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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

<b>Case file:</b>	CU 2-98 and SEC 7-98
<b>Application:</b>	Conditional Use and Significant Environmental Concern permits to establish a single family residence under the "template dwelling" approval standards in the Commercial Forest Use District.
<b>Location:</b>	18023 NW Johnson Road Tax Lot 10, Section 15, T2N R2W, W.M. Tax Account # R-97215-0100 <input type="checkbox"/>
<b>Property Owner:</b>	James & Theresa Le Francq 412 Morrison Road Vancouver, WA 98664
<b>Zoning:</b>	Commercial Forest Use

MULTNOMAH COUNTY  
PLANNING SECTION

98 APR - 7 AM 8:05

**Hearings Officer Decision:** Approve subject to compliance with specific conditions

### CONDITIONS OF APPROVAL

1. A Grading and Erosion Control (GEC) Permit will be required for any volume of soil or earth disturbed, stored, disposed of, excavated, moved, or used as fill greater than 50 cubic yards. The GEC Permit will be required only for areas of soil or earth disturbance not covered under the Oregon Department of Forestry (ODF) permit.
2. Best Erosion Control Practices shall be utilized through all phases of development. In the event Staff determines the level of erosion control is inadequate, construction will be stopped until such time as appropriate measures are taken.
3. Before a building permit is issued the applicant shall submit evidence indicating Tualatin Valley Fire and Rescue Fire & Life Safety Requirements for Fire Department Access and Water Supplies have been satisfied.
4. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with the Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
5. A forest stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052(A)(6).
6. Before a dwelling building permit is issued the applicant shall provide verification that the proposed driveway from the public road to the home has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW. [MCC 11.15.2074(D).] That verification shall be from a qualified professional engineer accompanied by sufficiently detailed maps, cross sections, and profiles.
7. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074(C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
8. Prior to issuance of a building permit and as long as the property is under forest resource zoning, the property owner shall maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074(A)(5).
9. Approval of this Conditional Use shall expire two years from the date of the Decision unless "substantial construction" has taken place in accordance with MCC 11.15.7110(C) or the subject proposal is completed as approved. For the purposes of this decision, "completion" of the development under this conditional use review will involve, at a minimum, the following (summarized actions) to have taken place

prior to the expiration date of the Conditional Use:

- A. Applying for and approval of a Grading and Erosion Control Permit, if necessary;
  - B. Forest stocking survey report submitted;
  - C. Fire safety zones cleared and inspected by Planning staff;
  - D. Submittal of a well drilling report, then 10 day opportunity for parties entitled to notice to appeal determination that the well report satisfies the service requirements of Comprehensive Plan Policy 37, Utilities.
  - E. Application for Right-of-Way permits for a new driveway, if applicable, and construction of the driveway to the design and specifications shown on plans submitted with the Conditional Use application, and;
  - F. The conditions of approval relating to the fire retardant roof, chimney spark arresters, foundation, and floor area are shown on the building plans.
  - G. The constructed building shall be a single family dwelling based on the following characteristics: be lawfully established under required building permits; have intact interior walls and roof structures inspected under that building permit; has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to an approved and permitted sanitary waste disposal system; has interior wiring for interior lights inspected under an electrical permit; and has a heating system.
  - H. If the dwelling is not completed, then the method of determination that "substantial construction" has taken place is an application to the Planning Director. The application must be submitted on a General Application Form with supporting documentation at least 30 days prior to the expiration date. The decision of the Planning Director will be a land use decision that may be appealed to a Hearings Officer by a party entitled to notice [MCC 11.15.7110 (C)(3)].
10. The property owner shall not plant the nuisance plants listed in MCC 11.15.6426(A)(7) and shall remove and keep removed from cleared areas any of the listed nuisance plants.

#### TESTIMONY AND EVIDENCE PRESENTED

- A. Phil Bourquin, County Planner, summarized the staff report. He noted that the staff report failed to include the SEC-h criteria and analysis and that the Hearings Officer's decision should include the applicant's submittal information from pages 30-34.
- B. Donna Hulme, the applicant's representative submitted a response, Exhibit H1, addressing Longview Fibre Company's comments. The applicant has filed and recorded a Conditions and Restrictions document which acknowledges farm and forestry practices, and the noise, dust, spray residue, smoke, vapor, and other types of visual, odor, or noise pollution, and the property owner accepts as a normal and necessary farm or forest practice as part of the risk of purchasing a residential

dwelling in a farm or forest area.

The response states:

"To further buffer any impacts, the proposed building envelope is approximately nine hundred fifty (950) feet from the closest boundary of the parcel owned by Longview Fibre. There are also intervening topography and existing vegetation. The applicant parcel also has a grown stand of commercial timber. It can be reasonably concluded that the applicant parcel will at some point in the future engage in forestry practices similar to those of Longview Fibre. Both parcels are required to handle herbicides and pesticides according to Federal guidelines.

"Based on setback distance, intervening topography and vegetation, recorded Conditions and Restrictions which are part of the applicant parcel's deed, and similar forestry practices on both parcels, it can reasonably [be] concluded that impacts and/or conflicts between Longview Fibre and the applicant parcel should be minimal or non-existent."

Ms. Hulme generally agreed with the staff report.

#### **APPROVAL CRITERIA:**

##### **L. MULTNOMAH COUNTY CODE (ZONING ORDINANCE):**

###### **Commercial Forest Use Zone:**

- A. **MCC 11.15.2052 (A):** A template dwelling may be sited on a *tract*, subject to the following:
- (1) **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:** Section MCC 11. 15.2062 is discussed below.

- (2) **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:** The site plan, Exhibit 1, shows the yard setbacks required. The proposed dwelling meets the required setbacks of this section.

(3) 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

**Findings:** Exhibit 11 is a copy of the soils map from the Multnomah County Soil Survey. The soil types on the site are 7B, 7C, 7D, and 7E. Types 7B, 7C, 7D and 7E are Cascade silt loam, with a Douglas Fir site index of 157. Based upon the site index of the soil on the parcel, the parcel is capable of producing 157 cubic feet per acre per year of Douglas Fir.

- (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

**Findings:** Exhibit 7 is a map of the 160 acre template test for this parcel. There are at least all or part of 11 other lawfully created lots that existed on January 1, 1993 within the 160 acre square.

- (ii) At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.

**Findings:** At least five (5) dwellings existed on those parcels prior to January 1, 1993. Included as Exhibit 8 are the Assessment and Taxation records of the parcels, provided by Metro Scan. County staff verified the Metro Scan information provided by the applicant and concurs that at least five (5) dwellings existed on those parcels prior to January 1, 1993. The applicant meets the criteria.

Parcel Number	Year Built
R97214-0190	1920
R97214-0240	1962
R97214-0250	1962
R97215-0110	1933
R97215-0120	1937

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

**Finding:** None of the dwellings is within the Urban Growth Boundary.

- (e) There is no other dwelling on the tract;

**Finding:** The parcel is not part of a tract. There is no dwelling on the applicant's parcel. The applicant meets this criteria.

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

**Finding:** The parcel is not part of a tract. The applicant meets the criteria.

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

**Finding:** This application is not for a replacement dwelling. The applicant parcel is not part of a tract. The applicant meets the criteria.

- (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 applicant's parcel is not part of a tract. The applicant meets the criteria.

- (4) 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:** The proposed dwelling is not in a big game winter habitat area as shown on the Sensitive Big Game Wintering Areas map and included as part of the record as Exhibit C1.

- (5) 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:** This criteria does not apply, the road access to the dwelling is via Johnson Road, which is a County Road.

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

**Finding:** A Stocking Report is included as Exhibit 13. The applicant can satisfy the criteria based on Exhibit 13. Condition of Approval #4 requires the applicant to submit a forest stocking survey prior to issuance of a building permit, in accordance with the provisions and procedures of MCC 11.15.2052 (A)(6).

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

**Finding:** Section MCC 11.15.2074 is addressed below.

- (8) MCC 11.15.2052 (A)(8): A statement has been recorded with the Division of Records that the owner and successor in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;

**Finding:** The applicant has recorded conditions and restrictions pursuant to this requirement on forms provided by the Planning Director as demonstrated in Exhibit 14 and recorded on 1/26/98.

- (9) MCC 11.15.2052 (A)(9): Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the County Division of Records;

- (a) The covenants, conditions and restrictions shall specify that:
  - (i) All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and
  - (ii) No lot (or parcel) that is part of the *tract* may be used to qualify another tract for the siting of a dwelling;
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest and agricultural lands;
- (c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

Finding: The required waiver, Exhibit 14, has been recorded.

MCC 11.15.2058 Dimensional Requirements

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

Finding: The applicant parcel is less than 80 acres and Section MCC. 2062 has been addressed.

- B. That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.
- C. Minimum Yard Dimensions - Feet:

Frontage on County Maintained Road 60 from centerline	Other Side Front	200	200	Rear 200
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Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

These yard dimensions 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.

Findings: The proposed site meets the criteria of .2058(C). The proposed dwelling is over



60 feet from the centerline of the County maintained road, the side yards are over 200 feet, and the rear yard is over 200 feet. The proposed dwelling will not be over 35 feet in height, and the front lot line length is over 50 feet. No variances are requested. The applicant meets the required setback dimensions for the site in the CFU zone. The criteria is satisfied.

- 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 is no adjacent dwelling within 100 feet. The applicant meets the criteria.

- 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 abutting street has sufficient right-of-way width to serve the area; therefore, the minimum yard requirement does not need to be increased. The criteria is satisfied.

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

**Finding:** The applicant proposes a single-family residential home. No barns, silos, windmills, antennae, or other structures are proposed. Should such structures be proposed for construction by the applicant in the future, the structures shall be subject to all applicable Code regulations in effect at that time.

**MCC 11.15.2062 Lot of Record**

- A. For the purposes of this district, a Lot of Record is:

(2) A parcel of land:

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;
- (b) Which satisfied all applicable laws when the parcel was created;
- (c) Does not meet the minimum lot size requirements of MCC .2058; and
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

**Finding:** Exhibit 5, a copy of the ownership record pertaining to this parcel, obtained from the Multnomah County Department of Assessment and Taxation, shows this parcel as 32.00 acres, deeded 1936. A copy of the original deed, recorded in book 294, page 149, is included as Exhibit 5. The applicant's parcel is a lot of record, as it was lawfully created prior to January 25, 1990. Since the lot size is less than 80 acres, the applicant is required to apply for a Conditional Use application for a template dwelling.

**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.

**C. A Lot of Record Which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

**11.15.2074 Development Standards for Dwellings and Structures**

Except as provided for the 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:

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

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);

**Finding:** Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will be encountered over the period of the dwelling existence. The proposed dwelling is at least two hundred (200) feet from all property lines. In correspondence dated February 28, 1990, ODF suggests that a 200 foot setback is typically effective in preventing serious conflicts between residential and forest uses. In addition, the ODF publication entitled Land Use Planning Notes No. 1. and No. 2 also supports that setbacks of 300 or more are effective

in preventing conflicts between forest and residential uses.

The property is accessed by Johnson Road. The proposed dwelling will be sited approximately one hundred (100) feet from Johnson Road. This area takes advantage of the site on the parcel that meets the required setbacks of at least sixty (60) feet from the road and 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while observing the previously stated setbacks. The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. Section MCC .2058 is addressed above.

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

**Finding:** The location of the proposed dwelling and access minimizes the amount of land taken from forest operations, while meeting the required setbacks. Only normal residential activities will be associated with the dwelling. The parcel is currently forested with reproduction fir trees that appear to be between 7 to 8 years old. The adverse impacts on the forest operations are minimized, as described above. Accepted forestry practices will not be curtailed nor impeded, the amount of forest land used to site access roads, service corridors, the dwelling, and structures is minimized. Activities associated with the proposed dwelling will include those typically found in conjunction with residential uses, such as eating, sleeping, gardening, occasional entertainment of guests, family activities, and the activities associated with caring for the forestry uses on the subject property. There will be no unusual activities associated with the proposed dwelling. The applicant meets this criteria by establishing the appropriate setbacks for the site and by describing the compatibility of the proposed use with the surrounding area.

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

**Finding:** The applicant's proposed development meets the required setbacks of the CFU zone. The location of the house is adequate in regard to slope.

**(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:** There are no access roads in excess of 500 feet in length on the parcel. Based on the applicant's site plan and statement, the criteria is satisfied.

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

**(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with a**

**residential fire protection contract:**

**Finding:** The proposed dwelling is located within the Tualatin Valley Fire and Rescue Fire District. The service provider affidavit submitted (Exhibit 4) verifies service is provided to the applicant's parcel.

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

**Finding:** There is no perennial water source on the lot. The applicant meets the criteria.

- (c) Maintenance of a primary and a secondary fire safety zone.
  - (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

**Finding:** The owners of the proposed dwelling will maintain a primary and secondary fuel free fire break area surrounding all structures. This will include a minimum of 30 feet in all directions around structures. Within the primary safety zone, fuels that will produce flame lengths in excess of one foot will be removed. Vegetation within the primary safety zone will include green lawns and low shrubs (less than 24 inches in height). Trees will be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. The applicant meets the criteria.

- (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 25	75
Less than 40	100

**Finding:** The proposed dwelling will be sited on a level area, slope will not cause the primary safety area to be increased. The applicant's proposed fire zone measures meet the

required criteria. Condition of Approval #6 addresses this requirement.

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

**Finding:** The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1, 1991 and published by the Oregon Department of Forestry. The applicant's proposed fire zone measures meet the criteria. Condition of Approval #7 addresses this requirement.

- (iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

**Finding:** The applicant meets the above criteria. Condition of Approval #6 addresses this requirement.

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

**Finding:** The proposed dwelling is on a slope of less than (10) percent. The applicant meets the criteria.

- (B) The dwelling shall:

- (1) Comply with the standards of the Uniform Building Code or as

prescribed in ORS 446.002 through 446.200 relating to mobile homes;

**Finding:** The applicant will meet this criteria through the Building Permit process.

- (2) Be attached to a foundation for which a building permit has been obtained; and

**Finding:** The dwelling will be attached to a foundation. The building permit will be obtained after the development permit is approved. The applicant meets this criteria.

- (3) Have a minimum floor area of 600 square feet.

**Finding:** The applicant's proposal meets this criteria.

- (4) Have a fire retardant roof; and

**Finding:** Conditions of approval ensure compliance with this criteria.

- (5) Have a spark arrester on each chimney.

**Finding:** The proposed dwelling will comply with this criteria.

- (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

**Finding:** The well for this property will be drilled at the building permit stage. The private well will be located on the applicant parcel, no easement will be involved. A condition of approval requires the applicant to submit the well instructor's report to the County upon completion of the well.

- (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:
  - (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;

**Finding:** The driveway accessing the dwelling from Johnson Road is required by Condition of Approval #5, to comply with the GVW standards.

- (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:** Condition of Approval #5 requires the applicant to provide documentation that this requirement will be met.

- (3) Provide minimum curve radii of 48 feet or greater;

**Finding:** Condition of Approval #5 requires the applicant to provide documentation that this requirement will be met.

- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;

**Finding:** The applicant is required to meet this by Condition of Approval #5.

- (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 proposed driveway has a grade of less than 8 percent. Condition of Approval #5 requires the applicant to provide verification this requirement has been met.

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

**Finding:** The applicant is required to provide verification this has been met under Condition of Approval #5.

- (7) Provide for the safe and convenient passage of vehicles by the placement of.

- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

**Finding:** Condition of Approval #5 requires the applicant to provide documentation this requirement has been met.

**MCC 11.15.6420 Criteria for Approval of SEC Permit**

**Any proposed activity or use requiring an SEC permit shall be subject to the following:**

- 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.**

**Finding:** This criteria is not applicable since no river, stream, lake, or floodwater storage area exists on site.

- B. Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Finding:** The applicant's narrative states the agricultural and forest land of the site shall be preserved and maintained. The applicant meets this criteria.

- 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:** The proposed dwelling is located to observe district setbacks, and preserve the wildlife habitat. There is no existing fencing on the applicant parcel. The adjacent parcel to the south, on the western portion of the southern boundary of the applicant parcel, is a commercial nursery and has fencing. The proposed dwelling is located in the best site of the parcel to preserve and protect the wildlife habitat, as well as balance the functional considerations and costs. The proposed dwelling is located to allow wildlife continued use of the timbered area, and ingress and egress across the parcel. The applicant meets this criteria.

- 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:** This parcel is not part of a public recreational land. Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will be encountered over the period of the dwelling existence. The applicant meets the criteria because the applicant's proposed use of the land will be carried out in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.



- 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:** Public safety is provided by Multnomah County Sheriff, as indicated by the Service Provider form. The applicant meets the criteria by providing the completed Service Provider form.

- F. Significant fish and wildlife habitats shall be protected.

**Finding:** No significant fish habitat exists on the site, the applicant meets the criteria.

- 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 continues riparian corridors.

**Finding:** There are no rivers, lakes, wetlands, or streams on the parcel. Therefore, this criteria does not apply to this application.

- H. Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

**Finding:** This criteria is not applicable as there no archaeological areas on the site.

- 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:** The site does not have areas of annual flooding, floodplains, water areas, or wetlands, therefore, this criteria does not apply.

- 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.

**Finding:** To ensure soil remains on the site and prevent soil from washing onto adjacent properties, the applicant states that Best Management Practices will be used during all phases of development. This is addressed in Condition of Approval #2.

- 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.

**Finding:** Exhaust from chimneys will meet DEQ standards. Water resources will not be polluted, the septic system will receive approval from the County Sanitarian. The proposed

dwelling will maintain ambient noise levels, as no unusual activities will be associated with the proposed dwelling. The site will be maintained and cleared of construction debris, waste, and solid waste material during and after construction of the proposed dwelling. The applicant meets the criteria.

- 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.

**Finding:** The areas of concern are wildlife habitat. The design and bulk of the proposed dwelling, as well as the construction materials will be compatible with the area. The colors and lighting will not be obtrusive, but will be in harmony with those of the area. The applicant meets the criteria.

- 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:** The parcel does not have the characteristics described in the criteria, therefore, this criteria is not applicable.

- N. The applicable Policies of the Comprehensive Plan shall be satisfied.

**Finding:** Applicable Comprehensive Plan policies are addressed below.

**Section 11.15.6426 Criteria for Approval of SEC-h Permit Wildlife Habitat**

- (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;

For purposes of this section, a forested area is defined as an area that has at least 75% crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Oregon Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

- (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'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:** Exhibit 2, the Aerial Photo with Map Overlay shows the location of all existing forested areas and non-forested "cleared" areas, that there are no existing structures on the parcel, the location and width of existing and proposed public roads, private access roads, driveways, and service corridors, and existing fencing on the subject property and on adjacent properties entirely or partially within 200 feet of the subject property. The site plan (Exhibit 1) shows the location of the proposed dwelling.

**(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:** This application meets the above requirement, as indicated on the site plan (Exhibit 1) and the aerial photo (Exhibit 2).

- (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:** As shown on the site plan (Exhibit 1), the proposed dwelling is approximately 100 feet from the road boundary. Therefore, the above requirement is met.

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

**Finding:** As shown on the site plan, the proposed dwelling is approximately 100 feet from the road boundary. Therefore, the above requirement is met.

- (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 adjacent property driveway is over 200 feet from the property boundary of the applicant parcel. Therefore, this requirement does not apply.

- (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:** As shown on the site plan (Exhibit 1), the proposed dwelling is within 300 feet of the property boundary. Therefore, this requirement is met.

- (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.

**Finding:** The owner of the parcel agrees to comply with the above requirements.

- (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 the public road serving the development, and the front yard setback line parallel to the public road serving the development.
- (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:** A Condition of approval requires the property owner to not plant the listed nuisance plants and to remove and keep removed from cleared areas any of the listed nuisance plants from cleared areas of the subject property.

## **II. MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:**

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

1. 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 and Noise Levels.

**Finding:** The proposal is not located in a noise impact area. There will be no unusual activities associated with the proposed dwelling. The quality of the air, water and land resources and ambient noise level will be preserved, as will the use of such resources. Exhaust from chimneys will meet DEQ standards, water resources will not be polluted, the septic system will receive approval from the County Sanitarian. The proposed dwelling will maintain ambient noise levels, as no unusual activities will be associated with be associated with the proposed dwelling. The applicant meets the criteria of Policy No. 13 Air, Water and Noise Quality.

2. 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:

A. Slopes exceeding 20%;

**Finding:** The site is not on the Slope Hazard map, and the slope of the site does not exceed 20%. The applicant meets this criteria.

B. Severe soil erosion potential;

**Finding:** The soils of the parcel are 7B, 7C, 7D, and 7E. The hazard rates of erosion for these soils as follows:

SOIL TYPE	HAZARD OF EROSION
7B	Slight
7C	Moderate
7D	High
7E	High

The soils types based on the Soil Survey of Multnomah County are not absolute and may include more or less of each of the soil type. The proposed dwelling site is on soil type 7B, which has the least potential of erosion. The site does not have a severe erosion potential, this criteria has been met. Because of potentially high hazard of erosion, and in response to other approval criteria, a condition of approval has been imposed to require the applicant to utilize Best Management Practices relative to erosion control measures. The criteria is satisfied.

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

**Finding:** The criteria is met as the applicant parcel is not within the 100 year floodplain based on maps available within the Planning Office.

**D. A high seasonal water table within 0-24 inches of the surface for more than 3 or more weeks of the year;**

**Finding:** The Soil Survey of Multnomah County Soil show the following water table for the soils on this parcel:

SOIL	WATER TABLE
7B	18" to 30"
7C	18" to 30"
7D	18" to 30"
7E	18" to 30"

All the soils on the parcel have a seasonal water table of 18-30 inches for December to April. These water tables that can range from 18" to 30" are within the 0-24 inch range, but at the lower end of the range of concern. Provided soil disturbing activities are completed prior to the on set of the rainy season (October 15) the potential for the water table becoming a problem should be mitigated. This is addressed in Condition of Approval #2 requiring the use of Best Management Practices.

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

**Finding:** The Soil Survey of Multnomah County states the fragipan is to a depth of 60 inches or more for all soil types on the applicant parcel. This requirement has been met.

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

**Finding:** The Soil Survey of Multnomah County does not list any of the soils of this parcel as being subject to slumping, earth slides, or movement. Therefore, this requirement is met.

**3. 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 application is for a dwelling on a lot of record. The density of the dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the county. The dwelling will meet current energy conservation standards of the Uniform Building Code. This parcel is not in an urban area. Therefore, sections B, C, D, above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions to advantage, in that the proposed dwelling is located close to the existing street (Johnson Road), while observing district setbacks, and is sited on the portion of the parcel that best meets the competing goals identifies in Development Limitations and the district requirements. The applicant meets the criteria described in A - E of Policy 22, Energy Conservation.

- 4. 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 sewerage disposal system; or
- D. There is an adequate private water system, and a public sewer with adequate capacity.

**Finding:** A private well will be drilled prior to obtaining a building permit. The well drillers report is required to be submitted by Condition of Approval #7 before issuance of the building permit. A Land Feasibility Study has been completed by the City of Portland determining the site is considered suitable for the use of a standard septic tank/drainfield disposal system.

**DRAINAGE:**

- E. There is adequate capacity in the storm water system to handle the increased run-off; or
- F. The water run-off can be handled on the site or adequate provisions can be made; and
- G. 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:** Existing vegetation and reforestation will continue to handle on site water run-off. A dry well on the parcel will be used to collect the run-off from the proposed structure. Water run-off will be handled on site in accordance with the standards set forth by the City of Portland Soils Section. Thus, run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

**ENERGY AND COMMUNICATIONS:**

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

**Finding:** The service providers are Portland General Electric and U.S. West Communications. The applicant meets the above criteria.

- 5. **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.

**Finding:** The applicant provided the school service provider form, Exhibit 4. The applicant meets the criteria.

- 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.

**Finding:** The applicant provided the fire service provider form, Exhibit 4. The service provider has indicated there is no water flow in this area. Therefore, the fire district will have to use water tanker trucks, or a water source for fire fighting will need to be established on the applicant parcel. Adequate water pressure and flow is provided by the



tanker.

Included with the fire service form is a copy of "Fire & Life Safety Requirements for Fire Department Access and Water Supplies", which was provided by Tualatin Valley Fire and Rescue. Item 21 of the brochure addresses rural buildings and required water flow.

Tualatin Valley Fire and Rescue has stated that Standard 1231, referred to in Item 21, takes slope and dwelling size into consideration. Because the slope of the dwelling site and access to the dwelling is less than fifteen (15) percent, and the proposed dwelling is approximately 3600 square feet or less, the flow of water from the tanker trucks suffice to meet this requirement. A building envelope of 100 feet by 100 feet was provided on the site plan to allow ease in siting the dwelling, while still complying with the requirements of this application, without requiring modifications. Due to the building envelope size being 10,000 square feet, the plans examiner may have assumed the dwelling was to be 10,000 square feet, which would require additional water flow, based on standard 1231. However, the proposed dwelling is not 10,000 square feet; therefore, this application should be able to meet the requirements of standard 1231 without additional requirements.

If a Tanker can obtain access and carry adequate water this criteria can be satisfied. A condition of approval requires evidence from Tualatin Valley Fire and Rescue indicating the Fire & Life Safety Requirements for Fire Department Access and Water Supplies has been satisfied, prior to issuance of a building permit.

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

**Finding:** The applicant has provided a police protection service provider form, Exhibit 4. The applicant meets the criteria.

- 6. **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:** The abutting right-of-way, Johnson Road, is not a designated bikeways facility.

There is no need for benches, as there are only single family residences in the area.

#### 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 user permit for a template dwelling and the significant environmental concern permit requests are hereby granted, subject to the Conditions of Approval contained herein.

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

Deniece B. Won

Deniece Birdseye Won, Hearings Officer