
MULTNOMAH COUNTY, OREGON
DECISION OF LAND USE HEARINGS OFFICER

This Decision consists of Conditions, Findings of Fact and Conclusions.

December 15, 1997

CU 7-97

and

SEC 34-97:

Applicant requests 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:

4307 SE Oxbow Parkway

**Description of
Property:**

Tax Lot 8, Section 9, Township 1 South, Range 4 East, W.M.

Parcel Size:

34.98 acres

Zoning

Designation:

Commercial Forest Use District

Applicant's

Representative:

Donna Hulme
Land Use Consultants, LLC
24880 NW Pederson Road
Hillsboro, OR 97124

Property Owner:

Steve P. Matiaco
P.O. Box 367
Forest Grove, OR 97116

5. If recommendation and decision are different, why?

They were the same.

6. Issues:

The applicant agreed with the Staff Report. A Metro representative submitted written comment and spoke at the Hearing on November 19th. A regional park supervisor, James Lind spoke in opposition of the siting of the dwelling on the parcel. Mr. Lind suggested the dwelling unit be placed in another location on the site. The location on the site, suggested by Mr. Lind, would have required a variance application to the County. Staff and the Hearings Officer found that based on the findings and substantial evidence, the applicant had adequately met the site requirements. A variance application would place an undue burden on the applicant. Mr. Lind also raised a concern about the subject parcel's nearness to areas that may be part of a sensitive big game wildlife habitat area. There are no identified Goal 5 resource for wildlife habitat areas on the applicant's parcel.

7. Do any of these issues have policy implications? Explain.

No policy implications have been identified.

Hearings Officer Decision:

Approve, subject to conditions, Conditional Use and Significant Environmental Concern permits to establish a single family dwelling on the subject property under the "template dwelling" standards, based on the Findings and Conclusions contained herein.

Conditions of Approval:

1. 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.
2. 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.
3. 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).
4. 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.
5. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074(C), and 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.
6. Prior to issuance of a building permit and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074(A)(5).
7. The applicant shall submit, to the Division of Records, 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

Rules, and to conduct accepted farming practices. Forms are available at the Land Use Planning Counter at Multnomah County.

8. Approval of this Conditional Use shall expire two years from the date of the Board Order unless "substantial construction" has taken place in accordance with MCC 11.15.7110(C) 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;
 - 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. The constructed building shall be a single family dwelling based on the following characteristics: be lawfully established under required building permits; have intact interior walls and roof structures inspected under that building permit; has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to an approved and permitted sanitary waste disposal system; has interior wiring for interior lights inspected under an electrical permit; and has a heating system.
 - H. Forest Practices Act and Rules statement to the Division of Records; and
 - I. 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)].

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdiction

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicant.

FACTS

1. Applicant's Proposal

The applicant's proposal is for a conditional use dwelling in the CFU district. Activities associated with the proposed dwelling will include those typically found in conjunction with residential uses.

2. Site and Vicinity Information

The applicant's parcel is located outside the Urban Growth Boundary of the City of Gresham, with access to Oxbow Parkway. The vicinity of the proposed dwelling is characterized by dwellings on parcels ranging in size from 1.21 acres to 70.50 acres. Activities on the parcels include forestry, farming and general residential use. Attached hereto as Exhibit "1" is the proposed site plan for the application.

The site has historically been used for timber production. The parcel was recently harvested and will be reforested prior to June 1998.

3 . Testimony and Evidence Presented

- A. The exhibits listed in the staff report were reviewed by the Hearings Officer and received in reference to this application.
- B. At the hearing, Tricia Sears testified for the County, summarized the history of the application and her staff report, and played a video tape depicting the site and surrounding property.
- C. Donna Hulme spoke on behalf of the applicant and addressed applicable ordinance criteria.
- D. James Lind, regional park supervisor, spoke in opposition to the proposed siting of the dwelling on the parcel. Mr. Lind requested that the applicant be required to move the dwelling to a different site on the parcel, a location for the dwelling proposed by Mr. Lind would have required a variance.

STANDARDS AND CRITERIA, ANALYSIS AND FINDINGS OF FACT

1 . MULTNOMAH COUNTY CODE (ZONING ORDINANCE):

Commercial Forest Use Zone:

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

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

ANALYSIS:

Section MCC 11.15.2062 is discussed below.

- (2) **MCC 11.15.2052 (A)(2):** The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

ANALYSIS:

The site plan included as Exhibit 1 shows the yard setbacks required. The proposed dwelling meets the required setbacks of this section.

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

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

ANALYSIS:

The soil types on the site are 20F, 27B, 27C, and 34C.

Soil 20F is Haplumgrepts, very steep. These soils are used for timber production and wildlife habitat, as well as recreational activities such as picnicking, hiking, and camping. These soils have a Douglas Fir site index of 120 to 135. The proposed dwelling site is not located on this soil type.

Soil 27B is Mershon silt loam, 0 to 8 percent slopes. These soils are used for farming, urban development, timber production, and wildlife habitat. These soils have a Douglas Fir site index of 120 to 135. The proposed dwelling site is located on this soil type.

Soil 27C is Mershon silt loam, 8 to 15 percent slopes. These soils are used for farming, urban development, timber production, and wildlife habitat. These soils have a Douglas Fir site index of 120 to 135.

Soil 34C is Powell silt loam, 8 to 15 percent slopes. These soils are used for farming, urban development, timber production, and wildlife habitat. There is no Douglas Fir site index listed for these soils.

A finding can be made that this application complies with this requirement.

- (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**

ANALYSIS:

A map of the 160 acre template test for this parcel was submitted as an exhibit and is referenced in the staff report. There are at least all or part of 11 other lawfully created lots that existed on January 1, 1993 within the 160 acre square.

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

ANALYSIS:

At least five (5) dwellings existed on those parcels prior to January 1, 1993. Exhibit 8 referenced in the staff report contains the Assessment and Taxation records of the parcels, provided by Metro Scan. The applicant meets the criteria.

Parcel Number	Year Built
R99409-0130	1977
R99409-0170	1980
R99409-0220	1987
R99409-0240	1966
R99409-0250	1978

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

ANALYSIS:

None of the dwellings counted is within the Urban Growth Boundary. This criteria is met.

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

ANALYSIS:

The applicant's parcel is not part of a tract. There is no dwelling on the applicant's parcel. A contract, recorded with the Multnomah County Department of Assessment and Taxation, shows the new ownership of 1S4E 9 Tax Lot 36. The owner of Tax Lot 36 is not the same owner as the owner of the applicant's parcel. This criteria is met.

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

ANALYSIS:

The applicant's parcel is not part of a tract. The applicant meets the criteria.

- (g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all rights to site a dwelling; and

ANALYSIS:

This application is not for a replacement dwelling. The applicant's parcel is not part of a tract. The applicant meets the criteria.

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

ANALYSIS:

The applicant's parcel is not part of a tract. The applicant meets the criteria.

- (4) **MCC 11.15.2052 (A)(4):** The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.

ANALYSIS:

The proposed dwelling is not in a big game winter habitat area. Mr. Lind, regional park supervisor, testified that big game frequent the area. However, staff has verified the proposed site is not part of the big game winter habitat area as shown on the Sensitive Big Game Wintering Areas map. The applicant meets this criteria and is entitled to site the dwelling in accordance with the criteria applicable at the time he submitted his application.

- (5) **MCC 11.15.2052 (A)(5):** Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;

ANALYSIS:

There is a long term road access agreement between the applicant's parcel and 1 S 4 E 9 36, granting the applicant's parcel an easement for access to Oxbow Parkway. The applicant has provided a copy of a document to meet this criteria.

- (6) **MCC 11.15.2052 (A)(6):** A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:

- (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor 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;

ANALYSIS:

The applicant's parcel was recently harvested. The parcel will be restocked prior to June 1998. This is in keeping with ODF guidelines. Planting seedlings during the summer greatly diminishes the survival rate of the seedlings.

The applicant meets the criteria and will plant seedlings prior to June 1998. Condition of Approval #3 requires the applicant to submit a forest stocking survey prior to issuance of a building permit, in accordance with the provisions and procedures of MCC 11.15.2052 (A)(6). The applicant meets this criteria.

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

ANALYSIS:

Section MCC 11.15.2074 is addressed below.

- (8) MCC 11.15.2052 (A)(8): A statement has been recorded with the Division of Records 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 Rules, and to conduct accepted farming practices;

ANALYSIS:

Condition of Approval #7 requires the applicant to submit the above described document. This criteria will be met by compliance with the condition of approval.

MCC 11.15.2058 Dimensional Requirements

- A. Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.

ANALYSIS:

The applicant's parcel is less than 80 acres, but it is an existing lot of record as provided in .2062. The applicant meets an exception to this criteria.

- 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 Yard Dimensions - Feet:

Frontage on County Maintained Road	Other Front	Side	Rear
60 from centerline	200	200	200

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

These yard dimensions and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable.

ANALYSIS:

The proposed site meets the criteria of .2058(C).

The proposed dwelling is over 60 feet from the centerline of the County maintained road, the side yards are over 200 feet, and the rear yard is over 200 feet. The proposed dwelling will not be over 35 feet in height, and the front lot line length is over 200 feet. No variances are requested. The applicant meets the required setback dimensions for the site in the CFU zone.

- D. To allow for clustering of dwellings and potential sharing of access, a minimum yard requirement may be decreased to 30 feet if there is a dwelling on an adjacent lot within a distance of 100 feet of the new dwelling.

ANALYSIS:

There is no adjacent dwelling within 100 feet of the proposed dwelling; therefore, the minimum yard requirement is not decreased. The applicant's parcel and 1S4E 9 36 will share the access onto Oxbow Parkway to eliminate adjacent multiple accesses. The applicant meets the criteria.

- E. The minimum yard 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.

ANALYSIS:

The proposed site meets the criteria of .2058 (E). The applicant's parcel has frontage on a County road, however, the frontage is not used to access the property. Therefore, the minimum yard requirement does not need to be increased.

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

ANALYSIS:

The proposed site meets the criteria of .2058 (F). At this time, no barns, silos, windmills, antennae, or similar structures are proposed. However, if they are, this section of MCC.2058 allows those structures and chimneys to exceed the height requirements.

MCC 11.15.2062 Lot of Record

- A. For the purposes of this district, a Lot of Record is:

* * *

- (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

* * *

ANALYSIS:

A tract is defined in MCC 11.15.2045 as one or more contiguous Lots of Record, pursuant to MCC .2062, in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract.

The ownership pertaining to this parcel shows that the parcel was created in 1958, by division of a larger piece. The applicant's parcel was created as 34.98 acres. The Multnomah County Planning Department was contacted regarding the land use laws in effect in 1958. The parcel was zoned as F-2 in 1960. If the maps from 1957 - 1958 were reapplied, the zoning in 1958 would have been F-2. The requirement of F-2 zoning was that the parcel was a minimum of two (2) acres. The applicant's parcel is 34.98 acres; therefore, this requirement is met.

The applicant's parcel is a lot of record, as it was lawfully created prior to January 25, 1990.

As a lot of record, this parcel qualifies pursuant to .2062 as an exception of the requirements of MCC .2058.

The applicant meets the criteria for MCC 11.15.2062 (A)(2). The applicant's parcel is considered a lot of record under MCC .2062. Since the lot size is less than 80 acres, the applicant is required to apply for a Conditional Use application for a template dwelling.

11.15.2074 Development Standards for Dwellings and Structures

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

(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);**

ANALYSIS:

The proposed dwelling will be sited on the parcel so that it will have the least impact on nearby or adjoining agricultural and forest lands. The proposed dwelling is sited at least 200 feet from all property boundaries. Activities of the

proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will occur.

The proposed dwelling is at least two hundred (200) feet from all property lines. The applicant contended that in correspondence dated February 28, 1990, ODF suggests that a 200 foot setback is typically effective in preventing serious conflicts between residential and forest uses.

The property is accessed by an easement to Oxbox Parkway. The proposed siting takes advantage of the site on the parcel that meets the required setbacks of at least 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while observing the previously stated setbacks. The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. The applicant meets this criteria.

(2) Forest operations and accepted farming practices will not be curtailed or impeded;

ANALYSIS:

The location of the proposed dwelling and access minimizes the amount of land taken from forest operations, while meeting the required setbacks. Only normal residential activities will be associated with the dwelling. The parcel has been recently harvested and will be reforested prior to June 1998. The adverse impacts on the forest operations are minimized, as described above. Accepted forestry practices will not be curtailed nor impeded, the amount of forest land used to site access roads, service corridors, the dwelling, and structures is minimized. Activities associated with the proposed dwelling will include those typically found in conjunction with residential uses, such as eating, sleeping, gardening, occasional entertainment of guests, family activities, and the activities associated with caring for the forestry uses on the subject property. There will be no unusual activities associated with the proposed dwelling.

The applicant meets this criteria by establishing the appropriate setbacks for the site and by describing the compatibility of the proposed use with the surrounding area.

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

ANALYSIS:

The required setbacks are met by the proposed dwelling. The proposed siting is the minimum necessary to locate all proposed structures and satisfy all applicable requirements, while observing the best area for a dwelling in regard to slope.

The applicant's proposed development meets the required setbacks of the CFU zone.

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

ANALYSIS:

The access road is in excess of 500 feet, due to having an easement over the adjacent parcel. The portion of the access road on the applicant's parcel is slightly under 500 feet. The access road has been designed to provide a slope of less than 15%, while taking the minimum amount of land necessary from forestry use. The shared access reduces the amount of driveways on Oxbow Parkway. Keeping the physical limitations of the site in mind, the applicant has met the required criteria adequately.

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

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

ANALYSIS:

The proposed dwelling is located within the City of Gresham Emergency Services Fire District. The Service Provider affidavit verifies service is provided to the applicant's parcel. There is no perennial water source on the applicant's parcel. The applicant meets the criteria.

- (b) Maintenance of a primary and a secondary fire safety zone.**

- (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 matu-**

urity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

ANALYSIS:

The owners of the proposed dwelling will maintain a primary and secondary fuel free fire break area surrounding all structures. This will include a minimum of 30 feet in all directions around structures. Within the primary safety zone, fuels that will produce flame lengths in excess of one foot will be removed. Vegetation within the primary safety zone will include green lawns and low shrubs (less than 24 inches in height). Trees will be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. The applicant meets the criteria.

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

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

ANALYSIS:

Slope of the proposed dwelling was determined by using the Hillside Hazard Map on file with the Multnomah County Planning Department, in conjunction with the USGS Topographic for the Sandy Quadrangle. Slope at the proposed dwelling site is calculated to be 8.9%. An imaginary line was drawn through the center of the proposed dwelling, north to south. Elevation changed from 410 feet to 450, over a distance of 450 feet.

In the Multnomah County Soil Survey, slope is defined as: "The inclination of the land surface from the horizontal. Percentage of slope is the vertical distance divided by horizontal distance, then multiplied by 100. Thus, a slope of 20 percent is a drop of 20 feet in 100 feet of horizontal distance."

Therefore, in reference to the proposed dwelling site, the vertical distance is 40 feet, over a horizontal distance of 450 feet ($40/450 = .0888$). To finish the calculation, $.0888 \times 100 = 8.9\%$.

The slope of the proposed dwelling site is less than ten (10) percent; therefore, the primary fire safety zone does not need to be extended down the slope from the proposed dwelling.

The applicant's proposed fire zone measures meet the required criteria. Condition of Approval #6 addresses this requirement.

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

ANALYSIS:

The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1, 1991 and published by the Oregon Department of Forestry.

The applicant's proposed fire zone measures meet the criteria. Condition of Approval #6 addresses this requirement.

- (iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**

ANALYSIS:

The applicant meets the above criteria. Condition of Approval #6 addresses this requirement.

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

ANALYSIS:

The proposed dwelling site meets the above requirement.

(B) The dwelling shall:

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;

ANALYSIS:

The proposed dwelling will meet this criteria.

- (2) Be attached to a foundation for which a building permit has been obtained; and

ANALYSIS:

The dwelling will be attached to a foundation. The building permit will be obtained after the development permit is approved. The applicant meets this criteria.

- (3) Have a minimum floor area of 600 square feet.

ANALYSIS:

The proposed dwelling will meet this criteria.

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

ANALYSIS:

The well for this property will be drilled at the building permit stage. The private well will be located on the applicant's parcel, no easement will be

involved. The proposed water supply is from a well. The applicant will submit the well inspector's report to the County upon completion of the well. The applicant meets the criteria.

- (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;**

ANALYSIS:

The driveway to this single dwelling will meet the above requirements. The driveway is an easement with shared access to Oxbow Parkway with the adjacent parcel. The applicant shall submit a Grading and Erosion Control Permit, as noted in Condition of Approval #1, where the volume of soil or earth moved, disturbed, stored, disposed of, or used as fill is greater than 50 cubic yards. The applicant shall submit the information described above, as noted in Condition of Approval #4, regarding compliance with GVW standards.

- (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;**

ANALYSIS:

The driveway will be 12 feet in width. Condition of Approval #4 requires the applicant to provide documentation that this requirement will be met.

- (3) **Provide minimum curve radii of 48 feet or greater;**

ANALYSIS:

The applicant's plans and narrative indicate this criteria will be met. Condition of Approval #4 requires the applicant to provide documentation that this requirement will be met.

- (4) **Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

ANALYSIS:

The applicant is required to meet this under Condition of Approval #4.

- (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;

ANALYSIS:

The proposed driveway has a grade of less than 8 percent. The applicant will meet the criteria. Condition of Approval #4 directs the applicant to provide verification this requirement has been met. In addition, the applicant shall provide engineered plans for the GEC permit, as required by Condition of Approval #1, to verify this requirement.

- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

ANALYSIS:

The proposed driveway is greater than 150 feet in length. The turnaround radius of the driveway will be a minimum of 48 feet. The applicant will meet the criteria. The applicant is required to provide verification this has been met under Condition of Approval #4.

- (7) Provide for the safe and convenient passage of vehicles by the placement of:

- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

ANALYSIS:

As indicated on the site plan, the proposed driveway meets the above requirements. Condition of Approval #4 requires the applicant to provide documentation this requirement has been met.

MCC 11.15.6420 Criteria for Approval of SEC Permit

Any proposed activity or use requiring an 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.**

ANALYSIS:

The proposed dwelling site does not have nor co-exist with a river, stream, lake, or floodwater storage area. This criteria is not applicable to this application.

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

ANALYSIS:

The applicant's parcel is in the CFU district. The forest land of the applicant's parcel will be preserved and maintained as such. The applicant meets this criteria.

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

ANALYSIS:

The proposed dwelling is located to observe district setbacks, and preserve the wildlife habitat. There is no existing fencing on the applicant's parcel. The adjacent parcel to the south, on the western portion of the southern boundary of the applicant's parcel, is a commercial nursery and has fencing.

The proposed dwelling is located in the best site of the parcel to preserve and protect the wildlife habitat, as well as balance the functional considerations and costs. The proposed dwelling is located to allow wildlife continued use of the timbered area, and ingress and egress across the parcel.

The location of the proposed dwelling on the site observes district setbacks for the CFU zone. The applicant has carefully considered the location of the dwelling on the site in effort to preserve wildlife habitat. The applicant meets this criteria.

- 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.**

ANALYSIS:

This parcel is not part of a public recreational land. Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will be encountered over the period of the dwelling existence.

The applicant states a use of the land for a single-family residential dwelling unit and for residentially related activities. The parcel is not part of a public recreational land system. The applicant meets the criteria because the applicant's proposed use of the land will be carried out in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

- 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.**

ANALYSIS:

Public safety is provided by Multnomah County Sheriff, as indicated by the Service Provider form. The applicant meets the criteria by providing the completed Service Provider form.

- F. Significant fish and wildlife habitats shall be protected.**

ANALYSIS:

There are not significant fish habitats on the parcel. The wildlife habitat shall be protected, as discussed in Section .6426. The applicant meets the criteria.

- 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.**

ANALYSIS:

There are no rivers, lakes, wetlands, or streams on the applicant's parcel; therefore, this criteria does not apply to this application.

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

ANALYSIS:

The applicant's parcel has no archaeological areas; therefore, this criteria does not apply to this application.

- 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.**

ANALYSIS:

The applicant's parcel has no areas of annual flooding, floodplains, water areas, nor wetlands; therefore, this criteria does not apply to this application.

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

ANALYSIS:

The applicant's parcel has no identified areas of erosion or potential erosion; therefore, this criteria does not apply to this application. The proposed dwelling will require some movement of earth. Best Management Practices will be used during all phases of development to ensure soil remains on site and not washed onto adjacent properties.

- 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.**

ANALYSIS:

There will be no unusual activities associated with the proposed dwelling. The quality of the air, water and land resources and ambient noise levels will be preserved, as will the use of such resources. Exhaust from chimneys will meet DEQ standards, water resources will not be polluted, the septic system will receive approval from the County Sanitarian, a Conditional Use dwelling is permitted in the CFU District, and this application addresses the SEC concern of wildlife habitat. The proposed dwelling will maintain ambient noise levels, as no unusual activities will be associated with the proposed dwelling. The site will be maintained and cleared of construction debris, waste, and solid waste material during and after construction of the proposed dwelling. The applicant meets the criteria.

- 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.

ANALYSIS:

The areas of concern are wildlife habitat. The design and bulk of the proposed dwelling, as well as the construction materials will be compatible with the area. The colors and lighting will not be obtrusive, but will be in harmony with those of the area.

The applicant shall maintain a design and color for the proposed dwelling which is compatible with the area. Lighting shall be unobtrusive. The applicant meets the criteria.

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

ANALYSIS:

The applicant's parcel has not been identified as having the characteristics stated above; therefore, this criteria does not apply to this application.

- N. The applicable Policies of the Comprehensive Plan shall be satisfied:

2 . COMPREHENSIVE PLAN POLICIES:

"POLICY NO. 13, AIR, WATER AND NOISE QUALITY.

MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS."

ANALYSIS:

The proposed dwelling will have activities of those normally associated with a dwelling, such as eating, sleeping, gardening, occasional entertainment of guests, and family activities. There will be no unusual activities associated with the proposed dwelling; therefore, it can be reasonably concluded that the quality of air and water will be maintained or improved, and will not generate noise pollution.

The proposed dwelling will comply with state and regional plans and programs to reduce pollution levels.

The water for the applicant will be from a private well. There will be no degradation to the surface and ground waters. The proposed dwelling will receive approval from the Sanitarian for a septic system.

The applicant's parcel is not in an area of high noise impact.

The applicant meets the criteria of Policy No.13 Air, Water and Noise Quality.

***POLICY NO. 14, DEVELOPMENT LIMITATIONS**

THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATION AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

A. SLOPES EXCEEDING 20%;

ANALYSIS:

The slopes of the proposed dwelling do not exceed 20%. The proposed dwelling site is not on the "Hazards Area" map, Exhibit 9. The applicant meets this criteria.

B. SEVERE SOIL EROSION POTENTIAL;

ANALYSIS:

The soils of the parcel are 20F, 27B, 27C, and 34C, with the proposed dwelling site being located on soil type 27B. The Soil Survey of Multnomah County states the hazard of erosion for this type of soil is slight. The Soil Survey does state that this soil type is moderately well drained.

Soil type 27C is also defined in the soil survey as being moderately well drained, and the hazard of erosion is moderate.

Soil type 34C is defined as somewhat poorly drained, with hazard of erosion being moderate, per the Soil Survey.

Soil type 20F is defined as well drained and moderately well drained, with the hazard of erosion being slight to high.

Since none of the soils on this parcel has a severe erosion potential, this requirement is met.

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;

ANALYSIS:

The applicant's parcel is not 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;

ANALYSIS:

The applicant does not propose to locate the dwelling on the portion of the site which contains soil with a water table within 24 inches of the surface. The applicant meets the criteria.

E. A FRAGIPAN LESS THAN 30 INCHES FROM THE SURFACE;

ANALYSIS:

The Soil Survey of Multnomah County lists only soil type 34C as having a fragipan. The fragipan for soil type 34C is 20 to 30 inches in depth. The proposed development on the applicant's parcel is not on the 34C soil type. The area of the parcel with the 34C soil type will not be impacted by the proposed development; therefore, this requirement is met.

F. LAND SUBJECT TO SLUMPING, EARTH SLIDES OR MOVEMENT."

ANALYSIS:

The Soil Survey of Multnomah County lists soil type 20C as being subject to slumping in places in areas of cut and fill. However, the proposed dwelling site is not located on the 20C soil of the applicant's parcel; therefore, this requirement is met. The proposed dwelling is to be sited on the part of the parcel that is best suited for a dwelling, considering all the above factors and required district setbacks.

"POLICY NO. 22, ENERGY CONSERVATION.

THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
- 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 CLIMACTIC CONDITIONS TO ADVANTAGE.
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES."

ANALYSIS:

This application is for a dwelling on a lot of record. The density of the dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the county. The dwelling will meet current energy conservation standards of the Uniform Building Code. This parcel is not in an urban area; therefore, sections B, C, D, above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions to advantage, in that the proposed dwelling is located as close to the existing street (Oxbow Parkway) as possible, while observing district setbacks, and is sited on the portion of the parcel that best meets the competing goals identifies in Development Limitations and the district requirements. The applicant meets the criteria described in A - E of Policy 22, Energy Conservation.

"POLICY NO. 37, UTILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

ANALYSIS:

A private well will be drilled prior to obtaining a building permit. A land feasibility study has been conducted to evaluate the site for the purpose of using a subsurface sewage disposal septic tank/drainfield (Exhibit 6). The letter from the Soils Inspector states the site is considered suitable for a septic system. The applicant meets the criteria.

DRAINAGE

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR**
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND**
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.**

ANALYSIS:

Existing vegetation and reforestation will continue to handle on site water run-off. A dry well on the parcel will be used to collect the run-off from the proposed structure. Water run-off will be handled on site in accordance with the standards set forth by the City of Portland Soils Section. Run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

ENERGY AND COMMUNICATIONS

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND**
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE."**

ANALYSIS:

The service providers are Portland General Electric and GTE. The applicant meets the above criteria.

"POLICY NO. 38, FACILITIES.

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

- A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.**

ANALYSIS:

The school service provider form was submitted. The applicant meets the criteria.

FIRE PROTECTION

- 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.

ANALYSIS:

The fire service provider form was submitted to the County. The applicant meets the criteria.

POLICE PROTECTION

- D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION."**

ANALYSIS:

The police protection service provider form was included in the file exhibits. The applicant meets the criteria.

***POLICY NO. 40, DEVELOPMENT REQUIREMENTS.**

THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.**
B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.
C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

ANALYSIS:

The applicant's parcel has a recorded easement for access onto Oxbow Parkway. Oxbow Parkway is not a designated bikeways facility. There is no need for benches, as there are only single family residences in the area. No dedication or requirements are appropriate pursuant to this criteria.

CONCLUSION

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application for Conditional Use and SEC approval satisfies all applicable approval criteria provided that the Conditions of Approval are complied with. Accordingly, Conditional Use and SEC is hereby granted for the subject site, subject to the Conditions of Approval contained herein.

IT IS SO ORDERED, this 15th day of December, 1997.



JOAN M. CHAMBERS, Hearings Officer