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

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

April 8 1999

Case File: Conditional Use CU-8-98
Significant Environmental Concern SEC 37-98

The applicant requests Conditional Use approval to allow a new single family dwelling in the Commercial Forest Use zone. The request also includes Significant Environmental Concern review for areas within the Sandy River Corridor.

Location: 36014 SE Lusted Road

Property Description: Tax Lot 66 of Section 22, T1S, R4E

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

**Applicant/
Owner:** Steven T. and Hazel DeBogart
8874 SE Mayberry Lane
Boring, OR 97202

**Applicant's
Representative:** Frank Walker & Associates
37708 Kings Highway
Philomath, OR 97370

**Applicant's
Attorney:** Jeannette M. Launer
1521 N. Jantzen, Suite 574
Portland, OR 97217

PROCEDURAL ISSUES

1 - Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2 - Jurisdictional Issues

At the commencement of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing.

3 - Application Time Line

The applicant original began the application process in 1998. An application was submitted on September 17, 1998. On October 16, 1998, the County notified the applicant's representative that the application was incomplete. On February 11, 1999 the applicant submitted additional application materials with a new general application form. Accordingly, I find that the application was complete as of February 11, 1999. As of April 8, 1999, 56 days on the 150-day clock have passed.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the Owner/Applicant.

FACTS

1 - Applicant's Proposal

This application is a request for a new dwelling in the Commercial Forest Use district. In addition, the application requires a Significant Environmental Concern permit, and that is part of the applicant's proposal. The applicant proposes to establish a template dwelling on a 3.24 acre parcel located in the CFU zone. The property is currently vacant and is located on Lusted Road. The property is partially located within the Significant Environmental Concern area, and therefore a separate application addressing the SEC criteria was submitted concurrently with the application for conditional use approval.

2 - Site and Vicinity Information

The physical attributes of the site are described under each of the following major topical headings:

Soils - According to the Soil Survey for Multnomah County Area, Oregon, four soil mapping units are located on the subject property (see Figure 2). Only the Mershon silt loam (27B) has a timber productivity rating; however, its rating of 135 is relatively low for the area. The proposed dwelling will be located in the area mapped with soils designated as the Mershon silt loam,

Topography - The topography of the site ranges from highly steep to depressional. The proposed dwelling will be located near the east side of the property where the 340' contour interval crosses the site from southeast to northwest (see Figure 3. Topography). The relative relief on the property is 220' despite the small size of the parcel. The steep portion of the property occupies the western one-fourth of the site. No improvements of any type are planned west of the 360' contour interval. The location of the proposed dwelling on a flat valley floor is safer than a hillside location since fire burns uphill.

Geologic Hazard - According to the Geologic and Slope Hazard maps for unincorporated Multnomah County, the subject property does not lie within such an area.

Flood Plain - The subject property is not located within a flood plain according to FEMA maps for the Sandy River Basin.

Wetlands - The applicant met with the Multnomah County Planning staff to determine if wetlands were located on the subject property. No wetlands are located on the property according to the maps at the Multnomah County Planning office.

Sewage Disposal - The subject property has been approved for a standard serial distribution system according to LFS 66-97a. The date of approval was June 30, 1997 (see service letter).

Water Availability - The subject property already has a domestic water meter from the Lusted Water District, the service letter does state that no further hookups will be allowed. This meter pre-exists modern zoning laws.

Fire Protection - The service letter from the Gresham Fire District states that the fire department will use water tankers for fire fighting purposes since there are no water hydrants in the area. The dwelling will be highly visible from Lusted Road.

Police Service - The service letter from the Multnomah County Sheriff's Office indicates that they can provide service to the subject property.

3 - Testimony and Evidence Presented

- A. The exhibits listed in Exhibit "A", which is attached hereto and incorporated by this reference herein, were reviewed by the Hearings Officer and received in reference to this application. At the hearing, three additional exhibits were received. Those consisted of the Affidavit of Posting, which is marked Exhibit H-1, and written testimony by applicant's attorney, Jeannette M. Launer, which is marked Exhibit H-2. In addition, at the hearing, copies were made of portions of the Multnomah County Zoning Map, as it existed in 1967. That map was labelled Exhibit H-3.
- B. At the March 17, 1999 hearing, Chuck Beasley testified for the County, summarized the history of the application and his staff report and played a video tape which depicted the property.
- C. At the hearing, Hazel DeBogart appeared personally and was represented by Frank Walker, applicant's representative, and by Jeannette Launer, applicant's attorney, who presented testimony in support of the application.
- D. There was no testimony presented in opposition to the application from any party who received notice of the pending application.

STANDARDS, CRITERIA, ANALYSIS AND FINDINGS OF FACT

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

MCC 11.15.2045 Definitions: As used in MCC .2042 through .2075, unless otherwise noted, the following words and their derivations shall have the following meanings:

* * *

(F) Date of Creation and Existence - When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot of record pursuant to MCC .2062 or tract for the siting of a dwelling, the date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot of record or tract.

* * *

(G) 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. **Criteria for Approval of a Temporary Hardship Dwelling in the EFU Zone:**

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

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

Applicant: This provision requires two findings: That the lot in the tract is a lot of record, and that the lot has been lawfully created prior to January 25, 1990. For purposes of this application, the "tract" consists of only one lot: the subject parcel.

As discussed in the Lot of Record Standards on page 15 and 16, the lot meets the lot of record standards of MCC 11,15.2062(A) and (B). In the pre-application conference, planning staff suggested that the parcel was not lawfully created because the conveyance of the parcel in 1967 resulted in a remainder parcel (Tax Lot 22) which was smaller than the minimum two-acre lot size for an F2 zone. The applicant disagrees. In the case of McKay Creek Valley Association v. Washington County, 24 Or LUBA 187 (1992), affirmed at 118 Or App 543 (1993), LUBA and the Court of Appeals agreed that under a local standard requiring that a lot or parcel be shown to have been "legally created," the applicant must establish that at the time the lot or parcel is created, any local government approval required at that time was given. LUBA stated that the local standard requiring a legally created lot did not require a complete reexamination of compliance with every approval standard that may have been applied at the time the lot or parcel was created. In McKay, recording a deed of conveyance was sufficient to create a parcel. No additional government approval was needed, and therefore the parcel was lawfully created.

In 1967, Multnomah County did not regulate the partition of property. There is no evidence that the 1967 deed is legally insufficient as a conveyance document. Therefore, this parcel was lawfully created since the conveying party in 1967 had no legal obligation to take any action other than the delivery of the deed to the buyer.

It is not relevant to the "legal creation" of this parcel that the remainder parcel was less than the required minimum lot size. There is a distinction between the "lawful creation" of a lot and the ability of a lot owner to develop the lot separately if the lot does not meet minimum acreage requirements. The owners of Tax Lot 22 may have difficulty in making additional improvements on their property. However, Tax Lot 22 is not the subject of this review.

A deed is enclosed in the record that shows the subject property was created in a recordable form prior to January 25, 1990.

Staff: Staff understands that the essence of the McKay case cited above is if the question of whether a lot or parcel was legally created must be answered in considering this application. This approval criterion clearly requires a finding of lawful creation.

The deed cited above (Exhibit A2, bk 544 pg 500) indicates that Tax Lots '22' and '66' (the subject parcel) were created in 1967. At that time, the property was zoned F2, and was subject to a minimum parcel size of 2 acres (see Exhibit C2 and C3). This deed partitioned a legal lot which was 4.15 acres in size into two lots, one of which was only .91 acres in size. Recordation of the deed changed the existing legal lot in a way that resulted a lot that did not meet the zone standard.

Hearings Officer Analysis: I concur with staff that MCC 11.15.2052(A)(1) requires that the lot or lots in the tract have been lawfully created. However, I cannot concur with staff's determination that the lot subject to this application fails to meet that standard.

On January 18, 1967 the Morlans and Shepherds conveyed to Albert and Mildred Nash, a portion of the property the grantors owned. The portion of the property so conveyed consisted of a 3.2 acre parcel that is the subject of this application. At the time of the conveyance, the property was zoned "F-2", in accordance with the County's zoning ordinance in effect in 1967. The lot in question exceeded the two acre minimum in the F-2 zone.

County staff was concerned that because the remainder parcel of .91 acres was also created, the "partition" could not have resulted in a "lawful creation" of a lot.

The applicant's attorney has cited several cases dealing directly with the issue of how to determine whether a parcel is lawfully created. In determining lawful creation, we must go beyond looking at simply the legality of the purchaser's property interest, but the legality of the lot or parcel itself for purposes of land use planning. Yamhill County v. Ludwick, 294 Or 778 (1983). In determining whether the lot was lawfully created for purposes of land use planning, we must inquire as to whether the lot or parcel obtained all necessary State and local government approvals required at the time the lot or parcel was created.

In McKay Creek Valley Association v. Washington County, 24 Or LUBA 187 (1992), aff'd 118 Or App 543 (1993), the LUBA opinion which was affirmed by the Court of Appeals, indicated that the appropriate inquiry is to ask whether at the time the lot or parcel was created, any or all required local government approvals were obtained. Id., at 193. Such a local standard does not require a complete re-examination of compliance with every approval standard that may have applied at the time the lot or parcel was created.

The undisputed evidence from both the County and the applicant was that at the time of the 1967 deed, the County had no approval criteria for a partition or requirements for County review. The County simply did not regulate partitions at that time. Similarly, the provisions in the F-2 zone that two acres was the minimum parcel size, did not make that lot size a condition for a partition or require a partition approval. There was in essence no restrictions in the County Code which would prohibit the division of a parcel into two lots.

The cases cited above also contain the standard that the division of the parcel, in order to be considered lawfully created, must also comply with applicable state law at the time of the division. It is not surprising that the County did not have regulations relating to partitions, given the language in ORS Chapter 92, in 1967.

A number of amendments to the State subdivision law were adopted in 1973. Prior to that time, ORS 92.010, as constituted in 1967, did not have any definitions for "Partition", "Minor partition", "Major partition", or "Partition land". Those definitions were added in 1973. The term "Subdivide land" was defined as "partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the partitioning." The term "Subdivision" was defined as "either an act of subdividing land or a tract of land subdivided as defined in this section." Thus, a partition of a parcel of land into two lots did not come under the definition of "subdivide land" or "subdivision" as the State statutes were constituted in 1967.

ORS 92.044 now requires a County governing body to adopt standards and procedures for the approval of certain subdivisions and partitions. Prior to 1973, the subdivision statutes simply provided that a County may adopt standards and procedures in addition to those provided in State law.

In 1967, the emphasis in State law was on regulating subdivisions, not partitions. It was, in fact, common practice to divide a unit of land into two parcels by deed. The 1967 deed in the instant case is indicative of the common practices at that time. The 1967 deed predates the adoption of Senate Bill 100 in 1973, which established statewide land use planning. There were, in fact, significant changes made to the subdivision partition laws in 1973, the same year that the State adopted Senate Bill 100.

In the instant case, I concur with the applicant's position that a parcel was lawfully created if it met all of the approval standards for a partition under State and local law at the time that it was created. In 1967, the County did not require a property owner to submit an application for a partition. Accordingly, the creation of the lot was lawfully created under the County standards as they existed in 1967. Under State law in 1967, a parcel could be created by deed.

Accordingly, I find that the 3.24 acre subject parcel was lawfully created in 1967.

MCC 11.15.2052 (A)(2): The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC.2074 with minimum yards of 60 feet to the centerline of 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;

Applicant: An exception to the setbacks standard will be required since the property averages less than 330' in width where the proposed dwelling is located. This proposal does meet the minimum 60' setback standard to a public road.

Staff: The property is 120' wide in the area of the dwelling according to the applicant's plot plan Figure 4 of Exhibit A1. The exceptions standards of MCC .2075 are discussed in that section.

Hearings Officer Analysis: I concur with staff.

MCC 11.15.2052 (A)(3): The *tract* shall meet the following standards:

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

Applicant: All of the soils are capable of producing above the 85cf/ac/yr of Douglas Fir timber according to the soil survey.

Hearings Officer Analysis: I concur.

- (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

Applicant: According to assessment data provided by the Multnomah County Assessor's Office, at least 24 lawfully created lots exist partially or wholly within the template (see Appendix 2 of this report for map of template dwelling). These parcels lawfully existed on the above-referenced date.

Hearings Officer Analysis: Staff confirms 18 lawfully created parcels by use of the 1977 zoning map, including Exhibit C-3. Accordingly, I find that 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.

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

Applicant: At least 12 dwellings lawfully existed on January 1, 1993, according to Multnomah County Assessor's records (please refer to Template Map in appendix of report). This criterion is met.

Hearings Officer Analysis: At least six dwellings lawfully existed within the template area. Accordingly, I find that this criteria has been met.

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

Applicant: No urban growth boundaries are located within the template for the subject property according to county zoning data.

Staff: Agrees with the applicant's assessment of the relationship of the subject Tax Lot to UGB.

Hearings Officer Analysis: I concur.

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

Hearings Officer Analysis: For the reasons stated above, I find that the parcel was lawfully created and therefore meets the definition of tract. There is no other dwelling on the tract.

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

Hearings Officer Analysis: There is a single lot making up this tract, and there is no dwelling on that parcel.

MCC 11.15.2052 (A)(3)(g): Except as provided for a replacement dwelling, all lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and

Hearings Officer Analysis: No other dwellings will be allowed.

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

Applicant: This situation does not apply to the subject property.

Hearings Officer Analysis: I concur with applicant.

MCC 11.15.2052 (A)(4): The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive plan in 1980, will be acceptable.

Applicant: The subject property is located outside of an Oregon Department of Fish and Wildlife big game winter habitat area. A letter from the State Game Biologist is included in the appendix of this report outlining that agencies concerns.

Staff: The referenced letter is dated July 15, 1996 (see Exhibit A3).

Hearings Officer Analysis: The applicant has met this criteria.

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

Applicant: The road to the subject property is a county-dedicated road (Lusted Road). A new access permit will be requested.

Staff: Agrees.

Hearings Officer Analysis: I concur.

MCC 11.15.2052 (A)(6): A condition of approval requires the owner of the *tract* to plant a sufficient number of trees on the *tract* to demonstrate that the *tract* is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided however, that:

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

Applicant: The property owner has a plan to restock some scattered pockets of cleared areas on the property with forest trees. The principal area for planting will occur west of the proposed dwelling site and the slough located at the base of the Sandy River Bluff.

The restocking will be consistent with stocking levels published in the Oregon Administrative Rules under Reforestation and Stocking Standards (OAR 629-610-020).

Staff: No stocking survey report has been submitted with the application, however the ordinance allows implementation of this requirement with a condition of approval.

Hearings Officer Analysis: A condition of approval will be imposed requiring that the applicant comply in accordance with this criteria.

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

Applicant: The specific development criteria will be addressed under MCC .2074.

Staff: See analysis under the appropriate section below.

Hearings Officer Analysis: This criteria will be addressed in a subsequent section.

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

Applicant: The property owners respectfully request that this be made a condition of approval rather than a condition of submittal.

Hearings Officer Analysis: A condition will be imposed requiring the applicant to complete and record with the Division of Records the above-described acknowledgement.

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

- (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;

Applicant: The subject property is not part of a tract but is a lawfully created lot that pre-dates existing modern zoning. Neither of the above criteria apply to this situation.

Hearings Officer Analysis: There are no other lots to which this requirement would be applicable.

- (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).

Applicant: The property owners acknowledge that the covenants and conditions and restrictions would preclude any further dwellings from being constructed on the parcel. They also recognize that the covenant could be revoked if the resource zoning designation were ever removed.

Staff: Under the cited Oregon Administrative Rules (OAR), this provision is applicable only to situations where an applicant is seeking approval of a large tract dwelling using either contiguous or non-contiguous parcels as provided in OAR 660-006-0027(1)(e) (June, 1998).

Hearings Officer Analysis: I concur with staff on this issue.

MCC 11.15.2058 Dimensional Requirements

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

Applicant: The subject property is a lawfully created pre-existing lot of record. This lot existed in its current state as early as 1967, which predates modern zoning (see deed for subject property in application packet). This proposal is evaluated according to the standards contained in Chapter 11.15.2062 of the Multnomah County Code, and the subject parcel is a lot of record pursuant those standards.

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

Hearings Officer Analysis: The lot in question is less than 80 acres. Accordingly, the lot will be reviewed in a subsequent section to determine compliance with the lot of record provisions of MCC .2062.

MCC 11.15.2058(C) Minimum Forest Practices Setback Dimensions From Tract Boundary – Feet:

Road Frontage	Other Front	Side	Rear
60 from	130	130	130

centerline
of road from
which access
is gained

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).

Applicant: This proposal conforms with all of the above standards.

Staff: The site plan in the applicant's Figure 4 shows the dwelling location 90' from the center line of Lusted Rd., and side yard setbacks of 30' to the north, and 50' to the south property lines. The distance to the rear property line is over 700'. Exceptions to the yard setbacks are subject to MCC .2075.

Hearings Officer Analysis: I concur with staff's evaluation of this criteria.

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

Applicant: This criterion is not applicable since the yard abutting Lusted Road is more than that prescribed by code.

Staff: The property abuts Lusted Road, which has a 60' wide right-of-way. This is the standard width for a Rural Collector, which is the Lusted Rd. classification.

Hearings Officer Analysis: It is unnecessary in the instant case to increase the minimum forest practices setback requirement.

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

Applicant: None of the above-referenced appurtenant structures or outbuildings apply to this property.

Hearings Officer Analysis: No buildings other than the dwelling are proposed.

MCC 11.15.2062 Lot of Record

MCC 11.15.2062(A) For the purposes of this district, a Lot of Record is:

* * *

(2) A parcel of land:

(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;

Applicant: A deed that was recorded prior to February 20, 1990, is entered into evidence in this report as Appendix 1, The property as it exists now is recorded in a 1967 deed.

Hearings Officer Analysis: The deed creating the parcel was recorded prior to February 20, 1990.

(b) Which satisfied all applicable laws when the parcel was created;

Applicant: The exact date that the parcel was created has not been established. However, a recorded 1967 deed (Appendix 1) shows the parcel in its current configuration, containing 3.24 acres. Based on a review of the original zoning and parcel map of the area, the parcel was zoned F2 between 1961 and 1975. The F2 zone required a minimum two-acre parcel size. Therefore, the parcel complied with applicable laws when the parcel was created. The applicant knows of no other laws which would have applied to the creation of this parcel. The various zones that have applied to the property pre-dating modern zoning did reveal that the parcel complied with applicable laws.

Hearings Officer Analysis: As discussed earlier, in response to criteria .2052 (A)(1), the subject parcel at the time of the recording of the 1967 deed, met all Multnomah County approval criteria for a partition. Multnomah County in fact did not regulate partitions at that time. The parcel in question at the time of its apparent creation in 1967, also complied with the parcel size provisions of the F2 zone.

(c) Does not meet the minimum lot size requirements of MCC .2058; and

Applicant: The subject property is 3.24 acres, and the minimum lot size is 80 acres in the CFU zone, The property does comply with this criterion because it was created specifically to deal with sub-minimum lot size parcels.

Hearings Officer Analysis: The parcel does not meet the current minimum lot size requirements of MCC .2058.

(d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

Applicant: None of the parcels contiguous to the subject property are under the same ownership according to Multnomah County Assessor's records.

Staff: As stated under MCC .2052(A)(1) on pages 5 and 6 of this report, the referenced deed created two parcels, the subject parcel and an adjacent parcel which did not meet the minimum lot size at the time. A copy of the ordinance then in effect, including the lot size standard for each district, is included as Exhibit C2. The description of the zoning districts states that the area regulations are "uniform", which means always the same; without fluctuation or variation.

Hearings Officer Analysis: The parcel in question is not contiguous to another substandard parcel or parcels under the same ownership.

Staff was concerned that provisions of the F-2 zone, as that zone was constituted in 1967, provided that the area of regulations are uniform, which to staff meant always the same, without fluctuation or variation. However, the code at that time did not contain a partition requirement, nor was there any requirement that in order to be valid, a partition must comply with the County lot size standards. However, the subject parcel did in fact meet the minimum lot size described in the F-2 zone.

MCC 11.15.2062(B) For the purposes of this subsection:

- (1) *Contiguous* refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
- (2) *Substandard Parcel* refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
- (3) *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

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

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

MCC 11.15.2074(A)(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);

Applicant: The proposed dwelling is located in a manner that it has the least amount of impact on nearby lands dedicated to resource uses. The dwelling is clustered near the

road frontage with an existing habitable and uninhabitable dwelling. The nearest sensitive farming areas are across Lusted Road approximately 190' away, and the nearest forested area is actually located on the subject property approximately 350' away. The physical segregation of the dwelling compound from active resource use areas should assure that the dwelling has the least impact. Other houses in the area are as close or closer to very active farming areas. The placing of this dwelling on the parcel in no way sets a precedent for increasing impact to resource uses.

Staff: The subject property is in an area where some small scale forest management occurs on the slope between Lusted Road and the higher farm areas east of Gresham. However, there are no lands managed for commercial forest use adjacent to the subject property. Small-scale nursery farming uses exist across Lusted Road and further north of the property. The proposed development area is not adjacent to any areas managed for farm use.

Hearings Officer Analysis: I find that the applicant has met this criteria.

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

Applicant: The subject property is not a tract, but this criterion will be addressed nevertheless. The subject property contains no agricultural activity, and the forest activities are found only west of the slough that lies at the base of the Sandy River Bluff. The forested area, as indicated in the Plot Plan (Figure 4), occupies all areas that are not under buildings, driveways, drainfields, and replacement drainfield areas.

The dwelling is totally isolated from the forested area of the parcel which is 400' away to the west. It is difficult to envision how the dwelling compound will have any adverse impact on this portion of the ownership. None of the improvements proposed will have any impact at all on this section of the property. The lack of accessibility to the forest area is directly related to the wetness and width of the slough. The forested area is not accessible by even a foot path.

Hearings Officer Analysis: I find that the adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

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

Applicant: 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 used to site the dwelling and access was zero. The area up to the slough is almost totally devoid of any commercial tree species. The area proposed for the dwelling and driveway require no tree removal at all. The land has capability for commercial forestry and will be planted to required stocking levels, but the amount of land utilized for the dwelling and other improvements is minimal.

The proposed dwelling will be located as far forward on the lot as possible to maximize the amount of forested land that can be planted to the west, The area in front of the dwelling represents the combined total of the front yard setback and the 30' primary fire safety zone, The 60' setback on the southeast corner of the proposed dwelling represents a commitment on the part of the property owner to maximize the amount of land for forest production. The setback on the northeast corner will be greater than 60' because of the angle of Lusted Road.

A 30' fire safety zone will also be located west of the proposed dwelling, and another area that has been approved for the septic drainfield and replacement drainfield must be totally free of planted timber. The only areas on the property that will not be fully stocked with commercial timber are the homesite, the accessory structure site, and the drainfield and replacement drainfield areas, Timber production can even be conducted within the 30' primary fire safety zone. Please refer to Figure 4, Plot Plan, for location of structures and timber production areas.

Staff: The dwelling is shown with a 60' setback from Lusted Road, which is within 30' of the minimum setback required under MCC .2058(C).

Hearings Officer Analysis: The applicant has met this criteria.

MCC 11.15.2074(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 access road to the subject property will be far less than 500' (see Plot Plan).

Staff: Agrees.

Hearings Officer Analysis: I find that the road is less than 500 feet.

MCC 11.15.2074(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: The property is located within the Gresham Fire District, and a Service Letter has been signed by the district stating they will provide service to the site.

Hearings Officer Analysis: The applicant has submitted the requisite service letter.

- (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: No perennial water source is located on the property.

Hearings Officer Analysis: I find this criteria is not applicable.

- (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 primary fire safety zone is a fire break extending 30' in all directions (please refer to Figure 4, Plot Plan). No existing low woody vegetation or trees are located in this area.

The slope of the land is almost perfectly level, so the primary fire zone will not have to be extended. This proposal conforms to the maintenance of the primary fire safety zones.

Staff: The proposed dwelling location does not meet the secondary fire safety zone standards for the side (north and south) yards due the limited 120' width of the property. The application is subject to the provisions of MCC .2075 as required under .2074(A)(5)(c)(iii) above. The secondary fire break can be met on the west (rear) side of the proposed dwelling.

Hearings Officer Analysis: A condition of approval will be imposed requiring the applicant to maintain primary, and to the extent possible on his own property, secondary fire safety zones around the new structure, in accordance with the requirements of this section.

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

Hearings Officer Analysis: I find that the building site slope is less than 40 percent.

MCC 11.15.2074 (B) The dwelling shall:

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

Applicant: The property owners are planning to construct a stick-built home, as shown in the appendix of this report. This may not be the exact home plan but is similar in nature to the home that will likely be constructed. The proposed dwelling will comply with the Uniform Building Standards since Multnomah County does require building permits.

Hearings Officer Analysis: The applicant will be required to comply with the Building Code.

MCC 11.15.2074 (B)(2) Be attached to a foundation for which a building permit has been obtained; and

Applicant: The proposed dwelling will be a stick-built home, and consequently a foundation will be required.

Hearings Officer Analysis: A foundation will be required.

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

Applicant: The Uniform Building Code now requires fire retardant roofs and specifically prohibits cedar shake roofing material.

Hearings Officer Analysis: A fire retardant roof will be required.

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

Applicant: One chimney is indicated in the proposed farm house design. This chimney will be equipped with a spark arrester pursuant to the Uniform Building Code.

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 (the applicant proposes a dwelling approximately 2,200 in size-see findings under .6420(L) of this report). Compliance with these standards can be ensured by a condition of approval to be satisfied prior to zoning approval of the Building Permit.

Hearings Officer Analysis: A condition will be so imposed.

MCC 11.15.2074 (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Applicant: The subject property has a water meter hookup with the Lusted Water District. A Service Letter from the District is included with the application form. The property has a water meter that was issued prior to the enactment of modern zoning.

Staff: Agrees.

Hearings Officer Analysis: The applicant has met this condition.

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

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

Applicant: The proposed driveway will have a base composed of 3" minus rock and an overlayment of 1 ½" minus rock. The property owners are submitting an application for an approach permit to the subject property, and it is not known whether or not a culvert will be required. Any culvert that is placed at the driveway entrance will be designed to sustain 52,000 lbs., or 26 tons, of gross vehicle weight, The Gresham Fire District has 9 engines and two aerial snorkels for fire suppression. The 52,000 capacity is not exceeded by any of the engines when loaded.

MCC 11.15.2074(D)(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;

Applicant: The proposed plot plan (Figure 4) shows the location and size of the proposed driveway. The all-weather surface will be gravel.

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

Applicant: The proposed driveway apron will conform with the specifications issued by the Multnomah County Transportation Department through the approach permit. The 481 turning radius standard will be followed.

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

Applicant: The proposed driveway corridor is totally devoid of any overhanging vegetation or structures and can easily conform with this criterion.

MCC 11.15.2074(D)(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;

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

Applicant: According to the topographic map provided in Figure 3, the slopes for the driveway alignment are 0 to 3%. A site visit to the subject property confirmed that the proposed driveway grade is very nearly level. It should be pointed out that the subject property does not lie within Multnomah County Rural Fire Protection District.

The proposed driveway easily conforms with the maximum grade requirements.

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

Applicant: The proposed driveway as shown in Figure 4, Plot Plan, is 60' long; and therefore no turnaround would be required.

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

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

Applicant: The proposed driveway is only 60' in length, and therefore the provisions of (a) and (b) above are not applicable. Fire apparatus can literally park along the road and have enough hose available to suppress fire at the proposed dwelling.

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.

Hearings Officer Analysis: A condition of approval will be imposed to require compliance with this section.

MCC 11.15.2075 Exceptions to Secondary Fire Safety Zones and Forest Practices Setbacks

MCC 11.15.2075 (A) The secondary fire safety zone and forest practices tract setbacks for dwellings and structures may be reduced pursuant to the provisions of .2075(B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or
- (2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties; or
- (3) The proposed dwelling or structure is proposed to be clustered with a legally existing dwelling or structure.

Staff: The average lot width is 120'. The proposed dwelling is shown on the Plot Plan in Figure 4 as 90' from the centerline of Lusted Rd.

Hearings Officer Analysis: The average lot width of 120 feet qualifies this parcel for a reduced secondary fire safety zone setback.

MCC 11.15.2075 (B) Exceptions to secondary fire safety zones and forest practices setbacks shall only be granted upon satisfaction of the following standards:

- * * *
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and
 - (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and
- * * *
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC .2075(B)(2) are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC .2048(D) shall not be required to meet this standard, but shall satisfy the standard of MCC .2074(B)(4) above.

- (6) All accessory structures within the fire safety zone setbacks required by MCC .2074, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.
- (7) All accessory structures within 50 feet of a building containing shall:
 - (a) Have a central monitored alarm system;
 - (b) Have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.
- (8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.

Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

Staff: The setbacks to the north and south property lines of 30' and 50' as shown on Figure 4 allow for less than 50' of secondary fire safety zone. The applicable provisions of this section are (2), (3), and (5). The provisions of (6), (7) and (8) are not applicable because no accessory structures are proposed. The information available on the proposed dwelling shape, and size is that shown in the perspective drawing of the "Stately Farmhouse" in Exhibit A3.

Hearings Officer Analysis: A condition of approval will be imposed relating to how the exception standards are to be met.

TEMPLATE DWELLING CONCLUSIONS:

1. I find that the subject tax lot does meet the provisions of MCC .2052 (A)(1). In order to qualify as a "legally created" lot, the lot at the time of creation must have received any necessary State or local approvals. In 1967, at the apparent time of creation of the subject lot, State law did not mandate County review of partitions and Multnomah County had no approval criteria relating to partitions or any requirement that a party partitioning a parcel into two lots submit an application. Similarly, the County had no requirements or prohibitions that made it unlawful to partition a lot without County approval or create a remainder parcel that did not meet the minimum zoning ordinance standards. Whether the remainder parcel is a "lawfully created" lot, was not a question before me in this proceeding and I make no ruling on that issue. I do find that the subject lot was lawfully created and meets the lot of record standards of MCC .2062(A)(2).

2. The parcel can meet the adequate size provision of MCC .2052 through compliance with the exceptions to forest setbacks as provided in MCC .2075. The

parcel is not wide enough to meet the listed standards for forest practices setbacks in MCC .2074, which requires 130' side yards. A condition of approval will be imposed in order to insure compliance with the exception standards.

3. The parcel exceeds the Template Dwelling requirements in MCC .2052(A)(3) for the number of houses and dwellings within the template area based on the evidence submitted by the applicant and the Assessor's mapping as of September of 1977. Compliance with the Department of Forestry stocking requirements is required in MCC .2052(A)(6), and this code provision could be satisfied by a condition of approval that the property owner submit a stocking survey report which demonstrates that the property will meet forestry stocking requirements, and by notification of the Assessor by the planning department as provided for in MCC .2052 (A)(6)(a). The deed restriction to acknowledge the rights of nearby property owners to conduct farm and forest management in MCC .2052(A)(8), could also be met by a condition of approval that the restriction is recorded prior to issue of a building permit, and such conditions will be imposed.

4. The dimensional/yard provisions of .2058 are met with the structure as proposed except for the side yard setbacks. As noted under conclusion 2. above, a condition that requires compliance to be demonstrated on the building plans could ensure compliance with this standard.

5. All of the development standards of section .2074 are met with the information presented by the applicant, or could be met through imposition of conditions. Except for MCC .2074(A)(5), the dwelling locational standards of .2074(A) are met by the dwelling location near Lusted Road. This minimizes access corridor length and the distance between the dwelling and the small-scale resource lands in the area. A condition of approval requiring MCC .2075 compliance will be imposed.

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

7. 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 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.

2. Criteria for approval of SEC Permit:

MCC 11.15.6404 Uses-SEC Permit Required

Applicant: This permit is being submitted concurrently with a Forest Template Dwelling Permit. According to the Multnomah County Comprehensive Plan and Zoning Ordinance, a portion of the subject property is located in a Stream Conservation Area. The significant Environmental Concern Permit is designed to protect, conserve, enhance, restore, and maintain significant natural and man-made features which are of public value, including among other things river corridors. Since the subject property is located in the Sandy River Stream Conservation Area, the SEC Permit requirements are outlined in Section 11.15.6428 (B). Each criterion will be evaluated in the next section.

Staff: The subject Tax Lot is bisected by the SEC overlay zone boundary as shown on the zoning map in Exhibit C. This SEC boundary depicts the Scenic Waterway boundary for the Sandy River, and development within this area requires approval of the Oregon Parks and Recreation Department, in addition to demonstration of compliance with the general criteria in MCC .6420.

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

MCC 11.15.6408 Application for SEC Permit

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

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

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

Staff: The applicant has submitted a written narrative as required in (1) above (Exhibit A3). The maps submitted by the applicant generally contain the information required in (2) above.

Hearings Officer Analysis: I concur with staff's comments.

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

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

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

Applicant: The subject property does not lie adjacent to the Sandy River but is located along the west side of Lusted Road. The proposed dwelling will be situated in a cleared field approximately 60' from the road right-of-way. The 30' primary fire safety zone requires that no low-growing fire fuel be present, and the property owners will maintain a normal type of lawn in front of the house up to the road. This lawn may include plantings of decorative trees and shrubs.

The area west of the house (but at least 30' away in order to meet primary fire safety zone standards) will be replanted to meet stocking levels for forest trees; however, a cleared area including the drain field will be located directly to the west of the proposed dwelling. Most of the property will be left in its present natural state, which is predominantly open meadow, a small seasonal slough, and a timbered hillside. The aesthetics of the property will definitely be enhanced with the addition of an attractive home and accompanying landscaped surroundings.

Staff: The relationship between the proposed dwelling and the intermittent stream is shown in Figure 4.

Hearings Officer Analysis: The applicant has met this criteria.

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

Applicant: This proposal strongly conforms with this criterion because the owners are going to restock areas of the property that have been neglected for forest use. Under the Oregon Administrative Rules, they are required to have 200 live tree stems survive a two-year period. None of the property is currently utilized for agricultural activities, and under the management program the cleared land will be converted to timber production. Areas that are currently forested will remain so. The owners will have additional incentive to maintain forest use because of their forest use tax deferral.

Staff: Agrees.

Hearings Officer Analysis: The application, as submitted, demonstrates compliance with this criteria.

MCC 11.15.6420 (C): A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Applicant: The proposed location of the structure has taken into account many considerations, including but not limited to accessibility for emergency vehicle access, drainage, soils, proximity to other dwellings, setbacks, on-site sewage disposal, water availability, driveway costs, passive solar potential, visibility from the road, and overall development cost. It should also be noted that the proposed dwelling will not displace any land that is currently utilized for agriculture, forestry, or wildlife habitat. This proposal strongly conforms with this criterion.

Staff: Agrees.

Hearings Officer Analysis: The application demonstrates compliance with this criteria.

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

Applicant: This particular criterion is not highly applicable to this proposal since the property is not located adjacent to the river. The recreational needs in the area will in no way be satisfied by the improvement program for the subject property. The aesthetics of the property will, however, not detract from the recreational appeal of the area.

Staff: Agrees.

Hearings Officer Analysis: The subject property is not adjacent to the river and does not impact recreational needs.

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

Applicant: This criterion also is not highly applicable to the subject property because of its distance from the river. The protection of the public safety and of public and private property, especially from vandalism and trespass, will be enhanced if this proposal is approved because a dwelling will be present in an otherwise remote stretch of Lusted Road.

Staff: Agrees.

Hearings Officer Analysis: The application has demonstrated compliance with this criteria.

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

Applicant: The subject property is not located within a significant fish and wildlife habitat according to maps obtained from the Multnomah County Planning Department.

Staff: Agrees.

Hearings Officer Analysis: I concur.

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

Applicant: The subject property is not located along a river or lake, nor are any wetland areas identified on this property according to the Division of State Lands Inventory; however, the natural vegetation that is currently on the property will not be disturbed at all to assure scenic quality and protection from erosion. The proposed dwelling is located several hundred feet from the most heavily timbered areas on the property, and no roads or other improvements are planned in the timbered areas. The obvious wetland area immediately east of the timber will also remain totally undisturbed by any of the activities proposed on the subject property. While this wetland is not identified on the National Wetlands Inventory Map, it will nevertheless be protected from any encroachment from any of the property improvements.

Staff: Agrees.

Hearings Officer Analysis: The subject parcel is not adjacent to the river and the proposed development will not impact the natural vegetation along the river.

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

Applicant: None of the Goal 5 values were identified for the subject property.

Staff: No archaeological areas are identified on the subject property.

Hearings Officer Analysis: The subject site does not contain any archaeological areas which must be preserved.

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

Applicant: The property has no identified flood plains or wetlands, but it will be maintained to the maximum extent possible in its current state to comply with the intent of this criterion.

Staff: The property appears to contain a wetland that is not shown on the official NWI map. The area is shown as a non-delineated wetland on Figure 4. Based on observation of standing water in the area by staff, and on the poorly drained soil type, staff is convinced that this area is wetland. No development is shown in this area.

Hearings Officer Analysis: The applicant has demonstrated compliance with this criteria.

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

Applicant: All of the improvements proposed for the subject property are on slopes of 0-3%, and all of the side hill of the bluff will remain undisturbed from any human activities. Virtually all of the property improvements will occur within 250' of the Lusted Road right-of-way, including the dwelling, drain field, and driveway.

Staff: Agrees. A Grading and Erosion Control Permit pursuant to MCC 29.300 will likely be required for the development of this property, and will include specific measures to protect water quality during and after construction. If such permits are not required, the applicant can demonstrate erosion control measures on a Grading plan to be submitted with the building permit. The Best Management Practices are those identified in the 1994 edition of the "Erosion Control Technical Guidance Handbook."

Hearings Officer Analysis: I concur.

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

Applicant: The quality of the air will not be impaired by the addition of a single dwelling. The quality of the water in the area will be protected through a DEQ-approved on-site sewage disposal system. The land resources will be protected by utilizing the minimum amount of space possible for the property improvements, the management of existing timbered areas and the restocking of barren areas that have timber growing potential.

According to DEQ standards, the noise levels in the area would have to increase by 10 decibels (Dba) in order for DEQ to require that mitigation measures be taken. A 10 Dba increase is usually associated with a commercial or industrial activity.

Staff: The resources that could be impacted by the project are water quality (on-site sanitation, stormwater) and soil erosion. Soil erosion/stormwater control issues will be addressed through the Grading plan. The on-site sanitation will be permitted under DEQ rules as discussed in the findings under Framework Plan Policy 37 Utilities.

Hearings Officer Analysis: The applicant has demonstrated compliance with this criteria.

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

Applicant: A copy of a prototype dwelling that will likely be built on this property is shown in the appendix of this report. The proposed dwelling is approximately 2,200 square feet and will be constructed of standard materials that are available in the local building market. The design and bulk of the structure are consistent with the houses in the general area and consistent with the size of the lot dimensions at that particular location on the property. The visual quality of the house appears to be very pleasing and would be compatible with the character of the area. The colors of the building exterior will likely be earth tones which are compatible with the Sandy River Greenway.

Staff: It is not clear what the applicant means by a “prototype dwelling”. No exterior lighting is indicated on the site plan in Figure 4, and the range of colors is not well defined.

Hearings Officer Analysis: The applicant has not submitted final plans for a building permit. This application, as submitted, should demonstrate that this condition is met.

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

Applicant: According to the maps provided to the property owners and their representative, no endangered plant habitats or other natural areas lie within the subject property.

Staff: No identified fragile or endangered plant habitats are on site.

Hearings Officer Analysis: There are no fragile or endangered plant habitats on the site which need to be protected.

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

Staff: The County requires a finding prior to approval of a Quasi-Judicial Action that Plan Policies 13, 22, 37, 38, and 40, are met. In addition, Policy 14, Development Limitations applies as indicated in the findings under Multnomah County Comprehensive Plan Policies, of this report.

MULTNOMAH COUNTY COMPREHENSIVE PLAN POLICIES:

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

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

Applicant: This application shows compliance with the Air, Water and Noise Quality Policy Statements contained in the Multnomah County Comprehensive Framework Plan Summary.

Staff: The primary issue under this policy is water quality related to septic system construction, and site development. This policy will be satisfied when a septic system construction permit and any necessary grading and erosion control permit is obtained and the property developed in compliance with the permits.

Hearings Officer Analysis: The applicant can meet the requirements of this plan policy by complying with the conditions of the septic system construction permit and compliance with a grading and erosion control permit, if such permit is required.

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

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

Applicant: The subject property does not contain any of the developmental limitations listed under Policy 14 and therefore shows strong compliance with the developmental limitations policy.

Staff: Disagrees with the applicant's view based on both mapping and site inspection. The westernmost part of the property contains relatively steep slopes of >25% as shown on the Slope Hazard Map. The applicant's plot plan (Figure 4) indicates slopes of approximately 40% in this area. These slopes are classified as 20C in the Soil Survey for Multnomah County, and the characteristics include severe limitations for homesites due to steep slopes and slumping in areas of cut and fill. The soils in the central portion of the property are classified in the Soil Survey as 57 Wollent silt loam, and are characterized as poorly drained soils with the water table from 12 inches above to 12 inches below the surface from November through May. This area includes a low area at the base of the slope to the west which staff believes to be wetland. The soil on the east portion of the property is classified as 27C Mershon silt loam, which has none of the characteristics listed in Policy 14.

The applicant's site plan indicates that the proposed development area is on the eastern portion of the property corresponding to the 27C Mershon soils. Staff agrees that the development can comply with this policy by meeting the DEQ and GEC permitting requirements.

Hearings Officer Analysis: The applicant can meet the conditions of this policy by directing the development of the parcel away from that portion of the parcel containing development limitations. Compliance will be demonstrated by satisfying the DEQ and GEC permitting requirements.

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

- A. The development of energy-efficient land uses and practices;
- B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreation centers;
- C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;
- D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.
- E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources.

Applicant: This proposal definitely promotes the conservation of energy and energy resources in an efficient manner by providing adequate setbacks for passive solar energy collection and by minimizing such factors as driveway length and building size.

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

Hearings Officer Analysis: I find that Policy 22 has been considered to the extent that it is applicable to this application.

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

WATER DISPOSAL SYSTEM:

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

DRAINAGE:

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

ENERGY AND COMMUNICATIONS:

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

Applicant: The subject property already has an approved water source and sewage disposal system. Drainage can be accommodated through proper yard grading and on-site retention. Electric power is available to the property along the Lusted Road right-of-way.

Staff: The Disposal System element "B", and the Drainage elements of F. and G. apply to this request. The property has an approved Land Feasibility Study and an approved septic system drainfield area. The septic system itself will be constructed

under a subsequent permit. Staff agrees that the property appears to be capable of meeting the on-site water run-off and protection of water quality elements of this policy. Improvements needed to meet the drainage provisions are most often considered under a Grading and Erosion Control permit.

Hearings Officer Analysis: I concur with staff's comments.

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

- A. The appropriate School District has had an opportunity to review and comment on the proposal.
- B. There is adequate water pressure and flow for fire fighting purposes; and
- C. The appropriate fire district has had an opportunity to review and comment on the proposal.
- D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

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

Staff: Agrees.

Hearings Officer Analysis: I find that the appropriate service districts have submitted the appropriate service letters.

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

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

Applicant: This policy is not appropriate for this remote rural location, particularly since there are no pedestrian ways, bicycle routes, or bus stops.

Staff: The property is not subject to dedication of land for bicycle corridor improvements.

Hearings Officer Analysis: It would not be appropriate to require dedication of land for bicycle corridor improvements in relation to this application.

SIGNIFICANT ENVIRONMENTAL CONCERN CONCLUSIONS:

1. Compliance with the approval criteria of .6420(J) and Framework Plan Policy 14, relies on approval and compliance with a Grading and Erosion Control Permit pursuant to MCC 29.300 if required. If the project meets one of the exemptions for a formal grading permit, the property owner can satisfy these standards by submittal of a Grading plan which contains erosion and stormwater control measures consistent with the Grading and Erosion Control Handbook.

2. The approval criterion of .6420(L) requires that the building features are compatible with the visual character of SEC areas. The information in the application about building details is not adequate to conclude make a specific finding of compliance. This approval will be conditioned in a way to ensure compliance.

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

HEARINGS OFFICER DECISION

Approve this application for Conditional Use Permit and Significant Environmental Concern Permit, subject to the following conditions:

CONDITIONS OF APPROVAL

1. This Conditional Use approval shall be specific to the use(s) described together with the limitation 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. The property owner is required to plant a sufficient number of trees on the tract to meet Department of Forestry stocking requirements.

3. Prior to zoning approval 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. The applicant will submit proof that the statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the right of owners of nearby property to conduct forest operations consistent with the

Forest Practices Act and Rules and to conduct accepted farming practices, as provided by MCC 11.15.20529(A)(8).

5. Prior to final approval of building permit, the applicant shall obtain a septic permit from the City of Portland Sanitarian.

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, to the extent possible, 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. The applicant shall submit specific evidence of how the exception standards of .2075 are to be met for review by staff, and such review and approval will be a condition for zoning approval of the building permit.

9. The applicant will be required to apply for a Grading and Erosion Control Permit, or demonstrate that the property qualifies for an exemption therefrom. If such permit is not required, the applicant must illustrate the proposed erosion control measures on a grading plan to be submitted with the building permit. These measures must be consistent with the provisions of the Grading and Erosion Control Handbook.

10. The color of the structure shall be earthtones consistent with the Sand River Greenway. Exterior lighting shall be directed downward and hooded or shielded so that it does not shine directly on neighboring properties. The dwelling shall be similar in size, design, width and height as the stately farmhouse design which was proposed in the application.

11. 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. Compliance with the exceptions standards of .2075 approved in the building permit.
- B. Applying for and approval of a Grading and Erosion Control permit, if necessary, or qualifying from an exemption therefrom;
- C. Forest stocking survey report submitted;
- D. Fire safety zones cleared and inspected by Planning staff;

- E. The conditions of approval relating to the fire retardant roof, chimney spark arresters, foundation, and floor area are shown on the building plans.
- F. 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.
- G. 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)].

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 CU 8-98, and for Significant Environmental Concern Permit SEC 37-98, to allow the construction of a new single family dwelling on Commercial Forest Use zoned property, subject to the conditions contained herein, 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 8th day of April, 1999.

JOAN M. CHAMBERS, Hearings Officer