

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

Regarding a request for a Conditional)	FINAL ORDER
Use Permit by Carson Linker for a single)	CU 9-98
family template dwelling)	(Linker)
)	

WHAT: The applicant is applying for a Conditional Use Permit to establish a Template Dwelling on the existing vacant parcel. The Trout Creek North Branch stream runs through the subject parcel; the stream is designated as a significant stream under the East of Sandy River Rural Area Plan.

WHERE: 40200 SE Trout Creek Road.
Tax Lot 14, Section 18, T1S, R5E, W.M. (R#99518-0140).

**APPLICANT/
PROPERTY OWNER:** Carson Linker
746 NE Sumner Street
Portland, OR 97211

PLAN DESIGNATION: Community Forestry Use

ZONING Community Forestry Use (CFU-4)

SIZE: 39.73 acres

**HEARINGS OFFICER
DECISION** Deny the request for conditional use to establish a template dwelling on the parcel because the parcel does not meet the template dwelling requirement that five dwellings exist within a 160-acre square centered on the center of the parcel.

I. HEARINGS AND RECORD

1. A public hearing concerning this application was held on April 21, 1999. That hearing was continued to May 19, 1999. Before the May 19, 1999 hearing, the applicant requested a continuance. On May 19, 1999, the Hearings Officer in a telephonic hearing, continued the hearing to July 21, 1999. After the July 21, 1999 hearing the record was left open for 21 days. The written record was closed on August 4, 1999.
2. The exhibits listed in the staff report and submitted during the hearing process were reviewed by the Hearings Officer and received in reference to this application. A list of the exhibits is included at the end of this decision.
3. At the hearings, Tricia Sears, Multnomah County Planner, testified for the county, summarized the history of the application and her staff report. Ms. Sears entered Exhibits H1 through H6 into evidence. The primary issue in this application is whether there are five dwellings within the 160-acre square template centered on the property. According to the survey prepared by the County's staff by a registered surveyor the fifth dwelling is located forty feet outside the 160-acre square template. Ms. Sears noted that the County staff's survey included the stem or pole of the flag lot in determining the center of the center of the parcel.
4. Michael Robinson, attorney representing the applicant, entered exhibits H7 through H10 into evidence. He noted that the applicant had provided a written agreement to extend the 150-day period within which the County must make a decision to January 1, 2000. Exhibit H5. Mr. Robinson summarized the points in his letter to Tricia Sears, dated July 21, 1999. Exhibit H7.
5. Phil Bourquin, County Planner, provided a copy of *Evans v. Mult. Co.* Which he said represented a precedential decision by the Board of County Commissioners concerning how to interpret "center of the center of the subject tract" for purposes of template dwelling applications.
6. At the conclusion of the Hearing the Hearings Officer left the record open for receipt of additional information concerning the differences in the applicant's and the staff's location of the center of the center of the tract. The continuance was for a seven-day period for all parties, including a response from the surveyors, followed by seven days for all parties to respond and concluding with seven days for the applicant to rebut testimony or argument.

II. BACKGROUND

The former owner of the parcel, SHT, Inc. represented by Ed Hanning, had a pre application conference with the County staff to discuss an application for a proposed template dwelling on May 27, 1998 (PA 16-98). The current owner, Carson Linker, used Mr. Hanning's Pre-Application Meeting narrative when he filed this application on September 23, 1998. Mr. Linker submitted an "Amendment to Application" letter on January 11, 1999 in response to a letter of incompleteness from Staff dated October 20, 1998.

The applicant parcel is located outside the Urban Growth Boundary of the City of Portland, on Trout Creek Road. The site has historically been used for timber production. The parcel has recently been reforested. Exhibit A1 is a site plan of the applicant parcel, denoting all property lines with dimensions, locations of buildings, abutting right-of-way, location and width of the proposed driveway, topography, and drainage. The parcel is not on the County "Slope Hazard Map."

Exhibit A7 is a vicinity map, showing approximate locations of surrounding buildings. The vicinity of the proposed dwelling is characterized by dwellings on parcels ranging in size from 3.00 acres to 80.00 acres. Activities on the parcels include forestry, farming, and general residential use.

The subject parcel is 39.73 acres in size and zoned Commercial Forest Use (CFU-4). The applicant proposes to establish a single-family dwelling on the existing, vacant parcel. The subject parcel is located outside of the Urban Growth Boundary (UGB) and is located on the south side of Trout Creek Road. The subject parcel is a flag lot, fronting on Trout Creek Road for 26.01 feet according to the Record of Survey dated May 12, 1988. The distance from Trout Creek Road to the main body of the parcel is 511.02 feet according to the Record of Survey dated May 12, 1988 for the subject parcel.

I. CRITERIA AND FINDINGS

A. SUMMARY OF APPLICABLE CRITERIA

Zoning Ordinance Requirements:

MCC 11.ES.2042 – Community Forest Use (CFU-4)

Comprehensive Plan Policies:

- 11 Commercial Forest Land
- 13 Air, Water and Noise Quality
- 14 Developmental Limitations

22	Energy Conservation
37	Utilities
38	Facilities
40	Development Requirements

East of Sandy River Rural Area Plan, Policy 21, 150-foot buffers from a significant stream to a proposed development

B. APPLICABLE MULTNOMAH COUNTY CODE PROVISIONS

Commercial Forest Use (CFU-4)

11.ES.2042 Purposes

The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

11.ES.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 (A), .2053 (B) and .2074.

*** * ***

Findings and Conclusion. This application is based on the Template Dwelling provisions. The required sections of MCC .2052 and .2074 are addressed below. The appropriate application process to establish a single-family residence in the CFU zone is through the Conditional Use application for a Template Dwelling. The applicant has made the correct application. However, as discussed below, the application does not meet the Template Dwelling test criterion

in 11.ES.2052(A)(3)(c)(ii) that at least five dwellings exist within a 160-acre square template centered on the center of the subject tract.

11.ES.2052 Template and Heritage Tract Dwellings

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

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

Findings and Conclusions. Section MCC 11.ES.2062 is discussed below where the Hearings Officer concludes that the parcel meets the lot of record requirements. The subject parcel, in its current size and configuration, was created prior to January 25, 1990 according to Multnomah County Sectional Zoning Maps and Exempt Minor Partition case file EMP 5-19-88. The application meets the criterion.

- (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 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;**

Findings and Conclusion. The site map provided by the applicant (Exhibit A1) shows the location of the proposed single-family residence on the subject parcel. The proposed location of the house meets the required front, rear, and side yard setback requirements of the CFU-4 zone. The application meets the criterion.

- (3) The tract shall meet the following standards:**

* * *

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

Findings and Conclusions. The applicant provided a copy of the soil map from the Multnomah County Soil Survey. The soil types on the site are 9B, 9C, 9D, and 9E. Type 9B, 9C, 9D, 9E are Cazadero silty clay loam, with a Douglas Fir site index of 165. Based on the site index of the soils on the parcel, the parcel is capable of producing 11,775 cubic feet of Douglas Fir.

- (i) **The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**
- (ii) **At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.**

Findings and Conclusions. At issue is the appropriate method for determining the "center of the center of the subject tract." The County staff used two methodologies, the 'center of gravity' method and the 'pin point'(or 'balance point') method. In the center of gravity method the shapes of an irregular parcel are divided, the center of each piece is found, and then the average of those centers is found, weighted by the area of each piece. Here, the center of gravity of the flag of the flag lot and the center of gravity of the pole of the flag lot were determined and then the center of the parcel was adjusted considering the two areas. In the pin point (or balance point) method the subject parcel was plotted, printed on paper, cut to size and then balanced on a point to determine the center point of the property. Each of these methods resulted in locating the center of the center of the property at the same point. The result of the County's calculations are shown on Exhibit H1.

The applicant's methodology involved locating the center by drawing two intersecting diagonal lines from the extreme corners of the parcel, including the stem or pole of the flag lot and adjusting the point of intersection of the two lines so that the halves of each line are equidistant. The result of the applicant's calculations is shown on Exhibit H9.

The method used by the applicant locates the center of the parcel significantly more to the northwest than the method used by the County staff. The result of shifting the center of the center of the property to the north under the applicant's methodology is that a fifth existing dwelling falls within the applicant's template that does not fall within the Staff's template.

During the public hearing on July 21, 1999, Staff referred to a prior case at Multnomah County that involved a question regarding the determination of the center of the center of a parcel. Case files CU 7-95/HV 17-95, for a template dwelling in the Commercial Forest Use (CFU) zone. Staff submitted the Hearings Officer's findings on those cases and the Board of County Commissioners' Final Order 96-177 as Exhibit 12. The Hearings Officer's findings on those cases were supported by the Board Order on appeal, including findings that the subject parcel did not meet the template dwelling test criteria. Multnomah County staff has followed these cases as precedent regarding the applicability of the "pin test" or the "center of gravity test" for determining the center of the center of a parcel.

An issue in that case, as here, was the interpretation of the term "centered on the center of the subject tract" for purposes of applying the template test in OAR 660-06-027 and MCC 11.ES.2052(A)(3)(i). The Hearings Officer found that the so called "center of gravity" test, used by the County as a method for determining the center of the template, was a reasonable interpretation of the "center of the center" test for purposes of the County Ordinance and OAR 660-06-027. The Hearings Officer stated:

"There is no definition of the phrase 'centered on the center of the subject tract' for purposes of OAR 660-06-027. Dictionary definitions are of no help in determining a methodology for finding the center of an irregular shape such as this. Staff's use of a 'balance point' or 'center of gravity' seems to be a reasonable method of uniformly determining the 'center' of a tract of property, regardless of its shape. Furthermore, the analysis of Mr. Matthew A. Rochlin, from a mathematics standpoint, [lends] further support to staff's use of the 'center of gravity' methodology for determining the 'center' of irregularly shaped parcels."

The analysis of Mr. Matthew A. Rochlin is included in the record as enclosure 4 to Exhibit H14.

According to a memorandum from Scott Okell, PLS, dated July 27, 1999, the County Staff determined the center of the subject property consistent with the precedent established in CU 7-95/HV 17-95, by the following method:

"The bulk of said property consists of a "box" approximately 1307 feet east-west by approximately 1316 feet north-south. The small amount of area cut off of the northeast corner was not taken into consideration. A line was drawn from the midpoint of the north boundary to the midpoint of the south boundary. Another line was drawn from the midpoint of the west boundary to the midpoint of the east boundary. Where these two lines intersect is the center of the "box". This method is also outlined in the Bureau of Land Management's "manual of Surveying Instructions" as property procedure to establish the legal center of section.

"The subject property also has an access strip 24 feet wide by approximately 540 feet long connecting the northwest corner of the "box" to Trout Creek Road. This "stem" contains approximately 13,000 square feet, which does contribute to the overall area of the property. Since the "stem" is geographically located north of the "box" the center of said "box" was adjusted approximately 10 feet to the (due) north to compensate for the area of this strip. The center was not adjusted in an east-west position since the overriding question is the north-south position. Dividing 13,000 square feet by the east-west width of the property (approximately 1307 feet) arrived at the 10 foot dimension."

In addition, the staff performed the "pin test" on the subject parcel. In the pin test Scott Okell, PLS, plotted the subject parcel to scale and printed the parcel. The subject parcel was cut to size

and then balanced on a pin to determine the center point of the property. The property's center point is marked on the cutout parcel piece and matches the plotted survey provided by Okell and marked as Exhibit H1 at the public hearing.

The applicant's registered land surveyor, Dale Hult of All County Surveying, revised the applicant's template map. Exhibit H9, oversized mounted map. Mr. Hult determined that the center of the line is established by locating the point of intersection of two lines drawn from the northwest to the south east extreme property lines and from the northeast to the southwest property lines, including the pole or stem of the flag lot. In support of this method the applicant submitted a copy of dictionary definitions of "center" which states:

"1. The point equidistant or at the average distance from the exterior points of a circle, sphere, or other geometric figure . . . "

The applicant also submitted a letter from Dale L. Hult, dated May 14, 1999 in which Mr. Hult stated:

"I have calculated the center point of the Tax Lot #14, also known as 40200 SE Trout Creek Road. This is determined by an equal distant from extreme property corners. Previously the center point was inaccurately identified because the odd area associated with the deeded access off Trout Creek Rd. was not taken into consideration. The property lines have been identified and marked for your edification. I have drawn on the template, which is perpendicular and parallel to the section lines per the template test requirements."

The applicant's surveyor calculated the center for this lot by including the lot stem connecting the main body of the lot to Trout Creek Road. The applicant notes that the MCC does not include a definition of "center" and argues that his surveyor's definition of the center is not contrary to any express language contained in the MCC. The applicant's attorney, Michael Robinson, argued in a letter to the Hearings Officer dated August 11, 1999 that the applicant's method is more reasonable than the staff's method for two reasons. "First, it does not require a complicated mathematical formula nor does it require a test that not all parties can be privy to. Moreover, it is clear that the applicant relied on the entire tract of land. It is also clear that the County's surveyor did not include the entire tract." In addition, Mr. Robinson argued that no precedent was created by the Board's Order in case file No. CU 7-95 (Board Order 96-177).

The Hearings Officer has not been cited to any reported opinion which addresses how the "center of the center of the subject tract" should be determined under state law. In her own research the Hearings Officer has found none. As the Hearings Officer has already stated, both the applicant's and the staff's methods take the pole of the flag lot into account. The Hearings Officer concludes that the staff's method is more reasonable for determining the center of the center of the property than is the applicant's. The staff's method considers only the subject

parcel to find the center whereas the applicant's method considers other parcels between the extreme property line of the subject parcel and its inner property lines. The fact that another Hearings Officer and the Board have previously considered this issue and found the staff's method to be reasonable adds further weight to the Hearings Officer's conclusion.

The applicant is required by subsection (i) to establish that "all or part of 11 lawfully created lots existed on January 1, 1993 within 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines." Under both the staff's and the applicant's methodologies, the Tax Assessor's Map (Exhibit H10) shows the following other parcels fall within the 160-acre square:

<u>Parcel</u>	<u>Section, Township, Range</u>
Tax Lot 18	18 1S5E
Tax Lot 19	18 1S5E
Tax Lot 20	18 1S 5E
Tax Lot 21	18 1S 5E
Tax Lot 22	18 1S 5E
Tax Lot 41	18 1S 5E
Tax Lot 50	18 1S 5E
Tax Lot 14 of Government Lot 4	19 1S5E
Tax Lot 19	19 1S5E
Tax Lot 21	19 1S5E
Tax Lot 13	13 1S4E
Tax Lot 2	13 1S4E

Although the record lacks documentary evidence concerning whether any of these 12 parcels were lawfully created before January 1, 1993, the staff report states that "there are at least all or part of 11 lawfully created lots that existed on January 1, 1993 within 160-acre square." The staff's statement of fact is not disputed. Consequently, the Hearings Officer concludes that the applicant meets this requirement.

The applicant is required by subsection (ii) to show "at least five dwellings lawfully existed on January 1, 1993 within the 160-acre square." The applicant provided a map of the 160-acre area (Exhibit A7 and revised map Exhibit H9). This map is composed of an aerial photograph overlaid with an Assessment and Taxation (A & T) map of the same area prepared by a State of Oregon surveyor, Dale Hult. Exhibit A6 illustrates the year-built date of each of the dwellings identified for inclusion in the Template Dwelling test. The applicant identified the following dwellings for the Template Dwelling test:

<u>House # on Map</u>	<u>Tax Lot #</u>	<u>Year Built</u>
1	41	1979
2	22	1978
3	20	1974
4	18	1975
5	19	1975
6	21	1986

The applicant originally included a second dwelling on Tax Lot 21 Section 18 1S5E. Multnomah County records (assessment and Taxation, land use cards, building permits, and land use maps) do not show a second dwelling on Tax Lot 21. Section .2052 establishes that a structure must lawfully exist to count for the template dwelling test. If a second dwelling exists on Tax Lot 21, the County finds that the dwelling does not lawfully exist. Based on the applicant's revised map (Exhibit H9), the house on Tax Lot 18 is directly on the north boundary line of the 160-acre area of the Template Dwelling test. Without deciding whether that dwelling qualifies to be counted for the Template Dwelling test, under the applicant's method of calculating the center of the center of the parcel, there are at least five dwellings within the 160-acre square.

Under the County staff's method, two of these six dwellings are located outside of the 160-acre square: the dwellings on Tax Lots 18 and 19. The difference in the County Staff's evidence and the applicant's evidence on whether there are five dwellings within the template rests on the method for determining the center of this flag lot. The Hearings Officer has concluded the staff's method is more reasonable. Based on the staff's method the Hearings Officer concludes that there are only four, not the required five, dwellings within the 160-acre square. Consequently, this criterion is not satisfied.

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

Findings and Conclusion. The parcels the applicant used to try to meet the Template Dwelling test are outside of the Urban Growth Boundary (UGB). This criterion is met.

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

Findings and Conclusion. The subject parcel is vacant land. No dwellings exist on the parcel. This criterion is met.

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

Findings and Conclusion. The subject parcel is not part of a tract. The subject parcel is vacant, the applicant proposes to construct one single-family dwelling for the subject parcel. The applicant meets this criterion.

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

Findings and Conclusion. This application is not for a replacement dwelling. The applicant's parcel is not part of a tract. The applicant meets this criterion.

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

Finding and Conclusion. The subject parcel is not part of a tract. The applicant meets this criterion.

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

Finding and Conclusion. The subject parcel is not located on the Multnomah County Big Game Winter Habitat Map. The criterion is not applicable.

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

Finding and Conclusion. The subject parcel accesses Trout Creek Road. The criterion is not applicable.

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

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

Finding and Conclusion. The applicant submitted a letter from Jeff Hepler, Forest Practices Forester, of the Oregon Department of Forestry. The letter from Mr. Hepler, dated April 8, 1998, states the parcel owned by the "SHT Group...has been planted with appropriate seedling[s] to meet the requirements of the Forest Practices Act."

Carson Linker submitted the following narrative statement on January 11, 1999 in response to Comprehensive Plan Policy #11:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the lands back to its healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The Code provision in (6) states that a "condition of approval" on a decision document will be written to ensure that the applicant provides documentation to the County that the subject parcel will meet the Department of Forestry requirements. This criterion can be satisfied by the

imposition of a condition. These criteria could be met by compliance with a condition of approval.

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

Finding and Conclusion. See Findings and Conclusions under Section .2074 below. The development standards of Section .2074 are either satisfied or could be satisfied by conditions of approval.

- (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;**

Finding and Conclusion. The applicant stated that he was willing to record with the Multnomah County Division of Records the required statement that acknowledges the rights of owners of nearby property to conduct their forest operations consistent with the Oregon Forest Practices Act and administrative rules and to conduct accepted farming practices. It is feasible to satisfy this criterion by a condition of approval.

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

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

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

Finding and Conclusion. The subject tax lot is a Lot of Record. It is not part of a tract. No covenant or restriction as described above is required to be submitted by the applicant to Multnomah County.

11.ES.2058 Dimensional Requirements

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

Finding and Conclusion. The subject parcel is 39.73 acres in size and does not meet the 80-acre minimum lot size requirement for the CFU zone. Section .2062 is addressed below. The applicant meets an exception to this criterion.

- (B) **That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

- (C) **Minimum Yard Dimensions - Feet:**
- | Frontage on
County Main-
tained Road | Other Side | Rear |
|---|-------------------|-------------|
|---|-------------------|-------------|

60 from centerline	130	130	130
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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.ES.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.ES.2074 (A)(5)(c)(ii).

Finding and Conclusion. The applicant's site plan, Exhibit A1, shows the proposed location of the dwelling on the parcel. The site of the proposed dwelling on the subject parcel meets the front, rear, and side yard setback requirements of the CFU zone. The proposed dwelling is more than 60 feet from the centerline of the county-maintained road, the side yards are more than 200 feet, and the rear yard is more than 200 feet. The front lot line length is more than 50 feet. The

applicant has submitted elevation drawings of the proposed structure that show the dwelling does not exceed the 35-foot height limit of the CFU-4 zone. No variances are requested. The applicant meets the required setback dimensions.

- (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 this ordinance.**

Finding and Conclusion. There is not evidence that Trout Creek Road lacks sufficient right-of-way width. This criterion does not apply.

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

Finding and Conclusion. The applicant's proposed development on the subject parcel is for a single-family residence. No barns, silos, windmills, or other structures are proposed with this application. However, if they were, this section of MCC .2058 allows the listed structures to exceed the height requirements.

- (G) Yards for the alteration, replacement or restoration of dwellings under MCC .2048 (D), .2048 (E) and .2049 (B) need not satisfy the development standards of MCC .2074 if originally legally established to a lesser standard than that required by MCC .2074, but in no case shall they be less than those originally established.**

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

- (H) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC .2048 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .22074 (A)(5)(c)(ii).**

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

11.ES.2062 Lot of Record

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

* * *

(2) A parcel of land:

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

Finding and Conclusion. A tract is defined in MCC 11.15.2045 as 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. The record shows this parcel contains 39.73 acres and was deeded and recorded in book 1922, page 2097 in 1986. The subject parcel obtained its current size and configuration as a result of an Exempt Minor Partition dated July 1986. Therefore, the parcel met applicable laws when created. The applicant has submitted a deed that corresponds to the size and configuration of the lot as created in 1986.

The applicant parcel is 39.73 acres; therefore, the minimum lot size requirements of MCC .2058 are not met. There are currently no contiguous tracts under identical ownership; therefore, this parcel is not part of a tract. Consequently, this parcel meets the requirements of this subsection. The applicant's parcel is a lot of record, as it was lawfully created before January 25, 1990. As a lot of record, this parcel qualifies pursuant to MCC .2062 as an exception to the requirements of MCC .2058. Since the lot size is less than 80 acres, the applicant is required to apply for a conditional use permit for a template dwelling.

(B) For the purposes of this subsection:

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

- (2) **Substandard Parcel** refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
 - (3) **Same Ownership** refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.
- (C) **A Lot of Record** which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

Finding and Conclusion. The subject parcel is not contiguous to any other parcel in the same ownership. The parcel is a substandard parcel because it contains less than the minimum 80 acres required in this zone. The parcel is a Lot of Record. The parcel has less than the minimum front lot line frontage to a public road. Under this Code provision, a template dwelling may be allowed so long as other applicable requirements have been met or will be complied with through conditions of approval.

11.ES.2074 Development Standards for Dwellings and Structures

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

- (A) **The dwelling or structure shall be located such that:**
- (1) **It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);**

Finding and Conclusion. Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will occur.

The proposed dwelling is at least two hundred (200) feet from all property lines. In correspondence dated February 28, 1990, ODF suggests that a 200-foot setback is typically effective in preventing serious conflicts between residential and forest uses. The proposed building site takes advantage of the site on the parcel that meets the required setbacks of at least sixty (60) feet from the road and 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while meeting the required setbacks. Section .2058 is addressed above. The site plan and narrative materials submitted by

the applicant show the setback requirements of Section .2058 (C) though (G) have been met. The applicant for CU 9-98, Carson Linker writes, "The rehabilitation of the land is of the utmost importance and shall take the highest priority...The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. The applicant's proposed structure would have minimum impact to nearby forest or agricultural lands. The application meets the criterion.

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

Finding and Conclusion. The applicant's site plan shows the proposed dwelling to be located in the northwest corner of the property, very near (while still meeting setback requirements) where the long flag entrance portion of the parcel meets the main portion of the parcel. Only normal residential activities will be associated with the dwelling. The adverse impacts on the forest operations are minimized by siting the dwelling in a corner of the parcel nearest its access. The amount of forest land used to site access roads, service corridors, the dwelling, and structure is minimized.

The parcel was recent replanted with Douglas Fir trees. The subject parcel has a Forest Management Plan. Accepted forestry practices will not be curtailed nor impeded by the dwelling.

The application meets the criterion to minimize adverse impacts to the forest and farming practices on the site by establishing the appropriate setbacks for the site and by describing the compatibility of the proposed use with the surrounding area.

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

Finding and Conclusion. The required setbacks are met by the location of the proposed dwelling but not significantly exceeded. The access road is the "pole" of the flag lot plus approximately 150 feet to reach the dwelling site. The amount of land for the access is minimal, considering the shape of the parcel and the setback requirements. The application meets the criterion.

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

Finding and Conclusion. The site plan illustrates the driveway distance would be more than 500 feet from Trout Creek Road to the subject parcel. The applicant did not indicate the location of the driveway on the site plan. The driveway would follow the flag portion of the lot which extends, according to the Record of Survey dated May 12, 1988, 511 feet to Trout Creek Road and then extends an additional 150 feet to the proposed dwelling. The proposed development is subject to setback requirements of 130 feet from the property line. The applicant's site plan shows the location of the proposed dwelling is set away from the property line slightly more than the required setback. The flag portion of the lot is not an adequate site to meet the required property setbacks for the CFU-4 zone. The application meets the criterion.

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

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

Finding and Conclusion. The proposed dwelling is located within the Corbett RFPD #14. The applicant has provided a completed Fire District Review form (from PA 16-98) that says that the source of water for fire suppression will be provided by tankers and that the volume of water depends on the fire suppression needs. The fire District's Aims Fire Station is within five miles of the property. The station has two pieces of equipment with a total of 4,000 gallons of water capacity: a tanker that carries 3,000 gallons and a pumper that carries 1,000 gallons. The pumper can be used to withdraw water from Trout Creek North Branch which is located approximately 260 feet south of the proposed dwelling site. In addition, the Fire District has mutual response agreements with surrounding fire districts. The application meets the criterion.

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

Finding and Conclusion. This criterion requires access for a pumping fire truck to within 15 feet of any perennial water source on the lot. This criterion also requires that the access to the perennial water source meet the driveway standards of MCC .2074(D). The north branch of Trout Creek crosses east west through the center of the parcel. The record does not contain evidence concerning whether this is a perennial stream. The Hearings Officer assumes that it is.

The applicant has provided a letter from Eugene Smith, a Registered Professional Engineer, of All County Surveyors and Planners, Inc., dated August 4, 1998, to try to illustrate compliance for the driveway standards applicable to the access to a perennial stream. Smith states that the

driveway "will need approximately 12" of base rock to make it suitable for 52,000 lb. GVW loads."

If the stream is a perennial water source, it is feasible to construct a driveway to the stream meeting the driveway standards of MCC 11.15.2074(D). Compliance with this criterion can be assured by the imposition of a condition of approval.

(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	<u>Distance</u>
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

Finding and Conclusion. This criterion requires that the applicant maintain primary and secondary fire safety zones on the tract. The primary fire safety zone is to be a minimum of 30 feet in all directions. The applicant can satisfy a condition of approval requiring those trees within the safety zones be spaced with more than 15 feet between the crowns, that they be pruned to remove low branches within eight feet of the ground at the maturity of the tree and accepted silvicultural practices may allow and that all other vegetation be kept less than two feet in height.

If the slope around the dwelling is 20% or less, the primary zone increases to 50 feet and if the slope is less than 40%, a primary zone of 100 feet is required. The applicant does not provide slope information in sufficient detail to determine the slopes at the building site. The topographic information submitted as Exhibit 3, an attachment to Exhibit H7, only shows

topographic lines at 40 foot intervals. According to the soils survey map, the soils around the proposed dwelling are soil types 9B and 9C. 9B soils have 0 to 6 percent slopes and 9C soils have 8 to 15 percent slopes. This suggests that a primary fire zone of 50 feet may be required. Nonetheless, even if the maximum 100 feet were required for the primary fire zone, the maximum primary plus a secondary fire zone that may be required is 200 total feet and the dwelling is proposed to be set back from the north property line 200 feet and from the west property line 300 feet. Therefore, it is possible to comply with both the primary and secondary fire safety zone requirements. Compliance with the criterion could be assured by imposing a condition of approval.

- (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. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.ES.2058 (D) and .2075.**

Finding and Conclusion. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowing would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1, 1991 and published by the Oregon Department of Forestry, the required secondary fire zone could be satisfied by compliance with a condition of approval.

- (iv) **No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**

- (v) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**

Finding and Conclusion. The subject parcel is under a Forest Management Plan. The subject parcel is identified on the Multnomah County Assessment and Taxation records as a deferral account. The subject parcel is large enough, and the proposed dwelling is located on the site plan such that the primary and secondary fire safety zones could be accommodated on the subject parcel. The application could meet the criterion.

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

Finding and Conclusion. This criterion requires that the building site have a slope of less than 40 percent. The applicant has not specifically provided documentation to verify that this criterion is satisfied. As already noted, the soil types around the proposed dwelling indicate the dwelling site has slopes less than 15 percent. This criterion has been met.

- (B) **The dwelling shall:**

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

Finding and Conclusion. The applicant's proposed dwelling shall comply with this criterion. The items in (1) through (5) would be verified at the time of building permit review,

- (2) **If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

Finding and Conclusion. According to the materials submitted by the applicant the proposed dwelling will be greater than 600 square feet in size and attached to a foundation. Building permits cannot be obtained until land use approval is received for the proposed development.

- (3) **[sic]**
- (4) **Have a fire retardant roof; and**
- (5) **Have a spark arrestor on each chimney.**

Finding and Conclusion. The applicant has stated that the dwelling will have a fire-retardant roof and a spark arrestor on each chimney. It is feasible to do so because the fire-retardant roof simply requires appropriate roofing materials and the installation of a spark arrestor. Typically

these requirements are verified at the time of submittal of the building permits. Compliance with these criteria can be assured by imposition of a condition of approval.

(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.

Finding and Conclusion. These criteria require that the applicant provide evidence that the domestic water supply is from a groundwater or surface water source and not from a Class II stream, and that a water use permit is not required for the proposed dwelling. According to the applicant, a well for this property will be drilled on the subject property after the land use approval, at the building permit stage.

According to the Certification of Water Service form required by Comprehensive Plan Policy 37, "If you propose to use a private water system, a determination that the system is adequate must be made to satisfy Comprehensive Plan Policy 37. There are two different times a determination can be made: 1) In the initial review of your proposal if the on-site well or other form of private system is existing at the same time of the initial land use application, OR 2) After the initial review but before the issuance of a building permit when documentation is provided to the Planning Director that a water system is in place. At that time public notification will again be given which may result in a new public hearing. If the request for the Template Dwelling were approved, the application would be subject to a review, as a separate notification process, of the water source for the site." Thus, the staff report found that evidence of domestic water supply can be satisfied pursuant to Multnomah County Comprehensive Plan Policy 37 by either the existence of a private water system or after the discretionary land use review for the issuance of a building permit.

A condition of approval can insure satisfaction of the criterion if there is substantial evidence demonstrating that it is feasible to do so. Rhyne v. Multnomah County, 23 Or LUBA 442 (1992). The applicant submitted a letter from Brant Well Drilling, dated May 7, 1999. (Exhibit 4 to Exhibit H7. The letter states that this company has more than 50 years of well drilling experience in Oregon and has drilled a number of wells in the Trout Creek Road area. The letter further states:

"Drilled water wells are a very viable source of domestic water. I foresee no reason why potable water cannot be produced by a drilled well. However, depths may range between fifty and five hundred feet.

"There is not a permit requirement from the Water Resources Department for a domestic water well . . . "

The letter is substantial evidence demonstrating that it is feasible to provide a private water system serving the proposed dwelling on this lot.

Finally, ORS 537.545(1)(d) exempts single or group domestic wells up to 15,000 gallons per day from the water permit requirements. This criterion can be satisfied.

(2) Evidence of a domestic water supply means:

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (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.**

Finding and Conclusion. According to the applicant, he will provide the well constructor's report upon completion of the well before he applies for a building permit. Subsection (a) is not applicable because the water source would be a private well. A water use permit is not required for domestic wells producing less than 15,000 gallons per day. But an average residential water consumption is only 450 gallons per day. Because the proposed well would be exempt from water permit requirements, the applicant can satisfy this criterion by submitting the well constructor's report. Compliance with this criterion could be assured by imposition of a condition of approval.

The application does not meet the criterion.

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

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

Finding and Conclusion. The access to the dwelling is a driveway accessing a single dwelling. This criterion requires the driveway to be designed, built and maintained to support a gross vehicle weight of 52,000 pounds. If the driveway involves bridges or culverts, compliance with the gross vehicle weight standard is required to be verified by an Oregon Professional Engineer. The driveway to this proposed dwelling does not involve a bridge or a culvert. Therefore, verification of compliance of the bearing capacity of the driveway by an Oregon Professional Engineer is not required by the Code. Nonetheless, the staff requested written verification from an Oregon Professional Engineer of the compliance with the above noted criteria.

The applicant submitted a letter from Eugene L. Smith, PE, dated August 4, 1998, stating:

"I have made an on-site inspection of the driveway shown on the attached map, located in the SE 1/4 of section 13 and the SW 1/4 of section 18, off Trout Road. The driveway proceeds south from Trout Creek Road approximately 511' thence easterly into the parcel. The 511' is a "shot rock" base apparently used for logging purposes. It has no culverts or bridges and appears to be adequate for 52,000 GVW loads. The approximately 200' of driveway which proceeds easterly into the property is dirt with no rock. It will need approximately 12" base rock to make it suitable for 52,000 lb. of GVW loads.

"No culverts or bridges are presently installed in either portion of the driveway. No bridges are needed; if culverts are installed, they will need to be inspected by an Oregon Professional Engineer to verify at least 1' of cover exists over the installed culvert to meet the 52,000 GVW load requirement."

The driveway location is illustrated on the applicant's revised site plan. The applicant can improve the driveway to support a minimum gross vehicle weight of 52,000 pounds. Because there are no bridges or culverts, MCC 11.15.2074(D)(1) does not require written verification from an Oregon professional engineer. Compliance with this criterion could be assured by compliance with a condition of approval.

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

Finding and Conclusion. According to the applicant, the driveway will be 12 feet wide. The applicant illustrated the location of the driveway on the revised site plan. A Staff site visit on April 7, 1999 found the existing, gravel driveway extends from Trout Creek Road to the proposed building site, is less than 12 feet in length and is composed of gravel. In a letter from Michael Robinson, Attorney representing the applicant, dated July 21, 1999, the applicant agreed to widen the driveway so that it at least 12 feet wide its entire length and meets the other requirements of MCC 11.15.2074(D). The applicant demonstrated that it is feasible to make these improvements by the August 4, 1998 letter from Eugene L. Smith, P.E. The Hearings Officer can impose a condition of approval requiring that the driveway be improved before the County issues a building permit to assure compliance with this criterion

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

Finding and Conclusion. The applicant does not illustrate the above requirement on the site plan. The site plan shows the driveway will be straight down the "pole" of the flag lot and then veer southeast to the proposed dwelling. A condition of approval could assure satisfaction of the minimum curve radius requirement.

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

Finding and Conclusion. The applicant states the requirement will be met. The driveway location is not illustrated on the site plan submitted by the applicant. This criterion can be satisfied by a condition of approval.

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

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

Finding and Conclusion. The applicant states the grade of the driveway is less than 8 percent. A Staff site visit on April 7, 1999 indicates the slope is likely to be less than 8 percent but no documentation to support that has been submitted by the applicant. The driveway crosses areas composed of class 9B and 9C soils according to the Multnomah County Soils Survey. Class 9B soils have 0 to 6 percent slopes and class 9C soils have 9 to 15 percent slopes. From the evidence in the record, it appears feasible to construct a driveway that complies with this criterion. Compliance can be assured by a condition of approval.

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

Finding and Conclusion. The applicant stated that the proposed driveway is less than 150 feet in length. The applicant's driveway is the entire length of the access from Trout Creek Road to the dwelling, approximately 661 feet, based on the evidence in the record. Consequently, the applicant is required to comply with this criterion. It appears feasible to comply with the turnaround requirement. Compliance can be assured by a condition of approval.

- (7) **Provide for the safe and convenient passage of vehicles by the placement of:**
- (a) **Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
 - (b) **Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.**

Finding and Conclusion. According to the applicant, the proposed driveway is less than 200 feet in length. Based on the distance along the flag portion of the subject parcel (511.02 feet according to the Record of Survey dated May 12, 1988) and the required property setback, the driveway length exceeds 200 feet. The applicant is required to comply with this provision. The "pole" of the flag lot is 33 wide. It would be feasible to provide a 20-foot wide turnaround and turnout along the driveway. Compliance with these criteria could be assured by a condition of approval.

C. APPLICABLE COMPREHENSIVE PLAN POLICIES

POLICY 11: COMMERCIAL FOREST LAND

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:

- D. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, AND III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;**
- E. SUITABLE FOR COMMERCIAL FOREST USE AND SMALL WOODLOT MANAGEMENT;**

- F. POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY;**
- G. NOT IMPACTED BY URBAN SERVICES; AND**
- H. COHESIVE FOREST AREAS; OR**
- I. OTHER AREAS WHICH ARE:**
 - 1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR**
 - 2. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.**

THE COUNTY'S POLICY IS TO ALLOW FOREST MANAGEMENT WITH RELATED AND COMPATIBLE USES, BUT TO RESTRICT INCOMPATIBLE USES FROM THE COMMERCIAL FOREST LAND AREA, RECOGNIZING THAT THE INTENT IS TO PRESERVE FOREST LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.

Finding and Conclusion. According to the applicant:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

This comprehensive plan policy provides direction to the County in zoning properties and adopting implementing regulations. It is not a policy applicable to land use applications.

POLICY 13: AIR, WATER AND NOISE QUALITY

**MULTNOMAH COUNTY . . . SUPPORTS EFFORTS TO IMPROVE AIR
AND WATER QUALITY AND TO REDUCE NOISE LEVELS.
THEREFORE, IT IS MULTNOMAH COUNTY'S POLICY TO:**

*** * ***

**D. DISCOURAGE THE DEVELOPMENT OF NOISE-SENSITIVE
USES IN AREAS OF HIGH NOISE IMPACT.**

**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. IF THE PROPOSAL IS A NOISE
SENSITIVE USE AND IS LOCATED IN A NOISE IMPACTED
AREA, OR IF THE PROPOSED USE IS A NOISE GENERATOR,
THE FOLLOWING SHALL BE INCORPORATED INTO THE
SITE PLAN:**

- 1. BUILDING PLACEMENT ON THE SITE IN AN AREA
HAVING MINIMAL NOISE LEVEL DISRUPTIONS,**
- 2. LANDSCAPING OR OTHER TECHNIQUES TO LESSEN
NOISE GENERATION TO LEVELS COMPATIBLE WITH
SURROUNDING LAND USES.**
- 3. INSULATION OR OTHER CONSTRUCTION
TECHNIQUES TO LOWER INTERIOR NOISE LEVELS IN
NOISE-IMPACTED AREAS.**

Finding and Conclusion. The applicant's proposed development is for a single-family residence. The construction of a structure may briefly involve some noise but otherwise no noises other than those typically associated with single-family residential use is anticipated. There will be no unusual activities associated with the proposed dwelling. The DEQ air quality, water quality and noise standards must be met. The parcel is not in a noise impacted area, the proposed use is not a noise generator, nor is the use a noise sensitive use.

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%;

Finding and Conclusion. According to the applicant, the slopes of the proposed dwelling site do not exceed 20%. The subject parcel is not identified on the Multnomah County Slope Hazard Map. The subject parcel soil types, 9B, 9C, 9D, and 9E, do not indicate slopes greater than 20% according to the Soil Survey of Multnomah County, Oregon. The applicant meets this criterion.

B. SEVERE SOIL EROSION POTENTIAL;

Finding and Conclusion. The soils of this parcel are 9B, 9C, 9D, and 9E. The Soil Survey of Multnomah County rates the hazard of erosion for these soils as follows.

<u>Soil Type</u>	<u>Hazard of Erosion</u>
9B	Slight
9C	Moderate
9D	High
9E	High

None of the soils on this parcel has severe erosion potential. The proposed dwelling site is on soil type 9B, which has slight potential of erosion. The driveway is proposed to be located on soils identified on the Multnomah County Soil Survey Map as "9B" and "C." These two soil types have, respectively, slight and moderate erosion potential, respectively. (Exhibit 5.) Because the soils do not have severe soil erosion potential, the applicant is not required to identify methods necessary to mitigate public or private harm.

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;

Finding and Conclusion. The subject parcel is not within the 100-year flood plain according to Federal Emergency Map Agency (FEMA) maps on file at Multnomah County.

D. A HIGH SEASONAL WATER TABLE WITHIN 0-24 INCHES OF THE SURFACE FOR 3 OR MORE WEEKS OF THE YEAR;

Finding and Conclusion. The Soil Survey of Multnomah County Soil and Water Features Table shows the following water table for soils on the parcel:

<u>Soil Type</u>	<u>Water Table</u>
9B	18" to 30"
9C	18" to 30"
9D	18" to 30"
9E	18" to 30"

According to the applicant, all the soils on the applicant parcel have a seasonal water table of 18-30 inches for December to April, the water table is not 0-24 inches on any of the soils of the subject parcel. Therefore, this requirement is met.

E. A FRAGIPAN LESS THAN 30 INCHES FROM THE SURFACE;

Finding and Conclusion. The Soil Survey of Multnomah County states the fragipan is to a depth of 60 inches or more for all the soil types on the applicant parcel. Therefore, this requirement is met.

F. LAND SUBJECT TO SLUMPING, EARTH SLIDES OR MOVEMENT.

Finding and Conclusion. The soil types of the subject parcel, according to the Soil Survey of Multnomah County, are not subject to slumping, earth slides, or movement.

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;**
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT**

**CORRIDORS AND EMPLOYMENT, COMMERCIAL AND
RECREATIONAL CENTERS;**

- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM
LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN
AND BICYCLE FACILITIES;**
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT
UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC
CONDITIONS TO ADVANTAGE.**
- E. FINALLY, THE COUNTY WILL ALLOW GREATER
FLEXIBILITY IN THE DEVELOPMENT AND USE OF
RENEWABLE ENERGY RESOURCES.**

Finding and Conclusion. The application is for a dwelling on a Lot of Record. The density of dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the County. The dwelling is not in an urban area, therefore, sections A, B, C, and D above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions, in that the proposed dwelling is located close to the existing street (Trout Creek Road), while observing district setbacks, and is sited on the portion of the parcel that best maintains the competing goals identified in Development Limitations and the district requirements. The applicant meets these criteria.

POLICY 37: UTILITIES

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO
APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION
THAT:**

WATER AND 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.

Finding and Conclusion. There is no public water or sewer system available to serve this property. A private well will be drilled prior to obtaining a building permit. A Land Feasibility Study (LFS) was conducted by Phillip Crawford, Environmental Soils Inspector, City of Portland Bureau of Buildings, to evaluate the site for use of a subsurface sewage disposal septic tank/drainfield system. The City of Portland Bureau of Buildings, an agent of DEQ, provides the services of county sanitarian on contract for Multnomah County. Based on the on-site study, LFS 5-98, Philip Crawford concluded that the site is suitable for the use of a standard septic tank/drainfield system in compliance with the standards set forth in On-Site Sewage Disposal Rules adopted on April 3, 1995. The LFS is not a permit to install a subsurface sewage system, however, it assures the property owner will receive a permit to construct a system provided the property owner meets the procedures and conditions for permit issuance in the On-Site Disposal Rules. The applicant has submitted documentation from DEQ that the water system and private sewage disposal systems are adequate. The applicant meets these criteria.

DRAINAGE

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.

Findings and Conclusion. No storm water facilities serve this area. The applicant stated that existing vegetation will continue to handle on-site water runoff, that a dry well on the parcel will be used to collect the runoff from the proposed structure, and that the driveway will have a permeable gravel surface. According to the applicant, water runoff will be handled on the site in accordance with the standards set forth by the City of Portland Environmental Soils Section. Thus the applicant argues that runoff from the site will not adversely affect the water quality in

Trout Creek North Branch. The application can meet the requirement of Comprehensive Plan Policy 37.

ENERGY AND COMMUNICATIONS

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 THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Findings and Conclusion. The service providers are Portland General Electric and General Telephone. The applicant meets these criteria.

POLICY 38: FACILITIES

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

Findings and Conclusions. The applicant has provided the school service provider form. The applicant meets the criterion.

FIRE PROTECTION

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 COMMENTS ON THE PROPOSAL.

Findings and Conclusions. This criterion requires a showing that "there is adequate water pressure and flow for firefighting purposes." The applicant submitted a letter from the fire service provider. (Exhibit 6.) The service provider has indicated there is no water system serving this area. Consequently, the fire district will have to use water tank trucks, or an on-site water source for fire fighting on the applicant parcel. The applicant submitted Exhibit 6 to Exhibit H7 which was a letter from Philip J. Dearixon, Assistant Fire Chief of Multnomah County Fire District #14, dated May 18, 1999, stating:

"In regard to the property owned by Carson Linker located at 40200 S.E. Trout Creek Road. Said property is within the boundaries of Multnomah County Fire District 14. Also, said property is within approximately five miles of the Aims Fire Station. There is no municipal water system in the area for fire suppression purposes. However, housed at the Aims station is a class A pumper carrying 1,000 gallons of water as well as a water tender with a capacity of 3,000 gallons. In the event of a reported fire in the area, two pumpers and a water tender with the same capacities would also respond from Corbett and Springdale. If the water carried on the initial apparatus is deemed insufficient a water relay would be used to shuttle water from Trout Creek to maintain an adequate supply of water for extinguishment."

The staff's report at page 30 states: "The lack of water alternatives for firefighting purposes is a concern to staff. The applicant has not provided specific details on how this problem can be addressed." This criterion does not require the applicant to demonstrate alternative water sources for firefighting purposes. The applicant has provided substantial evidence satisfying the criterion because the fire district's letter shows there is adequate water pressure and flow for fire fighting purposes. The fire district's Aims Fire Station is within five miles of this property. The station has two pieces of equipment with 4000 gallons of water capacity. In addition, the applicant is required to provide access for fire equipment to Trout Creek North Branch which crosses the parcel. This is substantial evidence demonstrating that the Plan policy is satisfied.

POLICE PROTECTION

D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

Findings and Conclusions. The Multnomah County Sheriff's Department has signed the form indicating that police service is adequate. This criterion is met.

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.**
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.**
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.**

Findings and Conclusion. The applicant has addressed some of these issues under Comprehensive Plan Policy #22 Energy Conservation. The criteria are not applicable to the proposed development.

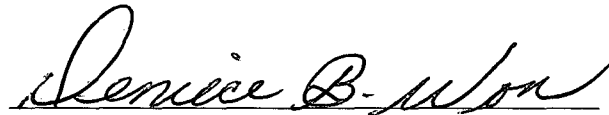
D. EAST OF SANDY RIVER AREA PLAN

The site contains a stream, Trout Creek North Branch, designated as a significant stream in the East of Sandy River Rural Area Plan. As a protected stream, new residential development is prohibited within "150 feet of a stream centerline" and "new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area" are limited. The revised site plan (Exhibit H9) shows the location of the significant stream, the dwelling location, the location of the driveway from Trout creek Road to the dwelling site and the setback from the significant stream. Note that "All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year." The inventory and analysis of wildlife habitat and streams in the East of Sandy River Rural Area can be found in the East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, completed in June 1995.

IV. CONCLUSION

Based on the findings and conclusions and the substantial evidence cited or referenced herein, I conclude that the application for conditional use approval does not satisfy MCC 11.ES.2052(A)(3)(c)(ii). Accordingly, Conditional Use Permit CU 9-98 is hereby denied.

IT IS SO ORDERED, this 18th day of August 1999.


DENIECE B. WON, Hearings Officer

V. LIST OF EXHIBITS:

List A: Staff/ Applicant Exhibits:

- A1. Applicant site plan showing dwelling location on the subject parcel.
- A2. Applicant site plan showing primary and secondary fire safety zone buffers.
- A3. Forest Practices Act and Rules statement form, to be recorded by the applicant at the County Recorder's office.
- A4. Stormwater Calculations sheet (3 pages).
- A5. 1987 Base County Land Use map.
- A6. Metro parcel map of the area adjacent to the subject parcel showing tax lots and year built of existing dwellings used in the Template Dwelling test.
- A7. Portion of the 160-acre square map submitted by the applicant for the Template Dwelling test (aerial photo with superimposed tax assessor's map)
- A8. Portion of the map and Policy 21 from the East of Sandy River Rural Area Plan. The map shows that Trout Creek North Branch runs through the subject parcel.
- A9. Elevation drawings of the proposed single-family residence.
- A10. 1998 Assessment and Taxation map for Section 18, 1S, 5E.

List B: Notification Information:

- B1. "Complete application" Letter, 3 pages.
- B2. Notice of Hearing, 4 pages.

List C: Multnomah County Documents

- C1. Staff Report – April 14, 1999

List D: Documents Submitted at April 21, 1999 Public Hearing:

- H1 Revised site plan map

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