



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

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## DECISION OF THE PLANNING DIRECTOR

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### TYPE II Permit: Hillside Development Permit – Request for Exemption Relate to Case File HDP 0-11 November 1, 2001

**Proposal:** The Applicant requests a determination of exemption to the Hillside Development and Erosion Control standards in MCC 38.5500 et seq. and, correspondingly, an exemption to the Hillside Development Permit (HDP). The Applicant submits the Request for Exemption under MCC 38.5510 (B). The proposed residential development is to construct a new single-family residence with an attached garage and a shed. See the related case NSA 0-7.

**Location:** 62737 NE Tumalt Road.  
T2N R6E, W.M. Section 36, Tax Lot 45.  
R#95636-0450.

**Applicant & Owner:** Applicant: Mike Neff  
Haglund, Kirtley, Kelley, Horngren LLP  
101 SW Main Street, Suite 1800  
Portland, OR 97204-3226

Property Owner: Rick & Marlo Messmer  
P.O. Box 759  
Cascade Locks, OR 97014

**Site Size:** .69 acres according to Assessment and Taxation.

**Zoning:** Gorge General Residential (GGR-2) General Management Area (GMA).

**Approval Criteria:** Multnomah County Code (MCC): MCC 38.0000 et seq., Columbia River Gorge National Scenic Area (NSA); and MCC 38.5500 et seq., Hillside Development Permit (HDP).

**Decision:** **A determination that the standards of MCC 38.5510 (B) are met. Correspondingly, the proposed development, described above, is considered exempt from the Hillside Development Permit. Case file HDP 0-11, for the Applicant's proposed development, as described in the "Proposal" section above and herein, is rendered moot.** The Applicant provided narrative and site plan materials to demonstrate compliance with the Multnomah County Code.

The appeal period ends **Thursday, November 15, 2001.**

**In the matter of HDP 0-11 Request for Exemption:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Susan Muir, Principal Planner  
For Kathy Busse, Planning Director  
Multnomah County Department of Sustainable Community Development

A copy of the complete decision for **HDP 0-11 Request for Exemption** and supporting documentation is available at the Multnomah County Land Use Planning Division, 1600 SE 190<sup>th</sup> Avenue, Portland, OR 97233 or by phone at 503-988-3043.

## **Decision Document**

### **Findings of Fact**

Formatting Note: Staff addresses the Multnomah County ordinance requirements and provides Findings referenced here. Multnomah County Code requirements are referenced using a **bold** font. Land Use Planning Staff comments and analysis follows Applicant responses. Applicant responses are identified as **Applicant**. The notation **Staff** precedes Staff comments; Staff conclusionary statements are in *italic*.

### **Staff and Applicant General Comments:**

#### **Applicant [Letter from Mike Neff dated and received 10/23/01]:**

Please consider this letter a request for a determination that the development proposed by Rick and Marlo Messmer (see your staff report for HDP 0-11) is exempt from the provisions of Multnomah County Ordinance provisions 38.5500-38.5525. This request is made pursuant to Section 38.5510(B).

This request is supported by the enclosed materials and the applications submitted by Jim Koch on behalf of the Messmers and which are designated NSA 07 and HDP 0-11. I have discussed the HDP 1 [sic] submitted for HDP 0-11 with Mr. Koch in detail and concluded that Mr. Robertson greatly overestimated the extent of cuts and fills required to complete the proposed development. More precise calculations can be found in Mr. Koch's October 23, 2001 letter to me. Please note that a report from our hydrologist is currently being prepared and will be forwarded to you within one to two days. Thank you for your prompt attention to this matter.

#### **Staff:**

##### **Site and Vicinity Characteristics:**

The property is zoned Gorge General Residential (GGR-2) in the General Management Area (GMA) of the Columbia River Gorge National Scenic Area (NSA). The property is identified as part of the 100-year floodplain of the Columbia River; the river abuts the north boundary of the property.

##### **Project Description:**

The subject property at 62737 NE Tumalt Road (R#95636-0450) is vacant land. The Applicant proposes to construct a two-story single-family residence with an attached garage (1800 square feet) and a shed (160 square feet). The proposed location of the house is as close to the south property line of the property as possible to still meet the required 30-foot front yard setback of the GGR-2 zone. Much of the detailed project description is contained in the related case files and decision documents for NSA 0-7, FD 0-12, and HDP 0-11.

##### **Applicant's Request and History of the Proposed Development**

The subject property is identified on the Slope Hazard Map of Multnomah County. The Property Owners submitted an application, HDP 0-11, under MCC 38.5505, Application Required. The

Planning Director's Decision, a denial, was issued April 13, 2001. The case was appealed to the Hearings Officer on April 25, 2001. The Hearings Officer upheld the Planning Director's Decision, thereby denying the Applicant's request on appeal. The Hearings Officer's Decision was issued July 29, 2001. On October 5, 2001, the Multnomah County Land Use Planning office received notice from the Columbia River Gorge Commission of the appeal Hearings Officer's Decision to the Gorge Commission. On October 23, 2001, Mike Neff, the representative of the Property Owners, submitted a request that the proposed development be exempt from the Hillside Development Permit via the provisions of MCC 38.5510, Exempt Land Uses and Activities.

Exhibits:

- 1) Applicant's site plan (from HDP 0-11).
- 2) Applicant's Monthly Volume chart (from David Brown & Associates, Inc.).

**Multnomah County Code**

**Staff:** The related case, NSA 0-7, contains comments regarding setback standards, building elevations, and other comments and analysis of the subject property under the Gorge General Residential (GGR-2) zoning district standards. This Planning Director's Decision, HDP 0-11 Request for Exemption, reviews the Applicant's proposal with regards to the Applicant's specific request for an exemption to the Hillside Development Permit application.

**Hillside Development Permit (HDP)**

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**38.5505 Permits Required**

- (A) Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.**

**Staff:** The subject parcel is identified as part of the Slope Hazard Map; therefore the proposed development is subject to review under the Hillside Development Permit application. The Slope Hazard Maps are on file at Multnomah County Land Use Planning office.

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**38.5510 Exempt Land Uses and Activities**

**The following are exempt from the provisions of this Chapter:**

- (B) General Exemptions – All land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if:**

**(1) Natural and finished slopes will be less than 25 percent; and,**

**Applicant [Jim Koch]:** Presently there are no slopes on the Messmer property which are 25% or greater. My estimate of the average grade for the property is 10%. The maximum slope of the property is 20% and is located in the area of the riverbank.

**Staff [excerpt from the Planning Director's Decision for HDP 0-11 under MCC 11.5.6720(E)(1)]:** The Applicant's information [HDP Form-1] indicates the development is on a property with an average slope of 10 to 20% and thus does not exceed the 25% standard. The Applicant submitted the HDP Form-1 and a report, dated June 22, 2000, from a State of Oregon Registered Professional Engineer and Certified Engineering Geologist, Christopher Robertson, regarding the site characteristics. In addition, according to the maps on file at Multnomah County, the soil type on the subject property is 29B. According to the Soil Survey of Multnomah County, Oregon, soil type 29B is Multnomah silt loam, 3 to 8 percent slopes.

*Staff finds the land of the subject property has an average slope less than 25%.*

**(2) The disturbed or filled area is 20,000 square feet or less; and,**

**Applicant [Jim Koch]:** The total area which will need to be disturbed or filled to complete the project is no more than 5,000 square feet. The house and garage area will cover 1800 square feet (36 feet by 50 feet). The driveway area as proposed will cover 400 square feet (20 feet x 20 feet). The septic tank will be 64 square feet in area (8 feet x 8 feet). Disturbance for the drainfield trenches will be 300 square feet in area (150 feet by 2 feet). No filling will occur except within the house/ garage area, and this fill will involve only the area beneath the garage and the area immediately surrounding the foundation. Disturbance for planting trees will be less than 300 square feet in area. Given the above calculations, even if inadvertent disturbance from construction significantly exceeds these areas, the disturbed area for the project will be less than 5,000 square feet.

**Staff:** The Applicant site plan illustrates the location of the "drainfield," the "replacement drainfield," and the 1,000 gallon septic tank on the property. The site plan was attached as Exhibit #1 in the Planning Director's Decision for HDP 0-11, and is again attached as Exhibit #1 for this decision. The subject property is .69 acres (30,056.4 square feet). The Applicant's description of the house, garage, shed, driveway, and septic field area is substantiated by review of the site plan. The area of disturbed or filled area is less than 20,000 square feet.

*The criterion is met.*

**(3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,**

**Applicant [Jim Koch]:** Grading for the project will be so minimal that a grading permit will not be required (less than 50 cubic yards). The minimal grading which will be required will not result in any finished slopes with a grade greater than 25%.

The project will require excavation of approximately 18 cubic yards of materials. The breakdown for each project component is as follows:

1. Foundation – 10 cubic yards (100 feet x 2 feet x 16 inches);
2. Dry well – 2/3 cubic yards (4 feet x 4 feet x 5 feet);
3. Septic tank – 3 cubic yards (8 feet x 8 feet x 7 feet);
4. Drainfield trenches – 4 cubic yards (150 feet x 2 feet x 2 feet);
5. Well and plumbing – *de minimis*;
6. Tree planting – *de minimis*.

No other excavation will be required. The material will be stored on site during construction and used to create a gradual slope away from the foundation.

**Staff:** The Applicant has provided a report from Christopher A. Robertson, a State of Oregon Registered Professional Engineer and a Certified Engineering Geologist. The report is dated June 22, 2000. The engineer also completed the HDP Form-1 as required. As described by the geologist report, less than 50 cubic yards of material will be cut, filled, or stockpiled to accommodate the construction of the single-family residence with an attached garage and the shed.

*The standard is met. Based on the above description, the proposed development will store less than 50 cubic yards of soil or earth materials.*

**(4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,**

**Applicant [Jim Koch]:** During construction, rainwater runoff will not be diverted. Once construction is complete, rainwater runoff will be diverted only from the areas covered by the residence and the garage and the driveway. Given that the home and the garage envelope is 1800 square feet and the proposed driveway is 400 square feet, the area from which the rainwater runoff will be diverted will be less than 2500 square feet.

**Staff:** The Applicant has described the rainwater runoff will not be diverted during construction. After construction, the Applicant describes that the rainwater runoff will be diverted by the residence, garage, and the driveway.

*These areas of diversion, based on the Applicant information provided in subsection (2), are less than 5,000 square feet. The criterion is met.*

**(5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,**

**Applicant [Jim Koch]:** Lastly, the only impervious services to be created as a result of the project will be the area to be covered by the house and the garage. The proposed driveway will be graveled. As with the rainwater runoff, created impervious surface will be less than 2500 square feet.

**Staff:** The Applicant describes the house and the garage will be impervious surfaces but the driveway will be graveled. The area of the house and the garage is approximately 1,800 square feet according to the Applicant statements in subsection (2) and (4).

*The amount of impervious surface material is less than 10,000 square feet. The criterion is met.*

**(6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.**

**Applicant [David Brown & Associates, Inc. letter dated 5/23/01]:** DBA also investigated whether the proposed development would influence the carrying capacity or characteristics of any drainage ways on the property. A dry drainage way was located approximately 50 feet to the west of the proposed development. According to Mr. Messmer, this drainage channel has not contained water in over two years, however, for the sake of the drainage investigation on the site, DBA considered it a potential drainage way. Upon examining the site and discussing construction plans, no information was learned that would indicate that potential drainage way along the west of the site would be blocked or have its carrying capacity limited by activities during or after construction. Drainage from the surfaces (roof, driveway, etc.) of the proposed dwelling will be routed to a drywell. From the drywell, the water will enter the shallow sub-surface water system and likely be routed to the Columbia River. Based upon the surface drainage investigation of the site, DBA believes that Mr. Messmer meets criteria (4) and (6) of the General Exemptions under Chapter 29.303, Exempt Land Uses and Activities of the Multnomah County Code - Volume I.

**[David Brown & Associates, Inc. letter dated 10/23/01]:** At your request, David Brown & Associates, Inc. (DBA) has re-examined information gathered during a field investigation of a parcel of property owned by Rick and Marlo Messmer of Warrendale, Oregon. Field research was conducted on Tuesday, the 22<sup>nd</sup> day of May, 2001 to investigate the various hydraulic or hydrologic impacts that could potentially occur if a single-family residence were to be constructed on the parcel. You have requested that DBA address whether the proposed construction meets the exception criteria found in MCC 38.5510(B). Our observations and analysis are presented in the following paragraphs.

During DBA's site visit, property boundary lines were delineated by the project applicant Jim Koch and the landowner Rick Messmer. DBA observed the entire property and estimated no natural slopes on the site to be greater than 25% (A professional survey was not conducted at the site, however, visual observations were made). DBA reviewed the development plans prepared by Mr. Koch and have conversed with Mr. Koch about the proposed development. It is DBA's understanding that the proposed home construction, driveway construction, dry well installation, tree planting, and septic tank construction, will not result in any finished slopes of 25% grade or greater.

Mr. Koch advised DBA that he has no plans for diverting rainwater during his construction activities. Once construction is complete, Mr. Koch proposes that rainwater runoff from the residential structure be diverted to a drywell. The footprint

of the house covers an area no greater than 2,500 square feet. DBA's review of the applicants plans and subsequent discussions with Mr. Koch indicate that no other rainwater or runoff diversion is planned as part of the proposed project.

In DBA's attached May 23, 2001 letter, we concluded that the project, as proposed, would not modify the stormwater capacity or characteristics of any drainageway. That analysis did not assume that the Columbia River itself was a drainageway. According to Mr. Koch, drainage from the proposed residence will enter a drywell measuring 28 inches in diameter and 15 feet in depth, capable of containing runoff from a 3,000 square-foot impervious surface. From the well, drainage water will enter the shallow subsurface and eventually be routed north to the Columbia River.

In the absence of the proposed structure (and under current conditions), local precipitation and drainage would also travel to the Columbia River. Precipitation typically follows one of two short-term pathways before entering a local drainage; overland flow (surface); and shallow sub-surface flow. The proposed structure drainage plan would effectively route all drainage from the area of the proposed dwelling into the sub-surface water system. In comparing current and future drainage characteristics, the volume of water reaching the Columbia River is not expected to change. However, the route taken to the Columbia River would change (from a combination of surface and sub-surface to predominantly sub-surface drainage). In our professional opinion, this change will have no affect on the stormwater carrying capacity or characteristics of the Columbia River. Any affect one could hypothesize would be too insignificant to be considered a modification. To emphasize this point, DBA performed a series of calculations that compared the combined potential runoff from the .69-acre site to actual recorded volumes of water in the Columbia River. As a part of this calculation the following information was utilized:

- Monthly precipitation values from 1970 to 2000 taken from the Oregon Climate Service webpage (<http://www.ocs.edu>), Station Number 354003 (Hood River Experimental Station).
- Monthly Columbia River discharge values from 1970 to 2000 taken from the United States Geological Survey Water Resources webpage (<http://water.usgs.gov>), Station Number 14105700 (Columbia River at the Dalles, Oregon).

Table 1 [see attached Exhibit] demonstrates the average monthly volumes of runoff from a .69-acre parcel with the average monthly Columbia River volumes from 1970 to 2000, using information collected around the Columbia Gorge. Average monthly runoff volumes were calculated by multiplying the average monthly precipitation values, between 1970 and 2000, by the surface area of the site (.69 acres or 30056.4 square feet). Average Monthly Columbia River volumes were calculated by multiplying the average monthly discharges of the Columbia River (in cubic feet per second) by the number of seconds in a day and by the number of days in a particular month of interest.

From the above calculations, monthly runoff from the .69 acre site can be assumed to be no more than .00000405% of the monthly volume of the Columbia River. This volume of water would be comparable to a coffee can of water in an Olympic-size swimming pool. However, in the case of the mentioned project, it is anticipated that



the volume of water contribution from the site to the Columbia River will not change from the current conditions. This example illustrates that neither the carrying capacity nor the characteristics of the Columbia River, a natural drainageway, will be modified in any way the proposed project.

**Staff:** David E. Brown is a State of Oregon Registered Professional Geologist. David A. Benner is a Staff Hydrologist. Both Mr. Brown and Mr. Benner have signed the letter as representatives of David Brown & Associates, Inc.

*The Applicant has submitted information to demonstrate the drainageway will not be blocked or have its stormwater carrying capacities or characteristics modified. The criterion is met.*

***AT THE TIME OF LAND USE PLANNING SIGN OFF ON BUILDING***

***PERMITS:*** *The Applicant shall illustrate, on a site plan drawn to scale, the location and type of the erosion control measures to be installed on the site. In addition, the Applicant shall illustrate the location of the drywell on the property on the site plan.*

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**Conclusion:**

Based on the findings and other information provided and described above, the Applicant has carried the burden necessary to demonstrate compliance with the standards of the Hillside Development Permit "Exempt Land Uses and Activities" provisions, MCC 38.5510 (B), of the Multnomah County Code. Therefore, the **Planning Director's Decision is to grant the Applicant's request for an exemption to the Hillside Development Permit application.** This renders the Hearings Officer's Decision **moot** for **HDP 0-11**, for the construction of a new house and a shed on the subject property in the Dodson/Warrendale area of unincorporated Multnomah County, as described herein.

**NOTICE:**

**Opportunity to Review the Record:** A copy of the Planning Director's 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's 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 Tricia R. Sears, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 38.0640. An appeal requires a \$108.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Multnomah County Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043).

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| <p><b>NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.</b></p> |
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