



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

DECISION

Conditional Use Permit for Template Dwelling

Case File: CU 10-98

Hearings Officer: Liz Fancher

Related Cases: Conditional Use Permit (CU 5-98)
Grading and Erosion Control Permit (GEC 26-98)

Hearing Date: November 18, 1998

Proposal: A conditional use permit request for a "Template Dwelling", to allow a new single family dwelling on Commercial Forest Use zoned property.

Location: 39864 SE Trout Creek Road
Tax Lot 13, Sec 13, T1S, R4E, W.M (R-99413-0130)

Applicant/Owner: David Wentz
39864 SE Trout Creek Road
Corbett, Oregon 97019

Site Size: 40.70 acres

Present Zoning: Commercial Forest Use (CFU-4)

Approval Criteria: Multnomah County Code (MCC): MCC 11.ES.2042
Commercial Forest Use; MCC 11.15.7105 Conditional Use;
Comprehensive Plan Policies 13, 14, 22, 37, 38, & 40

Hearings Officer Decision:

Approval of the proposed Conditional Use Permit for a “Template Dwelling” to allow the placement of a single-family dwelling, outbuildings, and new private driveway on Commercial Forest Use zoned property, subject to compliance with the following specific conditions.

Conditions:

1. This conditional use approval is specific to the use described in the land use application together with the limitations or conditions as determined herein. Any change of use from the use described in the land use application or modification of limitations or conditions imposed upon the dwelling as a result of this proceeding shall require new land use approval.
2. As long as the property is under forest resource zoning the applicant shall provide and maintain primary and secondary fire safety zones around all new structures, in accordance with the requirements of MCC 11.15.2074 (A)(5). These fuel break areas shall be provided prior to issuance of the building permit for the template dwelling.
3. A signed statement is to be submitted by the applicant confirming that they have provided a copy of the forest stocking survey to the county assessor in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6) prior to issuance of a building permit for the template dwelling.
4. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with Uniform Building Code and be attached to a foundation for which a building permit has been obtained.
5. Approval of this Conditional Use shall expire two years from the date of the Board Order unless “substantial construction” has taken place in accordance with MCC 11.15.7110(C) or the subject proposal is completed as approved. For the purposes of this decision, “completion” of the development under this conditional use review will involve, at a minimum, the following (summarized actions) to have taken place prior to the expiration date of the two year period:
 - A. Fire safety zones cleared and inspected by Planning staff.
 - B. Statement is submitted confirming that a copy of the forest stocking survey report has been provided to the county assessor.
 - C. The conditions of approval relating to the fire retardant roof, chimney spark arresters, and foundation are shown on the building plans.
 - D. The constructed building shall be a single family dwelling based on the following characteristics: be lawfully established under required building permits; have intact interior walls and roof structures inspected under that building permit; has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to an approved and permitted sanitary waste disposal system; has interior wiring for interior lights inspected under an electrical permit; and has a heating system.
 - E. If the dwelling is not completed, then the method of determination that “substantial construction” has taken place is an application to the Planning Director. The application must be submitted on a General Application Form with supporting documentation at least 30 days prior to the expiration date. The decision of the Planning Director will be a land

use decision that may be appealed to a Hearings Officer by a party entitled to notice [MCC 11.15.7110 (C)(3)].

Findings of Fact

Note: The Hearings Officer has used the staff report as a starting point in writing her decision. The findings proposed by staff and the applicant are listed following each land use approval criterion. 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. Staff and applicant comments constitute findings in support of the hearings officer’s decision unless noted otherwise in the Hearings Officer’s findings that follow staff comments. If no Hearings Officer findings are included, the Hearings Officer has determined that the applicant and staff comments are accurate and demonstrate compliance with the applicable approval criterion. The notation “Hearings Officer” precedes Hearings Officer findings.

The Staff Report did not specifically address the East of Sandy River Rural Area Plan. John H. Christensen raised concerns that approval of the template dwelling application would violate this Plan. As a result, the Hearings Officer has reviewed the Plan and made findings of compliance with the specific requirements of that Plan. The Hearings Officer has also addressed all concerns raised by Mr. Christensen in a separate section that follows findings regarding compliance with the East of Sandy River Plan.

1. Project Description:

Staff: The applicant’s request is for approval of a “Template Dwelling” to allow the placement of a single-family dwelling, outbuildings, and new private driveway on a Commercial Forest Use zoned parcel. Proposed site improvements, with the exception of the temporary structure housing the well, are identical to those approved August 20, 1998 with Conditional Use Permit CU 5-98 (Exhibit B1). The reason for this application is that the applicant has been unable to satisfy Condition #2 of the prior approval. This condition of approval reads as follows:

“Prior to issuance of a building permit, a copy of a recorded restriction, condition, or covenant, shall be submitted as evidence that the other parcel within this tract, described under Tax Account #R-99413-0310, is precluded from all current and future rights to site a dwelling. Such restriction, condition, or covenant, shall be in a format consistent with “Exhibit A” to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December 1995).”

This condition is required when an application is made for template dwelling on a “lot of record” parcel that is adjacent to another “lot of record” parcel or parcel(s) under common ownership. Such was the circumstance with CU 5-98. Both the subject property and the parcel adjacent to the west (Tax Account #R-99413-0310) were undeveloped and under common ownership at the time the decision was issued. Both parcels constituted the “tract” within which only one single-family dwelling may exist (MCC .2052(A)(3)(f)). Therefore, approval of a dwelling on the parcel the applicant intended to purchase required that a covenant be filed prohibiting residential development on the other parcel within the tract (MCC .2052(9)).

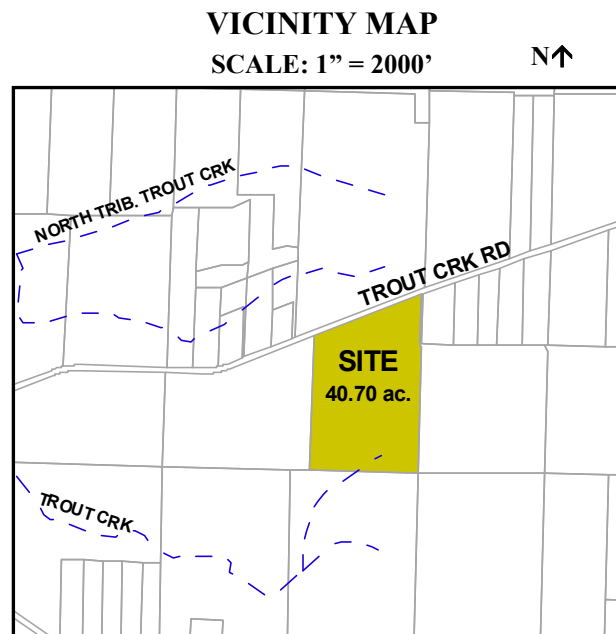
After the hearing on CU 5-98, the applicant informed staff that the landowner had conveyed an ownership interest in the adjoining parcel to a third party. The applicant further indicated that they would not be able to get the third party to sign the covenant required by Condition #2 of the decision. A copy of the recorded land sales contract evidencing the conveyance is attached as Exhibit B5.

Prior to initiating this application, the applicant acquired the subject property. In doing so the applicant dissolved the common ownership link between the two parcels that triggered the covenant requirement. However, this action by the applicant also reduced the area of the tract to a single lot of record parcel, thus altering the location of the 160-acre square template area used to determine eligibility for a residence (Note: The 160-acre square template area must be centered on the subject tract (MCC .2052(A)(3)(c)). For this reason a new application was necessary to determine if the new tract qualifies for a template dwelling.

As of August 8, 1998, prior to the filing of the pending conditional use application, the zoning for the subject property was changed from Commercial Forest Use (CFU) to Commercial Forest Use 4 (CFU-4). Therefore, this application has been evaluated against the criteria of the CFU-4 zone district, as it is the law in effect at the time of the filing of the new application. ORS 215.428 (3).

2. Site and Vicinity Characteristics:

Staff: The parcel upon which the improvements are proposed is approximately 40.70 acres in size. Access to the parcel is available off of SE Trout Creek Road. The site is currently undeveloped. A logging road currently extends from the property to the west, south into the parcel as illustrated on the applicant's site plan (Exhibit A17). Overhead utilities run along the eastern edge of the site. As evidenced in the applicant's written narratives the parcel was clearcut and replanted early in 1998. A tributary of Trout Creek extends into the southeast corner of the parcel. The property slopes away from Trout Creek Road to the south.



Multnomah County zoning on all adjacent properties is Commercial Forest Use (CFU-4). A pocket of Rural Residential (RR) zoned land exists to the northwest. As illustrated on the aerial photograph provided by the applicant (Exhibit A14), properties in this area are sparsely developed and forested. Evidence of timber harvesting activities is apparent on several of the adjoining parcels. Existing residential development exists along Trout Creek Road on the RR zoned properties to the northwest and on CFU zoned parcels northeast of the applicant's site.

3. Conditional Use (CU) Permit Required:

11.ES.2046 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2048 through .2056.

* * *

11.ES.2050 Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * *

(B) A Template Dwelling pursuant to the provisions of MCC .2052(A), .2053(B) and .2074.

* * *

Staff: As established under MCC .2050(B), a “Template Dwelling” request requires Conditional Use approval in this Commercial Forest Use zone district.

4. Compliance with MCC 11.ES.2052 Template Dwelling Requirements:

Per MCC .2052(A), a template dwelling may be sited on a tract, subject to the following:

- A. **MCC .2052(A)(1), The lot or lots in the tract shall meet the lot of record standards of MCC .2062(A) or (E), and (B) and have been lawfully created prior to January 25, 1990;**

Staff: This criterion has been satisfied. Compliance with Lot of Record requirements of MCC .2062 is established under Finding #6. One parcel makes up the tract. The parcel was created as a result of a minor partition, which was completed in May of 1986. Copies of the recorded partition documents are included in the record as part of Exhibit A4.

- B. **MCC .2052(A)(2), The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075, as applicable;**

Staff: This criterion has been satisfied. Compliance with MCC .2074 is established under Finding #7. As illustrated on the applicant’s scaled site plan (Exhibit A17) the yard requirements of the Commercial Forest Use district have been met.

- C. **MCC .2052(A)(3)(c), The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

(i) The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

(ii) At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.

Staff: This criterion has been satisfied. As referenced in the applicant's Forest Management Plan (Exhibit A12) and supported in the Soil Conservation Services "Soil Survey of Multnomah County," Cazadero series soils exist on the subject property. Cazadero series soils are Class II soils capable of producing in excess of 145 cf/ac/yr.

Exhibit A15, prepared by applicant, illustrates that all or part of 17 parcels fall within a 160-acre square centered on the subject **tract**. Exhibits A13 demonstrates that 5 dwellings lawfully existed on January 1, 1993 within the 160-acre square centered on the tract.

<u>Parcel #</u>		<u>Year Built</u>
R-99413-0150	-	1964
R-99413-0200	-	1974
R-99413-0410	-	1979
R-99413-0220	-	1978
R-99413-0230	-	1992 (A&T system indicates structure added to tax rolls in 1993. Manufactured home finaled by the City of Gresham 10/27/92.)

- D. **MCC .2052(A)(3)(d), Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

Staff: None of the lots or dwellings used fall within an urban growth boundary.

- E. **MCC .2052(A)(3)(e), There is no other dwelling on the tract,**

Staff: No dwellings currently exist within the tract.

- F. **MCC .2052(A)(3)(f), No other dwellings are allowed on other lots (or parcels) that make up the tract;**

Staff: No other parcels exist within the tract, therefore this criterion has been satisfied.

- G. **MCC .2052(A)(3)(g), Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

Staff: This tract includes only one parcel. Consistent with the provisions of the Commercial Forest Use zone district, a template dwelling approved at this location will be

the only dwelling permitted on the parcel.

- H. **MCC .2052(A)(3)(h), No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

Staff: None of the parcels used to qualify this dwelling are part of this tract or any other tract containing a template dwelling.

- I. **MCC .2052(A)(4), The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

Staff: As evidenced by the applicant on a copy of the Multnomah County Sensitive Big Game Wintering Areas map (Exhibit A19), the subject tract does not fall within a big game winter habitat area.

- J. **MCC .2052(A)(5), Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;**

Staff: Vehicular access to the proposed dwelling is available via a new private driveway that is owned and maintained by the applicant. The driveway connects directly to SE Trout Creek Road.

- K. **MCC .2052(A)(6), A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:**

(a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

(c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation

pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

Staff: A copy of the applicant's forest management plan, acknowledged by the Department of Forestry, explains that the subject parcel was logged in 1997 and describes how the property was re-stocked in January and February of 1998 (Exhibit A12). To comply with this criterion the applicant must provide a copy of the plan to the county assessor. A condition of approval has been included to address this matter.

- L. **MCC .2052(A)(7), The dwelling meets the applicable development standards of MCC .2074;**

Staff: Compliance with this criterion is demonstrated under Finding #7.

- M. **MCC .2052(A)(8), A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Staff: This requirement has been satisfied. A copy of the recorded statement is enclosed as Exhibit A22.

- N. **MCC .2052(A)(9), Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records; ...**

Staff: This requirement is only applicable when two or more parcels exist within the tract. Since the subject property is a one parcel tract, an "Exhibit A" restriction need not be filed.

5. Compliance with MCC 11.ES.2053, Use Compatibility Standards:

Per MCC .2053(B), Single family dwellings as specified in MCC .2050 (A), (B) and (C) may be allowed upon a finding that they will not significantly impact open space, public facilities, wildlife habitat, and rural community character.

Staff: This criterion has been satisfied. Template dwelling approval criteria contained herein have been drafted to ensure that new dwellings will not significantly impact rural community character, wildlife habitat, public facilities, and open space. New residential development is restricted to those areas that have an established residential presence. As demonstrated under Finding 4I the site is not within big game winter habitat. Findings 8D and 8E demonstrate that public facilities will not be significantly impacted. Staff is unaware of any open space areas within close proximity of the subject property.

6. Compliance with MCC 11.ES.2062, Lot of Record Requirements:

Per MCC .2062(A)(2), for the purposes of this district, a Lot of Record is a parcel of land:

- A. **MCC .2062(A)(2)(a), For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**

Staff: Applicant Exhibit A4 contains copies of a minor partition survey and legal description for the parcel that constitutes this tract. These documents, recorded in May of 1986, are evidence that the “recordable form” test of this criterion has been met.

- B. **MCC .2062(A)(2)(b), Which satisfied all applicable laws when the parcel was created;**

Staff: An exempt minor partition, approved by Multnomah County is evidence that the parcel met applicable laws at the time of its creation (Exhibit A4).

- C. **MCC .2062(A)(2)(c), Does not meet the minimum lot size requirements of MCC .2058;**

Staff: The parcel subject to this request is approximately 40.70 acres in size, well below the minimum lot size of 80 acres as defined under MCC .2058.

- D. **MCC .2062(A)(2)(d), Which is not contiguous to another substandard parcel or parcels under the same ownership.**

Staff: Exhibit A4 contains a copy of the deed transferring ownership of the subject property to the applicant. The applicant does not own any property adjacent to the parcel that is subject to this request.

7. Compliance with MCC 11.ES.2074, Commercial Forest Use Zone District Development Standards:

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

- A. **Per MCC .2074(A)(1), the dwelling or structure shall be located such that it has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);**

The placement of the dwelling exceeds the required 200-foot yard setback as required by MCC 11.15.2058. The proposed distance-of the dwelling is 300 feet from the nearest property boundary (see site plan). Area between the dwelling and surrounding properties will be maintained as a managed forest operation, with practices matching current industry expectations used on the surrounding plots. Therefore, the intent of Commercial Forest Use zoning of this plot and the surrounding plots will be maintained.

Staff: As evidenced on the applicant's site plan (Exhibit A17), the minimum yard requirements of MCC .2058 have been met.

- B. **Per .2074(A)(2), the dwelling or structure shall be located such that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.**

The proposed dwelling will be sited to take advantage of the already, existing disturbance and land currently removed from production by the existing access roads. The area has been harvested by clear-cut. The proposed dwelling site has been located in an area of least productivity as shown by the 1994 aerial photograph (Exhibit A14). The location allows for the minimum amount of property to be used while maintaining the needed setbacks. The property surrounding the dwelling beyond the primary fire safety zones will be managed as a timber crop. The dwelling is located approximately 500 feet from SE Trout Creek Road, beyond the 60-foot required setback to take advantage of the existing entrance roads and needed topography for the house placement (See accompanying topographic map) Exhibit A18.

- C. **Per .2074(A)(3), the dwelling or structure shall be located such that the amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized.**

The area of impact within the forest boundary (see the site map Exhibit A17) is estimated to be .2.47 acres. The impact from the road to the house is estimated to be 0.11 acres, giving a total estimated impact of 2.58 acres. The actual area impacted by the dwelling is 1,438 square feet. The barn is estimated to be approximately 1,080 square feet.

Staff: In siting the structure in a cleared area and by incorporating portions of the existing logging road into the new driveway, the applicant has taken steps to minimize disturbance of on-site forest lands.

- D. **Per .2074(A)(4), the dwelling or structure shall be located such that any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

The proposed dwelling location will require a driveway of approximately 500 feet from SE Trout Creek Road. The length of the road is necessary due to the existing roadway... and to utilize the closest level area to the required setbacks (see the topographic map).

Staff: As evidenced on the site plan (Exhibit A17) the access road does not exceed 500 feet, therefore, the above criterion has been met.

- E. **Per .2074(A)(5), the dwelling or structure shall be located such that the risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by**

contract;

(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;

(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.

(i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope In Feet	Distance
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

(iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.ES.2058(D) and .2075.

(iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

(d) The building site must have a slope less than 40 percent.

A Fire District Review form has been submitted to the Multnomah County Rural Fire Protection Department Number 14. It was returned as "...There is adequate water pressure and flow for fire fighting purposes." This was signed by Brent A Younker, Assistant Chief, dated February 27, 1998 (Exhibit A7).

The nearest perennial water source on the subject property is located in the southeast section of the lot, with a pond bordering the property. As shown in the site map an access road reaching the pond will be retained as part of the forest management practices of the forest plantation. Road and driveway construction design have been reviewed by the fire protection district and approved. A Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads sheet and inspection form has been completed, reviewed, and approved. A copy of this document has been submitted as part of this application (Exhibit A7).

The primary and secondary fire safety zones are represented on the Site Plan and Site Topography figures (Exhibits A17 & A18). The dwelling will be located as such to allow a primary safety zone of a minimum of 30 feet in all directions. Any trees within this area will be managed at a spacing of greater than 15 feet between crowns and other considerations as discussed in MCC 11.15.2074(A)(5)(c)(i). The dwelling location is on a grade of less than 10 percent. Therefore, extension of the primary fire safety zone is not required. In addition a secondary, fire safety zone of a minimum of 100 feet beyond the primary fire safety zone, in all directions. Any trees within this area will be managed with undergrowth and brush removed.

The building site, as described in the Site Topography Map... maintains a change of elevation of approximately 15 feet over a distance of approximately 400 feet. This gives an approximate slope of 4 percent.

Staff: It appears that the access road has been constructed consistent with the requirements of MCC .2074(D). A copy of an Engineer's statement, indicating that the road is constructed to withstand a vehicle weight of 52,000 lbs. GVW, is enclosed as Exhibit A21. Verification that primary and secondary fire safety zones have been established, as delineated on the site plan, must occur prior to a building permit being issued for the dwelling. This concern has been addressed with conditions of approval contained herein.

F. Per MCC .2074(B), the dwelling shall:

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) Be attached to a foundation for which a building permit has been obtained;**
- * * ***
- (4) Have a fire retardant roof; and**
- (5) Have a spark arrester on each chimney.**

A description and floor plan of the proposed dwelling is provided as a separate document

(Exhibit A20). *The dwelling will be a manufactured home of 1,438 square feet. The structure will be attached to permitted foundation, is over 600 square feet, have a fire retardant roof, and will maintain a working spark arrester on any chimney. A description of the proposed home is provided as part of this application.*

Staff: Evidence of compliance with each of the elements of MCC 2074(B) must be verified at time of building permit review and inspection. A condition of approval has been included herein addressing this concern.

- G. **Per MCC .2074(C), the applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:

* * *

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

A groundwater well will be installed, according to the Oregon, Department of Water Resources requirements by a licensed well installer. The well will be constructed by McInally and Sons Well Drilling, Inc., Well Driller's License #1380 of Boring Oregon. This company has been contacted by the client and agreed to complete the work. The general location of the well will be to the northwest of the dwelling, as represented on the Site Map (Exhibit A17).

Attempts were made by DBA (Applicant's Consultant) to obtain water well logs of properties adjacent to the subject property from the Oregon Department of Water Resources. However, well logs were not available at the time of this submittal.

Staff: This criterion has been satisfied. A copy of the well report has been provided as evidence of an on-site domestic water supply (Exhibit A6).

- H. **Per MCC .2074(D), a private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written

verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;

- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
- (3) Provide minimum curve radii of 48 feet or greater;
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
 - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

The existing forest management service road (see the aerial photograph and site map Exhibits A14 & A17), historically used for heavy vehicle transport, will be utilized. This will give a compacted base for the driveway. After re-grading, a subbase of 4-inch minus will be placed and compacted. The drive surface shall then be placed, consisting of 3/4-inch minus. This will be smoothed by tractor. The driveway will maintain a minimum width of 12 feet.

There are no curvatures between the dwelling and SE Trout Creek Road (see site map). The straight course of the driveway will also give unobstructed clearance. There is no vegetation or structures to impair the 13 feet, 6 inches of vertical clearance. The existing grade is approximately 4 percent. Therefore, there will be no section of the driveway greater than 8 percent grade.

As shown in the site plan, a turnout of a minimum of 20 X 40 feet will be constructed. The distance from SE Trout Creek Road will be approximately 200 feet. The distance from the dwelling will be approximately 200 feet. The driveway will not cross any perennial water systems and therefore will not require bridge crossings and an engineer's approval.

Road and driveway construction design have been reviewed by the fire protection district and approved. A Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads sheet and inspection form has been completed, reviewed, and approved. The review was completed by Brent A. Younker, Assistant Chief for Multnomah County Rural Fire Protection District Number 14. Mr. Younker can be contacted at (503) 695-2272. The review was completed February 27, 1998. A copy of this document has been submitted as part of this application (Exhibit A7).

Staff: An access road has been constructed, consistent with the design specifications of this criterion, at the location specified on the site plan. A copy of an Engineer's statement indicating that the road has been constructed to withstand a vehicle weight of 52,000 lbs. is enclosed as Exhibit A21.

8. 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.

The development of the single family residence as allowed b Multnomah County's Template Dwelling process will maintain and manage a forest crop on the property utilizing Best Management Practices for forest crop management. The choice of residence will utilize a small square footage (approximately 1,438 square feet). The home is of new construction utilizing currently accepted energy saving measures.

The sewage disposal system will manage disposal in a way that will not impact local waterways. A preliminary inspection has been conducted and the site approved by the City of Portland.

The placement of the structures utilizes the localized topography for the restriction of noise produced from Trout Creek Road. The residence is placed in a topographic, "low", surrounded on three sides by topographic "highs".

Continued management of the property, as a forest crop will maintain an ecosystem which will enhance air and water quality. Forest ecosystems provide oxygen production, air purification, water thermal pollution reduction, stormwater runoff attenuation, and surface water filtration. Placement of the residence at this location will allow for close proximity of the forest manager assisting in cultivation and expedient management of the woodland.

The development of the single-family residence as allowed by Multnomah County's Template Dwelling process, is not located within impact of any high noise generating sources. The nearest commercial use is the location of high voltage power lines and towers. These are not high noise generating.

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:

A. Slopes exceeding 20%;

The building site, as described in the Site Topography Map... maintains a change of elevation of approximately 15 feet over a distance of approximately 400 feet. This gives an approximate slope of 4 percent. Therefore this location satisfies criteria A.

B. Severe soil erosion potential;

The soil slope of the building site is approximately 4 percent. The soils are classified as Cazadero Soil. Therefore, this soil is given a Capability Classification of IIe². This gives the soil a moderate limitation due to erosion, as opposed to severe or extremely severe erosion limitations. The forest manager will maintain Best Management Plans of erosion control, including immediate replanting of disturbed areas. Therefore this location satisfies criteria B.

C. Land within the 100 year flood plain;

The dwelling will be located approximately 500 feet northwest of the nearest surface water, which is a wetland associated with Trout Creek, as represented in Site Topography (Exhibit A18). The wetland acts as a flood retention system. The building site is located at an elevation approximately 20 feet above the surface water. The Cazadero Soils are listed as not having flooding potential, with a seasonal high water table of greater than six feet from the ground surface. Therefore, this location satisfies criteria C.

D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;

The Cazadero Soils, as described in the Soil Survey for Multnomah County, maintain a high seasonal water table of greater than six feet from the ground surface. Therefore, this location satisfies criteria D.

E. A fragipan less than 30 inches from the surface;

The Soil Survey for Multnomah County does not list a fragipan associated with the Cazadero soils. Field investigation of soil pits constructed on the property showed no presence of a fragipan. Therefore this location satisfies criteria E.

F. Land subject to slumping, earth slides or movement.

The building site soil grade is within the angle of repose for this soil classification. Field examination revealed no evidence of slumping or earth movements associated with the building site. The Soil Survey of Multnomah County rates the soil as moderate for erosion hazard, no mention of soil failures for the Cazadero soils.

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:

A. The development of energy-efficient land uses and practices;

The development of the single family residence as allowed by Multnomah County's Template Dwelling process, will maintain and manage a forest crop on the property, utilizing Best Management Practices for forest crop management. The choice of residence will utilize a small square footage (approximately 1,438 square feet) making the dwelling far more energy efficient than that of a larger structure. The home is of new construction, utilizing currently accepted energy saving measures.

Placement of the residence at this location will allow for close proximity of the forest manager assisting in cultivation and expedient, efficient management of the woodland. Location of the residence near the forest crop will allow for reduced transportation for the forest manager and necessary equipment needed for the management of the woodland. Therefore, this application fulfills criteria A.

B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;

The tree farm located, on the property is intended as a retirement investment for the forest manager. Construction of the small residence near the woodland allows for intrinsic management of the forest resource. This long-term project will be sustained throughout his retirement. The dwelling and associated structures are required for the forest manager's residence and equipment storage associated with the needed management practices. Therefore this fulfills the location to employment centers addressed in criteria B.

C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;

The location of the project allows for numerous transportation alternatives. The closest public transit terminal is located in Troutdale, Oregon. The possible travel route system is from Trout Creek Road to Gordon Creek Road to Evans Road to Corbett. From Corbett two transportation routes are possible. The first is Corbett

Hill Road to Interstate 84 to Troutdale. The second is Evans Road to Hurlburt Road to Crown Point Road to Troutdale. The Public Transit terminal is located at the Outlet Store Complex, approximately 12 Miles, from the project. Tri-Met lines 24, 80, and 81 serve this facility.

Limited public transit is provided to the town of Sandy. The possible travel route system to this transit terminal is Trout Creek Road to Gordon Creek Road to Bull Run Road to Ten Eyck Road to the town of Sandy. The Public Transit terminal is approximately 13 miles from the project.

The dwelling and associated structures are within a linked transportation that includes primary arterial and public transportation systems. Therefore, this application fulfills criteria C.

D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.

The development of the single family residence as allowed by Multnomah County's Template Dwelling process, is not a development requiring street layouts, lotting patterns, or multiple dwelling and structure design. However, the placement of the dwelling will utilize existing topographies and the future growth of the forest crop for additional protection of weather extremes and climatic control.

E. Finally, the county will allow greater flexibility in the development and use of renewable energy resources.

The development of the single family residence, as allowed by Multnomah County's Template Dwelling process is being proposed to allow the forest manager close proximity to the forest resource, enhancing the management and oversight of this woodland. While not considered a direct energy resource, forestry does perpetuate the continued management of a renewable resource. Material gained from this project will be used for energy efficient building material, localized supply for pulp and paper manufacturing, and energy production in the form of a biomass heating resource. The management of this woodlot will increase the forest yield, providing a renewable resource for the community in the future.

D. Policy 37: Utilities

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

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**
- B. 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**

- C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**
- D. There is an adequate private water system, and a public sewer with adequate capacity.**
- E. There is adequate capacity in the storm water system to handle the run-off; or**
- F. The water run-off can be handled on the site or adequate provisions can be made; and**
- G. 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.**
- H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- I. 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.

A groundwater well will be installed according to the Oregon Department of Water Resources requirements by a licensed well installer. The well will be constructed by McNally and Sons Well Drilling, Inc., Well Driller's License #1380, of Boring Oregon. Attempts were made by DBA to obtain water well logs of properties adjacent to the subject property from the Oregon Department of Water Resources. However, well logs were not available at the time of this submittal.

A land feasibility site evaluation was conducted of the building site by Mr. Phillip Crawford, Environmental Soils Inspector for the City of Portland, Bureau of Buildings. The result of the study is that the "...site is SUITABLE for the use of a standard septic drainfield system in compliance with the standards set forth in On-Site Sewage Disposal Rule..." The minimum type and size of the system and absorption area required for the three bedroom home proposed in this project is 1,000 gallons for the septic system, and 300 feet of linear feet absorption trench. The report is referenced by LFS 13-98 (Exhibit A5). Therefore, criteria C is satisfied.

Drainage absorption trenches have been recommended by the City of Portland. The required minimum is 300 linear feet. There is ample area, as described in the Site Plan, to handle all drainage from roof runoff. The area of coverage is 1438 square feet. The topography slopes to the southeast, providing slope drainage into vegetated areas. The, slope will prevent ponding around the structure. Therefore criteria F is satisfied.

The nearest surface water is a wetland area associated with Trout Creek, located

approximately 500 feet to the southeast.... Stormwater from roof drainage will be directed downslope to the southeast. However, the runoff will be directed into' vegetated topography and infiltrate into the soils. Direct flow will not impact the existing surface waters. The building site has been located and the drainage designed so as to not impact nor alter any existing drainage patterns. Therefore, criteria G is satisfied.

The development of the single family residences, as allowed by Multnomah County's Template Dwelling process is-not a development requiring a large power supply. Power is currently supplied to residences located adjacent to the subject property. Although not a local power source, high voltage power lines bound the eastern side of the property. Therefore, criteria H is satisfied.

An underground telecommunications system bounds the north side of the property. A junction to the telecommunication is located approximately 50 feet east of the proposed drive. Therefore, criteria I is satisfied.

E. **Policy 38: Facilities**

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

A. The appropriate school district has had an opportunity to review and comment on the proposal.

A School District Review form has been submitted to the Corbett School District Number 39. It was returned as "...The District has no comment...", signed by the Superintendent, dated February 20, 1998. Therefore, criteria A is satisfied (Exhibit A9).

**B. There is adequate water pressure and flow for fire fighting purposes; and
C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

A Fire District Review form has been submitted to Multnomah County Rural Fire Protection District Number 14. It was reviewed and returned, stating there is adequate water pressure and flow for fire fighting purposes, with water- supply being provided by water shuttles with water tenders. This was completed by- Brent A. Younker, Assistant Chief, dated February 27, 1998. Therefore, criteria B and C are satisfied (Exhibit A7).

D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

A Police Services Review form has been submitted to the Multnomah County Sheriff. It was reviewed and returned, "...stating the level of police service available to serve the proposed project is ADEQUATE..." The form was completed by Mel Hedgpeth, Commander, dated February 24, 1998. Therefore, criteria D is satisfied (Exhibit A8).

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:

- A. 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.**

The development of the single-family residence, as allowed by Multnomah County's Template Dwelling process will not affect any existing or future bicycle path routes or projects. Therefore, criteria A is satisfied.

- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**

The development of the single-family residence, as allowed by Multnomah County's Template Dwelling process is not a commercial, industrial or multiple family development. Therefore, criteria B does not apply.

- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

The development of the single-family residence, as allowed by Multnomah County's Template Dwelling process, does not necessitate bicycle parking facilities. Therefore, criteria C is not appropriate.

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

9. **Compliance With East of Sandy River Plan:**

A. **Preamble/Vision Statement**

For our future, we envision:

- **The residential density east of the Sandy River stabilized at levels allowed by current zoning.**

Hearings Officer: This general vision statement indicates that the zoning ordinance, not the East of Sandy River Plan, regulates the density of development in the area governed by the plan. As a template dwelling is allowed by the applicable zoning ordinance, approval of such a dwelling is consistent with this provision of the Plan.

B. **Trout Creek Road Area, Map 8**

Hearings Officer: The Trout Creek Road Area map shows the Wentz property as being 40.7 acres in size. The map also shows that the property is adjacent to a 39-acre parcel that, at the time of mapping, was an aggregate lot due to contiguous ownership.

The Hearings Officer finds that this map does not address the legal effect of showing these two parcels as sharing an “aggregated lot line for contiguous ownership.” On one hand, this line could indicate that the parcels have been combined due to provisions of the adoption of the map. On the other hand, the map could be intended to show then current ownership patterns without dictating future development. As other Plan provisions cited below clearly recognize that “dis-aggregation” of aggregated lots is allowed, the Hearings Officer adopts the later interpretation of intended effect of the Plan map. As a result, the Wentz property is a separate parcel that may be “dis-aggregated” from the 39-acre parcel.

C. **COMMERCIAL FOREST USE**

Multnomah County's rules regarding dwellings in the Commercial Forest Use zone limit new development in three important ways.

1. **New dwellings must pass a template test.**

Hearings Officer: The Wentz dwelling passes the template test, as determined above.

2. **Current Multnomah County Zoning rules (although not required by the state) do not allow dis-aggregation of an individual parcel from a group of parcels owned by the same individual if the parcel is less than 19 acres. Oregon Revised States only require aggregation at the time of an actual application for a dwelling. Thus, the owner of two parcels, one or both of which is less than 19 acres, could have a single-family residence on only one of them.**

Hearings Officer: This summary of land use regulations indicates that the framers of the East of Sandy River Plan understood that parcels of the size involved in this application, 39 acres and 40.7 acres, could be “dis-aggregated” and separately developed. This policy makes it clear that then current regulations only prevented dis-aggregation for parcels of less than 19 acres in size. This is still the case under current County rules.

Commercial Forest Use Policies

1. **Maintain existing commercial forest use areas as forest lands. Do not allow parcelization that detracts from continued forest operations and incidental protection of open space, wildlife habitat, and rural community values.**

STRATEGY: Multnomah County shall not consider large-scale “exceptions” to Goal 4 of the Oregon Statewide Planning Program (Forest Lands).

Hearings Officer: Policy 1 is implemented by adoption the cited implementation strategy. The approval of the Wentz template dwelling application does not violate Policy 1 because it does not involve the approval of a large-scale exception to Goal 4.

- 2. Allow new dwellings on lands designated for commercial forest use only when it can be demonstrated that they will have no significant impact upon forestry practices, open space, public facilities, wildlife habitat, and rural community character.**

STRATEGY: The finding of no significant impact shall be met through compliance with approval criteria in the Multnomah County Zoning Ordinance.

Hearings Officer: Policy 2 is implemented by adoption the cited implementation strategy. The approval of the Wentz template dwelling application on CFU zoned land complies with Policy 2 and its implementing strategy because it complies with all approval criteria in the zoning ordinance. That ordinance does not prohibit “dis-aggregation” of legally created parcels of the size involved in this application.

- 4. Allow new dwellings on the remainder of the Commercial Forest Use zoned lands east of the Sandy River if the lot meets current County standards regarding the template test or if a lot meets the legal requirements regarding ownership since 1985 set forth in Oregon Revised Statutes or Oregon Administrative Rules.**

STRATEGY: Multnomah County shall implement this policy through amendments to the Multnomah County Zoning Ordinance Commercial Forest zoning district. However, Multnomah County shall retain its current standards for “template dwellings,” which require five residences within a half-mile square template centered on the center of the property.

Hearings Officer: Policy 4 is implemented by adoption the cited implementation strategy. Multnomah County has amended its zoning ordinances as expected in the cited strategy. The approval of the Wentz template dwelling application on CFU zoned land also complies with Policy 4 and its implementing strategy because the dwelling meets the five residence template dwelling standards of the amended CFU zoning district. Compliance has been documented above.

- 4A. Allow dis-aggregation of existing legally-created lots for purposes of consideration of an additional dwelling unit on a lot less than 19 acres in size under the following conditions: * * ***

Hearings Officer: Policy 4A is not directly applicable to the Wentz application

because it relates to “dis-aggregation” of lots that are smaller than the Wentz property and its adjoining formerly aggregated parcel. The policy does, however, show that the East of Sandy River Plan liberalized “dis-aggregation” requirements and that it is even possible for lots that are much smaller than 19 acres in size to be “dis-aggregated.” Multnomah County has amended its zoning ordinances as expected in the cited strategy. The approval of the Wentz template dwelling application on CFU zoned land also complies with Policy 4 and its implementing strategy because the dwelling meets the five residence template dwelling standards of the amended CFU zoning district. Compliance has been documented above.

- 5. Ensure that any proposed new dwellings in the commercial forest use designated areas receive appropriate public review by providing comprehensive notice and review opportunity prior to any land use decision.**

STRATEGY: Multnomah County shall implement this policy through the public notice provisions of the Multnomah County Zoning Ordinance.

Hearings Officer: Policy 5 has been implemented through the public notice requirements of the zoning ordinance. Notice of review of the Wentz application was provided to area property owners and other affected parties, as required by the zoning ordinance.

10. Findings Regarding Opponent’s Objections

The County received one letter in opposition to approval of the template dwelling from John F. Christensen. Mr. Christensen’s concerns are addressed below. Text in bold is a summary of Mr. Christensen’s concerns.

- 1. The prior template dwelling approval required Mr. Wentz to aggregate the 40.7-acre lot with the adjoining property owned by Schoppert Logging.**

Hearings Officer: The prior decision approving a template dwelling on the Wentz property was approved at a time that Schoppert Logging owned the Wentz property and the adjoining 39 acre tract. As a result, land use rules required that the Hearings Officer require aggregation due to the common ownership. When Mr. Wentz reapplied for approval of a template dwelling, he owned the 40.7-acre tract and Schoppert and a third party owned the 39-acre tract. As the parcels were not and are not now held in common ownership and Multnomah County and State of Oregon regulations do not prohibit “dis-aggregation” of properties held in common ownership, Mr. Wentz is entitled to obtain approval of a template dwelling on the subject property. It should also be noted that the Wentz property was lawfully divided into a separate parcel prior to 1990 and that the approval of a template dwelling on this parcel does not create an additional parcel of land.

- 2. The aggregation requirement is inconsistent with the CFU Policies of the East of Sandy Rural Area Plan.**

Hearings Officer: The East of Sandy River Plan recognizes the fact that parcels over 19 acres in size may be “dis-aggregated.” Approval of the Wentz template dwelling

application without requiring aggregation with the adjoining 39 acre tract owned by Schoppert Logging, therefore, does not violate either the spirit or the text of the East of Sandy River Plan. The specific policies of the Plan have been discussed above. The approval of the application does not cause parcelization because the two properties in question were lawfully created and remain lawful lots under ORS 92.017 once divided.

3. Schoppert's sale of the Wentz parcel violates the spirit of the Oregon administrative rule that raises the minimum lot size for dwelling in forest zones to 80 acres.

Hearings Officer: The Oregon administrative rules do not require an 80-acre minimum lot size for a template dwelling. The sale of the Schoppert parcel may not effectuate DLCD's intent in adopting the aggregation rules but DLCD has advised Multnomah County that it understands that "dis-aggregation" is permissible under its forest zone rules.

4. The selling of the adjacent parcel shows cynical disregard for the intent of the deed restriction requirement of the prior approval.

Hearings Officer: The requirement in the prior approval was imposed due to facts in existence at the time. As the facts have changed, the applicable law no longer supports the imposition of this condition. As discussed earlier, Schoppert Logging and the applicant are specifically allowed by County land use rules to "dis-aggregate" the parcels. Cynical disregard for an inapplicable requirement does not merit denial of this application or the imposition of such a condition by this land use decision.

5. Approval of this dwelling will effectively allow two dwellings on lots that were formerly jointly owned by Schoppert Logging.

Hearings Officer: This is the effect of allowing "dis-aggregation" of the lots. Yet, this is a result that is intended by the County land use regulations and allowed by State administrative rules.

6. Approval of this dwelling could potentially increase the number of dwellings that could be used to satisfy future template tests.

Hearings Officer: Approval of this application will not increase the number of dwelling that may be used to satisfy future template tests for dwellings on other parcels because the template dwelling criteria requires that a dwelling must be in existence on January 1, 1993 in order to be used to meet the template test.

7. Approval will seriously erode the low-density objectives of the East of Sandy River Plan.

Hearings Officer: The Plan specifically provides that density will be determined by the zoning regulations. As the Wentz application meets those regulations, its approval does not erode the density expectations of the Plan.

Conclusion

Considering the findings and other information provided herein, this application for approval of a “Template Dwelling,” to allow a new single family dwelling on Commercial Forest Use zoned property, as conditioned, satisfies applicable Comprehensive Framework Plan policies, East of Sandy River Rural Area Plan and Multnomah County Zoning Ordinance requirements. Compliance with local regulations establishes compliance with the applicable statewide regulations as well. The County regulations have been acknowledged by the State of Oregon as effectuating the requirements of State of Oregon forest zone regulations.

Dated this 24th day of November 1998.

Liz Fancher, Hearings Officer

Appeal to the Board of County Commissioners:

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed “Notice of Review” for and a fee of \$530.00 plus a \$3.70 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.