



**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 0-8  
**Hearings Officer:** Liz Fancher  
**Hearing Date:** November 15, 2000

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**PROPOSAL:** A request for approval of a Conditional Use (CU) for a Template Dwelling on the subject property

**LOCATION:** (address to be determined) SE Trout Creek Road  
T1S, R5E, Section 17, Tax Lot 24.  
R#99517-0240.

<b>APPLICANT</b>	Bruce Vincent	<b>PROPERTY</b>	Jay Hinrichs
<b>REPRESENTATIVE:</b>	Bedsaul/Vincent Consulting, LLC 825 NE 20 <sup>th</sup> Avenue, Suite 300 Portland, OR 97232	<b>OWNER:</b>	Cedar Mountain LLC 3570 SW 178 <sup>th</sup> Ave Beaverton, OR 97006

**ZONING:** The site is located in the Commercial Forestry Use (CFU-4) zone.

### **HEARINGS OFFICER DECISION:**

**APPROVAL** of the Conditional Use application for an MCC 11.ES.2052 (A)(3)(c) Template Dwelling in the CFU-4 zoning district, subject to the following conditions of approval:

### **CONDITIONS OF APPROVAL:**

*Note: The items listed as submittal requirements prior to issuance of building permits shall be provided to the Staff Planner assigned to CU 0-8 (Tricia Sears).*

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. The GEC Permit will be required only for areas of soil or earth disturbance not

covered under the Oregon Department of Forestry (ODF) permit. A GEC permit, if required, shall be obtained prior to the commencement of any of the activities governed by the County's GEC code provisions.

2. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
3. Prior to issuance of building permits, a forest stocking survey shall be submitted in accordance with the procedures and provisions of MCC 11.ES.2052 (A)(6).
4. Prior to issuance of building permits, provide verification that the proposed driveway from the public road to the home has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW. [MCC 11.ES.2074 (D).] That verification shall be from a qualified professional engineer accompanied by sufficiently detailed maps, cross sections, and profiles.
5. Prior to the issuance of building permits, a well report shall be submitted demonstrating compliance with MCC 11.ES.2074 (C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
6. Prior to issuance of building permits, and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.ES.2074 (A)(5).
7. Prior to issuance of building permits, the applicant shall submit, in accordance with MCC 11.ES.2052 (A)(8), to the Division of Records, a completed statement that the owner and successor in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. Forms are available at the Land Use Planning Counter at Multnomah County.
8. At the time of issuance of building permits, the applicant shall provide a site plan, drawn to scale, that illustrates the building footprint of the house and garage. In addition, the site plan shall include the location of the primary and secondary fire safety setbacks as measured from the dwelling. Primary and secondary fire safety setbacks, as required by County code, shall be maintained during the life of the use approved by this permit. The site plan shall include the location and type of erosion control measures to be installed on the property. The applicant shall also provide elevation drawings, drawn to scale, of the proposed house and garage.
9. The applicant shall provide photo documentation or call for inspection to ensure the erosion control measures have been installed on the property prior to commencement of work on the proposed development.

10. Prior to issuance of building permits, the applicant shall obtain a driveway permit and comply with requirements of the Multnomah County Right-of-Way Division. Contact Alan Young at (503)-988-3582 for information.
11. In accordance with the provisions of MCC 11.ES.2074 (A)(5)(b), the access shall meet the driveway standards of MCC 11.ES.2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source. In addition, the property owner shall provide documentation that the fire district has approved the driveway access to the residence.
12. Prior to issuance of building permits the property owner shall provide documentation from the City of Portland that the existing Land Feasibility Study, LFS 107-84, remains valid for the subject property and the proposed development.
13. **Approval of this Conditional Use shall expire two years from the date of the Board Order unless** “substantial construction” has taken place in accordance with MCC 11.15.7110 (C) or the subject proposal is completed as approved.

#### **APPROVAL CRITERIA:**

#### **ZONING ORDINANCE REQUIREMENTS:**

MCC 11.ES.2042 et seq. – Commercial Forest Use (CFU-4)  
MCC 11.15.7105 et seq. - Conditional Uses (CU)

#### **COMPREHENSIVE PLAN POLICIES:**

- 11 Commercial Forest Land
- 13 Air, Water and Noise Quality
- 14 Developmental Limitations
- 22 Energy Conservation
- 37 Utilities
- 38 Facilities

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

*Formatting Note:* The findings and conclusions in this decision were prepared using the findings and conclusions proposed by the Applicant and County staff. The decision set forth the applicable approval criteria contain in the Multnomah County Code and provides findings and conclusions of law that demonstrate compliance with the applicable criteria. Multnomah County Code requirements are referenced using a bold font. Planning Staff comments are identified as **Staff** and applicant comments are identified by **Applicant**. Staff's analysis follows the written applicant responses and includes a conclusionary statement of findings in *italic*. The hearings officer's findings and conclusions follow those provided by Staff and are **headed Hearings**

**Officer.** All findings and conclusions are adopted as findings of the hearings officer unless marked otherwise by strikeout text.

**Staff:** *The applicant submitted a narrative on August 4, 2000 that included these general statements. Additional comments are found in response to the specific criteria.*

**Applicant:**

The applicant requests establishment of a single-family dwelling under the template test dwelling criteria in the CFU-4 zone.

The subject site and the lots included within the 160-Acre Template Dwelling area were created before February 20, 1990. All lots meet the applicable standards as set forth in MCC 11.ES.2062. As required by MCC 11.ES.2052(3), there are least all or part of eleven lots within the 160-Acre template, and five dwellings within that template area existed on January 1, 1993. ~~Specifically, there are nine dwellings and all or part of 18 parcels within the 160-Acre Template Dwelling area that meet the criteria as set forth in MCC 11.ES.2052(3). (See Attachment "A", "B", and "C" - Fidelity Title/ Multiple Listing Service Information, copy of 1986 Tax Lot Map and site plan based on Multnomah County GIS aerial photo).~~

The site has been predominately used for forest practices. ~~(See Attachment "C".)~~ The site was logged in 1999 and Douglas Fir regeneration is part of the forest management plan for the site. The site will be replanted in the Fall of 2000.

Access to the parcel will be provided by the use of a 15' wide, proposed private driveway that will intersect with SE Trout Creek Road. ~~(See Attachment "H".)~~

The north branch of Trout Creek is approximately 200' south of the southerly border of the subject site. ~~(See Attachments "G" and "H".)~~

**Staff:**

**Proposed Development and Site Characteristics:**

~~See also the description of the property under "Recommended Hearings Officer Decision."~~ The subject parcel fronts Trout Creek Road for over 400 feet according to the Assessment and Taxation map on file at the Land Use Planning office (1S 5E Section 17, Tax Lot 24).

One land use card is on file at the Multnomah County Land Use Planning office for the subject property; it is identified as case file PRE 11-84 for Tax Lots 24, 32, 33, and 36.

The property owner, with Bruce Vincent as the representative, filed the Conditional Use application on August 4, 2000. The application was deemed complete on October 10, 2000. Staff visited the site on October 27, 2000. A list of exhibits is attached within this Staff Report.

**Protected Streams:**

The site is near Trout Creek North Branch, designated as a significant stream in the East of Sandy River Rural Area Plan. Trout Creek North Branch does not run through the subject property. In accordance with the East of Sandy River Rural Area Plan, Policy 21, new residential development is prohibited within “150 feet of a stream centerline” of a protected stream and “new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area” are limited. Note, “All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year.” The inventory and analysis of wildlife habitat and streams in the East of Sandy River Rural Area can be found in the East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, completed in June 1995.

#### Lot of Record:

As the parcel does not satisfy the minimum lot size of the CFU-4 zone, (A)(2) is the applicable criteria of 11.ES.2062 Lot of Record.

#### Hillside Development Permit:

The Multnomah County Slope Hazard Map includes a portion of the subject parcel. Based on the Applicant's submitted site plan, the location of the proposed dwelling is not within the mapped hazard area nor does the Applicant propose to locate a driveway in the mapped hazard area. Therefore, the Applicant's proposed development as described herein, does not require a Hillside Development permit.

#### Forest Practices:

The subject property is zoned Commercial Forest Use (CFU-4). Staff notes the criteria of MCC 11.15.2052 (A)(6) and (A)(8) are specifically related to forest practice activities.

#### Site Plan Details and Elevation Drawings:

The Applicant's submitted site plan illustrates the area of a "house yard" at 90' x 90'. The site plan includes the location of the primary (30 feet) and secondary (100 feet) fire safety zones, the well, and the driveway. At the time of building permits, the applicant shall demonstrate on a site plan, the location of the primary and secondary fire safety zones as measured from the dwelling.

### **Applicable Multnomah County Code Provisions and Comprehensive Plan Policies**

#### **Multnomah County Code**

#### **Commercial Forest Use (CFU-4)**

#### **11.ES.2042 Purposes**

**The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11,**

**Commercial Forest Land, the Commercial Forest Use policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.**

*[Amended 1992, Ord. 743 § 2 and Amended 1996, Ord. 859 § II]*

**Applicant:** In part, the primary purposes of the Commercial Forest Use District is to conserve and protect land for continued commercial forest uses, and conserve and protect watersheds. The site was logged in the Spring, and will be replanted in the Fall of 2000 with Douglas Fir, a commercial timber species. Despite the presence of a future dwelling on the subject site, there will still be 8-9 acres of timberland for future harvest of timber. The dwelling site is not located within the riparian area of the north branch of Trout Creek. Therefore, any future forest practices carried out in accordance with Forest Practice Rules should not substantially impact the water quality and thus help to conserve and protect the watershed. Based on the evidence presented above, the proposed use complies with the purpose of the CFU-4 zone.

**Staff:** The replanting of the subject property is in keeping with a potential for future commercial forest activities. Replanting is in keeping with the intent of these Code provisions to conserve and protect designated lands, and with the intent of protecting watersheds and wildlife habitat areas. The proposal as described above by the Applicant, will entail 1 to 2 acres of the 10.02-acre property and leave 8 to 9 acres of the property in timberland. The remaining land could be used for commercial forest activities. The siting of the dwelling is such that, it will minimize potential hazards or damage from fire, pollution, erosion, and urban development.

*The application meets the criterion.*

## **11.ES.2050 Conditional Uses**

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

\* \* \*

**(B) A Template Dwelling pursuant to the provisions of MCC .2052 (A), .2053 (B) and .2074.**

**Applicant:** According to this criterion, a Template Dwelling pursuant to the applicable provisions of MCC .2052 (A), .2053 (B), and .2074 is permitted as a Conditional Use in the CFU-4 zone. The following responses to the applicable standards mentioned above will substantiate that the request complies with the Template Dwelling standards. The applicant will address the applicable Conditional Use criteria later in this application statement.

**Staff:** See Staff comments and findings in MCC 11.ES.2052 (A), MCC 11.ES.2053 (B), and MCC 11.ES.2074.

*The application meets the criterion.*

\* \* \*

## 11.ES.2052 Template and Heritage Tract Dwellings

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

- (1) The lot or lots in the tract shall meet the lot of record standards of MCC .2062(A) or (E), and (B) and have been lawfully created prior to January 25, 1990;

**Applicant:** According to this criterion, the subject site shall meet the Lot of Record standards as set forth in MCC .2062 (A), or (E) and (B), and have been lawfully created prior to 1/25/90. According to MCC 11.ES.2062 (2) a Lot of Record is a parcel of land that met all applicable laws when the parcels were created, and had a deed recorded with Multnomah County prior to 2/20/90. The applicant has included a copy of the chain of title for the subject site showing that Tax Lot 1500 (formerly Tax Lot 24), was created on 10/22/70. (See Attachment "A" - Chain of Title for Subject Site). At that time, the former owner, (Herbert Roeser), owned Tax Lots 32, 33, and 36. All three tax lots were conveyed to Roeser in October of 1973, therefore the current 10.02-acre parcel has been under the same ownership since at least 1973. County tax records show that in 1993, and again in 1994, Tax Lots 24, 32, 33, and 36 were re-consolidated into a 10.02-acre Tax Lot 24 (now Tax Lot 1500). ~~Therefore, based on the evidence presented above, the subject ownership qualifies as a Lot of Record as defined under MCC 11.ES.2062(2).~~

**Staff:** As described in MCC 11.ES.2062(A)(2), Staff finds the subject property is a lot of record. The subject property was lawfully created prior to January 25, 1990. Therefore, the subject property is eligible for the Template Dwelling application.

*The application meets the criterion.*

**Hearings Officer:** The land division history of the area (discussed in detail below in the section that addresses the lawful lot status of lots within the template) that includes the subject property shows that the subject property consists of Lot 24, a parcel that was found to have been lawfully created as a 6.12-acre lot in 1970. The applicant has failed to establish that Lots 32, 33 and 36 were legally created as separate lots. The applicant's uncontested evidence, however, explains that all three lots were deeded to Mr. Roeser in October 1973. At that time, the minimum lot size in the F2 zone was two acres and none of the three lots was 2 acres or larger in size yet the aggregate size of the three parcels (just less than 4 acres) met the minimum lot size for the F2 zone. As it was legal to create a single parcel of this size, the hearings officer finds that the conveyance of these lots to Mr. Roeser in 1974 effectively

created one legal lot of approximately 4 acres in size.<sup>1</sup> This lot (Tax Lots 32, 33 and 36) was consolidated, by the Tax Assessor, with Lot 24 in 1993. The merger of these lots is also required by the state and local approval standards for this lot of record dwelling application as all are owned by the same person at this time.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075, as applicable;**

**Applicant:** This criterion requires that the tract of land shall be of sufficient size to accommodate siting the dwelling in accordance with the Development Standards for Dwellings and Structures as set forth in MCC 11.15.ES.2074. Responses to the applicable standards in MCC 11.ES.2074 will be presented later in this application narrative.

This criterion also requires that the dwelling have a minimum yard of 60' to the centerline of Trout Creek road, and 130' deep yards to all other property lines. As shown on the enclosed site plan, the proposed dwelling site is 100 feet from the centerline of Trout Creek Road, and at least 130' from adjacent properties. Therefore, the proposal complies with the setback requirements of this criterion.

**Staff:** The building envelope is more than 60 feet from the centerline of Trout Creek Road (front setback), and 130 feet from all other property lines.

*The application meets the criterion.*

- (3) The tract shall meet the following standards:**

\* \* \*

- (c) The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

- (i) The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**

- (ii) At least five dwellings lawfully existed on January 1, 1993 within the**

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<sup>1</sup> The lawful lot status of this area of the property is addressed because the consolidation process does not involve a land use review and because the County's code requires that the lots that make up the tract be lawfully created. If Lots 32, 33 and 36 were illegally created they could not have been lawfully merged into Lot 24 as they were created from Lot 16 and a lot line adjustment between Lots 16 and 24 would be needed to lawfully add the illegal lots to Lot 24.



### 160-acre square.

**Applicant:** According to this criterion, if the tract of land is composed primarily of soils capable of producing 85 cubic feet of Douglas Fir timber/ac/yr., then the subject site and at least all of part of 11 lawfully created lots within a 160-acre square must have existed on 1/1/93. Additionally, at least five dwellings lawfully existed within the 160-acre square on 1/1/93.

According to the information provided by the Planning Staff, and County GIS information, the following soils are located on the subject ownership: (See Attachment "D" & "E" - Soils Productivity Data and Soils Map.)

1. Aschoff cobbly loam 3D      5% to 30% slopes
2. Cazadero silty clay loam 9B      0% to 8% slopes
3. Cazadero silty clay loam 9E      30% to 60% slopes

The Cazadero soil group predominates on this site, and it has a potential of 145-165 cf./ac/yr. Aschoff cobbly loam has a potential of 124-140 cf./ac/yr. Therefore, based on the on-site soil types and their productivity, there must be all of part of 11 lawfully created lots and at least five dwellings within the 160 acre square. ~~An enclosed site plan shows that the site and at least all of part of 11 lawfully created lots and five dwellings exist within the 160-acre template square (See Attachment "C".) An enclosed portion of a 1986 tax lot map shows that the site, at least all of part of 11 lawfully created lots and five dwellings exist within the 160-acre template square. (See Attachment "B".) Based on the evidence presented above, the proposal complies with MCC 11.ES.2052 (A)(3)(c).~~

**Staff:** The Applicant has correctly identified the soil types of the subject property. According to the "Soils Unit Symbols and Names, Productivity Ratings and Classifications for Douglas Fir Yields" list attached as Exhibit #5, all three of the soil types exceed a production level of 85 cf/ac/yr. With a productivity level of 85 cf/ac/yr or more, the Applicant's burden is to demonstrate compliance with the above standards. The standard is to demonstrate that, "The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines and at least existed on January 1, 1993 within the 160-acre five dwellings lawfully square."

Staff uses the pin test method to determine the center of the center of the subject tract and thus measures the 160-acre square from this center. The pin test has been used in several cases previous to this application, to identify the center of the center of the subject tract. In CU 9-98, the Land Use Board of Appeals (LUBA) upheld the County's method of determining the center of the

center of the subject tract. See Carson Linker, Petitioner, vs. Multnomah County, Respondent, in LUBA No. 99-182, in which LUBA affirmed the County's decision to deny the application for a template dwelling (dated May 24, 2000). LUBA found, "...the record indicates that the 'pin' test, when applied correctly, will establish the center point."

Staff made and used a cardboard replica of the shape of the subject property for the pin test. During the Pre-Application Meeting on October 27, 1999, Staff performed this test with the Applicant of the Pre-Application.

The Applicant Representative for CU 0-8, Bruce Vincent of Bedsaul/ Vincent Consulting, has provided a map illustrating the center of the subject property and the proposed 90' x 90' building envelope. This map is attached as Exhibit #2. The center of the subject property on the Applicant's map is marked, "Center of 160 A template square."

Staff reviewed the land use and zoning maps on file at the Multnomah County Land Use Planning office. Staff also reviewed the tax cards, building cards, and land use cards for the subject property and the eleven (11) adjacent properties identified by the Applicant as part of the 160-acre square. Staff also used these documents to review the subject properties the Applicant identified as having five (5) legally established dwellings. Both the lots and the dwellings had to be lawfully created prior to January 1, 1993.

The subject property (R#99517-0240) is currently listed at 10.02 acres. The tax card from the Multnomah County Assessment and Taxation office shows that in 1993, the Tax Lots identified as 32, 33, and 36 (see the copy of the excerpt of the 1986 Dwelling Inventory map in the case file) were consolidated into Tax Lot 24. Prior to the consolidation in 1993, Tax Lot 24 was 6.12 acres in size. The consolidation of the Tax Lots altered the configuration of the property. The tax card describes the five existing deeds (a consolidation had occurred previously to the 1993 consolidation) that entail the legal description for Tax Lot 24. ~~Based on review of the maps on file at Multnomah County, the Tax Lots 32, 33, and 36, were lawfully established prior to the consolidation with Tax Lot 24. The consolidation process did not alter the ability of this Tax Lot, 24, to meet the standard of being lawfully established by January 1, 1993. It could be noted here that if Tax Lots 32, 33, and 36 had remained as separate tax lots, and were owned by the same person or entity that owns Tax Lot 24, the County would require the lots to be consolidated as part of the Template Dwelling application process. See also Staff comments under MCC 11.ES.2062 (A)(2), Lot of Record, and the Applicant comment in MCC 11.ES.2052(A)(1).~~

The Applicant has identified the twelve (12) following properties as within (at least partially) the 160-acre square (including the subject property) and has

identified more than five (5) dwellings as within the 160-acre square (these houses are marked by \* below). See Exhibit #2 attached to this Staff Report.

<u>Property</u>	<u>Year Built (if applicable)</u>
R#99517-0240 (subject property)	vacant (land)
R#99517-0310	1973 (house and land)*
R#99517-0180	1974 (house and land)*
R#99517-0280	1973 (house and land)*
R#99517-0300	1974 (house and land)*
R#99517-0160	1970 (house and land)*
R#99517-0170	1991 (house and land)*
R#99517-0250	(house not within sq.) (land)
R#99517-0370	1991 (house and land)*
R#99517-0340	1978 (house and land)*
R#99517-0510	(house not within sq.)(land)
R#99517-0230	(vacant according to A & T)(land)

*The subject property and the adjacent properties within the 160-acre template dwelling square, meet the standard of having been lawfully established prior to January 1, 1993. In addition, the five (5) houses identified by the Applicant as within the 160-acre template dwelling square meet the standards as having been lawfully established prior to January 1, 1993. Therefore, the application meets the criterion and is hence eligible for a Template Dwelling in accordance with the applicable Multnomah County Code and Comprehensive Plan provisions.*

**Hearings Officer:** County records show that, in the 1970s, the County questioned the legality of the lots in area of the subject property. At the time, the County required subdivision approval whenever a landowner created four or more lots from a single piece of property. According to County records, four or more lots, including the subject property, were created out of a single large tract of land owned under a single ownership in 1968. The County established two case files regarding the division of this one large tract (M 34-72 and M 53-73) and concluded that the numerous new lots were created by unregulated partitions, rather than by subdivisions. At the time, it was lawful to partition property (create three or fewer lots from a single property) without County approval. The County first required such approval in 1978 when it adopted a partition ordinance.

In Case M34-72<sup>2</sup> an “Application for Subdivision” was filed on June 8, 1972 to approve the creation of “Tax Lots 25, 17, 26, 23, 22, 27, 18, 28, 30, 16 & 24.” This

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<sup>2</sup> This case file contains nothing to establish that a subdivision plat was ever recorded for this property. Instead, contrary to evidence submitted by Mr. Vincent and discussions between the hearings officer and Ms. Sears at the November 15, 2000 hearing, it appears that no subdivision was approved. Rather, it appears that the County made findings in a memorandum that the parceling activity was not a subdivision. If the matter was not a subdivision it would not have required County land use approval.

application was, apparently, filed in response to a claim by the County's Department of Assessment and Taxation that the property had been subdivided. A June 9, 1972 letter from Irv Ewen, Planning Section to T. Douglas Cowley, Zoning Supervisor for Multnomah County determined that "the parceling activity which has taken place since 1968 does not yet constitute subdividing." Mr. Ewen stated, however, that the creation of Tax Lot 18 "appears to be a zoning violation" because the F2 zone imposed a two-acre minimum lot size and the lot is only 1.98 acres in size.

Mr. Ewen also questioned the lawfulness of the creation of Tax Lot 28 (as well as Tax Lot 28) by asking whether Planning Commission approval of the access to Tax Lots 18 and 28 had been approved by the Planning Commission. As there is no evidence in the record to suggest that this easement issue was addressed and this easement provides the only access to the lot, the hearing officer has inadequate information upon which to conclude that either Lot 18 or 28 was lawfully created.

The 1972 Ewen letter provides substantial evidence that all lots listed in the June 1972 application were lawfully created and in existence as of 1972:

- |           |                               |
|-----------|-------------------------------|
| 1. Lot 25 | 5.13 acres                    |
| 2. Lot 17 | 6.35 acres                    |
| 3. Lot 26 | 4.58 acres                    |
| 4. Lot 23 | 6.72 acres                    |
| 5. Lot 22 | 7.02 acres                    |
| 6. Lot 27 | 2.00 acres                    |
| 7. Lot 30 | 2.11 acres                    |
| 8. Lot 16 | 14.14 acres                   |
| 9. Lot 24 | 6.12 acres (subject property) |

In M-53-73,<sup>3</sup> the County and State again questioned the legality of the divisions of land that occurred on the above properties. After much discussion, a letter was sent to the State of Oregon stating that the land divisions were exempt from County subdivision regulations. At the time, one additional lot had been created and was impliedly found to have been lawfully divided. This lot was Tax Lot 31, a lot that had been created by a deed that excised it from Tax Lot 22 in 1972.

At some time after 1972 and before 1979, that three narrow, substandard lots were created from what was Lot 16. These three lots were all smaller than the two-acre minimum lot size of the F2 zone. This makes their creation unlawful. This illegal lot creation was corrected in 1993 when the substandard lots were consolidated by

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<sup>3</sup> While there is some evidence in the record from Mr. Vincent and from hearings discussions between Ms. Sears and Ms. Fancher to indicate that this matter resulted in approval of a subdivision, the file materials provided to the hearings officer by Ms. Sears do not support that conclusion. The file shows that the County sent a letter to Real Estate Division of the Dept. of Commerce of the State of Oregon stating that the "property does not require a subdivision filing with our office." Additionally, there is no evidence in the record to show that a final plat of a subdivision was ever filed, the conclusive way to resolve any ambiguity regarding this issue.

Multnomah County and the property owner into Lot 24.

According to Ms. Sears, Tax Lot 37 was created, by deed, from Tax Lot 16 (referenced above) in 1969. This lot was not shown on maps that accompanied the lots reviewed by the County in 1972 and 1974. Ms. Sears, however, believes that this lot was lawfully created and there is no evidence or argument to the contrary in the record. As a result, the hearings officer will treat this lot as being lawfully created. The hearings officer also finds that Tax Lot 51 and Tax Lot 34 were legally created by deed, based upon the review and professional opinion of Ms. Sears. The 1.33-acre Tax Lot 39 was not treated as a lawful lot by the hearings officer as there is no evidence to establish that it was lawfully created, there is evidence to suggest it was created when the lot size requirement was 2 acres and the parcel is only 1.33-acres in size.

*The hearings officer's findings establish that there are at least 11 lawfully created lots, in whole or part, within the 160-acre square template.*

The hearings officer's findings that Tax Lots 18 and 28 have not been shown to have been lawfully created requires the hearings officer to disqualify the homes on those lots from the count of lawfully established dwellings located within the template. The template map (Attachment F of the application) relied on these two lots and the two dwellings on these lots to establish compliance with the template test. Yet, as the applicant showed that there are at least 8 lawfully established dwellings within the template, the subtraction of two is immaterial. The total number of lawfully established dwellings within the template is at least six, one more dwelling than the five required by the template test.

*There are at least 5 lawfully established dwellings within the template.*

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

**(e) There is no other dwelling on the tract,**

**(f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**

**(g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**Staff:** No other lots exist in this tract. No additional dwellings are proposed. No future dwellings, except those provided for in the Multnomah County Code, can be established.

*The application meets the criterion.*

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

**Applicant:** No lots in the 160-acre template square are within any urban growth boundary, and there are no other dwellings on the tract, therefore the proposal complies with the above-stated criteria.

**Staff:** The subject property is outside of the Metropolitan Urban Growth Boundary. No other lots of the tract may be used to qualify for the siting of a dwelling.

*The application meets the criterion.*

- (4) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

**Applicant:** According to information provided by staff, the subject site is outside of a big game wintering habitat area. (See Attachment "G".) Therefore, the proposed dwelling site will also be outside of a big game wintering habitat in compliance with this criterion.

**Staff:** According to the East of Sandy River Map of Significant Streams and Wildlife Habitat, the dwelling will be located outside of the significant stream and wildlife habitat areas. According to the Big Game Wildlife Habitat Map, the dwelling will be located outside the big game wildlife habitat area. The Applicant provided excerpts of these maps to illustrate the location of the subject property on the respective maps.

*The application meets the criterion.*

\* \* \*

- (6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:**

**(a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**

**(b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The**

assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

- (c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

**Applicant:** As previously stated, the site has been predominantly used for forest uses. The site was logged in 1999 and Douglas Fir regeneration is part of the forest management plan for the site. The site will be replanted in the Fall of 2000.

**Staff:** Condition of Approval #14 requires the property owner to submit a stocking survey report to the County assessor as required by this criterion.

*The application will meet the criterion as established by these provisions and the Conditions of Approval.*

- (7) **The dwelling meets the applicable development standards of MCC .2074;**

**Staff:** See the Applicant and Staff comments under MCC 11.ES.2074.

- (8) **A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

**Staff:** This requirement is established under Condition of Approval #7.

*The application will meet the criterion.*

\* \* \*

#### **11.ES.2053 Use Compatibility Standards**

\*\*\*

- (B) **Single family dwellings as specified in MCC .2050 (A), (B) and (C) may be allowed upon a finding that they will not significantly impact open space, public facilities, wildlife habitat, and rural community character.**

**Staff:** Staff findings that the single-family dwelling proposed with this application will not significantly impact open space, public facilities, wildlife habitat, and rural community character are supported throughout this Staff Report. Specifically, see the findings of MCC 11.15. 7105 et seq. and the Comprehensive Plan Policies 11, 13, 14, 22,

37, and 38 for open space; Comprehensive Plan Policies, 11, 13, 14, 22, 37, and 38 for public facilities, MCC 11.ES.2052(A)(4) for wildlife habitat, and MCC 11.15.7105 et seq. for rural community character.

*The application meets the criterion in that the proposed single-family dwelling will not significantly impact open space, public facilities, wildlife habitat, and rural community character as demonstrated within this Staff Report.*

#### **11.ES.2058 Dimensional Requirements**

**(A) Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.**

**Staff:** See Staff comments under MCC 11.ES.2062, the Lot of Record standards. See also the findings under MCC 11.ES.2052 (A) for the Template Dwelling criteria.

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



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

**Frontage on County**

**Maintained Road**

**Other Side**

**Rear**

**60 from centerline**

**130**

**130**

**130**

**Maximum Structure Height - 35 feet**

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

**Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.ES.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.ES.2074 (A)(5)(c)(ii).**

**Applicant:** As shown on Attachment "H", the proposed dwelling site will have a 100' setback from the centerline of Trout Creek Road, a 130' setback from the westerly side yard, a 230' setback from the easterly side yard, and a 700' rear yard setback. Based on the proposed setbacks, the dwelling location complies with MCC 11.ES.2058(C). The owner has not decided on an exact building plan/ footprint layout for a proposed dwelling, but instead has provided a 90' x 90' building envelope/ yard area layout which indicates the location of a future building. However, any future dwelling on the subject site will not exceed the maximum height of 35'.

**Staff:** Under Condition of Approval #8, prior to issuance of building permits, the Applicant is required to provide elevation drawings of the north, west, east, and south faces, drawn to scale, of the proposed single-family dwelling. In addition, the Applicant is required to provide a site plan, drawn to scale, that illustrates the footprint of the house in relationship to the property lines of the subject property. The Applicant should also illustrate the location and type of erosion control measures on the site plan. As demonstrated on the Applicant's site plan, the 90' x 90' area meets the required setbacks for the front, rear, and side yards. The building envelope presented by the Applicant is shown in Exhibit #1 attached to this Staff Report.

*The application meets the criterion and these standards will be verified in accordance with the Condition of Approval #8.*

**(E) 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 this ordinance.**

**Applicant:** As shown on Attachment "F", Trout Creek Road has a 60" wide ROW at this location. Therefore, there is sufficient right-of-way width to serve the area.

**Staff:** According to Alan Young of the Multnomah County Right-of-Way Division, the Applicant will be required to obtain a driveway permit. Mr. Young can be reached at (503)-988-3582. Driveway and fire district standards are located in MCC 11.ES.2074.

*The application meets the criterion. Under Condition of Approval #10, prior to the issuance of building permits, the applicant is required to obtain a driveway permit from the Right-of Way Division.*

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

**Applicant:** There are no accessory structures such as barns, silos, antennae included as part of this proposal that will exceed the maximum structure height of 35'. Therefore, the proposal complies with this criterion.

**Staff:** The Applicant does not propose any of the structures listed within this criterion.

*The criterion is not applicable to the proposed development.*

**(G) Yards for the alteration, replacement or restoration of dwellings under MCC .2048 (D), .2048 (E) and .2049 (B) need not satisfy the development standards of MCC .2074 if originally legally established to a lesser standard than that required by MCC .2074, but in no case shall they be less than those originally established.**

**Applicant:** This application is for the eventual construction of a new dwelling, and is not for an alteration, replacement or restoration of a dwelling. Therefore, this criterion is not applicable to this request.

**Staff:** Staff agrees with the Applicant.

*The criterion is not applicable to the proposed development.*

\*\*\*

**11.ES.2062 Lot of Record**

**(A) For the purposes of this district, a Lot of Record is**

\* \* \*

**(2) A parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**

- (b) Which satisfied all applicable laws when the parcel was created;**
- (c) Does not meet the minimum lot size requirements of MCC .2058; and**
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or**

**Staff:** According to the records of Multnomah County Assessment and Taxation (A & T), the property is 10.02 acres. The applicant provided a copy of the tax card for Tax Lot 24, on file at the Assessment and Taxation office. As of 1971, the balance of Tax Lot 24 was 6.12 acres. This was in accordance with the zoning at the time, F-2, which had a minimum lot size of 2 acres. This created the parcel in recordable form prior to February 20, 1990. In 1993, Tax Lots 32, 33, and 36 were consolidated into Tax Lot 24, resulting in the current configuration of Tax Lot 24. The property is not contiguous to another substandard parcel or parcels under the same ownership. The subject property is thus considered a Lot of Record under MCC 11.ES.2062 (A)(2). See also the Staff and Applicant comments under MCC 11.ES.2052 (A)(1) and MCC 11.ES.2052 (A)(3).

*The application meets the criterion.*

\* \* \*

**(B) For the purposes of this subsection:**

- (1) 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;**
- (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and**
- (3) Same Ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.**

*[Amended and Renumbered 1990, Ord. 643 § 2]*

\* \* \*

**11.ES.2074 Development Standards for Dwellings and Structures**

**Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following: *[Amended 1996, Ord. 859***

**§ II]**

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

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);**
- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**  
***[Amended 1996, Ord. 859 § II]***

**Applicant:** This response is for (A) (1) and (A) (2).

An on-site analysis will evaluate the significance of any potential impacts imposed by the proposed dwelling. The test area is identified as the tax lots immediately north, south, east, and west of the subject parcel. These adjacent parcels are Tax Lots 100, 1100, 1600, 200 and 300. (Note: The tax lots listed in this analysis carry the newer State ID listing. Many of the enclosures are based on older maps with older tax lot ID.) The lots consist of forestlands and single-family dwellings. Forest management practices may eventually be pursued north, south, east and west of the subject site.

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

**North & West of the site**

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

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

The impacts associated with the single-family dwelling will include landscape

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

#### **EAST AND SOUTH OF THE SITE**

##### **Tax Lots 200 and 300 Map IS5E 16, Tax Lot 1600 Map 1S5E 17**

Tax Lots 200, 300 and 1600 are located east and south of Tax Lot 1500. According to Jay Hinrichs, and based on aerial photographic evidence, all lots function as timber parcels. There are no dwellings on any of these parcels. Land use activities on these parcels consist of forest management practices for timber acreage. Typical forest management harvest practices involving manual pre-commercial thinning, manual pruning, mechanical thinning, clearcutting, or slash disposal may occur in the future. Any serious conflicts occurring as a result of logging activities or slash disposal, will be reduced by the setback distances specified in the site plan and as recommended by State Forestry Planning Notes 1 and 2.

The impacts associated with the single-family dwelling will include landscape maintenance, occasional entertainment of guests, recreation activities outdoors, and raising of domestic pets (i.e. cats, dogs, etc.). These activities are anticipated to occur over the period of the dwellings' existence. A distance of 230' to the east, and 690' to the south, will exist between the proposed dwelling on Tax Lot 1500 and the potential forest activities on Tax Lots 200, 300 and 1600. These substantial distances, along with the dense vegetation, will contribute toward reducing or eliminating significant impacts generated by timber activities on Tax Lots 200, 300 and 1600.

## **SUMMARY**

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

Based on an analysis of land uses in the area noted above, the proposed set back separation distances, (400' to 690'), noted from the proposed dwelling location to various land uses in the area, area topographic features and existing vegetation buffers will reduce or eliminate any serious impacts to existing forest management land uses.

MCC 11.ES.2074 (A)(1) also requires that the proposed dwelling satisfy the minimum yard and setback requirements of MCC 11.ES.2058 (C) through (G). Those standards have already been addressed on page 6 of this application narrative.

**Staff:** The Applicant has provided a thorough analysis of the impact of the proposed residential development on the nearby adjoining forest and agricultural lands. Staff agrees with the Applicant's statements.

*Staff finds the development has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G). In addition, adverse impacts on forest operations and accepted farming practices on the tract will be minimized. The application meets the criterion.*

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

**Applicant:** According to the owner, the site was logged in the Spring of 2000. The enclosed aerial site plan enclosed with this application was photographed before the site was logged. The owner proposes to clear and construct the minimum acreage required for the driveway, drainfield, well, and dwelling. Because the site has been recently logged there already a cleared portion of the site for the proposed dwelling and driveway location. Therefore, a minimum amount of clearing will be required for construction of the new dwelling.

**Staff:** As established in subsection (1) and (2) above, the applicant's proposal minimizes adverse impacts to forest land. The amount of forest land used for the proposed development is minimal given the required setbacks. According to Multnomah County Assessment and Taxation Staff, approximately one-acre is typically designated as a home site within a property under forest deferral. The Applicant's proposal leaves eight (8) to nine (9) acres for forest management. The proposal to use one to two acres for the home site (dwelling and driveway) minimizes the amount of forest land used for the development.

*The application meets the criterion as Staff finds the amount of forest land used to*

*site the dwelling and the driveway is minimized given the required applicable setback standards.*

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

**Applicant:** As shown on the enclosed site plan, the proposed driveway will be approximately 100' long, therefore the driveway will not be in excess of 500' long. Based on the proposed driveway length, the proposal complies with this criterion.

**Staff:** The Applicant does not propose to have a driveway in excess of 500 feet in length.

*This criterion is not applicable to the application.*

- (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;**

*[Added 1996, Ord. 859 § II]*

**Applicant:** The applicant received a Fire District Review Letter from Multnomah Co, RFPD #14, (Corbett) stating that the site will be served by a "tanker shuffle" and "on-board" water. Therefore, the site is located on a tract within a fire protection district as required by this criterion.

**Staff:** The Applicant has provided a completed Fire District Review form signed by the Multnomah County Rural Fire District #14. The fire district stated, "We would need to approve driveway when, [or] before the structure is built. Water supply is supplied by on-board water, tender shuffle operation on larger fires." In addition, the Applicant is required to establish and maintain primary and secondary fire safety buffers in accordance with subsection (c) of this criterion.

*The fire district acknowledges the subject property is within its service district and establishes that service to the property can be provided. Therefore, Staff finds the criterion is met by the application.*

- (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 .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source; [Renumbered 1996, Ord. 859 § II]**

**Staff:** Based on the form from the comments from RFPD #14, the fire district can provide water to the site if access to the site is adequate. The fire district requested review of the driveway and under Condition of Approval #11, Staff requires the property owner or authorized representative to provide documentation that the access complies with fire district driveway standards. In addition, Condition of Approval #11 requires the property owner to provide permanent signs along the access route to indicate the location of the emergency water source.

*The application will meet the criterion.*

**(c) Maintenance of a primary and a secondary fire safety zone on the subject tract. [Renumbered and Amended 1996, Ord. 859 § II]**

**(i) 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.**

**(ii) 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:**

<b>Percent Slope In Feet</b>	<b><u>Distance</u></b>
<b>Less than 10</b>	<b>Not required</b>
<b>Less than 20</b>	<b>50</b>
<b>Less than 25</b>	<b>75</b>
<b>Less than 40</b>	<b>100</b>

**(iii) 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 11.ES.2058 (D) and .2075.**

**(iv) No requirement in (i), (ii), or (iii) 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

- (v) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**

**Applicant:** As shown on the enclosed site plan, there will be a 30' primary and 100' secondary fuel break around the proposed 90' X 90' dwelling and yard area. The dwelling will be located on slopes of less than 10%, as evidenced by the site plan that shows the dwelling location on the Cazadero 9B soil type. Grading of existing slopes for the dwelling and driveway will occur on slopes less than 10%. Excavation for any proposed dwellings will occur later. The site plan submitted with the application for a building permit would detail any proposed grading of the site at that time.

**Staff:** The Applicant site plan attached as Exhibit #1 illustrates the primary and secondary fire safety zones for the proposed development on the subject property. The property owner is required to establish and maintain the fire safety buffers under Condition of Approval #6.

*The application meets the criterion.*

- (d) The building site must have a slope less than 40 percent.**  
*[Renumbered 1996, Ord. 859 § II]*

**Staff:** Based on the soils maps on file with Multnomah County and the Soil Survey of Multnomah County, OR, the soil types on the subject property do not contain slopes of more than 40%. In addition, the building site slope does not exceed 40%. Staff walked the property on October 27, 2000 and found the area of the building envelope to be relatively flat.

*The application meets the criterion.*

**(B) The dwelling shall:**

- (1) Comply with the standards of the Uniform 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) [sic]**
- (4) Have a fire retardant roof; and [Added 1996, Ord. 859 § II]**

**(5) Have a spark arrestor on each chimney. [Added 1996, Ord. 859 § II]**

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

**Staff:** These standards have been established as Condition of Approval #2. The Applicant has stated the proposed development will meet the standards.

*The application will comply with the standards.*

**(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

**(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

*[Renumbered 1996, Ord. 859 § II]*

**(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.**

*[Added 1996, Ord. 859 § II]*

**Applicant:** The applicant proposed to dig a well at the location indicated on the site plan. The proposed domestic well will appropriate ground water in accordance with OAR 690, Division 11. The water source is not from a Class II stream. The proposed well is for domestic purposes and is exempt from the permitting requirements under OAR 537.545. The applicant will follow all

applicable Water Resources Department and Washington County standards for construction of the well, including a well log and well constructor's report.

**Staff:** The Applicant is required to submit a well report demonstrating compliance with the applicable standards of the State and Multnomah County. When the well report is received to the Land Use Planning office, notice of the well report will be sent as required. The Applicant submitted a Well Log Report that demonstrates the well type, water level, and yield (for example) of the wells on properties in the surrounding area. In addition, the Applicant provided a letter from Randy Stark of the Corbett Water District. Mr. Stark stated that the subject property is not within the Corbett Water District boundary and thus the district will not provide service to the property.

*The application will meet the criterion. See also Condition of Approval #5.*

**(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 1/2 the driveway length or 400 feet whichever is less.**

*[Amended and Renumbered 1992, Ord. 743 § 2]*

**Applicant:** The applicant proposed to construct a 100' long driveway that will support a minimum GVW weight of 52,000 lbs. In accordance with this criterion, the driveway will be an all-weather surface at least 12' in width. Given the shallow slope surrounding the dwelling, the road grade will not exceed 8%.

**Staff:** The Applicant is required to provide documentation, prior to issuance of building permits, that the driveway meets these standards. The Applicant site plan attached as Exhibit #1 illustrates the proposed location of the driveway.

*The application will meet the criterion. See also Condition of Approval #4.*

### **Conditional Use (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 application has been submitted by the applicant and the applicant representative in the manner required 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, CU 0-8, is to be reviewed by the Approval Authority at a public hearing scheduled for November 15, 2000.

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

#### **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.**

*[Amended 1990, Ord. 643 § 2]*

## **11.15.7120 Conditional Use Approval Criteria**

**(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:**

**(1) Is consistent with the character of the area;**

**Applicant:** The character of the area along Trout Creek Road is single family forest dwellings on lots ranging in size from 2 acres to 13 acres. Trout Creek Road dead ends into larger forest parcels close to the subject site. This application request, if approved, will result in the construction of a single family dwelling on a single lot of record, similar in character to other lots in the immediate vicinity. As evidenced by the enclosed aerial photo site plan, the proposed dwelling will be clustered among nine other dwelling along this section of Trout Creek Road. The proposal is consistent with the character of the area, given that the location of a dwelling on a small acreage forested parcel is a common pattern of development along Trout Creek Road.

**Staff:** Based on the Applicant narrative, Staff research, and the Staff site visit on October 27, 2000, Staff states there are a number of residences on forested properties along Trout Creek Road. Many of these properties were identified in the Staff analysis of compliance with the Template Dwelling criteria in MCC 11.ES.2052 (A)(3). The data from Assessment and Taxation revealed that several of those properties identified as within the 160-acre square contain houses constructed in the early 1970s. Some of the properties along Trout Creek Road are vacant land and some have been logged for the timber. Constructing a single-family dwelling, as the dwelling location has been described by the applicant within this report, will be in keeping with the rural, forest land character of the area.

*Staff finds the application meets the criterion.*

**(2) Will not adversely affect natural resources;**

**Applicant:** As previously stated, information provided by staff shows that the subject site is outside of a big game wintering habitat area. (See Attachment “G”) Therefore, the proposed dwelling site will not adversely effect the big game wintering habitat, especially since nine other dwelling and the presence of a rural road, (Trout Creek Road), have already established a pattern of residential use near the habitat area.

The site is located in a Commercial Forest zone, (CFU-4); therefore timber-related activities are permitted by right, and are assumed appropriate for the area. The owner must follow all applicable State Forestry regulations for the harvesting and planting of timber and stream bank protection. (OAR 629-56), Therefore, compliance with applicable Dept. of Forestry regulations will ensure that the off-site impacts from timber activities on the subject site will be minimized to the extent practicable.

Attachment H also shows the location of Cat Creek, Trout Creek, and the North Branch of Trout Creek relative to the subject site. As evidenced by that enclosure, the subject site is a significant distance from Cat Creek and Trout Creek. The northern edge of the North Branch of Trout Creek riparian area touches the southern edge of the subject site. However, the owner is required by State Forest Practices Rules to maintain a riparian management area 3 times the width of the stream course, which has been done on the subject site. (OAR Chapter 629-56-546) Compliance with the Forest Practice Rules ensures protection of the adjacent water resource. Based on the evidence presented above, the proposal complies with this criterion.

**Staff:** Based on the distance from the stream, the fact that the property is not located on the Big Game Wildlife Habitat map, and the fact that the property is has been recently logged, Staff finds the proposed development will not adversely affect natural resources.

*The application meets the criterion.*

**(3) Will not conflict with farm or forest uses in the area:**

- (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and**
- (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

**Applicant:** Determination of impact analysis area:

An on-site analysis will evaluate the significance of any potential impacts imposed by the proposed dwelling. The test area is identified as the tax lots immediately north, south, east and west of the subject parcel. These adjacent

parcels are Tax Lots 100, 1100, 1600, 200 and 300. (**Note:** The tax lots listed in this analysis carry the newer State ID listing. Many of the application enclosures are based on older maps with an older tax lot ID) The lots consist of forestlands and single family dwellings. Forest management practices may eventually be pursued north, south, east and west of the subject site.

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

#### **NORTH & WEST OF THE SITE**

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

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

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



dense vegetation, will contribute toward reducing or eliminating significant impacts generated by timber activities on Tax Lots 100, 1100 and 1400.

## **EAST AND SOUTH OF THE SITE**

### **Tax Lots 200 and 300 Map IS5E 16, Tax Lot 1600 Map 1S5E 17**

Tax Lots 200, 300 and 1600 are located east and south of Tax Lot 1500. According to Jay Hinrichs, and based on aerial photographic evidence, all lots function as timber parcels. There are no dwellings on any of these parcels. Land use activities on these parcels consist of forest management practices for timber acreage. Typical forest management harvest practices involving manual pre-commercial thinning, manual pruning, mechanical thinning, clearcutting, or slash disposal may occur in the future. Any serious conflicts occurring as a result of logging activities or slash disposal, will be reduced by the setback distances specified in the site plan and as recommended by State Forestry Planning Notes 1 and 2.

The impacts associated with the single-family dwelling will include landscape maintenance, occasional entertainment of guests, recreation activities outdoors, and raising of domestic pets (i.e. cats, dogs, etc.). These activities are anticipated to occur over the period of the dwellings' existence. A distance of 230' to the east, and 690' to the south, will exist between the proposed dwelling on Tax Lot 1500 and the potential forest activities on Tax Lots 200, 300 and 1600. These substantial distances, along with the dense vegetation, will contribute toward reducing or eliminating significant impacts generated by timber activities on Tax Lots 200, 300 and 1600.

## **SUMMARY**

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

Based on an analysis of land uses in the area noted above, the proposed set back separation distances, (400' to 690'), noted from the proposed dwelling location to various land uses in the area, area topographic features and existing vegetation buffers will reduce or eliminate any serious impacts to existing forest management land uses.

**Staff:** Staff made findings under MCC 11.ES.2074 (A) (1) and (2) that the proposed development would not adversely impact farm and forest land. See the comments under that criterion.

*The application meets the criterion.*

**(4) Will not require public services other than those existing or programmed for the area;**

**Applicant:** The applicant has provided Service Response Letters from the Multnomah County Sheriff, Corbett Fire District #14, Environmental Services, (Sanitary Sewer), and Corbett Water District. Sheriff, Fire and Environmental Services responded that services are adequate and/or can be provided on-site. The applicant will dig a well to provide domestic water. Therefore, based on the responses by public service providers, and the applicant's proposal, the request will not require public services other than those existing or programmed for the area.

**Staff:** The Applicant has provided the Fire District form, the Police Service form, the Certification of On-Site Sewage Disposal form, and a Certification of Water Service form. The Applicant has provided a water well log for properties in the area. Based on conversation with the Applicant representative, Bruce Bedsaul, the Applicant has provided this information to indicate the well water can be obtained on adjacent properties and is likely to be obtained on the subject property. The Certification of On-Site Sewage Disposal form references a Land Feasibility Study from 1984 (LFS 107-84). A copy of that study was not provided to Staff. Under Condition of Approval #12, Staff requires the property owner to re-verify the site the validity of LFS 107-84 with the City of Portland. Documentation of this verification shall be provided to Staff prior to issuance of building permits.

**(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

**Applicant:** As previously stated, information provided by staff shows that the subject site is outside of a big game wintering habitat area. (See Attachment "G") Therefore, the proposal complies with this criterion.

**Staff:** As stated under the findings of MCC 11.ES.2052(A)(4) the property is located outside the big game winter habitat area.

*The application meets the criterion.*

**(6) Will not create hazardous conditions; and**

**Applicant:** As shown on Attachment "H", the site contains a slope hazard area, delineated as a series of bolded and angled-lines that occupies the lower portion of the subject site. However, as shown on that same attachment, the proposed dwelling location will not be located in the above-mentioned slope hazard area. Therefore, the proposed development of a driveway and home site will be located outside of an area that could create a hazard due to soil erosion. The home site is not located near

the floodplain of the North Branch of Trout Creek; therefore, there is no danger of flooding the proposed dwelling. Based on the above-mentioned facts, the proposal complies with this criterion.

**Staff:** The Applicant has described the proposed home site is not within the floodplain of the North Branch of Trout Creek and that the development is outside of the Slope Hazard Area. Comprehensive Plan Policy #14, Developmental Limitations, also provides findings on soil type, slope, and other potential developmental limits of a property.

*The application meets the criterion.*

**(7) Will satisfy the applicable policies of the Comprehensive Plan.**

**Applicant:** According to the Pre-Application Conference Notes the applicant must address Comprehensive Plan Policies 11, (Commercial Forest Lands), Policy 13, (Air, Water and Noise Quality), Policy 14, (Development Limitations), Policy 22, (Energy Conservation), Policy 37, (Utilities), and Policy 38, (Facilities). The above-mentioned Comprehensive Plan Policies will be addressed in the following paragraphs.

**Staff:** The Comprehensive Plan Policies are addressed by the Applicant and Staff below in this Staff Report.

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**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 proposed development is not subject to a Design Review application.

**11.15.7130 Conditional Use Permit**

**A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.**

**11.15.7140 Conditional Uses Permitted**

**Except as otherwise provided in each district, the following conditional uses may be permitted in any district when approved under this Chapter.**

The uses listed as conditional uses within each district, subject to the findings, criteria and standards stated therein.

### **Comprehensive Plan Policies**

## **POLICY 11 Commercial Forest Land**

The County's policy is to designate and maintain as commercial forest land, areas which are:

- A. Predominantly in Forest Cubic Foot Site Class I, II, and III for Douglas Fir as classified by the U.S. Soil Conservation Service;**
- B. Suitable for commercial forest use and small woodlot management;**
- C. Potential reforestation areas, but not, at the present, used for commercial forestry;**
- D. Not impacted by urban services; and**
- E. Cohesive forest areas with large parcels; or**
- F. Other areas which are:**
  - 1. Necessary for watershed protection or are subject to landslides, erosion or slumping; or**
  - 2. Wildlife and fishery habitat areas, potential recreation areas, or of scenic significance.**

The County's policy is to allow forest management with related and compatible uses, but to restrict incompatible uses from the commercial forest land area, recognizing that the intent is to preserve the best forest lands from inappropriate and incompatible development.

**Applicant:** This policy strives to maintain commercial forestland that is predominately in productivity Site Class I, II and III for Douglas Fir as classified by the SCS. As previously stated, the Cazadero soil group predominates on this site, and it has a potential of 145-165 cf./ac/yr. (i.e. Site Class II) Therefore, the site is situated on soils capable of producing Douglas Fir at a Site Class Index that the County wants to maintain as productive forestland. The applicant has already stated that the site was logged in the Spring of 2000, thereby demonstrating that the site is suitable for small wood lot management. Urban services are limited to a rural roadway, with no public sanitary or waterlines; therefore, the surrounding area is not impacted by urban services. The County Sheriff patrols this area and a rural fire protection provides fire-fighting services. As shown on County tax maps and the enclosed aerial photo site plan, commercial forest tracts of 40 acres and larger are east and south of the site. These larger tracts form a cohesive forested area. The subject site and surrounding

dwelling are smaller 2 acre to 14-acre wood lot parcels that create a transition between non-forest uses and commercial forest uses.

The template dwelling tract process allows the siting of dwellings in areas that have an already established pattern of rural residential development within a 160-acre area surrounding the subject parcel. If this were not the case, the applicable criteria would not require at least 5 dwellings and at least 11 parcels within the template. The template dwelling tract process is allowed in the CFU-4 zone, and other forest zones in the County. Therefore, the County is permitting rural residential uses associated with forest management that are related and compatible, by allowing an applicant to meet the burden of proof for a template dwelling.

**Staff:** The Applicant has provided a detailed response regarding the compatibility of the proposed development with the forest land management standards. Recognizing that, "the County's policy is to allow forest management with related and compatible uses," and referencing the findings within this report, Staff has established that this proposed single-family residential dwelling is compatible with the forest management standards and is in keeping with forest land development.

## **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, if a land use proposal is a noise-sensitive use and is located in a noise-impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan: [Amended 1999, Ord. 933 § III]**

- 1. Building placement on the site in an area having minimal noise level disruptions.**
- 2. Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

*[Amended 1999, Ord. 933 § III]*

**Applicant:** If approved, this request will permit construction of a new dwelling adjacent to other similar dwellings. The spatial separation between the proposed new dwelling and existing forest practices on adjacent lands will be virtually the same as similarly sited dwellings on adjacent lots. Therefore, no significant noise impact will occur if the new dwelling is sited in virtually the same way as other existing dwellings. As evidenced by the enclosed aerial photo site plan, adjacent lots are surrounding by mature timber that will help to mitigate any noise impacts created by activities on the subject site. Additionally, the subject dwelling will be 400' from its neighbor to the west, and 300' south of its neighbor to the north. Therefore, the large spatial separation between dwellings will help to mitigate any noise impacts created by activities on the subject site. Over time, the newly planted

trees, and landscape plantings proposed for the new dwelling will lessen noise generation levels. Based on the facts presented above, the proposal complies with Policy 13.

**Staff:** The Applicant will comply with the standards of the Template Dwelling application and has demonstrated that the proposed development will not adversely affect the air, land, and noise quality of the subject property.

## **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%;**
- B. Severe soil erosion potential;**
- C. Land within the 100 year flood plain;**
- D. A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**
- E. A fragipan less than 30 inches from the surface;**
- F. Land subject to slumping, earth slides or movement.**

**Applicant:** Policy 14 lists six physical constraints that limit development and land form alterations:

- Slopes exceeding 20%
- Severe soil erosion potential
- Land within the 100-year floodplain
- High seasonal water table within 0"-2" of the surface for 3 or more weeks of the year, (e.g. wetland)
- A fragipan less than 30" from the surface
- Land subject to slumping, earth slides or movement

Based on a review of the past case files applicable to this site, and current information, there is no proposed development on the subject site that possesses one or more of the above-listed physical constraints. If none of the above-listed physical constraints is present, then the proposal complies with Policy 14.

**Staff:** Staff references the Soil Survey of Multnomah County, OR for these standards. The Soil Survey provided the following information. The three soil types are: Aschoff cobbly loam, 5 to 30 percent slopes (3D), the Cazadero silty clay loam, 0 to 8 percent (9B), and Cazadero silty clay loam, 30 to 60 percent (9E). In addition, under MCC 11.ES.2052 (A), the applicant provided detailed information regarding the soil types and characteristics of the site. By definition, soil types 3D and 9E have slopes over 20%. The hazard of erosion is moderate for 3D, slight for 9B, and high for 9E. The land within the 100 year floodplain would be along the North Branch of Trout Creek; the stream is located several hundred feet to the south of the proposed development. The Soil Survey did not specifically list the location of the water table; the potential for slumping, earth slides or movement; and the location of the fragipan for the three soil types identified for the subject property.

**Hearings Officer:** The parts of the subject property that have slopes over 20% (3D and 9E) are located to the south of the proposed home site, on the southernmost part of the subject property.

## **POLICY 22** Energy Conservation

**The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources through:**

*[Amended 1999, Ord. 933 § III]*

- A. The development of energy-efficient land uses and practices;**
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;**
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climatic conditions to advantage;**
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.**

**Applicant:** As written, Policy 22 applies to urbanized areas within Multnomah County. The Policy strives to “*increased density and intensity of development in urban areas*”, and “*an energy efficient transportation system linked with increased mass transit*” as well as “*street layouts, lotting patterns, and design*”. This request will permit a template tract dwelling, outside the urbanized area of Corbett, and within a resource zone. (i.e. CFU-4) Therefore, this Policy is not directly applicable to this request.

**Staff:** Staff agrees with the Applicant statement that this Policy is not directly applicable to the proposed development.

## **POLICY 37 Utilities**

*[Amended 1999, Ord. 933 § III]*

### **Water and Disposal System**

- A. Shall be connected to a public sewer and water system, both of which have adequate capacity; or *[Amended 1999, Ord. 933 § III]***
- B. 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 *[Amended 1999, Ord. 933 § III]***
- C. Shall have an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or *[Amended 1999, Ord. 933 § III]***
- D. Shall have an adequate private water system and a public sewer with adequate capacity. *[Amended 1999, Ord. 933 § III]***

### **Drainage**

- E. Shall have adequate capacity in the storm water system to handle the run-off; or *[Amended 1999, Ord. 933 § III]***
- F. The water run-off shall be handled on the site or adequate provisions shall be made; and *[Amended 1999, Ord. 933 § III]***
- G. 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. *[Amended 1999, Ord. 933 § III]***

### **Energy and Communications**

- H. There shall be an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and *[Amended 1999, Ord. 933 § III]***
- I. Communications facilities are available.**

**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.**



**Applicant:****Water Supply**

According to the owner, he will construct a new well to provide water to the proposed dwelling. There is no evidence contained in the well logs for this section of Multnomah County that indicate that domestic water wells cannot supply an adequate amount of water for domestic purposes. (See Attachment "I"-Well Log Summaries for Section 17) Pressurized holding tanks and pumping systems can be installed if a boost in pressure and/or flow is required. No building/plumbing permit will be issued until the owner can satisfy all applicable standards of the UBC and UPC for domestic water service. Based on the current gallon per minute flow of surrounding wells, there will be an adequate supply of water to service the site.

**Sanitary Sewage Disposal**

The County Environmental Services department responded to a service review request and stated that the site can be served by a septic tank and drainfield. (See Attachment "J" Service Response Letters) If this application request is approved, the system will meet all UBC, B.E.S. and Bureau of Building requirements, therefore, a sanitary sewage system, constructed to County standards, will be provided.

The East Multnomah County SWCD responded to the proposed request three days after the 10/22/99 Pre-Application Conference. (See Attachment "K") Although the report stated that the underlying soil percolates slowly, it did not say that it precludes installation of a standard septic tank and drainfield system. Even if it did, a sand-filtering system could be installed on the subject site, in the event that a standard septic tank and drainfield system will not function correctly. Based on the preceding statements, there can be an adequately sized septic tank and drainfield to supply sanitary disposal of waste on the subject site.

**Control and Disposal of Stormwater and Groundwater**

Conceptually, seepage trenches catch basins and culverts could trap storm water run-off from the proposed residence and private driveway and dispose of it on-site. Rain drains from the proposed structure could be attached to the proposed storm water system. The owner has not decided on an exact building plan/footprint layout for a proposed dwelling, but has instead has provided a 90' X 90' building envelope/yard area layout which indicates the location of a future dwelling. Conceptually, the site plan indicates that storm water can be adequately disposed of from the proposed residence and the along the private driveway/turnaround area. If this application request is approved, the system will be designed by a licensed Civil Engineer and will meet all UBC, B.E.S. and Bureau of Building requirements, therefore, a storm drainage system, constructed to County standards, will be provided. Based on the proposed installation of storm water control system, there will be an adequately sized seepage trenches, catch basins, culverts and drains to detain and retain storm water on the subject site.

**Staff:** The Applicant has provided a thorough description of the available facilities for the subject property. See also the Conditions of Approval. Condition of Approval #5 requires additional information regarding the well for the property; Condition of Approval #11 requires additional information from the property owner regarding the fire district; and Condition of Approval #12 requires additional information regarding the septic tank and drainfield.

## **POLICY 38 Facilities**

**It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure: *[Amended 1999, Ord. 933 § III]***

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### **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:** The applicant received a Fire District Review Letter from Multnomah Co, RFPD #14, (Corbett) stating that the site will be served by a “tanker shuffle” and “on-board” water. Therefore, the site is located on a tract within a fire protection district as required by this criterion.

### **Police Protection**

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

**Applicant:** The Multnomah County Sheriff's Office provides police protection to the subject site. (See Attachment “K”) This proposal will add one new single family home with other single family home along Trout Creek Road; therefore, there will be no significant increased impact on the police's ability to provide services to this site.

**Staff:** The Applicant has provided a completed Fire District Review form and a Police Services Review form. Additional information is required from the fire district as established in Condition of Approval #11.

## **MCC.29.300 Grading and Erosion Control**

### **MCC.29.302 (A) and (B) Permits Required**

**Applicant:** According to MCC.29.302 (A), a grading permit is required if the volume of soil disturbed, stored, disposed of or used as fill exceeds 50 cubic yards. The owner has not decided on an exact building plan/footprint layout for a proposed dwelling, but instead has provided a 90' X 90' building envelope/yard area layout which indicates the location of a future dwelling. Therefore, there is no way to determine whether a Grading and Erosion permit is required at this time. The applicant has reviewed all applicable criteria for dwelling siting in a CFU-4 zone, (MCC 11.ES.2042 et. seq.), and found no explicit requirement that an applicant must provide a specific building plan/footprint layout at this stage of the approval process.

County staff has the authority to recommend conditions of approval to ensure that the owner/applicant comply with all applicable standards for a Grading and Erosion permit when an owner/applicant decides on a specific dwelling footprint. Likewise, the Hearings Officer has the authority to impose conditions of approval to ensure that the owner/applicant comply with all applicable standards for a Grading and Erosion permit when an owner/applicant decides on a specific dwelling footprint is required. Therefore, based on the above-mentioned facts, the owner does not have enough specific factual information to adequately determine when and if a Grading and Erosion permit is required.

**Staff:** Condition of Approval #1 requires the applicant to obtain a Grading and Erosion Control (GEC) permit if applicable for the proposed development. The GEC permit must be obtained prior to issuance of building permits.

**Dated this 19<sup>th</sup> day of December 2000.**

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**Liz Fancher, Hearings Officer**

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

The Hearings Officer's 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. An appeal must be filed with the County Planning Division within **ten days** after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 1600 SE 190<sup>th</sup> Ave., Portland, OR (in Gresham) or you may call 503-988-3043, for additional instructions.

## **Case File: CU 0-8**

### **Location:**

T1N, R5E, Section 27, Tax Lot 7 at 4.75 acres (R#94527-0070).

### **Application Timeline:**

Pre-Application Conference, PA 28-99: October 27, 1999.

Conditional Use Application received with full fees: August 4, 2000.

Application incomplete letter mailed: September 1, 2000.

Determination that application is complete and **Begin "120 day timeline" on October 10, 2000.**

Letter mailed to applicant: November 2, 2000.

**NOTICE OF A PUBLIC HEARING (MAILED): NOVEMBER 2, 2000**

Staff Report available: November 8, 2000.

Public Hearing before Hearings Officer: November 15, 2000. **Day 36.**

### **List of Exhibits:**

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

1. Applicant site plan identified as "Attachment H" showing the building envelope with primary and secondary fire safety setbacks.
2. Applicant site plan identified as "Attachment F" showing subject property and surrounding properties.
3. Excerpt from the East of Sandy River Map of Significant Streams & Wildlife Habitat showing subject property.
4. Excerpt from the Soils Map, 1S 5E Section 17, showing the soil types of the subject property.
5. List entitled, "Soil Unit Symbols and Names, Productivity Ratings and Classifications for Douglas Fir Yields." Soil types of subject property are indicated on the list.

#### **List B: Notification Information:**

1. "Complete application" Letter, November 2, 2000, 3 pages.
2. Notice of Hearing, November 2, 2000, 4 pages.

#### **List C: Multnomah County Documents**

1. Staff Report – November 8, 2000.

#### **List D: Post-Hearing Evidence**

1. Memorandum to Liz Fancher from Tricia Sears, November 28, 2000, 2 pages.
2. 1978 Map of 1S 5E Section 17, 1 page.
4. Map of 1S 5E Section 17 approx. before 1969 to November 1978, 1 page.
5. 1962 Map (zoning and parcels), Sectional Zoning Map 812, 1 page.
6. Cover & Excerpt from Multnomah County Subdivision Regulations, Adopted April 19, 1955, 2 pages.
7. Multnomah County Ordinance No. 174, 37 pages.
8. Multnomah County Planning File M 53-73, Weck's Tracts, 36 pages.

9. Multnomah County Planning File M 34-72, 9 pages.
10. Facsimile Transmittal Sheet & Evidence, November 28, 2000, from Bruce Vincent to Liz Fancher & Tricia Sears, 3 pages.