

# MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK  
SUITE 1510, PORTLAND BUILDING  
1120 S.W. FIFTH AVENUE  
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
GLADYS McCOY •	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
CLERK'S OFFICE •	248-3277 •	248-5222

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

#### FOR THE WEEK OF

**May 24 - 28, 1993**

Tuesday, May 25, 1993 - 9:00 AM - Board Briefing. . . . .Page 2  
Tuesday, May 25, 1993 - 9:30 AM - Planning Items. . . . .Page 2  
Tuesday, May 25, 1993 - 1:30 PM - Agenda Review . . . . .Page 2  
Thursday, May 27, 1993 - 9:30 AM - Regular Meeting. . . . .Page 2

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers  
Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers  
Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers  
Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

**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.**

Tuesday, May 25, 1993 - 9:00 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFINGS

B-1 Update on the 1993 Legislative Session. Presented by Fred Neal. 30 MINUTES REQUESTED.

---

Tuesday, May 25, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

*Approved  
as Amended*  
P-1 C 6-92a Second Reading and Possible Adoption of a Proposed ORDINANCE Amending those Sections of Multnomah County Code Chapter 11.15 Regulating Land Uses within the Columbia River Gorge National Scenic Area 765

The Following May 3, 1993 Decisions of the Planning and Zoning Hearings Officer are Reported to the Board for Review:

P-2 CS 5-93 APPROVE, SUBJECT TO CONDITIONS, Modification of the Community Service Designation for the Subject Property to Allow a Two-Phased Expansion of an Existing Church Facility for Property Located at 16001 SE MAIN STREET

P-3 CU 20-92 PUBLIC HEARING - ON THE RECORD - 10 MINUTES ORAL ARGUMENT PER SIDE. Review the Hearings Officer Decision of April 13, 1993, APPROVING, Subject to Conditions, a Conditional Use Request for a Non-Resource Related Single Family Dwelling in the MUF-19 Zoning District for Property Located at 8282 S. RODLUN ROAD

---

Tuesday, May 25, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

B-2 Review of Agenda for Regular Meeting of May 27, 1993

---

Thursday, May 27, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR  
NON-DEPARTMENTAL

C-1 In the Matter of the Appointments of Kay Toran, Professional Position, Term Expires 5/96; David Jordan, Professional Position, Term Expires 5/95; Trudi Multime, Lay Citizen Position, Term Expires 5/94; and Mark Rosenbaum, Lay Citizen Position, Term Expires 5/94; to the Children and Youth Services Commission

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-2 ORDER in the Matter of the Execution of Deed D930888 Upon Complete Performance of a Contract to GEORGE P. LARIMER 93-192
- C-3 ORDER in the Matter of the Execution of Correction Deed D90431 for Certain Tax Acquired Property to CITY OF GRESHAM, OREGON 93-193

DEPARTMENT OF SOCIAL SERVICES

- C-4 Budget Modification DSS #62 Requesting Authorization to Appropriate a Total of \$132,080 in State Mental Health Grant Funds to the Mental Health, Youth and Family Services, Developmental Disabilities Contracts Budget and Reconcile Budgeted Revenue with State Amendment #45 and #46
- C-5 Budget Modification DSS #63 Requesting Authorization to Appropriate a Total of \$60,674 in State Mental Health Grant Revenue to the Mental Health, Youth and Family Services Division, Mental and Emotional Disabilities Program and the Office of Child and Adolescent Mental Health Services and Reconciles Budgeted Revenue with State Amendment #44
- C-6 Budget Modification DSS #64 Requesting Authorization to Move \$55,660 that was Appropriated to the Mental Health, Youth and Family Services Division, Partners Project Pass-Through Budget During the Supplemental Budget to Professional Services

REGULAR AGENDA

NON-DEPARTMENTAL  
MANAGEMENT SUPPORT

- R-1 Employee Relations Recognition Ceremony for Multnomah County Employees with 20 through 35 Years of Service (9:30 AM TIME CERTAIN, 45 MINUTES REQUESTED)

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-2 RESOLUTION in the Matter of Commemorating the Lives of Multnomah County Sheriff's Office Members who have Died in the Line of Duty 93-194

COMMUNITY CORRECTIONS

- R-3 Request for Approval of a NOTICE OF INTENT to Apply for a US Department of Education Grant to Fund a Life Skills Program Targeting Offenders in State Prison Scheduled to be Paroled to Multnomah County
- R-4 First Reading of an ORDINANCE to Amend MCC 5.10.430 to Allow Collection of a Fee for mandatory Child Custody Evaluations Provided by Department of Community Corrections Family Services Division for Multnomah County Circuit Court

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-5 RESOLUTION in the Matter of Scheduling the Date for a Possible Runoff Election for the Position of Multnomah County Chair 93-195

LIBRARY SERVICES

*Hold over 1 wk*  
R-6 Ratification of an Intergovernmental Revenue Agreement, Contract #600203, between the Library Information Network of Clackamas County (LINCC) and Multnomah County Library to Provide Housing of the LINCC Reference Staff at the Central Library, for the Period July 1, 1993 through June 30, 1996

PUBLIC COMMENT

R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

0265C/54-57  
cap

Flannery

Agenda Item #	Motion	Second	APP/NOT APP
<u>P-1</u>	<u>Ordin. 2nd Reading</u> <u>Amend SK</u> <u>SK</u>	<u>GH</u> <u>DS</u>	<u>App</u> <u>App</u> }
<u>P-2</u>	<u>Hearing on the Record</u>	<u>Motion to Modify</u>	
<u>P-3</u>	<u>Motion to Grant Appeal with</u> <u>DS</u>	<u>GH</u> <u>App</u>	<u>App</u>

Meeting Date: May 25, 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: C 6-92a Proposed Ordinance Amendments (Second Reading)

BCC Informal \_\_\_\_\_ BCC Formal May 25, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

C 6-92a Review of an Ordinance amending those Sections of Multnomah County Code Chapter 11.15 regulating land uses within the Columbia River National Scenic Area - Second Reading

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL \_\_\_\_\_

Or

DEPARTMENT MANAGER pc BH Weelia

(All accompanying documents must have required signatures)

MULTNOMAH COUNTY  
OREGON  
1993 MAY 12 PM 2:48  
CLERK OF BOARD OF COMMISSIONERS

Meeting Date: May 11, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: C 6-92s Proposed Ordinance Amendments

BCC Informal \_\_\_\_\_  
(date)

BCC Formal May 11, 1993  
(date)

DEPARTMENT DES

DIVISION Planning

CONTACT Sharon Cowley

TELEPHONE 2610

PERSON(S) MAKING PRESENTATION \_\_\_\_\_

Bob Hall

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 20 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

C 6-92a Review of an Ordinance amending those Sections of Multnomah County Code Chapter 11.15 regulating land uses within the Columbia River National Scenic Area.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL \_\_\_\_\_

Or

DEPARTMENT MANAGER BH William

(All accompanying documents must have required signatures)

CLERK OF  
COUNTY COMMISSIONERS  
1993 MAY - 4 AM 9:56  
MULTNOMAH COUNTY  
OREGON



# MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C6-92a

☒ Agenda Placement Sheet      No. of Pages 1

☐ Case Summary Sheet      No. of Pages \_\_\_\_\_  
☐ Previously Distributed \_\_\_\_\_

☐ Notice of Review      No. of Pages \_\_\_\_\_  
\*(Maybe distributed at Board Meeting)  
☐ Previously Distributed \_\_\_\_\_

☐ Decision      No. of Pages \_\_\_\_\_  
(Hearings Officer/Planning Commission)  
☐ Previously Distributed \_\_\_\_\_

☒ Ordinance Fact Sheet      1 1

\*Duplicate materials will be provided upon request.  
Please call 2610.

## ORDINANCE FACT SHEET

Ordinance Title: Columbia River Gorge National Scenic Area Zoning Code Amendment

Give a brief statement of the purpose of the ordinance (include the rationale for adoption of ordinance, description of persons benefited, other alternatives explored):

This technical ordinance amendment will bring the Multnomah County Zoning Code in compliance with the Columbia River Gorge National Scenic Area Management Plan as required by Public Law 99-663. The purposes of that law are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge. The persons benefited will be the public in general.

What other local jurisdictions in the metropolitan area have enacted similar legislation?

No other jurisdiction has yet adopted implementing standards for the Columbia River Gorge National Scenic Area Management Plan.

What has been the experience in other areas with this type of legislation?


There has been no experience in other areas since Multnomah County would be the first jurisdiction to comply with the federal law.

What is the fiscal impact, if any?

This will neither create, nor consume revenue beyond that realized by the existing planning program for the area.

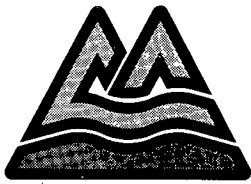
(If space is inadequate, please use other side)

SIGNATURES

Person Filling Out Form:  \_\_\_\_\_

Planning & Budget Division (if fiscal impact): \_\_\_\_\_

Department Manager/Elected Official: R Scott Rember for BW



# MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS  
GLADYS McCOY • CHAIR OF THE BOARD  
DAN SALTZMAN • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

May 24, 1993

To: Board of County Commissioners

From: Bob Hall, *Senior Planner*

RE: COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ORDINANCE AMENDMENT

There is an incorrect citation in the proposed NSA ordinance amendment. Section P of Attachment A (page 8) is an amendment of MCC 11.15.3810(B) not MCC 11.15.3670(B). Section P should be amended to reflect the correct citation.

Proposed amendment:

P. MCC 11.15.~~3670~~3810(B) is amended to read:

(B) Within ten business days following receipt of an application for NSA Site Review, the Planning Director shall mail notice describing the nature of the proposed use, including a site plan, and requesting written comment on the application within 30 days of the mailing of the notice to:

- (1) The Gorge Commission;
- (2) The Forest Service;
- (3) The Indian tribal governments;
- (4) The State Historic Preservation Office;
- (5) The Cultural Advisory Committee; and
- (6) All owners of record of parcels within 500 feet of the subject parcel.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ORDINANCE NO. 765

An Ordinance amending those sections of Multnomah County Code Chapter 11.15 regulating land uses within the Columbia River Gorge National Scenic Area.

Multnomah County Ordains as follows:

Section I. Findings.

(A). On January 7, 1993, Multnomah County adopted Ordinance No. 748 to enact the provisions of the Columbia River Gorge National Scenic Area Management ("CRGNSA" herein) Plan.

(B). On March 30, 1993, the Columbia River Gorge Commission, based upon comments by the Gorge Commission staff and the staff of the U.S. Forest Service, determined the County must modify some provisions and add other provisions to the Zoning Code before it can be found consistent with the CRGNSA Management Plan.

(C). Public Law 99-663 gives the County 90 days in which to make the necessary modifications.

(D). The Planning Commission conducted public hearings on April 5, 1993 and April 19, 1993 on the proposed amendments of the Zoning Code.

(E). The Planning Commission found that the proposed amendments include all revisions suggested by the Gorge Commission staff and the staff of the U.S. Forest Service.

Section II. Amendments

Multnomah County Code Chapter 11.15 is hereby amended as described in Attachment A.

ADOPTED THIS 25th day of May, 1993, being the date of its  
2nd reading before the Board of County Commissioners of Multnomah County.



By H.C. Miggins  
H.C. Miggins, Acting Chair  
MULTNOMAH COUNTY, OREGON

John DuBay  
John DuBay, Deputy County Counsel  
of Multnomah County, Oregon

## ATTACHMENT A

*Note:* With the exception of the replacement of entire sections (e.g., Section BB of this attachment), language added is underlined (language added) and language deleted is bracketed and struck through [~~language deleted~~].

A. MCC 11.15.3556 (Streams) is amended to read:

**Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed does not have to contain water year-round. They do not include irrigation ditches, canals, storm or surface-water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction in such watercourses.

B. MCC 11.15.3556 is amended to add:

**Columbia River Gorge National Scenic Area Graphic Signing System:** Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

**Recreation Opportunity Spectrum (ROS):** A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

- **Primitive:** Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.
- **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.
- **Roaded Natural:** Roaded areas with moderately frequent human encounters and with resource modifications evident.
- **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.
- **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.
- **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

C. MCC 11.15.3562(D) through (F) are amended to read:

(D) In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the [~~Lot of Record~~] Dedicated Site, subject to MCC .3568[~~and .3570(C)~~]. Expansion beyond the Dedicated Site is prohibited.

(E) Existing industrial uses in the General Management Area may expand as necessary for successful operation on the [~~Lot of Record~~] Dedicated Site, subject to MCC .3568[~~and .3570(C)~~]. Expansion beyond the [~~Lot of Record~~] Dedicated Site is prohibited.

(F) In the General Management Area, existing industrial uses may convert to less intensive uses, subject to MCC .3568[~~and .3570(C)~~]. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

D. MCC 11.15.3566(A)(1) is amended by adding:

(c) Adjustment of the boundary between two or more contiguous parcels which does not result in the creation of an additional parcel may be allowed if none of the parcels larger than the minimum parcel size before the adjustment becomes smaller than the specified minimum parcel size after the adjustment.

E. MCC 11.15.3568 is amended to read:

(A) Any application for a Use Under Prescribed Conditions or a Conditional Use shall be accompanied by a site plan which includes the following information:

- (1) Project applicant's name and address.
- (2) Location of the proposed use, including township, range, section, county, and tax lot number.
- (3) A written description of the proposed use, including details on the height, exterior color(s), and construction materials of proposed structures.
- (4) A list of Key Viewing Areas from which the proposed use would be visible.
- (5) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the reviewing agency to determine the location and extent of the proposed use and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail. If a parcel is very large, the map does not have to show the entire parcel. Rather, it may show only those portions of the parcel affected by the proposed use. The map shall include the following elements:
  - (a) North arrow;
  - (b) Map scale;
  - (c) Boundaries, dimensions, and size of the subject parcel;
  - (d) Significant terrain features or landforms;
  - (e) Groupings and species of trees and other vegetation on the parcel;

- (f) Location and species of vegetation that would be removed or planted;
- (g) Bodies of water and watercourses;
- (h) Location and width of existing and proposed roads, driveways, and trails;
- (i) Location and size of existing and proposed structures;
- (j) Location of existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and
- (k) Location and depth of all proposed grading and ditching.
- (l) Proposed uses in streams, ponds, lakes, and their buffer zones shall include the exact boundary of the ordinary high water-mark or normal pool elevation and the prescribed buffer zone; and a description of actions that would alter or destroy the stream, pond, lake, or riparian area.
- (m) Proposed uses in wetlands or wetlands buffer zones shall include the exact boundary of the wetland and the wetlands buffer zone; and a description of actions that would alter or destroy the wetland.
- (n) Proposed uses on parcels contiguous to established recreation sites shall provide a buffer between the proposed use and recreation site sufficient to insure that the proposed use will not detract from the use or enjoyment of the recreation site.
- (o) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:
  - (i) The site plan shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.
  - (ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:
    - Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.
    - List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.
    - List tribal ceremonial fishing seasons in the project vicinity.
    - Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

F. MCC 11.15.3570(B)(3) is amended to read:

- (3) Cluster development may create up to 25 percent more parcels (rounded to the ~~[next-largest]~~ nearest whole number) than otherwise allowed by the minimum parcel size on lands designated GGR-5 or GGR-10 and up to 50 percent more parcels (rounded to the ~~[next-largest]~~ nearest whole number) on lands designated GGA-20 or GGF-20.

G. MCC 11.15.3576(D)(4) is amended to read:

- (4) The proposed use is consistent with the goals, objectives and policies in ~~[this chapter]~~ the Management Plan.

H. MCC 11.15.3656(C)(6) is deleted.

I. MCC 11.15.3578 is amended to read:

A landowner who sells or otherwise transfers real property on lands designated GGA or GGF may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in MCC .3566. A second dwelling may be allowed subject to compliance with MCC .3800 to .3834, and upon findings that:

(A) The proposed dwelling is in conjunction with agricultural use as determined by MCC .3588(E)(3); or

(B) On lands designated GGF-20, one single-family dwelling on a legally created parcel upon enrollment in the state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of the dwelling shall comply with MCC .3584 and .3586. A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated GGF-80, GGF-20, GGA-40, or GGA-20.

(C) Upon termination of the life estate, either the original or second dwelling shall be removed.

J. MCC 11.15.3592 is added Indian Tribal Treaty Rights and Consultation

(A) If comment regarding tribal rights is received during the comment period provided in MCC .3810(B) from an Indian tribal government, the applicant shall offer to meet with the affected tribal government within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the tribal government.

(1) Consultation meetings should provide an opportunity for the project applicant and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(2) Any substantive comments, recommendations, or concerns expressed by Indian tribal govern-

ments during the consultation meeting shall be recorded and addressed by the project applicant in a Treaty Rights Protection Plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(3) The Planning Director shall submit all protection plans to the Indian tribal governments.

(a) Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Planning Director.

(b) If substantiated comment is received during the 30 day comment period from an Indian tribal government indicating that the protection plan is inadequate and the proposed use would affect or modify any treaty or other rights of the tribe, the Planning Director shall place the matter on the next available Hearings Officer agenda.

(i) The Hearings Officer shall determine whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

(i) The decision of the Hearings Officer shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments.

(ii) If the decision of the Hearings Officer contradicts the comments, recommendations, or concerns of Indian tribal governments, the Hearings Officer must justify how an opposing conclusion was reached.

(iv) Uses that would affect or modify tribal treaty rights shall be prohibited.

(B) The Planning Director shall deem the Treaty Rights Protection Plan process complete if no substantiated comment is received during the 30 day comment period and the Treaty Rights Protection Plan and/or site plan indicate that the proposed uses would not affect or modify treaty or other rights of any Indian tribe.

(a) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(B) within 25 days of the expiration of the 30 day comment period.

(b) The decision of the Planning Director regarding treaty or other rights of any Indian tribe shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(c) A finding by the Planning Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in this subsection, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

K. 11.15.3680(A)(10) is amended to read:

(10) Bed and breakfast inns in single family dwellings on lands designated GGR-5 or GGR-10,  
pursuant to .3570(D).

L. MCC 11.15.3582(B)(4)(d) is amended to read:

(d) Signs shall be unobtrusive and have low contrast with the setting and not result in sign clutter or other negative visual effect.

M. MCC 11.15.3608(B) is amended to read:

(B) The following uses may be allowed on lands designated GSA-40 pursuant to MCC .3564, provided that the use or development will be sited to minimize the loss of land suitable for the production of agricultural crops or livestock:

(1) Forest uses and practices as allowed in MCC .3634(B).

(2) A single-family dwelling on a parcel of 40 or more contiguous acres when necessary for and accessory to agricultural use as determined by MCC .3608(A)(5)(a) through (c).

(3) Accessory structures, greater than 60 square feet.

(4) Farm labor housing and agricultural buildings upon a showing that:

(a) The proposed housing or building is necessary and accessory to a current agricultural use and a showing that the operation is a commercial agricultural enterprise as determined by MCC .3608(A)(5)(c).

(b) The housing or building shall be seasonal unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed nine months.

(c) The housing or building shall be located to minimize the conversion of lands capable of production of farm crops and livestock and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

~~[(5) Home occupations and cottage industries pursuant to MCC .3570(C). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.]~~

~~[(6) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places approved under MCC .3570(D). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.]~~

([7]5) Fruit stands and produce stands upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(86) Aquiculture.

(97) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.

(108) Road and railroad construction and reconstruction.

(119) Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

N. MCC 11.15.3610(B) is amended to read:

The following conditional uses may be allowed on lands designated GSA, pursuant to the provisions of MCC .3568 and .3580.

- (1) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Areas.
- (2) Utility facilities necessary for public service upon a showing that:
  - (a) There is no alternative location with less adverse effect on Agriculture lands.
  - (b) The size is the minimum necessary to provide the service.
- (3) Community facilities and non-profit facilities related to agricultural resource management.
- (4) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.
- (5) Recreation, interpretive and educational developments and uses consistent with MCC .3834.
- (6) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.
- (7) Home occupations and cottage industries pursuant to MCC .3570(C). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.
- (8) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places approved under MCC .3570(D). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agri-

cultural practices from conflicting uses.

O. MCC 11.15.3634(B)(2)(a) is amended to read:

The following information, in addition to the site plan requirements of MCC .3564(A), shall be included on the site plan:

P. MCC 11.15.3670(B) is amended to read:

(B) Within ten business days following receipt of an application for NSA Site Review, the Planning Director shall mail notice describing the nature of the proposed use, including a site plan, and requesting written comment on the application within 30 days of the mailing of the notice to:

- (1) The Gorge Commission;
- (2) The Forest Service;
- (3) The Indian tribal governments;
- (4) The State Historic Preservation Office;
- (5) The Cultural Advisory Committee; and
- (6) All owners of record of parcels within 500 feet of the subject parcel.

Q. MCC 11.15.3678(B) is amended to read:

(B) The following uses may be allowed on lands designated GSR, pursuant to MCC .3564:

- (1) One single-family dwelling per legally created lot or consolidated parcel, subject to the standards of MCC .3584.
- (2) Accessory structures over 60 square feet.
- ~~[(3) Home occupations and cottage industries pursuant to MCC .3570(C).~~
- ~~[(4) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to .3570(D).]~~
- ~~[(5) ]3) Road and railroad construction and reconstruction.~~
- ~~[(6) ]4) Forest practices, pursuant to the provisions of MCC .3634(B).~~

R. MCC 11.15.3680(B) is amended to read:

(B) The following conditional uses may be allowed on lands designated GSR, pursuant to the provisions of MCC .3568 and .3580(C):

cultural practices from conflicting uses.

O. MCC 11.15.3634(B)(2)(a) is amended to read:

The following information, in addition to the site plan requirements of MCC .3564(AC), shall be included on the site plan:

P. MCC 11.15.~~3670~~3810(B) is amended to read:

(B) Within ten business days following receipt of an application for NSA Site Review, the Planning Director shall mail notice describing the nature of the proposed use, including a site plan, and requesting written comment on the application within 30 days of the mailing of the notice to:

- (1) The Gorge Commission;
- (2) The Forest Service;
- (3) The Indian tribal governments;
- (4) The State Historic Preservation Office;
- (5) The Cultural Advisory Committee; and
- (6) All owners of record of parcels within 500 feet of the subject parcel.

Q. MCC 11.15.3678(B) is amended to read:

(B) The following uses may be allowed on lands designated GSR, pursuant to MCC .3564:

- (1) One single-family dwelling per legally created lot or consolidated parcel, subject to the standards of MCC .3584.
- (2) Accessory structures over 60 square feet.
- ~~[(3) Home occupations and cottage industries pursuant to MCC .3570(C).~~
- ~~[(4) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to .3570(D).]~~
- ~~[(5) ]3) Road and railroad construction and reconstruction.~~
- ~~[(6) ]4) Forest practices, pursuant to the provisions of MCC .3634(B).~~

R. MCC 11.15.3680(B) is amended to read:

(B) The following conditional uses may be allowed on lands designated GSR, pursuant to the provisions of MCC .3568 and .3580(C):

- (1) New utility facilities.
- (2) Fire stations.
- (3) Community parks and playgrounds.
- (4) Home occupations and cottage industries pursuant to MCC .3570(C).
- (5) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to .3570(D).

S. MCC 11.15.3702(H) is amended to read:

(H) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

- (1) Grocery stores
- (2) Variety and hardware stores
- (3) Shops, offices and repair shops
- (4) Personal services such as barber and beauty shops
- ~~[(5) Travelers accommodations, bed and breakfast inns]~~
- (65) Restaurants
- (76) Taverns and bars
- (87) Gas stations
- (98) Gift shops

T. MCC 11.15.3702 is amended to read:

The following uses may be allowed on lands designated GGRC, pursuant to MCC .3564:

- (A) A single-family dwelling on a legally created parcel.
- (B) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.
- (C) The temporary use of a mobile home in the case of a family hardship, pursuant to MCC .3566(B).
- (D) Duplexes

~~[(E) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D) ].~~

~~[(F]E)~~ New cultivation, subject to compliance with MCC .3818, .3822, .3824, .3826 and .3828.

~~[(G]F)~~ Land divisions.

~~[(H]G)~~ Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

- (1) Grocery stores
- (2) Variety and hardware stores
- (3) Shops, offices and repair shops
- (4) Personal services such as barber and beauty shops
- (5) Travelers accommodations, bed and breakfast inns
- (6) Restaurants
- (7) Taverns and bars
- (8) Gas stations
- (9) Gift shops

~~[(I) Home occupations and cottage industries pursuant to MCC .3566(D).]~~

U. MCC 11.15.3704 is amended to read:

The following conditional uses may be allowed on lands designated GGRC, pursuant to the provisions of MCC .3568:

- (A) Fire stations
- (B) Libraries
- (C) Government buildings
- (D) Community centers and meeting halls
- (E) Schools
- (F) Accredited child care centers
- (G) Utility facilities and railroads

(H) Recreation development, subject MCC .3832.

(I) Places of worship

(J) Planned Developments pursuant to the provisions of MCC .6200 through .6226.

(K) Travelers accommodations, bed and breakfast inns pursuant to MCC .3566 (E).

(L) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).

V. MCC 11.15. 3728 is amended to read:

Uses Under Prescribed Conditions

~~[The following uses may be allowed on lands designated GGC, pursuant to MCC .3564:]~~

~~[(A)]~~ A single-family dwelling on a legally created parcel, pursuant to MCC .3564.

~~[(B) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).]~~

W. MCC 11.15. 3730 is amended to read:

The following conditional uses may be allowed on lands designated GGC, pursuant to the provisions of MCC .3568 and .3580(D):

(A) Travelers accommodations, bed and breakfast inns

(B) Restaurants

(C) Gift shops

(D) Utility facilities and railroads.

(E) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to MCC .3566(D).

X. MCC 11.15. 3752(C) is amended to read:

The following uses are allowed on all lands designated GS-PR pursuant to MCC .3564:

(1) Forest uses and practices as allowed in MCC .3634(B).

(2) Public trails, consistent with MCC .3834.

(3) All dwellings and accessory structures larger than 60 square feet.

~~[(4) Home occupations and cottage industries, pursuant to MCC .3566(D).]~~

(54) Road and railroad construction and reconstruction.

(65) Structures or vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

(76) Agricultural uses as allowed in MCC .3608(B) .

Y. MCC 11.15.3754(B)(1) is amended to read:

(B) The following conditional uses may be allowed on lands designated GG-CR, pursuant to the provisions of MCC .3568, .3580(E) and .3832(E)(1) and (3) through (7):

(1) Commercially-owned, resource-based recreation uses consistent with MCC .3832.

Z. MCC 11.15.3754(C) is amended to read:

The following conditional uses may be allowed on lands designated GS-PR, pursuant to the provisions of MCC .3568 and .3834:

(1) Public natural resource-based recreational facilities, consistent with MCC .3834.

(2) Public non-profit group camps, retreats, conference or educational centers, and interpretive facilities.

(3) Utility facilities for public service upon a showing that:

(a) There is no alternative location with less adverse effect on Public Recreation land.

(b) The size is the minimum necessary to provide the service.

(4) A single family residence on a parcel 40 acres or larger, when found to be necessary for the management of:

(a) An agricultural use pursuant to MCC .3608(B)(2);

(b) A forest use pursuant to MCC .3634(B)(6); or

(c) A public recreation site.

(5) Home occupations and cottage industries, pursuant to MCC .3570(C).

AA. MCC 11.15.3816 is amended to read:

Coniferous Woodlands and Oak-Pine Woodland: Woodland areas ~~[should]~~ shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the over-

all visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.

BB. MCC 11.15.3818 is deleted and the following substituted:

11.15.3818 GMA Cultural Resource  
Review Process

(A) Cultural Resource Reconnaissance Surveys

(1) A cultural reconnaissance survey shall be required for all proposed uses, except:

(a) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(b) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(c) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission will review all land use applications and determine if proposed uses would have a minor ground disturbance.

(d) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land disturbing activities occurred in the project area. Land disturbing activities include grading and cultivation.

(e) Proposed uses that would occur on sites that have been adequately surveyed in the past.

(i) The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception.

(ii) Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing.

(iii) The nature and extent of any cultural resources in the project area must be adequately documented.

(f) Proposed uses occurring in areas that have a low probability of containing cultural

resources, except:

- (i) Residential development that involves two or more new dwellings for the same project applicant;
- (ii) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (iii) Public transportation facilities that are outside improved rights-of-way;
- (iv) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (v) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources will be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the U.S. Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, will prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map will be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It will be refined and revised as additional reconnaissance surveys are conducted. Areas will be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

- (2) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those listed above in MCC .3818(A)(1)(a) through (f). The location of known cultural resources are shown in the cultural resource inventory.
  - (3) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or compromise features of the surrounding area that are important in defining the historic or architectural character of the buildings or structures that are 50 years old or older.
- (B) The cultural resource review criteria shall be deemed satisfied, except MCC .3818(L) and (M), if:
- (1) The project is exempted by MCC .3818(A)(1), no cultural resources are known to exist in the project area, and no substantiated comment is received during the comment period provided in MCC .3810(B).
  - (2) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this standard, a reasonable buffer zone must be established around the affected resources or properties; all ground disturbing activities shall be prohibited

within the buffer zone.

- (a) Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.
  - (b) An Evaluation of Significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the Reconnaissance Survey and survey report shall be incorporated into the Evaluation of Significance.
- (3) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:
- (a) SHPO concludes that the historic buildings or structures are clearly not significant, as determined using the criteria in the *National Register Criteria for Evaluation* (36 CFR Part 60.4); or
  - (b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983).
    - (i) The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these standards. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.
    - (ii) The historic survey and report must demonstrate that these standards have been clearly and absolutely satisfied. If SHPO or the Planning Director question whether these standards have been satisfied, the project applicant shall conduct an Evaluation of Significance.
- (C) If comment is received during the comment period provided in MCC .3810(B), the applicant shall offer to meet with the interested persons within 10 calendar days. The 10 day consultation period may be extended upon agreement between the project applicant and the interested persons.
- (1) Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.
  - (2) All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such infor-

mation shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

- (3) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.
  - (4) All written comments, consultation meeting minutes and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.
- (D) Reconnaissance and historic surveys, evaluations, assessments and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in *36 Code of Federal Regulations (CFR) Part 61* and *Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King n.d.)*. A survey shall consist of the following:
- (1) Reconnaissance Survey for Small-Scale Uses
- Reconnaissance surveys for small scale uses shall consist of the following:
- (a) A surface survey of the project area, except for inundated areas and impenetrable thickets.
  - (b) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes will be placed at intervals sufficient to determine the absence or presence of cultural resources.
  - (c) A confidential report that includes:
    - (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
    - (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
    - (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer area.
  - (d) The Gorge Commission will conduct and pay for all reconnaissance or historic surveys, and for Evaluations of Significance and Mitigation Plans for cultural resources discovered during construction of small-scale uses.

## **(2) Reconnaissance Survey for Large-Scale Uses**

For the purposes of this section, large-scale uses include residential development involving two or more new dwellings; recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Reconnaissance surveys for Large-Scale Uses shall consist of the following:

- (a) A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.
- (b) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following standards:

  - (i) Archival research shall be performed prior to any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.
  - (ii) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.
  - (iii) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.
  - (iv) Archaeological site inventory forms shall be submitted to SHPO whenever cultural resources are discovered.
- (c) A confidential report that includes:

  - (i) A description of the proposed use, including drawings and maps.
  - (ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.
  - (iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.
  - (iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.
  - (v) An inventory of the cultural resources that exist in the project area, including a written

description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(d) The applicant shall be responsible for reconnaissance surveys for large-scale uses.

(e) The Gorge Commission will conduct and pay for all Evaluations of Significance and Mitigation Plans for cultural resources discovered during construction of large-scale uses.

### (3) Historic Surveys

(a) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include:

(i) Original photographs;

(ii) Original maps; and

(iii) Archival research, blueprints, and drawings as necessary.

(b) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures

(c) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(E) The Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3810(B). Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer area.

(1) All parties notified shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.

(2) The Planning Director shall require an Evaluation of Significance if the Reconnaissance or Historic Survey or substantiated comment received indicate that the proposed use might

affect any of the following:

- (a) Cultural resources
- (b) Archaeological resources
- (c) Traditional cultural properties
- (d) Historic buildings or structures

- (3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the Reconnaissance or Historic Survey indicate that the proposed use would have no effect on the items listed in subsection (2)(a) through (d) above.
- (4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(E) within 10 days of the expiration of the 30 day comment period.
- (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(F) Evaluations of Significance shall meet the following standards:

- (1) Evaluations of Significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, n.d.) and *Guidelines for the Evaluation and Documentation of Traditional Cultural Properties* (Parker and King, n.d.). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.
- (2) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analysis, and archival research may be required.
- (3) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.
- (4) The Evaluation of Significance shall follow the principles, guidelines, and report format recommended by Oregon SHPO (Oregon State Historic Preservation Office 1990). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.
- (5) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented.

All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the Evaluation of Significance.

(6) The applicant shall be responsible for Evaluations of Significance

(G) If the Evaluation of Significance demonstrates that the affected cultural resources are not significant, the Planning Director shall submit a copy of all cultural resource survey reports to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(E)(1).

(1) All parties notified shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.

(2) The Planning Director shall find the cultural resources significant and require an Assessment of Effect if the Evaluation of Significance or comments received indicate either of the following:

(a) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for use in evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4). Cultural resources are eligible for the National Register of Historic Places if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. In addition, they must meet one or more of the following criteria:

(i) Association with events that have made a significant contribution to the broad patterns of the history of this region;

(ii) Association with the lives of persons significant in the past;

(iii) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(iv) Yield, or may be likely to yield, information important in prehistory or history.

(b) The cultural resources are determined to be culturally significant by a Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(3) The Planning Director shall deem the cultural resource review process complete if no substantiated comment is received during the 30 day comment period and the the Evaluation of Significance indicates the effected cultural resources are not significant.

(4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(G) within 10 days of the expiration of the 30 day comment period.

- (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

(H) An Assessment of Effect shall meet the following standards:

- (1) The Assessment of Effect shall be based on the criteria published in *Protection of Historic Properties* (36 CFR Part 800.9) and shall incorporate the results of the Reconnaissance or Historic Survey and the Evaluation of Significance. All documentation shall follow the requirements listed in 36 CFR Part 800.8.
  - (a) Proposed uses have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR Part 800.9(a)] .
  - (b) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR Part 800.9(b)]. Adverse effects on cultural resources include, but are not limited to:
    - (i) Physical destruction, damage, or alteration of all or part of the cultural resource;
    - (ii) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant;
    - (iii) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting;
    - (iv) Neglect of a significant cultural resource resulting in its deterioration or destruction; or
    - (v) Transfer, lease, or sale of the cultural resource.
- (2) The Assessment of Effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.
- (3) The effects of a proposed use that would otherwise be determined to be adverse may be considered to not be adverse in the following instances:
  - (a) The cultural resources are of value only for their potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines;
  - (b) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Stan-*

*dards for Historic Preservation Projects* (U.S. Department of the Interior 1983); or

- (c) The proposed use is limited to the transfer, lease, or sale of cultural resources, and adequate restrictions or conditions are included to ensure preservation of the significant features of the resources.
- (4) The applicant shall be responsible for the Assessment of Effect.
- (I) If the Assessment of Effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Planning Director shall submit a copy of the assessment to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(G)(1).
  - (1) All parties notified shall have 30 calendar days from the date the Assessment of Effect is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.
  - (2) The Planning Director shall require the applicant to prepare a Mitigation Plan if the Assessment of Effect or substantiated comment received during the 30 day comment period indicates the proposed use would have an effect or an adverse effect on significant cultural resources.
  - (3) The Planning Director shall deem the cultural resource review process complete if no comment is received during the 30 day comment period and the Assessment of Effect indicates the proposed use would have no effect or no adverse effect on significant cultural resources.
  - (4) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(I) within 10 days of the expiration of the 30 day comment period.
  - (5) The decision of the Planning Director on an application for cultural resource review shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.
- (J) Mitigation plans shall meet the following standards:
  - (1) Mitigation Plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and SHPO.
  - (2) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.
    - (a) Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation.

- (b) If the mitigation plan includes buffer areas to protect cultural resources, a deed covenant, easement, or other appropriate mechanism must be developed and recorded in county deeds and records.
- (3) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR Part 800.8(d), including, but not limited to:
- (a) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use;
  - (b) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;
  - (c) Documentation of consultation with SHPO regarding any alternatives or mitigation measures;
  - (d) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and local governments; and
  - (e) Copies of any written recommendations submitted to the Planning Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.
- (4) The applicant shall be responsible for Mitigation Plans.
- (K) The Planning Director shall submit a copy of the Mitigation Plan to the Gorge Commission, SHPO, the Indian tribal governments, the Cultural Advisory Committee, and any party who submitted substantiated comment during the comment period provided in MCC .3818(I)(1).
- (1) All parties shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Planning Director. The Planning Director shall record and address all written comments in the Site Review analysis.
  - (2) If substantiated comment is received during the 30 day comment period, the Planning Director shall place the matter on the next available Planning Commission agenda. The Planning Commission shall determine if the adverse effect identified in the Assessment of Effect is reduced to no effect or no adverse effect.
  - (3) The Planning Director shall deem the cultural resource review process complete if the Mitigation Plan indicates that the impact of the proposed use is reduced to no effect or no adverse effect and no substantiated comment is received during the 30 day comment period.
    - (a) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3818(I) within 10 days of the expiration of the 30 day comment period.
    - (b) The decision of the Planning Director on an application for cultural resource review shall

be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290.

- (4) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

**(L) Cultural Resources Discovered After Construction Begins**

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

- (1) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- (2) Notification – The project applicant shall notify the Planning Director and the Gorge Commission within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
- (3) Survey and Evaluation – The Gorge Commission will survey the cultural resources after obtaining written permission from the landowner and appropriate permits from SHPO (*see* ORS 273.705, ORS 358.905 to 358.955, and RCW 27.53). It will gather enough information to evaluate the significance of the cultural resources. The survey and evaluation will be documented in a report that generally follows the standards in MCC .3818(C)(2) and MCC .3818(E).
  - (a) The Planning Director shall, based on the survey and evaluation report and any written comments, make a final decision within 10 days of the receipt of the report of the Gorge Commission on whether the resources are significant.
  - (b) The Planning Director shall require a Mitigation Plan if the affected cultural resources are found to be significant.
  - (c) Notice of the decision of the Planning Director shall be mailed to those parties entitled to notice by MCC .3810(B).
  - (d) The decision of the Planning Director shall be final 14 days from the date notice is mailed, unless appealed as provided in MCC .8290. Construction activities may recommence if no appeal is filed.
- (4) Mitigation Plan – Mitigation plans shall be prepared according to the information, consultation, and report standards of MCC .3818(I). Construction activities may recommence when the conditions in the mitigation plan have been executed.

#### (M) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

- (1) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (2) Notification – Local law enforcement officials, the Planning Director, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.
- (3) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (4) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
- (5) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, chapter 97.740 to 97.760.
  - (a) If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report standards of MCC .3818(I).
  - (b) The plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in the standards of MCC .3818(J) are met and the mitigation plan is executed.

CC. MCC 11.15.3820(G)(4) is amended to read:

#### (4) Assessment of Effect

- (a) For each significant (*i.e.*, National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 *Assessing Effects*. Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for subsections (b) through (d) below. The Forest Service shall review each determination for adequacy and appropriate action.
- (b) If the proposed development or change in use will have no adverse effect as defined in 36 CFR 800.8 to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Requirements" of 36 CFR 800.8(a).
- (c) If the proposed development or change in use will have an adverse effect as defined by 36

CFR 800.9(b) to a cultural resource, the type and extent of "Adverse Effect" upon the qualities of the property that make it eligible to the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(d) If the effect appears to be beneficial (*i.e.*, an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the significant cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 *Documentation Requirements*.

DD. MCC 11.15.3820(A) is amended to read:

(A) The cultural resource review criteria shall be deemed satisfied, except MCC .3820(~~B~~H), if the Forest Service or Planning Director does not require a cultural resource survey and no comment is received during the comment period provided in MCC .3810(B).

EE. MCC 11.15.3822(A) is amended to read:

(A) The wetland review criteria shall be deemed satisfied if:

(1) The project site is not identified as a wetland on the *National Wetlands Inventory* (U.S. Fish and Wildlife Service, 1987);

(2) The soils of the project site are not identified by the *Soil Survey of Multnomah County, Oregon* (U.S.D.A. Soil Conservation Service, 1983) as hydric soils;

(3) The project site is adjacent to the main stem of the Columbia River.

(~~3~~)4 The project site is not within a wetland buffer zone; and

(~~4~~)5 Wetlands are not identified on the project site during site review, or

(~~5~~)6 The proposed use is one of the following uses, and:

(a) It is conducted using best management practices;

(b) It does not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and

(c) It complies with all applicable federal, state, and county laws:

(i) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(ii) Soil, water, and vegetation conservation uses that protect and enhance wetlands acreage and functions.

(iii) Low-intensity recreation uses, including hunting, fishing, trapping, bird watching, hik-

ing, boating, swimming, and canoeing.

- (iv) Non-commercial harvesting of wild crops, such as ferns, moss, berries, tubers, tree fruits, and seeds in a manner that does not injure natural plant reproduction or impact sensitive plant species.
- (v) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. Cultivation and vegetation removal may be allowed in conjunction with a home garden.
- (vi) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.
- (vii) Commercial fishing and trapping.
- (viii) Educational uses and scientific research.
- (ix) Navigation aids, including structures covered by Section 17(a)(3) of the Scenic Area Act.
- (x) Forest practices that do not violate conditions of approval for other approved uses.
- (xi) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

FF. MCC 11.15.3822(B) is amended to read:

- (B) If the project site is within a recognized wetland or wetland buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary. Wetlands boundaries shall be delineated using the procedures specified in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* (Federal Interagency Committee for Wetland Delineation, 1989), and any subsequent amendments.

GG. MCC 11.15.3824(B) is amended to read:

- (B) The following uses may be allowed in [~~wetlands and wetland buffer zones~~] streams, ponds, lakes and riparian areas when approved pursuant to the provisions of MCC .3568, MCC .3824(D), and reviewed under the applicable provisions of MCC .3814 through .3834:

HH. MCC 11.15.3822(E)(2) is amended to read:

- (2) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of a wetlands function, existing contour, vegetation, fish and wildlife resources, and hydrology;

II. MCC .3822(F)(1)(c) is amended to read:

- (c) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan revision pursuant to MCC .3588 to demonstrate that practicable alternatives do not exist.

JJ. MCC 11.15.3824(E)(7) is amended to read:

- (7) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement [~~should~~] shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement standards shall apply:

- (a) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.
- (b) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.
- (c) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.
- (d) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.
- (e) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.
- (f) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.
- (g) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.
- (h) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

- (i) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this standard.

KK.MCC 11.15.3826 is amended to read:

Wildlife Habitat Site Review shall be required for any project within 1,000 feet of ~~[the following]~~ sensitive wildlife areas and sensitive wildlife sites (i.e., sites used by sensitive wildlife species):

**Sensitive Wildlife Areas in the Columbia Gorge**

Bald eagle habitat  
Deer and elk winter range  
Elk habitat  
Mountain goat habitat  
Peregrine falcon habitat  
Pika colony area  
Pileated woodpecker habitat  
Pine marten habitat  
Shallow water fish habitat (Columbia R.)  
Special streams  
Special habitat area  
Spotted owl habitat  
Sturgeon spawning area  
Tributary fish habitat  
Turkey habitat  
Waterfowl area  
Western pond turtle habitat

~~[Sites Used by the Following Species]~~ **Oregon Endangered, Threatened and Sensitive Species in the Columbia Gorge**  
~~[are Considered Sensitive Sites]~~ (1991)

Common Name	Scientific Name
<b>Endangered:</b>	
Peregrine falcon	<i>Falco peregrinus*</i>
<b>Threatened:</b>	
Bald Eagle	<i>Haliaeetus leucocephalus**</i>
Northern spotted owl	<i>Strix occidentalis**</i>
Wolverine	<i>Gulo gulo</i>
<b>Sensitive:</b>	
Acorn woodpecker	<i>Melanerpes formicivorus</i>
Bank swallow	<i>Riparia riparia</i>
Barrow's goldeneye	<i>Bucephala islandica</i>
Black-backed woodpecker	<i>Picoides arcticus</i>
Bufflehead	<i>Bucephala albeola</i>
Bull trout	<i>Salvelinus confluentus+</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>
Cascade frog	<i>Rana cascadae</i>
Chinook salmon	<i>Oncorhynchus tshawytscha</i>
Chum salmon	<i>Oncorhynchus keta</i>
Clouded salamander	<i>Aneides ferreus</i>

Coastal cutthroat trout	<i>Oncorhynchus clarki</i>
Coho salmon	<i>Oncorhynchus kisutch</i>
Common kingsnake	<i>Lampropeltis getulus</i>
Cope's giant salamander	<i>Dicamptodon copei</i>
Dusky Canada goose	<i>Branta canadensis occidentalis</i>
Flammulated owl	<i>Otus flammeolus</i>
Fisher	<i>Martes pennanti</i>
Foothill yellow-legged frog	<i>Rana boylei</i>
Fringed myotis	<i>Myotis thysanodes</i>
Grasshopper sparrow	<i>Ammodramus savannarum</i>
Great gray owl	<i>Strix nebulosa</i>
Greater sandhill crane	<i>Grus canadensis tabida</i>
Harlequin duck	<i>Histrionica histrionica</i>
Larch mountain salamander	<i>Plethodon larselli</i> +
Lewis' woodpecker	<i>Melanerpes lewis</i>
Marten	<i>Martes americana</i>
Northern goshawk	<i>Accipiter gentilis</i>
Northern leopard frog	<i>Rana pipiens</i>
Northern pygmy-owl	<i>Glaucidium gnoma</i>
Olympic salamander	<i>Phrynosoma olympicus</i>
Oregon slender salamander	<i>Batrachoseps wrighti</i>
Painted turtle	<i>Chrysemys picta</i>
Pileated woodpecker	<i>Dryocopus pileatus</i>
Purple martin	<i>Progne subis</i>
Pygmy nuthatch	<i>Sitta pygmaea</i>
Red-legged frog	<i>Rana aurora</i>
Sharptail snake	<i>Contia tenuis</i>
Spotted frog	<i>Rana pretiosa</i>
Tailed frog	<i>Ascaphus truei</i>
Three-toed woodpecker	<i>Picoides tridactylus</i>
Townsend's big-eared bat	<i>Plecotus townsendii</i> +
Tricolored blackbird	<i>Agelaius tricolor</i> +
Western bluebird	<i>Sialia mexicana</i>
Western pond turtle	<i>Clemmys marmorata</i> +
White-headed woodpecker	<i>Picoides albolarvatus</i>
White-tailed jackrabbit	<i>Lepus townsendii</i>
Williamson's sapsucker	<i>Sphyrapicus thyroideus</i>

\* Endangered species under U.S. Endangered Species Act

\*\* Threatened species under U.S. Endangered Species Act

+ Candidate species for U.S. Endangered Species Act.

(A) The following uses may be allowed within 1,000 feet of sensitive wildlife areas and sites without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading, or ditching beyond the extent specified below:

- (1) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.
- (2) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

- (3) Forest practices that do not violate conditions of approval for other approved uses.
- (4) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.
- (5) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

**(B) Field Survey**

A field survey to identify sensitive wildlife areas or sites shall be required for:

- (1) Land divisions that create four or more parcels;
- (2) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (3) Public transportation facilities that are outside improved rights-of-way;
- (4) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (5) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(C) Uses not listed in MCC .3826(A) may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to MCC .3826(D) and reviewed under the applicable provisions of MCC .3814 through .3834.

(D) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

- (1) Site plans shall be submitted to Oregon Department of Fish and Wildlife by the Planning Director. State wildlife biologists will review the site plan and their field survey records. They will
  - (a) Identify/verify the precise location of the wildlife area or site,
  - (b) Ascertain whether the wildlife area or site is active or abandoned, and
  - (c) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons.

In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

- (2) The following factors may be considered when site plans are reviewed:
  - (a) Biology of the affected wildlife species.
  - (b) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron.
  - (c) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.
  - (d) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.
  - (e) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.
- (3) The wildlife protection process may terminate if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines:
  - (a) The sensitive wildlife area or site is not active, or
  - (b) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.
- (4) If the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Planning Director will incorporate them into the site review order and the wildlife protection process may conclude.
- (5) The project applicant shall prepare a wildlife management plan if the Planning Director, in consultation with the Oregon Department of Fish and Wildlife, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.
- (6) The Planning Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife. The Oregon Department of Fish and Wildlife will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Oregon Department of Fish and Wildlife in its site review order.

Based on the comments from the Oregon Department of Fish and Wildlife, the Planning Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and standards. If the final decision contradicts the comments submitted by the Oregon Department of Fish and Wildlife, the Planning Director shall justify how the opposing conclusion was reached.

The Planning Director shall require the applicant to revise the wildlife management plan to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

#### (E) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following standards:

- (1) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.
- (2) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.
- (3) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.
- (4) A wildlife buffer area shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer areas shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.
- (5) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer area shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:
  - (a) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(b) Intensive uses shall be generally prohibited in wildlife buffer areas. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer area and rehabilitation and/or enhancement will be completed before a particular species returns.

- (6) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer areas. When a buffer area has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

- (7) The applicant shall prepare and implement a 3 year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions. At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement standards.

(F) New fences in deer and elk winter range

- (1) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.
- (2) New and replacement fences that are allowed in winter range shall comply with the guidelines in *Specifications for Structural Range Improvements* (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:
- (a) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.
- (b) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.
- (c) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(d) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(3) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

LL.MCC 11.15.3828 is amended to read:

Rare Plant Site Review shall be required for any project within 1,000 feet of ~~[the following]~~ endemic ~~[and rare]~~ plants and sensitive plant species:

#### Columbia Gorge and Vicinity Endemic Plant Species

Common Name	Scientific Name
Howell's bentgrass	<i>Agrostis howellii</i>
Northern wormwood	<i>Artemisia campestris</i> var. <i>wormskioldii</i>
Hood River milk-vetch	<i>Astragalus hoodianus</i>
Howell's reedgrass	<i>Calamagrostis howellii</i>
Smooth-leaf douglasia	<i>Douglasia laevigata</i> var. <i>laevigata</i>
Howell's daisy	<i>Erigeron howellii</i>
Columbia Gorge daisy	<i>Erigeron oreganus</i>
Long-beard hawkweed	<i>Hieracium longiberbe</i>
Smooth desert parsley	<i>Lomatium laevigatum</i>
Suksdorf's desert parsley	<i>Lomatium suksdorfii</i>
Columbia Gorge broad-leaf lupine	<i>Lupinus latifolius</i> var. <i>thompsonianus</i>
Barrett's penstemon	<i>Penstemon barrettiae</i>
Pacific bluegrass	<i>Poa gracillima</i> var. <i>multnomae</i>
Obscure buttercup	<i>Panunculus reconditus</i>
Oregon sullivania	<i>Sullivantia oregana</i>
Columbia kitten tails	<i>Synthyris stellata</i>

#### Rare Plant Species in the Columbia Gorge

Common Name	Scientific Name
<b>List 1:</b>	
Howell's bentgrass	<i>Agrostis howellii</i> +
Oregon bolandra	<i>Bolandra oregana</i> +
Tall bugbane	<i>Cimicifuga elata</i> +
Howell's daisy	<i>Erigeron howellii</i> *+
Columbia Gorge daisy	<i>Erigeron oreganus</i> +
Branching stickweed	<i>Hackelia diffusa</i> var. <i>diffusa</i> +
Suksdorf's desert parsley	<i>Lomatium suksdorfii</i> *
White meconella	<i>Meconella oregana</i> +
Columbia monkey flower	<i>Mimulus jungermannioides</i> +
Barrett's penstemon	<i>Penstemon barrettiae</i> *+
Obscure buttercup	<i>Ranunculus reconditus</i> *+
Columbia yellow cress	<i>Porippa columbiae</i> *+
Oregon sullivania	<i>Sullivantia oregana</i> *+

**List 2:**

Hood River milk-vetch	<i>Astragalus hoodianus</i>
Large-awn sedge	<i>Carex macrochaeta</i>
Columbia lewisia	<i>Lewisia columbiana</i> var. <i>columbiana</i>
Fir clubmoss	<i>Lycopodium selago</i>
Wool-grass	<i>Scirpus cyperinus</i>
Scribner grass	<i>Scribneria bolanderi</i>
Violet suksdorfia	<i>Suksdorfia violacea</i>

**List 3 (Review):**

Cliff paintbrush	<i>Castilleja rupicola</i>
Shining flatsedge	<i>Cyperus bipartitus</i> = <i>C. rivularis</i>
Nuttall's larkspur	<i>Delphinium nuttallii</i>
Smooth douglasia	<i>Douglasia laevigata</i>
Baker's linanthus	<i>Linanthus bakeri</i>
Western ladies' tresses	<i>Spiranthes porrifolia</i>

**List 4 (Watch):**

Douglas' onion	<i>Allium douglasii</i> var. <i>nevii</i>
Cascade rock cress	<i>Arabis furcata</i>
The Dalles milk-vetch	<i>Astragalus sclerocarpus</i>
Columbia milk-vetch	<i>Astragalus succumbens</i>
Virginia grape-fern	<i>Botrychium virginianum</i>
Mountain lady's slipper	<i>Cypripedium montanum</i>
Branching stickseed	<i>Hackelia diffusa</i> var. <i>cottonii</i>
Gooseberry-leaved alumroot	<i>Heuchera grossulariifolia</i> var. <i>tenuifolia</i>
Long-beard hawkweed	<i>Hieracium longiberbe</i>
Smooth desert parsley	<i>Lomatium laevigatum</i> *
Columbia Gorge broad-leaf lupine	<i>Lupinus latifolius</i> var. <i>thompsonianus</i>
Branching montia	<i>Montia diffusa</i>
Withered bluegrass	<i>Poa marcida</i>
Columbia kittentails	<i>Synthyris stellata</i>

\* Candidate species for U.S. Endangered Species Act.

+ Candidate species for Oregon Endangered Species Act.

Source: Oregon Natural Heritage Program. *Rare, Threatened and Endangered Plants and Animals of Oregon*. Portland, Oregon: Oregon Natural Heritage Program, 1991.

(A) The following uses may be allowed within 200 feet of a sensitive plant without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading or ditching beyond the extent specified below:

- (1) Low-intensity recreation uses, including hunting, fishing, trapping, native plant study, bird watching, boating, swimming, and hiking. Regarding sensitive plants, horseback riding is not considered a low-intensity use.
- (2) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.
- (3) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such

uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

- (4) Forest practices that do not violate conditions of approval for other approved uses.
- (5) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

**(B) Field Survey**

A field survey to identify sensitive plants shall be required for:

- (1) Land divisions that create four or more parcels;
- (2) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (3) Public transportation facilities that are outside improved rights-of-way;
- (4) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (5) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200 foot buffer area. The results of a field survey shall be shown on the site plan map.

(C) Uses not listed in MCC .3828(A) may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to MCC .3568, .3828(D), and reviewed under the applicable provisions of MCC .3814 through .3834.

(D) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

- (1) Site plans shall be submitted to the Oregon Natural Heritage Program by the Planning Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200 foot buffer area on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

- (2) The rare plant protection process may conclude if the Planning Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer area.

- (3) New uses shall be prohibited within sensitive plant species buffer areas, except those listed in MCC .3828(A).
- (4) If a proposed use must be allowed within a sensitive plant buffer area in accordance with formal variance practices, the project applicant shall prepare a protection and rehabilitation plan pursuant to MCC .3828(E).
- (5) The Planning Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Natural Heritage Program staff in the site review order.

Based on the comments from the Natural Heritage Program staff, the Planning Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and standards. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Planning Director shall justify how the opposing conclusion was reached.

#### (E) Protection and Rehabilitation Plans

Protection and rehabilitation plans minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance. All plans shall meet the following standards:

- (1) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.
- (2) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.
- (3) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive three years after the date they are planted.

- (4) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

- (5) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.
- (6) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.
- (7) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:
  - (a) Describe the biology of sensitive plant species that will be affected by a proposed use.
  - (b) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.
  - (c) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.
  - (d) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the local government an annual report that documents milestones, successes, problems, and contingency actions.

(F) Sensitive Plant Buffer Areas

- (1) A 200 foot buffer area shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.
- (2) Buffer areas may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer area be less than 25 feet.
- (3) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:
  - (a) Identifies the precise location of the sensitive plants,
  - (b) Describes the biology of the sensitive plants, and
  - (c) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

- (4) The Planning Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon Natural Heritage Program. The Natural Heritage Program staff will have 20

days from the date that such a request is mailed to submit written comments to the Planning Director.

The Planning Director shall record and address any written comments submitted by the Oregon Natural Heritage Program in the site review order.

Based on the comments from the Oregon Natural Heritage Program, the Planning Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Planning Director shall justify how the opposing conclusion was reached.

MM. MCC 11.15.3830(A) is amended to read:

- (A) Buffer zones shall be undisturbed unless it has been shown that there are no practicable alternatives pursuant to MCC .3822(F)(1), substituting the name of the resource as appropriate. New developments and uses may only be allowed in the buffer zone upon demonstration in the natural resources mitigation plan required by MCC .3830(B)(6) that there would be no adverse effects.

NN. MCC 11.15.3830(B)(5)(a)(ii) is amended to read:

- (ii) A buffer zone for sites of sensitive wildlife species, such as nesting, roosting and perching sites, as defined by species requirements shall be as determined by the Forest Service biologist in consultation with other state or federal agency biologists.

OO. MCC 11.15.3830(B)(5)(b) is amended to read:

(b) Riparian, Wetlands, Parks, and Lakes.

- (i) Adding any fill or draining of wetlands is prohibited.
- (ii) A minimum 200 foot buffer zone shall be created on the landward side of each wetland, pond or lake; or a wider variance from this requirement shall be determined during the site plan analysis of the wetland or riparian area and those species inhabiting the area as determined by the Forest Service biologist in consultation with state and/or federal agencies;
- (iii) A 200 foot buffer zone shall be created along each fish-bearing and perennial stream.
- (iv) A 50 foot buffer zone shall be created along intermittent streams.
- (v) Revegetation shall use only species native to the Columbia River Gorge, and shall provide and maintain habitat diversity beneficial to the fish, wildlife and native plants.
- (vi) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian standards upon demonstration of the following:

- The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way;
- The wetland is not critical habitat; and
- Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(vii) There shall be no destruction of wetlands except within roads and railroad rights-of-way as provided in subsection viii below. There shall be no destruction of riparian areas except for water dependent uses, such as boat ramps, and road construction and reconstruction. Above stated exceptions to riparian destruction policy shall meet minimum natural resource protection standards and be reviewed for meeting resource protection guidelines.

(viii) The exact location of wetlands boundaries shall be delineated using the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands Federal Interagency Committee for Wetland Delineation, 1989. Changes to this Federal manual would not apply to the Scenic Area unless the National Scenic Area Management Plan has been amended. The approximate location and extent of wetlands in the National Scenic Area is shown on the National Wetlands Inventory (U.S. Fish and Wildlife Service, 1987).

PP. MCC 11.15.3830(B)(5)(f) is amended to read:

(f) Air and water quality:

- (i) Streambank and shoreline stability shall be maintained or restored with natural revegetation.
- (ii) All new developments shall be carried out to comply with state water quality requirements.
- (iii) Existing levels of air visibility shall not be degraded. The Scenic Area shall be suited for designation as a Class 1 airshed.
- (iv) County, state and federal regulations for air and water quality and for pesticide use shall be followed.

QQ. MCC 11.15.3832 is amended to read:

The following uses are allowed, subject to compliance with MCC .3832(E) and (F).

Meeting Date: May 25, 1993

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CS 5-93 Decision

BCC Informal (date) BCC Formal May 25, 1993 (date)  
DEPARTMENT DES DIVISION Planning  
CONTACT Sharon Cowley TELEPHONE 2610  
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CS 5-93 Review the Decision of the Hearings Officer of May 3, 1993, approving, subject to conditons, modification of the Community Service designation for the subject property to allow a two-phased expansion of an existing church facility for property located at 16001 SE Main Street.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL

Or

DEPARTMENT MANAGER

*[Signature]* BH Willia

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 MAY 12 PM 2:49



# MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. CS5-93

☒ Agenda Placement Sheet

No. of Pages 1

☐ Case Summary Sheet

No. of Pages \_\_\_\_\_

☐ Previously Distributed

\_\_\_\_\_

☐ Notice of Review

No. of Pages \_\_\_\_\_

\*(Maybe distributed at Board Meeting)

☐ Previously Distributed

\_\_\_\_\_

☒ Decision

No. of Pages 12

(Hearings Officer/Planning Commission)

☐ Previously Distributed

\_\_\_\_\_

\*Duplicate materials will be provided upon request.  
Please call 2610.



**Department of Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214 (503) 248-3043**

**Decision**

This Decision consists of Conditions, Findings of Fact and Conclusions

May 3, 1993

**CS 5-93, #393**

**Community Service Request  
(Church Expansion)**

Applicant requests a modification of the Community Service designation on this property to allow a two-phased expansion of an existing church facility. Phase I would include a 7,000-square foot addition for sanctuary and office purposes and Phase II, the addition of 2,000 square feet of classroom space. Seating capacity of the new sanctuary would be 320 persons. A community service request expires two years from the date of the issuance of the Board Order or two years from the date of final resolution of subsequent appeals, pursuant to MCC 11.15.7010(C). This request was approved October 30, 1990 and expired October 30, 1992 and the applicant is now requesting re-approval.

**Location:** 16001 SE Main Street  
**Legal:** West 280 and East 90' of West 370' of North 145' of Lot 8,  
Blk. C, Ritlow Acres, 1991 Assessor's Map  
**Site Size:** 2.09 Acres  
**Size Requested:** Same  
**Property Owner:** Calvin Christian Reformed Church  
16001 SE Main Street, 97233  
**Applicant:** Same  
**Comprehensive Plan:** Urban Low Density Residential  
**Present Zoning:** LR-7, C-S, Urban Low Density Residential  
Community Service District  
**Sponsor's Proposal:** LR-7, CS

**Hearings Officer**

**Decision:** APPROVE, subject to conditions, modification of the Community Service designation on this property to allow a two-phased expansion of an existing church facility, based on the Following Findings and Conclusions.

**Zoning Map**  
**Case #: CS 5-93**  
**Location: 16001 SE Main Street**  
**Scale: 1 inch to 200 feet (approximate)**  
 Shading indicates subject property  
 SZM 393; Old A&T Map No. 3146  
 SID 1S2E01AD 2900

HR-2 C S

6 C 546-57

ZC 26-68/T  
ZC 26-68a/T- PD 1-69

162ND AVE

S. E. TAYLOR 6270 ST.

2  
A D D

LC 93-6A

D. No 3716-60

28-72

SE HAWTHORNE S

KON-TIK

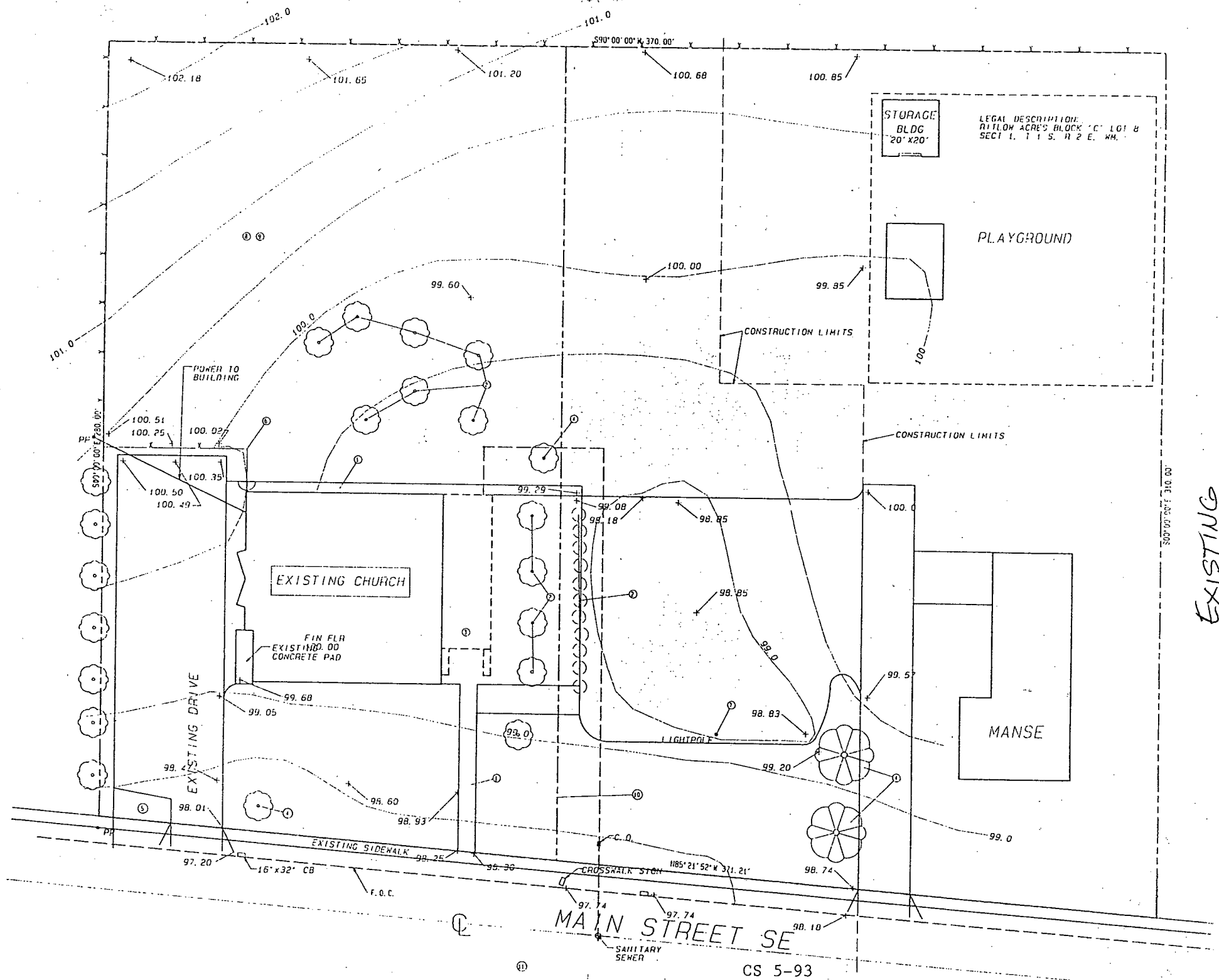
MR-3

I 83-56

N.E. 1/4 SEC. 1-13-12E

SE. 1/4, CLAY

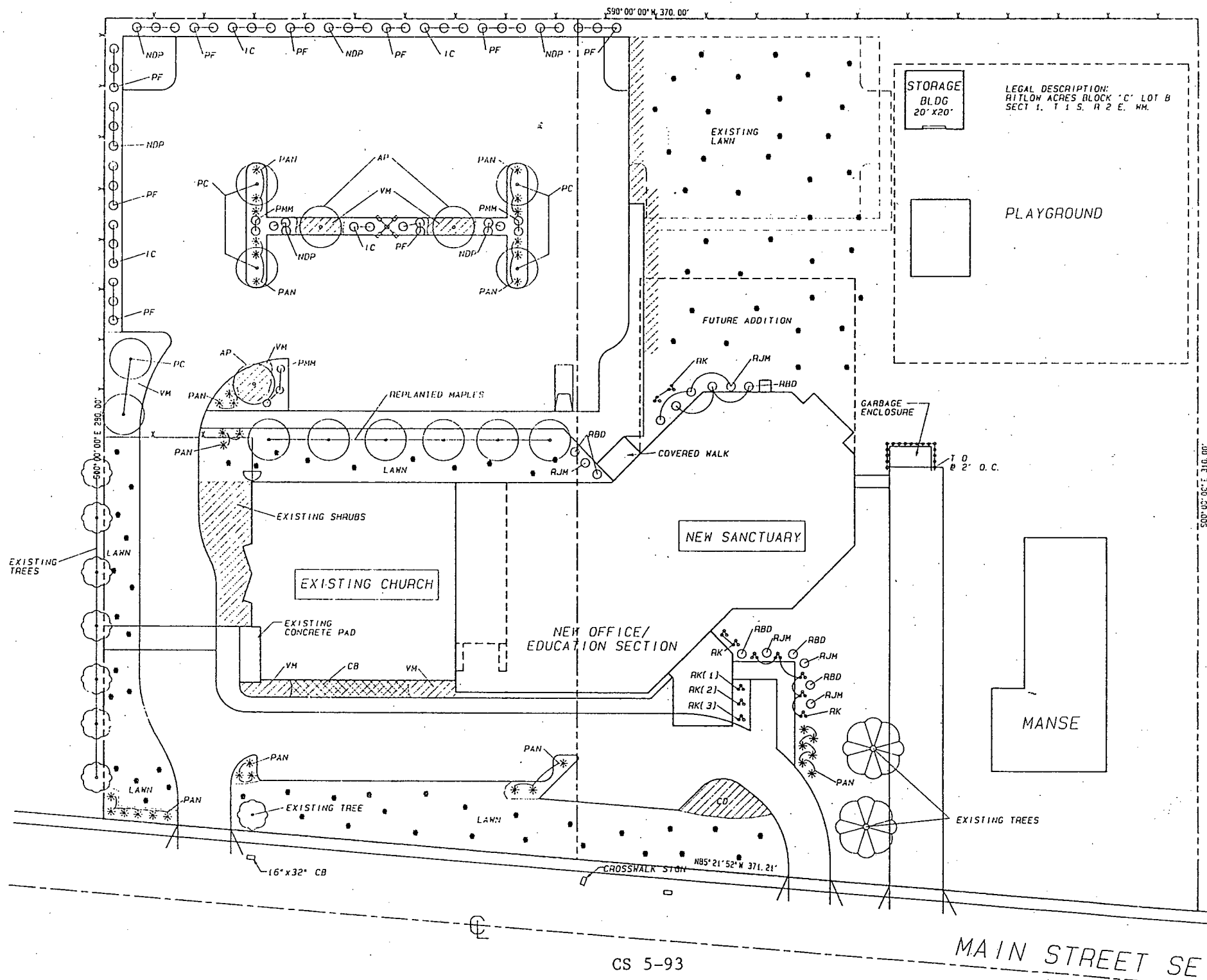
ST. 3146

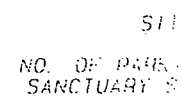


EXISTING



CS 5-93



CS 5-93

## Conditions:

1. Obtain Design Review approval of all proposed site improvements.
2. The facility operations shall be limited as specified in the application except as modified herein.

## Findings of Fact:

1. **Applicant's Proposal:** Applicant proposes modification of the Community Service designation on this property to allow a two phased expansion of an existing church facility. Phase I would include a 7,700 square foot addition for sanctuary and office purposes, and Phase II the addition of 2,000 square feet of classroom space which is to be used for Sunday School purposes only. Seating capacity of the new sanctuary would be 320 persons.
2. **Ordinance Considerations:** The burden is on the applicant for a Community Service designation to demonstrate that the proposal:
  - A. Is consistent with the character of the area;
  - B. Will not adversely affect natural resources;
  - C. Will not conflict with farm or forest uses in the area;
  - D. Will not require public services other than those existing or programmed for the area;
  - E. 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;
  - F. Will not create hazardous conditions; and
  - G. Will satisfy the applicable policies of the Comprehensive Plan.
3. **Site and Vicinity Characteristics:** The subject property is located on the north side of SE Main Street 500 feet westerly of SE 162nd Avenue. The site is developed with a church facility that has operated at this location for over twenty-five years.

Surrounding land uses include single family residences to the north, east and south, and an elementary school complex to the west.
4. **Analysis of Ordinance Criteria:** Modification of the Community Service designation of this property for a church expansion is found to satisfy the applicable ordinance criteria as follows:
  - A. *Consistency With the Character of the Area:* The character of the surrounding area is single family residential. The church has existed at this location since the mid-Sixties without conflicting with the surrounding area.
  - B. *Affect on Natural Resources:* This property is surrounded by urban development for several



miles. There are no agricultural, forestry, or other resource uses within that area that would be impacted by this expansion.

- C. *Compatibility With Farm and Forest Uses*: No applicable farm or forest uses will be affected by this proposal since the property is within the urban area.
- D. *Public Services*: Public sewer and water are available along the SE Main Street frontage, as are also telephone, gas and electric facilities.
- E. *Big Game Winter Habitat*: The site is not in an area designated for Big Game Winter Habitat.
- F. *Hazardous Conditions*: No hazardous conditions are known to affect this site. The access drive and on-site circulation of vehicles will be reviewed through the Design Review process and the Engineering Services access permit.
- G. *Comprehensive Plan Policies*: The following Comprehensive Framework Plan Policies are found to apply to this proposal:

(1) *No. 13 - Air, Water and Noise Quality*

There are no aspects of the air or water quality levels that have been identified that would be affected by the proposed expansion. Public sewer is available to the site, and there are no DEQ regulations applicable to a project of this size.

(2) *No. 14-Development Limitations*

The site is essentially level, has no soil erosion and is not within a 100 year flood plain. The soil of the site is Multnomah silt loam which does not have a high water table nor a fragipan within 30 inches of the surface. Because the land is level it is not subject to slumping or sliding.

(3) *No. 16 - Natural Resources*

Natural and cultural resources are protected by the sub-policies of Policy 16. Many of those sub-policies, by their terms, are implemented through the adoption of regulations and are not directly applied to quasi-judicial decisions. Sub-policies in this category include 16-B, Mineral and Aggregate Resources; 16-G, Water Resources and Wetlands; 16-H, Wilderness Areas, 16-I, Historic Resources; and 16-L, Wild and Scenic Waterways.

The remaining sub-policies may or may not apply to quasi-judicial decisions. However, I need not reach this issue if I find that none of the resources to be protected are present on or near the site.

The site of the proposed church expansion is not a hydroelectric or other site "required for the generation of energy": Policy 16-C is inapplicable.

The site is not designated and mapped as one of the "Areas of Significant Environmental Con-

cern.” The slides of the site and the neighborhood and the Staff Report, coupled with the omission of the area from the SEC maps, leads me to conclude that there are no fish and wildlife habitat areas on the site (protected by Policy 16-D). Based on the same evidence, I find there are no natural areas (protected by Policy 16-E), scenic views and sites (conserved by Policy 16-F) or wildness areas (discussed by Policy 16-H) on or near the applicant's property.

According to the Staff, the property is not one of the “known” cultural and archaeological sites. Thus Policy 16-I is inapplicable.

Based on the map of the site vicinity and the maps of the protected resources, I find the site does not contain or border any of the four recreation trails listed in Policy 16-K or the Sandy River, a wild and scenic waterway, recognized by Policy 16-L.

*(4) No. 22- Energy Conservation*

The expanded use of this property will conserve energy by increasing the intensity of development within the urban area at a location that requires no extension or expansion of public facilities or services.

*(5) No. 31- Community Facilities and Uses:*

This proposal qualifies as a Minor Community Facility. It satisfies the locational criteria of this policy as follows:

(a) Slope – Minor Community Facilities are required to be located on sites with an average site slope of 10% or less. The applicant's engineer has determined the slope of the property to be 2%.

(b) Access:

- The vehicular access standard for a Minor Community Facility is that the use should have direct access to a collector (or greater classification) street and no routing of traffic through local neighborhood streets. SE Main Street is a major collector street; therefore the site meets the locational standard of Policy 31.
- Engineering Services indicates that SE Main Street is fully improved with curbs and sidewalks and requires no additional improvement. They also indicate that SE Main Street is capable of accommodating the traffic generated by this expansion without creating traffic hazards. They find the existing driveway approach does not create a traffic hazard because it has sufficient sight distance in both directions.
- Tri Met bus #27 provides service directly to the property and along 162<sup>nd</sup> Avenue.

(c) Impact on Adjacent Lands:

- The church has operated over twenty-five years without adverse impacts to surround-

ing residences. The proposed expansion will not introduce new uses, only better accommodate those uses that presently exist; therefore should also be compatible with those surrounding residential uses.

- Design Review will insure that the expansion is adequately buffered from surrounding properties.

(c) Site Characteristics: The site is essentially level and of sufficient size and shape to accommodate the building expansion and provide the necessary on-site parking required for the expanded use.

(6) No. 37 - *Utilities:*

The site is adequately served by telephone, gas and electric facilities along the SE Main Street frontage. Existing systems for sewer and storm drainage will not require alteration to accommodate the expanded use.

(7) No. 40 - *Development Requirements*

There are no adjacent parks requiring pedestrian or bicycle path connection. Design Review will investigate the appropriateness of bicycle parking facilities.

**Subsequent Proceedings:**

MCC 11.15.7820 provides: "The provisions of MCC .7805 through .7865 shall apply to all conditional and community service uses in any district\*\*\*."

The applicant must submit a design review plan addressing the standards for parking, landscaping and other matters addressed by MCC 11.15.7805 to .7870.

**Conclusion:**

The proposal, as conditioned, satisfies applicable approval criteria for an alteration of the Community Service designation.

In the matter of CS 5-93:

Signed May 3, 1993



By Robert Liberty, Hearings Officer

Filed With the Clerk of the Board on May 13, 1993

### Appeal to the Board of County Commissioners

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the Record. Appeals must be filed within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50 per minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(B)]. "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, Portland.

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.

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, May 25, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m., Monday, May 24, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

*Hearings Officer Decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 9:30 a.m. in room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Division of Planning and Development at 248-3043.*

Meeting Date: May 25, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: CU 20-92 - Public Hearing

BCC Informal \_\_\_\_\_ BCC Formal May 25, 1993  
(date) (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Sandy Mathewson

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 20-92 Public Hearing - On The Record

Review the Hearings Officer Decision of April 13, 1993, approving, subject to conditions, a conditional use request for a non-resource related single family dwelling in the MUF-19 zoning district for property located at 8282 SE Rodlun Road.

Scope of Review - On The Record

Oral Argument - 10 minutes per side to present oral argument

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL \_\_\_\_\_

Or

DEPARTMENT MANAGER pc BH William

(All accompanying documents must have required signatures)

1993 MAY 12 PM 2:40  
MULTNOMAH COUNTY  
OREGON  
CLERK OF COUNTY



# MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 SE MORRISON/PORTLAND, OREGON 97214

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C 2120 92

#### I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet ( / Pages)
- ☒ Case Summary Sheet ( / Pages)
- ☒ Notice of Review Application ( 5 Pages)
- ☒ Decision ( 22 Pages)  
(Hearings Officer/Planning Commission)

#### II. Materials Available Upon Request

- ☐ Minutes ( Pages)
- ☒ Transcript ( Pages)
- ☒ Applicant's Application and Submittals ( Pages)
- ☒ Case Correspondence ( Letters)
- ☐ Slides ( Slides)
- ☐ Exhibits/Maps ( Exhibits)  
( Maps)
- ☐ Other Materials ( )



# MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C2420-92

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☒ Notice of Review

No. of Pages 5

\*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 22

(Hearings Officer/Planning Commission)

☒ Previously Distributed

4/27/93

\*Duplicate materials will be provided upon request.  
Please call 2610.



BOARD HEARING OF MAY 25, 1993

CASE NAME: PLANT APPEAL  
of CONDITION B

TIME 9:30 am  
NUMBER CU 20-92

1. Applicant Name/Address: David and Joann Plant  
1701 River Loop #1  
Eugene, OR 97404

2. Action Requested by applicant:

Appeal of Condition B requiring a 200 foot setback  
from property lines for a dwelling approved as a  
non-resource residence.

3. Staff Report Recommendation (November 2, 1992):

Approve, subject to conditions

4. Hearings Officer Decision (April 13, 1993):

Approved, subject to conditions

5. If recommendation and decision are different, why?

ACTION REQUESTED OF BOARD	
<input type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input checked="" type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input checked="" type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

ISSUES  
(who raised them?)

None.



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

## NOTICE OF REVIEW

1. Name: Davies, Colby, Anne  
*Last Middle First*
2. Address: 767 Willamette St. Suite 203 Eugene, OR 97401  
*Street or Box City State and Zip Code*
3. Telephone: ( 503 ) 687 - 1004
4. If serving as a representative of other persons, list their names and addresses:  
David & Jo Ann Plant 1701 River Loop 1 Eugene 97404  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Approval of conditional use request for  
non-resource related single family dwelling, with conditions  
\_\_\_\_\_
6. The decision was announced by the Hearings Official Planning Commission on April 15, 1993
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
David Plant, representing himself and his wife, Jo Ann,  
appeared and participated in the hearing before the hearings  
official. Both appellants, David and Jo Ann Plant, and their  
representative submitted additional written materials following  
the hearing. Appellants are, therefore, parties to the  
proceeding pursuant to MCC 11.15.8260(B)(2).  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please return this original form. *sd*

8. Grounds for Reversal of Decision (use additional sheets if necessary):

see attached sheet

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: Anne C. Davis

Date: Apr 122, 1993

**For Staff Use Only**

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 58 min x \$3.50/minute = \$ 203.00

Total Fee = \$ 503.00

Received by: AC

Date: 4/26/93

Case No. 2420-92

BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF THE  
APPROVAL OF A NONFOREST  
DWELLING FOR DAVID AND  
JO ANN PLANT

(Assessor's Map 1S-3E, Section 21, tax lot 32)

)  
)  
) CU 20-92, #544  
)  
)

BASIS FOR APPEAL

BY DAVID & JO ANN PLANT

INTRODUCTION

The setback requirement set forth in Multnomah County Code 11.15.2194(F) is a recommended setback; it recognizes that the terrain, the soil or some other natural features might create a situation where conformity with the 200-foot recommended setback is not possible. Other siting criteria and the topography of the tract must be considered. It is clear that the 200-foot setback will not be possible in this situation.

MULTNOMAH COUNTY CODE CRITERIA

Multnomah County Code 11.15.2194(F) provides: "Building setbacks of at least 200 feet shall be maintained from all property lines, **wherever possible**, except:

- (1) A setback of 30 feet or more may be provided from a public road, or
- (2) The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access." (Emphasis supplied).

The hearings official approved this application for a conditional use permit with several conditions. One of those conditions, Condition B, provides, "The house shall be set back at least 200 feet from the property lines." (p. 21). Appellants challenge this condition.

DISCUSSION

**Setback Requirement**

A plot plan was prepared and submitted as part of the record. It is a very detailed plan of the intended location of the dwelling on the property. The siting of the house, as shown on the plot plan, approximately 150 feet from the eastern property line and approximately 115-125 feet from the northern property line was not a mistake. The planning of the location and the design of the intended dwelling, including the attached garage, were both carefully considered by appellants before an application was even filed.

### **Distance from Septic and Drainfield**

The intended location of the house is on a flat portion on the northeast corner of the property and of the clearing. The contour lines show clearly that the available locations on the property for siting a dwelling are extremely limited by the steep slopes on the western portion of the property and by a ravine along the northern side. The hearings official concluded, "the homesite is within a clearing on the only relatively level portion of the property, a bench halfway up the hill." (p. 15).

The dwelling is sited on the top portion of the level part of the clearing. This leaves just enough room to locate the septic and drainfield at a sufficient distance from the house, but still on a level part of the property. A siting of the house 200 feet from the property lines would require moving the location of the septic and drainfield further down the hill, onto a very steep portion of the parcel, which would be unacceptable as well as unfeasible.

### **Access to Water Source**

MCC 11.15.2194(B) provides: "An access drive at least 16 feet wide **shall be** maintained from the property access road to any perennial water source on the lot or an adjacent lot." (Emphasis supplied). The hearings official decision points out that "perennial water source" is nowhere defined in the code. (p. 15). Therefore, it is unclear whether it is Kelly Creek along Rodlun Road or the well that must be accessible. The well and pond will serve the fire suppression needs on the property; appellants have, therefore, provided in their plot plan for a 16-foot access to those water sources. It is the pathway to those sources that must be clear.

When the well was dug, an access was made from the end of the driveway to the well. The siting of the house as indicated on the plot plan will allow access to the well and pond, located on the southeast corner of the clearing, along that pathway. If appellants were required to site the dwelling 200 feet from the property line, the dwelling would cut off the desired, indeed necessary, access for fire suppression equipment to reach the well and pond.

### **Excavation and Fill**

Aside from the aforementioned concerns, locating the dwelling as required by the condition would necessitate additional excavation and filling on the property that would not only add to the expense but would further degrade the natural condition of the property.

### **Tree-Length Setback**

The hearings official decision adds that the 200-foot setback is "the minimum necessary to maintain the 'two tree-length' setback (along the slope) needed to allow for proper tree felling, recommended by the forester, Scott Ferguson." (p. 16). However, the decision also

### **Appellants' Statement of Basis for Appeal**

states, "The siting standards in MCC 11.15.2194 were not adopted to prevent conflicts with resource management." (p. 7). Nothing in the record indicates whether the trees are 100 feet tall, 50 feet tall, or any other particular height. Nothing in the record, therefore, supports the conclusion that only the 200-foot setback would satisfy a two-tree length setback. The house is located as far from the property lines as possible while still allowing for feasible construction on the parcel.

#### **Minimum Floor Area**

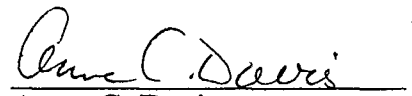
The building design to be used by appellants will be American Institute of Building Design, plan no. 1005-1D, not plan no. 1005-1A, as specified in the hearings official decision. (p. 16). The proposed dwelling will still exceed the minimum of 600 square feet per MCC 11.15.2194(I).

#### **CONCLUSION**

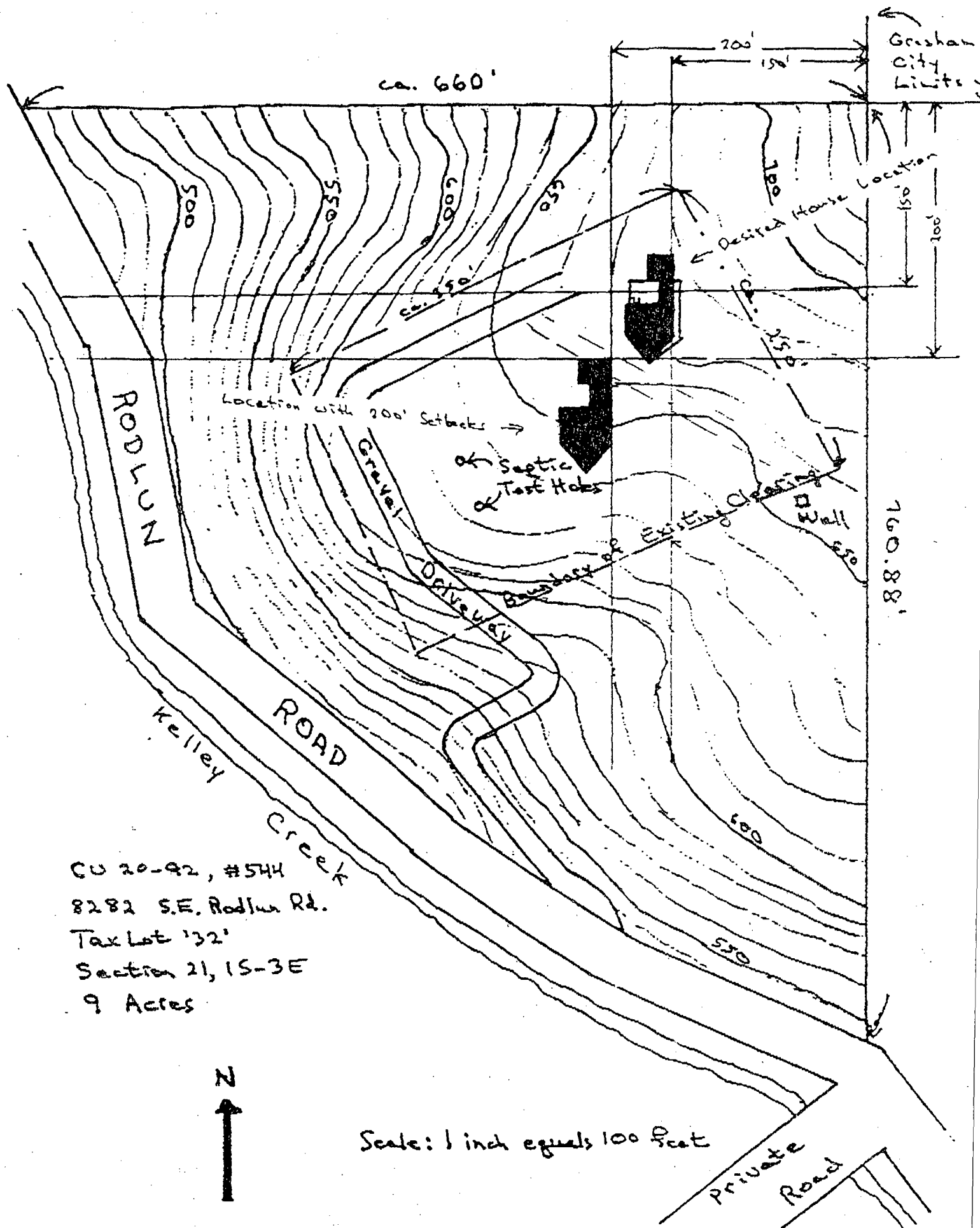
The siting of the dwelling as required by Condition B set forth in the hearings official decision is not possible or feasible. A setback of 200 feet from the property line would block the intended access to the water supply for fire suppression, it would interfere with the septic and drainfield location and would require intensive excavation and filling that would otherwise be unnecessary. The setbacks provided in appellants' plot plan satisfy the minimum yard dimensions and other requirements set forth in MCC 11.15.2178.

DATED: April 22, 1993

**JOHNSON & KLOOS**  
**Attorneys at Law**

  
Anne C. Davies  
Of Attorneys for Appellants

Phone 687-1004  
FAX 687-1021



CU 20-92, #544  
8282 S.E. Rodlun Rd.  
Tax Lot '32'  
Section 21, 1S-3E  
9 Acres



Scale: 1 inch equals 100 Feet



## Notice of Public Hearing Board of County Commissioners

Multnomah County  
Board of County Commissioners

1021 SW 4th Avenue  
Portland, Oregon 97204

The Board of County Commissioners will hear the following item on the date and at the time and place indicated below. The exact time may be later depending on the agenda schedule. The hearing will be conducted pursuant to the Board of Commissioners' *Rules of Procedure* (enclosed). Interested parties will have opportunity to appear and testify at the hearing. Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board an opportunity to respond to the issue precludes appeal to LUBA on that issue. The Board of Commissioner's Decision on the item may be announced at the hearing, or upon continuance to a time certain.

All materials submitted in the record are available for inspection and review prior to the hearing, and copies may be purchased at reasonable cost. For further information, call the Clerk of the Board at 248-3277 or the Planning Division at 248-3043.

Board of County Commissioners Members:

Hank Miggins, Acting Chair – Tanya Collier – Gary Hansen – Sharron Kelly – Dan Salzman

---

**Date:** 05/25/93      **Time:** 9:30 a.m.      **Place:** Room 602, Multnomah County Courthouse

---

### CU 20-92      Public Hearing - On The Record

Review the Hearings Officer Decision of April 13 1993, **approving, subject to conditions**, a conditional use request for a non-resource related single family dwelling in the MUF-19, multiple use forest zoning district, for **property located at 8282 SE Rodlun Road**.

**This item has been appealed by the applicant.**

**Scope of Review - On the Record**

**Oral Argument:** Each side will have 10 minutes to present oral argument to the Board.

CORPORATE

POSSIBLE  
SITE OF  
HOME  
FROM  
FENCE

Approx 30'

ca. 812'

EAST

Elev.  
700

Approx  
75'  
FROM FENCE

650

200 FT

TEST  
HOLE

WELL

SOUTH

GRAVE

ROAD

600

550

RODLUN ROAD

NORTH

TL# 32 9.0 ACRES  
7-1-92



Zoning Map

Case #: CU 20-92

Location: 8282 SE Rodlun Road

Scale: 1 inch to 200 feet (approximate)

Shading indicates subject properties

SZM 544; Section 21, T.1S., R.3E., WM.

CITY OF  
GRESHAM

**MUF -19**

GOVT LOT 2

(31)  
21.56 Ac.

(2)  
2 Ac.

(61)  
4.09 Ac.

(32)  
9.00 Ac.

(13)  
18.17 Ac.

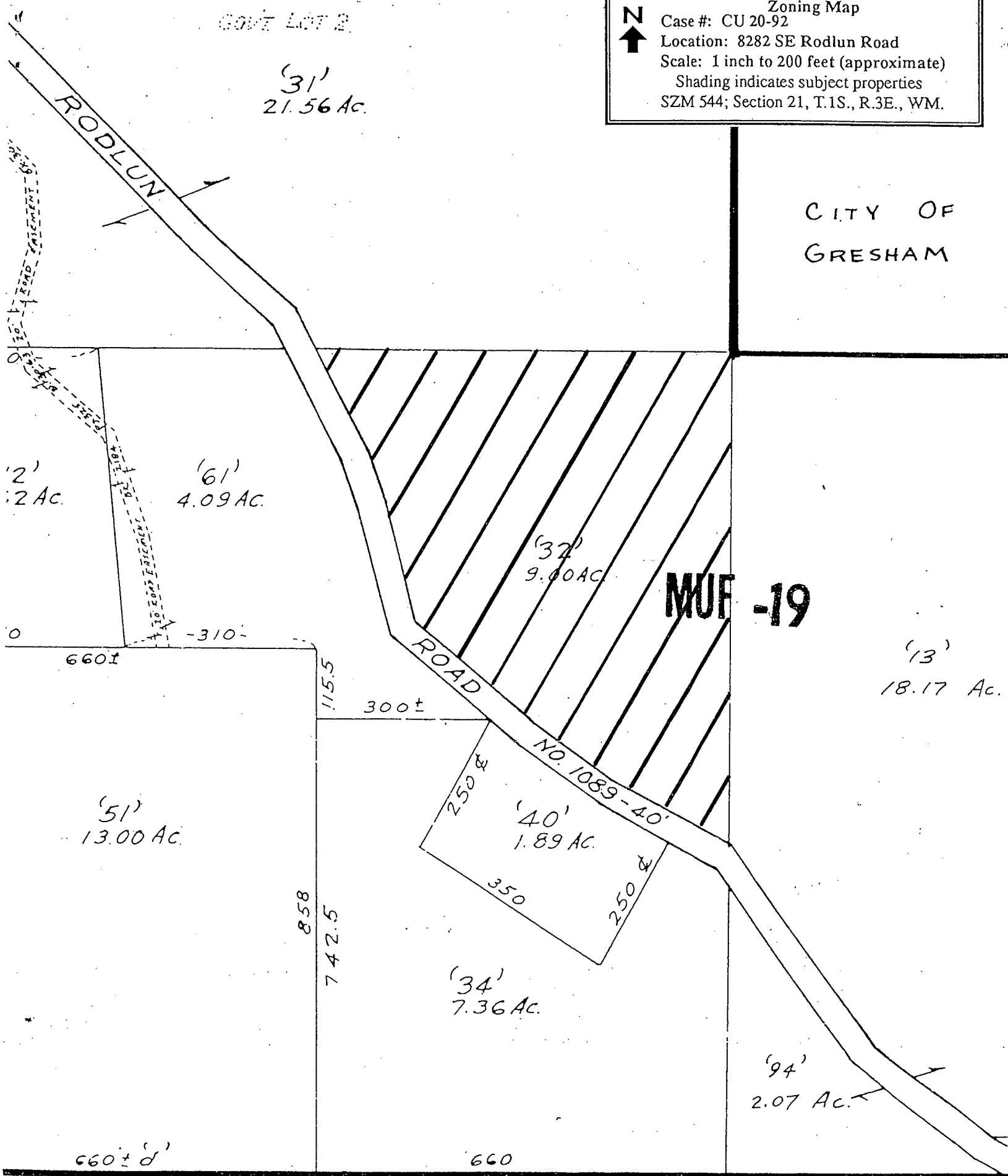
(51)  
13.00 Ac.

(40)  
1.89 Ac.

(34)  
7.36 Ac.

(94)  
2.07 Ac.

CLACKAMAS COUNTY





**Department of Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison Street  
Portland, Oregon 97214 (503) 248-3043**

**Decision**

This Staff Report consists of Conditions, Findings of Fact and Conclusions

**April 13, 1993**

**CU 20-92, #544**

**Conditional Use Request  
(Non-Resource Related Single Family Dwelling)**

Applicant requests Conditional Use approval for a non-resource related single family dwelling on this 9 acre Lot of Record in the MUF-19 zoning district..

**Location:** 8282 SE Rodlun Road

**Legal:** Tax Lot '32', Section 21, 1S, 3E, 1991 Assessor's Map

**Site Size:** 9 acres

**Size Requested:** Same

**Property Owner:** David and Joann Plant  
1701 River Loop #1  
Eugene, OR 97404

**Applicant:** Same

**Comprehensive Plan:** Multiple Use Forest

**Present Zoning:** MUF-19, Multiple Use Forest District

**Hearings Officer**

**Decision:** Approve, subject to conditions, development of this 9-acre Lot of Record with a non-resource related single family dwelling, based on the following Findings and Conclusion.

N

↑

Zoning Map

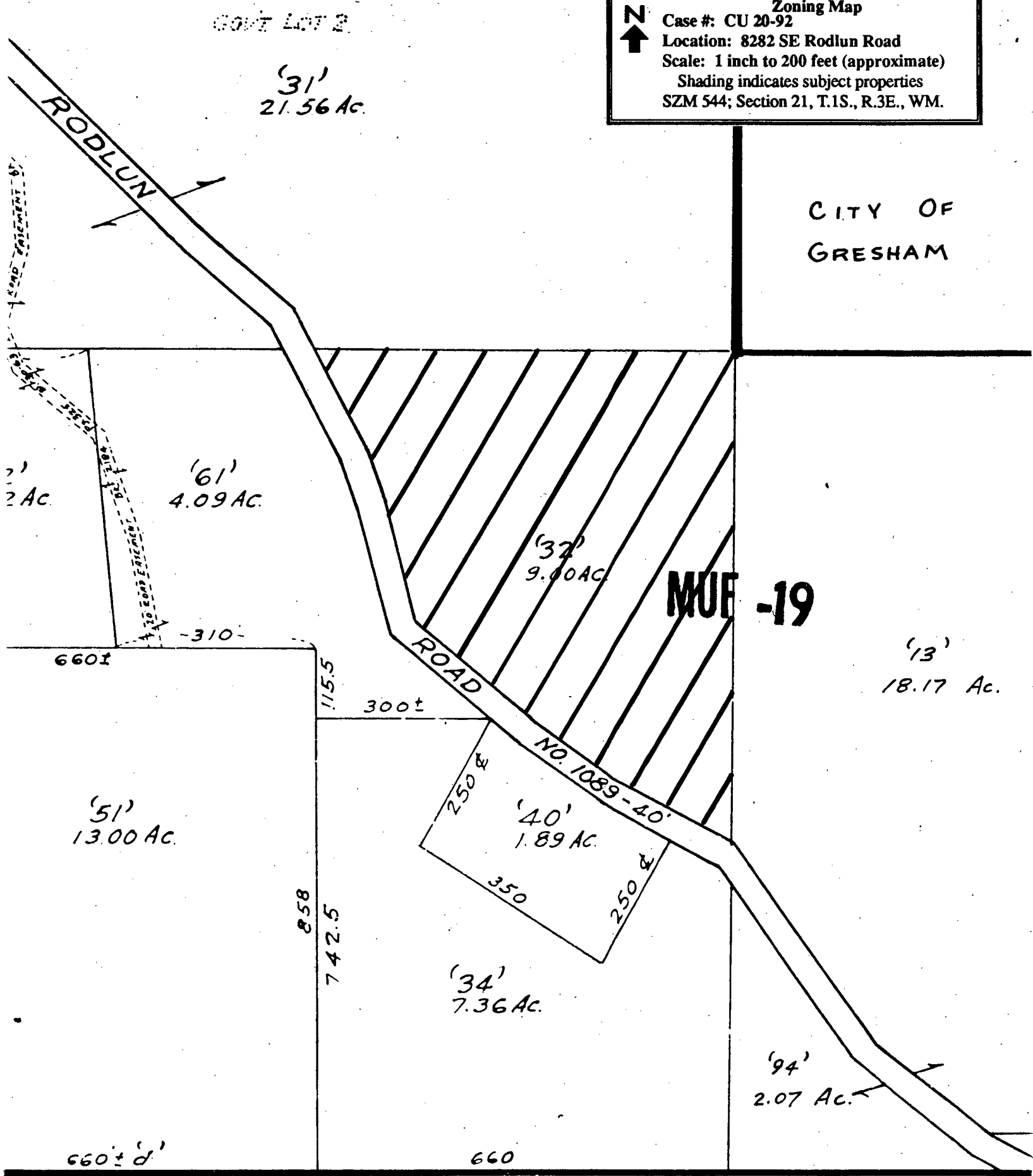
Case #: CU 20-92

Location: 8282 SE Rodlun Road

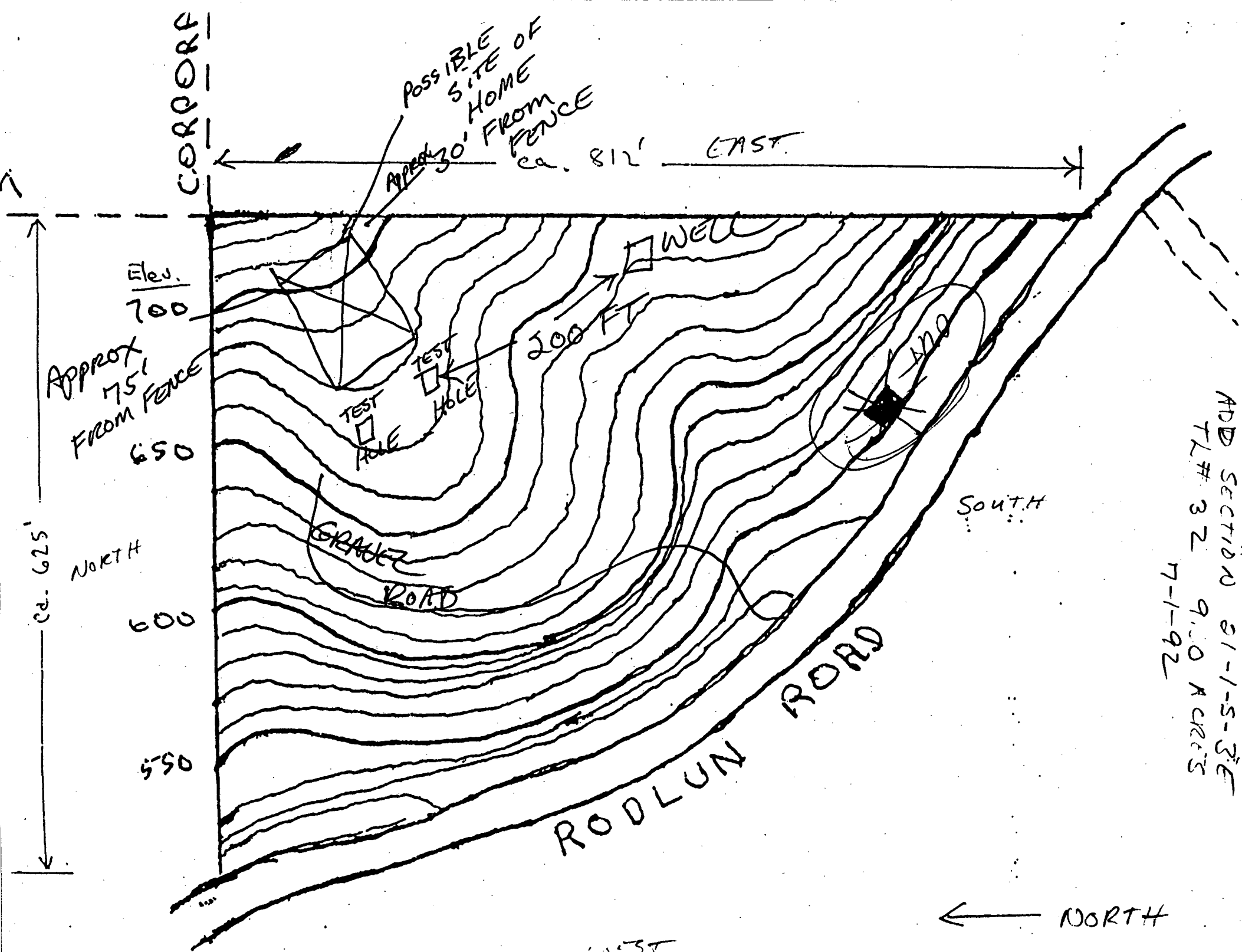
Scale: 1 inch to 200 feet (approximate)

Shading indicates subject properties

SZM 544; Section 21, T.1S., R.3E., WM.



CLACKAMAS COUNTY



ADD Section 81-1-S-36  
TL# 32 9.00 ACRES  
7-1-92

## **I. INTRODUCTION; NATURE OF THE DECISION**

This is an application for a conditional use permit to build a nonforest dwelling within the Multiple Use Forest District, 19-acre minimum lot size.

## **II. PARTIES TO THE PROCEEDING**

The only persons who participated in this proceeding was the applicant, David Plant, representing himself and his wife, Joann Plant. As a result, the applicants are the only parties to this proceeding. MCC 11.15.8225(A)(1).

## **III. PROCEDURAL ISSUES**

### **A. Impartiality Of The Hearings Officer**

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application. Subsequent communications with the applicant's representatives have concerned the applicable criteria, schedules for decision and the height of the proposed house. Most of these contacts were made, or are reflected in, letters in the record.

I have no financial interest in the outcome of this proceeding and have no family or financial relationship with any of the applicants.

### **B. Other Procedural Issues**

The applicants did not allege any procedural violations by the County, prior to, or during, the hearing.

## **IV. BURDEN OF PROOF**

The burden of proof is upon the applicant. MCC 11.15.8230(D)

## **V. REVIEW OF THE STANDARDS, ANALYSIS OF THE EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. MCC 11.15.2172(C); Conditional Uses: Residential Uses Not In Conjunction With A Primary Use**

In the Multiple Use Forest District a residence not in conjunction with one of the

primary uses listed in MCC 11.15.2168, such as forest practices and wood processing, can be allowed subject to findings addressing six sets of criteria. Each criterion is addressed separately below.

**1. MCC 11.15.2172(C)(1)**

Subsection (C)(1) requires a finding that:

- (1) *The lot size shall meet the standards of MCC .2178(A), .2180(A) to (C) or .2182(A) to (C);*

The minimum lot size in this District is 19 acres. MCC 11.15.2178(A). The applicants' parcel does not satisfy this requirement.

MCC 11.15.2180(A)(2) requires that a house on a subminimum parcel "be situated upon land generally unsuitable for commercial forest use \* \* \* ." For the reasons given below, addressing MCC 11.15.2172(C)(2), I conclude the applicant cannot meet this standard.

Consequently, in order to qualify for a residential use, the applicant must satisfy MCC 11.15.2182(A) to (C). Those provisions are addressed below.

**2. MCC 11.15.2172(C)(2)**

Subsection (C)(2) requires a finding that:

- (2) *The land is incapable of sustaining a farm or forest use, based upon one of the following:*
- (a) *A Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area,*
  - (b) *Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusion, or*
  - (c) *The lot is a Lot of Record under MCC .2182(A) though (C), and is ten acres or less in size;*

As required by this subsection, the parcel is less than 10 acres in size.

The applicant stated the property was less than 10 acres in size and thus incapable of sustaining a farm or forest use.

The applicant's original submittal materials did not contain evidence of unsuitability or the certification required under subsection (C)(2)(b) to support this assertion. The slides taken by the staff showed a second growth forest, with heavy cover of Big Leaf Maple, alder and Douglas Fir, so there is no question that the soil has the productive capacity to grow trees.

Materials submitted after the hearing, including photographs from ground level and an aerial photo show heavily forested hillsides of what appear to be second growth Douglas Fir and possibly some western red cedar. These materials also show that portions of the applicant's property are receiving preferential forest use assessment while the remainder is receiving farm use deferral. (Letter from Anne C. Davies, 8 March 1993 at page 1.)

Because the evidence does not support a finding of satisfaction of either subsections (2)(a) or (2)(b), the applicant must qualify under (C)(2)(c), in order to receive approval.

Compliance with MCC .2182(A) through (C) is addressed below.

### 3. MCC 11.15.2172(C)(3)

Subsection (C)(3) requires a finding that:

- (3) *A dwelling as proposed is compatible with the primary uses as listed in MCC .2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.*

Subsection (3) contains four criteria; (i) compatibility with the primary uses in the zone; (ii) noninterference with "resource management"; (iii) noninterference with "resources" and; (iv) a prohibition of a material alteration of the overall land use pattern in the area. I find no difference between the evidence needed to address (i) and (ii) and treat them together, below.

#### (i) Noninterference And Compatibility

It has been suggested that I rely on the siting standards in MCC 11.15.2194, (which include setback requirements) and the covenant not to object to forest and farm management practices (MCC 11.15.2172(C)(5)) to assure noninterference and compatibility. This would be an error in law and logic.

The siting standards in MCC 11.15.2194 were not adopted to prevent conflicts with resource management. While potentially useful in addressing such activities as spray drift and timber felling, setbacks alone cannot address all the conflicts between forest management and residential activities. For example smoke from slash drift, traffic safety concerns when roads are used for logging trucks and equipment, and potential interference with drinking water taken from surface streams, are not addressed by buffering. More generally, these standardized requirements are not tailored to reflect site-specific information about future potential management activities and address the ways in which conflicts can be avoided.

Nor do deeds and covenants prevent conflicts over forest management activities. If the County regarded the deed and covenant requirements in MCC 11.15.2172(C)(5) as sufficient to assure compatibility of residential uses with forest management practices it would not have adopted separate requirements for each. Regardless of the legal distinction made in the Code between findings of compatibility and noninterference and the acknowledgment of the right to "conduct accepted forestry or farming practices", such an acknowledgment does not constitute, and perhaps cannot be treated as, waivers of potential tort claims. Even if a tort claim against a forest manager is unsuccessful, defense against the claim can cost thousands of dollars.

In order to address these criteria, I must either (a) be satisfied that the dwelling will not interfere with nearby primary uses: the production, management and harvesting of timber, the raising of crops and livestock, MCC 11.15.2168) or (b) determine that these primary uses are not being conducted within the area which might be effected by the proposed dwelling. The applicants have submitted evidence in support of both theories of compliance.

In order to understand my findings regarding noninterference and compatibility it is necessary to describe the terrain in the area. As Rodlun Road proceeds south out of the Gresham city limits, it begins to follow the course of Kelly Creek. The Creek lies in a valley between steep hills on both sides of the Road, with summits 500 to 700 feet above the terrain to the north and west. Thus, properties southwest across from Rodlun Road, are separated from the applicant's property by this valley, the creek and the road.

On land southwest of Rodlun Road is divided into smaller parcels and ownerships of less than 10 acres, which occupy slopes of the hill rising to the south. Several of these are already the site of homes. None of the properties are receiving preferential farm or forest use assessment. With the exception of Christmas tree production on Tax Lot 94, the property owners have stated that they have no intention of engaging in forest management activities. I find that the proposed use need not be compatible with or not interfere with the use of these properties because they are not in farm or forest use.

There are three larger properties, with timber, on the same side of Rodlun Road (and the same hill or ridge) which adjoin or touch the Plant parcel; tax lots 13, 31 and 77. These are the focus of my chief concerns about compatibility and noninterference.

The adjoining property to the east, tax lot 13, is receiving farm deferral, (in 1992 it was assessed at less than \$1,000.00 acre.) The aerial photo (undated) shows that the southern half of the property is open land, possibly used for grazing.

In their application, the applicants stated: "Adjacent lots to north and east are lightly forested. They are very steep and could not be farmed. They have been selectively logged." During his testimony at the hearing, the applicant stated that the property to the east had been commercially thinned last year and that his neighbor had used the applicant's road to haul the logs out.

After the hearing, the applicant's representative submitted a letter from Scott Ferguson, a consulting forester with Individual Tree Selection Management Inc., dated 2 March 1993. Mr. Ferguson supervised the selective thinning on the neighboring property (Tax Lot 13). He state that he received no fee for his letter from the applicants. He qualifies as an impartial expert witness who is familiar with the property.

Ferguson's letter states that given the steep slopes, fragmentation of ownerships and infiltration of houses, the forest management which may occur in the area is not likely to entail slash burning, the aerial application of pesticides or other activities which will conflict with this or the other already present residential uses. On the other hand, some selective logging on this an other properties will remain possible using low-impact harvest methods. In this regard, Ferguson states:

*I've worked on dozens of thinning projects where this has been a concern because of inadequate setbacks -- I would recommend siting the house at least two tree lengths (slope distance) from the property line.*

However, according to the letter from Ms. Davies, "the contract os sale requires that the purchasers not conduct any forest activities, other than thinning fore firewood , until the property is paid off."

Tax lot 31, owned by Mr. Plant's mother, Margaret Barker, adjoins the property to the north. According to the Assessor's records submitted by the applicant, it is 16.31 acres (not the 21.56 acres shown on the annotated tax lot map submitted by the applicants.) The applicants report that Ms. Barker "has no intention of harvesting any trees on her property, and said that 'she plans to just watch them grow.'" Despite this denial, the tax records submitted by the applicants show that her property is receiving farm and forest deferral.

Tax lot 77, touches the northeast corner of the Plant property. It is 29.95 acres in

size, (not the 40.090 acres shown on the annotated tax lot map) and lies within the City of Gresham. Both the aerial and ground photos show that this hilly property is heavily timbered with second growth Douglas fir. According to the applicant, cutting trees more than 25 inches in diameter requires a City permit and the owner, Thomas Higgins told Ms. Davies "that he has no intention of logging on his property. In fact, his plans are to build a house on that property." Davies letter at page 2. The annotated tax lot map identifies a house "under construction" on the property.

Despite these promises of non-management, Mr. Thomas' property is receiving forest deferral. His property was assessed in 1993 slightly less than \$1,000/acre, even though the property is zoned LDR-7 with a 7,000 square foot minimum lot size.

In western Oregon there are two preferential forest use assessment programs, the Western Oregon Forest Land Assessment and Severance Tax ("WOFLAST", codified at ORS 321.257 to 321.375) and the Western Oregon Small Tract Optional Tax ("WOSTOT", codified at ORS 321.705 to 321.765). The record does not disclose under which of these programs Ms. Barker and Mr. Thomas' property is receiving deferral.

Under ORS 321.358 (a part of WOFLAST) the land must qualify under the following definition of "forestland":

*"Forestland" means land in western Oregon (a) which is being held or used for the predominant purpose of growing and harvesting trees of a marketable species or (b) the highest and best use of which is the growing and harvesting of such trees and has been designated as forestland \* \* \* \* .*

ORS 321.257(3). Lands enrolled in the WOSTOT program must meet a somewhat different definition of forestland:

*(3) "Forestland" means land which, in the judgment of the State Forester, is suitable for the production of timber or cultured Christmas trees and is being utilized primarily for that purpose. \* \* \* \**

ORS 321.705(3). A portion of the eligibility requirements for WOSTOT requires the land to be:

*held or used for the predominant purpose of growing and harvesting trees of a marketable species or (b) the highest and best use of which is the growing and harvesting of such trees.*

ORS 197.725(1)(c). (This is very similar to the qualifying definition of "forestland" under WOSTOT.

This record requires me to choose between the use of property which their preferential property tax qualification implies and the statements (albeit second-hand) of the property owners. I will rely on the property owners' assertions of fact about the use of their property rather than the legal implication drawn from their assessments.<sup>1</sup>

Based on this record, I conclude that the land adjoining the Plants' property is not, and will not be, managed for forestry.

With respect to farming activities, the record suggests these are not of a commercial scale, are isolated by intervening slopes and forests from the Plant property, Therefore the Plant's resident will not conflict with any commercial farm uses.<sup>2</sup>

(ii) **Noninterference With "Resources"**

This subsection requires findings that the proposed use *will not interfere with the resources or the resource management practices* in the area.

---

<sup>1</sup> This choice has some legal, if not factual logic to it, given the absurd distinctions drawn by the Court of Appeals between the land use and preferential assessment programs. *Springer v. Oregon Department of Revenue*, 11 Or App 262, \_\_\_ P2d \_\_\_ (1992).

<sup>2</sup> Land which is not within an EFU zone may receive preferential assessment under ORS 308.370(2), 308.372 and 308.375. ORS 308.370(2) provides in relevant part:

*(2) Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use as defined in ORS 215.203(2) shall, upon compliance with ORS 308.375, for purposes of assessment, be valued under ORS 308.232 at its true cash value for farm use and not at the true cash it would if applied to other than farm use. \* \* \* .*

ORS 215.203(2)(a) provides (in pertinent part):

*2(a) As used in this section 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use thereof.*

The Oregon Supreme Court (and Tax Court) have held that this standard is to be used to distinguish and exclude hobby farms from genuine commercial farming operations. *Capsey v. Dept. of Rev.*, 294 Or 455, 657 P2d 680 (1983).

The Multnomah County Code does not define "resources." MCC 11.15.0010. The second time the word "resource" is used, it apparently refers to farm and forest lands which are the subject of "resource management." Assuming that a distinction is made between "managed" and unmanaged "resources" I interpret the first use of the term refers to natural resources.

As noted below, this area is outside the big game habitat range mapped by the Department of Fish and Wildlife. Construction of the road, which might affect Kelly Creek, has already been built. Any additional impacts from improvement of the road or construction of the house which might affect the Creek or other natural resources can be addressed in Design Review under MCC 11.15.7830 and .7850.

**(iii) No Material Alteration Of The Stability Of The Overall Land Use Pattern In The Area**

The applicants have provided substantial documentation of the overall land use pattern of the area, which consists of homes generally unrelated to farming or forestry, located on lots from 2 to 30 acres in size. A large share of these lots already have been sited with homes. The largest properties, to the northeast, are within the regional urban growth boundary.

Any home alters the land use pattern. A first home introduced into an undeveloped area or the first home on a small lot may change the stability of the land use pattern. However, I find that the addition of one proposed house, among many houses, on a parcel within the range of prevailing parcel sizes within the area, will not materially alter the stability of the overall land use pattern of the area.

**4. MCC 11.15.2172(C)(4)**

Subsection (C)(4) requires a finding that:

- (4) The dwelling will not require public services beyond those existing or programmed for the area.*

The Multnomah County Sheriff's Office completed a County "Police Services Review" form, stating that the "level of police service available is adequate to serve the proposed project, signed by Sergeant M. Pajer, dated 17 November 1992.

Multnomah County Fire District #10 completed a County "Fire District Review" form, stating that "There is adequate water pressure and flow at the subject property for fire fighting services;" with the appended comment "Water for fire fighting supplied by Fire Department tanker. No additional requirement." The Fire District also commented: "Access road from public road to within 150' of structure shall be minimum 12' wide and

provided with an all weather surface." The form was completed and signed by Fire Protection Engineer Jim Schwager, dated 19 November 1992.

Centennial School District completed a County "School District Review" form, stating in response to the inquiry about "the level of service available to the property and potential impact on service levels;" "Centennial School District has no objection to this building." The form was completed and signed by Administrative Assistant Carol Thornbury, but was undated.

Sewage disposal will be provided through an on-site septic system. The City of Portland's Environmental Soils Specialist, Phil Crawford, determined that the site was suitable for the use of a standard septic tank/drainfield disposal system \* \* \* . " Site Evaluation Report LFS: 141-92 dated June 11, 1992.

Domestic water will be provided by an on-site well with a yield of 8 gallons per minute, which should be ample for domestic use.

I conclude the propose house does not require public water and sewer services and will not require fire, police or school services beyond the level of services currently provided for the area.

**5. MCC 11.15.2172(C)(5)**

Subsection (C)(5) requires a finding that:

- (5) *The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices; and*

The applicants' attorney has submitted the unsigned form they intend to use to record their acknowledgment (i.e. acceptance) of nearby farming and forest practices. The form is sufficient to implement the standard. However, the ordinance requires this form to be signed and recorded.

Signing and recording the form is made a condition of approval which must be met before a building permit may be issued. Because the determination of whether this form has been signed and recorded does not require the exercise of legal discretion, this determination does not require notice and an opportunity for a hearing.

**6. MCC 11.15.2172(C)(6)**

Subsection (C)(5) requires a finding that:

(6) *The residential use development standards of MCC .2194 will be met.*

These provisions are discussed in D., below.

**B. MCC 11.15.2178; Dimensional Requirements**

**1. MCC 11.15.2178(A); Minimum Lot Size**

The minimum lot size in this zone is 19 acres, MCC 11.15.2178(A), absent qualification under MCC 11.15.2189, .2182, .2184 and .7720. This application is being processed pursuant to MCC 11.15.2182, "Lot of Record."

**2. MCC 11.15.2178(C); Minimum Yard Dimensions**

This subsection has three components; minimum front, back and side yards, maximum building height and minimum "front lot line."

The 200' setback requirements established by MCC 11.15.2194(F), (discussed below) more than satisfy the 30' and 10' front, back and side yard dimensions.

The description of the proposed design submitted by the applicant, does not disclose whether the house will meet or exceed the 35 foot maximum. This matter can be addressed during Design Review.

I interpret the phrase "front lot line" as applied to the applicant's (roughly) triangular lot, as the lot's frontage on Rodlun Road. According to the site map submitted by the applicants after the hearing, their lot has an approximately 1,000' frontage on Rodlun Road, in excess of the 50' required by this subsection.

**3. MCC 11.15.2178(B), (D), (E)**

Subsections (B) and (D) of the dimensional requirements are not relevant. Subsection (E), can be addressed through Design Review.

**C. MCC 11.15.2182(A) through (C); Lot of Record**

**1. MCC 11.15.2182(A)(2)**

MCC 11.15.2182(A) defines three kinds of "lots of record," which are entitled to a dwelling in the MUF District notwithstanding other criteria limiting and restricting dwellings and minimum lot sizes. Subsection MCC 11.15.2182(B) contains definitions of key terms and (C) provides defines circumstances when a separate lot of record is "deemed created" by a zoning district line or County road.

The applicants' parcel does not qualify under MCC 11.15.2182(A)(1), because .2182(A)(1)(c) requires the parcel to "satisfy the minimum lot size requirements of .2178 \* \* \* ."

The applicants' parcel does not qualify under MCC 11.15.2182(A)(3) because that provision is applied to a "group of contiguous parcels of land" which, in the aggregate, satisfy the minimum lot size standards in MCC .2178.

This leaves MCC 11.15.2182(A)(2). To qualify under this definition, the lot must be "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 .2178, and*
- (d) *Which is not contiguous to another substandard parcel or parcels under the same ownership;*

According to information submitted on behalf of the applicants, the parcel was created sometime between 1931 and 1936, before any county zoning of the area. During that period the only applicable laws regulated the creation and sale of subdivision lots. The identification of this property as a separate tax lot in 1936 was apparently not associated with the creation of any other lots and thus the parcel was not a part of a subdivision. (This is consistent with the irregular sizes of nearby properties.) The property is not listed in the county's inventory of illegal lots.

The preceding evidence is sufficient to satisfy subsections (a) and (b).

According to the Planning Division's records, the applicant's testimony, and estate settlement order from 1947, the property is 9.00 acres, less than the minimum lot size. This evidence satisfies subsection (c).

The records from the Tax Assessor's office shows that none of the neighboring tax lots (and thus none of the neighboring parcels) are owned by David or Joanne Plant. This evidence satisfies subsection (d).

#### **D. MCC 11.15.2194 Residential Development Standards**

##### **(1) MCC 11.15.2194(A): Fire Safety Measures**

The applicants have identified 10 fire safety measures they intend to take, including clearing of brush from around the house, a small water storage pond (approximately 1000 gallons) with a gas pump and a 30 foot "defensible perimeter" around the house, with 200 feet in front of the house (presumably the existing clearing.)

I find the fire safety measures are satisfied by making the implementation of these 10 precautions conditions or approval.

**(2) MCC 11.15.2194(B): Access Road To Perennial Water Source On The Lot**

A minimum of a 16 foot wide "access drive" is required to "any perennial water source on the lot or an adjacent lot." "Perennial water source," "access drive" and "adjacent" are not defined in MCC 11.15.0010. If the "water source" means the well (shown on the site plan as approximately 150' from the home site, then such access can be provided by the applicants. However, if the "perennial" used with "water source" means surface water, and the Plants' lot is "adjacent" to the lots over which Kelly Creek runs, then the "access drive" might be their road. If so, the road width may be wider than originally planned.

These issues may be addressed as a part of Design Review.

**(3) MCC 11.15.2194(C): Proximity To Publicly Maintained Street**

The dwelling is to be located "in as close proximity to a publicly maintained street as possible." For the reasons cited in addressing MCC 11.15.2194(D), it is not possible to locate the house in closer proximity to Rodlun Road.

**(4) MCC 11.15.2194(D): Driveway Length**

The maximum driveway length of 500 feet may be exceeded provided the applicants describe in their written application materials "the physical limitations which require a driveway in excess of 500 feet ..."

The applicants originally stated "we will not require a driveway in excess of 500 feet." However, the applicants' revised site plan shows that the driveway from Rodlun Road will be approximately 800 feet. The reasons for this longer length appear in several of the submissions including topographical maps and photographs; the homesite is within a clearing on the only relatively level portion of the property, a bench halfway up the hill.

This information satisfies MCC 11.15.2194(D).

**(5) MCC 11.15.2194(E): Siting On Least Productive Portion Of The Property**

Since the proposed dwelling is not being approved as being in conjunction with any

primary farm or forest use, I conclude that this provision is inapplicable.

**(6) MCC 11.15.2194(F): Building Setback**

The applicants' site plan shows the "house site" about 150' from the north and east property lines and 400 feet from the southwest boundary.

This subsection requires 200' setbacks from all property lines, whenever possible, except for setbacks as little as 30' from a public road or when it will allow for the "clustering of dwelling or sharing of access" on adjacent lots.

Neither of these exceptions applies. In addition, this 200' setback requirement is the minimum necessary to maintain the "two tree-length" setback (along the slope) needed to allow for proper tree felling, recommended by the forester, Scott Ferguson. (See discussion of MCC 11.15.2172(c)(3), above.)

**(7) MCC 11.15.2194(G): Building Code Standards**

Compliance with the building code will be addressed through Design Review.

**(8) MCC 11.15.2194(H): Foundation**

Compliance with the building code, as applicable to the foundation, will be addressed through Design Review.

**(9) MCC 11.15.2194(I): Minimum Floor Area**

The house plan description submitted by the applicant (American Institute of Building Design, plan no. 1005-1A) shows that the proposed dwelling will have a floor area of 1,535 square feet, which exceeds the minimum of 600 square feet established by this section.

**(10) MCC 11.15.2194(J): Big Game Habitat Area**

The house is outside of any big game habitat area as defined by the Oregon Department of Fish and Wildlife.

**E. Plan Policies 37 And 38**

**1. In General**

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced begin with the statement: "The county's policy is to require a finding prior to approval of a legislative or

quasi-judicial action that \* \* \* ." "Action" is defined in MCC 11.15.8205 as a

*a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for: \* \* \**

(C) Conditional uses;

\* \* \* \*

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

I find that this proceeding is an "action" and that consequently both of these policies apply.

As noted below, some of the required findings can be made at this stage. A determination concerning satisfaction of the remaining required findings in those policies will be determined by the Planning Director before, or in conjunction with, the placement permitting process. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, cited above.

## **2. Plan Policy 37: "Utilities"**

Multnomah County Plan Policy 37, "Utilities" provides:

### ***POLICY 37***

***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 ON THE SITE; OR*
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)  
at 167.

The evidence discussed above under MCC 11.15.2172(C)(4) shows that the applicants will make use of well water and an approved on-site septic disposal system. This evidence is sufficient to demonstrate compliance with the first four subsections of Policy 37.

The remainder of Policy 37 provides:

*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*

*FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE*

COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)  
at 168.

I conclude that subsection E applies to urban areas and is inapplicable to this area, zoned MUF.

There is no evidence in the record concerning energy and communications facilities, subsections F, G, H and I. These matters are deferred for an administrative determination by the Planning Director in conjunction with the building permit decision.

The concluding paragraph of Policy 37 is relevant only to legislative decisions creating a regulatory system for groundwater; it is inapplicable to this quasijudicial proceeding.

**4. Plan Policy 38: "Facilities"**

Multnomah County Plan Policy 38, "Facilities" provides:

*POLICY 38*

*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 COMMENTS [sic] 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.***

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)  
at 169-170.

The evidence offered with respect to MCC 11.15.2172(C)(4), discussed above, is sufficient to carry the applicants' burden of proof with respect to Policy 38.

### **G. State Statutes, Goals And Administrative Rules Applicable To The Decision**

The provisions of state law governing county quasijudicial decisions, found in ORS 197.763 and 215.416 apply to this proceeding. They have been fulfilled through the notice of, and conduct of, the hearing on this matter.

No other provisions in ORS Chapters 197 and 215 are applicable.

Goal 4 and the Goal 4 Rule, as amended, do not apply to quasijudicial decisions made on applications submitted before the adoption of changes to plans and regulations made as part of periodic review, even if those changes were adopted before final action on the application. OAR 660-06-003(1)(f). No other statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

## **VI. ORDER AND CONDITIONS**

The application is approved, subject to subsequent proceedings and conditions specified below.

### **A. Matters Deferred For Later Determination In Design Review Or In Conjunction With The Issuance Of A Building Permit.**

The proposed use is a conditional use. MCC 11.15.2172(C). Design Review is required for all conditional uses in all districts. MCC 11.15.7820.

As part of Design Review, the following standards and related interpretive questions need to be satisfied:

- |   |                      |  |
|---|----------------------|--|
| • | MCC 11.15.2172(C)(3) | Impacts of home and road improvements on "resources."    |
| • | MCC 11.15.2178(C)    | Building height limitation                               |
| • | MCC 11.15.2178(E)    | Other structure height limitation                        |
| • | MCC 11.15.2194(D)    | Access to "perennial water source."                      |
| • | MCC 11.15.2194(B)    | Minimum road (driveway) width of 16 feet for fire safety |

- MCC 11.15.2194(F) Compliance with the 200' set-back requirement & condition
- Plan Policy 37(F),(G) Run-off and its impacts
- Plan Policy 37(H),(I) Energy and Communications

Because compliance with these provisions may require the exercise of judgment as to facts and interpretation of the code provisions, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 92-058, slip opinion of 10 July 1992 at 8-9 and cases cited there.)

Compliance with the provisions listed below, in the manner specified, does not require the exercise of discretion and therefore the County's determination on these points does not require notice and opportunity for a hearing. ORS 197.015(10)(b)(A), (B); ORS 215.402(4), 215.416. These decisions may be made in conjunction with the decision to issue a building permit.

- MCC 11.15.2172(C)(5) Applicants submit signed covenant acknowledging farm and forest management practices nearby.
- MCC 11.15.2194(G) Certification of compliance with building code.
- MCC 11.15.2194(H) Foundation meets requirements for a building permit.

## B. Conditions

The applicants shall comply with the following conditions:

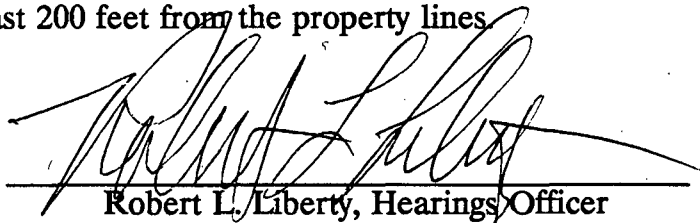
### A. Fire Safety Standards

Initial and continuing satisfaction of the ten fire safety measures described by the applicants on page 5 of the letter from their attorney, dated March 8, 1993 (copy attached.)

### B. Building Setbacks

The house shall be set back at least 200 feet from the property lines

13 April 1993  
Date

  
Robert L. Liberty, Hearings Officer

**Filed With the Clerk of the Board on April 15, 1993**

**Appeal to the Board of County Commissioners**

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the Record. Appeals must be filed within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(B)]. "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, Portland.

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.

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, April 27, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m., Monday, April 26, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF THE )  
APPROVAL OF A NONFOREST )  
DWELLING FOR DAVID AND ) CU 20-92, #544  
JO ANN PLANT )  
(Assessor's Map 1S-3E, Section 21, tax lot 32) )

BASIS FOR APPEAL

BY DAVID & JO ANN PLANT

INTRODUCTION

The setback requirement set forth in Multnomah County Code 11.15.2194(F) is a recommended setback; it recognizes that the terrain, the soil or some other natural features might create a situation where conformity with the 200-foot recommended setback is not possible. Other siting criteria and the topography of the tract must be considered. It is clear that the 200-foot setback will not be possible in this situation.

MULTNOMAH COUNTY CODE CRITERIA

Multnomah County Code 11.15.2194(F) provides: "Building setbacks of at least 200 feet shall be maintained from all property lines, **wherever possible**, except:

- (1) A setback of 30 feet or more may be provided from a public road, or
- (2) The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access." (Emphasis supplied).

The hearings official approved this application for a conditional use permit with several conditions. One of those conditions, Condition B, provides, "The house shall be set back at least 200 feet from the property lines." (p. 21). Appellants challenge this condition.

DISCUSSION

**Setback Requirement**

A plot plan was prepared and submitted as part of the record. It is a very detailed plan of the intended location of the dwelling on the property. The siting of the house, as shown on the plot plan, approximately 150 feet from the eastern property line and approximately 115-125 feet from the northern property line was not a mistake. The planning of the location and the design of the intended dwelling, including the attached garage, were both carefully considered by appellants before an application was even filed.

### **Distance from Septic and Drainfield**

The intended location of the house is on a flat portion on the northeast corner of the property and of the clearing. The contour lines show clearly that the available locations on the property for siting a dwelling are extremely limited by the steep slopes on the western portion of the property and by a ravine along the northern side. The hearings official concluded, "the homesite is within a clearing on the only relatively level portion of the property, a bench halfway up the hill." (p. 15).

The dwelling is sited on the top portion of the level part of the clearing. This leaves just enough room to locate the septic and drainfield at a sufficient distance from the house, but still on a level part of the property. A siting of the house 200 feet from the property lines would require moving the location of the septic and drainfield further down the hill, onto a very steep portion of the parcel, which would be unacceptable as well as unfeasible.

### **Access to Water Source**

MCC 11.15.2194(B) provides: "An access drive at least 16 feet wide **shall be** maintained from the property access road to any perennial water source on the lot or an adjacent lot." (Emphasis supplied). The hearings official decision points out that "perennial water source" is nowhere defined in the code. (p. 15). Therefore, it is unclear whether it is Kelly Creek along Rodlun Road or the well that must be accessible. The well and pond will serve the fire suppression needs on the property; appellants have, therefore, provided in their plot plan for a 16-foot access to those water sources. It is the pathway to those sources that must be clear.

When the well was dug, an access was made from the end of the driveway to the well. The siting of the house as indicated on the plot plan will allow access to the well and pond, located on the southeast corner of the clearing, along that pathway. If appellants were required to site the dwelling 200 feet from the property line, the dwelling would cut off the desired, indeed necessary, access for fire suppression equipment to reach the well and pond.

### **Excavation and Fill**

Aside from the aforementioned concerns, locating the dwelling as required by the condition would necessitate additional excavation and filling on the property that would not only add to the expense but would further degrade the natural condition of the property.

### **Tree-Length Setback**

The hearings official decision adds that the 200-foot setback is "the minimum necessary to maintain the 'two tree-length' setback (along the slope) needed to allow for proper tree felling, recommended by the forester, Scott Ferguson." (p. 16). However, the decision also

### **Appellants' Statement of Basis for Appeal**

states, "The siting standards in MCC 11.15.2194 were not adopted to prevent conflicts with resource management." (p. 7). Nothing in the record indicates whether the trees are 100 feet tall, 50 feet tall, or any other particular height. Nothing in the record, therefore, supports the conclusion that only the 200-foot setback would satisfy a two-tree length setback. The house is located as far from the property lines as possible while still allowing for feasible construction on the parcel.

#### **Minimum Floor Area**

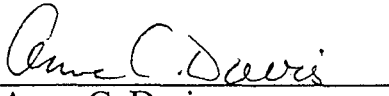
The building design to be used by appellants will be American Institute of Building Design, plan no. 1005-1D, not plan no. 1005-1A, as specified in the hearings official decision. (p. 16). The proposed dwelling will still exceed the minimum of 600 square feet per MCC 11.15.2194(I).

#### **CONCLUSION**

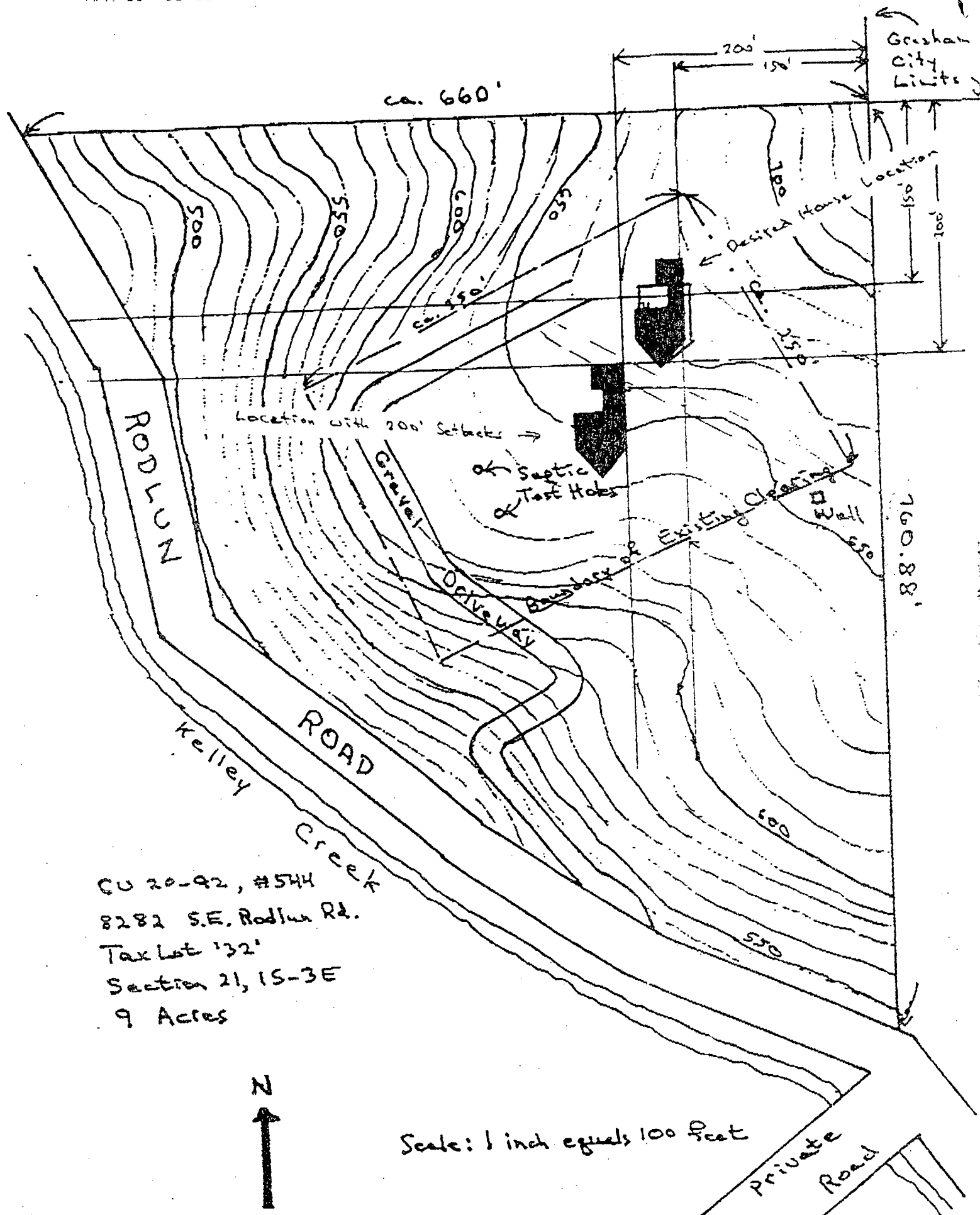
The siting of the dwelling as required by Condition B set forth in the hearings official decision is not possible or feasible. A setback of 200 feet from the property line would block the intended access to the water supply for fire suppression, it would interfere with the septic and drainfield location and would require intensive excavation and filling that would otherwise be unnecessary. The setbacks provided in appellants' plot plan satisfy the minimum yard dimensions and other requirements set forth in MCC 11.15.2178.

DATED: April 22, 1993

**JOHNSON & KLOOS**  
Attorneys at Law

  
Anne C. Davies  
Of Attorneys for Appellants

Phone 687-1004  
FAX 687-1021





## Multiple Use Forest MUF

### 11.15.2162 Purposes

The purposes of the Multiple Use Forest District are to conserve and encourage the use of suitable lands for the growing and harvesting of timber and small wood lot management; to provide for agricultural uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses and scenic values; to provide standards for residential and other uses, including local and tourist commercial services which are compatible with forest and agricultural uses; to assure public and private recreation opportunities and to minimize potential hazards from fire, pollution, erosion and urban development.

### 11.15.2164 Area Affected

MCC .2162 through .2194 shall apply to those lands designated MUF-38 and MUF-19 on the Multnomah County Zoning Map.

### 11.15.2166 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2168 through .2176.

### 11.15.2168 Primary Uses

- (A) Forest practices associated with the production, management and harvesting of timber;
- (B) Wood processing operations, such as:
  - (1) Pole and piling preparation;
  - (2) Portable sawmill for lumber cutting only;
  - (3) Wood chipping;
  - (4) Manufacture of fence posts; and
  - (5) Cutting firewood and similar miscellaneous products.
- (C) Farm Use, as defined in ORS 215.203(2)(a) for the following purposes only:
  - (1) Raising and harvesting crops;

- (2) Raising of livestock or honeybees; or

- (3) Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC .2172(B).

- (D) Public and private conservation areas and structures other than dwellings for the protection of water, soil, open space, forest and wildlife resources; and

- (E) Residential use consisting of a single-family dwelling including a mobile or modular home, on a lot of 38 acres or more, subject to the residential use development standards of MCC .2194.

### 11.15.2170 Uses Permitted Under Prescribed Conditions

- (A) Residential use, in conjunction with a primary use listed in MCC .2168, consisting of a single-family dwelling, including a mobile or modular home, subject to the following:

- (1) The lot size shall meet the standards of MCC .2178(A) or MCC .2182(A) to (C), but shall not be less than ten acres.

- (2) A resource management program for at least 75% of the productive land of the lot, as described in MCC .2172(D)(2)(a) consisting of:

- (a) A forest management plan certified by the Oregon State Department of Forestry, the Oregon State University Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use;

- (b) A farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economi-

cally suited to the primary purpose of obtaining a profit in money, considering accepted farming practice;

- (c) A resource management plan for a primary use listed in MCC .2168, based upon income, investment or similar records of the management of that resource on the property as a separate management unit for at least two of the preceding three years;
  - (d) A fish, wildlife or other natural resource conservation management plan certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses;
  - (e) A small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service; or
  - (f) A cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland of the property. Productive timberland is that portion of the property capable of growing 50 cubic feet/acre/year.
- (3) The dwelling will not require public services beyond those existing or programmed for the area;
  - (4) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices; and

(5) The residential use development standards of MCC .2194.

- (B) Wholesale or retail sales of farm or forest products raised or grown on the premises or in the immediate vicinity, subject to the following condition:

The location and design of any building, stand or sign in conjunction with wholesale or retail sales shall be subject to approval of the Planning Director on a finding that the location and design are compatible with the character of the area; provided that the decision of the Director may be appealed to the Hearings Officer pursuant to MCC .8290 and .8295. *(Amended and Renumbered 1990, Ord. 643 § 2)*

#### 11.15.2172 Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:

- (A) Community Service Uses pursuant to the provisions of MCC .7005 through .7041.

*(Amended 1982, Ord. 330 § 2)*

- (B) The following Conditional Uses pursuant to the provisions of MCC .7105 through .7640:

- (1) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral or subsurface resources;
- (2) Commercial processing of forest products, primarily grown in the region, other than as specified in MCC .2168(B);
- (3) Raising any type of fowl, or processing the by-products thereof, for sale at wholesale or retail;
- (4) Feed lots;
- (5) Raising of four or more swine over four months of age;
- (6) Raising of fur-bearing animals for sale at wholesale or retail; and
- (7) Commercial dog kennels.

## (8) Houseboats and Houseboat Moorages.

*[Added 1983, Ord. 402 § 17]*

(9) The following Conditional Uses may be permitted upon findings in addition to those required by MCC .7105 through .7640 that:

- (a) The capability of the land for resource production is maintained;
- (b) The use will neither create nor be affected by any hazards; and
- (c) Access for fire protection of timber is assured:
  - (i) Cottage Industries;
  - (ii) Limited rural service commercial uses, such as local stores, shops, offices, repair services and similar use; and
  - (iii) Tourist commercial uses such as restaurants, gas stations, motels, guest ranches and similar uses.

*[Amended 1990, Ord. 643 § 2]*

(C) Residential use, not in conjunction with a primary use listed in MCC .2168, consisting of a single-family dwelling, including a mobile or modular home, subject to the following findings:

- (1) The lot size shall meet the standards of MCC .2178(A), .2180(A) to (C), or .2182(A) to (C);
- (2) The land is incapable of sustaining a farm or forest use, based upon one of the following:
  - (a) A Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area,
  - (b) Certification by the Oregon State University Extension Service, the

Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusion, or

(c) The lot is a Lot of Record under MCC .2182(A) through (C), and is ten acres or less in size;

(3) A dwelling as proposed is compatible with the primary uses as listed in MCC .2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area;

(4) The dwelling will not require public services beyond those existing or programmed for the area;

(5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices; and

(6) The residential use development standards of MCC .2194 will be met.

*[Renumbered 1990, Ord. 643 § 2]*

(D) Mortgage Lot: Residential use consisting of a single-family dwelling in conjunction with a primary use listed in MCC .2168, located on a mortgage lot created after August 14, 1980, subject to the following:

- (1) The minimum lot size for the mortgage lot shall be two acres;
- (2) Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the Deed Records pertaining to said lot.

- (3) No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

*[Renumbered 1990, Ord. 643 § 2]*

**11.15.2174 Accessory Uses**

- (A) Signs, pursuant to the provisions of MCC11.15.7902-.7982. *[Amended 1986, Ord. 543 § 2]*
- (B) Off-street parking and loading;
- (C) Home occupations; and
- (D) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district.

**11.15.2176 Temporary Uses**

When approved pursuant to MCC .8705 and .8710.

**11.15.2178 Dimensional Requirements**

- (A) Except as provided in MCC .2180, .2182, .2184 and .7720, the minimum lot size shall be according to the short-title zone district designation on the Zoning Map, as follows:

MUF-38.....38 acres  
MUF-19.....19 acres

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

- (C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

*[Amended 1984, Ord. 428 § 2]*

- (D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall

determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

- (E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.

**11.15.2180 Lots of Exception**

- (A) The approval authority may grant an exception to permit the creation of a lot of less than the minimum specified in MCC .2178(A), after August 14, 1980, when in compliance with the dimensional requirements of MCC .2178(C) through (E). Any exception shall be based on findings that the proposal will:

- (1) Substantially maintain or support the character and stability of the overall land use pattern of the area;
- (2) Be situated upon land generally unsuitable for commercial forest use or the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation and the location or size of the tract;
- (3) Be compatible with accepted farming or forestry practices on adjacent lands;
- (4) Be consistent with the purposes described in MCC .2162;
- (5) Satisfy the applicable standards of water supply, sewage disposal and minimum access; and
- (6) Not require public services beyond those existing or programmed for the area.

- (B) Except as provided in MCC .2180(D), no lot of Exception shall be approved unless:

- (1) The Lot of Record to be divided exceeds the area requirements of MCC .2178(A), and
- (2) The division will create no more than one lot which is less than the minimum area required in MCC .2178(A).

- (C) The approval authority may attach conditions to the approval of any Lot of Exception to insure that the use is consistent with the Comprehensive Plan and the purposes described in MCC .2162.
- (D) The Planning Director may grant a Lot of Exception based on a finding that the permitted number of dwellings will not thereby be increased above that otherwise allowed in this district; provided that the decision of the Director may be appealed to the approval authority pursuant to MCC .8290 and .8295.

#### 11.15.2182 Lot of Record

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

- (1) 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 August 14, 1980;
- (b) Which satisfied all applicable laws when the parcel was created; and
- (c) Which satisfies the minimum lot size requirements of MCC .2178, or

- (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 .2178; and
- (d) Which is not contiguous to another substandard parcel or parcels under the same owner-

ship, or

- (3) A group of contiguous parcels of land:

- (a) For which deeds or other instruments creating the parcels were recorded with the Department of General Services, or were in recordable form prior to February 20, 1990;
- (b) Which satisfied all applicable laws when the parcels were created;
- (c) Which individually do not meet the minimum lot size requirements of MCC .2178, but, when considered in combination, comply as nearly as possible with a minimum lot size of nineteen acres, without creating any new lot line; and
- (d) Which are held under the same ownership.

- (B) For the purposes of this subsection:

- (1) *Contiguous* refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
  - (2) *Substandard Parcel* refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2178; and
  - (3) *Same Ownership* refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.
- (C) Separate Lots of Record shall be deemed created when a County maintained road or an EFU, CFU, MUA-20, RR or RC zoning district boundary intersects a parcel, or aggregated group of contiguous parcels, of land.

- (D) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.
- (E) Except as otherwise provided by MCC .2180 and .2184, no sale or conveyance of any portion of a Lot of Record, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

[Amended 1990, Ord. 643 § 2]

#### 11.15.2184 Lot Sizes for Conditional Uses

The minimum lot size for a Conditional Use permitted pursuant to MCC .2172, except subpart (C) thereof, shall be based upon:

- (A) The site size needs of the proposed use;
- (B) The nature of the proposed use in relation to its impacts on nearby properties; and
- (C) Consideration of the purposes of this district.

#### 11.15.2186 Off-Street Parking And Loading

Off-street parking and loading shall be provided as required by MCC .6100 through .6148.

#### 11.15.2188 Access

Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

#### 11.15.2190 Exceptions From Non-Conforming Use Provisions

Conditional Uses listed in MCC .2172, legally established prior to the effective date of Ordinance No. 148, shall be deemed conforming and not subject to the provisions of MCC .8805 provided, however, that:

- (A) Any change from one Conditional Use in listed MCC .2172 to another such Conditional Use shall be subject to approval pursuant to the provisions of MCC .2172; and

- (B) Any alteration of such Conditional Use listed in MCC .2172 shall be subject to Design Review pursuant to the provisions of MCC .7805 through .7865.

#### 11.15.2192 Right To Complete Single-Family Dwelling

A single-family dwelling, uncompleted prior to August 14, 1980, but which meets the tests stated in this subsection, may be completed although not listed as a Primary Use in this district.

- (A) Actual construction shall have commenced prior to August 14, 1980, under a sanitation, building or other development permit applicable to the lot. *Actual construction* means:
  - (1) Placement of construction materials in a permanent position;
  - (2) Site excavation or grading;
  - (3) Demolition or removal of an existing structure;
  - (4) The value of purchased building materials; or
  - (5) Installation of water, sanitation or power systems.
- (B) Actual construction shall not include:
  - (1) The cost of plan preparation; or
  - (2) The value of the land.
- (C) The value of actual construction commenced prior to August 14, 1980, shall be \$1,000 or more for each \$20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

#### 11.15.2194 Residential Use Development Standards

A residential use located in the MUF district after August 14, 1980, shall comply with the following:

- (A) The fire safety measure outlined in the *Fire Safety Considerations for Development in Forested Areas*, published by the Northwest Interagency Fire Prevention Group, including at least the following:

- (1) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and
- (2) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;
- (B) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot.
- (C) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC .2178(B).
- (D) The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval.
- (E) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subsection (C), above.
- (F) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:
  - (1) A setback of 30 feet or more may be provided from a public road, or
  - (2) The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access.
- (G) Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.
- (H) The dwelling shall be attached to a foundation for which a building permit has been obtained.
- (I) The dwelling shall have a minimum floor area of 600 square feet.
- (J) The dwelling shall be located outside a big game habitat area as defined by the Oregon

Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.