



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE Morrison Street
Portland, OR 97214 (503) 248-3043

DECISION OF THE PLANNING DIRECTOR

Hillside Development Permit Significant Environmental Concern Permit for Wildlife Habitat

Case File: HDP 13-98/SEC 35-98

Date Decision Issued: Friday, September 18, 1998

Proposal: Request for Hillside Development and Significant Environmental Concern permit approval for 916 cubic yards of excavation and fill associated with the replacement of a damaged culvert.

Location: 21726 NW Gilkison
Tax Lots 7 & 48, Sec 26, T3N, R2W, W.M.
Tax Acct #R-98226-0070 & #R-98226-0480

Applicant: Chuck Henley
Multnomah County Transportation
1620 SE 190th
Portland, Oregon 97223

Owner(s): Fred and Denise Weinel
21726 NW Gilkison Road
Portland, OR 97231
(#R-98226-0070)

Adrian Kalil
21875 NW Gilkison Road
Scappoose, OR 97056
(#R-98226-0480)

Present Zoning: Commercial Forest Use(CFU), Rural Residential (RR),
Significant Environmental Concern for Wildlife Habitat (SEC-h)

Approval Criteria: Multnomah County Code (MCC): MCC 11.15.6400, Significant Environmental Concern; MCC 11.15.6700, Hillside Development and Erosion Control; Comprehensive Plan Policies 13, 14, 22, 37, 38, & 40

Decision:

Approve, subject to the conditions below, grading activities involving approximately 916 cubic yards of excavation and fill associated with the replacement of a damaged culvert. Such approval is based on the following findings and conclusions.

Conditions of Approval

1. This approval is based on the submitted written narrative(s), geotechnical study, and site plan(s). No excavation or fill shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant to comply with these documents and the limitations of approval described herein.
2. Prior to issuance of a building permit, the applicant shall contact NMFS (503) 230-5400 (Rick Applegate) and obtain either a "take" permit or a letter stating that the proposed development will not impact Steelhead habitat. The applicant shall submit a copy of the permit or letter to the Land Use Planning Division.
3. The applicant is to adhere to the Culvert Repair Recommendations included within the geotechnical report prepared by Thomas S. Ginsbach, P.E., with Northwest Geotech, Inc., dated May 26, 1998.
4. The applicant shall maintain best erosion control practices through all phases of development. Erosion control measures are to be implemented as prescribed within this application, and are to include stream diversion as specified within the Transportation Division memorandum dated September 15, 1998, the placement of sediment fences/barriers at the toe of all disturbed areas, and post construction re-establishment of ground cover. A sediment fence/straw bale barrier shall also be used as a temporary check dam during the period of time that the stream is transitioned to the new culvert. As a wet weather measure, straw mulch or plastic sheeting shall be used to provide erosion protection for exposed soils. Replanting of exposed areas shall be accomplished within thirty (30) days of project completion.
5. Erosion control measures prescribed are designed for a low flow condition within the stream channel. Therefore, all land disturbing activities shall be conducted and completed between July and September, a time period within which a minimal flow of water is anticipated. **The applicant is to contact our office once erosion control measures have been installed.** No land disturbing activities are to be conducted until the erosion control measures are in place.
6. Erosion control techniques may be supplemented if turbidity or other down slope erosion impacts result from on-site grading work. The Portland Building Bureau (Special Inspections Section), the West Multnomah County Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion effects.
7. Fill materials shall be clean and non-toxic. 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.

8. Soil that is to be excavated and removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities.
9. The applicant is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems and shall be responsible for returning such features to their original condition or a condition of equal quality.
10. The nuisance plants listed in Finding #10(G) shall not be planted and shall be removed from all cleared areas.
11. All land disturbing activities shall be completed within two (2) years from the date of this approval. **At such time as the project is completed, the applicant is to contact the Multnomah County Transportation and Land Use Planning Division to arrange for a final site inspection.**

Findings of Fact

(Formatting Note: Staff as necessary to address Multnomah County ordinance requirements provides Findings referenced herein. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses by the applicant, demonstrating compliance with code criteria, are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation “Staff” precedes such comments.)

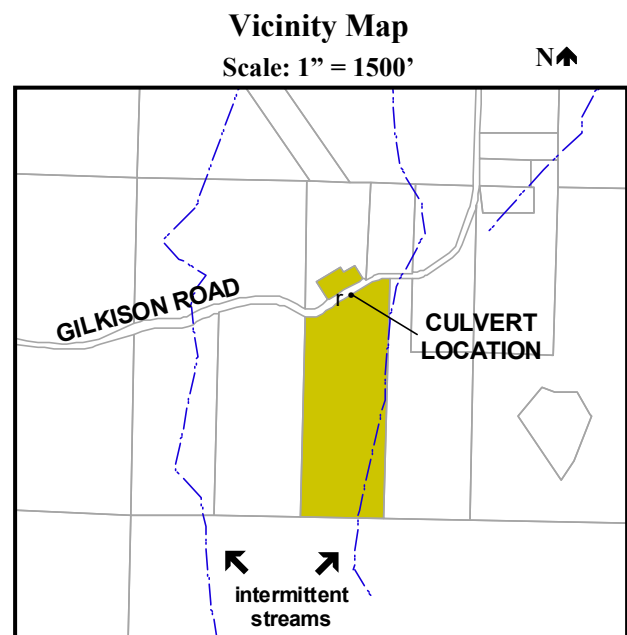
1. Project Background and Description:

This proposal involves the replacement of a damaged culvert, crossing Gilkison Road between the two (2) properties referenced under Tax Account # R-98226-0070 and #R-98226-0480. Grading activities attributed to this project include approximately 458 cubic yards of excavation with an equivalent amount of fill.

2. Site and Vicinity Characteristics:

Gilkison Road is a dead-end, paved roadway located in the far northwest corner of the County. Lands adjacent to the roadway are predominantly steeply sloped and forested, containing a mixture of commercial forest, farm, and low density, rural residential uses.

The location of the damaged culvert is as illustrated on the vicinity map to the right. The project area is within a densely wooded ravine, containing a tributary of Jackson Creek. Natural slopes adjacent to the site are fairly steep and, as evidenced in the geotechnical report prepared for this project, the damaged culvert is located at the toe of an ancient landslide that has recently experienced some movement.



Residential development exists on parcels adjacent to this project. Property to the north exists within a Rural Residential (RR) zone district, whereas the parcel south of the road lies within a Commercial Forest Use (CFU) zone. The entire area falls within a Significant Environmental Concern for wildlife (SEC-h) overlay district. The two streams illustrated on the vicinity map have been designated by the County as being “environmentally significant” consistent with Statewide Planning Goal 5, for natural resources. The tributary of Jackson Creek that is subject to this culvert replacement does not fall within this designation.

3. National Marine Fisheries Service (NMFS) Sign-off Required

On May 18, 1998, the National Marine Fisheries Service (NMFS) listed Steelhead as a threatened species in the lower Columbia Valley. See Endangered and Threatened Species: Threatened Status for Two ESUs of Steelhead in Washington, Oregon, and California, 63 Fed. Reg. 13347 (1998) (to be codified at 50 C.F.R. pt. 227). The Endangered Species Act prohibits “taking” of Steelhead without a permit from NMFS. 16 U.S.C. § 1538. Multnomah County recognizes that destruction or modification of habitat may constitute a “take” under the Endangered Species Act. See e.g. 50 C.F.R. § 17.3.

This application is subject to compliance with the Endangered Species Act because it may result in destruction or modification of habitat because development activities are proposed within a stream, that is a tributary to fish bearing watercourses within the area affected by this listing. Construction activities will increase turbidity, which may impact downstream fish bearing streams.

4. Hillside Development Permit (HDP) Required

Per MCC 11.15.6710(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.

The subject property has been identified as being within the hazard areas as identified on the adopted “Slope Hazard Maps,” a copy of which is included as part of the permanent record. The requested development is not a land use activity exempted under MCC .6715.

5. Compliance With MCC 11.15.6720, HDP Application Information Required:

Per MCC 11.15.6720, An application for development subject to the requirements of this subdistrict shall include the following:

- (A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.**
- (B) An estimate of depths and the extent and location of all proposed cuts and fills.**
- (C) The location of planned and existing sanitary drainfields and drywells.**
- (D) Narrative, map or plan information necessary to demonstrate compliance with MCC .6730(A). The application shall provide applicable supplemental reports, certifications,**

or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.

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

* * *

- (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.

* * *

- (G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC .6730(A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

The applicant has provided all information required pursuant to MCC 11.15.6720. Therefore, the Planning Director may take action on the request. Copies of all submitted materials are available as part of the permanent case file (HDP 13-98).

6. Compliance With MCC 11.15.6730, HDP Grading and Erosion Control Standards:

- A. **MCC .6730(A)(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.**

The areas of this project that will support the new inlet structure will be excavated down to solid material... The trench excavated for the replacement culvert will be backfilled with mechanically compacted 1" minus crushed aggregate. The standard detail for compaction in a pipe trench is shown on sheet 7 of the plans. The excavated material is the responsibility of the contractor to dispose of off site. The total volume of excavation is less than 350 cubic meters (458 cu) with an equal volume of fill. The depth of excavation is approximately 16 meters (52 ft). The fill depth is equal to the excavation depth.

Staff: Fill materials are consistent with what is recommended in the geotechnical report, prepared by Thomas S. Ginsbach, P.E., with Northwest Geotech, Inc., dated May 26, 1998. Density specifications are provided in the culvert repair recommendations section of the report.

- B. **MCC .6730(A)(1)(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.**

The existing slopes are steeper than 3:1. The new slopes of our fill areas will be steeper than 3:1. The permanent erosion control measures will consist of seeding and matting disturbed areas.

Staff: The geotechnical report and HDP Form 1, prepared by Northwest Geotech, Inc., indicate that this project can be completed safely, provided it is carried out consistent with their recommendations.

C. **MCC .6730(A)(1)(c), Cuts and fills shall not endanger or disturb adjoining property.**

This project essentially consists of digging a trench across the road, putting a pipe in the trench and back, filling. It will reduce the danger to other properties by keeping water out of the slide zone and replace a collapsed culvert.

Staff: All work is proposed within public right-of-way and easements acquired by the County (see case file). A culvert repair recommendation in the geotechnical report includes dewatering of the excavation area and diversion of the creek as a necessary step to provide suitable working conditions. Such action would also decrease the amount of sedimentation that would otherwise impact downstream property owners during the course of development.

The geotechnical report and HDP Form 1 indicate that the proposed development should not adversely impact adjacent properties. This assertion is supported by the reports analysis and culvert repair recommendations.

D. **MCC .6730(A)(1)(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;**

The pipe sizing calculations are attached. The pipe is oversized to allow future interior pipe sleeve as the large ancient slow moving landslide deforms the pipe.

Staff: As evidenced in phone conversations with Greg Kirby, a civil engineer with County Engineering, and as documented in the pipe sizing calculations included in the permanent case file, the proposed culvert has been sized to bypass existing upstream flow from a storm of 10-year design frequency.

E. **MCC .6730(A)(1)(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: Additional encroachment within the stream drainage to accommodate the new culvert is minimal. As evidenced under Finding #6(D), a new culvert is to be installed to handle the displaced stream flow for a storm of 10-year design frequency.

F. **MCC .6730(A)(2)(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 “Erosion Control Plans Technical Guidance Handbook” and the “Surface Water Quality Facilities Technical Guidance Handbook”. 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 not within the Tualatin River Drainage Basin, therefore this criterion is not applicable.

- G. **MCC .6730(A)(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.**

The area of this project is very small. The pipe has been realigned to save trees where possible. The work is expected to be completed in one to two weeks once started. The area will be seeded and matted soon after the work is completed. I will add to the specifications a requirement that the contractor provide a 1.5 inch pump. This pump will pump the water from the uphill side of the culvert around the work area. This will keep our excavation trench free of water unless there is a rainstorm, which would overrun the pump. The old existing culvert will be used as an alternate channel in case of rain. The silt fence and straw bale sediment barrier, construction note 1, will trap sediment unavoidably released by the project. The trench will be excavated and filled in stages, which minimizes the area open to erosion.

Staff: The proposed erosion control measures should be effective at minimizing soil erosion provided construction activities are conducted during those months of the year that a low flow condition exists within the stream channel. This concern has been addressed with a condition of approval contained herein.

- H. **MCC .6730(A)(2)(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.**

The trench will be excavated and filled in stages, which minimizes the area open to erosion. I will add to the specifications a requirement that the contractor provide a 1.5 inch pump. This pump will pump the water from the uphill side of the culvert around the work area. This will keep our excavation trench free of water unless there is a rainstorm, which would overrun the pump. The old existing culvert will be used as an alternate channel in case of rain. The final slopes will be very close to the existing slopes except where the inlet structure is being constructed, which will reduce the slope and therefore the erosion potential.

Staff: This criterion has been satisfied. The existing road generally conforms to natural topography. In the project area, the road runs east to west parallel to existing contours along the north face of a slope. This project does not significantly alter the configuration of the road and includes only those grading activities necessary to repair an existing damaged culvert.

- I. **MCC .6730(A)(2)(d), Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.**

The disturbed areas will be seeded and matted.

- J. **MCC .6730(A)(2)(e), Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**

(i) **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;**

(ii) **The buffer required in (i) 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 “Erosion Control Plans Technical Guidance Handbook” and the “Surface Water Quality Facilities Technical Guidance Handbook” and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;**

The design has saved the trees on sight. The vegetation disturbance is very limited. All areas disturbed will be seeded and matted as part of the project.

I will add to the specifications a requirement that the contractor provide a 1.5 inch pump. This pump will pump the water from the uphill side of the culvert around the work area. This will keep our excavation trench free of water unless there is a rainstorm, which would overrun the pump. The old existing culvert will be used as an alternate channel in case of rain.

In reviewing OAR 340-041-0455 I find that only subsection 3, non-point source pollution, could apply to this project. Under subsection (3)(d)(C) this project is exempt from the requirements of subsection (3)(e), which is all of the nutrient control measures. This makes sense because as we have talked this project will not generate a nutrient load. Sections (3)(b)(A) and (3)(b)(B) are the only requirements this project must comply with under 340. These requirements are the standards for an erosion control plan, which this project is in compliance with. Nothing in here would prevent direct discharge of road runoff into the stream. The sediment load of the road runoff is nonexistent since the road is paved and the ditch is lined. The small inlets and culverts are actually an erosion control measure as well as a landslide stabilization measure. The current out fall from the roadside ditch shows evidence of erosion. The culvert will stop this erosion. The inlets also have a sediment basin in the bottom of them.

Staff: Diversion of the stream, as proposed herein and recommended in the geotechnical report, limits the need for in-stream erosion control. Sediment fences/or sediment barriers can then be placed at the toe of disturbed areas during construction to control for surface erosion from exposed soils, as outlined in the handbook. The use of a silt fence/sediment barrier within the stream channel to

function as a check dam during the period of time within which the stream is transitioned to the new culvert is a reasonable temporary erosion control measure.

As for OAR 340, staff does not concur that this project is exempt under subsection (3)(d)(C) of the rule, in that it appears that this development will increase non-point source pollution once construction has been completed, by discharging road run-off directly into the stream. We concur that the provisions of OAR 340 are designed to minimize sediment and phosphorus loading in streams, and are not specifically tailored to address the types of non-point source pollution that are anticipated with road run-off. However, recognizing recent National Marine Fisheries Service (NMFS) steelhead listings, it is apparent that direct discharge of road run-off into fish bearing streams or their tributaries should be avoided where feasible.

- K. **MCC .6730(A)(2)(f), Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.**

Staff: This requirement has been addressed with a condition of approval attached herein.

- L. **MCC .6730(A)(2)(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.**

There will be no increased runoff generated by this project

- M. **MCC .6730(A)(2)(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.**

The plan shows a combination silt fence and straw bale barrier to create a temporary settling pond in the creek. The area of work is in the creek so no sediment pond can be created between the potential soil erosion and the creek. The primary erosion control is being provided by back filling soon after excavation.

Staff: Diversion of the stream as proposed herein and recommended in the geotechnical report will limit the need for in-stream erosion control. Sediment fences/barriers downslope of disturbed areas and wet weather controls for exposed soils (i.e. straw mulch or plastic) are measures that should effectively trap sediment until disturbed areas are stabilized through post construction re-establishment of ground cover.

- N. **MCC .6730(A)(2)(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.**

This is an extremely small work area. The contractor will be excavating, installing the pipe and filling in a continuous process. The road will be reopened to one lane travel each night. Exposed cut faces will be covered very soon after excavation.

- O. **MCC .6730(A)(2)(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.**

The drainage provisions are adequately designed to carry the surface runoff.

- P. **MCC .6730(A)(2)(k), Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.**

Staff: Not applicable. Drainage swales are not proposed with this project.

- Q. **MCC .6730(A)(2)(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:**

- (i) **Energy absorbing devices to reduce runoff water velocity;**
- (ii) **Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- (iii) **Dispersal of water runoff from developed areas over large undisturbed areas.**

The erosion control measures shown on the plans are consistent with the guides cited. The rip-rap basin is an energy dissipater for the outlet of the pipe.

Staff: Erosion control measures described under Finding #6(M), and included as a condition of approval contained herein should be adequate to prevent pollution discharges from occurring.

- R. **MCC .6730(A)(2)(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.**

Spoil material will be hauled off daily as excavated and no topsoil will be stockpiled.

- S. **MCC .6730(A)(2)(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.

No potential pollutants are anticipated.

Staff: This requirement has been addressed with a condition of approval attached herein.

- T. **MCC .6730(A)(2)(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 Control Plans Technical Guidance Handbook* (January, 1991). 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: Not applicable. This site is not within Balch Creek Drainage Basin.

- U. **MCC .6730(B)(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.**

Staff: This requirement has been addressed with a condition of approval attached herein.

- V. **MCC .6730(B)(2), It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.**

Staff: This requirement is not applicable in that none of the above features exist on-site.

7. Significant Environmental Concern (SEC) Permit Required:

Per MCC 11.15.6404(A), all uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC .6406, shall be subject to an SEC permit.

Staff: The subject property has been identified as being within a Significant Environmental Concern overlay zone district as identified on Sectional Zoning Map No. 2, a copy of which is included as part of the permanent record.

8. Significant Environmental Concern Application Materials Provided:

Per MCC 11.15.6408(C), an application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC .6420 through .6428.
- (2) A map of the property showing:
 - (a) Boundaries, dimensions, and size of the subject parcel;
 - (b) Location and size of existing and proposed structures;
 - (c) Contour lines and topographic features such as ravines or ridges;
 - (d) Proposed fill, grading, site contouring or other landform changes;
 - (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
 - (f) Location and width of existing and proposed roads, driveways, and service corridors.

* * *

Per MCC 11.15.6426(A), in addition to the information required by MCC .6408(C), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

- (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;

For the purposes of this section, a *forested area* is defined as an area that has at least 75% 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.

- (2) Location of existing and proposed structures;
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Staff: The applicant has provided all information required pursuant to MCC 11.15.6408(C) and MCC 11.15.6426(A). Therefore, the Planning Director may take action on the request. Copies of all submitted materials are available as part of the permanent case file (SEC 35-98).

9. Compliance With MCC 11.15.6420, SEC General Approval Criteria:

Per MCC 11.15.6420, the SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

- A. **MCC .6420(A), the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

Staff: This criterion has been met. The culvert replacement is an in-stream development. Disturbed areas adjacent to the stream channel are to be controlled for erosion throughout the course of development and are to be re-seeded upon completion of the project.

- B. **MCC .6420(B), agricultural land and forest land shall be preserved and maintained for farm and forest use.**

Staff: This criterion has been met. No agricultural lands exist adjacent to this project. As evidenced in the written narratives, existing trees within the development area are to be preserved.

- C. **MCC .6420(C), a building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

Staff: No buildings or structures are proposed with this development. Functional considerations and costs have been evaluated in the placement and design of the culvert as documented in the geotechnical study and written narratives.

- D. **MCC .6420(D), recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

Staff: Not applicable. This development is neither recreational in nature nor does not generate a demand for recreational services.

- E. **MCC .6420(E), the protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

Staff: This repair project is being conducted for the public safety and to protect both public and private property at risk due to the recent subsurface movement documented in the geotechnical report.

- F. **MCC .6420(F), significant fish and wildlife habitats shall be protected.**

Staff: Wildlife habitat issues are addressed under Finding #10. As evidenced in the applicant's written narratives this tributary of Jackson Creek is not a fish bearing stream.

Erosion control measures should be adequate to prevent any significant downstream impacts, however, confirmation from NMFS is required as described under Finding #3.

- G. **MCC .6420(G), the natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

Staff: This criterion has been addressed. Land areas disturbed as a result of this culvert replacement project are to be re-seeded with native vegetation. Erosion control measures are to be implemented as specified within the Hillside Development Permit element of this review contained herein.

- H. **MCC .6420(H), archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

Staff: We are not aware of any inventoried archeological sites on or adjacent to this property.

- I. **MCC .6420(I), areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

Staff: Development within the stream channel is not being significantly expanded. The site is not in an area subject to the 100 year flood event. This tributary of Jackson Creek is not an inventoried wetland.

- J. **MCC .6420(J), areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

Staff: Measures for protecting areas of erosion or potential erosion have been identified and are described in detail under Finding #6.

- K. **MCC .6420(K), the quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

Staff: This criterion has been met. Repair of this culvert will avert further deterioration and failure of Gilkison Road. Such a failure would clearly have significant downstream water quality and topographical impacts. Air and noise impacts as a result of this development are negligible.

- L. **MCC .6420(L), the design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

Staff: Not applicable. No structures or signs are proposed with this development.

- M. **MCC .6420(M), an area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for**

protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff: We are not aware of any fragile or endangered plant habitat or other sensitive vegetative features existing on this site.

- N. **MCC .6420(N), The applicable policies of the Comprehensive Plan shall be satisfied.**

Staff: Comprehensive Framework Plan policies applicable to this request are addressed in Finding #11.

10. Compliance With MCC 11.15.6426(B), SEC Wildlife Habitat Standards:

- A. **MCC .6426(B)(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: This criterion has been met. Most of the development is to occur within existing no-forested cleared areas (i.e. Gilkison Road).

- B. **MCC .6426(B)(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: This project involves work to a public road, therefore, this criterion has been met.

- C. **MCC .6426(B)(3), The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Staff: Not applicable. This project does not require the construction of a new access road or driveway.

- D. **MCC .6426(B)(4), The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**

Staff: Not applicable. This project does not require the construction of a new access road or driveway.

- E. **MCC .6426(B)(5), The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

Staff: Not applicable. This requirement is designed to facilitate the clustering of structures in areas of significant wildlife habitat.

- F. **MCC .6426(B)(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 currently exists or is proposed with this project.

- G. MCC .6426(B)(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:

<u>Scientific Name</u>	<u>Common Name</u>	<u>Scientific Name</u>	<u>Common Name</u>
<i>Chelidonium majus</i>	Lesser celandine	<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Cirsium arvense</i>	Canada Thistle	<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Cirsium vulgare</i>	Common Thistle	<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Clematis ligusticifolia</i>	Western Clematis	<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Clematis vitalba</i>	Traveler's Joy	<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Conium maculatum</i>	Poison hemlock	<i>Poa annua</i>	Annual Bluegrass
<i>Convolvulus arvensis</i>	Field Morning-glory	<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory	<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Convolvulus seppium</i>	Lady's nightcap	<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Cortaderia selloana</i>	Pampas grass	<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Crataegus</i> sp. except <i>C. douglasii</i>	hawthorn, except native species	<i>Rhus diversiloba</i>	Poison Oak
<i>Cytisus scoparius</i>	Scotch broom	<i>Rubus discolor</i>	Himalayan Blackberry
<i>Daucus carota</i>	Queen Ann's Lace	<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Elodea densa</i>	South American Waterweed	<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Equisetum arvense</i>	Common Horsetail	<i>Solanum dulcamara</i>	Blue Bindweed
<i>Equisetum telemateia</i>	Giant Horsetail	<i>Solanum nigrum</i>	Garden Nightshade
<i>Erodium cicutarium</i>	Crane's Bill	<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Geranium roberianum</i>	Robert Geranium	<i>Taraxacum officinale</i>	Common Dandelion
<i>Hedera helix</i>	English Ivy	<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Hypericum perforatum</i>	St. John's Wort	<i>Urtica dioica</i>	Stinging Nettle
<i>Ilex aquafolium</i>	English Holly	<i>Vinca major</i>	Periwinkle (large leaf)
<i>Laburnum watereri</i>	Golden Chain Tree	<i>Vinca minor</i>	Periwinkle (small leaf)
		<i>Xanthium spinosum</i>	Spiny Cocklebur
		Various genera	Bamboo sp.

Staff: The requirements of this criterion have been addressed with a condition of approval contained herein.

11. Compliance With Applicable Comprehensive Plan Policies:

A. Policy 13: Air, Water And Noise Quality

It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels.

Staff: Erosion control measures required through the course of this review should be adequate to address water quality impacts caused as a result of construction activities attributed to this project. Air and noise impacts related to this project are negligible.

B. Policy 14: Developmental Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

- **Slopes exceeding 20%;**
- **Severe soil erosion potential;**
- **Land within the 100 year flood plain;**
- **A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;**
- **A fragipan less than 30 inches from the surface;**
- **Land subject to slumping, earth slides or movement.**

Staff: Hillside Development Permit approval criteria are designed to address on-site development limitations.

C. Policy 22: Energy Conservation

The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

- **The development of energy-efficient land uses and practices;**

- **Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;**
- **An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
- **Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**
- **Finally, the county will allow greater flexibility in the development and use of renewable energy resources.**

Staff: The factors listed under this policy have been considered in the review of this application. These factors are tailored to address energy resource issues related to urban development and, therefore, are not applicable to this request.

D. Policy 37: Utilities

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- **The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**
- **The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or**
- **There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- **There is an adequate private water system, and a public sewer with adequate capacity.**
- **There is adequate capacity in the storm water system to handle the run-off; or**
- **The water run-off can be handled on the site or adequate provisions can be made; and**
- **The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**
- **There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**

- **Communications facilities are available.**

Furthermore, the County's policy is to continue cooperation with DEQ, for the development and implementation of a groundwater quality plan to meet the needs of the county.

Staff: This project is not a development requiring water, sewer, or communication services. Stormwater issues relative to this application have been addressed under Finding #6.

E. Policy 38: Facilities

The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

- **The appropriate school district has had an opportunity to review and comment on the proposal.**
- **There is adequate water pressure and flow for fire fighting purposes; and**
- **The appropriate fire district has had an opportunity to review and comment on the proposal.**
- **The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

Staff: Not applicable. This project to repair an existing culvert does not impact the service requirements of the organizations listed under this plan policy.

F. Policy 40: Development Requirements

The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

- **Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.**
- **Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- **Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Staff: This proposal does not impact any existing or planned park and recreation areas or bicycle facilities.

Conclusion

Considering the findings and other information provided herein, this application for approval of grading activities involving approximately 916 cubic yards of excavation and fill associated with the replacement of a damaged culvert, as conditioned, satisfies applicable Comprehensive Framework Plan policies and Multnomah County Zoning Ordinance requirements.

Exhibits

All materials submitted by the applicant, prepared by county staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be found as part of the permanent record for this application.

In the matter of: HDP 13-98/SEC 35-98

Multnomah County Department of Environmental Services
Transportation and Land Use Planning Division

By:

Derrick I. Tokos, AICP – Planner

For: Kathy Busse - Planning Director

This decision filed with the Director of the Department of
Environmental Services on Friday, September 18, 1998

NOTICE:

State law requires public notice (by mail) to nearby property owners and to any recognized Neighborhood Association of a Planning Director decision which applies discretionary or subjective standards or criteria to land use or development permit applications. The notice must describe the method to challenge the staff decision; and, if appealed, the County must hold a public hearing to consider the merits of the application. ORS 197.763, ORS 215.416(11)

The Administrative Decision(s) detailed above will become final unless an appeal is filed within the 10-day appeal period that starts the day after the notice is mailed. If the 10th day falls on Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business-day. If an appeal is filed, a public hearing will be scheduled before a County Hearings Officer pursuant to Multnomah County Code section 11.15.8290 and in compliance with ORS 197.763. To file, complete an Appeal of Administrative Decision form, and submit to the County Planning Division Office, together with a \$100.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. To review the application file(s), obtain appeal forms, or other instruction, call the Multnomah County Planning Division at (503) 248-3043, or visit our offices at 2115 SE Morrison Street, Portland, Oregon, 97214 [hours: 8:30 a.m. – 4:30 p.m.; M—F].

The appeal period ends Monday September 28, 1998 at 4:30 p.m.