



## 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.

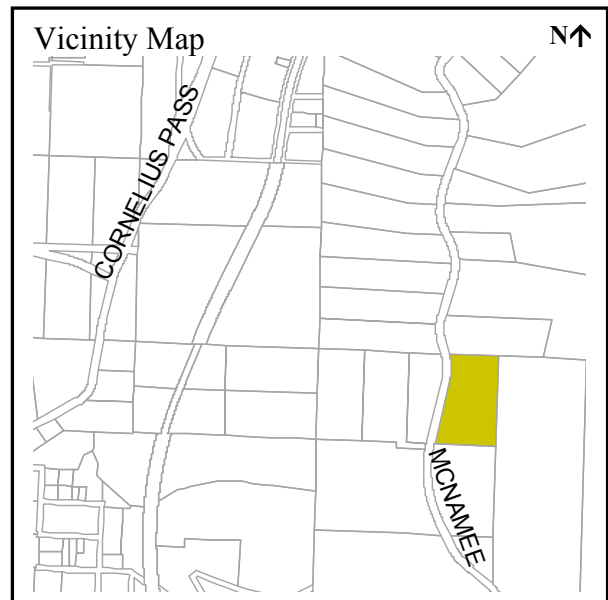
**Case File:** T2-04-037

**Permit:** Significant Environmental Concern For Wildlife Habitat

**Location:** 15400 NW McNamee Rd  
TL 1300, Sec 30, T 2N, R 1W, W.M.  
Tax Account #R97130-0250

**Applicant:** Andrea Carlstrom

**Owner:** Andrea Carlstrom &  
Chris Foster  
15400 NW McNamee Rd  
Portland, OR 97231



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**Summary:** Applicant has requested a Significant Environmental Concern permit for wildlife habitat to construct an in-ground swimming pool in the Rural Residential zoning district.

**Decision:** Approved with conditions.

Unless appealed, this decision is effective Friday, July 16, 2004, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, July 2, 2004

**Opportunity to Review the Record:** A copy of the Planning Director 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 Lisa Estrin, 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 requires a \$250.00 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 Friday, July 16, 2004 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC):

*General Provisions:* MCC 33.0005(L)(13) Definitions - Lot of Record.

*Rural Residential:* MCC 33.3120(F) Allowed Uses - Accessory Structures, MCC 33.3155 Dimensional Requirements, MCC 33.3170 Lot of Record

*Significant Environmental Concern:* MCC 33.4510 Uses; SEC Permit Required, MCC 33.4520 Application for SEC permit, MCC 33.4525 Applicable Approval Criteria, MCC 4565 Criteria for Approval of SEC-v Permit, MCC 33.4570 Criteria for Approval of SEC-h Permit

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](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

## **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. **Pursuant to MCC 37.0690, this land use permit expires two 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. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

## **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. Should exterior lighting be required or desired by the homeowner for the nighttime enjoyment of the in-ground lap pool, the 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 shall be composed of nonreflective, opaque materials.

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| <b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b> |
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| ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser. |
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## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### 1.00 ***General Project Description:***

**Applicant:** The project is to be located on a RR zoned property of approximately 6 acres. The existing residence was built in 1947, though the site has been occupied continuously for over 100 years. In 2001, an SEC View permit for this property was issued to allow a replacement and expansion of the existing attached garage. That work has since been completed. The proposed new structure is auxiliary to the residential use and the standard zoning setback requirements are easily met. This project consists entirely of the installation of an in-ground "lap" swim pool in the side yard of the existing residence. The pool size is approximately 10 ft x 38 feet with a depth of 4 feet, 6 inches. The location is to the south of the attached garage, oriented north/south and within 10 feet of the building. The installation and surrounding area is a grass covered yard and relatively flat with a maximum slope of approximately 12 inches over the affected area. No trees or shrubs of any kind will be removed, and no landscape alterations are planned. A 36 inch wide concrete walkway as close to the existing grade as possible will surround the pool. Per the State of Oregon Specialty Code, a power safety cover will be utilized in lieu of the required fencing, (Appendix B-B105.5, 2000 Addition). Except for an electrical permit, no other building permits are required. The highest point of the structure will be the housing for the pool cover projecting approximately 18 inches above the finish grade. Other pool equipment will be housed in existing structures. The installation or digging of the pit will require an excavation of approximately 60 cubic yards of soil, most of which will be immediately hauled off site. The project is thereby exempt from a GEC permit under MCC 29.303 (B) and/or (C)(1). Only a small amount of topsoil will be held for backfill.

**Applicant’s Clarification:** With regard to the View criteria, the automated pool cover will actually be in-ground and not extend above the grade at all. In the application submitted May 6<sup>th</sup>, it was stated that it would project 18” above grade. That was incorrect. The cover, which can only be viewed from above will be “Forest Green”. This may or may not be relevant to the General SEC criteria or View criteria.

With regarding to the Habitat siting standards at 33.4570(B)(5), the code was interpreted in the strictest possible sense. The pool or development area is actually begins at 271 feet or is centered at 293 ft from the north property line and complies with the 300 foot guideline. The May 6<sup>th</sup> application assumed the worse case scenario, to cover all possible interpretations. We understand that under the commonly used interpretation, no wildlife plan would be necessary (Exhibit A.8).

### 2.00 ***Administration and Procedures:***

#### 2.01 **Type II Case Procedures**

**MCC 37.0530(B):** ...Upon receipt of a complete application, notice of application and an

**invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...**

**Staff:** The application was submitted by the property owners' on May 6, 2004 and was deemed complete as of May 21, 2004. An *Opportunity to Comment* was mailed on May 25, 2004 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. One written comment was received from a nearby neighbor (Exhibit B.2). The concerns of the neighbor are noise pollution, the environmental sensitivities, landslide and septic issues.

The County's Noise Ordinance is administered by the Multnomah County Sheriff and is not part of the land use criteria applicable to the site. The County's Sound Control Ordinance may be found under MCC 15.265 through MCC 15.274. Questions or concerns should be directed to the County Sheriff's office at 503.988.4300.

The subject site has overlays for Significant Environmental Concern for wildlife habitat and views. The proposed in-ground pool will need to show compliance with the County's criteria in order to be granted the permit to construct the pool at the proposed location. Please see the findings below.

The subject site has an area of slope hazard in the north-east corner of the property. The proposed pool is located approximately 150 feet from the edge of the overlay. Development that does not disturb a defined slope hazard area is not required to obtain a Hillside Development Permit from the County. Erosion control measures may be needed and the applicant will need to demonstrate an exemption from the County's Grading and Erosion Control (GEC) criteria or obtain a GEC permit.

The final issue mentioned by the neighbor relates to the on-site sewage disposal system. As part of the building permit process, the applicant/property owner will have to obtain approval from the Sanitarian for the location of the pool in relation to the drainfield. The septic tank and drainfield is approximately 45 feet to the north of the location for the pool and drains to the northeast away from the pool.

## **2.02 Proof of Ownership**

### **MCC 37.0550 Initiation of Action**

**Except as provided in MCC 37.0760, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** The proposed project is located on Tax Lot 1300, Section 30, Township: 2 North, Range: 1 West. Assessment & Taxation records (Exhibit B.1) show that the land is owned by Andrea Carlstrom and Chris Foster. Andrea Carlstrom has been designated the applicant in this case. Both property owners have signed the General Application Form (Exhibit A.1). *This criterion has been met.*

3.00 ***General Provisions***

3.01 **MCC 33.0005 Definitions.**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

**(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

**(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**

**(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

**1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**

**2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**

**3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or**

**4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**

**5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

**1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

**MCC 33.3170 Lot of Record – Rural Residential**

**(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 33.3160, 33.3175, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**(D) The following shall not be deemed to be a lot of record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**Staff:** The subject property appears on the 1989 County Assessment Map of the area (Exhibit B.3). The property was part of a nine acre tract extending across the road (R971300250 & R97130-0020) and was designated as Rural Residential (RR) Zone District when the County adopted new zoning maps on October 13, 1983 (Exhibit B.4). The minimum parcel size for RR was five acres, however, under MCC 11.15.2222(C) with the parent property intersected with a street the subject property was deemed a lot of record (Exhibit B.5).

The evidence indicates that property was divided under MCC 11.45.110 (Exhibit B.6) as an exempt minor partition. This type of partition only required a deed to be filed to define the new property lines. The County Assessment Cartographic Unit, Parcel Record indicates that the property was created with a deed in 1987 filed with County Records in Book 2019, Page 2109 (Exhibit A.7).

The subject property meets MCC 33.0005(L)(13)(b)(4) as an exempt minor partition and meets MCC 33.0005(L)(13)(a) complying with the zoning requirements at the time it was created as a lot of record. *These criteria have been met.*

4.00 ***Rural Residential Criteria***

4.01 **MCC 33.3120 Allowed Uses**

**(F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district;**

**Staff:** The applicant is proposing a 10 ft by 38 ft lap pool. Land Use Planning Administrative Guideline 13 specifies that a swimming pool is a common accessory structure in the rural zones and is exempt from Planning Director review if not in excess of the ground floor area or height of the structure on the same lot or tract to which it is accessory, unless otherwise provided for by the Zoning Ordinance (Exhibit B.8). The dwelling with attached garage on this property is 1,782 square feet per the Assessment & Taxation Improvement Information Sheet (Exhibit B.9)

4.02 **MCC 33.3155 Dimensional Requirements**

**(A) Except as provided in MCC 33.3160, 33.3170, 33.3175 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).**

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

**Staff:** The subject lot is 5.7 acres in size without the area contained in the street. *This criterion has been met.*

4.03 **(C) Minimum Yard Dimensions – Feet**

| Front | Side | Street Side | Rear |
|-------|------|-------------|------|
| 30    | 10   | 30          | 30   |

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The swimming pool is 150 feet from the front property line along McNamee Road,



approximately 340 feet from the southern side property line, approximately 280 feet to the northern side property line and approximately 195 feet to the rear property line. Maximum height of the swimming pool and its cover will be 18 inches above the surrounding terrain.

- 4.04 **(D) 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 requirements not otherwise established by Ordinance.**

**Staff:** McNamee Road right of way is 60 feet in width adjacent to this property per the Assessor's map. McNamee Road is designated as a Local Street in the Multnomah County Functional Classification of Trafficways. The Transportation Division indicates that no additional right of way is needed for this street classification. Based upon the above no additional yards are required.

- 4.05 **(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The swimming pool is only 18" in height and does not exceed the 35 ft height requirement of the zoning district. *This criterion is not applicable at this time.*

5.00 ***Significant Environmental Concern Criteria***

5.01 **MCC 33.4510 Uses; SEC Permit Required**

**(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.**

**Staff:** The construction of a swimming pool in the Rural Residential zoning district is an Allowed Use pursuant to MCC 33.3120(F). A Significant Environmental Concern (SEC) permit for wildlife habitat and views is required prior to the issuance of the necessary construction permits.

5.02 **MCC 33.4520 Application for SEC Permit**

**An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 33.4560 through 33.4575.**

**(A) An application for an SEC permit shall include the following:**

**(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 33.4560 through 33.4575.**

**Staff:** The applicant has provided narrative statements addressing the applicable criteria for a SEC permit (Exhibit A.. *This criterion has been met.*

- 5.03 **(2) A map of the property showing:**

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

**Staff:** The applicant's site plan (Exhibit A.2) shows the above required information.  
*These criteria have been met.*

#### 5.04 MCC 33.4525 Applicable Approval Criteria

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

| Zoning Designation       | Approval Criteria (MCC#) |
|--------------------------|--------------------------|
| SEC-w (wetlands)         | 33.4560                  |
| SEC-v (scenic views)     | 33.4565                  |
| SEC-h (wildlife habitat) | 33.4570                  |
| SEC-s (streams)          | 33.4575                  |

The zoning maps used to designate the SEC-s zoning subdistrict were created digitally by interpreting various data sources including the hand drawn maps contained in the Goal 5 ESEE report. Care was taken in the creation of the maps, but in some instances mapping inaccuracies have occurred during the process. For those areas included in Ordinance 830 (West Hills Rural Area Plan), the Stream Conservation Area designated on the zoning maps as SEC-s is an area extending 300 feet from the nearest point on the centerline on both sides of the protected stream. In the event of a mapping inconsistency, the SEC-s zoning subdistrict shall be interpreted to be the defined Stream Conservation Area.

(B) An application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

5.05 **MCC 33.4565 Criteria for Approval of SEC-v Permit**

**(A) Definitions:**

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

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

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

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

5.06 **(B) In addition to the information required by MCC 33.4520, an application for development in an area designated SEC-v shall include:**

**(1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;**

**Applicant:** In the context of the view requirements, the above ground portion of this project consists of concrete and a small metal housing for a fabric pool cover. Most of the concrete will be within a few inches of the existing grade to a maximum of about 12 inches. A few yards of soil will be used to back fill and re-contour the low area where the concrete projects above the existing grade. No more than a few inches above grade is likely to show. Grass will be re-seeded. The metal housing for the cover will be a neutral earth tone color and project about 18 inches above the existing grade. No outdoor lighting or fencing is planned nor required.

**Applicant Correction:** With regard to the View criteria, the automated pool cover will actually be in-ground and not extend above the grade at all. In the application submitted May 6<sup>th</sup>, it was stated that it would project 18" above grade. That was incorrect. The cover, which can only be viewed from above will be "Forest Green". This may or may not be relevant to the General SEC criteria or View criteria (Exhibit A.8).

**Staff:** The applicant has submitted in a Site Plan (Exhibit A.2) and Site Plan Detail (Exhibit A.3) and narrative statements (Exhibit A.4 and A.8) regarding the installation of the in-ground pool. These plans show that the pool will be flush with the surrounding grade when finished, is rectangular, no outdoor lighting is proposed and that the pool cover will be "Forest Green". *This criterion has been met.*

5.07 **(2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;**

**Applicant:** See Attached Drawings.

**Staff:** Applicant's draws are Exhibit A.2 and A.3. *This criterion has been met.*

5.08

**(3) A list of identified viewing areas from which the proposed use would be visible; and,**

**Applicant:** If forest trees were removed from this and two or more other adjoining properties, a narrow view angle to roadways on the north side of Sauvie Island to portions of this property is possible. This view angle is partially blocked by the existing structure at the pool location. Further, significant distances to the north roadways of Sauvie Island would render most structures subordinate in this vicinity. However, because of the very low height and because it will be located well back from any significant slopes, it would not be physically possible to see any portion of this project from the roadways on Sauvie Island. The sloping hillside in the foreground would block it from any of the low elevation view areas such as those comprising the list. It could only be viewed from near equal or higher elevations. Other listed viewing areas are generally blocked by local geography anywhere on the property primarily a ridge to the east, though they too be negated by the relative height situation.

**Staff:** The proposed in-ground pool will be flush with the surrounding terrain when the pool installation is finished. The pool is not visible from any identified viewing areas. *This criterion has been met.*

5.09

**(4) A written description and drawings demonstrating how the proposed development will be visually subordinate as required by (C) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas.**

**Staff:** The applicant has submitted in drawings and narrative statements to address the criterion listed below (Exhibit A.2, A.3, A.4 & A.8). *This criterion has been met.*

5.10

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

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

**Applicant:** Not applicable as it will not be visible from viewing areas.

**Staff:** The proposed in-ground pool will be flush with the surrounding terrain when the pool installation is finished. The pool's cover will be "Forest Green" and will blend with the surrounding grass. If the pool is visible from any identified viewing areas, it will be visually subordinate. *This criterion has been met.*

5.11

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

**Applicant:** Same.

**Staff:** The pool's cover will be "Forest Green". The surrounding concrete walk will be natural color. Both improvements will be flush with the surrounding grade. *This criterion has been met.*

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

**Applicant:** No lighting is proposed.

**Staff:** The applicant is not proposing any exterior lighting at this time. A condition of approval has been included in case in the future exterior lighting is needed for building code purposes. *As conditioned, this criterion has been met.*

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

**Applicant:** Not applicable.

**Staff:** The proposed in-ground pool will be flush with the surrounding terrain when the pool installation is finished. The pool is not visible from any identified view areas. *This criterion has been met.*

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

**Applicant:** The location is as flat as can be found anywhere on the property. The excavation is thereby minimized.

**Staff:** The proposed in-ground pool will be flush with the surrounding terrain when the pool installation is finished. On the southeast corner of the pool, a small amount of fill will be used to contour the improvements to fit with the surrounding grade (Exhibit A.3). *This criterion has been met.*

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

**Applicant:** The alternative of a powered safety cover minimizes the potential height of this project. Normally a 48" barrier would be required. Either would be well below surrounding forest canopy.

**Staff:** The pool and surrounding concrete walk will be flush with the surrounding terrain on the site and is significantly shorter than the surrounding forest canopy. *This*

*criterion has been met.*

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

**Applicant:** Not applicable.

**Staff:** The pool and surrounding concrete walk will be flush with the surrounding terrain on the site and is significantly shorter than the surrounding forest canopy. *This criterion has been met.*

- 5.17 **(D) Mining of a protected aggregate and mineral resource within a PAM subdistrict shall be done in accordance with any standards for mining identified in the protection program approved during the Goal 5 process. The SEC Application for Significant Scenic Views must comply only with measures to protect scenic views identified in the Goal 5 protection program that has been designated for the site.**

**Applicant:** Not applicable.

**Staff:** No mining is proposed. *This criterion is not applicable.*

- 5.18 **(E) The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC 33.4550, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.**

**Staff:** One condition of approval has been included in case an exterior light is required for building code requirements.

- 5.19 **MCC 33.4570 Criteria for Approval of SEC-h Permit -Wildlife Habitat**

**(A) 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:**

**(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;**

**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.**

**Applicant:** The forested area of this property is to the northeast of the project area. Most of this property is dedicated to a commercial chestnut orchard to the south. Neither of these areas will be disturbed. The pool will be located as close as possible to the existing residence in a grass covered side yard, between the house and the orchard. See attached map and photos for further details.

**(2) Location of existing and proposed structures;**

**Applicant:** See map for structure locations.

**(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;**

**Applicant:** NW McNamee Rd. sets the west border of the property. The paved portion is approximately 20 feet wide, though it is a dedicated 60 feet. A perpendicular driveway 12 feet wide or better serves the residence that is approximately 125 feet from the roadway dedication. No changes or additional roads are proposed. No new fencing is proposed and none exists on the property with the exception of a few intermittent remnant strands of abandoned barbed wired bordering the agricultural area. As such, the property does and will continue to comply with the fencing standards. See map for further details.

**(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.**

**Applicant:** No new fencing is proposed and none exists on the property with the exception of a few intermittent remnant strands of abandoned barbed wired bordering the agricultural area. As such, the property does and will continue to comply with the fencing standards. See map for further details.

**Staff:** See applicant's exhibits A.2, A.3, A.4 & A.8 for details. *These criteria have been met.*

5.20 **(B) Development standards:**

**(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

**Applicant:** The project is entirely within a cleared area. It is grass covered and currently used as side yard. No trees or shrubs of any kind are to be removed.

**Staff:** Staff concurs. See applicant's site plan (Exhibit A.2). *This criterion has been met.*

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

**Applicant:** The entire project area is within 170 ft. of the roadway.

**Staff:** The pool is approximately 155 feet from the public right of way of McNamee (Exhibit A.2). *This criterion has been met.*

5.22

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

**Applicant:** The existing driveway is 125 feet or less in length. No changes are planned.

**Staff:** : Staff concurs. See applicant's site plan (Exhibit A.2). *This criterion has been met.*

5.23

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

**Applicant:** Not Applicable. There are no new driveways.

**Staff:** The property's improvements were constructed on the site prior to zoning being implemented in this portion of the County. The driveway exists in its current location and will not be extended or improved as part of this application. *This criterion is not applicable at this time.*

5.24

**(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

**Applicant:** To the south, the neighboring development is in excess of 200 feet from that property border. The project area is entirely within 300 feet to the east and west borders. However, as the southern end of this project would be approximately 315 feet from the north border and existing development on that adjoining property is within 200 feet of that line, this project narrowly misses the B(5) requirement. Because of the property size, configuration, slope, existing buildings and utilities, the project comes as close as possible to meeting the requirement of minimizing impact. The only area that would meet configuration, slope, existing buildings and utilities, the project comes as close as possible to meeting the requirement of minimizing impact. The only area that would meet this requirement for any type of development would be parallel to the residence on the west or east side. As this regulation is largely tailored for undeveloped forestland tracts, it is not necessary an appropriate fit here. Strictly meeting the requirement in this case would require new clearing, extensive excavation and re-contouring, removal of trees and shrubs, removal and relocation of septic, electrical, water or telephone services (and consequently more trees and shrubs). Any trees to be saved would need to be well back from the location to prevent root damage to either to the tree at installation or the structure in the future. As the chosen location is bordered closely on two sides by existing buildings and is in an already cleared and high use area, it is believed to have less habitat value. It is also generally further from forested areas than any other ground area on the property.

**Applicant Clarification:** With regarding to the Habitat siting standards at 33.4570(B)(5), the code was interpreted in the strictest possible sense. The pool or



development area is actually begins at 271 feet or is centered at 293 ft from the north property line and complies with the 300 foot guideline. The May 6<sup>th</sup> application assumed the worse case scenario, to cover all possible interpretations. We understand that under the commonly used interpretation, no wildlife plan would be necessary (Exhibit A.8).

**Staff:** The property to the north has a dwelling approximately 50 feet from the shared side property line. The northern edge of the proposed improvements is 275 feet away from the northern property line. The above criterion requires that a portion of the structure be within the 300 ft limitation to comply. The proposed physical improvements are within 300 feet of the north property line. *This criterion has been met.*

5.25

**(6) Fencing within a required setback from a public road shall meet the following criteria:**

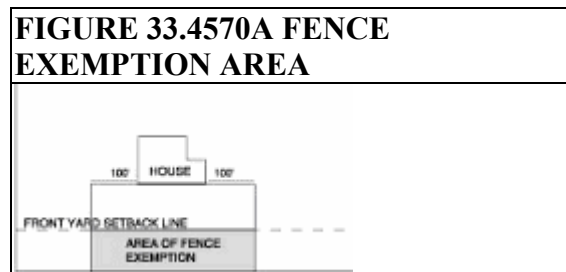
**(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**

**(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**

**(c) Cyclone, woven wire, and chain link fences are prohibited.**

**(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

**(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**



**Applicant:** No fencing is proposed.

**Staff:** Staff concurs. See applicant's site plan (Exhibit A.2). *This criterion has been met.*

5.26

**(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

| Scientific Name   | Common Name                     |
|---|---------------------------------|
| <i>Chelidonium majus</i>                                  | Lesser celandine                |
| <i>Cirsium arvense</i>                                    | Canada Thistle                  |
| <i>Cirsium vulgare</i>                                    | Common Thistle                  |
| <i>Clematis ligusticifolia</i>                            | Western Clematis                |
| <i>Clematis vitalba</i>                                   | Traveler's Joy                  |
| <i>Conium maculatum</i>                                   | Poison hemlock                  |
| <i>Convolvulus arvensis</i>                               | Field Morning-glory             |
| <i>Convolvulus nyctagineus</i>                            | Night-blooming Morning-glory    |
| <i>Convolvulus seppium</i>                                | Lady's nightcap                 |
| <i>Cortaderia selloana</i>                                | Pampas grass                    |
| <i>Crataegus</i> <i>sp.</i><br><i>except C. douglasii</i> | hawthorn, except native species |
| <i>Cytisus scoparius</i>                                  | Scotch broom                    |
| <i>Daucus carota</i>                                      | Queen Ann's Lace                |
| <i>Elodea densa</i>                                       | South American Water-weed       |
| <i>Equisetum arvense</i>                                  | Common Horsetail                |
| <i>Equisetum telemateia</i>                               | Giant Horsetail                 |
| <i>Erodium cicutarium</i>                                 | Crane's Bill                    |
| <i>Geranium roberianum</i>                                | Robert Geranium                 |
| <i>Hedera helix</i>                                       | English Ivy                     |
| <i>Hypericum perforatum</i>                               | St. John's Wort                 |
| <i>Ilex aquafolium</i>                                    | English Holly                   |
| <i>Laburnum watereri</i>                                  | Golden Chain Tree               |
| <i>Lemna minor</i>  | Duckweed, Water Lentil          |

| Scientific Name               | Common Name               |
|-------------------------------|---------------------------|
| <i>Loentodon autumnalis</i>   | Fall Dandelion            |
| <i>Lythrum salicaria</i>      | Purple Loosestrife        |
| <i>Myriophyllum spicatum</i>  | Eurasian Watermilfoil     |
| <i>Phalaris arundinacea</i>   | Reed Canary grass         |
| <i>Poa annua</i>              | Annual Bluegrass          |
| <i>Polygonum coccineum</i>    | Swamp Smartweed           |
| <i>Polygonum convolvulus</i>  | Climbing Binaweed         |
| <i>Polygonum sachalinense</i> | Giant Knotweed            |
| <i>Prunus laurocerasus</i>    | English, Portugese Laurel |
| <i>Rhus diversiloba</i>       | Poison Oak                |
| <i>Rubus discolor</i>         | Himalayan Blackberry      |
| <i>Rubus laciniatus</i>       | Evergreen Blackberry      |
| <i>Senecio jacobaea</i>       | Tansy Ragwort             |
| <i>Solanum dulcamara</i>      | Blue Bindweed             |
| <i>Solanum nigrum</i>         | Garden Nightshade         |
| <i>Solanum sarrachoides</i>   | Hairy Nightshade          |
| <i>Taraxacum officinale</i>   | Common Dandelion          |
| <i>Urtica dioica</i>          | Stinging Nettle           |
| <i>Vinca major</i>            | Periwinkle (large leaf)   |
| <i>Vinca minor</i>            | Periwinkle (small leaf)   |
| <i>Xanthium spinosum</i>      | Spiny Cocklebur           |
| <i>various genera</i>         | Bamboo sp.                |
|                               |                           |

**Applicant:** No landscaping other than re-seeding of a few square feet grass is proposed.

No nuisance plants exist in the cleared areas of the property.

**Staff:** Staff concurs. See applicant's site plan and photographs (Exhibit A.2 & A.5).  
*This criterion has been met.*

5.27

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

**(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**

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

**Staff:** The applicant's submittal has complied with the development standards in Section (B) above. *No wildlife conservation plan is required at this time.*

6.00

## **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary to grant approval of the Significant Environmental Concern permit for wildlife habitat and views in the Rural Residential zoning district. This approval is subject to the conditions of approval established in this report.

7.00

## **Exhibits**

**'A' Applicant's Exhibits**

**'B' Staff Exhibits**

**'C' Procedural Exhibits**

| Exhibit #                 | # of Pages | Description of Exhibit   | Date Received/ Submitted |
|---------------------------|------------|--|--------------------------|
| A.1                       | 1          | General Application Form   | 5/6/04                   |
| A.2                       | 1          | Site Plan  | 5/6/04                   |
| A.3                       | 1          | Site Plan Detail of Swimming Pool                                    | 5/6/04                   |
| A.4                       |            | Narrative Statements   | 5/6/04                   |
| A.5                       |            | Photographs  | 5/6/04                   |
| A.6                       | 1          | Cover Letter for Deed Submittal                                      | 5/7/04                   |
| A.7                       | 1          | Legal Description for Subject Property – Book 2019, Page 2109        | 5/7/04                   |
| A.8                       | 1          | Email from Andrea Carlstrom Revising Portions of Narrative Statement | 5/7/04                   |
| <b>'B' Staff Exhibits</b> |            |  | <b>Date of Document</b>  |
| B.1                       | 1          | A&T Property Record Printout   | 5/7/04                   |

|     |   |   |
|-----|---|---|
| B.2 | 1 | Letter from Neighborhood  |
| B.3 |   | 1989 Assessor Map   |
| B.4 |   | 1983 Zoning Map   |
| B.5 |   | 1987 RR Zone Regulations  |
| B.6 |   | Exempt Minor Partition Approval to Create R97130-0020 & R97130-0250 |
| B.7 |   | A&T Parcel Record Card for R97130-0250                              |
| B.8 |   | Land Use Planning Administrative Guideline 13                       |
| B.9 |   | Assessment & Taxation Improvement Information Sheet                 |

| 'C' |    | Administration & Procedures             | Date    |
|-----|----|---|---------|
| C.1 | 1  | Complete Letter – Day 1 is May 21, 2004 | 5/24/04 |
| C.2 | 3  | Opportunity to Comment                  | 5/25/04 |
| C.3 | 20 | Administrative Decision                 | 7/2/04  |