

**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.

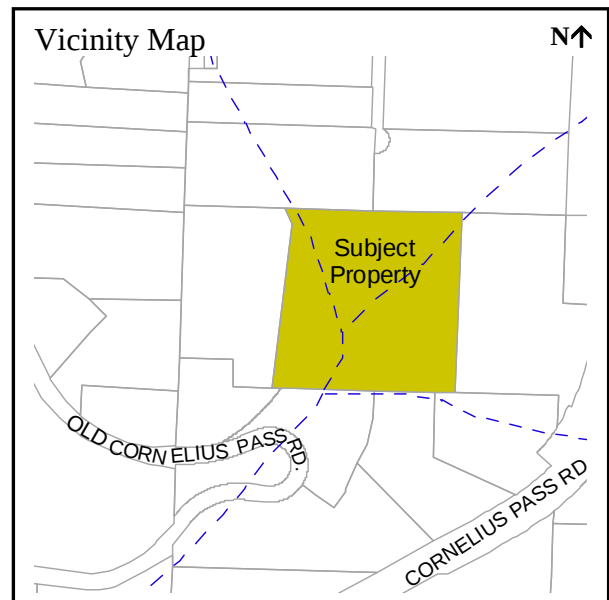
Case File: T2-08-004

Permit: Significant Environmental Concern for
Wildlife Habitat and Streams and
Hillside Development Permit

Location: 10734 NW Old Cornelius Pass Road
Tax Lot 1800, Section 06B,
Township 1 North, Range 1 West, W.M.
Tax Account #R961060070

Applicant: Pamela S. Loeb

Owners: J. Andrew & Pamela S Loeb
10740 NW Old Cornelius Pass Road
Portland, OR 97231



Summary: Request to build a single family dwelling with attached garage with the development including septic system and stormwater system on a property within the Rural Residential Zone District with Significant Environmental Concern for Wildlife Habitat and Streams and Hillside Development Overlay Zone Districts.

Decision: Approved with Conditions

Unless appealed, this decision is effective July 17, 2008 at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday July 3, 2008

Instrument Number for Recording Purposes: #

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 George A. Plummer, Staff Planner at 503-988-3043, ext. 29152.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted. **This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 17, 2008 at 4:30 pm.**

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administration and Procedures, MCC 33.3100 et. seq: Rural Residential, MCC 33.4500 et. seq: Significant Environmental Concern, and MCC 33.5500 et. seq: Hillside Development. Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

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. After this decision is final and prior to building permit sign-off, the property owner shall record with the County Records the Notice of Decision cover sheet through the conditions of approvals. The conditions of this decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense. [MCC 37.0670]

2. The property owner shall ensure that the proposed development work is observed by a Certified Engineering Geologist or Geotechnical Engineer. This observation shall be at the owner's expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to the Planning Director prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection. Prior to building permit final and occupancy the property owner shall submit to the County Land Use Planning Office a report from the observing Certified Engineering Geologist or Geotechnical Engineer which confirms that proper measures were implemented to meet recommendations of the of the Addendum to the Hillside Development Permit Application (Exhibit 1.5) as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer deemed necessary to achieve site suitability for the development. This report shall be signed by the Certified Engineering Geologist or Geotechnical Engineer with their seal (stamp) affixed to the report. [MCC 33.5515 (E)(2), MCC 33.5515(F)(3), and MCC 33.5520]
3. The property owner shall implement the erosion and sediment control measures as shown and listed on the erosion control plan (Exhibit 1.2) and described in the erosion control standard narrative (Exhibit 1.6), unless amended by the observing Certified Engineering Geologist or Geotechnical Engineer to achieve better site suitability for the development and improve erosion and sediment control. [MCC 33.5520(A)]
4. The property owner shall consistently maintain the erosion and sediment control measures to ensure the measures are in proper working order. The property owner and observing Certified Engineering Geologist or Geotechnical Engineer shall monitor the erosion and sediment control measures to ensure the measures are in proper working order. Additional measures shall be immediately installed to remedy the problem if sediment is determined to be escaping the development area. [MCC 33.5520 (A)]
5. Soil disturbing activities within a Stream Conservation Area (within 300 feet of the streams) shall be limited to the period between June 15th and September 15th. Revegetation/soil stabilization must be installed as soon as practical and accomplished no later than October 15. Best Management Practices related to erosion and sediment control shall be required within a Stream Conservation Area. [MCC 33.4575(E)(6)]
6. All excavated spoils from the project shall be removed from the property. Spoil materials removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. Any stockpiles of top soil to be used for fill shall be covered with plastic sheeting anchored to prevent disruption from wind. [MCC 33.5520(A)(2)(m)].
7. The property owner shall ensure that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters are prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. On-site disposal of construction debris is not authorized under this permit. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires, etc), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects [MCC 33.5520(A)(2)(n)].

8. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 33.5520(B)]
9. The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts resulting 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 or sedimentation effects. [MCC 33.5520(C)].
10. The erosion control permit notice card (provided at plan signoff) shall be posted at the location of the driveway entrance to the property as it leaves the easement access road in a clearly visible location (print towards the road) prior to any soil disturbance. This notice is to remain posted until such time as the grading/excavating work is completed and the vegetation has been re-established in disturbed areas. The erosion control permit notice shall be obtained during zoning review of building permit plans. In the event this sign is lost, destroyed, or otherwise removed prior to the completion of the grading work, the applicant shall immediately contact the County Land Use Planning Office to obtain a suitable replacement. [MCC 33.5520].
11. The property owner shall implement the mitigation plan proposed in the report titled Significant Environmental Concern for a Proposed Single Family Residence on NW Old Cornelius Pass Road in Portland, Oregon, by Pacific Habitat Services (Exhibit 1.3). The applicant shall mitigate for the impacts within the riparian area as shown in the Pacific Habitat Services Figure 7 plan in minimum area of 976 square feet. The planting quantities and species shall be as shown in Table 1 below:

Table 1. Plantings for the Mitigation Area for the Old Cornelius Pass Road Residence

Botanical Name	Common Name	Height	Planting density (on center)	Quantity
Trees				
<i>Acer macrophyllum</i>	big leaf maple	36"	10'	2
<i>Alnus rubra</i>	red alder	36"	10'	2
<i>Prunus emarginata</i>	Pacific crabapple	24"	10'	2
<i>Pseudotsuga menziesii</i>	Douglas fir	36"	10'	2
<i>Tsuga heterophylla</i>	Western hemlock	24"	10'	2
			Total	10
Shrubs/Small Trees				
<i>Acer circinatum</i>	vine maple	24"	5'	10
<i>Berberis aquifolium</i>	Oregon grape	6"	5'	10
<i>Corylus cornuta</i>	beaked hazel nut	12-24"	5'	10
<i>Oemleria cerasiformis</i>	oso-berry	24"	5'	10
			Total	40
Forbs				
<i>Anaphalis margaritacea</i>	Pearly everlasting	n/a	16'	5
<i>Aster subspicatus</i>	Douglas's aster	n/a	16'	5
<i>Lupinus rivularis</i>	Stream lupine	n/a	16'	5
<i>Polystichum munitum</i>	Western sword fern	n/a	16'	5
			Total	20
Grasses				
<i>Bromus carinatus</i>	native California brome	n/a	40 lbs per acre	0.80 lbs
<i>Glyceria elata</i>	tall manna grass	n/a	40 lbs per acre	0.80 lbs

All the vegetation removal and plantings within 100 feet of the stream shall be done using hand tools only. Care shall be taken to prevent any sediment from entering the stream-water; any excess soils shall be removed from the area within 100 feet of the stream. All disturbed soil areas related to the mitigation shall be reseeded with native grasses described in Table 1. All trees, shrubs and forbs shall be planted in a random manner. All plants shall be native and are non-clonal in origin. All plants shall be from a seed source that will be as local as possible and will be propagated in a nursery. Planting can occur during appropriate planting season within a year of occupancy of the dwelling. Each tree and shrub planting will be tagged to facilitate identification and monitoring.

Prior to the planting, non-native vegetation (i.e. Himalayan blackberry) within the mitigation area shall be removed. It is recommended that Himalayan blackberry be controlled by as recommended by Pacific Habitat Service or as recommend by the Soil and Water Conservation Service.

The mitigation area plantings shall be monitored for 5 years for survival with the criteria for success being 80% survival for all planted trees and shrubs. Each plant shall be inspected during the late summer to determine its health. If remedial actions are required (i.e. if there is less than 80% survival) it shall be a one to one replacement for each lost plant. If plant mortality is due to animal herbivory, protective barriers shall be installed around each of the plants or groups of plants. Invasive vegetation will be properly controlled via methods recommended by the Soil and Water Conservation District during the appropriate time of year. [MCC 33.4575 (D) & MCC 33.5520(A)(2)(a)]

12. To meet the Wildlife Conservation Plan requirements, the property owner shall plant an addition ten native conifer trees that are three feet or more in height at the time of planting, no closer than 15 feet on center to another tree and within fifty feet of the stream in areas other than the SEC-s mitigation area described in the previous condition. The plantings within 100 feet of the stream shall be done as using hand tools only. Care shall be taken to prevent any sediment from entering the stream-water; any excess soils shall be removed from the area within 100 feet of the stream. All disturbed soil areas related to the mitigation shall be reseeded with native grasses described in Table 1. Planting can occur during appropriate planting season within a year of occupancy of the dwelling. Each tree and shrub planting will be tagged to facilitate identification and monitoring. The property shall monitor these trees and shall replace any which do not survive. [MCC 33.4570(C)]
13. The property owner shall install the stormwater disposal bioswale designed by Carl V Rossetti, PE in the early phase of the development as shown on the site plan/erosion control plan (Exhibit 1.2 and 1.7). This system shall collect and disposed of stormwater from new impervious surfaces and shall properly control the rate of flow for a 10year/24hour storm event with the runoff no greater than that which existed prior to development. [MCC 33.5520(A)(1)(d) and MCC 33.4575(E)(2)]
14. The property owner shall ensure that any exterior lighting associated with a proposed development be placed, shaded or screened to avoid shining directly into a Stream Conservation Area. Any proposed exterior lighting shall be shown on the building plans and shall be hooded so that the light is directed downward. [MCC 33.4575(E)(3)]
15. The following nuisance plants, listed below, shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. Vegetation removal shall be in accordance with methods described in previous conditions. The local Soil and Water Conservation District should be consulted for nuisance plants removal and control methods, all nuisance plants removal and control within 100 feet of a stream shall be according to methods recommended by

Pacific Habitat Service or the local Soil and Water Conservation District. [MCC 33.4570(B)(7) & MCC 33.5520(A)(2)(a)]:

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

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

16. The property owners shall obtain a County Right-of-Way driveway access permit for site access onto Old Cornelius Pass Road. [MCC 33.3185]

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043 ext. 29152, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 will be required.

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 AND CONCLUSIONS

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

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

1. DESCRIPTION OF THE PROPOSAL

Applicant: *The proposed development plan is to rebuild a single-family residence in the western portion of the property within the same location as the previous house. The existing gravel road will remain, with no proposed improvements. The existing house was recently burnt down by the fire department in preparation for a new home in the same location. The permanent disturbance of the proposed house is 400 sq. feet. A septic pump and well are proposed to be in the same location; as such, no additional disturbance is proposed for these utilities. However, an overhead electricity line needs to be placed near the house, where it will be connected via an underground line. The temporary disturbance associated with this underground electrical line is 67 sq. feet. Figure 5 shows the proposed site plan and proposed disturbance.*

Multnomah County regulations require the stormwater from the house to be treated, and a bioswale is proposed directly south of the proposed residence. The permanent disturbance associated with the bioswale is approximately 576 sq. feet. Approximately 80 sq feet of temporary disturbance will be necessary for installation of the stormwater pipe inlet and outlet. The stormwater certificate and stormwater calculations for the site are included in Appendix B.

Staff: The applicant has requested an approval for a Significant Environmental Concern for Wildlife Habitat, a Significant Environmental Concern for Streams and a Hillside Development Permit to build a single family dwelling with an attached garage and a stormwater control system within the Rural Residential Zone District. The development area is also within the Significant Environmental Concern for Wildlife Habitat (SEC-h) and Streams (SEC-s) and Hillside Development (HD) Overlay Zone Districts (Exhibit 1.1 and 1.2).

The proposed dwelling will be located in a area were a previously existing dwelling burned. The proposed development will utilize some remaining features of the earlier development. The area of the proposed soil disturbance is about 1,123 square feet. The proposed development is located more than 100 feet from the stream. The previously existing driveway which is more than 100 feet from the stream will be utilized to access the proposed dwelling. The existing septic system will be used for the proposed development. No trees are proposed to be removal for this development. The applicant has proposed a mitigation plan for the work that will occur in the SEC-s Overlay District.

2. SITE AND VICINITY CHARACTERISTICS

Applicant: *The site is surrounded by rural residential development The western edge and the northeastern comer of the property are forested Scattered trees and shrubs are found throughout the remainder of the property.*

An unnamed tributary of Rock Creek, which flows to the south, is located in the central portion of the property. This tributary is fed by two smaller channels (forks) from the northwest and the northeast corners of the property.

On the western portion of the property is a gravel road at the top of a hillslope. The gravel road allows access to a home site; the location of a demolished house. A new house is proposed in the same location. In the northern part of the property, the gravel road transitions to a dirt road that ends at a barn and trailer. There is a steep transition from the developed portion of the property, down to the creek.

Figure 6 shows a soils map of the area. In the eastern part of the site, soils are mapped as Cascade silt loam. This soil is somewhat poorly drained, with no hydric soil inclusions. The western part of the site is mapped as Saum silt loam, which is a well drained soil with no hydric soil inclusions. Construction of the new house will not require changes to the existing topography.

Staff: The subject property is a 9.06 acre parcel located within the West Hills Rural Plan Area in the Rural Residential (RR) Zone District (Exhibit 2.2). The property is also entirely within the SEC-h and mostly within the SEC-s Overlay Districts (Exhibit 2.3). Additionally, most of the property is within the Hillside Development (HD) Overlay District (Exhibit 2.3). The property is accessed via a driveway easement accessing Old Cornelius Pass Road. The proposed development will use an existing driveway which served a previous dwelling on the property that was destroyed by fire.

The property has a fairly large pocket of RR Zoning surrounding it on all sides within Multnomah County (Exhibit 2.2). The adjacent property to the west is along the Multnomah and Washington County Line. The nearby properties in Washington County are large acreage residentially developed properties (Exhibit 2.4).

3. OWNERSHIP

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

Staff: County Assessment records show the property owners as J. Andrew & Pamela S Loeb (Exhibit 2.1). Pamela Swanda Loeb signed the applicant form providing the necessary authorization to process the application (Exhibit 1.1).

4. TYPE II CASE PROCEDURES

- 4.1. MCC 37.0530 (B) Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject Tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the**

decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.

Staff: The Type II process was applied to this case. An opportunity to comment was mailed to property owners within 750-feet of the property lines on February 25, 2008. One email with comments was received from Jim Emerson, president of the Forest Park Neighborhood Association (Exhibit 3.1). Mr. Emerson expressed a neighborhood interest in protection of streams and development practices on steep slopes, urging the County to “adhere closely to its policies” for the proposed development. This decision review will include findings detailing how the proposed development meets the Code requirements which enact the County Comprehensive Plan and West Hills Rural Area Plan policies.

Mr. Emerson expressed concern that the County will follow-up during and after construction to ensure adherence to conditions of approval. Conditions of approval will require that a Certified Engineering Geologist or Geotechnical Engineer observe the development including the site prep, foundation work and erosion control monitoring. Prior to building permit final and occupancy the property owner will be required to submit to the County Land Use Planning Office a report from the observing Certified Engineering Geologist or Geotechnical Engineer which confirms that proper measures were implemented meet the recommendations of geotechnical report as well as any other recommendations of the professional deems necessary to achieve site suitability for the development. Additionally, an erosion control inspection by County staff will be required in an early phase of the development and the final phase to assess potential impacts to water quality.

Mr. Emerson expressed concern about the septic system on neighboring property being upslope from an existing well on the subject property. In a phone conversation, staff informed Mr. Emerson that septic systems are not reviewed under this permit and that the City of Portland Environmental Program reviews septic systems and issues permit for these systems. Staff suggested that he may want to contact the Environmental Program staff to further discuss this issue.

5. RURAL RESIDENTIAL ZONE DISTRICT

5.1. Allowed Uses

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

Staff: The proposed development is a single family dwelling with an attached garage which is an allowed use (Exhibit 1.1).

5.2. Dimensional Requirements

MCC 33.3155 (C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Staff: The proposed dwelling is located roughly 168 feet from the front property line, more than 400 feet from the rear property line, about 112 feet from the west side-yard property line and more than 400 feet from the east side-yard property line. The proposed development meets the minimum yard requirements based on the site plan (Exhibit 1.2). The maximum height requirement will be reviewed at zoning review building permit sign off.

5.3. Lot of Record

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

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

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

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or

2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or

3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or

4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

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

Staff: The land division that authorized the creation of the property was approved through Case LD-19-85. That case reviewed the land division to confirm applicable zoning laws and land division were met. A survey was filed with County Survey Office on July 7, 1988 which created the property (Exhibit 2.6). The property met land division laws and is a lot of record.

5.4. Access

MCC 33.3185: All lots and parcels in this district shall abut a street, or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles, except as provided for Lots of Record at MCC 33.3170(B).

Staff: The subject property was approved through Case LD-19-85 (Exhibit 2.6). That case reviewed the land division to confirm applicable zoning laws and land division were met including the access. In a memorandum (Exhibit 2.6) submitted by J. Michael Lynch, County Transportation Planning Specialist stated, “An access permit for a driveway to NW Old Cornelius Pass Rd. must be acquired by the applicant.” Mr. Lynch continued, “County Transportation has no other requirements at this time.”

6. SIGNIFICANT ENVIRONMENTAL CONCERN REVIEW

6.1. SEC Permit Required

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

Finding: The proposed development is within the Significant Environmental Concern for Wildlife Habitat (SEC-h) and Significant Environmental Concern for Streams (SEC-s) Overlay Zone Districts (Exhibit 2.2). An SEC-h and SEC-s Permit is required for the proposed dwelling and related development.

6.2. Application for SEC Permit

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

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

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

Finding: The required information was submitted (Exhibits 1.2, 1.3, 1.8 and 1.9).

6.3. SEC-h Development standards

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

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

Staff: The required information has been submitted (Exhibit 1.2).

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

Applicant: *There is a mature canopy of trees on the northeastern and western border of the site; however, the development is occurring in an area with very few trees and no trees are proposed for removal. This is consistent with the intent of the Code, and therefore this standard is met.*

Staff: The development will be located in a previously existing cleared area where the previous dwelling was located (Exhibit 1.2 and 2.4). The existing driveway and septic system which served the previous dwelling and will serve the proposed dwelling are in previously cleared areas. This standard is met.

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

Applicant: *The gravel drive proposed for the residence is directly adjacent and within 200 feet of the public road, NW Old Cornelius Pass Road. Criterion has been met.*

Staff: The proposed dwelling is not within 200 feet of Old Cornelius Pass Road, a public road (Exhibit 1.2 and 2.4). Old Cornelius Pass Road is more than 300 feet from the proposed development. The standard is not met thus a Wildlife Conservation Plan will be required an option allowed under MCC 33.4570.

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

Applicant: *The gravel drive is approximately 320 feet in length Therefore, this criterion has been met.*

Staff: The existing driveway exceeds 500 feet in length (Exhibit 1.2 and 2.4). The driveway includes an easement along a vacated road on the properties to the south. The standard is not met thus a Wildlife Conservation Plan will be required an option allowed under MCC 33.4570.

6.3.4. MCC 33.2105(B) (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or
- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

Staff: The adjacent property to the south has a driveway within 200 feet of the side property line (Exhibit 2.4). The proposed driveway is located within 100 feet of the side property line of that property and is a driveway access for three properties (Exhibit 1.2). This standard is met.

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

Staff: The proposed development on the properties to the west is within 200 feet of the property boundary. The proposed dwelling is 168 feet from the front yard property line and 119 feet from the side-yard property line (Exhibit 1.2). This standard is met.

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

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

Applicant: *Fencing is not proposed for this development. This is consistent with the County Code, and all criterion listed above have been met*

Staff: No fencing is proposed.

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

Applicant: *The general contractor is aware of the nuisance plant species list and none of the plants shown on the list will be planted for landscape purposes. There is one listed nuisance plant present on the site, Himalayan blackberry, which will be removed within the mitigation area of the property.*

Staff: A condition of approval will require continual removal of the listed nuisance plants. This standard is met through a condition.

6.4. MCC 33.4570(C) Wildlife Conservation Plan: An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) 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 (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

* * *

Applicant: *Although the development complies with the above development standards for the Sec-h Wildlife habitat area, the standards for the Wildlife Conservation Plan are addressed below.*

Staff: The applicant states that the development complies with the development standards, however staff has found that the proposed development does not meet the standards under MCC 33.4570(B) (2) and (3) with findings in Sections 6.3.2 and 6.3.3 of this decision. While the standards in 33.4570(B) (2) and (3) could potentially be met for this property, the proposed building site is the location of the previously existing dwelling before it was destroyed by fire. Locating the proposed dwelling in the footprint of the previous dwelling will substantially reduce the amount of soil disturbance. In addition the area is an existing cleared area and is served by the existing driveway. The proposed conservation plan could meet this requirement to provide alternative conservation measures that exceed the standards of Section (B) if it proposed additional improvements to the riparian area. Planting an additional ten native conifer trees beyond the proposed SEC-s mitigation planting would meet this requirement. A condition will required that the property owner plant an additional ten native conifer trees within fifty feet of the stream in areas other than the SEC-s mitigation area. The proposed development and the condition for ten addition riparian tree plantings exceeds the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B) through using the existing development disturbed area, no removal of trees, and through the proposed mitigation. This standard is met through conditions.

6.4.1. MCC 33.4570(C) (3) The wildlife conservation plan must demonstrate the following:

- 6.4.1.1. MCC 33.4570(C)(3)(a) 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.**

Applicant: *As stated above, there is a mature canopy of trees, but only in the western and northeastern portions of the property. The limits of construction for the house have been designed to impact the minimum area necessary by using the original footprint of the previous house. The intent of the Conservation Plan is to mitigate for the area proposed to be impacted by the home site; however very little disturbance is proposed and no trees are proposed for removal. As such, additional plantings beyond what has been proposed for the mitigation area are not necessary.*

Staff: No trees are proposed to be removed. The proposed development is located in an existing cleared area around the previous development area on the property. This standard is met.

- 6.4.1.2. MCC 33.4570(C)(3)(b) 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 accessway required for fire safety purposes.**

Applicant: The total area to be disturbed from the construction of the house is approximately 400 square feet, which is less than the one acre maximum set by the County. This standard is met.

Staff: No new clearing is proposed. This standard is met.

- 6.4.1.3. MCC 33.4570(C)(3)(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Applicant: The proposed development will include no new fences. The applicants are requesting to retain an existing fence outside of the construction area. This fence is needed to demarcate the property boundary and due to its construction allows wildlife movement. As such, wildlife passage through the property will be maintained and the intent of the criterion has been met.

Staff: No new fencing is proposed. This standard is met.

- 6.4.1.4. MCC 33.4570(C)(3)(d) 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.**

Applicant: No new cleared areas are proposed onsite. The planting plan listed above in Table I, shows the mitigation area plantings; however, there are opportunities to control other non-native invasive species on-site. PHS is preparing a non-native species control recommendation letter for the applicant.

Staff: No new clearing is proposed. This standard is not applicable.

- 6.4.1.5. MCC 33.4570(C)(3)(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Applicant: Along with the non-native species control, we are suggesting the applicant plant native trees and shrubs along the entire corridor of the creek. The applicant is looking into sources of funding such as an OWES grant to help provide funds for the restoration of the tributary.

Staff: A condition of approval will require revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

6.5. SEC-s Development standards

- 6.5.1. MCC 33.4575(C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:**

- 6.5.1.1. MCC 33.4575(C) (1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses,**

drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;

Staff: The Stream Conservation Area boundary covers the entire area shown on site plan (Exhibit 1.2) with the outer boundary off the site plan map, thus the entire development area is within the Stream Conservation Area. Staff has included an aerial photo showing the Stream Conservation Area boundary (Exhibit 2.3). The applicant has submitted the required materials detailing the proposed development with the Stream Conservation Area shown, the location of the proposed development in relationship to the stream and wetlands.

6.5.1.2. MCC 33.4575(C) (2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;

Applicant: *Most of the property has the Stream Conservation Area overlay except the southeast corner (Figure 3). The creek is designated as a "3C" Water feature. As part of this designation and stream overlay requirements; the Stream Conservation Area's water sources, functional characteristics, vegetation types, and fish and wildlife habitat must be discussed.*

Water within the tributary most likely originates from direct precipitation, groundwater, and stormwater runoff from surrounding hillslopes. The tributary has two channels that flow south throughout the northern portion of the site. In the middle of the property the channels converge and continue to flow southwest. The tributary is approximately 3-5 feet wide and had at least a couple inches of flowing water during the October 4, 2006, site visit, and pools up to 12-inches deep. The tributary continues off-site to the south.

The pools within the tributary, which are below undercut banks, may provide fish refuge. A broken culvert on the western channel of the tributary may be a fish barrier, as it does not allow continuous water flow.

*Common plant species within the riparian area of the tributary include dewberry (*Rubus ursinus*), Himalayan blackberry (*Rubus discolor*), Oregon ash (*Fraxinus latifolia*), osoberry (*Oemleria cerasiformis*), red alder (*Alnus rubra*), Sitka willow (*Salix sitchensis*), snowberry (*Symphoricarpos albus*), tall manna grass (*Glyceria elata*) and western sword fern (*Potystichum munitum*). Figure 4 is an aerial of the site that shows the limits of general vegetation communities,*

*The wildlife habitat consists of some riparian tree cover surrounding the creek, and on the northeast corner of the study area there is a scrub-shrub wetland that provides a good wildlife corridor to a contiguous forested portion of the property just outside of the study area. Wildlife noted during the site visit include scrub jay (*Apheloma californica*), nuthatch (*Sitta* spp.), yellow rumped warbler (*Dendroica coronata*), Northern flicker (*Colaptes auratus*), bush tit (*Psaltirparus minimus*) and tree frogs (*Pseudacris regilla*).*

Staff: The applicant has submitted a map of the Stream Conservation Area including the portion to be affected by the proposed development. The applicant has submitted an assessment of the Stream Conservation Area's functional characteristics of the water sources

and a description of the vegetation types and fish and wildlife habitat prepared by Pacific Habitat Services, Inc (Exhibit 1.3). This standard is met.

6.5.1.3. MCC 33.4575(C) (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

Applicant: *Figure 6 shows a soils map of the area, In the eastern part of the site, soils are mapped as Cascade silt loam. This soil is somewhat poorly drained, with no hydric soil inclusions, The western part of the site is mapped as Saum silt loam, which is a well drained soil with no hydric soil inclusions. Construction of the new house will not require changes to the existing topography.*

Staff: The applicant has provided the information required. No vegetation removal is proposed.

6.5.1.4. MCC 33.4575(C) (4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by (E) (5) below;

Applicant: *Proposed construction will begin in summer 2008. Best Management Practices will be used to prevent soil erosion, Soil disturbing activities will take place between June 15th and September 15th.*

Construction access will occur via the existing gravel driveway. To ensure proper restoration of all temporary disturbance areas a native seed mix will be sown immediately following completion of construction activities. The seeded areas will be watered to ensure proper germination. Bare patches present after one month will be reseeded.

Sediment fencing will be installed along the slope behind the proposed house location and below the bioswale area.

Staff: The applicant has submitted a geotechnical report that addresses the applicable hazards listed in this standard (Exhibit 1.6). The applicant has submitted an erosion control plan and with narrative notes. Geologic hazard and erosion standards were will be addressed in findings in Section 7 and conditions of this decision. This standard has been met through conditions of approval.

6.5.1.5. MCC 33.4575(C) (5) A detailed Mitigation Plan as described in subsection (D), if required; and

Staff: See the findings in the following Section 6.5.2 address this standard.

6.5.1.6. MCC 33.4575(C) (6) A description of how the proposal meets the approval criteria listed in subsection (D) below.

Staff: See the findings in the following Section 6.5.2.

6.5.2. MCC 33.4575 (D) For stream resources designated "3-C" the applicant shall demonstrate that the proposal:

- (1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:
 - (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC 33.4575 (C);
 - (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;
 - (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC 33.4575 (D) (1);
 - (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

Applicant: The total amount of permanent impact as shown on Figure 5 is approximately 976 sq. feet. The applicant proposes to mitigate for the impacts within the riparian area of the creek closest to the development (Figure 7).

Proposed plantings for the mitigation area are shown on Figure 7. The plant quantities for the mitigation area were derived from the total area of the proposed permanent impact (976 sq. feet). Tree, shrub and forb plantings were determined by on-center requirements from the City of Portland Native Plant Species List. A total of 10 trees and 40 shrubs are required. Twenty native forbs will also be planted.

Table 1. Plantings for the Mitigation Area for the Old Cornelius Pass Road Residence

Botanical Name	Common Name	Height	Planting density (on center)	Quantity
Trees				
<i>Acer macrophyllum</i>	big leaf maple	36"	10'	2
<i>Alnus rubra</i>	red alder	36"	10'	2
<i>Prunus emarginata</i>	Pacific crabapple	24"	10'	2
<i>Pseudotsuga menziesii</i>	Douglas fir	36"	10'	2
<i>Tsuga heterophylla</i>	Western hemlock	24"	10'	2
			Total	10
Shrubs/Small Trees				
<i>Acer circinatum</i>	vine maple	24"	5'	10
<i>Berberis aquifolium</i>	Oregon grape	6"	5'	10
<i>Corylus cornuta</i>	beaked hazel nut	12-24"	5'	10
<i>Oemleria cerasiformis</i>	oso-berry	24"	5'	10
			Total	40
Forbs				
<i>Anaphalis margaritacea</i>	Pearly everlasting	n/a	16'	5
<i>Aster subspicatus</i>	Douglas's aster	n/a	16'	5
<i>Lupinus rivularis</i>	Stream lupine	n/a	16'	5
<i>Polystichum munitum</i>	Western sword fern	n/a	16'	5
			Total	20
Grasses				
<i>Bromus carinatus</i>	native California brome	n/a	40 lbs per acre	0.80 lbs
<i>Glyceria elata</i>	tall manna grass	n/a	40 lbs per acre	0.80 lbs

All trees, shrubs and forbs will be planted in a random manner. All plants are native and are non-clonal in origin. All plants will be from a seed source that will be as local as possible and will be propagated in a nursery. Planting will occur after construction, during appropriate planting times. Each tree and shrub planting will be tagged to facilitate identification and monitoring.

Prior to the planting, the applicant will control non-native vegetation (i.e. Himalayan blackberry) within the mitigation area. It is recommended that Himalayan blackberry be controlled by cutting the canes in early summer, followed by application of a systemic herbicide in September that is safe to apply near streams.

The initial removal will be conducted during 2008 and additional treatments facilitated the following year. The dead vegetation will be removed off-site. Re-growth of the non-native plants will be observed throughout the monitoring period and additional removal sessions may be necessary.

Monitoring of the mitigation area will take place for 5 years. The criteria for success will be 80% survival for all planted trees and shrubs. Each plant will be inspected during the late summer to determine its health. If remedial actions are required (i.e. if there is less than 80% survival) it will be a one to one replacement for each lost plant. If plant mortality is due to animal herbivory, protective barriers will be installed around each of the plants or groups of plants. Invasive vegetation will be properly controlled via appropriate physical and/or chemical methods during the appropriate time of year.

The goal of the mitigation is to have native plants that will provide habitat and forage for fish and wildlife, and increase the shoreline anchoring and flood storage of the tributary. At the end of each monitoring season a report will be submitted to Multnomah County. All monitoring reports will fulfill the requirements.

Staff: The applicant has submitted a map of subject property with the proposed development and disturbance areas shown (Exhibit 1.2 and 1.3). Nearly the entire property is in the Stream Conservation Area (Exhibit 2.3). The applicant has submitted an assessment of the Stream Conservation Area's functional characteristics in a report titled *Significant Environmental Concern for a Proposed Single Family Residence on NW Old Cornelius Pass Road in Portland, Oregon*, dated September 10, 2007, by Pacific Habitat Services (Exhibit 1.5). The report includes a description of the water source and a description of the existing vegetation types and fish and wildlife habitat.

The impacts to the stream conservation corridor are minimal given the proposed development will be in the same location as the previously existing dwelling. The area of the proposed soil disturbance is about 1,123 square feet. The proposed development is located more than 100 feet from the stream. The previously existing driveway which is more than 100 feet from the stream will be utilized. No trees are proposed to be removed for this development.

The proposed mitigation plan includes the removal of nuisance plants and planting areas in areas where nuisance plants are removed and replaced with native species described in the report (above table). The mitigation plan proposes removal of non-native blackberry and planting of native species in a 976 square foot area including 10 trees and several shrubs, forbs and grasses (see Table 1). The proposed mitigation plan will enhance and retain of the values the fish and wildlife resources, water quality and visual amenities characteristic of an area impacted by non-native invasive nuisance species along the stream. This will result in this area being restored to pre-

development habitat, water quality and visual amenities characteristics. The planting of an additional ten conifer trees along the stream corridor for the Wildlife Conservation Plan will also serve these purposes. Monitoring the survival of the plantings will be required by a condition of approval. This standard is met through a condition that the mitigation plan be implemented.

6.6. SEC-s Design Specifications

The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

Staff: Finding for the design specifications standard are in the following sections of this decision.

6.6.1. MCC 33.4575 (E) (1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: No stream crossing is proposal is included in the proposed development. This standard is met.

6.6.2. MCC 33.4575 (E) (2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

Applicant: *Multnomah County regulations require the stormwater from the house to be treated, and a bioswale is proposed directly south of the proposed residence, The permanent disturbance associated with the bioswale is approximately 576 sq. feet Approximately 80 sq feet of temporary disturbance will be necessary for installation of the stormwater pipe inlet and outlet The stormwater certificate and stormwater calculations for the site are included in Appendix B.*

Staff: The applicant has submitted a stormwater disposal system design, by Carl V. Rossetti, PE. Mr. Rossetti has indicated on the Storm Water Certificate that the proposed system will control the rate of flow from a 10year/24hour storm event with the runoff from the site no greater than that which existed prior to development. This standard has been met.

6.6.3. MCC 33.4575 (E) (3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.

Staff: The applicant has not submitted a design for the proposed exterior lights. A condition of approval will require this standard to be met and the lighting to be shown on the building plans.

6.6.4 MCC 33.4575 (E) (4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

Staff: No tree removal is proposed for the area within the SEC-s overlay. This standard is met.

6.6.5. MCC 33.4575 (E) (5) Satisfaction of the erosion control standards of MCC 33.5520.

Staff: The standards of MCC 33.5520 are addressed in findings in Section 7 of this decision.

- 6.6.6. MCC 33.4575 (E) (6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.**

Staff: A condition of approval will require soil disturbing activities within a Stream Conservation Area to be limited to the period between June 15 and September 15. Revegetation/soil stabilization shall be accomplished no later than October 15. A condition of approval will require these dates be met and Best Management Practices related to erosion control be implemented.

- 6.6.7. MCC 33.4575 (E) (7) Demonstration of compliance with all applicable state and federal permit requirements.**

Staff: The applicant had the wetlands delineated on the property in the vicinity of proposed work areas including the mitigation area. All the development areas and the mitigation area is outside the delineated wetland areas (Exhibit 1.8). There are no applicable state or federal permits required for the proposed development other than those required for a single family dwelling at the proposed site.

7. HILLSIDE DEVELOPMENT PERMIT

7.1. Application Information Required

- 7.1.1. MCC 33.5515 (A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.**

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

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

MCC 33.5515 (D) Narrative, map or plan information necessary to demonstrate compliance with MCC 33.5520 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control.

Staff: The applicant has submitted a *Geotechnical Reconnaissance and Stability* [HDP Form 1] prepared by James E. Pyne, RG and stamped and signed by James D. Imbrie, CEG of GeoPacific Engineering, Inc (Exhibit 1.4) including a addendum narrative (Exhibit 1.5). The applicant also submitted an addendum narrative (Exhibit 1.6) by Jeremy Totten, Engineering Division, All County Surveyors, along with a *Grading and Erosion Control Plan* stamped and signed by Ray l. Moore, PE (Exhibit 1.2) with notes addressing compliance with MCC 33.5520 (A) which is reviewed in the findings under Section 7.2 of this decision. These documents address depths and the extent and location of all proposed cuts and fills. The applicant has submitted a plan showing the required features in the development area and the applicable supplemental information (Exhibits 1.2 through 1.9). These requirements have been met.

- 7.1.2. MCC 33.5515 (E) A Hillside Development permit may be approved by the Director only after the applicant provides:**

(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

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

(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.

Staff: The applicant submitted a HDP Form– 1 signed and certified by James D. Imbrie, CEG (Exhibit 1.6) of GeoPacific Engineering, Inc. with his stamp and signature affixed indicating that the site is suitable for the proposed development. The applicant also submitted a narrative prepared by Mr. Pyne and Mr. Imbrie addressing development standards for the proposed project. Criterion under subsection (3) is met by the submitted materials.

7.1.3. MCC 33.5515 (F) Geotechnical Report Requirements

(1) A geotechnical investigation in preparation of a Report required by MCC 33.5515 (E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.

(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.

(3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.

Staff: The applicant submitted a HDP Form– 1 and an addendum with development standards for the proposed project. Conditions of approval will require that this standard be met and that development work be observed by a Certified Engineering Geologist or Geotechnical Engineer. A letter from a Certified Engineering Geologist or Geotechnical Engineer with his or her stamp affixed certifying the standards listed in the addendum were met by the development must be submitted to this office prior to the final building permit inspection. This standard is met though conditions.

7.2. Grading and Erosion Control Standards

7.2.1. MCC 33.5520(A)(1)(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The

Director or delegate may require additional studies or information or work regarding fill materials and compaction;

Applicant: *Imported fills should be approved by a soil Engineer. All fill material to support structures should be compacted to at least 95 percent density as determined by ASTM 0698 (Standard Proctor) or equivalent Field density testing fill should generally conform to ASTM D2922 and 03017 or 01556.*

All structural fill shall be spread in loose lifts not exceeding 9" loose thickness with each lift thoroughly compacted by repeated coverages of loaded hauling units and special compaction devices (sheeps-foot rollers or heavy rubber-tired rollers). Fill shall be compacted at 95% of maximum density as determined by AASHTO T-180. Fill slopes will be benched, as directed by the engineer.

Staff: The applicant has submitted an addendum narrative by Mr. Pyne and Mr. Imbrie addressing fill materials, compaction methods and density specifications (Exhibit 1.5). This work will be reviewed by the geotechnical engineer as a condition. This standard is met though conditions.

7.2.2. MCC 33.5520(A)(1)(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

Applicant: *Cut slopes on the subject home site are in weathered Columbia River Basalt and will stand vertical for temporary periods to heights of at least 10 feet. Permanent slopes should be no steeper than 2H:1V to heights of no more than 30 feet.*

Staff: Cut and fill slopes steeper than 3(H):1(V) are proposed. James E. Pyne, RG and James D. Imbrie, CEG stated in the addendum that permanent slopes should be no steeper than 2H:1V to height of no more than 30 feet. No cuts of this height are proposed (Exhibit 1.2). A condition will require that the all cut and fill activity be review and observed by a Certified Engineering Geologist or Geotechnical Engineer. The plans shall include erosion control measures specified for these slopes. As conditioned, this standard is met.

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

Applicant: *Cuts and fills will not endanger or disturb adjoining properties, as we are proposing placing the new house on the old house location. This will require minimal grading, as shown on the plan.*

Staff: This standard is met though conditions for the observation of construction by a Certified Engineering Geologist or Geotechnical Engineer.

7.2.4. MCC 33.5520(A)(1)(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

Applicant: *Storm water should be directed to the Bio-Swale shown located south of the house. The proposed bio-swale will have capacity per Storm Water Certificate completed by CVR & Associates dated 8/9/07*

Staff: The applicant has submitted a Storm Water Certificate with stormwater disposal system plans, stamped and signed by Carl V. Rossetti, PE., certifying that the project meets this requirement with on-site storm water drainage system which includes a bioswale (Exhibit 1.7). A condition will require these plans be implemented. This standard is met though conditions.

- 7.2.5. 33.5520(A)(1)(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;**

Applicant: *No fills will encroach on natural watercourses or constructed channels.*

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

- 7.2.6. MCC 33.5520(A)(2)(a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and stormwater control plans shall be designed to perform as prescribed by the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)". Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.**

Applicant: *Natural vegetation should remain as a natural buffer within 100 feet of natural streams and drainages. See the Grading and Erosion Control Plan dated 2/1/08. The proposed grading is over 100' from the creek and is in accordance with City of Portland Grading and Erosion Control Manual.*

Staff: The subject property is within the Tualatin River Drainage Basin. There is no ground disturbing activities within 100 feet of the streams, except for implement the mitigation plan and wildlife conservation plant nuisance plant removal and plantings consistent with OAR 340. These aspects of the project must be accomplished using hand tools with reseeding with grass all disturbed areas and excess soils removed from the 100 stream buffer area. The applicant has submitted erosion control plans that addresses BMPs outline in these manuals (Exhibits 1.2 and 1.6) including but not limited to silt fencing with specifications, mulching for disturbed areas and wet weather measures. A condition of approval will require the property owner to be responsible for implementing the staff amended erosion control measures to meet the required BMPs. A condition will require that the installation of erosion control BMP practices to be verified and be monitored for effectiveness by a Certified Engineering Geologist or Geotechnical Engineer.

- 7.2.7. MCC 33.5520(A)(2)(b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;**

Applicant: *Erosion at the site should be minimized by quickly re-vegetating exposed areas of soil. Such exposed areas may require immediate and/or temporary netting, blankets, judicious use of straw, bales, and silt fences. The proposed grading for the house is the minimum necessary to construct the building. All disturbed soils will be reseeded immediately after final grading.*

Staff: This standard is met though conditions.

- 7.2.8. MCC 33.5520(A)(2)(c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;**

Applicant: *The proposed grading for the house is the minimum necessary to construct the building.*

Staff: The grading and excavation work proposed are the minimum necessary to site the proposed dwelling and the stormwater system. The proposed development is designed to utilize the existing topography with some minor filling (Exhibit 1.2). This standard is met.

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

Applicant: *If needed, temporary mulching will be used to protect exposed soils and all disturbed soils will be reseeded immediately after final grading.*

Staff: Mulching and reseeding of any disturbed areas related to the development are prescribed in the narrative notes on the Grading and Erosion Control Plan (Exhibit 1.2). A condition of approval will require these notes be implemented. This standard is met.

- 7.2.10. MCC 33.5520(A)(2)(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**

1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;

Applicant: *The proposed disturbed area for the house is the minimum necessary to construct the building. No improvements will be made within 100 feet from the existing creek.*

Staff: No natural vegetation within 100 feet of a stream is proposed to be removed as part of this project. An undisturbed buffer area of more than 100 feet from the stream will be maintained, except for implement the mitigation plan and wildlife conservation plant nuisance plant removal and plantings. These aspects of the project must to be accomplished using hand tools with reseeding with grass all disturbed areas and excess soils removed from the 100 stream buffer area. This standard is met.

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

Applicant: *The proposed improvements will be constructed in accordance with the grading and erosion control plans.*

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

7.2.12. MCC 33.5520(A)(2)(g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

Applicant: *The proposed impervious area will be collected by a gutter drain, connected to a perimeter pipe, and flow into a proposed swale.*

Staff: Silt fencing and mulch will be used during construction to address stormwater erosion control. The disturbance is limited to very minimum amount around the dwelling and for the stormwater system, as described in earlier findings (Exhibit 1.2). The stormwater system bioswale is designed to handle the increase runoff from new impervious surface. This standard is met through conditions.

7.2.13 MCC 33.5520(A)(2)(h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;

Applicant: *Silt fences will be installed as required to trap any sediment laden water.*

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

7.2.14. MCC 33.5520(A)(2)(i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;

Applicant: *The surface water around the proposed house will drain away from the house into a swale. No water will run over a cut face of an excavation.*

Staff: Mulch will be used during construction to address stormwater erosion control. The disturbed areas will be required to be reseeded after construction. This standard is met through conditions.

7.2.15. MCC 33.5520(A)(2)(j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;

Applicant: *The only drainage system will be a rain drain pipe from the proposed house connecting to a proposed swale, which will be able to handle the ten-year design storm. All of the rain drains will be installed in accordance with the Uniform Building Code and will be capable of bypassing the ten-year design storm.*

Staff: The applicant has submitted a Storm Water Certificate with stormwater disposal system plans, stamped and signed by Carl V. Rossetti PE., certifying that the project meets this

requirement with on-site storm water drainage system which includes a bioswale (Exhibit). A condition will require these plans be implemented. This standard is met though conditions.

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

Applicant: *The drainage swale shall be vegetated.*

Staff: The proposed stormwater swale shall be vegetated. This standard is met though conditions.

7.2.17. MCC 33.5520(A)(2)(1) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

- 1. Energy absorbing devices to reduce runoff water velocity;**
- 2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- 3. Dispersal of water runoff from developed areas over large undisturbed areas.**

Applicant: *See the grading and erosion control plans for the proposed devices for this site.*

Staff: The applicant proposes using mulching for the disturbed soil area and silt fencing down slope of the project. This standard is met through conditions.

7.2.18. MCC 33.5520(A)(2)(m) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

Applicant: *If stockpiles are created, silt fence will be installed around the piles to prevent erosion, straw mulched will be added, if required See the grading and erosion control plans for more information.*

Staff: Spoil materials are not proposed to be stored on site. Any stockpiles of topsoil must be covered with plastic sheeting as a condition of approval. A condition will require spoils be removed from the property. This standard is met through conditions.

7.2.19. MCC 33.5520(A)(2)(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Applicant: *No pesticides, fertilizers, etc. will be used in the construction of the proposed house..*

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

7.2.20. MCC 33.5520(A)(2)(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)". All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be

seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Applicant: N/A

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

8. CONCLUSION

The applicant has demonstrated the standards for the Significant Environmental Concern for Wildlife Habitat and Streams Permit have been met or can be met through conditions of approval for the proposed development. The applicant has demonstrated that the standards for a Hillside Development Permit have been met or can be met through conditions of approval. The request for an SEC and HDP permit for a single family dwelling with attached garage and a bioswale for stormwater control is approved with conditions.

9. EXHIBITS

9.1. Exhibits Submitted by the Applicant:

- Exhibit 1.1: Application form (1 page)
- Exhibit 1.2: Site Plans including Erosion Control Details and Notes (1 oversized page)
- Exhibit 1.3: Narrative address SEC-h and SEC-s standards titled *Significant Environmental Concern for a Proposed Single Family Residence on NW Old Cornelius Pass Road in Portland, Oregon*, by Pacific Habitat Services (18 pages)
- Exhibit 1.4: *Geotechnical Reconnaissance and Stability* [HDP Form 1] prepared by James E. Pyne, RG and stamped and signed by James D. Imbrie, CEG of GeoPacific Engineering, Inc (13 pages)
- Exhibit 1.5: Addendum to Hillside Development Permit Application prepared by James E. Pyne, RG and stamped and signed by James D. Imbrie, CEG of GeoPacific Engineering, Inc (2 pages)
- Exhibit 1.6: Addendum addressing Hillside Development Grading and Erosion Control Standards by Jeremy Totten, Engineering Division, all County Surveyors, along with a *Grading and Erosion Control Plan* stamped and signed by Ray I. Moore, PE (4 pages)
- Exhibit 1.7: Storm Water Certificate with stormwater disposal system plans stamped and signed by Carl V. Rossetti PE. (6 pages)
- Exhibit 1.8: Wetland Delineation for the property (32 pages)
- Exhibit 1.9: DSL Wetland Delineation/Determination Report Cover Form (2 pages)
- Exhibit 1.10: Certificate of On-site Sewage Disposal (5 pages)
- Exhibit 1.11: Fire District Review Fire Flow Review (6 pages)
- Exhibit 1.12: Fire District Access Review (4 pages)

9.2. Exhibits Provided by the County:

- Exhibit 2.1: County Assessment Record and map for the subject property (2 pages)
- Exhibit 2.2: Current County Zoning Map with subject property labeled (2 pages)
- Exhibit 2.3: GIS aerial and map showing SEC-s and HD Overlay Districts (2 pages)
- Exhibit 2.4: 2004 Aerial photo of the property (1 page)

- Exhibit 2.5: Memorandum from J. Michael Lynch, County Transportation Planning Specialist (1 page)
- Exhibit 2.6: Type III Land Division including subject property as Parcel II (1 page)

8.2. Exhibits Provided by Others:

- Exhibit 3.1: Letter of comment submitted by Jim Emersion, FPNA President