

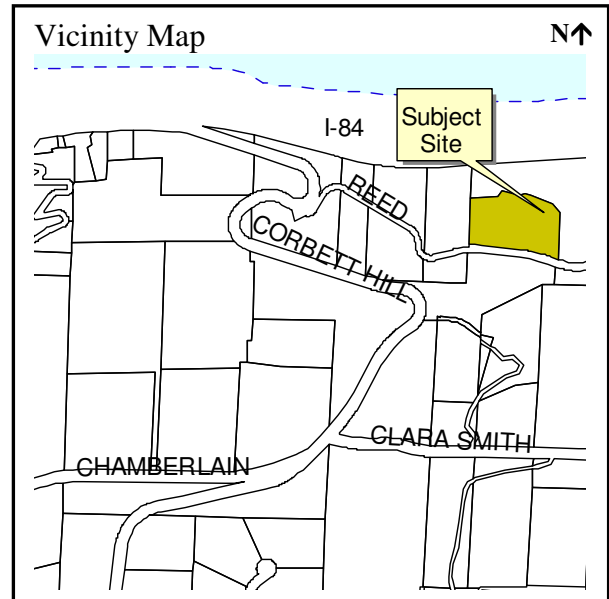
**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

<http://www.multco.us/landuse>

NOTICE OF DECISION

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

Case File: T2-2012-2130**Permit:** Hillside Development Permit**Location:** 37003 NE Reed Road
TL 700, Sec 26CA, T 1N, R 4E, W.M.
Tax Account #R944261070**Applicant:** Michael Bell**Owner:** Matthew Conti, and Marnie Conti

Summary: Hillside Development Permit to allow previously placed fill.**Decision:** Approved.Unless appealed, this decision is effective May 17, 2012, at 4:00 PM.

Issued by:

By: _____
Kevin Cook, Planner

For: Karen Schilling- Planning Director

Date: Thursday, May 3, 2012

Instrument Number for Recording Purposes: # 2012-030745

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 Kevin Cook, Staff Planner at 503-988-3043, ext. 26782.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Columbia River Gorge Commission until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is May 17, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Multnomah County Code (MCC): 38.5500 – 38.5525, Hillside Development; 38.3000 – 38.3095, Gorge General Residential Zones; 38.0000 – 38.0210 General Provisions; 38.0510 – 38.0850, 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: www.multco.us/landuse

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 38.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 38.0700. Such a request must be made prior to the expiration date of the permit.**

Conditions of Approval

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

1. **Within 30 days** of the final approval date of this decision the property owner shall record the Notice of Decision including the Conditions of Approval of this decision with the County Recorder. The Notice of Decision shall run with the land and the conditions shall be met by the current and future property owner(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to the issuance of any permits. Recording shall be at the applicant's expense. [MCC 38.0670]

2. **Within 90 days** of the final approval date of this decision the property owner shall plant four conifers north of the shop building as indicated in Exhibit B.8. Additionally, screening vegetation that was removed from the terraced area north of the detached garage shown in Exhibit B.7 shall be replanted within 90 days of the final date of this decision. The County Code Compliance office will keep the compliance case (UR) open until verification is provided to the Code Compliance office the required vegetation has been planted as required. [MCC 38.0560]
3. All present and future **property owners shall be responsible for the proper maintenance and survival of required screening vegetation.** Any required vegetation damaged or destroyed by inclement weather or disease to the extent that they no longer screen the development shall be replaced within the next planting season. Replacement trees shall be at least 6ft tall a time of planting and shall be placed in the same general location. [MCC 38.7040(A)(3), (4) and (7)]
4. **Within 90 days** of the final approval date of this decision a driveway access permit shall be applied for and issued for the driveway access onto NE Reed Road. [MCRR 16.200 and MCC 38.0560]
5. All conditions of approval for County Decision T2-05-023 (Exhibit B.8) remain in effect as applicable.
6. It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.

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 has applied for a Hillside Development permit in order to address previously placed fill on the property. The fill was placed in an area to the northeast of a detached accessory shop building that was approved in September 2005 through file T2-05-023. The fill resulted from the leveling of the building site for the shop building and the fill was deposited approximately 8 feet north of the shop building. Because the fill was deposited within area identified as a slope hazard overlay, the Hillside Development permit is required in order to insure that the deposited material is stable. The application was originally applied for by Michael Bell, who is the applicant and was the property owner at the time of the application. The property is now owned by Mathew Conti, who has since signed the application (Exhibit A.2).

2.00 Code Compliance:

The applicant has placed the fill beyond the limits previously indicated for grading in the applicant’s original site plan in 2005. The fill resulted from leveling the site for the shop building. While the accessory building was previously reviewed and approved by the County, depositing fill on a slopes was not included in the proposal. The site preparation including site leveling that resulted in some material being pushed out into an area designated as Slope Hazard on the County’s zoning maps (Exhibit B.4). Placement of fill in the Slope Hazard overlay requires review by an Oregon registered engineer and a County Hillside Development permit. This application is a review of the previously placed fill on the property.

It appears that vegetation originally shown on the site plan in T2-05-023 Exhibit B.8, including four proposed conifers that were never planted or did not survive, are now absent from the site. Conditions 2 and 3 requires the planting (and continued survival of) the four originally proposed conifers as well as the replanting of missing vegetation in the vicinity of the terraced area north of the existing dwelling. Condition 2 specifies that the property owner has 90 days from the final date of this decision to plant the required trees.

3.00 Comments Received:

3.01 Friends of the Columbia Gorge:

The Friends of the Columbia Gorge sent a letter received April 6, 2012. The letter raises a number of points:

- T2-05-023 required at least four new coniferous trees to the north of the building.

Staff: The applicant indicated to staff that the four trees had been planted but a site visit by staff could not locate any surviving trees north of the shop building that were indicated in Exhibit B.8. Condition 2 requires the planting of the trees shown in Exhibit B.8. Condition 5 requires compliance with all conditions of approval as stated in the original approval.

- Removal of screening vegetation in the vicinity of the terraced area near the existing dwelling.

Staff: Condition 2 requires the replanting of the missing trees in the terraced area.

- The accessory building was built as a 2,400 square foot structure instead of the 2,240 square foot building that was approved.

Staff: While county assessment records (Exhibit B.1) estimate the building at 2,400 square feet, measurements taken on a recent air photo (Exhibit B.2) show a 56' by 40' structure, which is the size that was approved in T2-05-023.

- Concern regarding the current use of the structure – staff needs to verify that the structure is not being used for commercial uses.

Staff: The site visit by staff in February 2012 did not reveal any unapproved uses on the property, nor did any previous site visits by County Code Compliance staff.

- Concern that fill may exceed 100 cubic yards.

Staff: The applicant's engineer estimated the fill volume at 80 cubic yards (Exhibit A.4).

4.00 Hillside Development Permit:

4.01 MCC 38.5505 PERMITS REQUIRED

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 38.5510.

Staff: In September 2005, an application for an accessory shop building was approved. Subsequently, the building site was graded and the shop was constructed. During the construction and site grading soil was pushed towards the north of the building site into an area mapped within the Slope Hazard overlay (Exhibit B.4). The purpose of the application is to address the fill that was placed within the Slope Hazard overlay.

4.02 MCC 38.5515 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 38.5520 (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 as a Type II decision 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 requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.

(F) Geotechnical Report Requirements

(1) A geotechnical investigation in preparation of a Report required by MCC 38.5515 (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 (a) If the 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 38.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Staff: The applicant has submitted the required information including site plan and extent and location of the fill material, narrative, map or plan information necessary to demonstrate compliance with MCC 38.5520(A). This review is a Type II decision.

A geological report and an HDP Form 1 were prepared by John E. Jenkins, C.E.G. (an engineering geologist) and submitted on February 8, 2012. The report indicates that the building and the fill appear stable and the storm water system appears to be functioning normally.

Following is a review of Standards for Grading and Erosion Control in MCC 38.5520 (A) through (D). Conditions of approval will be imposed to assure the development meets those standards. These criteria are met or can be met through conditions of approval.

4.03 MCC 38.5520 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;

Staff: The structural and general fill standards are addressed in the Geotechnical report. This standard is met.

4.04 (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;

Staff: Cut and fill slopes are addressed in the Geotechnical report. The report indicates that the slope is stable and that erosion control measures were in place at the time of fill placement. The standard is met.

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

Staff: The geological report prepared by John E. Jenkins, C.E.G. was submitted which stated that the fill is stable. This standard is met.

4.06 (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;

Staff: A Storm Water Certificate stamped and signed by Stephen R. Heryford P.E. (Exhibit B.6) indicated that a storm water management system is required. The installed system has been evaluated by John E. Jenkins, C.E.G., who indicates the system is functionally normal.

4.07 (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 de-sign frequency;

Staff: The fill is located above but not within a natural drainage swale. Stormwater is managed via a trench drain installed per the previous approval in 2005. This standard is met.

4.08 (2) Erosion Control Standards

(a) 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;

(b) 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;

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

Staff: The applicant indicates that erosion control measures were in place at the time the fill was placed. The fill is now covered with grasses. The standard is met.

4.09 (d) 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;

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

Staff: The fill is not located within a stream buffer. Trees that were required at the time to of the original approval are required to be planted as a condition of this approval (Conditions 2 and 5). As conditioned, this standard is met.

4.10 (f) 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;

Staff: A Storm Water Certificate stamped and signed by Stephen R. Heryford P.E. (Exhibit B.6) indicated that a storm water management system is required. The installed system has been evaluated by John E. Jenkins, C.E.G., who indicates the system is functionally normally.

4.11 (g) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;

Staff: The applicant indicates that erosion control measures were in place at the time the fill was placed. The fill is now covered with grasses. The standard is met.

- 4.12 (h) 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;**
- (i) 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;**
- (j) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;**
- (k) 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 re-duce 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.**

Staff: A Storm Water Certificate stamped and signed by Stephen R. Heryford P.E. (Exhibit B.6) indicated that a storm water management system is required. The installed system has been evaluated by John E. Jenkins, C.E.G., who indicates the system is functionally normally.

- 4.13 (1) Disposed spoil material or stock-piled 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;**

Staff: According to John E. Jenkins, C.E.G., the fill, located near a drainage swale, is stable and is covered with vegetation and grasses and does not require additional stabilization measures.

- 4.14 (m) 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.**

Staff: The applicant indicates that erosion control measures were in place at the time the fill was placed. The fill is now covered with grasses. The standard is met.

4.15 (B) Responsibility

- (1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;**

(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.

Staff: Condition 6 requires ongoing adherence to the above.

5.00 Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Hillside Development permit to establish previously placed fill in the GGR-5 zone. 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

Exhibits are available for review in Case File T2-2012-2130 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form – signed by applicant	02/01/2012
A.2	1	Application Form – signed by current owner	04/26/2012
A.3	3	Geological Report – prepared by John E. Jenkins, C.E.G.	02/08/2012
A.4	7	HDP Form with attached site plan and site photographs – completed by John E. Jenkins, C.E.G.	02/08/2012
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information – including accessory building area	05/02/2012
B.2	1	Air Photo with building measurements	04/30/2012
B.3	1	2004 Air Photo	02/01/2012
B.4	1	County Zoning Map	02/01/2012
B.5	2	Pre-File Meeting Notes	02/01/2012
B.6	1	Storm Water Certificate – completed by Stephen R. Heryford Feb. 8, 2005	04/30/2012
B.7	1	Site plan submitted with original application for accessory building – Exhibit A.25 of T2-05-023	04/30/2012
B.8	7	T2-05-023 – Multnomah County Hearings Officer Final Order	04/30/2012

		with Settlement Agreement attached	
‘C’	#	Administration & Procedures	Date
C.1		Completeness Review Notice Email	02/13/2012
C.2		Completeness Review Notice	02/13/2012
C.3		Complete Letter (Day 1)	02/26/2012
C.4		Opportunity to Comment	03/22/2012
‘D’	#	Comments Received	Date
D.1	3	Cultural Review Determination Letter – by Marge Dryden, Archaeologist/Heritage Program Manager, USDA Forest Service, Columbia River Gorge National Scenic Area. – Historic Survey not required; Reconnaissance Survey not required	02/17/2012
D.2	1	Joanna Valencia, Multnomah County Transportation Planner – regarding no evidence of access permit	03/16/2012
D.3	1	Dennis Griffin, Ph.D., RPA, State Archaeologist, Oregon Parks and Recreation Department – recommending caution during future ground disturbing activities	04/02/2012
D.4	8	Friends of the Columbia Gorge	04/06/2012