



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
(503) 248-3043 FAX: (503) 248 -3389

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER

This Decision consists of conditions, findings of fact and conclusions

MARCH 16, 2000

Case File: CU 4-99 and SEC 27-99

Proposal: Conditional Use and Significant Environmental Concern permits to establish a single-family residence under the "template dwelling" approval standards in the Commercial Forest Use District.

Location: 18985 NW Morgan Road
Tax Lot 39, Section 12, T2N, R2W, WM
Tax Account # R-97212-0390

Applicant/Owner: Eugene Still, Jr.
4326 NE 32nd Place
Portland, OR 97211

Site Size: 22.77 acres

Current Zoning: Commercial Forest Use (CFU-2)

Approval Criteria: Multnomah County Code (MCC): MCC 11.WH.2042
Commercial Forest Use; MCC 11.15.7105 Conditional Use;
MCC 11.15.6400 Significant Environmental Concern;
Comprehensive Plan Policies 13, 14, 16, 22, 37 & 38

I. Hearings Officer Decision:

Approval of the proposed Conditional Use, CU 4-99, for a "template dwelling" to allow the placement of a single-family dwelling, pole barn, and a private driveway on Commercial Forest

Use zoned property. The applicant's submitted materials demonstrate that the application meets the applicable Multnomah County Code provisions and Comprehensive Plan Policies.

II. CONDITIONS OF APPROVAL

1. This approval is based on the submitted material. The proposed development shall be constructed on the site in accordance with the design, size, and location shown and described in the application materials submitted by the applicant. Additional submittals and actions may be required of the applicant as noted in these Conditions of Approval.
2. The applicant shall make an appointment with the Staff Planner, Kerry Rappold, at Multnomah County, (503) 248-3043, for building permit sign-off. The applicant shall bring five (5) sets of site and building plans to the County for sign-off prior to submittal of the building permits to the Portland Building Department.
3. A Grading and Erosion Control (GEC) Permit will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards. The GEC Permit will be required only for areas of soil or earth disturbance not covered under the Oregon Department of Forestry (ODF) permit. The proposed surface/subsurface infiltration system shall be reviewed under the GEC permit.
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, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
5. Prior to issuance of a dwelling building permit, provide verification that the proposed driveway from the public road to the home has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW. [MCC 11.15.2074 (D).] That verification shall be from a qualified professional engineer accompanied by sufficiently detailed maps, cross sections, and profiles.
6. The applicant shall submit a well report demonstrating compliance with MCC 11.15.2074 (C) before the County issues a building permit. At that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
7. Any exterior lighting shall be shielded and directed downward. Shielding and hooding materials shall be composed of nonreflective and opaque materials.
8. Prior to any earth movement, construction fencing shall mark the boundary of the area to be cleared in order to protect the trees that are to remain.
9. No trees, shrubs or plants that are listed within the table in MCC 11.15.6426(B)(7) shall be planted within the landscape area or on-site. The submitted landscape plan shall comply with the following requirements: 1) Areas disturbed by clearing and grading or any existing

cleared areas shall be replanted with native vegetation; 2) Construction fencing shall be installed around the area to be cleared in order to protect the trees designated to remain.

10. If there are any nuisance plants in the location of the proposed development, they shall be removed.
11. A forest stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6).
12. The property owner shall maintain the primary and secondary fire safety zone as required in 11.WH.2074 5c(i) and (iii).
13. The applicant shall call for a final inspection of the site to ensure that the fire safety zone requirements are met.
14. No additional land use action and/or permit requests shall be accepted, relating to the subject application, until all required fees for the said application have been paid in full.
15. 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 Conditional Use:
 - A. Applying for and approval of a Grading and Erosion Control Permit;
 - B. Forest stocking survey report submitted;
 - C. Fire safety zones cleared and inspected by Planning staff;
 - D. Submittal of a well drilling report, then 10 day opportunity for parties entitled to notice to appeal determination that the well report satisfies the service requirements of Comprehensive Plan Policy 37, Utilities.
 - E. Application for right-of-way permits for a new driveway, if applicable, and construction of the driveway to the design and specifications shown on plans submitted with the Conditional Use application, and;
 - F. The conditions of approval relating to the fire retardant roof, chimney spark arresters, foundation, and floor area are shown on the building plans.
 - G. 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)].

16. The applicant shall submit a completed statement that the owner and successor in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rule, and to conduct accepted farming practices meeting requirements of MCC 11.WH.2052(8). Forms are available at the Land use Planning counter at Multnomah County.
17. The applicant shall submit evidence before the county issues a building permit, that the covenants, conditions and restrictions form adopted as Exhibit A to the Oregon Administrative Rules, Chapter 660, Division 6, or a similar form approved by the planning director has been recorded precluding all future rights to site another dwelling on the tract and
18. The applicant shall retain existing vegetation (that is not listed in the table in MCC 11.WH.6426(B)(7)) for screening. Trees planted for screening purposes shall be coniferous. The applicant shall properly maintain any vegetation used for screening.

III. Background:

The applicant requests approval of a "template dwelling" to allow him to place a single-family dwelling, pole barn, and a private driveway on the subject lot. The subject lot is 22.77 acres in size and zoned Commercial Forest Use (CFU-2). Access to the lot is available from NW Morgan Road on the southwest side of the lot. The subject property is undeveloped, and has been previously used for agricultural purposes. No rivers, creeks, lakes or wetlands are found within the property's boundaries. The subject lot has a steep rise from Morgan Road to a hill on the property, and then gradually slopes down toward the Columbia Slough to the east. The part of the lot directly adjacent to Morgan Road is within an identified slope hazard area, and the entire property is designated a Significant Environmental Concern for wildlife habitat (SEC-h) and scenic views (SEC-v).

Multnomah County zoning on adjacent properties is Rural Residential to the north and west of the property and Commercial Forest Use (CFU-2) to the south across Hwy 30 lands are zoned MUF-20 with a Willamette River Greenway designation. The area to the north and west is composed of small residential lots. Most of these lots have existing homes. Morgan Road bounds the lot on the southwest, and Highway 30, owned by the State of Oregon, borders on the east.

IV. TESTIMONY AND EVIDENCE PRESENTED

1. The exhibits listed in the Exhibit List CU 4-99/SEC 23-99, which is attached hereto as Exhibits "A," "B" and "HO" were reviewed by the Hearings Officer and received in reference to this application.
2. A public hearing was held on January 19, 2000.
3. Kerry Rappold, County Planner, summarized the history of the application and the Staff Report. The staff recommended denial of the application because it concluded that there was no evidence that the parcel was a "lot of record."
4. Gregory G. Lutje, attorney representing the applicant, submitted Exhibit HO1, a map depicting the lands conveyed in the 1942 deed (the beginning of the chain of title for the subject property, and Exhibit HO2 a memo dated January 19, 2000 with attached exhibits. Mr. Lutje argued that the subject parcel was created in 1971, before Multnomah County had a partitioning ordinance, when the owner of the "parent parcel," The Vernon Co., conveyed Tax Lot 16 to the Oregon Department of Transportation (ODOT). According to Mr. Lutje, that conveyance created Tax Lot 16, the parcel conveyed out of the center of the Vernon holdings and two remainder parcels - Tax Lot 2 (located between Hwy. 30 and the Columbia River), and Tax Lot 39, (located west of Tax Lot 16 and Hwy. 30). Multnomah County did not have a partitioning ordinance in 1971 when these lots were created. Nor did State statutes regulate partitioning until 1973. In the alternative, Mr. Lutje argued that the subject parcel was created in 1977, when the zoning on the subject parcel was changed from MUF-20 and the MUF-20 zoning provided that "Separate Lots of Record shall be deemed created when a street or zoning district intersects a parcel of land." When the MUF-20 zoning was applied to the subject parcel it was separated from the lands contained in Tax Lot 2 by Hwy. 30 and by intervening ownerships, now identified as Tax Lots 5, 16 and 22.
5. Jim Parr, the owner of property adjacent to the subject Tax Lot 39 at the northeast corner testified. He was neither supporting nor opposed. He said he was interested in how access will be provided to the subject property because there is a road, serving his property and accessing Hwy. 30 which dead-ends into Tax Lot 39 on the north. He would encourage access from NW Morgan Road.
6. The Hearings Officer indicated that portions of the chain of title to the subject parcel were not in the record. She asked the applicant to submit additional evidence concerning the chain of title of the subject parcel accompanied by maps depicting the sequence of the transactions. The public hearing was closed and the record was kept open for 21 days for the applicant to provide additional evidence, then for 21 days for the staff and Mr. Parr to provide additional evidence, followed by 14 days for the applicant to rebut any opposing evidence.
7. While the record was open the Hearings Officer received a letter dated February 7, 2000 from Greg Lutje, with attached exhibits, (all labeled Exhibit HO3) a letter dated March 2,

2000 from Greg Lutje (Exhibit HO4) and a letter dated March 2, 2000 from Kerry Rappold (Exhibit HO5).

V. Findings of Fact and Conclusions:

Note: The applicable approval criteria are addressed below. The Hearings Officer's findings and conclusions follow each criterion. Headings for each criterion are underlined. Multnomah County Code requirements are referenced using a **bold font**. The Hearings Officer has considered evidence and arguments submitted by the applicant and by the planning staff as well as other parties to the hearing. The Hearings Officer will set forth that evidence presented and determine which is relevant, reliable and credible. Following the summary of evidence and arguments the Hearings Officer will set forth her conclusions on each criterion. The Hearings Officer's Findings and Conclusions are in *italics*.

APPROVAL CRITERIA:

MULTNOMAH COUNTY CODE (ZONING ORDINANCE):

Commercial Forest Use Zone – CFU-2 West Hills Rural Plan Area:

MCC 11.WH.2044 Area Affected

MCC .2042 through .2075 shall apply to those lands designated CFU-2 on the Multnomah County Zoning Map.

MCC 11. WH.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.

MCC 11.WH.2048 Uses Permitted Outright

(A) The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:

- (1) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals, and disposal of slash;**

MCC 11.WH.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), and .2074.

Findings and Conclusions. MCC .2050(B) requires Conditional Use approval for a "template dwelling" in this Commercial Forest use zone district. The property owner has applied for a conditional use permit for a Template Dwelling pursuant to the provisions of MCC 11.WH.2052(A) and MCC.11.WH.2074.

MCC 11.WH.2052 Template and Heritage Tract Dwellings

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

- (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;

Findings and Conclusions. This provision provides only for the siting of a template dwelling on a "tract". This requires a demonstration that a "tract" exists. MCC 11.WH.2045 defines "Tract" as, "One or more contiguous Lots of Record in the same ownership". Thus, where, as here, the "tract" consists of only one lot, the applicant must prove that lot is a "lot of record" pursuant to MCC .2062.

The Hearings Officer concluded that the lot is a "lot of record" under MCC .2052 (A)(1) and MCC .2062. See discussion below under MCC .2062. Based on that conclusion, the dwelling and pole barn are proposed to be "sited on a tract." The subject parcel meets the lot of record standards of MCC.11.WH.2062(A) and (B). It was lawfully created in 1971, before January 25, 1990.

- (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.

Findings and Conclusions. This criterion requires the applicant to demonstrate that the dwelling will be sited on a "tract" of sufficient size to comply with specified siting standards. As indicated under MCC 11.WH.2062, the applicant has demonstrated the dwelling will be sited on a tract. The subject parcel contains 22.77 acres. (See Assessment and Taxation maps). It is of sufficient size to accommodate the dwelling in accordance with MCC.11.WH.2074.

- (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

Findings and Conclusions. *The tract is composed of soils that are capable of producing approximately 120 cf/ac/yr of Douglas Fir timber. (See Exhibit .2052(A)(3)(3)-1: Graphical Soil Analysis Report; Exhibit .2052(A)(3)(a-c)-2; USDA Soil Conservation Survey Report of Regional Soils; Exhibit .2052(A)(3)(a-c)-3; Assessment of Service Forester, Columbia Region, ODF, of Yield Potential on Subject Parcel.)*

- (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

Findings and Conclusions. *The applicant's Exhibit F-2 is a map showing the Property outlined and dozens of lots surrounding the Property on the West and the North. The Large Map Exhibit F-2 shows the Template Area outlined in red. The applicant determined the center of the center of the parcel by using the "balance on a pin" method approved by the Staff and the Board of County Commissioners. The applicant provided the chipboard cutout of the parcel used to determine the center of the center of the parcel.*

The subject parcel 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. At least 11 other lots were created adjacent to or nearby the subject parcel not later than the 1950's in the "Fairland" subdivision, according to the Multnomah County Tax Assessors records. There is an adjacent lot to the South, three more within 200 feet across NW Morgan Road and several more across Hwy 30. Refer to Large Map Exhibit. Lots are designated L6 – L11 on Exhibit F-2. The Multnomah County Public Record for each property, including Property Address (if any), Legal Description, "R" Account Number, Owner, and Map descriptors were provided. The applicant has also identified 17 additional lots within the Template Area that appear to qualify. The six (6) lots [plus 5 dwelling lots = 11 total lots] specified to meet the template requirements are:

- 1. Lot 6: 19200 NW Morgan Road. This 93,218 sq. ft. lot has a church on it constructed in 1960. It is across NW Morgan Rd. and up the street about four lots from the Subject Parcel. Only the lot is claimed for qualifying purposes.*
- 2. Lot 7: 19010 NW Morgan Road. This 155,073 sq. ft. lot has a single-family dwelling constructed in 1964 and owned by George and Sharon Ott. It is diagonally across NW Morgan Rd. from the Subject Parcel. Only the lot is claimed for qualifying purposes.*
- 3. Lot 8: No address, but lying on NW Clark Ave. This 16,117 sq. ft. lot is one of three lots owned by Randy & Vicky Wasteney. This lot is adjacent to a lot with a single-family dwelling owned by the Wasteney's. It is also adjacent to the Subject Parcel. It is used to pasture a horse. This lot was created sometime prior to 1960.*

4. Lot 9: 19005 NW Morgan Road, even though the lot faces and has road access on NW Clark Avenue. (Shown on the Legal Description with no address.) This 23,085 sq. ft. lot is also owned by Randy and Vicky Wasteneys. It is adjacent to the Subject Parcel. It has a single-family dwelling constructed in 1990. Only the lot is claimed for qualifying purposes.
5. Lot 10: No address, but lying on NW Clarke Ave. This lot, owned by the Wasteneys, is adjacent to a lot with a single-family own by the Wasteneys. It is also adjacent to the Subject Parcel. The 18,730 sq. ft. lot has on it a shed or small barn which is used for a horse and tack room. This lot was created sometime prior to 1960. Only the lot is claimed for qualifying purposes.
6. Lot 11: 19002 NW King Road. This 13,068 sq. ft. lot is improved with a single-family dwelling, constructed in 1953, owned by Susan Wiley, and used as a rental. It is "behind" the Subject Parcel. Only the lot is claimed for qualifying purposes.

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

Findings and Conclusions. Refer to Large Map Exhibit F-2. Five (5) Dwellings required to lie within the template area are designated D1 – D5. The Multnomah County Public Record for each property, including Property Address (if any), Legal Description, "R" Account Number, Owner, and Map descriptors was provided. A current Multnomah County map of the surrounding area is also attached, showing the cited dwellings within the template. The applicant's Exhibit D is a print-out obtained from a local title company that shows that there are a minimum of 44 residences within close proximity to the Property. Exhibit D also shows that the residences were constructed before 1993. The applicant has identified 15 dwellings that are most likely qualified within the template area. (Four additional homes exist, another is under construction, and a sixth dwelling is permit-approved. None of these is likely to qualify.) At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square. Six dwellings existing before January 1, 1993, are on lots adjacent to the subject property. No fewer than eight more are across NW Clark Road or NW King road or on NW Mann Avenue. A description of the five (5) dwellings specified to meet template requirements follows:

1. Dwelling 1: 19325 NW Morgan Road (shown in the Legal Description as "Lower Columbia River/Hy"). Built in 1931, this single-family dwelling is owned by the Vernon Co., a family-owned company, and occupied by James and Kelly Sue Munson. This dwelling is on a 12.58 acre lot adjacent (SE) to the Subject Parcel.
2. Dwelling 2: 19015 NW Morgan Road. Built in 1923, this single-family dwelling is owned and occupied by Robert and Bonnie Ray. This single-family dwelling, on the corner of NW Morgan Rd. and NW Clark Ave. is on a 26,571 sq. ft. lot adjacent to the subject parcel.

3. Dwelling 3: 19115 NW Morgan road. Across Clark Ave. from the Rays' home on NW Morgan Rd. is a single-family dwelling, built in 1953, owned and occupied by Betty Bottiger. The dwelling is on a 38,332 sq. ft. lot.
4. Dwelling 4: 20205 NW Clark Avenue. Built in 1953. This single-family dwelling owned and occupied by the Jacobs is on a 27,461 sq. ft. lot that is across the street from the Wasteney's.
5. Dwelling 5: 20215 NW Clark Avenue. Built in 1953. Douglas Norvald owns and occupies this single-family dwelling on a 37,461 sq. ft. lot on NW Clark that faces NW King Road and is across the street from the Wiley rental.

- (d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

Findings and conclusions. No lot or dwelling within an urban growth boundary is counted to satisfy MCC 11.WH.2052(A)(3)(a-c). See map of Regional Urban Growth Boundary and Exhibit .2052(A)(3)(c)(I)&(ii).

- (e) There is no other dwelling on the tract,

Findings and Conclusions. There is no other dwelling on the lot.

- (f) No other dwellings are allowed on other lots (or parcels) that make up the tract;

Findings and Conclusions. There is only one lot or parcel. There is no existing dwelling on the lot.

- (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

Findings and conclusions. There is only one lot or parcel. Only one dwelling is allowed on a lot. This criteria does not apply.

- (h) No lot (or parcel that is part of the tract may be used to qualify another tract for the siting of a dwelling;

Findings and Conclusions. There is only one lot or parcel. Only one dwelling is allowed on a lot. This criteria does not apply.

- (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.

Findings and Conclusions: The "subject property" is located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife. (See Exhibit B-1). The nearest big game wintering area is located in Section 12, Township 2 North, Range 2 West, approximately 3,000 feet west of the subject property. This criterion is satisfied.

- (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;

Findings and Conclusions. The "subject property" is adjacent to NW Morgan Road, a Multnomah County public road with an overall right-of-way of sixty (60) feet. Access to the parcel is via NW Morgan Road. (See Exhibit F: Site Map.) This criteria does not apply because access to the dwelling is a public road, not a private road nor a road owned by ODF, BLM or USFS.

- (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;

Findings and Conclusions: *In response to this criterion, the applicant submitted the following response in his "Supplement to Application for Conditional Use" Page 14:*

"The Service Forester, Columbia Region, Oregon Department of Forestry has developed a forestry plan for the subject parcel that calls for planting 400 or more trees per acre. Land preparation will be completed, the trees will be planted following approval of this application, and the required stocking survey report will be filed.

The applicant's submittal included sufficient evidence to satisfy the criteria of this section. Condition of approval #1 requires the applicant to submit a forest stocking survey prior to issuance of a building permit in accordance with the provisions of MCC 11.WH.2052 (A)(6).

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

Findings and Conclusions. *The applicant's submittal includes sufficient evidence to satisfy the criteria of this section. Condition of approval #11 requires the applicant to comply with the development standards of MCC .2074 by constructing in accordance with the design, size and location shown and described in the application materials submitted.*

(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;

Findings and Conclusions. *The required statement has not been recorded. The applicant has obtained and provided a copy of a statement to be recorded with the Division of Records. The form states that the owner and successors in interest acknowledge the rights of owners or nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. (See Exhibit .2052(A)(8). This requirement can be met as a condition of approval of the proposed Conditional Use. See Condition of approval number 16.*

(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).

Findings and Conclusions. *The required covenants, conditions and restrictions could be accomplished prior to approval of the building permit by a condition of approval. See condition of approval number 17.*

MCC 11.WH.2053 Use Compatibility Standards

Specified uses of MCC .2050(D), (E), and (F), and MCC .2054, and .2056 may be allowed upon a finding that:

(A) The use will:

- (1) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;

Findings and Conclusions. *The applicant submitted the following evidence. The applicant's evidence is uncontroverted. Consequently there is substantial evidence in the record that these criteria are satisfied.*

The property is bounded by (1) an adjoining farm (2) NW Morgan Road; (3) Hwy 30; and, (4) a row of residential developments on small lots on two boundaries. Across NW Morgan Road, to the south, several small parcels constitute a wooded area of several acres. Most of the immediate area (and, indeed, the areas traversing up NW Morgan Road or NW Logie Trail towards the West Hills) is zoned or occupied as Rural Residential or Commercial land. Consequently, farming/forestry practices occurring in the area occur only on the subject parcel and one adjoining parcel, with the exception of one tree lot in the neighborhood well away from any possible influence of the proposed development.

The improvements, including the driveway, of the adjoining 13-acre farm is generally along the farthest boundary of that parcel relative to the proposed development, excepting Hwy 30. An intervening stand of trees along NW Morgan Road on the adjoining parcel essentially lies between it and the proposed development. The proposed development could at most be moved approximately 100 feet farther from the boundary between the two parcels. The proposed development can have no impact on road access for the adjoining property, because such access now exists several hundred feet from the property line between the parcels and an additional hundreds of feet is available for additional or alternative access as required. Neither development is even in view of the other. The proposed development is not expected to interfere

with or affect road access, forest, nursery, or farm crop or livestock maintenance or logging or any other lawful practice on the adjoining farm. The proposed development will not create any off-site water run-off. Being literally hundreds of feet from the boundary between the two parcels and constructed in full compliance with building codes the proposed development cannot require development of any facility on the adjacent property for the control of water, effluent, or soil erosion. The proposed development will not require any modification in the adjacent owner's handling or use of pesticides, herbicides, fuels, or any other potentially toxic substance.

The applicant addressed several conditions concerning the forested area across NW Morgan. No parcel in the wooded area has any development. Because all of those parcels lie within 300 feet of an SEC-s-designated stream, the likelihood of any forestry practice actually occurring on those parcels is slight. No development on the subject parcel could affect road access to the parcels in question. The elevation of those parcels essentially "falls" at a steep angle down a considerable distance beginning at the edge of the road. Therefore, a person on the subject parcel might not even be aware of any activity occurring on the lands below the road. Any lawful farm/forestry practice in which one might choose to engage on the wooded parcels across NW Morgan Road could be conducted wholly without regard to the existence of the proposed development on the subject parcel. Consequently, neither interference of any sort nor added costs of any kind could be attributed to the proposed development. The proposed development could not conceivably interfere with or affect road access, forest, nursery, or farm crop or livestock maintenance or logging or any other lawful practice on any of the wooded parcels. The proposed development will create no water run-off on any land across NW Morgan Road. Being literally hundreds of feet from the road and constructed in full compliance with building codes, it cannot require development of any facility on the adjacent property for the control of water, effluent, or soil erosion. It does not require any modification in the future manner of handling or use of pesticides, herbicides, fuels, or any other potentially toxic substance.. Adjacent to that wooded area on NW Morgan Road (on the West), a large commercial site is being developed, so that the likelihood of that parcel ever being farmed or forested is low. If it or any other parcels across NW Morgan road were to be farmed or forested in the future, all of the conditions cited above would apply.

East of Hwy 30, directly across from the subject parcel and extending for a distance in both directions along it lie parcels between the highway and the Multnomah Channel that are agriculturally zoned and designated as Willamette River Greenway. The rights-of-way for the highway and the railroad line that runs alongside it extend for hundreds of feet. The highway is heavily traveled. Parcels facing the subject parcel are owned by the public through Metro and extend for thousands of feet along the Hwy. Whatever the ultimate uses for those parcels may be, farming and forestry are unlikely to be among them. The Applicant asserts that the proposed development could not conceivably interfere with or affect road access, land or facilities construction or maintenance, forest, nursery, or farm crop or livestock maintenance or logging or any other lawful practice on the farm lands to the east.

No farming or forestry practices occur on the small lots that border two sides of the subject parcel zoned Rural Residential. The requirement to protect farming/forestry practices does not apply to them.

This criterion is satisfied.

- (2) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and**

Findings and Conclusions. *The proposed development will not significantly increase fire hazard, the cost of fire suppression or the potential risks to fire suppression personnel. The Fire Chief of the Scappoose Rural fire Department has approved this proposed development. This criterion is satisfied.*

- (B) 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.**

Findings and Conclusions. *The Applicant has obtained the required form. A condition of approval of the Conditional Use requires the applicant to record the required statement with the county Division of Records.*

MCC.11.WH.2054 Accessory Uses

The following structures or uses may be authorized in this district provided they are customarily accessory or incidental to a permitted use:

- (A) Signs, pursuant to the provisions of MCC 11.15.7902-.7982;**
- (B) Off-street parking and loading as required by MCC .6100 through .6148;**
- (C) Type A home occupations pursuant to the definition and restrictions of MCC .0010 and .2053. Home occupations as defined by MCC .6100 do not allow the level of activity defined in ORS 215.448; and**
- (D) Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.**

Findings and Conclusions. *A pole barn and shed accessory uses are proposed. These accessory structures are customarily accessory or incidental to the forestry use permitted in this district.*

MCC.11.WH.2058 Dimensional Requirements

- (A) Except as provided in MCC.11.WH.2060 [Lots of Exception], .2061 [lot line adjustments] .2062 [lots of record], and .2064 [lot size for certain conditional uses not pertinent here], the minimum lot size shall be 80 acres.

Findings and Conclusions. *The lot of record exception applies to the 80-acre minimum parcel size in this CFU-2 zone. The size of the subject lot is approximately 22.77 acres. If the parcel complies with the lot of record provisions in MCC .2062, its lot size is consistent with the dimensional standards of the Code. As discussed under MCC 11.WH.2062 the lot meets the Lot of Record requirements. This requirement is satisfied.*

- (B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

- (C) Minimum Forest Practices Setback Dimensions from tract boundary- Feet:

	Other		
Road Frontage	Front	Side	Rear
60 from	130	130	130
centerline			
of road from			
which access			
is gained			

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.WH.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.WH.2074(A)(5)(c)(ii).

(D)

- (E) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Findings and Conclusions. *The applicant proposes that a driveway enter the development from NW Morgan Road. NW Morgan Road has a paved surface in good condition of twenty feet (20) and an overall right-of-way of sixty (60) feet. The proposed road access and driveway meet code requirements.*

- (F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Findings and Conclusions. The height of the proposed agricultural barn is approximately 15 feet. The height of the proposed equipment shed is approximately 10 feet. No chimney proposed will exceed the height limitation of 35 feet"

- (G) Yards for the alteration, replacement or restoration of dwellings . . . need not satisfy the development standards . . .

Findings and Conclusions. This criterion is not applicable here.

- (H) Agricultural buildings, as specified in ORS 455.315(2) and allowed under MCC .2048(C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .2074(A)(5)(c)(ii).

Findings and Conclusions. The proposed pole barn/equipment shed has a minimum forest practice setback of 130 feet (30 feet primary zone + 100 feet secondary zone) to all boundaries. A distance of not less than 50 feet is provided between the proposed dwelling and pole barn. A primary fire safety zone of 30 feet extends around the perimeter of the development. A secondary fire safety zone of 100 feet then extends around that primary safety zone, providing a total setback of not less than 130 feet to any boundary or public road. This criterion is satisfied.

MCC.11.WH.2062 Lot of Record

- (A) For the purposes of this district, a Lot of Record is

- (1) A parcel of land:

(a) * * *

(b) * * *

(c) Which satisfies the minimum lot size requirements of MCC. .2058. or

- (2) A parcel of land:

(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;

(b) Which satisfied all applicable laws when the parcel was created;

(c) Does not meet the minimum lot size requirements of MCC .2058; and

(d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

(3) A group of contiguous parcels * * *

(A) For the purpose of this subsection:

- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
- (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
- (3) Same ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

Findings and Conclusions. *To qualify for a template dwelling, the lot must satisfy three mandatory tests. First, the lot must be a Lot of Record under MCC.2062; second, the lot must have been legally created, and; third, the lot must have been created prior to January 25, 1990.*

The staff concluded that the applicant failed to demonstrate the lot is a Lot of Record. In reaching its conclusion, the staff relied on the definition of "parcel" in ORS 92 and the Multnomah County Code which states that a parcel is a unit of land that is created by a partitioning of land. Because there is no evidence of a partition the staff concluded that the lot was not created as required by the Code. However, ORS 215.010(1) provides that "As used in ORS chapter 215 The terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":

(a) *Includes a unit of land created:*

- (A) *By partitioning land as defined in ORS 92.010;¹*
- (B) *In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or*
- (C) *By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.*

Emphasis added. As discussed in more detail below, the Hearings Officer concludes that the parcel was created on April 27, 1971 by a deed by which the Vernon Co. conveyed the lands now identified as Tax Lot 16 (a 5.8 acre parcel) to the Oregon Department of Transportation. That conveyance created 3 parcels from the parent parcel owned by the Vernon Co.: (1) the subject parcel, (2) the parcel conveyed to ODOT and (3) a parcel now identified as Tax Lot 2 across

¹ ORS 92.010(5) "Parcel" means a single unit of land that is created by a partitioning of land.

Hwy 30 now owned by Metro. The subject parcel was created before Multnomah County regulated partitioning and before State land division law required counties to regulate partitioning.

The applicant provided copies of deeds in the chain of title to the subject property going back to 1914. The applicant submitted a map attached to his letter dated February 7, 2000. That map shows, in color-codes, the various transactions discussed here. The current tax lot numbers referred to in this discussion are those used on this map.

A January 23, 1942 deed for a probate sale from the Estate of Lena Matthia to John and Ida Britton is the starting place for constructing the transactions that lead to the conclusion that the subject parcel was created in 1971. That deed contains a metes and bounds perimeter description of a parcel which now contains the lots identified as Tax Lots 2, 5, 6, 16, 39 and a strip along the north edge of the subject property (the tax lot number is not apparent on the maps in the record). The deed expressly exempted from the conveyance two areas – (1) lands occupied by Hwy 30 and S.P. & S Railroad and (2) land sold to B.M. Hinds at Book 408 pages 548 and 552, which is the area now identified as Tax Lot 6. Not specifically excluded in the deed was a parcel that Fritz and John Mathias had sold to Charles Waltman sold in 1914 recorded at Book 668 Page 219. The 1914 deed conveyed the parcel now identified as Tax Lot 5, located at the SE corner of the subject property. Consequently, the Brittons took title on January 23, 1942 to a parcel that contained what are now identified as Tax Lots 2, 16 and 39 and the strip at the north edge of the subject parcel.

The Brittons sold the strip along the north side of their parcel to Henry and Anna Mann in April 1942. Book 673 Page 326. In July 1946 the Brittons sold their parcel to Leland and Vera Tooley. Book 1099 Page 417. The deed to the Tooleys excluded the parcel that had been sold in 1914 to Charles Walton (Tax Lot 5) and the strip sold to Henry and Anna Mann. Consequently, on April 1942 the Tooleys took title to a parcel that contained what are now identified as Tax Lots 2, 16 and 39. The Tooleys sold their parcel (and a parcel adjacent to Tax Lot 2 on the north, which is not relevant here) in 1954 to John and Lena Densen. Book 1658 Page 235. The Densens in turn sold the parcel to the Vernon Co. in 1961. Book 2096 Page 145.

The County adopted its first zoning in 1962 (Ordinance #100). The area west of Hwy 30 was zoned SR and the area between Hwy 30 and the Columbia Slough was zoned F-2. The SR zone had a minimum lot size of 40,000 square feet, a minimum lot width of 70 feet, a minimum lot depth of 100 feet and a requirement that all lots abut a street. The F-2 zone had a minimum parcel size requirement of 2 acres. The State land division act was amended by the 1969 Legislature to authorize, but not require, counties to regulate partitions (the creation of 2 or 3 parcels). Multnomah County did not regulate partitioning until 1978.

The Vernon Co. sold Tax Lot 16 to ODOT on April 27, 1971. That conveyance created 3 parcels from the original parcel (1) the parcel conveyed, Tax Lot 16, (2) the subject parcel on the west of Hwy 30, Tax Lot 39, and (3) the parcel between Hwy. 30 and the Columbia Slough, Tax Lot 2. The conveyance also rendered Tax Lots 39 and 2 noncontiguous. Between the Vernon Tax Lot 39 and the Vernon Tax Lot 2 there were intervening ownerships held by ODOT and the owners

of Tax Lot 6. Tax Lot 2 contained 41.51 acres, exceeding the minimum lot size of the F-2 zone. Tax Lot 16 contained 5.8 Acres and Tax Lot 39 contained 22.77 acres, exceeding the minimum lot size for the SR zone. It is apparent from the maps that the parcels also met the other dimensional requirements of the SR zone and F-2 zones respectively. Tax Lot 2 and Tax Lot 16 abut Hwy. 30. Tax Lot 39 abuts Morgan Road. The three lots created on April 27, 1971 met the requirements of the zoning code and the County had no applicable partitioning approval requirements. Consequently, all three lots, including the subject lot, were lawfully created on April 27, 1971. The deed creating the subject lot – the deed to Tax Lot 16 – was recorded in 1971 at Book 785 Page 1249. Finally the subject lot or parcel is not contiguous to another parcel under the same ownership because the conveyance of Tax Lot 16 to ODOT broke the contiguity between The Vernon Co.'s holdings and also because The Vernon Company sold Tax Lot 2 to Metro in 1997.

The Lot of Record requirements in MCC .2062(A)(2) are satisfied because: (a) a deed for the Property was recorded prior to 2/20/90; (b) the Property satisfied all the applicable laws when the Property was created; (c) the Property does not meet the minimum lot size requirements of MCC .2058, (which calls for an 80 acre minimum size); and (d) the Property is not contiguous to another substandard parcel or parcels under the same ownership.

- (B) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

Findings and Conclusions. The front lot line of the subject parcel exceeds the minimum required. This provision does not apply.

MCC 11.WH.2068 Access

Any lot in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles.

Findings and Conclusions. The subject parcel abuts NW Morgan Road. This criterion is satisfied.

MCC.11.WH. 2074 Development Standards for Dwellings and Structures. Except as provided for the alteration or restoration of dwellings under MCC.11.WH.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) 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).

Findings and Conclusions. *The applicant submitted the following evidence. The applicant's evidence is uncontroverted. Consequently there is substantial evidence in the record that these criteria are satisfied.*

The property is bounded by (1) an adjoining farm; (2) NW Morgan Road; (3) Hwy 30; and, (4) a row of residential developments on small lots on two boundaries. Across NW Morgan Road, several small parcels constitute a wooded area of several acres. Most of the immediate area (and, indeed, the areas traversing up NW Morgan Road or NW Logie Trail towards the West Hills) is zoned or occupied as Rural Residential or Commercial land. Farm and forest land in the area is constrained to that of the subject parcel, one adjoining parcel, and the forested parcels across NW Morgan Road.

The proposed development lies approximately two hundred (200) feet at its closest point from the boundary between the subject parcel and the adjoining farm. That boundary recedes at approximately ninety (90) degrees from the proposed development, so that the effective distance is even greater. No element in the design, siting, construction, operation, or maintenance of the proposed development, including, but not limited to, the minimal grading proposed, septic system, and drainage system, can have any impact whatsoever on the adjoining agricultural land. Thus, the proposed development has the least possible impact on it. At most the proposed development could be sited perhaps one hundred (100) feet farther from the boundary between the two parcels, but its impact on the adjoining land, already being minimal, could not be reduced.

No parcel in the wooded area across NW Morgan Road is developed. The parcels are separated by the sixty (60) feet of NW Morgan Road right-of-way, plus the minimum 130-foot setback required of the development. No possible alternate site that meets code requirements could move the development farther from the forested area or create less impact on that nearby forest land, most or all of which lies across NW Morgan Road.

East of Hwy 30, directly across from the subject parcel and extending for a distance in both directions along it lie parcels between the highway and the Multnomah Channel that are agriculturally zoned and designated as Willamette River Greenway. The rights-of-way for the highway and the railroad line that runs alongside it extend for hundreds of feet. Parcels facing the subject parcel are owned by the public through Metro and extend for thousands of feet along Hwy 30. Adjacent to that public land are parcels zoned for multiple agricultural uses. No potential alternate sites for the development could move the development farther from the agricultural land or create less impact on it. Any possible impact of the proposed development on this – or for that matter, any – land in the immediate area pales insignificance to the impact of the heavy vehicular traffic on Hwy 30 and NW Morgan Road, as well as that of the railroad trains.

The adjoining residences are located in a Rural Residential zone. This requirement does not apply to them.

This criterion is satisfied.

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

Findings and Conclusions. *The applicant submitted the following evidence. The applicant's evidence is uncontroverted. Consequently there is substantial evidence in the record that these criteria are satisfied.*

The subject parcel is essentially isolated, being bounded by Hwy, NW Morgan Road, small residential homesites along two boundaries, and an adjacent farm on a third. The 22.77-acre size of the subject parcel is not conducive to its profitability for use either as an "orphan" wood lot or as additional crop land by a remote owner or tenant. The proposed development will enable the owner to be present on the site to manage a small woodlot consistent with its zoning for farming/forest use. Stewardship of the land will be improved because the land will no longer be an orphaned, remote lot, but, rather, it will serve as the base for a potentially well-managed, efficient farm/forest operation. The development is sited at a location that minimizes the impact of the development on farm and forest operations on the parcel while meeting the Code's locational standards.

- (3) The amount of forest land used to site the dwelling or other structure, access road, or service corridor is minimized.**

Findings and Conclusions. *The applicant submitted the following evidence. The applicant's evidence is uncontroverted. Consequently there is substantial evidence in the record that these criteria are satisfied.*

The minimum land dedicated to any development in this forest zone is essentially determined by the zone-required one hundred thirty (130) feet setbacks surrounding any development for fire safety. The barn is sited just over fifty (50) feet distance from the dwelling, as required by fire safety standards to reduce its construction and maintenance costs by 50% or more, relative to its being sited at the minimum thirty (30) feet distance. With respect to siting the proposed development at alternative locations on the subject parcel, zone code restrictions are such that no other siting on the parcel would conserve more area than the proposed siting. At most, the development site could be moved approximately one hundred (100) feet towards the West boundary, but with no less impact on land use.

The length of the proposed driveway is approximately 300 feet. At an alternative location the driveway would be approximately 150 feet in length. The alternate location would require a Hillside Development Permit for cutting into an embankment and the removal of trees at great cost. The proposed driveway uses an existing road access, resulting in substantially less disruption to the land than would be required to build an additional road access.

- (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.

Findings and Conclusions. *The length of the proposed driveway is approximately 300 feet. This criterion 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 upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract.

Findings and Conclusions. *The subject parcel is within the Scappoose Rural Fire District. This criterion is satisfied.*

- (b) Access for a pumping 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.

Findings and Conclusions. *There is no perennial source of ground water on the lot. This criterion does not apply.*

- (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.
- (iii) 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

- (iv) 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. Assistance with planning forestry practices which meet these objectives may be obtained from the Oregon State 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.WH.2058(D) and .2075.
- (v) 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 Forestry Practice Rules.
- (vi) 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 the property line).

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

Findings and Conclusion. The area of the site where the building is proposed has a slope of less than 10 percent. The required minimum primary and secondary fire zone setbacks of 30 feet and 100 feet respectively are proposed. The applicant proposes to landscape and maintain vegetation as required. No requirement in (i), (ii), or (iii) restricts or contracts the forest plan developed for the parcel. Condition of approval #12 addresses the requirements of MCC 11.WH.2074 (A)(5)(c)(iii) and .2074 (A)(5)(c)(v).

(B) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

Findings and Conclusions. The applicant will meet this criterion by obtaining a building permit.

- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained.

Findings and Conclusions. *Not applicable.*

(3)

(4) Have a fire retardant roof; and

Findings and Conclusions. *The applicant proposes the structures will have fire-retardant roofs are proposed. Compliance with this criterion can be satisfied by imposition of conditions of approval. See condition of approval #4.*

(5) Have a spark arrester on each chimney.

Findings and Conclusions. *The applicant proposes that any chimney will have a spark arrester. Compliance with this criterion can be assured by imposition of conditions of approval. See condition of approval #4.*

(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 II stream as defined in the Forest Practices Rules.

(1) If the water supply is not available 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.

Findings and Conclusions. *Water will be provided by an onsite well. No permit is required for a well drawing under 15,000 gallons per day. These criteria are satisfied.*

(2) Evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water, or

Findings and Conclusions. *Not applicable.*

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

Findings and Conclusions. *No permit is required for a well producing less than 15,000 gallons of water per day.*

- (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.

Findings and Conclusions. Condition of approval#6 requires the applicant to submit a well constructor's report to the county upon completion of the well.

- (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 turn-around 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 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.

Findings and Conclusions. *The application states that driveway will be constructed to support a minimum gross vehicle weight (GVW) of 52,000 lbs. It has no bridge or culvert. The proposed access for fire apparatus has been approved by the Fire Chief of the Scappoose Rural Fire District. The applicant stated that the proposed driveway will have a width of 12 feet and meet the minimum outside curve radii requirements. According to the applicant the driveway will have an unlimited unobstructed vertical clearance. The proposed drive has a grade of 0-9 percent, except on short segment, which is not more than 12 percent. The proposed driveway is approximately 300 feet in length. A turn-around with an inside radius of not less than 25 feet and an outside radius of not less than 48 feet is proposed. The applicant did not propose a turnout because he was advised by the Fire Chief that no turnout is required on a driveway of less than 400 feet. The zoning Code however requires a turnout of the driveway is more than 200 feet in length, and this driveway is proposed to be 300 feet in length. The requirements of this section would be satisfied by compliance with condition of approval # 5.*

11.15.6404 Uses – SEC Permit Required

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

Findings and Conclusions. *The applicant proposes to construct a single-family residence and pole barn, which are conditional ("template dwelling") and accessory uses in the Commercial Forest Use (CFU-2) District. The applicant has demonstrated the requirements of the underlying district (CFU-2 – Template Dwelling) have been satisfied. Staff advised the applicant that SEC-h and SEC-v permits are required for the proposed development.*

11.15.6408 Applications for SEC Permit

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC .6420 through .6428, and shall be filed as follows:

- (A) For . . . an Accessory Use . . . in the manner provided in MCC .8210(B).
- (B) For a Conditional Use as specified either in the underlying district or . . . the SEC permit application shall be combined with the required application for the proposed action and filed in the manner provided in MCC .8210 and .8215.
- (C) An application for an SEC permit shall include the following:
- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC .6420 through .6428.

Findings and Conclusions: *The proposed development consists of a dwelling of approximately 2,500 square feet with an attached three-car garage; and a pole barn of 720 square feet with an attached equipment shed of 500 square feet. All are sited at the end of a driveway that extends from NW Morgan Road to the proposed site via a path designated by Staff. One alternative driveway, being located within 100 feet of the West boundary of the parcel, meets zoning requirements. A second preferred alternate driveway would access NW Morgan Road via a public access adjacent to the subject parcel and directly on the pertinent boundary. The site is wholly located within 200 feet of Morgan road and 300 feet of the West boundary.*

The dwelling is a single-story house of frame construction and so-called "ranch" design and exterior treatment to minimize its visual impact from a distance. The pole barn is a standard low-profile pole-barn with a service door, windows, and a double garage door to accommodate large equipment, such as a tractor. The equipment/implement shed is also a standard agricultural design with an open front and closed sides and rear intended to keep equipment out of the elements. The proposed development is amidst a group of homes and commercial sites in the immediate area. (The general area served by NW Morgan road and NW Logie Trail is heavily developed and populated.) Despite its zoning as a forest-use area, there is, in fact, relatively little farm or forest-use activity in the area. In addition to the proposed structures, the development includes implementation of a forestry plan that has been developed with the lead assistance of the Service Forester, Columbia Region, Oregon Department of Forestry. The applicant has applied for a grant through the forestry Incentive Program of the USDA, pursuant to this plan.

(2) A map of the property showing:

- (a) Boundaries, dimensions, and size of the subject parcel;**
- (b) Location and size of existing and proposed structures;**
- (c) Contour lines and topographic features such as ravines or ridges;**
- (d) Proposed fill, grading, site contouring or other landform changes;**
- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped area;**
- (f) Location and width of existing and proposed roads, driveways, and service corridors.**

Findings and Conclusions. *The applicant submitted exhibits .6408(C)(2)(a) through (f) containing the required maps. There is no existing structure. According to the application, proposed landform changes are limited to those required for creating a level area for constructing the dwelling and barn. The applicant proposes no tree removal and proposes to retain the desirable plants, shrubs, and ferns along fence and tree lines. According to the applicant, areas of dense blackberry growth and the field will be cleared pursuant to the farming and/or forestry plan developed for the parcel. The applicant also proposes to plant several trees to obscure the view of the proposed dwelling from the Multnomah channel.*

11.15.6409 Applicable Approval Criteria

- (A) The approval criteria in MCC .6420 shall apply to those areas designated SEC on the Multnomah County zoning maps.
- (B) The approval criteria that apply to uses in areas designated SEC-w, SEC-v, SEC-h and SEC-s on Multnomah County zoning maps shall be based on the type of protected resources on the property, as indicated by the subscript letter in the zoning designation, as follows:

zoning designation	approval criteria
SEC-w (wetlands)	MCC .6420
SEC-v (scenic views)	MCC .6424
SEC-h (wildlife habitat)	MCC .6426
SEC-s (streams)	MCC .6428

* * *

- (C) An application for use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.
- (D) For Goal 5 resources designated "2A" or "3A", a proposed development must comply with the approval criteria in order to be approved.
- (E) For Goal 5 resources designated "3C", the approval criteria shall be used to determine the most appropriate location, size and scope of the proposed development, in order to make the development compatible with the purposes of this section, but shall not be used to prohibit a use or be used to require removal or relocation of existing physical improvements to the property

Findings and Conclusion. *The subject parcel is in an area designated as SEC-h and SEC-v. This application addresses both.*

11.15.6420 Criteria for Approval of SEC Permit

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

- (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.

Findings and Conclusions. *There are no rivers, lakes, streams, or wetlands on the subject parcel. A SEC-designated stream bed lies across heavily-traveled NW Morgan Road. At its closest point to any boundary of the subject property, the streambed lies not less than 475 feet distant and is not less than 600 feet distant to the nearest point of the proposed development. The proposed development will have no measurable impact on this stream or any river, lake, wetlands, or floodwater storage. Inasmuch as the property boundary essentially parallels the designated streambed, and the development is proposed to be situated at the maximum 200 feet allowable setback from NW Morgan Road, the proposed development meets the requirement.*

- (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Findings and Conclusions. *For the last 45 years the property was continuously in use variously in farming row crops, nursery stock, orchard crops, grain crops, and livestock. There is a grove of apple and cherry trees where the parcel slopes towards Hwy 30. Virtually the entire cleared area of the property is appropriate for some type of farming or forestry.*

The previous continuous farm use of the parcel was enabled and supported by facilities for equipment, supplies, and inventory storage, workshops, and water, feed stations and shelter for livestock located on an adjacent parcel of land. Purchase of the subject parcel by the Applicant resulted in the loss of use of those facilities. To either continue existing farming use or to pursue the proposed forestry use requires construction of the proposed building and a shed for storage and maintenance of farm/forest supplies and equipment. The parcel presently lacks a tax "farm deferral." The proposed development of the building and shed will require approval of tax-deferred farm status.

With the exceptions of variations in elevation and sight lines, the site selected for development is similar to any other potential site that meets code requirements on the parcel (which is to stay within 300 feet of one of two boundaries with adjacent development and within 200 feet of a public road). The proposed site has no greater measurable impact on potential agricultural or forest production than any other potential site on the parcel, and requires less disturbance of the soil (grading) than other potential sites would require. The proposed development preserves land for farm and forest use as well as any other possible location on the parcel. This criterion is satisfied.

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

Findings and Conclusions. *Site selection is highly constrained by zoning requirements. According to the applicant, at most the proposed site could be moved approximately 5 feet closer to NW Morgan Road and/or approximately 125 feet closer to the boundary on the West. As one moves away from the selected site towards the West boundary, however, the elevation drops significantly. A building site at that location would result in (1) a dwelling with no view of a distant horizon which can be viewed from the present location, or (2) increasing site preparation costs with greater disruption of the land.*

According to the applicant he located the dwelling site so that its visibility from any area, including all areas of visual significant environmental concern, is from a distance of not less than approximately 1.5 miles, excepting the heavily wooded West Hills above the proposed site. Some alternative locations are visible from several areas of significant environmental concern.

The proposed site is near forested areas across NW Morgan Road and a "finger" of forested area of approximately one acre that extends across NW Morgan Road onto the adjacent parcel to the South. There is a solid band of smaller trees lining NW Morgan Road on the property line and the right-of-way that obstructs view of NW Morgan Road and the forested area across it. For these reasons and because NW Morgan Road is heavily traveled, the proposed site is not expected to have any effect, including visual, on the forested area.

The proposed site is more than 600 feet from the streambed identified as environmentally significant lying across NW Morgan Road. The proposed site is situated within an arc of home sites that abut the parcel so that the proposed development site will have minimal impact on wildlife. The applicant's proposed use of the land for forestry use should enhance it as wildlife habitat. This criterion has been satisfied.

- (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.**

Findings and Conclusions. *There are no public or private recreational facilities in the area surrounding the proposed development with which it could conflict. No recreational use of the property is proposed. The applicant's proposal does not affect public or private recreational areas. No areas of environmental significance are located within the property. This criterion is satisfied.*

- (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.**

Findings and Conclusions. *The zoning code requirements are designed to protect the public safety and some elements of the code are designed to protect public and private property. Compliance with the Code is a step toward protection of the public safety and protection of public and private property. The regular presence of occupants of a dwelling on the property can be expected to provide some protection against vandalism and trespass. According to the*

Police Services provider form the level of police service available to serve the proposed project is adequate. This criterion is satisfied.

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

Findings and Conclusions. *The subject parcel is not identified on the Multnomah County Wildlife Habitat Map as part of a Sensitive Big Game Wintering Area. No significant fish or wildlife habitats exist on the property. This criterion does not apply.*

(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.

Findings and Conclusions. *The National Wetlands Inventory and the Multnomah County wetlands maps indicate that the subject parcel does not contain wetlands. The nearest streambed is not less than 600 feet from the proposed building site at its nearest point. It is located on the far side of a County Road, and a parcel of land which the County has offered for sale as a buildable lot partially intervenes. There are no rivers, lakes, wetlands or streams on the property. Therefore, this criterion does not apply.*

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

Findings and Conclusions. *No significant archeological sites are known to exist in the general area. State Statutes require construction to cease and the State Historic Preservation Office to be notified if objects of archeological interest are discovered during construction. This criterion can be is satisfied.*

(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.

Findings and Conclusions: *The subject property is not identified on County Zoning maps or Federal Emergency Management Agency (FEMA) maps as being within a 100-year floodplain or flood way. No wetlands have been identified on the property, based on the National Wetlands Inventory Map for Multnomah County. This parcel, which basically constitutes the highest ground in the approach fronting the West Hills in the vicinity, does not include any areas of annual flooding, a flood plain, or a wetland. Since the subject property has no areas of annual flooding, floodplain, water areas or wetlands, this criterion does not apply.*

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

Findings and Conclusions. *Appropriate best management practices will be required for construction of the proposed residence, driveway and accessory structure. Compliance with this criterion can be satisfied. By the imposition of a condition of approval requiring such practices be adhered to. Condition of approval #3 requires a grading and erosion control permit.*

(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.

Findings and Conclusions. *Single family dwellings are not typically sources of emission affecting air quality. There are no identified unusual activities associated with the proposed dwelling. Exhaust from chimneys is required to meet DEQ standards. The applicant plans to use the proposed pole barn for equipment storage. Such storage would typically not affect air quality. There is no evidence that it will here.*

There are no identified streams, wetlands, lakes or rivers on the property. Soil erosion during construction can be a source of stream water quality from site run-off. Ground water quality can be affected by on-site sanitary facilities. The applicant has provided evidence that the property can meet the state Department of Environmental Quality (DEQ) requirements for a septic system. The DEQ standards are designed to protect water quality from pollution from sanitary waste. Water quality can be affected by soil erosion as can land quality. Soil erosion can be controlled and condition of approval #3 requires a grading and erosion control permit.

Single family dwellings typically do not increase ambient noise levels. The applicant's storage use of the pole barn would not be expected to have effect on ambient noise levels and there is no evidence that it will here.

No adverse effects have been identified that development of the proposed single-family dwelling and pole barn would cause to the air, water and noise quality of the area. This criterion is satisfied.

(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.

Findings and Conclusions. *The surrounding neighborhood is comprised of homes of several different styles and sizes and range in style primarily from "ranch" to other designs popular during the 1960's and 1970's, to a dwelling with a style influenced by Oriental design. Additionally several manufactured homes are situated in the neighborhood. Proposed colors of the dwelling exterior and exterior features are earth tones not only to ensure compatibility with the surroundings, but also to comply with the requirement that site be visually subordinate to them. The proposed earth tones stand in stark contrast to the bright colors of some of the homes in the neighborhood and will actually improve its overall impact on the senses and enhance it as a natural setting.*

The proposed development site can be partially viewed only from one general location that is a SEC-v Identified Viewing Area. That Viewing Area is within a narrow span of the Multnomah Channel looking through a tree line on the bank of the channel from a distance of approximately 1.7 miles. The proposed site can also be viewed from limited areas and looking down on it from the West Hills. From any SEC-v Identified Viewing Area the proposed development is designed to be visually subordinate to it.

- (M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Findings and Conclusions. *There is no identified threatened or endangered plant habitat on the subject property or in the vicinity of the proposed dwelling. Consequently, this criterion is not applicable.*

- (N) The applicable policies of the Comprehensive Plan shall be satisfied.

Findings and Conclusions. *The applicable Comprehensive Plan policies are addressed below.*

MCC 11.15.6424 Criteria for Approval of SEC-v Permit Significant Scenic Views

Significant scenic resources consist of those areas designated SEC-v on Multnomah County sectional zoning maps.

Identified Viewing Areas are public areas that provide important views of a significant scenic resource, and include both sites and linear corridors. Identified Viewing Areas are:

Bybee-Howell House
Virginia Lakes
Sauvie Island Wildlife Refuge
Kelley Point Park
Smith and Bybee Lakes
Highway 30
The Multnomah Channel
The Willamette River
Public Roads on Sauvie Island

Visually subordinate means development does not noticeably contrast with the surrounding landscape, as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not visually dominant in relation to its surroundings.

(A) In addition to the information required by MCC .6408(C), an application for development in an area designated SEC-v shall include:

- (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;
- (2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;
- (3) A list of identified viewing areas from which the proposed use would be visible; and
- (4) A written description and drawings demonstrating how the proposed development will be *visually subordinate* as required by (B) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas.

Findings and Conclusions. *Descriptions of the height, shape, colors, outdoor lighting, and exterior building materials of the proposed structures are provided in narrative as required. An architectural plan of the proposed dwelling is provided. A site plan is provided. Elevations of the proposed dwelling and pole barn/equipment shed are provided. Samples of proposed colors (chips), roofing materials, wood, and Hardi-Plank are provided. The applicant has indicated the color of the proposed structures will be earth tones. The proposed dwelling, driveway and pole barn have been depicted on a site plan with existing and final grades. The applicant has also submitted color photographs showing the view of the property from identified viewing areas. The proposed development will not be visible from any of these identified viewing areas, except for a very minimal view from Multnomah Channel. Trees will be planted to provide screening of the proposed dwelling. The application meets the criteria.*

(B) Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:

- (1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.

Findings and Conclusions. *Only a very small portion of the proposed development can be seen from Multnomah Channel. From all other identified viewing areas the proposed development will not be visible according to the applicant's narrative and photographs. The proposed development is sited on the subject parcel in a location where the topography and existing vegetation provide a screening effect. While the proposed site can be viewed from at least one*

identified viewing area (Multnomah Channel), the site is visually subordinate to its surroundings, as seen from any viewing site. The application meets the criterion.

- (2) **Use of nonreflective or low reflective building materials and dark natural or earthtone colors.**

Findings and Conclusions. *Non-reflective or low-reflectance wood and/or wood-like or wood-finish siding building materials and muted "natural" or earth-tone exterior colors are proposed. Natural color (black, dark brown, or gray) vinyl window trim is proposed. A muted "natural" color fire-retardant-composition roofing material is proposed. The proposed building materials will be earthtone colors, and be low to non-reflective in appearance. The south side of the dwelling has only a minimum amount of reflective surface (i.e. windows). This criterion is satisfied.*

- (3) **No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.**

Findings and Conclusions. *According to the application the applicant proposes no exterior lighting that will be visible from the Identified Viewing Area. Condition of approval #7 requires that proposed lighting will be directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. This criterion is satisfied.*

- (4) **Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.**

Findings and Conclusions. *The top of the hill above the proposed development along with existing and proposed vegetation will provide adequate screening. Condition of approval #18 requires that all trees to be planted for screening will be conifers. This criterion is satisfied.*

- (5) **Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.**

Findings and Conclusions. *The proposed development is on an essentially flat and level site, where minimal grading will be required. The proposed construction requires minimal disturbing of the earth. Grading around the structure perimeters will be limited to leveling the existing grades in the immediate area of the development, such as for creating the swale around the dwelling as required by building code. No soil will be removed from or added to the parcel. The amount of grading or modifications to the site's natural topography has been minimized, and the*

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proposed development will take advantage of existing vegetation and a hill to screen the single-family dwelling and pole barn. This criterion is satisfied and will be assured through the grading and erosion control permit.

(6) Limiting structure height to remain below the surrounding forest canopy level.

Findings and Conclusions. *A thick, high canopy of trees ranging in height from 30 to 70 feet or so on the subject parcel and the right-of-way behind it along NW Morgan Road rises high above the low-profile height of the proposed dwelling. These trees, all which will be retained, and an even larger canopy of trees formed by a stand of evergreen fir which rises immediately behind them, effectively masks the development from readily apparent view. Behind them rise the West Hills to height of several hundred feet. The proposed development is well below the surrounding forest canopy level. All trees are near the edge of the property, but still provide screening of the proposed buildings. This criterion is satisfied.*

(7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:

- (a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration that:**
 - (i) The new facility could not be located in an existing transmission corridor or built upon an existing facility;**
 - (ii) The facility is necessary for public service; and**
 - (iii) The break in the skyline is the minimum necessary to provide the service.**

Findings and Conclusions. *Rising far above a stand of evergreen fir immediately behind the proposed development, as perceived from SEC-v Identified Viewing Areas or elsewhere, are the evergreen-laden West Hills which lie along Hwy 30. The tree line immediately behind the proposed development rises not less than 30-40 feet above the highest structure, and probably 50-60 feet above it. The proposed development is sited below the ridgeline and will be partially screened by existing vegetation. The property and proposed development is only partially seen from one identified viewing area (Multnomah Channel). As seen from the identified Viewing Area, the silhouette of any proposed structure remains hundreds of feet below the skyline of bluffs and ridges above it.*

(C) Mining of a protected aggregate and mineral resource within a PAM subdistrict shall be done in accordance with any standards for mining identified in the protection

program approved during the Goal 5 process. The SEC Application for Significant Scenic Views must comply with measures to protect scenic views identified in the Goal 5 protection program that has been designated for the site.

Findings and Conclusions. *This criterion is not applicable.*

- (D) The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC .6418, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.

11.15.6426 Criteria for Approval of SEC-h Permit Wildlife Habitat

- (A) In addition to the information required by MCC .6408(C), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass.
- (1) Location of all existing forest areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;
 - (2) Location of existing and proposed structures;
 - (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;
 - (4) Existing and proposed type and location of all fencing on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

Findings and Conclusions. *The applicant submitted a map showing the required items. The subject parcel is exclusively a "non-forested cleared area." There are fewer than two dozen trees of 11-inch diameter on the entire parcel, all of which are ancient fruit or "shade" trees. None is a specie believed to be readily marketable. There are large oak and maple trees. There is no eleven-inch-diameter conifer tree on the parcel. Along an area of the southern boundary of the property that appears in the aerial photograph (see photo) as though it might be a forested section of the parcel, only a few of the trees are growing within the boundary of the parcel, and none of them is an 11-inch tree. Tree size on the adjoining parcel meets the standard for*

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forested area. No part of the subject parcel is being reforested pursuant to "Forest Practice Rules" of the Oregon Department of Forestry. There is no existing structure on the parcel. NW Newberry Road and Hwy 30 abut the parcel on the southwest and east respectively. See Exhibit .6426(A)(3). Fencing within 200 feet of the parcel is shown on Exhibit .6426(A)(4).

(B) Development Standards:

- (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.**

Findings and Conclusions. *The subject parcel is exclusively a "non-forested cleared area." Consequently the proposed development will occur in a non-forested cleared area. This criterion is satisfied.*

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

Findings and Conclusions. *The proposed site is located within 200 feet of NW Morgan Road. (See Exhibit F: Site Map et al.) This criterion is satisfied.*

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

Findings and Conclusions. *The proposed driveway is approximately 300 feet in length. One alternate driveway is approximately 140 feet in length; the approximate length of a second alternate driveway is also approximately 300 feet. (See Exhibit F-1: Site Map.) This criterion is satisfied.*

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

Findings and Conclusions. *The entrance of the proposed driveway is not located within 200 feet of the property boundary with an access road within 200 feet of it on adjacent property because of topography, an existing road access, and unusual boundaries. The proposed driveway does not satisfy the requirement of this criterion, consequently, the applicant submitted a wildlife conservation plan. The proposed plan will meet the requirements of this section.*

- (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.**

Findings and Conclusions. *The proposed development is within 300 feet of the property boundary that has adjacent development within 200 feet of it. (See Exhibit F-1: Site Map.) This criterion is satisfied.*

- (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.

Findings and Conclusions. *The applicant does not propose any fencing within the required setbacks. The existing fence has a ratio of solids to voids of less than 2:1. Existing fencing along NW Morgan Road and between the subject parcel and property to the SE are to be removed as part of a wildlife conservation plan developed with respect to the proposed driveway. This criterion is satisfied. See condition of approval #9*

- (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from the cleared areas of the subject property: (See plant list in Zoning Code).

Findings and Reasons: *Condition of Approval # 10 addresses the removal of nuisance vegetation. This criterion is satisfied.*

- (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;

Findings and Conclusions. *The proposed driveway will be more than 100 feet from the property boundary even though the adjacent property has an access driveway within 200 feet of the property boundary. Therefore, the applicant does not meet the development standard B(4), which will require the applicant to address the criteria for a wildlife conservation plan.*

(2) 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.**

Findings and Conclusions. *A wildlife conservation plan is required to allow the proposed driveway. The proposed plan consists of the following:*

- 1. All fencing along NW Morgan Road will be removed. (A security gate near the road access at the entrance to the driveway will be installed.)*
- 2. The fencing along the treed area between the subject parcel and the adjacent parcel to the South will be removed. (In the unlikely event that the owner of that parcel chooses to re-fence it, the Applicant will not participate in any way.) This is the area where, because of surrounding development, much access to the subject parcel is made by wildlife.*
- 3. The general area of the subject parcel adjacent to the treed area will be maintained without development of any kind to remain attractive to wildlife.*
- 4. The Applicant will not participate in any way in re-stringing a fence line that presently runs along the boundary between the subject parcel and the adjacent parcel to the South. Without this participation, re-fencing is unlikely to occur.*

No forest cover will be removed because of this development. The proposed width of the driveway is the minimum required by code. This criterion is satisfied.

- (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 required for fire safety purposes.**

Findings and Conclusions. *No newly cleared areas will result from the construction of the driveway or any proposed development. This criterion is satisfied.*

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Findings and Conclusions. *The applicant states no new fencing will be added, and existing fencing will be removed to improve access for wildlife. This criterion is satisfied.*

- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

Findings and Conclusions. No new areas will be cleared because of the proposed development. Therefore, revegetation is not required at a 2:1 ratio.

- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Findings and Conclusions. *No development will occur within the stream riparian area.*

Compliance With Applicable Comprehensive Plan Policies:

Policy 13: Air, Water and Noise Quality

Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, it is Multnomah County's policy to:

- A. Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County.
- B. Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.
- C. Maintain healthful air quality levels in the regional airshed, to maintain healthful ground and surface water resources, and to prevent or reduce excessive sound levels while balancing social and economic needs in Multnomah County.
- D. Discourage the development of noise-sensitive uses in areas of high noise impact.

Futhermore, 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. If the proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:

- 1. Building placement on the site in an area having minimal noise level disruptions.
- 2. Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.
- 3. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.

Findings and Conclusions. *The proposed residential development should have no measurable adverse impact on Air, Water, or Noise Quality. The development will be completed in compliance with all permits and conditions of approval. The applicant meets the criteria of this Policy.*

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%;
- 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 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

Findings and Conclusions. *The soil on the site is Quatama loam, which has a low seasonal water table and a fragipan below 40 inches. These soils have slight erosion potential. The proposed development is on slopes less than 10 percent. The site is not within a 100-year floodplain, or on land subject to slumping, earth slides or movement. The applicant meets the criteria of this Policy.*

Policy 16: Natural Resources

The County's Policy is to protect natural resources, conserve open space, and to protect scenic and historic areas and sites.

Findings and Conclusions. *Compliance is demonstrated through application of MCC 11.15.6400, Significant Environmental Concern – wildlife habitat.*

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 quasijudicial 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 recreational 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 climatic conditions to advantage;
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

Findings and Conclusions. *This proposal is for a new single-family dwelling to be built under standards approved by Multnomah County and the State of Oregon, including current energy conservation standards of the Uniform Building Code. Also to be built are an agricultural pole barn and attached equipment shed. Heating is proposed for neither. The applicant meets the criteria of Policy 22.*

Policy 37: Utilities

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

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

Findings and Conclusions. *The applicant will drill an on-site well. Turner Well Drilling recently drilled a well within 400 feet of the subject parcel, which produces 50 gal/minute. All adjacent homesites have operating wells. A condition of approval requires the applicant to submit the well driller's report before the County issues a building permit. The City of Portland Sanitation Engineer, who serves on contract as the County Sanitarian, has approved a Land Feasibility study for a sub-surface sewage disposal system.*

There will be no water run-off draining from the property due to this development. No solid-surface parking areas are proposed, and the building site, which will be essentially un-modified (graded) from its present condition, currently absorbs rain and snow. Because of topography and size of the parcel, as well as the nature and placement of the proposed site, no run-off from the parcel will be caused by this development. A code-compliant drainage system to handle run-off from the proposed structures is proposed. Design and calculations for a surface infiltration storm water drainage system signed by a registered Professional Engineer are provided in Exhibit W.

Both electrical energy and telephone services are readily available to the proposed development.

The proposed surface/subsurface infiltration system can be approved with a grading and erosion control permit. These criteria can be satisfied.

Policy 38: Facilities

It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

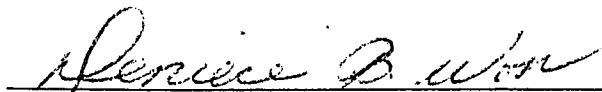
- A. The appropriate School District has had an opportunity to review and comment on the proposal.**
- B. There is adequate water pressure and flow for fire fighting purposes; and**
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.**
- D. The proposal can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

Findings and Conclusions. Completed service provider forms have been submitted by the applicant. This Policy is addressed.

VI. Conclusion

Subject to the conditions and based on the findings and conclusions cited or referenced in this decision, I conclude that the applicant is entitled to approval of its requests for a conditional use permit for a template dwelling and SEC-v and SEC-h permits.

IT IS SO ORDERED, this 16th day of March, 2000



DENIECE B. WON, Hearings Officer

Application Timeline:

Because the applicant had requested a continuance to the January 19, 2000 public hearing, the staff stated at the hearing and the applicant concurred, that January 19, 2000 was the 24th day of the 150 day timeframe for reaching a final decision on this application.

List of Exhibits:

List A: Exhibits:

1. Exhibit A-1: Historical Deed to Subject Property (January, 1942)
2. Exhibit A-2: Historical Deed to Subject Property (July, 1946)
3. Exhibit A-3: Historical Deed to Subject Property (May, 1954)
4. Exhibit A-4: Historical Deed to Subject Property (November, 1961)
5. Exhibit A-5: Warranty Deed to the Subject Property held by the Applicant (May, 1998)
6. Exhibit A-6: Template Test Map
7. Exhibit B-1: Big Game Wintering Habitat Areas
8. Exhibit C-1: Photo with MCC Map Overlay Showing Subject Property and Surrounding Lots and Tax Lot Number.
9. Exhibit C-2: Multnomah County Sectional Zoning Map of Subject Property and Surrounding Lots
10. Exhibit C-3: Partial Print of Survey Showing Location, Size & Dimension of Subject Property
11. Exhibit D-1: Title Company Printout Showing Minimum of 44 Homes within Close Proximity to the Property [Also County Assessor's Records of Dwellings within the Template Area - WH .2052 (A)(3)(c)(i)]
12. Exhibit E: Aerial Photo of Subject Property & Surrounding Area. Scale: 1 inch = 200 feet.
13. Exhibit F-1: Map of Subject Property with Proposed Site Plan
14. Exhibit F-2: Map of the Area for SEC-h
15. Exhibit G: Floor Plan of Proposed Dwelling
16. Exhibit G-2: Elevations of Proposed Dwelling
17. Exhibit G-3: Floor Plan of Proposed Barn/Shed
18. Exhibit G-4: Elevations of Proposed Barn/Shed
19. Exhibit H-1: Graphical Soil Analysis Report
20. Exhibit H-2: USDA Soil Conservation Survey Report of Regional Soils
21. Exhibit I-1: Assessment of Service Forester, Columbia Region, ODF, of Yield Potential on Subject Property
22. Exhibit I-2: Forestry Management Plan for Subject Property Developed by Service Forester, Columbia Region, Oregon Department of Forestry
23. Exhibit: J-1: Tax Assessor's Map Circa 1880

- 24. Exhibit J-2: 1961 Survey of "Fairland" Showing Presently Existing Lots Adjacent to the Subject Property**
- 25. Exhibit K-1: Comprehensive Plan, Policy 37, Utilities-1: No water facilities in district**
- 26. Exhibit K-2: Comprehensive Plan, Policy 37, Utilities-2: Water well easily accessible**
- 27. Exhibit K-3: Comprehensive Plan, Policy 37, Utilities: Septic Tank Approval**
- 28. Exhibit K-4: Comprehensive Plan, Policy 38, Facilities: School Review: Approval**
- 29. Exhibit K-5: Comprehensive Plan, Policy 38, Facilities: Police Review: Approval**
- 30. Exhibit K-6: Comprehensive Plan, Policy 38, Facilities: Fire Dept. Review: Approval**
- 31. Exhibit K-7: Fire Equipment Access Approval: Chief, Scappoose Rural Fire District**

List B: Applicants Information:

1. Conditional Use Application Form
2. Applicant's Response to Approval Criteria

List C: Notification Information:

1. Notice of Hearing
2. Affidavit of Posting

List HO: Documents Submitted at January 19, 2000 Public Hearing:

1. Map showing lands conveyed in 1942 deed
2. Greg Lutje memo dated 1-19-2000
3. Greg Lutje letter dated 2-7-2000 with attachments
4. Kerry Rappold letter dated March 2, 2000 to hearings officer
5. Geg Lutje letter dated March 2, 2000