



MULTNOMAH COUNTY

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

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

_____	Notices
<u>2</u>	Decision Notices
mailed on	<u>11/30/04</u>
by	<u>SA</u>

Notice of Hearings Officer Decision

Attached please find notice of the Hearing Officer's decisions in the matters of **T3-04-009**. This notice is being mailed to those persons entitled to receive notice under MCC 37.0660(D).

The Hearing Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that 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; 503-373-1265 (**<http://luba.state.or.us/>**).**

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

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

Conditional Use Permit for a Modification to a Prior Template Tract Dwelling Approval

Case File: T3-04-009

Location:	No Situs Address TL 1500, Sec 17D, T1S, R5E, W.M. Tax Account # R99517-0240	Zoning:	Commercial Forest Use-4 (CFU-4)
		Site Size:	10.66-acres

Applicant:	Bruce Vincent Bedsaul/Vincent 825 NE 20th, Suite 300 Portland, OR 97232	Owners:	Patrick & Patricia Drake 5089 Alejo Street San Diego, CA 92124
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Summary: Application to modify previously approved Conditional Use Permit CU 0-8 for a Template Test Dwelling to allow the dwelling to be constructed in a different location on the same property.

Hearings Officer Decision:

The request for a Conditional Use Permit to modify the previous approval of a Template Tract Dwelling on Commercial Forest Use-4 zoned land by moving the dwellings' location to 275-feet from the centerline of the road is approved, pursuant to the findings and subject to the conditions of approval that follow.

Conditions of Approval:

Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this decision and the conditions and limitations of the approval described herein.

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

1. Within 30 days of this decision becoming final, the property owner shall record the Notice of Decision (pages 1 through 3) and the Site Plan (Attachment A1). The Notice of Decision shall run with the land. Proof of recording shall be made prior to zoning approval of the building permit and the proof shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. **Failure to sign and record the Notice of Decision within the 30 day period shall void the decision.** [MCC 37.0670]
2. A Grading and Erosion Control (GEC) permit will be required pursuant to the standards of MCC 29.330-29.348. The GEC must be approved prior to the commencement of ground disturbing activities.
3. The dwelling and driveway locations shall be consistent with the site plan included with this decision as Exhibit A1. (MCC 35.2305(A)) At the time of zoning approval of building permits, the applicant shall provide a site plan, drawn to scale, that illustrates the building footprint of the proposed structure. In addition, the site plan shall include the location of the primary and secondary fire safety setbacks as measured from the dwelling, the location of the well, the location of the septic system, and the location of any storm water system to serve the needs of the house.
4. The area contained within the emergency vehicle turn-around shall be retained in an unobstructed condition for use as a log landing in future logging operations. This shall be clearly noted on the site plan submitted for zoning approval of building permits.
5. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. These features shall be clearly noted on the building plans prior to zoning approval of building permits. (MCC 35.2305(B))
6. Prior to the zoning approval of building permits, a well report shall be submitted demonstrating compliance with MCC 35.2305(C), and, at that time, persons entitled to notice will again be notified that the water service criteria are being reviewed. This notice will include an opportunity to comment and the right to appeal pursuant to MCC 37.0530(B).
7. Prior to zoning approval of building permits, primary and secondary fire safety zones must be constructed in accordance with the standards of MCC 35.2305(A)(5) as shown on the applicant's site plan included as Exhibit A1. These fire safety zones shall be

maintained as long as the dwelling remains on the property.

8. Prior to issuance of building permits, the applicant shall obtain a driveway permit and comply with the requirements of the Multnomah County Right-of-Way Division including the construction of a 20-foot paved approach onto SE Trout Creek Road. Contact Alan Young, Right-of-Way specialist at 503-988-3582 for further information on driveway permits.
9. Prior to zoning approval of building permits, the applicant must provide verification that the proposed driveway from the SE Trout Creek Road to the dwelling has been constructed to the specified width, grade, and location and that the surface can support 52,000 pounds Gross Vehicle Weight pursuant to MCC 35.2305(D). That verification shall be from a qualified professional engineer accompanied by sufficiently detailed maps, cross sections, and profiles to ascertain that compliance with the standards has been met.
10. Prior to zoning approval of building permits, a forest stocking survey shall be submitted to the County Assessor in accordance with the procedures and provisions of MCC 35.2240(A)(6).
11. Prior to zoning approval of building permits, the applicant shall submit, in accordance with MCC 35.2240(A)(8), a completed statement that the owner and successor 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. Forms are available at the Land Use Planning Counter at Multnomah County.
12. **Pursuant to MCC 37.0690(B) 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 (c) other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690. Such a request must be made prior to the expiration date of the permit.**

Note: When the owner/applicant is ready to have building permits signed off, the applicant shall call Tammy Boren-King, Planner, at (503)-988-3043, for an appointment for review and determination that the conditions of approval have been satisfied, 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. Four (4) sets each of the site plan and building plans are needed for building permit sign off.

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Findings of Fact

Note: Findings are provided here as necessary to address Multnomah County ordinance requirements. Headings for each finding are underlined. Multnomah County Code requirements are referenced using a bold font. Planning staff comments and analysis may follow applicant comments. Where this occurs, the notation "Staff" precedes these comments. The analysis, comments, and decision of the Hearings Officer with respect to criteria are preceded by the notation "Hearings Officer." Except as explicitly noted, planning staff comments and analysis are adopted and incorporated within these findings.

1. Project Description

Applicant: On 12/19/2000, Hearings Officer Fancher approved a Conditional Use for a Template Dwelling on the subject site. (See Case File CU-08) The approved site plan indicated a 90' X 90' building envelope located approximately 100' south of the Trout Creek ROW. (See approved site plan in CU-08 and Attachment "H") The current owners want to relocate the approved 90' X 90' building envelope approximately 150' southward from its currently approved location. (i.e. approximately 250' south of the ROW-See Exhibit "A") On 11/10/03, the owners applied for, and received a second, one-year extension of the Hearings Officer's decision for CU-08, pursuant to MCC 37.0690. (See Attachment "A")

Based on the evidence contained in this request, the only change to the previously approved application is the relocation of the dwelling and an extension of the approved driveway that will serve the site. Therefore, the applicant believes that the evidence contained in the applicant's narrative for CU-08 was sufficient for the Hearings Officer to find that all relevant, applicable criteria contained in the Multnomah County Comprehensive Plan and County Zoning Ordinance for a Template Dwelling had been met. Based on the above assertion, the applicant believes that the only relevant, applicable County Zoning Ordinance standards for this Template Dwelling request are those standards that apply to locating a dwelling in the CFU-4 zone. (i.e. MCC 1.ES.2074) The applicant requests that staff and the Hearings Officer review this Template Dwelling for compliance with MCC 1.ES.2074. However, if staff and/or the Hearings Officer disagree with the applicant's assertion, this narrative contains responses to all relevant, applicable criteria contained in the Multnomah County Comprehensive Plan and County Zoning Ordinance for a Template Dwelling.

The subject site and the lots included within the 160-Acre Template Dwelling area were created before February 20, 1990. All lots meet the applicable standards as set forth in MCC 11.ES.2062. As required by MCC 11.ES.2052 (3), there are least all or part of eleven lots within the 160-Acre template, and five dwellings within that template area existed on January 1, 1993. Specifically, there are nine dwellings and all or part of 18 parcels within the 160-Acre Template Dwelling area that meet the criteria as set forth in MCC 11.ES.2052 (3). (See Attachments "B" and "C")

The site has been predominately used for forest uses. (See Attachment "D") The site was logged in 1999 and Douglas Fir regeneration is part of the forest management plan for the

site. The site was replanted in the Fall of 2000.

Access to the parcel is provided by use of a 15' wide, private driveway that intersects with SE Trout Creek Road. (See Exhibits "A" and "B") The existing driveway will be improved to comply with County standards.

There is a proposed well located on the site. (See Exhibit "B")

The north branch of Trout Creek is approximately 470' south of the proposed dwelling location. (See Attachment "C")

Staff: The subject property was previously approved for a template test dwelling through conditional use permit CU 0-8 by the Hearings Officer on December 19, 2000 with an expiration date of December 19, 2002. The property owners have applied for and received approval for two 24-month extensions, making the previous approval valid until December 19, 2006. A copy of the first extension is included as Attachment A2. A copy of the second extension is included as attachment S1. The applicant wishes to modify the location of the dwelling approved through the CU 0-8. The dwelling location requested through this decision is set farther back from Trout Creek Road on an existing flat area which has been used as a log loading area during previous logging operations.

The Multnomah County Code has been reorganized and renumbered since the time of the original approval in 2000. While the numbering has changed, the standards remain the same. Staff concurs with the applicant that the previous approval can serve to show compliance with some of the applicable approval criteria. Criteria applicable to this request are listed in finding 5.

Hearings Officer: The applicant's narrative is consistent with the evidence in the file. The Hearings Officer concurs with the conclusion that the prior approval shows compliance with some of the now-applicable approval criteria.

2. Site Vicinity and Characteristics

Staff: The subject site is 10.66 acres and zoned Commercial Forest Use-4. The site was logged in 1999 with few mature trees being left on the northerly portions of the site. A stream crosses the southern portion of the property and the mature trees surrounding this watercourse were left standing. The stream is approximately 650 feet south of the proposed dwelling location. A logging road bisects the property and is the access which is proposed for the dwelling. The land generally slopes from Trout Creek Road on the north down to the stream on the south. There is a mostly level portion of the property that was previously used as the log landing. This area can clearly be seen in the 2002 aerial photo attached as Exhibit S2. This is the area currently proposed for the siting of the dwelling.

The subject property is in an area of the County which is generally heavily wooded. Property to the east and south of the subject site is heavily wooded and appears to be used for commercial forestry. Assessment and taxation information and aerial photos do not

indicate the presence of homes on the properties directly to the east and south. Nine of the eleven properties to the north and west contain dwellings as shown in the aerial photo attached as Exhibit S2. These dwellings are generally surrounded by forest with only a small portion of each lot being cleared to accommodate the residential uses.

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 Patrick and Patricia Drake as the owners of the subject property. Patrick and Patricia Drake have signed the application form authorizing this application.

Hearings Officer: Criterion met.

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 of the hearing was provided to all property owners within 750 feet of the subject tract and recognized neighborhood organizations on October 25, 2004. The notice was posted in the Oregonian on October 22, 2004. The applicant posted the signs required by MCC 37.0630 on October 29, 2004. The applicant's statement verifying the posting was done on October 29, 2004 is in the file.

Hearings Officer: The public hearing on this application was held November 12, 2004, 17 days after the notice of the hearing was mailed to the persons entitled to notice. In order to accommodate any person who was unable to present testimony 17 days after the public notice was sent, the record was held open until November 17, which was 22 days after notice was mailed. No person appeared at the public hearing to object to the proposed modification, and no written testimony or comments opposing the modification were received by the county either before or after the public hearing. No member of the public appeared at the hearing in order to testify at all, except for the owners and their representatives.

Technically, there has not been compliance with this criterion. Based on the lack of any objection, opposition, complaint, or even an attempt by the public to offer input on this matter, however, I conclude that no person's substantial rights have been prejudiced by the short notice. Consequently, this application may be approved notwithstanding the that the notice was mailed only 17 days prior to the public hearing.

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 and MCC 35.2305 - Development Standards for Dwellings and Structures. All other criteria of the original Conditional Use for a Template Tract Dwelling remain unchanged and are therefore met.

The subject lot has changed shape and size since it was found to be a Lot of Record in Conditional Use Permit CU 0-8. This reconfiguration was accomplished through a correction survey conducted by Multnomah County. This survey was conducted in an effort to correct an error created in 1957 when Multnomah County incorrectly monumented the east 1/4 section of section 17. This reconfiguration was done in accordance with all applicable laws and thus does not affect the subject property's status as a Lot of Record. Additional findings on this topic are not warranted in this report. A copy of the correction survey is included as Exhibit S3.

Hearings Officer: I concur with staff's analysis and conclusion that the requirements for modification of the prior approval are satisfied by the procedure that has been followed in this matter.

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

MCC 35.2260 Dimensional Requirements

6.1 **Staff:** The only portion of the dimensional standards which apply is part (C).

6.2 **(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)(c)2.

Applicant: As shown on Exhibits "A" and "B", the proposed dwelling site will have a 275' setback from the centerline of Trout Creek Road, a 130' setback from the westerly side yard, a 215' setback from the easterly side yard, and a 670' rear yard setback. Based on the proposed setbacks, the dwelling location complies with Chapter 35.2260 (C). Exhibits "A" and "B" indicate the proposed building footprint layout for a proposed dwelling. The proposed dwelling on the subject site will not exceed the maximum height of 35'.

Staff: The proposal meets the dimensional requirements of the CFU-4 district. The exhibits referenced by the applicant are attached as Exhibit A1.

Hearings Officer: These criteria are met.

7. The Proposal Meets The CFU-4 Development Standards

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:

7.1 (A) The dwelling or structure shall be located such that:

(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 (C) through (G);

Applicant (Submitted on September 23, 2004):

Determination of impact analysis area-

An on-site analysis will evaluate the significance of any potential impacts imposed by the proposed dwelling. The test area is identified as the tax lots immediately north, south, east and west of the subject parcel. These adjacent parcels are Tax Lots 100, 1100, 1600, 200 and 300. Note: The tax lots listed in this analysis carry the newer State ID listing.

Many of the application enclosures are based on older maps with an older tax lot ID. The

lots consist of forest lands and single-family dwellings. Forest management practices may eventually be pursued north, south, east and west of the subject site.

Natural vegetation and trees and a public road provide an effective physical buffer for ground or airborne impacts originating from the adjacent land use activities surrounding the proposed dwelling. Activities within the proposed dwelling are those customarily related to a residence. It is assumed those additional activities such as landscape maintenance, occasional entertainment of guests, recreation activities outdoors, and raising of domestic pets (i.e. cats, dogs, etc.) will be encountered over the period of the dwellings' existence.

NORTH & WEST OF THE SITE

Tax Lot 100 and 1400, Map 1S5E 17D, Tax Lot 1100, Map 1S5E 17

Tax Lots 100, 1100, 1400 are north and west of the subject site. Based on a site visit and aerial photographic evidence, Tax Lots 100, 1100, and 1400 consist of dwellings, outbuildings, mature timber and cleared areas surrounding each dwelling. Based on current activities, Tax Lots 100, 1100, and 1400 presently are not engaged in active forest management, but all parcels could in the future be actively managed timber parcels. Future land use activities on these parcels could consist of forest management practices for timber acreage. Typical forest management harvest practices involving manual pre-commercial thinning, manual pruning, mechanical thinning, clear cutting, or slash disposal. Any serious conflicts occurring as a result of logging activities or slash disposal, will be reduced by the setback distances specified in the site plan and as recommended by State Forestry Planning Notes 1 and 2.

The impacts associated with the single-family dwelling will include landscape maintenance, occasional entertainment of guests, recreation activities outdoors, and raising of domestic pets (i.e. cats, dogs, etc.). These activities are anticipated to occur over the period of the dwellings' existence. Given the current location of the home on Tax Lot 1100, the proposed dwelling on Tax Lot 1500 will be 400' to 500' south of potential forest activities on Tax Lot 1100. The current home location on Tax Lot 100 is 150' north of the centerline of Trout Creek Road, therefore the proposed dwelling on Tax Lot 1500 will be 425' south of potential forest activities on Tax Lot 100. Given the current location of the home on Tax Lot 1400, the proposed dwelling on Tax Lot 1500 will be 160' east of potential forest activities on Tax Lot 1400. Additionally, Trout Creek Road separates the subject site from Tax Lots 100 and 1100, which forms a physical buffer between those uses. In addition, the dwellings on Tax Lots 100, 1100, and 1400 will be as close to future timber activities as the proposed dwelling will be to future timber activities. These substantial distances, along with the dense vegetation, will contribute toward reducing or eliminating significant impacts generated by timber activities on Tax Lots 100, 1100 and 1400.

EAST AND SOUTH OF THE SITE

Tax Lots 200 and 300 Map 1S5E 16, Tax Lot 1600 Map 1S5E 17

Tax Lots 200, 300 and 1600 are located east and south of Tax Lot 1500. Based on a site

visit and aerial photographic evidence, all lots function as timber parcels. There are no dwellings on any of these parcels. Land use activities on these parcels consist of forest management practices for timber acreage. Typical forest management harvest practices involving manual pre-commercial thinning, manual pruning, and mechanical thinning, clear cutting, or slash disposal may occur in the future. Any serious conflicts occurring as a result of logging activities or slash disposal, will be reduced by the setback distances specified in the site plan and as recommended by State Forestry Planning Notes 1 and 2.

The impacts associated with the single-family dwelling will include landscape maintenance, occasional entertainment of guests, recreation activities outdoors, and raising of domestic pets (i.e. cats, dogs, etc.). These activities are anticipated to occur over the period of the dwellings' existence. A distance of 215' to the east, and 670' to the south, will exist between the proposed dwelling on Tax Lot 1500 and the potential forest activities on Tax Lots 200, 300 and 1600. These substantial distances, along with the dense vegetation, will contribute toward reducing or eliminating significant impacts generated by timber activities on Tax Lots 200, 300 and 1600.

SUMMARY

This application is for a Template Test Dwelling. Evidence has been presented to show that timber, and rural residential activities will not be altered by the placement of a dwelling on the subject site. The owner recognizes the right of the landowners in the area conducting farm and forest practices.

Based on an analysis of land uses in the area noted above, the proposed setback separation distances, (160' to 670'), noted from the proposed dwelling location to various land uses in the area, area topographic features and existing vegetation buffers will reduce or eliminate any serious impacts to existing forest management land uses.

Chapter 35.2305 (A)(1) also requires that the proposed dwelling satisfy the minimum yard and setback requirements of MCC Chapter 35.2260. Those standards have already been addressed on page 7 of this application narrative.

Applicant (Submitted September 30, 2004): As you requested in our telephone conversation today, the following evidence supports the proposed dwelling location. This evidence demonstrates compliance with Chapter 35.2305 (A) (1) and (2) and MCC 35.6315 (3) (a) & (b)

1. The 2000 approved location turned out to be a topographical depression, rather than a flat building site. This fact was not evident until after the request was approved. Building a new home in a depression causes many practical problems, such as:
 - wetter soils due to increased saturation from the concentration of storm water in the depression
 - difficulty of draining runoff away from the footing and foundation
 - increasing the height of the foundation wall to elevate the home above the depression
2. The 2004 proposed location is at the end of an existing road, on a flat platform of

land that was a log landing. The surrounding land slopes away from this platform, which solves all the problems of the 2000 approved location.

3. The site is narrow from a forest dwelling siting point of view. Therefore, the dwelling must be "centered" in an east-west direction, in order to comply with the 30' primary and 100' secondary fuel break setbacks. When all of the limiting site factors are combined, the result is a "centered" location on a log landing and away from any depressed areas as shown on the application site plan.
4. The 2004 dwelling location is situated as far away from the road as the lot directly to the west of the subject site.

Applicant (Submitted October 20, 2004):

1. The site is 453' wide, and the owner must provide a combined total of 130' on either side of the dwelling footprint for the code required primary and secondary fuel breaks. (i.e. 260') Therefore any reasonably sized dwelling footprint, (that is similar in size to other surrounding dwellings), must be "centered" on the lot. Based on the above, the "least impact on farm and farm uses" test must be balanced against the practical reasons for provided code-complying fuel breaks. That is, the proposed dwelling must be positioned to lessen the possibility that it will burn down in a wildfire. The current location is still centered and is only 150' southward of the 2000 approved location.
2. Not only is the 2000 approved location in a topographical depression but it is also surrounded by existing mature trees, that would most likely be removed for dwelling construction, and compliance with fuel break standards. In contrast, the proposed dwelling it is at the end of an existing road, on a flat platform of land that was a log landing. It is not surrounded by large mature trees; therefore, no mature trees will be removed to place the dwelling and driveway.

Staff: The subject parcel was previously approved for a dwelling through the template test in 2000 by case CU 0-8. In that decision, the Hearing Officer found the location proposed at that time had the least impact on nearby or adjoining forest or agricultural lands. This request is to move the dwelling location 150 feet south of the location previously found to have the least impact on nearby or adjoining forest uses. Since the Hearing Officer already found that a previous location has the least impact, the proposed dwelling site must be analyzed to determine whether or not it will satisfy the criteria to a higher degree than the previously approved location. The following analysis establishes that the proposed location will have fewer adverse impacts on nearby or adjoining forest operations than the previously approved location.

The uses of the surrounding properties have not changed since the previous approval. The surrounding parcels are either being used for forest practices, residential purposes or both. The previous dwelling location was approved in a location 130 feet east of the west property line. The proposed location has the same east/west orientation. The change is to the north/south orientation.

The proposed location will minimize the impacts on forest operations to the north due to

both an increase in physical separation and the retention of trees for screening. The proposed location provides an additional 150 feet of separation from forest operations to the north lessening the potential for conflict between the dwelling and forest operations to the North. The northern portion of the subject lot also contains some mature trees that were not removed during previous logging operations. These trees provide screening and serve as an effective buffer between the properties to the north and the subject property. Many of these trees would be removed to construct required fire breaks if the dwelling is constructed in the previously approved location. The subject location moves the dwelling into an area which is currently cleared, allowing the retention of the on-site mature trees. Exhibit S4 contains photos taken by staff showing the existing mature trees that will be retained to serve as a buffer for the properties to the north.

The subject location will minimize conflicts with forest operations to the west by moving the proposed dwelling closer to the dwelling on the property to the west. As can be seen in the aerial photo attached as Exhibit S2, the property to the west has an existing dwelling and accessory buildings approximately 30 feet from the common property line and in same north/south orientation as the proposed dwelling location. The applicant is proposing the new dwelling as close to the developed area to the west as the current setbacks allow. If the dwelling is built in the previously approved location, there is a greater potential for conflicts when the property to the west is logged. There is sufficient room on the property to the west to have active logging up to the property line directly west of the currently approved dwelling location. Logging operations are usually conducted in a manner that avoids the residence on the property being logged. Moving the new house near the existing house will maximize the effectiveness of this practice by keeping new development nearest the area where logging is least likely to occur on the property to the west.

The proposed location will not increase the potential for adverse impacts on forest operations to the south. The proposed dwelling location is approximately 700 feet from the south property line. Additionally, a watercourse separates the subject parcel from properties to the south. The combination of a forested area 700 feet in depth and the presence of a watercourse provide sufficient physical separation and buffering to minimize adverse impacts of the proposed dwelling location on forest operations to the south.

The proposed dwelling location will not increase the potential for adverse impacts on forest operations to the east. Both the previously approved dwelling location and the proposed dwelling location are as close to the west property line as allowed by the setbacks. By placing the dwelling as far to the west as allowed by the setbacks, the applicant has provided the maximum separation allowed to the east. The land to the east of the proposed dwelling location has been restocked with forest trees which will provide screening and buffering from any future forest operations to the east. The proposed location will minimize the impact on forest operations to the east.

Hearings Officer: Criterion met.

7.2 (2) Adverse impacts on forest operations and accepted farming practices on the tract

will be minimized;

Applicant (Submitted September 30, 2004): As you requested in our telephone conversation today, the following evidence supports the proposed dwelling location. This evidence demonstrates compliance with Chapter 35.2305 (A) (1) and (2) and MCC 35.6315 (3) (a) & (b)

1. The 2000 approved location turned out to be a topographical depression, rather than a flat building site. This fact was not evident until after the request was approved. Building a new home in a depression causes many practical problems, such as:
 - wetter soils due to increased saturation from the concentration of storm water in the depression
 - difficulty of draining runoff away from the footing and foundation
 - increasing the height of the foundation wall to elevate the home above the depression
2. The 2004 proposed location is at the end of an existing road, on a flat platform of land that was a log landing. The surrounding land slopes away from this platform, which solves all the problems of the 2000 approved location.
3. The site is narrow from a forest dwelling siting point of view. Therefore, the dwelling must be "centered" in an east-west direction, in order to comply with the 30' primary and 100' secondary fuel break setbacks. When all of the limiting site factors are combined, the result is a "centered" location on a log landing and away from any depressed areas as shown on the application site plan.
4. The 2004 dwelling location is situated as far away from the road as the lot directly to the west of the subject site.

Applicant (Submitted October 20, 2004):

1. The site is 453' wide, and the owner must provide a combined total of 130' on either side of the dwelling footprint for the code required primary and secondary fuel breaks. (i.e. 260') Therefore any reasonably sized dwelling footprint, (that is similar in size to other surrounding dwellings), must be "centered" on the lot. Based on the above, the "least impact on farm and farm uses" test must be balanced against the practical reasons for provided code-complying fuel breaks. That is, the proposed dwelling must be positioned to lessen the possibility that it will burn down in a wildfire. The current location is still centered and is only 150' southward of the 2000 approved location.
2. The existing driveway leads to a log landing that will be the site of the proposed dwelling. The driveway and landing were in place before this request was made, therefore there is land area that has already been taken out potential area for successful re-forestation. That is, the land underneath the roadway and log landing is compacted soil; full of base rock and gravel are thus is not conducive for successful tree growth. The existing driveway could be used as a haul road for logs when and if the site is ever logged, and the proposed turnaround area could serve as a log landing area. The proposed site of the turnaround is just to the east of the dwelling location, which is the

site of the current log landing. Therefore, the site will contain a roadway and future log landing area for future timber production.

3. Not only is the 2000 approved location in a topographical depression but it is also surrounded by existing mature trees, that would most likely be removed for dwelling construction, and compliance with fuel break standards. In contrast, the proposed dwelling it is at the end of an existing road, on a flat platform of land that was a log landing. It is not surrounded by large mature trees; therefore, no mature trees will be removed to place the dwelling and driveway.

Staff: The applicant is proposing a dwelling location that will require the use of more land than the previously approved dwelling location. The increased distance from the road requires a fire emergency turn around to be constructed in addition to a driveway. Additionally, the applicant is seeking to construct a larger house than would have fit within the previously approved 90 foot by 90 foot development area. While more land is used, the impact on forest operations is still minimized for the reasons outlined below.

The proposed dwelling location minimizes the impacts on forest operations on the site for three reasons. The first is that the proposed dwelling location leaves approximately 94 percent of the site in an undisturbed condition. The proposed driveway, fire emergency turn around, and dwelling site will occupy approximately 26,000 square feet, which is approximately 0.60 acres. The property is 10.66 acres. This means the developed area will occupy approximately 6 percent of the land area, leaving 94 percent of the property available for forest practices. While the amount of land used for the development is increased over the previously approved dwelling site, the amount of land used to site the dwelling and associated improvements is still minimal when viewed in context of the overall site size.

While the proposed location does take more land, it is proposed over land that primarily has been removed from forest production. The proposed driveway will be constructed on top of the existing logging road. The applicant has stated that the proposed driveway will be used to haul logs from the site in future logging operations. The proposed dwelling footprint will occupy a portion of the existing log landing. This land is already compacted and has not been replanted. The applicant has stated that the area contained within the circular emergency vehicle turn around is the area that would be used as the log landing and staging area for future logging operations.

The third reason is the previously approved dwelling location will require the removal of some mature trees for the construction of fire breaks that will not be required by the proposed location. The applicant has chosen to place the proposed dwelling location on the portion of the lot which has been used as the log landing in previous logging operations. The proposed driveway also will be constructed on top of the existing access road. It is unlikely that the access road and log landing would be replanted with timber trees. The area proposed for the dwelling footprint and driveway have not been reforested. A portion of the area proposed for the fire emergency turn around has been reforested. As can be seen in the photos attached as Staff Exhibit S4, the proposed driveway location will require the removal of some seedling trees. This action must be

viewed in light of the fact that it will allow the retention of existing mature trees to the north of the fire emergency turn around.

The use of exiting cleared areas for the building site and emergency turn around, the ability to retain mature trees previously required to be removed, using the exiting logging road for access, the applicant's statement that the area enclosed by the emergency vehicle turn-around will be used as the future log landing, and siting the proposed improvements in a manner that uses only 6% of the site all work to minimize the impact of the dwelling on forest operations on the tract.

Hearings Officer: Criterion met.

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

Applicant (Submitted September 23, 2004): According to the owner, the site was logged in 1999 and replanted in the Spring of 2000. The enclosed aerial site plan, (Attachment "C"), was photographed after the site was logged. The owner proposes to clear and construct the minimum acreage required for the driveway, drainfield, well, garage and dwelling. Because the site has been recently logged there already a cleared portion of the site for the proposed dwelling and driveway location. Therefore, a minimum amount of clearing will be required for construction of the new dwelling.

Applicant (Submitted October 20, 2004):

1 Staff asserts that the turnaround is too large and takes up too much land area. The owner specifically requested that turnaround so that the fire dept would have easy access and turnaround capabilities in the event of a fire. The removal of land for timber production must be balanced against the practical reasons for provided the turnaround.

2. Staff asserts that more land will be taken out of forest production, but in fact, some of the land included in staff's calculation is already devoted to a pre-existing road that will most likely not be planted in timber. Nevertheless, despite staff's contentions, the overall fact remains that, 9.4 acres, (or 94%) of the site will remain for forest production. (Note staff calculates that 26,245 square feet (i.e., 0.6 of an acre) will be taken out of timber production) It is hard to argue that the site will not maximize the land available for timber production when at least 94% is available for that purpose. In addition, it is common practice for the County Assessment and Taxation Dept. to remove one acre from any site in farm or forest deferral, (e.g. CFU zoned land), and appraise that one acre at a residential land rate, rather than as forest land. Therefore, the County already assumes that one acre of a forestland site will not be devoted to forest uses. Staff's calculations takes out 0.6 of an acre out of production, which is slightly over 1/2 of what Assessment and Taxation assumes will not be in forest production. .

3. Not only is the 2000 approved location in a topographical depression but it is also surrounded by existing mature trees, that would most likely be removed for dwelling construction, and compliance with fuel break standards. In contrast, the proposed dwelling it is at the end of an existing road, on a flat platform of land that was a log

landing. It is not surrounded by large mature trees; therefore, no mature trees will be removed to place the dwelling and driveway.

Staff: The proposed dwelling location does occupy more room than the previously approved dwelling location. The previous dwelling approval was for a 90 foot by 90 foot development area with a 12 foot wide, 130 foot long driveway. This is a total area of 9,660 square feet. The subject proposal is for a driveway, fire emergency turn around and house that will occupy approximately 26,245 square feet. This increase in size is due mainly to the fire emergency turn around required because the driveway is in excess of 150 feet in length. (MCC 35.2305(D)(6)). The proposed dwelling location will require 6 percent of the area of the lot, leaving 94 percent of the land area available for forest production.

While the proposed location does take more land, it is proposed primarily over land that has already been removed from forest production. The proposed driveway will be constructed on top of the existing logging road. The applicant has stated that the proposed driveway will be used to haul logs from the site in future logging operations. The proposed dwelling footprint will occupy a portion of the existing log landing. This land is already compacted and has not been replanted. The applicant has stated that the area contained within the circular emergency vehicle turn around is the area that would be used as the log landing and staging area for future logging operations.

While the proposed location does use more land than previously approved location, ninety-four percent of the parcel remains available for forest production. In addition to using a minimal percentage of the lot (6%), the impact of the development is further minimized by siting the development on portions of the lot which are no longer suitable for timber production

Hearings Officer: This criterion is met.

- 7.4 (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: As shown on the enclosed site plan, the existing driveway will be extended southward for a total length of 365', therefore the driveway will not be in excess of 500' long. Based on the proposed driveway length, the proposal complies with this criterion.

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

Hearings Officer: This criterion is inapplicable.

- 7.5 (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;

Applicant: The applicant received a Fire District Review Letter from Multnomah Co, RFPD #14, (Corbett) stating that the site will be served by a "water shuttle" and there is adequate water for fire fighting purposes. (See Attachment "I") Therefore, the site is located on a tract within a fire protection district as required by this criterion.

Staff: Staff concurs. The fire service provider letter is included as Attachment A4.

Hearings Officer: This criterion is met.

7.6 (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;

Staff: There is a perennial water source on the lot. However, this water source is at the far southern end of the property, approximately 650 feet south of the southern end of the proposed dwelling location. Providing fire access to this watercourse would not provide any meaningful protection to the proposed structure. Substantial areas of forest land would need to be removed from production in order to provide access to a pumping truck. Once cleared, the land would need extensive grading to make a slope that a pumping truck could navigate. The land surrounding the watercourse is steep and is designated as a slope hazard area. Construction of an access that was passable for a pumping truck for the length of this property would be cost prohibitive. Requiring the applicant to build such an access would be out of proportion to the proposed development and would be in opposition to the intent of the CFU-4 protections for forest practices. Staff finds it is unnecessary to require fire access to the watercourse in the far southerly portion of the site.

Hearings Officer: This criterion is not met. As staff explains, however, to require strict compliance with this criterion as applied to this property would be harmful to the property, expensive, contrary to the purpose of the county's regulations in the commercial forestry district, and possibly ineffective, given the physical challenges of utilizing the stream on the property. For all these reasons, it would not be reasonable to require that the perennial stream at the southern end of the property be a source of emergency water for fire-fighting. This criterion is inapplicable.

7.7 (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

Applicant: As shown on the enclosed site plan, there will be a 30' primary and 100' secondary fuel break around the proposed dwelling, garage and yard area. The dwelling will be located on slopes of less than 10%, as evidenced by the site plan that shows the dwelling location on the Cazadero 9B soil type. Grading of existing slopes for the dwelling and driveway will occur on slopes less than 10%. Excavation for any proposed dwellings will occur later. The site plan submitted with the application for a building permit would detail any proposed grading of the site at that time.

Staff: The applicant has indicated that firebreaks meeting the standards of this section will be constructed surrounding the dwelling at its newly proposed location. The applicant will be required to clear the fire breaks prior to the issuance of a building permit.

Hearings Officer: It is feasible for the applicant to satisfy this criterion, and the applicant has stated that the firebreaks will be constructed. These criteria will be met by satisfying a condition of approval.

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

Staff: As shown on the applicant's site plant, the proposed development area has an overall slope measured from the northern property line to the southern boundary of the primary fire break of approximately 5 percent.

Hearings Officer: Criterion met.

7.9 (B) 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.**

Applicant: The proposed dwelling will have a fire retardant roof and chimney spark arresters as required by this criterion.

Staff: The applicant will be conditioned to construct the house with a fire retardant roof and install spark arresters on each chimney. The applicant will be required to obtain a building permit to ensure the structure is erected in compliance with the building code.

Hearings Officer: As staff notes, it is feasible for the applicant to satisfy this criterion pursuant to conditions of approval.

7.10 (C) 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 11 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.

Applicant: The applicant proposed to dig a well at the location indicated on the site plan. A copy of the well logs from surrounding parcels is included with this application. (See Attachment "J") The applicant believes that the above-referenced well log data is sufficient evidence to demonstrate that providing a water supply to the subject site is feasible. The proposed domestic well will appropriate ground water in accordance with OAR 690, Division 11. The water source is not from a Class II stream. The proposed well is for domestic purposes and is exempt from the permitting requirements under OAR 537.545. The applicant will follow all applicable Water Resources Department and Washington County standards for construction of the well, including a well log and well constructor's report.

Staff: The applicant has submitted evidence to suggest that it is possible to drill a well on the property that might provide enough water to service a residential need. This is sufficient to approve the conditional use permit. However, prior to the issuance of a building permit, the constructed water source must be found to be adequate. This is a discretionary land use decision requiring notice and an opportunity to appeal. The applicant will be required to submit proof of a water source and that proof will be subject to a public notice and appeal process separate from the hearing surrounding this subject request to modify a conditional use permit.

Hearings Officer: This criterion will be met through satisfaction of a condition of approval that requires public process for a determination of the adequacy of the water source.

7.11 (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.

Applicant: The applicant proposed to extend the existing 12' wide driveway for a total length of 365'. The entire driveway will support a minimum GVW weight of 52,000 lbs. The driveway includes a turnaround with a 48' wide radius. (See Exhibits "A" and "B") In accordance with this criterion, the driveway and turnaround will be an all-weather surface at least 12' in width. As shown on Exhibit "A" and "B", the proposed road grade will not exceed 6%.

Staff: The applicant has submitted a site plan and driveway plans prepared by Jeffrey S. Senkel, Registered Professional Engineer of CSA Consulting Engineers. The site plan is included as Attachment A1. The driveway plans are included as Attachment A5. The plans meet all of the standards listed above.

The local Fire District has approved the proposed site plans as adequate for their service requirements.

The applicant will be required to submit documentation stamped by a professional engineer that the driveway has been constructed in a manner consistent with the standards of this section prior to issuance of a building permit.

Hearings Officer: The applicant's engineered plans and narrative evidence the intention to comply with these requirements. These criteria will be met through compliance with a condition of approval.

Conclusion and Decision:

Staff has recommended approval of this application, and the Hearings Officer agrees that the governing standards and criteria applicable to it have been met, or

will be met upon compliance with the conditions of approval. The request for a Conditional Use Permit to modify the previous approval of a Template Tract Dwelling on Commercial Forest Use-4 zoned land by moving the dwellings' location to 275-feet from the centerline of the road is approved, pursuant to the findings and subject to the conditions of approval set forth above.

Dated: November 29, 2004.

Signature:

A handwritten signature in cursive script, reading "Christine M. Cook", written over a horizontal dashed line.

Christine M. Cook, Hearings Officer

Attachments

Applicant's Attachments

- A1- Site Plan
- A2- Copy of original one-year extension of CU 0-8.
- A3- Site plan from CU 0-8 referenced by applicant as Attachment H
- A4- Fire district approval of driveway referenced by applicant as Attachment I.
- A5- Driveway plans prepared by CSA Consulting Engineers.

Staff Attachments

- S1- Copy of second extension of CU 0-8.
- S2- Aerial Photo
- S3- Correction Survey
- S4- Photos of Site
- S5- Copy of Code in effect when CU 0-8 was approved
- S6- Decision of Hearings Officer from CU 0-8.

Hearing Exhibits

- H1- 8x11 Aerial of Site Plan of subject parcel
- H2- Originally approved Site Plan
- H3- Current Site Plan
- H4- 1-Page Hearing Sign In Sheet