



## **MULTNOMAH COUNTY OREGON**

### **LAND USE AND TRANSPORTATION PROGRAM**

1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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# **NOTICE OF DECISION**

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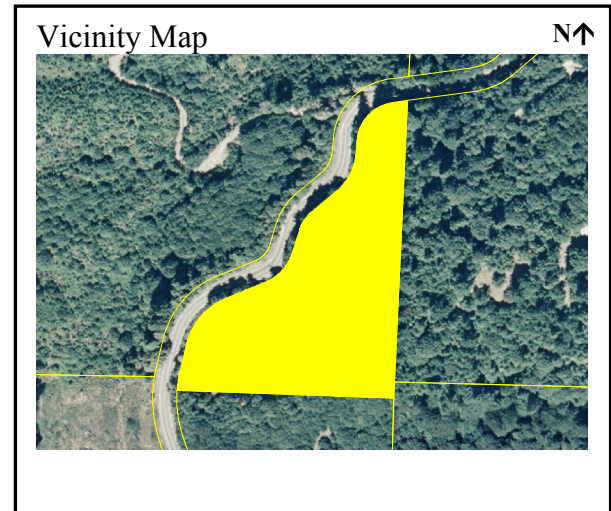
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-04-023

**Permit:** Verification and Modification of a Non-Conforming Use and Significant Environmental Concern Permit for a replacement dwelling request.

**Location:** TL 800, Sec 33B, T2N, R1W, W.M.  
Tax Account #R97133-0230

**Applicant/** Seth Tane  
**Owner:** PO Box 83037  
Portland, Oregon 97283



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**Summary:** This is a request to build a 1,380 square foot replacement dwelling on Commercial Forest Use-2 zoned land in the West Hills Rural Plan area. This request was processed as a request to replace a non-conforming use in a Significant Environmental Concern zoning overlay for scenic views and wildlife habitat (**Multnomah County Code, MCC 33.7200 - 33.7215 & 33.4500 - 33.4575**).

**Decision:** **Approved, with conditions.**

**Unless appealed, this decision is effective Thursday, July 15, 2004 at 4:30 PM.**

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Issued by:

By: \_\_\_\_\_  
Adam Barber, Planner

For: Karen Schilling - Planning  
Director

Date: Thursday, July 1, 2004

**Opportunity to Review the Record:** A copy of the Planning Director's Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Adam Barber, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of **MCC 37.0640**. An appeal costs \$250 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is **Thursday, July 15, 2004 at 4:30 pm**.

**Applicable Approval Criteria: Multnomah County Code (MCC):** **MCC 33.2200 – 33.2310**, Commercial Forest Use-2; **MCC 33.7200 – 33.7215**, Nonconforming Uses; **MCC 33.4500 – 33.4575**, Significant Environmental Concern; Chapter 37 – Administration and Procedures.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at:  
[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use/index.shtml](http://www.co.multnomah.or.us/dbcs/LUT/land_use/index.shtml)

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires four years from the date the decision is final** if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required.

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. **The property owner shall record a copy of the Notice of Decision cover sheet and conditions of approval with the Multnomah County Recorder within 30 days of the date this decision becomes final. This decision will become final Thursday, July 15, 2004 at 4:30 pm if no appeal is filed. A copy of the recorded document shall be submitted to the Land Use Planning Office prior to the building permit sign-off (MCC 37.0670).**
2. **The existing residence shall be removed from the property within three (3) months of occupancy of the new home, as agreed upon by the applicant in the Replacement Dwelling agreement (Exhibit A6).**

3. All exterior lighting shall be 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 non-reflective, opaque materials **(MCC 33.4565(C)(3))**.
4. The trees north of the proposed dwelling illustrated in Exhibit A14 shall be retained to help screen the proposed development **(MCC 33.4565(C)(1) & (4))**.

# **DECISION OF THE PLANNING DIRECTOR**

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## **Findings of Fact**

### **1.0 Summary of Request**

Staff: The applicant proposes to construct a replacement dwelling on the 5.16 acre subject property zoned Commercial Forest Use-2 located in the West Hills Rural Plan Area. A previous approval for a replacement dwelling request) expired prior to construction of the replacement dwelling (permits SEC 14-97 & HV 7-97). The applicant has submitted a new replacement dwelling request.

The existing dwelling is poorly built, uninsulated, and located only 25 feet from the centerline of N.W Newberry Road, perched at the edge of steep road cut bank. The proposed replacement dwelling will be a 30-foot by 46-foot, well insulated, seismically engineered, fire resistant structure located on gently sloping ground set back from the steep road cut.

### **2.0 Vicinity and Property Description**

Staff: The subject property is located on the north flank of the West Hills roughly 520-feet above Mean Sea Level (Exhibit A1 and A2). The subject property and surrounding areas are steeply sloped forest land sparsely developed with single family dwellings located mainly to the northeast of the subject property. The land surrounding the subject property is deeply incised with seasonal tributaries flowing towards Multnomah Channel located 0.6 miles to the northeast. Newberry Road, a public road, parallels the northwest side of the property and provides access to the southwest portion of the site. The subject property ranges from gently sloping to steeply sloping and is predominantly forested with residential development clustered in a cleared area within the southwest corner of the property (Exhibit A3). The property slopes north-northwest towards Newberry Road and is located within the Ennis Creek drainage basin – ultimately flowing into Multnomah Channel located at the base of the West Hills. Commercial Forest Use land surrounds the property with exception of the City of Portland's jurisdiction located to the southeast of the site (Exhibit A4).

Upon receipt of a complete application, notice of the application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750-feet of the subject tract (**MCC 37.0530(B)**). Written comments were not received from any party noticed pursuant to the provisions of **MCC 37.0530(B)**.

### **3.0 Lot of Record**

3.1 **MCC 34.3370 and 34.0005(L)(12)** states, a Lot of Record, For the purposes of this district is a parcel, lot, or group thereof which when created and when reconfigured satisfied all applicable zoning and land division laws.

Staff: The subject property was placed into the 5.16 acre configuration currently represented on Assessment and Taxation maps over 42 years ago, as indicated on a 1962 plat map. The first zoning regulations (F-2) applied to this property in 1955 and required all new properties to be at least 2-acres in size. The 5.41 acre subject property

clearly would have met the size requirements at the time of creation. The subject property has not changed configuration since the last land use approval granted in 1997 ((permits SEC 14-97 & HV 7-97). This request does not involve partitioning or adjusting the boundaries of the subject property. Staff finds the subject property is a Lot of Record.

#### **4.0 Commercial Forest Use-2 (Allowed Use)**

Replacement of an existing lawfully established habitable dwelling on the same lot is an allowed use, subject to the following:

- 4.1 The replacement dwelling will be located within 200 feet of the existing dwelling (**MCC 33.2220(E)(1)**); and

*Applicant: "The replacement dwelling will be located 39 feet from the existing dwelling."*

Staff: The existing dwelling is located 25-feet from the centerline of Newberry Road along the western portion of the site. The replacement dwelling will be located 120-feet from the centerline of the road, to the southeast of the existing dwelling (Exhibit A3). The site plan submitted by the applicant verifies the replacement dwelling will be located 39-feet from the existing dwelling (Exhibit A3). A site visit conducted by Staff on May 19, 2004 confirmed the proposed residential building pad will be within 200-feet of the existing dwelling. This standard is met. The narrative statements to the approval criteria that were provided by the applicant are presented as Exhibit A5.

- 4.2 The existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling (**MCC 33.2220(E)(2)**); and

*Applicant: "The existing residence will be removed (demolished) within three months of completion of the replacement dwelling in order to maximize the benefits of the replacement dwelling and minimize the negative impacts of the existing structure on the site. This can be made a condition of approval."*

Staff: The applicant has signed a covenant verifying this standard will be met (Exhibit A6). Compliance to this standard is a specific condition of this approval.

- 4.3 The replacement dwelling shall satisfy the dimensional standards of **MCC 33.2260** and the development standards of **MCC 33.2305; (MCC 33.2220(E)(3))**.

Staff: See responses to the applicable criteria below.

#### **5.0 Dimensional Requirements**

- 5.1 Except as provided in **MCC 33.2265; 33.2270; 33.2275, and 33.2280**, the minimum lot size for new parcels or lots shall be 80 acres (**MCC 33.2260(A)**).

*Applicant: "The application is for an existing lot of record, there is no new parcel."*

Staff: A land division creating a new parcel is not proposed. This criterion does not apply.

- 5.2 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 (**MCC 33.2260(B)**).

Staff: The construction of a new street, and the vacation of a street is not proposed. This criterion does not apply to this proposal.

- 5.3 Minimum Forest Practices Setback Dimensions from tract boundary (**MCC 33.2260(C)**).

Road Frontage (feet) (60 from road centerline)	Side (feet) 130	Rear (feet) 130
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Maximum Structure Height - 35 feet

*Applicant: The replacement dwelling will be 116 feet from the centerline of NW Newberry road. The replacement dwelling East side setback will be 396 feet. The West side setback will be 57 feet (see nonconforming use application). The replacement dwelling rear setback will be 399 feet. The replacement dwelling will be 28 feet high.*

Staff: The replacement dwelling will meet the 130-foot rear setback as the rear property line is located roughly 400 feet from the rear property line. Although the structure will be located over 60-feet from the centerline of Newberry Road, the 130-foot side yard setback will not be met on the south side of the proposed structure (Exhibit A3). Since the existing structure does not conform to the setbacks listed in **MCC 33.2260(C)**, the proposal is eligible for a non-conforming use determination to allow an exception to these setbacks with the replacement dwelling. The non-conforming use standards are evaluated within this report. Structural elevations for the replacement dwelling are presented as Exhibit A7 and confirm the dwelling will not be taller than 35-feet, as measured from the midpoint of finished grade to the mid-point of highest gable (**MCC 33.0005(B)(5)**).

Minimum Front Lot Line Length - 50 feet.

*Applicant: "The front lot line is 942 feet."*

Staff: This lot line length only applies to the creation of new properties; which is not proposed. This standard does not apply.

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 33.2310**, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by **MCC 33.2305(A)(5)(c)(2)**.

Staff: The Exceptions to forest practice setback dimensions will not be processed pursuant to **MCC 33.2310** as these standards do not apply to non-conforming uses. The primary fire safety zone of 30-foot surrounding the structure, as referenced by **MCC**

**33.2305(A)(5)(c)(2)**, will be met as the nearest property line is 57-feet away to the south (Exhibit A3).

- 5.4 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 (**MCC 33.2260(D)**).

Staff: As confirmed by Alan Young, County Right of Way Permit Specialist, Newberry Road currently has a 60-foot Right of Way. Mr. Young confirmed the existing right of way width is sufficient and need not be increased as a result of this request. The replacement dwelling will be located 116-feet to the east-southeast of the road centerline – far outside the designated road Right of Way.

- 5.5 Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements (**MCC 33.2260(E)**).

Staff: These types of structures are not proposed. This proposal only involves a replacement dwelling.

- 5.6 Yards for the alteration, replacement or restoration of dwellings under **MCC 33.2220 (D)** and **(E)** and **33.2225 (B)** need not satisfy the development standards of **MCC 33.2305** if originally legally established to a lesser standard than that required by **MCC 33.2305**, but in no case shall they be less than those originally established (**MCC 33.2260(F)**).

*Applicant: “The existing dwelling predates the previous owners and is estimated to have been built in the 1920’s. No development standards were in effect at that time. The replacement dwelling will qualify for the exception from compliance with this section under 33.2220 (E).”*

Staff: The applicant is proposing to replace a dwelling that does not currently meet either the forest practice setbacks or the development standards. Due to the narrow width of the property, a replacement dwelling could not meet current setback standards in the Commercial Forest Use zone. As such, this request is being processed as an alteration to an existing non-conforming structure. Such a request does not need to meet the standards of **MCC 33.2260(F)** as the applicant has the right to continue the non-conforming use if the applicable non-conforming use standards are met, as evaluated within sections 7.0 - 9.0 of this report.

## **6.0 Development Standards for Dwellings and Structures**

- 6.1 Except as provided for the alteration, replacement or restoration of dwellings under **MCC 33.2220 (D)** and **(E)** and **33.2225 (B)**, all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following (**MCC 33.2305**).

Staff: The development standards of **MCC 33.2305** do not apply to replacement dwellings.

## 7.0 Nonconforming Uses

- 7.1 The purpose of this section is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the neighborhood, or changes required for the use to comply with State or County health or safety requirements (**MCC 34.7200(A)**).

Staff: This review will evaluate consistency with the purpose of this section through a detailed standard by standard analysis below.

- 7.2 Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in **MCC 34.7205** or **34.7210**, (**MCC 34.7200(B)**).

Staff: This request involves the replacement of a non-conforming use.

- 7.3 If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms to the requirements of this Zoning Code at the time of the proposed resumption (**MCC 34.7200(C)**).

*Applicant: "The house and parcel have been actively and continuously occupied at least since 1953, when the previous owners purchased it."*

Staff: County records show the existing dwelling was constructed in 1950. The applicant purchased the property in 1992 and has continuously lived in the residence since 1993, 11 years ago. The applicant and his wife have provided a signed and notarized affidavit to support this statement (Exhibit A6). An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application (**MCC 34.7215(F)**). A copy of a Qwest residence credit certificate has been submitted which provides evidence that telephone service has been provided to the property since 2/12/93 (Exhibit A8). Staff obtained no evidence suggesting the use of the residence has been discontinued for more than two years, over the last ten years. The evidence in its entirety suggests the use of the structure as a residence has not been discontinued, as relating to the standard of **MCC 34.7200**.

\* \* \*

- 7.4 A nonconforming use may be maintained with ordinary care (**MCC 34.7200(E)**).

*Applicant: "The house and parcel have been actively and continuously occupied at least since 1953, when the previous owners purchased it."*

Staff: Staff inspected the home on May 19, 2004. Inspection involved assessing the current condition of the residential roof, exterior walls and interior structure including walls, ceiling and floors. Although the structure appears to be nearing the end of its design life, it appeared the structure had been maintained over time with no evidence of maintenance neglect. The County found in 1997 that the existing dwelling was habitable



and being used as a residence (see permit HV 7-97/SEC 14-97). Staff finds the residence has historically been maintained sufficiently to meet this approval standard.

- 7.5 A change in ownership or occupancy of a nonconforming use is permitted (**MCC 34.7200(F)**).

Staff: This standard does not impact this request and as stated above, does not require evaluation.

## **8.0 Verification of Nonconforming Use Status**

- 8.1 The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use (**MCC 34.7215(A)**):

- 8.1.1 Was legally established and operating at the time of enactment or amendment of this Zoning Code, and (**MCC 34.7215(A)(1)**):

*Applicant: By reference, please see the file from permits SEC 14-97 and HV 7-97 (the accessory building was built and permitted, but the replacement dwelling was not). Multnomah County found that the use was legally established and operating in 1997, prior to the time and enactment or amendment of this Zoning Code.*

Staff: The existing residence was established in 1950, according to County Assessment information. Zoning rules regulating the establishment of new dwellings did not exist until five years after the dwelling was constructed. No evidence has been found suggesting the use of the structure has been abandoned in the past. In 1997, the County found the residential use was a lawfully established, habitable dwelling (see permit HV 7-97/SEC 14-97). Staff finds the residential use was lawfully established.

- 8.1.2 Has not been abandoned or interrupted for a continuous two year period (**MCC 34.7215(A)(2)**).

*Applicant: "See...affidavit of continuous residence (use) since 1993."*

Staff: County records show the existing dwelling was constructed in 1950. The applicant purchased the property in 1992 and has lived in the residence since 1993, 11 years ago. The applicant and his wife have provided a signed and notarized affidavit to support this statement (Exhibit A9). An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application (**MCC 34.7215(F)**). A copy of a Qwest residence credit certificate has been submitted which provides evidence that telephone service has been provided to the property since 2/12/93 (Exhibit A8). Staff has received no evidence suggesting the use of the residence has been discontinued for more than two years, over the last ten years. Staff finds this standard is met when considering the evidence in aggregate.

8.2 The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider **(MCC 34.7215(B))**:

8.2.1 Description of the use **(MCC 34.7215(B)(1))**;

*Applicant: "Single family residence."*

Staff: A site visit conducted by Staff on May 19, 2004 confirmed the home is currently being used as a single family dwelling.

8.2.2 The types and quantities of goods or services provided and activities conducted **(MCC 34.7215(B)(2))**;

Staff: The activities conducted within the structure are those typical of a single family residence.

8.2.3 The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity **(MCC 34.7215(B)(3))**;

*Applicant: "Year round single family residence."*

Staff: The residence is occupied year round by two people requiring typical vehicular trips to and from the property daily as seen with other single family dwellings in the area.

8.2.4 The number, location and size of physical improvements associated with the use **(MCC 34.7215(B)(4))**;

*Applicant: "An existing dwelling, proposed replacement dwelling, two accessory structures and related driveways and cleared areas are clearly dimensioned and located on the SEC-h site plans included with this application."*

Staff: Staff concurs.

8.2.5 The amount of land devoted to the use **(MCC 34.7215(B)(5))**; and

*Applicant: "Approximately one acre of the 5.16 acres is developed area. This will not change."*

Staff: Staff concurs. This is demonstrated in a 2002 aerial photo of the site (Exhibit A10).

8.2.6 Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use **(MCC 34.7215(B)(6))**.

Staff: No other information is required to determine the nature and extent of the existing single family residential use occurring on the property today.

- 8.2.7 A reduction of scope or intensity of any part of the use as determined under **MCC 34.7215 (B)** for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered (**MCC 34.7215(B)(7)**).

*Applicant: "The level of use has been constant since 1993, when the present owners purchased the property."*

Staff: It has previously been found in this report that the residential use was lawfully established and has not been discontinued for more than 2-years over the last 10 years. A reduction in the scope or intensity of the residential use is not proposed. The applicant is proposing to construct a new single family dwelling on the subject property and remove the existing dwelling resulting in no net change to the scope or intensity of the residential use.

- 8.3 In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance (**MCC 34.7215(C)**).

*Applicant: "By reference, please see the file from permits SEC 14-97 and HV 7-97 (the accessory building was built and permitted, but the replacement dwelling was not). Multnomah County found that the use was legally established and operating in 1997, prior to the time and enactment or amendment of this Zoning Code."*

Staff: The existing residence was established in 1950, according to County Assessment information. Zoning rules regulating the establishment of new dwellings did not exist until five years after the dwelling was constructed. No evidence has been unearthed suggesting the use of the structure has been abandoned in the past. In 1997, the County found the residential use was a lawfully established, habitable dwelling (see permit HV 7-97/SEC 14-97). Staff finds the residential use was lawfully established, and has been in continual operation since that time.

- 8.4 Except for nonconforming uses considered under **MCC 34.7210 (B)**, the Planning Director may impose conditions to any verification of nonconforming use status to insure compliance with said verification (**MCC 34.7215(D)**).

Staff: No such conditions are necessary as no discrepancy exists in the status of the non-conforming use.

- 8.5 Any decision on verification of nonconforming use status shall be processed as a Type II permit as described in MCC Chapter 37 (**MCC 34.7215(E)**).

Staff: This request was processed as a Type II permit, as required by **MCC 34.7215(E)**.

- 8.6 An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application (**MCC 34.7215(F)**).

Staff: Evidence regarding the nature and extent of the use more than 10 years ago was not required.

- 8.7 For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application (**MCC 34.7215(G)**).

Staff: This information was not requested of the applicant.

## **9.0 Alteration, Expansion or Replacement of a Non-Conforming Use**

- 9.1 Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements (**MCC 33.7210(A)**).

Staff: This is a request to replace a non-conforming structure. The applicant will need to obtain all necessary building permits for the replacement dwelling to assure all applicable health and safety requirements will be met. Failure to obtain the necessary permits will initiate a violation.

- 9.2 After verification of the status of a nonconforming use pursuant to the applicable provisions of **MCC 33.7215**, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:

- 9.2.1 The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements (**MCC 33.7210(B)(1)**), or

*Applicant: "The existing dwelling is poorly built, uninsulated, and due to previous road alignment changes in N.W. Newberry Road by Multnomah County, now located only 25 feet from the centerline of the road and perched at the edge of a steep cut bank (slopes in excess of 1:1) at the edge of the road right of way."*

Staff: It was confirmed during a site visit conducted by Staff on May 19, 2004 that the existing structure is located in an unacceptable and unsafe location above N.W. Newberry Road. The structure is located at the edge of a near vertical road cut and appears to extend into the public road Right of Way. The storm water discharge attributed to the structure's roof contributes to the saturation of the cut bank raising significant slope stability concerns. Staff believes the replacement is necessary to provide a more safe and suitable living environment. The new structure will be set back roughly 90-feet further from the road in an attempt to significantly minimize if not

eliminate risk of structural damage created by shallow slope failure adjacent to the N.W. Newberry Road. This standard is met.

- 9.2.2 The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity (**MCC 33.7210(B)(2)**).

*Applicant: "The existing dwelling is poorly built, uninsulated, and located at the edge of a steep cut bank in the right of way of Newberry road. The partial foundation is leaky, and the low slope roof is sagging from lack of support. The dwelling needs complete re-building and it is not feasible or safe to rebuild in its present location. To maintain the use in good repair will require replacement nearby in a safer location."*

Staff: The existing dwelling, originally constructed in 1950, is near the end of its design life. Photos show the foundation is currently jacked up with blocks of concrete suggesting a structurally substandard situation (Exhibit A11). It is obvious action needs to be taken. When considering the location of the dwelling, Staff finds replacing the home would be a more logical solution than repairing the existing structure.

- 9.3 After verification of the status of a nonconforming use pursuant to the applicable provisions of **MCC 33.7215**, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider all of the criteria listed below. Adverse impacts to one of the criterion may, but shall not automatically, constitute greater adverse impact on the neighborhood (**MCC 33.7210(C)**).

*Applicant: "The existing dwelling is poorly built, uninsulated, and located at the edge of a steep cut bank in the right of way of Newberry road. The partial foundation is leaky, and the low slope roof is sagging from lack of support. The dwelling needs complete re-building and it is not feasible or safe to rebuild in its present location. To maintain the use in good repair will require replacement nearby in a safer location."*

*The surrounding area is zoned CFU-2 and lot sizes range from several acres to hundreds of acres in the neighborhood. The area has had the present character of mixed rural residential and commercial forest uses for at least the last 75 years.*

*The existing dwelling and accompanying outbuildings are a collection of structures that began in the 1920's as a small cabin and was expanded in stages by various owners beginning with their purchase in 1953. The existing dwelling, due to previous road alignment changes in N.W. Newberry Road by Multnomah County, is now located 25 feet from the centerline of the road and perched at the edge of a steep cut bank (slopes in excess of 1:1) at the edge of the right of way. The side yard distance is 112 feet. This is less than the 130' minimum fire practices setback now required for development. The centerline distance is also not met, since the current requirement is for 60 feet. The failure of this lawfully established use to meet these two dimensional standards that were enacted after the use was established is the nonconformance.*

*The proposed replacement dwelling will be a modest 30 by 46 foot, well insulated, seismically engineered, fire resistant structure located 39 feet from the existing dwelling.*

*The distance to the centerline of Newberry road will now be 116 feet which meets the front yard requirement, and the side yard will decrease to 57 feet which is a continuing non-conformance. One of the existing outbuildings is less than 5 feet from the property line and this is proposed to be reduced to less than 25 per cent of its present size. The entire side yard will be maintained to primary fire zone safety standards, and the replacement dwelling will be located on gently sloped stable ground well away from the steep road cut.*

*The proposed replacement dwelling will have no more adverse impact on the neighborhood than the existing dwelling because it will reduce the nonconforming dimensional standards from two items to one item. It will also not be so close to the steep road cut, have much better fire and earthquake resistance, better storm water drainage, and be a healthier, more energy efficient residence.*

*The proposed replacement dwelling will have no greater adverse impact on the commercial forest uses in the neighborhood than the existing dwelling because it will be less of a threat to or from wildfire by virtue of its method of construction and location, and will minimize potential damage from pollution and erosion by removing the seismically vulnerable existing dwelling adjacent to the public road and replanting vegetation in its place.*

*The only impervious area proposed is the 2,118 square feet of roofing surface. All driveways will remain pervious surfaces, either the existing gravel, or pervious paving stones. The storm water management system will be designed, sized and constructed using the guidance of the City of Portland Storm water Management Manual, September 2002, revision 2. The replacement dwelling roof gutters and downspouts are tied to a connector and led to a flow spreader surface dispersion feature that utilizes the existing gently sloped, grassy and vegetated swale to create non-channelized sheet flow to remove pollutants, reduce velocity and permit infiltration without increased runoff in rain events. These features are shown on the attached proposed storm water management plan drawing.”*

Staff: The existence of the current residence is creating a safety hazard for the property owners and for all members of the community that travel along N.W. Newberry Road. The poor condition of the foundation, the location above a near vertical road cut and the storm water disposal methods (saturating the steep slope) are the main contributors to the unsafe situation. Failure of the home or slope could create a catastrophic failure where the home falls into the road along a blind corner. This scenario is not unreasonable considering the location of the home, the shallow slope failures common throughout the West Hills and the risk of significant seismic event throughout western Oregon.

The use on the property will not change as one single family dwelling will be constructed and one removed. The replacement dwelling request will not impact the number of vehicular trips to and from the property and will have no foreseeable negative impact on the community. On the contrary, the impact on the community will be positive as the safety of Newberry Road will be improved through the removal of the unsafe residence. This criterion is clearly met by this proposal for the reasons cited above.

9.3.1 The character and history of the use and of development in the surrounding area (**MCC 33.7210(C)(1)**);

*Applicant: "The surrounding area is zoned CFU-2 and lot sizes range from several acres to hundreds of acres. The parcel is located approximately .9 mile uphill from US Highway 30 near Sauvie island, and just over a mile downhill from Skyline Boulevard. The Multnomah County - City of Portland Boundary and the Urban Growth Boundary touch the parcel, and Newberry Road crosses the City of Portland Boundary approximately .7 mile uphill. There is at least one house and outbuilding on every parcel on Newberry road, with the exception of the Metro Green Space and Forest Park. The area has had the present character of mixed rural residential and commercial forest uses for at least the last 75 years. The immediate neighborhood consists of rural homesteads and commercial forest uses that include small woodland owners, but over the last few years the large acreage local commercial forest land tracts were sold to Metro as open space, ending their use for continued commercial harvesting of timber while preserving their habitat and recreational forest values. The low intensity of development is supportable by the existing infrastructure and neighborhood organizations, and will not be altered by this replacement dwelling."*

Staff: The applicant has provided a detailed description of the nature of the area surrounding the subject site today. In the past, the area has historically been zoned forest use land (F-2) and has seen little changes in use due to strict regulations protecting forest land. The net change of use on this property as a result of this proposal will be immeasurable as no new use is proposed. Since the existing residential use was established on this property in 1950, Staff finds that the character of the area will not change if the substandard home is replaced.

9.3.2 The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood (**MCC 33.7210(C)(2)**);

*Applicant: "No increase in noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood will result from the replacement dwelling, except very briefly during construction. Prefabrication of framing and advanced construction techniques will keep the construction period to a minimum and be much less adverse than the nearby Angell Brothers Quarry or commercial forestry allowed in this zone."*

Staff: Timber harvest activities are common in the area which typically contributing to local noise pollution. Truck traffic passing through N.W. Newberry Road also contributes to fumes, noise and vibration in the area. In the short term, the construction activities will increase the level of noise, and dust that may be detectible from an off-site location. Over the long-term, the presence of the new home will not have any larger impact on the neighborhood than the existing home. Staff is not aware that the existing home is creating problems associated with noise, vibration, dust, odor, fumes, glare or smoke. Staff believes this standard will be met by the proposal.

9.3.3 The comparative numbers and kinds of vehicular trips to the site (**MCC 33.7210(C)(3)**);

*Applicant: "There will be no increase in vehicular trips to the site."*

Staff: Since the single family “use” will not be expanded, the number of vehicular trips to the site should remain relatively constant.

9.3.4 The comparative amount and nature of outside storage, loading and parking (**MCC 33.7210(C)(4)**);

*Applicant: “There will be no increase in outside storage, loading and parking.”*

Staff: The property currently has two accessory structures used for storage. No new accessory structures have been proposed. The applicant has not indicated outside storage, loading or parking demands would change as a result of the proposal.

9.3.5 The comparative visual appearance (**MCC 33.7210(C)(5)**);

*Applicant: “The visual appearance will be greatly improved; the ramshackle, poorly constructed house and dilapidated accessory structure will be removed or greatly reduced in size, and the new replacement dwelling will be an architecturally pleasing new structure with traditional lines.”*

Staff: The existing dwelling is a modest, poorly constructed, weathered structure. Elevations of the proposed dwelling illustrate a two story (with basement below), modern style dwelling (Exhibits AX). The visual appearance will be improved by the proposal as the existing dwelling visible from N.W. Newberry Road will be removed. This will make the subject property appear less developed as viewed when traveling along N.W. Newberry Road.

The determination of how something will look is somewhat subjective. Stepping back from the situation, the applicant is proposing to tear down an old structure and replace it with a new structure. To most people, this would most likely be viewed as an improvement, consequently improving the visual appearance of the structural development on the property.

9.3.6 The comparative hours of operation (**MCC 33.7210(C)(6)**);

*Applicant: “There will be no change in the hours of operation of the dwelling.”*

Staff: This criterion is not relevant to a request to rebuild a single family dwelling as a single family dwelling has no defined hours of operation.

9.3.7 The comparative effect on existing flora (**MCC 33.7210(C)(7)**);

*Applicant: “There will be no change in the existing flora. New vegetated buffers will be planted in the existing dwelling location.”*

Staff: The proposed building pad for the new residence is currently a moderately sloped grassed area, as seen in photos taken May 19, 2004 (Exhibit A12). Although the residential yard under the structure will be eliminated during construction, sensitive flora will not be impacted as the nearest forested area will be located roughly 60-feet to the south of the proposed dwelling. Two apple trees, located 25-feet to the northeast of the proposed dwelling will not be harmed. A grape arbor is located 90-feet to the northeast



of the proposed home which will also be left undisturbed. Staff finds, the proposal will have no measurable effect on existing flora.

9.3.8 The comparative effect on water drainage or quality (**MCC 33.7210(C)(8)**); and

*Applicant: "Water drainage and runoff quality will be greatly improved with the implementation of new, properly designed storm water management features."*

Staff: Currently, storm water runoff from the existing home contributes to the saturation of the steep road cut bank. By relocating the dwelling further from the slope, the stability of the slope would most likely be improved through the removal of the weight of the home at the top of the slope and the re-direction of future storm water disposal. The storm water from the proposed dwelling will be routed downhill to the northeast of the new home through vegetated swales designed to filter pollutants and infiltrate run off into the native soils on the site. The comparative effect of water drainage and water quality will be improved by the new design.

9.3.9 Other factors which impact the character or needs of the neighborhood (**MCC 33.7210(C)(9)**);

Staff: One issue that has not yet been discussed is the proposed septic disposal methods. The existing septic disposal system involves a combination sand filter and septic drain line system located to the immediate northeast of the existing residence. This system was installed in 1997 according to Phillip Crawford, City of Portland Sanitarian. Mr. Crawford had verified the feasibility for the new home to connect to this existing system, assuming an authorization permit is obtained from his office (Exhibit A13). Since the septic disposal method and location of disposal will not be altered by this request, Staff finds septic disposal from the new home will not ultimately impact the neighborhood in any way. This issue may not relate directly to the character and needs of the neighborhood but is the only issue that Staff could foresee that could create any impacts not yet discussed.

## **10.0 Significant Environmental Concern (View)**

- 10.1. 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 33.4515**, shall be subject to an SEC permit.

Staff: The applicant has proposed to replace the existing dwelling with a new dwelling. This alteration of use request is subject to the Significant Environmental Concern review, as required by **MCC 33.4520**.

- 10.2. An application for a SEC view permit shall include written narrative and the plan elements listed in **MCC 33.4520(A)(1)** and **(2)** and **33.4565(B)**.

*Applicant: “The Identified Viewing Areas that provide views of this development are: Public roads on Sauvie Island and Sauvie Island Wildlife Refuge. (see SEC-v Exhibit B ). None of the other identified areas provide views of this development. The replacement dwelling will be visible (discernable with the naked eye) from a 1/10th mile portion of NW Gillihan loop road approximately 1.1 miles from the site (see SEC-v exhibits and 2). Another stretch of Gillihan loop road approximately six miles distant from the property. The portion of Sauvie Island Wildlife Refuge and Reeder road that provide views are approximately ten miles distant. At these distances the development will not noticeably contrast with the surrounding landscape. It may be barely visible in certain conditions, but could not be reasonably considered visually dominant in relation to its surroundings to the naked eye.*

*Because the site is southwest of the applicable key viewing areas, the visible northeast facing surface is incapable of reflecting direct sunlight or producing visual dominance at the distances it is visible. Indeed, at most times of day one is looking into the sun to see the proposed 35 foot tall replacement dwelling. Topography alone limits the field of view to an exceptionally short (1/10th mile) stretch of road at the nearest key viewing area. In combination with the existing thick vegetation on all properties in the line of site, the proposed development will be very difficult to see with the naked eye. Details of the proposed construction materials will not change this. No visible outdoor lighting will be used.*

*Examine the convenient worst case example of the reflective galvanized metal roof on the existing accessory structure which is exactly in line with, and higher than the proposed replacement dwelling when viewed from the nearest key viewing area. In the photograph taken from the key viewing area with a normal lens (photo # 2 on SEC-v Exhibit C), and can be confirmed by a visit to the key viewing area, this structure with the worst case height, shape, colors and exterior building materials is so visually subordinate as to be nearly invisible.*

*We propose to use various standard profiles of corrugated architectural metal siding and roofing for aesthetic reasons, low maintenance and fire protection. We propose to use galvanized silver finish siding because it is the longest lasting available finish and does not require periodic repainting with its associated environmental impacts. Trim, door and window frames will be selected to provide maximum durability without maintenance and for fire protection. The photographs and narrative previously submitted with the SEC-v application illustrate how even this light colored, potentially reflective surface will remain nearly invisible and certainly visually subordinate in relation to the surrounding topography and evergreen vegetation as viewed from the key viewing areas at all times of day and in any season.”*

Staff: The applicant has supplied the information required by **MCC 33.4520(A)(1)** and **(2)** and **33.4565(B)**. This information was submitted in the form of narrative, plans and photos that will be discussed in detail on a point-by-point basis throughout the Significant Environmental Concern section of this report.

- 10.3 Development visible from an identified viewing area shall be sited on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas (**MCC 33.4565(C)(1)**).

*Applicant: "The replacement dwelling is located on a portion of the property where topography and existing vegetation will screen the development from the view of identified viewing areas while still complying with other guidelines for the clustering of development."*

Staff: The subject site is located on the northeast flank of Portland's West Hills trending northwest-southeast through the study area. The site sits roughly 520-feet above Mean Sea Level, ½ mile from Highway 30 located to the northeast of the property. The identified viewing areas are located to the north and northeast of the site ranging in distance from roughly ½ mile to over 10-miles away.

The closest viewing area, Highway 30, is located at the base of the West Hills a half mile away, roughly 470-foot lower in elevation than the subject site. Staff carefully reviewed the topography as mapped on the USGS Sauvie Island 7.5-minute quadrangle between the site and Highway 30. Staff determined the view to the site from Highway 30 is blocked by topography (i.e. not visible) for the majority of the highway in the study area. One exception is a location where the site is not blocked by topography as viewed up a topographic gully from Highway 30 along a bearing of 210 degrees passing through the site. This line of sight passes roughly 10-feet above the ground level and therefore would be obscured by existing tree cover in the area. In conclusion, Staff finds the proposed dwelling will not be able to be seen from any portion of the closest identified viewing area – Highway 30.

The development will not be fully blocked by topography or vegetation as viewed from other identified viewing areas on Sauvie Island including public roads on the island north of the site. As such, **(MCC 33.4565(C)(1))** requires development to be sited on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.

Because the site slopes to the north towards the identified viewing areas, topography on the site can not be used to obscure the development from Sauvie Island. It is evident on the topographic site plan presented as Exhibit A3 that moving the development to any other portion of the site would only move the development closer to the identified viewing areas. Staff finds site topography is irrelevant for evaluation of this standard. Mature tree cover is located to the south of the development, as evident in site photos taken from the proposed building pad on May 19, 2004 (Exhibit A12). The applicant is siting the development in a cleared area partially surrounded by mature tree cover.

The tree cover to the north (below) the development will stand between the identified viewing areas and the proposed home and will help obscure the bottom portion of the structure. After considering the location and height of the tree cover, Staff believes the trees will not obscure views of the home as viewed from the north but will partially screen the development minimizing the amount of exposure towards the north. Preservation of this tree cover is a condition of this approval. Staff finds the location chosen for the development utilizes the topography and vegetative cover to the maximum extent practicable in the attempt to comply with this standard. Moving the development to another location on the site would clearly conflict with other approval criteria designed to protect existing tree cover and cluster development, for example. This standard is met.

10.4 Use of non-reflective or low reflective building materials and dark natural or earth tone colors (**MCC 33.4565(C)(2)**).

*Applicant: “We propose to use various standard profiles of corrugated architectural metal siding and roofing for aesthetic reasons, low maintenance and fire protection. We propose to use galvanized silver finish siding because it is the longest lasting available finish and does not require periodic repainting with its associated environmental impacts. Trim, door and window frames will be selected to provide maximum durability without maintenance and for fire protection. The photographs and narrative previously submitted with the SEC-v application illustrate how even this light colored, potentially reflective surface will remain nearly invisible and certainly visually subordinate in relation to the surrounding topography and evergreen vegetation as viewed from the key viewing areas at all times of day and in any season.”*

Staff: The replacement dwelling will be a rectangular corrugated metal sided structure, similar in construction materials as used to construct the large “hanger like” existing shop (Exhibit A12). The galvanized corrugated metal used in the shop and proposed for the home does reflect light. The metal structure will not be painted and will remain a silver color.

Staff visited Sauvie Island on May 19, 2004 to determine how visible the existing corrugated metal shop was from identified viewing areas (public roads on Sauvie Island). The closest view from a public road towards the site was located on Gillihan Loop Road towards the southern tip of Sauvie Island roughly one mile northeast of the site. The existing corrugated metal shop is located in the same portion of the site as the new home and is a good benchmark when evaluating how the home may look. From Gillihan Loop Road, the existing metal shop could not clearly be seen with the naked eye but is not blocked by topography, as viewed from this location. The existing shop is small in size compared to the surrounding hillside, is partially obscured by tree cover and does not dominate the landscape.

The applicant has stated that from this vantage point – the closest identified viewing area from which the site can be seen – only the roof of the shop is visible above the tree line and can only be seen with binoculars rather than clearly seen with the naked eye. This would suggest that a similarly constructed residence next to the shop would also not be visually dominant as viewed by the naked eye from the closest identified viewing area. The development would be even less visible from identified viewing areas located further away on Sauvie Island. It should be noted that Staff has evaluated the worst case scenario above as this is the closest location from which the site is not blocked by topography – although the development area is not expected to be seen clearly with the naked eye.

Staff finds the new home, using the unpainted corrugated metal construction, will be visually subordinate (not dominate) without the requirement of using low-reflective building materials and dark colors. The tree cover downhill of the development will

help to partially screen the base of the structure. These trees, as illustrated in Exhibit A14 will be retained as a condition of this approval. It should be noted that as stated in **MCC 33.4565(C)** that a determination of visual subordination needs to be made, and the use of non-reflective building materials and dark colors is a “guideline” which may be used when reviewing this standard. Staff finds the construction, as proposed, will be visually subordinate and will meet the requirement of **MCC 33.4565(C)**.

- 10.5 Any exterior lighting shall be 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 non-reflective, opaque materials (**MCC 33.4565(C)(3)**).

*Applicant: “No unshielded exterior lighting will be used. Please refer to my previous responses in the SEC-v application concerning exterior lighting. There will be no unshaded exterior lighting on the visible North side of the replacement dwelling, and only fully shaded spot safety lighting under the doorway entrance roofs on the East and South walls. These lights are not visible from any Key Viewing Areas.”*

Staff: Although the structure has been found to be visually subordinate, exposed exterior lighting has the potential to be seen from identified viewing areas at night. The applicant is not proposing unshielded exterior lighting. A condition of this approval is that all exterior lighting shall be hooded and shielded to direct light downward to assure this condition will be met.

- 10.6 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 (**MCC 33.4565(C)(4)**).

*Applicant: “All existing screening vegetation will be retained. Additional evergreen trees will be planted in the location where the existing dwelling is now, and elsewhere on the property in the line of sight with the nearest key viewing area.”*

Staff: The identified viewing areas are located to the north of the development, so evaluation of vegetation north of the development is only relevant to this standard. Mature cherry, maple and alder tree cover is located north of the development in between all identified viewing areas and the home. These trees will help screen the base of the structure, but will not obscure the structure completely. A condition of this approval is that these trees be retained to continue to help screen the development. The proposed building location is currently grass land and was chosen in the attempt to avoid damage to the surrounding tree cover. No trees will need to be removed during construction. This standard is met.

- 10.7 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 (**MCC 33.4565(C)(5)**).

*Applicant: "There will be no grading, modifications of landforms, removal of vegetation or natural characteristics visible from the key viewing areas."*

Staff: The proposed building area is located on the flattest portion of the site, evident on the topographic map presented as Exhibit A3. Minimal cutting and a small volume of fill will be required to prepare the subgrade for foundation pouring. Staff finds that any other location on the property would require more grading for foundation preparation due to the increase in grade. The only exception would be the area of the existing home but this location is not-acceptable for the replacement dwelling due to safety concerns previously discussed in detail.

- 10.8 Limiting structure height to remain below the surrounding forest canopy level (**MCC 33.4565(C)(6)**).

*Applicant: "The structure will be lower than the surrounding forest canopy height."*

Staff: Tree cover behind (to the south) of the development will rise above the proposed home. The structure will remain below the surrounding forest canopy. Photos of the surrounding forest canopy are presented as Exhibit A12.

- 10.9 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 (**MCC 33.4565(C)(7)**):

*Applicant: "The structure will be lower than the skyline of bluffs or ridges as seen from identified viewing areas."*

Staff: The natural topography rises behind (south) of the subject site to an elevation of roughly 800-ft +Mean Sea Level (MSL) at the crest of the West Hills. The home will be sited at roughly elevation 520-ft +MSL. In short, the hill behind the development will prevent sky lighting of the structure as viewed from an identified viewing area because the hill is much taller than the home. This standard is met.

- 10.9.1. New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration the standards of **MCC 33.4565(C)(7)(a)(1) – (3)** will be met (**MCC 33.4565(C)(7)(a)**):

Staff: No new communication facilities are proposed. These approval criteria do not apply.

## **11.0 Significant Environmental Concern (Habitat)**

- 11.1 In addition to the information required by **MCC 33.4520 (A)**, 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 (**MCC 33.4570(A)**):

Staff: This information has been presented in the form of a 2002 aerial photo presented as Exhibit A10. This photo shows an existing wire fence paralleling the south and east sides of the subject property.

- 11.1.1 Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas (**MCC 33.4570(A)(1)**); For the purposes of this section, a *forested area* is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A *non-forested "cleared"* area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

Staff: This information has been presented in the form of a 2002 aerial photo presented as Exhibit A10. This photo shows the southwest portion of the property is currently cleared and impacted by existing residential development while the rest of the property is heavily forested.

- 11.1.2 Location of existing and proposed structures (**MCC 33.4570(A)(2)**);

Staff: A development plan submitted by the applicant labels all existing and proposed structures. The only proposed structure is the replacement dwelling to be located northwest of the existing shop.

- 11.1.3 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 (**MCC 33.4570(A)(3)**);

Staff: This information has been presented in the form of a 2002 aerial photo presented as Exhibit A10. Newberry Road has a 60-foot wide Right of Way and parallels the subject property's northwest side

- 11.1.4 Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property (**MCC 33.4570(A)(4)**).

Staff: This information has been presented in the form of a 2002 aerial photo presented as Exhibit A10. This photo shows an existing wire fence paralleling the south and east sides of the subject property. No new fencing is proposed.

- 11.2 Development standards (**MCC 33.4570(B)**):

- 11.2.1 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 (**MCC 33.4570(B)(1)**).

*Applicant: "The replacement dwelling will be located 44 feet from the existing dwelling and will be located in an already cleared and developed area. The replacement dwelling will be located clustered with the existing structures and require no new roads or other aspects of development that could have any impact on adjoining habitat."*

Staff: A 2002 aerial photo presented as Exhibit A10 clearly illustrates the proposed development will occur in the only cleared portion of the property. A site visit conducted by Staff on May 19, 2004 confirmed the southwestern corner of the site is currently the only cleared area.

- 11.2.2 Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site (**MCC 33.4570(B)(2)**).

*Applicant: "The replacement dwelling will be located approximately 135' feet from NW Newberry road on an existing driveway."*

Staff: The closest portion of the new home will be 116-feet from the centerline of N.W. Newberry Road, a public road (Exhibit A3). This standard is met.

- 11.2.3 The access road/driveway and service corridor serving the development shall not exceed 500 feet in length (**MCC 33.4570(B)(3)**).

*Applicant: "The replacement dwelling will be located approximately 135' feet from NW Newberry road on an existing driveway."*

Staff: No new access road or driveway will be needed as the existing driveway to the shop beyond the home location will provide access to the new home. This standard does not apply to this request.

- 11.2.4 The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary (**MCC 33.4570(B)(4)**).

*Applicant: "No adjacent property has an access road or driveway within 200 feet of the property boundary."*

Staff: No new access road/driveways are proposed. This standard does not apply. The existing access driveway will be utilized.

- 11.2.5 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 (**MCC 33.4570(B)(5)**).



Applicant: *“The replacement dwelling will be located within 300 feet of the nearest property boundaries. The adjacent property has no structures and developed areas within 200 feet of the property boundary.”*

Staff: The property across N.W. Newberry Road to the northeast has development within 200-feet of a property boundary making this standard applicable. Development on the subject property will occur 57 feet from the south property boundary, meeting the criteria of **MCC 33.4570(B)(5)**.

- 11.2.6 Fencing within a required setback from a public road shall meet the following criteria (**MCC 33.4570(B)(6)**):

Staff: No new fencing is proposed. This code section does not apply.

- 11.2.7 The nuisance plants listed in **MCC 33.4570(B)(7)** shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property (**MCC 33.4570(B)(7)**):

Applicant: *“None of the nuisance plants will be planted on the subject property and will be removed and kept removed from cleared areas of the subject property if found.”*

Staff: No nuisance plants will be used for landscaping.

- 11.3 Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist (**MCC 33.4570(C)**).

- 11.3.1 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 (**MCC 33.4570(C)(1)**); or

- 11.3.2 The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B) (**MCC 33.4570(C)(2)**).

Staff: A wildlife conservation plan is not necessary as the Significant Environmental Concern (habitat) development standards have been met.

## **Conclusion**

Considering the findings and other information provided herein, this application, as conditioned, satisfies applicable Multnomah County Zoning Ordinance requirements. The replacement dwelling shall be constructed as indicated in the plans approved by this decision, as further indicated in the **Scope of Approval** section of this report.

## **Exhibits**

All materials submitted by the applicant, prepared by County staff, or provided by public agencies or members of the general public relating to this request are hereby adopted as exhibits hereto and may be

found as part of the permanent record of this application. Exhibits referenced herein are enclosed, and a brief description of each is listed below:

<u>Label</u>	<u>Pages</u>	<u>Description</u>
A1	1	Vicinity map
A2	1	Topographic map of the area
A3	2	Development plans
A4	1	Zoning map
A5	25	Narrative submitted by the applicant
A6	1	Replacement dwelling agreement
A7	3	Home elevations
A8	1	Qwest credit certificate
A9	1	Affidavit signed by applicant
A10	1	2002 aerial photo of site
A11	2	Photos submitted by applicant
A12	3	Photos taken by Staff 5/19/04
A13	1	Septic signoff form
A14	1	Map of trees to be retained