

NOTICE OF DECISION

This notice concerns a Hearings Officer's Decision on the land use case(s) cited and described below.

Case File: T2-2013-2862

Permits: New Forest Dwelling, Accessory Use
Determination and Significant
Environmental Concern

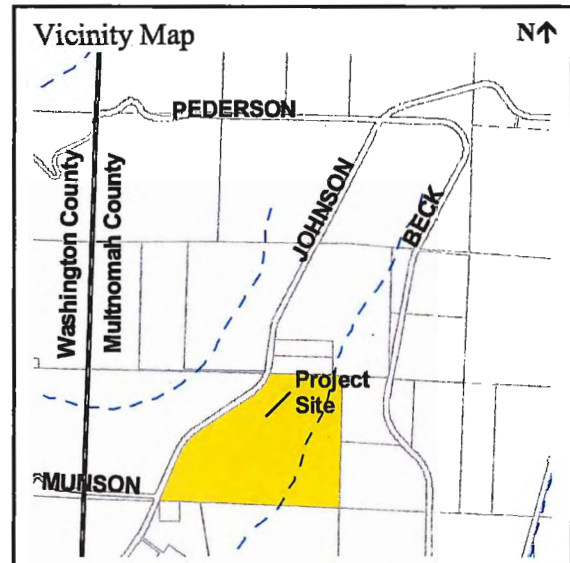
Location: 16528 NW Johnson Road
Tax Lot 400, Section 22B
Township 2 North, Range 2 West, W.M.
Tax Account #R972220060

Applicant: Charles Swindells

Owner: Joseph West

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

Overlays: Significant Environmental Concern for wildlife habitat (SEC-h) and streams (SEC-s) /
Hillside Development (HD)



Summary: Applicant is proposing a new forest dwelling on the subject property, the conversion of the former dwelling to an accessory use and related physical improvements. The land use applications to be reviewed include a Template Dwelling Review, Significant Environmental Concern for Wildlife Habitat (SEC-h) permit and Accessory Use Determination.

Decision:

1. New Forest Dwelling application – Denied
2. Accessory Use Determination application – Denied
3. Significant Environmental Concern application – Denied.

This is the County's final land use decision, absent Board-initiated review.

By:



Liz Fancher, Hearings Officer

Date: April 30, 2014

Applicable Approval Criteria: Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): *New Forest Dwelling*: MCC 37.0560 Code Compliance, MCC 33.0005 Date of Creation and Existence, MCC 33.0005 Lot of Record, MCC 33.2210 Definitions, MCC 33.2240(A) Template Tract Dwelling, MCC 33.2256 Forest Practice Setbacks and Fire Safety Zones, MCC 33.2261 Development Standards, MCC 33.2273 Access, MCC 33.2275 Lot of Record.

Accessory Use Determination: MCC 33.2225(L), MCC 33.2220

Significant Environmental Concern: MCC 33.4570 SEC-h Approval Criteria

Multnomah County Road Rules (MCRR): MCRR 4.000 et sequence

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://web.multco.us/landuse> or <http://web.multco.us/transportation-planning>.

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*. The Hearings Officer has adopted the findings made by staff, with minor revisions, except where specifically noted or where contrary findings are provided. Findings by the hearings officer are identified as '**Hearings Officer.**'

1.00 Project Description:

Staff: The applicant is requesting a new forest dwelling be approved for the 41.20-acre parcel. The subject application is seeking approval of a dwelling via the Template Dwelling criteria. An existing old, non-habitable dwelling will be converted to an accessory structure. In addition, a Significant Environmental Concern for wildlife habitat application has been included.

Hearings Officer: This application was denied by County staff. The applicant filed an appeal on March 7, 2014 stating objections to the decision. Those objections have been considered by the hearings officer in making this decision but the hearings officer has addressed all applicable approval criteria as the appeal was heard and was decided de novo.

2.00 Property Description & History (if needed):

Staff: At present, the subject property is occupied by a former dwelling located on the southwest corner of the property.

Hearings Officer: This dwelling was built in 1912. The applicant has chosen not to pursue approval of a replacement dwelling; presumably because the structure built in 1912 does not have the features needed to qualify for replacement pursuant to MCC 33.2225(A) Review Uses-Replacement or Restoration of an Existing Lawfully Established Habitable Dwelling. Instead, the applicant has proposed to convert this home to a non-residential accessory use.

3.00 New Forest Dwelling Criteria:

3.01 § 33.2225 REVIEW USES

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(B) The following dwellings:

(2) A Template Dwelling pursuant to all applicable approval criteria, including but not limited to MCC 33.2240(A);

Staff: The applicant has applied for a new forest dwelling and is addressing the template dwelling criteria (Exhibit A.1).

3.02 § 33.2240 TEMPLATE AND HERITAGE TRACT DWELLINGS

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

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

Staff: The applicant has provided information that Tax Lot 400, Section 22B, Township 2 North, Range 2 West, Willamette Meridian (Tax Lot 400) is a Lot of Record pursuant to MCC 33.2275. Please see Section 4.13, for addition findings in support of this criteria. Joseph West and Tasha Bollermann do not own any adjacent parcels, lots or tracts contiguous to this 41.5

acre parcel. *Criterion met.*

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

Staff: The tract is 41.20 acres and is of sufficient size to construct a dwelling that meets the standards of MCC 33.2256 and MCC 33.2261 without the need for a variance, adjustment or exception. *Criterion met.*

3.04 (3) The tract shall meet the following standards:

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

Staff: Tax Lot 100, 2N2W22 consists of the soil type Cascade silt loam (7B, 7C and 7D). These three subsoil categories of Cascade silt loam are capable of yielding between 140 to 164 cubic feet per acre per year (cf/ac/yr). To qualify for a template dwelling, at least all or part of eleven properties and five dwellings must exist within the 160-acre square template centered on the subject tract.

- 3.05**
- 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 applicant has provided deed and tax assessment records in an effort to demonstrate compliance with the above criteria. The applicant has shown two template squares on Exhibit A.33. The orange highlighted square is the center point of the property at the intersection of the midpoints of the south and east property boundaries. The second delineated square (yellow with black dashed lines) is the center of the property based on the County's "pin test" to find the center of the property.

The "pin test" is the County's standard for compliance for this criterion (*Linker v. Multnomah County*). The following information utilizes the "pin test" template on Exhibit A.33:

| Exhibit # | Property ID | Deed Date | Legal Parcels | Dwelling Currently on Property & Date | | Within Template | Dwelling Counted |
|-------------|-------------------|-----------|----------------------------------|---------------------------------------|------|-----------------|------------------|
| A.12 | R325791 | 1982 | Yes (1) | Yes | 1950 | No | No |
| A.13 | R325792 | 1966 | Together with A.14, 1 parcel (2) | Yes | 1972 | Yes | Yes (1) |
| A.14 | R325796 | 1972 | No | No | n/a | n/a | n/a |
| A.15 | R325783 | 1969 | Yes (3) | Yes | 1979 | No | No |
| A.16 | R325785 | 1971 | Yes (4) | No | n/a | n/a | n/a |
| A.17 | R325798 | 1971 | Yes (5) | No | n/a | n/a | n/a |
| A.18 & A.19 | R325793 & R325808 | 1970 | Together 1 parcel (6) | Yes | 1989 | Yes | Yes (2) |

| | | | | | | | |
|------|---------|------|----------|-----|------|-----|---------|
| A.20 | R325778 | 1891 | Yes (7) | No | n/a | n/a | n/a |
| A.21 | R325779 | 1961 | Yes (8) | Yes | 1980 | Yes | Yes (3) |
| A.22 | R325777 | 1962 | Yes (9) | Yes | 1943 | Yes | Yes (4) |
| A.23 | R325773 | 1983 | Yes (10) | ? | 1906 | Yes | No |
| A.24 | R325800 | 1976 | Yes (11) | Yes | 1994 | Yes | No |

Green = Dwelling Counted Pink = Dwelling Not Counted White = No Dwelling

Both the “pin test” and the deed information submitted by the applicant support the conclusion that all or part of 11 other lawfully created lots exist within the 160-acre template. *Criterion MCC 33.2240(A)(3)(c)1, has been met.*

Applicant claims that six dwellings currently exist within the 160-acre template (Exhibit A.12 through A.24, and A.33). One of the structures does not satisfy this criterion because it was constructed after January 1, 1993 (Exhibit A.24) [MCC 33.2240(A)(3)(c)2.].

Another structure was built in 1906 (Exhibit A.23) but does not satisfy this criterion because it is not a “dwelling” that “continues to exist.” [MCC 33.2240(A)(3)(c)2.] This 1906 structure is not presently occupied – it has been boarded up. Moreover, the building is not structurally intact - one half of the structure has split from the other, a portion of the roof is covered in plastic and another roof area is severely degraded with missing shingles, the windows are without glass and the siding has holes in it (Exhibit B.5). In addition, other than Portland Maps data offered by the applicant (Exhibit A.23) that lists this building as a dwelling with a bathroom, the record contains no other evidence that the building has indoor plumbing, cooking facilities, or sanitation or that it is or has been recently inhabited. Lastly, County Assessment and Taxation records indicate the current value of the 1906 building is less than \$2,500 and shows a range of values from \$1,000 to \$2,410 between the years of 1996 to 2013. These values indicate that the structure was in a similar, deteriorated and vacant condition for an extended period of time (Exhibit B.10).

This criterion requires the continued existence of at least five lawfully established “dwellings.” A structure that is no longer capable of serving as a dwelling, such as the 1906 structure, does not constitute a “dwelling” for purposes of this criterion.

The term “Dwelling (Single Family Detached)” is defined as “[a] detached building designed for one dwelling unit including Mobile Homes under the provisions as specified within the district.” [MCC 33.0005] (emphasis added).

The term “Dwelling Unit” is defined as “[a] single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.”

Hearings Officer: The applicant claims in final argument that the county’s code does not contain a definition of a dwelling. The code defines the term “residence (single family detached).” All homes in the template are single-family detached dwellings. This, therefore, is the applicable definition.

In written testimony, the applicant asked the hearings officer to find that any structure ever designed to be a dwelling continues to exist as a dwelling regardless of its condition or use as a dwelling by a person (Exhibit H.5). Photographs in the record provide strong circumstantial evidence that the structure is unoccupied and that it has been unoccupied for a period of many years. Property tax information shows that the structure has been assessed at an extremely low value since 1996 implying that it was in extremely poor condition unsuited for habitation since

that date.

The photos show that the structure is boarded up. The structure is in a state of extreme disrepair and decay (Exhibit B.5). Ivy is in the door jamb of an entrance to the building. The structure is posted with a “no trespassing” sign – a sign that it is an abandoned, unused building. The yard around the house lacks signs of wear associated with regular access by vehicles or persons. An outbuilding appears to be disintegrating and “falling” into the ground. This circumstantial evidence has not been rebutted by the applicant.

The County’s code requires that a dwelling must “continue to exist” to be considered a dwelling located within the template area. Given the current condition of the 1906 home and yard, it is evident that the dwelling use of the property has been discontinued many years ago and that only a disintegrating shell of a former residence remains. The applicant believes that the mere presence of the shell of a former residence is sufficient for a structure to be a dwelling. The hearings officer disagrees. For a structure to be a dwelling it must be used as a residence by some person, as well as be designed to serve that use. The use requirement is implicit in the County’s land use code which allows and regulates uses, including dwelling uses.

The two disintegrating, dilapidated structures that exist on the property are not dwellings because they are not used as dwellings. Land use laws impose regulations based on the use made of land. The county code allows a use of a template dwelling – a place in which a person or persons will reside. The structure claimed to be a dwelling was established prior to the implementation of the Statewide land use zoning. It was built without the conditional use approval required to build a dwelling in a forest zone under current law. It, therefore, is a nonconforming use. The dwelling use is forfeited if abandoned or interrupted for a period of over two years. ORS 215.130. In this case, as there is evidence in the record that suggests that the structure in question has been unoccupied for a considerable period of time, it was incumbent on the applicant to show that the dwelling use has not been lost due to abandonment for a period of over two years. Absent this evidence, the hearings officer finds that the applicant has failed to meet his burden of proving that the structure is a dwelling.

Staff: The term “complete” is not defined in the Multnomah County Code but has the plain meaning of “possessing all necessary parts, items, components, or elements[:] not lacking anything necessary [:] brought to an end or final intended condition.” *Webster’s Third New Int’l Dictionary* 465 (unabridged ed. 2002).

Lastly, of note, this criterion is set in the present tense. As expressly set forth in the criterion, qualifying dwellings must “continue to exist.” In addition, as expressly set forth in the definition of the term “Dwelling Unit,” that term means a single unit that is “providing” (i.e., currently providing) “complete” living facilities.

The evidence in the record on this application is insufficient to support a finding that the 1906 structure constitutes a “dwelling.” The applicant has failed to establish that it includes the facilities needed for living, sleeping, eating, cooking and sanitation. Also, the evidence shows that this structure is not currently occupied. The frame of this structure is not intact - one half of the structure has split from the other, windows are broken and boarded up, some of the siding is missing, and a portion of the roof is covered in plastic.

During the review of this application, staff requested evidence of the “habitability” of the 1906 structure. Staff made this request under the theory that evidence of “habitability” would demonstrate that the building is currently providing “complete...permanent provisions for living, sleeping, eating, cooking and sanitation” as required under this criterion – i.e., that it is a “dwelling” for purposes of this criterion.

The applicant argues that staff is improperly attempting to insert a “habitability” requirement

into this criterion: *"the Code omits the express requirement that a dwelling surrounding a proposed template dwelling be a "habitable" dwelling. The Code only requires that it be a "dwelling" – namely, a building designed to be a dwelling. The photos of the structure at 17137 NW Johnson Road clearly show that it is such a building. It was designed as a conventional, two-story rural residence of the sort found throughout Oregon. It has a fireplace chimney and electrical service. It has existed continuously since prior to 1993, and has historically been and continues to be assessed as a single-family residence with one full bath."* (Exhibit A.40).

Staff agrees that "habitability" is not an express standard in this criterion. However, applicant's argument overlooks the fact that a dwelling is defined as a structure that currently provides "complete" living facilities and it is these express terms upon which staff's analysis hinges.

Under the applicant's theory, this criterion would be satisfied by the mere physical presence of a shell (whether intact or not) of a derelict building. This theory does not meet the express terms of this criterion nor does it make sense in the context of other related land use regulations. For instance, applicant's theory does not align with the fact that land use regulations allow for conversion of a dwelling to a non-dwelling use. In that case, the dwelling "shell" remains, but the "dwelling" itself would not "continue to exist" as required under this criterion – applicant's theory would contravene the authorized land use.

Hearings Officer: During the land use hearing on April 11, 2014, the hearings officer asked the applicant's attorney whether the 1912 structure might serve as the fifth, required dwelling in the template. The applicant's legal position, however, is that the 1912 structure is not a dwelling. The applicant adopted this position to demonstrate compliance with MCC 33.2240(A)(3)(e). Also, there is insufficient evidence in the record to show that the structure is a dwelling. As a result, this is an academic question and not the basis for approval of this application.

Staff: For the foregoing reasons, the 1906 structure does not constitute a "dwelling" for purposes of this criterion. Consequently, there are not at least five dwellings in satisfaction of this criterion. *This criterion, MCC 33.2240(A)(3)(c)2. has not been met.*

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

Staff: All lots and dwellings are outside the Urban Growth Boundary (Exhibit B.3). *Criterion met.*

**3.07 (e) There is no other dwelling on the tract,
(f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**

Staff: At present, the subject tract has a building that was constructed in 1912 which is identified on Assessment and Taxation (A&T) records (Exhibit B.2) and Portland Maps (Exhibit B.9) as a "dwelling." It is valued at \$11,870 in the A&T record. The applicant's response to (e) is *"The subject property contains a dwelling constructed in 1912 that is in extreme disrepair. The owners request as a condition of approval of this application a requirement to decommissioned [sic] or remove the structure or obtain permit approval for use of the structure as an accessory use."*

It appears that this building valued at \$11,870 does not meet the standards necessary to be considered a *lawfully established habitable dwelling*" pursuant to MCC 33.0005 and OAR 660-06-0025(1)(p) as the applicant is applying for a template dwelling and not just a replacement dwelling.

| | |
|--|---|
| <p>§ 33.2225 REVIEW USES</p> <p>The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:</p> <p>(A) Replacement or restoration of an existing lawfully established habitable dwelling more than 100 feet from the existing dwelling.</p> <p>MCC 33.0005 Definitions</p> <p>Habitable Dwelling – An existing dwelling that:</p> <ul style="list-style-type: none"> (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. | <p>OAR 660-06-0025(1)(p).</p> <p>Alteration, restoration or replacement of a lawfully established dwelling that:</p> <ul style="list-style-type: none"> (A) Has intact exterior walls and roof structures; (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) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling;” |
|--|---|

In addition, the applicant is requesting to establish the building as an accessory building to the single family dwelling (Exhibit A.1 and A.3, page 6-7). The subject tract does not presently contain a dwelling.

Hearings Officer: The applicant has argued that the 1912 structure is in extreme disrepair and is not a dwelling for purposes of MCC 33.2240(A)(3)(e). He has offered to agree to a condition of approval that it use the structure as an accessory use building. This offer satisfies the requirement that no other dwelling be located on the subject property. *The applicant has demonstrated that compliance with MCC 33.2240(A)(3)(e) can be met through a condition of approval.*

3.08 (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

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

Staff: The property owner, Joseph West owns only one parcel. No other contiguous parcels are currently within his ownership. *Criteria met.*

3.09 (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.

(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.

(k) "Within" as used in the context of (a)2., (b)2. and (c)2. shall mean that all of the dwellings or any part of the dwellings are in the 160-acre square.

Staff: The subject property was created prior to the adoption of zoning in Multnomah County (Exhibit A.9). The property has not been reconfigured since its creation. All parcels and lots used to satisfy the 11 lot requirement existed on January 1, 1993. See Section 3.05 for supporting information. All dwellings that are all or in part within the 160 acre square were counted if they met the January 1, 1993 deadline and currently exist as a habitable dwelling.

Criteria met.

- 3.10 (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 is located outside of the big game winter habitat area as shown on Exhibit B.4. *Criterion met.*

- 3.11 (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 property fronts onto a public right-of-way known as Johnson Road. *Criterion met.*

- 3.12 (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: Provided the application is approved upon appeal, a condition of approval is required to ensure compliance with the above criteria. *Through a condition, criteria can be met.*

3.13 (7) The dwelling meets the applicable development standards of MCC 33.2256 and 33.2261;

Staff: The site plan for the proposed dwelling has demonstrated that the home site can meet the applicable development standards of MCC 33.2256 (see Section 4.01 through 4.03). The application has not met the applicable development standards of MCC 33.2261 (See Sections 4.04, 4.06 through 4.09 for additional findings). *Criterion not met.*

3.14 (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;

(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: Provided the application is approved upon appeal, a condition of approval is required to ensure compliance with the above criterion. *Through a condition, criteria can be met.*

4.00 Development Criteria

The proposed dwelling application has failed to demonstrate compliance with the Template Dwelling criteria of MCC 33.2240(A)(3)(c)2. Conditions of approval cannot remedy this failure to have 5 lawfully establish dwellings that existed on January 1, 1993 and continue to exist within the 160 acre template [See Sections 3.05 and 3.07]. The following criteria are being addressed in case the proposed dwelling is approved through the appeals process.

4.01 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 |
| Accessory structures located more than 100 ft. from the dwelling | N/A | 30 | 130 | Primary & Secondary required |

Staff: The site plan (Exhibit A.6) shows that the proposed building site envelope is 240 feet from the front property line and over 130 feet to all other property lines. The Fire Safety Zones are shown on Exhibit A.7 and show primary and secondary zones. See Section 4.03 for findings discussing compliance with the sizing requirements for these zones.

4.02

(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.

Staff: The applicant has not applied for an adjustment or variance to reduce the Forest Practice Setback dimensions. No exception to the secondary fire safety zone has been proposed. Johnson Road is designated as a *Local* road on the County's Functional Classification Map. A *Local* road right-of-way by the Road Rules should have a minimum width of 60 feet. Johnson Road currently has a dedicated right-of-way of 60 feet. No additional forest practice setbacks are required for this project. *Criteria met.*

4.03

(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.

Staff: The applicant has attempted to show the Fire Safety Zones on Exhibit A.7. The legend indicates the proper primary and secondary fire safety zones, but the drawing does not reflect that the primary fire safety zone must be a minimum of 30 feet in all directions around the dwelling. The location of the dwelling provides more than the necessary distances for the proper primary and secondary fire safety zones to be established on the property. The proposed dwelling would be located in an area of 25% or less slope. If the application is approved upon appeal, a condition of approval can be included to require the fire safety zones. *Through a condition, the above criteria can be met.*

4.04 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): ...

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

(1) The structure shall satisfy the following requirements:

(a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;

(b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;

(c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;

(d) The structure is sited within 300-feet of frontage on a public road and the

driveway from the public road to the structure is a maximum of 500-feet in length;

(e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or

Staff: The proposed building envelope is located in a reforested area (Exhibit A.5). The applicant indicates that the distance from Johnson Road to the proposed dwelling is 240 feet (Exhibit A.6). The site plan shows a looped roadway that is about 900 feet in length that is labeled "existing driveway." This roadway was constructed between August 2011 and August 2012. The applicant indicates that a turnout is required at one-half the access length (Exhibit A.2, page 3, answer 3) of the driveway. Turnouts are required by the Oregon Fire Code "*When a fire apparatus access road exceeds 400 feet in length, turnouts 10 feet wide by 30 feet long shall be provided in addition to the required road width and shall be placed no more than 400 feet apart, ...*" (Exhibit B.6). The applicant has requested use of the northern portion of the forest practice road (labeled "existing driveway") for a construction entrance and as such will utilize it as part of the proposed development (Exhibit A.38). Presently, two access points have been permitted for the property by Transportation. The applicant is requesting a temporary third access point to Johnson Road for the construction entrance. A turnout appears to have been constructed at the mid-point of the driveway (Exhibit B.8) and the driveway has been graveled along its entire length. These driveway improvements have been completed after the current property owner purchased the property on contract in May 2010 (Exhibit A.10). The driveway as developed is not in compliance with (1)(d) above as it is over 500 feet in length.

Hearings Officer: If the dwelling had met other approval criteria, it may have been possible to have achieved compliance with the driveway length requirement by the imposition of a condition of approval.

The road permit documents submitted by the applicant show that the applicant applied for approval of a third, temporary point of access to the property. The documents for the temporary access lack County approval as shown by the fact that the area provided on the application for County approval is not signed by a County official. (Exhibit H.7).

Staff: Tualatin Valley Fire and Rescue has reviewed the proposed development and is uncertain that the driveway is not over 15% grade (Exhibit A.32). All of the above standards, therefore, have not been met. The proposed development, therefore, must meet the standards in (2) and (3) below. *Criterion not met.*

4.05 (2) The structure shall satisfy the following requirements:

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

Staff: As discussed above in Section 4.03, the property can meet the forest practice setbacks and fire safety zones. Most of the surrounding properties are in forest practices or a mixture of forest and pasture. There are a number of locations that the dwelling can be placed that would have the least impact on nearby properties in forest practices. One location is the proposed building envelope. Another location would be within 100 feet to the north or east of the former dwelling to be converted to an accessory structure. *Criterion met.*

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

Staff: The subject property is mostly forestland (35.7 out of the 41.50 acres). The 35.7-acre forested area is in forest deferral and as such is being actively managed for forest practices. The

site has mature forest along the eastern stream corridor traversing north to south and has been replanted over about half of the site. Approximately six acres have been placed in grass in the southwestern portion of the property (Exhibit A.5). The grassy area is not in forest deferral. The location of the proposed building envelope is in an area labeled by the applicant as being "sparse replanting". The fire safety zones will utilize additional square footage within this replanted area (Exhibit A.5 and A.7). The driveway is 900 feet long (construction driveway and permanent driveway) and loops back to Johnson Road (Exhibit A.6). The application materials indicate that the access point towards the middle of the property will be used for the dwelling access, but the applicant is requesting to use the northernmost access point as a temporary access for construction purposes. This means that the whole forest practice roadway is being converted to serve the use. None of this forestland would need to be utilized and the forest practice roadway could be abandoned and replanted completely if the building envelope was moved to the southwest corner of the property and utilized the southern access point adjacent to the future accessory building. This area is not being used for farm or forest practices and the adverse impacts of converting forestland to residential use would be minimized in this location.

Another option would be to place the dwelling closer to Johnson Road in front of the looped driveway as the area terrain has less than 10% slopes (Exhibit B.11). While this would remove area recently replanted, it would allow a smaller primary fire safety zone and allow for the shortening of the driveway to less than 200 feet in length. The remaining 700 feet of the driveway could be abandoned and replanted. As proposed, the development will not minimize the impacts of forest operations on the property. *Criterion not met.*

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

Staff: Presently, an existing structure exists on the southwestern portion of the property. This building was previously a dwelling. The applicant is proposing to convert it to an accessory building. A driveway serves this building site. The applicant is proposing to construct the new dwelling over 900 feet to the northeast of the proposed accessory building. This creates two developed areas on the property. The proposed homesite will be served by a loop driveway that is approximately 900 feet in length. If the proposed dwelling was constructed near the accessory building, the amount of forest land would be minimized as this area is currently grass and is not being used as forest land (Exhibit B.11 and A.5). The proposed homesite while being in a sparse replanting area, intrudes into forest land. *Criterion not met.*

4.08 (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: The driveway is approximately 900 feet in length. It has been rocked. The applicant has requested that the northernmost access point be allowed to be connected to the roadway so that portion of the constructed driveway could be used as a construction entrance. A construction entrance would be related to the residential development of the site so must be counted towards the maximum length requirement. In addition, there has been no indication that the roadway would be abandoned after construction as no turnaround after the dwelling has been shown as would be required by the Oregon Fire Code (Exhibit B.6). The applicant has indicated that a turnout will need to be constructed and this is only required for driveways over 400 feet in length while the applicant has stated that the driveway for the dwelling will only be 350 feet (Exhibit A.2).

Hearings Officer: The applicant claims that the proposed driveway is "an approved forest practices" road. It is not clear who would have approved the road and there is no documentation of such an approval in the record. Nevertheless, what is clear is that this forest

road has been improved with gravel and will be used to access the dwelling – at least during the construction of the dwelling. During that time, the road will be used as an access road or service corridor for the new dwelling. It, therefore, is subject to the requirements of this code section. The applicant has not demonstrated that the driveway must be 900 feet long due to physical limitation unique to the property or that it is the minimum length required. *This criterion is not met.*

4.09 (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access.

(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 fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source.

Staff: The Tualatin Valley Fire and Rescue has indicated that the maximum grade for the driveway is 15% (Exhibit A.32). No documentation has been provided that the driveway meets or can meet that requirement. The applicant's site plan (Exhibit A.6) indicates that the driveway will cross an area with 10 to 25% slopes. The stream located on the property is over 100 feet from the edge of the driveway, so no fire truck access is required. *Additional information is required to find compliance with criterion (3)(a).*

4.10 (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: At present, the applicant's site plan shows a building envelope only. No floor plans or building elevations have been provided to demonstrate compliance with the above criteria. A condition of approval could be included to show compliance at time of building permit. *Criterion can be met through condition.*

4.11 (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 indicated that a well exists on the subject property and has a flow of 50 gallons per minute (Exhibit A.31). *Criterion met.*

4.12 MCC 33.2273 ACCESS

All lots and parcels in this district shall abut a public street or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 33.2275(C).

Staff: The subject tract fronts onto Johnson Road. Johnson Road is a public street. *Criterion met.*

4.13 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:

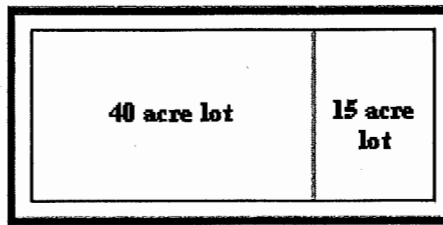
(a) Which were held under the *same ownership* on February 20, 1990; and

(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.

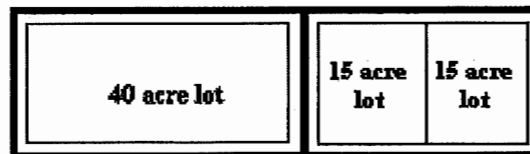
1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with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

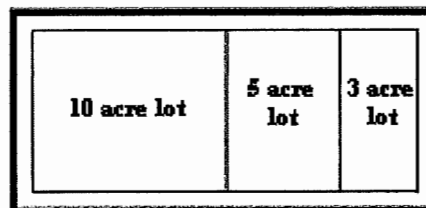
3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:



**Example 1:
One 55 acre Lot of Record**



**Example 2:
One 40 acre Lot of Record and
one 30 acre Lot of Record**



**Example 3:
One 18 acre Lot of Record**

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, BRC, 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.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established *habitable dwelling*, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the *same ownership* on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the *same ownership* on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance

may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(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.

(D) The following shall not be deemed a Lot of Record:

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

Staff: Based on Exhibit A.9, the property was created prior to the 1950's. No adjacent lands were owned by the same property owner on February 20, 1990. The subject property is a Lot of Record.

4.14 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: The above can be met through a condition of approval.

5.00 Accessory Use Determination

5.01 MCC 33.2225 REVIEW USES

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

- (L) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the "accessory structures" standard in MCC 33.2220 Allowed Uses.

Staff: The proposed conversion of a former dwelling to an accessory building for a woodworking shop, garden equipment storage and tractor parking on the first floor (778 square feet) and general storage for bicycles and camping equipment on the second floor (400 square feet) could be authorized as an accessory use if the application for a new forest dwelling (template dwelling) could be approved and constructed. The described uses shown on the floor

plans are all listed as accessory uses in MCC 33.2220(T), but based on the proposed location of the new single family dwelling (Exhibit A.6), the accessory structure will be approximately 900 feet from the new home site. Until such time as a dwelling is established on the site, the proposed conversion cannot be authorized as there is not a primary use on the site that would require bicycle storage, work shop or garden equipment storage. If the dwelling was approved, a condition of approval could be attached to this permit allowing the conversion of the existing structure to an accessory building. At present, the template dwelling application has not demonstrated that the criteria has been or can be met. The accessory structure is denied as the proposed primary use of a dwelling is not available. *Criterion not met.*

6.00 Significant Environmental Concern Criteria

6.01 MCC 33.4510 USES; SEC PERMIT REQUIRED

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

Staff: The applicant has applied for a Significant Environmental Concern permit for wildlife habitat (SEC-h) for the proposed dwelling.

6.02 MCC 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT

(B) Development standards:

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

Staff: Pursuant to MCC 4570(A)(1), the proposed home site is considered a forested area as it is an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry.

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

The site does contain approximately 6 acres of grass lands in the southwest portion of the property which contains the old homesite (Exhibit A.5). Placement of the dwelling in this grassed area would meet the definition for a non-forested "cleared" area. *Criterion not met.*

6.03 (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 home site is a minimum of 240 feet from Johnson Road. *Criterion not met.*

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

Staff: The existing driveway is approximately 900 feet in length. The applicant has indicated

that the driveway will only be 350 feet in length, but then asks that the remainder of the looped driveway be allowed to be used as a construction entrance. This request cannot be approved. In addition, the driveway is rocky and has been improved after the purchase of the property by the current owner in May 2010. *Criterion not met.*

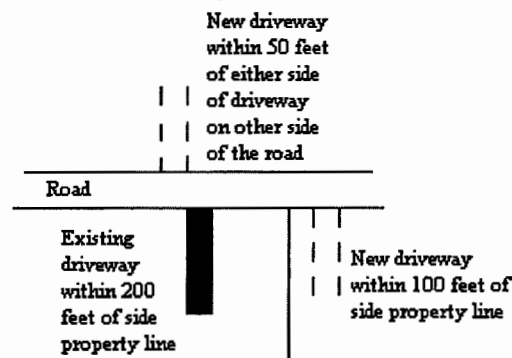
6.05

(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.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

(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: County air photos for 2010 do not show any driveway cut at the location of the Intended Access to Johnson Road" location (Exhibit A.6 & B.7). Land use planning found no authorization for the construction of a driveway at the "Intended Access" point for the dwelling. An access point for a forest practice is one that is temporary and would need to be closed at the end of the harvest or replanting. Presently a driveway exists for the former dwelling though it is not shown on the site plan. Air photos show vehicles parking near it (Exhibit B.8). As proposed, one driveway would exist for the accessory building, one for the proposed home site

and a third for a construction entrance/looped driveway.

Hearings Officer: Multnomah County Department of Community Services issued a permit in 2012 for two existing driveways (Exhibit H.6). The photograph attached to the permit shows one driveway near the building proposed for use as an accessory structure. The other is the point of access proposed for use by the template dwelling. At the time the permit was issued for this point of access, it appears that the "driveway" was a forest practices/logging road access to Johnson Road.

The applicant has failed, however, to show that the access location chosen to serve this dwelling complies with the clustering requirements of this section. A review of the aerial photographs included in the record suggests, also, that the driveway access proposed will not comply with the clustering requirements as it is not located within 100 feet of the north property line (driveway appears to be within 200' north on adjacent property) and a driveway is located across the street from the subject property and the access for the template dwelling is not within 50 feet of that driveway. Additionally, the approval of the access permit in 2012 is not an approval of the modification of the clustering requirements of this section of the code. As a result, the applicant has failed to meet his burden of proof on this criterion. *Criterion not met.*

Staff found that this code section limits the property to a single point of access. The code does not expressly impose such a restriction. Resolution of this issue is not, however, necessary as it is clear that the proposed access to the template dwelling does not comply with the clustering requirements of this part of the code.

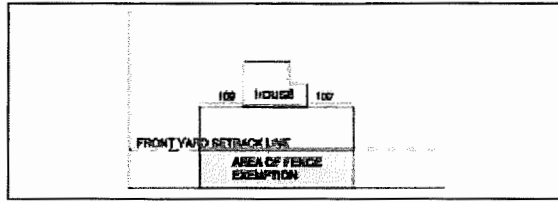
- 6.06** **(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

Staff: The parcel to the north of the subject property contains a dwelling within 80 feet of the side property line. The proposed homesite is 480 feet to the common side property line.
Criterion not met.

- 6.07** **(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.**

**FIGURE 33.4570A FENCE
EXEMPTION AREA**



Staff: The applicant's site plan shows no fencing existing or proposed (Exhibit A.6). The applicant's answers on page 5 of the SEC-h application (Exhibit A.27) indicate no fencing is proposed. *Criterion met.*

- 6.08** (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:

Staff: The applicant has indicated that nuisance plants do exist on the property and has directed staff to review the Wildlife Conservation Plan for their control in the cleared areas on the site.

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

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

Staff: The project site can meet the development standards listed in (B) but the applicant has chosen not to do so. The Wildlife Conservation Plan must demonstrate that the proposed development will result in less detrimental impact on forested wildlife habitat than the standards in Section (B). The applicant has not demonstrated that the proposed homesite will be less detrimental on forested wildlife habitat than if the proposal meets the standards in (B).

Hearings Officer: The applicant failed to identify all potential template dwelling locations that would comply with the subsection (B) standards and to show that each site would have a greater impact on forested wildlife habitat than the site selected with implementation of the habitat management plan. This is what is required by subsection (C)(2), above. To find that the impact of the chosen location is less detrimental, the impact caused by allowed development must be known and compared to that of the chosen location. For instance, it appears likely that a home location near the location of the proposed temporary access road would comply with the driveway clustering, 200 feet of roadway and cleared area requirements. A home in the southwest part of the property served by a driveway across from an existing driveway on the opposite side of the street might also be a feasible, code-compliant home location. Without an assessment of the impacts of homes built in these locations, *the SEC-h permit must be denied.*

- 6.10** (3) The wildlife conservation plan must demonstrate the following:
- (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: The proposed homesite is located in an area that has been replanted. The applicant has indicated that the home location is in an area of sparse tree cover due to failed forest management by the prior property owner. A loop driveway has been rocked for use of the

homesite in the forested areas by the current property owner. The location of the home site, driveway and construction entrance is in an area that is forested or replanted (Exhibit A.5). Approximately 6 acres currently exist in grass towards the southwestern corner of the property where the old homesite is located. The placement of the new dwelling in this location would disturb the least amount of forest cover for the property. *The Wildlife Conservation Plan has failed to meet the above requirement.*

Hearings Officer: A home located within 200 feet of the road and served by a driveway within 100 feet of the north property boundary also appears to be more likely to meet this criterion than the site selected. This area appears to have been cleared. This area is not located in the meadow area that is attractive to elk so would not have the negative impacts on elk associated with building a home near the existing structure.

- 6.11** **(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: Planning staff calculates the newly cleared areas for the proposed development as follows:

| Improvement | Dimensions | Square Footage |
|--|---------------------|---------------------------------|
| Driveway past homesite | 12 ft by 500 ft | 6,000 square feet |
| Homesite & 30-foot Primary Fire Safety Zone | 200 ft by 180 ft | 36,000 square feet |
| Secondary Fire Safety Zone (Two Areas Shown) | 75 ft by 300 ft (a) | 22,500 square feet |
| | 75 ft by 200 ft (b) | 15,000 square feet |
| Total | | 79,500 square feet (1.82 acres) |

Staff is uncertain as to where the drainfield will be placed so additional clearing may need to occur. The amount of area needed to be cleared will be over 1 acre.

Hearings Officer: The applicant claims that the driveway beyond the home site is not newly cleared and that the secondary fire safety zones do not need to be cleared. When these areas are excluded, the newly cleared area will be less than one acre. *This criterion is met.*

- 6.12** **(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 and the applicant has indicated that existing fencing has been removed or will be removed. *The Wildlife Conservation Plan meets the above requirement.*

- 6.13** **(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.**
(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Hearings Officer: No landscape plan has been submitted showing areas to be planted as part of the Wildlife Conservation Plan. Without a clear plan, the hearings officer cannot find that this criterion has been met. *Criteria not met.*

7.00 Conclusion

Based on the findings and other information provided above, the applicant has not carried the burden necessary for the New Forest Dwelling approval and Significant Environmental Concern for wildlife habitat permit to establish a single family dwelling in the CFU-2 zone.

8.00 Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

'C' Procedural 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 T2-2013-2862 at the Land Use Planning office.

| Exhibit # | # of Pages | Description of Exhibit | Date Received/ Submitted |
|-----------|------------|---|--------------------------|
| A.1 | 1 | General Application Form | 4.30.2013 |
| A.2 | 10 | CFU Zone Development Standards Permit Application Form B, Type 2 | 4.30.2013 |
| A.3 | 8 | Narrative | 4.30.2013 |
| A.4 | 1 | Air Photo Showing Fencing on Nearby Properties (in Red) | 4.30.2013 |
| A.5 | 1 | Vegetation Plan | 4.30.2013 |
| A.6 | 1 | Site Plan | 4.30.2013 |
| A.7 | 1 | Fire Safety Zones shown on Site Plan | 4.30.2013 |
| A.8 | 3 | EX – 1 through EX - 3: Portland Maps Information for Subject Property (R325775) | 4.30.2013 |
| A.9 | 2 | EX – 4 through EX – 5: Warranty Deed and Exhibit A for Subject Property | 4.30.2013 |
| A.10 | 2 | EX – 6 through EX – 7 Memorandum of Contract of Sale of Real Property and Exhibit A | 4.30.2013 |
| A.11 | 1 | Certificate of Death | 4.30.2013 |
| A.12 | 7 | EX – 10 through EX – 16 relating to 17200 NW Johnson Road (R325791) | 4.30.2013 |
| A.13 | 4 | EX – 17 through EX – 20 relating to 17200 WI/NW Johnson Road (R325792) | 4.30.2013 |
| A.14 | 3 | EX – 21 through EX – 23 relating to 17200 NW Johnson (R325796) | 4.30.2013 |
| A.15 | 4 | EX – 24 through EX – 27 relating to 23321 NW Beck Road (R325783) | 4.30.2013 |
| A.16 | 2 | EX – 28 through EX – 29 relating to NW Beck Road (R325785) | 4.30.2013 |
| A.17 | 6 | EX – 30 through EX – 35 relating to NW Johnson Road | 4.30.2013 |

| | | | |
|------|----|--|------------|
| | | (R325798) | |
| A.18 | 4 | EX – 36 through EX – 39 relating to No Situs (R325793) | 4.30.2013 |
| A.19 | 6 | EX – 40 through EX – 45 relating to 16350 NW Johnson Road (R325808) | 4.30.2013 |
| A.20 | 5 | EX – 46 through EX – 50 relating to NW Johnson Road (R325778) | 4.30.2013 |
| A.21 | 8 | EX – 51 through EX – 58 relating to 16377 NW Johnson Road (R325779) | 4.30.2013 |
| A.22 | 4 | EX – 59 through EX – 62 relating to 16705 NW Johnson Road (R325777) | 4.30.2013 |
| A.23 | 4 | EX – 63 through EX – 66 relating to 17137 NW Johnson Road (R325773) | 4.30.2013 |
| A.24 | 8 | EX – 67 through EX – 71 relating to 17013 NW Johnson Road (R325800) [EX-72 thru EX-74 was not submitted by applicant. See Exhibit A.39] | 4.30.2013 |
| A.25 | 1 | EX – 75 Section 22C, TL 400 | 4.30.2013 |
| A.26 | 1 | EX – 76 Section 22B, TL 100 | 4.30.2013 |
| A.27 | 11 | Significant Environmental Concern for Wildlife Habitat Permit Application | 4.30.2013 |
| A.28 | 4 | Wildlife Conservation Plan for Joseph West and Tasha Bolleman | 4.30.2013 |
| A.29 | 17 | Storm Water Certificate | 4.30.2013 |
| A.30 | 5 | Certification of On-Site Sewage Disposal | 4.30.2013 |
| A.31 | 3 | Certification of Water Service | 4.30.2013 |
| A.32 | 2 | Fire Service Agency Review | 4.30.2013 |
| A.33 | 1 | Template Cardboard and Template on Air Photo with Center of Property Identified | 4.30.2013 |
| A.34 | 6 | Letter Addressing Incomplete Letter Requests | 10.04.2013 |
| A.35 | 10 | CFU Zone Development Standards Permit Application Form, Type I | 10.04.2013 |
| A.36 | 3 | Air Photo of Existing Structure and Driveway a. Air Photo with Contour Information for Existing Structure b. Legend for Exhibit A.34.a | 10.04.2013 |
| A.37 | 1 | Letter from Michael Ahr with the West Multnomah Soil and Water Conservation District Dated September 12, 2013 | 10.04.2013 |
| A.38 | 6 | Copy of Temporary Access Permit in Conjunction with Dwelling Construction | 10.04.2013 |
| A.39 | 2 | Email Regarding Missing Exhibits | 11.27.2013 |

| | | | |
|------|----|---|------------|
| A.40 | 4 | Dwelling Argument Letter Dated 2.12.2014 | 2.12.2014 |
| | | | |
| 'B' | # | Staff Exhibits | Date |
| B.1 | 4 | Assessment & Taxation Property Information for Tax Lot 400, 2N2W22B | 4.30.2013 |
| B.2 | 3 | Assessment & Taxation Information for 2N2W22B – 00400 showing value of the existing improvements | 12.10.2013 |
| B.3 | 1 | Urban Growth Boundary in relation to NW Johnson Road | 2.26.2014 |
| B.4 | 1 | Big Game Winter Habitat Map | n/a |
| B.5 | 16 | Photographs of Questionable Dwelling/Building | 12.20.2013 |
| B.6 | 6 | Fire Code Application Guide | n/a |
| B.7 | 1 | 2010 Air Photo of Property | 2.26.2014 |
| B.8 | 1 | 2012 Air Photo of Property | 2.26.2014 |
| B.9 | 3 | Portland Maps for 16528 NW Johnson Road | 2.26.2014 |
| B.10 | 3 | Assessment & Taxation Information for 2N2W22B – 00100 showing value of the existing improvements | 2.26.2014 |
| B.11 | 1 | Optional Home Sites | 2.26.2014 |
| | | | |
| 'C' | # | Administration & Procedures | Date |
| C.1 | 2 | Incomplete Letter | 5.29.2013 |
| C.2 | 1 | Applicant's Acceptance of 180 Day Clock | 6.19.2013 |
| C.3 | 1 | Complete Letter (Day 1 – October 4, 2013) | 11.07.2013 |
| C.4 | 3 | Opportunity to Comment | 11.07.2013 |
| C.5 | 25 | Administrative Decision | 2.27.2014 |
| | | | |
| 'H' | # | Hearings and Post-Hearing Exhibits | Date |
| H.1 | 6 | Notice of Appeal documents and cover letters | 4.11.2014 |
| H.2 | 1 | E-mail from Charles Swindells to Lisa Estrin dated December 13, 2013 tolling 150-day decision clock | 4.11.2014 |
| H.3 | 3 | Drawing of Existing Structure As Is and As Proposed | 4.11.2014 |
| H.4 | 13 | Corrected Notice of Public Hearing and Notices of Public Hearing | 4.11.2014 |
| H.5 | 13 | Testimony on Behalf of Property Owners | 4.11.2014 |
| H.6 | 10 | Application for a Permit to Use Public Right of Way (2 driveways) | 4.11.2014 |
| H.7 | 7 | Letter and Application for a Permit to Use Public Right of Way | 4.11.2014 |

| | | | |
|-----|---|--|-----------|
| H.8 | 1 | LUP Hearings Officer Meeting Sign-In Sheet | 4.11.2014 |
| H.9 | 3 | Applicant's Final Submittal | 4.11.2014 |