

MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION & LAND USE PLANNING DIVISION
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3043

BOARD OF COUNTY COMMISSIONERS
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Multnomah County Hearings Officer Decision

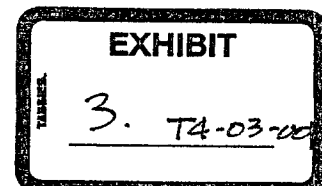
Attached please find a copy of the Hearings Officer's decision in the matter of CU 9-95. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

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

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.

To appeal the Hearings Officer decision, a *Notice of Review* form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at 248-3043

Signed by the Hearings Officer:	April 22, 1996
Decision Mailed to Parties:	April 29 1996
Decision Submitted to Board Clerk:	April 25, 1996
Last day to Appeal Decision:	May 8, 1996
Reported to Board of County Commissioners:	May 9, 1996



RECEIVED

APR 23 1996

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Multnomah County
Zoning Division

Regarding an application by Paul J. and Bonnie A.)	FINAL ORDER
Gill regarding conditional use approval for a non-)	CU 9-95
farm related single family residence in the Exclusive)	(Gill)
Farm Use (EFU and SEC-h Wildlife Habitat) zones)	
located at 11410 N.W. Skyline Boulevard in)	
unincorporated Multnomah County, Oregon.)	

I. HEARING AND RECORD

A public hearing was held concerning this matter on March 20, 1996. The hearing and written record were closed on the same date.

The following exhibits were received and made part of the record by the Hearings Officer:

1. Application
2. Application Packet
3. Completeness Letter
4. Correspondence from Michael Robinson RE: Lot of Record status
5. Vicinity Ownerships
6. Lot of Record documentation
- 7a-b. Air photo of property
8. Deed to Gills
9. Contract creating parcel
10. Property agreements (spring)
11. 50' access Easement granted to Kent Gambee
12. Letter from applicant's attorney requesting rescheduling hearing and waiving 120-day provision of ORS
13. Letter from M. Robinson
14. Letter from Paul & Bonnie Gill requesting rescheduling and waiving 120-day provision of ORS
15. Revised Site Plan
16. Geotechnical Evaluation (HDP Form-1)
17. Site Plan w/Topo: Geotech "Exhibit A"
18. Revised Site Plan w/air photo
19. Staff Report

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings and conclusions contained within the Staff Report dated March 20, 1996 (attached), except to the extent expressly modified or supplemented below.

III. DISCUSSION

A. Applicability of SEC Overlay

A question was raised at the hearing concerning whether or not provisions of the SEC overlay apply to this application. The evidence indicates that Ordinance 832, which adopted the SEC Overlay and applied it to this site was enacted on September 7, 1995 and became effective 30 days thereafter on October 7, 1995. The evidence further indicates that this application was received on October 20, 1995. Therefore, since the application was received after the effective date of Ordinance 832, the SEC overlay applies to this application.

B. Effect of Proposed Development on the Cost of Accepted Farm or Forest Practices on Surrounding Lands

The evidence indicates that the logging road which currently provides access to the primary building site is a private easement. This easement provides access to other interior parcels that are used for forest practices. Also, the evidence indicates that the proposed primary building site has historically been used as a log staging area. Based on the evidence and testimony in the record, the Hearings Officer finds that even if a residence is built on what had been a log staging area at the location of the proposed primary site, other log staging areas exist off-site, within the other interior parcels. Apparently, the staging area located on-site was used to gather and store logs harvested from this property only. Therefore, the loss of this staging area would not increase the cost of accepted forest practices on surrounding lands, because the surrounding forest lands have their own staging areas. As long as the easement is not blocked, so that log trucks and other forest related vehicles can continue to use it, the cost of accepted forest practices on surrounding lands will not be compromised by the construction of this proposed residence.

C. Secondary Building Location

The applicant has identified a secondary building site in their proposed site plan. The Hearings Officer finds that appropriate geotechnical and other analysis has not been performed for this secondary building site and that the site is therefore not approvable based upon the evidence in the record. The conditions of approval have been amended to eliminate any reference to the secondary building site.

D. Fire Protection

The evidence indicates that the Tualatin Valley Fire and Rescue District has had an opportunity to review and comment on the proposal. The District has noted that fire fighting water supply and access to the proposed structure will be provided as required by TVFRD Ordinance 92-01. Furthermore, plans showing hydrants and access complying with Ordinance 92-01 will be required to be submitted to TVFRD for review and approval prior to construction. These requirements have been added as conditions of approval to this land use decision.

The Hearings Officer notes that as shown in the proposed site plan, the logging road easement does not contain an area where fire trucks can turn around. The Exclusive Farm Use zone does not contain development regulations for private roads as is the case in MCC .2074(D) which provides detailed regulations for private roads within the Commercial Forest Use (CFU) zone. The CFU standards for private roads require turnarounds with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length. If this property were located in the CFU zone, the applicant would be required to demonstrate that it is possible to construct a turnaround with a radius of 48 feet at points where the access exceeds 150 feet in length.

However, since this property is zoned EFU, not CFU, the same turnaround regulations do not apply. Instead, access and fire protection standards contained within the EFU are more permissive. The Hearings Officer finds that it is not appropriate to add additional conditions of approval concerning the construction of specific turnarounds. Nonetheless, the Hearings Officer will direct Tualatin Valley Fire and Rescue District to pay particular attention to the needs of their fire, life and safety apparatus so that they are able to safely turn around on site.

IV. CONCLUSION

Based upon the above findings, the Hearings Officer concludes that CU 9-95 should be approved because it does or can meet the applicable approval criteria, subject to the conditions of approval set forth below.

V. DECISION

CU 9-95 is hereby approved subject to the following conditions:

1. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).
2. The dwelling shall be sited in the "primary" location indicated on the attached site plan and shall be located so that it does not conflict with or encroach upon the 50 foot access easement located on the property.
3. Prior to approval of any other residential-related permits, the owner shall disqualify the subject property from farm use taxation and meet all of the conditions set forth in this criterion by paying any additional taxes and penalties as determined by Multnomah County.
4. Prior to the issuance of a building permit for a dwelling, the property owner shall provide to the Division of Planning and Development a copy of the recorded restrictions acknowledging the rights of nearby properties to conduct farm and forest practices. A prepared form is available at the Planning Offices.
5. Prior to obtaining a building permit for a dwelling, the property owner shall demonstrate that the project meets the standards for fire protection as determined by the Tualatin Valley Fire and Rescue District. TVFRD should pay particular attention to a site plan which does not indicate a turnaround for fire and rescue vehicles. The County's land use approval criteria do not require a turnaround in this case. If the District's regulations require such a turnaround, appropriate geotechnical analysis should be performed prior to approving any proposed turnaround, given the extreme slopes located on-site.
6. Prior to the issuance of a building permit for a dwelling, submit a copy of the well report. At that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity for, comment and appeal of this finding.
7. Prior to issuance of a building permit for a dwelling, apply for and demonstrate compliance with the Hillside Development and Erosion Control ordinance, MCC 11.15.6700-.6735. This permit must include a detailed site plan depicting the location of the proposed dwelling, septic system, existing and proposed driveway(s), access easement, and existing and proposed topography.
8. Prior to issuance of a building permit for a dwelling, apply for and demonstrate compliance with the Significant Environmental Concern ordinance, MCC 11.15.6400-.6428.

9. Any dwelling on this site shall comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.

It is so ordered this 22nd day of April, 1996.

A handwritten signature in dark ink, appearing to read "P. E. Grillo", written over a horizontal line.

Phillip E. Grillo
Hearings Officer
Multnomah County



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE DIVISION
2115 S.E. 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.

Case File: CU 9-95

Scheduled Before: Phillip Grillo, Multnomah County Hearings Officer

Hearing Date, Time, & Place: March 20, 1996; at 9:00 a.m.
2115 SE Morrison Street, Room 111
Portland, Oregon 97214

Proposed Action(s) and Use(s): Applicant requests Conditional Use approval for a non-farm related single family residence.

Location of the Proposal: 11410 NW Skyline Boulevard

Legal Description of Property: Tax lot '59', Section 6, T1N, R1W;

Site Size: 9.29 acres

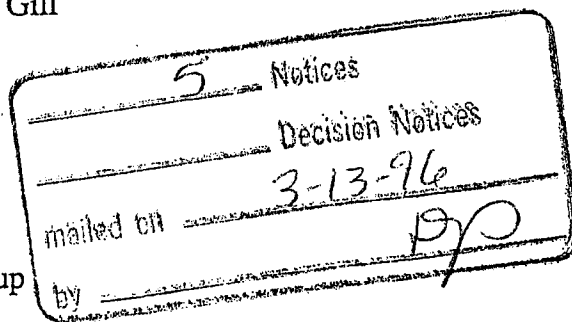
Plan Designation: Exclusive Farm Use; Significant Goal 5 Resource Area

Zoning Designation: Exclusive Farm Use (EFU); SEC-h (wildlife habitat)

Applicant: Paul J. and Bonnie A. Gill
7036 N Wall Avenue
Portland, OR 97203

Property Owner: Same

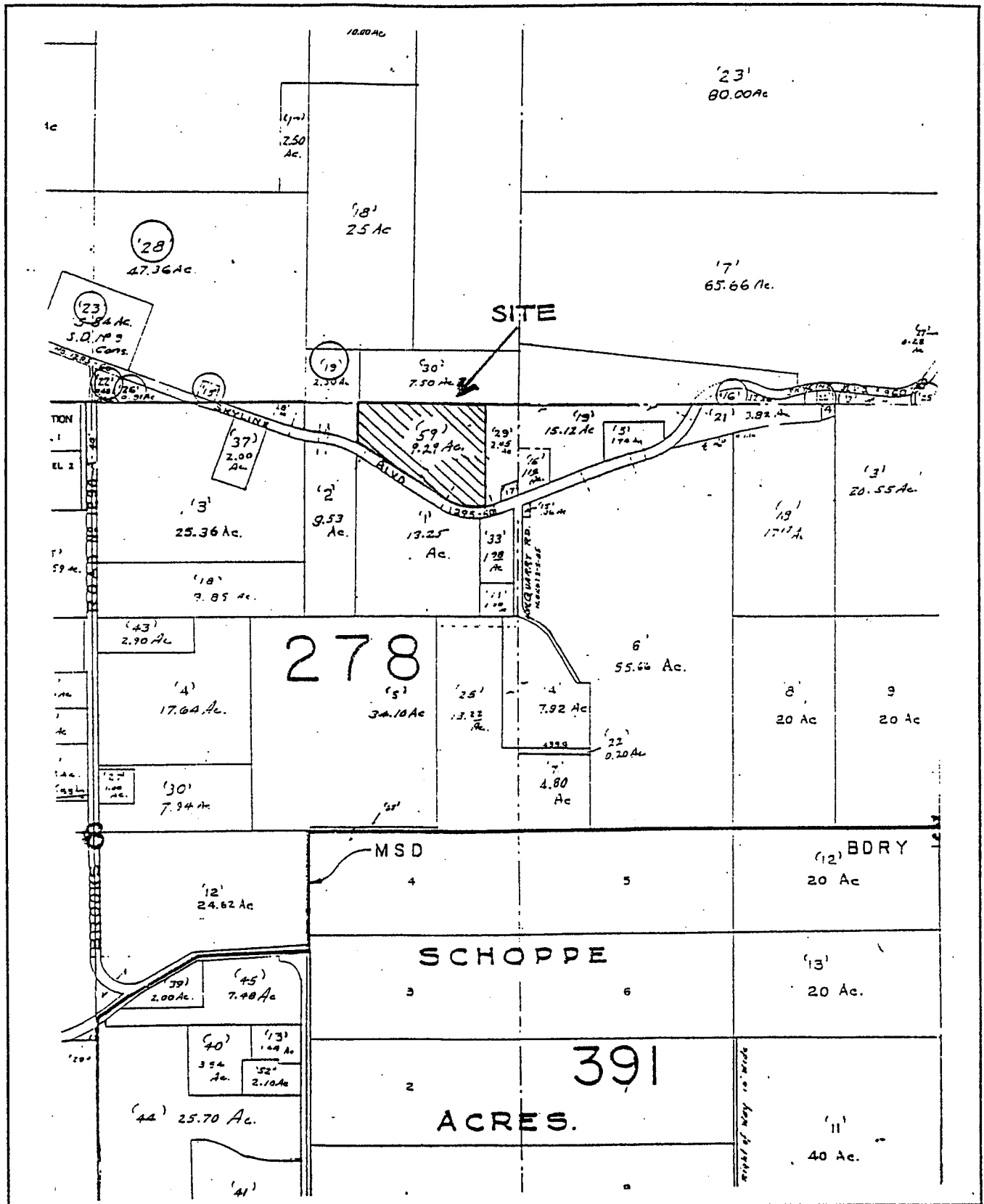
Representative: Dave Kimmel
Planning/Design Group
122 SE 27th
Portland, OR 97214



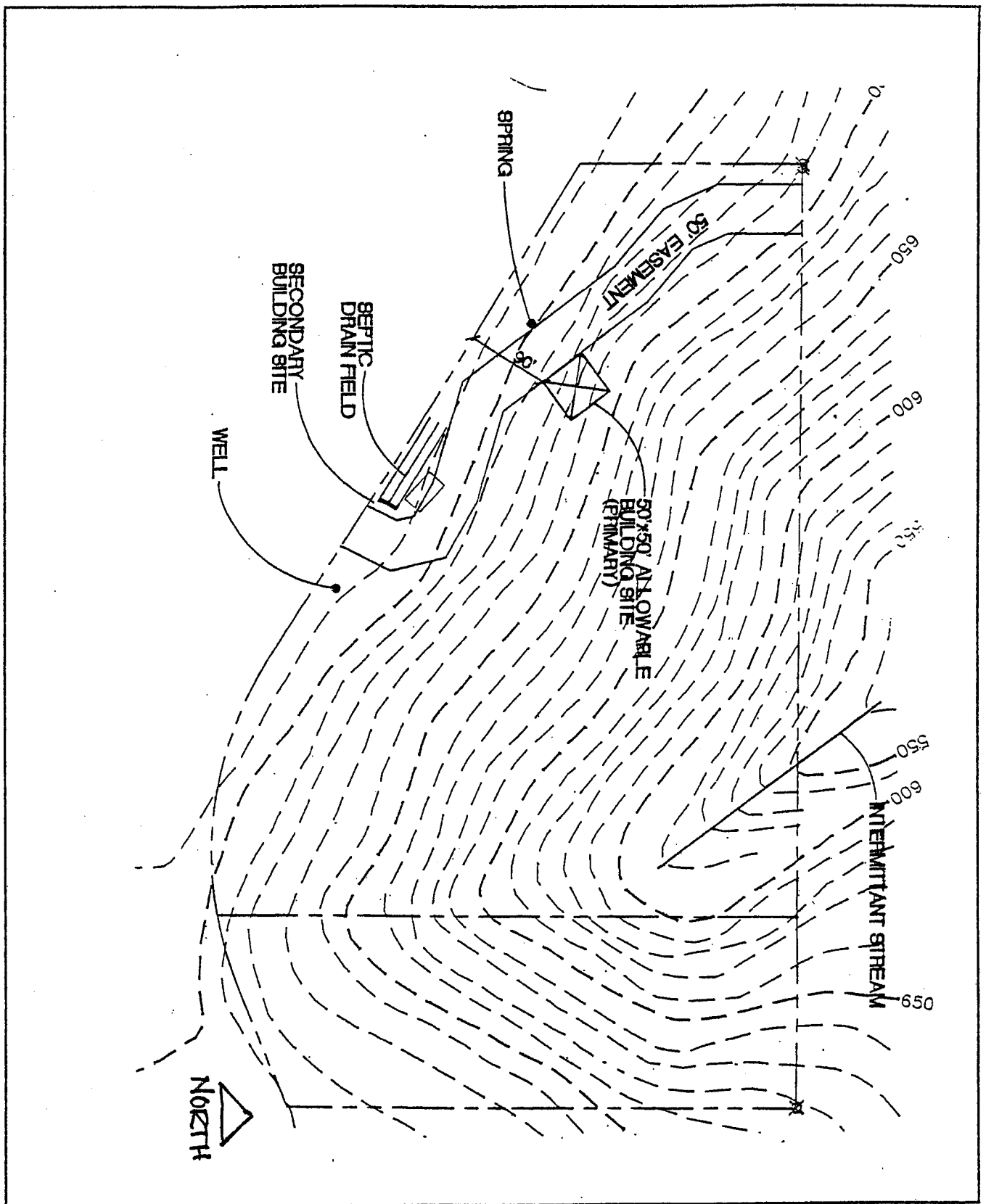
This Building is Wheel-Chair Accessible. Multnomah County TDD Line - 248-5040

Notice
BLM

CU 9-95
Notice mailed 3-13-96



Vicinity Map
CU 9-95



Site Plan
CU 9-95

Recommended Hearings Officer Decision:

Conditional Use (CU 9-95):

Approve, subject to conditions, development of this property with a single family dwelling not related to farm use, based on the following Findings and Conclusions.

CONDITIONS OF APPROVAL:

1. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).
2. The dwelling shall be sited: 1) in the "primary" location indicated on the attached site plan; or 2) in the "secondary" location indicated on the site plan if the dwelling can be sited so that it does not conflict with or encroach upon the 50 foot access easement located on the property.
3. Prior to approval of any other residential-related permits, the owner shall disqualify the subject property from farm use taxation and meet all of the conditions set forth in this criterion by paying any additional taxes and penalties as determined by Multnomah County.
4. Prior to the issuance of a building permit for a dwelling, the property owner shall provide to the Division of Planning and Development a copy of the recorded restrictions acknowledging the rights of nearby properties to conduct farm and forest practices. A prepared form is available at the Planning Offices.
5. Prior to obtaining a building permit for a dwelling, the property owner shall demonstrate that the project meets the standards for fire protection as determined by the Tualatin Valley Fire and Rescue District.
6. Prior to the issuance of a building permit for a dwelling, submit a copy of the well report. At that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity for comment and appeal of this finding.
7. Prior to issuance of a building permit for a dwelling, apply for and demonstrate compliance with the Hillside Development and Erosion Control ordinance, MCC 11.15.6700-.6735. This permit must include a detailed site plan depicting the location of the proposed dwelling, septic system, existing and proposed driveway(s), access easement, and existing and proposed topography.
8. Prior to issuance of a building permit for a dwelling, apply for and demonstrate compliance with the Significant Environmental Concern ordinance, MCC 11.15.6400-.6428.
9. Any dwelling on this site shall comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.

Staff Report Format

This staff report addresses one requested action: a request for conditional use approval for a non farm dwelling in an EFU zone. The Findings of Fact and Conclusions for the conditional use request begin immediately below. Approval of this action will be based on a demonstration that the proposal meets all applicable Multnomah County Ordinance and Comprehensive Plan approval criteria (sections IV and V below) as well as the Oregon Administrative Rule for Agricultural Lands (section III). The applicant's responses to the approval criteria follow each criterion. Staff Comments follow the applicant's response.

Findings of Fact

NOTE: Much of the application material relied upon as evidence for developing this Staff Report was submitted by Western International Forest Products, Inc., who were acting on behalf of property owners Paul and Bonnie Gill. On January 24, 1996 Multnomah County received a letter from the Gills requesting the County to consider them as applicant, rather than Western International Forest Products.

I. PROPOSAL:

Applicant's Response: Western International Forest Products, Inc. ("Applicant") is the previous owner of the property that is the subject of this request and, on behalf of the current owners, is applying for land use approval to construct a single-family residence on the property. In 1990, Multnomah County ("County") approved a conditional use permit application that proposed the construction of a single-family residence. That permit has now lapsed. The property is located on the north side of Skyline Boulevard near Cornelius Pass in Multnomah County. It is designated Exclusive Farm Use ("EFU") in the County Comprehensive Plan and is located in an EFU zone. Surrounding land uses are as follows: West: single-family home (tax lot 2); East: vacant agricultural land (tax lot 29); North: vacant agricultural land (tax lot 30); South: single-family home (tax lot 1). The current owners intend to build a single-family residence because this parcel is not suitable for commercial farm or forestry use due to adverse soils and terrain, small lot size, and poor lot configuration. This parcel is located among several other small agricultural tax-deferred parcels and is unlikely to be joined with other parcels to create a farmable unit.

Staff Comment: The applicant requests Hearings Officer approval to develop the above described 9.59 acre lot with a single family dwelling. A tentative site plan has been submitted by the applicant. This site plan indicates two potential locations for development of a single family dwelling: 1) a "primary" site located on the western portion of the site on a former log landing area adjacent to a 50 foot wide access easement; and 2) a "secondary" site in close proximity to Skyline Boulevard in the southern portion of the site. As depicted on the site plan, the secondary site encroaches somewhat into the access easement, and therefore may require adjustment to the site or easement in order to be a viable location.

II. SITE AND VICINITY CHARACTERISTICS:

The subject parcel is located on Skyline Blvd west of McNamee Road in the rural West Hills area of unincorporated Multnomah County. The property is surrounded by other properties located in the Commercial Forest Use (CFU) and Exclusive Farm Use (EFU) zones. Parcels in the immediate vicinity vary in size, ranging from approximately one acre to over 80 acres. Most of the small parcels in this area are located adjacent to Skyline Boulevard, McNamee Road, Newberry Road and Brooks Road. Many of these parcels appear to be developed, most with single family homes. Some farming occurs on lands west of the subject parcel, and a commercial nursery also operates to the south and west of the subject parcel. Most of the area to the north of the parcel is less parcelized, typified by steep topography, and has been recently clear cut. Land to the east appears to be forested (see air photo exhibit # 7), although several homes have been developed along Skyline Boulevard. Topography of the subject parcel is severe, with slopes exceeding 40%. However, a relatively narrow flat area, or "shelf," adjoins Skyline Boulevard. This is the location of the applicant's "secondary" building site. Another relatively flat area (staff estimates slopes at under 15%) exists in the western portion of the lot adjacent to the access easement. This flat area, which appears to have been used as a log landing at an earlier date, is the applicant's "primary" dwelling site.

III. OREGON ADMINISTRATIVE RULE CONSIDERATIONS

A. OAR 660-33-130, Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

A NON-FARM RELATED SINGLE FAMILY RESIDENCE REQUIRES APPROVAL OF THE GOVERNING BODY OR ITS DESIGNATE IN ANY FARMLAND AREA ZONED FOR EXCLUSIVE FARM USE.

(A) IN THE WILLAMETTE VALLEY, THE USE MAY BE APPROVED IF:

(A) THE DWELLING OR ACTIVITIES ASSOCIATED WITH THE DWELLING WILL NOT FORCE A SIGNIFICANT CHANGE IN OR SIGNIFICANTLY INCREASE THE COST OF ACCEPTED FARMING OR FOREST PRACTICES ON NEARBY LANDS DEVOTED TO FARM OR FOREST USE;

Applicant's Response: The proposed use of this property for a non-farm dwelling is compatible with the farm uses allowed in ORS 215.213. The location of the proposed dwelling is out of sight and far removed from commercial farm areas. The proposed dwelling will be over 350 feet away and 60 feet lower in elevation from the nearest sensitive farming area to the south. No farming activities occur north, east, or west of the proposed dwelling site. Only a 13.25-acre parcel to the south across Skyline Boulevard is engaged in commercial farm activity, and this is a relatively small farm according to 1987 Census of Agriculture statistics. The physical segregation afforded by the Skyline Boulevard right-of-way and difference in elevation allow the proposed use to be developed without significantly increasing the cost of or significantly changing nearby farming practices.

The location of the dwelling on the subject property will minimize any adverse effects on nearby

farm and forest ownerships. Property ownerships to the east and west are non-resource home-sites. The only commercial farm unit is located directly across Skyline Boulevard to the south. It is used for a commercial nursery operation. The nearest sensitive farming areas on the nursery property are at least 350 feet from the proposed dwelling site. The nearest commercial forest area is located on the parcel directly north of the subject property. The nearest sensitive commercial forest area is more than 480 feet away.

The activities associated with the proposed dwelling development should not significantly affect operations and uses on adjacent parcels. Activities associated with development of the residence will include lawn maintenance, outdoor recreation, and normal traffic to and from the residence. No home occupations or variances are anticipated. It is our understanding that other dwellings in the area coexist with farm and forest operations without conflict.

Staff Comment: Development of a dwelling on this parcel would not have a direct impact on farming or forestry practices. Most farm parcels, located to the south and west, are located a sufficient distance away from the subject parcel or are separated by Skyline Boulevard. Significant forestry has been practiced on the parcels to the north of this dwelling in the past, as evidenced by a recent clear cut. Access to the forested area was via a logging road that runs along the western edge of the parcel. An easement has been granted on this parcel for access to these northern parcels. Development of a dwelling on this site could impact future use of this access, and in turn, future forestry activities on northern parcels could possibly be impeded. However, the site plan submitted acknowledges this easement and specifies the location of the dwelling (primary site) and other on-site features accurately enough to ensure no conflicts with this easement. Therefore staff finds that a dwelling in the primary location specified on the revised site plan will not force a significant change in or significantly increase the cost of forest practices on nearby lands devoted to forest use. The applicant's secondary building site appears to conflict with the access easement, which could increase the cost of forest practices to the north. Therefore, the secondary site must be modified to eliminate conflicts with the easement to meet this criterion.

(B) THE DWELLING WILL BE SITED ON A LOT OR PARCEL THAT IS PREDOMINANTLY COMPOSED OF CLASS IV THROUGH CLASS VLLL SOILS THAT WOULD NOT, WHEN IRRIGATED, BE CLASSIFIED AS PRIME, UNIQUE, CLASS I OR CLASS 11 SOILS;

Applicant's Response: Ninety-five percent of this parcel is mapped as class IV through VIII soils. The subject property is located on the north side of Skyline Boulevard near Cornelius Pass. The property has an existing access near the eastern property boundary. The inherent site characteristics for the subject property such as soil classification and topography make this parcel unsuitable for agricultural use.

Three soil series are located on the subject property according to the Soil Survey for Multnomah County, Oregon. The three series are the Cascade silt loam (7C), Cascade silt loam (7D), and the Goble silt loam (17E). Only the Cascade silt loam (7C) is designated as high-value farmland soil by House Bill 3661 (1995 Session). This soil series comprises less than 4 percent of the total land area of the subject property. This can be seen by examining the northeast corner of the soils

map.

Eighty percent of the soil on the subject property is the Goble silt loam (30 to 60 percent slope). This soil series is class VI and does not meet the OAR definition for agricultural soils in Western Oregon or prime or important soils under House Bill 3661.

Approximately 15 percent of the property is mapped Cascade silt loam (7D) and is not designated high value according to House Bill 3661. This narrow strip of soil wraps around the entire southern and western boundaries in a strip not exceeding 200 feet in width.

The overall pedological profile of this property is very poor for commercial agriculture. More than 95 percent of the site is unsuitable for agricultural use based on the mapped soil series.

The topography of the subject site also makes the site unsuitable for agricultural use. The only relatively level areas on the site are located in the extreme northeast corner of the property and south of the 750-foot contour interval along Skyline Boulevard. These areas coincide with the areas mapped 7C and 7D, respectively. Either of these areas are suitable for development of a single-family residence.

According to the Geologic and Slope Hazard Maps for Unincorporated Multnomah County, Oregon, the bulge south of the 750-foot contour interval and the level area in the northeast corner are both outside geologic hazard areas. The proposed dwelling will be located in one of these two locations. The applicant will place the dwelling south of the 750-foot contour interval to allow space for emergency vehicle access.

Staff Comment: Staff concurs that the property is characterized by soils types 7C (Cascade silt loam), 7D (Cascade silt loam), and 17E (Goble silt loam). Of all three soil types, only 7C is considered to be high value agricultural soil. However, this soil type only represents a small portion (less than 10%) of the property area. Steep topography throughout most of the site also diminishes the probability of productive farming.

(C) THE DWELLING WILL BE SITED ON A LOT OR PARCEL CREATED BEFORE JANUARY 1, 1993;

Applicant's Response: The subject property was legally created before January 1, 1993.

Staff Comment: Staff concurs with the applicant. The parcel was created by contract in 1979 at a time when this parcel was zoned MUA-20, and new parcels were created when bisected by a road. See Lot of Record Discussion, at MCC 11.15.2018, to follow.

(D) THE DWELLING WILL NOT MATERIALLY ALTER THE STABILITY OF THE OVERALL LAND USE PATTERN OF THE AREA. IN DETERMINING WHETHER A PROPOSED NON-FARM DWELLING WILL ALTER THE STABILITY OF THE LAND USE PATTERN IN THE AREA, A COUNTY SHALL CONSIDER THE CUMULATIVE IMPACT OF NON-FARM DWELLINGS ON OTHER LOTS OR PARCELS IN THE AREA SIMILARLY SITUATED.

Applicant's Response: The proposed dwelling will not materially alter the stability of the overall land use pattern of the area. In general, most non-farm dwellings are located on small parcels (under 10 acres) with adverse soils and terrain and within 200 feet of a County-maintained road. This proposal is consistent with the land use pattern of the area because the proposed dwelling will be located on a narrow strip of land adjacent to the Skyline Boulevard right-of-way and situated on a parcel, 95 percent of which, has slopes of at least 20 percent.

The proposed dwelling will be located near existing infrastructure, including utilities and Skyline Boulevard. By locating the residence near Skyline Boulevard, the area to the north can serve as a buffer to nearby forest lands. In conclusion, the location of the dwelling will not be detrimental to farming or forestry.

Staff Comment: Staff concurs with the applicant. Many of the properties along Skyline Boulevard in the vicinity of the subject property are developed with residences. A dwelling on this particular parcel would be relatively isolated from adjacent farm uses, due to topography.

(E) THE DWELLING COMPLIES WITH SUCH OTHER CONDITIONS AS THE GOVERNING BODY OR ITS DESIGNATE CONSIDERS NECESSARY.

Applicant's Response: The owner will comply with any conditions the County considers necessary. The owner requests that any additional conditions be attached to the decision granting the conditional use.

Staff Comment: Recommended Conditions of Approval are included in this document.

IV. ORDINANCE CONSIDERATIONS:

A. MCC 11.15.2012 CONDITIONAL USES

(B) THE FOLLOWING USES MAY BE PERMITTED WHEN APPROVED BY THE HEARINGS OFFICER PURSUANT TO THE PROVISIONS OF MCC .7105 TO .7140:

(3) RESIDENTIAL USE NOT IN CONJUNCTION WITH FARM USE, CONSISTING OF A SINGLE FAMILY DWELLING, INCLUDING A MOBILE OR MODULAR HOME. THE LOT SHALL BE A LOT OF RECORD UNDER MCC .2018 OR HAVE BEEN CREATED UNDER THE APPLICABLE PROVISIONS OF MCC 11.45, LAND DIVISIONS. THE HEARINGS OFFICER SHALL FIND THAT A DWELLING ON THE LOT AS PROPOSED:

(A) IS COMPATIBLE WITH FARM USES DESCRIBED IN PARAGRAPH (A) OF SUBSECTION (2) OF ORS 215.203 AND IS CONSISTENT WITH THE INTENT AND PURPOSES SET FORTH IN ORS 215.243;

Applicant's Response: The proposed use of this property for a non-farm dwelling is compatible with the farm uses allowed in ORS 215.213. The location of the proposed residence is out of sight and far removed from commercial farm areas.

The proposed dwelling will also be consistent with the intent of ORS 215.243. This statute encourages the continuation of commercial agriculture by maintaining farm ownerships in large blocks and discouraging land divisions. This application involves an existing lot of record and does not create a new lot through a land division.

Staff Comment: A revised site plan submitted by the applicant in March 1996 indicates that the primary location of the proposed dwelling will be in the central/western portion of the site. The primary location is relatively isolated from farmland to the west due to topography, and is separated from farmland to the south by Skyline Boulevard. The applicant's secondary dwelling site is located adjacent to Skyline Boulevard which also creates few conflicts with adjacent farmland due to physical separation by topography and Skyline Boulevard.

(B) DOES NOT INTERFERE SERIOUSLY WITH ACCEPTED FARMING PRACTICES, AS DEFINED IN PARAGRAPH (C) OF SUBSECTION (2) OF ORS 215.203, ON ADJACENT LANDS DEVOTED TO FARM USE;

Applicant's Response: The proposed residence will be more than 350 feet away from the nearest sensitive farming area. That area, a 13.25-acre parcel to the south across Skyline Boulevard, is engaged in commercial farm activity. This is a relatively small farm according to 1987 Census of Agriculture statistics. The physical segregation afforded by Skyline Boulevard will decrease any potential interference factor. The 60-foot difference in elevation between the proposed dwelling site and the nearest sensitive farming area also reduces the interference factor. No farming activities occur north, east, or west of the proposed dwelling site.

Staff Comment: Due to the relatively isolated site and topographic features, staff believes that a residence on this site would not interfere with farming on adjacent parcels to the south and west.

(C) DOES NOT MATERIALLY ALTER THE STABILITY OF THE OVERALL LAND USE PATTERN OF THE AREA;

Applicant's Response: The land use pattern in the area is a diverse mix of parcel sizes and uses. Small parcels tend to be located along existing developed roads in the area, while larger parcels tend to be located behind road frontage lots.

This particular action involves an existing 9.29-acre lot located between lots of 9.53 and 2.45 acres. Other small lots along Skyline Boulevard include parcel sizes of 1.74, 1.33, 1.98, 2.0, 3.32, and 5.61 acres. Parcels of 1.0, 4.0, and 7.92 acres are located along N.W. Quarry Road immediately to the southeast. This preponderance of small lots along N.W. Quarry Road and Skyline Boulevard underscores the heavy parcelization in the immediate vicinity. No new lot is being created as a result of this action, and consequently no further destabilization is likely to occur.

Staff Comment: As discussed earlier, staff believes that development of this parcel with a dwelling will not materially alter the stability of the overall land use pattern.. Many parcels in

this area, including those along roads such as Skyline and McNamee have already been developed residentially.

- (D) IS SITUATED UPON GENERALLY UNSUITABLE LAND FOR THE PRODUCTION OF FARM CROPS AND LIVESTOCK, CONSIDERING THE TERRAIN, ADVERSE SOIL OR LAND CONDITIONS, DRAINAGE AND FLOODING, VEGETATION, LOCATION AND SIZE OF THE TRACT;

Applicant's Response: According to the Soil Survey for Multnomah County, Oregon, 85 percent of the property is made up of class VI soils with 30 to 50 percent slopes. The remaining 15 percent is composed of lands that are relatively steep (1.4 acres at 15 to 30 percent slope) or moderately steep (.4 acres at 7 to 12 percent slope).

According to the Geologic and Slope Hazard Maps for Unincorporated Multnomah County Oregon, portions of the property are in a geologic hazard area (see Exhibit 6).

The topography of the property does not automatically preclude the prudent use of this parcel for agriculture. The odd configuration, steepness, and disjointed location of agriculturally rated soils make the reasonable use of this land for agriculture difficult.

The amount of land that is level enough for cultivated crops is no more than one acre. Even some of the area mapped 7D with 15 to 30 percent slopes is too steep for cultivated crops. Nearly 90 percent of the property is too steep and the slopes too fragile for serious consideration as livestock land. No animal unit month rating for livestock is provided by the USDA when Goble series soils occupy 85 percent of the site.

Commercial nursery stock operations located on the south side of Skyline Boulevard cannot reasonably incorporate any portion of this property into their farming operations because of the location of Skyline Boulevard. Moreover, insufficient developable land for commercial agriculture is available on this parcel.

Staff Comment: Staff concurs with the applicant. The parcel is composed of soils which are Class VI with 30 to 50 percent slopes.

- (E) COMPLIES WITH SUBPARTS (1), (2) AND (3) OF MCC .2010(A) IF CONSTRUCTED OFF-SITE;

Applicant's Response: This criterion is not applicable.

Staff Comment: Staff concurs with the applicant. The type of dwelling has not been specified. However, as a Condition of Approval, any future dwelling will be required to demonstrate compliance with these provisions prior to building permit approval.

- (F) COMPLIES WITH SUCH OTHER CONDITIONS AS THE HEARINGS OFFICER CONSIDERS NECESSARY TO SATISFY THE PURPOSES OF MCC .2002;

Applicant's Response: The applicant is willing to comply with any conditions that the

Hearings Officer considers necessary.

- (G) CONSTRUCTION SHALL COMPLY WITH THE STANDARDS TO THE BUILDING CODE OR AS PRESCRIBED UNDER ORS 446.002 THROUGH 446.200, RELATING TO MOBILE HOMES;

Applicant's Response: This criterion is not applicable unless a mobile home is placed on the property by a subsequent purchaser.

Staff Comment: Staff concurs with the applicant. However, as a Condition of Approval, any future dwelling will be required to demonstrate compliance with these provisions prior to building permit approval.

- (H) THE DWELLING SHALL BE ATTACHED TO A FOUNDATION FOR WHICH A BUILDING PERMIT HAS BEEN OBTAINED; AND

Applicant's Response: The applicant or a subsequent purchaser will comply with this standard.

Staff Comment: A specific dwelling has not been proposed on this site. However, as a Condition of Approval, any future dwelling will be required to demonstrate compliance with these provisions prior to building permit approval.

- (I) THE DWELLING SHALL HAVE A MINIMUM FLOOR AREA OF 600 SQUARE FEET.

Applicant's Response: Any dwelling either placed or constructed on this site will have a floor area of at least 600 square feet.

Staff Comment: A specific dwelling has not been proposed on this site. However, as a Condition of Approval, any future dwelling will be required to demonstrate compliance with this provision prior to building permit approval.

- (J) THE OWNER SHALL RECORD WITH THE DIVISION OF RECORDS AND ELECTIONS A STATEMENT THAT THE OWNER AND SUCCESSORS IN INTEREST ACKNOWLEDGE THE RIGHTS OF NEARBY PROPERTY OWNERS TO CONDUCT ACCEPTED FARMING AND FORESTRY PRACTICES.

Applicant's Response: The owner will comply with this requirement.

Staff Comment: A statement acknowledging the rights of nearby property owners to conduct accepted farming and forestry practices has not been recorded to date. As a Condition of Approval, the owner will be required to demonstrate compliance with this provision prior to building permit approval.

- (K) THE APPLICANT SHALL PROVIDE EVIDENCE THAT ALL ADDITIONAL TAXES AND PENALTIES, IF ANY, HAVE BEEN PAID IF THE PROPERTY HAS BEEN RECEIVING SPECIAL ASSESSMENT AS DESCRIBED IN ORS 215.236(2). IN THE ALTERNATIVE, THE APPROVAL AUTHORITY MAY ATTACH CONDITIONS TO ANY APPROVAL TO INSURE COMPLIANCE WITH THIS PROVISION.

Applicant's Response: The Applicant has contacted the Multnomah County Assessor's Office regarding the current tax status. The subject property is currently assessed at a deferred taxation rate for timber. Upon approval of the Conditional Use Permit, the owner will disqualify the subject property from farm use taxation and meet all of the conditions set forth in this criterion.

Staff Comment: The applicant has not provided evidence of compliance with this criterion. Therefore, as a Condition of Approval, prior to approval of any other residential-related permits, the owner shall disqualify the subject property from farm use taxation and meet all of the conditions set forth in this criterion by paying any additional taxes and penalties as determined by Multnomah County.

B. MCC 11.15.2018 LOT OF RECORD

(A) FOR THE PURPOSES OF THIS DISTRICT, A LOT OF RECORD IS:

(2) A PARCEL OF LAND:

- (A) FOR WHICH A DEED OR OTHER INSTRUMENT CREATING THE PARCEL WAS RECORDED WITH THE DEPARTMENT OF GENERAL SERVICES, OR WAS IN RECORDABLE FORM PRIOR TO FEBRUARY 20, 1990;
- (B) WHICH SATISFIED ALL APPLICABLE LAWS WHEN THE PARCEL WAS CREATED;
- (C) DOES NOT MEET THE MINIMUM LOT SIZE REQUIREMENTS OF MCC .2016; AND
- (D) WHICH IS NOT CONTIGUOUS TO ANOTHER SUBSTANDARD PARCEL OR PARCELS UNDER THE SAME OWNERSHIP, OR

Applicant's Response: Tax lot 59 was part of a larger tract containing 22.54 acres. Skyline Boulevard bisects the property. Tax lot 59 was previously zoned Multiple Use Agriculture (MUA-20). Section 3.134.2, "Lot of Record," of the MUA-20 district ordinance provided as follows: "Separate lots of record shall be deemed created when a street or zoning district boundary intersects a parcel of land."

Because NW Skyline Boulevard bisects the larger parcel, two lots of record were created pursuant to the MUA-20 district: Tax Lot 59 and Tax Lot 1. Therefore, when Nellie May Brooks conveyed Tax Lot 59 to Michael Kruger and Gayle Brooks Kruger in 1979, she conveyed a lot which satisfied all applicable laws when the parcel was created pursuant to the then effective MCC 3.142.2(c).

Staff Comment: Staff concurs with the applicant. The lot was created in 1979 when it was conveyed by contract. The lot was, at the time, zoned MUA-20 which recognized separate lots of record for land bisected by a street or zoning district boundary (Exhibit 4).

C. MCC 11.15.7120 CONDITIONAL USE APPROVAL CRITERIA

IN APPROVING A CONDITIONAL USE, THE HEARINGS OFFICER SHALL FIND THAT THE PROPOSAL:

- (1) IS CONSISTENT WITH THE CHARACTER OF THE AREA;

Applicant's Response: The Applicant's area is characterized by a diverse mix of parcel sizes and uses. Small parcels tend to be located along existing developed roads in the area, while larger parcels tend to be located behind road frontage lots.

This application involves an existing 9.29-acre lot located between lots of 9.53 and 2.45 acres. Other small lots along Skyline Boulevard include parcel sizes of 1.74, 1.33, 1.98, 2.0, 3.32, and 5.61 acres. Parcels of 1.0, 4.0, and 7.92 acres are located along N.W. Quarry Road immediately to the southeast. This number of small lots along N.W. Quarry Road and Skyline Boulevard underscores the heavy parcelization in the immediate vicinity. No new lot is being created as a result of this action, and consequently the Applicant's proposal is consistent with the character of the area.

Staff Comment: Staff concurs with the applicant.

- (2) WILL NOT ADVERSELY AFFECT NATURAL RESOURCES;

Applicant's Response: The proposed use of this property for a non-farm residence is compatible with and will not adversely affect the natural resources of this area. The Applicant is siting the residence near Skyline Boulevard to minimize the impact to natural resources of bringing utilities to the residence. The residence will also be sited on the ridge above the steep slopes on the property to avoid adversely affecting the natural drainage patterns of the area.

Staff Comment: Staff concurs that development of this site will not adversely affect natural resources.

- (3) WILL NOT CONFLICT WITH FARM OR FOREST USES IN THE AREA;

Applicant's Response: The proposed dwelling will be more than 350 feet away from the nearest sensitive farming area. Only a 13.25-acre parcel to the south across Skyline Boulevard is engaged in commercial farm activity, and this is a relatively small farm according to 1987 Census of Agriculture statistics. The physical segregation afforded by the Skyline Boulevard will decrease any potential conflict with farm or forest uses. The difference in elevation between the proposed residence site and the nearest sensitive farming area will also reduce any conflicts with neighboring farm and forest uses. No farming activities occur north, east, or west of the proposed dwelling site.

Staff Comment: As noted earlier, conflicts with nearby farms is minimized due to topography

and existing roadways. However, significant forestry has been practiced on parcels to the north of the subject property. Access to northern forest parcels is currently provided via an access easement through the subject property. Location of a dwelling on the parcel could create conflicts with forestry in the area if access to these parcel is impaired. A dwelling located at the primary site will not conflict with nearby farm or forest uses because there are no conflicts with this access easement. Conflicts with this easement exist with the secondary site and must be resolved before a dwelling could be sited at this location.

- (4) WILL NOT REQUIRE PUBLIC SERVICES OTHER THAN THOSE EXISTING OR PROGRAMMED FOR THE AREA;

Applicant's Response: The proposed residence will not require public services other than those existing or planned for the area. Please refer to attached service provider forms (see Exhibit 8).

Staff Comment: Staff concurs with the applicant. No additional public services will be required to serve the proposed development.

- (5) 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 WILL BE ACCEPTABLE;

Applicant's Response: The residence will not be located in big game wintering habitat (see Exhibit 9).

Staff Comment: The parcel is located outside a big game winter habitat area (case file Exhibit 2 (9))

- (6) WILL NOT CREATE HAZARDOUS CONDITIONS; AND

Applicant's Response: The placement of the Applicant's proposed residence will minimize any hazardous conditions that may arise if the residence were sited on the property's steep slopes. The residence will not create any hazardous conditions for adjacent property owners, and all structures erected on the property will meet all UBC requirements.

Staff Comment: Most of the subject site is subject to severe slopes, The entire parcels is identified as a hazard area on the Multnomah County Slope Hazard Map. The applicant has submitted Multnomah County's *HDP Form-1* prepared by a professional engineering geologist, Kevin Foster of Foster Geotechnical. In this form, Foster Geotechnical indicates that development of the property with a dwelling on the "primary" site will not create potential land stability problems for the subject property and adjacent suites, provided additional geotechnical work, including a soils report, are performed on site prior to development. The HDP Form-1 does not specifically address the secondary building site. Foster Geotechnical recommends that further studies address foundation embedments, site drainage, grading and building setbacks. The consultant also notes that there is a remote possibility that subsurface disposal of sewage effluent could cause stability problems. Therefore, as a Condition of Approval, a geotechnical evaluation shall

be required along with a Hillside Development Permit (MCC 11.15.6700-.6735) prior to obtaining building permits.

(7) WILL SATISFY THE APPLICABLE POLICIES OF THE COMPREHENSIVE PLAN.

Applicant's Response: Please see discussion of applicable Comprehensive Plan policies below.

Staff Comment: See applicable Comprehensive Plan policies below.

D. MCC 11.15.7122 EXCLUSIVE FARM USE CONDITIONAL USE APPROVAL CRITERIA

(A) IN ADDITION TO THE CRITERIA OF MCC .7120, AN APPLICANT FOR A CONDITIONAL USE LISTED IN MCC .2012(B) MUST DEMONSTRATE THAT THE USE:

(1) WILL NOT FORCE A SIGNIFICANT CHANGE IN ACCEPTED FARM OR FOREST PRACTICES ON SURROUNDING LANDS DEVOTED TO FARM OR FOREST USE; AND

Applicant's Response: The location of the residence will minimize any adverse effects on nearby farm and forest ownerships. Property ownerships to the east and west are non-resource homesites. The only commercial farm unit is located directly across Skyline Boulevard to the south. The neighboring property is used for a commercial nursery operation, but the nearest sensitive farming areas are at least 350 feet from the proposed building site. The nearest commercial forest area is located on the parcel directly north of the subject property, and the nearest sensitive farming area is more than 480 feet away.

Staff Comment: See previous discussions related to impacts on farm and forest lands.

(2) WILL NOT SIGNIFICANTLY INCREASE THE COST OF ACCEPTED FARM OR FOREST PRACTICES ON SURROUNDING LANDS DEVOTED TO FARM OR FOREST USE.

Applicant's Response: The activities associated with the proposed residence will not significantly increase the cost of accepted farm and forest practices. These activities will include lawn maintenance, outdoor recreation, and normal traffic to and from the residence. No home occupations or variances are anticipated. Adjacent farming practices are separated from the property by Skyline Boulevard. Other dwellings are located in the area, particularly along road frontages. The proposed residence will not increase the cost of farm and forestry practices on surrounding lands.

Staff Comment: No evidence has been submitted with respect to the effect on the cost of farm and forest practices on adjacent lands. However, due to the relative isolation of the proposed dwelling no impacts are anticipated. As a Condition of Approval the owners will be required to sign a statement recognizing the rights of nearby property owners to conduct farm and forest operations.

As noted earlier, development of a dwelling may create conflicts with an forestry-related access

easement on this parcel. However, the revised site plan detailing the location of the house with respect to the easement has been submitted. Due to the proposed "primary" location of the dwelling with respect to the easement, staff finds that the costs of forestry practices will not increase due to conflicts with the easement.

(B) FOR THE PURPOSES OF THIS SUBSECTION SURROUNDING LANDS DEVOTED TO FARM OR FOREST USE SHALL NOT INCLUDE:

(1) PARCELS WITH A SINGLE FAMILY RESIDENCE APPROVED UNDER MCC .2012(B)(3);

(2) EXCEPTION AREAS; OR

(3) LANDS WITHIN THE URBAN GROWTH BOUNDARY.

(C) ANY CONDITIONS PLACED ON A CONDITIONAL USE APPROVED UNDER THIS SUBSECTION SHALL BE CLEAR AND OBJECTIVE.

V. COMPREHENSIVE PLAN POLICIES

(1) **POLICY NO. 9, AGRICULTURAL LAND.** THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS EXCLUSIVE AGRICULTURAL, LAND AREAS WHICH ARE:

A. PREDOMINANTLY AGRICULTURAL SOIL CAPABILITY I, II, III, AND IV, AS DEFINED BY U.S. SOIL CONSERVATION SERVICE;

B. OF PARCEL SIZES SUITABLE FOR COMMERCIAL AGRICULTURE;

C. IN PREDOMINANTLY COMMERCIAL AGRICULTURE USE; AND

D. NOT IMPACTED BY URBAN SERVICE; OR

E. OTHER AREAS, PREDOMINANTLY SURROUNDED BY COMMERCIAL AGRICULTURE LANDS, WHICH ARE NECESSARY TO PERMIT FARM PRACTICES TO BE UNDERTAKEN ON THESE ADJACENT LANDS.

THE COUNTY'S POLICY IS TO RESTRICT THE USE OF THESE LANDS TO EXCLUSIVE AGRICULTURE AND OTHER USES, CONSISTENT WITH STATE LAW, RECOGNIZING THAT THE INTENT IS TO PRESERVE THE BEST AGRICULTURAL LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.

Applicant's Response: The intention of this policy is to maintain parcels of land that are predominantly agricultural soil capability class I through IV. As indicated previously, 85 percent of this site is mapped as class VI and over 95 percent has slopes in excess of 20 percent.

The maximum amount of land suitable for commercial agriculture is no more than one acre. The farmable area on the property is no more than one acre.

This parcel is also affected by several non-farm dwelling sites on the east, west, and south. Bona fide commercial farm units are absent in all directions except to the south where a commercial nursery operates. Thus, this proposal is consistent with the policy to maintain identified commercial agricultural land.

Staff Comment: Staff concurs with the applicant.

- (2) **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: This policy calls for the maintenance and enhancement of air and water quality and the reduction of noise. This parcel is not in a noise congested area and it is not a noise generator. No state or federal agency imposes air quality standards on a single-family residence, and the proposed use does not pose a threat to the County's air quality.

Water quality could be threatened by inadequate on-site sewage disposal. To eliminate this risk, the Applicant will install an adequate on-site subsurface sewage disposal system. In 1991, the Portland Bureau of Buildings conducted a site evaluation report for purposes of determining the appropriate subsurface sewage disposal drainfield system for the subject property. Based on that report, an on-site sewage disposal system was determined to be adequate and appropriate. This system will eliminate any adverse water quality effects.

Staff Comment: There are no known measurement standards for the air and noise quality impacts of a single family dwelling. However, single family dwellings typically have little impact on air and noise quality, particularly in rural areas. For single family dwellings in rural areas, compliance with the water quality policy is typically shown by submitting an approved Land Feasibility Study (LFS), evidence that the land is capable of supporting an on-site sewage disposal system. A Land Feasibility Study (LFS) was conducted for this site in 1991 (LFS 6-91). This study found the site suitable for an on-site sewage disposal system. However, due to changes in the site plan, the City of Portland's Senior Environmental Soils Inspector has determined that LFS 6-91 may no longer be valid (Exhibit 19). Therefore, as a Condition of Approval, prior to obtaining a building permit the applicant will be required to provide evidence of an approved LFS, either a new approval or conformation of the validity of LFS 6-91, for a dwelling located at the "primary" or "secondary" site.

- (3) **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: This policy calls for development to be directed away from or mitigated on land with development limitations. This parcel is not within a 100 year floodplain.

The parcel is composed of three soil types: Cascade Silt Loam (symbol 7C), 8 to 15 percent slopes; Cascade Silt Loam (symbol 7D), 15 to 30 percent slopes; and Goble Silt Loam (symbol 17E), 30 to 60 percent slopes. (See Exhibit 2, Soil Survey Multnomah County, Oregon, Soil Conservation Service, USDA, 1983). Cascade Silt Loam 7C has a low shrink-swell potential. (*Id.* at 215). Soil erosion potential is moderate. (*Id.* at 24.) Cascade Silt Loam 7D also has a low shrink-swell potential (*id.* at 215), but high soil erosion potential (*id.* at 25). Goble Silt Loam 17E has a low shrink-swell potential (*id.* at 216), and a high soil erosion potential.

The residence site is located on a moderately sloped area near Skyline Boulevard and away from significantly sloped areas to the north. The residence site is also located away from the identified geologically hazardous area in the center of the property. The Applicant will be submitting the County's HDP-1 form as part of the Application.

The property is not subject to other limitations described in Policy 14. Therefore, although the property generally contains identified geologic hazard areas, the building site itself contains 10 percent slopes and stable soils and is not subject to development limitations.

Staff Comment: The site is typified by steep slopes in all but a few areas. The entire parcels is identified as a hazard area on the Multnomah County Slope Hazard Map. As noted earlier, Foster geotechnical performed a site evaluation and submitted an **HDP Form-1** indicating that the proposed development would not create potential slope stability problems provided that a thorough soils evaluation that addresses foundation embedments, site drainage, grading and other issues, be conducted prior to site development. As a Condition of Approval, a geotechnical evaluation shall be required along with a Hillside Development Permit (MCC 11.15.6700-.6735) prior to obtaining building permits.

(4) **POLICY NO. 16, NATURAL RESOURCES. THE COUNTY'S POLICY IS TO PRO-**

TECT NATURAL RESOURCES, CONSERVE OPEN SPACE, AND TO PROTECT SCENIC AND HISTORIC AREAS AND SITES. THESE RESOURCES ARE ADDRESSED WITHIN SUB-POLICIES 16-A THROUGH 16-L.

Staff Comment: Compliance with this Plan Policy can be demonstrated through application of MCC 11.15.6400, Significant Environmental Concern-Wildlife Habitat. As a Condition of Approval, compliance with the provisions of this section of the Zoning Ordinance will be required prior to building permit approval.

(5) **POLICY NO. 22, ENERGY CONSERVATION.** THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;
- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.
- E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

Applicant's Response: This policy encourages energy conservation. The property is adjacent to an existing County road and other dwellings. No transit service is provided to the property. It can also be served by existing utilities. This request is not for urban development because it is on an existing lot of record. Therefore, the request does not encourage urban sprawl and relies on existing transportation and utility facilities to serve the dwelling. Sections (A) through (E) of this policy are inapplicable to a single-family dwelling permit on an existing lot of record.

Staff Comment: Staff concurs with the applicant.

(6) **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: Water: The applicant will establish a private well to provide water to this site. Based on the production of adjacent property wells, the Applicant expects to drill a 150-foot well, obtain a 40-foot static water level, and have a flow rate of 15 gallons per minute. Disposal System: The site can accommodate an adequate subsurface sewage disposal system. Drainage: Drainage can be retained on the site. Energy and Communications: Adequate telephone and electric utilities serve the site.

Staff Comment: Water and Disposal: The property is not served by a public water supply system and no evidence has been submitted indicating that an on-site water supply is available. As a Condition of Approval proof of an adequate on-site water supply will be required prior to building permit approval. A Land feasibility Study (LFS 6-91) determined this parcel was suit-

able for an on-site sewage disposal system. As noted earlier, due to changes in the proposed site plan, LFS 6-91 may no longer be considered valid by the City of Portland, the agency contracted by Multnomah County to certify on-site disposal systems. Therefore, as a Condition of Approval, prior to obtaining a building permit, the applicant will be required to provide evidence of a valid, approved LFS for a dwelling on the primary or secondary site.

Drainage: Storm water drainage has not been addressed but will be further analyzed in the Hillside Development and Erosion Control process required as a Condition of Approval prior to obtaining building permit approval.

Energy and Communications: Telephone and electric utilities are available in the vicinity and can be provided to the site.

- (7) **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: The school district has reviewed and commented on the application and has no negative comments. The Portland Police Bureau has commented on the application and also has no negative comments. The Fire District has had an opportunity to review and comment on the proposal, and it has no negative comments.

Staff Comment: The Portland Police Bureau has determined that service can be provided to the site. The Portland Public School District has also determined that capacity is adequate to provide service for a proposed single family dwelling. Fire protection service is provided by the Tualatin Valley Fire and Rescue District (TVFRD). The Fire District has noted that fire fighting

water supply and access to the structure shall be provided as required by TVFRD Ordinance 92-01. Plans showing hydrants and access complying with Ordinance 92-01 shall be submitted to the TVFRD office for review and approval prior to construction. As a Condition of Approval, evidence of this approval will be required by Multnomah County prior to issuance of a building permit.

Conclusions

1. A single family dwelling should not be located in the "secondary" site as indicated on the revised site plan (Exhibit 15) unless conflicts with the access easement indicated on the site plan can be resolved.
2. The proposal for a single family dwelling located in the "primary" site as indicated on the revised site plan (Exhibit 15) is not capable of meeting all the approval criteria applicable to this proposal.
3. By applying Conditions of Approval, the a single family dwelling located in the "primary" site as indicated on the revised site plan (Exhibit 15) can satisfy all applicable approval criteria.

* * *

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 hearing(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.

