

# ANNOTATED MINUTES

Tuesday, August 27, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## LAND USE PLANNING MEETING

*Chair Beverly Stein convened the meeting at 9:30 a.m., with Vice-Chair Dan Saltzman, Commissioners Gary Hansen and Tanya Collier present, and Commissioner Sharron Kelley excused.*

P-1      CU 7-95/HV 17-95 DE NOVO HEARING, TESTIMONY LIMITED TO 20 MINUTES PER SIDE, Regarding an Appeal of the Hearings Officer Decision DENYING a Conditional Use Permit for a Single Family Dwelling Not Related to Forest Management and a Variance to Side and Rear Yard Setbacks for Property in the Commercial Forest Use Zoning District Located at 13913 NW SKYLINE BLVD., PORTLAND

**CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER SUSAN MUIR CONDUCTED A SLIDE PRESENTATION OF THE SUBJECT PROPERTY AND EXPLAINED THE CASE HISTORY AND STAFF RECOMMENDATIONS TO AFFIRM HEARINGS OFFICER DECISION TO DENY CONDITIONAL USE PERMIT FOR DWELLING, OVERTURN HEARINGS OFFICER FINDINGS RELATING TO VARIOUS CODE SECTIONS, AND AFFIRM HEARINGS OFFICER FINDINGS RELATING TO VARIOUS CODE SECTIONS. HEARINGS OFFICER PHIL GRILLO PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN DETERMINATION TO DENY APPLICATION, ADVISING CERTAIN TESTIMONY IN APPEAL WAS NOT BEFORE HIM AT THE TIME OF HIS DECISION. MR. GRILLO RESPONSE TO BOARD QUESTIONS. APPLICANT'S ATTORNEY WILLIAM COX REQUESTED MORE THAN THE 20 MINUTES ALLOTTED TIME, ADVISING HE WAS**

NOT PREPARED TO RESPOND TO THE ADDITIONAL APPEAL ISSUES. IN RESPONSE TO A REQUEST OF CHAIR STEIN, COUNTY COUNSEL SANDRA DUFFY EXPLAINED THE CODE ALLOWS THE BOARD TO DIRECT THAT A DECISION BE REVIEWED AND THAT WAS DONE PER ORDER 96-128 APPROVED BY THE BOARD JULY 25, 1996. IN RESPONSE TO MR. COX RAISING DUE PROCESS AND STANDING ISSUES, ADVISING HE DID NOT RECEIVE NOTIFICATION OF THE ADDITIONAL SCOPE OF REVIEW, MS. MUIR REPORTED APPROPRIATE NOTIFICATION WAS SENT WHICH INCLUDED THE BOARD'S NOTICE OF REVIEW. CHAIR STEIN ALLOWED MR. COX AN ADDITIONAL 5 MINUTES OF TESTIMONY. MR. COX CONDUCTED A VIDEO AND AREA MAP PRESENTATION OF THE SUBJECT PROPERTY, TESTIFIED IN SUPPORT OF REVERSING THE HEARINGS OFFICER DECISION. MR. COX SUBMITTED LETTERS FROM A GEOLOGIST AND THE FIRE DISTRICT INTO THE RECORD. IN RESPONSE TO QUESTIONS OF COMMISSIONER COLLIER, MR. COX EXPLAINED HIS CLIENT'S APPEAL IS BASED ON EXCEPTIONS TO THE HEARINGS OFFICER DECISION AND FINDINGS REGARDING LEGAL STANDARDS, ZONING REQUIREMENTS RELATED TO SITE IMPACT AND RESTRICTIVE SETBACKS. IN RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN, MR. COX EXPLAINED HIS CLIENT AGREES WITH THE HEARINGS OFFICER DECISION TO USE THE FIVE TEMPLATE TEST, ADVISING THE PROPERTY MEETS THE THREE TEMPLATE TEST, BUT CAN ALSO BE INTERPRETED TO MEET THE FIVE. CHRIS FOSTER EXPLAINED HIS STANDING TO APPEAR IN THIS CASE AND TESTIFIED IN OPPOSITION TO APPLICANT'S REQUEST AND IN SUPPORT OF AFFIRMING THE HEARINGS OFFICER DECISION TO DENY THE PERMIT. MR. FOSTER FURTHER TESTIFIED IN SUPPORT OF OVERTURNING THE HEARINGS OFFICER FINDINGS AND ADOPTING THE PLANNING STAFF RECOMMENDATIONS. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. FOSTER

EXPLAINED THE STATE LAW READS "MAY ALLOW" NOT "HAVE TO ALLOW" AND ADDED HE FEELS THE BOARD ACTED PROPERLY IN TAKING THESE ISSUES UP. ARNOLD ROCHLIN RAISED A PROCEDURAL MATTER, ADVISING ON JULY 25, 1996, IN OPEN SESSION, THE BOARD BROUGHT THE APPEAL ON ITS OWN MOTION AND DIRECTED PLANNING STAFF TO PROVIDE RECOMMENDATIONS. MR. ROCHLIN SUBMITTED A HANDOUT OUTLINING THE BASIS OF HIS ENTITLEMENT TO STATUS AS A PARTY, AND PRESENTED REBUTTAL IN RESPONSE TO TESTIMONY OF MR. COX, EXPLAINING THAT WASHINGTON COUNTY CODE REQUIREMENTS DO NOT APPLY IN THIS CASE; THE CODE ADDRESSES FARM USE ISSUES IN ADDITION TO FOREST USE IN RESPECT TO FIRE SAFETY REQUIREMENTS; AND ADVISING THAT THE 200 FOOT SETBACK WILL ALSO PROTECT THE DWELLING FROM CHEMICAL SPRAY. MR. ROCHLIN TESTIFIED HE SUPPORTS THE HEARINGS OFFICER DECISION DENYING THE CONDITIONAL USE PERMIT, AND SUPPORTS ADOPTING PLANNING STAFF RECOMMENDED FINDINGS, ADVISING HE FEELS THERE WAS SIMPLY A MISINTERPRETATION OF THE LAW, AND THAT THE STATE TEMPLATE RULE WOULD APPLY IF THE COUNTY HAD NOT ADOPTED STRICTER STANDARDS. MR. ROCHLIN DISCUSSED THE COMPREHENSIVE PLAN ISSUE, SUBMITTING A COPY OF THE APRIL 30, 1996 DLCD LETTER AND ADVISING ACKNOWLEDGEMENT OCCURRED. MICHAEL CARLSON ADVISED HE HAS STANDING AS HE ATTENDED THE PRIOR HEARING. MR. CARLSON PRESENTED ORAL AND WRITTEN TESTIMONY IN SUPPORT OF AFFIRMING THE HEARINGS OFFICER DECISION DENYING CONDITIONAL USE PERMIT, ADVISING APPLICANT CAN ONLY SHOW THREE OF THE FIVE TEMPLATE TEST, AND DISCUSSING THE IMPACT ON FARM AND FOREST ISSUES. MR. CARLSON EXPLAINED THE PROPERTY TO THE EAST IS A 15 ACRE GRASS FARM AND THE AREA SOILS ARE OF HIGH VALUE AND EXCELLENT

FOR FARM AND FOREST USE. MR. COX PRESENTED REBUTTAL TESTIMONY, EXPLAINING HIS CLIENT LIVES ON THE BOUNDARY OF MULTNOMAH AND WASHINGTON COUNTIES AND HER EAST NEIGHBOR'S PROPERTY USE IS NOT APPLICABLE, AND THAT THE TEMPLATE ISSUE IS DIRECTLY APPLICABLE. CHAIR STEIN SUGGESTED THAT THE PARTIES PREPARE WRITTEN RESPONSE ON THE LEGAL ISSUES PRIOR TO THE BOARD MAKING A DECISION IN THIS CASE. IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MS. MUIR EXPLAINED THAT PLANNING STAFF IS NOT IN AGREEMENT WITH THE HEARINGS OFFICER FINDINGS, AND WHEN THEY RECEIVED THE DECISION, STAFF RECOMMENDED THAT THE BOARD RAISE THE ISSUES ON ITS OWN MOTION AT THE TIME THE MATTER WAS SET FOR HEARING PER APPLICANT'S APPEAL. IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MS. DUFFY EXPLAINED THAT STATE LAW APPLIES UNLESS THE COUNTY APPLIES STRICTER ZONING. MS. DUFFY ADDED MR. COX CONTENDS THAT EVERY TIME THE COMPREHENSIVE PLAN IS AMENDED, THE COUNTY CODE IS WIPED OFF THE BOOKS UNTIL STATE ACKNOWLEDGEMENT, WHICH IS NOT FEASIBLE. IN RESPONSE TO BOARD QUESTIONS CONCERNING THE ROCK QUARRY NOISE ISSUE, MS. DUFFY AND MS. MUIR EXPLAINED THE WASHINGTON COUNTY OVERLAY HAS NO EFFECT ON THE MULTNOMAH COUNTY ZONING CODE. MS. DUFFY RESPONDED TO QUESTIONS OF COMMISSIONER SALTZMAN BY EXPLAINING APPLICANT HAS THE BURDEN TO PROVE THE FIVE DWELLING TEMPLATE TEST AND THAT THE EVIDENCE IN THE RECORD SO FAR DOES NOT SHOW THAT. IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, MS. MUIR EXPLAINED THE USGS MAP USED DOES NOT SHOW GRADING DONE IN THE SLOPE HAZARD AREA, BUT THE BURDEN OF PROOF IS ON THE APPLICANT TO PROVIDE THE CORRECT INFORMATION. MR. COX EXPRESSED

**FRUSTRATION WITH THE COMMENTS OF MS. MUIR AND MS. DUFFY, SUGGESTING THEY ARE NOT BEING FAIR AND IMPARTIAL. MR. COX REPORTED THAT HIS CLIENT MEETS THE CRITERIA OF STATE LAW CONCERNING THE FIVE DWELLING TEMPLATE TEST THAT "ANY OF 11 PARCELS THAT FALL WITHIN" WITH THE EXCEPTION OF ONE MISSING DWELLING, ADDING THAT THE FOUNDATION STILL REMAINS. MR. ROCHLIN PRESENTED REBUTTAL COMMENTS. CHAIR STEIN CLOSED THE HEARING BUT CONTINUED THE PROCEEDING TO ALLOW THE PARTIES TO SUBMIT WRITTEN RESPONSES TO THE LEGAL ISSUES. MS. MUIR ADVISED APPLICANT HAS WAIVED THE 120 DAY CLOCK ON THIS APPLICATION. FOLLOWING DISCUSSION, CHAIR STEIN ADVISED THAT SEPTEMBER 24, 1996 WILL BE THE CONTINUED DATE. FOLLOWING DISCUSSION WITH ALL PARTIES, IT WAS DETERMINED THAT THE PARTIES WILL PREPARE WRITTEN BRIEFS CONCERNING LEGAL INTERPRETATIONS AND FACTUAL ISSUES RAISED TODAY AND SUBMIT TO ALL PARTIES VIA THE LAND USE PLANNING OFFICE BY 4:30 PM, FRIDAY, SEPTEMBER 13, 1996; WITH WRITTEN REBUTTAL SUBMITTED TO ALL PARTIES VIA THE LAND USE PLANNING OFFICE BY 4:30 PM, WEDNESDAY, SEPTEMBER 18, 1996; AND THAT A DECISION ON THE DE NOVO HEARING BE CONTINUED TO 10:30 AM, TUESDAY, SEPTEMBER 24, 1996. IN RESPONSE TO A QUESTION OF MR. GRILLO, CHAIR STEIN ADVISED THE HEARING IS CLOSED AND HIS PRESENCE IS NOT NECESSARY ON THE 24TH. IN RESPONSE TO COMMISSIONER COLLIER EXPRESSING CONCERN WITH TESTIMONY HEARD TODAY WHICH WAS SUBMITTED OUTSIDE THE RECORD THE BOARD IS RULING ON, CHAIR STEIN EXPLAINED THE DE NOVO HEARING PROCESS ALLOWS NEW EVIDENCE.**

*There being no further business, the meeting was adjourned at 12:04*

*p.m.*

Thursday, August 29, 1996 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

## **REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:35 a.m., with Vice-Chair Dan Saltzman, Commissioners Gary Hansen and Tanya Collier present, and Commissioner Sharron Kelley excused.*

### **CONSENT CALENDAR**

***UPON MOTION OF COMMISSIONER HANSEN,  
SECONDED BY COMMISSIONER COLLIER, THE  
CONSENT CALENDAR (ITEMS C-1 THROUGH C-13)  
WAS UNANIMOUSLY APPROVED.***

### **SHERIFF'S OFFICE**

- C-1 ORDER Acknowledging Found/Unclaimed Property (List 96-2) and Authorizing Transfer for Sale or Disposal

***ORDER 96-139.***

### **DEPARTMENT OF COMMUNITY CORRECTIONS**

- C-2 Budget Modification DCC 1 Deleting 1 FTE Fiscal Specialist II, 1 FTE Fiscal Assistant, 2 FTE Office Assistant, and Adding 1 FTE Fiscal Specialist Senior, 1 FTE Fiscal Assistant Senior, and 2 FTE Office Assistant Senior Positions within the Business Services Unit
- C-3 Budget Modification DCC 2 Reclassifying 8 FTE Office Assistant II Positions to 8 FTE Office Assistant Senior Positions within 5 District Offices and 3 Community Corrections Program Units

### **DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-4 Budget Modification CFS 3 Increasing Personnel Services by \$15,067 within the Office of Community Action and Development, Anti-Poverty/Housing Stabilization Budget to Reflect the Reclassification of a Program Development Specialist to CFS Supervisor and a Technical Budget Correction

## **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-5 ORDER Authorizing Sale by Public Auction and Quitclaim of Surplus Multnomah County Property Described as Lots 12, 13, 14 and 15, Block 2, Whitwood Court, Portland, Oregon

### ***ORDER 96-140.***

- C-6 ORDER Granting a Sewer Easement to the City of Portland for Construction of the Darlington Sanitary Sewer Project

### ***ORDER 96-141.***

- C-7 ORDER Authorizing Execution of Deed D971340 Upon Complete Performance of a Contract to Weldon C. West and Cynthia D. West

### ***ORDER 96-142.***

- C-8 ORDER Authorizing Execution of Replacement Deed D971341 for Certain Tax Acquired Property to Richard Renton and Roxanne Renton

### ***ORDER 96-143.***

- C-9 ORDER Authorizing Execution of Replacement Deed D971342 for Certain Tax Acquired Property to John Andrews

### ***ORDER 96-144.***

- C-10 ORDER Authorizing Execution of Deed D971343 Upon Complete Performance of a Contract to Allen M. Sorensen

### ***ORDER 96-145.***

- C-11 ORDER Authorizing Execution of Deed D971344 Upon Complete Performance of a Contract to Larry Burright

### ***ORDER 96-146.***

- C-12 ORDER Authorizing Execution of Deed D971346 Upon Complete Performance of a Contract to Allen B. Strecker and Ken A. Hoadley

### ***ORDER 96-147.***

## **DEPARTMENT OF SUPPORT SERVICES**

- C-13      Renewal of Intergovernmental Agreement 5000157 with the Pacific Northwest Wildfire Coordinating Group for Participation in the Regional Incident Command System Shadow Team Program

## **REGULAR AGENDA**

## **PUBLIC COMMENT**

- R-1      Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

**DIANNE IVERSON INTRODUCED JASON FRANKLIN. MR. FRANKLIN SUBMITTED YOUTH ADVISORY BOARD AND COMMENTED IN SUPPORT OF THE PROJECT. CHAIR STEIN PRESENTED MR. FRANKLIN WITH A CERTIFICATE OF APPRECIATION FOR HIS CONTRIBUTIONS. JEFF McMAHON COMMENTED REGARDING BEING CONTACTED BY A MR. McDONALD WHO ADVISED COMMISSIONER HANSEN HAD REFERRED HIM, AND EXPRESSED CONCERN WITH MISREPRESENTATION. COMMISSIONER HANSEN ASSURED MR. McMAHON HE WAS MADE AWARE OF THE INCIDENT AND THAT STATEMENTS MADE OVER THE PHONE WERE MADE WITHOUT HIS CONTACT. DIANNA ROBERTS REQUESTED COPIES OF THE MULTNOMAH COUNTY HOME RULE CHARTER AND THE COMMISSIONERS' OATH OF OFFICE DOCUMENTS. BOARD CLERK FURNISHED SAME.**

## **SHERIFF'S OFFICE**

- R-2      RESOLUTION Creating a Siting Advisory Committee to Recommend a Site for a New Jail and Secure Residential Treatment Center

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-2. DAN OLDHAM EXPLANATION AND REQUEST THAT THE RESOLUTION BE AMENDED TO EXTEND THE DATE BY WHICH THE**



COMMITTEE RECOMMENDATIONS ARE DUE FROM DECEMBER 31, 1996 TO JANUARY 31, 1997. HARRIETT HEISEY TESTIMONY IN OPPOSITION TO RESOLUTION, ADVISING IT CONTRADICTS STATEMENTS MADE BY COMMISSIONER KELLEY AND SHERIFF NOELLE CONCERNING THE COMMITTEE COMPOSITION, AND RESPONSE TO QUESTION OF CHAIR STEIN. MARCUS DOBSON TESTIMONY IN OPPOSITION TO RESOLUTION, ADVISING HE WOULD LIKE TO BE ON THE COMMITTEE AND HAS CONCERNS WITH ONE OF THE PROPOSED SITES. MONICA CORY, SANDY LEAPTROTT, ED COUGHLIN, SHERY DAHLEN AND PAUL MILLER TESTIMONY IN OPPOSITION TO PROPOSED SITING AND COMMITTEE REPRESENTATION. IN RESPONSE TO CONCERNS OF MR. COUGHLIN, CHAIR STEIN ADVISED COMMISSIONER KELLEY HAS BEEN RECOVERING FROM SERIOUS SURGERY THE LAST TWO WEEKS. MR. OLDHAM RESPONDED TO TESTIMONY, ADVISING THEY ARE TRYING TO HONOR COMMITMENT, WANT CITIZEN REPRESENTATION FROM EACH PROPOSED SITE, AND ADVISED THERE WILL BE MANY OPPORTUNITIES FOR CITIZEN INPUT AND INVOLVEMENT IN THE SITING AND SUBSEQUENT LAND USE PROCESSES. COMMISSIONER SALTZMAN MOVED, SECONDED BY COMMISSIONER COLLIER, APPROVAL OF AN AMENDMENT TO THE RESOLUTION CHANGING THE NUMBER OF CITIZEN COMMITTEE MEMBERS FROM 7 TO 8, AND THE NUMBER OF AT LARGE COMMITTEE MEMBERS FROM 8 TO 7. MOTION UNANIMOUSLY APPROVED. COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, APPROVAL OF AN AMENDMENT TO THE RESOLUTION, CHANGING THE COMMITTEE RECOMMENDATION DEADLINE FROM DECEMBER 31, 1996 TO JANUARY 31, 1997. AMENDMENT UNANIMOUSLY APPROVED. IN RESPONSE TO A QUESTION OF COMMISSIONER HANSEN, MR. OLDHAM EXPLAINED THEY INITIALLY LOOKED AT JUST THREE SITES, BUT AFTER GOING TO THE

**NEIGHBORHOOD ASSOCIATION AND GETTING UNFAVORABLE INPUT, THEY CHANGED THEIR MINDS AND ARE NOW LOOKING FOR SITES COUNTY-WIDE. CHAIR STEIN COMMENDED THE EFFORTS OF THE WILKES COMMUNITY AND ADVISED SHE WILL SUPPORT THE RESOLUTION AS AMENDED BECAUSE SHE FEELS THERE WILL NOW BE ADEQUATE CITIZEN REPRESENTATION. COMMISSIONER KELLEY'S STAFF ASSISTANT CAROLYN MARKS BAX APOLOGIZED TO CITIZENS FOR NOT GETTING BACK TO THE CITIZENS ATTENDING THE WILKES MEETING YET, ADVISING THAT ALICE BLATT HAS PROVIDED THEM WITH THE NAMES AND ADDRESSES OF THOSE ATTENDING THE MEETING AND RESPONSES WILL BE SENT IN THE NEAR FUTURE. RESOLUTION 96-148 UNANIMOUSLY APPROVED, AS AMENDED.**

- R-3 First Reading and Possible Adoption of an ORDINANCE to Amend Multnomah County Code Chapter 7.40, to Provide for Enforcement Measures Taken In and Approaching Emergency Areas, and Declaring an Emergency

**ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF FIRST READING AND ADOPTION. KEVIN FERMENICK EXPLANATION AND RECOMMENDATIONS IN SUPPORT. NO ONE WISHED TO TESTIFY. ORDINANCE 866 UNANIMOUSLY APPROVED. COMMISSIONER SALTZMAN COMMENDED KEVIN AND THE SHERIFF FOR THEIR WORK WITH THE SAUVIE ISLAND RESIDENTS AND SAFETY ACTION TEAM.**

#### **NON-DEPARTMENTAL**

- R-4 PROCLAMATION Proclaiming September 2-8, 1996 as UNION LABEL WEEK in Multnomah County, Oregon

**COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4 CHAIR STEIN EXPLANATION.**

**PROCLAMATION READ. PROCLAMATION 96-149  
UNANIMOUSLY APPROVED.**

- R-5 RESOLUTION Adopting a Rural Action Plan and Recommending the Plan be Submitted to the Oregon Economic Development Commission for Consideration Under the Rural Investment Fund Program

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-5. JOHN HALL OF PORTLAND DEVELOPMENT COMMISSION EXPLANATION. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT. RESOLUTION 96-150 UNANIMOUSLY APPROVED.**

- R-6 RESOLUTION Supporting Portland State University and Urging that the Metropolitan Region be Active Participants in any Restructuring Planning Process that Affects Portland State University's Comprehensive Programs and its Capacity to Serve the Metropolitan Region and the State

**COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-6. RESOLUTION READ. COMMISSIONER COLLIER EXPLANATION AND COMMENTS IN SUPPORT. JOAN JOHNSON, MAIDA KELLEY FOR DON WILLNER, JOE ZELAYETA, LINDA MACPHERSON, TOM OWEN AND DAVID WEDGE TESTIMONY IN SUPPORT. COMMISSIONER SALTZMAN COMMENDED COMMISSIONER COLLIER FOR BRINGING RESOLUTION FORWARD, CAUTIONED AGAINST TURF WARS AND URGED FRESH THINKING FOR MUTUALLY ACCEPTABLE SOLUTIONS. CHAIR STEIN, COMMISSIONER HANSEN AND COMMISSIONER COLLIER COMMENTS IN SUPPORT OF RESOLUTION, PSU PARTNERSHIPS AND COOPERATIVE EFFORTS. RESOLUTION 96-151 UNANIMOUSLY APPROVED.**

- R-7 RESOLUTION Delineating Goals and Composition of School Service Alignment Task Force

**COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL**

**OF R-7. DIANNE IVERSON AND CHAIR STEIN EXPLANATION. CHAIR STEIN SUGGESTED WAITING TO CONVENE THE TASK FORCE UNTIL AFTER THE NOVEMBER ELECTION CONCERNING MEASURE 47, AND THAT SHE AND COMMISSIONER SALTZMAN PARTICIPATE ON THE TASK FORCE. BOARD DISCUSSION IN RESPONSE TO COMMISSIONER SALTZMAN ADVISING HE WANTS THE TASK FORCE IMPLEMENTED AND STAFFED USING ONLY EXISTING BUDGET FUNDS AND IN HOUSE STAFFING. RESOLUTION 96-152 UNANIMOUSLY APPROVED.**

#### **DEPARTMENT OF SUPPORT SERVICES**

**R-8            RESOLUTION Supporting Multnomah County Commitment to Purchase Products Made from Post-Consumer Recycled Material**

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-8. FRANNA HATHAWAY EXPLANATION. LAURA ETHERTON OF OSPIRG TESTIMONY IN SUPPORT OF RESOLUTION AND RECYCLING EFFORTS. IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, MS. ETHERTON EXPLAINED DEFINITION OF POST-CONSUMER WASTE. RESOLUTION 96-153 UNANIMOUSLY APPROVED.**

#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

**R-9            RESOLUTION in the Matter of County Acquisition of Certain Property for Construction of the North Portland Health Clinic**

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-9. BOB OBERST EXPLANATION. LARRY ANDERSON AND JESSICA ANDERSON TESTIMONY IN OPPOSITION TO COUNTY PURCHASING THEIR PROPERTY AT THE COUNTER OFFER PRICE, EXPRESSING CONCERN WITH COUNTY'S ABILITY TO RELOCATE THEM, THEIR TENANT, AND THEIR BUSINESS TO AN ACCEPTABLE**

**COMPARABLE SITE. IN RESPONSE TO QUESTIONS OF CHAIR STEIN, MR. OBERST EXPLAINED THE CONDEMNATION PROCEDURE, ADVISING IF OWNERS DISAGREED WITH AN INDEPENDENT APPRAISAL AS TO THE FAIR MARKET VALUE, THE COURT WOULD DETERMINE SAME, AND THE COUNTY WOULD RELOCATE OWNERS AT COUNTY EXPENSE. MR. OBERST RESPONSE TO BOARD QUESTIONS AND DISCUSSION CONCERNING ACCESS TO THE PROPERTY FOR INDEPENDENT APPRAISAL, AND COUNTY'S INABILITY TO CONDUCT A LEVEL 1 ENVIRONMENTAL STUDY WITHOUT ACCESS TO THE PROPERTY. COMMISSIONER HANSEN COMMENTS IN SUPPORT OF A MUTUALLY EQUITABLE SOLUTION TO THE MATTER. RESOLUTION 96-154 UNANIMOUSLY APPROVED.**

- R-10 ORDER Authorizing Execution of Purchase and Sale Agreement with Carol A. Hawk for County Acquisition of Real Property for Construction of the North Portland Health Clinic

**COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-10. ORDER 96-155 UNANIMOUSLY APPROVED.**

- R-11 ORDER Authorizing Execution of Purchase and Sale Agreement with Charles W. Edwards for County Acquisition of Real Property for Construction of the North Portland Health Clinic

**COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-11. ORDER 96-156 UNANIMOUSLY APPROVED.**

- R-12 ORDER Authorizing Execution of Purchase and Sale Agreement with RKW Investments (Rod Fisher, Ken Fisher and Wayne Plaster) for County Acquisition of Real Property for Construction of the North Portland Health Clinic

**COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-12. ORDER 96-157**

**UNANIMOUSLY APPROVED. COMMISSIONER HANSEN COMMENTS IN SUPPORT OF R-9 THROUGH R-12, ADVISING ACQUISITION OF THE PROPERTIES WILL SERVE THE GREATER COMMON GOOD.**

**DEPARTMENT OF AGING SERVICES**

**R-13 PUBLIC HEARING and Consideration of an ORDER Regarding the Multnomah County Aging Services Department, Adult Care Home Program Administrative Rules for Licensure of Adult Care Homes Filed June 28, 1996**

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-13. JEAN DeMASTER EXPLANATION AND COMMENTS IN SUPPORT OF MORE STRINGENT STANDARDS FOR THE PROTECTION OF FRAIL AND ELDERLY ADULT CARE HOME RESIDENTS. FRANCES JOHNSON TESTIMONY IN SUPPORT ON BEHALF OF PMCoA. LAURIE SITTON TESTIMONY IN SUPPORT ON BEHALF OF MHRC. PROVIDERS JOSEPHINE HOLMES, DARLEAN MATHEWS AND DIANNE ROBERTS TESTIMONY IN OPPOSITION. FORMER PROVIDER DAN SURINA TESTIMONY IN SUPPORT. JOAN SCHNELL OF OREGON FAIR SHARE TESTIMONY IN SUPPORT AND REQUEST FOR FIVE RATHER THAN ONE YEAR REVOCATION PERIOD. JEAN MITCHELL, NARCISA PIMENTEL, JIM DUNCAN AND VIRGINIA SEITZ TESTIMONY IN SUPPORT. MS. DeMASTER RESPONSE TO BOARD QUESTIONS AND DISCUSSION CONCERNING REVOCATION PERIOD, REMEDIES TO FRIVOLOUS OR UNSUBSTANTIATED CHARGES, NEED FOR LEGISLATIVE CHANGES AND EFFECTIVENESS OF CRIMINAL RECORD BACKGROUND CHECKS. MS. DeMASTER TO CONDUCT AND REPORT BACK TO THE BOARD THE RESULTS OF A SIX MONTH AND ONE YEAR ASSESSMENT ON APPEALS TO THE COURT AND A ONE YEAR REVOCATION STUDY. COMMISSIONER SALTZMAN COMMENTS IN APPRECIATION OF STAFF, PMCoA AND**

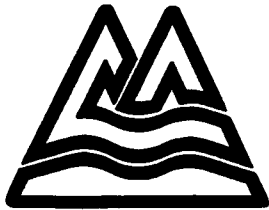
**PROVIDERS. ORDER 96-158 UNANIMOUSLY  
APPROVED.**

*There being no further business, the meeting was adjourned at 12:10  
p.m.*

*OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON*

*Deborah L. Bogstad*

*Deborah L. Bogstad*



## MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 SW FIFTH AVENUE  
PORTLAND, OREGON 97204  
CLERK'S OFFICE • 248-3277 • 248-5222  
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR	•248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	•248-5219
TANYA COLLIER •	DISTRICT 3	•248-5217
SHARRON KELLEY •	DISTRICT 4	•248-5213

# AGENDA

## MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

**AUGUST 26, 1996 - AUGUST 30, 1996**

*Tuesday, August 27, 1996 - 9:30 AM - Land Use Planning ..... Page 2*

*Thursday, August 29, 1996 - 9:30 AM - Regular Meeting..... Page 2*

*Thursday Meetings of the Multnomah County Board of Commissioners  
are \*cablecast\* live and taped and can be seen by Cable subscribers in Multnomah  
County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

**INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD  
CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-  
5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.**

AN EQUAL OPPORTUNITY EMPLOYER



*Tuesday, August 27, 1996 - 9:30 AM  
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**LAND USE PLANNING MEETING**

- P-1 CU 7-95/HV 17-95 DE NOVO HEARING, TESTIMONY LIMITED TO 20 MINUTES PER SIDE, Regarding an Appeal of the Hearings Officer Decision DENYING a Conditional Use Permit for a Single Family Dwelling Not Related to Forest Management and a Variance to Side and Rear Yard Setbacks for Property in the Commercial Forest Use Zoning District Located at 13913 NW SKYLINE BLVD., PORTLAND*
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*Thursday, August 29, 1996 - 9:30 AM  
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**REGULAR MEETING**

**CONSENT CALENDAR**

**SHERIFF'S OFFICE**

- C-1 ORDER Acknowledging Found/Unclaimed Property (List 96-2) and Authorizing Transfer for Sale or Disposal*

**DEPARTMENT OF COMMUNITY CORRECTIONS**

- C-2 Budget Modification DCC 1 Deleting 1 FTE Fiscal Specialist II, 1 FTE Fiscal Assistant, 2 FTE Office Assistant, and Adding 1 FTE Fiscal Specialist Senior, 1 FTE Fiscal Assistant Senior, and 2 FTE Office Assistant Senior Positions within the Business Services Unit*
- C-3 Budget Modification DCC 2 Reclassifying 8 FTE Office Assistant II Positions to 8 FTE Office Assistant Senior Positions within 5 District Offices and 3 Community Corrections Program Units*

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- C-4 Budget Modification CFS 3 Increasing Personnel Services by \$15,067 within the Office of Community Action and Development, Anti-Poverty/Housing Stabilization Budget to Reflect the Reclassification of a*

*Program Development Specialist to CFS Supervisor and a Technical  
Budget Correction*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-5      *ORDER Authorizing Sale by Public Auction and Quitclaim of Surplus Multnomah County Property Described as Lots 12, 13, 14 and 15, Block 2, Whitwood Court, Portland, Oregon*
- C-6      *ORDER Granting a Sewer Easement to the City of Portland for Construction of the Darlington Sanitary Sewer Project*
- C-7      *ORDER Authorizing Execution of Deed D971340 Upon Complete Performance of a Contract to Weldon C. West and Cynthia D. West*
- C-8      *ORDER Authorizing Execution of Replacement Deed D971341 for Certain Tax Acquired Property to Richard Renton and Roxanne Renton*
- C-9      *ORDER Authorizing Execution of Replacement Deed D971342 for Certain Tax Acquired Property to John Andrews*
- C-10     *ORDER Authorizing Execution of Deed D971343 Upon Complete Performance of a Contract to Allen M. Sorensen*
- C-11     *ORDER Authorizing Execution of Deed D971344 Upon Complete Performance of a Contract to Larry Burrigh*
- C-12     *ORDER Authorizing Execution of Deed D971346 Upon Complete Performance of a Contract to Allen B. Strecker and Ken A. Hoadley*

**DEPARTMENT OF SUPPORT SERVICES**

- C-13      *Renewal of Intergovernmental Agreement 5000157 with the Pacific Northwest Wildfire Coordinating Group for Participation in the Regional Incident Command System Shadow Team Program*

**REGULAR AGENDA**

**PUBLIC COMMENT**

- R-1      *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

## **SHERIFF'S OFFICE**

- R-2      *RESOLUTION Creating a Siting Advisory Committee to Recommend a Site for a New Jail and Secure Residential Treatment Center*
- R-3      *First Reading and Possible Adoption of an ORDINANCE to Amend Multnomah County Code Chapter 7.40, to Provide for Enforcement Measures Taken In and Approaching Emergency Areas, and Declaring an Emergency*

## **NON-DEPARTMENTAL**

- R-4      *PROCLAMATION Proclaiming September 2-8, 1996 as UNION LABEL WEEK in Multnomah County, Oregon*
- R-5      *RESOLUTION Adopting a Rural Action Plan and Recommending the Plan be Submitted to the Oregon Economic Development Commission for Consideration Under the Rural Investment Fund Program*
- R-6      *RESOLUTION Supporting Portland State University and Urging that the Metropolitan Region be Active Participants in any Restructuring Planning Process that Affects Portland State University's Comprehensive Programs and its Capacity to Serve the Metropolitan Region and the State*
- R-7      *RESOLUTION Delineating Goals and Composition of School Service Alignment Task Force*

## **DEPARTMENT OF SUPPORT SERVICES**

- R-8      *RESOLUTION Supporting Multnomah County Commitment to Purchase Products Made from Post-Consumer Recycled Material*

## **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-9      *RESOLUTION in the Matter of County Acquisition of Certain Property for Construction of the North Portland Health Clinic*
- R-10      *ORDER Authorizing Execution of Purchase and Sale Agreement with Carol A. Hawk for County Acquisition of Real Property for Construction of the North Portland Health Clinic*

- R-11      *ORDER Authorizing Execution of Purchase and Sale Agreement with Charles W. Edwards for County Acquisition of Real Property for Construction of the North Portland Health Clinic*
- R-12      *ORDER Authorizing Execution of Purchase and Sale Agreement with RKW Investments (Rod Fisher, Ken Fisher and Wayne Plaster) for County Acquisition of Real Property for Construction of the North Portland Health Clinic*

**DEPARTMENT OF AGING SERVICES**

- R-13      *PUBLIC HEARING and Consideration of an ORDER Regarding the Multnomah County Aging Services Department, Adult Care Home Program Administrative Rules for Licensure of Adult Care Homes Filed June 28, 1996*

SHARRON KELLEY  
Multnomah County Commissioner  
District 4



Portland Building  
1120 S.W. Fifth Avenue, Suite 1500  
Portland, Oregon 97204  
(503) 248-5213  
E-Mail: sharron.e.KELLEY@co.multnomah.or.us

## MEMORANDUM

TO: Clerk of the Board  
Board of County Commissioners

FROM: Andrew Mooney, Commissioner Kelley's Office

RE: Time off for Commissioner Kelley

DATE: August 1, 1996

---

This memorandum is to inform you that Commissioner Kelley will be out starting August 14th, for approximately 1-2 weeks.

SEK/atm

BOARD OF  
COUNTY COMMISSIONERS  
96 AUG - 1 PM 2:42  
MULTNOMAH COUNTY  
OREGON

#1

**PLEASE PRINT LEGIBLY!**

MEETING DATE 8/27/96

NAME

Chris Foster

ADDRESS

15400 NW McNamee Rd.

STREET

Portland OR

97231

CITY

ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. \_\_\_\_\_

SUPPORT \_\_\_\_\_

OPPOSE

Deny

SUBMIT TO BOARD CLERK

#2

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 8/27/96

**NAME**

Arnold Racklin

**ADDRESS**

PO Box 83645

**STREET**

Portland

97283

**CITY**

**ZIP**

**I WISH TO SPEAK ON AGENDA ITEM NO.**

P-1

**SUPPORT**

decision/denial

**OPPOSE**

appeal

**SUBMIT TO BOARD CLERK**

#3

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 8/27/96

**NAME**

MICHAEL CARLSON

**ADDRESS**

Box 15281

**STREET**

PORTLAND OR 97203

**CITY**

**ZIP**

**I WISH TO SPEAK ON AGENDA ITEM NO.** \_\_\_\_\_

**SUPPORT** \_\_\_\_\_

**OPPOSE** \_\_\_\_\_

**SUBMIT TO BOARD CLERK**

Deny appeal



Meeting Date: AUG 27 1996  
Agenda No: P-1  
Est. Start Time: 9:30

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

**SUBJECT:** DeNovo Hearing in the Matter of an Appeal of Hearings Officer's decision on  
CU 7-95 & HV 17-95.

**BOARD BRIEFING**      Date Requested:  
                                 Amt. of Time Needed:  
                                 Requested By:

**REGULAR MEETING**      Date Requested:      August 27, 1996  
                                 Amt. of Time Needed:      1 hour

**DEPARTMENT:**      DES      **DIVISION:** Transportation & Land Use Planning  
**CONTACT:**      Susan Muir      **TELEPHONE:** 248-3043  
                                 **BLDG/ROOM:** 412 / 109

**PERSON(S) MAKING PRESENTATION:** Susan Muir

### ACTION REQUESTED

☐ Informational Only      ☐ Policy Direction      ☐ Approval      ☒ Other

### SUGGESTED AGENDA TITLE

DeNovo Hearing in the Matter of an Appeal of Hearings Officer's regarding a Conditional Use  
approval for a dwelling not related to forest management in the Commercial Forest Use zoning  
district.

### SIGNATURES REQUIRED

**Elected Official:** \_\_\_\_\_

or

**Department Manager:** RB Larry F. Nicholas / mo

96 AUG 22 AM 11:45  
CLATSOP COUNTY  
BOARD OF  
COUNTY COMMISSIONERS



BOARD HEARING OF AUGUST 27, 1996

TIME 9:30am

CASE NAME Kim Evans Dwelling Not Related to Forest Mgmt. NUMBER

CU 7-95/ HV 17-95

1. Appellant Name/Address

Kim Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

2. Action Requested by Applicant

Appellant appeals Hearings Officer Decision.

3. Planning Staff Recommendation

Deny appellant's request to reverse Hearings Officer decision and overturn Hearings Officer findings of approval on MCC 11.15.2052(A)(4), 11.15.2074(A)(2), 11.15.2074(A)(3), 11.15.2074(A)(5), 11.15.2074(D), 11.15.8505(A)(1), 11.15.8505(A)(3), 11.15.8505(A)(4), Goal 5 and the West Hills Reconciliation Report and Comprehensive Plan Policy 14.

4. Hearings Officer Decision:

Denial based on three criteria relating to location, length of road and variance criteria.

5. If recommendation and decision are different, why?

See attached Staff Report and Hearings Officer decision.

**ISSUES**  
(who raised them?)

6. The appellant raised the following issues.

- Whether the applicant has established a basis for variance(s) that allow placement of the intended single family dwelling not related to forest management at the homesite chosen by applicant rather than the one preferred by the hearings office (MCC 11.15.2074(A)(1), 11.15.2074(A)(4) and 11.15.8505(A)(2).
- Whether the Hearings Officer was correct in allowing the Department of Land Conservation and Development representative to participate in the hearing.

The staff, under the Board Order of Review, raised the issues listed under the staff recommendation.

7. Do any of these issues have policy implications? Explain.

Yes, the Hearings Officer has ruled that the applicable template test is found in ORS 660-06-027 rather than the more restrictive template test found in the Multnomah County Code. The Hearings Officer argues

**ACTION REQUESTED OF BOARD**

- ☐ Affirm Plan.Com./Hear.Of
- ☐ Hearing/Rehearing
  - ☐ Scope of Review
    - ☐ On the record
    - ☒ De Novo
    - ☐ New Information allowed

that until Multnomah County receives acknowledgement by the State for its implementing regulations pursuant to the amended Goal 4 administrative rules, the state administrative rules shall apply directly to this application.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

In the Matter of Reviewing the Hearings  
Officer's Decision Denying CU 7-95/HV 17-95  
Pursuant to MCC 11.15.8260 and .8265

ORDER  
96-128

It is hereby Ordered that the decision of the Hearings Officer in CU 7-95/HV 17-95 be reviewed by the Board pursuant to its authority under MCC 11.15.8260 and .8265. This review is de novo, set for August 27, 1996 at 9:30 a.m., with each party allocated 20 minutes.

Approved this 25th day of July, 1996.



MULTNOMAH COUNTY, OREGON

By Beverly Stein  
Beverly Stein  
Multnomah County Chair

REVIEWED:  
LAURENCE KRESSEL, COUNTY COUNSEL  
for MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy  
Sandra N. Duffy, Chief Assistant Counsel



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE MORRISON STREET  
PORTLAND, OREGON 97214 (503) 248-3043

TOTAL 500.00  
0000-00 7/12/96  
4529 PH 12:12PM

## NOTICE OF REVIEW

1. Name: Evans, Kim

2. Address: 7555 NW 214th Pl., Hillsboro, Oregon

3. Telephone: (        )        -       

4. If serving as a representative of other persons, list their names and addresses:

Mrs. Evans is represented by:

William C. Cox, Attorney at Law

0244 S.W. California Street

Portland, Oregon 97219

(503) 246-5499

ALL CORRESPONDENCE SHOULD BE THROUGH MR. Cox

5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?

Denial of conditional use permit and major variance request.

6. The decision was announced by the Planning Commission on 7/3, 1996

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

I am the applicant, and thus a person entitled to  
notice under MCC .8220(C). I also made an appearance  
of record before the approval authority.

8. Grounds for Review of Decision (use additional sheet if necessary):

See Attached

9. Scope of Review (Check One):

- (a) ☒ On the Record
- (b) ☐ On the Record plus Additional Testimony and Evidence
- (c) ☐ De Novo (i.e., Full Rehearing)

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

Signed: 

Date: 7/12/96

For Staff Use Only

Fee:

Notice of Review = \$500.00

Transcription Fee:

Length of Hearing \_\_\_\_\_ x \$3.50/minute = \$ \_\_\_\_\_

Total Fee = \$ \_\_\_\_\_

Received by: \_\_\_\_\_

Date: \_\_\_\_\_

Case No. \_\_\_\_\_

GROUNDS FOR REVERSAL OF DECISION

MULTNOMAH COUNTY HEARINGS OFFICER DECISION

CU 7-95 & HV 17-95

This appeal is limited to the issues of whether applicant has established a basis for variance(s) that allow placement of the intended single family dwelling not related to forest management at the homesite chosen by applicant rather than the one preferred by the hearings officer and whether hearings officer was correct in allowing the Department of Land Conservation and Development representative to participate in the hearing without being a party and without approval of all parties to the application.

Specifically this appeal deals with the Hearings Officer conclusion stated in findings related to MCC .2074(A)(1) which are located under item number 9, page 13 of the decision; MCC. 2074(A)(4) also located under item number 9 pages 14/15 of the decision; and, MCC 11.15.8505(A)(2) located on pages 20/21 of the decision. The intent of this appeal is to limit the issues on appeal to the above identified findings and Conclusion and Decision items 1, 2 and 3.

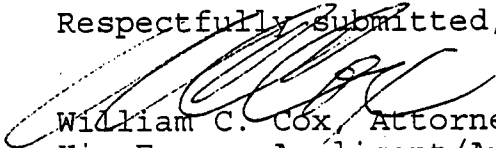
It is appellant's contention that the Hearings Officer decision should be reversed because he exceeded his jurisdiction by imposing personal rather than legal standards in his analysis. He also failed to follow procedures applicable to the matter before him in a manner that prejudiced the applicant's substantial rights by allowing input into the record by a non-party (DLCD) and did not allow direct confrontation of a DLCD conclusion which amounts to legal analysis by a non-attorney.

The hearing's officer decision improperly construed the applicable law when he based his decision on home placement without considering the impact other placements would have on the forest resource on the site and on surrounding uses. The site is zoned for forest use. The application is for a home not in conjunction with forest uses. There is substantial evidence in the record that the alternative locations considered by the hearings officer as possibly better sites would result in

substantial damage to the forest resource. The decision does not recognize those facts. The hearings officer decision concentrates of surrounding property at the expense of the subject parcel's future as forest resource.

The hearings officer's decision is not based upon substantial evidence in the record. The alternative locations were suggested by County staff but no evidence is in the record that they are superior to or even equivalent to the one chosen by the applicant. Furthermore, the hearings officer decision fails to properly consider that the access road will continue beyond any site chosen by the applicant. As the hearing officer recognized, the road used to access the home continues beyond the subject parcel of property. There is substantial and un rebutted evidence in the record that the road will exist regardless of the future use of the site for a home.

Respectfully submitted,



William C. Cox, Attorney for  
Kim Evans, Applicant/Appellant



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

Regarding a request for a Conditional Use Permit by	)	FINAL ORDER
Kim Evans for a single family dwelling not related	)	CU7-95 HV 17-95
to forest management and a Variance to side and	)	(Evans)
rear yard setbacks for property located at 13913 NW	)	
Skyline Boulevard in unincorporated Multnomah	)	
County, Oregon.	)	

**I. APPLICANT'S REQUEST**

The applicant requests a Conditional Use Permit for a single family dwelling not related to forest management on a 20-acre Lot of Record in the Commercial Forest Use (CFU) zoning district. The applicant proposes to place the dwelling approximately 50 feet from both the north and west property lines which requires a Major Variance from the 200 foot side and rear yard setback requirements in this zone. The proposed development also requires findings under Statewide Planning Goal 5 because the proposed development is located in an area designated on the Comprehensive Plan as a Primary Wildlife Habitat.

**II. HEARING AND RECORD**

A public hearing concerning this application was held on March 20, April 3 and May 2. The written record was closed on May 17, 1996.

A list of exhibits received into the record by the Hearings Officer is attached as Exhibit 1.

**III. PRELIMINARY ISSUES**

1. **Template Test**

The Hearings Officer has previously found in his Intermediate Ruling dated April 29, 1996, that since the County has not yet amended its land use regulations to implement the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules "shall be directly applicable to the local government's land use decision." Therefore, the applicable template test is found in OAR 660-06-027.

**RECEIVED**

JUL 1 1996

Multnomah County  
Zoning Division

Since the Hearings Officer issued his intermediate ruling, the Oregon Department of Land Conservation and Development (DLCD) through Mr. James W. Johnson, Farm/Forest Coordinator and Sandra Duffy, Multnomah County Counsel, have argued that ORS 197.646(3) does not preclude the County from applying more restrictive county standards in the interim, before the local code has been amended to comply with the 1994 Goal 4 requirements. DLCD cites to Dilworth v. Clackamas County, \_\_\_ Or. LUBA \_\_\_ (LUBA No. 95-115, January 4, 1996). County Counsel cites to Kola Tepee v. Marion County, 17 Or. LUBA 910 (1989); Spathas v. Portland, 28 Or. LUBA 351 (1994); Brewster v. Keizer, 27 Or. LUBA 432 (1994); and Zorn v. Marion County, 19 Or. LUBA 54 (1985).

Although the Dilworth case was factually similar to this one, in Dilworth, LUBA was not called upon to consider the effects of ORS 197.646(3). Therefore, Dilworth is of no value here hence the central issue here is the effect of ORS 197.646(3). Furthermore, neither Koala Tepee, Spathas, Brewster or Zorn deal directly with the impact and meaning of ORS 197.646(3). Therefore, they are of little value to the issue at hand.

Unlike the situation with ORS 315.283 which is a standard that courts have interpreted to be only a minimum standard that must be applied to acknowledge plans for land zoned EFU, ORS 197.646(3) is a statute that applies certain legislative statutes and regulations to local decisions directly before post acknowledgement amendments have been incorporated into the local government's comprehensive plan and land use regulations.

In essence, the County and DLCD argue that in the interim, after plans and zoning codes are acknowledged, but before post-acknowledgement Goal amendments are incorporated into local land use regulations, local governments are free to follow more restrictive ordinances than the amended goals and administrative regulations that will eventually need to be complied with. In short, they argue that where local post acknowledgement ordinances have not been acknowledged by LCDL, but are more restrictive than the new goal amendments and rule changes that the local government will be required to implement, such local ordinances should not be suspended in favor of less restrictive state law provisions, despite the requirements of ORS 197.646(3).

While the Hearings Officer acknowledges the policy grounds on which the County and DLCD base their arguments, the Hearings Officer has reviewed the cited cases and finds that there is nothing in those cases, and nothing in the record before the Hearings Officer which demonstrates that the legislature intended that the requirements of ORS 197.646(3) somehow do not apply when a local government has already adopted a more restrictive but unacknowledged land use ordinance.

The cases cited by the County involve the application of statewide goals and administrative rules after acknowledgement of local implementing regulations has occurred. None of the cited cases addressed the situation presented here where the County has adopted more restrictive local regulations before post-acknowledgment. In such cases,

ORS 197.646(3) specifically provides that the new or amended goal, rule or statute "shall be directly applicable to the local government's land use decision." The statute is unambiguous and leaves no room for interpretation. Furthermore, even if the statute were ambiguous, none of the parties have cited to any legislative history that would shed light on relevant legislative intent. Therefore, the Hearings Officer finds that the template test set forth in OAR 660-06-027 applies directly to this application because the County has not yet obtained acknowledgement for its implementing regulations pursuant to the amended Goal 4 administrative rules.

2. Interpretation of the Term "Centered on the Center of the Subject Tract" for Purposes of Applying the Template Test in OAR 660-06-027

The Hearings Officer finds that although the so called "center of gravity" test was used by the County as a method for determining the center of the template for purposes of the County ordinance, the Hearings Officer finds that the same method is also a reasonable interpretation of the "center of the center" test for purposes of OAR 660-06-027.

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, needs further support to staff's use of the "center of gravity" methodology for determining the "center" of irregularly shaped parcels.

Based upon the "center of gravity" established by staff and accepted by the Hearings Officer, there is uncontroverted evidence in the record indicating that three dwellings existed on January 1, 1993 within a 160 acre grid (template) centered on the center of the subject parcel. Therefore, the applicant has satisfied the applicable template test as set forth in OAR 660-06-027.

3. Goal 5 Application

The Hearings Officer agrees with the legal analysis of the applicant with regard to whether or not Ordinance 832 (amending the County's SEC zone) codified at MCC 11.15.6426, are the relevant approval standards in this case, or whether the requirements of Goal 5 and its administrative rules apply directly to this application.

The Hearings Officer finds that according to Ordinance 832, the County amended Ordinance 801, which included MCC 11.15.6426, establishing the SEC overlay district and SEC-h (wildlife habitat). Ordinance 801 implemented the previously adopted Ordinance 797 which adopted the "West Hills Reconciliation Report." In February of 1995, LCDC issued a

decision declaring the county Ordinance 797 and 801, et al. deficient as not meeting the requirements of Goal 5. In response, Multnomah County passed Ordinance 832, and Section 11.15.6400, et seq. of the code. As of approximately January 3, 1996 (see Exhibit X) when this application was deemed complete, the County did not have an acknowledged SEC overlay implementing regulation pursuant to Goal 5 on this site. Therefore, under ORS 197.625(3)(b), Goal 5 applies directly to this land use decision.

Based upon the findings prepared by the applicant which are adopted and incorporated by reference here, the Hearings Officer finds that the applicant can comply with the requirements of Goal 5.

4. Motion to Strike DLCD Letter

The applicant's attorney, William Cox, has objected to an April 30, 1996 letter from James W. Johnson, Farm/Forest Coordinator for DLCD. Mr. Cox has raised the following arguments in support of his motion to strike:

A. "Participation by DLCD not in accordance with statute."

Mr. Cox has cited ORS 197.090 for the proposition that only the "director" has authority to participate in a local land use proceeding. Therefore, since Mr. Johnson is not the "director" of DLCD, Mr. Cox argues that DLCD's participation is not accordance with the statute.

The Hearings Officer rejects Mr. Cox's proposition. ORS 197.090 does not say that only the director of DLCD can participate in a local land use proceeding. Rather it provides a methodology by which the director may participate. Furthermore, nothing in ORS 197.090 requires the Hearings Officer to exclude evidence submitted by someone other than DLCD's director even if such evidence from DLCD fails to follow the process called for in the statute.

B. "Failure to comply with local government requirements, MCC 11.15.8225(A) regarding record submissions."

In this argument, Mr. Cox asserts that only "parties" have the right to make an appearance of record and that Mr. Johnson, and DLCD have not qualified as a party in accordance with .8225(A).

The Hearings Officer finds that Mr. Cox is correct that only "parties" have the right to make an appearance of record according to the Multnomah County Code. However, the Hearings Officer finds that Mr. Johnson, acting in his role as a Farm/Forest Coordinator for DLCD, was presumably acting with the consent of the director of DLCD, and therefore, on behalf of DLCD and its director, and as such has the statutory duty and authority under ORS

197.090(B) to coordinate the activities of DLCD with regard to land conservation and development activities of various local governments in the state. In that regard, Mr. Johnson's letter asserts a position concerning what he believes to be the proper application of ORS 197.646(3) in this case. Because the Hearings Officer adopted a position contrary to DLCD's opinion, Mr. Johnson, on behalf of DLCD, satisfied the "adversely affected or aggrieved" test and therefore qualifies as a party under MCC .8825.

C. "Failure to comply with local government requirement, MCC 11.15.8225(B) regarding record."

Within this argument, Mr. Cox makes the following points:

1. DLCD letter was not submitted "at or prior to the hearing."

The Hearings Officer finds that Mr. Johnson's failure to assert a position at or prior to the hearing date on April 3 did not constitute a violation of .8225(B). The Hearings Officer received the letter into the record at the time it was submitted and allowed the applicant to provide additional oral and written rebuttal and testimony concerning the letter. Therefore, the evidence was received before the hearing itself was closed and the Hearings Officer finds that .8225(B) was not violated.

2. The letter fails to set forth evidence and argument either for or against the application being reviewed.

The Hearings Officer finds that Mr. Johnson's letter on behalf of DLCD provided argument contrary to the position taken by the applicant. Since the Hearings Officer tentatively adopted the position proposed by the applicant with regard to the so called "template test," DLCD's letter constitutes argument against the position taken by the applicant. Therefore this criteria is met.

3. The letter fails to show in what manner the interests of the person would be affected or aggrieved.

Because the letter is from DLCD and since that agency has a statutory duty to coordinate with local governments in relation to land conservation and development decisions, the Hearings Officer finds that the letter from DLCD contains sufficient facts indicating that the interests of DLCD would be adversely affected or aggrieved by a decision contrary to DLCD's position regarding the interpretation of ORS 197.646(3).

For the above stated reasons, the Hearings Officer rejects the applicant's motion to strike and allows the letter from DLCD to remain in the record.

## 5. Alternate Housing Locations

The subject site is a 20 acre parcel located in the CFU district. The parcel does not front on a public road, and instead takes access from a private easement and logging road that connects to NW Skyline Boulevard. The property has an unusual shape that contains slopes from approximately 7% to 40%.

Given the site's existing access limitations, size, configuration, slopes and surrounding uses, in order to locate a non-forest dwelling in the northwest corner of the site, the applicant would be required to seek variances from side yard and rear yard setbacks. Also, since the access road is in excess of 500 feet in length, the code requires finding that if such a road is longer than 500 feet, that such length is the minimum length required due to physical limitations unique to the property.

In response to these code criteria, the Hearings Officer encouraged the applicant to analyze alternative housing locations on site, so that appropriate findings could be made concerning staff's view that the proposed site was not the only acceptable building location. It should be noted that the Hearings Officer's purpose for requesting alternative dwelling location analysis was not to find the most acceptable building site, but rather to enable the Hearings Officer to make the appropriate comparative findings relevant to the approval criteria. For example, the following criteria require some level of comparative analysis:

A. An access road in excess of 500 feet is necessary due to physical limitations unique to the property and that the road is the minimum length required (see .2074(A)(4)).

B. The amount of forest land used to site the dwelling or other structure, access road and service corridor is minimized (see .2074(A)(3)).

C. The dwelling or structure is located such that it has the least impact on nearby or adjoining forest lands or agricultural lands that satisfies the minimum yard and setback requirements of .2048(C)-(G) (see .2074(A)(1)).

Based upon the above referenced criteria, all of which require some form of comparative analysis (e.g. minimum length required, minimization of forest land used, least impact on nearby forest and agricultural uses), the Hearings Officer finds that the applicant has undertaken a good faith effort to identify, analyze and compare other alternative locations for the proposed residence within the site, and in doing so, has enabled the Hearings Officer to make appropriate findings relative to other possible locations for the dwelling within the site. The applicant has identified the following other possible homesites:

1. Central Portion of the Site

This area is within the central portion of the site and is approximately one to one and one-half acres in size. This area would not require any setback variances in order to be developed. However, this area contains slopes in excess of 30% and would require significant engineering (cut, fill, retaining walls) to be developed. It would also require removal of a ten year old stand of Douglas Fir. Two potential homesites have been identified in this portion of the site.

2. Southeastern Portion of the Site

Two other alternative homesite locations have been identified here. One lies north of the roadway as the road enters the property. The other is the "meadow area" identified by staff. The "meadow area" is located between the existing road and the southern property line, in an area designated as a slope hazard area on the county's maps. However, based upon a site observation by staff, this area does not contain slopes steep enough to qualify as a slope hazard area. The evidence indicates that the "meadow area" appears to have slopes of approximately 10% -- comparable to those of the proposed homesite in the northwest portion of the parcel. Given the narrow width of the site in the "meadow area", setback variances may be required depending on the location of the dwelling.

The applicant has argued that the requested homesite location in the northwest corner of the site is the most viable and only feasible location for a dwelling on the property. Although the Hearings Officer tends to agree with the applicant that the proposed homesite in the northwest area is probably the most viable and feasible location from a development standpoint, "viability" and "feasibility" are not the relevant approval criteria. The relevant criteria are analyzed below relative to the facts in the record.

#### IV. CRITERIA AND FINDINGS

1. Conditional Use Permit

A. MCC 11.15.2052(A): A dwelling not related to forest management may be allowed subject to the following:

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

## Findings

MCC .2062(A)(2) requires (a) a deed creating the parcel be recorded prior to 1990, and (b) that the parcel satisfy the applicable laws when created, (c) that the parcel does not meet the minimum lot size standards (80 acres), and (d) that the parcel is not contiguous to other substandard lots under the same ownership.

The evidence indicates that a warranty deed dated October 7, 1996 describing the site was recorded with the Multnomah Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit 83). The subject parcel is 20 acres in size and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is currently less than 80 acres in size and thereby does not meet the current minimum lot size requirements in the CFU zone. The applicant does not own contiguous property either in the CFU or EFU zoning districts. Therefore, this criteria is satisfied.

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

## Findings

The subject property is not located adjacent to any county maintained roads, therefore the 200 foot setback standard applies. Due to the unusual configuration of this lot, limitations of the terrain, and surrounding uses, the applicant has chosen to request a variance to the standard. Therefore, this criteria can be met so long as a variance to a 200 foot setback standard is met.

- (3) The lots shall meet the following standards: [Note: Pursuant to ORS 197.646(3), since revisions to OAR 660-06, adopted by the State on February 18, 1994, have not yet been acknowledged by the county, the OAR requirements concerning lot standards requires that this amended goal and administrative rule apply directly to the local government's land use decision. Therefore, the following lot standards in OAR 660-06-027(1)(d)(c) apply]:

OAR 660-06-027(1)(d): In western Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:



**(C) capable of producing more than 85 cubic feet per acre per year of wood fiber if**

**(i) all or part of at least 11 other parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and**

**(ii) at least three dwellings existed on January 1, 1993 on the other lots or parcels.**

### Findings

The template prepared by the Multnomah County staff (Exhibit C) demonstrates compliance with OAR 660-06-027(1)(d)(c). All or part of at least 11 other parcels that existed on January 1, 1993 are within the 160 acre square. These parcels include Parcels 2 and 3 of Plat 1990-43, Tax Lots (14), (24), and (36) on Map 2 and 2W-25, Tax Lots (5), (10) and (38) on Map 2 and 2W-26, Tax Lots 100, 101 and 200 on Map 2 and 2-35 in Washington County, Tax Lots (22 and 32 on Map 2 and 2W-36.) Furthermore, at least three dwellings existed on January 1, 1993 on the other lots or parcels within the 160 acre square. These dwellings are located on Tax Lot (24 on Map 2 and 2W-25, Tax Lots 101 and 200 on Map 2 and 2-35 in Washington County, and Tax Lots (22) and (32) on Map 2 and 2W-36.

- (4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands**

### Findings

The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted in Exhibit A5. Numerous dwellings exist in the surrounding area on parcels of this size or smaller.

There is very little commercial forestry or agricultural use in this section of Skyline Boulevard. While the subject property is in the CFU district, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep demography, lack of irrigation, high elevation, cold winds, occasionally heavy snow cover, and the threat of soil erosion from intensive farming and marginally steep ground. What little farming does exist is mostly in low yield hay production or pasture. Large parcels in the EFU district are used for hay production, pasture and forest, however, they are not producing commercial level yields.

Properties employed in hay production and pasture are located in all directions from the subject site distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc., including plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Pasture lands, except for unmanaged forage areas (cleared land), receive much of the same treatment as land used for field crops and similar farm equipment is used (tractors, plows, disc, etc.)

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south.

The applicant has selected a dwelling location in the northwest corner of the site. As discussed in more detail below, the Hearings Officer finds that the location of the dwelling in this portion of the site will not force a significant change in or significantly increase the costs of or impede accepted forestry or farming practices on surrounding forest or agricultural land, because although a secondary fire break needs to be located in forest land to the northwest, this easement change poses only a minor change in accepted forestry practices on the accepted forest practices on the applicant's site. Evidence clearly indicates that whatever minor change might be imposed by this secondary fire break, the result would not be significant either in terms of cost or in terms of accepted forestry practices. No other changes are evident based on the evidence in the record.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands developed to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities in the area. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and

Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

Summary of Farm/Forest Activities on Adjacent Properties

Tax Map	Tax Lot	Acreage	Owner	Use
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

Key

D = Dwelling, F = Forest/Timber, H = Hay

- (5) 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 acknowledgement of the Comprehensive Plan in 1980, will be acceptable

Findings

According to Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area as being located within a big game winter habitat area. Therefore, this criteria is met.

- (6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection

Findings

The parcel is located within the boundaries of the Tualatin Valley Fire and Rescue and Beaverton Fire Department boundary. Therefore, this criteria is met.

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

Findings

The parcel is served by an access easement for ingress-egress from Skyline Boulevard as noted in Exhibit A2. Therefore, this criteria is met.

- (8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral

Findings

According to the Multnomah County Assessment records, the parcel is not receiving farm or forest deferral at this time. As a condition of approval, the applicant will be required to demonstrate that the parcel has been disqualified from receiving farm or forest tax deferral prior to receiving any additional permits from the County.

- (9) The dwelling meets the applicable development standards of MCC .2074; (as follows)

**MCC .2074 Development Standards for Dwellings and Structures**

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

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

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

Findings

The applicant has undertaken an analysis of alternative housing locations as referred to in the preliminary issues discussed elsewhere in this report.

The Hearings Officer finds that this criteria requires that a dwelling or structure must be located such that it has the least impact on nearby or adjoining forest or agricultural land.

The Hearings Officer finds that the proposed dwelling, if it is located in the northwest corner as requested by the applicant, will not have the least impact on nearby forest lands because 50 feet of the secondary fire break would need to be located off-site, within adjoining forest land. Although the Hearings Officer has previously found that the impact to this adjoining forest land from the fire break would be minimal, there is clear evidence in the record demonstrating that by locating the dwelling in the central portion of the site, where setback variances would not be required and where all fire breaks could be accommodated on site, that such placement would have less impact on adjoining forest land. Therefore, the Hearings Officer finds that this criteria has not been met.

- (2) Forest operations and accepted farming practices will not be curtailed or impeded.

Findings

The Hearings Officer finds that by locating the dwelling on the northwest corner of the site, forest operations and accepted farming practices on site will not be significantly curtailed or impeded. It is unclear from the text of this criteria whether

the criteria requires a finding that forest operations and accepted farming practices will not be curtailed or impeded to any degree, or whether such impact must just be significant in degree. The Hearings Officer finds that based upon the overall context of this criteria and its application in past cases, the criteria should be interpreted to mean that forest operations and accepted farming practices may not be curtailed or impeded to a significant degree. Because the Hearings Officer finds that the only impact on adjoining resource uses would be the 50 foot off-site fire break, and because such impact is not significant, this criteria is met.

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

#### Findings

The Hearings Officer finds that there is an existing accessway to the subject property which extends from Skyline Boulevard to the proposed home site and beyond to adjacent lots west of the site. Although the access road will require some improvements in order to comply with applicable standards, the location of a dwelling along this access road will not require any new road building on land devoted to forest use and thereby would minimize the amount of forest land used to site the dwelling, even though the dwelling would be located in a more remote corner of the site.

Furthermore, the amount of forest land used to site the dwelling in the northwest corner of the site is minimized compared to locating the dwelling in the central or southern portion of the site where additional land would be required for retaining walls and other associated engineering features, given the slope of the land in these areas. Therefore, this criteria is met.

- (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**

#### Findings

There has been considerable debate during the various hearings on this matter concerning this criteria. In this case, an access road in excess of 500 feet is necessary due to the fact that the site is more than 500 feet away from Skyline Boulevard. The distance from Skyline Boulevard constitutes a physical limitation unique to the property.

Although this access road, in its present condition, currently provides access to this property as well as other properties beyond this one, the question is whether the proposed length of the access road is the minimum length required to serve a dwelling on the site. The Hearings Officer finds that since the applicant could locate a dwelling in the central or southern portions of the site and thereby reduce the length of the access road, the applicant has not demonstrated that the access road is the minimum length required. Therefore, this criteria is not met.

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

- (a) 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 long the access route to indicate the location of the emergency water source;**
- (b) Maintenance of a primary and a secondary fire safety zone.**
  - (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 space with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
  - (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50

Less than 25	75
Less than 40	100

(iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning, forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(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

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

### Findings

The applicant has proposed an accessway that will meet the driveway standards of MCC .2074(D). Permanent signs posted along the access route could be used to indicate the location of an emergency water source. It is not clear based upon evidence in the record whether access for a pumping fire truck to within 15 feet of any perennial water source on the lot will be provided. However, since irrigation will be provided along the north property line with sprinkler heads, the Hearings Officer presumes that access for a fire truck within 15 feet of the perennial water source that would serve to irrigate the property by the sprinkler heads will be available. This could be required as a condition of approval.



The applicant has demonstrated that a 30-foot wide primary fire safety zone can be provided on site in the 50-foot setback proposed around the proposed homesite in the northwest corner of the site.

However, the code requires a 100-foot wide secondary fire safety zone. Within the secondary fire safety zone, trees need to be spaced with greater than 15 feet between their crowns. Also, trees must be pruned to remove low branches within eight feet of the ground as the maturity of the tree and accepted silviculture practices may allow. Finally, within the 100-foot secondary fire safety zone, all other vegetation must be maintained less than two feet in height. In other words, vegetation, including trees and underbrush must be thinned and cropped in order to provide an adequate secondary fire break.

In this case, along the north and west sides of the proposed dwelling site, only half (50 feet) of the 100-foot wide secondary fire safety zone can be provided on site. The remaining 50 feet of the secondary fire safety zone must be provided on forested land adjacent to the site by use of easement. The applicant indicates that an easement will be provided on the adjacent forested land to the west and north in order to accommodate the required secondary fire safety zone. Since there does not appear to be any prohibition providing the secondary fire safety zone adjacent property through the use of an easement, the Hearings Officer finds this criteria can be met.

Finally, the evidence indicates that the requirements for the fire safety zone would not restrict or contradict a forest plan approved by the State of Oregon pursuant to the State Forest Practice Rules. Therefore, these criteria can be 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;**
- (2) Be attached to a foundation for which a building permit has been obtained; and**
- (3) Have a minimum floor area of 600 square feet.**

**Findings**

The proposed single family dwelling would be required to receive a building permit which will conform to the Uniform Building Code, would be attached to a foundation and would be required to have a minimum floor area of at least 600 square feet. Therefore this criteria can be met.

- (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 II stream as defined in the Forest Practices Rules. 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.

### Findings

The applicant indicates that the proposed water supply for the dwelling would come from a well with a depth of approximately 550 feet located on the property. No surface water is involved in this request. Furthermore, the subject site does not involve a critical ground water area. Therefore this criteria can be met.

- (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:
- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
  - (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
  - (3) Provide minimum curve radii of 48 feet or greater;
  - (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
  - (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
    - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
    - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
  - (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
  - (7) Provide for the safe and convenient passage of vehicles by the placement of:

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

### Findings

The applicant has provided written verification that the culverts can comply with the 52,000 lb. gross vehicle weight standard. Furthermore criteria 2, 3 and 4 can be met based upon evidence in the record.

Criteria 5 requires that grades on the roadway cannot exceed 8 percent with a maximum of 12 percent on short segments except that the maximum grade may be exceeded upon written approval by the fire protection service provider having responsibility for the area. The proposed driveway exceeds the 12 percent limitation at various points along its course. However, Tualatin Valley Fire and Rescue has provided a letter dated February 27, 1996 approving the driveway subject to compliance with an exception standard detailed within the fire code. Based upon the letter dated February 27, 1996 from the fire protection service provider having responsibility, it appears that criteria 5 could be met.

Evidence in the record indicates that criteria 6 and 7 can be met based upon the proposed site plan. Therefore, these criteria can be met.

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

### Findings

The above referenced statement was recorded with the Multnomah County Division of Records on September 27, 1995 and is included as Exhibit 5B in the record. Therefore this criteria has been met.

## 2. Variance

### A. **Variance Approval Criteria MCC 11.15,8505(A)**

The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.

- (1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.

### Findings

The applicant is requesting a variance to the 200-foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line in the northwest corner of the site. The Hearings Officer finds that the subject property is unique in that it is L-shaped with long narrow necks extending to the northeast. Furthermore, the contours on the property indicate that the legs of "L" are relatively level compared to the central portion of the "L" which generally contains greater slopes.

Based upon all of the evidence in the record, the Hearings Officer finds that the shape of the parcel and its topography relative to its shape does present a circumstance and condition relative to this property does not apply generally to other properties in the same vicinity. Therefore this criteria is met.

- (2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

### Findings

The applicant has argued that the most suitable homesite on the property is within the northwest corner of the site that a variance is required from the setbacks in this area. Due to the width of the lots in the northwest corner of the site, the zoning regulation requiring a 200-foot setback does restrict the parcel to a greater degree than the other parcels in the vicinity or district and unless the variance is approved it would eliminate the possibility of locating a dwelling in this area.

Even though the Hearings Officer agrees that locating the proposed dwelling in the northwest corner of the site may be the most suitable location from a development standpoint, the applicant has not provided substantial evidence in the record demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity. Since it is possible to locate a dwelling in the central location on the site without the variance and since there is no evidence that such a location would be unduly restrictive, the Hearings Officer finds that this criteria has not been met.

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

#### Findings

The Hearings Officer finds that authorizing the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located nor will it adversely affect appropriate development of adjoining properties, because the proposed dwelling site is overall, the most suitable building site. The only negative impact from locating the dwelling in the proposed location is the relatively insignificant impact of locating the 50-foot secondary fire break off-site in the forested area on the north and west portion of the site. To the extent that surrounding forest properties in the area of the proposed dwelling are willing to accommodate the secondary fire break in the adjacent forest land and to the extent that location of this off-site secondary forest break does not significantly affect forest use on that property, the Hearings Officer finds that authorization of this variance will not be materially detrimental to the public welfare or injurious to the property in the vicinity of the district nor will it adversely affect appropriate development of the adjoining forest properties. Therefore this criteria can be met.

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

#### Findings

The Hearings Officer finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use that is not listed in the underlying zone so long as all the criteria in the zoning code and any applicable state laws are met. The Hearings Officer finds that provisions in the County's Comprehensive Plan are implemented through enacted County zoning ordinances,

applicable statutes and administrative rules. Therefore this criteria can be met if all applicable zoning ordinances, statutes, and administrative rules are satisfied.

The applicant's property has been identified as a Goal 5 resource where conflicting uses exist between residential and wildlife habitat. Goal 5 and its administrative rules in OAR Chapter 660 Division 16 require the conservation and protection of wildlife areas and habitats.

The application of Goal 5's administrative rules to individual sites in a quasi-judicial action is somewhat problematic. Nonetheless, the applicant has submitted limited information which has inventoried of the location, quantity and quality of plant and wildlife resources on the property, and has identified conflicting uses as required by the Goal. Furthermore, the applicant's conservation plan seeks to minimize potential impacts, while outlining means to protect and enhance habitat, conserve open space and promote the health of natural resources. Based upon the above-referenced information and record, the Hearings Officer finds that the applicant has satisfied the requirements of Goal 5. Since Multnomah County has not yet had its recent Goal 5 amendments acknowledged by the Land Conservation and Development Commission at the time this application was deemed complete, the requirements of Goal 5 and its administrative rules apply directly to this application. The Hearings Officer concludes that the requirements of Goal 5 and its administrative rules are or can be satisfied by the inventory, analysis of conflicting uses and conservation plan submitted by the applicant.

## V. CONCLUSION AND DECISION

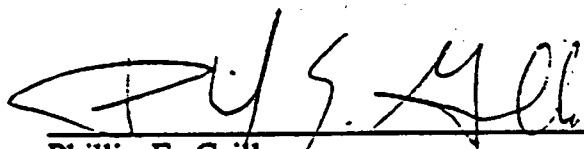
Although most of the relevant criteria have been satisfied, the Hearings Officer concludes that the applicant has not demonstrated that:

- 1) The location of the dwelling is located such that it has the least impact on adjoining forest or agricultural lands.
- 2) Any access road in excess of 500 feet in length is the minimum length required.

- 3) The zoning restriction (setback requirements) would restrict the use of the site to a greater degree than it restricts other property in the vicinity.

For these reasons, the proposed applications must be **Denied**.

It is so ordered this 28<sup>th</sup> day of June, 1996.



Phillip E. Grillo  
Hearings Officer  
Multnomah County

**List of Exhibits**  
**CU 7-95; HV 17-95**  
(Revised May 21, 1996)

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- Exhibit A** Applicant's Statement Submitted July 12, 1995
- Exhibit A1** Site Plan and Grading Plan
  - Exhibit A2** Current Warranty Deed & Roadway Easement
  - Exhibit A3** Warranty Deed Dated October 7, 1976
  - Exhibit A4** SCS Soils Map and Description
  - Exhibit A5** Aerial Photographs (1984 & 1986)
  - Exhibit A6** Maps of 160-acre grid
  - Exhibit A7** Assessment/Ownership Records of Properties within 160 acre grid (Multnomah County and Washington County - Includes Washington County Tax Map)
  - Exhibit A8** Land Use Planning Notes, No's 1 and 2, Oregon Department of Forestry, March and September 1991.
  - Exhibit A9** "Geotechnical Reconnaissance and Stability Questionnaire"
  - Exhibit A10** Service Provider Statements
- Exhibit B** Applicant's Supplemental Statement Submitted January 4, 1996
- Exhibit B1** "Private On-Site Sewage Disposal Certification" Form with Approved Land Feasibility Study (LFS 138-95)
  - Exhibit B2** Letter to Multnomah County RFPD No. 20 Dated 12/21/95
  - Exhibit B3** Oregon Department of Forestry (ODF) Letter Dated 11/27/95
  - Exhibit B4** Returned Questionnaires from Adjacent Property Owners on Farm/Forest Activities
  - Exhibit B5** Multnomah County Conditions & Restrictions Statement Recorded 9/27/95 as Vol./Pg. No. 95-118085 in Multnomah County Book of Records
  - Exhibit B6** Sec-h Permit Application Prepared by AG Crook Company
  - Exhibit B7** 1994 Aerial Photograph (Vicinity Map)
  - Exhibit B8** Site Plan, Grading Plan & Driveway Profile (Revised 12/21/95)
- Exhibit C** Staff Template Map



APR 29 1996

BEFORE THE HEARINGS OFFICER  
FOR MULTNOMAH COUNTY, OREGON

Multnomah County  
Zoning Division

Regarding a request by Eric and Kimberly Evans for  
a Conditional Use Permit and Variance to construct  
a single family dwelling not related to forest use  
located in the CFU zone at 13913 NW Skyline  
Blvd., in unincorporated Multnomah County,  
Oregon.

) INTERMEDIATE RULING  
) CU7-95 HV 17-95  
) (Evans)  
)  
)  
)

At the conclusion of the April 3rd hearing, the applicant requested the Hearings Officer to issue an Intermediate Ruling with regard to the applicable law concerning the "template test" and whether or not Goal 5 is directly applicable in this case. Concerning these legal issues, the Hearings Officer makes the following findings:

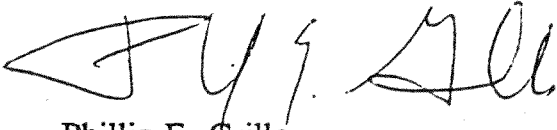
1. Template Test. The Hearings Officer finds that the applicable template test for determining whether or not this dwelling can be permitted in a forest zone is found at OAR 660-06-027. Since Multnomah County has not yet amended its land use regulations to implement the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules "shall be directly applicable to local government's land use decision." Therefore, in this case the applicable template test is found in OAR 660-06-027.

2. Interpretation of the term "Centered on the Center of the Subject Tract." In this case, there has been considerable debate concerning the manner in which the center of the subject tract is determined, in order to apply the template test. Having reviewed the testimony and exhibits received in this manner, the Hearings Officer finds that the county's justification for using the "center of gravity" as a method of determining the center of the template is reasonable and is supported by a valid technical explanation. Furthermore, although the "center of gravity" test was used by the county as the method for determining the center of the template for purposes of the county ordinance, the Hearings Officer finds that the same method is also a reasonable interpretation of the template test for purposes of OAR 660-06-027. Therefore, the Hearings Officer will use the center of gravity test as a method of computing the template test for purposes of OAR 660-06-027.

3. Goal 5 Application. The Hearings Officer agrees with analysis and conclusions of the applicant/appellant with regard to whether or not the SEC criteria or the Goal 5 criteria apply directly with this application. The Hearings Officer finds that Goal 5 and its administrative rules apply directly to this quasi-judicial action.

**4. Conclusion.** This Intermediate Ruling is being provided at the request of the applicant/appellant in advance of the hearing on this matter which has been continued to 3:00 pm May 2, 1996. The Hearings Officer intends to provide more detailed findings concerning the above mentioned conclusions as part of the Final Order in this case.

It is so ordered this 29<sup>th</sup> day of April, 1996.



Phillip E. Grillo  
Hearings Officer  
Multnomah County

**Exhibit GG Notice of continuation**

**Items Submitted At April 3, 1996 Hearing**

**Exhibit HH Staff Rebuttal**

**Exhibit II Submittal by Mr. Cox**

**Items Submitted After April 3, 1996 Hearing**

**Exhibit JJ Intermediate Ruling**

**Exhibit KK Department of Land Conservation and Development Letter  
Dated 4/30/96**

**Items Submitted At May 2, 1996 Hearing**

**Exhibit LL Western Helicopter Services Letter Dated 5/1/96**

**Exhibit MM Department of Land Conservation and Development Letter  
Dated 4/9/96**

**Exhibit NN Applicant's Submittal Dated 5/2/96**

**Exhibit OO Baker Rock Resources letter dated April 30, 1996**

**Items Submitted After May 2, 1996 Hearing**

**Exhibit PP Applicant's Submittal Dated May 8, 1996**

**Exhibit QQ Applicant's Submittal Dated May 17, 1996**

**Exhibit QQ-A Washington County Zoning Map**

**Exhibit QQ-B Washington County Zoning Ordinance**

**Exhibit QQ-C District 'B' Map**

**Exhibit QQ-D Letter from Agra Earth & Environmental  
dated May 16, 1996**

**Exhibit QQ-E Letter from Mike Pihl Logging, Inc.**

**Exhibit RR Letter from Soderstrom Architects, May 16, 1996**

**Exhibit SS Letter from Jeffrey L. Miller dated May 16, 1996**

**Exhibit TT Letter from Western States Development dated May 17, 1996**

**Exhibit UU Letter from Department of Forestry dated May 17, 1996 w/  
cover sheet from Western States Development**

**Exhibit VV Email from County Counsel**

**Exhibit WW Memo from Staff dated 5/21/96**

- Exhibit D** Letter from Kevin Bender dated January 12, 1996
- Exhibit E** Letter from David Jossi dated January 15, 1996
- Exhibit F** Letter from Tualatin Valley Fire and Rescue dated February 14, 1996
- Exhibit G** Staff Report Prepared for March 20, 1997 Public Hearing
- Exhibit H** Letter from Mr. Kravitz dated March 18, 1996
- Exhibit I** Photocopy of Aerial with Distances to Nearby Residences
- Exhibit J** Aerial Photo indicating lots with Forest Use and Dwellings
- Exhibit K** Survey Submitted by Applicant at 3/20/96 Hearing Indicating Center of Property
- Exhibit L** Colored Overlay of Exhibit C Prepared by Applicant Submitted at 3/20/96 Hearing
- Exhibit M** Letter from Tualatin Valley Fire and Rescue Dated February 27, 1996
- Exhibit N** 1983 Aerial Photo
- Exhibit O** Applicant's Response to Staff Report Submitted at 3/20/96 Hearing
- Exhibit P** General Application Form, Receipt and Owner Authorization
- Exhibit Q** Zoning Map
- Exhibit R** Pre-Application Notice and Staff Notes
- Exhibit S** Washington County Assessment and Taxation Records
- Exhibit T** Notice of Public Hearing with Hearings Officer
- Exhibit U** Mailing List for Notification and Affidavit of Posting
- Exhibit V** August 8, 1995 Letter from Planning Staff
- Exhibit W** August 15, 1995 Letter from Land Development Consultants with Owner consent to Variance Form
- Exhibit X** January 3, 1996 Letter from Land Development Consultants
- Exhibit Y** January 18, 1996 Letter from Land Development Consultants
- Exhibit Z** January 18, 1996 Letter from Planning Staff
- Exhibit AA** January 24, 1996 Letter from Planning Staff
- Exhibit BB** January 31, 1996 Letter from Land Development Consultants

**Items Submitted After March 20, 1996 Hearing**

- Exhibit CC** March 25, 1996 Letter from Christopher Foster
- Exhibit DD** March 27, 1996 Letter from William Cox
- Exhibit EE** March 21, 1996 Letter from Michael Carlson
- Exhibit FF** March 28, 1996 Memo to File from Staff



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE Morrison Street  
Portland, Oregon 97214 (503) 248-3043

## Staff Report

This Staff Report consists of Conditions, Findings of Fact, and Conclusions.  
Prepared for a Public Hearing to be held on March 20, 1996

### CU 7-95; HV 17-95

**Conditional Use Request for a Single Family Dwelling Not Related to Forest Management  
Variance to Side and Rear Yard Setback  
Compliance with the West Hills Reconciliation Report (a component of the Comprehensive Plan)  
to meet State Goal 5 requirements**

Applicant requests Conditional Use approval of a single family dwelling not related to forest management on a 20.00 acre Lot of Record in the Commercial Forest Use zoning district. Applicant proposes to place the dwelling 50' from both the north and west property lines which would require a major Variance from the 200 foot side and rear yard setback requirements. The proposed development requires a finding of State Planning Goal 5 Compliance for the development because it is located in an area designated as Primary Wildlife Habitat.

**Location of Proposal:** 13913 NW Skyline Blvd.

**Tax Roll Description:** Tax Lot '15', located in Sec 25, T 2N, R 2W

**Plan Designation:** Commercial Forest

**Zoning District:** Commercial Forest Use (CFU) with Primary Wildlife Habitat Designation

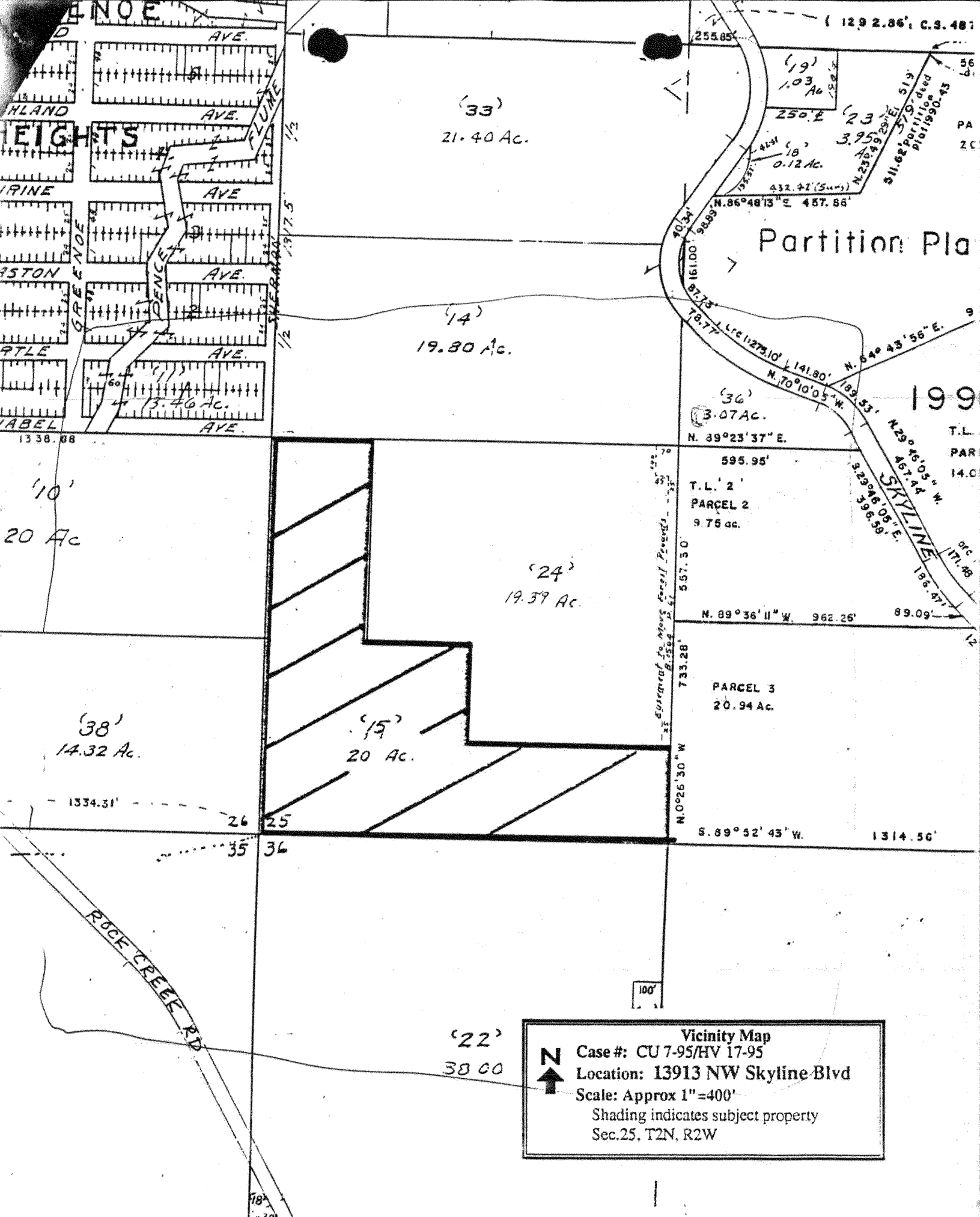
**Applicant:** Kim Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

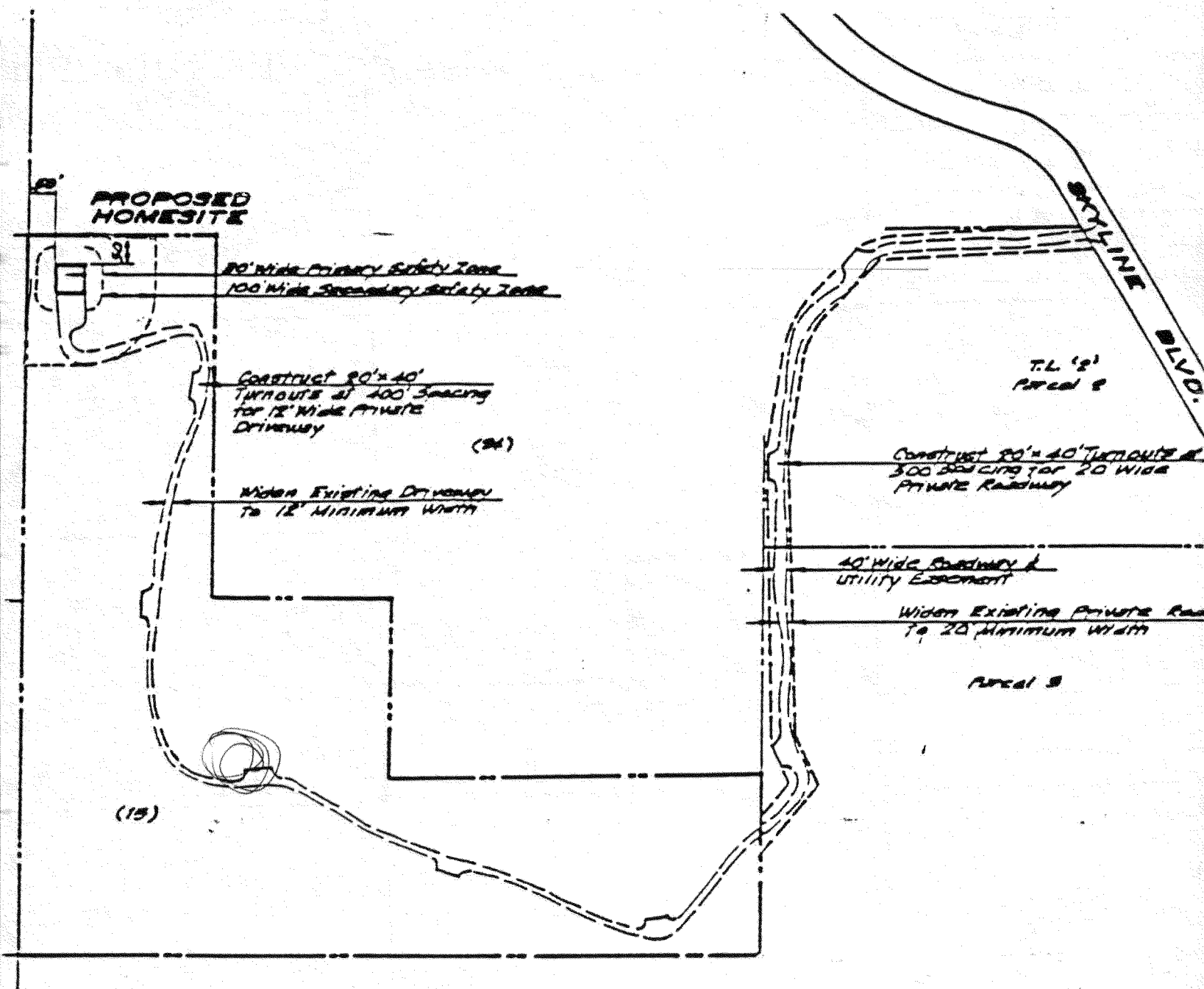
**Owner:** Eric D. and Kimberly R. Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

**Staff Contact:** Susan Muir

EXHIBIT

G





**Site Plan**  
 Case #: CU 7-95/HV 17-95  
 Location: 13913 NW Skyline Blvd  
 Not to scale  
 Sec.25, T2N, R2W

**LIST OF EXHIBITS**  
**CU 7-95; HV 17-95**  
(PREPARED MARCH 13, 1996)

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- EXHIBIT A**     **APPLICANT'S STATEMENT SUBMITTED JULY 12, 1995**
- EXHIBIT A1     SITE PLAN AND GRADING PLAN
  - EXHIBIT A2     CURRENT WARRANTY DEED & ROADWAY EASEMENT
  - EXHIBIT A3     WARRANTY DEED DATED OCTOBER 7, 1976
  - EXHIBIT A4     SCS SOILS MAP AND DESCRIPTION
  - EXHIBIT A5     AERIAL PHOTOGRAPHS (1984 & 1986)
  - EXHIBIT A6     MAPS OF 160-ACRE GRID
  - EXHIBIT A7     ASSESSMENT/OWNERSHIP RECORDS OF PROPERTIES WITHIN 160-  
ACRE GRID (MULTNOMAH COUNTY AND WASHINGTON COUNTY -  
INCLUDES WASHINGTON COUNTY TAX MAP)
  - EXHIBIT A8     LAND USE PLANNING NOTES, NO'S 1 AND 2, Oregon Department of  
forestry, March and September 1991
  - EXHIBIT A9     "GEOTECHNICAL RECONNAISSANCE AND STABILITY QUESTIONNAIRE"
  - EXHIBIT A10    SERVICE PROVIDER STATEMENTS
- EXHIBIT B**     **APPLICANT'S SUPPLEMENTAL STATEMENT SUBMITTED JANUARY 4, 1996**
- EXHIBIT B1     "PRIVATE ON-SITE SEWAGE DISPOSAL CERTIFICATION" FORM WITH  
APPROVED LAND FEASIBILITY STUDY (LFS 138-95).
  - EXHIBIT B2     LETTER TO MULTNOMAH COUNTY RFPD No. 20 DATED 12/21/95
  - EXHIBIT B3     OREGON DEPARTMENT OF FORESTRY (ODF) LETTER DATED 11/27/95
  - EXHIBIT B4     RETURNED QUESTIONNAIRES FROM ADJACENT PROPERTY OWNERS  
ON FARM/FOREST ACTIVITIES
  - EXHIBIT B5     MULTNOMAH COUNTY CONDITIONS & RESTRICTIONS STATEMENT  
RECORDED 9/27/95 AS VOL/PG No. 95-118085 IN MULTNOMAH  
COUNTY BOOK OF RECORDS.
  - EXHIBIT B6     SEC-H PERMIT APPLICATION PREPARED BY A.G. CROOK COMPANY
  - EXHIBIT B7     1994 AERIAL PHOTOGRAPH (VICINITY MAP)
  - EXHIBIT B8     SITE PLAN, GRADING PLAN & DRIVEWAY PROFILE (REVISED  
12/21/95)
- EXHIBIT C**     **STAFF TEMPLATE MAP**
- EXHIBIT D**     **LETTER FROM KEVIN BENDER DATED JANUARY 12, 1996**
- EXHIBIT E**     **LETTER FROM DAVID JOSSI DATED JANUARY 15, 1996**
- EXHIBIT F**     **LETTER FROM TUALATIN VALLEY FIRE & RESCUE DATED FEBRUARY 14, 1996**
- EXHIBIT G**     **STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING**



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**CU 7-95; HV 17-95**  
(PREPARED MARCH 13, 1996)

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- EXHIBIT G**     STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING

## **Recommended Hearings Officer Decision:**

### **CONDITIONAL USE:**

**(CU 7-95):** DENY, development of this property with a single family dwelling not related to forest management because based on the following conclusions and findings, the application does not demonstrate compliance with the Oregon Administrative Rules 660-06, the Multnomah County Comprehensive Plan or the Multnomah County Zoning Code;

### **VARIANCE**

**(HV 17-95):** DENY, the north yard and west yard setbacks of 50' for the proposed single family dwelling based on the following conclusions and findings;

### **/WEST HILLS RECONCILIATION REPORT AND GOAL 5 COMPLIANCE**

DENY, Goal 5 compliance based on the following conclusions and findings;

### **Staff Report Format**

This staff report addresses three requested actions: first, a request for conditional use approval for a dwelling not related to forest management; second, a request for approval of a variance to the side and rear yard setback standards for the single family; third, a determination of Goal 5 Compliance for development within a primary wildlife habitat area. The Findings of Fact and Conclusions for the Conditional Use appear first, followed by the Findings of Fact and Conclusions for the Variance second, followed third, by the Goal 5 Compliance discussion. There are two submittals by the applicant used in the response to the code criteria. Any Exhibit referenced by the applicant will have a letter, followed by a number. An Exhibit included in the original submittal dated July 11, 1995 will be lettered 'A' followed by the number, any Exhibit referenced as part of the second submittal received January 4, 1996 will be lettered 'B', followed by the number. Any additional Exhibits referenced in the Staff responses will be labeled only by letters.

## **FINDINGS OF FACT:**

### **Applicant's Proposal:**

The applicant requests the Hearings Officer approval to develop the above described property with a single family dwelling not related to forest management. The subject property is 20 acres in size and is predominantly wooded. The site has areas of moderate and steep slopes. The site does not front a public road, but is accessed by an existing roadway easement from Skyline Boulevard. Also requested is approval of a variance to the required yard setbacks of 200 feet. The applicant proposes setbacks of 50'. In addition, the proposed development is located within a designated Primary Wildlife Habitat which requires approval.

# 1. CONDITIONAL USE ORDINANCE CONSIDERATIONS AND FINDINGS:

**NOTE: THE APPLICANT'S RESPONSE TO AN APPROVAL CRITERIA WILL BE INDICATED BY THE BEGINNING NOTATION "APPLICANT'S RESPONSE:". (Additional Planning Staff comments may be added where supplemental information is needed or where staff may not concur with the applicant's statements.)**

- A. MCC 11.15.7120 Conditional Use Approval Criteria (General): "(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply." The approval criteria listed below are listed in the district; therefore, the general criteria in this subsection **do not apply**.
- B. Revisions to OAR 660-06, adopted on February 18, 1994, have not yet been adopted by the county. Consequently, any requirements of the OAR that are not included in the county code, as well as any OAR requirements that are more restrictive than county code criteria, must also be applied to this proposal. Applicable ordinance criteria are listed below in **bold**. Additional OAR requirements follow in [*bold, italics and bracketed*].
- C. MCC 11.15.2052 (A): A dwelling not related to forest management may be allowed subject to the following:
  - (1) The lot shall meet the lot of record standards of MCC .2062 (A) and (B) and have been lawfully created prior to January 25, 1990;

**Applicant's Response:** MCC .2062 (A)(2) requires (a) a deed prior to 1990, (b) that the parcel satisfied the applicable laws when created, (c) that the parcel does not meet the minimum lot size (80 acres), and (d) that the parcel is not contiguous to other standard lots under the same ownership. MCC .2062(B) offers definitions applicable to MCC .2062(A).

A warranty deed dated October 7, 1976 describing the site was recorded with the Multnomah County Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit A3). The subject parcel is 20 acres in size, and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is less than 80 acres in size and, thereby, does not meet the current minimum lot size in the CFU Zone. The applicant does not own contiguous property, either in CFU or EFU zoning. These findings demonstrate that the subject parcel satisfies the lot of record standards of MCC .2062 (A) and (B), and was lawfully created prior to January 25, 1990.

*All currently contiguous ownerships must be considered to be the subject "tract" of this*

*application. ["Tract" means one or more contiguous lots or parcels 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. OAR 660-06-027(5)(a)]*

Under the OAR, an additional dwelling is not allowed if there is an existing dwelling on the "tract". *[A proposed dwelling under this rule is not allowed: ... Unless no dwellings are allowed on other lots or parcels that make up the tract ... If the tract on which the dwelling will be sited includes a dwelling. OAR 660-06-027(4)(c)&(d)]*

**Staff Comment:** Assessor's printout is in the file and is made a part of the record as Exhibit A7.

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

**Applicant's Response:** The subject property is not located adjacent to any county maintained roads, therefore the required minimum yard of 60 feet to the centerline of any adjacent county maintained road cannot be applied to this property.

Due to the unusual configuration of this lot, the limitations of the terrain and the desire to preserve the densely forested areas on the property, the proposed homesite cannot satisfy the 200-foot setback standard. The only feasible location for a homesite is in the north-west corner, where the lot is approximately 325 feet in width, measured east-west. Given the width of the lot in this area, it is not possible to meet the 200-foot setback to the property lines. Therefore, the applicant requests a variance pursuant to MCC .8505, which is addressed below in this report.

**Staff Comment:** The lot is of sufficient size to accommodate siting the dwelling in accordance with the minimum yard setbacks as required in MCC .2074. Staff does not concur that the proposed location is the only feasible location for a homesite. The applicant has submitted the Variance application and addressed the criteria of MCC .8505 through .8525 as applicable (section 2 of this report).

- (3) The lot(s) shall meet the following standards: ...

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

**Applicant's Response:** According to the Multnomah County SCS Soil Survey (See Exhibit A4), the soils on the subject property are Cascade Silt Loam (7C, 7D, & 7E). The soils have a Site Index of 157, which translates into a yield of approximately 153 cubic feet per acre per year.

- (i) The lot and at least all or part of 11 other lots *[that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(i)]* exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section

lines; and

**Applicant's Response:** Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of 13 other lots within a 160 acre square centered on the center of the subject lot parallel and perpendicular to Section lines.

(ii) Five dwellings [*that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(ii)*] exist within the 160-acre square.

**Applicant's Response:** Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of five (5) dwellings within the 160 acre square.

**Staff Comment:** Exhibit A6 submitted by the applicant includes 5 numbered arrows, and one arrow with the notation 'on the line' (tax lot '22'). The Assessment and Taxation information included with the applicant's submittal shows tax lot '36' as being 'vacant land', [Exhibit A7, p. 15] this tax lot shows an arrow number '1'. Staff cannot make the finding based on the A&T information and site visits that a dwelling existed on tax lot '36' on January 1, 1993. If the arrow labeled 'on the line' on Exhibit A6 is to be one of the five (5) dwellings included in the template test, staff would need reliable survey information verifying the dwelling on tax lot '22' is within the template. In addition, the 160 acre square template as positioned by Staff includes the house, arrow number 3 on tax lot '32', 'on the line' of the template and Staff would need survey information verifying the location of the dwelling. Without this additional survey information Staff can only verify 3 dwellings within the 160 acre template and the parcel does not meet the 5 dwelling minimum established in MCC 11.15.2052. The Staff's template overlay is included as Exhibit C.

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

**Applicant's Response:** No lots or dwellings within an urban growth boundary were counted in (a) through (c) above.

(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.

**Applicant's Response:** Soils on the subject parcel have a Site Index of 157, which means that a fully stocked stand of 70 year old Douglas fir trees can produce 10,720 cubic feet of lumber per acre. The SCS survey says the "soil is suited to Douglas Fir. Dividing the yield by 70 years provides the average growth rate of 153 cubic feet per year per acre. When multiplied by the 20 acres on the site, the annual growth is approximately 3,060 cubic feet (See Exhibit A4). Therefore, this lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species.

(4) The dwelling will not force a significant change in, significantly increase the costs of,

or impede accepted forestry or farming practices on surrounding forest or agricultural lands;

**Applicant's Response:** The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted on the attached aerial photographs (Exhibit A5). Numerous dwellings exist in the surrounding area on parcels of this size or smaller. The addition of this single family dwelling will not alter that character. The proposed development is a single-family, detached dwelling not in relation to forest use. Water supply for the dwelling will be provided through an on-site well. An on-site septic system will be established in compliance with Multnomah County regulations. The proposed driveway will be constructed to Multnomah County and Fire District standards. It is anticipated that the proposed dwelling will not exceed an additional 10 vehicle trips per day along Skyline Boulevard or the existing roadway easement.

Since the proposed dwelling does not yet exist and is hypothetical at this time, no concrete evidence as to the actual activities of the future occupants can be provided with this analysis. However, it can be concluded from observation and prior knowledge of other existing rural residential uses that activities associated with single-family dwellings will likely be those customarily carried on, such as eating, sleeping, gardening, outdoor recreation, raising a family and occasional entertainment of guests.

There is very little commercial forestry or agriculture in this section of Skyline Ridge. While the subject property is in the CFU District, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground. What little farming exists is mostly in low-yield hay production or pasture. The large parcels in the EFU District are used for hay production, pasture, and forest; however, they are not producing commercial-level yields.

Properties employed in hay production and pasture are located in all directions of the subject site at distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc. include plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment, including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Trucks are employed for the transport of some of this equipment, as well as the seed, amendments, sprays and end products. Pasture lands, except for unmanaged forage areas (cleared land), receive much the same treatment as lands used for field crops and similar farm equipment is used (tractors, plows, disc, seed drills, etc.). Tilling and replanting of managed pastures ordinarily occurs on a seven year cycle. Harvesting is done by grazing animals instead of mechanized equipment.

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south. Forest practices include road building prior to harvest; timber harvest stock piling

and burning of slash subsequent to harvest; replanting; spraying of herbicides and pesticides and periodic thinning and trimming as the timber grows. Road building, harvesting, slash burning and thinning require the use of heavy equipment such as bulldozers, skidders, yarders (on steep sites) loaders and trucks. Chain saws are also used in harvesting and thinning operations. Replanting is accomplished using hand labor, as is trimming and some early thinning of the stand. Spraying in areas with moderate residential density on nearby lands is normally accomplished from the ground. However, spraying may also be accomplished from the air using low-flying fixed-wing aircraft or helicopters in order to limit drift of spray material to nearby properties. Effects from these activities include noise from heavy equipment and chain saws during harvest and thinning operations, smoke from slash fires, limited spray drift from herbicide and pesticide applications subsequent to harvest and replanting and periodic appearances by persons involved in ongoing stand management.

Nonfarm/nonforest uses and dwellings exist in all directions around the subject site. Farm and forest uses on lands near and adjacent to the site are currently being impacted by existing nonfarm/nonforest uses. Any potential impacts from the proposed dwelling to farm or forest activities beyond the existing nonfarm/nonforest uses is nullified by the impacts of these existing nonfarm/nonforest uses.

Impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors in addition to the presence of existing dwellings in the area. These factors include intervening distances and vegetation. The closest farm/forest operation to the north is located over 100 feet from the dwelling site. A farm operation is located over 100 feet to the east of the dwelling site. The dwelling site is separated from farm/forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from farm/forest uses to the west by a distance of approximately 100 feet. The subject property is densely wooded, as well as properties to the north, west and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

Potential physical impacts to the occupants of the dwelling from farm/forest uses and practices will be offset by location of the dwelling 200 feet from the east property line in compliance with required setbacks. A variance is sought as part of this application to allow the dwelling to be located 50 feet from the north property line and 50 feet from the west property line. A variance is necessary due to the limiting slopes, dense vegetation and unusual configuration of the parcel. Impacts to the dwelling from accepted farm and forest practices could include dust and noise from tilling and harvest operations, and possibly spray drift and smoke. Dust from tilling operations does not normally extend beyond 100 feet, nor does drift from spray operations. Tilling, planting, spraying and harvesting operation for field crops are likely to occur on only an 8 to 10 day spread in any given year. Farm tractors are generally equipped with mufflers. The configuration and location of fields to the north, west and south will place operating farm equipment over 100 feet away from the proposed dwelling all of the time during tilling and harvest operations. Observed ground spraying of herbicides and pesticides produces no significant spray drift or overspray beyond the ground area being sprayed, if it is done using an

accepted practice. Trespass and vandalism on nearby farm and forest properties is as likely to originate from outside the area as it is from dwellings in the vicinity. Trespass and vandalism on farm and forest land in the immediate vicinity of the development site cannot be effectively prevented by any physical means. However, the number of existing dwellings in the vicinity will discourage trespass and vandalism. Farm and forest lands are readily observable from nearby dwellings. Trespass and vandalism on these properties will be discouraged by the potential for observation. Trespass on nearby farm and forest lands by domestic animals (livestock, dogs) can be prevented by erection of strong fencing, if livestock are present, and by enforcement of the County's leash laws. However, livestock is not proposed on the subject site and adjacent properties with livestock are fenced.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

#### Summary of Farm/Forest Activities on Adjacent Properties

<u>Tax Map</u>	<u>Tax Lot</u>	<u>Acreage</u>	<u>Owner</u>	<u>Use</u>
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

#### Key

D = Dwelling, F = Forest/Timber, H = Hay

Five (5) of the adjacent properties contain residential uses. All 9 of the adjacent properties contain forestry/timber uses. Two (2) of the adjacent properties contain farm uses



(hay production). Properties in all directions around the site are employed in forest/timber uses, while only the properties adjacent to the east are in farm use (Tax Lot (24) and Parcel 3, Map 2N2W-25, are employed in hay production). Since specific management information for these activities is not available, documentation of typical farm and forest management information has been obtained from the Oregon State University Extension Service (attached to the original Applicant's Narrative Statement as Exhibit A8). An abstraction of this information is contained within the original Applicant's Narrative Statement.

As discussed within the original Applicant's Narrative Statement, impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors, including the presence of numerous existing dwellings in the area. These factors include intervening distances and vegetation. The closest forest operation to the north is located over 50 feet from the dwelling site. A farm operation is located over 200 feet to the east of the dwelling site. The dwelling-site is separated from forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from forest uses to the west by a distance of approximately 50 feet. The subject property is densely wooded, as are properties to the north, west, east and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

The above discussion, in conjunction with the discussion contained under the same section within the original Applicant's Narrative Statement, demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

**Staff Comment:** The five (5) dwellings used in the applicant's survey are not the five dwellings used for the demonstration of the template test. Tax lot '5' in Section 26 is listed as having a dwelling on it and the Assessment and Taxation information lists this as 'Vacant Land'. This may be because it is in common ownership with tax lot '8' of Section 25 to the northeast of tax lot '5' and they would be considered a 'tract' (Exhibit A7 p. 38). The applicant states that "All 9 of the adjacent properties contain forestry/timber uses". The placement of the proposed dwelling will impact these surrounding uses by reducing the existing distance between other dwellings and any forest uses. Overspray by air of chemicals may have to be limited or reduced by siting the dwelling in the center of the narrow neck in the northwest corner. As explained in the Applicant's Submittal (Exhibit A8, No. 2, p. 3) "In the case of herbicide applications, the FPA (Forest Practices Act) requires that when applying herbicides by aircraft, the operator must leave an unsprayed strip of at least 60 feet adjacent to dwellings. The requirement of leaving an unsprayed strip of 60 feet may mean that the operator must stop spraying considerable distance away from any dwelling to avoid any drift within the 60 foot unsprayed strip." Therefore, Staff cannot determine compliance with MCC 11.15.2052(A)(4).

- (5) 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 acknowledgement of the Comprehensive Plan in 1980, will be acceptable;

**Applicant's Response:** According to the Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area among the sensitive areas important to the survival of big game.

(6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection;

**Applicant's Response:** The parcel is within the boundaries of Multnomah County RFPD #20.

**Staff Comment:**—The parcel is within the Tualatin Valley Fire and Rescue and Beaverton fire Department boundary.

(7) 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's Response:** The parcel is served by an access easement for ingress-egress from Skyline Boulevard (Exhibit A2).

(8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral;

*The following OAR requirement supercedes the above requirement to disqualify the property from farm or forest deferral. If the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs.*

**[OAR 660-06 029(5): Approval of a dwelling shall be subject to the following requirements:**

(a) *Approval of a dwelling 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.*

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

(c) *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.*

**(d) 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 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's Response:** According to Multnomah County Assessment records, the parcel is not receiving farm or forest deferral.

**(9) The dwelling meets the applicable development standards of MCC .2074; (as follows:)**

**Applicant's Response:** As demonstrated in the following sections of this report, the proposed dwelling meets, or can feasibly be conditioned to meet, the applicable standards of MCC .2074.

**MCC .2074 Development Standards for Dwellings and Structures**

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

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

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

**(2) Forest operations and accepted farming practices will not be curtailed or impeded;**

**[OAR 660-06-029(1)(b): The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;]**

**Applicant's Response:** Sections MCC 11.15.2074 (A)(1) and (2) contain language similar to that found in Section MCC 11.15.2052 (A)(4). While it appears that the standards may be different in scope, they are both intended to ensure that dwellings not related to forest practices will not significantly conflict with nearby or adjoining farm/forest lands and practices. Therefore, since the standards are so similar, if compliance with .2052(A)(4), then it follows that compliance with .2074(A)(1) and (2) has also been demonstrated, provided the findings are adequate to demonstrate compliance with both.

Aerial photographs depicting adjacent and surrounding farm/forest uses are attached as Exhibit A5. As discussed above under .2050(A)(4), this development will not impact, curtail or impede farm/forest lands, operations or accepted practices due to the dense vegetation and steep terrain surrounding the homesite.

The proposed homesite location is the most suitable location for a dwelling on the parcel. The proposed dwelling location is a relatively flat area, near the highest point on the parcel. The majority of the parcel contains slopes above 20%, which are too steep for a dwelling site. Most of the parcel is also densely vegetated with Douglas Fir trees. The proposed homesite is already free of the dense vegetation found throughout the property. Construction of a dwelling on the proposed homesite would not require the removal of significant amounts of vegetation, whereas a homesite location elsewhere on the property would necessitate the removal of a significant amount of Douglas Fir trees. The steep terrain and existing vegetation on other parts of the parcel restrict the potential of locating a homesite in other locations on the parcel (refer to the attached site plan, Exhibit A1).

Due to the dense vegetation and steep slopes throughout the property, the impact of a dwelling on nearby or adjoining farm/forest lands will be virtually the same at any location on the site. Through compliance with the applicable criteria, listed within this report, and conditions of approval, the proposed house location will have minimal impact on existing and future farm/forest operations. Since the proposed roadway easement is already in existence and the proposed homesite will require the least amount of grading and vegetation removal, it is apparent that a dwelling in the proposed location will have the least impact on nearby or adjoining forest or agricultural lands, now existing or in the future.

As previously stated within this report, the proposed dwelling cannot meet the 200-foot setback requirement due to the width of the lot in this area. Therefore, a variance is requested as part of this application (Variance criteria are addressed in this report, below).

As previously stated within this report, no future forestry practices are planned for the subject property. The site was logged over 7 years ago and has been entirely replanted, except for the proposed house location. The proposed house location is the best one because it is cleared of trees and would not require the removal of any young trees that were recently replanted.

**Staff Comment:** Although Staff is reviewing the application for the cleared area in the north west corner of the site, there is another larger, relatively flat cleared area in the south east portion of the property that has not been reforested recently with young trees. Staff does not concur that the proposed house location is the best one based on the argument that it is cleared of trees and would not require the removal of any young trees that were recently replanted. The issue is that the development is required to demonstrate that it has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements for the CFU district and that forest operations and accepted farming practices will not be curtailed or impeded. The siting must ensure that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

Two letters were submitted into the file one by Kevin Bender of Western States Development Corporation (Exhibit D), owner of the adjacent property (tax lot 2 of parcel

2 of partition plat 1990-43) and the other by David Jossi (Exhibit E), the contract farmer that manages the property for Mr. Bender. Both letters are in opposition to locating the homesite to the south east end of the property due to potential impacts of surrounding farm practices. Staff believes that due to the topography on the site that slopes down from the hay field and the dense vegetation between the two parcels that a different homesite may not affect the agriculture operation if it were closer to the east property site. However, Staff is reviewing the application for the development site proposed in the north west corner of the property and does not have the information necessary to review any other development proposal for another area on the property. According to information submitted by the applicant, there is one house existing within 160' of the boundary of the hay farm in question (tax lot 36), there are two homes within 500 feet of the boundary of the existing hay farm (tax lots 24 and tax lot '1' of parcel 2 of partition plat 1990-43, this home is not noted as a dwelling on the 'Vicinity Map' or aerial photograph submitted by the applicant on January 4, 1996) and there are two houses within 1,000 feet of the boundary of the existing hay operation. The proposed homesite is in excess of 1,000' from the hay farm and the nearest potential site in the south east corner is approximately 160-200' from the hay operation. In addition, the parcel currently being managed by Mr. Jossi went through a land division case in 1989 in which the application submitted by Western States Development Corporation stated:

#### "Past and Present Uses

All attempts at farming this parcel have failed to make a profit. Hay production failed because of the poor soils, steep slopes, and poor markets. Attempts to grow winter wheat and dry land wheat failed because the soil produced substandard grain. The 33 acres cleared on these tax lots are presently left in grass, which is mowed once a year, bundled, and removed. The applicant's attempts to make this land profitable, in conformance with ORS 215.203, have failed for reasons that remain problems even for Christmas tree farms.

The reasons for unprofitable farm operation include poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground.

The problems of soil and slope and weather are shared by all surrounding EFU properties. There is no intensive commercial farming on this portion of Skyline Ridge. What little farming exists is mostly in low-yield hay production for pasture. There is one Christmas tree farm on a nearby parcel--growing Nobil fir on approximately 7 acres.

\* \* \*

In sum, numerous efforts to sustain commercial agriculture uses on the property have failed."

Staff cannot find that locating the proposed dwelling closer to the areas in forestry use and away from what has been termed a failing agricultural operation will have the least impact on nearby or adjoining forest or agriculture lands.

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

**Applicant's Response:** Publications provided by the Oregon Department of Forestry (ODF), attached as Exhibit A8, are pertinent to this section. These publications are Numbers 1 and 2 of Land Use Planning Notes, which were released in March and September 1991. Land Use Planning Notes indicates that the requirements for Section .2074(A)(3) are intended to minimize the amount of land taken out of forest production by residential uses. According to Notes, the standard can be met by siting dwellings close to existing dwellings and roadways, and by minimizing the length of access roads and service corridors. Notes also indicates that minimization of risks associated with wildfire, per Section .2074(A)(5), requires consideration of topography and slope direction, length of access and fuel supply for wildfire. Dwelling siting on level land is encouraged by ODF. Access drives should be as short and level as possible and must be capable of supporting fire fighting equipment.

The following discussion outlines significant factors which dictate the location of a dwelling and access drive on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. The access road may require some improvements in order to comply with applicable standards. Location of a home along this access road does not require any new road building on land devoted to forest use.

According to Land Use Planning Notes, No. 1, the ODF restricts the location of structures to areas of slope less than 40%. The slope of access drives is also limited to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running strait and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to maintain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site.

The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of

reducing fire hazards and preserving existing trees.

A dwelling exists on tax lot (24), which abuts the subject property to the east. The proposed homesite will be located approximately 700 feet west of the existing dwelling on tax lot (24). A homesite location south of this area on the subject property would be located at a greater distance from the existing dwelling on tax lot (24), as well as more than 700 feet from dwellings on other abutting properties. Theoretically the homesite could be located closer to the eastern property line in the northwestern corner, and thereby closer to the dwelling on tax lot (24), but the slopes in this area are greater than the chosen building site and exceed 40% at some points. The proposed dwelling location is approximately 1,300 feet from Skyline Boulevard and Rock Creek Road. A dwelling location anywhere else on the site would also be an estimated 1,300 feet from Skyline Boulevard. Areas on the property exist which would be closer to Rock Creek Road than the chosen site, but these areas are excessively steep.

The proposed homesite utilizes an existing access road. No matter where the proposed dwelling is located on the property the same amount of area will be devoted to roads, since this roadway is used to access lots to the west of the site. Therefore, any homesite location will utilize an equal amount of forest land to site the dwelling, access road and service corridors.

Based on the above findings, the subject property contains a number of limiting factors to development. The proposed dwelling location was designed in consideration of the characteristics of the site, the forest uses of the property, and requirements intended to minimize risks associated with wildfire. Given the existence of the access road to the proposed homesite, and slopes and vegetation found at the homesite, it is apparent that this proposal minimizes the amount of forest land used for development, as well as minimizes the risks associated with wildfire.

The discussion contained within the original Applicant's Narrative Statement under these sections demonstrates that the "amount of forest land used to site the dwelling, access road and service corridor is minimized. The access road is existing and will be improved, for the entire length, no matter where the dwelling is inevitably located. The area north of the existing road, just as the road enters the property, is not a suitable location for the proposed dwelling as it would necessitate the removal of recently replanted trees. In spite of this, the applicant does not believe that it is necessary to demonstrate that "a dwelling could not be built north of the drive just as the drive enters the property", since the roadway has been in existence for a number of years and is only proposed for improvement.

**Staff Comment:** Staff does agree that the siting standards in the State Code and Multnomah County Code are in part to minimize the risk of fire. As evident from the topography map submitted by the applicant, the proposed development site is relatively flat, however, the development site is located at the top of a site with slopes up to 40%. So, although the footprint of the building may indeed be flat, the fire considerations include the slope hazard area directly to the south and east of the proposed homesite, as well as other areas throughout the site. The OAR's and Multnomah County Code do

have requirements for fire safety zones that can mitigate building near steep slopes. The access road cannot meet the 15% maximum slope standard. In addition, the standard is for the proposed dwelling, not the other dwellings served by the access way.

- (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's Response:** The applicant proposes to utilize an existing roadway easement to access the proposed homesite. According to Land Use Planning Notes, No. 1, the ODF restricts the slope of access drives to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running straight and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to attain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site. For these reasons, the proposed roadway is the minimum length required.

**Staff Comment:** The issue is whether physical limitations unique to the property make a road more than 500 feet long necessary in this case. The applicant must also demonstrate that the proposed length of the road is the minimum length necessary. The home cannot be built within 500 feet of a public road because the property is accessed by a private easement off of Skyline Boulevard. However, staff is not convinced that the farthest corner from Skyline Boulevard is the only acceptable building location. Any physical limitations on the subject property are not unique, as the majority of the property in the vicinity is steep terrain and forested. Staff does believe that slope, soil, waterbodies, habitats and drainage features are physical conditions. The existing cleared area, whether or not it was approved under a Forest plan is not a physical limitation. The County is not obligated to follow the plan or to approve a dwelling that is consistent with that plan. Any work which may have been completed under a Forest Plan, or the fact that there are existing cleared areas on a site does not preclude locating a dwelling at a different location which may be located closer to Skyline Boulevard in order to minimize the length of the accessway required, which is the standard. It is not relevant that there is an existing logging road and an existing cleared area for the proposed homesite. The Code does not say an access road longer than 500 feet is permitted when it is an existing road. The Code asks whether physical conditions make violation of the 500 foot standards essential. The fact there is an existing road and cleared area does not make it essential or necessary to use the access road and cleared area for the proposed dwelling.



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

**(a) 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;**

**(b) Maintenance of a primary and a secondary fire safety zone.**

**(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:**

<b>Percent Slope</b>	<b>Distance In Feet</b>
<b>Less than 10</b>	<b>Not required</b>
<b>Less than 20</b>	<b>50</b>
<b>Less than 25</b>	<b>75</b>
<b>Less than 40</b>	<b>100</b>

**(in) 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.**

**(iv) No requirement in (i), (ii), or (in) 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**

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

**Applicant's Response:** No perennial water source is located on the site. The proposed dwelling will have an automatic sprinkler system. The sprinklers greatly reduce the risk of a home fire that could spread to the woods. The applicant proposes to install an irrigation system to include wet, stand pipes every 100 feet along west, north and east property

lines in vicinity of the homesite, each with 50 feet of hose. Plans also include tank storage for 1,000 gallons of water with 200 feet of hose and an operable gas driven pump. In addition, fire breaks, as outlined in this subsection, will be developed during construction. Fire breaks are indicated on the attached site plan (Exhibit A1). The proposed homesite has a slope of less than 40 percent, as required by Subsection (c) (See Exhibit A1). Driveway access will be improved and maintained to the standards of the Fire Marshal.

**Staff Comment:** The requirements of a secondary fire safety zone cannot be met because of the proposed setbacks of 50' to the north and west property lines..

**(B) The dwelling shall:**

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

*[OAR 660-06-035(5) The dwelling shall have a fire retardant roof.]*

*[OAR 660-06-035(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.]*

**Applicant's Response:** Upon approval of this application, the proposed dwelling will be designed and constructed in compliance with the standards of the Uniform Building Code. The dwelling will be attached to a foundation, for which a building permit will have been obtained, and have more than 600 square feet of floor area. The proposed dwelling will be constructed with a fire retardant roof. Any chimneys in the proposed dwelling will have spark arresters.

**Staff Comment:** The proposed single family dwelling will be required to receive a building permit which will require conformance with the Uniform Building Code.

**(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 II stream as defined in the Forest Practices Rules. 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.**

**Applicant's Response:** The water supply will come from a well of about 550 feet, located on the property. No water lines across neighboring properties are necessary. No surface water is involved. OAR 690, Division 10 deals with critical groundwater areas; this is not a critical groundwater area and the rules do not apply. OAR 690, Division 20 deals with surface water and does not apply.

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
- (3) Provide minimum curve radii of 48 feet or greater;**
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**
  - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
  - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
- (7) Provide for the safe and convenient passage of vehicles by the placement of:**
  - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
  - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.**

**Applicant's Response:** The dwelling is to be accessed by an existing private roadway easement from Skyline Boulevard. The roadway will be improved and maintained to support a minimum gross vehicle weight of 52,000 pounds. No bridges or culverts will be constructed. The roadway will have an all-weather surface 20 feet wide for the private road portion of the access serving Lot 24 and the subject property. The remainder of the access is a driveway serving only the proposed dwelling. That portion of the access will be covered with a 12-foot wide all-weather surface. All curves will have a minimum curve radii of 48 feet. The easement will have an unobstructed vertical clearance of 13 feet 6 inches or greater. Portions of the driveway on the subject property may exceed the 12% maximum. The Multnomah County RFPD #20 will review the proposed driveway. Their written approval will be supplemented at a later date. A turnaround with a radius of 48 feet or more will be provided at the end of the access. Additional turnarounds will be provided in compliance with the above standards. Refer to the attached site plan and grading plan for an illustration of the driveway (Exhibit A1).

A site plan, grading plan and driveway profile (revised 12/21/95) are attached as Exhibit B8. These plans contain detailed information regarding the existing and proposed road widths and grades, as well as typical improvement cross sections. These plans have been designed and certified by a registered professional engineer (Harris Hymen, P.E.).

As previously stated within this report, the road plans and a "Minimum Design Standards For Residential Driveways and Privately Maintained Roads" form were submitted to the Fire District for review on December 21, 1995 (copy of letter attached as Exhibit B2). A response from the Fire District has not been received at this date, but is expected within a few days. Since the 180 day period ends on January 8, 1996, this supplemental report is submitted without the necessary form from the Fire District. This form will be supplemented to Multnomah County as soon as it is available.

**Staff Comment:** There are three culverts existing on the proposed accessway (two noted on the Site Plan, Grading Plan & Profile sheet, one that is not indicated but located near the profile station 34.00) that have not been demonstrated to support a minimum gross vehicle weight (GVW) of 52,000 lbs. The Tualatin Valley Fire and Rescue has determined that the fire apparatus access roadway requirements cannot be complied with in the proposed development and accessway (Exhibit F). The Fire Chief also states that "when buildings are completely protected with an approved automatic fire sprinkler system, the provision of the requirements may be modified by the chief..." Staff cannot find that the fire department exemption to meet uniform fire code requirements addresses the Multnomah County Code and Oregon Administrative Rule requirement of providing grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except upon written approval from the fire district. Staff finds that the Multnomah County Code exemption is not included so that Multnomah County can approve developments with no fire access, but to allow for occasions where road grades may exceed 12% but where fire service providers are able to still access the site. For instance some Fire District Standards, including the Tualatin Valley, have less restrictive road standards that allow grades of up to 15%. The road accessway standards, including the exemption for short segments, still allow for fire equipment to access the site when a fire district has the equipment capable of maneuvering the higher grades. The proposed development site cannot be serviced by fire fighting equipment.

(10) 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's Response:** The above-described statement was recorded with the Multnomah County Division of Records on September 27, 1995 as Vol/Pg No. 95-118085, a copy of which is attached as Exhibit B5.

D. MCC 11.15.2052 (B): Dwellings not related to forest management shall not be allowed upon the effective date of a small scale resource land program adopted pursuant to the requirements of OAR 660, Division 6 and 33.

*No longer applicable. See below.*

*[OAR 660-06-070, Small-Scale Resource Land, Repealed by LCDC February 18, 1994.]*

## **2. VARIANCE ORDINANCE CONSIDERATIONS:**

**G. Ordinance Considerations and Findings of Fact**

**Variance Approval Criteria MCC 11.15.8505(A):**

**The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.**

- (1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.**

**Applicant's Response:** The applicant is requesting a variance to the 200 foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line. The subject lot is uniquely "L" shaped with long narrow necks extending to the north and east. The contours depicted on the attached site plan (Exhibit A1) demonstrate that these necks are relatively level compared to the extreme slopes found on the remainder of the property.

The reason necessitating the variance is the proposed location of the homesite on a relatively flat area of land with minimal vegetation, which happens to be on one of the narrow necks of land in this parcel. The distance between the property lines in the neck is approximately 325 feet. It is physically impossible to locate the dwelling 200 feet from all property lines. If the home is placed 200 feet from one line, a variance in excess of 100 feet is required for the setback to the opposite property line.

The shape of the parcel and the terrain both require the location of the homesite on the narrow neck of land. The shape of this parcel is unique in this vicinity and in the CFU District. The following discussion outlines significant factors which dictate the location of a dwelling on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. Location of a home along this access road does not require any new road building on land devoted to forest use. According to Land Use Planning Notes. No. 1, the ODF restricts the location of structures to areas of slope less than 40%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of reducing fire hazards. Therefore, due to the steep slopes and dense vegetation found throughout the site in conjunction with the unique configuration of the lot, a variance to the 200 foot setback requirement is

necessary in order to minimize the amount of grading and vegetation removal necessary to establish the dwelling, as well as to minimize the risks associated with wildfire.

**Staff Response:** Staff concurs that the shape of the property may be somewhat unique because it is "L" shaped but it is also a 20 acre parcel that does have areas that are not noted as 'Slope Hazard Areas' that could meet the setback requirements. The entire Skyline Ridge has lots with steep slopes that do not appear to be unique to this parcel. Staff does not concur that a previously cleared area is a circumstance or condition that would justify granting a variance on the property. The shape of the parcel and the terrain do not require the location of the homesite on the narrow neck of land as the applicant has stated. There may be areas with circumstances or conditions within the 20 acre parcel that do not apply generally to other areas within the 20 acre parcel, however, it appears there may be another area or areas without conditions such as steep slopes and vegetation as well as the proposed building site.

- (2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

**Applicant's Response:** As discussed above, under Section .8505(1), the only suitable homesite on this property is within the narrow neck of land that requires this variance. Due to the width of the lot in this area, the zoning regulation requiring 200-foot setbacks restricts this parcel to a greater degree than other parcels in the vicinity or district as it eliminates the possibility of locating a dwelling in this area.

**Staff Response:** As stated earlier there are portions of the property that are wide enough to accommodate a dwelling within the setbacks. These areas may not be the ideal location for development for views because they are located in a valley, however the 200 foot setback would not restrict development of the property.

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

**Applicant's Response:** Properties surrounding the subject site are developed in a mixture of farm/forest and rural residential uses. Findings under Sections .2052(A)(4) and .2074(A)(1) through (3), above, evaluate the impact of the dwelling, in the proposed location, on adjoining properties. Given the topography and dense vegetation of the site, these findings demonstrate that authorization of this variance, allowing location of the dwelling as proposed, will not be materially detrimental to the public welfare, or injurious to property in the vicinity or district, or adversely affect development of adjacent properties.

**Staff Comment:** Staff believes the intent of the 200 foot setback requirement is to keep proposed development within the CFU zoning district away from forest practices occurring on nearby properties to protect existing forest operations against impacts of siting dwellings nearby. These new dwellings can be impacted by noise, fire and other impacts

associated with forest practices that in turn may affect how the forest and timber operations are managed and not allow them to continue in the manner that they are being managed prior to the dwelling. Staff believes by locating the development in the northernmost section of the property it is actually being pushed closer to the forested area and actually in essence being 'nestled' in between forested areas, creating a greater impact potential than other locations with similar physical conditions on the site. Staff cannot make the finding that this development area will have the least amount of impacts on the development of adjoining properties.

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

**Applicant's Response:** The proposed dwelling is consistent with Comprehensive Plan Policy 11, Commercial Forest Land ("The county's policy is to allow forest management with related and compatible uses ") and Implementing Strategy A.1.c (dwellings not related to forest management are allowed as conditional uses.) The variance to allow the dwelling within 200 feet of a property line does not alter Multnomah County Code standards allowing a non-forest-related dwelling, which is listed in the CFU Zoning District under MCC 11.15.2052. Granting the variance will not establish a use that is not permitted in the CFU Zone. Applicable Comprehensive Plan policies are addressed in this report, below.

**Staff Comment:** The granting of a variance will not establish a use which is not listed in the underlying zone however Staff cannot make the finding that the variance will not affect the realization of the Comprehensive Plan by allowing development closer to areas reserved and designated for resource lands. Strategy A.1.c. states that "...dwellings not related to forest management...are to be allowed under approval criteria and siting standards designed to assure conservation of the natural resource base, protection from hazard, and protection of big game winter habitat". Staff believes that granting this variance will not assure conservation of the forest resource by locating it within the narrow portion of the property that extends into the narrow neck shaped portion of the property surrounded by forest uses.

### **3. STATE PLANNING GOAL 5 CONSIDERATIONS:**

The following section of this Staff Report is required pursuant to ORS 197.625 §(3)(a) because Multnomah County has adopted amendments to its Comprehensive Framework Plan that had not been acknowledged by the Land Conservation and Development Commission at the time this application was submitted.

In response to the Land Conservation and Development Remand Order 93-RA-876 the Multnomah County Board on September 22, 1994 adopted the West Hills Rural Reconciliation Report (Effective date October 23, 1994), applying Goal 5 requirements to specific scenic, stream, wildlife and mineral resources in the West Hills. The West Hills Reconciliation Report is an unacknowledged amendment to the Multnomah County Comprehensive Framework Plan.

## **Wildlife.**

The subject site includes a significant Goal 5 wildlife habitat area classified as a "primary wildlife area" for the reasons set out in the West Hills Reconciliation Report at pages V-3 through V-16. Conflict with the proposed use, and the Goal 5 analysis showing how conflicts are to be resolved to comply with Goal 5 are in the Reconciliation Report at pages V-18 through V-51. Except for findings showing how the proposal protects Goal 5 resources, which are set forth below, the findings of significance and Goal 5 analysis in the Reconciliation Report, together with the included relevant maps and tables, are hereby adopted by this reference.

Specific measures to protect primary wildlife habitat areas in the West Hills are at page VI-25 of the Reconciliation Report. These measures are applicable to this proposal which is in the Primary Wildlife Habitat and are discussed below.

Fencing should be prohibited along roadways, thus reducing barriers to wildlife movement. Design standards for fences outside of the "cultivated" area discussed below should be adopted which ensure that fences do not block passage for a wide range of wildlife species.

**Applicant's Response:** This request does not include any proposed fencing.

The "cultivated" area (i.e., lawns and gardens of residential lots in the primary habitat areas) should be limited to one acre (consistent with fire safety standards), leaving the remaining land in the parcel in native vegetation, to be altered only in conjunction with approved forest management practices. This cultivated area should be designed to minimize the edge effect along roads.

**Applicant's Response:** The cultivated area will not exceed one acre on the subject site. The remainder of the land on this site will be maintained in native vegetation.

Certain introduced vegetation should be prohibited (e.g., English Ivy, Vinca, and other invasive species), even in cultivated areas.

**Applicant's Response:** Any introduced vegetation will be native to the area.

Erosion control standards should be adopted where there will be prolonged exposure of soils, or excavation, associated with residential development.

**Applicant's Response:** Erosion control methods in compliance with Multnomah County standards will be utilized during construction.

Development along significant streams should be regulated as proposed in the discussion of streams.

**Applicant's Response:** There are no significant streams located on or adjacent to the subject site.



The "Specific protection measures for primary wildlife habitat areas" on pages VI-25 and VI-26 do not address the "Program to Achieve the Goal" on page VI-24 which reads:

**"Residential and Community Service/Conditional Uses**

Standards for protection of wildlife habitat should consider various measures to ensure the maintenance and enhancement of the designated primary habitat areas as homes for various species of wildlife. Differing standards are necessary for protection of primary, secondary, and impacted wildlife habitat areas. Implementation of these standards as regards residential and community service/conditional uses should be accomplished through use of a Significant Environmental concern (SEC) overlay zone for wildlife habitat protection."

Although the subject property was not "zoned" SEC-h at the time of application, the Reconciliation Report had been adopted as a part of the County's Comprehensive Plan. In order to demonstrate compliance with the "Program to achieve the goal" in the Reconciliation Report, it has been determined by Counsel that the above language requires evaluation of the standards in the adopted Significant Environmental concern (SEC). Where a parcel to be developed contains both primary and secondary, or primary and impacted wildlife habitat areas, development activities should be limited to the secondary or impacted areas to the maximum extent feasible.

**11.15.6426 Criteria for Approval of SEC-h Permit Wildlife Habitat**

**(B) Development Standards:**

- (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

**Applicant's Response:** The proposed location for siting of the home is a non-forested area of approximately 0.75 acres in size.

**Staff Response:** The proposed location for development which is a 'cleared' area does not meet minimum clearance standards for fire safety.

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

**Applicant's Response:** The proposed home site is 1350 feet from NW Skyline Boulevard at the closest point. A right-of-way gravel road approximately 1100 feet in length provides access to the southeast corner of the property from NW Skyline Boulevard. It provides the only reasonable and practical access to the property and proposed homesite.

**Staff Response:** There is no location on the site that is within 200 feet of a public road, however there may be other areas on the subject parcel which may be suitable for devel-

opment that would reduce the distance from a public road.

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

**Applicant's Response:** The access road/driveway are approximately 2,200 feet in length. See Section C. Wildlife Conservation Plan below.

**Staff Response:** The private easement to the site is longer than 500 feet in length, however there may be other areas on the subject parcel which may be suitable for development that would reduce the distance from a public road.

- (4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary

**Applicant's Response:** Adjacent property access road greater than 200 feet from the subject property boundary.

**Staff Response:** The nearest access road is approximately 800' from the property boundary on tax lot 32.

- (5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.

**Applicant's Response:** Structures on adjacent property greater than 200 feet from the subject property boundary.

**Staff Response:** The only type of development occurring within 200 feet of the property boundary is the haying operation mentioned earlier.

- (6) Fencing within a required setback from a public road shall meet the following criteria:

**Applicant's Response:** No fencing is proposed.

- (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

**Applicant's Response:** Landscaping will not include any plants from the nuisance plant list. Nuisance plants that currently occur on the property (Himalayan blackberry, scotch broom, Canada Thistle) shall be removed and kept clear from a one acre area surrounding the homesite.

- (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section B.

**Applicant's Response:** Two non-forested areas currently occur on the property (see description of non-forested areas above). Siting a home at either of these areas will not meet the requirements of Section B. To site a home on the property within the requirements set forth in Section B would require that additional forest cover be cleared and a new driveway/access road be constructed. It is therefore recommended that the home be sited at one of the two existing non-forested areas on the property and that a wildlife conservation plan be established. It is believed that establishment of alternative conservation measures than those required under Section B will result in less detrimental impacts to the forested wildlife habitat of the property than the siting of a home within the requirements of Section B.

**Staff Response:** Staff will concur that the access drive/easement is required to be greater than 500' in length because of the extended private easement used to access the site. However, the staff does not believe that there are physical characteristics unique to the property that prevent minimizing the length of the access road more than the 2,200 feet that is proposed. Staff cannot make the finding that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use. Therefore, Staff cannot find Goal 5 compliance with a primary wildlife habitat area because the application has not demonstrated that there is a minimum departure from the standards in Section B.

**Continued Applicant's Response:** The siting of a home on the property will result in some adverse impacts to wildlife. However, impacts are not expected to be significant. The increased presence of humans on the property could result in adverse impacts to wildlife species that are intolerant to human activity. Anticipated impacts are considered to be unavoidable and expected to occur no matter where the home is sited on the property.

The greatest single impact to wildlife on the property will be the presence of domestic dogs and cats. Domestic dogs can cause serious impacts to wildlife. Dogs can prey on a wide on a variety of animals ranging from big game to rodents and birds. The presence of barking dogs can result in reduced use or avoidance of an area by wildlife. Domestic cats prey on small mammals, birds, and snakes. Repeated hunting by cats in the same area can result in locally reduced populations of some small bird and mammal species.

The limited car travel that will occur along the proposed driveway/access road is not

expected to result in any significant impacts to wildlife. The number of vehicle trips per day along the driveway/access road generated by a single residence are expected to be few. Due to the size and proposed gravel surface of the driveway vehicular travel is expected to be at a slow rate of speed. Therefore injury or death to wildlife from vehicle impact is not expected to occur.

(3) The wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

**Applicant's Response:** Currently the home site is proposed to be sited at the non-forested area located at the northwestern portion of the property. No additional areas will be cleared for siting of the home. Lay down areas needed during the construction of the home will be revegetated with native plant species.

- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

**Applicant's Response:** The clearing of vegetation associated with siting of the home will not exceed one acre in size.

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

**Applicant's Response:** No fencing currently exists on the property and none is proposed.

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

**Applicant's Response:** If the home is sited, at the non-forested area located at the northwestern portion of the property, the other larger non-forested area that is located in the central portion of the property could be reforested at a 2:1 or greater ratio. Reforestation with trees and shrubs to provide year round food and cover for wildlife would help to improve the overall habitat value of the property.

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

**Applicant's Response:** Currently the vegetation that occurs within the drainages is so dense that it likely prevents the use of these areas by many species of wildlife. The thin-

ning of vegetation along the drainages will improve the usefulness of these areas for wildlife. Enhancement of the drainages could occur through the thinning of the dense sapling pole red alder and big-leaf maple stand and the control of the dense understory growth with herbicide applications. Following the clearing of vegetation non-weedy trees and shrubs useful to wildlife could be planted. A detailed list of recommended plants is included in Appendix III.

- (4) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

**Applicant's Response:** Not applicable.

**Additional Applicant Comment:** The proposed siting of a home on the property is expected to result in some adverse impacts to wildlife. These impacts in the form of human and domestic animal presence are expected to occur no matter where the home is located on the property. However, these impacts are not expected to be significant.

As currently proposed, the home is to be sited within a non-forested area in the northwestern portion of the property. The siting of a home at this location, requires the establishment of a wildlife conservation plan under Multnomah County Code 11.15.6426 Section B. The establishment of the wildlife conservation plan should improve the overall wildlife habitat value of the property and mitigate for any adverse impacts to wildlife as a result of siting the home on the property.

The wildlife conservation plan proposes the revegetation of non-forested areas, the planting of high value wildlife trees and shrubs, and the enhancement of the two drainages on the property. The implementation of these measures will likely improve the overall habitat value of the property and meet the requirements set forth in Multnomah County Code 11.15.6426 Section B.

#### **COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:**

- H. Applicable Comprehensive Framework Plan Policies (including those Policies requiring a Finding prior to a quasi-judicial decision):

- (1) **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's Response:** The subject dwelling will generally have no impact on air quality. A well and on-site disposal system will be established on the site to serve the proposed dwelling, in compliance with all applicable standards. The dwelling location is

not within a noise impacted area and the dwelling is not a noise generator.

**Staff Comment:** The LFS is included as Exhibit B1.

(2) **POLICY NO. 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%;
- 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 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Land subject to slumping, earth slides or movement.

**Applicant's Response:** Portions of the subject property contain slopes exceeding 20%. The proposed homesite will utilize an existing roadway easement for access. As illustrated on the attached site plan (Exhibit A1), the homesite is in one of the more level areas on the property. A completed "Geotechnical Reconnaissance and Stability Questionnaire" is attached as Exhibit A9.

**Staff Comment:** The Slope Hazard Map submitted by the applicant indicates that the road traverses slopes steeper than 25%. The Geotechnical Reconnaissance and Stability Preliminary Study indicates that the Maximum slope on the property is 20% which staff would conclude does not include the roadway to the site. Staff believes that the road is development and cannot find that it has been directed away from slopes exceeding 20%.

(3) **POLICY NO. 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.**

**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.

**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.

**Applicant's Response:** The applicant plans to serve the proposed dwelling with an on-site well and an on-site disposal system. An on-site sewage verification form will be submitted at a later date. Service providers are listed on the attached application form.

- (5) **POLICY NO. 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.

**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 COMMENT ON THE PROPOSAL.

**POLICE PROTECTION**

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

**Applicant's Response:** Service provider forms for school, fire and police services are attached as Exhibit A10.

**CONCLUSIONS FOR CONDITIONAL USE REQUEST**

1. The application for development of this property with a single family dwelling not related to forest management does not demonstrate compliance with Multnomah County Code, the Oregon Administrative Rules or the Multnomah County Comprehensive Framework Plan.

## CONCLUSIONS FOR VARIANCE REQUEST

1. The subject 20 acre parcel does not include circumstances of size and steep slopes that do not generally apply to other property in the same district.
2. The zoning requirement would not restrict the use of this property from development.
3. The authorization of the variance will not be detrimental to the public welfare or injurious to the property in the vicinity.
4. The variance requested will adversely affect the realization of the Comprehensive Plan if approved in conjunction with a Conditional Use Permit for a single family dwelling.

## CONCLUSIONS FOR GOAL 5 COMPLIANCE

1. The application does not demonstrate that there is a minimum departure from the standards required to allow the use because of physical limitations to the 20 acre parcel.

*This Staff Report and recommendation was available on March 13, 1996 seven days before the March 20, 1996 public hearing scheduled before a County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.*

*A written decision is usually mailed to all parties and filed with the Clerk of the Board within ten days of the decision by the Hearings Officer.*

## Appeal to the Board of County Commissioners

The hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Office decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$500.00 plus a \$3.50 - per-minute charge for a transcript of the initial hearings(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043.

Failure to raise an issue by the close of the record at or following the final hearing, (in person or by letter), precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond, precludes appeal to LUBA on that issue.





DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION AND LAND USE DIVISION  
2115 SE Morrison Street  
Portland, Oregon 97214 (503) 248-3043

## Supplemental Staff Report

This Staff Report supplements the original staff report prepared for the Public Hearing held on March 20, 1996

### Template Test

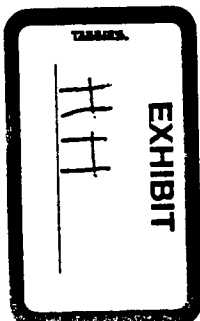
The Multnomah County Transportation and Land Use Division has been consistent in its interpretation of the center of a property being the 'center of gravity' and using the "pin method" as demonstrated at the March 20, 1996 hearing. Multnomah County demonstrated the "pin method" during the adoption of the CFU guidelines at public hearings in the fall and winter of 1992 and has consistently applied them to all inquiries regarding the template test.

### Existing Dwellings within Template Test

The OAR's state that *"At least three other dwellings existing on January 1, 1993"*, Multnomah County Code states *"five dwellings exist within the 160-acre square"*. Staff recommends that a partially demolished dwelling not be counted in the template (Exhibit DD). The information that Multnomah County has from the Assessment and Taxation Records is that there was no dwelling on the property as of January 1, 1993. Any issues regarding the buildability or vesting of tax lot '36' cannot be determined under this application. In addition, Staff cannot make the determination that lots which at one time have had land use permits to build houses but no existing dwellings located on them can count in the template test. These dwellings do not exist and were not existing as of January 1, 1993. The applicant has submitted three different template overlays, one as Exhibit A6, the second as Exhibit K submitted at the hearing, and the third as Exhibit DD8. All three contain different numbers of dwellings and different locations of dwellings particularly on tax lots '22' and '32'. Staff would still request more detailed information to determine the location of these two dwellings if they are to be included in the template test. Staff has also consistently interpreted the Multnomah County Code to mean that the dwellings themselves be located within the 160 acre square, not just a portion of the parcel with the dwelling on it. As stated in the original staff report, staff can only verify 3 dwellings within the 160 acre template.

### Impeding Accepted Forestry or Farming Practices

The staff report addressed the issue of aerial spraying regarding the code criteria which states that "The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands". The issue was whether or not the proposed fifty foot setback would affect the adjoining properties and their ability to spray as part of a forest management practice. The Staff is stating that the operator must leave an unsprayed strip of at least 60 feet to adjacent dwellings according to the Forest Practices Act. If the proposed home is located fifty feet from the property line, the



adjoining property could not be sprayed to its property line, but rather ten feet in from its property line. In other words, a portion of the forested area on the adjoining property would not be able to be sprayed because the proposed home would be located within sixty feet of the property line.

The secondary fire safety zone requires that "vegetation should be pruned and spaced so that fire will not spread between crowns of trees". The applicant has stated that they will be receiving agreements from adjoining property owners to maintain the secondary fire safety zone on adjoining properties because they do not meet these standards on-site. Staff has not reviewed these agreements and didn't review this proposal as part of the original submittal. Staff would conclude that the secondary fire break does affect the large trees and the spacing of them which affects the forestry operations which are occurring or may occur in the future on the adjoining properties.

### **Fire Access Standards**

The applicant submitted a letter at the March 20, 1996 Hearing from the Tualatin Valley Fire & Rescue dated February 27, 1996 (Exhibit M). Staff would like to clarify that the staff recommendation regarding Multnomah County Code compliance and the State OAR's regarding road standards does not take into consideration the Fire Chief's ability to waive the access standards under the Uniform Fire Code. Staff understands that a Fire Chief does not have the mechanism to deny a building permit or development proposal, but rather they require developments to meet the Uniform Fire Code. Staff has interpreted the State OAR's regarding fire protection not only as a protection measure for the dwelling, but also to reduce the risk of wildfire to surrounding forest areas. In discussions with Fire Chiefs within Multnomah County, sprinkler systems within the dwellings are not designed to put the fire out, but rather to give the occupants of the dwelling extra time to get out alive in the case of a fire. The Fire District's purpose is to save lives and the sprinkler systems proposed assists them in decreasing the risk of deaths due to fire. However, in addition to addressing these life and safety issues, the State Code and Multnomah County Code are required to protect forest practices in those areas designated for State Planning Goal 4 protection areas, Forest Lands.

### **Variance Criteria**

Due to the discussion at the March 20, 1996 hearing, a clarification of the Staff response to the Variance criteria that states "A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses" is needed. Staff is stating that there are some areas that are unique due to slope or natural features in places on the 20 acre parcel. But, there are not circumstances or conditions that apply to the entire 20 acre parcel that do not apply generally to other property in the same vicinity or district. The Staff report is not intended to suggest other locations that would be approvable, but it is required to make findings based on the information submitted. However, the Staff cannot reasonably make the finding that the zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district because it appears from a site visit there is a cleared area that may meet the setbacks, is not steeper than 25% and is adjacent to the existing roadway. The applicant has submitted two proposed development sites within what was being called the 'Center' area at the March 20, 1996 hearing and is labeled so on Exhibit B8.

## **Goal 5 Compliance**

On August 8, 1995 following a completeness check for the application materials submitted by the applicant on July 12, 1995 the Staff notified the applicant of the materials to be submitted to determine Goal 5 Compliance (Exhibit V) which included addressing the criteria of MCC 11.15.6426. The applicant submitted their responses to the criteria on January 4, 1996.

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August 21, 1996

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283-0645  
289-2657

Board of County Commissioners  
c/o Planning Division (hand delivered)

**Re. CU 7-95, HV 17-95—Evans—Hearing 8/27/96**

This testimony concerns four issues: impact on accepted farm and forest practices, variance criteria, applicability of the county's CFU zone regulations, and applicability of the county's SEC regulations.

### **I. IMPACT ON ACCEPTED FARM AND FOREST PRACTICES**

MCC 11.15.2052(A)(4) allows a dwelling in the CFU zone only if:

"The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands."

Similarly, .2074(A) provides: "The dwelling or structure shall be located such that:"

"(1) It has the least impact on nearby or adjoining forest or agricultural lands ..."

and

"(2) Forest operations and accepted farming practices will not be curtailed or impeded."

The Hearings Officer's findings of compliance with these standards are wrong.

First, the Hearings Officer considers only farm and forest practices reported to be used by current owners. It is well established in law that the language of the code encompasses all generally accepted farm and forest practices, not only those currently necessary or preferred. Because the proposal would site a house only 50 feet from both the North and West boundaries, it would be unsafe for neighbors to spray approved pesticides, herbicides, fungicides and fertilizers on farm or forest land up to the boundaries of the subject property. That alone impedes accepted farm and forest practices 150 feet into neighboring properties (anywhere that's within 200 feet of the proposed dwelling site).

Second, in order to find compliance with the requirement of MCC 11.15.2074(A)(5)(b)(iii) for a 100 foot "secondary fire safety zone" for a dwelling only fifty feet from two property lines, the Hearings Officer finds that the requirement can be satisfied by a condition placing 50 feet of the required safety zone on adjoining properties! The decision does not indicate that neighbors have granted easements, or even been informed of this notion. Since the safety zone requires removal of ground cover and some trees, and trimming of trees and precludes replanting, it must curtail "accepted forestry or farming practices on surrounding forest or agricultural lands". The Hearings Officer's completely unsupported assertion that removing even 50 foot wide strips on neighbors' land from productive use does not significantly impact farm or forest practices is obviously wrong and ignores the actual 150 foot impact.

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## II. VARIANCE CRITERIA

The applicant seeks a variance from the requirement of 200 foot setbacks, to allow siting of the dwelling in a remote corner of a narrow extension of a 20 acre parcel which, as staff points out, has ample room in other locations for a dwelling that complies with siting standards.

MCC 11.15.8505(A) allows approval of a variance "only when there are practical difficulties in application of the Chapter." Case law defines "practical difficulties" as meaning conditions, such as plot size, shape and topography, which preclude otherwise permissible use in compliance with standards. There are no such circumstances here. It is well established that neither the burdens created by ordinary compliance with a regulation, nor frustration of preferences of a developer, can be the basis for a finding of practical difficulties or hardship, so long as permitted uses can be substantially implemented.

Regarding .8505(A)(1), the Hearings Officer wrongly finds that the topography and shape of the property justify a setback variance. Staff has identified alternate siting on the property that would satisfy the setback standards. The Hearings Officer has not found alternate sites to be unsuitable, and his findings regarding .8505(A)(2) are inconsistent with the .8505(A)(1) findings. Regarding .8505(A)(2), the findings say: "... the applicant has not provided substantial evidence in the record demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity." (Whether parts of the site not preferred by the applicant are actually less suitable is disputed by all parties but the applicant, who merely prefers the remote location.)

Regarding .8505(A)(3), the Hearings Officer wrongly finds approval of the variance will not be "injurious to property in the vicinity ... or adversely affect the appropriate development of adjoining properties." He admits that because the house would be only 50 feet from two property lines, use on adjoining properties must be restricted anywhere within 100 feet of the house for fire protection purposes. And, as discussed above, spraying within 200 feet of the house will be precluded.

The Hearings Officer interprets .8505(A)(4) in a way that is necessarily wrong, because it deprives it of all meaning. He finds that to the extent that the proposal can satisfy other approval criteria, and to the extent that there can be a finding that variance criteria .8505(A)(1) to (3) are satisfied, .8505(4) is presumed satisfied. If that were true, there could be no meaning at all in .8505(4). The decision maker cannot find compliance without a case specific finding that the relevant purposes of the comprehensive plan are not undermined by the variance, and they are. (See Staff Report for March 20th, page 26.)

## III. APPLICABILITY OF COUNTY CFU ZONE REGULATIONS

The Hearings Officer wrongly concludes that county regulations defining qualification for a "template" dwelling may not be applied because the CFU regulations were not updated to reflect 1993 statutes and OARs concerning farm and forest land. The key difference between the state and county standards is that the statute requires that three properties in the template area had dwellings in January, 1993 and the county regulation, MCC .2052(A)(3)(c)(ii), requires five dwellings. The proposal meets the three dwelling state standard, but not the five dwelling county standard. There is no dispute about what the

difference is between the state and county standards.<sup>1</sup> The Hearings Officer ruled that the county had failed to amend its code to comply with amended statutes and OARs, thereby arguably invoking ORS 197.646(3) which provides in relevant part:

“When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government’s land use decisions.”

No party has disputed that the county CFU Chapter had not been updated to fully reflect amended state requirements when the subject application was filed, but the Hearings Officer wrongly leaps from that fact to a conclusion that any provision of the CFU that does not correspond to an amended state provision, is superseded in this process by direct application of the state provision. Staff, the Department of Land Conservation and Development (DLCD) and opponents of the application have all pointed out that his broad conclusion is unjustified because the statute allows counties to have forest zone regulations that are more protective than the state standards. ORS 215.750 provides that a county may allow a single family dwelling if it satisfies minimum standards that follow. ORS 215.750(4)(a) expressly disallows template dwellings if they don’t comply with local regulations. It is the view of both DLCD and LUBA that the new legislation was intended to allow local governments to have stricter standards. It couldn’t be clearer than in *Dilworth v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 95-115, Final Order 01/04/96) where LUBA said on page 4, upholding the Clackamas County six dwelling template standard:

“We agree with the county that it is not precluded from regulating the establishment of dwellings more stringently than is required under ORS 215.750.”

DLCD rejected the Hearings Officer’s position (which had been issued in a preliminary ruling). The following is quoted from the DLCD letter of April 30, 1996 submitted to the Hearings Officer by James W. Johnson :

“We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent standards in addition to the applicable state laws.

“ORS 197.646(3) requires a local government to directly apply any new or amended goal, rule or statute when a local government has not adopted comprehensive plan or plan amendments to implement new state laws. This statute does not preclude a county from applying other standards found in county land use regulations. The statute in effect establishes a minimum requirement which must be met in addition to any other applicable laws. This interpretation was confirmed by [LUBA] in *Dilworth v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 95-115, January 4, 1996). Like the subject case, *Dilworth* involved the application of template dwelling standards which are more stringent than those found in state law.”

These authorities indicate that each CFU standard must be considered alone. If it’s the same as or stricter than the state standard, it remains valid. If less strict, it cannot apply, and the state standard applies alone. The Hearings Officer holds *Dilworth* to be irrelevant because that case did not consider the impact of ORS 197.646(3). The whole point is that

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<sup>1</sup> The Hearings Officer correctly support the staff’s “center of gravity” method of applying a template.

197.646(3) substitutes state standards for county standards only when the county standards do not satisfy the state standards, and *Dilworth* establishes that a stricter county template standard does comply with the state standard. The Hearings Officer understands ORS 197.646(3), but completely misses the point that the issue is not that the statute requires state law to apply, but that it does not preclude concurrent application of non-conflicting county standards.

The strongest support for the applicant's position is found in *Blondeau v. Clackamas County*, \_\_ Or LUBA \_\_ (LUBA No. 94-222 03/21/95). It dealt with applicability of county farm regulations that had not yet been updated to reflect the same 1993 legislation that enacted the forest rules at issue in this case. The Clackamas County code did not provide for "lot of record" dwellings as are now allowed by the state. A key element of difference between *Blondeau* and this case is that prior to the 1993 legislation, "lot of record" farm dwellings (but not forest dwellings) were not allowed by state law, and the statute was amended to specifically enable them. The unamended Clackamas County code was understandably silent on lot of record farm dwellings, the silence meaning the county did not authorize them. LUBA held that the county must make its position known by an intentional code action, even if it amounts to readoption of the existing omission of lot of record dwellings.

Provisions in ORS 215.705 concern lot of record dwellings and 215.750 concerns template dwellings. While only .750 is of concern here, a comparison is useful. Each includes a similar provision (.705(1)(c) and .750(4)(a)) allowing the local government to deny a dwelling if it does not comply with the local regulations or comprehensive plan. But ORS 215.705(5), concerning only lot of record dwellings, allows a county to deny a dwelling for not meeting the intent of its plan or regulations "by application of criteria adopted by ordinance". Arguably (though I disagree) that provision requires adoption of an ordinance subsequent to enactment of the statute. But however .705(5) is to be interpreted, there is no comparable provision in .750 concerning template dwellings, and it is on .705(5) that Blondeau relies.

The Hearings Officer's holding leads to either absurdity or inconsistency. Consistent application of his theory requires that the whole scheme of ORS 215.700-750 replace the county's CFU regulations for all applications (made prior to the recent readoption and amendment). But over and over, except for the template test, the Hearings Officer does apply CFU regulations without a thought to whether or not they are more restrictive than the state standards. Beginning at page 7, the Hearings Officer applies CFU regulations 11.15.2052(A)(1 through 9), .2074(A)(1 through 5), (B)(1 through 3), (C), and (D)(1 through 7). He never considers that these provisions include requirements such as the required 200 foot setback, 500 foot maximum driveway and minimum impact siting, all of which are standards more protective of forest land than state requirements.

Among the several reasons for denial of the application, this issue is the most critical; the wrong decision would be a precedential land mine. Whenever state standards are revised, the county could not rely on any related county standard remaining effective, no matter how apparent it is that the standard remains lawful under the revised statute. If the state were to again change its forest dwelling standards, every regulation in the zoning code, no matter that it remains lawful, would have to be re-enacted, if it would have the effect of denying a dwelling that the statute might allow or of imposing development standards stricter than found in the statute. We don't need that waste, and qualified authorities say the law doesn't require it.

#### IV. SEC Standards and Goal 5

In considering this issue, it is significant that no party, staff or decision maker has disputed that the subject property is entirely within an area inventoried as a significant Goal 5 resource, and that development must satisfy the requirements of either Goal 5 directly, or the county's SEC standards, or both. Which are applicable is disputed, but no party claims none apply. The applicant and Hearings Officer argue for only Goal 5. As is explained below, state law requires application of the county's regulations, acknowledged or not.

The Hearings Officer's determination that the county has no SEC regulations applicable to the wildlife habitat on the site relies on a misunderstanding of the law. Because acknowledgment of revised SEC regulations has been delayed by a very few objections to specific provisions by the DLCD Director and some private individuals, the Hearings Officer wrongly concludes that none of the SEC provisions are effective.

First, if his basic analysis were correct, the county would still have the already acknowledged SEC regulations that were in effect before the amendments, and which were substantially unchanged in the amended SEC chapter. Those regulations are the SEC criteria in MCC .6420, which are entirely ignored by the Hearings Officer. MCC .6420 criteria were readopted in 1994 and again later, substantially unchanged, and are applicable to all SEC permits in addition to the provisions of .6426, applicable to only SEC-h (habitat) overlays. Until 1994, the only SEC approval criteria were in .6420. In all subsequent versions of the SEC chapter, .6420 has provided: "Any proposed activity or use requiring an SEC permit shall be subject to the following." Criteria of subsection A through N follow. It cannot be reasonably argued that "any activity requiring an SEC permit" does not include SEC-w, v, h and s. And, if an unreasonable claim of exemption were put forward, the significance of putting the quoted sentence into .6420 for the first time, simultaneously with the new SEC-w, v, h and s provisions of .6422 through .6428, cannot be reasonably understood as anything but a statement that those provisions are requirements in addition to .6420. The Hearings Officer's discussion is entirely of applicability of .6426, inexplicably ignoring the acknowledged, unchanged, unchallenged and expressly applicable provisions of .6420. (Decision p.3).

Second, the controlling statute sections are ORS 197.625(3)(a) and (b):

"(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions ..."

"(b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment."

The Hearings Officer errs in believing subsection (b) to be an alternative to (a). The plain language indicates that, where the regulations are not acknowledged, they are to be applied, and there are to be additional findings of compliance with the relevant goals.

The DLCD Director's opinion on compliance with the goals carries great weight, and may be arguably decisive. Even assuming the latter, the DLCD findings and orders are most significant in holding that, with a few specifically identified exceptions, the new SEC regulations complied with the Goals as the regulations were adopted prior to this application. The Hearings Officer seems to not understand that, though the regulations in effect at the time of application remain in effect throughout the process, it is always the most recent and correct interpretations of laws and regulations that are effective. Therefore,



only the latest orders of DLCD and LCDC are significant, and they find the SEC regulations relevant to this application, and enacted prior to the application, to be in substantial compliance with the statewide goals. Only provisions, if any, that continue to be held out of compliance are even arguably inapplicable, and the Hearings Officer has identified none!

The applicant has failed to carry the burden of affirmatively proving compliance with the SEC standards, whether all the provisions of current .6420 and .6426, or only .6420 as acknowledged in 1990, and substantially the same as the current version. Compliance of the proposal with some provisions is doubtful. There is no need for opponents to address individual criteria, as they were not at all addressed by the applicant, and not otherwise shown to be satisfied by the evidence in the record.

## V. SUMMARY

The Board should find that the application should be denied for the following reasons in addition to those offered by the Hearings Officer or Staff:

1. In violation of MCC 11.15.2052(A)(4) and .2074(A)(1) and (2) the proposal would impact, impede and curtail accepted farming and forestry practices on surrounding lands by siting a house within 50 feet of 2 boundaries, requiring restricted forest growth in fire safety zones within 100 feet of the dwelling and precluding spraying of chemicals within 200 feet.
2. For reasons given above, there is not compliance with variance approval criteria MCC 11.15.8505(A), (A)(1), A(3) and A(4).
3. The proposal violates the template dwelling standard of MCC 11.15.2052(A)(3)(c)(ii).
4. The proposal is not shown to comply with any of the applicable SEC criteria of MCC 11.15.6420 and .6426.



August 20, 1996

Christopher H. Foster  
15400 NW McNamee Rd.  
Portland, OR. 97231

Multnomah County Board of County Commissioners  
2115 SE Morrison  
Portland, Or.  
Case File : CU-7- 96

Introduction

This testimony is given in support of the of the Planning Staff's recommendation for denial based upon the applicability of the local " template test " ordinance which exceeds the requirements of new State Statutes and O.A.R.S. at the time of effective date. I ask that you reject all of the Hearing's Officers findings in favor of the Staff Report. I believe that the Hearings' Officer has erred on many issues, as the Staff Report demonstrates. This submission discusses just one issue; an issue with broad implications. Having participated in this case before the Hearings' Officer in written testimony, I offer the following for your consideration.

Preliminary Issue

The kind of decision sought by the Applicant is one which overturns or invalidates a local ordinance. Its a generic type of argument that applies equally in any planning jurisdiction. The working interpretation or correct implementation of Statutes offered by the Applicant here is not one held by Staff, County Counsel, or the DLCD. I believe it to be the kind of decision the Applicant seeks is one in which ORS. 197.829 1(d) gives deference to LUBA. I don't believe it to be a local hearings officer's nor a County Commission's burden and responsibility to find new interpretation of State Statutes nor review vague and complicated legislative history which supposedly overturns commonly held understandings. Similarly, the language of ORS. 215.416 at (4) and (8) suggest that this kind of decision-making belongs at the state rather than local level. While there is no law which forbids you from making this type of decision, I think the responsibility lies elsewhere, not here. Its not your obligation.

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OREGON

What Is The Basis Of the Hearings' Officer Version of ORS 197.646 (3) ? The Blondeau vs. Clackamas County LUBA Opinion?

The Hearing's Officer argues that 197.646 (3) requires that the amended goals and administrative rules "shall be directly applicable" in the absence of implementing local ordinances. But in applying the amended rules, he ignores the express language and intent of the legislation. Note that the Statute and Administrative Rule says **Counties may authorize forest dwellings**. If Counties were ordered to site such dwellings, or were given exclusive instructions as to what was necessary to support a denial, the language would be different. There would be no sense to authorizing **Counties** and the language would say **shall** if they were ordered as is the case with other parts of the law. The effect of the Hearing's Officer ruling is to order the County to site the dwelling. In view of the wording of 197.646(3), there must be a reason why we should abandon the language which gives the Counties authority and uses the word "**may**".

The ruling being sought by the Applicant appears to be an attempt to build and expand upon the Blondeau opinion. The implications or relevancy of Blondeau is doubtful for several reasons. That opinion did not seem to turn on any one issue or single argument but but drew from three or four elements which do not exist in this case.

1. The case before us is about the applicability of the "template test", not the "lot of record" provisions as in Blondeau. There is no legislative history offered thusfar which connects the provisions as equal or causes doubt about the express language of ORS 215.750 which states a county "**may** allow"(emphasis added) the establishment of such dwellings.

2. No one here is offering the kind of meaning that Clackamas County offered with regard to 215.705 1(c) or its counterpart at 215.750 4(a). Although the language was never clarified, I find the legislative discussion in Blondeau to be adequate in explaining the aim of the provision was to address things like local floodplain or Goal 5 mineral-aggregate provisions which might otherwise prohibit dwellings. In any case, there are no pre-existing broad comprehensive plan policies which ban dwellings from Multnomah County forestland as was the case in Clackamas County's ( or any other county's) best farmland. Multnomah County already has an implementing ordinance for forest template dwellings The significant conflict between old policies and new Statutes spawned the confusion and misunderstanding of 215.705 1(c) as brought forth in Blondeau.

3. The Blondeau opinion was based in part upon the meaning and effect of the provisions of ORS. 215.705 (5). No such provision applies to template dwellings in the forest zone.

4. Perhaps one of the most important distinctions is that in Blondeau, the parties were in silent agreement over the meaning of all parts of ORS. 197.646. No such agreement exists in this case. This issue is perhaps more important than whatever the legislative intent of HB. 3661. Does 197.646 suspend local ordinances which already exceed newly adopted State Statutes and O.A.R.S. until such a time that they choose to reaffirm them? How does one jump to this conclusion? This is a significant reach!

(a) The position that the Applicant seems to be forwarding here is that that local ordinances were, in their entirety, (or on at least any subject HB3661 arguably touches on) somehow suspended. In other words, the slate was wiped clean when HB 3661 became law. Was it HB 3661 that did this or was it ORS 197.646? Why isn't the Hearing's Officer also throwing out the other Goal 4 provisions like setbacks or driveway lengths which clearly exceed the new rules?

For the sake of argument, suppose that a local ordinance in pre-existence was identical to the new provisions of the law save one small detail which exceeded or was in addition to the new provisions. Say, for example that the old local provision slightly exceeded ORS.215.730(F) in specifying a certain type of spark arrestor or screen size for chimneys. The kind of decision being sought here would similarly suspend this existing provision, even though this provision had

been duly considered, had already been subjected to local hearings and findings, and finally, subject to LCDC acknowledgement proceedings. The provision would be suspended until, upon local initiation, the county re-affirmed its provision through new hearings, findings and acknowledgement proceedings. This procedure typically takes several months and not without substantial costs. Was this burdensome outcome really the intent of HB3661 or does ORS. 197.646 require this? Are these two parts of the law in agreement? What about any additional provisions which may or not be directly addressed in the legislation or spelled out in the regulation?

(b) Its clear in *Dillworth vs Clackamas County*, (LUBA, March 96' ) counties may adopt more stringent regulation with regard to "template dwellings". I don't think this is an issue here. I believe that the Hearings' Officer is in agreement on this point. The more pertinent questions in this case are (1) What does it take to stay or get there? and (2) What part of the law ( if any ) orders the suspension of the existing ordinances which meet, exceed, or are in addition to new regulation?

A handwritten signature in black ink, appearing to read "Chris Felt", with a long horizontal flourish extending to the right.



S O D E R S T R O M   A R C H I T E C T S , P . C .

William COX  
8/27/96  
Submittal

May 16, 1996

Kim Evans  
7555 N.W. 214th Pl.  
City, State Zip

RE: Lot 15 2N2W-25

Dear Ms. Evans:

I have walked your 20 acre property west of Skyline Blvd. for the purpose of selecting the most advantageous site for your new home. The terrain limits siting possibilities to only two locations. Of these two, only one has a view of the valley. I agree with you that this location, at the end of the access road, has significant advantages due to its higher elevation, ventilation, and outlook. Locating a home on the lower portions of the site near the canyons, natural drainage pathways, and slope hazards, brings the additional risk of dry-rot from the constant moisture present due to limited natural aeration.

Your preferred site benefits from solar access throughout the day. Energy conservation is a significant factor in site selection. On this site, you will have passive solar heating from the south, which is also your view orientation. Solar access from the view orientation is quite a rare opportunity which you should use to your advantage.

Your dwelling will not be related to forest management, however, your selected location allows future forestry activities to occur with little impact to your home. If you built on the central portion of the site, for example, access for future logging would severely impact your house. Building on the "edge" of the future forest crop, is a responsible thing to do.

It is also my understanding that due to the moisture and hazardous soils conditions, all percolation tests failed on the lower portions of the site. Percolation was approved for a septic tank and drainfield disposal system on your preferred location.

You have an opportunity to site your dwelling down in the damp, dark hole or on the brow of a sunny hill with a commanding southern view. Obviously, those who presume to make this decision for you have never walked on your property. If they had, there would be no question. You have selected the only buildable site.

ARCHITECTURE  
PLANNING  
INTERIOR DESIGN  
EXTERIOR RESTORATION  
SPACE PLANNING

DAVID SODERSTROM  
CAMERON HYDE  
JON WIENER  
DOUG WALTON  
MARC BEVENS  
DAN DANIELSON  
E. HENRY FITZGIBBON

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MULTNOMAH COUNTY  
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Ms. Kim Evans  
Page 2

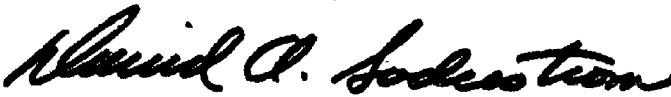
William COX  
8/27/96  
SUBMITTAL

I have practiced architecture for 33 years, and during that time sat for seven years on the City of Portland Variance Committee, five years with Multnomah County's Hearing Council, nearly eight years as President of Portland's Design Commission, and two years on the Portland Planning Commission. All those years of public service adjudicating land-use issues, in addition to my design practice, qualified me, in my opinion, to offer you some judgment in this matter. After being on your property, however, it would seem that your preferred location should be obvious to anyone, since the facts are so clearly in your favor.

I look forward to assisting you further with the detailed siting and design of your home, if, after this protracted approval process, you can still afford to build.

Sincerely,

SODERSTROM ARCHITECTS, P.C.



David A. Soderstrom

DAS/kkc

c:\project\partners\davidlevanslr.doc

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MULTNOMAH COUNTY  
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From : XDDDD

WESTERN HERITAGE

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P02

JEFFREY L. MILLER, AIA  
ARCHITECT

TEN MACLEAY BLVD.  
PORTLAND, OREGON 97210  
503/222-2234

William COX  
8/27/96  
Submittal

May 16, 1996

Attn: Susan Muir  
Multnomah County Planning Dept.  
2115 SE Morrison  
Portland, Oregon 97214  
503-248-3043

Dear Ms. Muir:

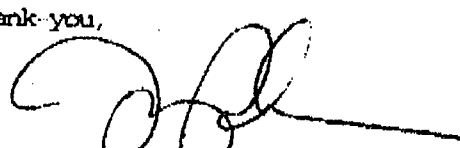
This letter is in regard to the potential home location of Mr. and Mrs. Evans, whom own property just northwest of my property.

Mrs. Evans came to my home to introduce herself and family, and acquire a signature, at your request, with the understanding that I approve of their building their home and it's location. Now I understand that you are proposing the location to be on the south property line, which would also require a variance. I do not approve of the site that you are proposing them to build their home.

In addition, I would like to see no changes to their application, regarding their home site and that I understood it would be, due to the fact that it would infringe on my continuing Christmas tree operation. In the past I have used helicopters to harvest the trees and a home in the southern or central area could impact it. I have no objection to the northwest area at the end of the road on the property in question.

Please have this letter incorporated into the record on this case.

Thank-you,

  
Jeffrey L. Miller

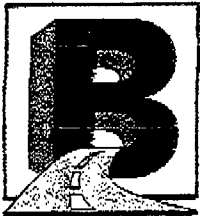
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MULTNOMAH COUNTY  
OREGON

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LAND DEVELOPMENT CONS

FAX NO. 15036817646

P. 02


**BAKER ROCK**  
RESOURCES

21880 S.W. FARMINGTON ROAD  
BEAVERTON, OREGON 97007-5470  
(503) 642-2531  
FAX (503) 642-2534

**RECEIVED**  
MAY 2 1996

Multnomah County  
Zoning Division

William Cox  
8/27/96  
SUBMITTAL

April 30, 1996

Ms. Susan Muir  
Multnomah County Department of Environmental Services  
Division of Planning and Development  
2115 SE Morrison Street  
Portland, OR 97214

Re: Case File: CU 7-95; HV 17-95

Dear Susan,

Our company owns a 40 acre piece of property that lies on the Washington County, Multnomah County border within Washington County. On page 2 of the staff report that you copied for our use our property can be identified as #35 touching the South West corner of the applicants property.

It is my understanding that Multnomah County has recommended denial of the applicants conditional use request, however we understand that you would recommend approval of another location.

At this time I would like to voice our concerns about locating a residential dwelling adjacent to a mineral and aggregate resource. Any residential uses would have to balance against the authorized mineral and aggregate uses. Please enter our concerns into the record.

Sincerely,

*Todd A. Baker*

Todd A. Baker  
Marketing Representative

BOARD OF  
COUNTY COMMISSIONERS  
96 AUG 27 1996  
MULTNOMAH COUNTY  
OREGON







May 16, 1996  
21-08795

AGRA Earth & Environmental, Inc.  
7477 SW Tech Center Drive  
Portland, Oregon  
U.S.A. 97223-8026  
Tel (503) 639-3400  
Fax (503) 620-7892

William COX  
8/27/96  
SUBMITTAL

Kim Evans  
7555 N.W. 214th Place  
Hillsboro, Oregon 97124

Dear Ms. Evans:

RE: PRELIMINARY GEOLOGIC ASSESSMENT  
40 ACRE PROPERTY BETWEEN SKYLINE AND ROCK CREEK RD.  
MULTNOMAH COUNTY, OREGON

AGRA Earth & Environmental, Inc. (AEE), was requested to review some of the pertinent materials from Multnomah Case File: CU 7-95; HV 17-95, regarding the subject property.

Based upon the topography moderate to steep slopes toward the southwest, the drainage patterns, vegetation, experience with recent slope stability problems in the region, and a potential quarry site immediately southwest of the site, it is our opinion that the house should be situated as far from the steep slopes and drainages as possible.

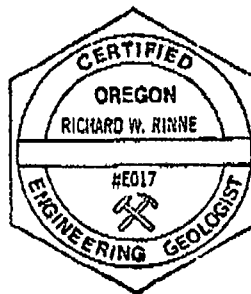
Because of the topography, the bulk of the quarry site would be opened to the northeast, toward your property. This being the case, impacts from quarrying operations (dust, noise, visual) would be lessened with distance. This would place the structure at the extreme northern or eastern part of the property.

If you have any questions or need additional information, please feel free to contact the undersigned at (503) 639-3400.

Sincerely,

AGRA Earth & Environmental, Inc.

  
Richard W. Rinne  
Principal Engineering Geologist



BOARD OF  
COUNTY COMMISSIONERS  
96 AUG 27 PM 1:11  
MULTNOMAH COUNTY  
OREGON

Engineering & Environmental Services



William COX  
8/27/96  
SUBMITTAL

Mr. and Mrs. Eric Evans  
7555 NW 214th Place  
Hillsboro, OR 97124

Dear Mr. and Mrs. Evans:

At your request, I have walked your property and have determined that locating a residence in the central portion of your property makes future timber harvests more difficult than the location you have proposed with Multnomah County.

Most of the property has steep to moderately steep slopes. The center of the property would accomodate a yarder and skycar to yard the timber to a landing. Merchandizing the timber and stockpiling the logs could be easily done at the southern portion of the property which is currently cleared. The resource can be conveniently loaded from this staging area on trucks for shipment. Having a residence close to this type of operation is quite dangerous and would not be recommended.

Other options for future harvestation exists, but involves greater expence because of the limited ability to gain access to some areas with ground equipment. This also creates much more ground disruption and erosion.

I hope this information is helpful in respect to locating your home. If you have any questions, please don't hesitate to call.

Sincerely,

*Michael D. Pihl*

Mike Pihl  
Mike Pihl Logging, Inc.

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 27

Oregon

DEPARTMENT OF  
FORESTRY

Columbia Unit



STEWARDSHIP IN  
FORESTRY

William COX  
8/27/96  
SUBMITTAL

May 17, 1996

Kimi Evans  
7555 N.W. 214th Place  
Hillsboro, Or. 97124

RE: Tax Lot 15, Section 25, T2N R2W W.M.

Dear Mrs. Evans,

This letter is in regards to your request for a satisfactory equivalent to the recommended site standards for a dwelling located in the north portion of the above stated property.


Due to the proposed placement of the dwelling, the recommended alternatives described below need only take place to the west and north of the dwelling. South of the dwelling, which is down slope and east of the dwelling, which is where the dry summer east winds come are far more critical and likely directions from which a fire would come and threaten your dwelling. I understand these two sides of the dwelling will have the recommended site standards of at least a thirty foot primary fire break and a one hundred foot secondary fire break.

The recommended site standard equivalents are as follows:

- 1) A primary fuel free fire break of 50 feet from the dwelling
- 2) All structures, including the dwelling to have a non-combustible roofing material.
- 3) 3,000 gallon water storage tank for the sole purpose of fire protection.
- 4) An underground irrigation system around the residence

I hope the above mentioned alternatives assists you in your desired site location.

Sincerely yours,

  
John Krause  
Forest Practices Forester  
Oregon Department of Forestry

MULTNOMAH COUNTY  
OREGON

96 AUG 27



J. E. Smith  
Multnomah City, OR  
(503) 267-2636  
X (503) 397-8361

ARNOLD ROCHLIN  
8/27/96  
SUBMITTAL

August 27, 1996

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283

Board of County Commissioners  
CU 7-95 HV 17-95 Evans

#### BASIS OF ENTITLEMENT TO STATUS AS A PARTY

I would be aggrieved if a dwelling were approved in a forest zone without correct application of the relevant county code provisions, including SEC standards and relevant CFU standards stricter than the minimum standards of ORS 215.705 through 215.750 and implementing OAR's.

I have been concerned with correct interpretation and application of land use laws and regulations in this region and have expended considerable effort in furthering that interest over the last several years. I chair the Forest Park Neighborhood Association Land Use Committee and am active in land use affairs of the Friends of Forest Park, of which I am an officer and director. In furtherance of my concerns, I am a member of 1000 Friends of Oregon, Audubon Society of Portland and the Oregon Natural Resources Council. Though my own property on the west side of the county is in the City of Portland, near county farm and forest zones, and an incorrect decision would adversely affect enjoyment of my property. I have an interest in preserving forest land as provided by state and county laws, regulations, goals and policies.

I am not here merely to offer information, such as would be offered by an expert witness. I have a philosophical and practical interest in the outcome and am here in hope of avoiding aggrievement by a decision harmful to those interests.

*League of Women Voters v. Coos County*, 15 LUBA 447 (1987) supports the contention that my dissatisfaction with an adverse decision would constitute aggrievement. "Aggrievement" in the MCC is a term intended to correspond in meaning to the language of former and current provisions of ORS Chapters 197 and 215 and must be interpreted to mean the same as it does in the statutes. *Joseph v. Lane County*, 18 Or LUBA 41, 51 (1989).



BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
96 AUG 27

April 30, 1996

VIA FACSIMILE

Oregon

Phillip Grillo, Hearings Officer  
% Multnomah County Division of Planning and Development  
2115 SE Morrison Street  
Portland, Oregon 97214

ARSOLO ROCHLIN  
8/27/96  
SUBMITTAL

DEPARTMENT OF  
LAND  
CONSERVATION  
AND  
DEVELOPMENT

Dear Mr. Grillo:

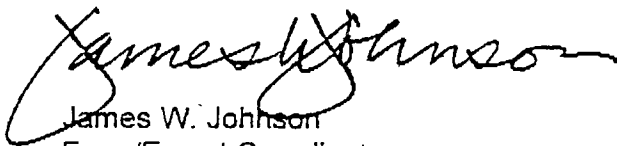
The department has reviewed the Intermediate Ruling in CU7-95 HV 17-95 involving the application for a single family dwelling not related to forest use in the CFU zone. We have the following comments.

In the Ruling, the hearings officer finds that the applicable criteria for review of a "template" dwelling are those found in OAR 660-06-027. We understand that this ruling would also in effect void the more stringent law found in the Multnomah County Zoning Ordinance. We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent land use regulations in addition to the applicable state laws.

ORS 197.646(3) requires a local government to directly apply any new or amended goal, rule or statute when a local government has not adopted comprehensive plan or plan amendments to implement new state laws. This statute does not preclude a county from applying other standards found in county land use regulations. The statute in effect establishes a minimum requirement which must be met in addition to any other applicable laws. This interpretation was confirmed by the Land Use Board of Appeals in *Dilworth v. Clackamas County*, \_ Or LUBA \_ (LUBA No. 95-115, January 4, 1996). Like the subject case, *Dilworth* involved the application of template dwelling standards which are more stringent than those found in state law. LUBA agreed with the county "that it is not precluded from regulating the establishment of dwellings more stringently than is required under ORS 215.750."

Please enter this letter into the record of the proceedings. We also request a copy of the final decision and the findings and conclusions in support of the decision. If you have any questions, please contact me at 503.373.0082.

Respectfully,



James W. Johnson  
Farm/Forest Coordinator

<i:\\multco.eva>

c: Susan Muir, Multnomah County Division of Planning  
Celeste Doyle, AAG  
Jim Knight and Michael Rupp, DLCD  
DLCD Field representatives

RECEIVED  
APR 30 1996

Multnomah County  
Zoning Division

96 AUG 27  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

John A. Kitzhaber  
Governor



1175 Court  
Salem, OR  
(503) 37  
FAX "