



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-09-004

Permit: Template Test Forest Dwelling,
Significant Environmental Concern
Permit - Wildlife Habitat

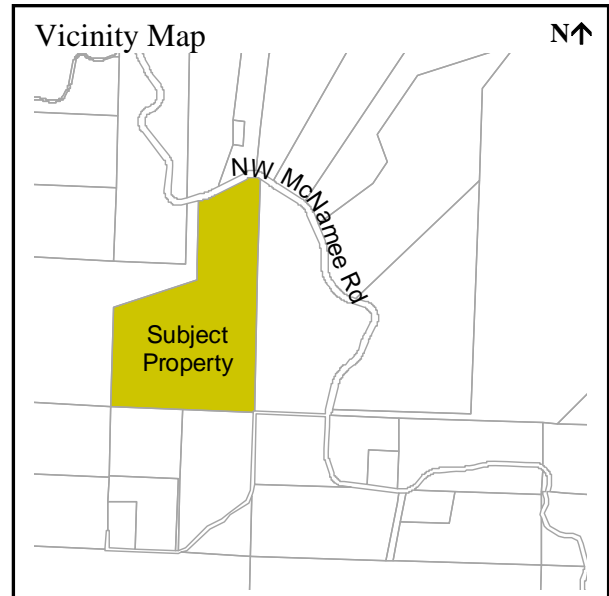
Location: Off of McNamee Road
TL 500, Sec 30, T2N, R1W, W.M.
Tax Account #R97130-0300

Applicant: Chris Goodell
AKS Engineering & Forestry

Owner: Jim Bewick

Base Zone: Commercial Forest Use-2 (CFU-2)

Overlays: Significant Environmental Concern –
Habitat (SEC-h); Significant
Environmental Concern – Streams (SEC-s); Slope Hazard (HD).



Summary: New Forest Template Dwelling in the Commercial Forest Use-2 (CFU-2) zone with a Significant Environmental Concern – Habitat (SEC-H) overlay. Additionally the applicant is seeking approval of an Adjustment to the width requirements of the access road.

Decision: Approved With Conditions

Unless appealed, this decision is effective Friday, March 26, 2010, at 4:30 PM.

Issued by:

By: _____
Don Kienholz, Planner

For: Karen Schilling- Planning Director

Date: Friday, March 12, 2010

Instrument Number for Recording Purposes: # 2008062395

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 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 Don Kienholz, Staff Planner at 503-988-3043, ext. 29270.

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 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, March 26, 2010 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): 37.0560 Code Compliance; 33.0005 Lot of Record Definition; 33.2240(A) Template Dwelling; 33.2256 Forest Practices Setbacks and Fire Safety Zones; 33.2261 Development Standards for Dwellings; 33.2273 Access; 33.2275 Lot of Record; 33.4570 SEC Habitat Approval Criteria; 33.7611 Adjustment Approval Criteria.

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>.

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.**

Conditions of Approval

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

1. **The owners or their representative shall record the Notice of Decision (Exhibit 1) 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 shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 37.0670]**

- 2. Prior to building permit sign-off, the owner or their representative shall apply for and obtain a Grading and Erosion Control permit for the dwelling, driveway and necessary turnarounds, septic field, landscaping and any other ground disturbance activities associated with this approval [MCC 29.336].**
- 3. Prior to building permit sign-off, the owner or their representative shall obtain an Address Assignment for the property [MCC 37.1500 et seq].**
- 4. The approved building envelope for the home measures 30-feet by 60-feet. Yard improvements and landscaping shall not exceed one acre in size and shall be shown on the site plans at the time of building permit sign-off. Any modification to the building envelope must go through an Administrative Modification of Conditions Established in Prior Case. [MCC 33.4570(C)(3)(b)].**
- 5. Prior to building permit sign-off, the owner shall either obtain an easement from the property owners of 14355 NW McNamee to improve the turnoff from the private road to the driveway of 14355 NW McNamee Road (Driveway to be improved is found on Exhibit 2) to the standard of a TVF&R turnaround or provide written verification from TVF&R that the driveway currently meets their turnaround standard. If a recorded easement agreement is required, a copy of the recorded easement must be submitted to land use planning prior to the issuance of building permit and provide for the use of the turnaround. The driveway must then be improved into a turnaround and the new turnaround at the subject parcel's property line must be installed prior to final occupancy of the home. A \$1000 bond shall be deposited with Land Use Planning to ensure compliance with the turnaround construction. The Bond shall be released upon evidence of the turnarounds and improvements being completed [MCC 33.2261(E)(7) and MCC 33.7611].**
- 6. The building plans submitted for plan check and sign-off shall show the internal NFPA 13D sprinkler system for the dwelling [Comprehensive Plan Policy 38].**
- 7. The property owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. The owner shall submit a copy of the Department of Forestry's stocking requirements to the Land Use Planning Office prior to building permit sign-off. Upon submittal, Land Use Planning will notify the Assessors office of the planting requirements [MCC 33.2240(A)(6)].**
- 8. The statement, in Exhibit 3, shall be recorded with the Multnomah County Recorders Office prior to zoning approval of the building permit. The statement documents that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices [MCC 33.2240(A)(8) & MCC 33.2307].**
- 9. The property owner shall establish and maintain a primary and a secondary fire safety zone on the subject tract as outlined below and show the fire primary and secondary safety zones from the dwelling on the building permit site plan [MCC 33.2256(D)]:**
 - a. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. On areas where slope is 10-19%, the primary fire safety zone shall be 80-feet. On areas where the slope is 20-24%, the primary fire safety zone**

shall be 105-feet. On Areas where the slope is 25-39%, the primary fire safety zone shall be 130-feet. 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. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone on the subject property. 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. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner.
- 10. The dwelling shall comply with the standards of the applicable building code. Prior to zoning sign off for building plan check, the property owner or their representative shall provide documentation on the building plans that the proposed dwelling complies with the following [MCC 33.2261(C) and Comprehensive Plan Policy 38]:
 - a. A fire retardant roof; and
 - b. A spark arrester on each chimney.
 - c. NFPA 13D internal sprinkler system
 - 11. Prior to starting construction work of the dwelling, the property owner or their representative shall obtain the required building department permits for the type of construction proposed. It is the property owner's responsibility to keep the permit active and to confirm that the work performed under the building permit shall be completed with a final inspection. [MCC 33.2261(C)].
 - 12. Prior to building permit sign-off, the owner shall submit a well drillers report to the land use planning office demonstrating the property contains a domestic water source. Upon receiving the well drillers report, the County shall send out a 14-day appealable notice to property owners within 750-feet of the property lines. If the appeal period has expired with no appeal, then the County may move forward and sign-off on building plans [MCC 33.2261(D)].
 - 13. Prior to building permit sign-off, the owner shall submit written verification from an licensed Oregon Professional Engineer that the private road extending from McNamee Road to the building site will support a Gross Vehicle Weight (GVW) of 52,000 lbs. [MCC 33.2261(E)(1)].
 - 14. The owner shall maintain an unobstructed vertical clearance of at least 13 feet 6 inches for the private road and driveway on the subject property [MCC 33.2261(E)(4)].
 - 15. The owner shall provide a turnaround at the terminus of the driveway that meets TVF&R's Turnaround standards (Exhibit 4). The turnaround shall be included on the copies of the site plan submitted for building permit sign-off [MCC 33.2261(E)(6)].
 - 16. The owner shall trim back and maintain vegetation on portions of the private road that are not 20-feet in width in order to increase the sight distance [MCC 33.7611(A)].

17. Prior to building permit sign-off, the owner shall install at least two permanent signs in both directions (ingress and egress) noting "Caution: Narrow Road Ahead" along the private driveway. Photographic evidence shall be submitted showing the installation of the signs. The signs shall be placed prior to points where the private driveway narrows below 20-feet in width to warn drivers of the narrowing roadway. Signs shall be easily seen and legible from passing vehicles. Text on the signs shall be made of reflective paint, reflective sign tape or other reflective materials used in standard road signs. The owner shall keep the signs in good repair [MCC 33.7611(A)].
18. Prior to building permit sign-off, the owner shall install permanent posts with reflectors attached on the downhill side of the private road every 50-feet along portions of the driveway that are below 20-feet in width extending from NW McNamee Road to the turnoff to the subject properties driveway. Photographic evidence shall be submitted showing the installation of the signs. The owner shall maintain the posts in good repair [MCC 33.7611(A)].
19. Future fencing may only be placed within the approved building envelope identified on the site plan at the time of building permit sign-off. Fencing may only be allowed outside of the building envelope if associated with a farm practice, which the owner shall demonstrate by being in farm deferral or submitting a letter from Assessment and Taxation clearly indicating the activity on site meets the requirements to be enrolled in the farm deferral program except for the duration of the farming practice [MCC 33.4570(C)(3)(c)].
20. The following nuisance plants shall not be planted on 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 seppium</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>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

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.

Scientific Name	Common Name
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name

- 20. The owner shall remove invasive and non-native plant species around the culvert crossing of the private road in the southwest portion of the property as identified on the site plan [MCC 33.4570(C)(3)(e).**

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Don Kienholz, at (503) 988-3043 ext. 29270, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$53.00 will be collected. In addition, an erosion control inspection fee of \$77.00 may be required as well as an \$85 address assignment fee.

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.

Findings of Fact

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

1.00 Project Description:

Staff: The applicant is seeking approval for a Template Test Dwelling in the Commercial Forest Use-2 (CFU-2) zoning district and Significant Environmental Concern – Habit overlay (SEC-h). The applicant is also requesting approval to an Adjustment to the Private Road standards.

2.00 Property Description & History:

Staff: The property was once part of a large development in the West Hills called Forest Trails Estates. A series of land divisions created large forest parcels that were eventually to be developed with dwellings. The 43-acre subject property, currently vacant, had been previously approved for a building permit in August of 1992 (Exhibit 5). However, the home was never constructed and the previous permit expired. An application was submitted in 2008 to qualify for a Template Dwelling (T2-08-030) but was returned due to not being deemed complete within 180-days of being submitted [MCC 37.0600(B)]. The current application is the most recent permit request for the subject property.

3.00 Template Test Approval Criteria:

MCC 33.2240 TEMPLATE AND HERITAGE TRACT DWELLINGS

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

A. **(1) The lot or lots in the tract shall meet the lot of record standards of MCC 33.2275;**

Staff: Lot of Record findings are made under Section 7.

B. **(2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC 33.2256 and 33.2261;**

Staff: Assessment and Taxation shows the property being 43.42 acres which is more than adequate to accommodate the siting of a dwelling that meets the dimensional and development standards as discussed further in this staff report.

Criterion met.

C. **(3) The tract shall meet the following standards:**

1. **(c) If the tract is predominantly composed of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

1. The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993

within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and

2. At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square and those dwellings either continue to exist or have been replaced by lawful replacement dwellings.

Staff: The definition of “template” is found under MCC 33.0005 Definitions. The code defines the template as:

Template Dwelling – A type of single family detached dwelling in the CFU zoning districts with approval criteria that includes a requirement that a certain number of parcels and dwellings exist within a 160-acre square (map template) centered on the subject tract. The complete description of requirements are in the use sections of the district.

The applicant provided a site plan depicting their template over their discovered center of the property with the template oriented to the cardinal directions. Staff concurs with the general location of the template square. Staff replicated the template test and found the center of the template to be slightly off to the west of the applicants template mark (Exhibit 6), but the difference does not affect the number properties or dwellings located within the template.

Due to the soils on the property and their timber capacity (Cascade Silt Loam and Goble Silt Loam; 135-164 cubic foot per acre per year), the template must contain all or part of 11 lawfully created parcels and 5 lawful dwellings established prior to January 1, 1993. As seen on the applicants template site plan (Exhibit 7), there are 18 properties that fall wholly or partially within the template square. Staff concurs with the applicant’s listing of properties as being accurate in reflecting composition of the template but found six dwellings within the template rather than the applicant’s five.

The applicant provided documentation on the creation of the parcels within the template. Staff reviewed 11 of the parcels for compliance with the zoning and land division codes. Staff found the following 11 parcels within the template met the required codes and were lawfully established prior to January 1, 1993.

Qualifying Parcel	Address	Established:
1	16731 NW Pauly Road	By Instrument Book 962, pages 606-607 December 5, 1973
2	14440 NW McNamee Road	County Approved Partition Plat 1990-32
3	14350 NW McNamee Road	County Approved Partition Plat 1990-32
4	14320 NW McNamee Road	County Approved Partition Plat 1990-31
5	14310 NW McNamee Road	County Approved Partition Plat 1990-31
6	14250 NW McNamee Road	County Approved Partition

		Plat 1990-31
7	14190 NW McNamee Road	County Approved Partition Plat 1990-30
8	14000 NW McNamee Road	County Approved Partition Plat 1990-30
9	13780 NW McNamee Road	County Approved Partition Plat 1990-30
10	14355 NW McNamee Road	County Approved LD 23-89
11	14347 NW McNamee Road	County Approved LD 23-89

Within the template, staff found 6 dwellings that were established prior to January 1, 1993. Those dwellings are as follows:

	Tax Lot /Location	Year Established/ Building Permit?
Dwelling 1	Tax Lot 300 2N1W Sec 30 14355 NW McNamee Rd.	1991 – Yes
Dwelling 2	Tax Lot 700 2N1W Sec 30 14377 NW McNamee Road	1992 – Yes
Dwelling 3	Tax Lot 600 2N1W Sec 30 14347 NW McNamee Rd.	1992 – Yes
Dwelling 4	Tax Lot 200 2N1W Sec 31 16731 NW Pauly Road	1990 – Yes
Dwelling 5	Tax Lot 100 2N1W Sec 31 16529 NW Pauly Rd	1986 – Yes
Dwelling 6	Tax Lot 1500 2N1W Sec 29 13555 NW McNamee Rd.	1992 – Yes

Considering the evidence noted above, the subject property meets the requirement to have 11 lots of record and 5 dwellings lawfully established prior to January 1, 1993.

Criteria met.

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

Staff: No lots or dwellings qualifying the subject property are located within an urban growth boundary.

Criterion met.

3. **(e) There is no other dwelling on the tract,**

Staff: The subject property is vacant and contains no other dwellings.

Criterion met.

4. **(f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**
- Staff:** The subject property is made up of only one parcel, therefore there is no tract.
- Criterion met.*
5. **(g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**
- Staff:** The subject property is made up of only one parcel, therefore there is no tract.
- Criterion met.*
6. **(h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**
- The subject property is made up of only one parcel, therefore there is no tract.
- Criterion met.*
7. **(i) Pursuant to the definition of “Date of Creation and Existence” in MCC 33.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 33.2240(A), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling.**
- Staff:** The subject parcel qualifies for a dwelling therefore this criterion does not apply.
- Criterion met.*
8. **(j) Pursuant to the definition of “Date of Creation and Existence” in MCC 33.0005, lots, parcels and tracts that are reconfigured after November 4, 1993 cannot be counted as meeting the “other lawfully created lots” existing on January 1, 1993 standard in MCC 33.2240(A)(3)(a), (b), and (c): 3, 7, and 11 lots respectively.**
- Staff:** All 11 parcels and lots used to qualify the subject parcel for a dwelling were all lawfully established prior to January 1, 1993 and have remained in their original configuration.
- Criterion met.*
- D. **(4) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in**

the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.

Staff: The property does not show up on the county maps as being within an identified Big Game Winter Habitat area as defined above.

Criterion met.

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

Staff: The applicant has provided a copy of the deeds creating the parcel and the accompanying access easement for the property. Because of the access code requirements of MCC 33.2261(E) and 29.019(D), the owner may need to obtain additional easement access to improve portions of the private road, including the entry points to the first two dwellings served by the private road if they do not currently meet the TVF&R standards for a turnaround. This shall be demonstrated as being accomplished prior to building permit sign-off.

Criterion met with condition of approval.

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

(a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;

(b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

(c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

Staff: A condition of approval will require the owner to submit a restocking report to Land Use Planning, who will then forward the report on to Assessment and Taxation.

Criteria met with condition of approval.

- G. **(7) The dwelling meets the applicable development standards of MCC 33.2256 and 33.2261;**

Staff: The development standards are addressed under Section 5.

- H. **(8) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Staff: A condition of approval will require the owner to record a statement acknowledging forest and farming operations take place nearby the property.

Criterion met with condition of approval.

- I. **(9) Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

(a) The covenants, conditions and restrictions shall specify that:

- 1. All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**
- 2. No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;

(c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

Staff: The subject property is not a part of a “tract” and therefore no covenant needs to be recorded.

Criteria met.

4.00 Building Height and Setback Requirements

A. MCC 33.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

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

Staff: The applicant has not provided building plans of the proposed dwelling for review. The purpose of this application is qualify the property for a dwelling and approve a building envelope. As such, building height will be reviewed though the building permit process.

Compliance will be verified at plan sign-off.

B. MCC 33.2256 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES

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:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Template Dwelling	N/A	30	130	Primary & Secondary required

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 33.2310 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

(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.

(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 proposed template dwelling is required to have a 130-foot forest practice setback along with a primary and secondary fire safety zone. The primary fire safety zone for the building envelope is 30-feet to the north, east and west and 80-feet to the south due to slope. The secondary fire safety zone is 100-feet in all directions. As seen on the applicants submitted site plan (Exhibit 7), the building envelop meets the required 130-foot

forest practice setback as well as the required primary and secondary fire safety zones. No Adjustment or Exception is required to the setbacks.

Criteria met.

5.00 CFU-2 Development Standards

MCC 33.2261 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

All dwellings and structures shall comply with the approval criteria in (B) through (E) below except as provided in (A):

A. (B) New dwellings, replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from a dwelling shall meet the following standards in (1) and (3) or (2) and (3):

1. (2) The structure shall satisfy the following Option 2, Discretionary Type 2 Permit requirements:

a. (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 33.2256;

Staff: Staff concurs with applicant's narrative response. The proposed site is within close proximity to an existing dwelling on the property adjacent to the north. The Fire Safety zones required for the proposed dwelling will fit fully on the subject property as required by the code and are immediately adjacent to the presumed fire safety zones of the property to the north, thus creating a clustered and cleared residentially influenced area. The clustered area is preferred over "islands" of residential use since the individual islands do not allow large, undisturbed forest stands that are more economical to harvest. The clustering of homes also improves fire safety. Furthermore, clustering the homes allows for a greater area of undisturbed harvestable timber at the northern panhandle of the subject property.

The proposed home location would have the least impact on nearby and adjoining forest lands for the above mentioned reasons. There are no agricultural lands nearby.

Criterion met.

b. (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Staff: No Farming occurs on the subject property. The proposed site is currently cleared as seen on air photos and adjacent to an existing dwelling and associated yard. The proposed access is an existing gravel driveway that currently serves two dwellings. Utilizing the existing driveway would reduce the need for grading and constructing a new driveway in any other location of the property for the proposed dwelling, such as in the northern panhandle. However, the driveway would need to be improved from its

current condition from the dwelling on the property adjacent to the north down to the proposed home site with an additional turnaround. The applicant has proposed a location for a new turnaround between the driveway of the adjacent property to the north and the driveway to the subject building site. The identified area is mostly cleared and considered part of the residential curtilage of the proposed dwelling and the existing dwelling to the north.

The Fire District has given conditional approval of the driveway providing a sprinkler system is put into the new home. The sprinkler system will help minimize the threat of fire and thus minimize the adverse impact on forest operations.

Additionally, using the existing driveway instead of building a new one will reduce the amount of the forest stand taken out of harvest and leave the rest of the property in a continuous block of harvestable forest.

Criterion met.

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

Staff: The proposed site minimizes the amount of forest land by utilizing an existing private road to access the site, using an existing cleared development site adjacent to a cluster of other dwellings, and leaves intact a large unbroken timber stand at the only other potential building site in the northern panhandle of the property.

Criterion met.

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

Staff: As the applicant states, the property contains some geographic limitations as well as environmental limitations. The northern most area of the property is adjacent to NW McNamee Road and could provide direct access to a home site. However, the immediate area near McNamee Road contains two tributaries/draws that feed into an SEC-s identified stream as seen on the applicants site plan (Exhibit 7). The most appropriate area for development at the panhandle site would be between the two streams which could negatively impact both streams due to their proximity.

The topography at the northern panhandle site is not prohibitively steep, but is steeper than the proposed western location. Locating a dwelling in the northern panhandle next to McNamee Road would require even further clearing of forest land because the slope is greater than 10% and would require an expanded primary fire safety zone.

As noted in the Existing Conditions section on Page 1 of the applicant's wildlife assessment as well as in the narrative responses on page 4 (Conducted by Environmental Sciences & Assessment, LLC), the panhandle of the property is located in an area that serves as one of the few crossing points across McNamee for wildlife. The assessment's Figure 2 depicts the wildlife corridor over the subject property and neighboring properties (Exhibit 8). The historical clustering of dwellings along the road as well as the long, linear pattern of parcels tends to expand the residential influence. As a result, there are few opportunities for wildlife to cross the road and not encroach into the residentially utilized areas of properties. Comments received indicate that when the area was divided into parcels and homes were located, that the original developers recognized the wildlife corridor and placed a wildlife easement over the panhandle of the property. Staff researched the original development and deeds and found the wildlife easement was in fact in place. However, it is not clear if the easement is still in effect since some of the parties are no longer in existence. While the County does not enforce private agreements – whether they be covenants or contracts, the County does recognize the fact that the original developers as well as the applicant's environmental consultant note the wildlife corridor as being important for the local area.

In examining the proposed access to the building site, staff believes the applicant has met the burden to demonstrate that while the private road is over 500-feet in length, it is the minimum necessary in order to get to the development site, meet the forest practice setbacks, meet the fire safety zones, and still cluster the proposed development next to the adjacent development.

Criterion met.

2. **(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**
 - (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**
 - (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the driveway standards of MCC 33.2261(E) with permanent signs posted along the access route to indicate the location of the emergency water source;**

Staff: The property is served by Tualatin Valley Fire & Rescue (TVF&R). Drew Dubois, Deputy Fire Marshal for TVF&R, conducted a site visit to the proposed building site and conditionally approved the proposed site with the installing a fire sprinkler system in the home. He further commented that the existing accessway would be adequate (Exhibit 11). While the marshal deemed the access adequate, Multnomah County will require some improvements to meet current county code for accesses in the forest zones.

There are existing streams on the subject property; however, access to those streams is impossible due to steep slopes.

Criteria met with Conditions of Approval.

B. (C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

Staff: A condition of approval shall require a fire retardant roof and spark arrestors on each chimney.

Criteria met.

C. (D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

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

(2) Evidence of a domestic water supply means:

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

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

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Staff: The applicant has elected to postpone demonstrating the property has a domestic water supply until they can secure an approval for the dwelling. As such, a condition of approval will require the owners to submit a well drillers log prior to the issuance of a building permit. The log shall then be sent out for a 14-day appeal period to those entitled to notice under Chapter 37 of the Multnomah County Code. The appeal period must expire with no appeal before building permits can be issued.

Criteria met with condition of approval.

- D. **(E) A private road (including approved easements) accessing two or more dwellings, a driveway accessing a single dwelling, a Forest Practices road that is utilized as a private road/driveway accessing a dwelling(s), or a new driveway constructed to access a replacement/restored dwelling, shall be designed, built, and maintained to:**

(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;

1. **Staff:** The private road does not utilize any culverts or bridges. A condition of approval shall require the owner to submit written verification from an Oregon Professional Engineer that the private road from McNamee to the building site will support a minimum gross vehicle weight of 52,000 lbs.

Criterion met with condition of approval.

(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;

2. **Staff:** The access to the development site is a Private Road under the definition found in MCC 33.2261(E) since it serves three other homes. The subject property would be the fourth home served, although it would not be at the terminus of the private road. It would be the third of the four homes in line. The access becomes a driveway at the point the access serves only the subject home, which is right after crossing onto subject the property from the north.

Staff concurs with the applicant that currently, the private road varies in width from between 13 to 25 feet in width. A site visit to the property confirmed the varying widths along the private road. Because the entire private road does not measure at least 20-feet in width, the applicant would need to reconstruct part of the road, or obtain approval for an Adjustment to reduce the required width. The applicant has chosen to apply for an Adjustment, which is discussed under Section 8.

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

Staff: Curves along the private road are minimal. There is one main curve near the beginning of the private road after the driveway to the first home that is very slight and is adequate. The only curves after it are to the second dwelling's driveway, a proposed new turnaround just before the subject dwellings driveway, and the subject dwelling's driveway – which are all minimal curves that have a radii greater than 48-feet.

Criterion met.

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

Staff: Drew Dubois, Deputy Fire Marshal for TVF&R, walked the site and found that met the districts requirements. Staff also walked the site and drove the driveway and found the private drive met the vertical clearance requirement listed above. A condition of approval will require the owner to maintain the vertical clearance requirements.

Criterion met.

5. **(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**

(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;

(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;

Staff: Drew Dubois, Deputy Fire Marshal for TVF&R, has given written approval for the private road with conditions. That written approval allows the owner to have a private road and driveway that deviates from the slope maximums for short durations. Since the Deputy Fire Marshall has thoroughly examined the access route to the property, signed off on the Fire Access Certification Form, and provided written authorization for the dwelling, staff concludes that the fire protection service provider for the area has granted approval for the dwelling – including its access to have short durations exceeding the slope requirements of this criterion.

Criterion met.

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

Staff: The access to the development site is well over 150-feet and requires a turnaround. A condition of approval will require a turnaround to be constructed at the terminus of the driveway that meets TVF&R's standards (Exhibit 4).

Criterion met with condition of approval.

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

(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

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

Staff: Because the access to the proposed dwelling is a private road by definition, turnarounds are required rather than turnouts. Staff concurs with the applicant that the private road access does not meet the above standards because the private road has a segment where the spacing of the turnarounds is more than 500-feet.

The applicant proposes using the turnoffs to the driveways of the first two homes along the private road as 'turnarounds.' Utilizing those turnoffs as turnarounds, they measure 525-feet apart – exceeding the maximum distance allowed. As such, the applicant is requesting an Adjustment to the standard, which staff addresses under Section 8.

8. **(8) An existing driveway currently being utilized by the habitable dwelling may be extended to a replacement dwelling without compliance with the roadway standards above. However, nothing in this exemption removes the requirements under the county's Fire Apparatus means of Approach Standards contained in MCC 29.012.**

Staff: The project does not include an existing dwelling and therefore this criterion is not applicable.

E. **MCC 33.2307 SINGLE FAMILY DWELLINGS CONDITION OF APPROVAL - PROHIBITION ON CLAIMS ALLEGING INJURY FROM FARM OR FOREST PRACTICES**

As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Staff: A condition of approval shall require the owner to record a covenant prohibiting claims of injury from farming or forest practices.

Criterion met with condition of approval.

6.00 Access

MCC 33.2273 ACCESS

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 subject property abuts NW McNamee Road. However, access to the building site in the southwest part of the property is taken by easement over the two adjacent properties to the

west. The easement is recorded in deed and has been secured. However, additional easements may need to be obtained if those driveway turnouts need to be improved.

Criterion met.

7.00 Lot of Record

MCC 33.2275 LOT OF RECORD

(A) In addition to the *Lot of Record* definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not *contiguous* to any other parcel or lot under the *same ownership* on February 20, 1990, or

(2) A group of *contiguous* parcels or lots:

(a) Which were held under the *same ownership* on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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.
2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The subject parcel is was not contiguous to any other parcel in common ownership on February 20, 1990. The subject parcel is more than 19-acres in size and therefore is not aggregated to any other parcel as part of a tract. The parcel was created via a county approved land division (LD 23-89). Since the county approved the land division, the property met all zoning and land division rules in place at the time.

Criteria met.

8.00 Adjustment Approval Criteria

A. MCC 33.7606 SCOPE

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts and the Commercial Forest Use fire safety zone are not allowed under the Adjustment process; and

(2) Reduction of yards/setback/buffer requirements within the Hillside Development, Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(3) Minor modification of yards/setbacks/buffers in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

Staff: The scope lists dimensions of a ‘private street’ as being eligible for an Adjustment. The definitions of Chapter 33 direct the user to see ‘private road’ when looking for a definition of ‘private street.’ Considering this, staff finds that ‘private street’ and ‘private road’ to be synonymous in meaning.

The applicant’s request to have the private street turnaround length and width of MCC 33.2261(E) modified through an Adjustment is permitted provided the modification is less than 40% of the required dimension.

The applicant indicated that the road varies in width with a minimum of 13-feet along the route, with portions being as wide as 20-feet. A reduction from 20-feet to 13-feet is less than 40% and therefore the request can be processed as an adjustment.

On a private road, turnarounds must be provided at a maximum of 500-feet apart. Any further, and an Adjustment must be granted. The applicant is requesting a distance of 525-feet between turnarounds at one point along the private road. The increase of 25-feet is a modification of 5% and is therefore allowed through an adjustment.

B. **MCC 33.7611 ADJUSTMENT APPROVAL CRITERIA**

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 33.7606 upon finding that all the following standards in (A) through (E) are met:

1. **(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

Staff: The applicant is seeking an Adjustment to the width of the access (private road) from the required 20-feet under MCC 33.2261(E)(2), down to 13-feet in some places. The applicant has stated that portions of the road do in fact meet the 20-foot width but due to topographic features, other portions of the road cannot physically meet the requirement. The width is required to be 20-feet because the classification of the access is a “private road/street” under MCC 33.2261(E)(2) and 29.012(D)(4). The purpose of the required access width is to decrease the potential for traffic conflicts due to the increased trips generated from multiple dwellings using the private road as well as ensure that fire and emergency vehicles can travel safely along the access. The extra width that is required is to allow enough space for vehicles to pass by each other safely without collision or falling off the embankment since the likelihood of cars encountering each other are increased with the addition of a new dwelling.

MCC 33.2261(E)(7)(a) requires that a private road have additional turnarounds for vehicles at a maximum distance of 500 feet apart. Like the purpose of the width, the turnarounds are to reduce vehicle conflicts caused by the increased use of the private road.

Currently, no turnarounds have been constructed. The applicant is proposing to construct a turnaround at the subject property’s common lot line with the property to the north just north of the proposed building site. However, the construction of the turnaround would then create a distance of 700- feet without a turnaround which does not meet the code maximum. Because of this situation, the applicant is seeking an adjustment to the 500-foot maximum length because of the physical limitations along the private road that limit the ability to construct another turnaround within the required 500-foot maximum distance.

The 200-foot difference is a modification of 40% and would qualify as an adjustment. However, the applicant has stated that the first driveway turnoff located on the private road adequately meets the TVF&R turnaround standards. This has not been substantiated at this point. If confirmed, a turnaround located at the first driveway turnoff would reduce the distance between available turnarounds to 525-feet. That being the case, the proposal would reduce the distance between turnarounds to 525-feet and be a modification of the distance of only 5%. A condition of approval will require the applicant demonstrate the noted driveway turnoff meets the TVF&R turnaround requirement with a letter from TVF&R and if it does not, that the applicant will modify it such that it does meet the standard.

Staff finds that the purpose of both the width and distance between turnarounds is for safe traveling and passage of vehicles – most importantly larger emergency

vehicles. The fire district that serves the area, Tualatin Valley Fire & Rescue has stated on the fire certification forms for both access (Exhibit 9) and flow (Exhibit 10) as well as in a letter (Exhibit 11) that the existing access is adequate to meet their needs to serve the proposed dwelling site. Only portions of the access are below Multnomah County's code standards (width of 20-feet) and need the adjustment – not the entirety of the private road length. Exactly what percentage of the access is between 13 and 20 feet is not clear.

Considering the local fire district has thoroughly reviewed the access path and has signed off on the plan based on the home being equipped with an internal sprinkler system, it seems reasonable that with the proposed improvements by the applicant, the access equally meets the purpose of the access width and turnarounds. Additionally, the home site was previously approved for a single family dwelling on August 18, 1992 (Exhibit 5) when the property was zoned Multiple Use Forest-19 (MUF-19) and the access was deemed adequate, even though the rules in place at the time were not as stringent as today.

A condition of approval requiring the owner to trim back brush along the private road and maintain the vegetation will increase sight distance and help mitigate those portions of the road that are below 20-feet in width.

A condition of approval will also require reflective signs be located on the downslope side and along the private road warning vehicles of where the edge of the roadway is located. Additional signs will be placed warning drivers of a narrow road ahead.

Considering the above, granting the adjustment to the width and distance between turnarounds with the mitigation measures and improvements will equally meet the purpose of the regulations being modified.

Criterion met.

2. **(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and**

Staff: The applicant is proposing to mitigate the adjustment to the driveway width and distance between turnarounds by installing an internal sprinkler system and constructing an additional turnaround off of the private street access right at the subject property's lot line.

A condition of approval will also require the applicant to verify the driveway to 14355 NW McNamee Road either meets the requirement of a TVF&R turnaround or will be improved to the standard. The turnaround can then function as a turnout for passenger vehicles or turnaround for emergency vehicles in case they meet on those particular sections of the private road. Additionally, conditions of approval shall require the property owner to trim and maintain the brush and vegetation along the private road to increase sight distance along the narrow portions; place

reflective posts on the downhill side of the private road to warn drivers of the edge of the roadway; and place cautionary signs to drivers that the roadway narrows.

These mitigation measures will allow the sought adjustments to equally meet the purpose of the width and distance between turnarounds.

Criterion met.

3. **(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and**

Staff: Two adjustments are being sought to the private road access to the proposed dwelling site. The cumulative effect of the adjustments could impact vehicles traveling the private road if they were to encounter each other in opposite directions. With a new dwelling being served by the existing private road, there would be an increased chance of vehicle conflicts. Currently, three other homes utilize the same private road for access. The proposed home would increase generated trips by an estimated 25%. With one turnaround and one turnout in place from the proposed dwelling to McNamee Road, and an additional turnaround constructed, it does not seem the impact would significantly increase the chances of vehicles traveling in opposite directions meeting along a portion of the road where a turnout, turnaround, or a 20-foot wide portion of the road would not be in the vicinity.

Criterion met.

4. **(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and**

Staff: The property is in the CFU-2 district. Staff concurs with the applicant that the proposed adjustments would allow a home to be built in the flattest and most cleared portion of the property. Additionally, the adjustments would allow the home to utilize an existing road as access and would prevent further reduction of harvestable land from commercial production.

By locating the dwelling where proposed – in the clearest and flattest area of the property – and clustered near the two dwellings to the immediate north of the building site, the residential influence of the area is only marginally extended. The other potential location for the dwelling, in the panhandle near McNamee Road, would have had a greater impact on forest practices as well as wildlife because the area is currently undisturbed by any residential influence, is not cleared, and is near the headwaters of a draw that flows into an SEC-s protected stream.

Taking the facts into consideration, the proposal will not force a significant change or increase in the cost of accepted forest practices on the subject lot or surrounding properties.

Criterion met.

5. **(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.**

Staff: The property is not within the RR or RC zone.

9.00 Significant Environmental Concern Permit

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

A. (B) Development standards:

1. **(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 being located in an area that meets the definition of 'cleared' in the SEC overlay zone. As seen in county air photos and observed during a staff site visit, the proposed location is mostly brush and small saplings. Additionally, the access to the proposed site is already developed to serve three other dwellings which further reduces the amount of ground clearing necessary for development. The proposed development site is the only area on the property that meets the definition of 'cleared.'

Criterion met.

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

Staff: The proposed development is more than 200 feet from a public road. The proposal doesn't meet this requirement and must go through a Wildlife Conservation Plan under MCC 33.4570(C).

Criterion not met.

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

Staff: The access road (Private Road) exceeds the 500-foot maximum length. The proposal doesn't meet this requirement and must go through a Wildlife Conservation Plan under MCC 33.4570(C).

Criterion not met.

4. **(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.

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.

2. The County Road Official shall provide written findings supporting the modification.

Staff: The proposed development is taking access onto McNamee Road through an existing private road serving three other dwellings. Therefore, there will be no new access onto a county road.

Criteria met.

5. **(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

Staff: The proposed development is within 300-feet of a property line that is shared with a property that has development within 200-feet of the same common property line.

Criterion met.

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

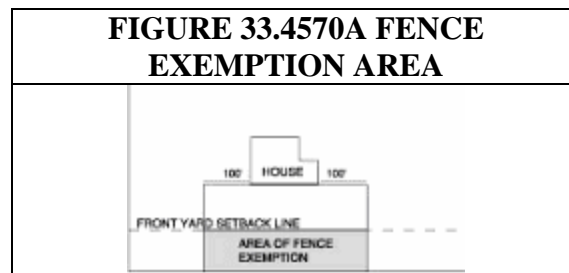
(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(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.



Staff: No fencing is proposed as part of this application. A condition of approval will require any future fencing to meet the requirements of this section.

Criterion met with condition of approval.

7. (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 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>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>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
various genera	Bamboo sp.

Staff: A condition of approval will require the removal of the listed plants from the development site as well as maintaining the area free from them into the future.

Criterion met

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

1. (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: Staff concurs with the applicant – the proposed dwelling could be located such that it meets the development standards. There is a location in the panhandle of the property that would meet the majority of the development standards, but not all.

In this circumstance, the proposed development meets the requirement of being in a cleared area and clustered around existing development. The proposed site does not meet the requirements limiting the length of the access corridor and constructing within 200-feet of a county maintained road.

However, staff also concurs with the applicant that the proposed home site is superior to site identified in the panhandle of the property. The proposed home site would have a less detrimental impact to forested wildlife habitat because:

- The site in the panhandle of the subject property is completely forested. Clearing the site for the required development site, access, and fire safety breaks could have a negative impact on the two draws/creeks that feed into an identified Significant Stream just to the west of the site. Damaging the draws/creeks that feed the SEC-s stream would directly impact the quality of the SEC-s stream.
- Accessing the public road from the panhandle site would be difficult due to a lack of sight distance for the access point. The property is adjoins the public road right on a significant curve of McNamee road which would restrict virtually all visibility eastward. According to the application, it would require significant additional grading to allow for better visibility.
- The applicant's wildlife consultant, ES&A notes in their wildlife assessment that building in the panhandle would have a greater impact on wildlife than the proposed home site because of the wildlife crossing on the property by McNamee Road. Comments received by several neighbors as well as representatives of The Forest Park Conservancy (FPC), formerly Friends of Forest Park, also indicate the existence of the wildlife crossing in the panhandle. Documents provided show the original easement agreement for the property detailing a wildlife conservation easement for the corridor (Exhibit 12). Constructing in the panhandle would be in the middle of the crossing, which is one of the few areas seen on air photos as having continuous mature tree canopy and habitat on both sides of McNamee Road. The continuous nature of the canopy provides cover for wildlife crossing the road. Construction in the panhandle would have a significant impact on the crossing.

Staff believes the issues listed above make the proposed home site better suited for development and would have a less detrimental impact on wildlife habitat.

The applicant's consultant provided a narrative addressing the approval criteria as well as the wildlife mitigation plan (Exhibit 13). The measures proposed, as well as the benefits resulting from developing on the proposed location rather than the panhandle, exceed the standards and their intent of MCC 33.4570(B).

A synopsis of those measures and benefits are:

- Development not occurring within the existing wildlife habitat corridor adjacent to and crossing McNamee Road, thus keeping the habitat intact and not fragmenting it.
- Development and earth disturbance not occurring within with SEC-s overlay or adjacent to draws and creeks that feed the SEC-s stream.
- The proposed site is already cleared and clustered with other dwellings in a residentially influenced area.

- No new roads will be constructed. That will preserve the existing unbroken wildlife habitat and allow greater access across McNamee road for wildlife.
- No stream crossing is required with the proposed development site
- The home site is the most level which reduced the required grading.

Criterion met.

2. **(3) The wildlife conservation plan must demonstrate the following:**

- a. **(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

Staff: Locating the home in the only cleared area on site that is also served by an access corridor reduces the amount of forested area removed from potential harvest. It also leaves a greater untouched swath for wildlife to migrate. The proposed development site will not require the removal of significant trees or canopy and amounts to disturbing the least amount of forest canopy.

Criterion met.

- b. **(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Staff: Clearing tree canopy for the development will be minimal due to the proposed site being mostly cleared already. As seen on county air photos and during the site visit, the site has random larger trees but mostly contains brush, saplings, and overgrown wild grass. Some clearing will be required to satisfy the fire safety breaks but because of the adjacent residential area associated with the dwelling to the north, but in total it will be well below one acre of new clearing.

Criterion met.

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

Staff: No fencing is proposed as part of the development and there is no existing fencing on the property. A condition of approval will regulate the future placement of fencing to conform to this criterion.

Criterion met with condition of approval.

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

Staff: The development is proposed to take place on the only ‘cleared’ portion of the subject property. Clearing associated with the fire safety breaks for the development will be minimal due to the development site already being cleared. There are no other ‘cleared’ areas on the property therefore the owner does not need to replant.

Criterion met.

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

Staff: Staff concurs that the proposed development will not disturb any stream riparian areas on the property. The proposed development does not encroach into an SEC-s area, or within 100-feet of a draw or creek feeding the SEC-s stream. The applicant has proposed removing invasive plant species on the property by an existing stream crossing.

Criterion met.

3. **(4) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.**

Staff: The subject property is not within the PAM overlay district.

Criterion met.

10.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the New Forest Template Dwelling in the Commercial Forest Use-2 zone with an Adjustment and Significant Environmental Concern permit for Wildlife Habitat. This approval is subject to the conditions of approval established in this report.

11.00 Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-09-004 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit
1*	6	Notice of Decision

2*	1	Driveways Required To Be Improved
3*	1	Statement To Be Recorded Regarding Farm And Forest Practices
4*	1	Tualatin valley Fire And Rescue Turnaround Standards
5	2	1992 Building Permit Sign-Off For Subject Property
6	2	Staff Template Square
7*	1	Applicant's Site Plan And Template Center
8*	1	Applicant's Wildlife Assessment Figure 2 – Wildlife Corridor
9	1	Fire Access Service Provider Form
10	2	Fire Flow Service Provider Form
11	1	Letter From Tualatin Valley Fire & Rescue Regarding Building Site And Conditions
12*	6	Recorded Wildlife Conservation Easement
13	10	Environmental Services & Assessment's Wildlife Assessment and Mitigation Plan
14	2	On-Site Sewage Disposal Certification Form