

MULTNOMAH COUNTY, OREGON HEARINGS OFFICER DECISION

Case File: Conditional Use CU 3-98 and
Significant Environmental Concern SEC 12-98

Proposed Action and Use: The applicant requests
Conditional Use review and approval to allow a single
family dwelling on a 30.3 acre tract. The request also
includes Significant Environmental Concern review for
areas that contain Wildlife Habitat and Significant Streams.

Location: 7547 NW Skyline Blvd.

Property Description: Lots 1-5 and 30 of Hillhurst, Section 15, T1N, R1W

Zoning: CFU, Commercial Forest
Use SEC-h Significant
Environmental Concern,
SEC-s Significant Wildlife Habitat and Streams

Applicant/Owners: Fred and Corrine Bacher
505 NW 107th Ave.
Portland, OR 97229

Applicant's Representative: Dorothy S. Cofield
Executive Centre, Suite 107
12725 SW 66th Ave.
Portland, OR 97223

DECISION

Based on the findings, analysis and conclusions and conditions of approval contained in this decision, the Hearings Officer **approves** Conditional Use request CU 3-98 and Significant Environmental Concern request SEC 12-98

CONDITIONS OF APPROVAL

Conditions of Approval:

1. Before the County issues a building permit, the owner shall provide a copy of a deed restriction deed restriction in the 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, recorded with the county Division of Records. The deed restriction shall specify that no other dwellings are allowed on other lots (or parcels) that make up this tract; all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling, except a replacement dwelling; and that no lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling.
2. Before the County issues a building permit, the owner shall dedicate an additional 20 feet of right-of-way for Hillhurst Street along the entire frontage of the subject property.
3. The property owner shall contact the Multnomah County Right-of-way permitting section and obtain any necessary permits before development within the Hillhurst right-of-way occurs.
4. Before issuance of a building permit, the owner shall sign and record a waiver of remonstrance against formation of a future local improvement district to finance improvements to Hillhurst Street.
5. Trees within the primary fire 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. Vegetation within the secondary fire safety zone shall be kept 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.
6. Before the County issues a building permit, the owner shall provide evidence the driveway shall be designed, built and maintained to meet the requirements in MCC 11.15.2074(D) including, but not limited to, supporting a minimum gross vehicle weight (GVW) of 52,000 lbs.; providing an all-weather surface of at least 12 feet in width; with a minimum curve radii of 48 feet, an unobstructed vertical clearance of at least 13 feet 6 inches; having grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided in subsection .2074(D)(5); providing a turnaround with a radius of 48 feet or greater at the end; and providing for the safe and convenient

passage of vehicles by the placement of turnouts measuring 20 feet by 40 feet at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

7. 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).
8. Compliance with the applicable portions of MCC .2074(B) (2), (4), and (5) has not been demonstrated. These features shall be indicated on the final building plans.
4. The dwelling shall be placed at the minimum 200' setback from the Hillhurst right-of-way within a building envelope in the general location shown on the site plan in Exhibit I, the envelope being 80' X 120' in size. This location shall be shown on the final site plan.
9. Prior to approval of the Building Permit, the applicant shall either demonstrate that a Grading and Erosion Control Permit (GEC) pursuant to MCC 9.40.010 or a Hillside Development Permit (HDP) is not required, or obtain a GEC or HDP permit. If neither permit is required, the applicant shall submit a Grading plan which details the erosion control measures to be used in order to demonstrate compliance with the SEC approval criteria of .6420(J), and Framework Plan Policy 37 F. and G for storm water management.
10. As part of the process described in condition 9. above, the applicant shall include an analysis which demonstrates that no beneficial groundwater recharge can occur by on-site disposal of storm water generated from impervious surfaces of the development.
11. The owner shall implement the mitigation plan provided in the SEC assessment prepared by SRI/SHAPIRO/AGGO for the property dated February 26, 1998.
12. The owner shall not plant any of the nuisance plants listed at section 11.15.6426(B)(7) and shall remove and kept removed any such nuisance plants from cleared areas.
13. Before the County issues a building permit, the owner shall provide evidence of an approved subsurface sewage disposal system on the site.
14. The owner shall show all exterior lighting on the final building plan. All exterior lighting shall be directed downward and hooded to minimize the impact of night lighting on wildlife habitat areas.
15. Except as specified in the above conditions, this approval is based on the applicant's submittals, testimony, site plan and the findings contained in this Decision of the Hearings Officer. The applicant shall be responsible for implementing the development plan as presented and approved.
16. Approval of this Conditional Use shall expire two years from the date of the Hearings Officer Decision unless substantial construction has taken place in accordance with MCC 11.15.7110 (C). The process for determination of substantial construction 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.

PROCEDURAL ISSUES

A. Impartiality of the Hearings Officer.

1. No ex parte contacts. I did not have any ex parte contacts before the hearing of this matter. I did not make a site visit.

2. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

B. Burden of Proof. The burden of proof in this proceeding is upon the applicant.

SUMMARY OF REQUEST

This Hearings Officer Decision addresses two requested actions, approval of a Conditional Use Permit, and a Significant Environmental Concern Permit.

Fred and Corinne Bacher, (hereinafter "applicant"), desire to build a single family dwelling in the Hillhurst Subdivision, lots 1-5 and 30, comprising 30.30 acres (hereinafter "subject tract"). The site is at an elevation of approximately 1,000 feet and generally slopes to the west. Vegetation on the site is characterized by a mixed hardwood forest with scattered conifers. A portion of the headwaters of an unnamed intermittent tributary of Rock Creek occurs on the property. There are existing dirt logging roads, but otherwise this parcel is relatively undisturbed, containing native plants with ferns and low shrubs growing under the alder canopy.

The surrounding area is a small neighborhood along Skyline Road, with 11 dwellings within 1500 feet of the proposed site. The surroundings are generally forested, primarily with 40 year old alder trees.

The subject tract lies just outside the City of Portland boundary, located to the west of Skyline Road at approximately the NW 7500 block. See Figure 1, Exhibit I. At the time of platting the Hillhurst Subdivision, a 30-foot wide perimeter right-of-way was created and dedicated to Multnomah County. See Map 1 of 1 of Exhibit I. No road improvements have ever been made to this right-of-way in the 100-year history of the subdivision.

The house is proposed to be located in the east-central portion of the site near the top of a broad ridge line. The home and the primary fire safety zone will be located partially over the existing dirt road.

A portion of the property falls within the SEC-s area for the intermittent tributary that occurs on the property. The stream is located in the southeastern portion of the site and flows northeast

to southwest. The entire site is located in the Germantown Subarea and mapped as Primary Wildlife Habitat in Multnomah County's West Hills Reconciliation Report.

The applicant proposes to access the subject property by an easement on Tax Lot 35 that benefits the subject tract. See Exhibit A, Roadway & Utility Easement (hereinafter "roadway easement"). The easement is 60 x 289.55 foot which begins at Skyline and ends at the right-of-way. In order to avoid steep slopes, the applicant will use 190 feet of the right-of-way to the south of Tax Lot 35, improved to County standards with a variance for 12 foot width per the applicant's discussions with Engineering Services Administrator John Dorst. See Exhibit V. In order to meet the 200 foot setback requirements, the applicant proposes to use an existing logging road as the private driveway to access the dwelling site from the right-of-way. The private driveway extends from the east boundary of the subject tract 200 feet west to the home site. The applicant selected the home site to minimize the impact to forest practices and the Significant Environmental Concern Stream Area (SEC-s) and the Hillside Hazard area, as discussed in the revised SEC assessment report, marked as Exhibit N.

The proposed home site is outside the Hillside Hazard area. Therefore, hillside area standards are not applicable to the application. The private driveway and secondary fire zone are within the SEC-s area which is addressed in the SEC assessment report, Exhibit N.

The proposed dwelling is an approximately 3000 square foot single family dwelling with a two-car garage. The driveway is proposed to be built over an existing logging road. Since the existing logging road site will be utilized for both the driveway and home site, very little cutting of trees or soil disturbance will be needed. See SEC Assessment Report, Exhibit N. The owners proposed to continue to manage the forest for timber production purposes. Utilities will be brought in underground, and no fences are proposed, so disturbance to wildlife will be minimal.

The applicant has worked with Oregon Department of Fish and Wildlife (ODFW) to develop a mitigation plan for the habitat area and stream area. The applicant is required by a condition of approval to make new native plantings at a ratio of 2:1 for all disturbed areas, consisting of native plants from the ODFW preferred list of plants most useful to local wildlife and appropriate to the local soil type.

The site plan shows a maximum disturbed building site of 120' x 80'. See Map 1 of 1, Exhibit I. The home for this site has not been designed, but is expected to be a 30' by 50' residence (approximately 3000 sq. ft. not including a 2-car garage and deck.) The building dimension shown in Map 1 of 1, Exhibit I, are approximate, and may be located elsewhere on the 120' x 80' building envelope, based on an exact survey.

HEARING AND TESTIMONY

- A. The Hearings Officer held a hearing on the appeal on October 21, 1998.**
- B. The planning department file is designated as an exhibit to this opinion. The staff showed no slides or video of the subject site at the public hearing.**
- C. Chuck Beasley, County planner summarized the staff report. He noted that the application was filed before the county adopted its new template dwelling rules. He said that there should be a condition of approval added to require the owner to**

comply with the driveway standards in MCC 11.15.2074(D). He also suggested that there should be a condition of approval included that states that the approval is based on representations made by the applicant and that those representations are binding on the owner. Mr. Beasley stated that the major issue in the staff's review was the location of the proposed dwelling. The issue related to the requirements in 11.15.2074(A)(3) and (4) requiring that the amount of forest land used is minimized and that the access be the minimum length required if it exceeds 500 feet. He discussed two alternative locations the staff considered.

- D. Dorothy Cofield, attorney, testified on behalf of the owner/applicant. She summarized the evidence that the tract meets the lot of record requirements. She stated that the applicant will dedicate 20 feet of addition right-of-way for Hillhurst street along the entire frontage of the property. Ms. Cofield expressed a concern that there should be conditions of approval imposed to assure that the criteria can be met in those instances where the applicant needs to provide further evidence before the County issues a building permit. She submitted three documents labeled Exhibits H1 through H3: H1 is an affidavit of posting. H2 is a Letter from David Newton dated October 21, and H3 is a copy of "Land Use Planning Notes" from the Oregon department of Forestry.
- E. William Wright, Engineer for the applicant, testified the access to the alternate site suggested by the staff would be too steep. It would result in slopes of 20% straight down the hill and would cause water rush down the road causing erosion.
- F. Kathleen Miller, a neighbor to the north, appeared. She had no objection to the application but stated her general concern about protecting the area and minimizing disruption to wildlife.

APPROVAL CRITERIA, FINDINGS OF FACT AND CONCLUSIONS

The Hearings Officer reviewed Multnomah County Code provisions concerning the CFU, SEC-h and SEC-s zoning designations. The following criteria were found by the Hearings Officer to be applicable. Each applicable criterion is set forth in bold face type followed by the Hearings Officers findings, analysis and conclusions.

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

MCC 11.15.2052 Template Dwelling

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

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

Findings of Fact and Conclusions. The subject tract is comprised of lots 1, 2, 3, 4, 5 and 30 of the Hillhurst Subdivision and is owned by the applicant, Corinne A. Bacher as shown in the deeds in Exhibit B. The subject tract was acquired by Dale and Virgil Burger on June 4, 1968 as shown in Exhibit B. The subject tract was in the same Burger ownership on February 20, 1990, as shown in Exhibit M. The subject tract is a lot of record because, as of February 20, 1990, there were no other contiguous lots in the same ownership as the Burger's.

The contiguous lots are: Lots 6, 11 and 29. Pursuant to 11.15.262(B), adjacent lots 12 and 13 are not contiguous to the subject tract because the only common boundary is a single point. Adjacent lots to the north and to the east in Tulamette Acres are not in the CFU district. The contiguous lot analysis only applies to lots and parcels in the CFU district. The A & T printouts, marked as Exhibit M, demonstrate that as of February 20, 1990, Lots 6, 11 and 30 were not in the same ownership as the subject tract. Lots 6 and 11 were owned by Lee Martinson and Frank Nash and Lot 29 was owned by Frank Fuhrman and Charles Henderson.

County Counsel has determined if there are no other contiguous lots in the same ownership as the subject tract as of February 20, 1990, the tract may be determined to be a lot of record. See Exhibit U. The subject tract configuration is consistent with the county's redline map that shows Lots 1-5 and 30 as a Lot of Record.

The tract as described, meets the lot of record requirements of this section.

These lots were legally platted and recorded in 1892 (the "tract"). A copy of the plat was provided as Exhibit C. The applicant will access the subject tract by a recorded easement on TL 35. See attached Roadway and Utility Easement, Exhibit A. The applicant has a building permit from the City of Portland to build a driveway to Skyline Blvd. See Exhibit O, Building Permit # 97-00518.

The applicant meets the standards set out in MCC 11.15.2062(A)(3) and (B) (Lot of Record). The subject tract of 30.30 acres is a group of contiguous lots which individually do not meet the minimum lot size requirements of MCC .2058 (80 acres), but considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres without creating any new lot lines and are held under the same ownership. As of February 20, 1990, there were no contiguous lots in the same ownership as the subject tract.

(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;

Findings of Fact and Conclusions. A site plan, (Map 1 of 1, Exhibit I of applicant's submittal), shows the required setbacks. No variances are requested. The subject tract is approximately 30.3 acres in size and therefore of sufficient size to site the dwelling.

(3) The tract shall meet the following standards:

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* * *

(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.

Findings of Fact and Conclusions. The aerial photo, (Exhibit T), shows that there are 12 lawfully created lots within the 160 acre square (TL 63, 24, 33, 32, 36, 31, 21, 20, 17, 19, and Hillhurst Subdivision Lots 6 and 7. The Tax Lot Cards and Hillhurst Subdivision Plat, (applicant's Exhibits M and C respectively), demonstrate that the above-referenced lots were lawfully created. There are eight houses, lawfully existing on January 1, 1993, sited on TL 21, 17, 19, 31, 36, 32, 33, and 63 which are within the 160-acre template and outside the urban growth boundary ("UGB"). (See A & T printouts, Exhibit G). Therefore, the applicant has demonstrated that there are 11 lots, lawfully created with at least five houses on them, existing as of January 1, 1993 and that this code provision is satisfied.

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

Findings of Fact and Conclusions. The lots and dwellings identified on the aerial map (shown in Exhibit T) to meet the 160-acre test are all outside the urban growth boundary.

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

Findings of Fact and Conclusions. The aerial photo, (Exhibit T), demonstrates that there are no dwellings on the tract.

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

Findings of Fact and Conclusions. There are no other dwellings on the lots that make up this tract as shown in the aerial photo, (Exhibit T).

(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

Findings of Fact and Conclusions. As a condition of development, the applicant is required to sign and record a deed restriction on lots 1-5 and 30 to preclude them from all future rights to site a dwelling. This criterion can be met.

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

Findings of Fact and Conclusions. The applicants stated that they will agree that lots 1-5 and 30 will not be used to qualify another tract for the siting of a dwelling. The tract meets the requirements of this section (3 a-h), when the deed restriction to meet part (3)(g) and (h) is recorded as required by a condition of approval to assure compliance with this section and section .2052(A)(9) below.

(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.

Findings of Fact and Conclusions. The dwelling is located outside the big game winter habitat areas as shown on Exhibit D.

(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.

Findings of Fact and Conclusions. Road access to the dwelling is by a privately owned road. Therefore, this code provision applies. The applicant has a recorded easement on Tax Lot 35 for use as a private road to access the subject tract from Skyline Blvd., subject to maintenance obligations (Exhibit 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 of Fact and Conclusions. No stocking survey report has been submitted with the application, however the ordinance allows implementation of this requirement with a condition of approval. As a condition of approval, the applicant is required to meet all Department of Forestry stocking standards and meet the standards of MCC 11.15.2052(A)(7) (a) through (c) as set forth above.

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

Findings of Fact and Conclusions. The applicable standards of MCC .2074 are addressed within this Decision, below.

(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;

Findings of Fact and Conclusions. A waiver of conflicts statement that perpetually runs with the subject tract has been executed and recorded with the Recorder. The applicant provided a copy of the recorded deed restriction, (Exhibit E).

(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 or agricultural lands;

(c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

Findings of Fact and Conclusions. Compliance with this condition requires both that the other lots which make up the tract are precluded from a dwelling in the future, and that no part of the tract can be used to qualify another tract for the siting of a dwelling. The owner will comply with the provisions of this section when he satisfies a condition of approval that requires the owner to record an irrevocable covenants, conditions and restrictions form which specifies that all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling and that no lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling.

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.

Findings of Fact and Conclusions. The tract meets the exception of .2062 as demonstrated under .2052(A)(1) above.

(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.

Findings of Fact and Conclusions. The minimum yard dimensions for under this section are 200' for all property lines. The site plan in Exhibit A1. I shows the dwelling location as 235' from the east property line, and approximately 435' from the next closest (north) property line.

- (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.**

Findings of Fact and Conclusions. This provision could be used to locate the dwelling at an alternate site in the northeast corner of the property as shown on the sketch by staff in Exhibit C2. The applicant's site plan (Exhibit A1. I) indicates that there is an existing dwelling on an adjacent parcel located 50' from the property line of the subject property. The applicant's proposed dwelling could be located 30' from the property lines at this location and still be within 80' of the dwelling on the adjacent parcel, thereby satisfying this alternative setback.

The staff considered application of this alternative setback standard because the applicant's response to the maximum access/utility corridor length standard in .2074(A)(4) shows that the corridor length to the dwelling in the proposed location is 680 feet. The corridor length could apparently be reduced to meet the 500' maximum if the dwelling were placed using this alternative setback standard.

The applicant's letter dated 9/17/98 (Exhibit A1. W.) addresses the alternate location and explains why this location should not be used. The applicant argues that alternate location would place the dwelling in a mapped slope hazard area on slopes of from approximately 11% to 12.5% (see Exhibit C2). The staff responded that a hazard report is not required for areas with slopes of less than 25% (MCC .6710(A)), and the slope hazard ordinance does not prevent development in mapped areas. Staff also noted that the topography between the west end of the 20' easement to the alternative dwelling site is nearly flat as shown by the location of the 1060' foot contour. This should result in a road grade which is less than the 12% road grade for the access to the proposed location.

The applicant made three code-related arguments concerning the applicability of the alternative setback provision. The applicant's first argument is that the nearest dwelling is within the UGB and can therefore not be considered pursuant to .2052(3)(d). Section .2052(3)(d) only applies to dwellings which can be counted to qualify the tract as a template dwelling. The applicant's second argument is that the alternative dwelling location does not result in shared access, which is required by the code provision. The staff responded that shared access is not a requirement of .2058(D). The language in .2058(D) does not require that access sharing must occur, but states that the potential for access sharing is one reason to allow clustering. The applicant's third argument is that placement of the dwelling within 30' of the Hillhurst right-of-way does not allow the firebreaks to be implemented. The staff responded that section .2074(c)(v) only requires maintenance of firebreaks for areas within approved yards. The most important primary and secondary zone, the area downslope of a dwelling, can be maintained for the alternative dwelling location, in the configuration shown in exhibit C2.

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The owner intends to dedicate 20 feet of land along the existing rights-of-way abutting his property so that the right-of-way will meet county road standards (Exhibit A1. V., and A1. X.). Upon dedication of this right-of-way, the distance to the nearest dwelling would increase to over 100', making the alternative setback inapplicable.

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

Findings and Conclusions. No buildings other than the dwelling are proposed.

MCC 11.15.2062 Lot of Record

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

* * *

- (3) A group of contiguous parcels of land:**

(a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;

(b) Which satisfied all applicable laws when the parcels were created;

(c) Which individually do not meet the minimum lot size requirements of MCC .2058, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and

(d) Which are held under the same ownership.

- (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.

Findings and Conclusions. The parcel meets the Lot of Record requirement of .2062(A)(3). (See the applicant's response and the finding under .2052(A)(1) of this Decision).

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.

Findings and Conclusions. The County's Transportation Division staff has determined that using the Hillhurst Street right-of-way would be an acceptable access if the right-of-way were increased to state standards of at least 50 feet of right-of-way width. To have a 50 foot wide right-of-way the owner would need to deed the additional 20 feet.

To ensure that access to Tax Lot 35 does not impair use of the right-of-way of Lambert Street to provide access to other lots in Hillcrest Subdivision in the future, the staff requires the applicants to submit detailed plans showing cuts and fills for County approval. To ensure that Hillhurst Street will be an adequate public facility, the county staff recommended that the applicant sign and record a waiver of remonstrance against formation of a future local improvement district to finance improvements to Lambert Street. The applicant and the County Transportation Division staff agreed that the land dedication, deed restriction and permit application would be a condition of approval of the template dwelling application.

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:

(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);

Findings and Conclusions. The applicant's proposed dwelling dimensions are 30' by 50' feet. The dwelling is proposed to occupy a site of approximately 80' x 120' on the subject tract. The applicants have sited the dwelling so that it is both as close as possible to the access easement and other residential uses on Skyline Blvd. and meets the minimum 200 foot setback requirement to all boundary lines while avoiding steep slopes. The dwelling site area is less than 1 percent of the subject tract.

The applicant provided a copy of an aerial photo showing neighborhood agricultural uses (Exhibit T). Lands north and east of the tract are within the regional urban growth boundary. The code provision only applies to conflicts with resource uses. Forestry, including Christmas

trees, and grazing are the principal agricultural uses in the area west and south of the tract. There are no adjacent parcels in farm use.

The main potential impact of the dwelling location on forest management on adjacent parcels is to the forest zoned parcels west, and south of the subject parcel. The distance to the closest parcel capable of forest use to the west is over 700'. At this distance, the proposed dwelling should have no adverse impact to forest uses. In addition, the applicant's dwelling will be buffered from the nearby resource uses to the west and south by a protected SEC-s area to the south and a Hillside Development Area in the northeast and northwest corner adjacent to the subject tract, on Lot 1 of Hillhurst Subdivision.

The dwelling's location near the existing logging roads would potentially constrain use of those logging roads for forest use access to adjacent forested areas. However, the proposed dwelling would not infringe upon any access rights because the adjacent property owners have no such rights. Tax Lot 29 is the only adjacent parcel that can be accessed by the existing logging road, and it has no access easement to allow that access.

The proposed location of the dwelling on the subject tract minimizes adverse impacts on adjacent lots by having these topographical features acting as a buffer to adjacent properties. The preferred dwelling site location is the maximum distance away from nearby and adjacent resource use and still meet required setbacks.

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

Findings and Conclusions. The applicant stated that their primary purpose for siting a dwelling on the tract is facilitate management of forest uses on, returning the tract to Red Cedar and Douglas Fir. The proposed dwelling will occupy an 80' x 120' building envelope, less than 1 percent of the subject tract. The driveway, an existing logging road, will still be used for forestry uses as well as limited residential use. Using the logging road for both dwelling access and forest practices will minimize adverse impacts on forest operations on the site because less of the subject tract will be disrupted for road access.

The applicant stated they intend to manage the forest on this property according to a "no herbicide" management plan, using intensive manual labor to control brush and nonnative species, as a family operation. The applicant said they intend to gradually replace the mature and dying alder on the subject tract with Western Red Cedar and Douglas Fir. Existing cedars and firs are not mature, and will be maintained until maturity. The applicant's preferred logging management method is sustained-yield uneven-age stand thinning every 5-10 years. The applicant has previously managed other wood lots in Timber, near Hagg Lake and near Jewel in this manner. This forest management goal is additional incentive for the applicant to use the existing logging road for the driveway and home site, to avoid compacting forest soils and to minimize disturbance of forest area. The dwelling location on slopes less than 10% minimizes the firebreak safety zone and keeps the secondary firebreak out of the streams, thereby minimizing lost tree planting area for harvest.

The dwelling's location minimizes adverse impacts on forestry use of the subject tract.

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

Findings and Conclusions. The area of the private driveway is approximately 2400 square feet (200 x 12) and the area of the building site is approximately 9,600 square feet. The area of the two septic drain fields is 15,000 square feet; the access easement and right-of-way is 480 feet long. The total area used to site the dwelling, roadway easement, driveway, septic field and firebreaks is approximately two thirds of an acre or 2 percent of the subject tract. (See Exhibit N, page 2).

The access road/service corridor is indicated as 680 feet long. The access road/service corridor length is composed of three segments, an easement from Skyline to the Hillhurst right-of-way, a segment in the Hillhurst right-of-way, and approximately 250' to the dwelling envelope as shown on Exhibit A1. I. Of these areas, only the last segment, the corridor from the right-of-way to the dwelling is forest land. Using the active logging road as the private driveway minimizes the amount of forestland used to site the service corridor and access road. The easement is within the City of Portland and carries an urban zoning designation, the right-of-way is dedicated to uses other than forest management.

The proposed 9,600 square foot dwelling site is an average size dwelling site for residential use within the UGB and is the minimum necessary here to site the dwelling. The septic drain fields of 15,000 square feet are the minimum necessary as approved by the Portland Sanitarian.

In conclusion, the area used to site the dwelling, septic system and access minimizes the amount of forest land dedicated to these uses.

(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

Findings and Conclusions. The access easement from Skyline Blvd. to the county right-of-way is 290 feet. There is an extremely steep ravine to the north of the proposed building envelope. The distance along the right-of-way is 190 feet to avoid steep slopes. The driveway extends an additional 200 feet from the county right-of-way west to the dwelling site. The service corridor is 680 feet, which is more than 500 feet.

Ms. Cofield submitted a letter dated September 17, 1998 (Exhibit A1.W), with an enclosed revised figure 2 showing the subject tract and the Hillside development areas (HDA). According to the applicant's revised Figure 2, the HDA is designated on the north, northwest, and southwest portions of the subject tract. If the access were shortened, the home site would need to be placed in the HDA to the north of the proposed building site.

According to Mrs. Cofield's letter the dwelling cannot be located in the northern portion of the subject site due to septic drain field concerns. She stated that, according to the Portland Department of Environmental Services, a septic drain field on steeper slopes must have stable soils. The cascade soils on the north portion of the property are not stable and drain poorly (see Exhibit P). Ms. Cofield stated that the septic drain field must be located where shown on the site plan with the dwelling located nearby. Consequently one reason that the road is longer than 500 feet is the unstable soils in the north part of the site.

If the home site were further north, a new road would need to be built. That road would be within the HDA on the north slope of the ridge line. According to SRIShapiro, the existing road

access would need to be retained to provide access to the remainder of the property for timber management purposes. In addition the new road would be steep, averaging 10% grade with a 200-foot distance of 12% grade and require a cut 240 foot wide. The cut would endanger or disturb adjoining property in Tulamette Acres contrary to an approval criteria for a Hillside Development permit.

The physical limitations of the property dictate that the access road and private driveway exceed 500 feet. The east boundary of the subject tract is approximately 320 feet east of Skyline Blvd. The required setback from the property boundary is 200 feet. The private driveway must begin 190 feet south of TL 35 in order to avoid steep slopes. Therefore, because of placement of the tract, 320 feet from Skyline Blvd. and the 200-foot setback requirement, the access corridor must be in excess of 500 feet.

The property is situated in a unique way due to the distance from an improved road to the property, and due to the unimproved substandard right-of-way which borders Hillhurst subdivision.

Based on the site plan in Exhibit I, it appeared to the staff that there were two other potential locations for the dwelling which would reduce the access road length as shown in Staff's Exhibit C2. The first is shown 200' due west of the end of the 20' wide access. This area is ruled out because location of a dwelling here would significantly increase the risk of fire loss due to its proximity to a draw. Building in steep areas has significant fire risks. According to the Oregon Department of Forestry Land Use Planning Notes #2, September 1991: "Fire spreads faster and burns hotter as slopes steepens. Steepness of slope also complicates fire equipment access, control efforts and fuel modification. Therefore, dwellings should be located on a level portion of the parcel . . . Natural features which should be avoided include narrow canyons and draws. These features serve as natural chimneys and intensify fire behavior. If the level portion of the parcel is the top of a ridge, the dwelling should be located at least 30 feet back from the slope."

In addition, the applicant submitted evidence (Exhibit H2) that access to the first alternate site would be only 20 feet shorter than the access to the applicant's proposed site, would have an average grade of 10% and with a 12% grade for a distance of 200 feet. According to Exhibit H2, the maximum cut and fill to access the proposed site is 4 feet with balanced cut and fill while the alternate access would require 30 feet of all cut. To construct the access the width of the graded area would be 132 feet (compared to 28 feet for the proposed access) having a much greater impact on the area and consequent erosion. The letter concludes that the steep alignment would become a channel for runoff, creating potentially serious erosion problems.

The other potential location is in the northeast corner of the property. That location could be accessed by a road/corridor 500' or less in length. However, this area has been ruled out by the applicant's stated intention to dedicate 20' of land to increase the right-of-way width to 50' which has been made a condition of approval.

The applicant has demonstrated that it is necessary to have an access road in excess of 500 feet in order to (1) minimize erosion and related environmental damage in the HDA; (2) meet the road standards of .2074(D)(5); (3) comply with the Fire District's maximum allowed grades; (4) avoid siting the septic field in unstable steep soils; (5) maintain the existing road system for timber management purposes; (6) avoid unnecessary new road construction; and (7) avoid cuts and fills that could endanger adjoining properties in Tulamette Acres

(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;

Findings and Conclusions. According to the applicant, the proposed dwelling will be served by Portland City Fire Bureau. The applicant provided a service form signed by the Portland Fire Bureau, (Exhibit F). Because the territory is located outside the City of Portland, it is within the boundary of the Tualatin Valley Fire and 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;

Findings and Conclusions. Access for a pumping fire truck is from fire hydrant located at 7704 NW Skyline Blvd., (Exhibit F). The applicant's engineer has determined that grades for the access driveway can be kept less than 8%, with short segments of 12%, as shown on the Driveway Profile Map, (Exhibit I and David J. Newton Associates July 2 and June 18, 1998 letters marked as Exhibit Q and R respectively). The applicant proposed to construct turn-outs at the midpoint of the driveway and at the building site end. The driveway will be built with gravel to the applicable standards in MCC .2074(D), and as shown on the Drainage Plan, Map 1 of 1, Exhibit I and Exhibit R.

(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. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

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. 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 the 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 for the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(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 and Conclusions. Slopes on the land where the dwelling will be sited are less than 10%, (Map 1 of 1, Exhibit I). A primary fire break zone extending 30 feet is shown on the site plan, (Map 1 of 1, Exhibit I). The applicant proposes to space trees to meet the code provisions. A secondary fire break zone extending 100 feet is provided as shown on the site plan. The applicant proposes to prune vegetation and trees to meet code provisions. A condition of approval requires the applicant to maintain tree spacing and to prune the vegetation. A condition of approval has been imposed to assure compliance with the tree spacing and pruning requirements.

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

Findings and Conclusions. The building site has slopes less than 40 percent.

(B) The dwelling shall:

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) Be attached to a foundation for which a building permit has been obtained; and
- (3) Have a minimum floor area of 600 square feet.
- (4) Have a fire retardant roof.

(5) Have a spark arrester on each chimney.

Findings and Conclusions. The dwelling has not been issued a Building Permit, therefore compliance with the applicable portions of this section, (2), (4), and (5) has not been demonstrated (the applicant proposes a dwelling approximately 3,000 sq. ft. in size). Compliance with these standards are ensured by a condition of approval requiring that these requirements will be satisfied upon approval of the Building Permit.

- (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.**

Findings and Conclusions. According to the service provider form from the Portland Water Bureau (Exhibit H), water is available from City of Portland. This criterion is met.

- (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:**

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- (3) Provide minimum curve radii of 48 feet or greater;**
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;**
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

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

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

(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

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

Findings and Conclusions. The access easement is a private driveway because it only serves a single dwelling. According to the applicant: (1) The access will be built to meet minimum gross vehicle weight of 52,000 lbs. (2) The access will be 12 feet wide of asphalt over rock. The portion of the road within the right-of-way will be improved as explained in Exhibit V because it may eventually serve more than the subject tract. (3-4) The road will be constructed to provide unobstructed vertical clearance of at least 13 feet 6 inches and will provide for a minimum curve radii of 50 feet. (5) Because grades exceed 6%, the applicant has received approval from the fire chief. See Attached Service Provider Form marked as Exhibit F. Exhibit R explains that grades of less than 12% can be achieved with minor cuts and fills. (6 & 7) A turnaround with a radius of 50 feet will be built because the driveway exceeds 150 feet. Because the access easement and private driveway together are in excess of 500 feet, an additional turnaround has been provided. See Map 1 of 1, Exhibit I. Exhibit R also explains how the required turnouts will be aligned.

The plans for the road have not be reviewed and approved as meeting these standards, although the applicant has provided substantial evidence in the form of an engineer's opinion (Exhibit A1. R.) that most of the standards can be met. A condition of approval requires the applicant to provide evidence, before the County issues a building permit that the access will be designed, built and maintained to met the requirements of 11.15.2074(D).

B. CRITERIA FOR APPROVAL OF SEC PERMIT

MCC 11.15.6404 Uses-SEC Permit Required

(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 and Conclusions. The applicant has applied for the SEC permit concurrently with the Conditional Use request as required in .6408(B). Approval of the CU request qualifies the dwelling as a permitted use.

MCC 11.15.6408 Application for SEC Permit

CU 3-98 & SEC 12-98
Hearings Officer Decision

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:

*** * ***

(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:

(A) Boundaries, dimensions, and size of the subject parcel;

(b) Location and size of existing and proposed structures;

(c) Contour lines and topographic features such as ravines or ridges;

(d) Proposed fill, grading, site contouring or other landform changes;

(e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;

(F) Location and width of existing and proposed roads, driveways, and service corridors.

Findings and Conclusions. The applicant has provided a written description of how the proposed development complies with the approval criteria of MCC .6420-6428 below, supported by an SEC assessment report (Exhibit N). A site plan, marked Map 1 of 1, Exhibit I, includes all the information requested in .6408(2)(a-f) and shows the subject parcel dimensions; contour lines and topographic features; location of proposed structures; proposed fill and landform changes; existing vegetation and proposed vegetation; and the location and width of existing and proposed roads.

According to the SEC assessment report, the entire site likely was logged between 1850 and 1900 when the majority of the Tualatin Hills were cleared for lumber and farming by homesteaders. Since then, the site likely has been partially logged a second time. Currently, the site is characterized by a mixed hardwood forest with scattered conifers. Bigleaf maple and red alder are the dominant tree species.

The portion of the territory surrounding the intermittent stream in the southeastern portion of the site is designated SEC-s. The entire site is located in the Germantown Subarea and mapped as Primary Wildlife Habitat in Multnomah County's West Hills Reconciliation Report.

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:

- (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 and Conclusions. The Staff explored the possibility of moving the dwelling site to an alternate location further north which would take the proposed development out of the stream conservation area. As discussed above in this Decision, the staff ruled out this alternate site because access could not be provided to it at acceptable grades and because upon the owner's dedication of additional right-of-way for Hillhurst Street, the criteria for the reduced setbacks in MCC 11.15.2058(D) could not be met. Furthermore, the home site could not be moved north without requiring construction and grading with designated Hillside Development Areas that occur on the north slope of the ridge line. Shifting the home site north outside the SEC area would require new road construction and the new road would have steep grades and require extensive cuts.

The maximum vegetation area is provided between the disturbed area and the stream because the driveway is located on the plateau, as far away from the stream as possible and still maintain 200' setbacks to the northern property line. A mitigation plan has been prepared for the site. New vegetation planted as part of the mitigation plan is located between the driveway and the stream. The applicant has demonstrated that this criterion can be met through the mitigation plan. A condition of approval requires the owner to implement the mitigation plan.

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

Findings and Conclusions. The subject parcel is zoned for forest use and will continue to be managed for active forestry use as explained in the Applicant's Conditional Use Application Narrative Report, page 8-9.

- (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.**

Findings and Conclusions. The applicant located the dwelling site at the proposed location because it is at the confluence of two existing logging roads; is on a flat area midway between the stream and steep slope areas; and is the minimum distance from the entrance to the parcel after avoiding stream areas and meeting applicable setback requirements. A total of .91 acres (which includes the dwelling site, septic area, and primary fuel break) are to be disturbed on the

subject parcel. The dwelling has been located in a manner which balanced the functional considerations and costs with the need to avoid environmental impact.

- (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.**

Findings and Conclusions. This application has no impact on community recreational needs. This criterion does not apply.

- (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.**

Findings and Conclusions. This criterion is not an approval criterion, but rather is applicable only to the location of the proposed use. By complying with the access, setback and fire safety standards the public safety is provided to the maximum extent practicable. There is no public property that needs to be protected in this vicinity. Protection of private property in the area, especially from vandalism and trespass, may be improved by the existence of the dwelling and the presence of its occupants who will be available to see vandalism and trespass by others. Access to Skyline Road through an existing metal gate which protects against vandalism and trespass, will be unchanged.

- (F) Significant fish and wildlife habitats shall be protected.**

Findings and Conclusions. According to SRI Shapiro, the portion of the stream that occurs on the property does not provide habitat for fish species. The intermittent nature of the stream, its steep gradient and its narrow channel width (10-16 inches) likely prevent native fish species from occurring.

The siting of a home on the property requires establishment of a wildlife conservation plan under MCC 11.15.6426, Section B. The wildlife conservation plan proposed for this development is the selective harvest of deciduous trees from the site and the conversion of the stand over time to be predominantly conifers. Implementation of these measures will improve the overall habitat value of the property. No disturbance of the stream and riparian area is expected to occur as a result of the proposed residence. Construction activities will be approximately 150 feet from the creek channel which is within the 300-foot SEC-s area. Newton & Associates have pointed out in Exhibit I that there will be no drainage impacts due to the proposed project.

Shade tolerant coniferous trees will be planted within 50 feet of each side of the stream channel extending from the eastern property boundary down stream for 500 feet. These plantings will help to accelerate the recovery of the riparian zone to a more natural pre logging state. The site setback requirements for the SEC area will further protect the riparian zone.

- (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.**

Findings and Conclusions. Riparian vegetation is currently in a state of regrowth and recovery from logging activities 30 to 50 years ago. Construction activities will be approximately 150 feet from the creek channel, which is within the 300-foot SEC-s area. Approximately .4 acre of vegetation within the SEC-s area will be disturbed. To offset the vegetation removal, the applicant proposes to plant shade tolerant coniferous trees within 50 feet of each side of the stream channel extending from the eastern property boundary down stream for 500 feet. These plantings will enhance the riparian zone to the maximum extent practicable and will protect against erosion. Natural vegetation will be enhanced as part of the mitigation plan. See Exhibit N, page 10. The applicant has demonstrated compliance with this criterion.

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

Findings and Conclusions. There are no archaeological sites on the subject parcel.

(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.

Findings and Conclusions. No soil disturbance will occur closer than 150 feet to a stream. There are no flood plain areas on this parcel. Preservation of natural drainage is addressed in Exhibit I.

(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 and Conclusions. The applicant addressed potential erosion problems in a drainage plan, (Exhibit I) which recommended Best Management Practices. The Newton & Associates Letter, dated July 2, 1998, explains that erosion control methods will be specified at the time of construction. Construction will take place between June 15 through September 15. The SBUH analyses (in Exhibit I) indicate that the effects of the development of a single family residence on the site has a negligible effect on either runoff rate or volume. The runoff rates are very low and the area of disturbance is further buffered by approximately 700 feet of wooded area from the adjacent property to the north.

A Grading and Erosion Control Permit pursuant to MCC 9.40.010 or a Hillside Development Permit, will likely be required for the development of this property, and will include specific measures to protect water quality during and after construction. If such permits are not required, the applicant can demonstrate erosion control measures on a Grading plan.

(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 and Conclusions. 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 plan. The on-site sanitation will be permitted under DEQ rules as discussed in the findings under Framework Plan Policy 37 Utilities.

CU 3-98 & SEC 12-98

Hearings Officer Decision

- (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 and Conclusions. The proposed dwelling will be approximately 3000 square feet, not including a 2-car garage and deck. The footprint of the dwelling is proposed to be 30 by 50 feet. The applicant kept the footprint small to keep the building site as far away from the stream SEC area as possible and to have the least impact on wildlife. The applicant proposes a two-story dwelling to keep disturbance on the ground to a minimum. The basic configuration of the dwelling will be a box, although some deviation from this will be required for porches, dormers, etc. The long access of the house will be oriented east/west to take advantage of the passive solar heat available in this location. According to the applicant (Exhibit A1.X), the exterior finish will be natural wood, possible board and batten or waney-clapboard. The natural finish will make the house fit into the character of the CFU, wildlife habitat and stream corridor. The roof will be metal and the color will likely be green or natural to blend in with the trees. The applicant stated (in Exhibit A1.X) that the exterior lighting will be minimal and down-lighted to avoid the most disruption to surrounding wildlife. To protect the visual quality of SEC-s areas, utilities will be installed underground and no fences are proposed. The home site, primary fire protection zone and septic field will use a total of .91 acres of the 30 acres of forest land. The forested northern, western and southern portions of the property will screen the proposed home site from areas of significant environmental concern. Exterior lighting will be directed away from the SEC-s area by pointing to the north.

- (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.**

Findings and Conclusions. No endangered plant habitat was identified during consultation with the ODFW Urban Habitat Biologist. According to the staff, no identified fragile or endangered plant habitats are on site. Nevertheless, this area will be left in its natural state to the maximum extent possible given the siting issues discussed in response to 11.15.2052(7) as explained in Exhibit N.

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

Findings and Conclusions. The County Comprehensive Plan requires a finding prior to approval of a 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 Decision. The applicable policies of the Comprehensive Plan (Policy 13, 14, 22, 37, 38 and 40) are satisfied, as explained in this Decision in the section C below.

MCC 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;**

Findings and Conclusions. These areas are shown on the site plan, Map 1 of 1, Exhibit I.

- (2) Location of existing and proposed structures;**

Findings and Conclusions. Existing and proposed structures are shown on the site plan, Map 1 of 1, Exhibit I.

- (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;**

Findings and Conclusions. Public roads and driveways are shown on the site plan, Map 1 of 1, Exhibit I.

- (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.**

Findings and Conclusions. No fences are proposed as a part of this application. Existing fences are shown on the site plan, Map 1 of 1, Exhibit I.

(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.**

Findings and Conclusions. According to the SEC assessment canopy closure on the site is 75-100% (Exhibit N, Page 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.**

Findings and Conclusions. While the proposed home site is within 200 feet of a public right-of-way, this road cannot provide reasonable access as it is unimproved and is likely to remain so. Skyline Boulevard is the nearest public road capable of providing reasonable access, and it is 500 feet from the proposed home site. Therefore, the applicant proposes a Wildlife Conservation Plan pursuant to 11.15.6426 (C) (1). This Plan is addressed below under the discussion on 11.15.6428 (B) (5).

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

Findings and Conclusions. Due to physical characteristics unique to the property, this application cannot meet the development standards in .6426(B)(3). The service corridor must be at least 680 feet in length. The home site is positioned on the nearest area where the slope of the driveway can be kept less than the 12% maximum. The area within 500 feet of Skyline Boulevard has slopes of 20% or greater. Therefore, the applicant has proposed a Wildlife Conservation Plan pursuant to 11.15.6426 (C) (1). This Plan is addressed below under the discussion on 11.15.6428 (B) (5).

(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.

Findings and Conclusions. Adjacency for purposes of this SEC development standard is intended to apply to driveways which access the same road frontage as the subject property. Due to the undeveloped Hillhurst right-of-way there are no developed driveways which fit this criterion.

(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.

Findings and Conclusions. The proposed dwelling is 200' from the property boundary along Hillhurst right-of-way.

(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.

Findings and Conclusions. No fencing is proposed as part of this application.

(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: [See Code for List].

Findings and Conclusions. Plants that are proposed for planting are listed mitigation plan (Exhibit N). This list does not contain nuisance plants. According to the SEC assessment the entire site has a 75-100% canopy, therefore there are no cleared areas.

(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 and Conclusions. The standards of 11.15.6426 (B) (2) and (B) (3) cannot be met, due to physical characteristics unique to the property because the property is located over 300' from the public road from which it takes access. Therefore, the applicant has proposed a Wildlife Conservation Plan pursuant to 11.15.6426 (C) (1). This Plan is addressed in this Decision under the discussion on section 11.15.6428 (B) (5).

The standards that cannot be met relate to distance from the nearest public road. The proposed home site does minimize the access corridor because it is the minimum setback of 200 feet from the eastern boundary, and a site further north is impracticable due to steep slopes in excess of 20%. A private road may not have grades exceeding 8% overall with a maximum of 12% grade on short segments (MCC 11.15.2074(D)(5)). The maximum grade may only be exceeded upon written approval from the fire protection service provider (MCC 11.15.2074(D)(5)(b)). The fire Marshall has limited the road grades to 12%. If the home site were moved, road grades would be in excess of 20% which is not allowed by the Fire Marshall.

(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.

Findings and Conclusions. The home site and access driveway are proposed to be located over an existing logging road which is devoid of trees. Vegetation removed adjacent to the existing road will consist primarily of red alder and bigleaf maple, and under story shrub species. The proposed home will be compact, consisting of 2 or 3 stories to minimize foundation area disturbance. The access corridor is the minimum length, given the constraints of the 12% maximum access grade and the 200-foot setback requirement. The septic field is the minimum size adequate for the home. The driveway and right-of-way improvement width is 12 feet, which is the minimum acceptable for County road and driveway standards.

(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.

Findings and Conclusions. The proposed home site will result in clearing of approximately 0.22 acre of mixed hardwood forest. The clearing associated with installation of a septic system will result in clearing of 0.33 acre of mixed hardwood forest. The primary and secondary fire safety zones will not result in new cleared areas since the existing tree spacing of 20 feet as demonstrated by survey results (see W.B. Wells Topographical Survey Map) is greater than the minimum spacing of 15 feet required by 11.15.2074 (A) (5) (c) (I). The proposed access way is minimum as stated in the previous section, and includes the minimum driveway turnout required for fire safety standards. Therefore, the newly cleared area proposed by this development is 0.55 (excluding the driveway), which is less than one acre. Further, the access road itself does not create newly cleared areas since it is proposed to be along an existing logging road.

(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.

Findings and Conclusions. No fencing exists on the site currently, and none is proposed.

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

Findings and Conclusions. All of the area of the subject property has at least 75% crown closure, according to the Wildlife Habitat assessment in Exhibit N. Therefore, there are no "cleared" areas.

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

Findings and Conclusions. No stream riparian areas will be disturbed from siting the home as planned.

MCC11.15.6428: Criteria for Approval of SEC-s Permit Streams

(B) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;

Findings and Conclusions. Structures, roads, waterways, and topography are shown on the site plan, Map 1 of 1, Exhibit I. A portion of the property falls within the SEC-s area for the intermittent tributary that occurs on the property. The stream is located in the southeastern portion of the site and flows northeast to southwest. The riparian zone of the stream is approximately 25-30 feet in width along each side of the stream. Riparian vegetation is characterized by red alder, western red cedar, Douglas-fir, vine maple, sward fern, and thimbleberry. The proposed home site is within the 300-foot SEC-s area of the intermittent stream. The proposed home site is 180 feet at its closest point to the centerline of the stream. The primary fire safety zone is 140 feet from the stream at its closest point. The septic tank and septic field will both be located outside the SEC-s area.

According to the SEC assessment, the home site cannot be located outside the 300-foot SEC-s area without requiring construction and grading within designated Hillside Development Areas that occur on the north slope of the ridge line.

There are no utility installations on this site. The applicant states that the utilities for the dwelling are to be installed in a trench from Skyline to the dwelling along the easement, Hillhurst right-of-way, and driveway (see Exhibit A1. W.). The applicant will need to contact the Multnomah County Right-of-way permitting section before development within the Hillhurst right-of-way occurs. This is required by a condition of approval.

(2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;

Findings and Conclusions. A detailed description of the Stream Conservation Area and the area of proposed development is given in the SEC Assessment in Exhibit N, Section 4.1. The SEC-s area is shown on the site plan, Map 1 of 1, Exhibit I. An assessment of the SEC-s areas functional characteristics is given in the SRI/Shapiro letter dated 7/9/98, Exhibit S. A description of the vegetation in the SEC-s zone is given in the Exhibit N document, Section 4.1. A description of the wildlife habitat is given in the Exhibit N document, Section 4.3.

The SRI/Shapiro letter concluded that the proposed development should not result in a reduction of species diversity. The SEC assessment report in Exhibit N describes the

vegetation in the SEC-s as characterized by red alder, western red cedar, Douglas fir, vine maple, sword fern, and thimbleberry. The portion of the stream that occurs on the property does not provide habitat for fish species. The intermittent nature of the stream, its steep gradient, and its narrow channel width (10-16 inches) likely prevents native fish species from occurring.

The applicant has provided the information required by this Code section.

(3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

Findings and Conclusions. The portion of the property proposed for the home site and septic system has been mapped by the Soil Conservation Service (SCS) on (USDA, 1977; Exhibit P) Cascade silt loam, 8-15% slopes (map unit 7C). The northern portion of the property and the areas adjacent to the stream are mapped as Cascade silt loam, 30-60% slopes (map unit 7E). The extreme northeastern corner of the property is mapped as Cascade silt loam, 15-30% slopes.

The surface of Cascade silt loam is typically a dark-brown silt loam about 8 inches thick. The subsoil is dark-brown silt loam about 19 inches thick. The substratum is a dark brown, mottled, silt loam fragipan to a depth of 5 feet or greater. Permeability is slow. Effective rooting depth is 20-30 inches and available water capacity is 5.0-7.5 inches. Water-supplying capacity is 17-19 inches. This soil is used for farming, timber production, urban development, and wildlife habitat.

The applicant had a detailed Storm Water Management Report prepared (Exhibit I). That report concluded that the proposed development would have minimal effect on runoff rate or volume, and that a detention pond is not required. That report (page 2) gives specifications for culverts and ditches. No dredging is proposed on the site. Minor amounts of cut and fill will be required along portions of the access corridor to meet the maximum 12% grade standard, and to construct the County right-of-way improvement. The amounts and methods for filling, grading, and vegetation removal are given in a letter from David Newton and Associates dated 7/2/98, Exhibit Q. Total fill quantities will not exceed 250 cy, and cuts/fills will be less than 4' to meet County and Fire Safety road standards. Clearing and grading for the access way, home site, and septic fields will be accomplished with a small tracked bulldozer. While specifications for the septic field construction requirements are in the City of Portland Site Evaluation Report (Exhibit L), the septic fields are not in the SEC-s zone.

Based on the amount of fill in the description of site work, a Grading and Erosion Control Permit or Hillside Development Permit will be required for access road development. This permit is intended to consider all development needed for the approved use, and will therefore also address development of the dwelling and septic system site. A condition of approval is imposed that requires the applicant to submit a plan demonstrating compliance with the SEC approval criteria of 11.15.640(J).

(4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by (D)(5) below;

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Findings and Conclusions. Flood and erosion hazards were analyzed by professional engineers (Exhibit I). Using the accepted Santa Barbara Urban Hydrograph (SBUH) method, they concluded that the effects of this development on the site would be minimal, and not require special measures such as a detention pond. Design specifications for the one required culvert and driveway ditches are included in that report. Runoff rates on this site are very low, and the area of disturbance is buffered by the large surrounding wooded area.

(5) A detailed Mitigation Plan as described in subsection (C), if required; and

Findings and Conclusions. The Mitigation Plan is contained in the SRI/Shapiro SEC assessment, Exhibit N, Section 7.0. In summary, approximately two acres of coniferous trees and native vegetation will be planted along both the driveway and stream channel to offset for the soil disturbance area and mature trees removed. Wildlife habitat will be enhanced by conversion to coniferous forest and planting native shrubs. The riparian area near the stream will not be disturbed by construction activity.

(6) A description of how the proposal meets the approval criteria listed in subsection (C) below.

Findings and Conclusions. These descriptions are provided in the discussion on subsection (C) below. Only a small portion of the development area, including access road development, is planned for areas within the drainage of the significant stream conservation area. This is shown by the "Drainage Divide" drawn on the site plan (Exhibit A1. I).

(C) For stream resources designated "3-C" the applicant shall demonstrate that the proposal:

(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:

Findings and Conclusions. The stream on the subject property is so small that there are no fish habitat, and no shoreline anchoring or flood storage issues. The wildlife habitat, water quality, and visual amenities of the stream will be enhanced by conversion of the forest from primarily hardwoods to conifers and by new plantings of native plants along a 500-foot length of the stream. The new plantings will create more diversity of vegetation on the site, thereby promoting more diversity of wildlife, as well as increased filtering of runoff water and visual diversity. Details are given in the Mitigation Plan, Exhibit N, Section 7.0.

(a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC .6428(B);

Findings and Conclusions. The site plan is given in Map 1 of 1, Exhibit I. Documentation for Code Section .6428 (B) is given by section numbers above.

**(b) A description of the applicant's
coordination efforts to date with the requirements of other
local, State, and Federal agencies;**

Findings and Conclusions. The applicant contacted Holly Michael at Oregon Department of Fish and Wildlife to determine these requirements. Also, the applicant contracted SRI/Shapiro to assess any related requirements. Both indicated that there are no local, State, or Federal requirements for this stream and site outside the MCC requirements addressed in this application.

**(c) A Mitigation Plan which demonstrates
retention and enhancement of the resource values addressed
in MCC .6428(C)(1);**

Findings and Conclusions. The response for this criteria is in the response to 11.15.6428 (C) (1). Details are given in the Mitigation Plan, Exhibit N, Section 7.0.

**(d) An annual monitoring plan for a period
of five years which ensures an 80 percent annual survival rate
of any required plantings.**

Findings and Conclusions. New native plantings will be marked with white wire flags to facilitate monitoring of their survival. Mitigation plantings will be checked annually each year in the fall for a period of five years. Any non-surviving plants will be replaced to maintain an 80% survival rate for all installed plantings. Irrigation will occur for the first two years during the summer dry period. Slow release organic fertilizer will be applied once yearly to trees and shrubs for the first two years.

The plans contain all of the information required by this section. The Mitigation Plan identifies development of vertical structural forest diversity as a primary objective because this will have the greatest benefit to wildlife. The plan recommends measures to accomplish this over time and designates areas where additional plantings of species "Most Useful to Oregon's Wildlife" should occur. A condition of approval requires the owner to implement the Mitigation Plan.

(D) Design Specifications

**The following design specifications shall be incorporated, as appropriate,
into any developments within a Stream Conservation Area:**

**(1) A bridge or arched culvert which does not disturb the
bed or banks of the stream and are of the minimum width necessary
to allow passage of peak winter flows shall be utilized for any
crossing of a protected streams.**

Findings and Conclusions. No stream crossings or bridges are required as a part of this application.

(2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

Findings and Conclusions. Two objectives are stated in this criterion, groundwater recharge and reduction of peak stream flows. The applicant had a Storm Water Management Report prepared (Exhibit I). It is not clear from the report whether on-site disposal of storm water would contribute to groundwater recharge. It appears that the relatively small amount of impervious surfaces added as a result of the development, coupled with the large dispersal area, could result in no increase in stream flow at the property line when no on-site detention is used. Technical review of the Storm Water Management Report can occur as part of a Grading and Erosion Control permit process.

The Storm Water Management Report concluded that the proposed development would have minimal effect on runoff rate or volume, and that a detention pond is not required. The method used in that analysis were the generally accepted Santa Barbara Urban Hydrograph (SBUH) method. Design criteria are presented in that report for culvert and ditches which represent the best practices for this area, and these are the design criteria that will be used.

(3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area

Findings and Conclusions. Since the driveway and home site are located at the northern edge of the SEC-s area, the applicant proposed to direct any outdoor lighting to the north and away from the stream.

(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

Findings and Conclusions. Any trees over 6 inches caliper that are removed will be replaced by western red cedar, western hemlock, and Douglas Fir whose combined caliper is equivalent to that of the trees removed. Details are given in the Mitigation Plan, Exhibit N, Section 7.0. A condition of approval requires the owner to implement the Mitigation Plan.

(5) Satisfaction of the erosion control standards of MCC .6730.

Findings and Conclusions. Flood and erosion hazards were analyzed by professional engineers (Exhibit I). This analysis was done in cooperation with Multnomah County engineering staff to meet the MCC .6730 standard. Using the accepted Santa Barbara Urban Hydrograph (SBUH) method, they concluded that the effects of this development on the site would be minimal, and not require special measures such as a detention pond. Design specifications for the one required culvert and driveway ditches are included in that report. Runoff rates on this site are very low, and the area of disturbance is buffered by the large surrounding wooded area.

(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.

Findings and Conclusions. According to the applicant, soil disturbance activity will only take place from June 15 to September 15 in any year. According to the applicant, new plantings as outlined in the Mitigation Plan, Exhibit N, Section 7.0, will be accomplished prior to October 15 in the year when the home is built and driveway improvement is done. Erosion control methods will be by Best management Practices and will be specified in the building permit approval. While specifications for the septic field construction requirements are in the City of Portland Site Evaluation Report (Exhibit L), the septic fields are not in the SEC-s zone.

(7) Demonstration of compliance with all applicable state and federal permit requirements.

Findings and Conclusions. The applicant has stated that no state or federal permit requirements apply.

C. 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.

Findings and Conclusions. The primary issue under this policy is water quality, related to septic system placement and construction and to storm water runoff. The Storm Water Management Report indicates that the dwelling will have a minimal effect on both runoff rate and volume. The Report analyzes pre-developed and post-developed runoff rates and volumes for like storm events. The Report finds that the 700 feet of wooded area from the adjacent property to the north buffers any runoff effect. 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.

This proposal is not a noise sensitive use because it is only one single family dwelling on 30.3 acres. The dwelling is not in a noise impacted area. Other single family dwellings are sited north and east of the subject tract as shown in the aerial map. Any noise resulting from the dwelling use will be should not be noticeable by surrounding residents because of the distance the dwelling will be set back from the property lines.

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

Findings and Conclusions. The proposed dwelling site is in an area of slope less than 10% (Map 1 of 1, Exhibit I). DOGAMI maps show that the dwelling site is not in an area of severe erosion potential or in a flood plain, and is not subject to high water, slumping, or earth movement. The building site has been located outside the Hillside Hazard Development Area (Map 1 of 1, Exhibit I). The effect to off-site properties due to septic effluent or surface water drainage from areas of shallow fragipan has been determined to be negligible by engineers at David J. Newton Associates due to the design of septic field and the large buffering of wooded area between the building site and adjacent parcels (Exhibits L, and Exhibit R, page 3). This policy applies due to the typical soil profile on the property of a fragipan and "perched" water table. The proposed development can comply with this policy by meeting 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.

Findings and Conclusions. The parcel is in a rural area. Urban energy, transportation and lotting pattern issues do not apply.

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.**

Findings and Conclusions. These water service elements are alternatives, only one needs to be met. The proposed development complies with "B." Water service will be provided by Portland Water Bureau via a 6" line. A subsurface sewage disposal system has been determined feasible for the subject tract as demonstrated in the feasibility form (Exhibit L). A condition of approval requires the applicant to submit evidence of an approved subsurface sewage disposal system on the site.

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.**

Findings and Conclusions. Drainage elements F. and G. apply to this request. A Storm Water Management Report for the subject tract (Exhibit I) was prepared by David J. Newton & Associates. That report shows how water run off can be handled. The report determines that an on-site detention pond is not necessary because the effects of a single family residence will have a minimal effect on runoff rate and volume. A 12" CMP culvert will handle drainage under the driveway. According to the Newton Report, this is considerably larger than necessary to handle the limited drainage area, but provides protection against plugging by debris or animals. Flow from the culvert is to the northwest into the local area drainage. Newton & Associates have determined that water run off from the site will not adversely affect the area tributary or alter the drainage on adjoining land, which is buffered by approximated 700 feet of wooded area from the adjacent property to the north.

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.

Findings and Conclusions. The applicant provided school, fire, and police service provider forms (Exhibits J, F, and K respectively).

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.

Findings and Conclusions. These requirements are generally applicable to urban lands. The subject property is in a rural area. There has been no identified need to make pedestrian or bicycle path connections and is not near a designated bicycle corridor. The proposed development is single family residential, element B does not apply. There is no need for bicycle parking facilities in a proposed single tract, rural single family development.

CONCLUSIONS

A. TEMPLATE DWELLING CONCLUSIONS:

1. The parcel meets the Template Dwelling requirements for the number of houses and dwellings within the template area. Since a number of parcels make up the tract, a condition of approval which requires recordation of a deed restriction is necessary in order to ensure compliance with MCC .2052(A)(9). Compliance with the Department of Forestry stocking requirements is required, and 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/yard provisions of .2058 are met with the structure as proposed, provide that the road dedication occurs. The access standards of .2068 are met as proposed by the applicant in Exhibit V.
3. The Lot of Record requirement in MCC .2062(A)(3) is demonstrated to be met in the applicant's response under .2052. The provision is met because the 30.3 acre tract was not contiguous to other parcels in the same ownership on or after February 20, 1990.
4. All of the development standards of section .2074 are met with the information presented by the applicant, or can be met by compliance with the conditions of approval. The locational standards of .2074(A) are met when the dwelling is located within 200' of the east property line and within the proposed 80' X 120' building envelope, primarily because this location is accessed by the shortest practical road. The proposal includes a modest footprint size which minimizes the amount of land removed from forest use. A condition of approval which requires the dwelling to be located within 200' of the east property line is imposed in order to ensure that it is constructed at the minimum setback in order to minimize road length.

Compliance with the provisions of .2074(B) cannot be determined at this time because the dwelling has not been designed. However, the required features can easily be incorporated into the final building design, and can therefore be met for purposes of this application through imposition of a condition of approval. In addition, the water supply elements of .2074(C) are met by the provision of the building to be connected to the City of Portland water system.

The road/driveway standards of .2074(D) have not been met because the road has not been designed or constructed. Based on the information provided by the applicant's engineer, a conclusion can be made that a road which meets the standards of this section can be constructed as proposed. A condition of approval which requires the road design and construction to meet these standards is imposed.

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

C. 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. This has been imposed as a condition of approval.
2. The approval criterion of .6420(L) requires that the building features are compatible with the visual character of SEC areas. The information about building bulk, color, materials and lighting is adequate to conclude that the design will be compatible with its forest environment. This is achieved by the modest footprint size, and neutral color. It is unclear however, what lighting will be installed on the building exterior, and night lighting is recognized as having potential negative impacts to wildlife. Staff therefore recommends imposing a condition that all exterior lighting shall be shown on the final

building plan, and shall be directed downward and hooded to minimize the impact of night lighting on wildlife habitat areas.

3. The Wildlife Habitat provisions of .2626(B) and (C) have been demonstrated to be met by the applicant. The Wildlife Conservation Plan in (C) is required because physical characteristics related to the location of the property prevent compliance with the access road/service corridor length provisions of (B)(2) and (3). The application limits development area to 1 acre, and the road length is limited to the minimum necessary to serve the dwelling when the dwelling is built at the minimum 200' setback. The findings under the forest template dwelling setback standards in .2058 apply equally here as justification for the "least impact" conclusion for the road length.
4. The Stream Conservation Area informational requirements of .6428(B) includes a detailed description of the functional characteristics of the area of interest which is the basis for the Mitigation Plan. The description of the proposed site disturbance leads staff to a conclusion that a Grading and Erosion Control Permit will be required for development of the property, although most of the development is within the drainage to the north. The Mitigation Plan in .6428(C) appears quite adequate to achieve the enhancement objective to increase structural diversity. Implementation of the project according to the responses to the Design Specifications of .6428(D), with the exception of groundwater recharge, will ensure compliance with the purposes of the plan. The groundwater recharge element can be evaluated as part of the Grading and Erosion Control process, and a condition is imposed to this effect.

D. COMPREHENSIVE PLAN POLICY CONCLUSIONS

1. The applicant has demonstrated compliance with the applicable Comprehensive Framework Plan Policies except for Policy 13 and 14 as they relate to development impacts. These policies will be satisfied by development of the septic system under DEQ permits, and by implementing Grading and Erosion Control best management practices.

IT IS SO ORDERED, this 9th day of November 1998

Deniece B. Won, Hearings Officer

Appeal to the Board of County Commissioners:

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division

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within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 per minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043 for additional instructions.