



MULTNOMAH COUNTY
LAND USE PLANNING DIVISION
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Decision of Land Use Hearings Officer

Case File: Conditional Use CU 3-99

Hearings Officer: Liz Fancher

Hearing Date: November 17, 1999

Proposed Action and Use: Conditional Use approval to allow a new single-family dwelling in the Commercial Forest Use zone.

Location: 175 SE Pounder Road

Property Description: Tax Lot '7' of Section 2, T1S, R4E
Tax Account # R99402-0070

Zoning: CFU-4, Commercial Forest Use

Applicant/: Richard M. Burbach
Owner 3024 SW Meyers Pl.
Gresham, OR 97080

Decision: Approve Conditional Use CU 3-99

Conditions of Approval:

1. Prior to approval of the building permit, the property owner shall record the statement required to meet MCC .2052(A)(8).
2. 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).
3. The dwelling has not been issued a Building Permit, therefore, compliance with the applicable portions of MCC .2074(B) (2), (4), and (5) have not been demonstrated. These features shall be indicated on the building plans prior to zoning approval of the Building Permit and the approved dwelling shall be constructed in compliance with the requirements of those subsections.

4. The property shall obtain an access permit pursuant to County right-of-way access requirements prior to final Building Permit. The applicant shall submit confirmation from the RFPD #14 that the road and dwelling designs meet the requirements and conditions for fire access imposed by the District.
5. The homesite shall be moved 60' to the east of its proposed location, to the approximate location shown on the attached homesite map, a marked up version of the first sheet of the applicant's Exhibit A1.
6. Prior to approval of a Building Permit, the applicant shall install the proposed driveway on the subject property and within the easement area in full compliance with all requirements of MCC .2074(D). The applicant and future owners shall test the driveway, once constructed, for its ability to serve fire, ambulance and police emergency vehicles and shall not construct the approved residence unless the testing reveals that vehicles typically used by fire, ambulance and police service providers can access the dwelling site. Additionally, the property owner shall, as a continuing condition of approval, keep the driveway well maintained so that the emergency vehicles of said service providers and of the owners and guests of the new residence are assured safe access to the property. In the event that the driveway fails to continue to provide safe access, the property owner shall reconstruct the driveway to provide safe access to and from the residence.
7. Prior to zoning 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 Framework Plan Policy 14 A. and 37 E., F. and G for stormwater management.
8. Prior to approval of the Building Permit, the property owner shall demonstrate that the existing culvert meets the flood passage requirements of MCC 29.305(A)(1)(d), or include necessary expansion in the plan.
9. Except as otherwise specified in the above conditions, this approval is based on the applicants' submitted testimony, site plan, and findings contained in the Staff Report. The applicant shall be responsible for implementing the development plan as presented and approved.
10. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C). The process for determination of substantial expenditure shall be initiated by the applicant/property owner by application made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.

Decision Format:

This decision is written using the Staff Report as the base document. The decision lists the applicable criteria and contains finding that support the decision and the imposition of the above conditions of approval. The decision lists Applicant's response to an approval criterion following the notation "Applicant." Planning staff comments and analysis follow the Applicant's responses to the criteria. Hearings Officer findings and conclusions of law follow the staff comments. All such findings are findings of the hearings officer unless noted otherwise. The hearings officer has ~~stricken~~ those words and sentences in the applicant and staff findings that are not adopted by reference. Where the hearings officer has added words to applicant or staff findings, the new text is shown in *italics*.

Findings

Description of Site and Vicinity: The subject property consists of a 15-acre parcel located between Pounder Road and Evans Road south of the community of Corbett. The general character of the area is rural homesites and small farms on rolling hills and valleys. The north portion of the parcel consists of relatively steep land that slopes down to Pounder Road, and the south half of the property is on a relatively broad ridgeline adjacent to Evans Road. The dwelling site is accessed via a relatively steep (25% slope) road through the adjacent parcel to the north.

Notification and Public Participation: Notice of the November 17, 1999 hearing was sent to 22 neighboring property owners, interested parties, and applicable agencies on November 5, 1999. A copy of the notice is Exhibit "B1" of the record. No objections to the adequacy of the notice were raised in writing or at the November 17, 1999 hearing.

Approval Criteria

The Hearings Officer must find that the proposal meets the following Multnomah County Zoning Code approval criteria and applicable Comprehensive Plan Policies. The forest template dwelling approval criteria are those in MCC 11.ES.2042 through .2075. The applicable plan policies are 14 Development Limitations, 37 Utilities, 38 Facilities, and 21 and 21a Streams and Watersheds.

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

MCC 11.ES.2045 Definitions: As used in MCC .2042 through .2075, unless otherwise noted, the following words and their derivations shall have the following meanings:

* * *

(F) *Tract* - One or more contiguous Lots of Record, pursuant to MCC .2062, in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract.

Staff: The subject parcel is ~~also~~ the subject tract because Mr. Burbach does not own any contiguous property.

MCC 11.ES.2052 (A): A template dwelling may be sited on a *tract*, subject to the following:

MCC 11.ES.2052 (A)(1): The lot or lots in the *tract* shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;

Staff: The findings under MCC .2062 below demonstrate that the subject property meets the lot of record standards.

Hearings Officer: The findings below also establish that the subject property was created January 25, 1990.

MCC 11.ES.2052 (A)(2): The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC.2074 with minimum yards of 60 feet to the centerline of an adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075 as applicable;

Staff: The property is of a size adequate to meet the required Forest Practices setback of 130 feet to all property lines as shown on the Site Plan in Exhibit A1.

Hearings Officer: No structures, including the proposed dwelling, may be constructed in the required yards.

MCC 11.ES.2052 (A)(3): The *tract* shall meet the following standards:

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

Staff: The majority of the soils on the property are class III, capable of producing above the 85cf/ac/yr of Douglas Fir timber according to the soil survey.

- (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

Staff: The applicant has submitted a Dwelling Template Map in Exhibit A2, and a packet of property profiles and deeds in Exhibit A3. The center of the property is that

point where lines drawn from each of the corners of Tax Lot 7 intersect. This shifts the center of the template area south and west, however this location does not change the outcome of the test because the necessary 5 dwellings and 11 other parcels still exist as required.

The area is relatively parcelized and there are substantially more than the 11 other lots necessary to meet this requirement. Staff compared the September 1977 zoning work maps with the current Tax Assessor's map to identify 11 other parcels that meet the lawful creation test. The assumption used is that if the parcel is now in the same configuration as it was prior to the more restrictive zoning that became applicable in October of 1977, and if the parcel is at least as large as the minimum 2 acre lot size of the pre 1977 F2 zoning, then the parcel was lawfully created prior to 1977. Staff found 17 parcels that meet this test in 1N4E 35 and 1S4E 02. Additional qualifying parcels appear to exist in the adjacent sections to the west as shown in Exhibit A2.

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

Staff: There ~~appear to be~~ are more than the required dwellings to meet this requirement based on the applicant's Exhibit A2. Staff considered only the dwellings in 1N4E 35 and 1S4E 02 as in the lawful parcel analysis above. Of the six dwellings identified, three were built prior to building permit or zoning requirements and so are deemed lawfully established. These dwellings are located at 131, 260, and 921 SE Pounder Rd. Staff located the building permit record for the dwellings at 400 and 615 SE Pounder Rd. (see Exhibit C1.).

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

Staff: The template does not include areas within a UGB.

MCC 11.ES.2052 (A)(3)(e): There is no other dwelling on the *tract*;

MCC 11.ES.2052 (A)(3)(f): No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

MCC 11.ES.2052 (A)(3)(g): Except as provided for a replacement dwelling, all lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and

MCC 11.ES.2052 (A)(3)(h): No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;

Staff: The approval standards in (A)(3)(e) through (h) above are all met with the same finding, that the subject property is a single vacant parcel.

MCC 11.ES.2052 (A)(4): The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with

approvals of other dwellings in the area since acknowledgment of the Comprehensive plan in 1980, will be acceptable.

Applicant: The dwelling location is located in the NW ¼ of section 2, Township 1 South, Range 4 East. According to the Sensitive Big Game Wintering Areas as found on the Wildlife Habitat map provided by Multnomah County, the subject property lies outside the big game wintering areas. The closest wintering area is located in Section 18 of Township 1 South, Range 5 East, approximately two miles east of the subject property. Please see the accompanying Multnomah County Wildlife Habitat map.

Staff: The referenced map is included in Exhibit AO.

MCC 11.ES.2052 (A)(5): Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Staff: The road to the subject property includes an easement from Pounder Road over the adjacent property to the north. While the road is over land owned by the property owner to the north, the existing logging road has not been constructed as an access road for a dwelling and is not owned and maintained by the adjacent owner. The agreement does provide for perpetual use, construction and maintenance of the access road to the subject parcel (see Exhibit A4).

Hearings Officer: The County's findings regarding this issue are based upon representations made by the applicant that the easement provides lawful access to the subject property and that it is located where shown on the applicant's plan. No conflicting evidence exists in the record. The County's findings on this matter should not, however, be relied upon by private parties purchasing this property as the County however, undertaken an independent title, legal and survey property review of the easement to verify these statements.

MCC 11.ES.2052 (A)(6): A condition of approval requires the owner of the *tract* to plant a sufficient number of trees on the *tract* to demonstrate that the *tract* is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided however, that:

- (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.**
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.**

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

Staff: The applicant has submitted a Forest Management Plan included as Exhibit A5. A stocking survey report has not been submitted with the application, however the ordinance allows implementation of this requirement with a condition of approval.

Hearings Officer: The required condition of approval has imposed by this decision (see above).

MCC 11.ES.2052 (A)(7): The dwelling meets the applicable development standards of MCC.2074;

Staff: See analysis under the appropriate section below.

MCC 11.ES.2052 (A)(8): A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;

Staff: The required statement has not been recorded, but this can be accomplished prior to approval of the building permit.

MCC 11.ES.2052 (A)(9): Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;

(a) The covenants, conditions and restrictions shall specify that:

(i) All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and

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

(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or

agricultural lands;

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

Staff: This provision does not apply to tracts that contain only one parcel.

MCC 11.ES.2058 Dimensional Requirements

MCC 11.ES.2058(A) Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.

Staff: The subject property is less than 80 acres. The applicable standards are the Lot of Record provisions of MCC .2062 discussed below.

MCC 11.ES.2058(C) Minimum Forest Practices Setback Dimensions From Tract Boundary – Feet:

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

**Maximum Structure Height - 35 feet
Minimum Front Lot Line Length - 50 feet.**

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.15.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.15.2074(A)(5)(c)(ii).

Staff: The site plan in the applicant's Exhibit A1 shows that the proposed dwelling location meets the forest practices setback of 130' to all property lines.

Hearings Officer: Neither staff nor the applicant have addressed the minimum front lot line requirement. The County's definition of the term "Lot Line (Front)" is ambiguous, as applied to this case, as the definition provides different rules for flag lots and interior lots and the subject property could, conceivably, be defined as either. Flag lots, but not interior lots, are defined by the County code. As this is the only term that is defined in the zoning ordinance and as the subject property fits this definition, the hearings officer has found that the subject property is a flag lot and not an interior lot, whatever an interior lot may be.

The subject property meets the definition of a “flag lot.” It is a lot or parcel which includes a private driveway. MCC 11.15.0010, “Flag Lot.” The subject property does not adjoin a road or accessway but has access to a public road by way of a private driveway. This driveway is located in the easement area that runs between a public road and the subject property and on the subject property. For flag lots, the front lot line is the lot line closest to and most nearly parallel with the street that serves the lot. For the subject property, this is the northern property boundary. The north boundary is longer than 50 feet.

An interior lot is a lot that has frontage on a roadway or accessway. The hearings officer reaches this conclusion because the front lot line definition refers to street frontage in its definition. The subject property lacks a lot line that adjoins a roadway or accessway. As a result, the subject property is not an interior lot. MCC 11.15.0010, “Lot Line (Front).” Even if the subject property were determined to be an interior lot, it would qualify for development because it is a lot of record and MCC 11.ES.2062(C) says that a lot of record “which has less than the front lot line minimums required may be occupied by any permitted or approved use.”

MCC 11.ES.2062 Lot of Record

MCC 11.ES.2062(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;

Staff: Prior to the recording date of the deed transferring Tax Lot 7 to Mr. Burbach on 9/7/99, the Lot of Record included Tax Lot 26 (1S4E Section 2), which is the homesite of the prior owner, Mr. Blanc. The subject property, Tax Lot 7, is a parcel that was created prior to 1973, and likely before 1962. The applicant has submitted a deed (bk 920 pg 1762) which verifies that the property was in existence in 1973. The 1962 zoning map does show Tax Lot 7, indicating an earlier date of creation. Tax Lot 26 is also shown on the 1962 zoning map supporting a conclusion that it was created prior to 1990. In addition, the deed submitted by the applicant (bk 1174 pg 1916) indicates that Tax Lot 26 was in existence by April of 1977 (see Exhibit A6).

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

Staff: The exact date that the parcels were created has not been established. However, in the case of Tax Lot 7, a recorded 1973 deed is adequate to demonstrate that the subject parcel satisfied all applicable laws when the parcel was created. The minimum parcel size of the zoning ordinance (F2) in effect at that time was two acres, and the County did not require review of partitions prior to recording. In the case of Tax Lot 26,

the 1962 zoning map indicates that the 13.47-acre parcel met the requirements in effect at the time.

- (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**

Staff: Tax Lot 7 is 15 acres in size, and Tax Lot 26 is 13.47 acres in size. Except for the dis-aggregation provisions of MCC .2062(E), the two parcels would together constitute a Lot of Record.

- (d) Which are held under the same ownership.**

Staff: This provision is intended to ensure that tracts which contain parcels less than 19 acres in size are aggregated into lots of record. The CFU-4 zone contains an exception to this provision in the dis-aggregation provisions of MCC .2062(E). The subject parcel has been conveyed to Mr. Burbach in order to qualify under the dis-aggregation provisions.

Hearings Officer: The subject property meets the definition of a lot of record provided in MCC 11.ES.2062 (A)(2). The deed that created the 15-acre parcel was recorded prior to February 20, 1990. It satisfied all applicable laws when created, for the reasons discussed by staff. The 15-acre lot size does not meet the 19-acre minimum lot size. The subject property is not contiguous to another substandard parcel or parcels under the same ownership.

The subject property was, until a couple of months ago, held under the same ownership prior to its transfer to Mr. Burbach. Nothing in 11.ES.2062 prohibits this transfer. The County's East of Sandy River Plan states that "current" County zoning do not allow "dis-aggregation of an individual parcel from a group of parcels owned by the same individual if the parcel is less than 19 acres."¹ The Plan and East of Sandy River code, however, allows an exception to this claimed rule for lots in the East of Sandy River Plan area, as discussed below.

MCC 11.ES.2062(B) For the purposes of this subsection:

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

¹ The Hearings Officer finds no such requirement in either the "current" rules (CFU), Comprehensive Framework Plan, the East of Sandy River Plan or code. The hearings officer has not, however, made an extensive search as the resolution of this question is not necessary in order to approve this land use application as the County clearly intended to allow this parcel to be "dis-aggregated." At best, the adoption of the "dis-aggregation" requirement implies that such a rule exists and prevents owners of substandard single lots that were, at some time after the adoption of the County's lot of record provisions, from qualifying as lots of record.

- (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.**

MCC 11.ES.2062(E) Dis-aggregation of Lots of Record existing on or before (effective date of ordinance)

- (1) A Lot of Record may be dis-aggregated for consideration of a new dwelling under MCC .2052 if:**
 - (a) It consists of two legally created, aggregated lots or parcels and:**
 - (i) The dis-aggregation occurs along existing lot or parcel lines without creating any new lots or parcels;**
 - (ii) One of the lots or parcels is currently developed with a legally established dwelling;**
 - (iii) The lot or parcel on which application will be made for the new dwelling is less than 19 acres; and**
 - (iv) The lots or parcels constituting the Lot of Record were owned by the current owner prior to January 1, 1985.**

Staff: The *staff* findings under MCC .2062 above establish that the two parcels, Tax Lots 7 and 26, *together*, qualify as a lot of record as required under this provision. The dis-aggregation is proposed to occur along the existing line between the two lots as required under (i). Tax Lot 26 contains the dwelling currently owned by Mr. and Mrs. Blanc. The Assessor's record indicates that the dwelling was established in 1962 which is before reliable building permit records were available. For this reason, although a building permit for the dwelling was not found, staff assumes lawful establishment. The parcel on which the application for the forest template dwelling is made is Tax Lot 7 which is 15 acres in size. The deeds submitted by the applicant indicate ownership by Mr. Blanc prior to 1/1/85.

The provision in (iv) above is intended to ensure that the owner of the two aggregated parcels was in ownership from 1985 until the present in order to qualify for the dis-aggregation provisions. It is not intended to require that the 1985 property owner owns both parcels at the time this decision is made. If both properties were "owned by the current owner" at this time, the provisions of MCC .2052(A)(3)(e) and (f) would not be met. These two provisions require that a parcel can only qualify for a template dwelling when there is no other dwelling on the tract and when no other dwellings are allowed on

other parcels that make up the tract. These provisions implement OAR 660-006-0027(1)(i) and (4)(c) for dwellings in forest zones.

These provisions must be interpreted in a manner consistent with the Comprehensive Plan. The East of Sandy River Rural Area Plan, adopted 7/10/97, contains findings and policies intended to implement the dis-aggregation provisions under policy 4A (see Exhibit C2).

Hearings Officer: The current owner, Mr. Burbach, did not own the subject property before January 1, 1985. Mr. Blanc owned both the subject property and an adjoining parcel before January 1, 1985. If applied literally, Subsection (iv) would prohibit the approval of this land use application and “dis-aggregation” of the subject property from the adjoining property owned by Mr. Blanc.

Oregon law makes it clear that land use regulations should be interpreted in light of their intent and purpose, whenever possible. In order for a County to be allowed to interpret code and plan language, it must find that the language is ambiguous. The term “current owner” is ambiguous for a number of reasons.

- A. The term “current owner” could refer to the owner of the property at the time of adoption of the East of Sandy River Plan; or
- B. The term “current owner” could refer to the owner at the time the owner seeks to develop the property; or
- C. The term “current owner” could mean the current owner at the time of separating the lots by deeding it to a new owner.

In order to resolve this ambiguity, the Hearings Officer has reviewed the East of Sandy River Plan and plan maps. The Plan allows dis-aggregation of lots less than 19-acres in size when “[b]oth of the lots [*aggregated by County regulations*] were owned by the current owner prior to 1985, or the current owner owned two lot prior to 1985 and sold one of them, rendering the other one undevelopable.” This Plan language reveals that it is interpretation C that was intended by the Plan. This is true because the Plan clearly intends that parcels transferred by an owner who owned two substandard lots prior to 1985 and prior to adoption of the East of Sandy River Plan qualify for new development. Neither of the other interpretations (A or B) would allow development of parcels sold prior to adoption of the Plan. Under interpretation C, the current owner, Mr. Blanc was authorized to convey the 15-acre lot to Mr. Burchach without disqualifying the lot for development.

MCC 11.ES.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.

Applicant: As discussed in the original application, the subject property is accessed via an existing forest practice road to Southeast Pounder Road. The access road is currently

constructed of rock base suitable to service large mobile equipment and trucks used in forest management. Southeast Pounder Road is a county maintained public roadway.

The original application included correspondence from Chief Tom Layton of the Multnomah County Rural Fire Protection, District Number 14, dated June 5, 1999. A copy of this correspondence is included with this letter. The fire district has granted approval, with conditions, to the access and construction at the SE Pounder Road site.

In addition, Mr. Al Young of Multnomah County has been contacted. In regard to conversations between Mr. Dale Burkholder and Mr. Young, All County Surveyors and Planners, Inc., has completed additional correspondence addressing the volumes and engineered solutions to the placement of the access between SE Pounder Road and the existing road grade. Please refer to the documentation provided by All County Surveyors and Planners, Inc. The requirement of a 20-foot landing of compacted material, as discussed with Mr. Young is acceptable. The applicant will comply with the requirement, as well as all other County and State standards applying to the access and construction of this project.

Staff: The subject parcel does not abut a street, but is proposed to take access from Pounder Road. The information submitted by the applicant in response to this requirement includes a letter dated 10/18/99, and Private Drive Improvement Plan dated 10/25/99. These documents are included as Exhibits A7 and A8 respectively. The proposed private drive will contain a relatively level segment for approximately the first 40 feet from Pounder Road, and then the grade quickly increases to approximately 25%.

As stated by the applicant above, the existing road that extends from Pounder Road to the top of the ridge near the dwelling site is a forest practices road that accesses the property over an easement created this year. As such, the access road has not been approved for access to a dwelling or any other use subject to County standards and must be approved under these provisions for access.

After site inspection on 11/1/99, it appears to staff that the safety issues are related to the access point to Pounder Road, and the steep (approximately 25%) grade of the logging road. The County right-of-way permit section will require a re-constructed landing at the Pounder Road access point that is consistent with condition #2 of the Multnomah County RFPD #14 letter, with an additional paving requirement as part of the required access permit. These should adequately address safety issues at this point.

It appears to staff that the steep road grade is unsuitable for regular vehicle access when the surface is limited to 6" of gravel as proposed in Exhibit A8. The loose gravel surface is likely to remain disturbed with regular use. However, RFPD #14 accepts a gravel surface in condition #5, and staff recommends deference to the assessment of the District as to what type of surface is adequate to support their vehicles.

Hearings Officer: Approval is based on the opinion of the RFPD that the driveway is suitable for emergency vehicle access. This is the only competent evidence in the record

regarding the safety and suitability of the driveway. As such, the County must find compliance with this criterion. Yet, the hearings officer has grave concerns about the wisdom of using such a steep driveway as the only access to the proposed dwelling. The applicant and future owners must be certain to test the driveway, once constructed, for its ability to serve emergency and other vehicles. The driveway must be well maintained to assure its future safety. The hearings officer, therefore, has imposed maintenance and performance standards for the driveway as a condition of approval.

MCC 11.ES.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:

MCC 11.ES.2074(A) The dwelling or structure shall be located such that:

MCC 11.ES.2074(A)(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);

Applicant: The placement of the dwelling exceeds the required minimum 130-foot setback as required by MCC 11.ES.2058. The proposed distance of the dwelling is 300 feet from the nearest property boundary (see site plan). Area between the dwelling and surrounding properties will be maintained as a managed forest operation with practices matching current industry expectations used on the surrounding plots will be maintained.

Staff: The proposed dwelling envelope is shown on the site plan in Exhibit A1. The dwelling envelope is closest to the north property line at approximately 152 feet, and otherwise meets the requirements of .2058(C) through (G). The subject property is in an area where some small-scale forest and farm management occurs as shown on the aerial photograph in Exhibit C3. No impacts to farm or forest lands are identified.

MCC 11.ES.2074(A)(2) Adverse impacts on forest operations and accepted farming practices on the *tract* will be minimized;

Applicant: The proposed dwelling will be sited to take advantage of the already existing disturbance and land currently removed from production by the existing access roads. The building area is currently not managed and overgrown by shrub level and ground level vegetation. Canopy vegetation consists of deciduous trees such as alder. The location also allows for the maximum amount of property to be used while maintaining the needed setbacks. The property surrounding the dwelling beyond the primary fire safety zones will be managed as a timber crop.

The building site also takes advantage of an existing road base. By utilizing the existing access, no new disturbance of potentially productive land is required. The placement of the existing road base allows construction of the building to take place on level land adjacent to the slope. Therefore, the site's location is on the perimeter of manageable

forestland, allowing a contingent and continuous acreage to be managed as a forest crop as opposed to site development toward the center of the property, which would create separation in the management acreage.

The site cannot be located further to the north due to topographical slopes. The slopes are estimated at 25%+. By placing the development on the least slope, the impact areas for primary and secondary fire safety zones can be reduced as according to MCC 11.ES.2074 (A)(c)(ii) in addition to meeting the intent of Multnomah County Comprehensive Plan Policy 14 (A).

Staff: No impacts to farm or forest management on the subject tract are identified.

MCC 11.ES.2074(A)(3) The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.

Applicant: The area of impact within the forest boundary (see the site map), including the primary fire safety zone is estimated to be less than one acre. The impact from the road to the house is estimated to be approximately 20,400 ft². The impact of the house footprint and associated drainfield is estimated to be approximately 3,000 ft². The impact of the primary fire safety zone is estimated to be approximately 9,600 ft². This gives a total estimated impact of approximately 33,000 ft² or acreage of 0.76 acre. By use of the existing road base, additional potential productive land is not removed from management and impact acreage is reduced.

Staff: Agrees.

MCC 11.ES.2074(A)(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Applicant: The proposed dwelling location will require a private drive of approximately 1250 feet from SE Pounder Road. The length of the road is necessary due to the existing road base and to utilize the closest level area to the required setbacks (see the site map). Dwelling development within the 1250 feet would impact Pounder Creek ecological systems (Potential SEC, riparian zones, and East of the Sandy Rural Area Plan Policy 21 and 21a) or require development on slopes greater than 25%. As stated previously, such development on slopes would require additional impact area of fire protection zones and impacts to the intent of Multnomah County Comprehensive Policy 14 (A).

Staff: Agrees that a road and service corridor in excess of 500 feet is required. The distance from Pounder Road to the subject property alone is 470 feet. In addition, locating the dwelling on slopes greater than 25% while perhaps feasible, would require unnecessary grading and slope disturbance on this site. It is not clear from the information submitted however, that the road is the minimum length required. The old logging road ends at the top of the hill, at the approximate location of the fire department approved turnaround shown on Exhibit A1. The grade in this area is relatively flat, and

the site would be approximately the same distance from the south property line as is the proposed site from the north. The access road/service corridor could apparently be reduced by over 200' if the dwelling was sited in this location.

Hearings Officer: Staff findings question whether the length of the driveway is the minimum length needed to serve the dwelling. The hearings officer finds that Exhibit H1 documents the fact that soils on the property are extremely limited in their ability to support a septic system. Soils are also subject to erosion as a result of construction and run-off created by home construction. As a result, the hearings officer agrees that the only feasible location for the home is the relatively level area of the property that exists at the top of the hill. Mr. Beasley suggested that this site might be at the point of the RFPD approved turnaround. The hearings officer finds, however, based on the submitted plan map (Exhibit A1) that the turnaround area is not as level as the area west of the turnaround. The hearings officer does find, however, that the area that is the most level, according to the submitted map is approximately 60' to the east of the proposed location for the home. As a result, the applicant has been required to move the homesite to this approximate location and to reduce the length of the driveway by 60'.

At the hearing, the applicant's representative advised the County that the home site is intended to be located in a cleared area on the property. Approval of this application is based on this representation and carries with it the obligation to site the home in the cleared area, except to the extent that it is not possible to comply with that representation and to move the home 60' to the east.

MCC 11.ES.2074(A)(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;**

Applicant: A letter dated June 5, 1999 has been received from Mr. Tom Layton, Chief of Multnomah County RFPD #14. The purpose of the letter was in response to a request for fire apparatus approval of the proposed development. The district will grant approval provided certain conditions are met. These conditions are listed in the letter included with this submittal.

- (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;**

Applicant: The nearest perennial water source on the subject property, Pounder Creek, is located north of the building site. The creek crosses the flag lot of the property. The access road base crosses over the creek. Therefore, access to the creek is to creek bank.

In addition, a fire hydrant is located approximately 1,000 feet southwest of the building site with another fire hydrant located approximately 1/4 mile south of the entrance along SE Pounder Road. The residence itself will be provided with public water from the Corbett Water District.

Staff: Pounder Creek is not on the subject property.

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

- (i) **A primary safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure**
- (ii) **On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

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

- (iii) **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... . The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.15.2058(D) and .2075.**
- (iv) **No requirement in (i), (ii) , or (iii) above may restrict or contradict a forest management plan approved by the state of Oregon Department of Forestry pursuant to the state Forest 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).**

Applicant: The dwelling will be located as such to allow a primary safety zone of a minimum of 30 feet in all directions. Any trees within this area will be managed at a spacing of greater than 15 feet between crowns and other considerations as discussed in MCC 11.ES.2074 (A)(5)(c)(i). The dwelling location is on a grade of less than 10 percent. Therefore, extension of the primary fire safety zone is not required.

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

Applicant: The building site maintains a change of elevation of approximately 6 feet over a distance of approximately 110 feet. This gives an approximate slope of 5.4 percent.

Staff: The proposed dwelling location appears to meet these standards.

MCC 11.ES.2074 (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) Deleted 1998, Ord. 916 II]**
- (4) Have a fire retardant roof.**
- (5) Have a spark arrester on each chimney.**

Applicant: The dwelling will comply with all applicable standards and building codes.

Staff: 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. Compliance with these standards can be ensured by a condition of approval to be satisfied prior to zoning approval of the Building Permit.

MCC 11.ES.2074 (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Applicant: A Certificate of Water Service has been issued to the property by the Multnomah County Department of Environmental Services, Division of Planning and Development, dated June 29, 1999. A copy of this certificate is included with this submittal. As described by the document:

"... the District will provide service from a 4" PVC inch line located south edge of pavement..."

Therefore, reliable water services will be provided to the dwelling by Multnomah County.

Staff: Water is available from the Corbett Water District according to the Certificate of Water Service (see Exhibit A0).

MCC 11.ES.2074(D) A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:

MCC 11.ES.2074(D)(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;

MCC 11.ES.2074(D)(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;

MCC 11.ES.2074(D)(3) Provide minimum curve radii of 48 feet or greater;

MCC 11.ES.2074(D)(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;

MCC 11.ES.2074(D)(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;

- (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
- (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;

MCC 11.ES.2074(D)(6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

MCC 11.ES.2074(D)(7) Provide for the safe and convenient passage of vehicles by the placement of:

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

Applicant: The existing forest management service road, historically used for heavy vehicle transport, will be utilized. This will give a compacted base for the roadway. Construction of the final roadway is detailed in the engineering design of All County Surveyors and Planners, Inc. of Sandy Oregon. A copy of these designs is included with this submittal.

A letter dated June 5, 1999 has been received from Mr. Tom Layton, Chief of Multnomah County RFPD #14. The purpose of the letter was in response to a request for fire apparatus approval of the proposed development. The district will grant approval provided certain conditions are met. These conditions are listed in the letter included with this submittal.

Staff: Agrees with the information provided by the applicant in response to the seven standards in this section. However, the plans for the road have not been reviewed and approved as meeting these standards. Given the approval of the fire district for the road slope and surface, staff ~~seen~~ sees no reason why a road that meets these standards cannot

be built and therefore recommends a condition of approval requiring compliance be imposed.

TEMPLATE DWELLING CONCLUSIONS:

1. The subject parcel meets the basic template test provisions in MCC .2052 for the number of other parcels and dwellings that must be within the template area based on the soil productivity of the parcel. Compliance with these provisions has not been a concern to staff due to the significant parcelization and development that already exists in the area. The property owner will need to record the statement acknowledging the rights of nearby property owners to manage their property for farm or forest use. The property owner will need to submit a stocking survey report that determines whether the property is stocked consistent with Oregon Forest Practices Rules. The building plans will also need to demonstrate compliance with the provisions of MCC .2052(A)(9) as well. These requirements can be met by imposition of conditions of approval.
2. The proposed dwelling envelope meets the dimensional standards of the 130-foot forest practices setback as required in MCC .2058(C).
3. The parcel meets the Lot of Record and dis-aggregation provisions of MCC .2062(B) and (E). Both of the parcels which made up the Lot of Record were lawfully created prior to the more restrictive zoning which was applied in 1977, at a time when no planning review was required. The deeds submitted indicate ownership as of 1/1/85 as required, and staff assumes the existing dwelling was lawfully established in 1962 due to lack of adequate building permit records dating to that time.
4. The access requirement in MCC .2068 has *been met, as demonstrated* ~~to be met~~ by the letter submitted by the applicant. In addition, approval of a road access permit by the right-of-way permitting section contributes to ensuring safe access and can be satisfied by a condition of approval.
5. The proposal meets most of the Development Standards in MCC .2074 due to the slopes on the property, a road area which is already mostly cleared, and the lack of apparent conflicts with farm or forest uses with the proposed dwelling site. The property is on public water and is in a fire protection district that has conditionally approved the relatively long, steep access, and there is room to meet the fire break requirements. The applicant has not demonstrated that the proposed dwelling envelope results in the minimum necessary driveway/service corridor. ~~The alternate dwelling site near the south property line can meet all of the applicable provisions of this section. Staff recommends that~~ *As a result, the Hearings Officer consider additional information from the applicant which demonstrates compliance, or require has required the use of the an alternate site.* A condition of approval is needed to ensure the dwelling standards of MCC .2074(B) are met.

6. 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, 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 could be imposed because the applicant has demonstrated that they can be met.

Multnomah County Comprehensive Plan Policies:

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

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%;

Applicant: The building site maintains a change of elevation of approximately 6 feet over a distance of approximately 100 feet. This gives an approximate slope of 5.4 percent. Therefore, this location satisfies criteria A.

B. Severe soil erosion potential;

Applicant: The soil slope of the building site is approximately 5.4 percent. The soils, as indicated by Multnomah County and verified by David Brown & Associates, Inc., are classified as Merston Soil. Therefore, this soil is given a Capability Classification of IIIe3. This *gives the* soil a severe limitation on vegetation choice due to erosion, as opposed to extremely severe erosion limitations. This limitation is removed if a close-growing plant cover is maintained. The forest manager will maintain Best Management Plans of erosion control, including immediate replanting of disturbed areas. Therefore, this location satisfies criteria B.

C. Land within the 100-year flood plain;

Applicant: The dwelling will be located approximately 700 feet southwest of the nearest surface water, Pounder Creek. The building site is located at an elevation approximately 180 feet above the surface water, placing the dwelling far outside the 100-year flood plain. The Merston Soils are listed as not having flooding potential, with a seasonal high water table of 3 to 5 feet from the ground surface. Therefore, this location satisfies criteria C.

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

Applicant: The Mershon Soils, as described in the Soil Survey for Multnomah County, maintain a high seasonal water table of 3 to 5 feet from the ground surface⁴. Therefore, this location satisfies criteria D.

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

Applicant: The Soil Survey for Multnomah County does not list a fragipan associated with the Cazadero soil. Field investigation of soil pits constructed on the property showed no presence of a fragipan. Therefore, this location satisfies criteria E.

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

Applicant: The building site soil grade is within the angle of repose for this soil classification. Field examination revealed no evidence of slumping or earth movements associated with the building site. The Soil Survey of Multnomah County does not mention of soil failures for the Mershon soils.

Staff: The provisions of this policy apply to all development and land form alterations. As such, the provisions of A. above apply to development of the access road as well as the dwelling site. As shown on the Private Drive Improvement Plans, the grade of the road is greater than 25%. An engineering report (HDP permit) appears to be required for the road improvement based on these plans. Soil erosion and other development related impacts will be controlled through the HDP or Grading and Erosion Control Permit process.

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:

B. The proposed use shall be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

Applicant: A Certificate of Water Service has been issued to the property by the Multnomah County Department of Environmental Services, Division of Planning and Development, dated June 29, 1999. A copy of this certificate is included with this submittal. As described by the document:

" . . . the District will provide service from a 4 " PVC inch line located south edge of pavement. . . "

Therefore, Multnomah County will provide reliable water services to the dwelling.

A land feasibility site evaluation was conducted of the building site by the Environmental Soils Inspector for the City of Portland, Bureau of Buildings. The result of the study is that the "... *site is SUITABLE for the use of a standard septic tank, Wdrainfield disposal system in compliance with the standards set forth in On-Site Sewage Disposal Rule...* " The minimum type and size of the system and absorption area required for the three bedroom home proposed in this project is 1,000 gallons for the septic system, and 300 feet of linear feet absorption trench. The report is referenced by LFS 64-99.

Therefore, criteria C is satisfied.

DRAINAGE:

- E. **Shall have adequate capacity in the storm water system to handle the increased run-off; or**
- F. **The water run-off shall be handled on the site or adequate provisions can be made; and**

Applicant: The City of Portland has recommended drainage absorption trenches. The required minimum is 300 linear feet. There is ample area, as described in the Site Plan, to handle all drainage from roof runoff. The area of coverage is approximately 2,100 square feet. The topography slopes to the north, providing slope drainage into vegetated areas. The slope will prevent ponding around the structure.

Therefore, criteria F is satisfied.

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

Applicant: The dwelling will be located approximately 700 feet southwest of the nearest surface water, Pounder Creek. The building site is located at an elevation approximately 180 feet above the surface water, placing the dwelling far outside the 100-year flood plain. The Mershon Soils are listed as not having flooding potential, with a seasonal high water table of 3 to 5 feet from the ground surface.

Stormwater from roof drainage will be directed downslope to the north. However, the runoff will be directed into vegetated topography and infiltrate into the soils. Direct flow will not impact the existing surface waters. The building site has been located and the drainage designed so as to not impact nor alter any existing drainage patterns. Therefore, criteria G is satisfied.

Staff: The policies which have import to this proposal are the Water Disposal and Drainage policies listed above. The property can be served by the Corbett Water District as indicated by the Certification of Water Service in the casefile. In addition, Land

Feasibility Study LFS 64-99 indicates that the on site soils are suitable for a septic system.

Water runoff will occur from both the dwelling site and the improved driveway. The dwelling runoff does not appear to present any special problems due to the relatively large area for dispersal and the on site soils that will support a standard septic system. Drainage from the driveway will need to be controlled in order to not impact Pounder Creek or adjacent property to the east. Staff feels this can be accomplished through the HDP or GEC process.

Policy No. 38, Facilities: It is the County's Policy to coordinate and encourage involvement of applicable agencies and jurisdiction in the land use process to ensure:

- 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.

Applicant: Service Letters in the record indicate adequate service levels for schools, fire protection, and police protection.

Staff: The applicable agency for this application is the fire district, and the record contains their response and conditional approval.

East of Sandy River Rural Area Plan

Steams and Watersheds Policies

- 21. Protect significant streams in the East of Sandy River Rural Area by prohibiting new residential development within 150 feet of a stream centerline and limiting new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area. Additions to existing dwellings of up to 400 square feet shall be exempt from the setback requirements. All related ground disturbing activities within the 150 foot steam setback shall be limited to the period between May 1 and October 1 in any year.
- 21a. Require any stream crossing to utilize a bridge or arched culvert which does not disturb the bed or bank of the stream and are of the minimum width necessary to allow passage of peak winter flows.

Applicant: Placement of the dwelling at the top of the slope will remove the dwelling from the 150-foot impact zone. The development also utilizes existing road and stream

crossings, removing the need for new or additional impacts. The crossing has a history of success, allowing numerous winter flow events to pass without impedance. Normal forest practice acts, as detailed in OAR 629-625-600 of the Oregon Department of Forestry Forest Practice Administrative Rules, will be utilized to maintain the roadway and stream crossing. No ground disturbing activities, associated with the road within the 150-foot setback, will be conducted between May 1 and October 1 in any given calendar year.

Staff: Pounder Creek is designated as a significant stream and is protected by this policy. While the forest road crossing and culvert are in place, these have not been approved under County standards. The standards in policy 21 and 21a are intended to protect water quality and wildlife habitat. Replacement of the existing culvert with a bridge in this location is not feasible is staff's estimation because the stream follows a steep hillside. In addition, replacement of the existing culvert would require significant excavation and potential impacts to wildlife habitat. However, at a minimum, staff recommends a condition which requires that the culvert meet the flood passage requirements in the Grading and Erosion Control Code MCC 29.305(A)(1)(d).

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 within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 1600 SE 190th Ave., (in Gresham) or you may call 248-3043, for additional instructions.

DATED this 21st day of November 1999.

Liz Fancher, Hearings Officer