



OREGON

MULTNOMAH COUNTY

DEPARTMENT OF BUSINESS AND COMMUNITY SERVICES
LAND USE PLANNING DIVISION
1600 SE 190TH AVE., SUITE 116
PORTLAND, OREGON 97233
(503) 988-3043 (503) 988-3389 FAX
land.use.planning@co.multnomah.or.us

BOARD OF COUNTY COMMISSIONERS
DIANE LINN - CHAIR OF THE BOARD
MARIA ROJO DE STEFFEY - DISTRICT 1 COMMISSIONER
SERENA CRUZ - DISTRICT 2 COMMISSIONER
LISA NAITO - DISTRICT 3 COMMISSIONER
LONNIE ROBERTS - DISTRICT 4 COMMISSIONER

Notice of Hearings Officer Decision

Attached please find notice of the Hearing Officer's decisions in the matters of **T3-04-002**. This notice is being mailed to those persons entitled to receive notice under MCC 37.0660(D) and to other persons who have requested the same.

The Hearing Officer's Decision may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization who appeared and testified at the hearing, or by those who submitted written testimony into the record. **Appeal instructions and forms are available from the Land Use Board of Appeals at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301 (<http://luba.state.or.us/>).**

For further information call the Multnomah County Land Use Planning Division at 503-988-3043.

MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
1600 SE 190TH Avenue Portland, OR 97233
(503) 988-3043 FAX: (503) 988-3389
http://www.co.multnomah.or.us/dbcs/LUT/land_use/

**FINDINGS AND DECISION OF THE
LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON**

**Conditional Use Permit for a Modification to a
Previous Template Tract Dwelling Approval**

Case File: T3-04-002

Location: 645 SE Pounder Road
TL 700, Section 2, Township 1 South, Range 4 East, W.M.
Tax Account #R994020700

Applicant: David Moir
The Lucas Allen Group
PO BOX 63
Corbett, OR 97019

Owner: David Moir
The Lucas Allen Group
PO BOX 63
Corbett, OR 97019

Summary: A request to move the location of the dwelling approved under Conditional Use Permit #T3-02-007 as a Template Dwelling approximately 130-feet closer to Pounder Road.

Zoning: Commercial Forest Use-4 (CFU-4)

Site Size: 2.21-acres

Timeline: The application was deemed complete as of March 8, 2004. The public hearing took place on April 16, 2004, day 40. This decision is rendered April 30, 2004, day 54.

Hearing Officer Decision:

This application is approved, pursuant to the findings, and subject to the conditions that follow.

Conditions of Approval:

Note: When the owner/applicant is ready to have building permits signed off, call Planner Don D. Kienholz at (503)-988-3043, for an appointment for review and approval of the conditions and to sign the building permit plans. Multnomah County must review and sign off building permit applications before they are submitted to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off.

Also note: Conditions of Approval 1, 3, 4, 6, 10, 13 and 15 from the initial decision granting a conditional use permit for a template tract dwelling on this property, Case File No. T3-02-007, have not been modified by reason of the application or this decision. They remain in effect and must be satisfied according to their terms. Those conditions are set forth following the Conditions of Approval listed immediately below this paragraph. All of these conditions 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. **Prior to Land Use Planning sign-off of building permits, the owner/applicant shall record the Notice of Decision and Conditions of Approval (pages one through four) and submit a copy of the recorded document to Land Use Planning.**
2. **The owner of the property shall construct and maintain the following primary and secondary fire safety zones:**

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.

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	Not required
Less than 20	50
Less than 25	75
Less than 40	100

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 primary fire safety zone around the proposed dwelling shall be 30-feet to the west, north and south of the structure and 50-feet to the east. The owner/applicant shall continuously maintain these primary fire safety breaks.

[MCC 35.2305(A)(5)(c)(1) through (3)]

- 3. The roof shall be fire retardant and all chimneys shall have spark arresters. Roof materials and any spark arresters shall be noted on the building plans prior to building permit sign off. [MCC 35.2305(B)]**
- 4. At the time of land use sign-off of building permits, the owner/applicant shall submit plans showing the dwelling will be constructed out of materials consistent with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. The owner/applicant shall include detailed listing of these materials on the building plans.**
- 5. A central station monitored 13D sprinkler system shall be installed in the dwelling. Prior to land use sign-off of building permits, the applicant/owner shall provide information on the system to be installed and shall detail the system on the building plans. [MCC 35.2310(B)(5)]**
- 6. Grading within the 150-foot East of Sandy River Rural Area Plan Policy 21 Buffer Zone is limited to occur only during the time period of May 1 to October 1.**
- 7. Prior to land use sign-off of building permits, the applicant/owner shall submit evidence that no building crosses the property line [MCC 37.0560].**
- 8. Prior to land use sign-off of building permits, the applicant/owner shall submit evidence that the 5-foot right-of-way dedication required under T3-02-007 has been completed.**
- 9. Pursuant to MCC 37.0690 and ORS 660-33-0140(5), 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 ©) 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 33.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

Conditions of Approval From Decision on Case File T3-02-007:

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 or modified by the conditions of approval. It shall be the responsibility of the property owner(s) or their representative(s) to comply with these documents and the limitations of approval described herein.**
3. **Prior to building permit sign-off, the applicant/owner shall record a statement 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. [MCC 35.2240(A)(8)]**
4. **Prior to building permit sign-off, the owner/applicant 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 applicant shall submit documentation from the Department of Forestry to satisfy this condition of approval.**
6. **Prior to the issuance of a building permit, the applicant is to provide verification from a qualified professional engineer that the proposed driveway from a public road to the home has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs GVW. [MCC 35. 2305(D) and Plan Policy 38]**
10. **No fencing shall be allowed within 12-feet of the dwelling or any future structure on site. [MCC 35.2310(B)(3).]**
13. **Prior to building permit sign-off, the applicant/owner shall submit engineering analysis to identify the depth of the fragipan of the development site and to certify the areas identified for development are suitable as per Policy 14 – Development Limitations.**
15. **Prior to building permit sign-off, the owner or applicant shall submit evidence satisfactory to Land Use Planning that no accessory dwelling exists within the setbacks for the property.**

Findings of Fact:

Note: As necessary to address Multnomah County ordinance requirements this decision provides findings and conclusions referenced here. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written comments prepared by the applicant are labeled as such. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation “Staff” precedes such comments.

Analysis, findings and conclusions of law by the Hearings Officer are labeled “Hearings Officer.” Except as expressly noted below, this decision adopts, incorporates, and includes the comments, and conclusions by Multnomah County Planning Staff.

1. **Project Description**

Applicant: The owner and applicant David A. Moir is requesting a modification of a Conditional Use permit to construct a single family home, driveway, and septic system on 645 SE Pounder Road in Corbett, Oregon. The site is 2.21 acres zoned CFU-4. My request is to move the previously approved building site approximately 130-feet East towards Pounder Road with a significant reduction in driveway length and site impact. The approval site is 25-30% slope while the proposed site is 8-10%. The reduction of impacted area will be at least 16,000 square feet. Driveway length will be reduced from 300-feet to 100-feet. Driveway grade will be 12%. This site is less than 10-feet from the location of the previous dwelling.

Staff: The applicant is applying for a modification to the previously approved Template Tract Dwelling T3-02-007. As stated by the applicant, the proposed new site would be 130-feet from the previously approved dwelling site. It should be noted that the “previous dwelling” the applicant refers to is regarding a very small dwelling that was built on the property in the early part of this century and has since been demolished.

2. **Site Vicinity and Characteristics**

Staff: The subject site is 2.21 acres and zoned Commercial Forest Use-4. The site is heavily overgrown with vegetation and trees. A dwelling was once located on the property but was abandoned some time ago. The foundation and some of the walls are still in place on the site but badly degraded. The original driveway can no longer be used. Under a GEC permit, T1-03-033, a new driveway apron has been constructed onto Pounder Road. Slopes on the site average between 20% and 25% according to the topographic information in the County’s GIS system, and lead uphill from the road westward to the rear of the property, growing steeper further into the property. The original application for the Template Dwelling (T3-02-007) contained erroneous topographic and narrative information provided by the prior applicant with regard to the approved dwelling site. Topographic information provided by the applicant for this permit appears to be accurate with regard to slopes and topography on site.

Pounder Creek, a stream identified as environmentally significant, is located across the street on an adjacent property. The centerline of the creek is 130-145-feet away from the

subject property, depending on what point of the property you measure from. The surrounding area encompassing properties along Pounder Road and Littlepage Road is an that area is highly developed for a rural area with most lots having either a dwelling or other structure located on them according to a County air photo. Properties to the west of the subject lot are heavily forested. Properties to the east are mostly cleared.

3. **Proof Of Ownership**

MCC 37.0550 Initiation of Action

Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment and Taxation records show David Moir as the owner of the subject property. David Moir has signed the application form authorizing this application.

Hearings Officer: This criterion is satisfied.

4. **TYPE III CASE PROCEDURES, PUBLIC NOTICE**

MCC 37.0620: At least 20 days prior to the hearing, the County shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any County-recognized neighborhood association or identified agency whose territory includes the subject property. The County shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The County shall also publish the notice in a newspaper of general circulation within the County at least 20 days prior to the hearing.

Staff: Notice was provided to all property owners within 750 feet of the subject tract and recognized neighborhood organizations on March 24, 2004, more than 20 days in advance of the hearing. The notice was posted in the Oregonian on March 23, 2004.

Hearings Officer: This criterion is satisfied.

5. **Modifications Of Previously Approved Conditional Uses Are Allowed**

MCC 37.0660 Conditions Of Approval And Notice Of Decision

(E) Modification of Conditions. Any request to modify a condition of permit approval shall be processed in the same manner, and shall be subject to the same standards, as was the original application provided the standards and criteria used to approve the decision are consistent with the current code. However, the decision maker may at its sole discretion, consider a modification request and limit its review of the approval criteria to those issues or aspects of the application that are proposed to be changed from what was originally approved.

Staff: The modification request conforms to Chapter 37 of the Multnomah County Code. Because the modification request is for only the location of the dwelling, the only applicable standards as determined by the County are: MCC 35.2260 - Dimensional Requirements, MCC 35.2305 - Development Standards for Dwellings and Structures, and MCC 35.2310 - Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks. All other criteria of the original Conditional Use for a Template Tract Dwelling remain unchanged and are therefore met.

Hearings Officer: The Hearings Officer concurs with Staff. It is not necessary to determine again that this property meets the criteria for a template tract dwelling other than those noted above by Staff. All criteria other than those treated in this decision remain satisfied, or will be satisfied by compliance with conditions of approval.

6. **The Proposed Dwelling Meets The CFU-4 Dimensional Standards**

MCC 35.2260 Dimensional Requirements

- A. **(A) Except as provided in MCC 35.2265, 35.2270, 35.2275, and 35.2280, the minimum lot size for new parcels or lots shall be 80 acres.**

Applicant: NA.

Staff: No new lots are being created with this proposal.

Hearings Officer: This criterion is not applicable to this application.

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

Applicant: NA

Staff: When included in the calculation for area of the lot, the area that would accrue to the property from Right-of-Way does not bring the lot to the minimum lot size therefore it does not have a bearing on the decision.

Hearings Officer: This criterion is not relevant to this application.

- C. **©) Minimum Forest Practices Setback Dimensions From Tract Boundary - Feet:**

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 35.2310, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 35.2305(A)(5)©2.

Applicant: The proposed dwelling meets the front set back (94' from the centerline) and the rear setback (340'). The sides do not (37' and 108'). The primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around the dwelling [MCC 35.2305(A)(5)©1]. Since the slope is more than 10% but less than 20% the primary fire safety zone is 50 feet [MCC 35.2305(A)(5)©2]. The proposed dwelling meets the primary fire safety requirements.

The height of the proposed dwelling is 25-feet. It meets the height requirements. The property front lot line length is 228 feet. It meets the front lot line length requirements.

Staff: The proposed dwelling site only meets the front and rear yard set backs as seen on the site plan (Exhibit A). It does not meet either of the required side yard setbacks because the lot is so narrow (averages roughly 220-foot wide). As such, an exception to the forest practice setbacks is available under MCC 35.2310(A)(1). Plans submitted for the dwelling show it as a single story home measuring 25-feet in height. The property has over 200-feet of road frontage.

Hearings Officer: The setback criteria are met with an exception under MCC 35.2310.

- D. **(D) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**

Applicant: NA.

Staff: Five feet of right-of-way was required to be dedicated to meet the minimum right-of-way requirements under Case #T3-02-007. This would bring the right-of-way width to County standards.

Hearings Officer: The applicant has not proposed modification of this requirement. Compliance with a condition of approval requiring the dedication of five feet of right-of-way will preclude the need to increase the forest practices setback.

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

Applicant: NA.

Staff: The application and site plan do not include any other structures other than the proposed dwelling.

Hearings Officer: This criterion is not relevant to this application.

- F. **(F) Yards for the alteration, replacement or restoration of dwellings under MCC 35.2220 (D) and (E); and 35.2225 (B) need not satisfy the development standards of MCC 35.2305 if originally legally established to a lesser standard than that required by MCC 35.2305, but in no case shall they be less than those originally established.**

Applicant: NA

Staff: The proposal is for a new dwelling site location. This criterion does not apply.

Hearings Officer: This criterion is not relevant to this application.

- G. **(G) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC 35.2220 ©), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC 35.2305(A)(5)©2.**

Applicant: NA

Staff: There are no agricultural buildings proposed in this application.

Hearings Officer: This criterion is not relevant to this application.

7. **The Subject Lot Is A Lot Of Record**

MCC 35.2275 Lot of Record

(A) In addition to the *Lot of Record* definition standards in MCC 35.0005, 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.

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.

3. Exceptions to the standards of (A)(2) above:

©) Dis-aggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

* * *

(E) Dis-aggregation of Lots of Record existing on or before August 8, 1998, being the effective date of Ordinance 916.

(1) A Lot of Record may be dis-aggregated for consideration of a new dwelling under MCC 35.2240 if:

(a) It consists of two legally created, aggregated lots or parcels and:

1. The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels;
2. One of the lots or parcels is currently developed with a legally established dwelling;
3. The lot or parcel on which application will be made for the new dwelling is less than 19 acres; and
4. The lots or parcels constituting the dis-aggregated Lot of Record were in the same ownership prior to January 1, 1985.

* * *

MCC 35.0005(L)(13) Lot of Record - Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

(b) "Satisfied all applicable land division laws" shall mean the parcel or lot

was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Staff: Staff made a finding in the original Conditional Use case #T3-02-007 that the lot is a Lot of Record. Nothing has changed in the circumstances that would alter that finding. As such, the property is still a Lot of Record.

Hearings Officer: This criterion is satisfied.

8. **The Proposal Meets The CFU-4 Development Standards**

MCC 35.2305 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC 35.2220 (D) and (E); and 35.2225 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

- A. **(A) The dwelling or structure shall be located such that:**
1. **(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 35.2260 ©) through (G);**

Applicant: Properties to the North and South contain dwellings and are largely cleared and therefore no impact on them is expected. The proposed dwelling site is approximately 340-feet from the rear (West) property line which borders a forested

property. This distance will eliminate any impact on the property.

Staff: With a width of only 219-feet, the applicant is limited in siting locations due to setbacks as required under MCC 35.2260. The proposed location is closer to the road and existing development than the previously approved location, thus reducing any potential impact even more so. Properties to the north and south contain dwellings and are largely cleared and therefore no impact on them is expected. The proposed development site is over 300-feet from the rear property line, which borders a forested property. The 300-feet should minimize any impacts on the property to the rear of the subject site. The side yard setbacks will not be met but the property qualifies for an exception to the forest practice setbacks and fire safety setbacks.

Hearings Officer: The modification approved by this decision does reduce and minimize impact on nearby properties, particularly the property to the west. This criterion is satisfied.

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

Applicant: The proposed location of the home creates far less impact than the approved site. This location is the area of least slope minimizing the amount of cut and fill.

Staff: The subject site is only 2.21-acres which is small for a viable forest practice. Staff concurs with the applicant that the proposed site is better suited than the originally approved site. Errors in the original conditional use case incorrectly showed the approved site as the flattest site on the property. The site proposed in this application is in fact the flattest and will reduce the amount of cut and fill required both for the dwelling, and for the driveway being as it is much shorter. These measures will reduce the impact on forest and farm operations.

Hearings Officer: Staff is correct in concluding that the new location of the building will reduce impacts, which had already been deemed to be acceptable. In addition, a condition of approval requires that the applicant/owner sign and record a statement with the Division of Records that the owner and successors in interest acknowledge the rights of owners of nearby properties to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. This criterion is satisfied.

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

Applicant: This location requires roughly one third of the driveway length of the driveway site. The dwelling and drive will leave 90% of this small parcel available for forest production.

Staff: As stated by the applicant, the reduction in area used for the driveway due to the new location reduces the amount of forest land taken out of production. The new site

location also has less slope which will require less grading away from the home site to make a flat area for the foundation and driveway.

Hearings Officer: This criterion is satisfied.

4. **(4) 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**

Applicant: NA

Staff: The proposed driveway measures under 500-feet on the submitted site plan (Exhibit A).

Hearings Officer: Because the driveway will be less than 500 feet in length, the criterion is not applicable.

5. **(5) 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 on the lot. The access shall meet the driveway standards of MCC 35.2305 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;

(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.

1. 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.

2. 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	Not required
Less than 20	50
Less than 25	75
Less than 40	100

3. 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 MCC 35.2260 (F) and 35.2310.

4. No requirement in 1., 2., or 3. 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

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

Applicant: The parcel is served by Rural Fire Protection District 14. Primary and secondary safety zones are addressed in the narrative of MCC 35.2310. The building site is 8-10% slope.

Staff: Slope for the entire site is roughly 23% per the Multnomah County GIS contours. The development site proposed by the applicant is measures roughly 15% from the farthest point of the rear building line to the eastern property line as shown on the site plan. The contours on the GIS system indicate roughly the same results. Therefore, the primary fire safety zone must be extended from 30-feet to 50-feet on the eastern side. With the site plan showing there to be 67-feet from the closest building line to the eastern property line, there is more than enough room for the structure to meet the primary fire safety setback.

Hearings Officer: This criterion is satisfied.

B. (B) The dwelling or structure shall:

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

prescribed in ORS 446.002 through 446.200 relating to mobile homes;

Applicant: NA.

Staff: The proposed dwelling is not a mobile home as shown in the application.

Hearings Officer: This criterion is not applicable.

2. **(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;**

Applicant: NA.

Staff: The proposed dwelling is not a mobile home.

Hearings Officer: This criterion is not applicable.

3. **(3) Have a fire retardant roof; and**

Applicant: The proposed dwelling will have a fire retardant roof.

Staff: The proposed dwelling shall have a fire retardant roof as a condition of approval.

Hearings Officer: Pursuant to compliance with the relevant condition, this criterion is satisfied.

4. **(4) Have a spark arrester on each chimney.**

Applicant: NA.

Staff: The floor plans show a gas fireplace in the family room. Any chimney on the structure shall require spark arresters as a condition of approval.

Hearings Officer: Compliance with the relevant condition of approval will satisfy this criterion.

- C. **(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single 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;

(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;

- (3) Provide minimum curve radii of 48 feet or greater;
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
- (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;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (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 ½ the driveway length or 400 feet whichever is less.

Staff: The subject site has been shown to be large enough to adequately handle the required driveway design standards. The submitted site plan (Exhibit A) shows the driveway as measuring 70 to 75-feet in length. The applicant's site plan details the driveway as being 12-feet in width. While no turnaround or turnouts are necessary, a hammerhead turnout has still been provided. The slope of the driveway measures at roughly 15%. The local Fire District has approved the proposed site plans as adequate for their service requirements.

Hearings Officer: This criterion is satisfied.

9. **The Subject Lot Qualifies For An Exception To The Fire Safety Setbacks**

MCC 35.2310 Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks

A. **(A) The secondary fire safety zone and forest practices tract setbacks for dwellings and structures may be reduced pursuant to the provisions of 35.2310 (B) when:**

(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

Applicant: The tract has a width of 228 feet and the proposed dwelling is to be located 94 feet [*sic.*] This meets the requirements for an exception for the Forest Practices Setbacks.

Staff: The subject lot has an average width of roughly 220-feet. Therefore, the lot qualifies for an exception to the forest practice and fire safety setbacks.

Hearings Officer: The Hearings Officer concurs with Staff.

B. **(B) Exceptions to secondary fire safety zones and forest practices setbacks shall only be granted upon satisfaction of the following standards:**

1. **(2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**

Applicant: The secondary fire safety zone is less than 50 feet on the North side and the front. The proposed dwelling will have a monitored 13D sprinkler system and be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction.

Staff: The submitted site plan shows a distance of 67-feet from the dwelling to the front property line. With a primary fire safety setback of 50-feet on the eastern side, the secondary fire safety setback would only be 17-feet. Therefore the dwelling will need to meet the requirements of the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. This standard can be met by the applicant using such building materials. This shall be a condition of approval.

Hearings Officer: This criterion will be satisfied by compliance with the relevant condition.

2. **(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**

Staff: No fencing is shown on the submitted site plan. As such none shall be allowed within 12-feet of the dwelling as a condition of approval.

Hearings Officer: The Staff Report did not include a condition of approval to this effect. This decision notes that Condition of Approval 10 from Case File No. T3-02-007 is still in effect. Compliance with that condition will satisfy this criterion.

3. **(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC 35.2310 (B) (1) are utilized, or**

(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC 35.2310 (B) (2) are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC 35.2220 (D) shall not be required to meet this standard, but shall satisfy the standard of MCC 35.2305 (B) (3) above.

Staff: The applicant has indicated that a central station monitored 13D sprinkler system shall be installed. This shall also be a condition of approval.

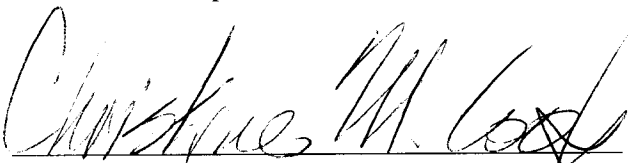
Hearings Officer: Compliance with the relevant condition of approval will satisfy this criterion.

Conclusion:

Staff: Based upon the findings described above, the applicant has satisfied the applicable standards of the Commercial Forest Use-4 zone, with conditions of approval, to modify the previous Conditional Use approval. Therefore, staff recommends approval.

Hearings Officer: This application is approved, pursuant to the findings, and subject to the conditions above.

DATED: April 30, 2004.


Christine M. Cook,
Multnomah County Land Use Hearings Officer

Exhibits:

- A. Site Plan
- B. Proposed Dwelling Rendering
- C. Fire District Sign-off
- D. On-Site Septic Certification Form

Submitted at Public Hearing 4/16/04

- H-1 Sign In Sheet
- H-2 Driveway Plan of site
- H-3 Corrected Staff Report with page 15 added