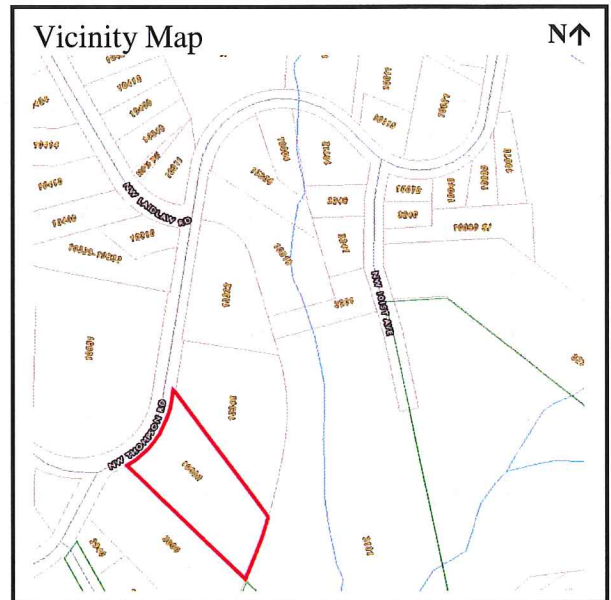


1600 SE 190th Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

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

Case File: T2-2015-4633
Permit: Hillside Development
Location: 10350 NW Thompson Rd
Tax Lot 500, Section 26,
Township 1N, Range 1W, W.M.
R324535
Applicants: Mike Nedelisky
Owners: Vantage Homes LLC
Base Zone: Rural Residential (RR)
Overlays: Significant Environmental Concern
Stream(SEC-s), Slope Hazard

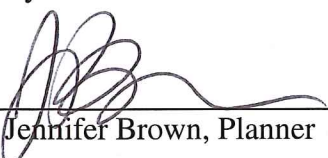


Summary: Retroactive Hillside Development Permit for earth disturbance for the regarding of an existing driveway. Approximately 10,000 square feet of surface area was disturbed.

Decision: Approved with Conditions

Unless appealed, this decision is effective April 13, 2016.

Issued by:

By: 
Jennifer Brown, Planner

For: Michael Cerbone, AICP, Planning
Director

Date Issued: March 30, 2016

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Jennifer Brown, Staff Planner at (503) 988-0167 or Jennifer.brown@multco.us.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue [Phone: (503) 988-3043]. This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is April 13, 2016.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance, 33.3155 Dimensional Requirements, 33.3185 Access, 33.5515 Application Information Required, 33.5520 Grading and Erosion Control Standards

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at multco.us/landuse/zoning-codes under the link Chapter 33: West Hills Rural Plan Area.

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. Pursuant to MCC 37.0690(B), this Type II land use approval for a driveway shall expire:
 - A. When construction has not commenced within two years of the date the final decision, or
 - B. When the structure has not been completed within four years of the date of commencement of construction.

As used in A., commencement of construction shall mean actual construction of the foundation or frame of the approved structure. As used in B., completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

2. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 37.0660]
3. The applicant shall provide evidence, from a geotechnical engineer, that the following requirements were maintained during all phases of development:

- A. The property owners (or representative thereof) shall maintain best erosion control practices through all phases of the development. The property owners shall ensure erosion control measures are installed and functioning throughout all phases as described in applicant's narrative and grading and erosion control plans.
 - B. Erosion control measures are to include the installation of sediment (silt) fence barriers at the locations shown on the grading and erosion control site plan as modified by Condition No. 4.
 - C. Soil stock piles shall be covered with plastic sheeting at least 6 mil in thickness and anchored to remain in place during windy periods.
 - D. If there is any indication of overland flow of water carrying sediment onto a neighboring property or identified water resource, additional silt fencing or other erosion control measures shall be required to remedy the problem.
 - E. No fill or soil disturbance shall be located on the property down slope of the sediment (silt) fences shown on the grading and erosion control site plan.
 - F. The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts that result from on-site grading work occur. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Natural Resource Conservation Service can also advise or recommend measures to respond to unanticipated erosion effects.
- 4. Should earth materials be deposited, tracked, spilled or otherwise placed on adjoining properties, right-of-ways or within the SEC-s buffer zone, the property owner or their representatives are responsible for removing it immediately and restoring the area to its original or equal condition. [MCC 33.5520(B)(1) and (2)]
 - 5. The property owners shall maintain the sight distance to the north and south of the driveway access onto Thompson Road by controlling vegetation to insure sight lines of at least 335 feet are met. [MCRR 16.200 and 4.500]
 - 6. Any addition or alteration of the storm water discharge onto the right-of-way requires a Discharge Permit. [DCM Section 5]

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, Jennifer Brown, at (503) 988-0167 or Jennifer.brown@multco.us 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. A fee will be collected at the time of building permit review. In addition, an erosion control inspection fee 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.

Findings of Fact

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

1.00 Project Description:

Staff: The applicant requesting a retroactive Hillside Development Permit for earth disturbance and grading, relating to the regarding of the existing driveway in the Rural Residential zone. The area is identified as within a slope hazard area and is also within the Tualatin River Drainage Basin. A Hillside Development application has been submitted to disturb 10,000 square feet of soil.

2.00 Code Compliance:

MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

Staff: There is an open code compliance case on the subject property, UR-2015-4576. The complaint is for grading, ground disturbance and tree removal without permits, remodeling of house and demolition of an agricultural building without prior permit approval. This application is for the retroactive Hillside Development Permit for earth disturbance and grading. This application is the last in a sequence of applications needed to resolve the identified code violations.

A Voluntary Compliance Agreement has already been signed to sequence the code compliance actions.

3.00 Rural Residential Criteria:

3.02 MCC 33.3155 Dimensional Requirements

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: The applicants are not requesting changes to any setbacks for the driveway construction.

Criteria met.

3.03

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 property was subject to a previous land use decision, T2-07-120, for grading and a home remodel. While that decision expired and was never acted

upon, that decision determined that *The subject parcel is a Lot of Record.*

3.04

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 subject property fronts onto the public right-of-way known as Thompson Road.

Criterion met.

4.00

Hillside Development Permit

4.01

MCC 33.5505 Permits Required

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 33.5510.

Staff: The subject property is located in a mapped hazard area on the Slope Hazard Map. The applicant has applied for a Hillside Development Permit to retroactively authorize the development.

4.02

MCC 33.5515 Application Information Required

An application for development subject to the requirements of this subdistrict shall include the following:

(E) A Hillside Development permit may be approved by the Director only after the applicant provides:

(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned.

High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.

(a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be

prepared and submitted.

(F) Geotechnical Report Requirements

(1) A geotechnical investigation in preparation of a Report required by MCC 33.5515 (E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.

(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.

(3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.

(4) The Director, at the applicant's expense, may require an evaluation of HDP Form- 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.

(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Staff: The applicant's geotechnical engineer completed a HDP Form -1 (Exhibit A.6). The Geotechnical Report finds that the site may be developed as proposed provided the recommendations presented in the report are incorporated into the design and development. A condition has been added to this decision requiring evidence from a geotechnical engineer showing how these standards were met at the time of development.

As conditioned, criteria met.

4.03

MCC 33.5520 Grading and Erosion Control Standards

Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control

(1) Grading Standards

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

work regarding fill materials and compaction;

Staff: The Hillside Development Permit (HDP) Work Sheet (Exhibit A.2) states that there will not be any fill on the site.

Criterion met.

- 4.04** (b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;

Staff: The HDP Work Sheet indicates that there are no cut or fill slopes greater than 3:1.

Criterion met.

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

Staff: The geotechnical engineer indicates in the HDP form 1 that the proposed earthwork will not create stability problems for the subject property or adjacent properties (Exhibit A.3, page 2 of 6, Question No. 3).

Criterion met.

- 4.06** (d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

Staff: The geotechnical engineer indicated on the form that there is no existing upstream flow of runoff. Any runoff is expected to dissipate into the surrounding grass areas. (Exhibit A.3, Page 2 of 6, Question 4).

As conditioned, criterion met.

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

Staff: This project is for the regarding of an existing driveway. The geotechnical engineer indicated that there is no fill involved in this project.

Criterion met.

- 4.08** (2) Erosion Control Standards

(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 property is located within the Tualatin River Drainage Basin. The development is approximately 360 feet from the nearest stream, providing a buffer greater than 100 feet.

Criterion met.

- 4.09** **(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 geotechnical engineer states that any disturbed areas were covered with hay and seeded with grass and no soil erosion occurred.

Criterion met.

- 4.10** **(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: The geotechnical engineer states that the driveway access road will not require cuts or fills.

Criterion met.

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

Staff: The soil stockpile area was covered with mulch while it was stored temporarily prior to removal.

Criterion met.

- 4.12** **(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: As stated above, the development was approximately 360 feet from the nearest stream, which buffered the stream from any erosion. The stream buffer was not disturbed.

Criterion met.

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

Staff: The disturbed area was reseeded with grass and other permanent plantings once the construction was complete.

- 4.14** (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: The geotechnical engineer stated that bio-bags were placed at the edge of the driveway to accommodate any increased runoff.

Criterion met.

- 4.15** (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: Bio-bags and a silt fence were installed to trap sediment.

Criterion met.

- 4.16** (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 states that a swale was installed at the edge of the driveway to control drainage down the driveway along with bio-bags which were placed to capture sediment during construction. Following construction, vegetation was restored and runoff associated with the earth disturbing work ended.

Criterion met.

- 4.17** (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: A drainage swale was installed at the edge of the driveway to control runoff, and bio-bags were placed to capture sediment.

Criterion met.

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

Staff: A drainage swale was installed at edge of the driveway, along with bio-bags.

Criterion met.

4.19

(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: The geotechnical engineer states that the portion of the property graded is only gently sloped, and that no pollution discharges occurred.

Criterion met.

4.20

(m) Disposed spoil material or stockpiled 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 HDP worksheet indicates that spoils and topsoil was removed as it was excavated and was not stored on-site.

Criterion met.

4.21

(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 has been included requiring that this note be added to the plans prior to land use sign off for building plan check.

As conditioned, criterion will be met.

4.22

(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 property is not located within the Balch Creek Drainage Basin.

Criterion not applicable.

4.23

(B) Responsibility

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

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

Criterion not applicable.

4.24

(C) Implementation

* * *

(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.

Staff: A condition of approval has been included indicating that the planning director or other governmental entities can require additional erosion control measures if warranted by conditions on the property.

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Hillside Development Permit to perform earth disturbance and grading for a driveway in the Rural Residential (RR) zone. This approval is subject to the conditions of approval established in this report.

6.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

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 T2-2015-4633 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	11.04.2015
A.2	7	Hillside Development Permit Work Sheet	11.04.2015
A.3	4	Hillside Development Permit (HDP-Form 1) Preliminary Study	11.04.2015
A.4	2	Site Plan and Grading	11.04.2015

A.5	1	Fire Service Approval	11.04.2015
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1W26B - 00500	11.04.2015
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	12.04.2015
C.2		Opportunity to Comment	1.11.2016
C.3	18	Administrative Decision	3.30.2016