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**BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON  
FINAL ORDER**

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

**April 3, 1998**

**Case File:** Conditional Use CU 1-98  
Significant Environmental Concern SEC 6-98  
Major Variance HV 2-98

**CU 1-98  
SEC 6-98  
HV 2-98:**

The applicant requests Conditional Use review and approval to allow a single family dwelling on a 1.98 acre parcel. The request also includes Significant Environmental Concern review for areas that contain wildlife habitat, and a Major Variance to reduce the 200' side yard setback from the west property line to 90 feet.

**Location:** 11401 NW Skyline Blvd.

**Property Description:** TL '33' of Section 6, T1N, R1W

**Zoning:** CFU, Commercial Forest Use  
SEC, Significant Environmental Concern

**Applicant:** Fred Ball  
653 NE Kelly Ct.  
Hillsboro, OR 97124

**Owners:** Marsha Buesgens  
Sandra K. Boero and Sheila F. Allan  
934 Shadowfax Rd.  
Henderson, NV 89015

**Consultant:** Stacy Connery  
LDC Design Group, Inc.  
233 SE Washington St.

**Decision:**                      **Approve Conditional Use request CU 1-98**  
                                      **Approve Significant Environmental Concern request SEC 6-98**  
                                      **Approve Variance request HV 2-98**

**Conditions of Approval:**

1.     The owner of the tract shall plant a sufficient number of trees on the tract to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. The property owner shall submit a stocking survey report to the county assessor for verification that stocking requirements have been met. This condition is intended to implement the provisions of MCC 11.15.2052(A)(6).
2.     The dwelling has not been issued a Building Permit, therefore compliance with the applicable portions of MCC .2074(B) (2), (4), and (5) has not been demonstrated. These features shall be indicated on the building plans prior to zoning approval of the Building Permit.
3.     The applicant shall submit written verification from an Oregon Professional engineer that any culverts comply with the 52,000 lbs gross vehicle weight requirement of MCC 11.15.2074(D)(1). The applicant shall also submit evidence that the gross vehicle weight, the minimum curve radius, and all-weather surface requirements of the driveway will be met. Both shall be submitted before a building permit is issued.
4.     The driveway as proposed may not meet County right-of-way access requirements. Before a Building Permit is issued, the applicant shall submit confirmation from the Tualatin Valley Fire and Rescue District that the design which meets County right-of-way access requirements is also approved by the District.
5.     Before a Building Permit is issued, the applicant shall obtain a Grading and Erosion Control Permit pursuant to MCC 9.40.010 to demonstrate compliance with the SEC approval criteria of .6420(J), and Framework Plan Policy 37 F and G for stormwater management.
6.     Before a Building Permit is issued the applicant shall provide a copy of the final well report. Notification of the well report and opportunity to appeal will be provided to the same parties entitled to notice of the hearing in this case.
7.     A variance shall be void if the Planning Director finds that no substantial construction or substantial expenditure of funds has occurred on the affected property within 18 months after the variance is granted. The process for determination of substantial expenditure shall be initiated by the applicant/property owner by application made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.

8. 8. 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). The process for determination of substantial expenditure shall be initiated by the applicant/property owner by application made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
9. Before a building permit is issued the applicant shall amend the site plan to include an evergreen vegetative buffer along un-forested portions of the west property line. Species used shall not include any of the Nuisance Plants listed in SEC ordinance section 11.15.6426(B)(7). The buffer shall be established within two years of the date this decision becomes final.
10. Before a building permit is issued the property owner shall dedicate five (5) feet of right-of-way along the site's frontage on NW Quarry Rad and dedicate a 25-foot radius return at the northeast corner of the site as shown on the site plan.

### **Applicant's Proposal/Description of Site and Vicinity**

The subject property is a 1.98 acre parcel fronting on the south side of NW Skyline Boulevard and the west side of NW Quarry Road. The site has moderate easterly and northeasterly slopes, with a steep bank along its road frontages. The southern half of the site is forested with a variety of deciduous trees. The northern half of the property is an open field with a small treed area in the northwest corner.

The applicant is requesting approval of a Conditional Use Permit to allow the construction of a single family dwelling with an attached garage on the subject property. Due to the small size of the parcel, the applicant is also requesting approval of a variance to the setback and fire break requirements of the CFU District. The subject property is located within an area of Significant Environmental Concern for wildlife habitat and within the Tualatin River Drainage Basin. The site does not contain any designated Slope Hazard areas. This application includes a request for approval of an SEC-h Permit. An application for a Grading and Erosion Control (GEC) Permit will be submitted later, subsequent to approval of this request.

The proposed dwelling and driveway are located within the northern cleared portion of the site. A site plan, grading plan and driveway profile depicting the proposed development are attached to this report as Exhibits 1 and 2, respectively. The proposed residence will be served by an individual well and an onsite septic disposal system. The site will be accessed directly from NW Quarry Road.

### **Testimony and Evidence Presented**

- A. Chuck Beasley, County Planning gave a summary of the staff report. Mr. Beasley suggested an additional condition to require an evergreen vegetative buffer along un-forested portions of the west property line.
- B. Stacy Connery, the applicant's representative, submitted a tentatively approved proposed drainfield plan, Exhibit E1. She supported the staff report. Ms. Connery clarified that the applicant's intent is to provide a larger primary fire safety zone instead of a 30 foot primary fire

safety zone and a secondary fire safety zone to the extent allowable within the dimensions of the parcel.

- C. Shelly Lorenzen, a neighbor the east, asked about the primary fire safety zone proposal. The Hearings Officer stated that the larger primary fire safety zone would be more protective of risks of fire than the Code requires.

## **Approval Criteria**

1. Criteria for Approval of a Dwelling in the CFU Zone:

MCC 11.15.2052 (A): A template dwelling may be sited on a *tract*, subject to the following:

**MCC 11.15.2052 (A)(1): The lot or lots in the *tract* shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;**

**Finding:** The applicant is requesting approval of a template dwelling on a tract that consists of one (1) parcel (Tax Lot 33, Map 06-1N1W). County records indicate that the subject parcel was created on March 16, 1964 by a deed recorded on Page 734 of Book 2211 (Exhibit 5). The request area contains one parcel or lot and is therefore not a *tract*. The subject parcel was in the SR Suburban Residential District when created. The most restrictive parcel size at the time required 40,000 square feet for new parcels. The parcel satisfied all applicable laws when it was created. Therefore, the parcel was lawfully created prior to January 25, 1990. The standards of MCC .2062(A) and (B) are addressed within this decision below.

**MCC 11.15.2052 (A)(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 County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;**

**Finding:** Section MCC. 2074 is further addressed within this Decision, below. The subject property is adjacent to Quarry Road to the east and Skyline Boulevard to the north. The site plan (Exhibit 1) indicates that the proposed dwelling will be sited a minimum of 60 feet from the centerline of Quarry Road, a minimum of 112 feet from the centerline of Skyline Boulevard, and a minimum of 241 feet from the south property line in compliance with the CFU setback standards. Due to the small size of the property, the 200-foot setback to the west property line (rear property line) cannot be satisfied. The site plan indicates a minimum 90 foot setback from the west property line. The applicant is requesting a variance to the required setback from the west property line. The applicable standards of MCC .8505 through .8525 are addressed within this Decision, below.

**MCC 11.15.2052 (A)(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 160 acre square.
- (d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

**Findings:** According to the Multnomah County SCS Soil Survey (Exhibit 6), three (3) soil types exist on the subject property, including Soil Type #7D (Cascade silt loam), Soil Type #17E (Goble silt loam) and Soil Type #43C (Saum silt loam). The table provided by Multnomah County for “Productivity Ratings and Classifications for Douglas Fir Yields” (Exhibit 6) indicates that Soil Type #7D is capable of producing a yield of 140 to 164 cubic feet per acre, Soil Type #17E is capable of producing a yield of 135 to 145 cubic feet per acre, and Soil Type #43C is capable of producing 120 to 130 cubic feet per acre. Therefore, the subject tract is composed of soils which are capable of producing above 85 cubic feet per acre per year of Douglas Fir timber.

Based on review of Multnomah County Assessment and Taxation Tax Rolls dated October 1992 (Exhibit 8) and July 1997 (Exhibit 9), as well as review of the 1994 Aerial Photograph (Exhibit 3) and visual observation of the area, there are 28 parcels (the subject tract plus 27 other parcels) either partially or entirely within a 160-acre square centered on the subject tract which existed on January 1, 1993 and seven (7) dwellings within the 160-acre square centered on the subject property which existed on January 1, 1993. Six of the dwellings were established prior to building permit requirements, and the seventh received a final inspection on 2/24/92. Exhibit 7 contains a template map and a table describing the specific properties used to establish qualification under .2052(A)(3)(c). Exhibit 18 contains copies of the Multnomah County Assessment and Taxation tax lot cards, which indicate the creation date of all parcels within the subject 160-acre square. Exhibit 18 documents that at least 11 of the 28 parcels within the 160-acre square were lawfully created. The subject tract is not located near an urban growth boundary, so parcels or lots within an urban growth boundary are not used to satisfy the above eligibility requirements.

**MCC 11.15.2052 (A)(3)(e):** There is no other dwelling on the *tract*;

**Finding:** No other dwellings exist on the subject tract, as demonstrated by the aerial photograph (Exhibit 3) and the 1997 Tax Rolls (Exhibit 9).

**MCC 11.15.2052 (A)(3)(f):** No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

**Finding:** The subject property does not contain more than one parcel.

**MCC 11.15.2052 (A)(3)(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

**Finding:** The applicant is aware that no other dwellings, except for potentially a replacement dwelling, will be allowed on the tract.

**MCC 11.15.2052 (A)(3)(h):** No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;

**Finding:** The tract consists of only one (1) parcel.

**MCC 11.15.2052 (A)(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.

**Finding:** According to the Multnomah County Comprehensive Plan Wildlife Habitat Map (Exhibit 4), the subject site is located outside of designated sensitive big game wintering habitat areas.

**MCC 11.15.2052 (A)(5):** Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of forestry, the Bureau of Land Management or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

**Finding:** The site fronts on NW Skyline Boulevard and NW Quarry Road, both of which are County roads. The site will be accessed directly from NW Quarry Road. Therefore, a road access use permit or agreement is not required.

**MCC 11.15.2052 (A)(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 shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall 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 shall 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 shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

**Findings:** No stocking survey report has been submitted with the application, however the ordinance allows implementation of this requirement with a condition of approval. The ordinance does not appear to waive the reporting and stocking requirement for land in a forest zone which is in farm use. A condition of approval has been imposed to require the applicant to plant trees on the subject property in order to comply with the Oregon Department of Forestry stocking requirements.

**MCC 11.15.2052 (A)(7):** The dwelling meets the applicable development standards of MCC.2074;

**Finding:** The applicable standards of MCC .2074 are addressed within this Decision, below.

**MCC 11.15.2052 (A)(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;

**Finding:** The above-described statement was recorded with the Division of Records as Document No. 97-122432 on August 13, 1997. A copy of this document is Exhibit 12.

**MCC 11.15.2058**      **Dimensional Requirements**

**MCC 11.15.2058(A)** Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.

**Finding:** As noted above, the subject parcel is 1.98 acres in size, which is below the required 80-acre minimum lot size. MCC .2062 (Lot of Record) includes provisions for the subject parcel and is addressed within this report below.

**MCC 11.15.2058(C)** Minimum Yard Dimensions - Feet:

Frontage on County Maintained Road	Other Front	Side	Rear
60 from centerline	200	200	200

**Maximum Structure Height - 35 feet.**

**These yard dimension and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable.**

**Finding:** The subject property is 1.98 acres in size with frontage on two (2) County maintained roads, NW Skyline Boulevard to the north and NW Quarry Road to the east. The subject parcel has a north-south dimension of 481.90 feet on its east boundary and a north-south dimension of 375.98 feet on its west boundary. The parcel has an east-west dimension of 229.06 feet on its south boundary and an east-west dimension of 243.07 feet on its north boundary, which follows the curve of Skyline Boulevard. The

site plan (Exhibit 1) indicates that the proposed dwelling will be sited a minimum of 60 feet west of the centerline of Quarry Road, a minimum of 112 feet south of the centerline of Skyline Boulevard, a minimum of 90 feet east of the west property line and a minimum of 241 feet north of the south property line. The applicant is requesting a variance to the required setbacks from the west property line as a result of the small size and narrow width of the subject parcel. Due to the size and dimensions of the property, the required 200 foot setback cannot be met to the west side lot line. The setbacks to all other property lines can be met. The applicable standards of MCC .5808 through .8525 are addressed within this Decision below. The proposed dwelling will comply with the minimum 35-foot height limitation (Refer to the house plans - Exhibit 17).

**MCC 11.15.2058(D) To allow for clustering of dwellings and potential sharing of access, a minimum yard requirement may be decreased to 30 feet if there is a dwelling on an adjacent lot within a distance of 100 feet of the new dwelling.**

**Finding:** There are dwellings on adjacent parcels to the north across Skyline Blvd., and to the west. Both dwellings are over 100 feet from the proposed dwelling site.

**MCC 11.15.2058(E) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**

**Finding:** The site plan (Exhibit 1) indicates dedication of an additional five (5) feet right-of-way along the site's frontage on NW Quarry Road and dedication of a 25-foot radius return at the northeast corner of the site, as requested by Multnomah County. The identified dedication will occur as a condition of approval, prior to issuance of building permits.

**MCC 11.15.2058(F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.**

**Finding:** The applicant is not proposing the establishment of a barn, silo or windmill. The applicant is requesting approval of a single-family dwelling, which may include an antenna or chimney. The house plan (Exhibit 17) indicates that the proposed dwelling will have a chimney. The proposed dwelling, itself, will comply with the maximum 35-foot height limitation. However, the above standard would allow an antenna or chimney to exceed the 35-foot height limitation. Building height will be confirmed when complete building plans are reviewed for zoning compliance.

**MCC 11.15.2062 Lot of Record**

**MCC 11.15.2062(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

**MCC 11.15.2062(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.

**Finding:** As noted previously, the applicant is requesting approval of a template dwelling on a tract of land that consists of one (1) parcel (Tax Lot 33, Map 06-1N1W). According to County records, a deed recorded on March 16, 1964 on Page 734 of Book 2211 created the subject parcel. A copy of this deed is included in Exhibit 5. In 1964 when the parcel was created, the zoning was SR Suburban Residential (1962 Ord. 100). The most restrictive minimum parcel size for new partitions was 40,000 square feet. Multnomah County did not require zoning application and approval of partitions until 1979. The subject parcel satisfied all applicable laws when it was created. The subject parcel is currently 1.98 acres in size and was 1.98 acres in size when it was created in 1964. The minimum lot size requirement of MCC .2058 is 80 acres, which the subject parcel does not meet. Therefore, Multnomah County considers the subject parcel to be substandard.

The subject property is owned by Marsha Buesgens, Sheila Allen and Sandra K. Boero. The applicant, Fred Ball, plans to purchase the parcel subject to approval of this request. Neither the property owners nor the applicant own any contiguous properties, nor have they owned any contiguous properties in the past (at least since 1989). Ownerships of adjacent properties from 1989 to 1996 are documented by the copies of Multnomah County tax rolls, Exhibit 19. The tax rolls for contiguous properties in 1997 were provided as Exhibit 9. Exhibit 19 demonstrates that the subject property has been in ownership separate from the contiguous properties from at least February 20, 1990 to the present. The above findings demonstrate that the subject parcel qualifies as a Lot of Record under MCC .2062(A)(2).

**MCC 11.15.2068** Access

**Any lot in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles.**

**Finding:** The subject parcel abuts two (2) County maintained roads (NW Skyline Boulevard and NW Quarry Road). Driveway access to the proposed dwelling will be obtained from NW Quarry Road at a point over 100 feet south of the intersection of Skyline Boulevard and Quarry Road.

**MCC 11.15.2074 - Development Standards for Dwellings and Structures: Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:**

**Finding:** The applicant is requesting approval of a new single-family residence in the CFU District. The following sections of this Decision document compliance with the required standards of MCC .2074.

**MCC 11.15.2074(A) The dwelling or structure shall be located such that:**

**MCC 11.15.2074(A)(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);**

**Finding:** In order to determine potential impacts between the proposed dwelling and farm/forest activities on nearby or adjacent lands, an area of analysis was selected based on the types of uses occurring in the area. Activities associated with the proposed dwelling are reviewed. Properties in the selected area are inventoried to determine farm/forest uses and practices occurring on those lands. The following analysis identifies and discusses potential conflicts, if any, between the proposed dwelling and accepted farm and forest practices on nearby lands.

Surrounding properties consist of a wide variety of sizes and a mixture of farm, forest and residential uses. Properties within a 1/4 mile of the site have been inventoried to determine the specific types of uses occurring in the area. It was not necessary to extend the analysis area beyond 1/4 mile because impacts to farm and forest uses beyond this area would be considerably less than impacts, if any, to farm and forest uses within the selected area.

Property owners in the study area were surveyed by mailed questionnaire. Returned questionnaires were provided as Exhibit 11. The following information has been gathered from Multnomah County Assessment and Taxation records (Exhibit 9), review of an aerial photograph (Exhibit 3), and visual observation of the surrounding area.

Summary of Farm/Forest Activities on Surrounding Properties

<u>Tax Map</u>	<u>Tax Lot</u>	<u>Acreage</u>	<u>Ownership</u>	<u>Use</u>
5-1N1W	5	1.74	Mark Walkley	D
5-1N1W	6	55.66	Shelley Lorenzen	D/H/F
5-1N1W	7	4.80	Terrence/Sandra Hart	D
5-1N1W	14	7.70	Multnomah County	
5-1N1W	15	0.06	Multnomah County	
5-1N1W	16	1.10	Charles/Joyce Speight	D
5-1N1W	19	15.12	Ralph/Betty Ketchum	D
5-1N1W	21	3.82	Marvin/Claire Adams	
5-1N1W	22	0.20	Multnomah County	
6-1N1W	1	13.25	Donald/Shirley Motz	D/N/H
6-1N1W	2	9.53	Donald Motz	D/N
6-1N1W	3	25.36	Donald Motz	D/N
6-1N1W	5	34.10	William/June Lattin	D/FC

6-1N1W	17	0.23	Dennis/Barbara Roland	D
6-1N1W	18	9.85	Marie Weinstein	N
6-1N1W	23	1.00	The American Legion	
6-1N1W	25	13.22	Multnomah County	
6-1N1W	28	1.00	Donald/Shirley Motz	D
6-1N1W	29	2.45	Kent Gambee	F
6-1N1W	59	9.29	Paul/Bonnie Gill	
31-2N1W	5	152.27	Mid-Valley Resources, Inc.	F
31-2N1W	18	25.00	Kent Gambee	F
31-2N1W	19	2.50	Donald Motz	
31-2N1W	28	47.36	B.M./Helen Brooks	D
31-2N1W	30	7.50	Kent Gambee	F
32-2N1W	7	65.66	Mid-Valley Resources, Inc.	F
32-2N1W	16	1.12	Marvin/Clair Adams	

Key = D = Dwelling, F = Forest, FC = Field Crops, H = Hay, N = Nursery Stock

Of the 27 properties in the analysis area, 12 parcels contain residential uses, six (6) parcels are employed in farm use and six (6) parcels are employed in forest use. The existing residential uses are primarily situated along Skyline Boulevard within close proximity to the road. A few residences, on parcels that do not front on a County maintained road, are situated some distance back from Skyline Boulevard and other residences.

Farm uses in the analysis area are predominately located on the more level lands along Skyline Boulevard. Farm uses in the analysis area consist of field crops, hay and nursery stock production. One (1) parcel, Tax Lot 5 (6-1N1W), which is approximately 350 to 500 feet southwest of the site, appears to be employed in field crop production. Two (2) parcels, Tax Lot 6 (5-1N1W) and Tax Lot 1 (6-1N1W) are employed in hay production. Tax Lot 6 is located east of the subject site, across NW Quarry Road. Tax Lot 1 abuts the subject site to the west. Four (4) parcels are employed in the production of nursery stock, including Tax Lots 1, 2, 3 and 18 (6-1N1W). These parcels are situated to the west of the subject site. Tax Lot 1, which abuts the site to the west, contains both hay and nursery stock production. The portion of Tax Lot 1 in hay production is directly adjacent to the site. The portion of Tax Lot 1 in nursery stock production is situated approximately 330 feet west of the site, at the closest point.

Since specific information regarding the management practices of farm operations in the analysis area is not available, documentation of typical farm management practices from the Oregon State University Extension Service has been reviewed. The following is an abstraction of that information.

Practices associated with the cultivation of field crops such as hay, grains, clover, etc. include plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment, including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Trucks are employed for the transport of some of this equipment, as well as the seed, amendments, sprays and end products.

Practices associated with the cultivation of nursery stock such as native plants, tree seedlings, bulbs and ornamentals include cultivation, fertilizing, pruning and the application of herbicides and pesticides. Nursery stock may be either field grown or grown in containers. These practices employ the use of various types of farm equipment including tractors and towed appliances such as a plow, spreaders, seed drills, sprayers and specialized mowers and trailers. Some plants are machine harvested, utilizing specialized equipment, and other plants are hand collected. Trucks are employed for the transport of some of this equipment and employees, as well as the transport of harvested products, seeds, containers, bulbs, amendments, sprays and end products.

Forest uses in the analysis area are predominately north of the site. Six (6) parcels in the analysis area are employed in forest production, including Tax Lot 6 (5-1N1W), Tax Lot 29 (6-1N1W), Tax Lots 5, 18 and 30 (31-2N1W) and Tax Lot 7 (32-2N1W). The area of Tax Lot 6 in forest production is approximately 300 feet southeast of the site. Tax Lot 29 is 60 feet north of the site, across Skyline Boulevard. Tax Lots 5, 18, 30 and 7 are all situated over 500 feet north of the site beyond Tax Lot 29.

Since specific information regarding the management practices of forest operations in the analysis area is not available, documentation of typical management practices from the Oregon Department of forestry has been reviewed. The following is an abstraction of that information.

Forest practices include road building prior to harvest; timber harvest stock piling and burning of slash subsequent to harvest; replanting; spraying of herbicides and pesticides and periodic thinning and trimming as the timber grows. Road building, harvesting, slash burning and thinning require the use of heavy equipment such as bulldozers, skidders, yarders (on steep sites) loaders and trucks. Chain saws are also used in harvesting and thinning operations. Replanting is accomplished using hand labor, as is trimming and some early thinning of the stand. Spraying in areas with moderate residential density on nearby lands is normally accomplished from the ground. However, spraying may also be accomplished from the air using low-flying fixed-wing aircraft or helicopters in order to limit drift of stray material to nearby properties. Effects from these activities include noise from heavy equipment and chain saws during harvest and thinning operations, smoke from slash fires, limited spray drift from herbicide and pesticide applications subsequent to harvest and replanting and periodic appearances by persons involved in ongoing stand management.

The proposed development is a single-family, detached dwelling. Water supply for the dwelling will be provided through an on-site well. An on-site septic system will be established in compliance with City of Portland regulations. A driveway will be constructed to Multnomah County and Tualatin Valley Fire & Rescue standards. It is anticipated that the proposed dwelling will not exceed an additional 10 vehicle trips per day along Quarry Road. Since the proposed dwelling does not yet exist and is hypothetical at this time, no concrete evidence as to the actual activities of the future occupants can be provided with this analysis. However, it can be concluded from observation and prior knowledge of other existing rural residential uses that activities associated with single-family dwellings will likely be those customarily carried on, such as eating, sleeping, gardening, outdoor recreation, raising a family and occasional entertainment of guests.

The subject property, where the proposed dwelling would be located, is approximately 1.98 acres in size and fronts on Skyline Boulevard to the north and Quarry Road to the east. The southern half of the site is forested with a mixture of deciduous trees. The northern half of the site is an open field, that has apparently been managed as part of the hay field on the adjacent Tax Lot 1 to the west. A small cluster of trees is located in the northwest corner of the site. Exhibit 1 illustrates the location of the proposed

development. The proposed development includes the construction of a single-family dwelling with an attached garage and a driveway from Quarry Road. The dwelling is proposed to be sited 60 feet west of the centerline of Quarry Road, 241 feet north of the south property line, 90 feet east of the west property line and 112 feet south of the centerline of Skyline Boulevard.

As noted above, the surrounding area contains six (6) parcels in farm use (hay, field crop, and nursery stock production) and six (6) parcels in forest use. Most parcels in farm or forest use are situated some distance from the site, so that impacts between the proposed dwelling and most farm and forest uses on surrounding lands are expected to be nullified due to intervening residential uses and vegetation, as well as distances and changes in elevation (aerial photograph - Exhibit 3). Therefore, the review of impacts that follows focuses on adjacent properties in farm or forest uses.

Tax Lot 6, adjacent to the east, contains areas employed in hay production and areas in forest production. Forest related activities on Tax Lot 6 are situated approximately 300 feet southeast of the site. Farm activities are approximately 60 feet east of the site. The subject dwelling is buffered from these uses by an existing row of trees along the eastern edge of Quarry Road, the 45-foot wide right-of-way of Quarry Road, and a 35-foot setback from the western edge of the Quarry Road right-of-way. Additionally, the location of the proposed dwelling is at a higher elevation than the resource uses occurring on Tax Lot 6. Impacts between the proposed dwelling and resource uses on Tax Lot 6 should be insubstantial as a result of the distances between the uses, intervening vegetation, and different elevations.

Tax Lot 29, adjacent to the north, contains forest uses. The subject dwelling is buffered from these uses by the 60-foot wide right-of-way of Skyline Boulevard and an 83-foot setback from the southern edge of the Skyline Boulevard right-of-way, for a total distance of 143 feet. Additionally, the location of the proposed dwelling is at a higher elevation than the forest uses occurring on Tax Lot 29. Also of note, dwellings exist on Tax Lots 17 and 16, which are both situated closer to the forest uses on Tax Lot 29 than the proposed dwelling. Any potential impacts to the proposed dwelling to or from the forest activities on Tax Lot 29 are nullified by the impacts of these existing dwellings. Therefore, impacts between the proposed dwelling and forest activities on Tax Lot 29 should be insubstantial as a result of the intervening distances, existing residential uses, and changes in elevation.

Tax Lot 1, adjacent to the west, contains farm uses including hay and nursery stock production. The areas of Tax Lot 1 in nursery stock production are situated 420 feet west of the proposed dwelling (330 feet + 90 foot setback). Due to this distance, impacts between the proposed dwelling and the nursery operation are likely to be insubstantial. However, the portion of Tax Lot 1 employed in hay production is directly adjacent to the site. The proposed dwelling will be sited 90 feet east of the hay field on Tax Lot 1. An impact analysis questionnaire was not returned by the owners of Tax Lot 1, so the applicant is not aware of any concerns that these owners may have. Currently, there is no intervening vegetation between the proposed dwelling and the hay operation. Impacts to the proposed dwelling from the hay operation could include dust and noise from tilling and harvest operations, and possible spray drift and smoke. Dust from tilling operations does not normally extend beyond 100 feet, nor does drift from spray operations. Tilling, planting, spraying and harvesting operations for field crops, such as hay, are likely to occur on only an eight (8) to ten day spread in any given year. Farm tractors are generally equipped with mufflers. Observed ground spraying of herbicides and pesticides produces no significant spray drift or over spray beyond the ground area being sprayed, if it is done using an accepted practice.

The applicant is fully aware that the proposed dwelling is located in an area where farm and forest activities will occur. The restrictive covenant required by Multnomah County, which acknowledges the

occurrence of accepted farm and forest practices, has been executed by the property owner, Exhibit 12. The proposed 90-foot separation between the proposed dwelling and the nearby hay field minimizes potential impacts, which will likely occur for only a few days a year because as larger setbacks cannot be provided given the size of the parcel and other setback requirements. The subject 90 foot setback cannot be further increased as the proposed dwelling is currently at the minimum setback to Quarry Road. Additionally, the proposed dwelling could not be moved any further south or the construction and grading activities associated with the dwelling would cause the removal of trees within the forested portion of the site, which would be in direct conflict with the standards of the SEC-h Subdistrict.

The main potential impact of the dwelling location on farm or forest management on adjacent parcels is to the parcel west of the proposed dwelling site, Tax Lot 1, which is managed for nursery and hay crops. The resource management areas on the other adjoining parcels are separated from the proposed dwelling site by County rights-of-way (north and east), and by a non-resource parcel to the south. The potential impacts which should be considered are not limited only to the current use of the adjacent area of the farm parcel for hay production. More intensive management activities for nursery stock production could occur along the west property line of the subject parcel. The applicant states that establishment of a vegetative buffer would result in the proposed dwelling location having the least impact on farm management of the adjacent parcel. Implicit in this argument is that given the narrow width of the parcel and the setback requirement from Quarry Road, all potential locations would have the same impacts on farm management of the parcel to the west. Therefore, the approach taken is to minimize potential impacts by creation of a buffer/barrier. These impacts could be substantially mitigated by planting a vegetative buffer along the site's west property line, subject to the fire break requirements. A condition of approval has been imposed requiring a vegetative buffer.

As discussed above, the proposed dwelling location will have minimal, if any, effect on surrounding farm and forest lands. If any effects occur, they would most likely involve the adjacent hay operation to the west. However, these effects would not force a significant change in any farming practices and any effects can be minimized, as noted above, by the establishment of a vegetative buffer to reduce potential dust, noise or spray drift from the hay operation. The proposed dwelling location will have the least impact on surrounding forest and agricultural lands.

The setback requirements of MCC .2058(C) through (G) are addressed within the preceding sections of this Decision. The proposed development satisfies the requirements of MCC .2058(C) through (G) as demonstrated by this Decision. The proposed development does involve a variance to the setback requirements of MCC .2058(C). MCC .2058(C) allows variances "pursuant to MCC .8505 through .8525, as applicable." The applicable standards for a variance are addressed under Section III.A.3 of this Decision, below.

**MCC 11.15.2074(2) Adverse impacts on forest operations and accepted farming practices on the *tract* will be minimized;**

**Finding:** There are no forest operations or management on the tract. The low level of farm management (hay production) which has occurred on the property in the past is connected to the adjacent farm to the west. No farm management of the tract itself occurs.

The siting of the proposed dwelling and driveway on the subject property must occur in consideration of the following factors: 1) minimization of adverse impacts on forest operations; 2) minimization of adverse

impacts on accepted farming practices; and 3) minimization of adverse impacts on wildlife habitat. The following analysis demonstrates how the proposed house and driveway siting finds a balance among these siting considerations.

The southern half of the subject property is forested with a mixture of deciduous trees. This forested area is less than an acre in size and does not appear to contain commercially valuable trees. This site is not being managed for commercial timber production. As discussed above (MCC .2074 (A)(1)), the forested area on the site is not situated directly adjacent to any areas in commercial forest production. The closest areas in forest production are located over 150 feet to the north across Skyline Boulevard and over 300 feet to the southeast across Quarry Road. Impacts to surrounding forest operations are discussed in the section above, and were found to be insubstantial. Therefore, the subject property has limited value for forest production. Siting of a dwelling anywhere on the property will not adversely affect forest operations on the site or on surrounding properties.

The northern half of the site is an open field less than one acre in size. The field portion of the site has been harvested for hay in conjunction with the adjacent hay operation on Tax Lot 1 (this is apparent on the 1994 aerial photograph - Exhibit 3). A letter from the farm operator who has harvested hay from the subject property, Donald Motz of Motz & Son Nursery, was provided, Exhibit 20. Mr. Motz indicates that "approximately 30 bales at a rate of \$3.00 per bale with the gross value coming to \$90.00 per year" have been harvested from the subject property. The farm income generated from the subject property is minimal. Mr. Motz has not expressed any opposition to the construction of a house on the subject property and the removal of this property from hay production. The proposed house construction impacts the adjacent hay operation by removing land from production, however the income generated by this land is so minimal that its loss will not adversely impact the adjacent farm operation (Also see comments under MCC .2074 (A)(1) above).

The applicant hired an environmental consultant, Maurita Smyth, to evaluate the habitat value of the subject property. Ms. Smyth has prepared a "Preliminary Significant Natural Resources Reconnaissance Report" letter, Exhibit 21. Ms. Smyth indicates that: Overall habitat value on site is low. Disturbance of native vegetation has occurred within both the agricultural field and the forested habitat. Species and structural diversity is limited, no water source is present on site, and the site is bounded by two paved roads. Connection to other open space or meadow like habitat exists to the west. The site provides foraging and nesting habitat for some birds and small mammals. No wildlife or their sign were observed during the field survey. However, the site is likely used by foraging birds, such as swallows, in the field area and by passerines, such as warblers and chickadees, in the forested habitat. Meadow mice, coyote, and raccoon also likely use the site for foraging and travel to other habitats.

The site plan calls for a single family dwelling with access from Quarry Road. A drainfield is proposed for the agricultural field. No construction is scheduled to take place within the forested habitat. Placement of development within the field avoids impacts to the forest, which, although it has limitations, is the higher valued habitat on site due to its diversity. Landscaping and lawn that may replace the hay meadow will provide similar foraging for birds and small mammals.

The "Preliminary Significant Natural Resources Reconnaissance Report" letter demonstrates that the proposed house and driveway siting minimizes impacts to habitat on the site by locating development outside the more valuable habitat (the forested area), maintaining the diversity of habitat on the site, and replacing the hay meadow with lawn and landscaping areas that provide similar habitat functions. Therefore, the proposed development will not adversely impact wildlife habitat on the site.

The site is only 1.98 acres in size. The small size of the property, neighborhood characteristics, the limited value of onsite resources and the fact that the site qualifies for a residence under the applicable CFU standards, combine to make it highly unlikely that the subject property will be put to use as a farm or forest operation. In fact, since the parcel qualifies for a dwelling, its use has become residential in nature.

The above findings demonstrate that no forest operations exist on the site or directly adjacent to it; accepted farming practices have occurred on the site in the past, but will not continue to occur as the use of the property is changing; accepted farming practices occur on adjacent properties, but the proposed use will not adversely impact those practices; and, while habitat values on the property are low, the proposed use reduces impacts to the diversity of habitat that does exist on the property. For these reasons, the proposed siting of the house and driveway find a balance among the impacts to resources present on the site. The proposed use will not adversely impact forest operations on the tract, as none exist. The proposed use will impact accepted farming practices on the tract, however these impacts will not be adverse due to the limited value of the farm product harvested from the site and the change in use of the subject parcel. Therefore, the proposed use complies with MCC .2074(A)(2).

**MCC 11.15.2074(3) The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.**

**Findings:** The site is forested with a mixture of deciduous trees in the southern half and the northwest corner. The site is not managed as a forest operation. The proposed dwelling will be located 60 feet west of the centerline of Quarry Road, 241 feet north of the south property line, 90 feet east of the west property line, and 112 feet south of the centerline of Skyline Boulevard. The driveway will be from Quarry Road. The driveway is 15 feet wide and 117 feet long. The dwelling and driveway are sited in the portion of the property that is not forested. This area is currently an open field. No tree removal is necessary to establish the dwelling and driveway. The only vegetation removal necessary is the removal of field grasses and small plants, as well as that necessary to establish the required fire breaks.

The grading and erosion control plan (Exhibit 2) indicates the land areas affected by grading related to the proposed development. The subject property has an approximate 13% slope with a steep bank along its road frontages. A slope analysis map (Exhibit 22) indicates similar slope conditions throughout the field portion of the property. As noted previously, the proposed development is sited to minimize impacts to the southern forested portion of the parcel, which provides some habitat value. The amount of grading depicted is the minimum necessary.

The proposed dwelling is 2,744 square feet in size, including the attached garage, (House Plan - Exhibit 17) in addition to a 540 square foot deck. The proposed driveway involves approximately 1,756 square feet of travel surface. An estimated 0.12 acres (5,040 square feet) will be covered by structures and paved driveway improvements. The total area on the site impacted by the proposed development, including grading activities, consists of approximately 0.25 acres. The proposed development is located at the minimum front yard setback and is designed to minimize the driveway length and the amount of grading to the extent possible, given the site characteristics. The subject property is not managed as forest land. However, the amount of land used to site the dwelling, access road and service corridor is still minimized, and forested areas will not be impacted by this development in compliance with the above standard.



**MCC 11.15.2074(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

**Finding:** The site plan (Exhibit 1) indicates that the proposed access road is 117.05 feet in length.

**MCC 11.15.2074(5)** The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

- (a) The proposed dwelling will be located on a *tract* within a rural fire protection district, or the dwelling shall be provided with residential fire protection by contract;

**Finding:** The subject property is situated within the jurisdiction of the Tualatin Valley Fire & Rescue District.

- (b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet driveway standards of MCC .2074 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;

**Finding:** No perennial water source is located on the site.

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

- (i) A primary safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure ....
- (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:

Percent Slope	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 30	75
Less than 40	100

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .
- (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 Practices 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).**

**Findings:** The primary fire break is required to extend a minimum of 30 feet around the proposed structure. The proposed homesite is situated in an area consisting of 13% slopes that fall northeast toward Quarry Road and Skyline Boulevard. The primary fire break, according to MCC .2074 (A)(5)(c)(ii), is required to be 30 feet. Around the primary fire break, a 100-foot secondary fire break is required by MCC .2074 (A)(5)(c)(iii).

As noted in MCC .2074 (A)(5)(c)(v) above, the “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).” As discussed in this Decision under MCC .2058(C), the applicant is requesting a variance to the setback requirements to the west property line due to the size and dimensions of the subject parcel.

Given the size and configuration of the subject parcel, it is possible to establish the required primary fire break on all sides of the proposed structure. The full 100-foot secondary fire break could only be established on the south side of the proposed structure.

Due to the inability to establish the full secondary fire break on the north, east and west sides of the structures, the applicant proposes to extend the primary fire break to the north, east and west property lines. The primary fire break, around the subject dwelling and garage, would extend 60 feet to the east property line, which is the centerline of Quarry Road, 112 feet to the north property line, which is the centerline of Skyline Boulevard, and 90 feet to the west property line, which abuts an open field. The primary fire break would extend 30 feet south of the subject structure. As noted above, the 100-foot secondary fire break would only be established on the south side of the dwelling, south of the primary fire break. The proposed fire breaks are depicted on the site plan (Exhibit 1).

In summary, the required primary fire break can be established in full around the homesite, but due to the size and dimensions of the parcel, the required secondary fire break cannot be established in full to the east, west and north of the homesite. Therefore, the applicant is proposing extended primary fire breaks to the north, east and west property lines, and elimination of secondary fire breaks in these directions. The variance criteria (MCC .8500) are addressed within this report, below. The Tualatin Valley Fire & Rescue fire marshal has approved the proposed fire breaks in writing, Exhibit 16.

Maintenance of the secondary fire break is not required if it does not fit within an approved yard pursuant to MCC .2074(A)(5)(c)(iv). Approval of the variance to the 200' side and front yard setback would allow this requirement to be met.

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

**Finding:** The proposed homesite has an average slope of 13% (Refer to Exhibit 2).

**MCC 11.15.2074 (B) The dwelling shall:**

**MCC 11.15.2074 (B)(1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

**Finding:** The proposed dwelling will be designed and constructed in compliance with the Uniform Building Code.

**MCC 11.15.2074 (B)(2)**  
**been obtained; and**

**Be attached to a foundation for which a building permit has**

**Finding:** The proposed dwelling will be attached to a foundation, for which a building permit will be required. Compliance with this standard can be assured when a building permit is issued as required by a condition of approval.

**MCC 11.15.2074 (B)(3)** **Have a minimum floor area of 600 square feet.**

**Finding:** The proposed dwelling will have a floor area of approximately 2,744 square feet, according to the plan, (Exhibit 17). This is well in excess of the minimum 600 square foot floor area.

**MCC 11.15.2074(B)(4)** **Have a fire retardant roof.**

**Finding:** The proposed dwelling will have a fire retardant roof. Compliance with this standard can be assured when a building permit is issued as required by a condition of approval.

**MCC 11.15.2074(B)(5)** **Have a spark arrester on each chimney.**

**Finding:** The house plan (Exhibit 17) indicates that the proposed dwelling will have a chimney. Compliance with this standard can be assured when a building permit is issued as required by a condition of approval.

**MCC 11.15.2074 (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 groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, 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.**

**Finding:** The domestic water supply for the proposed dwelling will be from an on-site well. Copies of well logs in the vicinity of this site, Exhibit 15, demonstrate the availability of groundwater in the area. A letter from the Oregon Water Resources Department, Exhibit 23, verifies that a water use permit is not required for the proposed use. A condition of approval requires the applicant to submit the well constructor's report to Multnomah County upon completion of the subject well. The findings under Framework Plan Policy 37, Utilities are related to this standard.

**MCC 11.15.2074(D)** **A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

**MCC 11.15.2074(D)(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**

**Findings:** The proposed driveway will be designed, constructed and maintained to support a minimum GVW of 52,000 lbs. No bridges are proposed. Any culverts associated with the driveway will also be designed, built and maintained to support 52,000 lbs. GVW. Written verification from an Oregon Professional Engineer of compliance with this standard will be submitted subsequent to culvert construction, as required by a condition of approval.

**MCC 11.15.2074(D)(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;**

**Finding:** The proposed driveway will be constructed with an all-weather surface at least 15 feet in width (Exhibit 1).

**MCC 11.15.2074(D)(3) Provide minimum curve radii of 48 feet or greater;**

**Findings:** The curve radius of the proposed driveway is at least 48 feet, as illustrated on the attached plan (Exhibit 1).

**MCC 11.15.2074(D)(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

**Finding:** An unobstructed vertical clearance of 13 feet 6 inches will be maintained along the proposed driveway.

**MCC 11.15.2074(D)(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;**

**Finding:** The driveway will have an overall grade of 11.46%, with a short segment, approximately 70 feet long, with 17.91% grade (Exhibit 2). The plans have been approved by the fire marshal (Exhibit 16). The plans appear to indicate that the driveway grade is higher than the existing Quarry Road grade at the right-of-way line. This condition does not meet County right-of-way access requirements, and this circumstance could require changes to the driveway design. A final driveway plan which can be approved for access should also be approved by the fire district. A condition of approval has been imposed to require the fire marshal to approve the access plans.

**MCC 11.15.2074(D)(6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**

**Finding:** A turnaround is not required since the proposed driveway is only 117 feet long (Exhibit 1).

**MCC 11.15.2074(D)(7) Provide for the safe and convenient passage of vehicles by the placement of:**

- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

**Finding:** Since the proposed driveway is only 117 feet in length, additional turnarounds and turnouts are not required.

**TEMPLATE DWELLING CONCLUSIONS:**

1. The parcel meets the Template Dwelling requirements for the number of houses and dwellings within the template area. Compliance with the Department of Forestry stocking requirements appears to be required. This code provision can be satisfied by a condition of approval that the property owner submit a stocking survey report which demonstrates that the property will meet forestry stocking requirements, and by notification of the Assessor by the planning department as provided for in MCC .2052 (A)(6)(a).
2. The dimensional and development location requirements are met with the structure as proposed, or will be reviewed for compliance during final Building Permit processing, with the exception of the setback standards. The setback provisions of the ordinance are not met due to the proposed reduction of the 200' side yard setback to 90'. Approval of the variance request HV 2-98 will effect compliance with this standard.
3. The Lot of Record requirement is met based on the deed history provided by the applicant which demonstrates that the parcel was created in 1964, at a time when zoning allowed parcels of lesser size to be created by recordation of a deed.
4. All of the development standards of section .2074 are met with the information presented by the applicant, subject to these conclusions and conditions of approval. The least impact standard of .2074(1) can be met by a condition of approval which requires establishment of a vegetative buffer along the open field portion of the west property line. This conclusion is based on the lack of evidence that any location on the parcel would impact farm management to a different degree given the narrow width of the parcel and the required setback from Quarry Road.

The adverse impacts standard in .2074(2) is met by information provided by the applicant that there are no forest operations or management on the tract. The low level of farm management (hay production) which has occurred on the property in the past is connected to the adjacent farm to the west. No farm management of the tract itself occurs.

The driveway maximum grade standard in .2074(D)(5) is exceeded with the driveway as proposed, however the written approval of the Tualatin Valley Fire District allows a conclusion that this standard is met. However, the driveway as proposed may not meet County right-of-way access requirements, therefore a condition of approval requiring fire district approval of a design which meets right-of-way access requirements is recommended.

5. All of the development standards of MCC .2074(B) are not shown to have been met, but can be met the elements in .2074(B)(1), (2), (4), and (5) are indicated on the final building plans.

2. Criteria for approval of SEC Permit:

MCC 11.15.6404 Uses-SEC Permit Required

MCC 11.15.6404(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use or change or alteration of a use, except as provided in MCC. 6406, shall be subject to an SEC permit.

Findings: As stated above, the applicant is proposing the establishment of a single-family dwelling in the CFU District. This application includes a request for Conditional Use approval of the proposed dwelling.

The subject property is also designated SEC-h. The following findings indicate that the location and design of the proposed dwelling are in compliance with the applicable standards for an SEC-h Permit. Approval of the CU request qualifies the dwelling as a permitted use.

MCC 11.15.6408 Application for SEC Permit

**An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC .6420 through .6428, and shall be filed as follows:**

MCC 11.15.6408(C) An application for an SEC permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC .6420 through .6428.
- (2) A map of the property showing:

**Findings:** The applicable approval criteria are addressed within this report, below. This report serves as the required written description. A map of the property, indicating all of the applicable information, was provided as Exhibit 1.

MCC 11.15.6420: Criteria for Approval of SEC Permit (General Provisions):

**The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on the Multnomah County sectional maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

MCC 11.15.6420 (A): The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

**Findings:** There are no rivers, streams, lakes, or flood water storage areas on or near the subject property. However, the applicant intends to retain existing vegetation on the site to the maximum extent possible. The southern portion of the site is forested with a mixture of deciduous trees. The northern portion of the site is an open field with a small cluster of trees in the northwest corner. Proposed development areas are within the existing cleared area. Vegetation removal is limited to the removal of field grasses and plants, as well as that necessary to comply with the fire break requirements.

**MCC 11.15.6420 (B): Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Finding:** The subject property is zoned CFU. Surrounding lands contain farm and forest uses. As noted above, the southern half of the site is forested and the northern half is an open field. The proposed dwelling is situated within the field area in the northern half of the site. All of the parcel could be suitable for farm or forest uses, although the size of the parcel precludes resource management at a commercial scale. The north portion has been in farm use as part of the hay crop area on the adjacent parcel to the west. The south portion is not currently managed for commercial forest use, however it is suitable by definition and by inclusion in the CFU zone. The purpose of this criterion is not to preclude development, but to minimize impact on resource lands.

The proposed development is designed to help preserve and maintain farm and forest uses to the extent possible, given the change in use. Specific findings addressing impacts to farm and forest uses on the site and on surrounding lands are found under Section .2074 (A)(1) and (2), within this Decision above. As discussed in the following sections of this Decision, the proposed development is sited and designed to minimize impacts to adjacent lands through minimizing vegetation removal and implementing appropriate grading, drainage and erosion control methods, thereby preserving and maintaining surrounding farm and forestry uses.

**MCC11.15.6420 (C): A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

**Finding:** As demonstrated by the findings within this Decision, specifically MCC .2074 (A)(1) & (2), and the attached development plans, the proposed development is located in a manner that balances the functional considerations and costs with the need to preserve and protect areas of environmental significance, thereby conserving the wildlife habitat on the subject site and adjacent properties. A “Preliminary Significant Natural Resource Reconnaissance Report,” Exhibit 21, indicates that the proposed development will preserve the forested habitat on the site, which is the more valuable habitat area due to its diversity.

**MCC 11.15.6420 (D): Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

**Finding:** The subject property is approximately 1.98 acres in size and is in private ownership. The proposed development is a single-family residence. As discussed throughout this Decision, the proposed development is sited and designed to minimize impacts to wildlife habitat through minimizing vegetation removal and implementing appropriate grading, drainage and erosion control methods. No recreational

uses are proposed, aside from those associated with a typical single-family residence. As demonstrated by this Decision, the proposed development is consistent with the carrying capacity of the site and is designed to minimize conflicts with wildlife habitat on the site and on adjoining properties.

**MCC 11.15.6420 (E): The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

**Finding:** Vandalism and trespass on the subject property, and adjacent properties, is and will be deterred by the presence of the onsite dwelling and other dwellings within the surrounding area.

**MCC 11.15.6420 (F): Significant fish and wildlife habitats shall be protected.**

**Finding:** The subject property is designated as containing significant wildlife habitat (SEC-h). No areas of fish habitat are located on or near the site. The proposed development includes the construction of a single-family dwelling with an attached garage and a driveway. The proposed development is situated within an existing cleared area. Existing vegetation on the site will be retained, aside from vegetation removal resulting from the construction of the proposed homesite. Vegetation removal for the proposed development is limited to the removal of field grasses and small plants, and that necessary to establish the required fire breaks. The existing forest canopy will not be altered since no large diameter trees will be removed as a result of the proposed construction. The proposed development is sited and designed to minimize impacts to wildlife habitat through minimizing vegetation removal and implementing appropriate grading, drainage and erosion control methods. A "Preliminary Significant Natural Resources Reconnaissance Report," Exhibit 21, indicates that the proposed development will serve the forested habitat on the site which is the more valuable habitat area due to its diversity. Therefore, significant fish and wildlife habitats will be protected.

**MCC 11.15.6420 (G): The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

**Finding:** There are no rivers, lakes, wetlands, or streams present on or near the subject site. This criterion does not apply.

**MCC 11.15.6420 (H): Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

**Finding:** There are no known archaeological areas on, or near the subject site.

**MCC 11.15.6420 (I): Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

**Finding:** There are no areas of annual flooding, floodplains, water areas, or wetlands on or near the site.



**MCC 11.15.6420 (J): Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restrictions on timing of soil disturbing activities.**

**Findings:** The subject property is located within the Tualatin River Drainage Basin. The applicant submitted a preliminary grading and erosion control plan, Exhibit 2. A condition of approval requires the applicant to submit an application for review of a GEC Permit. Compliance with the GEC Permit criteria will ensure that areas of potential erosion are protected. The proposed detention pond is unacceptable to the County due to the potential of slope failure into the right-of-way. A Grading and Erosion Control Permit pursuant to MCC 9.40.010 will be required for the development of this property, and should include an alternate detention design.

**MCC 11.15.6420 (K): The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

**Findings:** The resources that could be impacted by the project are water quality (on-site sanitation) and soil erosion. Soil erosion/stormwater control issues will be addressed through the Grading and Erosion Control Permit. The on-site sanitation will be permitted under DEQ rules as discussed in the findings under Framework Plan Policy 37 Utilities. This criterion can be met by compliance with the conditions of approval.

**MCC 11.15.6420 (L): The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

**Findings:** Elevations and floor plans of the proposed house and attached garage are shown on Exhibit 17. The proposed house will be gray with white trim. The proposed dwelling and garage are of a design and bulk, and consist of construction materials, colors and lighting, similar to existing dwellings and accessory structures on adjacent properties and within the surrounding area. The proposed structures are compatible with the character and visual quality of the surrounding area.

**MCC 11.15.6420 (M): An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of natural vegetation, shall be retained in a natural state to the maximum extent possible.**

**Finding:** No identified fragile or endangered plant habitats are on the site. The proposed development will be located within an existing cleared area. The existing vegetation on the site will be retained, aside from vegetation removal associated with the driveway and house construction. Vegetation removal for the proposed development is limited to the removal of field grasses and small plants and any vegetation removal associated with the establishment of fire breaks. Therefore, natural vegetation will be retained in a natural state to the maximum extent possible. The application complies with this criterion.

**MCC 11.15.6420 (N): The applicable Policies of the Comprehensive Plan shall be satisfied.**

**Finding:** The Multnomah County Zoning Ordinance implements the goals and policies of the Multnomah County Comprehensive Plan. Therefore, by designing the proposed development in

compliance with applicable standards of the Multnomah County Zoning Ordinance, it is designed in accordance with the Multnomah County Comprehensive Plan. However, MCC .6420(N) specifically requires a finding of compliance with applicable plan policies. The County requires a finding prior to approval of a Legislative or Quasi-Judicial Action that Plan Policies 13, 22, 37, 38, and 40, are met. In addition, Policy 14, Development Limitations applies as indicated in the findings under Multnomah County Comprehensive Plan Policies, of this report. Policies 11, Commercial Forest Land, and 16 Natural Resources are either directive of the County to zone land in a certain manner, or are implemented through ordinance provisions which are applied here, and therefore do not apply.

**MCC 11.15.6426(A)** In addition to the information required by MCC .6408(C.), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

- (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;
- (2) Location of existing and proposed structures;
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.

**Finding:** A vicinity map (Exhibit 3), indicating all of the applicable information, was submitted. No fencing is proposed or existing.

**MCC 11.15.6426 (B): Development Standards:**

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

**Finding:** The site plan (Exhibit 1) and aerial photograph (Exhibit 3) indicate the forested and non-forested areas on the property. The wildlife consultant's report in Exhibit 21 characterizes the entire site as a "cleared area" pursuant to the ordinance definition in 6426(A)(1). The proposed development is located within a non-forested "cleared" area. The only vegetation removal necessary for the proposed construction is the removal of field grasses and small plants, as well as any vegetation removal necessary through establishment of fire breaks.

- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

**Finding:** The proposed homesite is approximately 60 feet from the centerline of Quarry Road, in compliance with this standard.

- (3) **The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Finding:** The access road/driveway is approximately 117 feet in length (from Quarry Road to the homesite), in compliance with this standard.

- (4) **The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**

**Finding:** The subject parcel abuts Skyline Boulevard to the north and Quarry Road to the east. Adjacency for purposes of the SEC development standards includes parcels on the same side of the road. The adjacent property to the west does not have a driveway/access road that is within 200 feet of the site. The adjacent property to the south has a driveway/access road approximately 190 feet south of the site's southern property line. Therefore, compliance with this standard requires the driveway to be within 200 feet of the south property line. The proposed driveway is approximately 325 feet from the south property line, and therefore does not meet this standard.

The proposed driveway off of Quarry Road is approximately 107 feet south of Skyline Boulevard and within 100 feet of an existing driveway on Tax Lot 15, which is east of the site across Quarry Road.

Section .6426(C) is addressed below because the Hearings Officer determines that the access to the homesite does not meet this standard.

- (5) **The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.**

**Finding:** Adjacent parcels for purposes of the SEC ordinance are those on the same side of a road which share a property line. Development on the adjacent property to the south is within 65' of the common property line, therefore development on the subject parcel must occur within 300' of the south property line. A variance has been requested.

- (6) **Fencing within a required setback from a public road shall meet the following criteria:**
- (a) **Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
  - (b) **Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
  - (c) **Cyclone, woven wire, and chain link fences are prohibited.**
  - (d) **Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

- (e) **Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**

**Finding:** No fencing is proposed.

- (7) **The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

**Finding:** Based on the Wildlife Reconnaissance Report, the property contains one or more nuisance plants. Future landscaping will not include any plants from the nuisance plant list. Nuisance plants that occur on the property will be removed and kept clear from the areas on the site that remain cleared.

**MCC 11.15.6426 (C): Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

- (1) **The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**
- (2) **The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having less detrimental impact on forested wildlife habitat than the standards in Section B.**

**Findings:** As previously noted, the subject parcel abuts Skyline Boulevard to the north and Quarry Road to the east. The adjacent property to the west does not currently have a driveway/access road that is within 200 feet of the site. The adjacent property to the south has a driveway/access road approximately 190 feet south of the site's southern property line. Locating the proposed driveway within 100 feet of the southern boundary of the site would require the removal of a significant amount of vegetation, including some large diameter trees. The proposed driveway location would not require the removal of any forest vegetation, and, thereby, will minimize impacts to wildlife habitat. The proposed driveway location off of Quarry Road is approximately 107 feet south of Skyline Boulevard and within 100 feet of an existing driveway on Tax Lot 15, which is east of the site across Quarry Road.

The above findings demonstrate that the proposed development siting will have a less detrimental impact on forested wildlife habitat than development siting in compliance with the standards of Section B (Exhibit 21). The proposed development exceeds the standards of Section B as it is clustered near existing streets and structures and will minimize impacts to the forested wildlife habitat on the site. Additionally, the standards of Section B are exceeded through the application of and compliance with Section C(3).

The applicant appears to argue that the driveway location standard in .6426(B)(4) can be met, but that the siting of the dwelling as proposed will have a less detrimental impact than compliance with the development standards in B. Impacts to the forested wildlife habitat are minimized by not removing trees for the driveway.

**(3) The wildlife conservation plan must demonstrate the following:**

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

**Finding:** The proposed development plan includes measures to reduce impacts to forested areas by siting the development within an existing cleared area. The only vegetation removal that will be required is the removal of field grasses and small plants. Disturbance of the existing forest canopy cover will be minimized, as no large diameter trees will be removed.

- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

**Finding:** The proposed development is situated within an existing cleared area, so vegetation removal will be minimized. As noted previously, the proposed development area is approximately 0.25 acres in size.

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing areas used for agricultural purposes.**

**Finding:** No fencing exists or is proposed on the subject site.

- (d) That revegetation of existing cleared areas on the property at a 2:1 ration with newly cleared areas occurs if such cleared areas exist on the property.**

**Finding:** As required by a condition of approval, revegetation of existing cleared areas will occur on the subject property at a 2:1 ratio.

- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainage's and streams located on the property occurs.**

**Finding:** No drainages or streams are located on or adjacent to the subject property. Therefore, no disturbance of riparian areas will occur. The standards (a) through (e) above are met with the proposal. The dwelling is being located within an existing "cleared" area, therefore no re-vegetation is required.

## **Multnomah County Comprehensive Plan Policies:**

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

**Policy No. 13, Air, Water and Noise Quality: Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.**

**Finding:** The primary issue under this policy is water quality related to septic system placement and construction, and stormwater runoff. This policy will be satisfied when the necessary septic system construction permit and grading and erosion control permit are obtained and the property developed in compliance with the permits. The subject dwelling will generally have no impact on air quality. A well and on-site disposal system will be established on the site to serve the proposed dwelling, in compliance with all applicable standards. The dwelling location is not within a known noise impacted area and the dwelling is not a noise generator.

**Policy No. 14, Development Limitations: The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

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

**Finding:** The subject property contains three (3) soil types: #7D Cascade silt loam, #17E Goble silt loam, and #43C Saum silt loam (See Exhibit 6). Soil Type #7D is subject to a high seasonal water table within 0-24 inches of the surface for more than three (3) weeks a year and a fragipan less than 30 inches from the surface.

A site evaluation report (LFS 86-97) was provided by the applicant as Exhibit 24. Septic construction plans have been prepared by the septic installer and have been reviewed by DEQ (Exhibit 25). The proposed septic system is also illustrated on the grading and erosion control plan (Exhibit 2). This information demonstrates that a septic system can be constructed on the subject property in compliance with DEQ standards.

The grading and erosion control plan (Exhibit 2) illustrates that the proposed house and driveway can be constructed on the subject property with the appropriate measures for preventing erosion and protecting water quality. An onsite storm water system and erosion control measures are depicted on the grading and erosion control plan. Grading related to construction is minimized to the extent possible, given the slopes on the property, the need to maintain a maximum setback from the west property line (so that the variance requested is the minimum necessary), and the need to preserve the forested portion of the property to protect existing habitat values and reduce site preparation costs by eliminating the need for tree removal. Compliance with this policy will be assured through the permitting processes for a septic construction permit and a GEC permit, both of which will be obtained prior to issuance of a building permit. The development can comply with this policy by meeting the requirements of the DEQ and GEC permitting requirements.

**Policy No. 22, Energy Conservation: The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:**

- 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 recreation 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 climactic conditions to advantage.
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

**Finding:** This request satisfies subpart "A" of Policy No. 22 as the subject dwelling will meet current energy conservation standards of the Uniform Building Code. Subparts "B," "C" and "D" are not applicable since the site is not in an urban area. Approval of this request will not adversely impact the ability of the owner of the property to take advantage of subpart "E." This request satisfies Policy No. 22.

**Policy No. 37, Utilities: The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:**

**WATER DISPOSAL SYSTEM:**

- A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

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

**Finding:** New dwellings are subject to building code requirements and inspection. The proposed dwelling will be served by an individual onsite well and an onsite disposal system. Septic construction plans have been prepared by the septic installer and have been reviewed by DEQ (See Exhibit 25) and the proposed drainfield plan was tentatively approved by the City of Portland (Exhibit E1). The City of Portland issues permits in accordance with DEQ requirements. A condition of approval requires the applicant to provide evidence of an adequate private water system.

Due to the proposal to locate the dwelling and septic system drainfield in a limited area on the lower (northern) portion of the site, and due to the need to maintain adequate setbacks from drainfield areas and rights-of-way, staff asked the applicant to provide a preliminary septic system plan approval. That approval has been granted (Exhibit E1).

**DRAINAGE:**

- A. There is adequate capacity in the storm water system to handle the increased run-off; or
- B. The water run-off can be handled on the site or adequate provisions can be made; and
- C. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

**Finding:** The proposed onsite storm water system is depicted on the grading and erosion control plan (Exhibit 2) and storm water calculations have been prepared by a registered professional engineer (Exhibit 13). The Drainage Policy listed above will be met through application of the Grading and Erosion Control (GEC) Permit requirements and compliance with conditions placed on approval of the GEC Permit. A condition of approval requires an application for a GEC Permit to be submitted subsequent to approval of this request.

**ENERGY AND COMMUNICATIONS:**

- H. There is an adequate energy supply to handle levels projected by the plan; and
- I. Communications facilities are available.

**Finding:** This proposal is for a single-family residence. The subject parcel is located in an area serviced by appropriate power and phone services. The Water and Disposal System alternative "C." and the Drainage elements of F. and G. apply to this request. The evidence provided to address "C" by the applicant is incomplete at this writing because the well has not been constructed. The adequate on-site sanitation and water system provisions of this policy can be met by a condition of approval which requires demonstrated compliance prior to Building Permit approval.



The Drainage elements of “F” and “G” are not met because the County does not approve of the detention pond due to its proximity to the right-of-way, and a perceived potential for slope failure into the right-of-way. A final system can be considered under a Grading and Erosion Control Permit.

**Policy No. 38, Facilities: The County’s Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

- A. The appropriate School District has had an opportunity to review and comment on the proposal.
- 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.
- D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

**Finding:** The applicant has provided a letter from the fire marshal from Tualatin Valley Fire & Rescue, Exhibit 16. The appropriate school district will receive notification of this decision. The Tualatin Valley Fire District has approved the proposed plan. Police protection is assumed to be adequate because no limitations to service have been reported in the recent past.

**Policy No. 40, Development Requirements: The County’s policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:**

- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.

**Finding:** There are no pedestrian or bicycle path connections to parks, recreation areas or community facilities plans for the site or in the vicinity of the site designated in the bicycle corridor capital Improvements Program and Map. This development is for single family use. No bicycle parking facility requirement is appropriate.

**SIGNIFICANT ENVIRONMENTAL CONCERN CONCLUSIONS:**

- 1. Compliance with the approval criteria of .6420(J) and Framework Plan Policy 14, relies on approval and compliance with a Grading and Erosion Control Permit pursuant to MCC 9.40.010.

A condition of approval requires compliance with a grading and erosion control permit before a building permit is issued.

2. The demonstration of adequate utilities findings required in Policy 37 has not been met for the on-site well and storm-water disposal/drainage elements. Conditions of approval have been imposed to ensure compliance with these policies. The conditions require submission of a well report and completion of a Grading and Erosion Control Permit.
3. The applicant has demonstrated compliance with the other general standards of .6420, and with the habitat standards of .6426 with the proposal as submitted.

### **3. Criteria for approval of a Major Variance:**

#### **MCC 11.15.8505      Variance Approval Criteria**

- (A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.**

**Finding:** The applicant is requesting a major variance to the setback and fire break requirements of the CFU District. The requested variance would allow the proposed dwelling to be located a minimum of 90 feet east of the west property line, as opposed to the required 200 foot setback. Additionally, the requested variance would allow the 100-foot secondary fire break to be established on only one (1) side of the homesite (the south side), as opposed to the requirement of a secondary fire break around all sides of the homesite. The criteria for a major variance are addressed below.

- (1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

**Finding:** The circumstance which gives rise to the need for the variance is that the east-west dimension of 229' does not allow for the combined street side yard and side yard setback total distance of 260'. The subject property is a 1.98 acre rectangular-shaped parcel. The subject parcel has a north-south dimension of 481.90 feet on its east boundary and a north-south dimension of 375.98 feet on its west boundary. The parcel has an east-west dimension of 229.06 feet on its south boundary and an east-west dimension of 243.07 feet on its north boundary, which follows the curve of Skyline Boulevard. The east/west setback requirements require 260 feet plus the foot print of the proposed building. Surrounding properties in the vicinity, identified as an area within 1/4 mile of the subject site and in the CFU District consist of a wide range of sizes and shapes (See Exhibit 3). Most properties in the surrounding area and in the CFU District are at least partially forested (See Exhibit 3). The size and shape of the subject parcel, which limit its ability to comply with the setback and fire break requirements of the CFU District, do not apply generally to other property in the vicinity of the site or in the CFU District.

- (2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.**

**Finding:** MCC .2058 (C) requires a 60-foot setback to the centerline of Quarry Road and the centerline of Skyline Boulevard, and a 200-foot setback to all other property lines. MCC .2074 (A)(5)(c) requires the establishment of a 30-foot primary fire break on the west and south sides of the dwelling, an 80-foot primary fire break on the north and east sides of the dwelling, and a 100-foot secondary fire break around the primary fire break. Due to the small size and narrow width of the parcel, imposition of the setback and fire break requirements of the CFU District would restrict the use of the subject property to a greater degree than it restricts other property in the vicinity or in the CFU District, as it would then be impossible to locate a dwelling on the subject site. Dwellings could potentially be located on other properties in the vicinity or in the CFU District in spite of the setback and fire break requirements.

- (3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

**Finding:** The intent of the 200-foot setback requirement in the CFU District is to minimize impacts to farm and forest uses on the subject site and surrounding lands, as well as to minimize the amount of forest land that is used for residential development. Findings within this report under MCC .2074 (A)(1) demonstrate that the proposed use is designed and located so that it will have the least impact on nearby or adjoining forest and agricultural lands. Findings under MCC .2074 (A)(2) demonstrate that the proposed dwelling is designed and sited to minimize adverse impacts on farm and forest activities on the site. Additionally, findings under MCC .2074 (A)(3) demonstrate that the proposed use is designed to minimize the amount of forest land used to site the dwelling and driveway. Therefore, since the proposed use will still comply with the intent of the 200-foot setback requirement, authorization of the requested variance will not be materially detrimental to the public welfare, nor injurious to property in the vicinity or CFU District, nor will it adversely affect the appropriate development of adjoining properties.

The intent of the fire break requirements in the CFU District is to minimize the risks associated with wildfire in forested areas. Fire breaks are intended to slow the path of wildfire and, thereby, minimize the risk of fire for the subject structure which the fire breaks surround. As noted previously within this decision, the secondary fire break can only be established on the south side of the dwelling. The applicant proposes to extend the primary fire break to the north, east and west property lines. The subject property abuts two (2) County maintained roads, Quarry Road to the east and Skyline Boulevard to the north. Therefore, on the east and north sides of the house the primary fire breaks will be bordered by paved streets, which serve as a fire break. Additionally, the fire marshal has reviewed and approved the proposed development plans, Exhibit 16. The proposed development meets the intent of the fire break requirements as fire hazards are minimized to the extent possible. Therefore, authorization of the requested variance will not be materially detrimental to the public welfare, nor injurious to property in the vicinity or district, nor will it adversely affect the appropriate development of adjacent property since fire hazards are minimized.

- (4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.**

**Finding:** As demonstrated by the findings contained under Section III.B. of this Decision, the proposed development complies with the applicable policies of the Comprehensive Plan and, thereby, will not adversely affect the realization of the Comprehensive Plan.

The proposed use is a single-family dwelling in the CFU District. The CFU District allows dwellings as a conditional use pursuant to the provisions of MCC .2052 and .2074, which are addressed under Section III.A.1 of this Decision. Findings throughout this Decision demonstrate that the proposed dwelling will be established in conformance with the intent of the CFU District standards, as well as other applicable standards and the Comprehensive Plan.

#### **VARIANCE CONCLUSION:**

1. The applicant has demonstrated that all of the Major Variance approval criteria have been met. Overall, the need for the variance is driven by the small size of the parcel and the large yard areas required in the CFU zone.

#### **CONCLUSION**

Based on the findings and the substantial evidence cited or referenced herein, I conclude that the application satisfies all applicable approval criteria provided that the Conditions of Approval are complied with. Accordingly, the conditional use permit for a template dwelling, the significant environmental concern permit and major variance request are hereby granted, subject to the Conditions of Approval contained herein.

IT IS SO ORDERED, this 3<sup>rd</sup> day of April, 1998.

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Deniece Birdseye Won, Hearings Officer