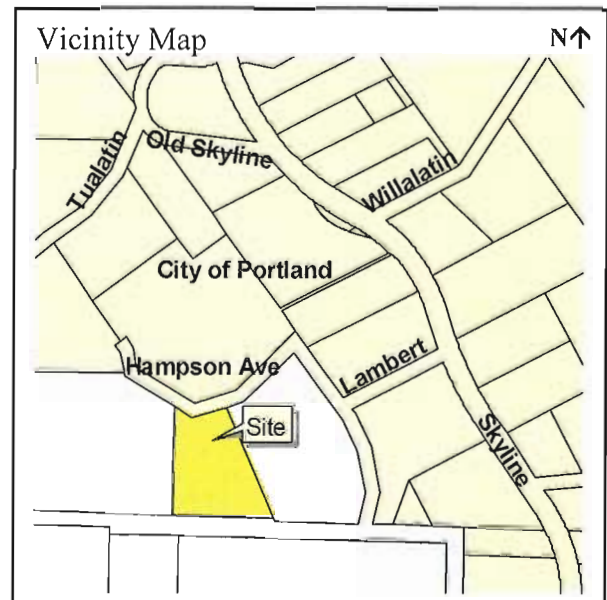


**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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

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

HEARINGS OFFICER DECISION AND FINAL ORDER

Case File: T2-2012-2550**Permit:** Significant Environmental Concern Permit – Wildlife Habitat (SEC-h) and Streams (SEC-s); Hillside Development Permit**Location:** 11770 NW Hampson Ave.
Tax Lot 6100, Section 10C
Township 1N, Range 1W, W.M.
Tax Account #R846000430**Applicants:** Bernard and Amy Nnoli
Dan Symons**Appellant:** Hilary Mackenzie**Owners:** Benell and Ilene Tindall**Base Zone:** Rural Residential**Overlays:** SEC-h, SEC-s, HD

Summary: The appellant contends that the subject parcel is not a Lot of Record by asserting that the subject lot was aggregated with two adjacent lots, that the aggregated parcel already has a dwelling and that therefore the Director could not approve the subject permits and homesite.

Decision: The appeal is denied and the Decision of the Planning Director is affirmed with Conditions

Conditions of Approval

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

- 1. After the decision is final and prior to zoning review for building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval (pages 1 through 5). The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense [MCC 37.0670].**
- 2. An Enhanced NFPA 13(D) fire sprinkler system must be installed on all levels, including the garage as required by Tualatin Valley Fire & Rescue (Exhibit A.19). At the time of zoning review for building permit sign-off, the owner shall submit the sprinkler specifications to land use planning for the system to be installed [Tualatin Valley Fire & Rescue Letter].**
- 3. "No Parking" signs shall be posted along NW Hampson Ave. and within the elements of the fire turnaround are required by Tualatin Valley Fire & Rescue [Tualatin Valley Fire & Rescue Letter].**
- 4. Prior to City of Portland's issuance of a building permit, provide evidence to Tualatin Valley Fire & Rescue that a current fire flow test of the nearest fire hydrant demonstrates an available flow of 20PSI residual pressure [Tualatin Valley Fire & Rescue Letter].**
- 5. No new fencing is authorized by this permit except for that which is associated with the production of agriculture [MCC 33.4570(B)(6)].**
- 6. No nuisance plants listed in MCC 33.4570(B)(7) shall be planted on the subject property. If any of the listed plants are in the development area, they shall be removed along with those outlined in the mitigation plan during construction. The owner shall also keep the development area free of the nuisance plants listed in MCC 33.4570(B)(7).**
- 7. The owner and contractors shall initiate and maintain the mitigation plans as described by GeoPacific Engineering, Inc., the application narrative, and shown on plan sheets C2, C4, and C5 [MCC 33.4575(D)(1)(c) and (d), MCC 33.4575(E)(4), and MCC 33.5520(A)(2)].**
- 8. A five year monitoring plan is required to ensure the SEC-s mitigation plan in Exhibits A.29 and L1 achieves an 80% vegetative survival rate. The owner shall submit a yearly report to land use planning performed by a licensed landscape architect or biologist on the survival rate of the planted vegetation required under the mitigation plan by December 1st of each year for the five-year period. If 80% survival rate is not reached, the owner shall plant in-kind replacements during the next spring planting season as advised by the licensed landscape architect or biologist [MCC 33.4575(D)(1)(d)].**

9. Exterior lighting shall be included on building plans at the time of zoning review for building permit sign-off. Additionally, the owner shall submit light design specifications at the same time [MCC 33.4570(B) and MCC 33.4575(E)(3)].
10. The property owner shall implement all phases of the erosion and sediment control measures as discussed in the narrative (Exhibit A.29), Geotechnical report (Exhibit A.14) and shown on the applicants' erosion control plan sets C2, C3, C5 and C6 [MCC 33.5520].
11. Soil disturbing activities shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15 [MCC 33.4575(E)(6)].
12. The following Geotechnical Testing and Observations are required before, during and after land disturbing activities by a Geotechnical Engineer or Certified Engineering Geologist or by a professional under their auspices [MCC 33.5515(F) and MCC 33.5520(A)(1)(c)].:

Procedure	Timing
Preconstruction Meeting	Prior to beginning site work
Stripping, aeration, and root-picking operations	During stripping
Compaction testing of engineered fill (90% of Modified Proctor)	During filling, tested every 2 vertical feet
Compaction testing of trench backfill (95% of Standard Proctor)	During backfilling, tested every 4 vertical feet for every 200 lineal feet
Street Subgrade Compaction (95% of Modified Proctor)	Prior to placing base course
Base course compaction (95% of Modified Proctor)	Prior to paving, tested every 200 lineal feet
AC Compaction (91% (bottom lift) / 92% (top lift) of Rice)	During paving, tested every 200 lineal feet
Final Geotechnical Engineer's Report	Completion of Project

13. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, other than those approved by the City of Portland's Department of Transportation Program, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality [MCC 33.5520(B)(1)].
14. 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 [MCC 33.5520(B)(2)].

15. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects. On-site disposal of construction debris is not authorized under this permit. Construction debris removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities [MCC 33.5520(A)(2)(n)].
16. The use of absorptive “pillows” shall be utilized in the two different sumps to trap hydrocarbon spills in the event of a spill during construction or dripping of chemicals from vehicles and motors once the dwelling comes into use. These pillows shall be maintained in compliance with manufacturer’s specifications. [MCC 33.5520(A)(2)(n)].
17. All excavated topsoil and soil shall be stored in the area designated on the erosion control plan. These materials shall be covered with 6-mil plastic or 2” of mulch or straw to prevent movement into undesignated areas. Stored earthen materials shall be backfilled around the foundation of the structure as soon as practical and reseeded with temporary vegetation until permanent plantings are made. [MCC 33.5520(A)(2)(m)].
18. The culvert located in the un-named creek (Exhibit A.6, A.25) shall be carefully removed during the dry building season of June 15 through September 15 and the channel replanted as necessary with native plants appropriate for its location [MCC 33.4575(E) and MCC 33.5520(A)(2)].
19. During the construction of the curtain drain and the retaining wall, the cut face and fill slope shall be completed as soon as possible and temporary stabilization methods such as mulching, seeding or covering with plastic utilized to prevent damage and erosion to these surfaces. [MCC 33.5520(A)(2)(i)].

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, 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 Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No *ex parte* contacts. I did not have any *ex parte* contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing, I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the Applicant.

SCOPE OF APPEAL

An appeal from an administrative decision of the Planning Director is conducted as a *de novo* hearing. The issues asserted in the notice of appeal as well as the testimony, arguments and evidence submitted at the hearing and in the record in this matter will be considered herein. The issues raised on appeal will be addressed under the section of this decision titled **ISSUES ON APPEAL** and within the context of the Analysis applied by the Planning director in making the Decision now on appeal.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance; 33.0005 Lot of Record; 33.3155 Dimensional Requirements; 33.3170 Lot of Record; 33.3185 Access; 33.4570 SEC-h Approval Criteria; 33.4575 SEC-s Approval Criteria; 33.5520 Grading and Erosion Control Standards.

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>.

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*. The Hearings Officer's analysis and findings are preceded by the term '**Hearings Officer**'. If there is no comment by the Hearings Officer after a staff comment, the Hearings Officer concurs with the Staff comment or analysis.

1.00 Project Description:

Staff: The applicant is seeking approval for a single family dwelling on the subject vacant site. The property takes access off of a public road wholly within the limits of the City of Portland.

2.00 Property Description & History:

Staff: The development area generally slopes from northeast to southwest. The subject residential lot is bisected by a seasonal creek the runs from approximately the southeast property corner to about the middle of the west property line. A drainageway tributary to the seasonal creek enters the property at the east property line about 1/3 south of the northeast corner. Grades climb steeply on the south side of the seasonal creek.

A dwelling was previously approved on the subject property in 2007 (Case T2-06-111). An extension to the permit expiration was approved in case T2-09-071 but the dwelling was not constructed and the extension has expired.

3.00 Code Compliance:

MCC 37.0560 Code Compliance And Applications.

Except as provided in subsection (A), the County shall not make a land use decision, 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.

Staff: There are no known violations on the subject property within Multnomah County's jurisdiction.

Criterion met.

4.00 Public Comments:

Staff: An Opportunity to Comment was mailed out to property owners within 750-feet from the subject lot's property lines as well as County recognized neighborhood associations and the City of Portland. Four sets of comments were received as outlined below:

Fred Bacher – Neighbor to the South. Mr. Bacher's letter (Exhibit C.1) supports approval for the application. Mr. Bacher also noted that he has volunteered a portion of his property to be the site of any necessary mitigation needed by the Nnoli's in their quest for approval.

While the original application submission included off-site mitigation, the applicant has since altered the application to contain all on-site mitigation.

Hearings Officer: Mr. Bacher also spoke at the appeal hearing and testified that he supported the staff and applicants' position. He stated that he had researched the history of the subdivision and that the lot in question had been legally approved and signed off on in 1911. He also stated that the Nnolis were responsible people who would comply with and carry out the environmental mitigation plan for the property.

In reference to the aggregation issue raised by the Appellant, Mr. Bacher testified that taxing and zoning maps do not accomplish aggregation and that the Nnoli lot had never been aggregated with other property.

Steven Miller and Leslie Hildula – Neighbors within 750-feet of the subject lot. Mr. Miller and Ms. Hildula's letter (Exhibit C.2) opposes the proposed application. Their letter states concerns over:

1. The terrain of the property;
2. Concern over other lots in the area being developed with dwellings;
3. That the application is another one for the property made over several years even with neighbor opposition.

The letter alludes to comments submitted to the record in other cases for the property but they were not included in this comment letter. As such they are not in the record for the subject application.

Hilary Mackenzie – Daughter of property owner of an adjacent lot. Ms. Mackenzie's letter (Exhibit C.3) requests denial of the application on the grounds that the SEC approval criteria found in MCC 33.4575 and 33.4570 are not satisfied; that the property is not a Lot of Record under MCC 33.3185 and 33.3170; that the application does not satisfy the grading and erosion control standards of MCC 33.5520; and that at roughly 5,441 square feet the dwelling is too large.

The Significant Environmental Concern and Hillside Development Permit approval criteria are addressed below in the corresponding findings. It should be noted that the 500-foot limitation for access does not include public right-of-way; it only includes access and driveways on private land. Lot of Record findings are made in Finding #5 below. The Rural Residential zoning district does not have a size limitation on dwellings or a lot coverage provision. A house may be as large as the land can properly service in terms of stormwater and septic capacity. There are no overlays on the property that contain provisions on visual appearance or design that would limit the square footage of a dwelling or architectural features.

Ms. Mackenzie also submitted an email dated November 26, 2012 (Exhibit C.4) that included additional comments regarding the Lot of Record. Included in the email were a Notice of Public Hearing (Exhibit C.5) for an appeal of a HDP 3-92a on property off of NW Tualatin Avenue, a map containing the Tualamette Acres subdivision from case HDP 3-92a (Exhibit C.6), and Page 4 of a Hearing Notice from Multnomah County case CU 3-98; SEC 12-98 (Exhibit C.7).

In her email, Ms. Mackenzie indicates that the subject lot of the current application was supposed to be consolidated into other adjacent lots owned by the same property owner to form one large property in 1991. Ms. Mackenzie uses the notes on the bottom of the site plan from HDP 3-92a (Exhibit C.5) as justification along with Page 4 from case CU 3-98/SEC 12-98

(Exhibit C.7). However, the two documents come from separate cases and applications for different properties.

The Notice of Public Hearing and site plan included with the email is from case HDP 3-92a (Exhibit C.6) for property at 12040 NW Tualatin Avenue while Page 4 of the hearing notice (Exhibit C.7) for CU 3-98/SEC 12-98 is for property at 7547 NW Skyline. Permit HDP 3-92a did not involve the subject property. The subject property is zoned Rural Residential, a zone which does not have aggregation or consolidation requirements. The handwritten notes on the site plan from HDP 3-92a regarding consolidation of Lots 8,9, and 10 is for the creation of one tax lot – not one Lot or Parcel as defined by ORS 92. A tax lot is used solely for assessment of taxes – not to describe deeded property. The code language included in Page 4 from the hearing notice of CU 3-98/SEC 12-98 for property that was zoned Commercial Forest Use, which does require aggregation in some circumstances, but does not apply to the subject property.

Hearings Officer: I concur with the staff analysis. The notes on Exhibit C6 state: “Lots 8, 9 & 10 are now one big tax lot.” The notes refer to the individual lots by their individual lot designations. A tax lot consolidation for assessment purposes is not an aggregation of lots. The tax lot consolidation did not change the character of the lots from 3 individual lots to one larger parcel. The Appellant’s arguments relative to whether the lot in question is a lot of record will be discussed in more detail in section **5.00 Lot of Record**, of this Decision .

Forest Park Neighborhood Association – Recognized Neighborhood Association for the area. The neighborhood organization submitted a letter (Exhibit C.8) that notes they are neutral on the application itself as they recognize they may have a right to build a dwelling. The letter goes on to discuss that the neighborhood association recognizes there is an environmental concern on the property for both habitat and streams. In their letter, they note that if the standards of MCC 33.4570(B) cannot be met a Wildlife Conservation Plan must be submitted. They also note that the SEC criteria require ‘enhancement’ of wildlife resources and as such suggest mitigation plans should be included. Findings on the applicable code criteria are found below in the Planning Director’s decision.

5.00 Lot of Record:

MCC 33.0005 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 33.3170 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;

(5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;

(6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

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

(C) Except as otherwise provided by MCC 33.3160, 33.3175, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be 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) An area of land created by court decree.

Staff: The subject property was determined to be a Lot of Record in case T2-06-111 as it is an intact lot from the Tulamette Acres subdivision platted in 1911. The configuration has not changed since that time and therefore the property is still a Lot of Record.

Criteria met.

Hearings Officer: At the Appeal hearing and in written submittals to the Planning Department, the Appellant contended that Lot 8 of Tulamette Acres is part of the contiguous ownership that includes lots 9 and 10. She also argues that lots 8, 9 and 10 were aggregated on October 10, 1977 or earlier. I see no evidence in the record or in her submittals that would support a finding that lots 8, 9 and 10 were ever aggregated.

Under the 1980-82 tab in Appellants notebook submittal H.1, the Appellant sets forth the 1982 version of 11.15.2182 (B) (1) as follows:

“(B) A lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

(1) Parcels of land which are contiguous and in which greater than possessory interests are held by the same person, partnership or business entity shall be aggregated to comply as nearly as possible with a minimum lot size of ten acres, without creating any

new lot line, and with the front lot line minimums of this district. The word "contiguous" shall refer to parcels of land which have any common boundary and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way, except as provided in subpart (2) of this subsection. Nothing in this subsection shall be deemed to alter or amend the other provisions of this chapter."

(2) Separate Lots of Record shall be deemed created when a County-maintained road or zoning district boundary intersects a parcel of land."

Hearings Officer: Subsection 2 is not relevant, it is only quoted because it is referred to in subsection (1).

The Applicants' attorney, Jennifer Bragar discusses the aggregation issue in her post hearing submittal.

"The appellant appears to contend that the aggregation standard in subpart (1) applied directly to the subject property because Tulamette Acres Lots 8, 9 and 10 are all in and were in common ownership at the time. However, this interpretation ignores the prefatory language of MCC 11.15.2182(B) that is the context for aggregation. As stated in subsection B, the standard only applied to when an applicant sought to develop the property with any permitted or approved use. At the time the MFU zoning applied to the subject property, no development was ever proposed and the County had no grounds to and did not apply the aggregation requirement."

I concur with the Applicants' analysis. In addition, as pointed out by the Applicants, when the MFU zoning was replaced with the current Rural Residential Zoning large lots were not required as part of resource protection and the zoning allowed for residential uses.

As explained by County Staff at the March 22, 2013 hearing, the aggregation standards did not automatically apply to all MFU zoned contiguous lots in the County if those lots were later zoned Rural Residential.

Lots 8, 9 and 10 are not aggregated. As Staff found: "The subject property was determined to be a Lot of Record in case T2-06-111 as it is an intact lot from the Tulamette Acres subdivision platted in 1911. The configuration has not changed since that time and therefore the property is still a Lot of Record.

Lot 8 is a Lot of Record.

6.00 Base Zone Criteria:

A. MCC 33.3120 Allowed Uses

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

Staff: The property is a Lot of Record as discussed in Finding #5. As such, the property is entitled to a dwelling provided the approval criteria of the overlay districts are satisfied.

Criterion met.

B. MCC 33.3155 DIMENSIONAL REQUIREMENTS

1. **(A) Except as provided in MCC 33.3160, 33.3170, 33.3175 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).**

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

Staff: Lot area is not applicable as no new Lots are being created.

Criteria met.

2. **(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

Staff: As seen on the applicant's Overall Site Plan C1 submitted on January 11, 2013 (Exhibit A.25), the proposed dwelling is 30-feet from the front property line along NW Hampson Avenue. The parking area is located within the front yard but is not subject to structural setback requirements. The dwelling is shown to be 10-feet from the closest side property line (on the east) at the dwelling's closest point. The subject property is more than 100-feet to the rear and other side property lines.

As seen on the on the submitted elevation plans, Sheet A4 (Exhibit A.13), the dwelling measures 33-feet and 34.5-feet on the two tallest sides of the building according to the methodology used to determine building height in MCC 33.0005- Building Height.

No new lot is being created so lot frontage is not applicable.

Criteria met.

3. **(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

Staff: The road that fronts the subject property is not in the County's jurisdiction and therefore not subject to the County's right-of-way requirements. Likewise, while the road is in the City of Portland, the property is not and is therefore not subject to city jurisdiction for exactions or increased right-of-way dedications. Notice of the application was sent to the City of Portland for comment and no concerns were raised.

Criterion met.

4. **(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

Staff: No structures listed in the standard are proposed as part of the project.

Criterion met.

C. MCC 33.3180 OFF-STREET PARKING AND LOADING

Off-street parking and loading shall be provided as required by MCC 33.4100 through 33.4220.

MCC 33.3185 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 33.3170(B).

Staff: The applicant has demonstrated on the site plan (Exhibit A.25) that the proposed use has room for the required two parking spaces in the garage as well as in front of the house. Access is taken from a public road in the City of Portland.

Criteria met.

7.00 Significant Environmental Concern Permit – Wildlife Habitat:

MCC 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT

Staff: The applicant hired SWCA Environmental Consultants to address the SEC standards for the wildlife habitat and stream criteria.

A. (B) Development standards:

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

Staff: The whole site meets the definition of a forested area as defined in MCC 33.4570(A)(1), which states:

For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

Therefore, there are no cleared areas to site the development.

Criteria met.

Hearings Officer: The appellant has contended that the Applicants could not site their house on the subject property because the house could only be sited in a non-forested area. That is not the case. If the property contains non-forested areas, the development would be restricted to such an area. However, in this instance the whole site meets the definition of a forested area and so the development is allowed to occur in a forested area.

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

Staff: The proposed development is within 200-feet of NW NW Hampson Ave., a public road under the jurisdiction of the City of Portland. NW Hampson Ave. is the only public right-of-way that abuts the subject property and is in the general vicinity. The applicant notes the City of Portland has issued an approval, Portland Case #LU-09-173677 EN (Exhibit A.37), to improve the roadway. Regardless, with NW Hampson abutting the subject property, the standard is satisfied.

Criterion met.

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

Staff: The site plan (Exhibit A.25) shows the driveway measuring 30-40 feet in length from the public road.

Criterion met.

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

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

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.

2. The County Road Official shall provide written findings supporting the modification.

Staff: There are no other access points onto NW Hampson Road. As such, the applicant is not required to cluster access development.

Criteria met.

5. **(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

Staff: No development is on any adjacent property within 200-feet of a common side yard.

Criterion met.

6. **(6) Fencing within a required setback from a public road shall meet the following criteria:**

(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

Staff: No fencing is proposed in the application.

Criterion met.

(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

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

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

Staff: No nuisance plants are being proposed for planting. Nuisance plant removal and long term abatement in the development area shall be a condition of approval.

Criterion met with condition of approval.

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

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

Staff: The applicant demonstrated compliance with the SEC-h development standards therefore a Wildlife Conservation Plan is not required.

Criterion met.

8.00 Significant Environmental Concern Permit – Streams:

MCC 33.4575 CRITERIA FOR APPROVAL OF SEC-S PERMIT -STREAMS

A. (D) For the protected stream resources, 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:

- 1. (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC 33.4575 (C);**

Staff: The applicant has provided a site plan showing the full extent of the Stream Conservation Area on the subject property with the Overall Site Plan C1(Exhibit A.25). The applicant also provided a September 20, 2012 written narrative prepared in part by SWCA Environmental Consultants (Exhibit A.4); a January 14, 2013 revised and supplemental narrative by the same firm (Exhibit A.29); and a January 11, 2013 response narrative by Jennifer Brager of the Garvey Schubert Barer law firm (Exhibit A.28). The materials contained all the elements required for the proposed project.

Criterion met.

- 2. (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**

Staff: No other local, State or Federal permits are known to be required for the proposed project. The City of Portland has already issued an approval (Exhibit A.37) for the development of NW Hampson Ave. in 2010.

Criterion met.

- 3. (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC 33.4575 (D) (1);**

Staff: As identified in 33.4575(D)(1), the resource values the mitigation plan is seeking to retain and enhance are fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state.

The applicant's environmental consultants surveyed the subject site, identified all trees over 6-inches caliper, surveyed not only the identified protected stream on the county maps but also an unidentified creek and drainage way. The survey found that significant portions of the property are within the SEC-s overlay and the remaining portions contain riparian areas and drainages associated with the SEC-s stream (Exhibit A.25, A.26, A.27).

Additionally the applicant found that all of the property is forested as defined in MCC 33.4570(A)(1) with roughly 75% canopy closure. Overall the SEC-s corridor is in good condition. The landscape plan (A.26) shows areas of invasive plant species that need to be removed to improve and enhance the vegetation of the corridor. The applicant is also proposing planting 302 inches of caliper of native trees, shrubs, and ground cover to increase the overall canopy, ground cover, stream shade, and reduce the exposed soil areas.

The native species were chosen by Darrell Mulch, a licensed Landscape Architect, to help enhance the properties identified resource values. The invasive plant removal, (Exhibit A.26), native plantings (Table 1 of Exhibit A.29), creek improvements, culvert removal and dwelling location (Exhibit A.25, A.26) in the upper northeast portion of the property provide for a mitigation plan that staff finds will retain and enhance the resource values that the SEC-s code seeks to protect.

The mitigation plan is discussed further under MCC 33.4575(E) – Design Specifications.

Criterion met.

4. **(d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

Staff: A condition of approval will require that a five year monitoring plan is followed.

Criterion met with condition of approval.

B. (E) Design Specifications

Staff: The design specifications can be found in their entirety in the applicant's January 11, 2013 narrative, Sheets C4 (Exhibit A.26) and L1 (Exhibit A.27) of the January 11, 2013 plan set.

Part of the design for the mitigation plan includes the placement of the dwelling in the northeast corner. It has been sited as close to the front property line and eastern (side) property line as the code provides for in order to cluster the dwelling as much as possible

with development off of Skyline Boulevard. The location leaves the remaining property undisturbed and part of a larger continuous forested area stretching from Skyline Boulevard on the east to Springville Road on the south, Germantown Road to the north, and the Washington County border to the west. In the large swath there is very limited development – allowing wildlife to nest, feed, migrate, and inhabit the area with little human interference. Based on the location, forest fragmentation is limited. Additionally, the dedicated right-of-way that was a part of the Hillhurst subdivision immediately south of the subject property was vacated in 2012, further limiting access and human impacts in the large forested area.

The mitigation plan includes the clearing of patches of invasive plant species such as blackberry and stinging nettles. It also includes the planting a total of 103 trees, 404 shrubs throughout the property and adjacent right-of-way (approved by the City of Portland, Exhibit A.37) and the placement of a vegetative filter berm along the creek identified from the property survey (Exhibit A.26). Lastly, hydromulching will be utilized to help stabilize disturbed soil and quickly revegetate the site.

The dwelling has been designed as a roughly 6,000 square foot dwelling over three floors on a roughly 3,000 square foot building envelope (Exhibit A.12) – not including the paved driveway. The chosen design limits the footprint of the dwelling and its horizontal intrusion into the habitat area by building up in a denser design.

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

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

Staff: No new stream crossings are proposed as part of the project. A culvert on the east side of the property utilized by the stream identified through the survey will be removed with the area being revegetated as part of the mitigation plan to enhance riparian areas and stream corridors. The area will be planted and reseeded as shown on Sheet C4 (Exhibit A.26).

Criterion met.

- 2. (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: A completed storm water certificate has been stamped and signed by Dan E. Symons, Oregon Registered Professional Engineer, certifying that storm water generated from the new impervious surface will be adequately handled on-site for a 10-year/24-hour storm event (Exhibit A.17). The system design and calculations are also included in Exhibit A.18 and the system is shown on the site plan C1 in Exhibit A.25 as well as sheet CS1 included with the On-Site Sewage Disposal Certification Form (Exhibit A.21). The proposed system consists of a detention tank

with an outlet control structure to restrict the outflow connected to a flow spreader (Page 18 of January 14, 2013 narrative Exhibit A.28).

Criterion met.

3. **(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: All exterior lighting shall be hooded and shielded down as a condition of approval. Additionally exterior lighting is not permitted to shine directly into the creeks on site.

Criterion met with condition of approval.

4. **(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: As a result of the proposed development, 18 Big Leaf Maple trees and seven Douglass Fir trees will be removed totaling 296-inches in caliper. The applicant has proposed to mitigate the removal of the 296-inches of caliper with the planting on-site of 103 trees and 404 shrubs consisting of a combined 302-inches of caliper. The proposed location of the trees and shrubs are found on Page 19 of the January 14, 2013 narrative (Exhibit A.29) as well as sheets C4 and L1 of the plan set.

Criterion met.

5. **(5) Satisfaction of the erosion control standards of MCC 33.5520.**

Staff: The applicant has submitted for a Hillside Development Permit and addresses the noted standards in Finding #9 later in this decision.

Criterion met.

6. **(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: Earth disturbing activities shall be limited to the period of June 15 through September 15 as a condition of approval.

Criterion met with condition of approval.

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

Staff: There are no known state or federal permit requirements for the proposed project.

Criterion met.

- C. **(F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to (C) through (E) above:**

Staff: The subject site is within Metro's jurisdictional boundary.

1. **(1) The planting of any invasive non-native or noxious vegetation as listed in MCC 33.4570(B)(7) and MCC 33.4570(A)(4) is prohibited. A list of native plants can be found in the latest edition of the Metro Native Plant List.**

Staff: The applicant hired a Darrel Mulch, a licensed Landscape Architect, to determine what vegetation would be enhance the resource values of the stream corridor and also satisfy the vegetation restrictions. None of the proposed plant and tree species are invasive or noxious.

Criterion met.

2. **(2) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of this ordinance; or, unless such storage is contained and approved during development review.**

Staff: No storage of hazardous materials are proposed.

Criterion met.

- D. **(G) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.**

Staff: The subject property is not within the PAM overlay.

Criterion met.

Hearings Officer: The Appellant has submitted generalized objections to the SEC approvals in particularly, the SEC Streams overlay. I do not find that the Appellant has submitted any substantial evidence in support of her general objections. The criterion have been met.

9.00 Hillside Development Permit:

MCC 33.5520 Grading and Erosion Control Standards

Staff: The applicants' hired GeoPacific Engineering to perform a geotechnical evaluation of the development site and create a grading and erosion control plan. James D. Imbrie, Oregon Licensed Professional Engineer specializing as a Geotechnical Engineer, signed and stamped a

letter noting that a previous evaluation of the site is still effective and appropriate for the site. The previous evaluation took place in 2008 and was also reviewed by GeoPacific Engineering for compliance with the HDP code. A new HDP worksheet was submitted to accompany the HDP Form-1 and geotechnical reconnaissance.

(A) Design Standards For Grading and Erosion Control

A. (1) Grading Standards

1. **(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;**

Staff: The proposed dwelling utilizes fill to provide a building pad for the dwelling, which includes a daylight basement. Plan sheet C2 (Exhibit A.7) from the plans submitted September 28, 2012 show the proposed grading; elevation views of the soil conditions; and grading details for the site development. Plan C6 (Exhibit A.11) also shows areas of fill with the dwelling design.

Grading and erosion control will be conducted as noted in the applicant's Geotechnical Report (Exhibit A.14) and in the notes on Sheet C2 (Exhibit A.7).

Criterion met.

2. **(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: Some cut and fill slopes will exceed 3(H):1(V) but have been certified by a geotechnical engineering report (Exhibit A.14) and HDP Form-1 (Exhibit A.15) to be stable and safe. Erosion control methods are specified on the building plan set sheets C2 (Exhibit A.7), C3 (Exhibit A.8), C5 (Exhibit A.10) and C6 (Exhibit A.11)

Criterion met.

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

Staff: The proposed dwelling will be 10-feet from the east (side) property line as seen on the site plan (Exhibit A.25). The east line is the closet property line with the rear and other side property line being over 100 and 200 feet away respectively. To ensure the adjacent property will not be endangered, GeoPacific Engineering Consultants, INC. performed a geotechnical survey of the site and provided a report (Exhibit A.14) detailing the soil conditions, subsurface conditions, and recommendations on site preparation and construction. Due to the steep slopes on site and the SEC-s overlay, a condition of approval will require a geotechnical engineer to be onsite and observe site preparation and site construction to ensure the development is done in a manner which protects both the adjacent property and stream resources on the subject property.

Criterion met.

4. **(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 retention system has been designed for the site (Exhibit A.17,A.18) and a professional engineer has certified it will adequately handle a 10-year/24-hour storm on the subject site.

Criterion met.

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

Staff: Fill will be placed on site to construct the building pad for the dwelling. As seen on the applicants' overall site plan containing the SEC-s overlays (Exhibit A.25), the fill will be roughly 75 to 80-feet from the top of bank to the closest water resource. The applicants' erosion control plan includes judicious use of straw bales and silt fencing along with hydromulch, and hydroseed. The proposed measures should adequately prevent soil from the fill from leaving the construction site and traveling the 75-80 feet to the water resource.

Criterion met.

B. (2) Erosion Control Standards

1. **(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.**

Staff: The subject site is within the Tualatin River Drainage Basin. Ground disturbance will occur within 100-feet of a water resource, namely a drainage way. A substantial erosion control and mitigation plan has been proposed by the applicant that includes judicious use of silt fencing and straw bales. Additionally, on the downslope side the development between the work and the drainage, a vegetative filter berm will be created to trap any sedimentation that passes the layers of silt fencing and straw bales. Lastly, the area between the proposed development and the drainage is vegetated and will help filter and retard any overland water. In addition to the proposed plan, a geotechnical professional will be on site during development

who can require additional erosion control measures to ensure the protection and quality of the on-site water resources. This plan adequately meets this standard.

Criterion met.

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

Staff: The applicant has stated in the narrative, HDP worksheet (Exhibit A.16) and on the erosion control plans (Plan set sheet C2 – Exhibit A.7) that the earth disturbance will occur in a limited area on far northeast portion of the property. The earth work will be performed all at once other than backfill needed for the retaining wall on site. Additionally, work will be limited to the seasonal dry season of June 15-September 15 to reduce potential of rain and runoff. Silt fencing, straw bales, and hydromulch will be utilized to trap any sediment and prevent the disturbed soil from being exposed to weather elements.

Criterion met.

3. **(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;**

Staff: Due to the slopes on the subject property, cut and fill is necessary to provide a building site. Part of the design for the project includes a daylight basement which will reduce the overall amount of cut and fill necessary. The applicant has shown that the proposed development site will only require cut and fill for a portion of the dwellings roughly 3000 square foot footprint along with the driveway and retaining walls. The cut and fill will provide the flat surfaces necessary for the buildings and will not alter the remaining property. The applicant has also demonstrated that the erosion control measures proposed will reduce the potential for erosion while also demonstrating runoff will be adequately handled on site.

Criterion met.

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

Staff: The development will utilize a vegetated filter berm downslope of the development along with normal erosion control measure, such as silt fencing and straw bales, to reduce critical areas exposed to the natural elements that could cause erosion and sedimentation. Hydroseeding and hydromulching will also be used to cover exposed ground areas. All the mentioned measures will be between the development site and water resources on site.

Criterion met.

5. **(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**

1. **A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;**
2. **The buffer required in 1. May only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the “Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)” and the “City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)” and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;**

Staff: The subject property is located within the Tualatin River Basin. The proposed dwelling, portion of the retaining wall, approximately 50% of the on-site sewage disposal system, oversized detention pipe tank and storm system outfall are within the 100 ft buffer as seen on the site plan (Exhibit A.25). Two zones of nuisance plants (blackberries & stinging nettles) will be removed within the buffer zone as required by MCC 33.4570(B). The applicant has provided a mitigation plan that includes silt fencing, straw bales, hydromulch and a vegetated filter berm to ensure that water quality is protected. The proposed plan is adequate to meet this standard.

Criteria met.

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

Staff: The proposed stormwater system to be installed as part of the construction of the dwelling includes a water retention system that will retard the flow and includes a structured flow disperser. The applicant has also proposed a vegetated filter berm on the downslope of the construction site. Lastly, hydroseeding and hydromulching will help ensure quick vegetation reestablishment after the project. Erosion control measures must be installed prior to initiation of development.

Criterion met.

7. **(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;**

Staff: A stormwater system will be installed to handle the increase in stormwater due to the creation of impervious surfaces. The system has been designed to handle the water from the development and the roof and paved driveway (Exhibit A.18). Ground disturbance on the site will be limited to the area where the dwelling will be

constructed (and associated amenities – septic system, driveway, etc). A vegetative filter berm and silt fence will be installed per the erosion control plans. Due to the slope on the site, Best Management Practices indicate that an additional silt fence should be installed. A condition of approval has been included requiring the applicant amend the erosion control plan to have a second silt fence between the stream and the development site approximately half way in-between. The second silt fence should be located immediately below the area of disturbance illustrated on the site and Erosion Control Plans (Exhibit A25, A.26, A.7).

Criterion met.

8. **(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;**

Staff: The applicant has proposed silt fencing, straw bales and a vegetated filter berm to ensure any sediment is trapped. The stormwater discharge point design will also trap sediment and provide filtering of water runoff.

Criterion met.

9. **(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;**

Staff: The geotechnical engineer has determined that the development location should be protected from excessive ground water as found in the geotechnical report (Exhibit A.14). A catch basin will be installed north of the dwelling to help de-water the site as will a curtain drain. This water will be piped to an outfall which will include a soakage trench and flow spreader to prevent erosion of the outfall outlet. Additionally, stockpiled materials will be covered to prevent damage to fill.

Criterion met.

- (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;**

Staff: Water from the roof and driveway will be piped into a subsurface stormwater system which includes a tank and flow restricted outfall (Exhibit A.8,A.10 A.18). The system has been engineered to adequately handle the water for a 10 year, 24 hour storm event (Exhibit A.17).

Criterion met.

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

Staff: No drainage swales are proposed; however a vegetated filter berm will be placed downslope of the entire development area to protect the intermittent stream and water resources on site.

Criterion met.

11. **(l) 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.**

Staff: Water from the storm water system will be piped to a riprap outfall where it will have a controlled and restricted release. This outfall is presently shown just north of the intermittent stream channel below the existing culvert. The proposed outflow pipe to a flow spreader and gabion base will absorb energy from the flowing water and reduce the velocity. The oversized detention pipe and erosion control measures, including vegetation, will trap any sediment materials.

Criterion met.

12. **(m) 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: The topsoil will be stored within the Hampson Avenue right of way which is approximately 110 ft north of the streams on the property. The location of the pile is at the top of a fairly steep slope (40%). It is important to keep this material from moving down into the undisturbed vegetation south of the pile. A condition of approval has been included requiring that the stockpiled topsoil be covered immediately with plastic or mulched with 2" of straw immediately upon placement. Woodchip mulch will also be stored on site to the west of the driveway and also will be required to be covered and protected from erosive elements.

Criterion met.

13. **(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.**

Staff: A condition of approval will ensure non-erosion pollution occurs on site.

Criterion met with condition of approval.

14. (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: The site is not within the Balch Creek Drainage Basin.

Criterion met.

(B) Responsibility

- (1) Whenever sedimentation is caused by stripping vegetation, ☐egarding 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.

(C) Implementation

- (1) **Performance Bond** – A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising there from will be minor.
- (2) **Inspection and Enforcement.** The requirements of this subdistrict shall be enforced by the Planning Director. If inspection by County staff reveals erosive conditions which exceed those prescribed by the Hillside Development, work may be stopped until appropriate correction measures are completed.

(D) Final Approvals

A certificate of Occupancy or other final approval shall be granted for development subject to the provisions of this subdistrict only upon satisfactory completion of all applicable requirements.

Staff: The Responsibility, Implementation, and Final Approval sections are strictly code sections and included for information purposes only.

10.00 Transportation Standards:

MCRR 4.000 Access to County Roads

Staff: The subject site is adjacent to a public road wholly within the limits of the City of Portland. As such, Multnomah County Transportation does not have jurisdiction over the access requirements. The applicant is responsible for working with the City of Portland to obtain any required access permits. A copy of this decision will be sent to the City of Portland noticing the city that a land use decision has been issued that could impact their road system.

CONCLUSION

Based on the findings and other information provided above and the testimony and evidence submitted at the appeal hearing and in the record, the Applicants have carried the burden necessary to establish that the subject property is a Lot of Record and for approval of a Significant Environmental Concern for Wildlife Habitat and Streams permit and Hillside Development Permit to establish a single family dwelling in the Rural Residential zone. The Appeal is denied and the decision of the Planning Director is affirmed and is subject to the conditions of approval established in this decision.

IT IS SO ORDERED, this 3rd day of May 2013.



JOAN M. CHAMBERS, Hearings Officer

11.00 Exhibits:

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Comments

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 T2-2012-2550 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	1	Applicant's List of Items
A.3	1	Authorization Letter From Benell and Ilene Tindall for Bernard and Amy Nnoli to Apply for Permits
A.4	27	September 28, 2012 Narrative
A.5	1	September 28, 2012 Plan Sheet Title Page
A.6	1	September 28, 2012 Overall Site Plan C1
A.7*	1	September 28, 2012 Grading and Erosion Control Plan C2
A.8	1	September 28, 2012 Utility and Drainage Plan C3
A.9	1	September 28, 2012 Tree and Nuisance Removal/Mitigation /Landscaping Plan C4
A.10	1	September 28, 2012 Mitigation and Landscape Detail C5
A.11	1	September 28, 2012 Sections & Erosion Control Details C6
A.12*	3	September 28, 2012 Dwelling Floor Plans A1, A2, A3
A.13*	1	September 28, 2012 Dwelling Elevation Plans A4
A.14	22	Geotechnical Engineering Report and Discussion on Lateral Earth Pressures Performed by James D. Imbrie, P.E. & Geotechnical Engineer; GeoPacific Engineering, INC.
A.15	11	Geotechnical Reconnaissance and Stability Preliminary Study HDP Form-1 and Attachments
A.16	6	Hillside Development Permit Worksheet
A.17	1	Storm Water Certificate Signed and Stamped by Dan E. Symons, P.E.
A.18	10	Stormwater Calculations and Attachments

A.19	5	Fire Service Agency Review Form; Letter From Drew S. DeBois, Deputy Fire Marshall II for Tualatin Valley Fire & Rescue; and Stamped Site Plan With Turnout Design
A.20	4	Certification of Water Service Form and Well Drillers Log
A.21	3	Certification of Onsite Sewage Disposal Form and Signed Site Plans
A.22	6	Preliminary Title Report
A.23	1	Copy of April 23, 1991 Deed
A.24	1	January 11, 2013 Plan Set Title Page T
A.25*	1	January 11, 2013 Overall Site Plan C1
A.26*	1	January 11, 2013 Tree & Nuisance Removal/ Mitigation/ Landscaping Plan C4
A.27*	1	January 11, 2013 Onsite Tree Mitigation Area 2 L1
A.28	5	January 14, 2013 Applicant Response to Comments Received Written by Jennifer Brager, Attorney At Law, Garvey Schubert Barer
A.29	26	Applicant's Revised January 14, 2013 Narrative
A.30	1	Reduced Size Copy of January 11, 2013 Tree & Nuisance Removal/ Mitigation/ Landscaping Plan C4
A.31	1	Reduced Size Copy of January 11, 2013 Onsite Tree Mitigation Area 2 L1
A.32	1	Applicant's Plat of Tulamette Acres Subdivision
A.33	2	Applicant's Copies of Documents From HDP 3-92a Appeal
A.34	12	Applicant's Copy of Deeds Recorded for the Purpose of Road Dedications
A.35	8	Applicant's Copy of HDP 3-92a Hearings Officer Decision and Administrative Decision
A.36	1	Applicant's Copy of Page 4 From Hearing Notice CU 3-98/SEC 12-98
A.37	14	Copy of City of Portland Land Use Case LU 09-173677 EN
'B'	#	Staff Exhibits
B.1	2	A&T Property Information
B.2	1	A&T Tax Map with Property Highlighted
B.3	2	October 26, 2012 Complete Letter
B.4	7	November 9, 2012 Opportunity to Comment and Mailing List

'C'	#	Comments Received
C.1	2	November 21, 2012 Comment Letter From Fred Bacher
C.2	1	November 22, 2012 Comment Letter From Steven Miller and Leslie Hildula
C.3	2	November 23, 2012 Comment Letter From Hilary Mackenzie
C.4	4	November 26, 2012 Email and Attachments From Hilary Mackenzie
C.5	1	Notice of Public Hearing for an appeal of a HDP 3-92a on property off of NW Tualatin Avenue
C.6	1	Map From Case HDP 3-92a containing the Tualamette Acres subdivision
C.7	1	Page 4 From Hearing Notice for Case CU 3-98/SEC 12-98
C.8	2	November 23, 2012 Comment Letter From Forest Park Neighborhood Association
		Hearing Exhibits
H.1	118	Notebook submitted by Appellant containing various materials including but not limited to excerpts from Multnomah County Code from 1961 to the current code
H.2	3	Written Testimony from Appellant Hilary Mackenzie
H.3	1	Hearings Sign-In Sheet
		Post Hearing Exhibits
P.1	2	Appellants' Post Hearing submittal dated March 29, 2013
P.2	3	Applicants' Final Written Argument dated April 5, 2013