterion does not apply.”

Staff: No such work has occurred to Staff's knowledge.

- 12.11 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 (MCC 36.5515(F)(3)).**

Applicant: "The proposed project will meet the requirements of the geotechnical report. Construction will be completed by a third party with experience in this type of work and will be overseen by the City of Portland Bureau of Water Works, construction management and inspection staff in consultation with the project Geotechnical Engineer."

Staff: This approval is conditioned such that the author of the March 4th, 2005 geotechnical memorandum must observe the work and verify in writing that the geotechnical recommendations outlined in the memorandum were followed. Applying this condition of approval is required to assure compliance with this standard.

- 12.12 The Director, at the applicant's expense, may require an evaluation of HDP Form– 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer (MCC 36.5515(F)(4)).**

Applicant: "If the Director requires additional review, the applicant (City of Portland Water Bureau) will make the relevant information available."

Staff: Requiring a second party evaluation of the geotechnical recommendations is not necessary.

- 12.13 Development plans shall be subject to and consistent with the Design Standards for Grading and Erosion Control in MCC 36.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards (MCC 36.5515(G)).**

Applicant: "The proposed project is consistent with design standards described in MCC 34.5520(A) through (D), as described below."

Staff: The ability to impose these conditions is noted.

- 12.14 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 (MCC 36.5520(A)(1)(a));**

Applicant: "Fill materials, compaction methods, and density specifications are set forth in the project construction specifications. All fills will be inspected by the City of Portland and compaction tests performed to demonstrate compliance with project specifications. The geotechnical analysis describing the site's suitability for this project is included as Attachment E."

Staff: This information is indicated in the geotechnical memorandum prepared by GeoDesign, Inc on March 4, 2005 (Exhibit A-6). Areas of compacted fill are illustrated in the construction

plans (Exhibits A-9 & A-10). The applicant has submitted the required information. No additional studies or information is required.

12.15 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 (MCC 36.5520(A)(1)(b));

Applicant: "The project would not involve any permanent cut and fill slopes greater than 3:1. Excavated areas will be returned to pre project grade. Erosion and sediment control plans have been developed with this slope taken into consideration and are shown in Attachment C, Sheet 4.02."

Staff: Slopes will not exceed 3:1. Erosion control and slope stability recommendations are presented within the geotechnical memorandum as required by **MCC 36.5520(A)(1)(b)**. Staff finds the required information has been submitted. Temporary slopes have not been addressed in the geotechnical memorandum; temporary slopes will need to be no greater than 3:1 (see Condition 10).

12.16 Cuts and fills shall not endanger or disturb adjoining property (MCC 36.5520(A)(1)(c));

Applicant: "The proposed project will have no impact to adjoining property. All work would occur onsite and erosion control measures will be installed to prevent any erosion from occurring, as shown in Attachment C, sheet 4.02. Sediment fencing will be installed around the project area, straw bales will be placed at the base of affected slopes, and biofilter bags will be placed within the channel to prevent sediment from leaving the construction area. If necessary, the work area will be pumped dry using a fish exclusion screen on the intake and all sediment-laden water from the project will be appropriately treated (e.g., settling pond, pumping to vegetated upland location, or biofilter bags) prior to being discharged into the waterway. Stream flow (if any) conveyance during construction will be maintained through a pipe."

Staff: The detailed erosion control plan, presented as Exhibit A-10, has been designed to avoid endangerment to adjoining properties. The HDP Form-1 geotechnical reconnaissance study confirms that the project will not cause stability problems for the subject and/or adjacent properties. This standard has been met.

12.17 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 (MCC 36.5520(A)(1)(d));

Applicant: "The existing culverts will be replaced with two new culverts. The new culverts are designed to pass the 100-year design frequency storm as required by the project criteria for protection of the conduits from washout during storm events."

Staff: The installation of 100-year storm rated culverts, as described above, exceeds the required 10-year design frequency. The criterion is met.

12.18 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 (MCC 36.5520(A)(1)(e));

Applicant: "The proposed project will have a temporary impact on wetlands, which will be restored as identified in the wetland mitigation plan to be completed in coordination with DSL. The project would provide culverts under the reconstructed conduits to preserve water flow in the project area, and pass flow down channel. No impacts to stream flow are anticipated."

Staff: Fill material will temporarily encroach on the wetland as the trench is backfilled but the excavated native fill will be re-compacted in place resulting in no new fill within the watercourse channel. Obstruction to streamflow will actually be removed from the channel when the concrete trestle structure is removed from the channel. This standard is met as fill will not encroach on the watercourse after construction is finished.

- 12.19 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 (MCC 36.5520(A)(2)(a));**

Staff: This project is not located within the Tualatin River Basin. This standard does not apply.

- 12.20 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 (MCC 36.5520(A)(2)(b));**

Applicant: "Some vegetation will be removed from the project area during construction. The erosion and sediment control plan (Attachment C, Sheet 4.02) shows the steps that will be taken to minimize erosion potential and stabilize the ground disturbed from construction related activities. When construction activities are completed, disturbed areas will be reseeded with a variety of grasses and container plants similar to the surrounding area. The revegetation plan is also shown in (Attachment C, sheet 4.12)."

Staff: The geotechnical engineer has recommended that erosion control measures be in-place before construction begins and clearing of vegetation and the organic duff removed from the project area before trenching begins. Areas of disturbance can not be reduced below what is recommended by the project engineer within the geotechnical memorandum (Exhibit A-6). This conditional approval requires that the work occur only in the footprint illustrated on the plans and that all approved erosion control measures be in-place before construction begins to minimize soil erosion.

The landscaping plan proposed will be installed within 14-days of project completion to assure the site will be stabilized as quickly as possible. This standard will be met with the conditions of approval imposed relating to site preparation, scope of work and required landscaping.

- 12.21 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 (MCC 36.5520(A)(2)(c));**

Applicant: "Cuts and fills have been minimized to the greatest extent practicable, although approximately 2,000 cubic yards of soil will be excavated. Preliminary erosion and sediment control plans have been developed and will continue to be revised as needed to meet erosion control specifications. The preliminary erosion and sediment control plan is shown in Attachment C, Sheet 4.02.

No permanent surface water detention is proposed because the pipeline will be underground and no impervious surface is will be constructed. When construction is complete, the project area will function in a similar fashion as today.

Staff: Topography will be minimally altered as a result of this project. The objective of this project is to bury the conduits in a way that does not leave indication of the pipes location. Minimizing the amount of soil disturbed will, in combination with the proposed erosion control plan, minimize the amount of erosion potential. The volume and velocity of the surface runoff will not be changed as a result of this project as no new impervious surfaces are proposed. Staff finds that this standard has been met.

12.22 Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development (MCC 36.5520(A)(2)(d));

Applicant: "As needed, mulching, reseeding, or other erosion control techniques will be utilized to reduce any erosion potential."

Staff: As illustrated in plan sheet 4.12 in Exhibit A-11, the active work area, and additional areas around and downstream of the work area will be landscaped and planted with native grasses. Staff finds all disturbed areas will be permanently protected by vegetation helping to stabilize the site. Temporary vegetation and/or mulching can not be used within the small the active work area during construction as this portion of the site will need to be grubbed free of organics as recommended by the geotechnical engineer retained by the applicant (Exhibit A-6).

12.23 Whenever feasible, natural vegetation shall be retained, protected, and supplemented (MCC 36.5520(A)(2)(e));

Applicant: "The purpose of the proposed project is to bury the existing water line under the stream, requiring work within the 100-foot buffer. Construction will require the removal of four trees and some low growing scrub material. When construction is complete, the entire project area, including any staging areas, area will be graded to pre-project conditions and will be replanted with a variety of grasses and container plants. The revegetation plan is shown in Attachment C, Sheet 4.12.

Staff: Staff agrees with the applicant's response to this standard and finds that this standard has been met.

12.24 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 (MCC 36.5520(A)(2)(e)(1));

Applicant: "The purpose of the proposed project is to bury the existing water lines, requiring work within the 100-foot buffer. Construction will require removal of four trees and some low growing scrub material. When construction is complete, the entire project area, including any

staging areas, area will be graded to pre-project conditions and will be replanted with a variety of grasses and container plants. The revegetation plan is shown in Attachment C, Sheet 4.12."

Staff: It is not possible for the applicant to avoid work within the 100-foot buffer as the existing pipe crosses the watercourse. The applicant has proposed a mitigation plan, as directed by MCC 36.5520(A)(2)(e)(2).

- 12.25 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 (MCC 36.5520(A)(2)(e)(2));**

Applicant: "The erosion and sediment control and storm water control plans will perform to the standards prescribed under this criterion. A preliminary erosion and sediment control plan is included as Attachment C, Sheet 4.02. The erosion and sediment control plan is designed to meet the 2000 City of Portland Bureau of Environmental Services Erosion Control Manual. Currently, several erosion and sediment control measures are proposed that include seeding, silt fences, biofilters, and straw bales placed at the base and at mid slope near the streambed. As needed, erosion and sediment control measures will be upgraded if unforeseen storm events occur to ensure that no sediment or sediment laden water leaves the site."

Staff: Staff agrees with the applicant's assessment of this standard. This standard has been met.

- 12.26 Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical (MCC 36.5520(A)(2)(f));**

Applicant: "Areas disturbed by construction will be reseeded and container plants will be planted when the contractor determines that replanted vegetation will not be disturbed if the project's construction will continue in the area. Erosion control and drainage measures will be installed as a part of the proposed project as soon as is feasible."

Staff: This approval is conditioned that the erosion control measures be in-place before construction begins and that all landscaping be installed and grasses spread within 14-days of project completion. This standard is met.

- 12.27 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 (MCC 36.5520(A)(2)(g));**

Applicant: "The proposed project does not propose any permanent drainage system because the conduit will be buried and there will be no additional impervious surface or stormwater runoff. During construction, the project will maintain conveyance of flow where work crosses wetlands and will provide flow bypassing when necessary. When construction is complete, the wetland area is expected to function as before construction. Temporary erosion control measures, as shown in Attachment C, Sheet 4.02, will be put in place to accommodate and temporary erosion and sediment control concerns."

Staff: Staff agrees with the statement provided by the applicant. This standard is met.

12.28 Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized (MCC 36.5520(A)(2)(h));

Applicant: "As necessary, sediment control measures such as biofilter bags, straw bales and sediment fences will be used to restrict sediment movement within the project area. No impacts to water courses are expected because all water in the project area dissipates only through ground infiltration and does not connect to a larger system."

Staff: In addition to sediment fencing, the applicant is proposing straw bale barriers, and two rows of biofilter bag barriers to trap sediment in runoff water.

12.29 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 (MCC 36.5520(A)(2)(i));

Applicant: "Cuts and fills have been minimized to the greatest extent practicable. Appropriate measures will be used to trap sediment, including sediment fences placed at the edge of the project area, straw bales along the streambank, and biofilter bags across stream, shown in Attachment C, Sheet 4.02. The entire area will be reseeded when construction is complete or the contractor determines that newly planted plants will not be harmed. As needed, erosion and sediment control measures will be upgraded if unforeseen storm events occur to ensure that no sediment or sediment laden water leaves the site."

Staff: Any creek flow that might flow through the project area during construction will be routed around the disturbed areas by the contractor through a pipe to minimize erosion of trench faces and disturbed areas in general. Biofilter barriers will also be used within and downstream of the project to minimize erosive scour of sediment laden water. This standard has been met.

12.30 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 (MCC 36.5520(A)(2)(j));

Applicant: "Culverts will be designed to carry the 100-year design storm. When construction is complete the wetland area is expected to function as before construction, where drainage into the wetland areas dissipates through ground infiltration."

Staff: The installation of 100-year storm rated culverts, as described above, exceeds the required 10-year design frequency. The criterion is met.

12.31 Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion (MCC 36.5520(A)(2)(k));

Applicant: "No permanent drainage swales are proposed. This criterion does not apply."

Staff: No drainage swales are proposed.

- 12.32 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 (MCC 36.5520(A)(2)(l)(1));**

Applicant: "Several measures will be put in place to reduce runoff water velocity, as shown in Attachment C, Sheet 4.02. Sediment fencing will be installed around the project area, straw bales will be placed at the base of affected slopes, and biofilter bags will be placed within the channel to prevent sediment from leaving the construction area."

Staff: The sediment fencing, straw bale barriers and biofilter bag barriers proposed will all function as energy absorbing devices. These best management practices are required to be installed and kept in working order throughout the life of the project.

- 12.33 Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule (MCC 36.5520(A)(2)(l)(2));**

Applicant: "No sediment or debris basins are proposed."

Staff: No sediment or debris basins are proposed. This standard is met.

- 12.34 Dispersal of water runoff from developed areas over large undisturbed areas (MCC 36.5520(A)(2)(l)(3)).**

Applicant: "No permanent surface water detention is proposed."

Staff: Runoff from large developed areas will not occur. All improvements will be buried.

- 12.35 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 (MCC 36.5520(A)(2)(m));**

Applicant: "Excavated soils will be stockpiled onsite west of the pipeline construction. All stockpiled material will be covered with plastic sheeting and surrounded by fiber rolls around the base of the material."

Staff: The staging area is illustrated on Plan Sheet 4.12, Exhibit A-11. All stockpiles will be covered with plastic sheeting and surrounded by fiber roll berms to reduce erosion potential.

- 12.36 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 (MCC 36.5520(A)(2)(n)).**

Applicant: "The contractor will be responsible for ensuring that non-erosion pollution be prevented from contaminating the site. All work areas shall have a spill response plan and approved containment facilities. This is identified on the erosion control plan Note #4 (Attachment C, Sheet 4.02)."

Staff: Any chemicals used will be stored in the construction staging area west of the trench, rather than within the creek gully. As indicated by the applicant, a spill response plan and containment facilities will be required in the event of a leak. Staff finds this standard is met.

- 12.37 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 (MCC 36.5520(A)(2)(o)).**

Staff: This project is not located within the Balch Creek Drainage. This standard does not apply.

13.0 Commercial Forest Use Development Standards

- 13.1 All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A)... (MCC 36.2061).**

Staff: The proposal to relocate three existing conduits below ground does not trigger a review of the Commercial Forest Use Development Standards. These standards are intended to consider impacts of above ground improvements within forest lands such as dwellings and structures rather than below ground utilities. These standards also evaluate new access road construction which is also not proposed.

Conclusion

Considering the findings and other information provided herein, this application, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements. The water conduit structures shall be constructed as indicated in the plans approved by this decision, as further indicated in the **Scope of Approval** section of this report.

Exhibits

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record of this application. The exhibits referenced herein are listed below:

- A-1 Project Description and Narrative
- A-2 Assessor's Map, Slope Hazard Map, FEMA Flood Map
- A-3 Pre-Filing Meeting Notes, Pre-Application Meeting Notes
- A-4 Construction Plans, Elevation Certificate
- A-5 Joint Permit Application to U.S. Army Corps of Engineers and Oregon Dept. of State Lands
- A-6 Geotechnical Report prepared by Rajiv Ali, P.E. (March 4, 2005)
- A-7 Easement Information
- A-8 CFU Zone Development Standards Permit Application, Form B
- A-9 Construction Plans (Sheets 1.01 through 4.12)
- A-10 Updated sheet 4.02 (Erosion Control and Tree Removal Plan – submitted June 11, 2007)
- A-11 Updated sheet 4.12 (Wetland Mitigation Planting Sheet – submitted June 11, 2007)
- A-12 Sheet 4.13 (Wetland Planting Details Sheet)
- A-13 Sheet WM-01 (Wetland Mitigation Grading Plan)
- A-14 Compensatory Wetland Mitigation Plan (prepared by David Evans and Associates, Inc., March 2007)
- A-15 Printed copy of City of Portland Water Bureau's website, '*Portland Water Bureau History*' accessed April 4, 2007.
- A-16 Copy of Oregon Department of State Lands project approval.
- B Lot of Record Research
- C Letter indicating incomplete application status (April 5, 2007)
- D Signed intent to provide additional information (April 5, 2007)
- E Letter from H. Wayne Gresh, P.E. Regarding Earthen Dam (April 12, 2007)
- F Letter from H. Wayne Gresh, P.E. Regarding acronyms used in application (April 12, 2007)
- G Applicant's response to completeness review (May 24, 2007)
- H Copy of signed Land Use Compatibility review (May 31, 2007)
- I Letter in response to applicant's additional information (June 11, 2007)
- J Printed email from Carmen Nale, P.E. (June 28, 2007)
- K Printed email from Carmen Nale, P.E. (July 9, 2007)
- L Letter in response to applicant's additional information (July 10, 2007)
- M Copy of signed Oregon Department of State Lands, Wetland Land Use Notification Form (July 11, 2007)
- N 1955 zoning ordinance coversheet and table of contents