

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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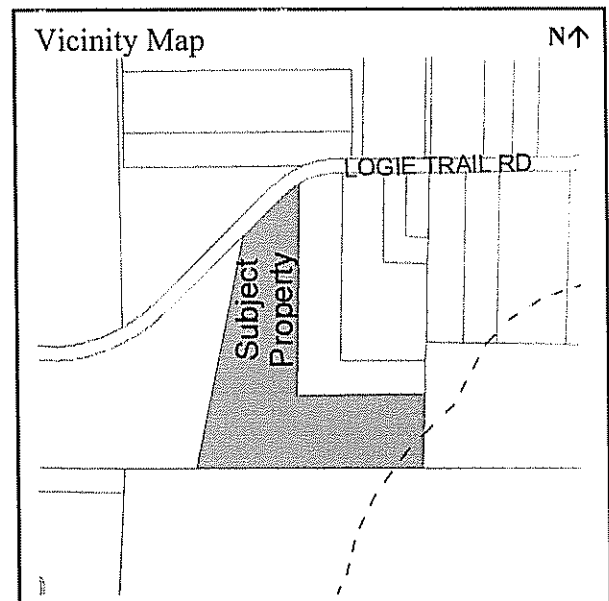
**DECISION OF THE MULTNOMAH COUNTY
LAND USE HEARINGS OFFICER**

Case File: T2-07-044

Permit: Significant Environmental Concern for
Scenic Views and Wildlife Habitat and
Commercial Forest Use Development
Standards Permit

Location: 19210 NW Logie Trails Road
Tax Lot 500, Section 34AC,
Township 2 North, Range 2 West, W.M
Tax Account #R972130230

**Applicant/
Owner:** Alexander Altotsky
8245 SW Connemara Ter.
Beaverton, OR 97008



Summary: Appeal of a Planning Director's decision that approved with conditions a request for a replacement dwelling with an attached garage in the Commercial Forest Use – 2 Zone District and within the Significant Environmental Concern for Wildlife Habitat and Scenic Views Overlay Zone Districts.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37: Administrative Rules and Procedures, MCC 33.2200 et al: Commercial Forest Use, and MCC 33.4500: Significant Environmental Concern

HEARING: A public hearing was held at the offices of the Multnomah County Land Use and Transportation Program on February 8, 2008. Hearings Officer Christine Cook announced the procedure for the hearing, explained the rules requiring that issues be raised before the record closed or they could not be bases for an appeal or a suit for damages at circuit court, and stated that the criteria were set forth in the Staff Report. Ms. Cook stated that she had had no *ex parte* contacts with any person regarding the substance of the application, had not made a site visit, and had no financial or other relationship with the applicant or the county that would affect her ability to render an unbiased decision based upon the criteria and the evidence. No person objected to her serving as hearings officer, or to the hearing going forward.

The following people testified: George Plummer, Planner, on behalf of Multnomah County; Alexander Altotsky, applicant and appellant; Norman Dodge, in support of the application and appeal.

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold** font. Planning staff comments and analysis may follow applicant comments related to each criterion. The notation "Applicant" precedes the applicant's comments, which may be set forth in *italics*, and the notation "Staff" precedes staff comments and analysis. The Hearings Officer's analysis and conclusions may follow, preceded by the notation "Hearings Officer." **Unless explicitly noted otherwise, the Hearings Officer adopts and incorporates Staff comments and analysis as findings supporting this decision.**

A. **APPEAL**

Hearings Officer:

The applicant stated nine separate grounds for appeal, the first eight of which request deletion from the decision of all eight conditions of approval. Ex. H.3. The ninth basis for appeal requests deletion from the decision of the "Note" that follows the conditions of approval. *Id.* The appeal, in general, is denied, for the reasons that are set forth in this section and in the findings on relevant approval criteria. Mr. Plummer stated that the county has no objection to deletion of the "Note", which is meant to be a helpful reminder of post-approval procedures. Therefore the "Note" has been deleted from this decision. In addition, condition of approval 3 has been modified to address the applicant's concerns regarding trees that are dying or present hazards to people or property. In addition, Condition of Approval 6 has been slightly revised by the addition of one phrase. Otherwise, approval of the application remains subject to satisfaction of Conditions of Approval 1-8, which are all either authorized or required, in order to ensure satisfaction of approval criteria.

A.1 Grounds for Appeal 1: Recording Requirement

The first basis for appeal states as follows:

"The Decision must not be recorded with the title. Current title legal language already includes the binding of the property/land owners with all applicable land use laws and regulations. If county decision is based on land use laws and regulations th[e]n it is not necessary to add additional repeated clause in the title. If county decision is in [violation] of applicable land use laws and regulations, then it is illegal to demand from the property owner to be bound by illegal regulation. Applicant request removal [of] conditions #1."

Staff response to these contentions is that MCC 37.0670 authorizes the county to impose, as a condition of approval, a requirement that the applicant record the Notice of Decision with the County Recorder. The purpose of the requirement is to put a potential purchaser on notice that the development on the property is subject to ongoing conditions of approval. Ex. H.4.

In addition to the approval criteria that govern the substance of this application, MCC 37.0660(A)-(C) and MCC 37.0670 govern the portion of this appeal that concerns Condition of Approval 1. MCC 37.0660 states in pertinent part:

“(A) All county decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be, met.

“(B) The applicant has the burden of demonstrating that the application complies with the approval criteria or will comply with the approval criteria through the imposition of conditions of approval. The applicant must submit evidence demonstrating that an approval criteri[on] can be met with the imposition of conditions as well as demonstrate a commitment to comply with conditions of approval.

“(C) Failure to comply with any condition of approval shall be grounds for revocation of the permit(s) and grounds for instituting code enforcement proceedings pursuant to the county code.”

MCC 37.0670 states:

“RECORDING OF DECISION.

“The County may impose as a condition of final approval of a Type II, Type III, or Type IV decision, the requirement that the applicant record with the County the Notice of Decision. The Notice of Decision shall run with the land and shall be placed in the county deed records prior to the issuance of any permits or development activity pursuant to the approval. Proof of recording shall be made prior to the issuance of any permits and filed with the Land Use Planning Division. Recording shall be at the applicant’s expense.”

Condition of Approval 1 states:

“1. Within 30 days of this decision becoming final and prior to building permit sign-off, the property owner shall record the Notice of Decision (pages 1 – 4) of this decision and the Site Plan (Exhibit 1.2) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant’s expense. [MCC 37.0670]”

MCC 37.0660 provides clear authority for imposition of conditions of approval as a means of requiring that approval criteria are satisfied. The applicant would apparently prefer not to be bound by several of the criteria that govern his application. He views the criteria and the conditions of approval that require their satisfaction as invalid or violating applicable land use laws and regulations. To the

extent that the applicant raises specific arguments concerning the legality of a particular Condition of Approval to this decision, those arguments are addressed below in the findings relating to the relevant approval criterion.

The requirements of Condition of Approval 1 come straight from the applicable land use regulation. MCC 3.0670 explicitly authorizes imposition of these requirements in the form of a condition of approval. As for other requirements to which the applicant objects, neither the Planning Director nor this Hearings Officer may ignore the criteria that are set forth as requirements in the Multnomah County Code. The criteria at issue have been acknowledged, are in effect, and govern consideration of applications that come under their terms. The function of the decision maker in considering a permit application is to apply the governing criteria, not to consider the revision or elimination of criteria. Consequently, the Hearings Officer rejects the applicant's contention that he should not be required to record the Notice of Decision that sets forth explicit directions, in the form of conditions to the approval, for ongoing satisfaction of approval criteria that govern his proposed development.

The appeal is denied with respect to the first grounds for appeal.

A.2 Grounds for Appeal 5: Requirement to obtain a grading and erosion control permit.

The Applicant objects to Condition of Approval 5, which states as follows:

"5. The property owner shall obtain and grading and erosion control permit approval prior to Building Permit Zoning Review and prior to any soil disturbance related to the proposed development [MCC 29.336]."

The fifth grounds for appeal states as follows:

"The item #5 in conditions of the Decision does not need to be added to the title as it is related only to the current development. This item is not necessary as developer must obtain all necessary and legally required permits prior to development. Applicant request removal conditions #5."

In his testimony the Applicant acknowledges that the disturbed areas on the property will exceed 10,000 square feet (Ex. PH.2), thus triggering the requirement to obtain a Grading and Erosion Control permit. MCC 29.336(A)(1). Thus his only argument with the condition seems to be that it is a condition, rather than the requirement itself.

Staff explains as follows:

"Staff included this condition because sometimes a property owner begins the site preparation prior to obtaining a building permit. This condition reminds the property owner that the GEC permit is necessary prior to any soil disturbance." Ex. H.4.

The Hearings Officer finds that staff, which has experience in shepherding permittees through the process of zoning review for building permit, is persuasive in the rationale for this condition. The Applicant will not be harmed by the recordation of this condition as part of the Notice of Decision, and potential purchasers are protected by it. The appeal is denied with respect to Grounds for Appeal 5.

A.3 Claim of discrimination.

In addition, Mr. Altotsky complained that he had been discriminated against by the county staff because of his Russian heritage. Ex. PH.1. The Hearings Officer finds no evidence of any discrimination against Mr. Altotsky. The conditions of approval that offend Mr. Altotsky are similar to or exactly like conditions that have been imposed throughout the years upon development approvals that were subject to the same or similar criteria that govern Mr. Altotsky's application. Ex. H.12, Ex. PH.4.

The record gives no indication that Mr. Altotsky's application was subject to any procedural irregularities, or that he was personally mistreated or abused in any way. It appears that he took offense at an unfortunate attempt at humor concerning his proposed roof color. This incident, showing a minor misjudgment on staff's part, is not evidence of the pervasive anti-Russian sentiment that the applicant ascribes to Mr. Plummer and the county staff in general. The conditions of approval of which Mr. Altotsky complains simply were not imposed because of anti-Russian discrimination, because they are generally applied to applications for this sort of development in this zone. They do not relate in any way to the identity or ethnicity of the applicant.

The Hearings Officer concludes that the Planning Director's consideration of Mr. Altotsky's application was not tainted, either procedurally or in substance, by discrimination against him.

1. DESCRIPTION OF THE PROPOSAL

Applicant: *The proposal is to tear down the existing 2,600 sq. ft. home and 430 sq. ft. garage and replace them with a newly constructed home around 6,000 square feet. The location of the new home will be built over the footprint of the existing home and garage and will consume an additional 3,300 square feet of surface area. The site is relatively flat so there is no concern for slides or wetland issues. Additional erosion control measures are being taken to prevent any sediment from leaving the site with a gravel construction entrance in the same location as the existing entrance and some strategically placed sediment fence. Please review the grading and erosion control plans for specific erosion control measures and placement.*

For *the construction of the new home three fig trees from the orchard to the north east of the existing home will need to be removed. The orchard has 15 trees all around 10 inches in diameter. The trees that are not in good shape may need to be removed. These trees are only 15 feet tall and have no effect on the subordination of the home.*

The existing home is almost surrounded by 100 – 130 foot tall evergreen trees. The hope is to maintain all of the existing evergreens, but the fire buffer may require the removal of one or two for spacing requirements. Please review the tree removal plan for clarification on remaining vegetation and fire buffer protection area.

Staff: The request is to build a replacement dwelling with an attached garage in Commercial Forest Use – 2 (CFU-2) Zone District with SEC-v and SEC-h, Overlay Zones (Exhibits 2.2).

Hearings Officer: The Hearings Officer notes that this application is subject to the criteria that govern development on property within the CFU-2 Zone with the SEC-v and SEC-h overlays.

2. SITE AND VICINITY CHARACTERISTICS

Staff: The subject property is an 11.44 acre parcel located within the CFU-2 Zone District in the West Hills Rural Plan Area. The property is entirely within the Significant Environmental Concern for Wildlife Habitat (SEC-h) and Scenic Views Overlay District as well. A southeastern portion of the property is located within the SEC – Stream Overlay; however, this area is a substantial distance from the proposed dwelling. The property has a relatively shallow slope from the road to just beyond the development area. The property then drops in elevation with forested steeper slopes (Exhibit 2.).

In the vicinity there are several parcels zoned CFU-2 of a similar size or smaller, developed as residential properties with small woodlots. To the east there is a pocket of properties zoned Rural Residential that are developed as residential properties, most of these include some forested land. To the south and west are some larger undeveloped parcels of forest land in the CFU-1 Zone District.

3. OWNERSHIP

MCC 37.0550: 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.

Staff: County Assessment records show the property owner as Alexander Altotsky. (Exhibit 2.1). Mr. Altotsky signed the application form providing the necessary authorization to process the application (Exhibit 1.1).

Hearings Officer: The criterion is satisfied.

4. TYPE II CASE PROCEDURES

- 4.1. **MCC 37.0530 (B)** Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. 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. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to LUBA within 21 days of when the decision is signed.

Staff: An opportunity to comment was mailed to property owners within 750-feet of the property lines on October 29, 2007. No comments were received.

Hearings Officer: Note that the application is allowable if and only if it is consistent with applicable siting standards and in compliance with approval requirements. Those standards and requirements are set forth in the Multnomah County Code and in this decision.

5. COMMERCIAL FOREST USE -2 ZONE DISTRICT

5.1. REVIEW USES

MCC 33.2225(A) Expansion, replacement or restoration of an existing lawfully established habitable dwelling.

(1) In the case of a replacement dwelling, the existing dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

MCC 33.0005: Definitions

Habitable Dwelling – An existing dwelling that:

- (a) Has intact exterior walls and roof structure;
- (b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (c) Has interior wiring for interior lights;
- (d) Has a heating system; and
- (e) Was lawfully established.

Staff: The existing dwelling was established in 1942 (Exhibit 2.1) prior to building permit and zoning requirements, thus was lawfully established. A site visit by staff confirmed that the existing dwelling is a habitable dwelling (Exhibit 2.4).

Hearings Officer: This criterion is satisfied.

5.2. BUILDING HEIGHT REQUIREMENTS

MCC 33.2250 (A) Maximum structure height – 35 feet.

Staff: The submitted elevation plans show the dwelling at 35 feet (Exhibit 1.6). The height will be checked on the final plans submitted for Building Permit Zoning Review.

5.3. FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

MCC 33.2256: The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

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Use	Forest Practice Setbacks			Fire Safety Zones
	Nonconforming Set-backs	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Replaced or restored dwelling in same location & greater than 400 sq. ft. additional ground coverage; Alteration and maintenance of dwelling	May maintain current nonconforming set-back(s) if less than 30 ft. to property line	30	30	Primary is required to the extent possible within the existing setbacks

Staff: The proposed replacement dwelling is located in the same location as the existing dwelling as shown on the site plan included as Exhibit 1.2. The proposed development exceeds the 30 foot setbacks for all the setbacks. The primary firebreak maintenance will be required as a condition of approval.

Hearings Officer: This criterion is satisfied pursuant to Condition of Approval 4.

- 5.3.1. MCC 33.2256(C):** The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

Staff: Logie Trail Road right-of-way is 60 feet wide, a width considered sufficient for a local road. Additionally, the proposed dwelling is setback more than 50 feet from the right-of-way (Exhibit 1.2). This standard is met.

Hearings Officer: This criterion is satisfied.

- 5.3.2. MCC 33.2256(D):** Fire Safety Zones on the Subject Tract

(1) Primary Fire Safety Zone

- (a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.
- (b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional

Less than 25	75 additional
Less than 40	100 additional

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

(2) Secondary Fire Safety Zone

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 33.2310.

- (3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
- (4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.
- (5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: The property owner will be required to establish and maintain the primary firebreak maintenance as a condition of approval. The property owner is encouraged to maintain a secondary firebreak to the extent possible on the property.

Hearings Officer: The applicant objects to Condition of Approval 4, which states as follows:

“4. The property owner shall maintain the primary fire safety zone extending 30 feet in all directions around the structure. Trees within the primary safety zone shall be spaced with greater than 15 feet between the crowns. The trees within the primary safety zone shall be pruned to remove low branches within 8 feet of the ground. All other vegetation within the primary safety zone shall be kept less than 2 feet in height [MCC 33.2256(D)].”

The applicant’s fourth grounds for appeal states:

“The item #4 in conditions of the Decision is not necessary and need[s] to be removed based on item #1 in this document. Applicant request[s] removal [of] conditions #4.”

Mr. Altotsky testified that he believed this requirement to be nonsense, because he would not be able to keep alive a small tree he might plant in the primary fire zone if he had to remove all branches below 8 feet. Ex. PH.2.

Condition of Approval 4 restates almost verbatim the requirements of MCC 33.2256(D) as applicable to this specific property. Mr. Altotsky is correct that it might be difficult to keep a small, young tree alive in this area. Reading MCC 33.2256 in its entirety shows that the primary and secondary fire safety zones are intended to be as clear of small trees and large shrubs as

possible, as a means of maintaining an area surrounding a dwelling that has reduced or minimal vegetative fuel. This is to reduce fire hazards in the area. See also MCC 33.2400. The Hearings Officer sees no nonsense involved in this requirement, which in any event, is not subject to revision in the course of this appeal.

Additionally, to the extent that this grounds for appeal is based upon the applicant's first grounds for appeal, the Hearings Officer has already rejected those arguments, and rejects them again here.

The fourth grounds for appeal is denied. The criterion is satisfied, pursuant to Conditions of Approval 1 and 4.

.4. DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

MCC 33.2261 (C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code ...

*** * ***

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: A condition of approval will require these standards be met by the proposed dwelling.

Hearings Officer: The Applicant objects to Condition of Approval 2, which states as follows:

"The dwelling structure shall comply with the standards of the applicable building code, have a fire retardant roof, and have a spark arrester on each chimney [MCC 33.2261(C)]."

The Applicant's second grounds for appeal states:

"The item #2 in conditions of the Decision is not necessary and need[s] to be removed based on item #1 in this document. Applicant request[s] removal [of] conditions #2."

Condition of Approval 2 restates the requirements of MCC 33.2261(C). These requirements are mandatory, not optional, and must be part of the land use permitting approval of Mr. Altotsky's application. His testimony indicates that he believes them to be redundant. Nevertheless, they are requirements applicable to his development proposal. MCC 37.0660 authorizes the imposition of Condition of Approval 2 in order to ensure that MCC 33.2261(C) is satisfied.

Additionally, to the extent that this grounds for appeal is based upon the applicant's first grounds for appeal, the Hearings Officer has already rejected those arguments, and rejects them again here.

The second grounds for appeal is denied. The criterion is satisfied pursuant to Conditions of Approval 1 and 2.

5.5. ACCESS

MCC 33.2273: All lots and parcels in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 33.2275(C).

Staff: The property has an existing access to Logie Trail Road serving the existing dwelling. The Logie Trail Road right-of-way is 60 feet wide, a width considered sufficient for a local road. Any work that is done in the right-of-way will require a Right-of-Way Permit.

Hearings Officer: This criterion is satisfied.

5.3. Lot of Record

MCC 33.0005(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.)

MCC 33.3170 (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.

Staff: The subject property was found to be a Lot of Record in Case T2-03-031 (Exhibit 2.5).

Hearings Officer: This criterion is satisfied.

6. SIGNIFICANT ENVIRONMENTAL CONCERN REVIEW

6.1. SEC Permit Required

MCC 33.4510(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 proposed development is within the Significant Environmental Concern for Significant Scenic Views (SEC-v) and Significant Environmental Concern for Wildlife Habitat (SEC-h) Overlay Zone Districts (Exhibit 2.2). An SEC-v and SEC-h permit is required for the proposed dwelling with attached garage.

Hearings Officer: Consideration of the required SEC-v and SEC-h permit is governed by the approval criteria applicable to the permit. Neither the Planning Director nor the Hearings Officer may revise the criteria set forth in the Multnomah County Code. Conditions of approval may be imposed in order to ensure compliance with the approval criteria. MCC 37.0660.

6.2. 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.

MCC 33.4520 (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.
- (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 required information was submitted (Exhibit 1.2 - 1.16).

Hearings Officer: This requirement is satisfied.

6.3. Criteria for Approval of SEC-v Permit -Significant Scenic Views

MCC 33.4565(B) In addition to the information required by MCC 33.4520, an application for development in an area designated SEC-v shall include:

6.3.1. MCC 33.4565(B) (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;

Staff: The applicant has submitted details on the proposed height, shape, colors, and exterior building materials. The applicant has submitted the information outlined in this section (Exhibits 1.2 – 1.16). While the applicant has submitted details on the height, shape, colors, outdoor lighting, and exterior building materials of the proposed structure, the details are not always adequate to demonstrate compliance.

Hearings Officer: This criterion is satisfied pursuant to Conditions of Approval 6 and 7.

6.3.2. MCC 33.4565(B) (2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;

Staff: The applicant has submitted the required information (Exhibit 1.6).

Hearings Officer: This requirement is satisfied.

6.3.3. MCC 33.4565(B) (3) A list of identified viewing areas from which the proposed use would be visible;

Applicant: *Gillihan road was the only location that the site was presumed visible if no vegetation existed, but at 200' plus in elevation and over 1.5 miles away the proposed property would definitely qualify as visually subordinate.*

Staff: The applicant states that the development site is only visible from Gillihan Road viewing area. However, an analysis of LIDAR data mapping using County Geographic Information System indicates the proposed building site is topographically visible from several of the identified viewing areas, including Bybee Lake, Smith Lake, Kelly Park, Virginia Lake, Sauvie Island Wildlife Refuge, and Sauvie Island Roads located to the northeast, east, and southeast of the development site.

Hearings Officer: The Applicant contends that the LIDAR data mapping used by the county is not accurate, and that only photography from the key viewing areas (KVA's) can show whether a site is visible from them. He submitted articles that he found on the Internet concerning LIDAR (Ex H-7, H-8, H-9) and color photos that he explains he took from KVA's looking toward the site (Ex H-6). He asserts that the building site is screened topographically and by heavy forest from the KVA's. The Applicant also questions the expertise and ability of the planning staff to use the LIDAR system, and contends that he has expertise because of his education and profession to evaluate LIDAR.

First, even the Applicant agrees that the site is "presumed visible" from the Gilihan Road KVA.

Second, planning staff, like most of the rest of us, need not be software engineers in order to use computer programs. The Hearings Officer rejects contentions that staff are incapable of using the LIDAR system.

Third, the Applicant's own evidence regarding visibility, the color photos in Exhibit H-6, do not persuade the Hearings Officer that a dwelling sited on his property would not be visible from those locations. Some photos point to places that are currently blocked by trees and vegetation, but trees may be removed for many reasons, and vegetation that is not evergreen may leave gaps in the screening that existed when the photos were taken. The Applicant can control only the trees and vegetation on his own property, so the current existence of vegetative screening on properties between KVA's and his land is not dispositive on the question of visibility under this criterion. Furthermore, the photos do not clearly demonstrate that the property, or any vertical structure on the property, is or would be topographically screened from the KVA's.

The Hearings Officer, unfortunately, has no way of evaluating the validity of the technical information set forth in the Applicant's Internet articles submitted at the hearing (H-7, H-8, H-9). Neither the Applicant nor the county presented testimony by an expert on LIDAR to explain the significance of these articles or to address most of the criticisms made by the Applicant. Mr. Plummer did point out that even with a 6 foot to 15 foot margin of vertical error claimed by the Applicant, the proposed development, which may be up to 35 feet high, would be well within the area that is accurately stated as visible.

The Applicant must prove compliance with the criteria. He has suggested that the county use other methods of proving topographic visibility (Ex. PH-2), but has not demonstrated that his development would not be visible using other methods. The Hearings Officer would wish for more valid and understandable information regarding the LIDAR system. However, in the absence of persuasive evidence to the contrary, the Hearings Officer presumes that the technical information, including LIDAR data and conclusions, offered by agency staff charged with implementing these ordinances, is valid.

6.3.4. MCC 33.4565(B) (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.

Applicant: *This proposed new home is topographically screened or visually subordinate from all significant scenic resources and identified viewing areas. Topographically the property is screened a couple different ways. The first is because of it's location along the inside of the natural drainage way for the hillside The hillside that the proposed property sits upon naturally curves from south to west in a natural flow providing screening from the opening of the canyon. The indentation of that flow along with the flow to the southeast creates a natural hillside or mountain that provides additional screening from the opening of the canyon. The property based on topography alone is screened for a radius of 5 miles. After 5 miles the property would only be visible if 50 acres around the property burned or was logged. Even at that point the property would still in proportion to the hillside only be a spec at 5 miles and will still be visually subordinate to the barren land left behind.*

The materials proposed on this project consist of wood and/or Hardy Plank Fiber Cement siding with a Composition roof. The wood/ Hardy Plank siding is of a non-reflective material as is the composition roof therefore meeting the non reflective requirement.

The criteria for approval of sec-v permit states: Colors should be chosen to be dark natural or earth-tone colors and building material should be selected to minimize reflectivity.

Earth tone is a color scheme that draws from a color palette of browns, tans, grays, greens and some reds. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt and rocks.

The color proposed for the exterior of this home is Spalding Gray and Superior Bronze for trims (Sherwin-Williams Color Number: SW 6074, SW 6152). The Spalding Gray color is equivalent to E16 of the County recommended color charts.

*The color for the roof is to be Carriage House Shingle Georgian Brick (sample is attached)
The following colors are earth tone colors and do meet the requirements.*

Staff: As stated in the previous finding, the proposed dwelling will be topographically visible from several identified viewing areas. The applicant has included written description and drawings which the applicant has attempted to demonstrate how the proposed development will be visually subordinate. That information includes 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. Assessment of how the site plan and other submittal information demonstrates visual subordination or lack thereof is included under finding 6.4 through 6.4.7 below.

The applicant submitted elevation plans that include two scales, however it appears that the $3/32'' = 1' - 0''$ is the correct scale (Exhibit 1.6). Using that scale, the proposed dwelling shown in the drawings, appears to meet the 35 foot height limit. This will be confirmed when the applicant brings in the full scale set of plans for the Building Permit Zoning Review. The applicant has submitted a narrative addressing the standards. The applicant states the dwelling will be "topographically screened or visually subordinate from all significant scenic resources and identified viewing areas." The elevation drawings show the type of dwelling. The site plan shows the existing trees. The applicant is proposing using Hardi Plank siding and composition roofing. The applicant has submitted computer printed documents showing a proposed color for the body of the dwelling and for the roofing.

Hearings Officer: Condition of Approval 3, as modified by addition at the end of the first sentence of the phrase "on the subject property" will, in part, ensure that this criterion is satisfied on an ongoing basis.

- 6.4 MCC 33.4565 (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:**

Applicant: *The property is topographically screened or visually subordinate from all significant scenic resources and identified viewing areas. The property is currently and nearly surrounded by evergreens and orchards that provide visual subordination to the existing dwelling and will also provide visual subordination with the new proposed home. The elevation of the property and distance to Highway 30 combine with the gently sloping topography near the dwelling site makes it not visible from the Highway. Gillihan road was the only location that the site was presumed*

visible if no vegetation existed, but at 200' plus in elevation and over 1.5 miles away the proposed property would definitely qualify as visually subordinate

Staff: An analysis of LIDAR topographic data mapping using County Geographic Information System indicates that the entire proposed dwelling would be topographically visible from several of the identified viewing areas, including Bybee Lake, Smith Lake, Kelly Park, Virginia Lake, Sauvie Island Wildlife Refuge, and Sauvie Island Road. A site visit by staff indicated that the topography drops off to the northeast, east and southeast as indicated in the LIDAR analysis.

There are several existing trees on the property to the southeast, east and northeast of the proposed dwelling that will provide some screening of the proposed dwelling from the identified viewing areas. There are several trees on the neighboring properties to the east, however if these trees were removed from the neighboring properties, the existing trees on the property would only provide for partial screening of the proposed dwelling.

6.4.1. MCC 33.4565 (C)(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.

Applicant: *The existing vegetation is a series of pine and fir trees that range from 100' – 130' in height along the west, south and north side of the property. On the east side of the property there is a mixture of birch, pine and oak trees that range from 60' – 100'. Although the trees are nearly 10-15 feet lower in elevation the canopy provides plenty of screening around the property making the existing and proposed home visually subordinate. Please review tree removal plan for tree location information.*

Staff: The proposed dwelling site is located in an area with shallow slopes near the road. The slope drops off at increasing steepness to the south with topography that would likely result in a more topographically visible site from some of the identified viewing areas. The proposed development site is the best suited area topographically on the property. The proposed dwelling is located in an area on the property where existing vegetation will provide vegetative screening of the development from the identified viewing areas. This standard is met.

Hearings Officer: This criterion is satisfied.

6.4.2. MCC 33.4565 (C)(2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

Applicant: *The materials proposed on this project consist of wood and/or Hardy Plank Fiber Cement siding with a Composition roof. The wood/ Hardy Plank siding is of a non-reflective material as is the composition roof therefore meeting the non reflective requirement.*

The criteria for approval of sec-v permit states: Colors should be chosen to be dark natural or earth-tone colors and building material should be selected to minimize reflectivity.

Earth tone is a color scheme that draws from a color palette of browns, tans, grays, greens and some reds. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt and rocks.

The color proposed for the exterior of this home is Spalding Gray and Superior Bronze for trims (Sherwin-Williams Color Number: SW 6074, SW 6152). The Spalding Gray color is equivalent to E16 of the County recommended color charts. The color for the roof is to be Carriage House Shingle Georgian Brick (sample is attached). The following colors are earth tone colors and do meet the requirements.

Staff: The applicant proposes to use Hardi Plank Fiber-Cement siding and composition roofing which are low reflective building materials. The applicant's submittal does not discuss the reflectivity of the proposed windows. The windows must have a 15 % or less visible light reflectivity rating to meet this standard. A condition of approval will require the use of nonreflective or low reflective building materials.

Staff recognizes that the window units often include a plastic trim which comes in a limited color selection. Staff also recognizes that this trim is a rather narrow strip, however if it is white it can stand out in the landscape. A condition of approval will allow such trim but will require it to be the darkest color which is available.

The applicant proposes to paint the exterior of the dwelling with Sherwin-Williams "Spalding Gray" for the body and "Superior Bronze" for trim, with the proposed roofing being "Carriage House" brand composition shingle, of a dark red color called "Georgian Brick". The applicant submitted a computer printer version of the "Spalding Gray" color and the "Georgian Brick" color (Exhibit 1.11), but did not submit a sample of the "Superior Bronze" color. The submitted roof color sample, "Georgian Brick", meets the standard for dark natural or earth tone colors which will blend into the forest environment when seen from the distance of the identified viewing area. However if the proposed dwelling body is painted a light gray color, "Spalding Gray", this will result in a noticeable contrast and visually dominant appearance of the structure in relation to the surrounding forest landscape when viewed from the identified viewing areas. The surrounding forested landscape when viewed from the identified viewing areas is made up of dark greens, dark browns, dark grays and black.

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. This guideline recommends dark natural or earthtone colors because these colors blend into the forest environment without resulting in a noticeable contrast. Given that the proposed dwelling body color "Spalding Gray" will result in a noticeable contrast and a visually dominant appearance of the structure in relation to the surrounding forest landscape when viewed from the identified viewing areas and "Superior Bronze" trim color could not be assessed without a sample, the applicant has not demonstrated the proposed colors meet this standard.

Staff has used Columbia River Gorge Commission Color Chart (Exhibit 2.6) which shows dark earth tone colors for forested landscapes to illustrate the colors needed to achieve visual subordination in the West Hill Plan Area. The surrounding forested landscape when viewed from the identified viewing areas is made up of dark greens, dark browns, dark grays and black. The upper two rows (Row A and B) of the color chart show dark earth tone colors that blend into forest landscapes such as that in the surrounding vicinity of the proposed development. These colors will blend into the forest landscape of the surrounding area, by

providing substantially less contrast thus visual subordination for the proposed dwelling when other conditions of this decision are met.

Hearings Officer: Condition of Approval 6 was imposed in order to ensure compliance with MCC 33.4565(C) and (C)(2). The Applicant vigorously objects to Condition of Approval 6, which is stated in the Planning Director's Decision as follows:

"6. The property owner shall use the low or non-reflective building materials outlined in the application narrative for the exterior of the dwelling (Exhibit 1.10). Approved building materials include cement/fiber board, wood and composition asphalt roofing. If plastic framing around the windows is used, it must be the darkest earth tone color available. The property owner shall use windows with a low visible light reflectivity rating of less than 15 percent. The applicant shall submit the window manufacturer's specification for reflectivity prior to or during Building Permit Zoning Review. The exterior colors of the finished building shall match colors as shown on the Columbia River Gorge Commission Color Chart top two rows (Row A and B). The composition roofing shall be a color that matches that of the photo submitted or match colors as shown on the Columbia River Gorge Commission Color Chart top two rows (Row A and B). The type of exterior building materials shall be noted on the building plans and color samples shall be submitted prior to County Zoning Building Permit review. [MCC 33.4565(C) and (C)(2)]."

The Applicant's sixth grounds for appeal states:

"The item #6 in conditions of the Decision is in violation of an existing regulation and code standards. For example: Nowhere in the code does it require that the window framing to be of a dark earth tone color. Code does not require color of roof to be selected from '...the Columbia River Gorge Commission Color Chart top two rows (Row A and B).' Applicant request removal conditions #6."

The Applicant has provided information to demonstrate compliance with portions of this condition and the criteria that it implements. He intends to use wood or Hardi-Plank siding for the structure and composition roofing. His proposed roofing color has been approved. His primary objections appear to be based on his arguments that the county's use of LIDAR led to the inaccurate conclusion that his development would be visible from KVA's, and that the county should not restrict his color choices on siding, trim, window trim, and so forth, to those on Row A or B of the list of the Columbia River Gorge Commission Color Chart.

The concerns regarding use of LIDAR data have already been addressed above.

In order to address the Applicant's objections regarding acceptable colors, the Hearings Officer notes that the applicant is correct in that no ordinance provision in the Multnomah County Code requires use of the Gorge Commission color chart in the West Hills Rural Plan Area CFU-2 zone. But see MCC 33.4550, which authorizes imposition of a condition to achieve compliance with SEC permit requirements. The colors on Rows A and B of Gorge Commission color chart are those that would comply with the ordinance requirement to use "dark natural or earthtone colors" so as to achieve visual subordination in the forested environment. The Hearings Officer also agrees with staff that the light "Spalding Gray" paint color proposed by the Applicant is not a dark natural or earthtone color, and that no other

samples of exterior colors, except for the roofing color, have been submitted. Therefore, Condition of Approval 6 is retained, but revised by the addition of the phrase “or similar dark natural or earthtone colors approved during Building Permit Zoning Review” in each sentence that refers to the color chart.

In all other respects, the sixth grounds for appeal is denied. The Hearings Officer is confident that planning staff can assist the Applicant during Building Permit Zoning Review with any relevant questions or concerns he might have about his gutters, his cars, or his white rabbit. Pursuant to Condition of Approval 6, this criterion is satisfied.

6.4.3. MCC 33.4565 (C)(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: *Lighting for this project is proposed under the eaves and overhangs of the roof. These lights project downward to the hardscape. The lighting will not have more than a .5 illumination leaving the site and tree screenings will provide even more protection. Any additional site lighting will be from low wattage landscaping lights no more that 1' in height. These lights will not be visible from any of the identified viewing areas.*

Staff: The applicant has not demonstrated that this standard is met because no drawings were submitted of the lighting fixtures to confirm compliance. A condition of approval can require that prior to Building Permit Zoning Review plan check, the applicant submit outdoor lighting fixture drawing or photo that shows the proposed outdoor lighting fixture meets this standard. This standard is met through a condition.

Hearings Officer: The Applicant objects to Condition of Approval 7, which states as follows:

“ 7. Outdoor lighting shall be directed downward, hooded and shielded. Shielding and hooding materials should be composed of non-reflective, opaque materials. If any outdoor lighting is proposed, that lighting shall be shown on the building plans and the property owner shall submit a drawing or brochure of the fixture showing the lighting fixtures meet this condition prior to or during Building Permit Zoning Review [MCC 33.4565(C)].”

The seventh grounds for appeal contends:

“The item #7 in conditions of the Decision does not need to be added to the title as it is related only to the current development. Applicant already specified all proposed development that is approved by this Decision. Applicant request removal conditions #7.”

The Applicant is mistaken. He has not submitted the drawings necessary to confirm compliance with this standard. In order to approve this application, a condition of approval is necessary to demonstrate present compliance with the standard. See also MCC 33.4550, which authorizes this condition. The appeal is denied with respect to the seventh grounds for appeal. Pursuant to Condition of Approval 7, this criterion is satisfied.

6.4.4. MCC 33.4565 (C)(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: *There is no earth berm planned for this project for screening or any other purposes. The only other additional trees that will be planted will be along the northeast side of the property for landscaping purposes.*

The property has sufficient screening and therefore any other vegetation planted around the property will be for landscaping purposes.

Staff: The subject property has several trees east of the proposed dwelling. While some of these trees may need to be removed to meet the primary fire break requirements, the remaining trees will provide some screening of the proposed dwelling.

While the neighboring properties have substantial forest areas which screen the proposed development, the applicant does not have any control over those trees and they could be removed by the property owners.

A condition of approval will require the property owner provide for the proper maintenance and survival of any vegetation used for screening vegetation. This standard is met through a condition.

Hearings Officer: Imposition of Condition of Approval 3 satisfies this criterion. The condition in the Planning Director's Decision states as follows:

"To provide vegetative screening of the dwelling from the viewing areas, the property owner shall maintain the existing tree density as shown on aerial photo Exhibit 2.4 and the site plan for the first 200 feet to the east, northeast and southeast of the proposed dwelling. Trees in these areas may only be removed or pruned back to meet the primary fire safety zone standard of a 15 foot space between crowns [MCC 33.4565(C) and (E)]."

The Applicant's third grounds for appeal states:

"The subject property is in commercial forest zone and it's finding to standard forest management practices. The item #3 in conditions of the Decision does not specify the conditions when trees have to be replaced based on condition of the tree. The sick tree could damage other trees and maybe necessary to be removed. The statement is open for misinterpretation. It has not specified which tree applicant must keep. Applicant request removal condition #3."

In order to clarify that this condition applies only to trees on the Applicant's property, staff has suggested adding the words "on the subject property" at the end of the first

sentence in the condition. The Hearings Officer finds that this revision to the condition would clarify it, and has revised the condition accordingly.

Staff has also suggested the addition of language that would permit removal of dying or hazard tree upon certification by an arborist that the tree presented at threat to persons or property. Ex. H-4. The Hearings Officer agrees that the owner of the subject property should be able to remove hazard trees when they present a threat, and has revised the condition accordingly. The Hearings Officer finds that the Applicant's legitimate concerns about Condition of Approval 3 are thereby addressed, and suggests that he consult with staff if he has further questions about the applicability of the condition.

The Applicant notes in his testimony the tension between maintaining screening vegetation and providing a secondary fire safety zone. Ex. PH-2. The Applicant has also suggested that a condition requiring a primary fire safety zone is not valid and should be removed, so his sincerity in suggesting that he should maintain the secondary fire zone instead of maintaining tree density is questionable. Regardless, this condition requires maintaining tree density, not maintaining brush or shrubs in the secondary zone. With respect to the secondary zone, the Applicant is encouraged to "maintain a secondary firebreak to the extent possible." Requiring maintenance of trees, but encourage the use of a secondary firebreak as otherwise possible is a balance between the two objectives of safety and screening. Also see MCC 33.4550, which also authorizes this condition.

This condition, as revised, is necessary to ensure survival of screening trees while meeting the Applicant's concerns about hazardous trees on his property. The third grounds for appeal is denied. This criterion is satisfied pursuant to Condition of Approval 3, as revised and stated in this decision.

6.4.5. MCC 33.4565 (C)(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 existing area is primarily flat and mostly lawn and hardscape. The shape and placement of the home is to best use the existing vegetation for screening and landscape benefits.*

The proposed project will require the installation of a construction entrance which will require a small amount of excavating. The new building will be located over the footprint of the existing building, but an additional 3,000 square feet of soil will need to be scraped and prepped for the new building footprint and foundation walls.

Staff: The proposed dwelling is located in the area where the existing dwelling is located. The area has a relatively shallow slope requiring a minimal amount of grading (Exhibit 1.2). The proposed development is located to take advantage of the existing vegetation. This standard is met.

Hearings Officer: This criterion is satisfied.

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

Applicant: *The proposed home is limited to 35 feet in height. The surrounding forest canopy is over 100 feet in height. The skyline and the forest canopy are not affected by the proposed height of this project.*

Staff: The proposed dwelling will be below the canopy of the trees in the area. This standard is met.

Hearings Officer: This criterion is satisfied.

6.4.7. MCC 33.4565 (C)(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: *The proposed building silhouette is 35' in height and is completely below the skyline of bluffs or ridges as seen from identified viewing areas.*

Staff: The proposed dwelling will be below the skyline of bluffs or ridges if seen from identified viewing areas. This standard is met.

Hearings Officer: This criterion is satisfied.

6.4.8. MCC 33.4565 (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: The proposed development area that is topographic visible is the entire proposed dwelling. The proposed development site is about one and a half miles from the nearest identified viewing area. The identified viewing area from which the proposed dwelling is topographically visible area listed in Section 6.3.3 of this decision. The proposed development is topographically visible from the Sauvie Island Wildlife Refuge northeast of the proposed dwelling to Bybee Lake/Kelly Park to the southeast a linear distance of about ten miles. Given the size, the distance to nearest viewing area, the number of identified viewing areas and the linear distance from which the proposed development is topographically visible results in significant potential adverse impact. Dwellings that noticeably contrast with the surrounding environmental, such as those painted with light colors, are easily seen from the distance of identified viewing areas.

Given that the applicant has submitted a color sample that does not achieve visual subordination and has not submitted the sample for the trim, we can include a condition of approval that the colors used for the exterior of the dwelling body, trim, and doors match the dark earth tone colors shown in Row A or B of the Gorge Color Chart (Exhibit 2.6). The condition can require the applicant submit color chips for colors of the dwelling prior to Building Permit Zoning Review plan check to verify they match the color chart. A condition of approval will require the use of nonreflective or low reflective building materials. This standard is met through conditions.

If the proposed dwelling is built using low reflectivity building materials, dark earth tone colors and maintaining the existing trees (except those needed to be removed for the primary fire safety zone), then the dwelling will meet the visually subordinate requirement.

We are imposing conditions of approval for this permit in order to make the development visually subordinate. The conditions address the colors, material type, protection of tree density and outdoor lighting fixtures. Given the distance and location of the viewing areas, visual subordination can be achieved through these conditions. These conditions are 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.

Hearings Officer: The Hearings Officer concurs with staff's analysis and conclusions.

6.5. SEC-h Development standards

MCC 33.4570(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;**
- (2) Location of existing and proposed structures;**
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;**
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.**

Staff: The required information has been submitted (Exhibit 1.2).

Hearings Officer: This requirement has been satisfied.

- 6.5.1 MCC 33.4570(B)(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

Staff: The proposed development is in a cleared area where the existing dwelling is located. The standard is met.

Hearings Officer: This criterion is satisfied.

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

Staff: The proposed dwelling is shown on the site plan as approximately 55 feet from the Logie Trail right-of-way (Exhibit 1.2). The standard is met.

Hearings Officer: This criterion is satisfied.

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

Applicant: *The access road/driveway does not exceed 500' refer to site plan.*

Staff: The proposed driveway is less than 500 feet in length (Exhibit 1.2). This standard is met.

Hearings Officer: This criterion is satisfied.

- 6.5.4. MCC 33.2105(B)(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:**

- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or**
- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**

Staff: The adjacent property to the west has an access onto Logie Trail Road within 200 feet of the property boundary. The driveway on the subject property is within 100 feet of the property with the driveway within 200 feet of the property line (Exhibit 1.2 and 2.3). This standard is met.

Hearings Officer: This criterion is satisfied.

- 6.5.5. MCC 33.4570(B)(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.**

Staff: The development is within 300 feet of both side yard property lines (Exhibit 1.2 and 2.3). This standard is met.

Hearings Officer: This criterion is satisfied.

6.5.6. MCC 33.4570(B) (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.

Staff: No fencing is proposed.

Hearings Officer: As long as no fencing will be located within the required road setback, this criterion is inapplicable.

6.5.7. MCC 33.4570(B) (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: Plants list under MCC 33.4570(B)(7).

Applicant: *Will be controlled using lawn mower and manual removal.*

Staff: A condition of approval will require continual removal of the listed nuisance plants. This standard is met through a condition.

Hearings Officer: The Applicant objects to Condition of Approval 8, which states as follows:

“8. The following nuisance plants listed in the following table shall not be planted on the subject property and shall be removed from cleared areas of the subject property [MCC 33.4570(B)(7)]: [List of plants].”

The Applicant’s eighth grounds for appeal states:

“Property owner must comply with standard forest management practices, laws and regulations. The item #8 in conditions of the Decision is not necessary as it is too narrow and open door for misinterpretation and laws violation. For example: the statement in Item #8 does not specify planting illegal drugs plants. Applicant request removal conditions #8.”

Condition of Approval 8 states the requirements of MCC 33.4570(B)(7) practically word for word. Neither the Planning Director nor the Hearings Officer has the authority to ignore or revise a criterion in the county code that governs consideration of this application. Pursuant to MCC 33.4550, this condition of approval is valid and necessary to ensure compliance with the criterion. The county development code need not repeat the criminal code in order to state clear requirements for land development in Multnomah County. If the Applicant has concerns about whether he is permitted to plant illegal drug plants, the answer is that this permit approval gives him no such authorization.

The appeal is denied with respect to the eighth grounds for appeal. This criterion is satisfied pursuant to Condition of Approval 8.

7. CONCLUSION:

The applicant has demonstrated that the standards for the Commercial Forest Use – 2 for a replacement dwelling and the standards for a Significant Environmental Concern for Wildlife Habitat and Scenic Views Permit have been met or can be met through conditions of approval for the proposed development, as set forth below.

8. DECISION ON APPEAL:

The appeal is denied. The Planning Director's decision on Case File No. T2-07-044, dated January 14, 2008, which approved the application subject to conditions of approval, is affirmed as modified by this decision.

9. 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. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

10. 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.

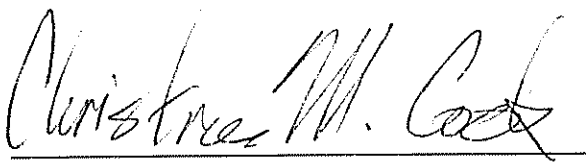
1. Within 30 days of this decision becoming final and prior to building permit sign-off, the property owner shall record the Notice of Decision (pages 1 – 4) of this decision and the Site Plan (Exhibit 1.2) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and a copy filed with Land Use Planning. Recording shall be at the applicant's expense. [MCC 37.0670]
2. The dwelling structure shall comply with the standards of the applicable building code, have a fire retardant roof, and have a spark arrester on each chimney [MCC 33.2261(C)]

3. To provide vegetative screening of the dwelling from the viewing areas, the property owner shall maintain the existing tree density as shown on aerial photo Exhibit 2.4 and the site plan for the first 200 feet to the east, northeast and southeast of the proposed dwelling on the subject property. Trees in these areas may only be removed or pruned back under either of the following circumstances: (1) to meet the primary fire safety zone standard of a 15 foot space between crowns; (2) to remove a dying or hazard tree, according to the procedure in this paragraph. A professional arborist must determine that the tree to be removed threatens the safety of humans or structures or threatens the health of other trees. The arborist shall prepare a report addressing the tree's health, the threat presented by the tree, and the tree's location. That report shall be submitted to County Land Use Planning prior to the tree removal. Any tree removed because it is a dying or a hazard tree shall be replaced with another tree of similar species at least six feet in height at the time it is planted [MCC 33.4565(C) and (E)].
4. The property owner shall maintain the primary fire safety zone extending 30 feet in all directions around the structure. Trees within the primary safety zone shall be spaced with greater than 15 feet between the crowns. The trees within the primary safety zone shall be pruned to remove low branches within 8 feet of the ground. All other vegetation within the primary safety zone shall be kept less than 2 feet in height [MCC 33.2256(D)].
5. The property owner shall obtain a grading and erosion control permit approval prior to Building Permit Zoning Review and prior to any soil disturbance related to the proposed development [MCC 29.336].
6. The property owner shall use the low or non-reflective building materials outlined in the application narrative for the exterior of the dwelling (Exhibit 1.10). Approved building materials include cement/fiber board, wood and composition asphalt roofing. If plastic framing around the windows is used, it must be the darkest earth tone color available. The property owner shall use windows with a low visible light reflectivity rating of less than 15 percent. The applicant shall submit the window manufacturer's specification for reflectivity prior to or during Building Permit Zoning Review. The exterior colors of the finished building shall match colors as shown on the Columbia River Gorge Commission Color Chart top two rows (Row A and B) or similar dark natural or earthtone colors approved during Building Permit Zoning Review. The composition roofing shall be a color that matches that of the photo submitted, or matches colors as shown on the Columbia River Gorge Commission Color Chart top two rows (Row A and B) or similar dark natural or earthtone colors approved during Building Permit Zoning Review. The type of exterior building materials shall be noted on the building plans and color samples shall be submitted prior to County Zoning Building Permit review. [MCC 33.4565(C) and (C)(2)].
7. Outdoor lighting shall be directed downward, hooded and shielded. Shielding and hooding materials should be composed of non-reflective, opaque materials. If any outdoor lighting is proposed, that lighting shall be shown on the building plans and the property owner shall submit a drawing or brochure of the fixture showing the lighting fixtures meet this condition prior to or during Building Permit Zoning Review [MCC 33.4565(C)].
8. The following nuisance plants listed in the following table 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)]:

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 sepium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Eloidea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telmateia</i>	Giant Horsetail

Scientific Name	Common Name
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium robertianum</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
<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

Scientific Name	Common Name
<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>Utricularia vulgaris</i>	Common Bladderwort
<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.



Christine M. Cook,
Multnomah County Land Use Hearings Officer

DATED: March 14, 2008

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

11. EXHIBITS

11.1. Exhibits Submitted by the Applicant:

- Exhibit 1.1: General Application form submitted 5/1/07 (1 page)
- Exhibit 1.2: Site Plan submitted 8/8/07 (1 oversized page)
- Exhibit 1.3: CFU Zone Development Standards Permit Application Form A, Type I submitted 5/1/07 (1 page)
- Exhibit 1.4: Significant Environmental Concern for Views Permit Application Form submitted 5/1/07 (1 page)
- Exhibit 1.5: Significant Environmental Concern for Habitat Permit Application Form submitted 5/1/07 (1 page)
- Exhibit 1.6: Elevation drawing of the dwelling submitted 9/27/07 (2 pages)
- Exhibit 1.7: Narrative with attached photos submitted 8/8/07 (19 pages)
- Exhibit 1.8: Narrative with site plan, erosion control specifications, elevation drawings and septic information attached submitted 10/2/07 (10 pages)
- Exhibit 1.9: Email with revised narrative attached 10/3/07 (3 pages)
- Exhibit 1.10: Revised narrative submitted 10/4/07 (3 pages)
- Exhibit 1.11: Computer printed color sample for roof and house paint submitted 10/4/07 (2 pages)
- Exhibit 1.12: First American Title Insurance Company topographic map for the property submitted 8/8/07 (1 page)
- Exhibit 1.13: Fire District Review Fire Flow Review and Access Review submitted 5/1/07 (9 pages)
- Exhibit 1.14: Certificate of On-site Sewage Disposal submitted 5/1/07 (4 pages)
- Exhibit 1.15: Certification of Water Service submitted 5/1/07 (3 pages)
- Exhibit 1.16: Storm Water Certificate signed and stamped by Erik M. Esparza, PE submitted 5/1/07 (11 pages)
- Exhibit 1.17: Topographic map of the area (1 page)

11.2. Exhibits Provided by the County

- Exhibit 2.1: County Assessment Record and map for the subject property (1page)
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page)
- Exhibit 2.3: 2004 Aerial photo of the property (1 page))
- Exhibit 2.4: Staff site visit notes related to habitatable dwelling (9 pages)
- Exhibit 2.5: Case T2-03-031 (7 pages)
- Exhibit 2.6: Columbia River Gorge Commission Color Chart (4 pages)

11.3. Appeal Exhibits

- Exhibit 3.1: Notice of Appeal filed by the applicant (5 pages)
- Exhibit 3.2: Notice of Public Hearing (2 pages)
- Exhibit 3.3: Newspaper Notice of Public hearing (1 page)

11.4 Hearing Exhibits

- Exhibit H.1: Sign-in sheet (1 page)
- Exhibit H.2: Aerial photo of vicinity of subject property (1 page)

- Exhibit H.3: Grounds for Appeal Decision Case # T2-07-044 (1 page)
- Exhibit H.4: Written testimony read by Planner George Plummer (10 pages)
- Exhibit H.5: Colored pages showing roof shingles and Sherwin-Williams color "Spalding Gray" (2 pages)
- Exhibit H.6: Memo from Alexander Altotsky, and attached color photos, showing subject property from "Scenic View Points" (19 pages)
- Exhibit H.7: An Assessment of LIDAR Data Quality, Michael Shank, TAGIS Unit, West Virginia Department of Environmental Quality (6 pages)
- Exhibit H.8: Strip Adjustment of LIDAR data, W. Kornus, A Ruiz (4 pages)
- Exhibit H.9: Modeling and Analyzing Systematic Errors in Airborne Laser Scanners, T.Schenk, January , 2001 (45 pages)
- Exhibit H.10: Forest Park Neighborhood Association Meeting Notes, 6/19/07 (3 pages)
- Exhibit H.11: Measure 49 Guide (15 pages)
- Exhibit H.12: Notice of Decision, Multnomah County Case File T2-06-031 (10 pages); Notice of Decision, Multnomah County Case File T2-06-100 (13 pages); Notice of Decision, Multnomah County Case File T2-06-071 (12 pages); Administrative Decision, Multnomah County File No. SEC 4-95 (9 pages); Administrative Decision, Multnomah County File No. SEC 29-97 (19 pages); Decision of the Planning Director, Multnomah County Case File SEC 17-99 (15 pages)
- Exhibit H.13: Letter dated February 7, 2008 from Principal Planner Derrick I. Tokos to Alex Altotsky (2 pages)

11.5 Post-Hearing Exhibits

- Exhibit PH.1: Letter dated June 1, 2007 from Alexander Altotsky titled "County Discrimination of Russian Refugee" (3 pages)
- Exhibit PH.2: Alexander Altotsky's Hearing Notes (9 pages)
- Exhibit PH.3: Alexander Altotsky Measure 49 claim document (5 pages)
- Exhibit PH.4: Memo from George Plummer with attached county decisions