



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
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**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

This Decision consists of Conditions, Findings of Fact and Conclusions.

June 15, 2006

Case File: T3-06-001 Application for Conditional Use Permit for approval of a Heritage Tract Dwelling on property within the Commercial Forest Use-2 (CFU-2) Zone District. This review includes CFU-2 Development Standards Site Review for the dwelling.

Location: NW Elliot Road

Map Description: TL 1500, Sec 23A, Township 2 North, Range 2 West, W.M.

Zoning Designation: Commercial Forest Use – 2 (CFU-2), Significant Environmental Concern for Habitat (SEC-h)

Site Size: 19.22 acres

Applicant: Robert Shrader, c/o Rick Walker
PGP Valuation Inc.
110 SE Yamhill, Suite 200
Portland, OR 97204

Property Owner: Susan Campbell, Trustee
70 E. Aycliff Dr.
Shelton, WA 98584

Hearings Officer Decision:

Approval of application, as amended, subject to conditions of the Conditional Use Permit application for a Heritage Tract Dwelling.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. Ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the Applicant.

FACTS

1. Applicant's Proposal

Applicant: *This application requests a Conditional Use permit under MCC 33.22130, Conditional Use Heritage Tract Dwelling; thus, allowing for development of final construction design for submittal of a Significant Environmental Concern Permit as required by MCC 33.4510, prior to building permit issuance. The applicant Susan Campbell and Robert Shrader, representing the interest of the family members of the former owner Earl and Vera Hendrix, wishes to establish the Heritage Tract Dwelling Permit to facilitate the sale of the subject property to allow dispersal of the assets to the family of Mrs. Hendrix as specified in her will (See Exhibit J to Application). For this reason the family is not requesting approval of the Significant Environmental Concern Permit at this time allowing the buyer to make the final design decisions regarding the construction of the residence, and its consistency with environmental standards and, emergency access requirements.*

This request for Heritage Tract Dwelling will establish consistency of a defined building envelope to be used with the approval criteria (See Exhibit F to Application). Tualatin Fire and Rescue, the Environmental Soils Section of the City of Portland, and the Department of Forestry have all submitted documentation that use of the subject for a Heritage Tract Dwelling is consistent with their ability to provide services to the future residents and the public at large. The requested Heritage Tract Dwelling permit establishes the building envelope to be used on the east side of NW Elliott Road, minimizing impacts on the existing wood lot use, the creek side environment of the closely related, unnamed creek that drains directly into the Rock Creek Reservoir, and the significant slopes leading down to the creek. The narrative below and supporting graphic materials will establish the

location of the building envelope as the most desirable for purposes of residential use, while maximizing consistency with the purposes of MCC standards.

Staff: The applicant is requesting approval of a conditional use permit for a heritage tract dwelling for property within the Commercial Forest Use—2 Zone District (Exhibit 2.3 to Staff Report). The subject property is entirely within the Significant Environmental Concern for Habitat (SEC-h) Overlay Zone. Portions of the property are within the Significant Environmental Concern for Streams (SEC-s) Overlay Zone and Hillside Development (HD) Overlay Zone (Exhibit 2.4 to Staff Report). While the proposed dwelling site is within the SEC-h Overlay Zone District, the applicant has not applied for the SEC-h Permit. The applicant has indicated that the SEC permit will be applied for at a later date. The proposed dwelling location is outside the other overlay districts.

Hearings Officer: At the hearing, Exhibit H-4 was accepted, which depicted a revised site plan which relocated the conceptual building envelope 30 feet farther south.

2. Site and Vicinity Information

The subject site is located within the in the West Hills Rural Plan Area. The property is bisected by NE Elliot Road (Exhibit 2.2 to Staff Report). The dwelling is proposed to be located on the portion of the property east of the road (Exhibit 1.8 to Staff Report). The property is located in the upper portion of the Rock Creek drainage near the Willamette-Tualatin divide. The proposed location for the dwelling is along a ridgeline between to creeks of the Rock Creek drainage. The subject property is predominately forested, with the west side (west of Elliot Road) entirely forested except a small patch along the road (Exhibit 2.5 to Staff Report). The eastern portion of the property was cleared some time in the past, with a couple pockets of forested land remaining. There used to be a dwelling on this property, on the east side of the road, which according to the applicant was lost to fire in the 1950s.

The properties to the east, north and west are zoned CFU-2 (Exhibit 2.2 to Staff Report). The CFU properties tend to be a similar size to the subject property or larger. To the south of the subject property there is a pocket of Rural Residential (RR) Zoned properties. The RR properties tend to be smaller is size the subject property. This area is predominately forest land with some clearing used for farming or residential development.

3. Testimony and Evidence Presented

- A. George Plummer, Multnomah County Planner, presented the staff report and recommended approval of the application, subject to certain conditions.
- B. Rick Walker, of PGP Valuation Inc., applicant, testified in support of the application and submitted written exhibits.
- C. At the hearing on June 9, 2006, in the matter of T3-06-001, the following exhibits were received by the Hearings Officer and made part of the record:

- H-1 Aerial photo of subject property
- H-2 June 8, 2006 memorandum from Alison Winter, Transportation Planning Specialist
- H-3 June 8, 2006 letter from Geoffrey A. Judd, P.E., Transportation Engineer with Lancaster Engineering, to Rick Walker of PGP Valuation Inc.
- H-4 Revised conceptual site plan
- H-5 Sign-in sheet

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

1. Initiation of Action

MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on a Tax Lot 1500, Section 23A, 2 North 2 West (Tax Account #R972230260). Assessment & Taxation records show that the land is owned by Susan L. Campbell TR (Exhibit 2.1 to Staff Report). Susan L. Campbell is the Trustee of the Hendrix Family Trust as shown on Exhibit 1.4 to Staff Report. Ms. Campbell signed the application form as the property owner (Exhibit 1.1 to Staff Report). This criterion has been met.

Hearings Officer: I concur, this criterion has been met.

2. COMMERCIAL FOREST USE – 4 LOT OF RECORD PROVISIONS

2.1. Lot of Record Definition

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.)

Applicant: *The subject has lot of record status due to its single tract status, creation in 1942 as documented by the County Assessor Records, and deeded and recorded ownership that predates October 19, 1978 (See exhibits G, and H to Application)*

Staff: The applicant has submitted a County Assessment record that shows a date of 1942 with a notation "div" and the legal description of the subject property. This record does not include a book and page for which the "div" was recorded in (Exhibit 1.2 to Staff Report, Applicant's Exhibit G). The applicant submitted a copy of a warranty deed that describes the property recorded at County Records on October 16, 1958 in Book 1922 on Page 456 (Exhibit 1.2 to Staff Report, Applicant's Exhibit H). It appears from the County Assessment record that the property may have been created in 1942, however without a copy of a deed describing that we can not be sure. The October 16, 1958 deed shows that the property existed on the date that this deed was recorded. If this is the deed that created the property, the property was in F-2 Zone District at that time (Exhibit 2.8 to Staff Report) and would have met the minimum F-2 zoning requirements that were in effect at that time (Exhibit 2.10 to Staff Report). If the property was created prior to 1958 there were no zoning requirements that would have applied to the land division. The property meets these Lot of Record standards.

Hearings Officer: The parcel may have been created as early as 1942, but certainly no later than 1958. The property meets the Lot of Record standards.

2.2. CFU-4 Lot of Record

MCC 35.2275(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.

* * *

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, RC, R-10, GGA-40), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

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

Applicant: *The subject has lot of record status due to its single tract status, creation in 1942 as documented by the County Assessor Records, and deeded and recorded ownership that predates October 19, 1978 (See exhibits G, and H to application).*

Staff: The applicant has demonstrated that the property was created either prior to or in 1958. The subject property exceeds 19 acres (Exhibit 2.1 to Staff Report). Of the adjacent properties in resource zones only the one to the north is less than 19 acres. The subject property was not under same ownership with an adjacent property in 1990. The subject property meets the standards as a lot of record.

Hearings Officer: I concur with staff. This property is a lot of record.

COMMERCIAL FOREST USE – 4 HERITAGE TRACT DWELLING PROVISIONS

3. Conditional Uses

MCC 33.2230: The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * *

(C) A Heritage Tract Dwelling pursuant to the provisions of MCC 33.2240 (B), and 33.2305.

Staff: Applicant applied for a conditional use permit for a heritage tract dwelling (Exhibit 1.1 to Staff Report). The provisions of MCC 33.2240(B), and 33.2305 have been addressed in findings in the following sections of this report.

Hearings Officer: I concur.

4. Heritage Tract Dwelling Criteria

A heritage tract dwelling may be sited, subject to the following:

4.1. MCC 33.2240 (B)(1)(a) On a tract: That is not developed with a single family residence, and

Applicant: *The subject tract has been a 19.22 acre, vacant wood lot since the 1950's when the former residence was lost due to a fire.*

Staff: The tract does not have a dwelling on it (Exhibit 2.1 to Staff Report). This criterion has been met.

Hearings Officer: This criterion is met.

4.2. MCC 33.2240(B)(1) (b) That is not capable of producing 5,000 cubic feet per year of commercial tree species based on soil type, and

Applicant: *According to the soil map prepared by Multnomah County Staff, and confirmed with review of the Soil Conservation Service Soil Survey for Multnomah County, the subject soils are 7B-Cascade silt loam, 3 to 8-percent slopes, 7C-Cascade silt loam, 8 to 15-percent slopes, and 7D-Cascade silt loam, 15 to 30-percent slopes (See Exhibit D to Application). These soils have a productivity rating (Site Index) of 157, with the ability to produce between 145 to 165 cubic feet of Douglas fir per acre per year (See Exhibit E to Application). This translates to a total productivity expectation for the entire site of (19.22 acres X 165 cu. ft./ac/yr) 3,171 cubic feet per year, which falls below the threshold of 5,000 cubic feet per year.*

Staff: We concur with the applicant that this property is not capable of producing 5000 cubic feet per year of commercial tree species based on soil type. The property meets this criterion.

Hearings Officer: This criterion is met.

4.3. MCC 33.2240(B)(1)(c) That is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and either paved or surfaced with rock.

Applicant: *The subject has approximately 645 feet of frontage on NE Elliott Road, a paved two lane, county maintained road in a 50 foot right of way*

Staff: The property abuts Elliot Road which is a County maintained right of way (Exhibit 2.2 to Staff Report). This criterion has been met.

Hearings Officer: As conditioned, this criterion will be met.

4.4. MCC 33.2240(B)(1)(d) For which deeds or other instruments creating the lots or parcels were recorded with the County Recorder, or were in recordable form prior to January 1, 1985;

Applicant: *The former owner, Mr. Edward Earl Hendrix was the recorded owner of the subject tract as of 1942, as indicated on the property card as provided by the Multnomah County, Division of Assessment and Taxation, attached to Application. Mr. Hendrix has owned the subject site since the early 1940's. The former residence that occupied the subject site was lost to fire in the 1950's. It is safe to say that Tax Lot 1500, Section 23A, 2N2W, has been considered a legal lot of record for over 62 years.*

Staff: The applicant submitted a copy of a warranty deed that describes the property recorded at County Records on October 16, 1958 in Book 1922 on Page 456 (Exhibit 1.2 to Staff Report, Applicant's Exhibit H) indicating the property existed since at least 1958. This criteria is met.

Hearings Officer: This criterion is met.

4.5. MCC 33.2240(B)(1)(e) That is comprised of lots or parcels that were lawfully created and pursuant to the definition of "Date of Creation and Existence" in MCC 35.0005, if the lot, parcel or tract does not qualify for a dwelling under the standards in MCC 35.2240(B), any reconfiguration after November 4, 1993 cannot in any way enable the tract to meet the criteria for a new dwelling;

Applicant: *The subject site consists of a single tract that was lawfully created in 1942. This tract of land has not been altered in configuration or adjusted its site size since it was lawfully created.*

Staff: Under the findings for Lot of Record in Section 4.1 of staff's report, staff made the finding the subject property was legally created. The property has been in existence since at least 1958 in its current configuration (Exhibit 1.2 to Staff Report, Applicant's Exhibit H). This criterion has been met.

Hearings Officer: I concur. This criterion has been met.

4.6. MCC 33.2240(B)(1)(f) Notwithstanding the same ownership grouping requirements of the Lot of Record section, the tract was acquired and owned continuously by the present owner:

1. Since prior to January 1, 1985; or
2. By devise or by intestate succession from a person who acquired the lot or parcel since prior to January 1, 1985.
3. For purposes of this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

Applicant: *Mr. Robert Shrader whose name accompanies the application, is Mr. Hendrix's blood nephew, and is thus an "owner" as defined under Subparagraph 3. Mr. Hendrix, whose name appears on the original deed of ownership (See Exhibit H to Application), took possession of the property in 1942, transferring the land to his wife Vera Hendrix (Exhibit I to Application) who subsequently transferred the property to the family members (Exhibit J to Application).*

Staff: The applicant submitted a copy of a warranty deed that describes the property recorded at County Records on October 16, 1958 in Book 1922 on Page 456 (Exhibit 1.2 to Staff Report, Applicant's Exhibit H) showing Edward Earl Hendrix purchased the property on October 15, 1958. The applicant submitted a copy of a deed recorded with County Records on December 19, 1990 in book 2371 on page 1176 showing Mr. Hendrix granted one-half ownership in the property to his wife, Vera M Hendrix (Exhibit 1.2 to Staff Report, Applicant's Exhibit I). The applicant has submitted a copy of a "Joint Trust Agreement between E. Earl Hendrix and Vera M. Hendrix, Trustors and Susan L. Campbell, Trustee" (Exhibit 1.4 to Staff Report) which outlines the distribution of the Hendrix's assets after their death. According to this Trust document the assets were to be distributed to Don Leonard Campbell, Kurt A. Campbell and Susan L. Campbell. Attached to the Joint Trust Agreement is Schedule A, "First Amendment to Joint Trust Agreement between E. Earl Hendrix and Vera M. Hendrix, Trustors and Susan L. Campbell, Trustee" which amends the trust to include a distribution of ten percent of the trust estate to Robert L. Shrader and ninety percent to the previous mentioned parties. According to the Joint Trust document, Don Leonard Campbell is the son of Vera M. Hendrix and E. Earl Hendrix's stepson, Kurt A. Campbell is Ms. Hendrix's grandson, and Susan L. Campbell is Ms. Hendrix's son's former wife. The applicant has submitted an affidavit stating that Robert L. Shrader is the nephew of E. Earl Hendrix being related through his mother, Ruby F. Hendrix, who was Mr. Hendrix's sister (Exhibit 1.3 to Staff Report).

The applicant has demonstrated that the property has been in the present ownership since prior to January 1, 1985 as defined in this code section to include wife, son, grandson and nephew. This criterion is met.

Hearings Officer: I concur, this criterion is met.

- 4.7. MCC 33.2240(B)(1)(g) Where the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, that no dwelling exists on another lot or parcel that was part of that tract.**

Applicant: *This section does not apply to the subject's single tract status.*

Staff: No other property is part of the tract. There is no dwelling on the subject property. This criterion is met.

Hearings Officer: I concur. This criterion is met.

- 4.8. MCC 33.2240(B)(2) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.**

Applicant: *According to the Wildlife Habitat Map Provided by Multnomah County (See Exhibit M to application) the subject property does not lie within an area of identified Big Game Habitat.*

Staff: The Comprehensive Plan Big Game Habitat Map (Exhibit 1.2 to Staff Report, Applicant's Exhibit M) shows the subject property is not located within an area designated as habitat for big game.

Hearings Officer: This criterion is not applicable to this application, since the subject property is not within an area of identified Big Game Habitat.

- 4.9. MCC 33.2240(B)(3) When the tract on which the dwelling will be sited consists of more than one lot or parcel, the remaining lots or parcels shall be consolidated into a single lot or parcel prior to the issuance of any development permits.**

Applicant: *This section does not apply to the subject's single tract status.*

Staff: The tract is made up of one parcel. This criterion does not apply.

Hearings Officer: This criterion is not applicable.

- 4.10. MCC 33.2240(B)(4) Prior to the issuance of any development permits the owner of the tract 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, provided, however, that:**

- (a) The Transportation and Land Use Planning Department shall notify the County Assessor of the above condition at the time the dwelling is approved;
- (b) The property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The Assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;
- (c) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, it will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

Applicant: *Attached to this application is a letter from the Oregon Department of Forestry indicating that the subject is adequately stocked in compliance with their administrative rules*

Staff: The applicant has submitted a letter dated May13, 2006 from Malcolm E. Hiatt, Acting Protection Unit Forester, Forest Grove District Oregon Department of Forestry (Exhibit 1.2 to Staff Report, Applicant's Exhibit L). Mr. Hiatt states that the forest on this property (west of the road) is approximately 50 years old and stocking surveys don't apply to forests of this age. This letter meets the intent of this code section for the portion of the property on the west side of the road. County Assessment already has the east side of the property in non-forest deferral designation. This criterion is met.

Hearings Officer: This criterion is met.

4.11. MCC 35.2240(B)(5) The dwelling meets the applicable standards of MCC 35.2305.

Applicant: *Yes, the dwelling meets applicable development standards. Please see section 35.2305.*

Staff: The findings of compliance with MCC 35.2305 can be found in the following sections of this staff report. The applicant has submitted a site plan showing a designated home site and the driveway (Exhibit 1.8 to Staff Report). The criteria under MCC 35.2305 that affect building construction techniques are recommended as conditions. As conditioned, this criterion has been met.

Hearings Officer: As conditioned, this criterion will be met.

5. Single Family Dwellings Condition of Approval - Prohibition on Claims Alleging Injury From Farm or Forest Practices

MCC 33.2255: As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Staff: A condition of approval can require a covenant to the deed for the property as included as Exhibit 2.9 to Staff Report be recorded at County Records. This criterion is met through a condition.

Hearings Officer: As conditioned, this criterion will be met.

6. COMMERCIAL FOREST USE – 4 DIMENSIONAL REQUIREMENTS

6.1. MCC 35.2260 (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

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: *The subject property is 19.22 acres in size and is bisected with approximately 645 feet of frontage on a paved county roadway, NW Elliot Road. To minimize environmental impacts, maximize the continuing forestry use and minimize impacts on sloping topography, the dwelling use is proposed for location east of the roadway, a site that is approximately 3.75- acres in size (See Exhibit A to application). At its narrowest dimension of 200 feet, at the most northerly property line, the site east of Elliot Road has a building envelope depth of 35 feet. The 35 foot depth is the remaining depth after deducting a 35 foot front yard requirement (60 ft from centerline less 25 ft of roadway) and the minimum 130 feet from the rear (east) property line. The minimum building envelope distance is increased by approximately 35 feet to 70 feet as the*

building envelope shifts to the south to the 162 foot minimum side yard requirement to the north property line. The remaining setbacks will greatly exceed 130 feet.

It should be noted that the 162 foot side yard setback to the north property line is based on a storm water management plan developed under the assumption of a large 3,500 square foot building foot print. The actual foot print of the residence is expected to be much smaller.

Staff: The applicant demonstrates the proposed dwelling envelope meets the forest practices setbacks (Exhibit 1.2 to Staff Report, Applicant's Exhibit F). The applicant has demonstrated that these standards can be met.

Hearings Officer: As conditioned, this criterion will be met.

- 6.2. MCC 35.2260 (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.**

Staff: NE Elliot Road is designated a Rural Local classification on the Multnomah County's Functional Classification of Trafficways map. The specified right-of-way width for a Rural Local is 50 feet in width. The existing right-of-way is 50 feet. County Transportation staff has reviewed the proposed project and has indicated that no dedications are needed at this time (Exhibit 2.7 to Staff Report). This criterion is not applicable at this time.

Hearings Officer: This criterion is not applicable to the subject property.

7. CFU-4 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

MCC 35.2305 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. MCC 35.2305 (A) The dwelling or structure shall be located such that:**

Staff: These standards are addressed in the following findings.

- 7.1.1. MCC 35.2305(A)(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: The location of the Heritage Tract Dwelling on the east side of NE Elliott Road represents the minimal impact on surrounding forestland. The 3.75 acre site size and the ability to meet the 130 foot setback standards support this conclusion. If the

Heritage Tract Dwelling were to be located west of NW Elliott Road, the distances to the adjoining property ownership would be increased and thus represent a reduced impact on the adjoining forest or agriculture uses, however, would also represent a greater impact on the identified natural resource area associated with the subject's closely related creek side forest lands. This location would also require building the residence on slopes that will result in greater site disturbance, resulting in possible erosion and hazardous slide conditions.

Staff: The proposed dwelling site is located near the roadway, about 35 feet from the right-of-way (Exhibit 1.8 to Staff Report). The site also provides for the 130 foot fire safety zone. The site has shallow slopes. This site will result in the least impacts to nearby or adjoining forest lands. There is no agricultural land adjacent to this property. This standard is met.

Hearings Officer: As relocated 30 feet farther south on the subject property, the proposed building site still satisfies this standard.

7.1.2. MCC 35.2305(A)(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Applicant: *The proposed location does not disturb the most densely forest area of the subject that lies west of NW Elliott Road. The building envelop location is currently in brush and grasses, and was formerly used for hay production and homesite use. By locating the residence east of NW Elliott Road, impacts from harvesting operations on the residence is minimized; thus, providing a greater likelihood of continuing commercial forestry use of the majority of the property.*

Staff: The proposed location on the subject property will not impact the forest land on the property because the forestland on the property is located across the road. There are no farming practices on the property. The criterion is met.

Hearings Officer: As relocated, the building site still meets this criterion.

7.1.3. MCC 35.2305(A)(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Applicant: The proposed building envelope on the east side of NW Elliott Road, will have the least amount of disturbance to the subject's existing wood lot characteristic.

Staff: By locating the proposed dwelling on the east side of the road there are no impacts to the amount of forest land on the property. The dwelling is proposed to be near the road, reducing the impact to the portion of property east of the road as well (Exhibit 1.8 to Staff Report). The proposed driveway access may not meet the Multnomah County Road Rules sight distance requirements. It is likely that an alternative driveway to the dwelling site will be proposed during the hearing. The applicant will need County Transportation to approve the access location. It appears that this

standard will be met given a revised access point due to location of the proposed dwelling site and the fact that eastern portion of the property along the road is not forested.

Hearings Officer: As relocated and conditioned, it appears that the proposed dwelling site can meet this criterion.

7.1.4. MCC 35.2305(A)(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: *The distance of 500 feet will not be exceeded due to the combination of site configuration and the 130 foot setback requirement from the east property line. The concept drive way access presented on the concept site plan has a maximum distance of 346 feet.*

Staff: The proposed access driveway will be less than 500 feet (Exhibit 1.8 to Staff Report). This criterion has been met.

Hearings Officer: This criterion will be met.

7.1.5. MCC 35.2305(A)(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
 5. Maintenance of a primary and a secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the home owner.
- (d) The building site must have a slope less than 40 percent.

Applicant: The subject lies within the Tualatin Fire and Rescue District boundary. Service will be available upon completion of a access road to district standards. (See Exhibit L to application). There is no perennial water source on the lot. This standard will be addressed during the final site design and environmental review. The site dimension of 3.75 acres east of the county road will allow this standard to be met. With the location of the building envelop on lands that do not exceed 20-percent in slope, this primary fire safety zone can be met on-site. This standard would not apply to the Heritage Tract Dwelling permit application, and will be addressed during the final site plan and environmental review process to follow.

Review of Topographical maps and the County's Soil Classification Map indicate that no portion of the subject exceeds 30 percent in slope with the proposed building envelop occupying the area of least slope at 3 to 8-percent.

Staff: The applicant has submitted a letter dated April 26, 2006 to Rick Walker from Drew DeBois, Deputy Fire Marshal, Tualatin Valley Fire & Rescue (Exhibit 1.5 to Staff Report). Mr. DeBois states, "Tualatin Valley Fire & Rescue endorses this proposal predicated on the following criteria and conditions of approval." Mr. DeBois then lists 10 conditions of approval that address requirements for the driveway (turnarounds, turnouts, wide, clearance, surface, and load), gates, fire flow. A condition of approval can be included that the development meet the conditions of approval as stated in the Fire District letter. Given the topography on site as shown on Exhibit 2.5 to Staff Report, it appears the Fire District conditions can be met by an alternative driveway location. The applicant has stated that more evidence will be provided at hearing to demonstrate the conditions can be met.

There is no stream on the property for fire vehicle access. The slopes in the development area do not exceed 20 percent. The site plan demonstrates an ability to meet the primary and secondary fire safety zones on the property. The maintenance of these safety zones will not restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules. There are no 40 percent slopes in the proposed development area. These standards can be met through conditions of approval.

Hearings Officer: As conditioned, these criteria will be met.

7.1.6. MCC 35.2305(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: *If a mobile home is proposed, consistency will be determined at the final site design and environmental approval.*

Staff: A condition of approval can require these items be met.

Hearings Officer: As conditioned, these criteria will be met.

7.1.7. MCC 35.2305(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 II 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 application is for a Heritage Tract Dwelling approval only. Domestic water supply is available. See Exhibit P to application, well log for the recently installed water well.

Staff: The applicant submitted a State of Oregon Water Well Report (Exhibit 1.2 to Staff Report, Applicant's Exhibit P) indicating the property will be served by a domestic well on the property which is exempt from permitting requirements. This criterion has been met.

Hearings Officer: This criteria is met.

7.1.8. MCC 35.2305(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 $\frac{1}{2}$ the driveway length or 400 feet whichever is less.

Applicant: *Access road standards are addressed in the Tualatin Fire and Rescue District response letter attached. These access standards will be addressed with the final design and environmental permit.*

The building envelope is being proposed at a location that minimizes access road slopes, thus maintaining an access road under an 8-percent slope is expected. A slope analysis is provided as part of the site plan attached (Exhibit F to application). This analysis indicates the existing soil profile along the temporary drive access does not exceed 8 percent. Thus, a final site grading plan is possible within the constraints of meeting emergency access requirements.

This design standard requiring a turnaround for emergency equipment with a 48 foot radius will be addressed at the final design approval phase. If the final design calls for a turnaround, the site size of 3.75 acres is of sufficient size to meet this standard.

Staff: Given the slope on the property (Exhibit 1.2 to Staff Report, Applicant's Exhibit D and E and Exhibit 2.5 to Staff Report), it appears these standard and Fire District conditions can be met by an alternative driveway location. The applicant has stated that more evidence will be provided at hearing to demonstrate the conditions can be met. A condition of approval can require these standards to be met.

Hearings Officer: The applicant has provided a letter from Lancaster Engineering, which indicates that it would be possible to meet these standards. A condition of approval will require that these standards will be met.

8. COMPREHENSIVE PLAN POLICIES

8.1. Policy 14: Development Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

**Slopes exceeding 20%;
Severe soil erosion potential;
Land within the 100 year flood plain;
A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
A fragipan less than 30 inches from the surface;
Land subject to slumping, earth slides or movement.**

Staff: Based on the submitted information and a site visit by staff, the slopes in the development area do not exceed 20 percent (Exhibit 1.2 to Staff Report, Applicant's Exhibit D and E, Exhibit 1.8 to Staff Report and Exhibit 2.5 to Staff Report). Given the relatively shallow slopes on the property, there is little potential for severe erosion problems related to the development. The subject parcel is not located within an area of 100 year flood plain based upon the County's GIS mapping system. Soils on the site are Cascade silt loam 7B and 7C (Exhibit 1.2 to Staff Report, Applicant's Exhibit D). The *Soil Survey of Multnomah County* indicates that this soil is a, "somewhat poorly drained soil" (Exhibit 1.2 to Staff Report, Applicant's Exhibit E). The applicant has submitted an on-site sewage disposal site evaluation from the City of Portland, Bureau of Development Services dated May 24, 2005. This is evidence that, "this site is considered suitable for a standard septic tank/drainfield" (Exhibit 1.2 to Staff Report, Applicant's Exhibit L). The applicant has also submitted a Stormwater Certificate signed and stamped by Craig Christensen PE indicating that a stormwater system can be install to process the 10 year/24 hour storm (Exhibit 1.9 to Staff Report). Given the property's shallow slopes the land is not subject to slumping, earth slides or movement. This property does not have any known areas of development limitations due to the factors listed in this policy. This policy is met.

Hearings Officer: The application complies with this policy.

8.2. Policy 37: Utilities

8.2.1. Water and Disposal Systems

Shall be connected to a public sewer and water system, both of which have adequate capacity; or

**Shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or
Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
Shall have an adequate private water system, and a public sewer with adequate capacity.**

Staff: The applicant has indicated that the site is served by an existing on-site well and has submitted a State of Oregon Water Well Report (Exhibit 1.2 to Staff Report, Applicant's Exhibit P). The applicant has submitted May 24, 2005 on-site sewage disposal site evaluation from the City of Portland, Bureau of Development Services, signed by Michael G. Ebeling, RS, Senior Environmental Soils Inspector, indicating, "this site is considered suitable for a standard septic tank/drainfield (Exhibit 1.2 to Staff Report, Applicant's Exhibit L). City of Portland contract with DEQ to provide on-site septic system permit reviews. These policies are met.

Hearings Officer: These policies are met.

8.2.2. Policy 37: Drainage

**Shall have adequate capacity in the storm water system to handle the run-off; or
The water run-off shall be handled on the site or adequate provisions shall be made; and
The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.**

Staff: The applicant has also submitted a Stormwater Certificate signed and stamped by Craig Christensen PE indicating that a stormwater system can be install to handle the run-off on site as described on the certificate and plans (Exhibit 1.9 to Staff Report). These policies are met.

Hearings Officer: These policies are met.

8.2.3. Policy 37: Energy and Communications

**There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and
Communications facilities are available.**

Staff: The property is served by electrical supply lines and telephone communication lines. There are adequate energy and communication facilities available to serve the site at this time. These policies are met.

Hearings Officer: These policies are met.

8.3. Policy 38: It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

Fire Protection:

There is adequate water pressure and flow for fire fighting purposes; and The appropriate fire district has had an opportunity to review and comments on the proposal.

Staff: The applicant has submitted a letter dated April 26, 2006 to Rick Walker from Drew DeBois, Deputy Fire Marshal, Tualatin Valley Fire & Rescue (Exhibit 1.5 to Staff Report). Mr. DeBois states, "Tualatin Valley Fire & Rescue endorses this proposal predicated on the following criteria and conditions of approval." Mr. DeBois then lists 10 conditions of approval address requirements for the driveway (turnarounds, turnouts, wide, clearance, surface, and load), gates, fire flow. A condition of approval can be included that the development meet the conditions of approval as stated in the Fire District letter.

Given the slope on the property (Exhibit 1.2 to Staff Report, Applicant's Exhibit D and E and Exhibit 2.5 to Staff Report), it appears theses standard and Fire District conditions can be met by an alternative driveway location. The applicant has stated that more evidence will be provided at hearing to demonstrate the conditions can be met. These policies can be met through a condition of approval.

Hearings Officer: A condition of approval is imposed requiring the applicant to meet the requirements of Tualatin Valley Fire & Rescue.

Conditions of Approval:

The following conditions of approval are hereby imposed:

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 specified in subsequent land use permits. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Pursuant to MCC 37.0690, this land use decision is void/expires four years from the date the decision is final if the development action is not initiated within that time period. 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 in writing prior to expiration of the decision.

3. Property owner shall meet the conditions listed in the Tualatin Valley Fire & Rescue letter dated April 26, 2006 included as Exhibit 1.5 to Staff Report [MCC 35.2305(A)(5)].
4. The property owner shall maintain a primary and a secondary fire safety zone on the subject tract [MCC 35.2305(A)(5)].
 - A. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.
 - B. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone on the subject property. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner.
5. The dwelling structure shall comply with the standards of the applicable building code. Prior to zoning sign off for building plan check, the applicant or their representative shall provide documentation on the building plans that the proposed dwelling complies with the following [MCC 35.2305(B)]:
 - A. 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;
 - B. A fire retardant roof; and
 - C. A spark arrester on each chimney.
6. A statement included as Exhibit 2.9 to Staff Report shall be recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices [MCC 33.2255].
7. The driveway accessing the dwelling, shall be designed, built, and maintained to [MCC 35.2305(D)]:
 - (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.
8. Significant Environmental Concern for Habitat Permit shall be obtained prior to any development work on the property.
9. Grading and Erosion Control Permit shall be obtained prior to any development work on the property, unless that applicant demonstrates that the development is exempt from this permits.

CONCLUSION

Based upon the staff report, testimony of the applicant, and the substantial evidence submitted by applicant and contained in the staff report, I conclude that this request for a Conditional Use Permit for a Heritage Tract Dwelling on property within the Commercial Forest Use-2 (CFU-2) Zone District is hereby approved, subject to the conditions of approval set forth above.

IT IS SO ORDERED, this 15TH day of June, 2006.



JOAN M. CHAMBERS, Hearings Officer