



NOTICE OF DECISION

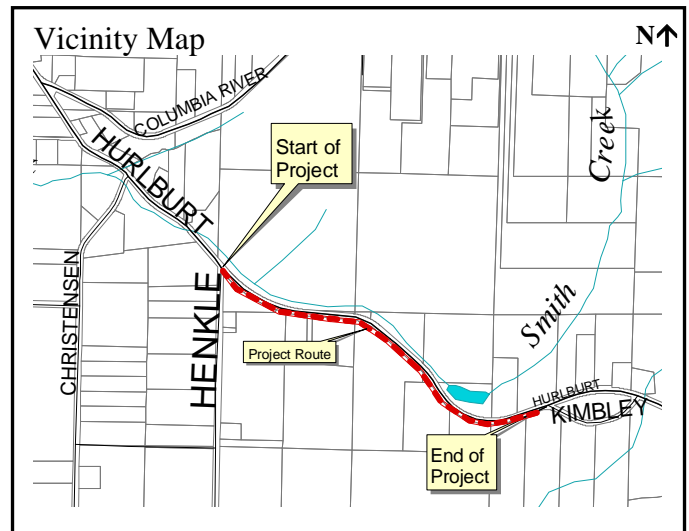
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-09-028

Permit: Significant Environmental Concern Permit for Streams

Location: Hurlburt Road, between Henkle to Kimbley Road
Corbett, OR 97019
Sections 04 and 03
Township 01 S, Range 04 E, W.M.

Applicant: Cascade Utilities dba Reliance Connects
Tim Dodd, Engineer



Summary: Application for a Significant Environmental Concern Permit for Streams to install new communication facilities along Hurlburt Road between Henkle Road and Kimbley Road. New facilities will be located along the south ditch line of Hurlburt Road. There will be one road crossing to service property located at 33945 Hurlburt Road. The communication facilities will be placed by either the use of plowing or directional boring. The project is occurring on lands zoned Exclusive Farm Use (EFU) and Multiple Use Agriculture-20 (MUA-20).

Decision: Approved with conditions.

Unless appealed, this decision is effective October 13, 2009 at 4:30 PM.

Issued by:

By: _____
Joanna Valencia, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, September 29, 2009

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 Joanna Valencia, Staff Planner at 503-988-3043, ext. 29637.

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 October 13, 2009 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):): 35.2620(Y) Allowed Uses, 35.4520 Application for SEC Permit, 35.4525 Applicable Approval Criteria, 35.4575 Criteria for approval of SEC-S Permit-Streams, Chapter 37 Administration and Procedures.

Copies of the referenced Multnomah County Code (MCC) 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 2 years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. 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. As part of the mitigation plan (Exhibit A.8) the disturbed area for the project shall be monitored by the applicant annually for a period of 5 years after the completion of the project to ensure that no erosion occurs and that vegetation is maintained [MCC 35.7575(D)].
2. All soil disturbing activities will be limited to the period between June 15 and September 15, with revegetation/soil stabilization needing to be accomplished no later than October 15th. Additional, Best Management Practices related to erosion control is required within the Stream Conservation Area [MCC 35.4575(E)(6)].
3. It is the responsibility of the applicant to obtain all applicable state and federal permits prior to starting the project. Demonstration of compliance with all applicable state and federal permits shall be submitted at the time of building plan review and approval [MCC 35.4575(E)(7)].

Note: Once this decision is final, application with the County to Occupy or Perform Operations Upon A County Road or Dedicated Street can be made. Contact Alan Young for additional information at (503) 988-3582. When ready to have project plans signed off, the applicant shall call the Staff Planner, Joanna Valencia, at (503) 988-3043 ext. 29637, for an appointment for review and approval of the conditions and to sign the project plans. Please note, Multnomah County must review and sign off the project plans before the applicant submits plans to the County Right Of Way Office Transportation Division. Three (3) sets each of the project plans are needed for project sign off. At the time of project plan review an erosion control inspection fee of \$77.00 will be collected.

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 of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

The applicant is requesting a Significant Environmental Concern Permit to install new communication facilities along Hurlburt Road between Henkle Road and Kimbley Road. New facilities will be located along the south ditch line of Hurlburt Road. There will be one road crossing to service property located at 33945 Hurlburt Road. The communication facilities will be placed by either the use of plowing or directional boring. All ditch slopes will be replaced to as-found condition, and bio bags will be placed in the ditch downstream from all disturbed areas to minimize construction silt from flowing into Smith Creek. The Smith Creek crossing will be done via a directional bore. No spoils will enter the creek bed directly. There will be no disturbance of any large bushes or trees along the route, and disturbed grassy areas will be re-vegetated. Most of the area identified to be disturbed is located within a road ditch.

A written comment was received from Gary and Jonette Lee (Exhibit D.1) regarding concerns regarding impacts to their paved driveway and mailbox area. The applicant addressed their concerns (Exhibit A.9), indicating that their project calls for directional boring under the asphalt driveway and mailbox of 34140 SE Hurlburt Road, so there is not anticipated disturbance to the Lee’s driveway or mailbox. The applicant further states that, should there be any inadvertent damage to their driveway or mailbox caused by the project construction, Cascade Utilities will repair it to as-found or better condition. Per the applicants submittal, there are no plans to cut or remove asphalt for this project, and any mailboxes removed for construction will be reset to as-found or better condition.

2.00 Exclusive Farm Use (EFU) Zoning District

§ 35.2620 ALLOWED USES

(Y) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

- (1) A public right of way;**
- (2) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or**
- (3) The property to be served by the utility.**

Staff: The proposed project is for the placement of new facilities for communications. This involves the placement of pipe and cable underground along Hurlburt Road and replaces existing aerial phone cable. The facilities are located on the public right-of-way and will be located along the south ditch line of Hurlburt Road. There will be one road crossing to service property located at 33945 Hurlburt Road.

3.00 Multiple Use Agriculture-20 (MUA-20) Zoning District

§ 35.2820 ALLOWED USES

§ 35.2825 REVIEW USES

(F) Placement of structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

Staff: The proposed project is for the placement of new facilities for communications. This involves the placement of pipe and cable underground along Hurlburt Road and replaces existing aerial phone cable. The facilities are located in the public road right-of-way and will be located along the south ditch line of Hurlburt Road. There will be one road crossing to service property located at 33945 Hurlburt Road.

§ 35.4575 CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS

(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 35.4575 (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 35.4575 (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.

Staff: The proposed project is located within the Stream Conservation Area. The applicant has submitted the required information as listed in MCC 35.7575 (Exhibits A.1-A.9). The proposed project is not located within an identified flood hazard area. Ground disturbance for the trenching and boring for the installation of the communication pipe and lines is mainly occurring along the south ditch line of Hurlburt Road. One directional bore will occur to cross Smith Creek and measures will be in place to ensure that no spoils will enter the creek. Bio bags will be placed in the ditch downstream from all disturbed areas as indicated in the site plans to minimize construction silt from flowing into Smith Creek from the construction site. An estimated 28,808 square feet of ground disturbance will occur.

Per the submitted application, the predominant species of existing vegetation along the ditch route is common grass and blackberry vine. Straw will be spread over disturbed areas and all disturbed areas will be revegetated with perennial rye grass seed. Disturbed areas will be returned to as-found condition in regards to existing slopes and grades. As stated, the applicant's goal is to restore the construction areas to as-good or better than found. The ditch where work will be done will be cleaned of debris and garbage.

There is no anticipated impact to fish and wildlife resources due to the construction route being located outside of the streambed. Existing shrubs and trees will be retained and disturbed grassy areas will be revegetated. The construction period will be limited to June 15 to September 15 as required below per MCC 35.7575(E)(6). The applicant has indicated as part of their mitigation plan that the disturbed area for the project will be monitored for a period of 5 years after the completion of the project to ensure that no erosion occurs and that vegetation is maintained. A condition has been included to reflect this. *As conditioned this criterion is met.*

(E) Design Specifications

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

(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: The project doesn't include bridges or arched culverts. There are no streams being crossed that require the construction of a bridge or arched culvert. A directional bore method is being used to place the communication utilities and not impact the stream. *This criterion is not applicable.*

(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.

Staff: No new impervious surfaces are proposed as part of this project, and therefore no impacts to stormwater are expected. *This criterion is met.*

(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: No exterior lighting is associated with this development. *This criterion is not applicable.*

(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 large bushes or any trees are proposed to be removed as a result of this project. *This criterion is met.*

(5) Satisfaction of the erosion control standards of MCC 35.5520.

Staff: A request for a Grading and Erosion Control permit has been submitted for this project (Case No. T1-09-017) that addresses and satisfies the erosion control standards of MCC 35.5520. *This criterion is met.*

(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 has been included requiring that all soil disturbing activities will be limited to the period between June 15 and September 15, with revegetation/soil stabilization needing to be accomplished no later than October 15th. Additional, Best Management Practices related to erosion control is required within the Stream Conservation Area. *As conditioned, this criterion is met.*

(7) Demonstration of compliance with all applicable state and federal permit requirements.

Staff: The applicant has submitted an application for a Significant Environmental Concern (SEC) permit. No other permits have been identified as required by state and federal agencies. A condition has been added requiring that it is the responsibility of the applicant to obtain all applicable state and federal permits prior to starting the project. *As conditioned this criterion is met.*

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit for Streams to install new communication facilities along Hurlburt Road between Henkle Road and Kimbley Road. New facilities will be located along the south ditch line of Hurlburt Road. There will be one road crossing to service property located at 33945 Hurlburt Road. The communication facilities will be placed by either the use of plowing or directional boring. The project is occurring on lands zoned Exclusive Farm Use (EFU) and Multiple Use Agriculture-20 (MUA-20). This approval is subject to the conditions of approval established in this report.

6.00 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

All exhibits are available for review in Case File T2-09-028 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form for the Significant Environmental Concern Permit for Streams	5/19/09

A.2	1	Grading and Erosion Control (GEC) Permit Application Form	5/19/09
A.3	1	Applicant Narrative	5/19/09
A.4	1	Application and Permit to Occupy or Perform Operations Upon A County Road or Dedicated Street	5/19/09
A.5	7	Photographs of project area	5/19/09
A.6	1	Site Plan (Oversized)	5/19/09
A.7	1	Topography map (Oversized)	5/19/09
A.8	3	Applicant Narrative addressing Incomplete Letter and Mitigation Plan	7/27/09
A.9	1	Applicant response to Gary and Jonette Lee Comment	9/1/09
'B'	#	Staff Exhibits	Date
B.1	1	Zoning and Location Map	
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete Letter	6/4/09
C.2	1	Applicant's Acceptance of 180 Day Clock	6/29/09
C.3	1	Complete Letter (Day 1)	8/14/09
C.4	1	Opportunity to Comment	8/18/09
'D'	#	Comments Received (if needed)	Date
D.1	1	Written comment form Gary and Jonette Lee	8/31/09