



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 988-3043 FAX: (503) 988 -3389

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## **DECISION OF HEARINGS OFFICER**

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**Case File:** CU 0-1

**Hearings Officer:** Liz Fancher

**Hearing Date, Time, & Place:** Wednesday May 17, 2000, 10:30 AM  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

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**PROPOSAL:** A request for Conditional Use approval for a single-family heritage tract dwelling on land identified as high-value farmland on the subject parcel. The applicant proposes to tear down the illegal existing dwelling (constructed in a pole barn) and to remove the existing mobile home on the site. The applicant's site plan illustrates the said structures. The subject parcel is zoned Exclusive Farm Use (EFU). A Pre-Application Meeting, PA 24-98, was held in 1998. See also the related case files on the subject property.

**LOCATION:** 20537 NW Sauvie Island Road.  
Tax Lot 24, Section 7, T2N, R1W, W.M.  
R#97107-0240.  
See attached map.

**APPLICANT/**

**PROPERTY OWNER:** Michael J. Moar and Robert J. Moar  
20537 NW Sauvie Island Road  
Portland, OR 97231

**HEARINGS OFFICER DECISION:**

**Denial** of the proposed Conditional Use, **CU 0-1**, for a single-family heritage tract dwelling on land identified as high-value farmland as provided under MCC 11.15.2012 (O). The applicant proposes to tear down and rebuild the existing building, formerly used as a dwelling and attached to the existing farm structure (see the site plan). The applicant proposes to retain the farm structure. The applicant proposes to remove the existing mobile home. The described structures are identified on the applicant's most recent site plan (originally dated February 7, 2000), dated March 24, 2000 with the revisions made that day noted on the plan. The subject parcel is 3.00-acres in size and is zoned Exclusive Farm Use (EFU). The application materials do not demonstrate compliance with the provisions of MCC 11.15.2012 (O).

The application materials have not met the applicable Multnomah County Code provisions and Comprehensive Plan Policies.

**LOCAL APPROVAL CRITERIA:**

**ZONING ORDINANCE REQUIREMENTS:**

**MCC 11.15.2002 et seq. – Exclusive Farm Use (EFU)**

**MCC 11.15.7105 et seq. – Conditional Uses (CU)**

**MCC 11.15.9052 et seq. - Interpretations, Violations, and Enforcement**

**COMPREHENSIVE PLAN POLICIES:**

**13 Air, Water and Noise Quality**

**14 Developmental Limitations**

**37 Utilities**

**38 Facilities**

**SHOULD THE APPLICATION BE APPEALED AND APPROVED, STAFF AND THE HEARINGS OFFICER RECOMMEND THE FOLLOWING CONDITIONS OF APPROVAL:**

1. A **Grading and Erosion Control (GEC) permit** will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards.
2. Approval of this Conditional Use for a single-family heritage tract dwelling on high value farmland shall expire two years from the date the Hearings Officer Decision is mailed out for the twelve (12) day appeal period (and that date is considered the final decision date unless the Decision is appealed) on the matter unless “substantial construction” has taken place in accordance with MCC 11.15.7110 (C)(3); the subject proposal is completed as approved; or the Approval Authority establishes a specific expiration date.
3. When ready to have land use or building permits signed-off, the applicant shall contact the Staff Planner, Tricia R. Sears, at (503)-248-3043, **for an appointment** to review and sign the plans. The applicant shall provide site plan drawings drawn to scale (not reduced copies where the scale does not match the drawing). The applicant shall submit five (5) copies of the required plans. Multnomah County will keep one (1) copy and four (4) copies will be returned to the applicant for processing with the City of Portland.
4. Prior to sign-off of a building permit for a dwelling under this decision, the applicant shall remove the existing mobile home from the subject property within three months of the final date of the approval for CU 0-1. Or, the applicant shall complete the Residential Dwelling Agreement, available at the Multnomah County Land Use Planning office, to use the mobile home as a residence during the construction of the single-family heritage tract dwelling. The applicant’s proposed single-family heritage tract dwelling is shown on the site plan as attached to the farm structure.
5. The applicant shall provide calculations, pursuant to the requirements of Comprehensive Plan Policy #37, to show the on-site system will adequately handle the stormwater run-off on the subject parcel.
6. The applicant/property owner shall notify the Multnomah County Assessment and Taxation office upon approval of CU 0-1. This is required under MCC 11.15.2010 (F)(6).

7. No additional land use action and/ or permit requests shall be accepted, relating to the subject application, until such time as all required fees for the said application has been paid in full.
8. **This approval is based on the submitted material.** The proposed single family dwelling shall be constructed in accordance with the design, size, and location shown and described in the application materials submitted by the applicant in case file CU 0-1. The applicant will retain the two structures identified on the March 24, 2000 revised site plan as "existing farm structure". The applicant will remove the structure labeled on the March 24, 2000 revised site plan as "tear down and rebuild as dwelling". The applicant shall remove the structure labeled "dwelling site/ existing mobile home" on the March 24, 2000 revised site plan. The applicant is required to obtain a demolition (demo) permit from Multnomah County and the City of Portland prior to sign-off for the new residence. The applicant shall also have the site inspected by the Multnomah County Staff Planner or Code Enforcement prior to the sign-off of building permits for the new residence. Additional submittals and approvals may be required of the applicant as noted in these Conditions of Approval.

## **FINDINGS AND CONCLUSIONS:**

### **Summary:**

#### **Applicant:**

*Narrative from January 25, 2000:* The subject property is located on Sauvie Island, in an area composed primarily of small lots, 3-10 acres in size. The adjacent properties are mostly single family residential with one larger parcel used for growing nursery stock. The other parcels have some farm-related activities occurring on them but are not actually "farms".

This proposal consists of three acres, two of which are being farmed. The third acre has not been cleared and is heavily treed. This property had a single family residence on it for a number of years until it was damaged in a storm and removed. The present applicants have a preference for siting the dwelling in an addition to an existing building and will allow all trees and land contours to remain the same.

A review of FEMA maps shows that this property is not within a 100-year floodplain or a drainage hazard area.

This property accesses Sauvie Island via a 20' recorded easement across the adjoining property to the northwest.

This property is not within the 100 year floodplain nor is it in the drainage hazard area as designated on the FEMA map #.

A single family heritage tract dwelling may be allowed on land identified as high value farmland when the following uses are met and when approved by the hearings officer pursuant to 11.15.2020 (F)(1) through 2010(F)(2) and (O) 2012.

Note: MCC 11.15.7120 Conditional Use criteria does not apply.

*Narrative from March 24, 2000:* Michael J. Moar and Robert J. Moar are submitting for a single family heritage tract dwelling on the three acre site at 20537 NW Sauvie Island Road.

The site has records of having a mobile home as a dwelling. The mobile home was destroyed in a storm and then removed. We tried to get a replacement dwelling permit but the mobile home was gone and we didn't have anything saying it was placed legal on the site, partly due to lost records.

My farther Robert Moar has a small mobile home on the site now. It is hooked up to the existing sewage and water and power as was the old mobile home. We have disconnected it per instruction from the County as well as the order to vacate our land. My father now resides in a 12 ft. travel trailer off the site. I built a small apartment in a existing building to live in until a building permit could be obtained however the city has determined that I too must move and remove parts of site that do not meet County code (sic). I have taken the apartment out and moved off the site.

My father has lived on Sauvies Island for 67 years. I have been here for 38 yrs. On this site. The Moar family home staded on the Island in 1841. Our family cemetary is just next door.

My Father is heavily involved at the Sauvie Island Fire Department. Our life is here on the Island and while no one is perfect we have done a lot to contribute to this community in positive ways. Anyway...

The proposed building site is part of a existing building (sic). I have talked with a building inspector at the City of Portland Planning and Development. It seems that I would have to restart from the ground up to meet their building code which I am willing to do. It makes sense to me to stay in this spot due to the layout of the trees and driveway and we wouldn't be changing the physical setting of the land or trees.

Thank you in advance for all your efforts on this matter.

**Staff:**

Related cases:

PA 24-98, ZV 98-04, MC 6-98, MC 4-99.

Proposal:

The applicant request is for a proposed single-family heritage tract dwelling on high value farmland on the subject parcel located at 20537 NW Sauvie Island Road (R#97107-0240). The subject parcel is zoned Exclusive Farm Use (EFU).

The applicant proposes to tear down and rebuild the existing building labeled "tear down and rebuild as dwelling" on the site plan dated March 24, 2000 revised. The applicant stated that the footprint will remain essentially the same (approximately 24' x 60') as shown on the site plan. The two structures labeled "existing farm structures" are to be retained on the site by the applicant. The structures are shown as 72' x 40' and 28' x 40' respectively. The existing "greenhouse" is to be retained on the site. The greenhouse is shown as 30' x 60'. The applicant states the structure labeled "dwelling site/ existing mobile home" will be removed. The mobile home is 30' x 60'. The site plan submitted by the applicant illustrates the proposed location of the single-family heritage tract dwelling. The site plans attached as Exhibit #1 is the final site plan submitted by the applicant. The site plan is dated February 7, 2000 and dated again March 24, 2000 with revisions. Photos of the February 9, 2000 Staff site visit are included with this written report as Exhibits #4, #5, and #6.

## Background:

In the Applicant comment section above, the applicant has provided a site description and historical background of the subject property.

A Pre-Application Meeting, PA 24-98, was held in 1998. The applicant previously submitted two cases identified as MC 6-98 and MC 4-99. Under case file MC 6-98, the applicant applied for a building permit for a replacement dwelling of the existing single-family dwelling. The denial of the building permit was appealed to the Hearings Officer. The applicant's appeal of the Planning Director's Decision was denied by the Hearings Officer on July 20, 1998. Under case file MC 4-99, the applicant applied for a non-conforming use determination. The applicant's request was denied by the Planning Director and the applicant's subsequent appeal was denied by the Hearings Officer on June 2, 1999.

The subject property includes a Zoning Violation case, ZV 98-04. Multnomah County mailed a Notice of Zoning Violation to the property owners on February 12, 1998. According to the letter, "the County has no records of approving an accessory structure, use of accessory structure as a single-family dwelling or use of travel trailers for dwellings." Based on the applicant's submitted materials and verbal communication, the residence that was in the farm structure has been totally dismantled (in the interior). The mobile home remains on the site; however, all services and utilities have been disconnected. The applicant stated in a phone call with Staff on May 3, 2000 that the septic tank on the site has been dug up. During the Staff visit on February 9, 2000, no travel trailers were on the property.

## General Case Information:

The applicant has addressed Comprehensive Plan Policies 13, 14, 37, and 38. The applicant has submitted completed copies of the Certification of Private On-Site Sewage Disposal, the Certification of Water Service, the Fire District Review, and the Police Services Review. The applicant submitted a copy of the application he submitted to the City of Portland for a Land Feasibility Study.

The applicant submitted the application for the Conditional Use for the single-family heritage tract dwelling on high-value farmland, CU 0-1 on January 25, 2000. Staff visited the site on February 9, 2000. The application was deemed complete on March 24, 2000. A public hearing is scheduled for May 17, 2000 before a Multnomah County Hearings Officer. Exhibits are referenced throughout this report and are attached in order to supplement the written narrative and findings. The Exhibit list is attached at the end of this document.

## Multnomah County Code

### Exclusive Farm Use (EFU)

#### **11.15.2002 Purposes**

**The purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this district shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 (1995 edition) and the Oregon Administrative Rules Chapter 660, Division 33 (December 1995 edition) as interpreted by this Exclusive Farm Use code section.**

### 11.15.2004 Area Affected

**MCC .2002 through .2030 shall apply to those areas designated EFU on the Multnomah County Zoning Map.**

**Staff:** The subject property identified as R#97107-0240 with an address of 20537 NW Sauvie Island Road. The subject property is zoned Exclusive Farm Use (EFU) according to the maps on file with Multnomah County Land Use Planning.

### 11.15.2005 Definitions

**As used in MCC .2002 through MCC .2032, unless otherwise noted, the following words and their derivations shall have the following meanings:**

**Staff:** These definitions are included to additional information regarding the subject application.

**(C) *Contiguous* refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way.**

**Staff:** The property owners of the subject property, Robert Moar and Michael Moar, do not own the properties that are contiguous to the subject property.

**(E) *High-value farm land* means land in a tract composed predominately of soils that are:**

**(1) Irrigated and classified prime, unique, Class I or Class II; or**

**(2) Not irrigated and classified prime, unique, Class I or Class II; or**

**(3) Willamette Valley Soils in Class III or IV including:**

**(a) Subclassification IIIe specifically, Burlington, Cascade, Cornelius, Latourell, Multnomah, Powell, Quatama;**

**(b) Subclassification IIIw specifically, Cornelius;**

**(c) Subclassification IVe, specifically, Cornelius, Latourel, Powell, and Quatama.**

**Location and the extent of these soils are as identified and mapped in "Soil Survey of Multnomah County, published by the Soil Conservation Service, US Department of Agriculture, 1983."**

**The soil class, soil rating or other soil designation of a specific lot or parcel may be changed if the property owner submits a statement or report pursuant to ORS 215.710(5).**

**Staff:** The subject property contains soil type 6B, Burlington fine sandy loam, according to the soil maps available at Multnomah County Land Use Planning. This soil type is classified as a Class Ie soil on the High-Value Farmland Soils list for Multnomah County. The applicant has completed the "Current Resource Use of the Parcel (from Standard Industrial Class - SIC) portion of the "Decisions on EFU Land" form. The "Decisions on EFU Land" form is a form that

Multnomah County Staff Planners are required to complete, according to the State of Oregon, each time an application is submitted for properties zoned Exclusive Farm Use (EFU). According to the applicant, one acre of the property is not in production (SIC 001) and two acres are in field crops (SIC 013). The applicant has not stated whether the land is irrigated or not. The Burlington fine sandy loam is listed under the "Prime, Class I, and Class II soils."

**Hearings Officer:** All three acres of the subject property consist of high value farm soils.

**(H) *Suitable for farm use means land in Class I-IV or "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands."***

**(I) *Tract means one or more contiguous lots or parcels in the same ownership.***

**Staff:** The subject property consists of one parcel, Tax Lot 24, and this one parcel is a tract. Robert and Michael Moar do not, according to the records of the Multnomah County Assessment and Taxation office and the Geographic Information System (GIS), own any of the contiguous lots or parcels.

#### 11.15.2006 Uses

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2008 through .2014.**

**Staff:** The applicant requests approval for a single-family heritage tract dwelling on high-value farmland, a Conditional Use listed in MCC 11.15.2012(O). The applicant has provided narrative response to the applicable Multnomah County Code and Comprehensive Plan Policies. The Staff comments are included following the applicant comments.

**Hearings Officer:** Hearings Officer findings follow staff comments. All findings proposed by the applicant have been adopted as findings of the hearings officer except those findings marked with strike-through text.

#### 11.15.2012 Conditional Uses

**The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7135:**

**(O) A single family heritage tract dwelling may be allowed on land identified as high-value farmland when:**

*[Amended 1999, Ord. 932 § III]*

**Note: MCC 11.15.7120 Conditional Use Approval Criteria does not apply.**

**(1) The lot or parcel meets the requirements of 11.15.2010(F)(1) through 2010(F)(8); and**

**Applicant:** See Exhibit A.

**Staff:** Staff has included the applicant narrative and Staff comments for the requirements of MCC 11.15.2010(F)(1) through .2010(F)(8) below. Based on the applicant's submitted application materials, Staff made findings of non-compliance with several of the criteria of

MCC 11.15.2010(F)(1) through .2010(F)(8). Therefore, Staff makes findings here that the subject lot or parcel for this application does not meet the requirements of MCC 11.15.2010(F)(1) through .2010(F)(8). Without findings of compliance for the criterion of MCC 11.15.2010(F)(1) through .2010(F)(8), Staff must make findings of non-compliance with this criterion. Please see the Staff comments in each of the criterion. Staff includes the caveat here that much of the information required to make findings of compliance was not included in the submitted application materials. Without evidence of compliance, Staff must make findings of non-compliance. Several examples of case law are cited to support the Staff findings for each criterion. Staff has included a list of "Recommended Conditions of Approval" if the application were to be approved.

According to the case *McNulty v. Marion County*, 19 Or LUBA 367 (1990), when "denying an application for a nonfarm dwelling on land zoned for exclusive farm use, a county need only adopt findings demonstrating that one or more approval standards are not met." (LUBA Headnotes: Section 3.3.3).

*The application does not meet the criteria of 11.15.2010(F)(1) through .2010(F)(8) and thus the application for the subject lot or parcel does not meet the criterion of 11.15.2012(O)(1).*

- (2) The lot or parcel cannot practicably be managed for farm use by itself or in conjunction with other land due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity; and**

**Applicant:** See Exhibits M, N, O, and P.

Exhibit M: The lot or parcel cannot be managed for (farm use) by itself, defined in ORS 215.203(2)(A) there is not enough land to be managed for any profit or gain to the economy. These small lots are meant for hobby farming, open spaces, and single-family dwellings.

The lot or parcel cannot be farmed in conjunction with other farms in the area due to the small size and the small area that would be farmable. See Exhibit N and Exhibit P.

Exhibit N: A copy of a letter from Don Richards, President of Applied Horticultural Consulting, Inc. to Mike Moar dated July 25, 1998.

Exhibit P: A copy of a letter from Bailey Nurseries Inc. to Multnomah County Land Use Planning (no date).

Even if the land was cleared the extraordinary circumstances of the setting of the land and the trees, the road, the lot is mostly a very sandy nodule of class IIIe soil, it just isn't feasible use for commercial agriculture (sic). It never has been and probably never will be. See Exhibit O.

Exhibit O: A copy of a letter from Craig Bergerson of Northland LLC to Mike Moar dated July 27, 1998.

**Staff:** ORS 215.203(2)(A) defines *farm use* as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other



agricultural or horticultural use or animal husbandry or any combination thereof. "

Don Richards of Applied Horticultural Consulting, Inc. wrote an evaluation of the subject property at 20537 NW Sauvie Island Road in response to Mike Moar's "request for an opinion regarding the ability to perform profitable, sustainable agricultural production on the (3) acre parcel". The letter is included in the applicant's submittal materials and referenced above as Exhibit N. Richards cites three main reasons for his determination that Moar would "not be able to produce any kind of profitable, sustainable crop on this small acreage." Richards cites the following reasons for his findings: lack of irrigation, lack of market potential, lack of knowledge of production methods, lack of proper ingress and egress to the property for a distribution system, and a poor investment to return ratio.

Craig Bergerson of Northland LLC wrote an evaluation of the subject property in response to the applicant request for a timber appraisal. According to the letter dated July 27, 1998 to Mike Moar from Bergerson, the report summary includes a figure for "total cost of project" at \$16,710.82 and a figure for "total gross value of timber" at \$9,685.76 with a resulting "net loss" of \$7,025.06. The Bergerson letter is included in the applicant's application materials and referenced as Exhibit O.

The applicant has submitted a letter from Bailey Nurseries, Inc (not dated) to Multnomah County Land Use Planning. The letter, signed by "Management" states that: only one of the three acres of the subject property is farmable, it would not be cost effective, and there is not proper access to the property.

The applicant has provided the above-cited letters to show the subject property could not farmed or harvested for timber. The reasons cited by the applicant are primarily based on economic reasons for not being able to farm the high-value farmland. However, in the letter from Bailey Nurseries, the "Management" states that one of the acres is farmable. The Multnomah County Code provision states, "the lot or parcel cannot practicably be managed for farm use *by itself or in conjunction with other land*" (emphasis added). Adjacent properties, based on the February 9, 2000 site visit, were being farmed. Exhibit #7 is an aerial photograph of the subject property and the surrounding properties. According to the applicant's submitted copy of the "Decisions on EFU Land" form, two acres of the site are farmed with "field crops". Evidence has not been submitted to substantiate the applicant's statement that the land could not be farmed in conjunction with other land.

The applicant has not submitted evidence of "extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity." The applicant stated the site was not in the 100-year floodplain. The site is accessible by a driveway from NW Sauvie Island Road; the Sauvie Island Fire District #30 has given approval for the accessibility of the property (see Service Provider form and attached letter from Don Posvar, Sauvie Island Fire District #30 Chief). Slope on the site is negligible.

The State of Oregon rules provide the basis for the provision of the Multnomah County Code. According to OAR 660-033-0133(3)(c)(C)(i), "The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be

practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use."

Exhibit #7 is an aerial photograph of the subject property and the surrounding properties. Farming of the land on several of the surrounding properties is evident.

*The application does not meet the criterion because evidence has not been provided to show that the lot or parcel cannot be practicably managed for farm use by itself or in conjunction with other land due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.*

**Hearings Officer:** This criterion imposes a standard that is extremely difficult to satisfy. The applicants must prove that their land may not "practicably be managed for farm use by itself or in conjunction with other land due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity."

The most obvious difficulty presented in this case is that the applicant's property is not unique in its circumstances or physical setting. Most of the other properties are small lots. Some of these small lots, including the applicant's property, are being used for marginal farm use by the landowner or by a farmer who is leasing the land. The applicants make a compelling case, from the data gathered from neighbors that area properties, other than the 131.73-acre Bailey Nurseries Inc. property, are not commercial farm properties. This fact is not determinative, however, because Oregon case law has been it extremely clear that it protects noncommercial and commercial farming of EFU lands.

The aerial photographs submitted by the applicants show that the pattern of prior development and land division has created a pocket of extremely small parcels on good farm soils. These facts *might* support an application for approval of a committed lands goal exception but do not supply the type of proof needed to show *extraordinary* circumstances inherent in the land or its setting that *do not apply to other properties*.

The evidence shows that a shared driveway, a NW Natural Gas underground gas line and a significant stand of large trees separates the applicants' property from the Bailey Nursery property. These conditions *might* warrant a finding of extraordinary circumstances. The applicant has not, however, clearly and convincingly explained why these factors prevent combined farm use in this case. The applicants say that the utilities separate their lot from other parcels but do not explain why that it so. It is unknown whether the underground natural gas line cannot be crossed by farm machinery or whether it imposes any other conflicts with farm use. The hearings officer is unable to find any explanation of why the overhead power lines on the opposite side of the property preclude farm use of the subject property.

The applicants and Bailey Nurseries have claimed that the access to the subject property is inadequate for farm use but have not clearly explained why the Moars have, to date, been able to farm their property using the existing access. It should also be noted that the

adjoining property owned by Jane Moar uses the same access driveway for agricultural use (rental of six acres of property to Sauvies Farm Market for farm use).

**(3) The dwelling will not:**

**(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest; or**

**Applicant:** See Exhibit Q.

Exhibit Q: The applicant has submitted a color, aerial photograph of the subject property and abutting properties.

**Staff:** The subject property has previously contained residences (not all were legally established). The applicant submitted a map that showed the location of residences on the surrounding properties. Staff used the records of Multnomah County's Assessment and Taxation office and the Geographic Information System (GIS) to verify the property information listed by the applicant. A copy of the applicant's plan and the Staff notes on the plan is contained in the case file for CU 0-1. No analysis of the farm and forest uses of the surrounding properties has been submitted by the applicant.

Several court cases are cited here to substantiate the idea that additional information is necessary about the surrounding properties to make a determination that the dwelling will not force a significant change in the accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The case identified as *Hearne v. Baker County*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 97-146, March 18, 1998), slip op. 5 included a determination that "Absent an identification of what specific farm and forest practices are involved on nearby lands, a local government cannot meaningfully determine whether a proposed nonfarm dwelling will cause significant change in or increased cost to those practices" (LUBA Headnotes: Section 3.3.3).

Two cases are cited here to show that the burden is on the applicant to provide information that substantiates the applicant claim that no significant change in farm or forest practices will occur on the surrounding properties as a result of the proposed dwelling. Under *Lyon v. Linn County*, 28 Or LUBA 402 (1994), "Where the local code requires that a proposed use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding land, the applicant has the burden of identifying the relevant accepted farm and forest practices and producing evidence showing those practices will not be significantly changed or their costs significantly increased" (LUBA Headnotes: Section 3.3.3). Also, under *Just v. Linn County*, 32 Or LUBA 325 (1997), the findings included "Under ORS 215.296(1), the applicant bears the burden to demonstrate that the proposed use will force no significant change in accepted farming practices or their cost, and the local government's findings must affirmatively explain why it believes there are no such significant adverse impacts" (LUBA Headnotes: Section 3.3.3).

*The application does not contain evidence to substantiate the applicant's statements that the dwelling will not force a significant change to the accepted farm or forest practices on surrounding lands devoted to farm or forest. Based on this lack of evidence, Staff finds the application does not meet the criterion.*

**Hearings Officer:** The applicants made a good effort to gather this type of information by surveying their neighbors. The survey, unfortunately, failed to ask the question posed by this code section: What are the farm or forest practices that are occurring on the property? The applicants asked whether one farm practice, spray application of pesticides, is occurring on adjoining properties but did not determine what other farm practices are occurring on these properties. The applicants asked whether the approval of their home will force a significant change in accepted farm and forest practices on their properties. While the answer to that question was a resounding NO, Oregon law requires the County to reach that conclusion only after knowing what farm practices are occurring on area lands. This rule has been stated in many Land Use Board of Appeals cases, e.g. Schellenberg v. Polk County and the Lyon case cited by staff.

**(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**

**Applicant:** As above, the dwelling requested will not have any affect (sic) on the surrounding lands.

**Staff:** According to the findings of *Brown v. Union County*, 32 Or LUBA 168 (1996), "Under ORS 215.296(1), the county may not assume from an absence of information in the record that there are no adverse farm impacts. The burden is on the county to identify and explain why it believes there are no significant adverse impacts and why it believes the cost of accepted farm practices would not be increased" (LUBA Headnotes: Section 3.3.3). The Staff Planner has not determined there are adverse farm impacts. Staff has stated the application does not contain enough evidence that the subject property and proposed dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest. The applicant has not submitted an analysis for what farm and forest operations exist in the area.

*There is not enough evidence in the record to show the dwelling will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. The application does not meet the criterion.*

**Hearings Officer:** As discussed above, the information contained in the survey and record does not give the hearings officer sufficient facts about accepted farm or forest practices on other area properties. Without this information, the hearings officer may not conduct the analysis necessary to make a finding of compliance with this approval criterion.

**(4) The dwelling will not materially alter the stability of the overall land use pattern of the area.**

**Applicant:** The surrounding land use pattern is of smaller lots, 3 to 18 acres with a single-family residence and minimal agricultural use. The addition of a dwelling on this small parcel is in keeping with the land use pattern in this area and will not alter the stability in any way. This lot has traditionally had a single-family location dwelling on it there will be no changes of the land use.

**Staff:** Staff has put a copy of the Hearings Officer Decision for MC 6-98, dated July 20, 1998, and a copy of the Hearings Officer Decision for MC 4-99, dated June 2, 1999, in the

case file of CU 0-1. These two previous cases contain relevant history of the subject property.

Under MCC 11.15.8805, Restoration, Replacement or Abandonment of a Non-Conforming Use, the Hearings Officer for case file MC 4-99, provided extensive review of the site history of the subject property identified as 20537 NW Sauvie Island Road. The applicant request under MC 4-99 was to replace a mobile home that had been destroyed. As written by the Hearings Officer, "The Hearings Officer finds, taking the evidence as a whole, that it is more probable than not that the Homette mobile home did not exist on Tax Lot 24 until 1984-85 when it was "relocated" there pursuant to a 1984 permit issued by Multnomah County and that it remained there until it was removed after the April 20, 1997 windstorm damaged it. Because it was not on the property on August 20, 1997, the Hearings Officer finds that it was removed before August 20, 1997, not on October 15, 1997 as stated by the applicant. Consequently, the Hearings Officer concludes that the applicant has failed to prove that they established the mobile home on Tax Lot 24 before the County adopted EFU zoning in 1977."

The subject property has previously contained residential development (some not established legally). The site currently contains a mobile home that is not connected to services or utilities.

Under *Lett v. Yamhill County*, \_\_\_Or LUBA\_\_\_ (LUBA No. 97-008, October 15, 1997), slip op. 23, "A land use pattern stability analysis requires more than a simple tally of farm and nonfarm uses in the selected area, but without such a tally the stability analysis is impossible" (LUBA Headnotes: Section 3.3.3).

~~*Staff does not find evidence in the application submittal materials that the dwelling will not materially alter the stability of the overall land use pattern of area. The application does not meet the criterion.*~~

**Hearings Officer:** The applicant's survey of area parcels clearly shows that the area has an established pattern of residential development on very small parcels zoned EFU. A large number of these lots are being used for non-farm residential use. In some cases, it appears that farm dwelling approvals may have been obtained and the farm use abandoned (the overgrown Christmas tree farms). Even if these parcels were considered as farm parcels with farm dwellings, however, the area is still heavily populated with residences and structures and non-farm residences. In such a setting, one additional home will not change the stability of the existing pattern of residences on small to medium sized rural lots of a size typically found in a rural exceptions area. The hearings officer, therefore, finds that approval of this application will not materially alter the stability of the overall land use pattern of the area.

*As referenced above in MCCC 11.15.2012 (O)(1), the applicant must show compliance with the criteria of MCC 11.15.2010. Applicant and Staff narrative is included below.*

### **11.15.2010 Uses Permitted Under Prescribed Conditions**

**The following uses may be permitted when approved by the Planning Director. These decisions of the Planning Director may be appealed pursuant to MCC 11.15.8290 through 11.15.8295. The procedures and forms for obtaining approval of a Use Permitted Under Prescribed Conditions shall be as provided by the Planning Director.**

**(F) A single family heritage tract dwelling may be allowed on land not identified as high-value farmland when:**

*[Amended 1999, Ord. 932 § III]*

**(1) The lot or parcel meets the following requirements:**

- (a) A deed or other instrument creating the lot or parcel was recorded with the Department of General Services, or was in recordable form prior to January 1, 1985; and**

**Applicant:** See Exhibits B and D.

Exhibit B: A copy of the Warranty Deed from book 930 pages 1784-85.

Exhibit #D: A copy each of three of the pages from Exhibit B: the Warranty Deed from book 930, pages 1784-85, and the file copy of the page from Multnomah County Assessment and Taxation (A & T).

**Staff:** Exhibit B includes several pages of property documents. First, the applicant includes a copy of the Warranty Deed from book 930 pages 1784-85. The deed lists Robert F. Lewis and Edith E. Lewis as the persons convey property to Robert C. Moar and Jane E. Moar. The deed is dated June 1, 1973. The applicant also submitted a copy of the file copy from Multnomah County Assessment and Taxation; it describes the legal description of the property. The applicant submitted a copy of the 1952 deed and a copy of the Warranty Deed from book 1553, page 304. Exhibit D includes pages already included in Exhibit B. The documents provided by the applicant substantiate that a deed or other instrument creating the lot or parcel was recorded with the Department of General Services, or was in recordable form prior to January 1, 1985.

*The application meets the criterion.*

- (b) The lot or parcel satisfies all applicable laws when the lot or parcel was created; and**

**Applicant:** See Exhibit C.

Exhibit C: The lot met the applicable laws when it was created in 1973, the area was F-2 at 2-acre minimum. See copies of deeds.

**Staff:** The applicant provided copies of deed documents, as described above, in subsection (a). The subject parcel was created in 1973 according to the applicant narrative. Zoning maps on file at Multnomah County's Land Use Planning office illustrate the subject property. Zoning at the time of the creation of the property was F-2, single-family residential.

*The application meets the criterion.*

- (c) The lot or parcel is held under the same ownership and which was acquired by the present owner prior to January 1, 1985; and**

**Applicant:** See Exhibit D.

Exhibit D: Same as Exhibit C.

**Staff:** The parcel or lot is held in the same ownership (Robert Moar) and was acquired by the present owner prior to January 1, 1985. In 1973, Robert and Jane Moar purchased the property. The records of Assessment and Taxation list Michael Moar and Robert Moar as the property owners of the subject property.

*The application meets the criterion.*

**(2) The tract on which the dwelling will be sited does not include a dwelling; and**

**Applicant:** See Exhibit E.

Exhibit E: A copy of the Multnomah County Assessment and Taxation printout from the "Catbird" system of the subject property. The printout is dated January 3, 2000. It shows a year built date of "0" for the property. It also shows the property is in farm deferral.

**Staff:** The definition of *tract* is "one or more contiguous lots or parcels in the same ownership" according to MCC 11.15.2005(I).

The subject property is a tract. Exhibit E is a copy of the Multnomah County Assessment and Taxation printout from the "Catbird" system of the subject property. The printout is dated January 3, 2000. It shows a year built date of "0" for the property. It also shows the property is in farm deferral. It should be noted that just because the A & T system lists a year built date of "0" for the property, it does not necessarily indicate the property does not include a dwelling.

In this case, at the time the applicant submitted the Conditional Use application, CU 0-1, two dwellings existed on the subject property. Staff visited the site on February 9, 2000. Photos from the visit are attached to this Staff Report as Exhibits #4, #5 and #6. The applicants, Michael Moar and Robert Moar, each resided in a dwelling unit. The portion of the submitted site plan labeled "tear down and rebuild as dwelling" was used as a residence. The residence was constructed illegally inside of an existing farm structure. Michael Moar has now vacated the residence in the farm structure. The portion of the site plan labeled "dwelling site, existing mobile home" was used as a residence for Robert Moar. The mobile home remains on the subject property but it has been disconnected from services and utilities. The septic tank has been dug out on the site according to Michael Moar.

As for considering the site vacant, that can't be stated without a caveat. The caveat is that there is a structure, the mobile home, on the site. Exhibit #1 shows the location of the "dwelling site, existing mobile home" on the property. What the applicant has stated is that the mobile home is no longer connected to the services and utilities necessary for an operational residence. Thus, the applicant writes his narrative as if the subject property is vacant. In addition, the applicant cites the property description document from the Assessment and Taxation's "Catbird" system as evidence of the property being vacant. See also Staff comments under subsection (2) of this criterion MCC 11.15.2010(F).

According to MCC 11.15.9052(B), "No application for use or development of land shall be approved for a site which is subject to an enforcement action pursuant to the provisions of

this section. A permit for the use or development of land may only be issued if it is necessary to correct the land use violation contained in this Notice of Violation." Staff has been working with the applicant throughout the application review process with the goal of resolving the violations on the subject property (ZV 98-04).

Staff has already made findings of non-compliance with the criteria under MCC 11.15.2012(O). Should the applicant be able to provide ~~eee~~ evidence the criteria of MCC 11.15.2012(O) have been met, it would be possible to approve the case only if the violations of ZV 98-04 would be resolved through the approval. Staff has included a set of recommended Conditions of Approval for the case if it can be determined that the case can be approved.

Staff makes the finding that there is a dwelling on the subject property, the mobile home. The mobile home is not connected to services and utilities but it is a residence on the subject property. It was not lawfully established. This unit would have to be removed from the property prior to building permit sign-off.

*The application does not meet the criterion as the tract on which the dwelling would be sited already contains a dwelling.*

**Hearings Officer:** The applicant's existing dwelling would need to be removed from the property prior to the issuance of a building permit for the new dwelling proposed in this application.

**(3) The proposed dwelling is not prohibited by, and will comply with, the requirements of the Comprehensive Plan, land use regulations, and other provisions of law; and**

**Applicant:** See Exhibit F.

Exhibit F: We have gone over the Comprehensive Plan Policies. The proposed dwelling will comply with the comprehensive plan and land use regulations and other provisions of law. The building plans will be submitted to the county and city planning and development review. See also Exhibits R, S, T, U, V, 1, 2, 3, and 4.

**Staff:** See the Staff comments in the Comprehensive Plan Policies portion of this Staff Report. Staff has addressed each of the applicable Comprehensive Plan Policies.

*The application meets the criterion.*

**(4) The lot or parcel on which the dwelling will be sited does not lie within an area designated by the Comprehensive Plan as a Big Game habitat area; and**

**Applicant:** See Exhibit G.

Exhibit G: The lot or parcel is not in a big game designated area.

**Staff:** According to the maps on file at Multnomah County's Land Use Planning office the subject property is not part of the Big Game Habitat Area.

*The application meets the criterion.*



- (5) The lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single parcel when the dwelling is allowed; and**

**Applicant:** See Exhibit H.

Exhibit H: This has been done in 1952/ 1973 the parcel in which the dwelling will be sited, is from a tract and that is a single parcel now Tax lot (8) (sic). A copy of the file paper from A & T was included from the applicant; the paper shows the legal description of the property with the book and page citation. The applicant also included a map with labels "Tax Lot 8" and "Tax Lot 24".

**Staff:** A copy of the file paper from A & T was included from the applicant; the paper shows the legal description of the property with the book and page citation. The applicant also included a map with labels "Tax Lot 8" and "Tax Lot 24". As stated earlier in the Staff Report, the subject property is considered a tract.

*The criterion is not applicable to the application.*

- (6) The County Assessor shall be notified when the permit is approved.**

**Applicant:** See Exhibit I.

Exhibit I: The County Assessor will be notified when the permit is approved. All so this lot is presently designated as 2 acres in farm deferral and 1 acre as a home site by the County Assessor's office, do to being an existing dwelling site (sic).

**Staff:** The applicant provides conflicting narrative statements. In his response to this criterion, he says the property is "an existing dwelling site" and has farm deferral status with A & T. In his response to subsection (2), the applicant stated that the site was vacant. The applicant referred to a copy of the Multnomah County Assessment and Taxation printout from the "Catbird" system of the subject property. The printout is dated January 3, 2000. It shows a year built date of "0" for the property. Both of the applicants lived on the site, in two separate dwellings (the farm structure and the mobile home) previous to this application for a single-family heritage tract dwelling. In the narrative from Michael Moar, submitted on March 24, 2000, the applicant states the "My father now resides in a 12 ft travel trailer off the site." Also, the applicant states, "I have taken the apartment out and moved off the site."

*The application will meet the criterion. See also Condition of Approval #6.*

- (7) Approval of the dwelling would not:**

- (a) Exceed the facilities and service capabilities of the area; and**

**Applicant:** See Exhibit J.

Exhibit J: Service provider letters approving the dwelling will not exceed the facilities or capabilities of the area. See next pages. Copies of the following forms are included: Certification of Private On-Site Sewage Disposal, Police Services Review, School District Review, Fire District Review, and Certification of Water Service.

**Staff:** The applicant has provided the required Service Provider forms as listed above. Both of the applicants lived on the site, in two separate dwellings (the farm structure and the mobile home) previous to this application for a single-family heritage tract dwelling. In the narrative from Michael Moar, submitted on March 24, 2000, the applicant states the "My father now resides in a 12 ft travel trailer off the site." Also, the applicant states, "I have taken the apartment out and moved off the site."

The applicant's previous fully operational residences on the site provide evidence that the subject property has facilities and services capabilities for water, on-site sewage disposal, police, fire, and communication. The mobile home remains on the site as shown on the submitted site plan dated revised March 24, 2000. The applicant states that the sewage, water, and power have all been disconnected from the mobile home. In addition, the apartment has been dismantled (the interior portion of the farm structure is no longer a residence). Neither of the previously sited residences (one dismantled and one disconnected) were located on the site legally.

As for considering the site vacant, that can't be stated without a caveat. The caveat is that there is a structure, the mobile home, on the site. Exhibit #1 shows the location of the "dwelling site, existing mobile home" on the property. What the applicant has stated is that the mobile home is no longer connected to the services and utilities necessary for an operational residence. Thus, the applicant writes his narrative as if the subject property is vacant. In addition, the applicant cites the property description document from the Assessment and Taxation's "Catbird" system as evidence of the property being vacant. See also Staff comments under subsection (2) of this criterion MCC 11.15.2010(F).

*Staff finds that locating a single-family heritage tract dwelling will not exceed the facilities and service capabilities of the area. The application meets the criterion.*

**(b) Materially alter the stability of the overall land use pattern of the area; and**

**Applicant:** See Exhibit K.

Exhibit K: This area is largely composed of small (2-18) acre lots with homes the proposed dwelling will not alter the stability of the area in any way (sic). The new dwelling will be placed in a existing area of the lot (see plot plan) the stability of the land will remain the same (sic).

See next page showing the lots that have houses. See plot plan for where the dwelling will be placed. See air photos.

**Staff:** The applicant has submitted a map, based on an Assessment and Taxation map that illustrates property. The applicant's map shows the subject property and it also indicates the location of the houses on adjacent properties. This map is attached as Exhibit #3. Staff has used the records of the Multnomah County Assessment and Taxation system in conjunction with the Land Use Planning Geographical Information System (GIS) to confirm there are houses located on the properties identified by the applicant's site plan. Staff visited the subject property on February 9, 2000.

~~Almost all of the adjacent properties identified on the applicant's map, attached as Exhibit #3, contain houses. As was noted in subsection (a), the applicant's proposal will not exceed the facilities and service capabilities of the area. As noted in MCC 11.15.2012(O)(4), the applicant has not provided evidence to show the dwelling will not materially alter the stability of the overall land use pattern of the area. This is essentially the same criterion as MCC 11.15.2012(O)(4). Therefore, Staff makes the same findings, Staff does not find evidence in the application submittal materials that the dwelling will not materially alter the stability of the overall land use pattern of area. The application does not meet the criterion.~~

**Hearings Officer:** The hearings officer has determined, earlier in this application, that the approval of the dwelling application will not materially alter the stability of the land based on new evidence provided to her by the applicants following the close of the May 2000 land use hearing.

**(c) Create conditions or circumstances that are found to be contrary to the purpose or intent of the Comprehensive Plan or MCC 11.15.**

**Applicant:** See Exhibit L.

Exhibit L: The proposed dwelling is not contrary to the purpose or the intent of the Comprehensive Plan or MCC 11.15. MCC 11.15.202 (sic) states "that the purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open spaces, to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the county and to establish criteria and standards for farm use and related and compatible uses which are deemed appropriate."

This lot consists of 2 acres which are actually farmed and one acre which has traditionally supported a stand of old cedar trees and a dwelling and a mobile home that was removed. Allowing another dwelling on the property, especially in the existing area, will not change the use of the land and is consistent with the purposes of this section of the MCC 11.15.

**Staff:** Staff has provided comments in response to the Comprehensive Plan Policies identified within this Staff Report. Staff has reviewed the applicant's proposed development and the Comprehensive Plan Policies.

*The application for a single-family heritage tract dwelling on high-value farmland does not create conditions or circumstances that are contrary to the purpose or intent of the Comprehensive Plan or MCC 11.15. The application meets the criterion.*

**(8) For purposes of this subsection, and of dwellings considered under MCC 11.15.2012 (O) and (P), the following definitions apply;**

- (a) Owner includes a person who acquired the lot or parcel by devise or intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.**
- (b) Date of Creation and Existence. When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the date of the reconfiguration is**

**the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.**

**Applicant:** Definitions only.

**Staff:** The definitions of *owner* and *date of creation and existence* are applicable to this Conditional Use application for a single-family heritage tract dwelling. The applicant has submitted a Conditional Use application, CU 0-1, with a request listed under MCC 11.15.2012 (O) for "a single-family heritage dwelling... on high-value farmland."

The submitted application materials provide evidence that the *owner* of the subject property, as defined above, was Robert Moar prior to January 1, 1985. According to the copy of the Warranty Deed (Book 930 Page 1784-5), Robert and Jane Moar purchased the subject property on June 1, 1973.

The *date of creation and existence* for the subject property is prior to November 4, 1993. According to the records submitted by the applicant and verified by Staff Planner research, the subject property was deeded out of Tax Lot 8 in 1973. The subject property has retained its 3.00-acres size and same shape since 1973. According to the printout from the A & T "Catbird" system, the subject property is currently owned by Robert Moar and Michael Moar. See also MCC 11.15. xxxx for additional comments on the ownership /creation/ legal size and shape...

*The definitions of owner and date of creation and existence are applicable to the application and the application meets the criterion.*

#### **11.15.2014 Accessory Uses**

**The uses or structures incidental and accessory to the uses permitted under MCC .2008 through .2012 are:**

- (A) Structures such as garages, carports, studios, pergolas, private workshops, barns, loafing sheds, storage buildings, greenhouses or similar structures, whether attached or detached, when in accordance with the yard requirements of this district;**

**Staff:** The applicant site plan attached as Exhibit #1 illustrates the existing greenhouse on the subject property. The applicant plans to retain the greenhouse on the site. The applicant plans to retain the existing farm structures shown on the site plan. The farm structures and the greenhouse are accessory structures. The applicant plans to "tear down and rebuild as dwelling" the structure (shown as attached to the farm structures) as shown on the site plan. Also, the mobile home that is located on the property (it is disconnected from services and facilities) will be removed from the site prior to building permit. See the Recommended Conditions of Approval if the application, CU 0-1, is approved.

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#### **11.15.2016 Dimensional Requirements**

- (A) Except as provided in MCC .2018, the minimum lot size for new parcels shall be 80 acres in the EFU district.**

**Staff:** The subject property identified as 20537 NW Sauvie Island Road is less than the 80-acre

minimum lot size of the EFU district. Staff has provided comments under MCC 11.15.2018.

\*\*\*

**(C) Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The applicant’s proposed location for the single-family heritage tract dwelling on high-value farmland is shown on the site plan attached as Exhibit #1. The building labeled “tear down and rebuild as dwelling” meets the required front, rear, and side yard setbacks for the EFU zone as shown on the submitted site plan.

\*\*\*

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The applicant does not propose to construct a barn, silo, windmill, antennae, chimney or other similar structure as described by subsection (E). The applicant’s proposed development is a single-family heritage tract dwelling on high-value farmland as has been described throughout this Staff Report for CU 0-1.

**11.15.2018 Lot, Parcel and Tract Requirement**

**(A) The Lot, Parcel and Tract requirement shall be applied to all uses in this district except for Single Family Heritage Tract Dwellings: MCC 11.15.2010(F), MCC 11.15.2012(O) or MCC 11.15.2012(P). For the purposes of this district, a lot, parcel or tract is defined as:**

*[Amended 1999, Ord. 932 § III]*

**Staff:** As established by the Code provision, this criterion is not applicable to the single-family heritage tract dwellings in MCC 11.15.2010(F) and MCC 11.15.2012(O). Therefore, the criterion is not applicable to this application, CU 0-1, for the request to have a single-family heritage tract dwelling on high-value farmland on the subject property.

**Conditional Uses (CU)**

**11.15.7105 Purposes**

**Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.**

**11.15.7110 General Provisions**

**(A) Application for approval of a Conditional Use shall be made in the manner provided in**

**MCC .8205 through .8280.**

**Staff:** The applicant submitted the application for the Conditional Use on January 25, 2000 in the appropriate manner established by the Multnomah County Code.

- (B) The Approval Authority shall hold a public hearing on each application for a Conditional Use, modification thereof, time extension or reinstatement of a revoked permit.**

**Staff:** The application for CU 0-1 will be reviewed by the Hearings Officer at a public hearing on May 17, 2000 at the Multnomah County Land Use Planning offices.

- (C) Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:**

- (1) The project is completed as approved, or**
- (2) The Approval Authority establishes an expiration date in excess of the two year period, or**
- (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:**
  - (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.**
  - (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:**
    - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and**
    - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).**

**Staff:** Subsection (C) of Section .7110 is established as Condition of Approval #2.

- (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.**

**Staff:** The Staff Report will be available seven days in advance of the scheduled public hearing, as required. The notice of the public hearing was mailed May 4, 2000.

- (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.**

*[Amended 1990, Ord. 643 § 2]*

- (D) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.

**Staff:** The applicant is responsible for implementing the development proposal as presented and approved. Development is subject to the rules in place at the time of application submittal or building permit review.

- (E) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC .7120 and in the district provisions.

**Staff:** The above criteria are included as informational.

#### 11.15.7115 Conditions and Restrictions

Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335, the approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

**Staff:** Staff has included Conditions of Approval within this Staff Report.

#### 11.15.7120 Conditional Use Approval Criteria

*As stated above in MCC 11.15.2012(O), the Conditional Use Approval Criteria do not apply.*

\*\*\*

#### 11.15.7127 Design Review Exemption

Exempted from the Design Review criteria of MCC .7805 through .7870(A), include:

- (A) Single family residences.

**Staff:** The applicant's proposal is to construct a single-family heritage tract dwelling on high-value farmland on the subject parcel. The applicant's proposal is illustrated on the site plan attached as Exhibit #1. The site plan illustrates the existing and proposed structures.

*The application is exempt from the Design Review application.*

### Interpretations, Violations, and Enforcement

#### 11.15.9052 Violations and Enforcement

**Any use of land in violation of any provision of MCC 11.15, MCC 11.45, MCC 9.10 and MCC 9.40 or the terms and conditions of any permit issued under those code provisions by a person shall be subject to penalties as provided by MCC 11.15.9053.**

*[Amended 1998, Ord. 905 § II; Amended 1998, Ord. 908 § III]*

\*\*\*

**(B) Compliance Required**

**No application for use or development of land shall be approved for a site which is subject to an enforcement action pursuant to the provisions of this section. A permit for the use or development of land may only be issued if it is necessary to correct the land use violation contained in the Notice of Violation.** *[Amended 1998, Ord. 908 § III]*

**Staff:** In the decision written by the Hearings Officer for MC 4-99, the Hearings Officer wrote that the County mailed a Notice of Zoning Violation (ZV 98-04) to the property owners on February 12, 1998. Within the letter, the County Code Enforcement Staff cited that "the County has no records of approving an accessory structure, use of an accessory structure as a single family dwelling or use of travel trailers for dwellings."

Based on the application material in case file MC 4-99, the Hearings Officer made the following findings: "the mobile home does not qualify as a non-conforming use. They have not proved that it ever qualified as a nonconforming use. Nevertheless, even if it did, its nonconforming status was lost when they lawfully relocated it in 1984 under the EFU code. In addition, the property is subject to an enforcement action because there is an unauthorized structure and unauthorized residential uses of travel trailers occurring on the lot. The application, even if it were approved, does not correct those land violations and pursuant to MCC 11.15.9052 has to be denied."

Based on the Staff site visit on February 9, 2000 and the applicant's written and verbal application information, the subject property does not contain travel trailers. The subject property contains a mobile home (as shown on the site plan). The mobile home is not connected to services and facilities and is not currently used as a residence. In addition, the use of the farm structure as a residence has stopped. The applicant/ property owner, Michael Moar, has moved off the subject property. In addition, the structure has been altered (the interior) to render it a non-dwelling. According to the applicant, during a Staff/ applicant phone conversation on May 3, 2000, the structure is used for storage.

Staff has worked with the applicant to resolve the zoning violation. The applicant has not provided evidence, as stated throughout this report, of the compliance with the requirements of MCC 11.15.2012(O) for the placement of a single-family heritage tract on the high-value farmland site. The application for the CU 0-1 could be approved, if the criteria are met, as the approval is an option to close the Zoning Violation case, ZV 98-04.

*The application could meet the criterion.*

**Comprehensive Plan Policies**

**POLICY 13 Air, Water and Noise Quality**



**Multnomah County, recognizing that the health, safety, welfare, and quality of life of its citizens may be adversely affected by air, water and noise pollution, supports efforts to improve air and water quality and to reduce noise levels. Therefore, it is Multnomah County's policy to:**

- A. Cooperate with private citizens, businesses, utilities and public agencies to maintain and improve the quality of air and water, and to reduce noise pollution in Multnomah County.**
- B. Support and participate in the implementation of state and regional plans and programs to reduce pollution levels.**
- C. Maintain healthful air quality levels in the regional airshed, to maintain healthful ground and surface water resources, and to prevent or reduce excessive sound levels while balancing social and economic needs in Multnomah County.**
- D. Discourage the development of noise-sensitive uses in areas of high noise impact.**

**Staff:** The air, water, and noise impacts will be those impacts typically associated with a single-family dwelling. Staff finds the impacts to air, noise, and water quality from the single-family dwelling as minimal.

## **POLICY 14 Developmental 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:**

**A. Slopes exceeding 20%;**

**Staff:** The Soil Survey of Multnomah County, OR identifies one soil type on the subject parcel; Burlington fine sandy loam, 0 to 8 percent slopes (6B). The soil type is identified as a high-value farmland soil type in Multnomah County. The soil type does not have a slope exceeding 20%.

**B. Severe soil erosion potential;**

**Staff:** The Soil Survey lists the erosion potential of Burlington fine sandy loam as slight.

**C. Land within the 100 year flood plain;**

**Applicant:** This property is not within the 100 year floodplain nor is it in the drainage hazard area as designated on the FEMA map #.

**Staff:** The Flood Insurance Rate Map (FIRM) from the Federal Emergency Management Agency (FEMA) for the subject property is Community Panel #410179-0040B. The FIRM shows the property is not in the 100-year floodplain. A copy of this map is in the case file for CU 0-1.

**D. A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**

**Staff:** The Soil Survey of Multnomah County, OR does not list a seasonal water table for soil type 6B. The available water capacity is 7 to 8 inches and the water-supplying capacity is 17 to 20 inches.

**E. A fragipan less than 30 inches from the surface;**

**Staff:** The Soil Survey of Multnomah County, OR states, "Typically, the surface layer is very dark grayish brown and dark brown sandy loam about 12 inches thick. The substratum is dark brown and dark yellowish brown loamy fine sand to a depth of 60 inches or more." Fragipan depth is not listed.

**F. Land subject to slumping, earth slides or movement.**

**Staff:** The Soil Survey states that cut banks and excavations are not stable and are subject to slumping for soil type 6B.

**Hearings Officer:** Staff findings show that if this application is approved by the Board on appeal, if the matter is appealed, that the requirements of this policy should be addressed. The property is clearly an area with development limitations and the policy requires the County to direct development away from this type of area. It may be that the County might find that this policy does not apply in quasi-judicial proceedings or that it applies but does not prevent development when the entire parcel contains lands with development limitations. The latter approach is possible if the County interprets the policy to say that an applicant must put new development on parts of a lot that do not have development limitations but does not authorize or require a prohibition on development on land with development limitations.

## **POLICY 37** Utilities

**The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

### **Water and Disposal System**

**A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or**

**Applicant:** There are no public sewer and water services on Sauvie Island.

**Staff:** No public sewer or water service systems are available to the residents of Sauvie Island.

**B. The proposed use can 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**

**Applicant:** There is no public water system on Sauvie Island. A land feasibility study has been done to determine the suitability of the soils and other factors to the site, the city planning and development and DEQ will approve a on site sewage system after we get approval from the county planning and zoning (sic). See Exhibit R.

Exhibit R: A letter from Robert Moar and Michael Moar to Multnomah County Land Use Planning, dated March 20, 2000, regarding the water and septic systems for the subject property. The applicants provide the following narrative.

We have adequate water from a well on site, the water has been tested and is very good.

The sewage disposal system that is on the site now does not have a permit it was put in by a licensed sewage contractor in 1984 now we find out that the contractor didn't get a permit it is his job to get a permit as being a contractor in the state of OR, it is the contractors responsibility to get a permit, so now we are going to take care of this (sic). We are having the contractor remove the system. We have applied for a land feasibility study to determine the suitability of the soils and other factors of the land. The soil was tested by Jason Abraham city of portland Environmental Soils Specialist (sic). The soil was found adequate for a subsurface sewage disposal system on the site, we are waiting for multnomah county planning to give land use approval.

The water run-off will be handled on the site, it will run into a 100 ft drain field see map, this system will be adequate and work well in this type of soil (sic).

A copy of the applicants' application to the City of Portland for a land and soils test (Land Feasibility Study or LFS) on the subject property. The application includes a site map that indicates the "test pits" for the land and soils test.

**Staff:** The applicant will install a private water system and a subsurface sewage disposal system. Please see Staff comments in subsection (C).

**C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or**

**Applicant:** The site has a adequate private water system (sic). See Exhibit S. DEQ will approve a subsurface disposal system on site. See Exhibit R.

Exhibit R: Described in subsection (B).

Exhibit S: A copy of the Water Well Report.

**Staff:** The applicant has submitted a copy of the Water Well Report for the subject property. The well report includes the "pumping test/ drawdown test," the "customer water analysis," and the "water test results". Based on this report, it appears the water is available to the site and is adequate for the single-family residential purposes. On the applicant's submitted copy of the Certification of Water, the applicant wrote that water would be available at 60 gallons per minute (GPM).

**D. There is an adequate private water system and a public sewer with adequate capacity.**

**Applicant:** The site has a adequate water system (sic). See Exhibit S. There is no public sewer system on Sauvie Island.

**Staff:** Exhibit S was described in subsection (C) above. The applicant property will have a private water system and a private subsurface sewage disposal system. No public sewer or public water services are available to the residents of Sauvie Island.

**Drainage**

**E. There is adequate capacity in the storm water system to handle the run-off; or**

**Applicant:** The system will have adequate capacity to handle the storm water, we will use a dray well system to handle the water run-off. See Exhibit T.

Exhibit T: A copy of the "Water and Disposal System Drainage and Storm Water Run-Off" site plan.

**Staff:** A copy of the "Water and Disposal System Drainage and Storm Water Run-Off" site plan is attached to this Staff Report as Exhibit #2. The site plan shows the location of the sewage disposal system, the stormwater run-off, the private well water, and the building site. The applicant has stated the system has adequate capacity to handle the stormwater run-off. However, the applicant has not provided calculations or other information to substantiate the claim that the system is adequate for the property. Staff will require the applicant to provide stormwater calculations and other information to substantiate the claim that the stormwater system is adequate to handle the run-off. This is included as Condition of Approval #5.

**F. The water run-off can be handled on the site or adequate provisions can be made; and**

**Applicant:** The water will be handled on site, the system will be installed to meet city or county codes. See Exhibit T.

**Staff:** Exhibit T was described in subsection (E). The applicant again states the stormwater run-off will be handled by the proposed system. Staff will require the applicant to substantiate these claims by submitting stormwater calculations and other information. See also Condition of Approval #5.

**G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands.**

**Applicant:** The water run-off will be handled on the site and will not affect the adjoining lands. There are no streams, ponds, and lakes that will be affected.

**Staff:** The subject property does not contain streams, ponds, or lakes. The applicant has repeatedly stated that the stormwater run-off will be handled by the proposed system. Staff has required the applicant to provide additional information to substantiate these claims. See also Condition of Approval #5.

**Energy and Communications**

**H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**

**Applicant:** The site has adequate energy supply to it now, from PGE. See Exhibit U.

Exhibit U: A copy of a letter from Lyle Truax at Portland General Electric (PGE). The letter states, "Portland General Electric is the serving electric utility at the above address. PGE has adequate capacity to serve your electrical needs. There may be some costs to you to have the appropriate equipment installed."

**Staff:** Electric service is available to the site.

**I. Communications facilities are available.**

**Applicant:** The site has communications facilities, from US West.

Exhibit V: A copy of the "Residence Credit Certificate" from US West Communications.

**Staff:** Communication facilities are available to the subject property.

**Furthermore, the County's policy is to continue cooperation with the Department of Environmental Quality for the development and implementation of a groundwater quality plan to meet the needs of the County.**

## **POLICY 38 Facilities**

**The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

### **School**

**A. The appropriate school district has had an opportunity to review and comment on the proposal.**

**Applicant:** The appropriate school district has had an opportunity to review and comment on the proposal. See Exhibit #1.

Exhibit #1: A copy of a letter from Sam Olson, Secretary of Sauvie Island School.

**Staff:** The applicant's letter from Sam Olson of the Sauvie Island School states, "Sauvie Island School has had the opportunity to review the land use proposal brought to us by Mike and Robert Moar. We have no objection to this proposal."

### **Fire Protection**

**B. There is adequate water pressure and flow for fire fighting purposes; and**

**C. The appropriate fire district has had an opportunity to review and comment on the proposal.**

**Applicant:** There is adequate water pressure and flow for fire fighting purposes and the appropriate fire district has had an opportunity to review and comment on the proposal. See Exhibit #2.

Exhibit#2: A copy of the letter from Don Posvar, Sauvie Island Fire District #30 Chief, to Mike Moar and Robert Moar, dated March 6, 2000.

**Staff:** The applicant's letter shows the appropriate fire district reviewed the applicant's proposed development. The applicant also submitted a copy of the Fire District Review form.

### **Police Protection**

**D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.**

**Applicant:** The proposal can receive adequate local policy protection in accordance with the standards of the jurisdiction providing police protection. See Exhibit #4.

Exhibit #4: Not included.

**Staff:** The applicant provided completed copies of the Police Services Review form, signed by the Multnomah County Sheriff's Office.

### **Appeal to the Board of County Commissioners:**

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. A timely appeal must be filed with the County Land Use Planning Division within the time frame provided by law. An Appeal requires a completed "Notice of Review" form and a fee of \$500.00 submitted to the Land Use Planning office. If you wish to obtain a copy of the transcript of the initial hearing (s), the fee is \$3.50 - per - minute [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Land Use Planning office at 1600 SE 190<sup>th</sup> Ave, Portland, OR 97223, or you may contact the Land Use Planning office at (503)-988-3043, for additional information.

**Dated this 16th day of August 2000.**

**Liz Fancher**  
**Multnomah County Hearings Officer**

**Case File: CU 0-1**

**Location:** Tax Lot 24, Section 7, Township 2N, Range 1W, WM.

**Application Timeline:**

Pre-Application Conference: October 28, 1998.

Application received with full fees: January 25, 2000.

Application incomplete letter mailed: February 25, 2000.

Determination that application is complete: March 24, 2000.

**Begin “120 day timeline” on March 24, 2000.**

**Notice of a Public Hearing (mailed): May 4, 2000.**

Staff Report available: May 10, 2000.

Public Hearing before Hearings Officer: May 17, 2000. **DAY 55**

**List of Exhibits:**

**List A: Staff/ Applicant Exhibits:**

1. Applicant site plan (reduced copy) showing dwelling location.
2. Applicant site plan "Water and Disposal System Drainage and Storm Water Run-off".
3. Applicant site plan showing dwelling locations on surrounding properties.
4. Staff site visit photos illustrating the site and the mobile home.
5. Staff site visit photos illustrating the farm structure and former residence in the farm structure.
6. Staff site visit photos illustrating the farm structure and the adjacent property.
7. Aerial photograph of the subject property printed from the Multnomah County GIS.

**List B: Notification Information:**

1. “Complete Application” Letter, dated May 3, 2000, 3 pages.
2. Notice of Hearing, dated May 4, 2000, 4 pages.
3. Completed Copy of the Affidavit of Posting, dated May 8, 2000, 1 page.

**List C: Multnomah County Documents**

1. Staff Report – May 10, 2000

**List D: Documents Submitted at or following the May 17, 2000 Public Hearing:**

1. Mike Moar's fax to Staff requesting additional time for the case, dated June 16, 2000. (2 pages)
2. Mike Moar's supplemental packet of information regarding farm uses on the surrounding properties , dated July 21, 2000.