



**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.co.multnomah.or.us/landuse>

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## CORRECTED NOTICE OF DECISION

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

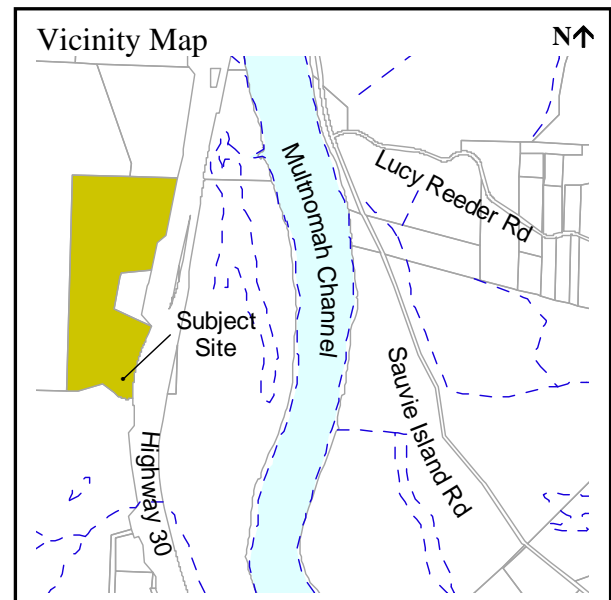
**Case File:** T2-08-045

**Permit:** Hillside Development Permit

**Location:** 22037 NW St. Helens Road  
TL 100, Sec 01, T2N, R2W, W.M.  
Tax Account #R97201-0020

**Applicant/  
Owner:** Joseph Mellor

**Nature of  
Correction:** Removed Condition of Approval #1  
from original decision.



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**Summary:** Retroactive Hillside Development Permit (HDP) to permit unlawful grading activities including cut into a hillside and filling the head of a ravine in 2001.

**Decision:** Approved

Unless appealed, this decision is effective Wednesday, September 3, 2008, at 4:30 PM.

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Issued by:

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

For: Karen Schilling- Planning Director

Date: Wednesday, August 20, 2008

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-3043, ext. 29270.

**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 Wednesday, September 3, 2008 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): 37.0560 Code Compliance; 33.5515 Application Materials Required; 33.5520 Grading and Erosion Control Standards.

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.

<b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b>
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ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.
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**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Staff comments and analysis are identified as **Staff:**. Staff comments include a conclusionary statement in *italic*.

1. **Project Description**

**Staff:** The applicant is seeking to retroactively permit grading work that took place in 2001 on areas of the subject property identified as being within the Slope Hazard overlay. The full extent of the cut and fill activities is unknown due to the amount of time that has passed since the actions took place. However, the applicant has furnished information noting that a portion of a hill was cut into a shelf or landing to the east of an existing large barn and adjacent to an old skid road related to past forest harvests (Exhibit B-1). The material resulting from the cut was then placed in a seasonal draw just east of the cut area and on the other side of the Bonneville Power Administration easement to the west of the barn.

2. **Site Characteristics**

**Staff:** The subject property is located in the West Hills Rural Plan Area off of Highway 30 and directly north of Wildwood Golf Course. The property is just over 55-acres and zoned Commercial Forest Use-2 (CFU-2) with overlays for Significant Environmental Concerns for Wildlife Habitat (SEC-h) and Scenic Views (SEC-v) and also Slope Hazard. The majority of the property is heavily forested except the areas around the existing dwelling, a manufactured home currently undergoing review as a health hardship dwelling in case #T2-08-007, the barn, and other various buildings identified as part of raising animals and the residential use. Additionally, the BPA easement appears to run north-south through the middle of the property and has been mostly cleared and maintained by the power company and/or owner.

3. **Public Comment**

**MCC 37.0530 Summary Of Decision Making Processes.**

**(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 Directors decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).**

**Staff:** Public notice was mailed out on July 24, 2008 to property owners within 750-feet of the property lines. Those that received notice were given 14-days to provide comment. No written comments were received on the proposal.

*Procedures met.*

4. **Proof of Ownership**

**MCC 37.0550 Initiation Of Action.**

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

**Staff:** Assessment and Taxation records show Joseph and Roberta Mellor are the owners of the subject property (Exhibit A-1). This application was broken out of case #T2-08-007. The original case T2-08-007 was for a Temporary Health Hardship Permit, Significant Environmental Concern Permit, and a Hillside Development Permit for the placement of the Health Hardship as well as to correct the unlawful grading activities from 2001. Because that original permit was incomplete and needed additional information, the applicant requested that the unlawful grading activities be reviewed separately in order to maintain good standing with an existing Voluntary Compliance Agreement (VCA). The County agreed to split the grading aspect of the original permit out. As such, the signature of Mr. Mellor on Case #T2-08-007 (Exhibit A-2) combined with his request to split the grading out demonstrate the application action was initiated by the owner of record.

*Criterion met.*

5. **Full Compliance**

**MCC 37.0560 Code Compliance And Applications.**

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

**(A) A permit or other approval, including building permit applications, may be authorized if:**

**(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**

**(2) It is necessary to protect public safety; or**

**(3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that**

situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**Staff:** The property is the subject of a longstanding compliance issue that included a complaint of unlawful grading activities (UR 01-71) and multiple dwellings without permits. A voluntary Compliance Agreement (VCA) was signed and entered into by both Mr. Mellor and Multnomah County (Exhibit A-3). This application does not address all the violations associated with the property but is associated with a VCA and brings the property closer to full compliance via the sequencing of permits provision of MCC 37.0560(A)(1). As such, action by the County on this permit is allowed.

*Criterion met.*

6. **Hillside Development Permit**

**MCC 33.5515      Application Information Required**

**An application for development subject to the requirements of this subdistrict shall include the following:**

**(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.**

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

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

**(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, and/or replanting.**

**(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.**

**(a) If the HDP Form– 1 indicates a need for further investigation, or if the Director geotechnical report as specified by the Director shall be prepared and submitted.**

**(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.**

**(4) 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.**

**(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.**

**MCC 33.5520          Grading and Erosion Control Standards**

**Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:**

**(A) Design Standards For Grading and Erosion Control**

**(1) Grading Standards**

**(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;**

(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;

(c) Cuts and fills shall not endanger or disturb adjoining property;

(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;

(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;

## **(2) Erosion Control Standards**

(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.

(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;

(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;

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

(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 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;**

**(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;**

**(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;**

**(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;**

**(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;**

**(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;**

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

**(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.**

**(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;**

**(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.**

**(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.***

**Staff:** Although the exact location of all work is unknown, we do know the grading and filling that took place on the property in 2001 was in areas that required a Hillside Development Permit considering the property is mapped within the HD zone or slopes average more than 25%. The permit was not applied for until now, roughly seven years after the fact. Because this application is retroactive, the ability of the review the methods of work such as cutting, compaction, fill lifts and erosion control is greatly hindered. The purpose of the HDP-Form 1 is to ensure that an area of development or potential development is stable and does not have characteristics that may lead to failure, slumping or sliding of earth material. The applicant submitted a complete Geotechnical Reconnaissance and Stability Preliminary Study (HDP Form-1) for the areas of the past cut and fill (Exhibit B-2). Charles R. Lane, a registered Professional Engineer, reviewed the cut shelf and fill placed in the drainage and determined that there does not appear to be stability problems. Mr. Lane used Drive Probe data to determine the fill was stable. Mr. Lane also noted that the past earthwork, in his opinion, did not cause potential stability problems for either area of work.

Because the cut and fill areas worked on seven years ago appear to be stable according to Mr. Lane and do not appear to pose a threat to the health and safety of the property owners or adjacent property owners, Staff finds that the requirements for the Hillside Development Permit have been satisfied. As indicated by Mr. Lane, P.E., any further development proposed in those areas will require additional review for specific projects. Work performed elsewhere on the subject property identified as being in the Slope Hazard overlay or where natural or finished slopes exceed 25% shall require additional reconnaissance and another Hillside Development Permit.

*Criteria met.*

## **Conclusion**

Considering the findings and other information provided herein, this application for a retroactive Hillside Development Permit satisfies applicable Multnomah County Zoning Ordinance requirements.

## **Exhibits**

### Staff Exhibits

- A-1 – Multnomah County Assessment and Taxation Information Sheet.
- A-2 – Signed General Application Form From T2-08-007.
- A-3 – Signed Voluntary Compliance Agreement.

### Applicant Exhibits

- B-1 – Applicant Site Plan
- B-2 – HDP Form-1.