

**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: T2-2012-2416

Permit: Significant Environmental Concern
Permit - Water Resources (SEC-wr),
Scenic Waterway (SEC-sw)

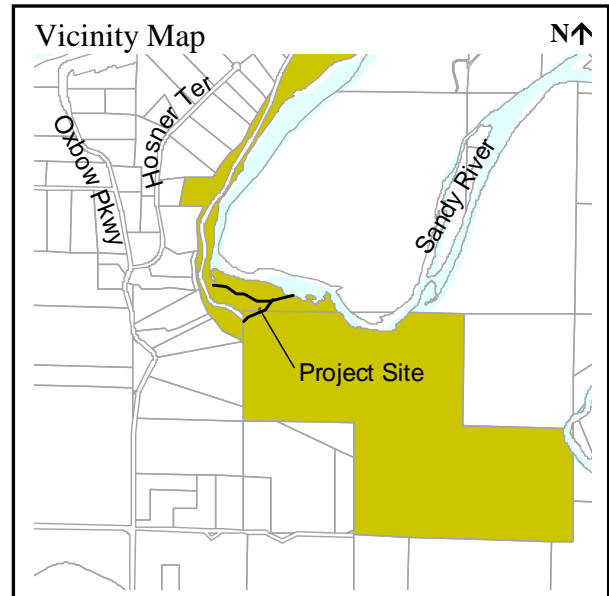
Location: 3010 SE Oxbow Parkway
Tax Lots 400 and 200 , Sections 10 & 15
T1S, R4E, Tax Accounts #R994100050
& R994150020

Applicants: Steve Wise & Bill Weiler
Sandy River Basin Watershed Council

Owners: METRO, United States of America

Base Zone: Commercial Forest Use (CFU)

Overlays: SEC-h, SEC-sw, SEC-wr, Flood
Hazard; Slope Hazard



Summary: Restoration of salmonid habitat in a tributary stream (Happy Creek) and side channel of the Sandy River.

Decision: Approved with Conditions

Unless appealed, this decision is effective Wednesday, November 28, 2012, at 4:00 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, November 14, 2012

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, November 28, 2012 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance, 36.0005 Lot of Record, 36.2275 Lot of Record, 36.4540 Application for SEC Permit, 36.4545 SEC-sw Approval Criteria, MCC 36.4550 General SEC Requirements for SEC-h SEC-wr, 36.4555 SEC-wr Approval Criteria, 36.4560 SEC-h Approval Criteria.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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> or <http://web.multco.us/transportation-planning>.

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 pursuant to MCC 37.0690(A) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, 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.

Note: Once this decision is final, application for building permits, if applicable, may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, 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 Gresham. Three (3) 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 may be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

- 1. Staging of equipment or vehicles shall occur no closer than 150-feet from the stream or waterbody [MCC 36.4545(G)].**
- 2. The conditions of the Oregon Department of Parks and Recreation letter shall be met as part of this approval (Exhibit A.6) [MCC 36.4545(A)(1)].**
- 3. Any equipment or vehicle working in stream shall be inspected daily prior to entering the waterbody to ensure there are no leaks or hazardous materials present [MCC 36.4545(G)].**
- 4. Nuisance plants listed in MCC 36.4550(C) shall not be planted in the development area.**
- 5. Vegetation planted as part of the habitat restoration and enhancement shall be as proposed in the mitigation plan[MCC 36.4555(D)(6)].**
- 6. Prior to work commencing, and through the duration of the project, equipment access areas will be clearly flagged to prevent equipment from encroaching into the water resource areas other than what is necessary to construct the woody debris structures and the placement of boulders [MCC 36.4555(D)(7)].**

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:

Staff: The applicant is seeking approval for a restoration project along a tributary of the Sandy River that will improve habitat for salmonid by adding woody debris and boulders in the watercourse. The project will occur in the Commercial Forest Use zone and within the Significant Environmental Concern overlays for Scenic Waterways and Water Resources.

2.00 Code Compliance

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit 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.**

Staff: There are no known code compliance issues associated with the two involved properties and as such the County has the authority to issue this land use decision.

Criteria met.

3.00 Lot of Record:

MCC 36.0005 Lot of Record

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

*** * ***

MCC 36.2075 Lot of Record

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**
- (2) A group of contiguous parcels or lots:**
 - (a) Which were held under the same ownership on February 20, 1990; and**
 - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;

(7) August 8, 1998, CFU-1 zone applied, Ord. 916 (reenacted by Ord. 997);

(8) May 15, 2002, Lot of Record section amended, Ord. 982 & reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2073, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot;**
- (4) An area of land created by court decree.**

Staff: The applicant has provided deed documents to demonstrate each involved property is a Lot of Record. Below is an analysis of each property:

Property/Parcel 1 (METRO), Tax Lot 400: The applicant submitted a deed (Book 2133, Pages 436 through 441) dated August 14, 1962 and recorded September 5, 1962 (Exhibit A.20) that contains several parcels. Parcel II, beginning on Page 438 of Book 2133, describes the portion of Tax Lot 400 the project takes place on. In 1962, the property was zoned F2 (Exhibit B.5). The F2 zone only required a 2-acre minimum lot size and did not have other requirements such as road frontage or a front lot line length. As such, the property met the zoning requirements.

Land divisions creating three or fewer parcels were not required to be reviewed by the County until 1978. Since the property was in existence since at least 1962 in its current configuration, it was not required to undergo a partition review.

In addition to findings above, the CFU zone has aggregation requirements of properties less than 19-acres in size in common ownership on February 20, 1990. By all known information, there are several properties that comprise property known as Tax Lot 400. Multnomah County had been the owner of the properties for decades and managed Oxbow Park. The applicant has provided a deed from 2004 (Exhibit A.20) that transferred ownership of the properties comprising Oxbow Park to Metro. The deed includes 17 properties on the title. Considering that Multnomah County owned all the property for decades (including all property comprising Tax Lot 400) and they were adjacent to each other, then it is clear they were in common ownership on February 19, 1990 and thus aggregated. Those properties are still in continuous ownership and therefore a Lot of Record under the CFU requirements.

Considering the above facts, Property 1 owned by Metro, a portion of Tax Lot 400, is a Lot of Record.

Property/Parcel 2 (United States of America), Tax Lot 200: The applicant states in their September 6, 2012 narrative (Exhibit A.19) that the property does not have a deed and that it was created by court decree. The explanation of the court decree is included in a August 27, 2012 email from Manning Welsh, Chief Title Officer at Portland Title Group, to the applicant. The summary of their documentation is that the land was originally owned by the Oregon and California Railroad company and transferred to the US Government in 1916 as a result of a 1916 US Supreme Court decision and the Chamberlain-Farris Act of 1917.

Regardless of the ownership issue, the applicant's narrative is corroborated by Multnomah County's Division of Assessment, Recording and Taxation's Parcel Record Card (Page 8, Exhibit A.20) showing the parcel at 161.02 acres in size as of 1916. The parcel record includes notations that the property was owned by the US Government from the "O.C. Grant" (the railroad company) and has only had its acreage changed due to Assessor's requests of map corrections and calculations. As such, staff finds the parcel is in its current configuration as of 1916 and has remained unchanged.

In 1916 there was no zoning on the property so there were no minimum lot size, setback, or front lot line length requirements. Considering this, the property met all zoning rules in place at the time it was created. Additionally, there were no partition requirements until 1978 as previously discussed. So the property met all land division rules in place at the time it was created.

Considering the above facts, Property 2, known as Tax Lot 200, is a Lot of Record.

Criteria met. Both parcels are lots of record

4.00 Commercial Forest Use:

MCC 36.2020 ALLOWED USES

(F) An uninhabitable structure accessory to fish and wildlife enhancement.

Staff: The proposed use is allowed in the CFU zone.

Criterion met.

Staff: Because there are no buildings, roads, septic systems, etc., proposed, no other requirements or standards of the CFU zone are applicable since they are aimed at locational requirements for buildings and supporting utilities.

5.00 Significant Environmental Concern Permit:

A. MCC 36.4545 CRITERIA FOR APPROVAL OF SEC-SW PERMIT - SCENIC WATERWAY.

The SEC-sw designation shall apply to those wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. An application shall not be approved unless it contains the information in 36.4540(A) and (B). Any proposed activity or use requiring an SEC-sw permit shall be subject to the following:

- 1. (A) Submittal of a letter from the Oregon Parks and Recreation Department which indicates that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.**

Staff: The applicant has submitted a letter dated June 26, 2012 from the Oregon Department Parks and Recreation (Exhibit A.6) stating the proposed project can be consistent with the Oregon Scenic Waterways Management Plan. The letter listed 7 conditions of approval from Parks and Recreation.

Criterion met.

2. **(B) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

Staff: Restoration of an area is not a 'use.' That said, the nature of the project, to improve and restore salmonid habitat, requires the project to take place in the waterways as shown on the submitted site plan (Exhibit A.17). Because of the requirements of the project, the applicant has provided the maximum landscaped area between the project and the river. The project does not include any buildings or roads and therefore will not have an adverse affect on the scenic and aesthetic values in the area.

Criterion met.

3. **(C) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

Staff: The restoration will take place adjacent to the Sandy River and a tributary in Oxbow Park. There are no farm or forest practices taking place on the properties.

Criterion met.

4. **(D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

Staff: The proposal does not include buildings, but does include woody debris structures that will provide habitat for endangered fish species. The US Bureau of Land Management has also reviewed the project (Exhibit A.5) and determined that "based on the analysis...., it is determined the proposed project would not have a direct and adverse impact effect on scenic, recreational, wildlife, fish or ecological values..." As such, the proposed use will help preserve and protect fish and expand areas of environmental significance.

Criterion met.

5. **(E) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion.**

Staff: The project is an enhancement project of the stream corridor and wildlife habitat and removal of any invasive plants, should they be found. The woody debris will fit into the natural environment and will not adversely affect any scenic qualities of the area. As such, the project itself will enhance scenic resources and will not increase erosion concerns.

Criterion met.

6. **(F) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

Staff: There are no known archaeological areas in the vicinity of the project.

Criterion met.

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

Staff: According to the submitted Department of the Army letter (Exhibit A.3), the project will involve 2,810 cubic yards of gravel being excavated below the ordinary high water mark of the Sandy River. Then, approximately 1,220 cubic yards of gravels, woody debris, boulders and a ditch plug will be installed in areas below the ordinary high water mark.

The applicant has stated that all Best Management Practices will be implemented in the installation of the woody debris structures; revegetation of disturbed areas will take place immediately following construction; work will be isolated with sandbags and floating silt curtains etc. Additionally, staging will be limited to be no closer than 150-feet from; equipment or vehicles working in stream will be inspected daily prior to entering the stream to ensure no leaks or hazardous materials are exposed.

Criterion met.

8. **(H) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

Staff: The proposal is to construct and improve natural habitat along the tributary of the Sandy River. The materials will consist of woody debris, gravel and boulders – all natural materials colored with the surrounding environment. The project may initially stand out since it will be fresh, but will quickly become weathered and blend in to the natural area. As such, the project will be compatible with the character and visual quality of the scenic waterway, which is the area of environmental concern.

Criterion met.

9. **(I) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

Staff: The site has not been identified specifically as having fragile or endangered plant habitat. However, the whole area is identified as a significant environmental concern for the scenic and natural qualities it possesses as well as the habitat it provides. This project will enhance that habitat.

Criterion met.

B. MCC 36.4550 GENERAL REQUIREMENTS FOR APPROVAL IN AREAS DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

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

Staff: According to the submitted Department of the Army/Army Corps of Engineers letter (Exhibit A.3), the project will involve 2,810 cubic yards of gravel being excavated below the ordinary high water mark of the Sandy River. Then, approximately 1,220 cubic yards of gravels, woody debris, boulders and a ditch plug will be installed in areas below the ordinary high water mark. The tributary has been diverted so that it is dry and the project will not be considered "in-water" work. The applicant has stated that all Best Management Practices will be implemented in the installation of the woody debris structures; revegetation of disturbed areas will take place immediately following construction; work will be isolated with sandbags and floating silt curtains etc. Additionally, staging will be limited to be no closer than 150-feet from; equipment or vehicles working in stream will be inspected daily prior to entering the stream to ensure no leaks or hazardous materials are exposed.

Criterion met.

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

Staff: No lighting is proposed as part of the project.

Criterion met.

3. (C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:

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 sepium</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 robertianum</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.

Staff: Nuisance plant removal and long term abatement in the development area shall be a condition of approval.

C. MCC 36.4555 CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE

Except for the exempt uses listed in MCC 36.4520 and the existing uses pursuant to 36.4525, no development shall be allowed within a Water Resource Area unless the provisions of section (A) or (B) or (C) below are satisfied. An application shall not be approved unless it contains the site analysis information required in 36.4540(A) and (C), and meets the general requirements in 36.4550.

1. (B) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E) are met. The applicant shall prepare an alternatives analysis which demonstrates that:
 - a. (1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and

Staff: Because the project includes restoration of the tributary of the Sandy River, the project is water dependant on the water resource that is protected under the SEC-wr. As such, there is no alternative to the location of the proposed project.

Criterion met.

- b. **(2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;**

Staff: The very nature of the project is to enhance habitat for endangered species and requires work in the water resource in order to be effective. Restoration and enhancement projects are allowed in the underlying zone. Because the project is for the enhancement of the habitat, the development is limited to those areas that need to be improved from a fish habitat perspective. The wildlife assessment performed by Siskiyou BioSurvey found that based on their sampling, the general area of the project is in “good” condition for vegetation, understory, and tree canopy. But the proposed work is in the tributary and will improve the fish habitat, which is as important as upland habitat. As such, the proposed development is limited to the area necessary for the fish habitat improvement and enhancement.

Criterion met.

- c. **(3) Development shall occur as far as practically possible from the stream; and**

Staff: Because of the nature of the project, the development cannot be done outside the stream. As such, it *is* as far as practically possible from the stream.

Criterion met.

- d. **(4) The Water Resource Area can be restored to an equal or better condition; or**

Staff: As identified by Siskiyou BioSurvey, the area around the development project is already in “good” condition.

Criterion met.

- e. **(5) Any net loss on the property of resource area, function and/or value can be mitigated.**

Staff: There is no net loss to the resource area. All areas will remain in “good” condition and the project will enhance water borne wildlife habitat and resources.

Criterion met.

2. **(D) Development Standards- Development within the Water Resource Area shall comply with the following standards:**

- a. **(1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource.**

Staff: No facilities such as those mentioned in the criterion are proposed for the project.

Criterion met.

- b. **(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.**

Staff: The applicant is not proposing to remove any trees as part of the project. The 'development' is installing large woody debris structures and bounders in the tributary and along the bands to provide improved fish habitat. Logs for the structures are to be imported in to the site, constructed and installed. Since no trees will be removed, no replacement is required.

Criterion met.

- c. **(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.**

Staff: The area of the project has been determined to be in "good" condition which includes tree stands of 50% canopy closure and native trees, shrubs, and ground cover covering 85% of the area. Given that the development area is in "good" condition, the tree, shrub, and natural vegetation cover is and will remain connected and contiguous.

Criterion met.

- d. **(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to (E) below and the specifications in Table 2.**

Staff: The area of development is currently in "good" condition and will remain so after the woody debris structures, bounders and habitat is put in place.

Criterion met.

- e. **(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.**

Staff: The proposed development does not include vegetation removal other than invasive plants or the cutting of trees. With the proposed development isolated to the tributary, this criterion is met.

Criterion met.

- f. **(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.**

Staff: While vegetation is not proposed to be removed, the applicant has stated that there will nonetheless be vegetation planted throughout the project site. Native vegetation will be utilized and is a condition of approval.

Criterion met.

- g. **(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this district. Such markings shall be maintained until construction is complete.**

Staff: The applicant has stated that equipment access areas will be flagged through the duration of the project. This shall be a condition of approval.

Criterion met.

- h. **(8) Stormwater quantity control and quality control facilities:**

(a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.

(b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and

(c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property.

Staff: No impervious surface is being added as a result of the project. Therefore, stormwater mitigation is not required.

Criterion met.

- D. **(E) Mitigation - Mitigation shall be required to offset the impacts of development within the SEC-wr. This section establishes how mitigation can occur.**

(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.

(a) When a proposed use or development activity could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1. through 5. below shall be followed unless the applicant demonstrates that an

overriding public benefit would warrant an exception to this preferred sequence.

- 1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**
- 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;**
- 3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;**
- 4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments onsite.**
- 5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments offsite.**

(b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:

- 1. The extent of the public need for the proposed development ;**
- 2. The functional values of the Water Resource Area that may be affected by the proposed development;**
- 3. The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;**
- 4. The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and**
- 5. The uniqueness or scarcity of the Water Resource Area that may be affected.**

(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.

(a) Any person who alters or proposes to alter regulated natural resource areas shall restore or create natural resource areas equivalent to or larger than those altered in order to compensate for resource losses.

(b) The following ratios apply to the creation or restoration of natural resource areas. The first number specifies the amount of natural resource area to be created and the second specifies the amount of natural resource area to be altered or lost.

Creation (off-site)	2:1
Restoration (off-site)	1.5:1
Creation (on-site)	1.5:1
(Restoration (on-site)	1:1

(c) Only marginal or degraded water resource areas as described in Table 2 may be the subject of a restoration project proposed as part of a Mitigation Plan.

(d) Highest priority sites for mitigation are marginal or degraded corridors that are closest to a natural drainage, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.

(e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the watershed where the development will take place or as otherwise specified by the County.

(f) Compensation shall be completed prior to initiation of development where possible.

(g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in the deed records of Multnomah County. In order to ensure that offsite mitigation areas will be protected in perpetuity, the owner shall cause a deed restriction to be placed on the property where the mitigation is required. The deed restriction shall be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County.

(3) Mitigation Plan Standards - Natural re-source mitigation plans shall contain the following information:

(a) A description of adverse impacts that could be caused as a result of development.

(b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.

(c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.

(d) A map drawn to scale, showing where the specific mitigation activities will occur.

(e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

Staff: As described in previous findings, the proposed project is to take place in an area that has been determined to be in “good” condition (A.8). The project does not remove trees or other vegetation from the development area. The project enhances and creates fish habitat in the tributary of the Sandy River. The habitat enhancement includes adding large woody debris structures and boulders to create shade, crags, and protected areas for endangered salmonid. As such, no mitigation is required to off-set the project because the project will not result in the loss or degradation of a regulated natural resource area.

Criteria met.

6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit for Scenic Waterways and Water Resources to construct and enhance fish habitat in a tributary of the Sandy River in the Commercial Forest Use zone. This approval is subject to the conditions of approval established in this report.

7.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2012-2416 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
A.1	1	General Application Form
A.2	1	Project Summary
A.3	6	Army Corps of Engineers Verification Letter of Permits and Accompanying Documents
A.4	1	Oregon BLM/SHPO Cultural Resource Protocol Tracking Slip
A.5	7	US Department of the Interior, Bureau of Land Management Environmental Assessment
A.6*	1	Oregon Department of Parks and Recreation Letter of Approval
A.7	1	National Wetlands Inventory Map
A.8	10	Water Resource Assessment
A.9	12	Custom Soils Report for Happy Creek Project
A.10	1	SEC-wr Supporting Documents Table of Contents

A.11	5	SEC-wr Narrative
A.12	1	SEC-sw Table of Contents
A.13	3	SEC-sw Narrative
A.14	15	July 18, 2012 Deed Documents
A.15	23	Memorandum of Understanding for Restoration at Oxbow Regional Park Between Metro and the Sandy River Basin Watershed Council – including Maps
A.16*	1	Project Layout and Large Scale Site Plan
A.17*	1	Detailed Site Plan
A.18	1	Applicant's Incomplete Response Letter
A.19	3	September 6, 2012 Narrative
A.20	13	Lot of Record and Parcel Information for Parcel 1, Tax Lot 400, Owned by Metro
A.21	14	Lot of Record and Parcel Information for Parcel 2, Tax Lot 200, Owned by United States of America
A.22	1	Project Clarification Email From Steve Wise
'B'	#	Staff Exhibits
B.1	4	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	2	August 16, 2012 Incomplete Letter
B.4	9	Opportunity to Comment and Mailing List
B.5	1	1962 Zoning Map