



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
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DECISION OF HEARINGS OFFICER

Case File: CU 4-97 & SEC 7-97

Scheduled Before: Liz Fancher, Hearings Officer

Hearing Place, & Time: 2115 SE Morrison Street, Room 111
Portland, Oregon 97214
Time: 4:00 pm

Proposed Action and Use: The applicant requests Conditional Use review and approval for development of a single family dwelling on the subject property.

Location: 14625 NW Skyline Blvd.

Property Description: TL '10', Section 25, T2N, R2W

Zoning: CFU, Commercial Forest Use
SEC-h, Significant Environmental Concern

Applicant/Owner: Michael R. and Marilyn Oliver
9665 SW Ventura Ct.
Tigard, OR 97223

Decision: Approval of the single family dwelling approved in Design Review case DR 13-96, based on the findings and conclusions contained below and subject to the conditions herein.

Conditions:

- I. The site plan is approved as submitted and as approved in Design Review case DR 13-96 and Grading and Erosion Control Permit GEC 22-96.

MULTNOMAH COUNTY
PLANNING SECTION

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2. No fencing shall be built and existing fencing shall be removed outside of areas cleared for site development except for existing areas used for agricultural purposes. Any such fences shall comply with the requirements of MCC 11.15.6426. Approval for the construction of fences must be obtained from Multnomah County, prior to construction.
3. Maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074 (A)(5).
4. The nuisance plants listed in MCC .6426(B)(7) shall not be planted on the property and shall be removed from cleared areas of the property. The Applicant shall comply with this condition during the life of this permit.
5. The owner of the tract shall 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 and comply with all provisions of MCC11.15.2052(A)(6).
6. Every chimney must have a spark arrester.
7. Approval of these applications is granted for the use described in the land use application. Commitments made by the Applicant in the land use applications regarding activities on the subject property which were relied upon by the County in approving this application and which were relevant to compliance with approval criteria are conditions of approval of this application.
8. 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).

Decision Format

This decision is based upon the staff report which was prepared by County Planning Division staff. The Applicant's response to an approval criteria is indicated by the notation "Applicant's Response." Planning Staff comments and analysis follow the Applicant's responses to the criteria, where supplemental information was needed or where staff did not concur with the applicant's statements. If no staff remarks were indicated, staff concurred with the applicant. The Hearings Officer has added her own findings below the Applicant and staff comments. Where no findings are listed, the Hearings Officer concurs with the findings made by the Applicant and staff and adopts such findings as her own.

Background

Applicant's Proposal: The Applicant is requesting approval of a single family dwelling in the CFU zone. The request is the same as that approved in CU 8-94, which expired 2/14/97 due to lack of substantial construction pursuant to MCC 11.15.7110 (C) (3). During the two year period that CU 8-94 was in effect, the applicants successfully completed the Design Review and Grading and Erosion control permit processes by obtaining both permits (DR 13-96 and GEC 22-96). This request is to re-approve the same dwelling and development plan that was considered and approved for DR 13-96 and GEC 22-96, which remain in effect.

Description of Site and Vicinity: The subject property is situated on the west side of NW Skyline Blvd., approximately one-half mile south of its intersection with Rock Creek Road. Land uses in the area consist of small fields near Skyline Blvd., with primarily forest uses on the steeper slopes. Dwellings in the area south of the subject site are spaced at intervals of up to one-fourth mile along Skyline Blvd, with wider spacing in the area north to Rock Creek Rd. These existing dwellings range from 100' to 1000' feet from the road, with the majority located less than 400' from Skyline Blvd.

The property is triangular in shape and is undeveloped, with the central portion along the road consisting of a clearing. Forested areas exist along the south property line and along the southwest to northeast property line which follows a ravine. The proposed dwelling site is located on slopes of approximately 15% in the central portion of the property, and is set back between 97' and 116' west of the Skyline Blvd. right-of-way. Slopes increase to 40% with distance from the road.

Access to the dwelling site is from Skyline Blvd., with electrical power and telephone available at the road. Potable water will be from an existing well located on the property, and sewage disposal will be accommodated on-site, with a sandfilter subsurface system. Fire protection will be provided by the Tualatin Valley Fire and Rescue District.

Notification and Public Participation: Notice of the hearing Scheduled for April 16, 1997 and applicable criteria was sent to 14 neighboring property owners, interested parties, and applicable agencies on March 26, 1997.

Approval Criteria

The Hearings Officer finds that the Applicant's proposals meet the following Multnomah County Zoning Code approval criteria and Comprehensive Plan Policies and that such ordinances and policies are the approval criteria which govern review of this application:

1. Criteria for Approval of a Dwelling in the CFU Zone:

MCC 11.15.2052 (A): A template dwelling may be sited on a *tract*, subject to the following:

MCC 11.15.2052 (A)(1): The lot or lots in the *tract* shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;

Applicant: The property complies with the county "Lot of Record" requirements set forth in MCC 11.15.2062: Section 2, (a - d). There is only one lot in the tract.

The property was created in 1987 through an Exempt Minor Partition approved by the county in 1987. A copy of the tax assessor records is included to so verify. The lot satisfied all applicable laws when the parcel was created. The lot does not meet the minimum lot size requirements (80 acres) of MCC.2058. The lot is not contiguous to another substandard parcel under the same ownership.

Staff: The evidence for parcel creation is included in the form of a deed description and map in Exhibit A5, and in the Tax Assessor's Deed History included on the fourth page of Exhibit A8. Staff agrees that the parcel meets the lot of record requirements.

HO: The Hearings Officer finds that the subject property is a legal lot of record.

MCC 11.15.2052 (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 County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

Applicant: The dwelling site is located 93 feet from the centerline of the road at the front garage corner and 116 feet from the centerline of the road at the house front. It is more than 200 feet from all other property lines, approximately 437.5 feet from the south property line and 416 feet from the northwest property line by perpendicular measure.

HO: The proposed dwelling site meets the referenced setback standards.

MCC 11.15.2052 (A)(3): The *tract* shall meet the following standards:

- (c) The *tract* shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and
- (iii) 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

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

Applicant: Soils on the property are Cascade silt loam, with a potential yield of 140-164 cubic feet per acre. The potential yield on the 18.89 acre property is approximately 3000 cubic feet per year.

Tax assessor records show that all or part of 11 lots exist within a 160 acre template. Four houses had occupancy permits prior to January 1, 1993. A fifth house was determined by the hearings officer to have "existed" based on the following:

"for the purposes of MCC 11.15.2052, a dwelling "exists" when a substantial investment has been made in that dwelling. This interpretation of the term "exist" is reasonable under the circumstances because the purpose of the ordinance is to insure there has already been a significant investment in the development of residential dwellings in the area, such that the area already has a significant residential character. In other words, the purpose of this provision in the ordinance is to identify rural areas that have already experienced significant residential development."

In the case of the 5th house, evidence was presented that showed that prior to January 1, 1993, the foundation, foundation drains, posts and beam work were completed on the house located on tax lot 29. The Hearings Officer found that such level of development constituted a substantial investment in the dwelling and therefore, for the purposes of MCC 11.15.2052, that the fifth dwelling existed prior to January 1, 1993. An occupancy permit was issued for the dwelling in January.

Staff: The findings regarding the fifth dwelling are located on the second page of the Hearings Officer decision in CU 8-94, which is included as Exhibit C1 of this report.

HO: The County has previously determined that the fifth dwelling was a dwelling for purposes of the template test. This Hearings Officer finds that as the Applicant has acted in reliance upon this County determination and as the law regarding template dwellings has not changed since the Applicant applied for the prior conditional use permit, the Hearings Officer believes that she is bound to apply the law in the same manner as the prior Hearings Officer. The findings of Hearings Officer Phil Grillo, included in the record of this decision are, therefore, adopted as findings of compliance with this requirement of the template test.

MCC 11.15.2052 (A)(3)(d): Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

MCC 11.15.2052 (A)(3)(e): There is no other dwelling on the tract;

MCC 11.15.2052 (A)(3)(f): No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

MCC 11.15.2052 (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

MCC 11.15.2052 (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;

Applicant: No lots or dwellings are within the urban growth boundary. There are no other dwellings on the tract. Sections f - h do not apply because there are no other lots comprising the tract.

HO: The Hearings Officer concurs with the Applicant's proposed finding regarding subsections (d) - (h).

MCC 11.15.2052 (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.

Applicant: Documentation showing that Section 25 does not contain any significant wildlife or big game winter habitat has been submitted. A copy of the Comprehensive Plan Wildlife Habitat map is included with the application.

Staff: The Wildlife Habitat map is included as Exhibit A9.

HO: The Applicant has established that the proposed dwelling site is located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife.

MCC 11.15.2052 (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.

Applicant: This provision does not apply. Public road access is available on Skyline Blvd. An application to construct driveway access to the right of way was filed and a rural driveway approach permit has been granted.

HO: Road access is not provided by a road owned and maintained by a private party or by the Oregon Department of Forestry, BLM or the US Forest Service.

MCC 11.15.2052 (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 shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall 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 shall 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 shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

Applicant: At least 200 well distributed seedlings per acre are required to qualify for forestland status. In January 1997, 3300 seedlings were planted on 11 acres of meadow (300 trees per acre). The Oregon Department of Forestry reviewed and approved this plan prior to its implementation. Prior to planting, a stocking survey was submitted in May 1996. An updated stocking survey reflecting the recent planting will be submitted as soon as possible. Because of 12.76 acres of non use all 18.89 acres were removed from deferral status June 25, 1996 subsequent to submitting a stocking survey. Eleven acres have been replanted, so that now 17.39 acres of parcel is forested. Re-application for deferral status is underway.

Staff: A new stocking survey report dated March 14, 1997, which evaluates the reforestation which occurred in 1997, is included as Exhibit A14. Other than a recommendation to fertilize the recently planted trees in 5 years, no impediments for the tract to achieve the Department of Forestry stocking requirement after 5 years are identified. This, and the statement in the report that "overall natural fir is already dominant over alder competition", indicate that the parcel should be able to meet the stocking requirement.

HO: The Hearings Officer has included a requirement that the Applicant comply with the stocking requirement as the County code requires that such a condition be included in any conditional use permit for a template dwelling. The Hearings Officer recognizes, however, that the Applicant has taken significant steps to comply with the requirements

of a similar requirement in a prior conditional use approval and that those efforts may be sufficient to satisfy the condition of approval imposed in this decision.

MCC 11.15.2052 (A)(7): The dwelling meets the applicable development standards of MCC.2074;

Applicant: Documentation of compliance follows under the appropriate section.

MCC 11.15.2052 (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;

Applicant: The required statements was filed on October 14, 1994. A copy of this statement and receipt have been provided.

Staff: A copy of the statement is included as Exhibit A10.

MCC 11.15.2052 (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;

- (a) The covenants, conditions and restrictions shall specify that:
 - (i) All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and
 - (ii) No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;
- (c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

Applicant: This section does not apply. The tract has only one lot.

MCC .2074 - Development Standards for Dwellings and Structures: Except as provided for the alteration, replacement or restoration of dwellings under MCC

.2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

MCC .2074 (A) The dwelling or structure shall be located such that:

- (1) 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);**

Applicant: The dwelling has been sited in a previously cleared area of open field. It does not require destruction of wooded wildlife habitat or the removal of any trees. In compliance with MCC.2058 (C) - (G), the east (front) corner of the garage is approximately 93 feet from the centerline of the county road which exceeds the minimum requirement of 60 feet. The front of home is 116 feet from the road. The lot exceeds the minimum 200 feet required for yard dimensions in all other directions. The lot exceeds the minimum lot line length. Refer to the attached site plan for dimensions. The proposed structure will not exceed 35 feet in height.

Staff: Forest lands adjacent to the subject parcel exist to the east across Skyline Blvd., and along the northwest and south property lines. The site plan on the third page of Exhibit A15 identifies the dwelling location as 416' to the northeast property line, which is the closest distance to any forest land not separated from the parcel by a road. This location places the dwelling nearly equidistant from the south and northeast property lines. In addition, the setback from Skyline Blvd. places the dwelling below the road and creates both a visual and audio buffer with the parcel across the road to the east.

HO: The above findings of fact establish that the proposed homesite will have the least impact on nearby or adjoining forest or agricultural lands of any potential homesite allowed by law. The findings also establish that the proposed homesite complies with the minimum yard and setback requirements of .2058 (C) through (G);

- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Applicant: Current forest and farming practices will not be curtailed or impeded by the placement of the dwelling. Available forest land on the parcel remains accessible from Skyline Boulevard and from the proposed driveway. The property has been reforested. A contract for management of the forest resource has been signed with Meristem Reforestation Company. The plan was developed in consultation with Jay Worley of the Oregon Department of Forestry.

HO: The Applicant's proposed plan minimizes any adverse impacts on forest operations and accepted farming practices for the reasons given above and by the home location midway between the side lot lines and toward Skyline Boulevard. This home placement leaves a large area of the Applicant's property where commercial forestry practices could be conducted without interfering with the residential use of the property.

- (3) The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.**

Applicant: Less than 2 acres of land will be removed from forest production. The dwelling site is between the well and the approved septic field. Moving the house closer to the road would put it on top of the well. The land area between the house and the road has been planted with Douglas fir seedlings and will remain in forest production. The placement of the driveway was determined by assuring a 300 foot minimum sight distance from the curve in the road. A driveway access permit has been received.

HO: The Applicant has minimized the amount of land needed to site the dwelling and other structures, access roads and service corridor by placing the home relatively close to Skyline Boulevard.

- (4) 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**

Applicant: The driveway is less than 500 feet in length. This section does not apply.

- (5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) The proposed dwelling will be located on a *tract* within a rural 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 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 safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure**
 - (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	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 30	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....
- (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 Practices 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.

Applicant: (a) The property is within Multnomah County RFPD #20. Fire District Review and Fire Marshal Access Certification have been provided to the county.

(b) Access for a pumping truck will be provided including signs noting the location of a perennial water source within 15 feet of the drive.

(c) (I) A primary fire safely zone will be maintained as required.

(c) (ii) The slope of the property below the building site is greater than 10% but less than 20%. The primary fire safety zone will be extended as required.

(c) (iii) A secondary fire safety zone will be maintained as required.

(d) The slope at the building site is approximately 15%, less than the 40 percent maximum.

Staff: The slopes on the property vary from roughly 15 % to 20% in the area of the dwelling, to 24% to 32% for the first 50' behind and to the west of the dwelling site. This is based on the elevation survey provided by the applicant. A reduced scale of this survey is included as Map 4 of Exhibit A15. The increasing steepness of slopes west of the dwelling site require a primary fire break distance of 100', and this is indicated on Map 3 of exhibit A15. Maintenance of the necessary secondary fire safety zone can be added as a condition of approval.

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; and
- (3) Have a minimum floor area of 600 square feet.
- (4) Have a spark arrester on each chimney.

Applicant: The building will be attached to a foundation. It exceeds 600 square feet. There will be one chimney equipped with a spark arrester. The plan provides for a fire retardant roof of composition shingles (Arch 80 type). Plans and documents are currently under review by the city of Portland under application for a building permit.

Staff: Building plans which meet the applicable requirements of this section were approved by Multnomah County Planning on January 3, 1997.

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 groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, 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.

Applicant: A copy of the well log has been provided attached to the county form certifying water service.

Staff: See Exhibit A11.

MCC .2074 (D) A private road (including all 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 ½ the driveway length or 400 feet whichever is less.**

Applicant: The Fire Marshall has approved the driveway plan, which meets the standards of MCC.2074(D) Documentation has been provided to the county. Driveway specifications can be met during construction. An all weather surface 12 in diameter will be provided with a minimum curve radii of 48 feet. The driveway is 125 feet in length and therefore does not require a turnaround for the fire truck nor turnouts for passage of vehicles. The average slope of the driveway is less than 8% and does not exceed 12%. Landscape design and forestation plans comply with the required 13 foot 6 inch vertical clearance and 12 foot width required for the fire truck.

Staff: The applicant has designed a driveway which meets the requirements of this section. The site plan which shows the driveway location, width, length, and grade is included at the end of the staff report for DR 13-96, attached hereto as Exhibit C2.

2. Criteria for approval of SEC-h Permit, Wildlife Habitat:

A. MCC 11.15.6420: Criteria for Approval of SEC Permit (General Provisions):

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 the Multnomah County sectional maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

MCC 11.15.6420 (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.

Applicant: There are no rivers, streams, lakes or floodwater storage areas on the property. Two small seasonal creeks run along the property lines. The amount of water in the creeks vary with the season and are comprised of runoff from the subject property as well as from the adjacent properties to the south and north. One creek runs through the ravine on the south property line starting about three fourths of the way between the east and west property boundaries. A second seasonal creek runs through a deep ravine at the west end of the property. The northwest creek runs from approximately 450 feet below the building site on the north west boundary to 800 feet below the site on the west boundary (see plot plan). Sufficient drainage systems are in place for the dwelling so that no runoff from the house will reach the creek. A report of a soil engineer was submitted and a grading and erosion control permit has been issued by the county.

HO: The maximum possible open space has been provided between the residential use proposed in this application and a river, stream, lake, or floodwater storage area.

MCC 11.15.6420 (B): Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Applicant: The attached site map illustrates areas of mature Douglas fir and western red cedar as well as the recently planted 11 acres of Douglas fir seedlings which cover the previous meadow / grass field areas. The subject parcel is designated Commercial Forest Use (CFU) under the Multnomah County Comprehensive Framework Plan. Statewide Planning Goal 3 - Agricultural Lands and Goal 4 - Forest Lands were established in part to preserve and maintain agricultural lands and to conserve forest lands for forest uses. The County CFU zone has been deemed consistent with Goal 4 and provides for dwellings in certain instances. Compliance with the requirements of the CFU zone as demonstrated through this report ensures agricultural land and forest land will be preserved and maintained.

HO: The subject property is in the process of being reforested as required by the State forest resource rules. The subject property is not located in an area of agricultural lands.

MCC11.15.6420 (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.

Applicant: The building site was selected because it is just downhill (25 feet) from the existing well (installed in 1988) and just uphill from the approved septic field. Moving the building site from this location between the well and the septic field would require additional trenching, plumbing, and would take more land out of forest production. The site is situated approximately half way between the north and south boundaries of the property to minimize its impact on the farming and forest practices of the surrounding parcels.

MCC 11.15.6420 (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.

Applicant: There is currently no recreational use on this piece of private property, nor is any proposed. The property is not identified as being a necessary connection between recreation areas or bicycle corridors.

MCC 11.15.6420 (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.

Applicant: The issues pertaining to public safety are the location of the driveway access, preservation of visibility along the road for motor vehicles, and assurances that site maintenance and construction standards will minimize fire risks.

The driveway access was selected to provide an unobstructed view of at least 300 feet to the curve in the road on the south and 750 feet to the curve to the north. Tree planting has been kept at least 30 feet from the road. Trees will be pruned up so as not to obscure the visibility from neighboring driveways. A contract has been signed for grass control by backpack spraying to reduce fire fuels. The dwelling will include an alarm system, a fire retardant roof, and spark arrester for the single chimney.

MCC 11.15.6420 (F): Significant fish and wildlife habitats shall be protected.

Applicant: There are no fish habitats in the area. The property does not lie within a big game winter wildlife habitat. Wildlife in the area includes coyotes, birds, rodents, insects amphibians (lizards and snakes), and elk. Two elk herds have been known to roam the area. Recent reforestation has provided an environment akin to that of the surrounding residential parcels, which the elk seem to enjoy. There are no fences on the property and there are no plans for installing fences. Natural vegetation in the ravines will be preserved. There is no possibility of contamination of the seasonal creek at the west end of the property from erosion or runoff. The hillside has been re-forested and plans provide for storm runoff and household waste according to approved septic standards. No chemicals shall be used except those allowed under the State Forest Practices Act.

MCC 11.15.6420 (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.

Applicant: The only water on the property are two small seasonal creeks. There are no plans to remove any vegetation within over 500 feet of either creek. (refer also to sections A and F)

MCC 11.15.6420 (H): Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Applicant: There are no identified archaeological areas, or areas with historic, scientific or cultural value on the property. This section does not apply.

Staff: Staff acknowledges the likelihood of items of archaeological being located on site is limited. The applicant is advised that, if archaeological object are discovered during construction, state statutes require construction be stopped and the State Historic Preservation Office be notified.

MCC 11.15.6420 (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.

Applicant: There are no such areas on the property. This section does not apply.

MCC 11.15.6420 (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 restrictions on timing of soil disturbing activities.

Applicant: A Grading and Erosion Control Permit was issued by the county December 26, 1996. Landscaping to control erosion includes landscape fabric, mulch, groundcover (lawn) and shrubs which will be in place before November. Erosion control practices (as per the plan) will be implemented during construction. Reforestation of the hillside has been completed.

Staff: A copy of the staff report and erosion control plan approved in GEC 22-96 is included as Exhibit C3 of this report. This approval remains in effect for the project as approved, and demonstrates compliance with this criterion.

MCC 11.15.6420 (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.

Applicant: The proposed residence is not a noise generator and is not in a noise impacted area. Set backs from the north and south property boundaries will insure minimum impact on the adjacent residences. Water quality standards can be met as evidenced by the approved Land Feasibility Study for on-site sewage disposal.

MCC 11.15.6420 (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.

Applicant: The design review has been completed by the county. A Design Review Permit was issued by the county December 23, 1996. The building is a daylight basement residence, designed to take advantage of the natural slope of the land, and requires a minimum of excavation. The house shall be barely visible from the road because it is a single story and a tree buffer has been planted. The home takes advantage of passive solar heating through window placement on the west side. The color will be an earth tone in the gray - taupe range.

Staff: See Exhibit C2 for the staff report demonstrating compliance with the Design Review ordinance requirements. This approval remains in effect for 18 months consistent with the provisions of MCC .7870.

MCC 11.15.6420 (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 natural vegetation, shall be retained in a natural state to the maximum extent possible.

Applicant: The area has not been recognized as fragile, nor have any endangered plants been identified on the parcel. If there were any, they would have to be deep within the wooded ravines. No removal of plants or vegetation is planned for those areas. They are to be retained in their natural state. This criteria is not applicable.

MCC 11.15.6420 (N): The applicable Policies of the Comprehensive Plan shall be satisfied.

Applicant: It is intended to follow the applicable policies of the Comprehensive Plan.

Staff: The County requires a finding prior to approval of a Legislative or Quasi-Judicial Action that the following factors have been considered. Since this application involves a Quasi-Judicial Action, Plan Policies 13, 22, 37, 38, and 40, are addressed in part 3. of this report.

B. MCC 11.15.6426: Criteria for approval of SEC-h Permit Wildlife Habitat:

MCC 11.15.6426 (B): Development Standards:

Applicant: The applicants believe the project complies with Section B. However, if the planning director disagrees with the applicants' analysis of subsection 4, the applicants wish also to argue for approval under (C) (2) and (C) (3). Such argument follows the written description for Section 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.

Applicant: The building site is in a cleared area. The site was approved in CU 8-94 (now expired). The site was not replanted in anticipation of the dwelling. No trees or vegetation other than grass / weeds need to be removed to construct the dwelling at this site.

Staff: The ordinance defines "non-forested cleared areas" in section .6426(A)(1), as areas which are not forested, and which are "not being reforested pursuant to a forest management plan." The proposed dwelling site is the only cleared area on the site.

Exhibit A-14 is the stocking survey which reflects planting which has already occurred to implement the reforestation plan the applicant references under subsection (4) below. The survey report map confirms that all of the previously non-forested areas of the property except for the proposed building site have been replanted.

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

Applicant: The building site is 93 feet from the public road at the garage corner and 116 feet from the public road at the house corner. (see plot plan)

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

Applicant: The driveway is 125 feet long. (see plan)

(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.

Applicant: The adjacent property to the north has a driveway within 200 feet of the subject property boundary. In fact the driveway is at the property boundary. Owners of that property (parcel 8) had no other option for driveway / access placement due to the triangular shape of their parcel which provides only 75 feet of frontage on Skyline Blvd.

However, the criteria of MCC.6426 (B) (4) cannot apply to the subject property for the following reasons:

MCC 11.15.6426 (B) Development Standards require (1) "Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, . . ." MCC 11.15.6426 (A) (1) defines "non forested "cleared" areas 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."

The reforestation plan for the subject property was developed in the summer of 1995 and approved by the Oregon Department of Forestry in October 1995 for implementation between October 1996 and March 1997. Site preparation took place as scheduled in the fall of 1996 and replanting was completed in February 1997 in accordance with the pre-approved plan. Also in accordance with the plan, slightly more than one acre was left unplanted or "cleared" to accommodate the dwelling site which was approved under CU 8-94 (now expired).

Any alternate sites on the subject property within 200 - 300 feet of the north boundary cannot be approved for building because they qualify, according to the definition of MCC 11.15.6426 (A) (1) as a forested area, including areas which have "at least 75%

crown closure" as well as areas which are "being reforested pursuant to Forest Practice Rules of the Oregon Department of Forestry."

Locating the dwelling within 200 - 300 feet of the northwest property line would require removal of trees (both mature trees and seedling trees) from within a forested area. Such development would be in conflict with the Development Standards (B) which require that where a parcel contains "**any** non-forested cleared areas, development shall **only** occur in these areas, " (bold mine)

Staff: The site plan of the third page of Exhibit A-15 identifies the driveway location as 612' south of the north property line, therefore this standard is not met. The applicant's response above demonstrates that the standard cannot be met because the only cleared area which can meet the standard under (1) above exists further than 100 feet from the north property line. In addition, staff notes that the 200' dwelling setback requirement from a side property line under MCC .2058(C) results in a minimum dwelling location of approximately 300' when the dwelling would meet the minimum front setback of 60' from the center of Skyline. This circumstance results from the triangular shape of the parcel. In this situation, the only way the applicant could comply with the setback standards of the CFU zone, and both standards (1) and (4) of this section would be to construct a driveway parallel to Skyline for a distance of 500', rather than taking the shortest route as is proposed. The physical circumstance of the location of the only cleared area on the site, and the triangular shape of the parcel do not allow this standard to be met.

HO: The requirements of this section apply to the subject property. As the Applicant's plan does not comply with the requirements of the section, a wildlife conservation plan is required. MCC 11.15.6426(C).

(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.

Applicant: There are no structures within 200 feet of the property lines.

(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.

Applicant: No fencing is currently planned. This section does not apply.

HO: Any future fencing on the subject property must comply with the requirements of this section during the life of the template dwelling.

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

Applicant: None of the listed "nuisance" plants are in the landscaping plan or will be introduced. There is a small patch of scotch broom and moderate sized patches of blackberries on the parcel. A contract is in place with Meristem Reforestation to remove them.

HO: The Applicant shall keep the subject property free of nuisance plants. This requirement has been made a condition of approval of this application.

MCC 11.15.6426 (C): Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having less detrimental impact on forested wildlife habitat than the standards in Section B.
- (3) The wildlife conservation plan must demonstrate the following:
 - (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
 - (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
 - (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing areas used for agricultural purposes.

(d) That revegetation and enhancement of disturbed stream riparian areas occurs along drainage's and streams located on the property occurs.

Applicant: The proposed location of the dwelling is preferable to any alternative site with driveway access within 100 feet of the north boundary. Such driveway access would require siting the dwelling within 200 - 300 feet of the north boundary (to comply with required driveway length limitations). Any such siting would be undesirable for the following reasons:

1. Issues relating to the seasonal creek

The boundary due north is very close to the seasonal creek. In fact the seasonal creek begins here as drainage from the road, the subject property, and the adjacent property to the north. That drainage runoff becomes a creek and flows through the ravine which defines the northwest boundary between the two parcels.

MCC .6420 (A) requires that "the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream," etc. Any dwelling site within 200 - 300 feet of the northwest boundary does not meet this criteria because there is clearly a better alternative. The site as proposed in the application does comply with this criteria stated in MCC .6420 (A).

There would most likely be a greater possibility of pesticides and fertilizers finding their way into the drainage if the dwelling were located just 200 - 300 feet above the seasonal creek, as opposed to the more than 400 foot distance proposed in the application.

Relocating the dwelling site to within 200 - 300 feet of the north boundary would place the on-site drainage of the sand filtration / trench type required by the Sanitarian undesirably close to the creek. Moreover, locating the dwelling within 200 - 300 feet of the north property boundary would require removing vegetation from within 500 feet of the creek, an activity prohibited by MCC .6420 Section G.

Staff: The provisions of subsection (C)(1) apply because Development Standard (B)(4) cannot be met due the physical circumstances unique to the property. The standard of (B)(1) which requires development to be located in a cleared area can only be met by the proposed dwelling location as addressed in the findings for that section. Staff interprets the ordinance requirements of (C)(1) and (2) to be met when the provisions of (C)(3) are satisfied.

A finding that subsection (C)(3) is satisfied is supported by the applicant for the following reasons. The minimization of impacts to forested areas under (C)(3)(a) are satisfied because establishment of the dwelling site occurred through reforestation rather than clearing. No forest canopy cover was disturbed. The newly cleared area standard of (b) is shown to be satisfied on the maps in Exhibit A-15 by designation of less than

one acre for the dwelling and yard. The fencing requirement of (c) can be addressed by a condition of approval which requires compliance with the standards of MCC .6426(B)(6) and this standard. No disturbance of the seasonal drainage along the northwest property line has occurred based on Map 3 on the 6th page of Exhibit A-15.

HO: A condition of approval has been included with this decision to assure compliance with the limitations upon fencing imposed by this section.

3. Multnomah County Comprehensive Plan Policies:

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, 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.

Applicant: The area has not been recognized as fragile, nor have any endangered plants been identified on the parcel. If there were any, they would have to be deep within the wooded ravines. No removal of plants or vegetation is planned for those areas. They are to be retained in their natural state. This criteria is not applicable.

HO: The County is responsible for determining the applicable review criteria for a land use application. County staff has accepted the Applicant's position that this plan policy does not apply to review of this application. No party has challenged this determination.

Policy No. 14, Development 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%;
- B. Severe soil erosion potential;
- C. Land within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface; and
- F. Lands subject to slumping, earth slides or movement.

Applicant: Slope on the property ranges from 8 to 15 % according to the Department of Agriculture's data. However, there are steeper areas on the property, although no

alteration is planned in those areas. The proposed dwelling site has a slope of 15%. No development is planned for the steep areas in the ravines on the south and northwest boundaries. County Geological and Slope Hazard Maps indicate that the property has low erosion potential. The property is not within a 100 year flood plain.

The soil on the property is cascade silt loam, symbol 7C at the building site. The soil survey does not indicate that the land is subject to slumping, earth slides or movement.

Findings from auger borings taken in December are as follows:

0-18 inches (silt soil and wet), 18-42 inches (silt soil and moist to wet)

The content of the soil is such that it drains slowly. Therefore a sand filtration / trench septic system will be required to meet the requirements of the sanitation department. Such a system is in the design plan and was approved based on the moisture content of the soils.

Policy No. 22, Energy Conservation: The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- A. The development of energy-efficient land uses and practices;
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

Applicant: The parcel is in a rural area. Urban energy, transportation and lotting pattern issues do not apply.

Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:

WATER DISPOSAL SYSTEM:

- 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.

DRAINAGE:

- E. There is adequate capacity in the storm water system to handle the increased 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 adjacent lands.

ENERGY AND COMMUNICATIONS:

- H. There is an adequate energy supply to handle levels projected by the plan; and
- I. Communications facilities are available.

Applicant: Approval forms have been submitted showing there is a private well with a yield of 10 gallons per minute, that the site is served by PGE and US West, and that the dwelling can be served by an on-site septic system. Additional documentation was provided as part of the Grading and Erosion Permit application documenting provisions to handle runoff on the site.

Staff: The applicable service provider forms are in Exhibit A-11. The Grading and Erosion Control Permit is in Exhibit C-3.

Policy No. 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.
- 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.
- D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

Applicant: Review forms and appropriate comments have been included from the school district, fire district and police district which show that services can be provided and the development shall not negatively impact those departments or agencies.

Policy No. 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.**
- B. **Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- C. **Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Applicant: The property is not identified as being a necessary connection between recreation areas or bicycle corridors.

CONCLUSIONS:

1. The subject parcel and proposed dwelling meet the template tests and development standards of the CFU zone.
2. The development plan meets the requirements of the SEC overlay zone.
3. The applicant has carried the burden of demonstrating compliance with the applicable Comprehensive Plan Policies.

Appeal to the Board of County Commissioners:

The Hearings Officer's 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 \$500.00 plus a \$3.50 - 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.

CU 4-97 and SEC 7-97 Application Timeline:

Application received with full fees: 3/7/97

Determination that application is complete: 3/7/97 **Begin "120 day timeline"**

Staff Report available: 4/9/97

Public Hearing before Hearings Officer: 4/16/97 **Day 40**

List of Exhibits for CU 4-97 and SEC 7-97

"A" Applicant Initial Submittals:

- A1 Conditional Use App. Form
- A2 SEC App. Form
- A3 CU Narrative 3/6/97 (4 pgs)
- A4 SEC Narrative 3/6/97 (9pgs)
- A5 "Exhibit A" Legal Description
- A6 Soils Productivity / Wood Fiber
Production Information
- A7 Lot Creation / Existing Dwelling List
- A8 Assessor's Tax Lot Deed History
(11pgs)
- A9 Wildlife Habitat Map
- A10 Deed Record of Farm/Forest
Management Practices
Acknowledgement
- A11 Service Provider Forms
- A12 Approved Road Approach Permit
- A13 Assessor's Map with Subject Parcel
Highlighted
- A14 Forest Stocking Survey Report
- A15 Map and Site Plan Index and
Maps/Plans (9pgs)

"B" Notification Information

- B1 2/26/97 Notice of Public Hearing
- B2 Affidavit of Posting 4/7/97

"C" Staff Report

- C1 CU 8-94 Hearings Officer Decision
- C2 DR 13-96 Staff Report
- C3 GEC 22-96 Permit