



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

This Decision Consists of Conditions, Findings of Fact and Conclusions

**October 19, 1998**

**CU 7-98/SEC 24-98  
HV 11-98:**

A "Template Dwelling" Conditional Use, Significant Environmental Concern for Wildlife and Streams, and Minor Variance to allow a new single family dwelling on Commercial Forest Use zoned property.

**Location:**

21574 NW Gilkison Road  
Tax Lot 37, Sec 26, T3N, R2W, W.M (R-98226-0370)

**Applicant and  
Owner:**

Robert Huseby  
3385 SW 87th Avenue  
Portland, Oregon 97225

**Site Size:**

17.80 acres

**Present Zoning:**

Commercial Forest Use (CFU)  
Significant Environmental Concern (SEC)

**Approval Criteria:**

Multnomah County Code (MCC): MCC 11.15.2042  
Commercial Forest Use; MCC 11.15.6400 Significant  
Environmental Concern; MCC 11.15.7105 Conditional  
Use; MCC 11.15.8505 Variances; Comprehensive Plan  
Policies 13, 14, 22, 37, 38, & 40

MULTNOMAH COUNTY  
PLANNING SECTION

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## Hearings Officer Decision:

Approve the proposed "Template Dwelling" Conditional Use Permit, Significant Environmental Concern for Wildlife and Streams Permit, and Minor Variance to allow the construction of a new single family dwelling, subject to the conditions stated herein.

## Conditions:

1. This Conditional Use approval shall be specific to the use(s) described together with the limitations or conditions as determined herein. Any change of use from the use described in the land use application or modification of limitations or conditions shall be subject to approval by the approval authority and may require a public hearing.

2. A forest stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6).
3. Prior to issuance of a building permit, the applicant is to provide verification that the proposed driveway from the public road to the home has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW. [MCC 11.15.2074 (D).] That verification shall be provided, in writing, from a qualified professional engineer.
4. Prior to issuance of a building permit, the applicant is to provide verification that the proposed driveway, as constructed, meets the access requirements of the Scappoose Fire District.
5. The applicant is to submit a copy of an approved septic permit from the City of Portland Sanitarian. Additionally, a revised copy of sheet #2 of the site plan is to be submitted illustrating the final location for the septic system, including its relationship to neighboring water sources and the proposed french drain system. Both of these items are to be provided prior to building permits being signed-off for the proposed dwelling.
6. Prior to issuance of a building permit and as long as the property is under forest resource zoning, the applicant is to maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074 (A)(5).
7. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
8. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074(C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
9. A Hillside Development Permit (HDP) has been applied for and must be obtained prior to issuance of a building permit for the proposed dwelling. The HDP Permit will be required only for areas of soil or earth disturbance not covered under the Oregon Department of Forestry (ODF) permit.
10. The nuisance plants listed in Finding #9G shall not be planted on the property and shall be removed from cleared areas of the property.
11. Prior to issuance of a building permit the applicant is to provide supplemental evidence further describing the re-vegetation plan proposed on sheet #4 of the site plan (Exhibit A19). Such supplemental evidence shall include descriptions of the types and amounts of native vegetation to be planted, installation methods to be used, and a timeframe within which the work is to be completed. Additionally, a monitoring plan is to be prepared consistent with Finding #11D, to ensure the survival of the new plantings.

12. Soil disturbing activities within the Stream Conservation Area as depicted on sheet #4 of the site plan shall be limited to the period between June 15<sup>th</sup> and September 15<sup>th</sup>. Revegetation/ soil stabilization must be accomplished no later than October 15<sup>th</sup>. Best Management Practices related to erosion control shall be conducted within a Stream Conservation Area.
13. Approval of this Conditional Use shall expire two years from the date of the Board Order unless "substantial construction" has taken place in accordance with MCC 11.15.7110(C) or the subject proposal is completed as approved. For the purposes of this decision, "completion" of the development under this conditional use review will involve, at a minimum, the following (summarized actions) to have taken place prior to the expiration date of the Conditional Use:
- A. Applying for and approval of a Hillside Development Permit, if necessary;
  - B. Forest stocking survey report submitted;
  - C. Fire safety zones cleared and inspected by Planning staff;
  - D. Submittal of a well drilling report, then 10 day opportunity for parties entitled to notice to appeal determination that the well report satisfies the service requirements of Comprehensive Plan Policy 37, Utilities.
  - E. Application for Right-of-Way permits for a new driveway, if applicable, and construction of the driveway to the design and specifications shown on plans submitted with the Conditional Use application, and;
  - F. The conditions of approval relating to the fire retardant roof, chimney spark arresters, foundation, and floor area are shown on the building plans.
  - G. The constructed building shall be a single family dwelling based on the following characteristics: be lawfully established under required building permits; have intact interior walls and roof structures inspected under that building permit; has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to an approved and permitted sanitary waste disposal system; has interior wiring for interior lights inspected under an electrical permit; and has a heating system.
  - H. If the dwelling is not completed, then the method of determination that "substantial construction" has taken place is an application to the Planning Director. The application must be submitted on a General Application Form with supporting documentation at least 30 days prior to the expiration date. The decision of the Planning Director will be a land use decision that may be appealed to a Hearings Officer by a party entitled to notice [MCC 11.15.7110 (C)(3)].

### **Findings of Fact**

Written responses by the applicant, demonstrating compliance with code criteria, are *italicized*. Planning staff comments and analysis follows applicant responses. Where this occurs, the notation "Staff" precedes such comments. The Hearings Officer analysis and discussion will follow the staff comments. Where I concur with staff, or when no additional comment is needed, no discussion will be added to the staff comments.

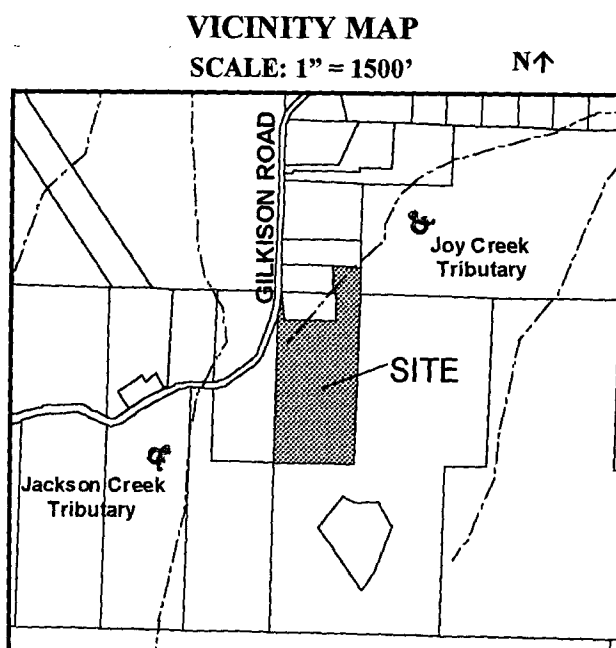
## 1. Project Description:

Staff: The applicant's request is for approval of a "Template Dwelling" to allow the placement of a single family dwelling, and new private driveway on a Commercial Forest Use zoned parcel. A Significant Environmental Concern for Wildlife Habitat and Streams has been requested for development activities within these zoning overlay districts. The minor variance has been requested to permit a 150 foot structural setback from the western property line.

This application is consistent with what was submitted and approved under Case #CU 10-94 and #HV 28-95 (Exhibit A5). This request is necessary in that the previous approvals have expired.

## 2. Site and Vicinity Characteristics:

Staff: The parcel upon which the improvements are proposed is approximately 17.80 acres in size. Access to the parcel is available off of Gilkison Road along an existing logging road. The logging road extends south and east from Gilkison Road, across the northeast corner of the adjoining parcel to the west, then extends south into the site. A private access easement contains the road where it crosses the adjoining parcel (Exhibit A14). The property is roughly rectangular in shape, with an extension to the northeast and a small extension to the northwest to obtain frontage on Gilkison Road. Topography generally slopes down from southwest to northeast, although the terrain is uneven and contains ridges, bowls and drainageways. The site is currently un-developed.



A logging road currently extends from the property to the west, south into the parcel as illustrated on the applicant's site plan (Exhibit A17). The property has been logged within the last ten (10) years. The property contains a number of branching logging roads in poor condition. There appear to be several easements attached to the property, both for logging roads and water, but the exact location of these are somewhat unclear. One of the easements is to allow a water line from a spring to an adjoining property. Another nearby property obtains domestic water from the tributary of Joy Creek that runs through the northeast corner of the subject property.

Gilkison Road exists in the far northwest corner of the County. Property in the vicinity of the site consists of a number of small lots with residences adjacent to Gilkison Road, backed by larger parcels containing forest land. Dwellings currently exist on parcels immediately to the north and west of the applicant's property. All other adjoining parcels are undeveloped and forested.

### 3. Testimony and Evidence Presented :

- A. Derrick Tokos testified for the County, summarized the staff report and discussed the approval criteria.
- B. Robert Huseby, Matt Harrell, Jeffrey Richards and Don Henry spoke in favor of the application.
- C. Marquette Mitchell spoke in opposition to the application and presented written testimony on behalf of herself and Paul Wright.
- D. Sue Durrett and Dale Skaggs spoke in opposition to the application, and expressed concerns regarding water quality, wildlife and septic issues.
- E. The exhibits considered as evidence for the hearing is listed on the attached Exhibit "A" which is incorporated by this reference herein.

### 4. Conditional Use (CU) Permit Required:

#### **11.15.2046 Uses**

**No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2048 through .2056.**

\* \* \*

#### **11.15.2050 Conditional Uses**

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

\* \* \*

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

\* \* \*

Staff: As established under MCC 11.15.2050(B) a "Template Dwelling" request requires Conditional Use approval in the Commercial Forest Use zone district.

### 5. Compliance with MCC 11.15.2052 Template Dwelling Requirements:

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

- A. **MCC .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;**

*The parcel meets the lot of record provisions of 11.15.2062(A) and (B) as per the Staff Report (CU 10-94) issued for September 20, 1995 Public Hearings pages 19 and 20 (Exhibit A 10).*

Staff: This criterion has been addressed. Compliance with Lot of Record requirements of MCC .2062 was established with Hearing's Officer's Decision on Case #CU 10-94 (Exhibit A5) and is discussed in detail under Finding #5.

- B. **MCC .2052(A)(2), The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;**

*The lot is 17.80 acres. The site plan illustrates the exact location of the homesite. This location was used due to a previous submittal and a minor variance granted for 150 feet of distance from the south property line to the homesite. All other distances conform to standards of at least 200 feet to a property line.*

Staff: This criterion has been addressed. Compliance with MCC .2074 is established under Finding 6. As illustrated on the applicant's scaled site plan (Exhibit A19) the yard requirements of the Commercial Forest Use district have been met, with the exception of the setback from the west property line which is to be reduced to 150 feet. This reduction to the 200 foot yard requirement requires a minor variance, the criteria for which are contained in Finding #15.

- C. **MCC .2052(A)(3)(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.**

*The site's soils are Cornelius Silt Loam, 8 to 15 percent slopes (symbol 10C) and Globe Silt Loam, 15 to 30 percent slopes (symbol 17E) and are capable of producing 176cf/ac/yr of Douglas Fir timber. Therefore, there must be eleven other lots with at least five dwellings within a 160-acre square. Fifteen other lots or parts of lots exist within a 160-acre square and six dwellings exist within the prescribed square (Exhibit A10).*

Staff: Compliance with this criterion was established with Case #CU 10-94, the previous "Template Dwelling" approval for this site. The staff report prepared for that case, and adopted in the Hearing Officer's decision (Exhibit A5), indicated that all or part of 16 parcels and 6 houses existed prior to January 1, 1993, within a 160 acre square template centered on the subject tract.

- D. **MCC .2052(A)(3)(d), Lots and dwellings within urban growth boundaries shall not be counted to satisfy...(c) above.**

*This standard is not applicable because this site and adjacent properties are not near or within the Urban Growth Boundary.*

Staff: None of the lots or dwellings used fall within an urban growth boundary.

- E. **MCC .2052(A)(3)(e), There is no other dwelling on the tract,**

*There are currently no other dwellings on the site.*

Staff: The subject property constitutes the tract and does not currently contain a dwelling.

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

*There are currently no other dwellings on the site.*

Staff: No other parcels exist within the tract.

- G. **MCC .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**

*There are currently no other dwellings on the site and applicant accepts the fact that no additional dwellings will be placed on the parcel.*

- H. **MCC .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;**

*There are currently no other dwellings on the site. The qualifying of the tract is with the use of other parcels and homes from adjacent properties.*

Staff: None of the parcels used to qualify this dwelling are part of this tract or any other tract containing a template dwelling.

- I. **MCC .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.**

*A corner of the parcel not the homesite may be within a big game winter habitat area. The ODFW has certified that an additional dwelling will be acceptable. See Exhibit 8.*

Staff: As evidenced in the previous Hearing's Officer decision (Exhibit A5), the proposed dwelling site is located outside of a Multnomah County Sensitive Big Game Wintering Areas map.

**Hearings Officer:** Some of the neighbors, who testified at the hearing, expressed concern that the parcel was in a big game habitat and that the animals would be adversely effected by the proposal. However, this criteria is fully satisfied by the certification by the ODFW that this dwelling is acceptable.

- J. **MCC .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;**

*A prior owner has had an easement recorded with the County Records Office that allows future owners to cross a triangularly shaped parcel adjacent to Gilkison Rd. This easement is at least a twenty (20) foot wide access easement across the parcel to Gilkison Rd. The access easement contains an improved road surface that the fire district has determined is satisfactory (Exhibit A14).*

Staff: Easement documents submitted do not indicate a twenty (20) foot access width, referencing only the use of the existing roadway. However, the roadway easement is perpetual, therefore, the requirements of this criterion have been met. As documented with Exhibit A7, the Scappoose Fire District has indicated that the roadway, as currently constructed, does not meet their requirements. As referenced in the easement documents, maintenance of the access road is the applicant's responsibility.

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

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

**(b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;**

**(c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not**



meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

*This property meets the stocking requirements of the Department of Forestry. See Exhibit #7. In addition, the OAR supersedes the county requirements.*

Staff: A condition of approval has been included to ensure that the requirements of MCC .2052(A)(6) are met.

- L. **MCC .2052(A)(7), The dwelling meets the applicable development standards of MCC .2074;**

*The applicant has submitted a design plan in accordance with MCC.2074.*

Staff: Compliance with this criterion is demonstrated under Finding #6.

- M. **MCC .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;**

*The applicants have submitted a form that has been recorded with the Division of Records that allows nearby property owners to conduct reasonable forest practices (Exhibit A16).*

- N. **MCC .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;**

*Applicants will meet this criterion by compliance.*

Staff: This requirement is only applicable when two or more parcels exist within the tract. Since the subject property is a one parcel tract, an "Exhibit A" restriction need not be filed.

**Hearings Officer:** I find that the application complies with the Template Dwelling requirements.

6. **Compliance with MCC 11.15.2062, Lot of Record Requirements:**

**Per MCC .2062(A)(3), for the purposes of this district, a Lot of Record is a group of contiguous parcels of land:**

- A. **MCC .2062(A)(3)(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: As evidenced in the previous decision, and referenced in the excerpt from the staff report prepared for Case #CU10-94 (Exhibit A10) the parcel was created in its current form by deed in 1967. Therefore, this criterion has been met.

- B. MCC .2062(A)(2)(b), Which satisfied all applicable laws when the parcels were created;**

Staff: As evidenced with Exhibit A10, the parcel satisfied applicable laws when it was created. County zoning for the area at the time the parcel was created was "F-2 Agricultural," a district with a minimum lot size standard of 2 acres.

- C. MCC .2062(A)(2)(c), Does not meet the minimum lot size requirements of MCC .2058; and**

Staff: This criterion has been met. The parcel subject to this request is approximately 17.80 acres in size, well below the minimum lot size of 80 acres established under MCC .2058.

- D. MCC .2062(A)(2)(d), Which is not contiguous to another substandard parcel or parcels under the same ownership, or**

Staff: Staff is not aware of any contiguous parcels that are currently under the same ownership as that of the subject property.

**Hearings Officer:** I find that the application complies with the Lot of Record Requirements.

**7. Compliance with MCC 11.15.2074, Commercial Forest Use Zone District Development Standards:**

- A. Per MCC .2074(A)(1), the dwelling or structure shall be located such that 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);**

*The dwelling can be located so that it has the least impact on nearby or adjoining forest and agricultural lands and still satisfy the minimum yard and setback requirements. The dwelling will be sited away from the property lines which separates this lot from adjacent forest lands...The amount of forest land for the dwelling and access road is minimized. The amount of land necessary to site the structure requires less than one acre. There is no need to use additional forest land to access the site. Access to the proposed dwelling site is serviced by an existing logging road.*

*The applicant's site is surrounded by homesites on two sides. There are four residences with adjoining property lines. There is a fifth residence across Gilkison Road. The other two property lines that are furthest from Gilkison Road are*

*surrounded by commercial forest properties. There is no agricultural farmland adjacent to the applicant's property. Therefore the applicants site plan demonstrates how small the impact would be to adjoining properties.*

Staff: Compliance with the minimum yard requirements of MCC .2058 will be met provided the minor variance to allow a 50' foot reduction to the 200' setback from the west property line is granted as requested herein.

- B. Per 11.15.2074(A)(2), the dwelling or structure shall be located such that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.**

*There will be no adverse impacts on forest operations. The reforested trees will be encouraged to regrow the forest on the tract. Impacts to farming practices will be minimized since the only form of farming on the tract is the regrowing of the forest.*

- C. Per 11.15.2074(A)(3), the dwelling or structure shall be located such that the amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized.**

*The amount of forest land for the dwelling and access road is minimized. The dwelling and driveway to the existing access road will require less than one acre. The amount of forest land used is minimized for two reasons. First, the applicants using an existing access road. Second, the proposed dwelling site size is minimal; 50'x100' lot size.*

Staff: In siting the structure in a cleared area and by incorporating an existing logging as the new driveway, the applicant has taken steps to minimize disturbance of on-site forest lands.

- D. Per 11.15.2074(A)(4), the dwelling or structure shall be located such that 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**

*The access road to the dwelling site is less than 500 feet, but is also an existing road.*

*The Applicant's property is characterized by slopes ranging from 2% slope to 20% slope. The Applicant proposes to place the dwelling in the area identified as having the least slope (12%) on the property and is the most stable, as determined by the geotechnical consultants. The physical limitations of the property's extreme slopes require that the nonfarm dwelling be sited as depicted in the attached site plan and that the existing access road exceed 500 feet. The road is existing to the proposed dwelling site.*

Staff: This requirement has been satisfied. As evidenced on the site plan (Exhibit A19), the distance from Gilkison Road to the location of the proposed dwelling is less than 500 feet. The road extends beyond 500 feet only so far as to provide a turn around for emergency vehicles. The location of the proposed dwelling is

consistent with what was approved under the previous conditional use (CU #10-94).

- E. Per 11.15.2074(A)(5), the dwelling or structure shall be located such that the risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

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

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

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

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

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

Percent Slope In Feet	Distance
Less than 10	Not required
Less than 20	50
Less than 25	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 crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

No requirement in (i), (ii), or (iii) above may restrict or contradict a

forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

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).

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

*The Applicant will comply with these requirements intended to reduce risk of wildfire. As per the site plan there is a primary fire break shown at 50 feet and a secondary fire break shown at 100 feet. The dwelling site has a slope of less than 20 %. Furthermore, the applicant has demonstrated that he does or can comply with criteria relevant to prevention of fire. The fire district has indicated that it can serve this site at the proposed dwelling site is also located more than 150 feet away from the parcel's boundaries, thus minimizing the danger of fire spreading to adjacent parcels.*

Staff: To ensure that the requirements of these criteria are met evidence must be submitted prior to building permit sign-off that the access road has been constructed to the standards of MCC .2074(D) which will satisfy fire district concerns as documented with Exhibit A7. The on-going maintenance responsibility for primary and secondary fire safety zones, as delineated on the site plan, must also be clearly established. These concerns have been addressed with conditions of approval contained herein.

**F. Per MCC .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;**
- (3) Have a minimum floor area of 600 square feet;**
- (4) Have a fire retardant roof; and**
- (5) Have a spark arrester on each chimney.**

*The dwelling will comply with Uniform Building Code standards. The dwelling will be attached to a foundation for which a building permit has been obtained. The dwelling will have a minimum floor area of 600 feet and will have roof and chimney that conform to criteria (B)(4) (5). A floor plan has been submitted (Exhibit A17).*

Staff: Evidence of compliance with each of the elements of MCC 2074(B) must be verified at time of building permit review and inspection. A condition of approval has been included herein addressing this concern.

**G. Per MCC .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 ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.

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

(2) Evidence of a domestic water supply means:

\* \* \*

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

*The water will be provided to this site from a well located on the property and not a Class II stream. The well constructors report shall be submitted to the county upon completion of the well.*

Staff: To address this criterion a copy of the well constructor's report must be submitted prior to building permit sign-off. A condition of approval addressing this concern has been included herein.

**Hearings Officer:** The issue of water was of significant concern to many of the neighbors. Both oral and written testimony was presented by neighbors indicating that water quality and quantity for wells in the area was problematic. The neighbors were concerned that the drilling of a well on the subject property would adversely affect the existing wells in the area. The applicant, however, does have the right to drill a well and this criteria is met by the submittal of the well report.

Since the well report has not been presented, the condition relating to the report will also contain the requirement that the parties entitled to notice of this proceeding will be notified that the water service part of the approval criteria is being reviewed and that there will be an opportunity to comment and appeal those particular findings.

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

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

(2) Provide an all-weather surface of at least 20 feet in width for a private

road and 12 feet in width for a driveway;

- (3) Provide minimum curve radii of 48 feet or greater;
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
  - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
  - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
  - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
  - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

*The dwelling site will be accessed by an existing logging road which will be upgraded to conform to the standards (D) (1)-(7). The dwelling site obtains access from Gilkison Road via an easement. The access easement will serve only the proposed dwelling on this site (Exhibit A14). As per the site plans the driveway to the dwelling will conform to the driveway specifications (D) (1)-(7). The engineered driveway plans were also submitted with the Hillside Development Permit which is pending. In addition, the Fire Chief for the Scappoose Rural Fire District has signed the form entitled "Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads" Furthermore final approval and acceptance will be done by the Fire Chief (Exhibit A7).*

Staff: The requirements of MCC .2074(D) appear to be either the same or slightly more restrictive than the requirements of the Scappoose Fire District (Exhibit A7), with the exception of maximum road grade. The Fire District requirements allow a maximum grade of fifteen (15) percent (proposed maximum grade is (14) fourteen percent). Therefore, recognizing the maximum road grade exception allowed by the District, evidence must be provided prior to building permit sign-off demonstrating that the access road has been engineered and constructed to all of the other standards specified under MCC .2074(D). This concern has been addressed with a condition of approval attached herein.

**Hearings Officer:** I find that the applicant has met all of the requirements of the Commercial Forest Use Zone Development Standards.

**8. Significant Environmental Concern (SEC) Permit Required:**

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

**Staff:** The subject property has been identified as being within a Significant Environmental Concern overlay zone district as identified on Sectional Zoning Map No. 2, a copy of which is included as part of the permanent record (Exhibit B6).

**9. Compliance With MCC 11.15.6420, SEC General Approval Criteria:**

**Per MCC 11.15.6420, 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 Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

- A. MCC .6420(A), the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

*The applicant has planned to conform to the prior approved variance; which includes the relocation of the homesite to provide adequate distance set-backs from any and all rivers, streams, lakes, or floodwater storage areas. In addition, the applicant has not even planned to do site grading in any of the above mentioned areas.*

**Staff:** This criterion has been met. The existing logging road is the only improvement within the SEC stream conservation area as demonstrated on sheet #4 of the site plan (Exhibit A19). The road lies just inside the conservation area, in excess of one hundred (100) feet from a stream feature. Disturbance of vegetated areas adjacent to the driveway attributed to roadway improvements required to accommodate the proposed dwelling should be minimal. The landscaping proposed downstream from the roadway constitutes an enhancement provided that the types and amounts of native vegetation to be planted are identified, installation methods for plantings are described, and a timeframe within which the work is to be completed is established. This concern has been addressed with a condition of approval contained herein.

- B. MCC .6420(B), agricultural land and forest land shall be preserved and maintained for farm and forest use.**

*The applicant plans to maintain all forest land for forest use. The applicant has no intention of removing any trees located outside of the approved 5000 square foot*



homesite area. In addition, the applicant plans to conform to all primary and secondary fire break requirements.

- C. **MCC .6420(C), a building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

*The applicant has planned to preserve and protect areas of environmental significance by locating the homesite in a non-harmful manner. This homesite has prior approval with a variance. In addition, the only known areas that may be "winter habitat areas" is only located at the southwesterly property lines.*

Staff: This criterion has been met. The proposed location of the dwelling takes advantage of existing site disturbances (i.e. the logging road) while respecting on-site topographic limitations as identified in the geotechnical evaluation prepared by LaVielle Geotechnical, P.C. (Exhibit A15).

- D. **MCC .6420(D), recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

*The applicant has planned to maintain recreational needs as necessary with a single family home and plans to stay within the carrying capacity of the land.*

Staff: Not applicable. This development is neither recreational in nature nor does not generate a demand for recreational services.

- E. **MCC .6420(E), the protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

*The applicant will protect public and private property once the homesite has been completed. Prior to Certificate of Occupancy from the City of Portland, the applicant can only protect public and private property by posting "no trespassing" signs at all entrances to the property and visiting the site un-announced. Currently, the applicant has posted "no trespassing" signs at all entrances to the property to promote less vandalism and trespassing. This appears to be working.*

- F. **MCC .6420(F), significant fish and wildlife habitats shall be protected.**

*Wildlife habitats will be protected by the small impact a 5000 square foot building site will have on a 17.8 acre lot. All natural native plants will be encouraged to come back in any disturbed areas. The encouraged regrowth of the forest on the entire property will help to protect and expand the wildlife habitat on the applicant's property.*

Staff: Wildlife habitat issues are addressed under Finding #9. As previously indicated, the only improvement within the stream conservation area is an existing logging road that is to be converted for use as a private driveway. Improvements to the road should not have any significant impact on fish habitat in that; (a) the work involved will require minimal new land disturbance within the conservation

area; (b) the road is more than one hundred (100) feet from a stream feature and; (c) a significant amount of existing vegetation exists as a natural buffer between the logging road and the closest stream feature.

**Hearings Officer:** The neighbors who testified at the hearing were concerned about the wildlife. I do find that this criteria is met.

- G. **MCC .6420(G), the natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

*There are no additional disturbances of the Stream Conservation Areas on the applicants proposed site plan. The biggest enhancement will be leaving the Stream Conservation Areas untouched and allow the natural forest to continue to develop. The applicants Sec S site plan does show several small areas for replanting if deemed necessary. See Vegetation Notes on the site plan.*

**Staff:** The landscaping proposed downstream from the roadway constitutes an enhancement provided the types and amounts of native vegetation to be planted are identified, installation methods for plantings are described, and a timeframe within which the work is to be completed is established. This concern has been addressed with a condition of approval contained herein. Erosion control measures are to be identified with the Hillside Development Permit application currently under review by the County.

**Hearings Officer:** Paul Wright and Marquetta Mitchell submitted written testimony their concerns about erosion. Marquetta Mitchell also testified at the hearing concerning potential erosion. The applicant has applied for a Hillside Development Permit which will require the applicant to apply specific erosion control measures. The implementation of the HDP measures should alleviate the conditions described by the neighbors.

- H. **MCC .6420(H), archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

*The applicants parcel has no archaeological areas; therefore, this criterion does not apply to this application.*

**Staff:** We are not aware of any inventoried archeological sites on or adjacent to this property.

- I. **MCC .6420(I), areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

*The applicants parcel has no areas of annual flooding, floodplains, water areas, nor wetlands; therefore, this criterion does not apply to this application.*

- J. **MCC .6420(J), areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

*The applicants parcel has no identified areas of erosion. The proposed dwelling will require some earth moving. Best Management Practices will be used during all phases of development to ensure soil remains on site and not washed onto adjacent properties. This will be done with silt fencing, bio-bags and straw bales.*

Staff: Measures for protecting areas of erosion or potential erosion shall be identified through the course of review of the applicant's Hillside Development Permit request. An approved Hillside Development Permit will be required prior to land disturbing activities occurring on-site.

**Hearings Officer:** Paul Wright and Marquetta Mitchell submitted written testimony regarding this criteria. Marquetta Mitchell also testified at the hearing concerning potential erosion. The applicant has applied for a Hillside Development Permit which will require the applicant to apply specific erosion control measures. The implementation of the HDP measures should alleviate the conditions described by the neighbors

- K. **MCC .6420(K), the quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

*There will be no unusual activities associated with the development of the proposed dwelling. The quality of the air, water and land resources and ambient noise levels will be preserved. Exhaust from chimneys will meet DEQ standards, water resources will not be polluted, the septic system will receive approval from the City of Portland Sanitarian, a Conditional Use dwelling is permitted in the CFU District, and this application addresses the SEC concern of wildlife habitat. The site will be maintained and cleared of construction debris, waste, and solid waste material during and after construction of the proposed dwelling.*

**Hearings Officer:** Wright and Mitchell submitted testimony on this issue. I do find that the proposed building site is located far enough from water resources so as to provide an adequate level of protection for those resources.

- L. **MCC .6420(L), the design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

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

- M. **MCC .6420(M), an area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

*The applicant's parcel has not been identified as having the characteristics stated above; therefore this criteria does not apply to this application.*

Staff: We are not aware of any fragile or endangered plant habitat or other sensitive vegetative features existing on this site.

- N. **MCC .6420(N), The applicable policies of the Comprehensive Plan shall be satisfied.**

Staff: Comprehensive Framework Plan policies applicable to this request are addressed in Finding #16.

**Hearings Officer:** I do find that this application complies with the SEC General Approval Criteria.

10. **Compliance With MCC 11.15.6426(B), SEC Wildlife Habitat Standards:**

- A. **MCC .6426(B)(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.**

*No cleared areas exist on the applicant's parcel. The county has an arial photo of the applicant's property showing it shortly after being logged (Exhibit A20). No new disturbance has occurred since the site was logged.*

Staff: This criterion has been met. Most of the development is to occur within existing no-forested cleared areas.

- B. **MCC .6426(B)(2), Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

*We cannot meet this criteria therefore we have proposed the single family development to be deeper within the property*

Staff: Given the configuration of the property and yard requirements of the Commercial Forest Use district it is not possible for the applicant to meet this requirement.

- C. **MCC .6426(B)(3), The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

*The applicants proposed driveway will not be in excess of 500 ft. Furthermore, this access road is existing and continues on through the property parcel.*

Staff: As illustrated on the site plan, the distance from Gilkison Road to the location of the proposed dwelling is less than 500 feet (Exhibit A19).

- D. **MCC .6426(B)(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.**

*The applicants proposed driveway will be located within 100 feet of the property boundary.*

- E. **MCC .6426(B)(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.**

*The proposed development is within 300 feet of the property boundary.*

- F. **MCC .6426(B)(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.**

*The applicant does not propose any fencing of any type.*

Staff: No fencing currently exists or is proposed with this project.

- G. MCC .6426(B)(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:

<u>Scientific Name</u>	<u>Common Name</u>	<u>Scientific Name</u>	<u>Common Name</u>
<i>Chelidonium majus</i>	Lesser celandine	<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Cirsium arvense</i>	Canada Thistle	<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Cirsium vulgare</i>	Common Thistle	<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Clematis ligusticifolia</i>	Western Clematis	<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Clematis vitalba</i>	Traveler's Joy	<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Conium maculatum</i>	Poison hemlock	<i>Poa annua</i>	Annual Bluegrass
<i>Convolvulus arvensis</i>	Field Morning-glory	<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory	<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Convolvulus seppium</i>	Lady's nightcap	<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Cortaderia selloana</i>	Pampas grass	<i>Prunus laurocerasus</i>	English, Portuguese Laurel
<i>Crataegus</i> sp. except <i>C. douglasii</i>	hawthorn, except native species	<i>Rhus diversiloba</i>	Poison Oak
<i>Cytisus scoparius</i>	Scotch broom	<i>Rubus discolor</i>	Himalayan Blackberry
<i>Daucus carota</i>	Queen Ann's Lace	<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Elodea densa</i>	South American Waterweed	<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Equisetum arvense</i>	Common Horsetail	<i>Solanum dulcamara</i>	Blue Bindweed
<i>Equisetum telemateia</i>	Giant Horsetail	<i>Solanum nigrum</i>	Garden Nightshade
<i>Erodium cicutarium</i>	Crane's Bill	<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Geranium roberianum</i>	Robert Geranium	<i>Taraxacum officinale</i>	Common Dandelion
<i>Hedera helix</i>	English Ivy	<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Hypericum perforatum</i>	St. John's Wort	<i>Urtica dioica</i>	Stinging Nettle
<i>Ilex aquafolium</i>	English Holly	<i>Vinca major</i>	Periwinkle (large leaf)
<i>Laburnum watereri</i>	Golden Chain Tree	<i>Vinca minor</i>	Periwinkle (small leaf)
		<i>Xanthium spinosum</i>	Spiny Cocklebur
		Various genera	Bamboo sp.

*The applicant has no intentions of planting the "nuisance plants". Furthermore the applicant will comply with the fire beak regulations.*

Staff: The requirements of this criterion have been addressed with a condition of approval contained herein.

Hearings Officer: I find that this application does comply with the SEC Wildlife Habitat Standards.

11. Compliance with MCC 11.15.6426(C), Wildlife Conservation Plan Standards:

- A. **MCC .6426(C)(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**

*The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property.*

Staff: We concur that the applicant cannot meet the standards of MCC .6426(B)(2), due to the configuration of the property, a physical characteristic unique to the site. The re-vegetation plan proposed on sheet #4 of the site plan (Exhibit A19) constitutes a Wildlife Conservation Plan, provided the types and amounts of native vegetation to be planted are identified, installation methods for plantings are described, and a timeframe within which the work is to be completed is established. This concern has been addressed with a condition of approval contained herein.

- B. **MCC .6426(C)(3)(a), The wildlife conservation plan must demonstrate 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.**

*The applicant has met this criterion because no further removal of trees will occur outside the proposed homesite area. As for the trees that have been planted in the homesite area in order to satisfy the Oregon Dept. of Forestry re-forestation plan, the applicant plans to remove these trees and to transplant and relocate to a more suitable location, outside the primary fire break.*

Staff: We concur that the wildlife conservation plan, as included on sheet #4 of the site plan (Exhibit A19) and as conditioned herein, will contain necessary measures to minimize the developments impacts on forested areas.

- C. **MCC .6426(C)(3)(b), The wildlife conservation plan must demonstrate 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 required for fire safety purposes.**

*The applicant has met this criterion because the proposed clearing will not be in excess of 5000 sq. ft.*

- D. **MCC .6426(C)(3)(c), The wildlife conservation plan must demonstrate that no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

*The applicant has met this criterion because the proposed development will NOT have any fencing.*

- E. **MCC .6426(C)(3)(d), The wildlife conservation plan must demonstrate 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.**

*The applicant has met this criterion because the proposed development site doesn't have any existing cleared areas. The county has an arial photo of the applicant's property showing it shortly after being logged. No new disturbance has occurred since the site was logged.*

Staff: We concur. As evidenced with the photographs taken during our site inspection (Exhibit B3) and the arial photograph provided with the previous Conditional Use Permit request (Exhibit A20) no existing cleared areas appear to exist on-site.

- F. **MCC .6426(C)(3)(e), The wildlife conservation plan must demonstrate that revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

*The applicant plans to use an existing logging road, very little if any disturbance of the Stream Conservation Area will occur. The Applicants site plan shows this. If deemed necessary the site plan shows several areas for planting natural vegetation per the USA Stream and Wetland Enhancement Guide. See Vegetation Notes on the applicants site plan.*

Staff: The wildlife conservation plan, as included on sheet #4 of the site plan (Exhibit A19) and as conditioned herein, constitutes an enhancement of the riparian area.

**Hearings Officer:** The application complies with the Wildlife Conservation Plan Standards.

**12. Compliance With MCC 11.15.6428(C), Significant Stream (SEC-s)**  
**Approval Criteria for "3-C" Designated Stream Resources:**

**Per MCC 11.15.6428(C)(1), for stream resources designated "3-C" the applicant shall demonstrate that the proposal 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:**



- A. **MCC .6428(C)(1)(a), A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC .6428(B);**

*This criterion is shown on the applicants site plans (Exhibit A19).*

- B. **MCC .6428(C)(2)(b), A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**

*The applicant has had interaction with a variety of local, State, and Federal agencies.*

*City of Portland Sanitarian; City of Portland Building Department; Oregon Department of Forestry; Portland General Electric; Phone company; Multnomah County Planning; Right-of-Way, Records and Transportation; Scappoose Rural Fire District; and Oregon Department of Water Resources*

- C. **MCC .6428(C)(2)(c), A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC .6428(C)(1);**

Staff: The wildlife conservation plan included on sheet #4 of the site plan (Exhibit A19) and as conditioned herein, constitutes a mitigation plan.

- D. **MCC .6428(C)(2)(d), An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

Staff: The wildlife conservation plan does not currently include a monitoring plan. A condition of approval has been included to address this requirement.

Hearings Officer: I find that the application complies with MCC 11.15.6428(C).

**13. Compliance With MCC 11.15.6428(D), SEC-s Design Specifications:**

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

- A. **MCC .6428(D)(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.**

*The applicant has no bridge or arched culverts planned.*

Staff: No land disturbing activities are proposed that would require crossing a stream feature, therefore, this criterion is not applicable.

- B. **MCC .6428(D)(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.**

*Storm water runoff from the proposed development will be minimal per the drainage plan submitted.*

Staff: Stormwater generated by the new dwelling is to be collected and infiltrated using a french drain as illustrated on sheet #5 of the plan. Driveway runoff is to be infiltrated via overland sheet flow. Both of these methods emphasize groundwater recharge.

- C. **MCC .6428(D)(3), Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.**

*The applicant has proposed no lighting of the Stream Conservation Area.*

- D. **MCC .6428(D)(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.**

*No trees over six inches in caliper are proposed to be removed in the Stream Conservation Area.*

- E. **MCC .6428(D)(5), Satisfaction of the erosion control standards of MCC .6730.**

*Erosion control standards are met and shown on the applicants site plan.*

Staff: The erosion control standards of MCC .6730 are Hillside Development Permit approval criteria. The applicant currently has a Hillside Development Permit application on file with the County. Compliance with MCC .6730 is required prior to approval of a Hillside Development Permit.

- F. **MCC .6428(D)(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.**

Staff: This criterion has been addressed with a condition of approval contained herein.

- G. **MCC .6428(D)(7), Demonstration of compliance with all applicable state and federal permit requirements.**

*The applicants proposed site development is within all known applicable State and Federal permit requirements.*

**Hearings Officer:** The application does comply with the SEC-s Design Specification criteria.

**14. Variance to CFU Zone District Dimensional Standards Required:**

**MCC 11.15.2058                      Dimensional Requirements**

\*           \*           \*

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

<b>Frontage on County Main- tained Road</b>	<b>Other Side Front</b>	<b>Rear</b>
<b>60 from centerline</b>	<b>200    200</b>	<b>200</b>

**Maximum Structure Height - 35 feet**

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

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

Staff: As evidenced under MCC .2058(C) the minimum setback from the west property line is 200 feet. The applicant is requesting a setback of 150 feet. Therefore, a variance to this dimensional standard is required pursuant to MCC 8505.

**15. Determination that the Requested Variance Meets the Threshold for Classification as a "Minor Variance":**

**Per MCC 11.15.8515(B), a Minor Variance is one that is within 25 percent of an applicable dimensional requirement...**

*The Applicant's request a minor variance to the required 200 foot front yard setback to 150 feet... This is a reduction in the required standard of 25 percent. The variance qualifies for the minor variance process set forth in MCC 11.15.8515(B).*

**16. Compliance With MCC 11.15.8505, Minor Variance Approval Criteria:**

**Per MCC 11.15.8505(A), the Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter... A Minor Variance shall met criteria (3) and (4).**

- A. MCC .8505(A)(3), The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of adjoining properties.**

*The Applicants seek a minor variance to reduce the required 200 foot front yard set back to 150 feet. This minor variance is in response to adjoining property owners concerns that the proposed dwelling should be sited closer to NW Gilkison Road. To accommodate these concerns, a variance to the front yard setback is required. This variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district of the Applicant's proposed dwelling. [Footnote: The Applicant's pending application for a conditional use contains evidence that the original building site will not interfere with the development of adjoining properties.] The variance is similar to the setbacks of some of the existing dwellings on NW Gilkison Road. The approval authority can insure that the proposed dwelling will not adversely affect the appropriate development of adjoining properties.*

Staff: Exhibit A11 is the staff report for Case #HV 28-95, supporting this variance request. We concur with the findings contained in this report. As with the prior Conditional Use Permit, the approval granted under HV #28-95 has expired (Exhibit A5).

- B. **MCC .8505(A)(4), The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.**

*The reduction of the front yard setback does not adversely affect the realization of the Multnomah County Comprehensive Plan. The Applicant's request simply reduces the front yard setback by 50 feet, a 25 percent reduction of the required standard. Sitting the dwelling closer to NW Gilkison further reduces the potential impacts that a dwelling might have on adjacent forestry practices.*

Staff: We concur.

**Hearings Officer:** I find that the application meets the requirements for approval of a minor variance to the yard dimensional standards.

## **17. Compliance With Applicable Comprehensive Plan Policies:**

### **A. Policy 13: Air, Water And Noise Quality**

**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.**

*The applicant will comply with Policy #13 entirely. The applicant's property will comply with all noise levels compatible with surrounding land uses. The applicant is not proposing any adverse activities other than construction activities necessary of single family home development.*

Staff: Water quality issues are to be addressed through stormwater runoff mitigation, an issue addressed in the course of reviewing a Hillside Development Permit such as that which the applicant currently has under review with the

County. Air quality and noise level impacts related to single family dwellings are negligible.

**Hearings Officer:** The neighbors were concerned about water quality and the potential impact the septic system might have on the stream resource. The Sanitarian will be reviewing the application for the septic permit to assure that water quality is protected. This plan policy simply requires a statement from the "appropriate agency". The septic permit would constitute a statement from the appropriate agency that the septic system would not impact water quality.

**B. Policy 14: Developmental Limitations**

**The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:**

**A. Slopes exceeding 20%;**

*The applicant's homesite is not located within a 20% or greater slope area. Therefore, this criterion is met.*

**B. Severe soil erosion potential;**

*The applicant's homesite is not located within a severe soil erosion area. The applicant does however plan to provide erosion control measures during single family homesite development and after completion of the homesite development. In addition, the submitted site plan shows all proposed erosion control measures necessary. Therefore, this criterion is met.*

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

*The applicants parcel is not located within the 100 year floodplain.*

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

*The applicants proposed homesite is not located within an area which has a water table within 0-24 inches of the surface. Therefore, this criterion is met.*

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

*There is no fragipan less than 30inches from the surface located within the homesite area.*

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

*The applicants homesite is not located within an area subject to slumping,*

earth slides or movement. The maximum slope on the proposed homesite is 12%. Furthermore, the submitted HDP-1 Permit and site plan has additional information supporting this.

Staff: A Hillside Development Permit application addresses on-site development limitations.

C. **Policy 22: Energy Conservation**

The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

A. **The development of energy-efficient land uses and practices;**

*The proposed new home for the homesite will be well insulated and energy efficient. It will have an electric heat pump.*

B. **Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;**

*The homesite is in an area that is rural, therefore this criteria doesn't apply.*

C. **An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**

*The homesite is in an area that is rural, therefore this criteria doesn't apply.*

D. **Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**

*Applicant is using an existing roadway for a driveway this is the best way to help minimize adverse conditions to the land.*

E. **Finally, the county will allow greater flexibility in the development and use of renewable energy resources.**

*Applicant will do whatever energy conservation measures that are feasible and make sense.*

Staff: The factors listed under this policy have been considered in the review of this application. These factors are tailored to address energy resource issues related to urban development and, therefore, are not applicable to this request.

**D. Policy 37: Utilities**

**The County's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:**

- 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.**
- E. There is adequate capacity in the storm water system to handle the 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 adjoining lands.**
- H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- I. Communications facilities are available.**

**Furthermore, the County's policy is to continue cooperation with DEQ, for the development and implementation of a groundwater quality plan to meet the needs of the county.**

*The applicant plans to use a well for it's water source. The DEQ will approve the subsurface sewage disposal system. Already the City of Portland Sanitarian (Jason Abraham) has approved a septic system for a five bedroom home. The water runoff will be handled on the site and will not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands. The runoff water from the proposed homesite will be minimal. The water runoff will be handled on the site and will not adversely affect the water quality in adjacent streams, ponds, lakes, or alter the drainage on adjoining lands. The runoff water from the proposed homesite will be minimal. Power and telephone lines both come up Gilkison road and will adequately support the homesite.*

**Staff:** Conditions of approval have been included herein, requiring that the

applicant provided evidence that the proposed use has an adequate private water system and that the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site. The City of Portland Sanitarian is the DEQ licensed approval authority for on-site sewage disposal systems, therefore, evidence of an approved septic permit from the Sanitarian will be required.

The City of Portland Sanitarian, per Land Feasibility Study #5-96 (Exhibit A6), has indicated that the site is suitable for a disposal system. However, they noted that neighboring water sources and easement issues must be satisfactorily addressed before they will issue a permit. The proposed french drain for stormwater infiltration will also be of concern to the Sanitarian if it is located too close to the septic system.

As illustrated on the sheet #2 of the site plan (Exhibit A19), the septic system illustrated is not acceptable to the Sanitarian. A revised copy of this plan must be provided illustrating the final location for the septic system, including its relationship to neighboring water sources and the proposed french drain system. This concern has been addressed with a condition of approval contained herein.

**Hearings Officer:** The proposed septic system and its location was of significant concern to the neighbors. The opponents contend that the contours of the land limit suitable sites, and they questioned whether a septic system could be located on the property in manner that would not negatively impact water quality. They also contended that this application should be denied because a septic disposal system design had not been approved.

The owner testified that he had spoken to the Sanitarian regarding the proposed septic system plan. The owner contended that the only problem with the plan was that the location of the lines appropriately in relation to the contours.

The site evaluation report for the septic system indicates that the site is suitable for a sand filter system. As a condition of approval, the applicant will be required to submit a copy of an approved septic permit from the City of Portland Sanitarian. In addition, a revised copy of sheet #2 of the site plan is to be submitted illustrating the final location for the septic system, including its relationship to neighboring water sources and the proposed french drain system. No building permits will be issued until the applicant complies with this condition.

**E. Policy 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.**

*A single family dwelling will not have any major affect on the local school district.*



- 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.**

*The applicant has provided a site plan that the Scappoose Rural Fire District has reviewed and approved.*

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

*The proposed homesite will receive police protection from the Multnomah County Sheriffs Department the same as all adjoining properties.*

Staff: The Fire District has indicated that they will need to conduct a final inspection of the driveway to ensure that it meets their access requirements (Exhibit A7). This concern has been addressed with a condition of approval contained herein.

**F. Policy 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.**

*The proposed dwelling site lies in a rural area that doesn't need bike paths as people can safely ride there bikes on the roadway which is a dead end road. These criteria's don't apply to the subject property.*

- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**

*The proposed dwelling site lies in a rural area that doesn't need bike paths as people can safely ride there bikes on the roadway which is a dead end road. These criteria's don't apply to the subject property*

- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

*The proposed dwelling site lies in a rural area that doesn't need bike paths as people can safely ride there bikes on the roadway which is a dead end road. These criteria's don't apply to the subject property*

Staff: This proposal does not impact any existing or planned park and recreation areas or bicycle facilities.

**Hearings Officer:** This Comprehensive Plan policy has been given the level of review and consideration appropriate for a single family home.

### **Conclusion**

Considering the findings and other information provided herein and the testimony and evidence provided at the hearing, this application for approval of a "Template Dwelling" Conditional Use Permit, Significant Environmental Concern Permit for Wildlife and Streams, and Minor Variance to allow the construction of a new single family dwelling on Commercial Forest Use zoned property, as conditioned, satisfies applicable Comprehensive Framework Plan policies and Multnomah County Zoning Ordinance requirements. Accordingly, the issuance of the aforementioned permits is approved, subject to all conditions imposed herein.

**IT IS SO ORDERED**, this 19<sup>th</sup> day of October, 1998

  
JOAN M. CHAMBERS, Hearings Officer