MULTNOMAH COUNTY, OREGON

BOARD OF COMMISSIONERS

Beverly Stein, Chair
1120 SW Fifth Avenue, Suite 1515
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ANY QUESTIONS? CALL BOARD CLERK DEB BOGSTAD @ 248-3277
Email: deborah.l.bogstad@co.multnomah.or.us

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

AUGUST 27, 1998 BOARD MEETING

FASTLOOK AGENDA ITEMS OF INTEREST

Pg 2	9:30 am Sheriff's Office Presentation on New Inmate Discipline Policy
Pg 3	9:45 am Union Label Week Proclamation
Pg 3	9:50 am Tryon Creek Watershed Council Resolution
Pg 3	10:10 am Notice of Intent to Apply for Traffic Safety Grant
Pg 3	10:15 am Notice of Intent to Respond to NIDA Request for Funding
Pg 3	10:20 am Decision in Land Use Appeal
✷	**Check the County Web Site: http://www.multnomah.lib.or.us**

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30
Friday, 10:00 PM, Channel 30
Sunday, 1:00 PM, Channel 30
Produced through Multnomah Community Television

Thursday, August 27, 1998 - 9:30 AM
Multnomah County Courthouse, Boardroom 602
1021 SW Fourth Avenue, Portland

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

C-1 Amendment 1 to Intergovernmental Agreement 500948 with Washington County and Portland Development Commission for Portland Development Commission to Act as the Administering Agency for Regional Strategies Funding through August 31, 1999

C-2 Budget Modification NOND 9902 Correcting Clerical Error in Regional Arts and Culture Council's Fiscal Year 1999 Budget

DEPARTMENT OF HEALTH

C-3 Budget Modification HD 2 Adding 1.6 FTE of Clerical Unit Supervisor, a Reduction in Temporary Help, and Changes in FTEs in Various Job Classes in Corrections Health

REGULAR AGENDA

PUBLIC COMMENT

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

SHERIFF'S OFFICE

R-2 Briefing on Inmate Discipline Policy Resulting in a Behavior Modification Program for Inmates at County Corrections Facilities. Presented by Sergeant Shawn Skeels. 15 MINUTES REQUESTED.

NON-DEPARTMENTAL

R-3 PROCLAMATION on the Occasion of the Observance of Union Label Week Across the Nation and at the Traditional Northwest Oregon Labor Council Oaks Park Labor Day Picnic Kick-Off Celebration for Oregon

R-4 RESOLUTION Recognizing the Tryon Creek Watershed Council as a Watershed Council Meeting the Intent of the State of Oregon Governor's Watershed Enhancement Board (GWEB) Guidelines

DEPARTMENT OF SUPPORT SERVICES

R-5 RESOLUTION Adopting Pay Rates and PERS Pick-Up for Temporary Employees

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

R-6 NOTICE OF INTENT to Apply to the Oregon Department of Transportation for a Traffic Safety Grant for Funding to Monitor DUII Offenders Sentenced to Bench Probation

DEPARTMENT OF HEALTH

R-7 NOTICE OF INTENT to Respond to a Request for Proposals from the National Institute on Drug Abuse, Community Research Branch, for Funds for Behavioral Research Study Targeted at Reducing HIV Transmission Risks and Domestic Violence Among Female Offenders

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-8 CU 4-98/HV 7-98 Continued Board Decision Regarding an Appeal of the Hearings Officer Decision Approving CU 4-98 HV 7-98 with Modifications to Condition Number Three to Require Applicant to Comply with Private Road Standards of MCC 11.15.2074(D) on Property Located at 32152 SE STEVENS ROAD, PORTLAND

COMMISSIONER COMMENT

R-9 Opportunity (as Time Allows) for Commissioners to Provide Informational Comments to Board and Public on Non-Agenda Items of Interest. Comments Limited to Three Minutes Per Person.

MEETING DATE: AUG 27 1998
AGENDA NO: C-1
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA for PDC to Administer Regional Strategies Funding

BOARD BRIEFING: DATE REQUESTED:
REQUESTED BY:
AMOUNT OF TIME NEEDED:

REGULAR MEETING: DATE REQUESTED: August 27, 1998
AMOUNT OF TIME NEEDED: Consent

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: John Rakowitz TELEPHONE #: 306-5797
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION:

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement between Multnomah and Washington Counties and Portland Development Commission (PDC) for PDC to act as the administering agency for regional strategies funding through August 31, 1999.

8/28/98 ORIGINALS to JOHN RAKOWITZ

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
(OR)
DEPARTMENT MANAGER:

98 AUG 18 PM 3:14
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES.

Any Questions: Call the Board Clerk @ 248-3277

2/97

Beverly Stein, Multnomah County Chair

Room 1515, Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204

Phone: (503) 248-3308
FAX: (503) 248-3093
E-Mail: mult.chair@co.multnomah.or.us

MEMORANDUM

TO : Board of County Commissioners
FROM : John Rakowitz
DATE : August 17, 1998
RE : Supplemental Staff Report
IGA for PDC to Administer Regional Strategies Fund

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1. Recommendation/Action Requested

The Board of County Commissioners is requested to renew and extend the expired Intergovernmental Agreement providing for the continued legal existence, structure and authority of the Multnomah and Washington Counties Regional Strategies Board and the continued authority for the Portland Development commission to act as the Regional Strategies Board's fiscal and administrative agent.

2. Background/Analysis

The Regional Strategies Board administers funds from The State of Oregon's Regional Strategies and Rural Investment Funds. The Portland Development Commission (PDC) has acted as the fiscal and administrative agent for the Multnomah and Washington counties Regional Strategies Board since 1994. The legal authority for the Regional Strategies Board and PDC role was established in an Intergovernmental Agreement executed in 1994.

The action requested renews and modifies this IGA in the following manner:

- Extends the terms of the members of the Board representing each County until August 31, 1999
- Extends the effective date of the IGA to August 31, 1999
- Amends the amount of compensation for PDC to an amount not to exceed $55,000;
- Includes a provision for PDC to establish a reserve fund comprised of unexpected administrative funds and interest earnings from program funds.

"Printed on recycled paper"

3. Financial Impact

There is no financial impact upon the County. The associated State of Oregon economic development funds are distributed directly by the State of Oregon to Portland Development Commission.

4. Legal Issues

There are no legal issues associated with the recommended action.

5. Controversial Issues

None.

6. Link to Current County Policies

N/A

7. Citizen Participation

N/A

8. Other Government Participation

The Portland Development Commission legal counsel has reviewed and approved the renewed IGA and associated modifications. PDC and the Washington County Board of Commissioners are expected to approve the renewed IGA in the near future.

The original IGA was assigned Contract No. 500466. The first amendment was made under this contract number. Subsequently, the contract was assigned a new number (500948). This is the first amendment under the new number, but the second contract amendment.

Rev. 5/92

MULTNOMAH COUNTY OREGON

CONTRACT APPROVAL FORM

(See Administrative Procedure #2106)

Contract # 500948

Amendment # 1

CLASS I	CLASS II	CLASS III
☐ Professional Services under $25,000	☐ Professional Services over $25,000 (RFP, Exemption) ☐ PCRB Contract ☐ Maintenance Agreement ☐ Licensing Agreement ☐ Construction ☐ Grant ☐ Revenue	☒ Intergovernmental Agreement **APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS** AGENDA # C-1 DATE 8/27/98 DEB BOGSTAD **BOARD CLERK**

Department Nondepartmental Division Chair's Office Date 8/17/98

Contract Originator John Rakowitz Phone 306-5797 Bldg/Room 106/1515

Administrative Contact Delma Farrell Phone 248-3953 Bldg/Room 106/1515

Description of Contract Intergovernmental agreement between Multnomah and Washington counties and Portland Development Commission for Portland Development Commission to act as the administering agency for regional strategies. Amends IGA #500466 12/14/95 & 7/10/97.

RFP/BID # _____ Date of RFP/BID _____ Exemption Exp. Date _____

ORS/AR # Contractor is ☐ MBE ☐ WBE ☐ QRF

Contractor Name Portland Development Commission

Mailing Address 1900 SW 4th, Ste. 100

Portland OR 97201

Phone 503/823-3199 John Hall

Employer ID# or SS# 93-6013584

Effective Date Upon Execution

Termination Date August 31, 1999

Original Contract Amount $ 150,000

Total Amount of Previous Amendments $ 74,500

Amount of Amendment $ 55,000

Total Amount of Agreement $ _____

Remittance Address (If Different) _____

Payment Schedule		Terms
☐ Lump Sum $	_____	☐ Due on receipt
☐ Monthly $	_____	☐ Net 30
☐ Other N/A		☐ Other _____

☐ Requirements contract - Requisition required.

Purchase Order No. _____

☐ Requirements Not to Exceed $ _____

REQUIRED SIGNATURES:

Department Manager Beverly Stein Date 8/17/98

Purchasing Director (ClassII Contracts Only) _____ Date _____

County Counsel _____ Date August 21, 1998

County Chair / Sheriff _____ Date August 27, 1998

Contract Administration (Class I, Class II Contracts Only) _____ Date _____

Encumber? Yes ☐ No ☐

VENDOR CODE	VENDOR NAME	TOTAL AMOUNT	$	

LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND
01.											
02.											
03.											
★	* If additional space is needed, attach separate page. Write contract # on top of page.										

INSTRUCTIONS ON REVERSE SIDE

WHITE - CONTRACT ADMINISTRATION CANARY - INITIATOR PINK - FINANCE

SECOND AMENDMENT TO

INTERGOVERNMENTAL AGREEMENT
between
MULTNOMAH AND WASHINGTON COUNTIES
and
PORTLAND DEVELOPMENT COMMISSION

WHEREAS, on December 14, 1995, the Portland Development Commission (PDC), Multnomah County and Washington County entered in to the attached agreement for PDC to act as the administering agency for Regional Strategies; and

WHEREAS, the agreement provided that its provisions would be in effect from December 14, 1995 through June 30, 1997; and

WHEREAS, the agreement was amended July 10, 1997 by the attached amendment to provide that provisions of the original agreement and amendment would be in effect through August 31, 1997; and

WHEREAS, the agreement was further amended February 23, 1998 by the attached amendment to provide that provisions of the original agreement and amendments would be in effect through August 31, 1998; and

WHEREAS, the agreement of February 23, 1998 expires on August 31, 1998; and

WHEREAS, the Region wishes to provide for the effective and efficient development and administration of a Regional Strategy in the Region through the designation of the PDC as the administering agency; and to compensate PDC work performed in administering the Regional Strategy under the previous original agreement and the previous July 10, 1997 and February 23, 1998 amendments; and

WHEREAS, PDC is willing to be the administering agent of the Regional Board through August 31, 1999; now therefore

IT IS AGREED that the attached Intergovernmental Agreement and the associated amendments dated July 10, 1997 and February 23, 1998 among PDC, Multnomah County and Washington County is amended as follows:

A. Section 1 on page 2 of the original agreement and as amended by Section A of the July 10, 1997 amendment is further amended to delete the sentence reading "The terms of the members of the Board representing each County shall serve until August 31, 1997." and replaced by:

"The terms of the members of the Board representing each County shall serve until August 31, 1999."

B. Section 3 on page 6 of the original agreement as amended by the addition of a subsection (e) by Section C of the February 23, 1998 amendment is further amended to include a new subsection (f) to read:

"Compensation to PDC from the State for its services during the period September 1, 1998 through August 31, 1999, as set forth in this Agreement, shall be an amount equal to the actual costs incurred by the PDC, but in no case more than $55,000. The $55,000 shall be comprised of unexpended administrative funds from the 1997-1998 fiscal year, and additional funds as required from the 1998-1999 Multnomah and Washington Counties allocation from the State of Oregon."

C. Section 3 on page 6 of the original agreement is amended to include a new subsection (g) to read:

"On or before August 31, 1999 PDC shall establish a reserve account comprised of any of the $55,000 for compensation unexpended, and any interest earned on Regional Strategies and/or Rural Investment Fund monies received from the Oregon Economic Development Department during the 1997-1999 biennium."

D. Section 4 on page 6 of the original agreement beginning with the words "This Agreement" as amended by Section C of the July 10, 1997 amendment, and by Section E of the February 23, 1998 amendment, beginning with the words "This Agreement" is amended to read:

"This agreement shall commence upon execution by all parties and end August 31, 1999, unless earlier terminated as provided in this section."

IT IS FURTHER AGREED that, except as specifically amended herein, all provisions of the agreement shall remain in full force and effect as originally written.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed in their respective names by their duly authorized representatives.

DATED this ___th day of _____, 1998.

BOARD OF COUNTY COMMISSIONERS FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

REVIEWED:
THOMAS SPONSLER, COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

By _____

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 8/27/98
DEB BOGSTAD
BOARD CLERK

BOARD OF COUNTY COMMISSIONERS FOR WASHINGTON COUNTY, OREGON

_____
Linda B. Peters, Chair

REVIEWED:
DAN OLSEN, COUNTY COUNSEL
WASHINGTON COUNTY, OREGON

By_____

PORTLAND DEVELOPMENT COMMISSION

_____
Felicia Trader, Executive Director

REVIEWED:

By_____
Karen Williams, Legal Counsel

BUDGET MODIFICATION NO. **BMNond99_02**

(For Clerk's Use) Meeting Date AUG 27 1998

Agenda No. C-2

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR 27-Aug-98

DEPARTMENT **Nondepartmental** DIVISION **Support Services**

CONTACT **Julie Neburka** TELEPHONE **248-3883**

* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

SUGGESTED AGENDA TITLE: Corrects clerical error in Regional Arts & Culture Council's FY 1999 budget.

(Estimated Time Needed on the Agenda)

2. DESCRIPTION OF MODIFICATION (Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

☐ Personnel changes are shown in detail on the attached sheet

Corrects Regional Arts & Culture Council's FY 1999 budget to remove a $70,000 add package that was erroneously entered into the Budget System twice. As a consequence of this error, the Board approved this item twice.

3. REVENUE IMPACT (Explain revenues being changed and reason for the change)

This change will result in a $70,000 increase to General Fund contingency.

98 AUG 13 PM 12:18
MULTNOMAH COUNTY OREGON
BOARD OF COUNTY COMMISSIONERS

4. CONTINGENCY STATUS (to be completed by Budget & Quality)

3,852,228 Fund Contingency before this modification 8/11/98 Date

After this modification 3,922,228

Originated By **Julie Neburka**	Date **8/11/98**	Department Director Vicki S. Gates	Date 8/11/98
Plan/Budget Analyst Julie Neburka	Date 8/11/98	Employee Services	Date

Board Approval DEBORAH L BOGSTAD Date 8/27/98

BudMod1.xls

EXPENDITURE

TRANSACTION EB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD 2/99 BUDGET FY 1999

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
		100	050	9345			6050	354,354	284,354	(70,000)		
		100	075	9120			7700	3,852,228	3,922,228	70,000		
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL EXPENDITURE CHANGE										0	0	

REVENUE

TRANSACTION RB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD BUDGET FY

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL REVENUE CHANGE										0	0	

MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DIANE LINN
GARY HANSEN
LISA NAITO
SHARRON KELLEY

BUDGET & QUALITY
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Board of County Commissioners

FROM: Julie Neburka, Budget Analyst

TODAY'S DATE: August 11, 1998

REQUESTED PLACEMENT DATE: August 27, 1998

SUBJECT: Correction to the Regional Arts & Culture Council's FY 1999 budget.

I. Recommendation / Action Requested:

Approve bud mod Nondepartmental 02 to correct an error in the Regional Arts & Culture Council's FY 1999 budget.

II. Background / Analysis:

During the FY 1999 budget process, the $70,000 add package for ArtsPlan Schools was erroneously entered into the budget system twice. As a consequence of this mistake, the Board was presented with this item twice *and inadvertently approved it twice*.

III. Financial Impact:

There will be no net change to the General Fund.

IV. Legal Issues:

None.

V. Controversial Issues:

None. The Budget Office has contacted RACC to discuss this error, and they understand both the nature of the mistake and the correct budget amount for this year.

VI. Link to Current County Policies:

N/A

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

N/A

BUDGET MODIFICATION NO. HD 2

(For Clerk's Use) Meeting Date AUG 27 1998

Agenda No. C-3

1. R PLACEMENT ON THE AGENDA FOR

(Date)

DEPARTMENT **Health** DIVISION **Corrections**

CONTACT **Kathy Innes** TELEPHONE 248 3056 x 27027

) OF PERSON MAKING PRESENTATION TO BOARD

SUGGESTED AGENDA TITLE (to assist in preparing a description for the printed agenda)

Approve an increase of 1.6 FTE of Clerical Unit Supervisor, a reduction in temporary help, and changes in FTEs in various job classes in Corrections Health. The changes are funded from within the current budget.

(Estimated Time Needed on the Agenda)

2. CRIPTION OF MODIFICATION (Explain the changes this Bud Mod makes. What budget does it increase? What do changes ome from? What budget is reduced? Attach additional information if you need more space.)

[X] Personnel changes are shown in detail on the attached sheet

This budget action adds 1.6 FTE of Clerical Unit Supervisor while shifting funds out of temporary.
The action also changes FTEs in the following job classes adds 1 OA2, cuts 2.6 OA Sr, adds .8 Health Info Spec 2, cuts .8 Health Educator, cuts 1.8 Health Assistant, adds 1.8 Licensed Comm Prac Nurse, cuts .6 Nurse Prac, adds .1 Comm Health Nurse, adds 2 Med Records Tech, cuts 1 Health Op Supr, adds 1 Operations Administrator
All personnel changes are funded from within current budget appropriations.

3. REVENUE IMPACT (Explain revenues being changed and reason for the change)

N.A.

98 AUG 19 AM 3:10
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

4. CONTINGENCY STATUS (to be completed by Budget & Quality)

Fund Contingency before this modification _____ Date _____

After this modification

Originated By	Date	Department Director Billi Odegaard (ale)	Date 8-19-98
Plan/Budget Analyst Chf Hay	Date 8-19-98	Employee Services Suzanne S. Kahn	Date 8/19/98
Board Approval DEBORAH L BOGSTAD	Date 8/27/98		

PERSONNEL DETAIL FOR BUDGET MODIFICATION NO. HD 2

5. ALIZED PERSONNEL CHANGES (Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

				ANNUALIZED			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease		TOTAL Increase (Decrease)
					Fringe	Ins.	
-0.50	6314	0980	Nurse Practitioner	(25,223)	(4,416)	(3,660)	(33,299)
-0.10	6314	0951	Nurse Practitioner	(5,674)	(993)	0	(6,667)
-0.20	6315	0951	Comm. Health Nurse	(9,960)	(1,744)	0	(11,704)
-0.50	6315	0951	Comm. Health Nurse	(29,948)	(5,378)	(2,278)	(37,604)
-1.00	6002	0951	Office Assistant Sr.	(28,119)	(4,923)	(7,238)	(40,280)
-0.80	6352	0951	Health Educator	(19202)	(3517)	(2281)	(25,000)
-1.00	6294	0951	Health Assistant	(28967)	(5200)	(6650)	(40,817)
1.00	6001	0951	Office Assistant 2	23,733	4,260	4,500	32,493
1.00	6315	0951	Comm. Health Nurse	43,133	7,745	4,500	55,378
1.00	6321	0951	Medical Records Tec	29,948	5,378	4,500	39,826
1.00	6003	0951	Clerical Unit Supervi	31,272	5,475	5,000	41,747
1.00	6303	0951	Licensed Practical N	30,213	5,287	6,650	42,150
0.80	6018	0951	Health Infor Spec 2	19,202	3,517	2,281	25,000
		0951	Temporary	(30,408)	(5,491)	(5,324)	(41,223)
-1.00	6002	0975	Office Asst/Sr	(28,088)	(4,916)	(7,236)	(40,240)
-1.00	6294	0975	Health Assistant	(23,687)	(4,253)	(5,211)	(33,151)
-1.00	6002	0975	Office Asst/Sr	(33,324)	(5,834)	(5,298)	(44,456)
-1.00	9692	0975	Health Op Supv	(43,912)	(7,688)	(7,377)	(58,977)
-0.20	6315	0975	Community Health N	(9,960)	(1,747)	(1,170)	(12,877)
1.00	6321	0975	Med Rec Tech	29,733	5,203	7,121	42,057
1.00	6303	0975	Licensed Comm, Pra	29,828	5,220	6,381	41,429
1.00	6003	0975	Clerical Unit Supr	34,160	5,978	5,528	45,666
1.00	9720	0975	Operations Administr	45,250	7,922	7,377	60,549
							0
1.50	TOTAL CHANGE (ANNUALIZED)			$0	($115)	$115	$0

6. EAR PERSONNEL DOLLAR CHANGES **HD 2** (Calculate costs/savings that will take place this FY

Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Current Year Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease Fringe	Ins.	TOTAL Increase (Decrease)
-0.50	6314	0980	Nurse Practitioner	(25,223)	(4,416)	(3,660)	(33,299)
-0.10	6314	0951	Nurse Practitioner	(5,674)	(993)	0	(6,667)
-0.20	6315	0951	Comm. Health Nurse	(9,960)	(1,744)	0	(11,704)
-0.50	6315	0951	Comm. Health Nurse	(29,948)	(5,378)	(2,278)	(37,604)
-0.80	6002	0951	Office Assistant Sr.	(22,295)	(3,938)	(6,295)	(32,528)
-0.80	6352	0951	Health Educator	(19202)	(3517)	(2281)	(25,000)
-0.80	6294	0951	Health Assistant	(23174)	(4160)	(5320)	(32,654)
1.00	6001	0951	Office Assistant 2	23,733	4,260	4,500	32,493
1.00	6315	0951	Comm. Health Nurse	43,133	7,745	4,500	55,378
1.00	6321	0951	Medical Records Tec	29,948	5,378	4,500	39,826
0.80	6003	0951	Clerical Unit Supervi	25,448	4,490	4,057	33,995
0.80	6303	0951	Licensed Practical N	24,420	4,247	5,320	33,987
0.80	6018	0951	Health Infor Spec 2	19202	3517	2281	25,000
		0951	Temporary	(30408)	(5491)	(5324)	(41,223)
-1.00	6002	0975	Office Asst/Sr.	(28,088)	(4,916)	(7,236)	(40,240)
-1.00	6294	0975	Health Assistant	(23,687)	(4,253)	(5,211)	(33,151)
-0.80	6002	0975	Office Asst/Sr.	(26,659)	(4,667)	(4,238)	(35,564)
-0.80	9692	0975	Health Op Supv	(35130)	(6150)	(5902)	(47,182)
-0.20	6315	0975	Community Health N	(9960)	(1747)	(1170)	(12,877)
1.00	6321	0975	Med Rec Tech	29,733	5,203	7,121	42,057
1.00	6303	0975	Licensed Comm, Pra	29,828	5,220	6,381	41,429
0.80	6003	0975	Clerical Unit Supr	27,495	4,811	4,468	36,774
0.80	9720	0975	Operations Administr	36,468	6,384	5,902	48,754
1.50							
TOTAL CURRENT FISCAL YEAR CHANGES				$0	($115)	$115	$0

EXPENDITURE HD 2

TRANSACTION EB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD BUDGET FY

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
		100	015	0951			5100			30,408		
		100	015	0951			5200			(30,408)		
		169	015	0975			5500			(115)		
		169	015	0975			5550		115	115		
									0			
									0			
		400	070	7522			6580		115	115		
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL EXPENDITURE CHANGE										115	0	

REVENUE

TRANSACTION RB GM [ ] TRANSACTION DATE ACCOUNTING PERIOD BUDGET FY

Document Number	Action	Fund	Agency	Organi-zation	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description
		400	070	7522			6601		115	115		
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
									0			
TOTAL REVENUE CHANGE										115	0	

MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

HEALTH DEPARTMENT
BUSINESS SERVICES
McCOY BUILDING
426 SW STARK
PORTLAND, OR 97204
PHONE (503) 248-3056

TO: Board of County Commissioners

FROM: Bill Odegaard

TODAY'S DATE: Aug. 18, 1998

REQUESTED PLACEMENT DATE: Aug. 27th 1998

SUBJECT: Health Budget Modification Number 2

I. Recommendation / Action Requested:

Approve an increase of 1.6 FTE of Clerical Unit Supervisor, a reduction in temporary help, and changes in FTEs in various job classes in Corrections Health. The changes are funded from within the current budget.

II. Background / Analysis:

This budget action adds 1.6 FTE of Clerical Unit Supervisor while shifting funds out of temporary. The supervisor positions are required to improve the functioning of support staff in Corrections Health. The action also changes FTEs in the following job classes: adds 1 OA2, cuts 2.6 OA Sr., adds .8 Health Info Spec 2, cuts .8 Health Educator, cuts 1.8 Health Assistant, adds 1.8 Licensed Comm Practical Nurse, cuts .6 Nurse Practitioner, adds .1 Comm Health Nurse, adds 2 Medical Records Tech, cuts 1 Health Operations Supervisor, and adds 1 Operations Administrator. All personnel changes are funded from within current budget appropriations.

III. Financial Impact: NA

IV. Legal Issues: NA

V. Controversial Issues: NA

VI. Link to Current County Policies: NA

VII. Citizen Participation: NA

VIII. Other Government Participation: NA

SPEAKER SIGN UP CARDS

DATE 8/27/98

NAME Fillard Rhyne

ADDRESS 2614 SE 29th Ave

Portland, OR 97202

PHONE 236-4735

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Charter Review Committee

GIVE TO BOARD CLERK

R-1

"Instant Runoff" resolutions passed by the Charter Review Committee on June 2, 1998

Resolution #1
Passed by voice vote (estimated 12 votes to 1)

Submit charter language to the voters that would allow the Board of Commissioners to use "Instant Runoff" at its discretion.

Resolution #2
Passed by voice vote (estimated 12 votes to 1)

Recommend that the Board of Commissioners create a task force to look for sensible and inexpensive ways to implement "Instant Runoff".

DRAFT
06/30/98

REPORT OF THE

MULTNOMAH COUNTY

CHARTER REVIEW COMMITTEE

JULY 30, 1998

BALLOT MEASURE J

CAPTION: Multnomah County Elections

QUESTION: Shall County Charter be amended to allow instant runoff elections?

STATEMENT: The Charter now provides that the candidates who receive the most votes in a primary are in a runoff. The Oregon Constitution permits local laws to allow voters to mark first, second or additional choices among the candidates for any office. This measure amends the Charter to allow the Board of Commissioners to use an instant runoff election process. It does not require instant runoff. It takes effect November 4, 1998.

EXPLANATORY STATEMENT

This measure amends the election sections of the county Charter. They now require a runoff if no candidate receives a majority of the votes cast. The Charter Committee feels the Board of Commissioners should be able to adopt an instant runoff election process.

This measure will remove the automatic runoff provisions from the Charter. It will permit the Board to adopt a different runoff process.

The measure will take effect November 4, 1998.

Draft 6/30/98

4.50. Vacancies--Filling.

(1) If a vacancy occurs in an elective office of the county and the term of office expires:

(a) One year or more after the vacancy occurs, then a person shall be elected at the next available election date to fill the vacancy for the remainder of the term of office. ~~If no candidate receives a majority of votes cast at that election, the board of county commissioners shall call for a special election in which the names of the two candidates receiving the highest number of votes shall appear on the ballot. The candidate receiving a majority of votes cast will be deemed elected to fill the balance of the unexpired term.~~ The board of county commissioners shall by ordinance prescribe procedures for nominating and electing persons to fill vacancies under this subsection.

(b) Less than one year but 90 days or more after the vacancy occurs, then the board of county commissioners shall appoint a person to fill the vacancy for the remainder of the term of office.

(c) Less than 90 days after the vacancy occurs, the vacancy shall not be filled.

11.15. ELECTION OF OFFICERS [Nonpartisan offices].

(1) All elective county offices shall be nonpartisan.

(2) The manner of nominating and electing officers shall be the same as that established by state law for nominating and electing circuit court judges, except as this charter provides to the contrary.

(3) Petitions or declarations of candidacy shall contain no reference to any political party ballot or to the political party affiliation of the candidate.

(4) The names of all candidates shall appear on the primary election ballot. If a candidate receives a majority of the votes cast for a position at the primary election, the candidate shall be elected to the position. If no candidate for a position at a primary election receives a majority of the votes cast for the position, the ~~two candidates receiving the highest number of votes shall be [declared nominees and their names shall appear on the general election ballot~~ **Board of County Commissioners shall by ordinance prescribe procedures for electing a candidate under this section.**

(5) If a candidate dies, withdraws, or becomes otherwise ineligible on or after the primary election date, candidates for the office shall be nominated by petition or assembly in the manner provided by state law for the nomination of independent candidates.

[Amendment proposed by Ord. 170 § 7 (1978), adopted by people Nov. 7, 1978; amendment proposed by Ord. 427 § 2 (1984) (measures 2, 14) (ballot measures 11, 23), adopted by people Nov. 6, 1984]

MEETING DATE: AUG 2 7 1998
AGENDA NO: R-2
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Inmate Discipline Policy

BOARD BRIEFING: DATE REQUESTED: August 27, 1998
REQUESTED BY: Dan Oldham/Sheriff's Office
AMOUNT OF TIME NEEDED: 15 minutes

REGULAR MEETING: DATE REQUESTED:
AMOUNT OF TIME NEEDED:

DEPARTMENT: SHERIFF'S OFFICE DIVISION: Executive

CONTACT: Dan Oldham TELEPHONE #: 251 - 2519
BLDG/ROOM #: 113/103

PERSON(S) MAKING PRESENTATION: Sgt. Shawn Skeels

ACTION REQUESTED:

[X] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

A new policy for inmate discipline at Corrections Facilities. An increase in the number of inmates drives a policy review and rewrite which includes a fine and fee schedule patterned after the system used by Oregon State Department of Corrections. The rewrite has resulted in a behavior modification program for inmates.

98 AUG 18 PM 3:57
PAUL THALHOFER COUNTY
OREGON
COUNTY COMMISSIONERS

SIGNATURES REQUIRED:

ELECTED OFFICIAL:
(OR)
DEPARTMENT
MANAGER:

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

Multnomah County Sheriff's Office

DAN NOELLE
SHERIFF

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

(503) 255-3600
TTY (503) 251-2484

Memorandum

TO: MULTNOMAH COUNTY COMMISSIONERS

FROM: SERGEANT SHAWN SKEELS
MCIJ "C" Shift Sergeant

DATE: AUGUST 20, 1998

SUBJECT: INMATE DISCIPLINARY PROCESS

The Multnomah County Sheriff's Department Corrections Division currently houses approximately 2,000 individuals in five separate facilities. Double bunking of the MCDC was completed in January of 1998. Construction at MCIJ is under way in an attempt to alleviate the strain on the system and minimize the number of inmates released because of high inmate population. The overall effect has increased disciplinary problems throughout the jails leaving staff frustrated as to a possible solution.

The attached MCSO Policy was formulated by a group of deputies and sergeants, who are involved supervising inmates on a daily base. This procedure was designed to reward positive behavior thus, creating fewer assaults, fights and other disruptive behavior.

At this time, we are using the Five Levels of Discipline Policy to enhance Corrections staff ability to maintain Security, Custody, and Care. Level 1 is the least restrictive while Level 5 is the most restrictive. This new policy enables an individual on discipline status to determine their housing level based solely on their behavior.

Sgt Shawn Skeels

LEVEL DESIGNATION

Level 1
- 1 Hour walk time daily
- Meals normal

Level 2
- 30 minute walk time daily
- Meals normal

Level 3
- 15 minute walk time daily
- Sack breakfast and lunch, dinner normal

Level 4
- Five 15 minute walks in a week
- Sack breakfast and lunch, dinner normal

Level 5
- Five 15 minute walk in a week
- Sack breakfast and lunch, dinner normal
- Additional sanctions approved by Facility Commander of designee
    1. Nutra loaf for up to 21 meals
    2. Two 15 minute walks in a week
    3. Paper suit for clothing

Multnomah County Sheriff's Office

DAN NOELLE
SHERIFF

SPECIAL ORDER

98-00

June 18, 1998

SUBJECT: INMATE DISCIPLINARY PROEDURES

EFFECTIVE: JULY 1, 1998

CANCEL: When Incorporated Into The Corrections Division Operational Procedures Manual

I The Multnomah County Sheriff's Office shall have in place a system of inmate disciplinary procedures that will serve to protect the staff, inmates, and public and to maintain orderly operation of the corrections facilities. The inmate disciplinary system shall incorporate all applicable due process requirements.

II. All Corrections Lieutenants, Corrections Sergeants and Corrections Deputies shall familiarize themselves with the attached Corrections Division Operational Procedures by July 1, 1998.

III. The Corrections Division will operate Five Levels of secure inmate disciplinary housing for inmates who require a higher degree of physical control by virtue of being charged with rule violations, their behavior or having been found guilty of rule violations.

IV. The Classification Unit manager shall monitor designated housing areas for disciplinary inmates.

V. Beginning July 1, 1998, Corrections Sergeants conducting investigations for an inmate's alleged violation of facility rules, shall determine the appropriate level of inmate disciplinary segregation in accordance with CD10.101.074 through CD10.101.091.

VI. All Corrections Sergeants and Corrections Deputies assigned to Inmate Disciplinary Units shall ensure the impartial application of the conditions of confinement for inmates in accordance to CD.10.101.100 Disciplinary Segregation Housing.

VII. Any change in an inmate's assigned disciplinary segregation level to a more restrictive level must be accompanied with a misconduct report. A change in an inmate's disciplinary level to a less restrictive level may occur when the Deputy assigned to the disciplinary housing unit determines the inmate behavior warrants the change and the Sergeant assigned to the area authorizes the movement of the inmate.

VIII. The Inmate Disciplinary Hearings Officer shall fairly and impartially hold all disciplinary hearings for alleged violations of major rules and impose sanctions to include monetary fines for guilty violations.

IX. Inmates shall have the right to appeal decisions of the Hearings Officer in accordance with CD10.102.080 Appeal. The appeal request is the responsibility of the inmate and must be submitted to the Facility Commander within five working of the disciplinary action. The Facility Commander shall render a decision to the inmate's appeal within seven working days.

X. Facility Commander shall ensure consistency in staffing of Disciplinary Housing Units.

POLICY

It is the policy of the Multnomah County Sheriff's Office to have in place a system of inmate discipline that will serve to protect the public, inmates and staff and to maintain orderly operation of the facilities. The Corrections Division shall ensure the impartial application of a fully developed, well understood set of inmate rules of conduct, appropriate levels of inmate disciplinary housing and a disciplinary hearings process that incorporates all applicable due process requirements.

PURPOSE

To describe the inmate disciplinary system to be used in Multnomah County Correctional Facilities to enforce facility rules and inmate conduct.

PROCEDURAL DESCRIPTION

A properly managed inmate disciplinary process will maintain security, control, and safety and address the following:

Inmate rules of conduct and sanctions;
Pre-hearing Segregation;
Appropriate levels of disciplinary housing.
Reviews of inmates in disciplinary housing;
Due process rights;
Criminal Misconduct;
Disciplinary hearings;
Disciplinary hearings and disposition review;
Proper documentation of inmate behavior and all rule violations;
Provide all applicable safeguards to inmates under County Counsel opinion;
Conditions of confinement.

INMATE RULES OF CONDUCT

CD10.100.000 INMATE RULES OF CONDUCT

CD10.100.010 POLICY: The Corrections Division shall have written rules governing inmate conduct.

CD10.100.020 PURPOSE: The rules of conduct serve to prohibit behavior that can have a direct adverse effect on an inmate or on facility order and security.

CD10.100.030 REFERENCE

CD.10.100.040 DEFINITIONS

MAJOR RULES: Violation of a major rule activates a Misconduct Report, pre-hearing segregation within one of five levels of disciplinary housing, a hearing (unless knowingly waived by the inmate) and possible major sanctions. Violations of a major rule may also be cause for criminal prosecution.

MINOR RULES: Violation of a minor rule activates either informal (counseling, verbal warning or reprimand) or formal disciplinary process.

CD10.100.050 INMATE RULES OF CONDUCT:

CD10.100.051 The following Inmate Rules of Conduct will be classified as major:

1. Assaulting, fighting or threatening another person physically or sexually.
2. Assaulting, fighting or threatening a staff member.
3. Extortion, blackmail, demanding or receiving money or anything of value for protection against others or to avoid injury to person or property.
4. Giving another inmate any item or article of value.
5. Escaping or attempting to escape from custody.
6. Unauthorized departure from any program or facility of the Sheriff's Office.
7. Stealing (taking anything that is not yours, including meals).
8. Possession of contraband (anything that is not issued by or authorized for use by the facility or any item which has been altered).
9. Rioting or inducing others to riot.
10. Tampering with or blocking any alarm, safety or locking device.

11. Failure to follow lawful orders of staff in a timely manner.

12. Violation of any facility program rules or failure to comply with program contract.

13. Violation of any criminal statute.

14. Participating in sexual activities, indecent exposure, or sexual proposals to others.

15. Destroying, altering, or tampering with County or other's property.

16. Bribery of any official, staff member or inmate.

17. Abuse of authorized medication or medical process.

18. Possession of money or currency in a secure detention facility.

19. Lending money or anything of value for profit.

20. Engaging in or encouraging an unauthorized gathering, meeting or group demonstration.

21. Refusing or encouraging others to refuse to work.

22. Conduct that disrupts or interferes with security of facility operations.

23. Forging, reproducing or altering documents.

24. Gambling or possession of gambling paraphernalia.

25. Lying or providing false information.

26. Entering into or being in an unauthorized area.

27. Making unauthorized verbal contact with the public.

28. Using mail, telephone or television in an unauthorized manner.

29. Participating in horseplay.

30. Tampering with food or drink.

31. Violation of any rules or regulations governing the use of Library materials or the Law Library.

32. Disrespect to staff or others by use of inflammatory language or gestures.

33. Disrespect to staff or others based on race, sex, religion, national origin, disability or political beliefs.

34. Failure to wear wrist band or properly identify yourself.

35. Three Minor Rule Violations (Citations) within 30 days.

CD10.100.052 Minor rules of inmate conduct shall include:

1. Failure to follow safety or sanitation regulations.

2. Taking food or drink, except commissary, to unauthorized areas.

3. Failure to properly wear only issued clothing in living areas and public places.

4. Failure to follow commissary or laundry rules.

5. Placing or affixing objects onto walls, window, lights, bunks, beds, ceilings, floors or doors.

6. Sitting on tables.

7. Failing to make your bed.

8. Tattooing yourself or another.

9. Failing to perform assigned work or tasks properly.

10. Entering into or sitting on another inmate's sleeping area.

11. Wearing an unauthorized head covering or headband.

12. Abusing library materials (e.g. destroying materials or possessing more than four books/magazines other than legal, religious or GED materials).

13. Communicating with inmates in other housing areas other than through the U.S. Mail Service.

14. Unauthorized receipt or use of another's property.

15. Use of any equipment in an unsafe or unauthorized manner.

16. Non-emergency use of call signal during lockdown.

17. Violation of any posted housing rule

CD10.100.053 During their orientation training, staff shall be provided training to thoroughly familiarize them with the rules of inmate conduct, the rationale for the rules and sanctions available.

CD10.100.054 Each inmate shall have access to the rules of conduct through the Inmate Manual and posted within each of the inmate housing areas.

CD10.100.055 Staff members shall determine the level of severity of the act by considering the type(s) of violations(s).

CD10.100.055 Staff are encouraged to resolve Minor Rule Violations on an informal basis through counseling, warning or reprimand. This shall be recorded in the housing area diary for future reference.

CD10.100.057 Major violations shall be handled on a formal basis. Staff members shall have the discretion of implementing the Citation process or a Misconduct Report for Major Rule Violation.

CD10.100.060 SANCTIONS – rule violation:

CD10.100.061The following sanctions may be imposed for Minor Rule Violations if the inmate has waived the right to a formal hearing:

1. Loss of any privilege(s) for up to 8 hours; (loss of telephone, television etc.);

2. Extra work assignments for sentenced inmates;

3. Restriction to room/bunk for up to 8 hours;

4. Written reprimand;

5. Verbal warning.

CD10.100.062 The following sanctions may be imposed for Minor Rule Violations when an inmate requests a formal hearing:

1. Loss of one or more privileges, including work release, for up to fifteen (15) days;

2. Confinement to quarters under Disciplinary Segregation regulations for up to five (5) days;

3. Extra work assignments for up to forty (40) hours for sentenced inmates. May be imposed for unsentenced inmates who choose, in writing, to accept extra work instead of lockdown time;

4. Change in work assignment or living quarters;

5. Loss of personal visits for up to one week;

6. Written reprimand; or

7. Verbal warning.

CD10.100.063 The Hearings Officer may impose any one, or a combination of following sanctions for Major Rule Violations:

1. Disciplinary detention for up to 30 days for one violation or 60 days for multiple violations;

2. Loss of good time (sentenced inmates);

3. Change in Facility assignment, housing area assignment or removal from a program;

4. Loss of Inmate Worker status for up to remainder of current incarceration;

5. Loss of personal visits for up to 30 days for one violation or 60 days for multiple violations;

6. Loss of commissary privileges for up to 30 days for one violation or 60 days for multiple violations;

7. Loss of one or more entitlements for up to thirty days for one violation or 60 days for multiple violations;

8. Restitution for property or items damaged or destroyed;

    8.1 Restitution shall not be for more than the actual cost of repair or replacement.

9. Suspended sanctions to be imposed in a future disciplinary hearing if further violations occur;

10. Written reprimand or verbal warning.

11. Imposition of a monitary fine.

CD10.100.064 The maximum sanction for Major Rule Violations is no more than 60 days or all violations arising out of one incident. Continuous confinement for more than 30 days requires the review and approval of the Facility Commander.

CD10.100.070 INFORMATION PROVIDED TO COURTS:

CD10.100.071 No disciplinary records or report shall be provided to the court while a defendant is on trial and in a pre-conviction status.

1. Information felt to be critical, such as threats toward the court, witnesses, Co-defendants, etc. should be communicated to the District Attorney's Office.

CD10.100.072 Selected disciplinary records and reports shall be provided to the sentencing court on convicted offenders.

1. No alcohol or drug treatment participation or involvement information shall be part of the information provided to the court unless a valid signed Release of Information or Court order is present.

2. Corrections Counselors shall send copies of all Information Reports and Misconduct Reports to the sentencing court for all inmates on work release.

3. The Hearings Officer shall review all hearings held for sentenced non-Work Release violators and shall identify rule violations involving serious violent, assaultive or threatening behavior for notification to the court.

    3.1 All identified hearings information shall be sent to the sentencing Judge by the Hearings Officer.

4. The Hearings Officer shall identify rule violations that directly violate orders of the court on sentenced non-Work Release violators (i.e. an inmate returning under the influence of alcohol from a judicially approved pass).

    4.1 Records of such disciplinary action shall be sent to the court by the Hearings Officer.

CD10.100.073 Disciplinary information about serious rule violations shall be sent to other county, state and federal institutions.

CD10.100.080 INMATE RULES REVIEW:

CD10.100.081 Each Facility Commander or designee shall ensure that Inmate Rules of Conduct are reviewed annually and updated if necessary.

CD10.101.000 DISCIPLINARY PROCEDURES

CD10.101.010 POLICY: The Corrections Division shall have an inmate disciplinary process.

CD10.101.020 PURPOSE: Inmate discipline will be administered to maintain proper control, to promote human values, individual dignity, and socially desirable changes in attitude and behavior.

CD10.101.030 REFERENCE: ACA 3-ALDF-3C-02, 05, 06, 07, 08, 09, 10, 11; ORS 169.076 (12).

CD10.101.040 DEFINITIONS:

CITATION: A method of formal discipline which responds to alleged Minor Rule Violations

DISCIPLINARY HEARING: A non-judicial administrative procedure to determine if substantial evidence exists to find an inmate guilty or not guilty of a rule violation.

FORMAL DISCIPLINE: A Minor or Major Rule Violation handled by a Citation or Misconduct Report and the imposition of sanctions, with or without a disciplinary hearing.

HEARINGS OFFICER: An appointed staff member who, fairly and impartially holds all disciplinary hearings for alleged violations of major rules and approves or imposes sanctions in accordance with the severity of the violations.

INFORMAL DISCIPLINE: The handling of rule violations by counseling, verbal warning or reprimand, without imposing sanctions.

MAJOR RULES: Rules of conduct which promote the health or safety of inmates or staff, and the smooth operation of the Facility. Violation of a major rule may result in a Misconduct Report, a hearing (unless knowingly waived by the inmate) and possible major sanctions. Violation of a major rule may be cause for criminal prosecution.

MINOR RULES: Rules of conduct which promote the health or safety of inmates or Staff, or order and efficiency of the Facility. Violation of a minor rule activates either informal discipline (counseling, verbal warning or reprimand) or formal discipline (Citation, the imposition of minor sanctions), without a hearing.

PREHEARING SEGREGATION: The confinement of an inmate charged with a Major Rule Violation to one of five levels of disciplinary housing in order to ensure the safety and security of the inmate, other inmates or staff, or the safety and security of the Facility.

CD10.101.050 DISCIPLINARY OVERVIEW:

CD10.101.051 The purpose of inmate discipline is:

1. To make inmates accountable for socially undesirable attitudes and behavior and to promote socially desirable changes in attitude and behavior;

2. To protect the health and safety of inmates, staff and the public; and

3. To ensure security and orderly and efficient operation of Correctional facilities.

CD10.101.052 Disciplinary action shall be timely. The least severe disciplinary action appropriate to each offense shall be the disciplinary action imposed.

CD10.101.053 Discipline will not be arbitrary or capricious, retaliatory or vengeful.

CD10.101.54 Inmates will not be subject to any form of punishment which would be deemed to be:

1. Cruel, or unusual punishment, including corporal damage or damage to personal property.

CD10.101.060 INMATE CITATION:

CD10.101.061 When observing an inmate violating a rule, staff shall:

1. Determine whether to handle the violation formally or informally.

2. Verbally inform the inmate of the rule violation.

CD10.101.062 If the decision is to handle a rule violation formally by using the Citation process, the staff member shall have recorded on the Citation:

1. The inmate's name and SWIS Number;

2. The rule violated;

3. The date and time of occurrence;

4. The recommended sanctions;

5. The staff member's signature.

CD10.101.063 The sergeant shall review and sign the Citation before the end of the shift and before the imposition of any sanctions.

CD10.101.064 If the sanctions seem excessive, the Sergeant shall:

1. Discuss the Citation and sanctions (privately) with the staff member;

2. Instruct the staff member to modify the sanctions(s) as appropriate to the violation of the rule.

CD10.101.065 The Sergeant shall ensure a copy of the Citation Report is given to the inmate.

CD10.101.066 The staff member shall then present the inmate with the Citation and:

1. Explain to the inmate the rule violated:

2. Inform the inmate of the recommended sanction;

3. Inform the inmate that he may waive a hearing and accept the sanction by signing the Citation, or decline the sanctions and proceed to a hearing with the Hearings Officer.

4. Impose and ensure the completion of the sanction either during the same shift or within 24 hours.

    4.1 Normal lockdown periods shall not count towards sanction lockdown hours.
    4.2 Extra work assignments can only be given to sentenced inmates. Unsentenced inmates may, by signing the Citation, agree to extra Work assignment in lieu of lockdown time.

5. Forward a copy of the Citation to the Classification Unit.

CD10.101.067 An inmate may choose not to accept the Citation and request a formal hearing. Refusal to sign a Citation is not an additional violation.

CD10.101.068 If an inmate has requested a formal hearing, the staff member shall:

1. Complete a Misconduct Report and Information Report for review and investigation by the Sergeant:

2. Not impose any sanctions for the violation while the hearing is pending;

3. Forward the Misconduct Report package, including the Citation, to the Hearings Officer.

CD10.101.069 Whenever an inmate receives a third Citation within a (30) days period, it shall automatically be handled as a Major Rule Violation.

CD10.101.070 DISCIPLINARY PROCESS/MAJOR RULES:

CD10.101.071 Rule violations that cannot be handles informally and require formal resolution shall be prepared on a Misconduct Report and an Information Report.

CD10.101.072 Disciplinary Reports for rule violations requiring a disciplinary hearing shall include, but are not limited to the following:

1. Specific rule(s) violated;
2. A formal statement of the charges;
3. An explanation of the specific events, which shall include who was involved, what transpired and the time and location of occurrence;
4. Unusual inmate behavior;
5. Inmate and Staff witnesses;
6. Description and disposition of any physical evidence;
7. Any immediate action taken, including the use of force;
8. Reporting staff member's signature, and date and time the report is made;
9. The signature of the investigating Sergeant.

CD10.101.073 The staff member observing the rule violation shall:

1. Fill out a Misconduct Report and an Information Report before the end of their shift;
2. Upon completion of the report, forward the report to the Sergeant for review and Investigation of the incident;
3. Ensure that the inmate is given a copy of the Misconduct listing the rule violation within 24 hours;
4. Upon completion of the investigation, forward the report package to the Hearings Officer;
5. Contact the Matrix staff to ensure notification of an inmate pending disciplinary action;
6. Initiate a Classification Update and forward to the Classification Unit.

CD10.101.074 Upon receipt of a Misconduct Report for a Major Rule Violation, the Sergeant shall:

1. Review all reports for proper format and contents;

2. Conduct an investigation by the end of the shift when possible but within 24 hours of the report;

3. Document the investigation by preparing an addendum to the staff member's Information Report, including;

    3.1 Date and time the investigation was conducted;
    3.2 Summary of the statements of all involved persons;
    3.3 Reason for the need of pre-hearing segregation, if required;
    3.4 Signature.

4. Determine the level of disciplinary housing for pre-hearing segregation;

5. Ensure that the inmate receives a copy of the Misconduct Report within 24 hours.

6. If the Sergeant is unavailable to complete the investigation, the Officer-In-Charge may delegate the investigation and determine the level of housing to another Sergeant.

CD10.101.080 PREHEARING SEGREGATION:

CD10.101.081 Pre-hearing segregation of inmates within one of the five levels of disciplinary housing shall be used;

1. To ensure the health or safety of the inmate, other inmates or staff;

2. To ensure the security of the Facility.

CD10.101.081 Inmates on pre-hearing segregation status and placed within one of the five levels of disciplinary housing shall be governed by the conditions of confinement in accordance with CD10.100.000.

CD10.101.090 DISCIPLINARY CONTINUUM

CD10.101.091 The investigating Sergeant shall determine by use of the Disciplinary Continuum, alleged violations, severity of threat, nature of the violation and the inmates (resistance) behavior in determining the placement of an inmate within one of the five levels of disciplinary housing:

DISCIPLINARY CONTINUUM

LEVELS OF DISCIPLINARY HOUSING	VIOLATION EXAMPLES	SEVERITY THREAT	NATURE OF VIOLATION	INMATES RESISTANCE
LEVEL V LEVEL IV	1. STAFF ASSAULT 2. RIOT/DISTURBANCE 3. WEAPONS 4. ASSAULT 5. CONTINUOUS DISCIPLINARY VIOLATIONS	RESISTIVE	MAJOR VIOLATIONS	OMINOUS
LEVEL III	1. THREATS TO STAFF 2. FIGHTS 3. DISRUPTIVE BEHAVIOR 4. MAJOR CONTRABAND 5. FACILITY VIOLATIONS 6. DISRESPECT			ACTIVE
LEVEL II	7. ABUSE OF MEDICATIONS 8. GAMBLING 9. DISRESPECT 10. TELEPHONE VIOLATIONS 11. UNAUTHORIZED AREA 12. LYING/FALSE INFORMATION	UNDECIDED		STATIC VERBAL
LEVEL I	1. MINOR CONTRABAND 2. MINOR MODULE/DORM 3. COMMISSARY VIOLATIONS 4. LIBRARY VIOLATIONS 5. FAIL TO MAKE BED	NONE	MINOR VIOLATIONS	NONE

CD10.101.100 DISCIPLINARY SEGREGATION HOUSING

CD10.101.101 The Corrections Division will operate five levels of secure disciplinary housing that will constitute its prime resource for inmates who require a higher degree of physical control by virtue of being charged with rule violations or have been found guilty of rule violations.

LEVEL I

Level I disciplinary housing is considered the least restrictive level of disciplinary housing and can be administered within the inmate's current housing assignment.

CONDITIONS OF CONFINEMENT

FOOD
Food service to inmates housed in Level I shall be the same as those served to the general population.
COMMISSARY
Commissary for inmates housed in Level I shall be limited to personal hygiene items only.
VISITATION
Visitation for inmates housed in Level I shall be limited with their mother, father, spouse, or child (when accompanied by the legal guardian).
WALK TIME
Inmate housed at Level I shall receive one hour walk time during a 24hr period.
BOOKS
Inmates housed in Level I shall be allowed to posses up to four books.
TELEPHONE
Inmates housed in Level I shall have opportunity for telephone use during their one hour scheduled walk period.

LEVEL II

Level II disciplinary housing is more restrictive than Level I.

CONDITIONS OF CONFINEMENT

FOOD
Food service to inmates housed in Level II shall be the same as those served to the general population.

COMMISSARY
Commissary for inmates housed in Level I shall be limited to personal hygiene items only.
VISITATION
Visitation for inmates housed in Level II shall be limited with their mother, father, spouse, or child (when accompanied by the legal guardian).
WALK TIME
Inmates housed in Level II shall receive a scheduled 30 minute walk period.
BOOKS
Inmates housed in Level II shall be allowed to posses up to four books.
TELEPHONE
Inmates housed in Level II shall have opportunity for telephone use during their 30 minute scheduled walk period.

LEVEL III

Level III disciplinary housing is more restrictive than Level II.

CONDITIONS OF CONFINEMENT

FOOD
Food service to inmates housed in Level III shall consist of a sack breakfast, sack lunch and a dinner meal same of those served to the general population.
COMMISSARY
Commissary for inmates housed in Level III shall be limited to personal hygiene items only.
VISITATION
Visitation for inmates housed in Level III shall be authorized by the Sergeant or OIC and shall be limited with their mother, father, spouse or child (when accompanied by the legal guardian).
WALK TIME
Inmates housed in Level III shall receive a scheduled 15 minute walk period.
BOOKS
Inmates housed in Level III shall be allowed one book to be exchanged during "E" Shift only.
TELEPHONE
Inmates housed in Level III shall have opportunity for 15 minute telephone use during their scheduled walk period
CLOTHING
Inmates housed in Level III shall be issued white jail clothing.

LEVEL IV

Level IV disciplinary housing is more restrictive than Level III.

CONDITIONS OF CONFINEMENT

FOOD
Food service to inmates housed in Level IV shall consist of a sack breakfast, sack lunch and a dinner meal will consist of that served to the general population.
COMMISSARY
Commissary for inmates housed in Level IV shall consist of hygiene items issued by staff.
VISITATION
Visitation for inmates housed in Level IV shall be limited to legal counsel, clergy and for emergencies as determined by the Facility Commander or designee.
WALK TIME
Inmates housed in Level IV shall be limited to five, fifteen minute walk periods as scheduled during a seven-day period.
BOOKS
Inmates housed in Level IV shall be allowed to posses religious material authorized by the Chaplain and must be accompanied by written approval.
TELEPHONE
Inmates housed in Level IV shall be limited to incoming legal calls only.
WRITING MATERIALS
Inmates housed in Level IV shall be limited to three sheets of paper and two pencils, issued and returned on "C" Shift.
CLOTHING
Inmates housed in Level IV shall be issued white jail clothing.

LEVEL V

Level V disciplinary housing is considered the most restrictive level of disciplinary housing.

CONDITIONS OF CONFINEMENT

FOOD
Food service for inmates housed in Level V will consist of a sack meal for breakfast a sack meal for lunch and the diner meal will consist of that served to the general population.

COMMISSARY
Commissary for inmates housed in Level V shall be limited to only personal hygiene items issued by staff.
VISITATION
Visitation for inmates housed in Level V shall be limited to legal counsel, clergy and for emergencies as determined by the Facility Commander or designee.
WALK TIME
Inmates housed in Level V shall be limited to five, fifteen minute walk periods as scheduled during a seven-day period.
BOOKS
Inmates housed in Level V shall be allowed to posses only religious materials approved by the chaplain and must be accompanied by a special handling form.
TELEPHONE
Inmates housed in Level V shall have opportunity to receive only incoming legal calls.
WRITING MATERIALS
Inmates housed in Level V shall be limited to three sheets of paper and two pencils. Writing materials shall be issued by the "C" Shift deputy and must be returned to the deputy by the end of the shift.
INMATE CLOTHING
Inmates housed in Level V shall be issued white jail clothing.

CD10.101.102 Inmates housed in Level V may have additional conditions of confinement imposed. The Facility Commander may impose the following options for inmates who continue to exhibit a threat to the orderly operation of the facility.

1. Nutra-Loaf for up to seven days for the inmate's abuse of food or feces;
2. Two fifteen minute walk periods scheduled on Tuesdays and Thursdays, inmates shall have waist and leg restraints applied during the walk period;
3. Wearing of a paper suit.

CD10.101.103 APPLICATION OF RESTRAINTS FOR MOVEMENT OF INMATES IN DISCIPLINARY HOUSING LEVELS

LEVEL I
Applied at the deputy's discretion.
LEVEL II
Applied at the deputy's discretion.
LEVEL III
Handcuffs, waist and leg restraints, Escort by two deputies.
LEVEL IV
Handcuffs, waist and leg restraints, Escort by two deputies
LEVEL V
Handcuffs, waist and leg restraints, Escort by two deputies.

CD10.101.110 DISCIPLINARY SEGREGATION REVIEWS

CD10.101.111 The status of inmates in disciplinary segregation levels shall be reviewed every seven days to decide if the reasons for the assigned level of disciplinary segregation still exists.

CD10.101.112 The Classification Unit shall review all inmates placed in Disciplinary Segregation at least every seven days.

CD10.101.113 The review of the inmate's status shall consist of the reviewing the following;

1. Information and misconduct reports;

2. Classification updates;

3. Disciplinary observation forms;

4. Any pertinent information supplied by corrections staff regularly assigned to Disciplinary Segregation.

CD.101.114 Inmates will be classified to appropriate housing areas 48 hrs. prior to completion of the disciplinary sanction.

CD10.101.120 CHANGE OF DISCIPLINARY SEGREGATION LEVELS

CD10.101.121 A change in an inmates assigned disciplinary segregation level to a more restrictive level must be accompanied by a misconduct report. The same procedure and disciplinary hearing criteria must be used for this decision as was used for initial placement.

CD10.101.122 A change in an inmate's disciplinary level to a less restrictive level shall occur when;

1. The Disciplinary Unit Deputy determines the inmate's behavior warrants the change through the weekly review.

2 If this is completed, the Disciplinary Unit Sergeant may authorize the movement of the inmate to a less restrictive level of disciplinary housing, based on recommendation from staff.

CD10.101.090 CRIMINAL MISCONDUCT:

CD10.101.091 In instances in which an inmate is alleged to have committed a crime, the case may be referred to Multnomah County Sheriff's Office Law Enforcement Division for criminal investigation.

CD10.101.092 A staff member who observes an inmate committing a criminal act shall:

1. Immediately notify the Sergeant of the need to investigate the incident;

2. Complete a Misconduct Report and an Information Report;

3. Preserve any evidence.

CD10.101.093 The Officer-In-Charge shall review and sign all reports of criminal misconduct and ensure notifications are made through their chain of command.

1. For statistical purposes a report of this incident shall be called in to the MCDC Officer-In-Charge for the Daily Report.

CD10.101.094 The Officer-In-Charge shall contact Bureau of Emergency Communication to request the dispatch of a Multnomah County Sheriff's Office Deputy to investigate the incident.

CD10.101.095 When requested, the Deputy will conduct a routine investigation following Law Enforcement investigation procedures.

CD10.101.096 The Officer-In-Charge shall ensure that copies of the reports are forwarded to:

1. The Investigating Law Enforcement Deputy;

2. The Hearings Officer (with the Misconduct);

3. The Facility Commander;

4. The Classification Unit;

5. The Records Unit (Original).

CD10.102.000 DISCIPLINARY HEARINGS

CD10.102.010 POLICY: The Corrections Division shall conduct disciplinary hearings for inmates alleged to have violated Inmate Rules of Conduct.

CD10.102.020 PURPOSE: Disciplinary hearings shall be administered to ensure due process and impartial treatment by a designated Hearings Officer.

CD10.102.030 REFERENCE ACA 3-ALDF-3C-11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22; ORS 169.076 (12)

CD10.102.040 DEFINITIONS:

DISCIPLINARY HEARING: A non-judicial administrative procedure to determine if substantial evidence exists to find an inmate guilty of a rule violation.

HEARINGS OFFICER: An appointed staff member who fairly and impartially holds all disciplinary hearings for alleged violations of major rules and approves or imposes sanctions in accordance with the severity of the violations.

CD10.102.050 GENERAL PROVISIONS:

CD10.102.051 Inmates charged with rule violations are scheduled for a hearing as soon as practicable but no later than ninety-six hours, excluding weekends and holidays, after the alleged violation.

CD10.102.052 Inmates charged with rule violations shall be present at their hearing, unless they waive that right in writing or by choosing not to participate or are exhibiting inappropriate behavior.

CD10.102.053 Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusions are to be documented by the Hearings Officer.

CD10.102.054 Disciplinary hearing postponement or continuance may be granted for cause such as preparation of a defense, illness, unavailability of the inmate, an inmate's unacceptable behavior during the hearing or the inmate's refusal to participate in a reasonable manner.

CD10.102.055 Disciplinary hearings on rule violations shall be conducted by an impartial person. The Hearings Officer's decision shall be based solely on information obtained in the hearings process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

CD10.102.056 A written record shall be made of the decision and supporting reasons and a copy given to the inmate.

CD10.102.057 Inmates shall have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf. The reasons for denying such a request are to be stated in writing by the Hearings Officer.

1. Upon request of the inmate, the Hearings Officer shall arrange for witness(es) to present statements for the hearing.

2. The hearings Officer may limit the number of witnesses to those persons having direct knowledge of the incident.

3. The Hearings Officer may require the inmate to write down any questions to be asked of the witness(es).

4. The Hearings Officer shall ensure that statements given by the charged inmate, name and statements of witness(es) and evidence is documented on the information Report.

CD10.102.058 A staff member may assist an inmate at a disciplinary hearing, if requested by the inmate.

1. An inmate is not entitled to an attorney at a disciplinary hearing, but may receive staff assistance before or during the hearing.

    1.1 If the staff member declines, the inmate has the option of selecting one alternative.
    1.2 The staff member providing assistance shall be given adequate time to consult with the inmate being charged.

2. To request staff assistance, the inmate should complete a Program Request Form and send it to the Hearings Officer, or request staff assistance at the time of the hearing.

3. The Hearings Officer shall appoint a representative when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on their own behalf.

    3.1 The Hearings Officer may request a psychiatric evaluation before holding a hearing to determine the inmate's mental competency.

CD10.102.060 DISCIPLINARY HEARINGS PROCESS:

CD10.102.061 In preparation of an inmate disciplinary hearing the Hearings Officer shall ensure that:

1. An investigation was conducted within 24 hours of the report;

2. The inmate charged with the violation was given a copy of the charges within 24 hours of completion of the investigation;

3. A hearing is held not less than 24 hours from the completion of the investigation of the alleged rule violation(s);

    3.1 The inmate may, in writing, consent to a hearing within less than 24 hours.

4. The hearing is conducted within ninety six hours of the notice of charges, excluding weekends, holidays or when the inmate cannot be present due to other scheduled activities.

CD10.102.062 To prepare for disciplinary hearings, the Hearings Officer shall:

1. Review Misconduct and Information Reports daily;

2. Compare Misconducts with the SWIS Pending Hearing List;

3. Inform the Classification Unit of inmates pending hearings;

4. Schedule hearings to ensure they are within the established time frames of the alleged violation;

5. Locate the inmate, staff and witnesses;

6. Using the current list, identify the cost of repair or replacement of destroyed or damaged items.

CD10.102.063 When conducting a disciplinary hearing the Hearings Officer shall:

1. Record the hearing;

2. Advise the inmate of their rights at the hearings, including the right to appeal the decision;

3. Read the Information Report to the inmate, excluding names of confidential informants;

4. Allow time for the inmate to deny or admit to the charges.

5. Allow the inmate to present a defense;

    5.1 Inmate witnesses may be questioned and recorded on tape or documented by the Hearings Officer.
    5.2 Interpreters shall be provided when necessary.

CD10.102.064 At the conclusion of the hearing, the Hearings Officer shall:

1. Weigh statements of all participants in the hearing;

2. Determine if a rule violation occurred;

3. Determine the appropriate sanction by using the disciplinary sanction guideline;

    3.1 Deviation from the established guidelines shall be recorded on the Misconduct Report stating mitigating/aggravating factors.

4. Record the disposition on the Misconduct Report.

5. Give a copy of the disposition to the inmate;

6. Notify a Deputy of the disposition and arrange with Classification for movement of the inmate to a level of disciplinary segregation if warranted;

7. Record the disposition on the appropriate Disciplinary status tags;

8. Enter all relevant information regarding the disposition in SWIS.

9. Maintain written and tape recorded records of all disciplinary hearings.

10. Provide copies of Misconduct Reports and Information Reports for the Classification file.

11. Complete an Order for Administrative fees/Fines/Restitution/Trust Account Adjustment if applicable:

    11.1 Original to the Records Unit.
    11.2 Copy to Accounts Clerk.
    11.3 Copy to the inmate;
    11.4 Copy to Classification file.

12. Call Accounts Clerk to verbally order trust account adjustment pending arrival of documents.

CD10.102.070 DISPOSITIONS REVIEW:

CD10.102.071 Disciplinary hearings and dispositions shall be reviewed by the Facility Commander or designee.

CD10.102.072 The Hearings Officer shall forward completed Misconduct Reports, with their disposition, to the Facility Commander, or designee of the Facility where the violation occurred for review.

CD10.102.073 The Facility Commander or designee shall:

1. Review all formal Disciplinary Reports and dispositions and reviewing all disciplinary Reports of incidents;

2. Discuss any questions regarding the sanctions and incidents with the Hearings Officer;

3. Upon completion of the review, initial the Misconduct Form and forward it to the Detention and Warrants Records Unit.

CD10.102.080 APPEAL:

CD10.102.081 An inmate has the right to appeal decisions of the Hearings Officer to the Facility Commander.

CD10.102.082 At the time a disciplinary decision is rendered, the Hearings Officer shall advise the inmate of the right to appeal the decision and of the procedures to be followed if an appeal is sought.

CD10.102.083 To appeal a decision of the Hearings Officer, the inmate must be able to show that the sanction imposed was not proportionate to the offense or that there is substantial new evidence that could affect the results of a disciplinary hearing.

CD10.102.084 The appeal request is the responsibility of the inmate, and must be submitted on a Program Request Form to the Facility Commander within five working days of the disciplinary action.

CD10.102.085 The Facility Commander shall consider only the charges and the evidence presented on the record.

1. The Facility Commander shall, within seven working days excluding weekends and holidays from receipt of the appeal, render a decision in writing.

2. The Facility Commander may affirm or reverse the disciplinary decision.

3. The Facility Commander may reduce, but may not increase, the sanctions imposed.

4. The Facility Commander may order a new hearing.

CD10.102.086 The Facility Commander may delegate this duty and authority to another person.

1. The delegation must be in writing.

2. It must be premised on the Commander's absence and last only so long as the Commander is absent.

CD10.102.087 Disciplinary actions against an inmate will not normally be stayed pending appeal. If the inmate prevails on appeal, the Facility Commander shall direct that the inmate be restored to the status held before the disciplinary hearing.

CD1.102.088 Copies of the Facility Commander's appeal decision shall be forwarded to:

1. The inmate;

2. The Hearings Officer.

CD10.102.090 RECORDS EXPUNGEMENT:

CD10.102.091 Disciplinary Reports shall be removed from all files if inmate is found not guilty of an alleged rule violation.

CD10.102.092 The Hearings Officer shall:

1. Inform the Officer-In-Charge of any inmate found not guilty of an alleged rule violation;

2. Ensure that no record of the Misconduct Report is kept except a copy of the Misconduct Form for the hearings file.

3. Update SWIS to reflect no pending hearing.

MEETING DATE: AUG 27 1998
AGENDA NO: R-3
ESTIMATED START TIME: 9:45

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Proclamation

BOARD BRIEFING: DATE REQUESTED:
REQUESTED BY:
AMOUNT OF TIME NEEDED:

REGULAR MEETING: DATE REQUESTED: August 27, 1998

AMOUNT OF TIME NEEDED: 5 Minutes

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Chair Stein, Delma Farrell TELEPHONE #: 248-3953
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Judy O'Connor, Northwest Oregon Labor Council, Executive Secretary-Treasurer

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [√] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

8/27/98 ORIGINAL to JUDY O'CONNOR; 8/28/98 COPY to DELMA FARRELL

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
(OR)
DEPARTMENT MANAGER:

98 AUG 13 AM 9:18
MULTNOMAH COUNTY OREGON
COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

PROCLAMATION NO. 98-118

On the occasion of the observance of Union Label Week across the nation and at the traditional Northwest Oregon Labor Council Oaks Park Labor Day Picnic kick-off celebration for Oregon:

a) A strong economy depends on good jobs; and

b) Buying union-made goods and services helps preserve American jobs and strengthens the economy; and

c) Products and services identified by a Union Label, Shop Card, Store Card, or Service Button, are guaranteed to be the best quality, American-made products and services.

The Multnomah County Board of Commissioners Proclaims:

The week of September 7th to the 13th 1998 to be Union Label Week in Multnomah County, in recognition and in honor of these distinguished emblems which signify commitment to quality and dignity in the American workplace.

Adopted this 27TH day of August, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

#1

SPEAKER SIGN UP CARDS

DATE 8/27/18

NAME Brad Howe

ADDRESS 13841 Verte Ct

Lake Oswego OR

PHONE 635-4450

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Tryon Creek Watershed

R-4

GIVE TO BOARD CLERK Council

#2

SPEAKER SIGN UP CARDS

DATE 8/27

NAME Sonya Kazen

ADDRESS 9343 SW 3rd
Portland, OR 97219

PHONE 2453752 7318284(w)

SPEAKING ON AGENDA ITEM NUMBER OR TOPIC Tryon Creek Watershed Council
R-4

GIVE TO BOARD CLERK

MEETING DATE: AUG 27 1998
AGENDA NO: R-4
ESTIMATED START TIME: 9:50

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Recognition of the Tryon Creek Watershed Council as a statutory watershed council

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED _____

REGULAR MEETING: DATE REQUESTED: August 27, 1998

AMOUNT OF TIME NEEDED: 20 minutes

DEPARTMENT: Non-Departmental DIVISION: Commissioner Linn

CONTACT: Ramsay Weit TELEPHONE #: 248-5137
BLDG/ROOM #: 106/1500

PERSON(S) MAKING PRESENTATION: Dawn Uchiyama, Sonja Kazen (council members)

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [x] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

In the Matter of Recognizing the Tryon Creek Watershed Council as a Statutory Watershed Council

8/28/98 copies to Ramsay Weit

98 AUG 19 AM 11:12
MULTNOMAH COUNTY OREGON
BOARD OF COMMISSIONERS

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

2/97

Diane Linn, Multnomah County Commissioner
DISTRICT ONE

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Commissioner Diane Linn

DATE: August 27, 1998

RE: Recognition of Tryon Creek Watershed Council

---

1. Recommendation/Action Requested:

Approval of the Resolution recognizing the Tryon Creek Watershed Council as a watershed council meeting the intent of the State of Oregon Governor's Watershed Enhancement Board (EWEB) statutory guidelines.

2. Background/Analysis:

Oregon state statutes provide for counties to recognize voluntary local groups organized to assess watershed conditions, develop action plans, implement projects, and monitor results. These councils must have a majority of local residents, including local officials, and be broadly representative of the watershed area. The Tryon Creek group meets the intent of the statute and seeks our recognition. Recognition enables the Council to seek funds from EWEB to conduct projects.

3. Financial Impact:

None to the County- this Resolution only grants statutory recognition to the group which enables it to operate with official sanction.

"Printed on recycled paper"
1120 S.W. Fifth Ave., Suite 1500, Portland, Oregon 97204
Phone: (503) 248-5220, FAX: (503) 248-5440, E-Mail: diane.m.linn@ co.multnomah.or.us

4. Legal Issues:

The membership of the group appears to meet the intent of the state statute, ORS 541.388, which defines the requirements for recognition.

5. Controversial Issues:

In May, 1996, the Board of County Commissioners recognized another group as a Watershed Council for Tryon Creek. County Counsel and EWEB have confirmed that the statutory scheme permits a county to recognize more than one watershed council in a given area. This Resolution does not in any way affect the recognition granted to the Tryon Resource Management Partnership. These organizations have been unsuccessful in the past in efforts to merge, and EWEB anticipates competition for funding. The funding decision is EWEB's to make- we are merely recognizing the group as appearing to meet statutory guidelines.

6. Link to Current County Policies:

Watershed Council activities are linked to County efforts in regional planning and resource enhancement, in conjunction with our partners at Metro.

7. Citizen Participation:

The Tryon Creek Watershed Council has citizen members as part of its working group and as required by state statute.

8. Other Government Participation:

Local government is represented on the Council, including the cities of Portland and Lake Oswego and Metro.

AUDUBON SOCIETY OF PORTLAND

Inspiring people to love and protect nature.

August 19, 1998

98 AUG 20 PM 1:57
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

Beverly Stein, Chair
Multnomah County Commission
and County Commissioners
Room 1500
1120 SW Fifth Avenue
Portland, OR 97204

Dear Chair Stein and Commissioners,

I am writing once again as I did over a year ago in support of the Tryon Creek Watershed Council's request for formal recognition from Multnomah County. The Tryon Creek Watershed Council, unlike other groups working in the watershed, truly represents a diverse group of individuals and organizations that meet both the spirit and letter of the state of Oregon's watershed council guidelines.

This is not to say there are not other groups working in Tryon Creek that merit recognition for their work. However, they are not truly a Watershed Council from the perspective of their limited mission and acceptance of a diverse array of backgrounds, including representation by local and state agency personnel.

I am writing to urge the Multnomah County Commission to formally recognize the Tryon Creek Watershed Council as the watershed council for the Tryon Creek Watershed. If you have any questions regarding this recommendation please feel free to call myself or Ron Carley, our Urban Conservation Outreach Director, at 292-6855.

Sincerely,

Mike Houck

cc Dawn Uchiyama
Amanda Fritz

5151 NW Cornell Road, Portland, Oregon 97210 (503) 292-6855 FAX (503) 292-1021

Printed on 100% post-consumer recycled paper with soy ink.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 98-119

Recognizing the Tryon Creek Watershed Council as a watershed council meeting the intent of the State of Oregon Governor's Watershed Enhancement Board (GWEB) guidelines.

The Multnomah County Board of Commissioners Finds:

a. The GWEB guidelines and state statute (ORS 541.388) define voluntary local watershed councils as consisting of a "majority of local residents, including local officals.:

b. Tryon Creek has been declared a water quality limited stream by the State of Oregon Department of Environmental Quality.

c. The Tryon Creek watershed lies within the jurisdictions of Multnomah and Clackamas Counties, the City of Lake Oswego, and the City of Portland.

d. The Tryon Creek Watershed Council is a local, citizen-led organization reflecting the interests of the affected watershed, with a majority of local residents and representatives from local government, including the City of Portland, Metro, Tryon Creek State Park, and the City of Lake Oswego.

e. The Tryon Creek Watershed Council meets the intent of GWEB and state statute guidelines for watershed councils.

f. The Tryon Creek Watershed Council has requested formal recognition by the Multnomah County Board of Commissioners (See Exhibit A).

g. Formal recognition will enable the watershed council to be eligible for GWEB grant funds to support council activities directed at assessing watershed conditions, developing action plans, implementing projects, and monitoring results.

h. Public stewardship and public involvement are critical elements in improving and protecting water quality in the Tryon Creek watershed to meet county and regional goals for clean water.

The Multnomah County Board of Commissioners Resolves:

1. That the Tryon Creek Watershed Council is recognized by Multnomah County as a voluntary watershed council meeting the intent of ORS 541.388(2).

2. That the Tryon Creek Watershed Council shall report its activities semi-annually to the Multnomah County Board of Commissioners as required by ORS 541.388(3).

Approved this 27th day of August, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

By Sandra Duffy for
Thomas Sponsler, County Counsel

Ex A

Tryon Creek Watershed Council

10750 SW Boones Ferry Road, Portland Oregon, 97219

Jennifer Budhabhatti
Metro Regional Parks and Greenspaces

Steve Daneman
Citizen Member

Barbara Edwardson
Citizen Member

Amanda Fritz
Citizen Member

Brad Howe
Citizen Member

Sonya Kazen
Citizen Member

Loring Larsen
Tryon Creek State Park

Deborah Lev
City of Lake Oswego

Eileen Lipkin
Citizen Member, Chair

Tom McGuire
Portland Planning

Barbara Shearin
Citizen Member

Jim Sjulin
Portland Parks and Recreation

Jonathan Snell
Citizen Member

Eric Strecker
Citizen Member

George Toepfer
Friends of Tryon Creek State Park

Dawn Uchiyama
Citizen Member

Amin Wahab
Bureau of Environmental Services

RECEIVED
JUN 2 6 1998
BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

June 24,1998

Beverly Stein, Chair
Commissioner Diane Linn
Multnomah County Board of Commissioners
1120 SW Fifth Avenue
Portland, OR 97204

Dear Chairwoman Stein and Commissioner Linn,

We respectfully request formal endorsement by Multnomah County of the Tryon Creek Watershed Council.

TCWC seeks to bring the communities and agencies with an interest in the environment together to "preserve, protect and enhance the health of the Tryon Creek Watershed." The Council was created to be a focal point and clearinghouse for community and agency activities in Tryon Creek. We stand poised to serve as a participant in the creation of a Coordinated Resource Management Plan for the watershed. The recent listing of the Lower Columbia Steelhead highlights the importance of working together now to address critical habitat and water quality issues.

Please see the attached History of the Tryon Creek Watershed Council for detailed background on our group. Current membership on the Council appears on the letterhead. You are encouraged to contact anyone on the Council to discuss this matter further. The references listed below are familiar with the activities of TCWC and have also agreed to be available for consultation.

The Tryon Creek Watershed Council received endorsements from the City of Portland and Metro in 1996. TCWC is concurrently seeking formal endorsement from Multnomah County, Lake Oswego and Clackamas County at this time, and requests that the Tryon Creek Watershed Council be recognized as the sole watershed council for Tryon Creek. We feel the best collaborative effort to address the spectrum of needs in the watershed will be made by a group fully supported by the relevant government agencies, the Governor's Watershed Enhancement Board, and area citizen advocacy groups.

I would be happy to discuss this request with you further. Please contact me at 244-2812. I will be on vacation in September, during which time Sonya Kazen may be contacted at 731-8282 (work), 245-3752 (home).

Please inform us of the date and time when endorsement is scheduled to be considered, so that we may participate at the Council session.

We appreciate your consideration in this matter. Your endorsement is a critical factor in our ability to meet our shared goals for the watershed and the salmon.

Very truly yours,

Eileen Lipkin, Chair
Tryon Creek Watershed Council

Cc: Multnomah Co: Ramsey Weit, Andrea Jilovec
Clackamas Co: Judy Hammerstad, Chair, Board of Commissioners
Lake Oswego: Mayor Bill Klammer; Doug Schmitz, City Manager
Portland: Mayor Vera Katz; Commissioner Eric Sten
METRO: Jon Kvistad, Council President; Patricia McCaig, Councilor

Enc: History of the Tryon Creek Watershed Council

References:
Mike Houck, Audubon Society of Portland, 292-6855
Marc Smiley Organizational Development, 249-0000
Sylvia Bogert, Southwest Neighborhoods, Inc., 823-4592
Steve Fedje, Natural Resources Conservation Service, 231-2270
Keri Green, Mediator, (541) 488-1383

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project.

(d) The amount of funding that a local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933 can provide directly for a watershed enhancement project without prior approval of the board. [1987 c.734 §8; 1997 c.7 §9]

541.382 Water Resources Department to provide staff for board. The Water Resources Department shall provide staff for project oversight and the day-to-day operation of the Governor's Watershed Enhancement Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities. [Formerly 541.385]

541.384 Watershed management program; project funding; high priority watersheds. (1) The Governor's Watershed Enhancement Board shall initiate a watershed management program that relies on the establishment of voluntary local watershed councils comprised of residents, state and federal agency staff, members of federally recognized Indian tribes and other citizens interested in the management of watersheds and that provides for the development by these partnerships of local plans that may include but are not limited to the assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan. The program shall focus state resources on the achievement of sustainable watershed health, including funding major projects that contribute to the overall health of a watershed. In addition, the board shall fund smaller, voluntary projects for watershed enhancement and for restoration of riparian areas and associated uplands.

(2) In carrying out the program under subsection (1) of this section, the board may designate high priority watersheds. However, the designation of high priority watersheds is intended only as a management tool for state agencies in allocating resources to support coordinated watershed management activities. Such designation is not intended to establish or confer any right, duty or authority, nor to have any legal significance beyond that described in this section, nor to discourage or prohibit the formation and function of voluntary local watershed councils in other watersheds.

(3) The elected officials representing the appropriate local government groups containing or within a proposed watershed council area shall determine whether to participate in the voluntary formation of a local watershed council. When multiple local government groups are involved within an area that would be served by a watershed council, the affected local government groups shall together determine their respective roles and the appropriate method for appointing members to a local watershed council. [1993 c.601 §2; 1995 c.187 §6]

541.385 [1987 c.734 §4; renumbered 541.382 in 1995]

541.388 Voluntary local watershed councils. (1) Local government groups are encouraged to form voluntary local watershed councils in accordance with the guidelines set forth in subsection (2) of this section. The Governor's Watershed Enhancement Board may work cooperatively with any local watershed council that may be formed. Requests from local watershed councils for state assistance shall be evaluated on the basis of whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question.

(2) Local watershed councils formed under subsection (1) of this section shall consist of a majority of local residents, including local officials. A watershed council may be a new or existing organization as long as the council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation of a watershed action program. A local watershed council may include representatives of local government, representatives of nongovernment organizations and private citizens, including but not limited to:

(a) Representatives of local and regional boards, commissions, districts and agencies;

(b) Representatives of federally recognized Indian tribes;

(c) Public interest group representatives;

(d) Private landowners;

(e) Industry representatives;

(f) Members of academic, scientific and professional communities; and

(g) Representatives of state and federal agencies.

(3) If more than one watershed council exists in a county, each watershed council shall periodically report the activities of the council to the county governing body. [1993 c.601 §3; 1995 c.187 §7]

541.390 Duties of Natural Resources Division. In addition to the duties conferred on the Natural Resources Division under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

(1) In cooperation with the Governor's Watershed Enhancement Board, provide ap-

I HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Clerk of the Metro Council

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RECOGNIZING THE TRYON CREEK WATERSHED COUNCIL AS A WATERSHED COUNCIL THAT MEETS THE STATE OF OREGON GOVERNOR'S WATERSHED ENHANCEMENT BOARD (GWEB) GUIDELINES	)))))	RESOLUTION NO. 97-2457 Introduced by Mike Burton, Executive Officer

WHEREAS, Tryon Creek has been declared a water quality limited stream by the State of Oregon Department of Environmental Quality; and

WHEREAS, The Tryon Creek watershed lies within the jurisdictions of Multnomah and Clackamas counties, City of Portland, City of Lake Oswego, and Metro; and

WHEREAS, Public stewardship and public involvement are critical elements to protection and enhancement of water quality in the Tryon Creek watershed; and

WHEREAS, The Tryon Creek Watershed Council is a local, citizen-led organization, with a majority of local residents and local government representatives including the City of Portland, City of Lake Oswego, Tryon Creek State Park, Natural Resources Conservation Service and Metro; and

WHEREAS, The goals and objectives of the Tryon Creek Watershed Council are to assess watershed conditions, develop plans and projects to protect or improve watershed conditions, build public awareness of watershed functions and conditions, and to monitor the projects and conditions of the watershed; and

WHEREAS, The Tryon Creek Watershed Council meets GWEB and state statute guidelines for a voluntary local watershed council; and

WHEREAS, The Tryon Creek Watershed Council requests formal recognition by the Metro Council (Exhibit A); now, therefore,

BE IT RESOLVED

1.) That the Metro Council hereby recognizes the Tryon Creek Watershed Council as a watershed council that meets the guidelines of the Governor's Watershed Enhancement Board.

ADOPTED by the Metro Council on this 27th day of February 1997.

Jon Kvistad

Jon Kvistad, Presiding Officer

TOTAL P.01

35577

RESOLUTION NO.

Recognize the Tryon Creek Watershed Council as a watershed council that meets the intent of the State of Oregon Governor's Watershed Enhancement Board (GWEB) guidelines. (Resolution)

WHEREAS, The GWEB guidelines and state statute ORS 541.388 define voluntary local watershed councils as consisting "of a majority of local residents, including local officials".

WHEREAS, Tryon Creek has been declared a water quality limited stream by the State of Oregon Department of Environmental Quality.

WHEREAS, The Tryon Creek watershed lies within the jurisdictions of Multnomah and Clackamas Counties, the City of Lake Oswego, and City of Portland.

WHEREAS, The Tryon Creek Watershed Council is a local, citizen led organization, with a majority of local residents and representatives from local government including the City of Portland, City of Lake Oswego, Metro, Tryon Creek State Park, and the Natural Resources Conservation Service.

WHEREAS, The Tryon Creek Watershed Council meets the intent of GWEB and state statute guidelines for watershed councils.

WHEREAS, The Tryon Creek Watershed Council has requested formal recognition by the Portland City Council. (See Exhibit A, Memorandum from Tryon Creek Watershed Council, October 15, 1996).

WHEREAS, Formal recognition as a watershed council will enable the Tryon Creek Watershed Council to be eligible for GWEB grant funds to support council activities in assessing watershed conditions, developing action plans, implementing projects, and monitoring results.

WHEREAS, The goals and objectives of the Tryon Creek Watershed Council are to assess watershed conditions, develop plans and projects to protect or improve watershed conditions, educate people about watershed conditions and functions and to monitor projects and conditions of the watershed.

WHEREAS, Public stewardship and public involvement are critical elements in improving and protecting water quality in the Tryon Creek Watershed to meet the City of Portland's NPDES Stormwater permit requirements and the goals of the Clean River Program.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portland, Oregon, that the Tryon Creek Watershed Council is recognized by the City as a watershed council and meets the intent of state statute ORS 541.388(2).

ADOPTED by the Council,

DEC 11 1996

BARBARA CLARK

Auditor of the City of Portland
By Britta Olson Deputy

Commissioner Mike Lindberg
December 2, 1996
P. Mango

Tryon Creek Watershed Council

10750 SW Boones Ferry Road, Portland Oregon, 97219

ennifer Budhabhatti
Metro Regional Parks
nd Greenspaces

Steve Daneman
Citizen Member

Barbara Edwardson
Citizen Member

Amanda Fritz
Citizen Member

Brad Howe
Citizen Member

Sonya Kazen
Citizen Member

Loring Larsen
Tryon Creek State Park

Deborah Lev
City of Lake Oswego

Eileen Lipkin
Citizen Member, Chair

Tom McGuire
Portland Planning

Barbara Shearin
Citizen Member

Jim Sjulin
Portland Parks and
Recreation

Jonathan Snell
Citizen Member

Eric Strecker
Citizen Member

George Toepfer
Friends of Tryon Creek
State Park

Dawn Uchiyama
Citizen Member

Amin Wahab
Bureau of Environmental
Services

HISTORY OF THE TRYON CREEK WATERSHED COUNCIL

In the summer and fall of 1994, three citizens - Liz Callison, Amanda Fritz and Sonya Kazen - initiated the formation of the TCWC. We held public meetings, invited participation by both citizens and agency staff. The structure of the group consisted of a voluntary steering committee and open participation. Our primary goal, then and now, has been to address problems affecting the health of the watershed and provide an opportunity for all interested parties to work toward water quality preservation. Monthly meetings included educational presentations and discussion of issues and goals. Volunteer 'working groups' conducted stream monitoring, produced newsletters, and conducted restoration plantings, etc.

In the spring and summer of 1995, Donna Silverberg, of the State Dispute Resolution Service, provided independent facilitation for several visioning and problem-solving workshops for the steering committee. A difference of opinion regarding agency participation had already surfaced.

By the fall of 1995, it was apparent that the group was experiencing difficulties due to its lack of organizational structure or adopted decision-making process, and disagreement about the role that government agencies should have on the Council. The group agreed to woodshed, and spent six months going through an intensive organizational development process. The City of Portland provided funding for an independent consultant, Marc Smiley, who facilitated a series of open workshops/meetings.

In the Spring of 1996, after extensive public outreach, participation and a democratic voting process, the goal statement and formal structure of TCWC was adopted, The new structure included a more formal Council, with citizen-elected citizen and agency-appointed seats. However, meetings and participation continued to be open to all. Our goal was and remains to serve as a broad-based, citizen-led, collaborative forum for all stakeholders in the Tryon Creek watershed.

When the majority of citizens participating in this process voted to include agency representatives as full participating members on the council, two members of the steering committee ceased participation in the Tryon Creek Watershed Council. They subsequently started the Tryon Resource Management Partnership group. The Partnership sought and obtained recognition from Multnomah County as a watershed council just a few weeks after the formation of their group. Although preparing to seek endorsement once our formal structure was adopted, TCWC had not yet requested jurisdictional recognition. It is not clear whether Multnomah County was aware

that the Partnership was a different group than the Tryon Creek Watershed Council.

The TCWC, which holds public elections at open meetings at Tryon Creek State Park, subsequently sought and received recognition from Metro and from the City of Portland *(see attached Resolutions).*

From the outset, the Tryon Creek Watershed Council has outreached to the four local jurisdictions in the watershed - Portland, Lake Oswego, Clackamas County and Multnomah County - and Metro, our regional government for participation on the council. Unfortunately, due to limited staff resources, neither Clackamas nor Multnomah County have been able to fill seats on the Council. For similar reasons, other important agencies, such as the Multnomah Soil Conservation Service (now Natural Resource Conservation Service) and Oregon Fish and Wildlife have also declined Council membership, but have served as resources for various TCWC projects.

Beginning in September 1997, the Tryon Creek Watershed Council and the Partnership held several sessions with mediators Keri Green and Sid Lezack, who were funded by a GWEB grant. The objective of the mediation was to try to reach a negotiated merger. Although core differences were apparent, the groups agreed to a trial joint meeting. In November, an agenda was agreed upon. The groups were attempting to finalize a meeting date when the Partnership indicated that they did not want to proceed until after the Tryon Creek watershed 'Summit' meeting, to be held in March. Lake Oswego Councilor Bill Atherton had convened the Summit, for the purpose of bringing the jurisdictions to the table to discuss strategies for restoring Tryon Creek fish runs. The issue of the two councils was not on the agenda, although members of both the Tryon Creek Watershed Council and the Tryon Resource Management Partnership were in attendance. No resolution of the conflict between the two watershed groups or clear direction for future reconciliation efforts resulted from the Summit. Since that time, there have been no attempts by either group to schedule a joint meeting.

The current board members of the Tryon Creek Watershed Council are as listed to the left. New participants are always welcome, and we are actively recruiting members from under-represented stakeholder groups. One of the major successes of the TCWC thus far has been the good working relationship of the agency representatives and the citizens.

Our monthly meetings are open to the public and publicized in community newspapers such as the Southwest Connection, Lake Oswego Review and the Oregonian. Meetings are held the second Monday of each month from 7-9 p.m. in the Nature Center at Tryon Creek State Park.

We continue to have informational presentations on issues affecting the watershed, such as "Landslides: what causes them, and how you can prevent them from occurring on your property", and a presentation and discussion of siting options for a new South Willamette River Crossing. This March we co-

sponsored the first Tryon Creek Watershed Fair. We have spent considerable effort in the past 18 months developing recommendations regarding stormwater management for the City of Portland's Southwest Community Plan. Flyers for presentations and special events regularly go to our mailing list of over 300 interested persons. We have a homepage on the web @ http://members.aol.com /fritzamand/tcwc.htm.

TCWC believes the ideal solution is a pooling of the energies and talents of concerned citizens and government agency representatives. The apparent operation of two watershed councils in the Tryon Creek watershed has created difficulties in terms of public awareness, as well as an inability to obtain state funding through GWEB. The resources to support watershed council efforts in our small watershed are too scarce to be spread thin by redundancy. The TCWC acknowledges that other watershed groups can make valuable contributions to the health and protection of the watershed, and we are available to support their missions when appropriate.

Full recognition of the Tryon Creek Watershed Council by all by all jurisdictions in the watershed, make it probable that adequate funding can be obtained to carry out our programs. Our ability to serve as a focal point between the community, government and other non-profit environmental groups who have an interest in the watershed will be increased. Tryon Creek Watershed Council is a resource that can be utilized and enhanced to further our shared goals of watershed health and salmon recovery. We believe that the Tryon Creek Watershed is an urban watershed with immense potential.

Written by the Tryon Creek Watershed Council

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of Supporting, Convening and Designating the Tryon Resource Management Partnership, a Watershed Council	))))	RESOLUTION 96-78

WHEREAS the need to protect the urban watershed is of paramount importance

WHEREAS the formation of a watershed council by the Board of County Commissioners is a necessary condition for receipt of grants for Watershed improvement projects from the Governor's Watershed Enhancement Board (GWEB)

WHEREAS ORS 541 authorizes the county to convene and designate a watershed council

WHEREAS the purpose of the watershed council is to address the goal of sustaining natural resource and watershed protection and enhancement within a watershed

WHEREAS the appointment of a Tryon Resource Management Partnership, a Watershed Council may achieve this goal by:

a. Providing a forum regarding matters of watershed health; to foster public understanding, education and involvement regarding such matters;

b. Fostering coordination of public, private and volunteer activities affecting watershed health, and

c. Encouraging communication and cooperation among all interests within Tryon Creek relating to water and watershed health issues.

NOW, THEREFORE BE IT RESOLVED, that pursuant to the provisions of ORS 541, the Multnomah County Board of Commissioners convenes and designates the Tryon Resource Management Partnership, a Watershed Council.

IT IS FURTHER RESOLVED, that this Resolution is conditional on formation of the council, provided they are in compliance with GWEB requirements.

ADOPTED this 2nd day of May, 1996.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By _____
John Thomas, Senior Assistant Counsel

MEETING DATE: AUG 27 1998
AGENDA NO: R-5
ESTIMATED START TIME: 10:05

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Pay adjustments for "PERS Pick-Up" of Temporary Employees

BOARD BRIEFING: DATE REQUESTED: 8/27/98
REQUESTED BY: Debra Larson, Classification/ Compensation & Rudy Williams, ES Manager
AMOUNT OF TIME NEEDED: minutes

REGULAR MEETING: DATE REQUESTED: 8/27/98

AMOUNT OF TIME NEEDED: minutes

DEPARTMENT: Support Services DIVISION: Employee Services

CONTACT: Debra Larson TELEPHONE #: 248-5015 X24827
BLDG/ROOM #: 106

PERSON(S) MAKING PRESENTATION: Debra Larson and Mindy Harris

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

Pay adjustments for "PERS Pick-Up" of Temporary Employees

8/27/98 COPIES TO DEBRA LARSON & MINDY HARRIS

BOARD OF COUNTY COMMISSIONERS
98 AUG 19 PM 12:12
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:
(OR)
DEPARTMENT MANAGER: Vickie L. Gates

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES	(503) 248-5015	(503) 248-5170 TDD
FINANCE	(503) 248-3312	
LABOR RELATIONS	(503) 248-5135	
PLANNING & BUDGET	(503) 248-3883	
RISK MANAGEMENT	(503) 248-3797	
PURCHASING, CONTRACTS & CENTRAL STORES	(503) 248-5111	

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97293

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

M E M O R A N D U M

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Vickie Gates, Director, DSS

DATE: August 19, 1998

REQUESTED PLACEMENT DATE: August 27, 1998

RE: A resolution affecting pay ranges and PERS pick-up for temporary employees.

I. Recommendation/Action Requested: Adoption of Resolution.

II. Background/Analysis: On July 9, 1998 the Board voted to return to the County "pick-up" of the employee PERS contribution for exempt employees. The Board decided that the pay rates of all exempt employees (who are PERS members on September 1, 1998) would be reduced by formula (multiply salary by .9434) which results in a neutral effect on exempt employees' gross pay, including PERS "pick-up." An identical provision is provided for in the current contract with AFSCME, Local 88. However, the temporary employees who are PERS members are not covered by either the AFSCME contract or the exempt employees' resolution #98-94. This needs to be addressed before the implementation of the September 1, 1998 return to PERS "pick-up."

Effective September 1, 1998 the County again "picks up" the employee PERS contribution of temporary employees. The pay rates of the temporary employees, who are PERS members on that date, are multiplied by .9434 to make this provision have a neutral impact on temporary employee's total compensation. This adjustment keeps treatment of all employees, including temporary employees, equal with regard to both wages and the PERS retirement plan.

III. Financial Impact: The financial impact of the general pay increase is detailed in the attached memo from the Budget Division.

IV. Legal Issues: The return to the employer "pick-up" of PERS is permitted as the result of an Oregon Supreme Court decision that a ballot measure prohibiting such arrangements was not constitutional.

V. Controversial Issues: None.

VI. Link to Current County Policies: Multnomah County Code 9.202 (A) provides that compensation plan revisions shall be subject to approval of the Board if costs of the revision exceed department or County budgets.

VII. Citizen Participation: None.

VIII. Other Government Participation: None.

MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

BUDGET & QUALITY OFFICE
PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Debra Larson

FROM: Ching Hay, Budget *CH*

DATE: August 21, 1998

SUBJECT: FICA Savings Per Employee

The FICA savings from FICA tax on employee contributions for PERS average $172 per employee.

		Amount
FY 1996-97 PERS covered payroll	$	154,149,000
Employee 6% Contribution	$	9,248,940
FICA tax on employee contribution	$	707,544
Number of Employees	$	4,119
Average FICA Savings per Employee	$	172

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

RESOLUTION No. 98-120

Pay Rates and PERS Pick-Up for Temporary Employees

The Board of County Commissioners Finds:

a. Multnomah County employs a variety of individuals who work in a temporary capacity as needed by departments to carryout short-term projects or to replace other employees working as "on call" staff. They are not covered by any collective bargaining agreement; however, the pay of temporary employees is set by using existing County Compensation Plan salaries which are approved by the Board.

b. The Personnel Officer is responsible for developing and recommending compensation plan adjustments by the Board of Commissioners.

c. Temporary employees serve a critical need for temporary and substitute workers. It is the desire of the County to treat all employees in a like manner.

The Board of County Commissioners Resolves:

1. This resolution will amend Resolution 98-94 to provide equitable treatment for temporary and on-call employees who are PERS members.

2. Consistent with pay practices for exempt and nonexempt employees, effective September 1, 1998, the pay rates of temporary and on-call employees, who are PERS members, shall be multiplied by .9434 in conjunction with the return to the employer "pick-up" of employee contributions to PERS as provided in ORS 237.075. This shall not include temporary or "on-call" employees who are covered by a collective bargaining agreement, unless the agreement so provides.

3. Effective September 1, 1998, the County shall "pick-up" the employee contribution to PERS as permitted by ORS 237.205 for temporary and on-call employees who are not covered by a collective bargaining agreement.

4. If for any reason should the ORS 237.205 "pick-up" no longer be legally available, the County shall on the last payroll period of the legal availability of the "pick-up" increase temporary employee pay rates by six percent (6.0%) and return to the limited "pick-up" provided for prior to September 1, 1998.

Adopted this 27th day of August, 1998.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair

REVIEWED:
THOMAS SPONSLER, COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OREGON

_____
Thomas Sponsler, County Counsel

p:pers/BrdReso#98-.doc

MEETING DATE: AUG 27 1998
AGENDA NO: R-6
ESTIMATED START TIME: 10:10

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Notice of Intent to Apply for Traffic Safety Grant

BOARD BRIEFING: DATE REQUESTED:
REQUESTED BY:
AMOUNT OF TIME NEEDED:

REGULAR MEETING: DATE REQUESTED: August ~~18~~ 27, 1998

AMOUNT OF TIME NEEDED: 5 minutes

DEPARTMENT: Community Justice DIVISION: Adult Communtiy Justice

CONTACT: Cary Harkaway TELEPHONE #: 248-3039
BLDG/ROOM #: 161/600

PERSON(S) MAKING PRESENTATION: Cary Harkaway

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

Notice of Intent to Apply for Traffic Safety Grant

BOARD OF COUNTY COMMISSIONERS
98 AUG -7 PM 2:47
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:
(OR)
DEPARTMENT
MANAGER:

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY OREGON

JUVENILE AND ADULT COMMUNITY JUSTICE
ADULT COMMUNITY JUSTICE
ELYSE CLAWSON, DIRECTOR
421 S.W. 5TH, SUITE 600
PORTLAND, OREGON 97204
(503) 248-3701 FAX (503) 248-3990

BEVERLY STEIN
COUNTY CHAIR

SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Cary Harkaway, Community Justice Administrator

DATE: August 6, 1998

RE: Notice of Intent to Apply for Traffic Safety Grant

---

1. Recommendation/Action Requested

   The Department recommends approval of our Notice of Intent to apply to the Oregon Department of Transportation for a Traffic Safety Grant.

2. Background/Analysis

   The Adult Community Justice DUII Unit includes four Probation Officers who supervise approximately 250 chronic DUII offenders. Their target population is offenders with three or more DUII convictions in the last ten years. This is a very difficult population. About 50% of the offenders successfully complete their probation. Case management standards require offenders to attend a Victim's Panel, undergo alcohol and drug assessment, and participate in recommended treatment. Probation Officers conduct surveillance of offender residences and vehicles to assure compliance with Court-imposed restrictions. In consultation with the Courts and the District Attorney's Office, and in recognition of funding constraints, we have opted to focus our resources on the chronic DUII offender.

   This proposal addresses a significant problem in the monitoring of approximately 800 DUII offenders sentenced each year to Bench probation (supervised by the Judge) rather than formal probation (supervised by this Department). When an offender is placed on Bench probation there is no monitoring of EPR (a component of LEDS, which notifies Probation Officers when any law enforcement agency has any contact with a probation client). An EPR "hit" could inform the Probation Officer of an arrest or a situation or behavior that did not result in an arrest, but that could be considered a violation of DUII probation. Examples are drinking or driving. However, because there is no staff to monitor Bench Probation cases, these issues are not brought to the attention of the original judge for a violation hearing. The

result is diminished system integrity and increased risk to public safety by offenders who are not complying with drinking and driving restrictions.

This grant will add two Corrections Technicians to monitor EPR hits and send police reports and other documentation to the Courts for appropriate action. It is supported by our new Trial Court Administrator, our Chief Criminal Judge, and our District Attorney. We are planning to collect a $10 monitoring fee (using our probation fee collection system).

3. Fiscal Impact

   The grant will cover the personnel, computers, phones, and office supplies. The grant does NOT cover County indirect costs, estimated at $4,441.

4. Legal Issues

   There are no legal issues related to entering Bench probation cases in the LEDS/EPR system and reporting EPR "hits" to the Court. The planned fee collection was discussed with Dave Warren (Budget & Planning) and with Jackie Weber (County Counsel). No problems were noted.

5. Controversial Issues

   The Department does not supervise Bench probation cases. Our staffing patterns and budget were developed based on priorities for supervision determined in collaboration with our partners in the justice system. We are willing to assist the Court and the DA's Office with this population because grant funds will support the administrative function of monitoring law enforcement contacts. We will consider continuing this service beyond the grant if it meets its objectives and fee collections are sufficient to support the program.

6. Link to Current County Policies.

   This program is consistent with interagency efforts to reduce drunk driving. That objective is shared by Community and Family Services, MCSO, the DA's Office, and this Department.

7. Citizen Participation

   If our proposal is successful, we will brief the County's DUII Advisory Committee.

8. Other Government Participation

   This proposal was developed in consultation with the DA's Office and the Circuit Court.

MEETING DATE: AUG 27 1998
AGENDA NO.: R-7
ESTIMATED START TIME: 10:15

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: NOI- RESPOND TO NIDA PROPOSAL REQUEST FOR FUNDING

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: AUGUST 27, 1998
AMOUNT OF TIME NEEDED: 5 to 10 MINUTES

DEPARTMENT: HEALTH DIVISION: PLANNING & DEVELOPMENT UNIT
CONTACT: MIKE STARK TELEPHONE#: 731-4291 x544
BLDG/ROOM#: 125/550

PERSON(S)MAKING PRESENTATION: MIKE STARK

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [X] APPROVAL [ ] OTHER

SUGGESTED AGENDA TITLE:

Notice of Intent to respond to request for proposals from the National Institutes of Health, Community Research Branch for funds for behavioral research study targeted at reducing HIV transmission risks and domestic violence among female offenders.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Or

DEPARTMENT MANAGER: Bill Odegaard

98 AUG 19 PM 12:13
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

MULTNOMAH COUNTY OREGON

HEALTH DEPARTMENT
BUSINESS SERVICES DIVISION
426 SW STARK ST., 7TH FLOOR
PORTLAND, OREGON 97204
(503) 248-3056
FAX (503) 248-3015

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

MEMORANDUM

TO: Beverly Stein, Chair
Board of County Commissioners

FROM: Denise Chuckovich, Manager,
Planning and Development Office

VIA: Billi Odegaard, Director
Multnomah County Health Department

DATE: August 19, 1998

RE: Notice of Intent to Respond to Request for Proposal for experimental study targeted at reducing HIV transmission and domestic violence among female offenders.

REQUESTED PLACEMENT DATE: Thursday, August 27, 1998

I. Recommendation/Action Requested:

The Multnomah County Health Department is requesting approval to submit a proposal to the National Institute on Drug Abuse (NIDA), Community Research Branch, to fund an experimental intervention to reduce the risk of HIV transmission and domestic violence among female offenders.

II. Background/Analysis:

The National Institute of Drug Abuse, of the National Institutes of Health, has announce a program of funding available in the area of Women's HIV Risk and Protective Behaviors. The purpose of the program includes the support of behavioral research on women's HIV risk and/or protective behaviors combined with community-level intervention strategies aimed at preventing HIV/AIDS in women whose drug and sex practices put them at high risk of HIV infection. The National Institute of Drug Abuse is specifically seeking gender-specific behavior change interventions.

Multnomah County Health Department wants to propose a study targeted at female offenders who will be recruited through existing HIV test sites that are run by Multnomah County Health Department, and located at the Multnomah County Department of Corrections. It is known that female offenders often engage in drug and sex practices that put them at risk for HIV infection. In addition, it is known that many female offenders have also had experiences of domestic violence. The study we propose will be a field experiment of an intervention to reduce female offenders' HIV-related risk behavior and exposures to domestic violence.

The study will take place over a five-year period including an initial development year, a three-year period of recruitment and data collection, and a final year of data analysis and writing. **All participants** will receive HIV testing at the time they are enrolled into the study and again ten months later at their last study follow-up point. They will complete face-to-face assessment interviews measuring their drug-related behaviors, sexual risk behaviors, and experiences of domestic violence, psychological well being, and sense of psychological control and self-efficacy in their relationships. In addition, participants will be randomly assigned to one of three study conditions. **Participants in the first study condition, the control group,** will receive the standard of care (referrals) for any conditions warranting referral which are identified through the assessment process. **Women in the second condition** will receive a three-month, intensive HIV prevention intervention including both case management and intervention for behavior change. The behavior change component will include a face-to-face interview with our interventionist during which our interventionist will assess the participants' HIV risk experiences and activities, will give feedback to the participant concerning her apparent level of risk, and will proceed with a motivational interview for behavior change. The motivational interview will emphasize the importance of self-direction for behavior change, will express empathy for the difficulty of instituting behavior change, will indicate that a range of behavioral strategies can be implemented for self-protection, and will evoke a specific behavioral plan for the participant to follow in the ensuing time period. The behavioral plan will be reviewed at the start of the next behavior change intervention session. **Women in the third study condition** will receive the same three-month intervention as women in the second condition, with the additional component of assessment and intervention in the area of prevention of victimization due to domestic violence. **All participants** will complete assessment interviews at the conclusion of the intervention period (or the would-be intervention period in the case of the control group), again at a three-month follow-up point, and again at a six-month follow-up point.

III. Financial Impact:

The Health Department anticipates requesting approximately $450,000 from the NIDA per year for the study period of five years. We expect to receive no other project funding.

IV. Legal Issues:

We foresee none.

V. Controversial Issues:

This project involves interviews on the topics of sexual behaviors, drug-related behaviors, alcohol use and HIV disease. As is the case any time such topics are addressed, there is the potential that some citizens might object to the topics of the study.

This project will encourage those study participants who are using injection drugs to use clean hypodermic needles when they do so. Some community members might object to this approach.

One aspect of the project has the goal of helping women in domestic violence situations to lessen their exposure to violence. Because every violent act has a perpetrator, it is possible that some perpetrators of domestic violence will object to our intervention. It is clear that we will need to work well with the Portland Police Bureau and with other agencies for the benefit of our project participant.

Some persons might object that due to random assignment, it is only members of study group three who receive the full intervention. Without this component of the design, however, this experiment could not be conducted at all, in which case none of the participants would receive intervention benefits. In addition, all study participants will receive a minimum of the standard of care for relevant matters which might be identified in the course of assessment (for example, if a participant says that she needs STD testing, our interviewer will refer her to the county STD clinic). If the study were not taking place, these referrals would not be made.

VI. Link to Current County Policies:

The proposed project is consistent with current county policies, and addresses the public health problem of increasing rates of HIV infection among drug-affected women.

VII. Citizen Participation:

The project staff will form an Advisory Panel of professional's expert in the areas of domestic violence, the needs of women in the corrections system, and the needs of women at risk for HIV. The panel will inform the development of our intervention during year one of the study.

VIII. Other Government Participation:

The Oregon Health Division will be a partner in the evaluation of the project.

Meeting Date: JUL 14 1998 JUL 30 1998 8-9
Agenda No: R-7
Est. Start Time: 9:30 10:40

AUG 13 1998 AUG 27 1998
R-5 R-8
9:50 10:20

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: A **DeNovo Hearing** before the Board of County Commissioners regarding the Hearings Officer's decision on **CU 4-98 & HV 7-98.**

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

REGULAR MEETING Date Requested: July 14, 1998
Amt. of Time Needed: 1 hour

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

PERSON(S) MAKING PRESENTATION: Chuck Beasley / Liz Fancher

ACTION REQUESTED

[ ] Informational Only [ ] Policy Direction [x] Approval [ ] Other

SUGGESTED AGENDA TITLE

DeNovo Hearing before the Board of County Commissioners regarding an appeal of the Hearings Officer's decision **approving** CU 4-98 & HV 7-98 with modifications to condition number 3 to require the applicant to comply with private road standards of MCC 11.15.2074 (D).

8/28/98 Copies to Stuart Farmer & Jeff Litwak

SIGNATURES REQUIRED

Elected Official: _____

or

Department Manager: KB Lauck E. Nicholas

98 JUL -8 PM 2:51
MULTNOMAH COUNTY
OREGON
BOARD OF COUNTY COMMISSIONERS

MULTNOMAH COUNTY

BOARD HEARING OF July 14, 1998

TIME 9:30am

CASE NAME: Andre Protassy

NUMBER: CU 4-98, HV 7-98

Action Requested of Board

- ☐ Affirm Hearings Officer Dec.
- ☐ Hearing/Rehearing

Scope of Review

- ☐ On the record
- ☒ De Novo
- ☐ New information allowed

1. **Applicant Name/Address**

   Andre Protassy
   12120 SW Boones Ferry Rd.
   Portland, OR 97219

   Owner:
   Andre Protassy

2. **Action Requested by Applicant:** Conditional Use approval to modify a condition of approval imposed in case number CU 12-96, which approved a new dwelling in the Commercial Forest Use (CFU) district. The condition requires compliance with the private road standards of the CFU, which include a 20' wide improved road width and other standards. The applicant is also requesting immediate Building Permit approval. The variance request is to allow the minimum road width of 20' to be reduced to 16.'

3. **Planning Staff Recommendation**

   Approve in part, the Conditional Use request CU 4-98. The request is for modification of Conditions of Approval for CU 12-96 which require that the applicant demonstrate compliance with the private road standards of MCC 11.15.2074(D), and to direct or require staff to approve the Building Permit immediately. Approval of his variance request, HV 7-98, and subsequent construction of the road to the revised road width, will satisfy MCC .2074(2) and (7). If the variance is approved, staff recommends approval of the request to modify condition #3 of CU 12-96 accordingly. Staff recommends against approval of the Building Permit until the approved road is either in place, or until assurance of timely construction is made.

   The staff recommendation to the Hearings Officer was to approve an alternative variance. The applicant's requested variance is to reduce the private road width requirement of .2074(D)(2) from 20' to 16'. The applicant did not demonstrate that a practical difficulty exists for the first approximately 170' of road, therefore staff recommended approval of an alternative variance. This variance would allow the improved road width to be reduced to 16' and would require improvement of one 40' long section to the full 20' width to provide a turnout as required in .2074(D).

4. **Hearings Officer Decision**

   The Hearings Officer modified Condition of Approval #3 of CU 12-96 to require that the applicant comply with the private road construction standards of MCC 11.15.2074(D), except as modified by the approved variance.

The Hearings Officer denied the requested road width reduction for the first 170' of roadway, and approved a variance to reduce the width for the remainder of the road from 20' to 18'. A condition is imposed that requires that the applicant obtain a Grading and Erosion Control permit for the road work and drainage improvements.

5. If recommendation and decision are different, why?

The staff recommendation and Hearings Officer decision are essentially the same for the Conditional Use request. The Hearings Officer found that she does not have the authority under the code to direct staff to approve the Building Permit.

The Hearings Officer agreed with staff that the applicant did not demonstrate justification of a variance for the east 170' of the roadway. The Hearings Officer found that the applicant should build the rest of the road to the maximum width possible in order to protect public safety, and that since the existing utility poles along the north side of the road would need to be moved to construct the requested 16' wide road, that the road should be widened further. The Hearings Officer decision to widen the road beyond the staff recommendation is based on new information submitted at the hearing.

ISSUES

(who raised them?)

6. The following issues were raised:

Staff accepted the applicant's argument that the walnut trees on the south side of the road, and the utility poles on the north side of the road, could be found to be a "practical difficulty" as required for consideration of a variance. The trees did not exist along the first 184' of the road when application was made, therefore staff found that a variance was not justified along that portion of the road. The applicant submitted evidence during the hearings process which showed that the utility poles along the north side would need to be moved in order to widen the road to the requested 16' width. Therefore, there is no practical difficulty to widening the road on the north to the widest allowed within the 30' easement.

The applicant raised an issue that since the road had been approved for a reduction in width from 20' to 16' in a past land use action, and since the road has not been built, he should not be required to meet the ordinance requirements applicable to his application. The Hearings Officer found that the earlier reduction in road width was for a different applicant, was to a different legal standard, and does not in any way justify a variance to the CFU zone standard that applies here

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

No.

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
1. Practical Difficulty (need for variance)	**MCC .8505(A): The Approval Authority may authorize a variance from the requirements of this chapter only when there are practical difficulties in the application of the Chapter.**	Hearings Officer/ Staff. Requires a finding that a practical difficulty exists to constructing the road to the full 20' width required by the ordinance.	The applicant cited mature walnut trees along south side of road and utility poles on north side of road were the practical difficulties claimed by the applicant. Mature walnut trees and poles do not exist along the first 170' of the road, the small trees planted along the road in April of 1998 are a self-created hardship and could have (and still can) be planted elsewhere, therefore, no practical difficulty was shown for this area. The poles on north side need to be moved to construct the 16' wide road which is the width asked for in the variance.	Agrees with Hearings Officer.	Adopt Hearings Officer decision.

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
2. Road width reduction already approved for Camp Angelos, Protassy should not be required to meet.	**MCC .2074(D): A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:** **(2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway.**	Applicant	Variance from one legal standard does not, in any way, justify a variance from another legal standard.	Agrees with Hearings Officer. The camp received a road width reduction to the 20' width required by the Off-Street Parking standard of MCC .6128 in October of 1993, to implement a CS use approved in March, 1992. The CFU road standards became effective for applications received 30 days after Dec. 8, 1992, when the standards were adopted. The road width standards of the CFU zone were not applied to the Design Review decision for the camp because the use decision was made in March 1992, prior to the effective date of the new standards.	Adopt Hearings Officer decision.

ISSUE	CODE REQUIREMENT	WHO RAISED ISSUE?	HEARINGS OFFICER DECISION	STAFF CONCERNS/ COMMENTS	RECOMMENDATION
3. The road has already been approved as is by fire district	Same as in 2. above.	Applicant	Response received from District in response to applicant's dwelling does not explain why a private roadway that does not meet the CFU code requirements listed on the comment sheet, carries out the safety concerns that the standards were adopted to address.	Agrees with Hearings Officer. The road width standards adopted by the County in late 1992 are the same as the standards recommended by the Oregon Department of Forestry in the statewide publication "Fire Safety Design Standards for Roads." As county code requirements, the adopted standards are legal standards. HB 3508 specifies that when a local government adopts road width standards, those standards supersede standards in the fire code. In this case, the county standard for road width is the same as the state fire code for roads which access three or more dwellings e.g. 20'.	Adopt Hearings Officer decision.

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

11# 530.00
ZONING 530.00
TOTAL 530.00
0000-001 6/19/98
8221 DERRIC11:12AM

NOTICE OF REVIEW

1. Name: PROTASSY (*Last*), _____ (*Middle*), Andre (*First*)
2. Address: 12120 SW Boones Ferry (*Street or Box*), Rd. Portland (*City*), OR. 97219 (*State and Zip Code*)
3. Telephone: (503) 245 - 5569
4. If serving as a representative of other persons, list their names and addresses:

5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?
   Hearings Officer Decision
   CU 4-98 and HV 7-98
6. The decision was announced by the Hearing Officer on June 7, 19 98
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
   As an owner of 32152 SE Stevens Road
   TL 44 of Section 8, T1S, R4E

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

Grounds will be presented before or at the hearing

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [ ] On the Record plus Additional Testimony and Evidence

(c) [X] *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*.**

Grounds will be presented before or at the hearing

Misrepresentation, misleading, violating my civil rights. Using personal reasons from staff to deny most of the things I applied for.

Signed: [signature] Date: June 19, 1998

For Staff Use Only

Fee:

Notice of Review = ~~$500.00~~ 530.00

Received by: _____ Date: _____ Case No. _____

Friday, June 19, 1998

Grounds For Reversal of Decision:

The decision is unconstitutional, depriving me of protections and of rights that are granted to others. Making me build a road bigger than the one the County already approved creates an unnecessary impact. The findings are insufficient to support the decision because they failed to indicate the basis for the decision. The decision is not supported by substantial evidence in the whole record. The decision is flawed by procedural errors that prejudice my substantial rights. The decision improperly construes the applicable law ORS 197835.

The requirement for the road ignored evidence that creation of the road would cost hardship on me. It is unnecessary to meet fire and police standards and is in violation of conservation and environmental protection policies.

It is my contention that the Hearings Officer decision should be reversed because the Hearings Officer exceeded her jurisdiction by imposing staff personal rather than legal standards in her analysis. The Hearings Officer decision is not based upon substantial evidence in the record.

The locations and width of the road were suggested by County staff, but no evidence is in the record that they are superior to or even equivalent to the one chosen by me, the applicant.

As the Hearings Officer recognized the road used to access my dwelling continues beyond the subject parcel of the property. There is substantial and un rebutted evidence in the record that the road will exist regardless of the future use of the site for my dwelling.

Respectfully,

Andre Protassy

RECEIVED
98 JUN 19 PM 3:32
MULTNOMAH COUNTY
PLANNING SECTION

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

MEMORANDUM

To: Board of County Commissioners

From: Chuck Beasley

Date: July 7, 1998

Re: Timeline of Protassy Zoning Violation Resolution

Below is a timeline of events which relate to processing of the permits needed to resolve this zoning violation. This is included because of the extended time we have been working to help Mr. Protassy meet the legal requirements for the dwelling constructed without permits.

Conditional Use CU 12-96, Major Variance HV 18-96, Significant Environmental Concern SEC 27-96

11/2/95 Notice of Zoning Violation

5/6/96 Pre-Application conference to legalize dwelling (held by Barry Manning). Pre-app submitted 4/17/96.

11/12/96 Application materials received for CU 12-96, HV 18-96, and SEC 27-96. The CU is for the forest dwelling, the HV for a major variance to front and side yard setbacks, the SEC is the general Sandy River application.

12/9/96 Notice of incomplete application mailed.

4/18/97 Submittal by applicant of a portion of the requested information.

4/24/97 Second incomplete letter mailed.

5/12/97 Second submittal by applicant.

6/22/97 Notification to applicant that application is complete as of 5/12/97.

7/16/97 First Hearings Officer hearing. Staff recommends denial on all three applications, primarily because the applicant did not demonstrate compliance with one or more

approval criteria. Applicant requests and is granted 7 days to submit additional evidence.

7/18/97 Statement from Hearings Officer including her list of information lacking in the application and includes questions the applicant needs to answer.

7/22/97 Letter from Paul Norr, waiving the 120 days, requesting that the Hearings Officer hold the record open until 9/24/97 in order to submitt additional evidence in support of the application.

7/28/97 Hearings Officer grants request to extended period for open record.

9/24/97 Supplement to the record received from Paul Norr. (Record closed 10/1/97)

11/18/97 Hearings Officer decision signed. (Decision mailed to parties on 11/21/97.)

12/4/97 Decision approved on Consent Calendar by BOC.

Design Review DR 14-97

12/26/97 Application materials received for Design Review.

1/7/98 Notification of incomplete application letter mailed.

1/9/98 Follow up incomplete letter, confirmation that road does not meet improvement standards of MCC .2074(D).

1/13/98 Submittal by applicant, agrees to widen road 4' on his (south) side. This is the same side on which the trees are located.

1/26/98 Submittal by applicant, includes revised section pertaining to road and omits the agreement to widen the road.

1/30/98 Notice of complete application after receipt of Geotech report. States that needed road improvements do not have to be addressed again in Design Review application, states that road improvements need to be done prior to county approval of the Building Permit. Advises that if additional time is needed to complete the road, and/or if he wants to apply for a variance to the road width standard, he should immediately apply for a Modification of Condition and Variance. Letter warns that if he fails to comply with the conditions and timelines of the CU it will void.

2/10/98 Design Review application approved.

Conditional Use CU 4-98, Variance HV 7-98

4/9/98 Initial submittal by applicant for Modification of Condition CU 4-98 and HV 7-98.

4/15/98 Incomplete letter. Needs to address quasi-judicial policies. Hearing is scheduled for 5/6/98.

4/21/98 Submittal by applicant of a portion of the requested information.

4/27/98 Submittal by applicant of balance of requested information.

5/6/98 Hearing. Staff recommends alternate variance. New information regarding location of the utility poles in relation to the existing easement and mature Walnut trees, and information that new trees have been planted along the east 170' of roadway, is placed into the record by the applicant. The record held open until May 22, 1998 to allow applicant additional time to submit testimony and argument.

6/7/98 Decision signed by Hearings Officer. Appeal period ends June 22, 1998.

6/19/98 Notice of Review filed and fee paid.

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

To: Multnomah County Board of Commissioners

From: Chuck Beasley CB

Date: July 7, 1998

Re: Cu 4-98 and HV 7-98 Addition to Record

Attached are three documents for the record of this case. The first is a summary of the decision and comments from the Hearings Officer. This is a concise description of the case and the legal basis for the decision, and also contains her thoughts about some of the issues raised in Mr. Protassy's Notice of Review.

The second is a letter from the applicant dated January 13, 1998, which was submitted in response to correspondence from staff on the administrative Design Review application DR 14-97. Staff had sent Mr. Protassy a letter stating that the road did not meet the road width standards of MCC .2074(D)(2) as required in the Conditional Use approval CU 12-96. The attached letter applies to this case in that the last sentence contains a statement that he will widen the road 4' on his side (the south side) in order to meet the applicable standard. In a subsequent submittal, Mr. Protassy omits the promise to widen the road, and staff included the later letter in the record of DR 14-97. This letter was not before the Hearings Officer in the current case, CU 4-98 and HV 7-98.

The third document is a letter dated July 6, 1997, to Mr. Protassy, informing him that the time allowed for him to meet the conditions of approval of CU 4-98 has elapsed, but that we are offering another opportunity for him to comply. The letter lays our three steps he can take in order to keep his Conditional Use permit valid, and to resolve his zoning violation.

RECEIVED
JUL 6 1998
BY:

BEFORE THE BOARD OF COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

Case File:	Conditional Use CU 4-98 Minor Variance HV 7-98
Matter:	Appeal of partial approval of CU 4-98 and HV 7-98 re road width standards of the CFU zone
Location:	32152 SE Stevens Road
Property Description:	TL '44' of Section 8, T1S, R4E
Zoning:	CFU, Commercial Forest Use SEC, Significant Environmental Concern
Applicant/Owner:	Andre Protassy
Hearings Officer:	Liz Fancher

SUMMARY OF HEARINGS OFFICER'S DECISION AND COMMENTS

Construction of Dwelling without Permits

The Protassy residence was damaged by fire many years ago. More than one year following the date of the fire, Mr. Protassy built a new home on his property without receiving building permit, septic permit or land use permit approval.

Conditional Use Approval

In 1996, the County required Mr. Protassy to seek conditional use approval for a dwelling in a forest zone for his illegally constructed dwelling. The east side of the Protassy property adjoins the end of Stevens Road. The home is located on the west side of the Protassy property and is reached by driving a distance of more than 500'over a private road. In the conditional use application, Mr. Protassy stated that the private road was 20' wide and, therefore, met CFU zone standards that require a 20' wide road for the Protassy property.

The Hearings Officer approved Mr. Protassy's conditional use permit in 1997 subject to proof of compliance with the road standards of the CFU zone, including the 20' wide roadway requirement. Mr. Protassy did not appeal the Hearings Officer's decision and that decision became final.

Compliance Problems

Following conditional use approval, it was determined that the private roadway that serves the Protassy residence does not meet County road standards as it is only 10' to 14' wide. As a result, Mr. Protassy filed for approval of a modification of the Hearings Officer's 1997 decision and for approval of a variance to allow use of 16' wide, rather than a 20' wide road.

Grounds for Variance & Modification Requests

The main grounds claimed to support the variance and modification were:

(1) It is not possible to widen the road to the south of its present location without harming existing, mature walnut trees; and

(2) It is not possible to widen the road to the north because power line poles exist within a short distance of the northern edge of the private road.

Legal Criteria

A variance may be approved **only if** the applicant demonstrates that "practical difficulties" exist in the application of the zoning ordinance. Approval of the variance may not be materially detrimental to the public welfare or injurious to area property.

Hearings Officer Action

The Hearings Officer denied the variance request for the first 170' of roadway, as measured from the terminus of Stevens Road, as no mature walnut trees or telephone poles exist in this section of roadway. As a result, no practical difficulty exists to warrant a variance. The Hearings Officer approved a variance to 18' in width for the remainder of the roadway, however, in order to protect the mature walnut trees from damage due to road construction.

Reasons for Hearings Officer's Decision

A 20' wide road was required for the first 170' of the Protassy private road because no practical difficulties (mature trees or telephone poles) were found to exist in this section of roadway. Mr. Protassy planted new trees close to the south side of roadway in April 1998, after the filing of the variance application. The trees were planted to replace mature trees that died or were cut down a number of years ago. The April 1998 planting effort appears to have been designed to create a difficulty to justify this variance. Such a self-created difficulty is not a valid legal reason to grant a variance. Further, the trees are very small and it appears that it may be possible to move the trees to another location or to replace the trees with other trees in another, more appropriate location.

An 18' road width was required for the rest of the roadway (near the mature trees and telephone poles) because this is the narrowest width that was justified by the evidence in the record. The evidence is that the telephone poles will be moved in the near future, thereby allowing Mr. Protassy to improve his road to the north of the centerline. Evidence in the record shows that, without the telephone poles in the easement area, it is possible to build a road 21' in width without expanding the road toward the walnut trees on the south side of the road. The Hearings Officer determined that a 3' wide strip of land would be needed within the easement area for the relocated telephone poles. This strip will provide a small buffer area between the poles and the roadway. These facts established a practical difficulty that justified a variance to 18 feet, not the 16 feet requested by Mr. Protassy.

New Evidence and Due Process

Camp Angelos, another user of the private road in question in this appeal, is required by a prior County land use approval to widen the Protassy roadway to 16 feet in width. The camp submitted evidence to the County that showed that the camp plans to and will need to move the telephone poles in order to widen the Protassy roadway. This new fact had a significant bearing on the question of practical difficulty. Upon learning this new fact, the Hearings Officer extended the post-comment period in order to allow all parties, particularly Mr. Protassy, to respond to the evidence.

Protassy Grounds for Appeal

Mr. Protassy appears to be raising a challenge to the road improvement requirement and the Hearing Officer's decision based upon the Dolan decision. No challenge of the road improvement requirement imposed by the conditional use approval was raised in the conditional use approval process. No such challenge was raised during the variance proceedings until the filing of this appeal.

The Dolan case requires the County to show, by individualized factual findings, that any property dedication or public improvement requirement in a land use decision be "roughly proportional" to the impact of the development being permitted. The time to have made such findings, however, was during the conditional use approval process. At that time, the County could have assured safe ingress and egress to the Protassy home without any claim of unconstitutional exactions, by requiring Mr. Protassy to place his home in the eastern area of his property, near the end of Stevens Road. This location met the conditional use approval criteria for a dwelling, as did the site approved by the Hearings Officer (assuming that the roadway was actually 20' in width).

During the conditional use permit review, however, Mr. Protassy strongly resisted all County requests that the Protassy home be moved to the eastern end of the property. Mr. Protassy argued to retain his home in its current location because he did not want to move the illegally constructed home. The Hearings Officer allowed Mr. Protassy to retain the current home site, rather than move the home to the eastern side of the Protassy property based upon the understanding that the private roadway was 20' in width and would

provide safe access to the Protassy residence for fire vehicles in compliance with the County ordinance. This was a particular concern because of the fact that the house adjoins a steep, heavily wooded area and is uphill from a heavily used camp. It is clear now, however, that the private roadway is too narrow to meet County fire safety standards. If this fact had been known during the conditional use permit review, the Hearings Officer would have required Mr. Protassy to place his home on the eastern area of his property where fire safety could be assured without imposing any type of road improvement requirement.

As mentioned earlier, a prior land use decision requires Camp Angelos to improve the private roadway to 16' in width for the entire length of the road. This means that it is highly unlikely that Mr. Protassy will pay for the full cost of the roadway improvements required by the decision.

The Hearings Officer's decision was based upon the facts of the case, not upon "personal" reasons from staff. Mr. Protassy's evidence was reviewed closely, however, it is obvious from photographic evidence in the record that Mr. Protassy's oral testimony regarding damage to his walnut trees was inaccurate.

The primary reasons that Mr. Protassy did not receive the variance approval he requested are:

(1) No practical difficulty exists to support approval of a variance for the first 170' of the road; and

(2) One of the two practical difficulties that may have justified a 16' wide road, the telephone poles, will be moved by Camp Angelos in the near future; and

(3) Mr. Protassy failed to provide evidence to establish that a full 5' area is needed between the roadway and the edge of the roadway easement (the width that must be justified to warrant a 16' roadway width).

Mr. Protassy's notice of appeal makes it clear that Mr. Protassy believes that it is his role to choose the correct road width for the private roadway. The road width standard has been set by County ordinance and may be changed only to the extent necessary to alleviate proven hardship. In this case, that proof was not provided.

Protassy Intentions re Road Improvements

At the land use hearing, Mr. Protassy stated his legal theory that if a 16' wide road is approved by the County to serve the Protassy residence that Camp Angelos, and not Andre Protassy, will be required to improve the private road. The Hearings Officer advised Mr. Protassy that Protassy is not relieved from any obligation to improve the road just because Camp Angeles is responsible for roadway improvements. The fact that Camp Angelos must also improve the road, however, means that users of the road should be able to agree to share the costs of improving this road to County standards.

RECEIVED
98 JAN 15 PM 12:40
MULTNOMAH COUNTY
PLANNING SECTION

Tuesday, January 13, 1998

Multnomah County Planning Division
2115 SE Morrison St.
Portland, OR 97214

Attention: Chuck Beasley, planner

RE: Design Review Request DR 14-97 at 32152 SE Stevens Road

Dear Mr. Beasley:

From your letters dated January 7, 1998 and January 9, 1998, I see once again that some kind of misunderstanding has occurred. Again, I will try in detail to satisfy all the criteria in question.

(1) MCC.7850 (A) (6) Surface Drainage-Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets
and
(2) MCC 11.15.6420 (J) : Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restrictions on timing of soil disturbing activities.
Which is condition number five of CU 12-96.

In the decision of the hearings officer under MCC 11.15.6420 (J) **Staff indicated that there are no areas of erosion observed on the property.** Further down, the hearing's officer indicates, **"Exempt activities, however, need not to be addressed in the plan."**

In the **Chapter 9.40. Grading and Erosion Control Code** under **9.40.020** are clearly indicated all **Exempt land Uses and Activities.** Which I all, under **(B) General Exemptions** meet.

(1) Natural and finished slopes will be less than 25 percent.
I have less than eight percent.

(2) The disturbed or filled area is 20,000 square feet or less.
There is no disturbed or filled area, and the property I am building on is less than 8,000 square feet.

(3) The volume of soil or earth materials to be stored is fifty cubic yards or less.
No earth materials have been moved whatsoever.

(4) Rain water run off is diverted either during or after construction, from an area smaller than 10,000 square feet.
The area is smaller than 8,000 square feet.

(5) Impervious services, if any, of less than 10,000 square feet are to be created.
There are no impervious services at the building site.

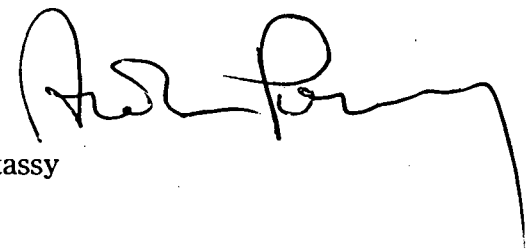
(6) No drainage way is to be blocked or have its storm water carrying capacities or characteristics modified.
No drain way was blocked. The storm water carrying capacities were there for more than thirty years (On the old house). The new structure is sitting on the exact same place and the drainage 4" pipes are carrying the roof water in the exact same direction as the old ones did. The only difference is that I replaced and improved the old material with new one.

Notwithstanding MCC 9.40.020 (A) (B) (1) through (6) the following activities took and will take place in order to minimize soil erosion and protect neighboring properties. Adequately designed and sized septic system was designed and approved by a sanitarian, which also will be approved by the City of Portland Authorities. The system existed for more than thirty years, and for better service was replaced with a new system in 1989. The system was put on the exact same place where the old one was. Talking to the previous owner, no erosions whatsoever were noticed on the entire property, especially on the west property line. No erosions whatsoever were observed also since I bought the property in 1987. All natural drainage on the property flows to the south and into the Sandy river. Considering that no excavation, earth movement, vegetation removal, and altering of a drainage course took place, the criteria have been met. Regardless of all the above, for more safety, to protect my property and structures and to control erosion, I will direct the 4" pipes to the south on my property so that the water going through will drain into the natural surface drainage and into the Sandy river. Most of the water is going to drain into the soil after a bed of drainage rock will be installed. The density of the trees and the rocky soil did not allow any erosions in the past but to ensure even more protection, I will plant even more trees to perfectly satisfy the criterion so that the whole system will not adversely affect the neighboring properties.

(3) MCC 2074 (D) (2) and (4)
and Conditions of Approval 3. A and D. of CU 12-96 in relation with MCC 7850 (A) (2) and (5).

The private road which serves Protassy's property, the Camp, and the neighbor to the north is in existence for more than forty years. More than twenty years ago, easement was granted to the Camp and the road was maintained by the Camp. I bought the property under this condition, and signed a statement with which I accepted the condition. It seems to me that after more than forty years of service I solely have to take responsibilities for maintenance of the road. MCC 2074 (D) is there for cases where no roads and driveways exist and the standards you provide are for a building of a new road. I am confused some how because the road existed for so long time and was accepted by the authorities like Fire Marshal, Police department, and others. It did not bother anyone, and was good enough to serve the three properties. Considering that very often there are passing by vehicles like dump trucks, buses, logging trucks, and long and wide load vehicles. In addition of some times hundreds of cars and buses going to the Camp. I and my neighbor to the north have one or two cars, which are going in and out maybe once or twice a day. I still don't get it and am curious where does it say that a private road which serves three different properties has to be maintained only by one of the owners. Is that a privilege to only two property owners? How do I have to feel?-Discriminated? Despite the facts above, I am willing to maintain vertical clearance of 13' and 6" starting immediately after the weather makes it possible for me. In addition to that, I will widen the road on my side with four feet to meet the applicable standards.

Sincerely,



Andre Protassy

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

July 6, 1998

Andre Protassy
12120 SW Boones Ferry Rd.
Portland, OR 97219

Subject: Non-Compliance with Condition of Approval #6. of CU 12-96, to Legalize the Dwelling Currently Under Construction, Extension of Time to Meet Condition.

Dear Mr. Protassy:

This letter is to inform you that you have not satisfied the above cited Condition of Approval within the six month time specified in the final decision in Conditional Use approval CU 12-96. The terms of that decision state that if the time frames are not strictly complied with, "this permit shall expire and be of no further legal validity and the residence shall be removed from the subject property by the applicant." You were advised by staff to include a request for additional time to meet the condition along with your Modification of Condition request in CU 4-98, however you did not make the request. Nevertheless, in recognition of your application to resolve the road width improvement requirement, and due to our interests of trying to resolve this zoning violation as quickly as possible and to avoid processing a new dwelling application, we are extending your time for compliance with Condition of Approval #6 as specified in this letter.

Condition of Approval #6 of CU 12-96 allowed six months for you to obtain a Building Permit for the dwelling under construction on your property. During the process of verification of compliance with the private road construction standards in order to meet Condition of Approval #3 of CU 12-96, staff found that the road does not meet the 20' width standard. Your requests for Modification of Condition and Variance have been approved for a road width reduction to 18' for a portion of the road. We have already advised you that we will give zoning authorization of the Building Permit when either the road is constructed as required, or when we receive surety sufficient to ensure that the road improvements will be built. In order to avoid enforcement action, you must :

1. Meet the requirements for a complete Grading and Erosion Control (GEC) permit application for construction of the necessary road improvements within 60 days of the final decision from the Board of Commissioners in CU 4-98. The GEC application shall include a road design consistent with MCC 11.15.2074(D) except as modified by the variance, and include utility relocation and drainage facilities. A registered professional engineer shall complete the design work. In addition, the GEC application shall include a proposed timeline for completing the work.

2. Within 45 days of completion of the GEC application, provide a surety bond or other surety agreeable to the County, for 100% of the cost of the constructed improvements. The value must be based on an estimate by a registered professional engineer or actual bid for construction by an experienced road construction contractor. Land Use Planning with the assistance of the Transportation Division will review the proposed cost of the road for accuracy.

3. Within 45 days of providing the surety, you must obtain a building permit from the City of Gresham Building Department after zoning sign-off by Multnomah County Planning. Due diligence in completing the dwelling shall be shown by keeping the building permit valid and having regular and necessary inspections to complete the dwelling.

This letter is our final notification to you of the measures you must take to maintain the dwelling approval CU 12-96 in effect. Failure to comply with the measures specified herein will result in our referral of your case to County Counsel for prompt enforcement action.

Sincerely,
Multnomah County Transportation and Land Use Planning Division

Kathy Busse SF

Kathy Busse
Planning Director

cc: Jeff Litwak, Assistant County Counsel

William C Cox, Attorney at Law
0244 SW California St.
Portland, OR 97219

Gary P. Shepherd, Attorney at Law
3115 SE Salmon St.
Portland, OR 97214

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

Decision of Hearings Officer

Case File: Conditional Use CU 4-98
Minor Variance HV 7-98

Proposed Action and Use: CU 4-98 is a request for modification of a condition of approval imposed in case number CU 12-96, which approved a new dwelling in the Commercial Forest Use (CFU) district. The condition requires compliance with the private road standards of the CFU, which include a 20' wide access road and other standards. The applicant is also requesting immediate Building Permit approval. The variance request is to allow the minimum road width of 20' to be reduced to 16'.

Location: 32152 SE Stevens Road

Property Description: TL '44' of Section 8, T1S, R4E

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

Applicant/Owner: Andre Protassy
12120 SW Boones Ferry Road
Portland, OR 97219

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PLANNING SECTION

Decision:

The Hearings Officer denies the variance request for the first 170' of roadway (as measured from the terminus of Stevens Road, east of the Protassy property).

The Hearings Officer approves the variance request for the remainder of the roadway at a width of 18 feet, except that the roadway shall be tapered from the 20' width at the 170' point from the end of Steven Road down to a width of 18 feet, according to County specifications.

The variance is granted upon the express condition that the Applicant obtain a Grading and Erosion Control permit from the County for all required road work and related drainage improvements prior to commencing roadway improvements.

The Hearings Officer modifies Condition of Approval 3 of CU-12-96 to require that the Applicant comply with the requirements of MCC 11.15.2074(D), except as varied by this variance application.

Applications:

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96 which requires that the applicant demonstrate compliance with the private road standards of MCC 11.15.2074(D). MCC 11.15.2074(D) requires Mr. Protassy to widen the existing private roadway to the Protassy residence to a minimum width of 20 feet, to provide a vehicle turnaround and a vehicle turnout. Mr. Protassy proposes to improve the road to a width of sixteen rather than twenty feet. As the road improvement standards included in the conditional use application mirror mandatory County code road requirements, a variance is needed to authorize the requested modification of the conditional use permit.

Mr. Protassy's land use application includes a request that the Hearings Officer direct Multnomah County Planning staff to sign a Building Permit application for the Protassy residence immediately. Mr. Protassy does not identify any provision in the County Code to support this request. Further, the Hearings Officer's authority is strictly limited by law and does not include the authority to direct County staff to take any type of action regarding building permits.

Procedural Matters

A hearing was held on the variance and conditional use applications on May 6, 1998. The record of the application was held open until May 13, 1998 for additional evidence. The Hearings Officer also gave the parties until May 16, 1998 to request an opportunity to respond to new evidence. During the comment period new evidence was received regarding the need to remove the telephone poles in question in this matter to construct a 16' wide road. The Hearings Officer extended the comment period until May 22, 1998 in order to allow the applicant to respond to this new information. On May 21, 1998 the applicant submitted additional information responding to the telephone pole issue.

Decision Format

This decision addresses two requested actions, a request for modification of the Hearings Officer decision, and a Minor Variance. The Applicant's narrative or response to an approval criterion is indicated by the notation "Applicant." Planning staff comments and analysis follow the Applicant's responses to the criteria. Additional planning staff comments are added where supplemental information is needed or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff concurs with the applicant. The Hearings Officer's comments follow staff remarks. A lack of any findings indicates that the Hearings Officer concurs with applicant and staff comments. Where staff comments differ from the applicant's comments, those of staff shall serve as the controlling findings, unless the Hearings Officer's findings indicate

otherwise.

FINDINGS:

Case History: The applicant's requests follow approval of his forest dwelling application, CU 12-96, in December of 1997, and approval of his Design Review permit DR 14-97 in February of 1998. These cases were and are intended to resolve a zoning violation that entails construction of a dwelling by the applicant without required permits. Inspection of the property for DR 14-97 revealed that a substantial portion of the private easement road is approximately 12' wide, does not meet the 20' width standard of the Commercial Forest Use district, and is therefore not in compliance with CU 12-96.

The record of CU 12-96 includes a written statement from Mr. Protassy that his private road access was 20-feet wide. This statement was provided in order to demonstrate compliance with MCC 11.15.2074(D)(2). This statement is clearly wrong. The road is, *according to Mr. Protassy's current evidence*, a single lane road that is approximately 10 to 12 feet in width. Mr. Protassy claims that his misstatement in CU-12-96 was made because "I assumed that the road, since it has been used for so long, is legal and never bothered to measure it." Whether the road was or was not legal was not question asked in CU-12-96. The question asked was whether the road was 20-feet wide. That question was answered as follows: "The width of the road is at least 20 feet wide . . ." The Hearings Officer finds that Mr. Protassy's prior statement could not reasonably be confused with a statement regarding the legality of the road. Further, a review of the photographs of the roadway and of a car parked in the roadway make it obvious that the existing road is not 20-feet wide. As a result, the Hearings Officer concludes that, at a minimum, Mr. Protassy's prior statement exhibited a complete lack of concern for providing this hearings body with accurate evidence.

Other factual inaccuracies occur throughout Mr. Protassy's testimony, most notably, his statement that the trees that he replaced in April 1998 were lost in an ice storm in the winter of 1997. Photographs from CU-12-96 show that most of the walnut trees that Mr. Protassy claims were lost in the winter of 1997 were not present on the Protassy property in November of 1996. Mr. Protassy offers excuses for his inaccurate testimony, claiming that he was not referring to the loss of all of the trees but it is clear from the photographs that almost all of the walnut trees in question were missing from the Protassy property prior to November 16, 1996.

The fact that Mr. Protassy has provided such inaccurate testimony in this and the earlier conditional use proceeding casts a long shadow on the reliability of the remainder of Mr. Protassy's evidence. As a result, the Hearings Officer has carefully reviewed all of the evidence to determine whether Mr. Protassy has met his burden of proof in the variance and modification proceeding. The burden of proving this case rests on Mr. Protassy's shoulders. Without competent evidence, the requested variance and modification cannot be approved.

A 16' road width for the private road was approved in a Design Review permit for the adjacent Camp Angelos, in October of 1993. Camp Angeles has failed to improve the road to the approved 16' width. The County is currently proceeding to require Camp Angeles to comply with the road improvement requirements of its Design Review approval. The County's approval of a variance for this road in that case was made under different approval criteria and is not binding upon the County in this proceeding. Further, the hearings officer is not authorized to rely upon the fact that such a variance was approved to justify the approval of the requested variance to the road standards of the CFU zone. Approval must be granted based upon facts included in the record of this case and upon the law that relates to the approval of the Protassy dwelling.

The applicant requested immediate zoning sign-off of a Building Permit application in order to obtain the confirmation of compliance with building code requirements needed to meet Condition of Approval #6 of CU 12-96. This condition must be satisfied by June 14, 1998, which is six months from December 14, 1997, the date the decision was final. As discussed above, the Hearings Officer lacks the authority to direct the County to take administrative actions to order County staff to sign a building permit application. As such, this request is denied.

Description of Site and Vicinity: The access road is described in the applicant's Exhibits A. and B., which are contained in casefile Exhibit A1.

Notification and Public Participation: Notice of the hearing Scheduled for May 6, 1998 and applicable criteria was sent to 15 neighboring property owners, interested parties, and agencies on April 15, 1998. A copy of the notice is included as Exhibit "B1" of this report.

Requested Actions

1. CU 4-98, Request for Modification of Hearings Officer Decision

Applicant:

This request is for:

(a) Modification of condition #3D on a prior Hearings Officer decision from CU 12-96, HV 18-96, and SEC 27-96.
(b) Immediate permit for sign off from Planning Commission in order to obtain Building permit which is going to satisfy condition #6 of the Hearing's Officer decision from CU 12-96, HV 18-96, and SEC 27-96.

Submitted here with are the following exhibits:
Exhibit A- Site Plan
Exhibit B- Photographs
Exhibit C- letter from Halstead's Arborculture Consultants

Exhibit D- Signed statement from Thomas Layton (Fire Chief), Multnomah County Fire District #14.
Exhibit E- Signed statement from Dennis Bryson (Fire Chief), Multnomah County RFPD #14.
Exhibit F- Site Map.
Exhibit G- Robert E. Meyer Consultants Inc. Statement.
Exhibit H- CS 4-92 #574- #583-B from March 2, 1992.
Exhibit I- Administrative decision on an application for Hillside development permit and final design review plan. File numbers DR 17-93; HDP 21-93.
Exhibit J- Staff Report for Public hearing on August 3, 1994, HV 12-94 (Variance).
Exhibit K- Decision of the Hearings Officer HV 12-94.
Exhibit L- Variance request from Spencer H. Vail, Planning Consultant.

The Site: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens Road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

History: The private road has been serving more or less, three sites for more than thirty years. This road came to the attention of the Planning Commission on March 2. 1992, when a decision was made and approved for community serving expansion CS 4-92 #574/#583-B. Condition # 1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot 44, immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens Road Right-of-way.

On August 3, 1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve foot wide access is satisfactory to the Fire District.

On August 24, 1994, variance HV 12-94 was approved by the Hearings officer. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision. The fact that the road between Camp Angelos property and West end of Stevens road was inspected, accepted

and approved from Portland Planning Division, its staff and Hearings officer creates a confusing situation. I do not know why a road which was serving the area for many years and was approved by the County and Planning Commission for certain reasons, has to be approved twice or for the same reasons again. If the road was accepted and approved by the Planning Commission, it means that the road is legal and that is why I am asking the Hearings Officer to exclude or modify #3 D from the conditions of approval in CU 12-96.

Regardless of all the facts above, the access private road can not be widened without of causing tremendous hardship to tax lot 44 and all the adjoining properties for the following reasons:

(1) Widening the road is going to kill the ten forty years old walnut trees which are part of my farming. It was already mentioned from the Planning Commission as a condition #1 from March 2, 1992 decision CS 4-92, #574/#583-B and Halstead's Arboriculture Consultant's report from March 16, 1998.

(2) Widening the road will cause removal and replacement of all electrical polls and cable along the entire private road. The electrical polls sitting almost in the middle of the road will be unsafe for the drivers and causing eventual accidents. Especially dangerous will be for the school district buses full of children driving very often in dozens into the camp. That also will cost unnecessary and expensive work for PGE and Paramount Cable to remove all the electrical polls.

(3) Widening the road on the south will cause removing and replacing of the entire telephone line along the private road, which will also be expensive work for the telephone company.

(4) Widening the road (because of the slope) is going to carry twice the amount of water all the way down to the camp property and will cost tremendous erosion and eventual take the entire hill side down. This is regardless if ditches are built on the side of the road or not. It happened some time in the past, and widening the road will double the danger of land slide and erosion.

Staff Comment: The applicant notes under "The Site" above that the road is of varying widths and has two turn arounds. Staff is unable to find a description of the varying widths expressed in feet in the application. Only one turn around is indicated on Exhibit A1. A. It is not clear that the turn around meets the 48' radius turn-around requirement in MCC .2074(D)(7). A diagram of turn around types is included in Exhibit C4, and are referenced in the 6/5/96 fire district sign-off in Exhibit A3.

Staff notes that two statements above made by the applicant are not accurate. The applicant's statement that staff found the road to be 16' wide, and that the road was accepted and approved as it is, are not consistent with the record. These statements are addressed in the staff comments beginning on page 8. of this report.

The applicant questions why, since the road in question has already been approved for a reduced width, must he also request a variance. The portion of the access road from Stevens Road to the Camp Angelos property received a Minor Exception to the access road width requirement of the Off-Street Parking Standards. In order for the applicant to meet the code requirements for a dwelling in the CFU district, he must demonstrate compliance with the code requirements of that section, including the road standards of .2074(D). Conditions of approval were imposed to ensure compliance with these code requirements.

Hearings Officer: The standards of the CFU zone are different from the off-street parking standards considered in the Camp Angeles approval. The approval of the variance of one legal standard does not, in any way, justify the variance of the different legal standard of the CFU district. The CFU zone variance must rise or fall upon its own merits.

Applicant:
(b) In the decision of the Hearings officer CU 12-96, HV 18-96, and SEC 27-96, condition #6 cannot be satisfied without sign off from the Planning Commission, which has been refused to me. The condition has to be satisfied no later than six months from the date that approval has taken place. The dwelling is 90% finished and is sitting in this condition since 1992. I have suffered great loss of materials, furniture, tools and instruments because I do not have heat inside of the dwelling and the moisture destroyed and continues to destroy my belongings. That is why I seek immediate sign off from the Planning Commission in order to obtain building permit and satisfy all the building requirements of the Uniform building code, including the satisfaction of condition #6 of the Hearings officer decision from CU 12-96, SEC 27-96, and HV 18-96.

Staff Comment: In his application for a new dwelling under CU 12-96, the applicant stated that the road meets all of the standards of .2074(D), including that it is 20' wide. The County is holding a special hearing on May 6, 1998, in order to expedite processing of the variance request, notwithstanding that the road improvement standards could have been addressed at the July 16, 1997 hearing.

Staff believes that any needed road improvements should be constructed prior to building permit approval in order to ensure safe access to structures which are under construction, and after completion. This is also cited as an Oregon Uniform Fire Code requirement on the Multnomah County fire district response form in Exhibit A3.

Hearings Officer: The Hearings Officer lacks the authority to direct staff to "sign-off" the building permit application sought by Mr. Protassy.

<u>MCC .2074 - Development Standards for Dwellings and Structures:</u> Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

* * *

MCC .2074 (D) **A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

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

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

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

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

(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;
- **(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
- **(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

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

(7) Provide for the safe and convenient passage of vehicles by the placement of:
- **(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
- **(b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

MODIFICATION OF CONDITIONAL USE CONCLUSION:

Staff:

1. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98. Staff recommends approval of a modified variance which would reduce the road width requirement which must be met to satisfy Condition of Approval #3. A. and D.
2. Approval of request (b), building permit approval prior to construction of the required improvements is not found to be consistent with the purpose of the code because no assurance is provided that the road will be constructed. Staff recommends denial of this part of the request.

2. Minor Variance Request HV 7-98:

Applicant:
THE SITE: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

Hearings Officer: The applicant has demonstrated that there is one loop road near the end of Stevens Road. A large portion of the loop road, however, is located on land that is not owned by Mr. Protassy and that is located outside of the 30' easement area provided for the private road. In order to qualify as the turnaround required by MCC .2074 and the Hearings Officer's conditional use approval, Mr. Protassy must provide proof of his right to use this turnaround in order to satisfy the conditions of approval of CU-12-96. This issue is not before the Hearings Officer for decision in this case. These comments are offered, however, as *dicta*, in an attempt to help Mr. Protassy understand the requirements of the approved conditional use permit.

HISTORY: The private road has been serving more or less, three sites for more than thirty years. The road came to the attention of the Planning Commission on March 2, 1992, when a decision was made and approved for the community serving expansion CS 4-92 #574/#583-B. Condition #1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot @ immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens road Right-of-way.

On August 3,1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve-foot wide access is satisfactory to the Fire District.

On August 24, 1994, the Hearings Officer approved variance HV 12-94. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision.

The road between Camp Angeles property and west end of Stevens road was inspected, accepted, and approved from Portland Planning Division as a 16 feet wide access private road.

Staff Comment: The statement above which states; "Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director" appears to be in error in part. On page 7 of the staff report for HV 12-94 (see Exhibit A1. K.) the statement that the roadway is 16 feet or wider is the applicant's response, not staff's.

The applicant has submitted a letter from Fire District Chief Tom Layton, dated 4/20/98, which verifies that the easement road was considered and approved as adequate both for access to the applicant's property and for Camp Angelos. This letter and attached fire district responses are included in Exhibit A3. The attached responses include the June 5, 1996 letter from Chief Thomas Layton, and the August 17, 1993 letter from Chief Dennis Bryson. The letter from Chief Layton is in response to the request from Mr. Protassy, in connection with his dwelling request (CU 12-96). The response from Chief Bryson is apparently in response to a request from Camp Angelos in connection with the 1993 Design Review and Hillside Development Permits (DR 17-93 and HDP 21-93). Staff is unsure what this latter response means for the entire access road, extending from the end of Stevens Road to the camp facilities, for two reasons. The 8/17/93 response carries a notation by the Chief Bryson that the access road will serve two parcels of property. If the four tax lots owned by the camp are considered as one parcel, the access road served three parcels at the time, Mr. Protassy's parcel, the adjacent parcel to the north, Tax Lot '49', and the camp. Second, the staff comment on page 7 of HV 12-94 (see Exhibit A1. K.) relates that in a telephone conversation with Chief Bryson, he indicated that a 12' wide access road "on one section of the road was adequate for emergency vehicle access."

The statement above which states; "The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property." appears to be in error in part. The Hearings Officer decision in HV 12-94 (see Exhibit A1. K.) does not "accept" or "approve" any portion of the access road. The decision clearly states on the first page that it is for one 250' section, cites the already approved reduction from 20' to 16' (DR 17-93 decision), and states in the staff comment on page 9 that improvements are required to other portions of the road outside of the 250' being considered for the variance.

Staff does not understand the last statement above because the Portland Planning Bureau has no review authority for implementation of land use decisions in unincorporated Multnomah County.

Hearings Officer:

The statement from Chief Tom Layton of the Multnomah County Rural Fire Protection District dated April 20, 1998 discusses the Protassy driveway and private driveway but

fails to explain why the District determined that a private roadway that does not meet the fire protection standards of the CFU zone that are plainly listed on the County's Fire Service comment sheet is adequate. The roadway width requirements were imposed by the County to satisfy fire safety concerns of area fire districts and departments. At a minimum, the Hearings Officer needs to know why this very narrow road will provide safe access to three properties, one of which is a very intensive use of land in a very isolated and vulnerable location. At the present roadway width, it is clear that residents and camp visitors fleeing a fire would prevent fire vehicles from driving down the private road. How this can be a safe situation is unclear from the evidence in this case.

MCC 11.15.8505 Variance Approval Criteria

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).

Staff: This provision defines the circumstances under which a variance can be considered, and distinguishes between approval criteria for major and minor variances. A finding needs to be made that a practical difficulty to implementation of the 20' road width requirement exists for the application. The applicant makes three general arguments that there are practical difficulties in the application of the 20' road width requirement. These include potential damage to his walnut trees, re-locating existing utilities, and increased stormwater runoff and landslide hazard. See the numbered points under section 1. of this report. The statement of erosion effects or instability caused by road widening is unsubstantiated in the application.

The applicant has submitted a map to show the relationship between the easement road and the utility poles on the north side and the trees on the south side. Based on this map, the walnut trees start 184' from the end of Stevens Road, and the utility poles start 204' from the end. The practical difficulty described by the applicant begins at the point where widening of the road would begin to impact the trees on the south side of the road. Staff estimates that this would be approximately 170' from the end of Stevens Road.

A Minor Variance is defined as one that is within 25% of an applicable dimensional requirement. The dimensional requirement which is the subject of the variance is the CFU Development Standard in MCC 11.15.2074(D)(2), which requires an all-weather surface of at least 20 feet in width for a private road. The applicant is requesting a 4 foot variance for a reduction of 20% of the standard.

Hearings Officer: Mr. Protassy planted walnut trees in April 1998, long after approval of CU-12-96. Mr. Protassy claims that the locations he chose for these new trees must be protected from encroachment by any roadway improvements. These trees could have been planted elsewhere on the Protassy property where they would have not been effected by the road widening required by CU-12-96. As such, the location of the

newly planted trees is a self-created difficulty that, as a legal matter, does not warrant approval of a variance.

The evidence in the record indicates that the telephone poles located to the north of the private roadway will need to be moved by Camp Angeles when the camp widens the road to 16' in order to comply with its land use approvals. As a result, the current location of these poles is no longer a justification for this variance. Evidence from County staff reveals that a 21' wide road could be built if the existing road was widened to the north only. Mr. Protassy states that the existing telephone poles are two feet north of the easement area. As the poles in question have a diameter of less than one foot, a total of 3' feet may be required for the poles and a buffer area between the poles and the roadway. This means that Mr. Protassy should be able to widen the private roadway to a width of 18' without harming his walnut trees. This evidence does not, however, justify a variance to the 16' width sought by Mr. Protassy.

Mr. Protassy's evidence does not explain why it is not possible to construct storm drains and other drainage facilities to handle run-off from the private roadway. This may or may not require more than 3' of easement area. As the burden of proof is on the applicant in this proceeding and the hearings officer cannot go outside of the record of this matter to find this information. Without this information, the hearings officer may not justify a variance to a 16' wide road standard (from the 18' justified by the need to place telephone poles in the easement area and to avoid paving on the tree side of the roadway). The hearing officer she would like to approve a variance that will allow the roadway, drainage facilities and telephone poles to be constructed within the easement area without causing harm to the mature walnut trees. Hopefully, the 18' roadway width will allow Mr. Protassy to achieve this result.

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

Applicant: As mentioned above, the access private road is an existing road which has been serving Tax Lot 44 and the adjoining properties for more than thirty years. The owners of the adjoining properties have not expressed any concerns about this matter, and have signed a property owner consent of variance request. Approval of the Variance will only affect the subject property, and this proposal would not impede nor impact any of the neighboring practices. As for adversely affecting the development of adjoining properties, the adjoining properties are already developed and have been served by the same road. Also, as stated above, the Fire District has approved twice the 12 foot width as adequate for emergency vehicles.

Staff: The public welfare in this case is safe access and adequate fire access. The 20' road width requirement allows for two way traffic for emergency and private vehicles. Jerry Renfro, Tualatin Valley Fire and Rescue, confirmed in telephone conversation with staff that the 20' road width requirement is intended to allow two way access for

emergency vehicles. The proposed 16' wide road would allow a narrow two lane access for cars, but would not allow two emergency vehicles or a truck and an emergency vehicle to pass. Staff notes that the road development standard in the CFU zone in MCC .2074(D)(7) requires turnarounds or turnouts at intervals of less than 500 feet in order to provide safe and convenient passage of vehicles. The applicant has not shown that a turn around or turnout which meets the requirement of .2074(D)(7) exists within the first 400' or 500' from the end of Stevens Rd. The legal rights to the turn around shown on the applicant's Exhibit A1. A. are uncertain. If the turn around is not within a dedicated easement, then there is no assurance it will remain available because current or future property owners could restrict access.

As noted in the findings under (A) above, the applicant has not demonstrated a practical difficulty to meeting the 20' road width standard for the first approximately 170' from the end of Stevens Road. Improvement of the road to the full width for the first 170' would reduce the substandard road length to the end of the last utility pole to 386'. See Exhibit A5. Widening of the road to 16', plus improvement of a turnout in the middle of the section to 20' X 40' as provided in .2074(D)(7)(b), would meet that standard and substantially increase areas suitable for fire equipment and other vehicles to pass.

The two other adjoining properties are owned by the neighbor to the north, and by the American Hellenic Education Association. The CFU zoning on the property to the north limits that property to one dwelling. The Camp Angelos property received an initial Community Service Use approval in 1986, and approval for expansion in 1992. Future development requests by the Camp will be required to meet the access road requirements of the CFU district in MCC .2074(D), the minimum access road requirements in the Off-Street Parking ordinance .6128(A), and the Framework Plan Policy 31: Community Facilities and Uses.

Hearings Officer: Evidence received after the staff report was written show that the private road may be widened to a width of 18 feet because the telephone poles located to the north of the roadway will be need to be moved for construction of a 16' wide road and there is adequate room for such a road and the telephone poles within the existing easement area, without widening the road to the south toward the walnut trees.

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

Applicant: No use is being permitted that is not allowed either outright or through a conditional use permit. The approval of the Variance request, therefore, will not provide for the establishment of a use not listed in the underlining zone. Previous approvals from the County for the single family dwelling on Lot 44 have been based partially on Findings that the use was consistent with the comprehensive plan. Approval of this Variance concerning roadway width will not jeopardize compliance with the plan.

Staff: Staff agrees that approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

VARIANCE CONCLUSIONS:

1. Staff concludes that the applicant has not demonstrated that practical difficulties exist on the approximately 170' road segment beginning at Stevens Road. Since this threshold requirement for consideration of a variance has not been shown to have been met by the applicant, staff recommends that this area be excluded from consideration of the road width variance.

2. The requested variance reduces the road function from a two lane road suitable to all vehicles, to a narrow two lane road for cars. The applicant has not shown that no material detriment to the public welfare would occur if the variance is approved. In addition, the turn around and/or turn out standard of MCC .2074(D)(7) has not been shown to have been met. Staff feels that a conclusion of compliance with variance approval criterion #3. can be made if turnouts which meet the .2074(D)(7)(b) standard are provided. This would require improving one 40' long section in the middle of the 386' long variance area to the full 20' width.

Hearings Officer: The Hearings Officer concurs with staff's conclusion that the applicant has failed to demonstrate that a variance is justified for the eastern portion of the private roadway. The Hearings Officer also finds that, due to the fact that the telephone poles will be need to be moved to create a 16' wide road, that the road should be built to the maximum width possible in order to protect public safety. Although the evidence in the record is scanty, it appears that an area of approximately three feet is needed between the edge of the roadway and the northern boundary of the easement for power poles and buffer area. This 3 feet wide area will also allow some room for drainage facilities. Whether it is sufficient is unknown as the applicant has failed to provide this information. Yet, in the absence of proof from the applicant, the Hearings Officer may not grant a more generous variance upon the unproven assumption that a larger area is needed.

3. Multnomah County Comprehensive Plan Policies:

The Framework Plan Policies applicable to this Quasi-judicial Decision are addressed as follows:

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

Applicant: A single family dwelling is not a high emission source. Water quality is not degraded by the dwelling on the property and there are no streams or creeks on the property. This policy is satisfied because all necessary permits have been obtained, and the applicable sanitation regulations have been complied with.

Staff: The primary issue under this policy is water quality related to any construction which would be required to widen the road. This type of development impact can be addressed through the Grading and Erosion Control Permit.

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

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

Applicant: The parcel is in a rural area. For the proposed use, there are no new streets, power lines, or energy consumptive development requirements.

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

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

WATER DISPOSAL SYSTEM:

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

DRAINAGE:

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

ENERGY AND COMMUNICATIONS:

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

Applicant: There has been an approved site for on-site septic tank and drain field by the sanitarian. A septic tank permit has been obtained. the water run-off will be handled on site, and the property is serviced by PGE, Cascade Utilities, and Corbett Water District. The applicable service provider forms have been submitted in exhibit A from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The portion of this policy which is unmet by the submittal is Drainage. The applicable sub-policies are F. and G. The applicant has stated that widening the road will result in increased stormwater flow onto adjoining land, erosion, and increased danger of landslide. He notes that these effects will occur even if roadside ditching is constructed. This policy requires adequate stormwater measures to be provided, and absent expert testimony to the contrary, staff finds that the drainage policies can be met as part of the Grading and Erosion Control Permit process. A Grading and Erosion Control Permit is required for private road construction of the magnitude required to build to meet the revised width.

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

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

Applicant: All of the service provider forms have been signed and submitted, showing adequate service levels can be provided to the dwelling. The service provider forms are in exhibit A6 from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The fire district has not commented on the proposed variance or modification of conditions requests. Staff assumes based on the 1996 response form that the district would not oppose the requests.

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

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

Applicant: This should not apply to a residential dwelling, nor is there a near by park or recreation area.

Staff: Concurs that this policy does not apply to the request related to a single family dwelling.

Dated this 7th day of June 1998.

Liz Fancher, Hearings Officer

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

List of Exhibits for CU 4-98, and HV 7-98

"A" Applicant Submittals:

A1 Combined CU, Variance Narrative and Exhibits, 4/9/98 submittal, form.
- A. Site Plan
- B. Photographs
- C. 3/16/98 ltr. Halstead Arboriculture
- D. 6/5/96 statement from T. Layton, Fire Chief
- E. 8/17/93 statement from D. Bryson, Fire Chief
- F. Site Map
- G. 6/29/93 statement from R. Meyer
- H. CS 4-92 Decision, 3/2/92
- I. Administrative decision, DR 17-93, HDP 21-93
- J. 8/3/94 hearing minutes and staff report, HV 12-94
- K. Hearings Officer decision HV 12-94
- L. HV 12-94 Variance request, Spencer Vail

A2 7/16/97 Hearings Officer decision, CU 12-96, HV 18-96, SEC 27-96

A3 4/20/98 letter, T. Layton, To Whom it may concern.

A4 12/9/88 Lot of Exception application, deed and survey.

A5 Road plan date stamped 4/27/98

A6 4/24/98 Framework Plan Summary

"B" Notification Information

B1 4/15/98 Notice of Public Hearing

B2 Staff Incomplete letter dated 4/15/98

"C" Staff Report, Documentation

C1 CU 4-98, HV 7-98 Staff Report, dated 4/29/98.

C2 Letters from staff to Andre Protassy, dated 1/7/98, 1/9/98, 1/30/98.

C3 4/24/98 letter from Lisa Estrin to American Hellenic Education Center, Inc.

C4 1996 Aerial photo of road and adjacent properties/Recommended Road Standards

"D" Agency Comment

"H" Documents Submitted at 5/6/98 Public Hearing:

H1 _____

H2 _____

H3 _____

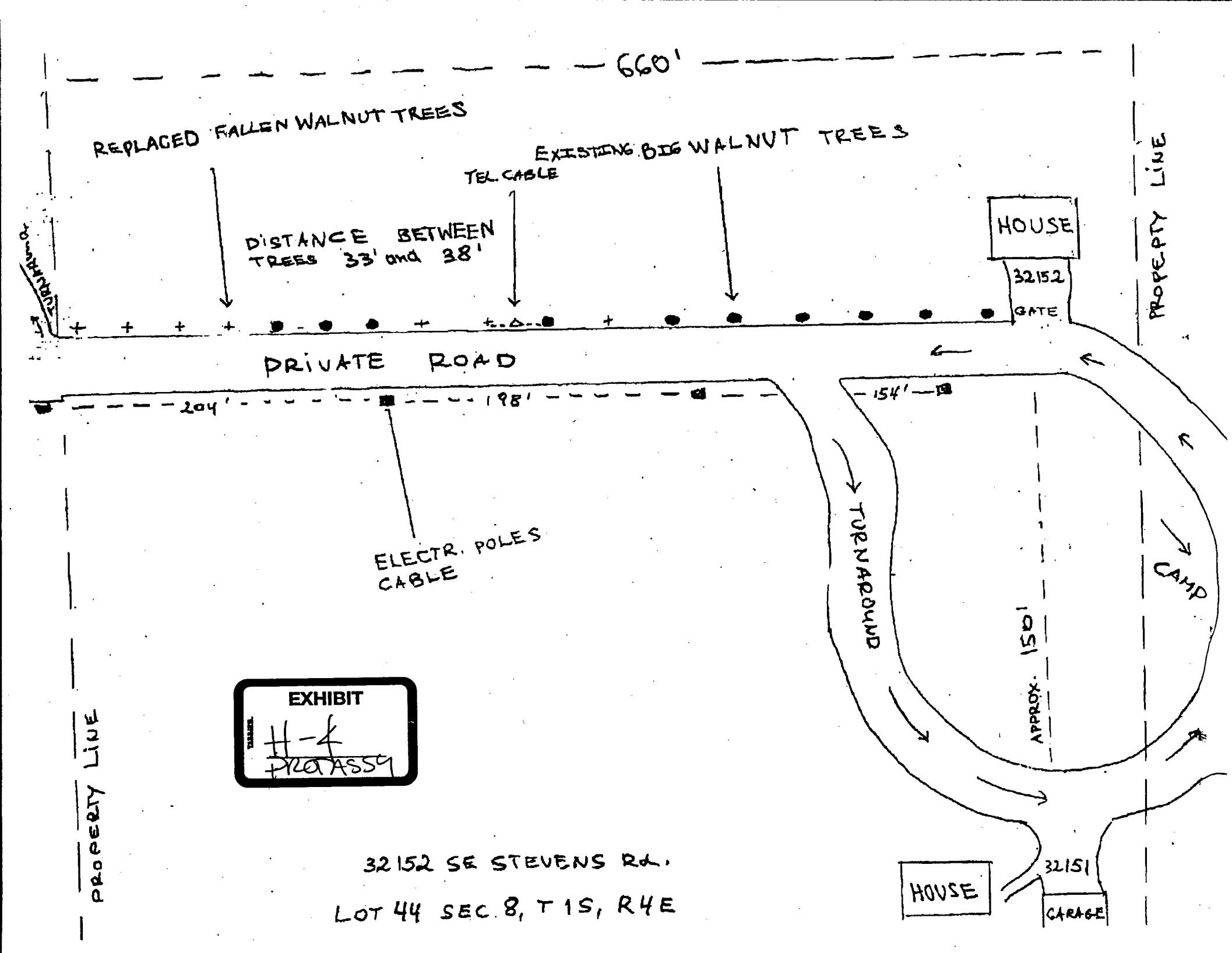
Exhibit List for CU 4-98 and HV 7-98, Continued

"F" Documents Submitted After 5/6/98 Public Hearing

F-1 May 13, 1998 letter from Chuck Beasley to Liz Fancher
F-2 Fax and letter from Jim Peterson, Vice President, American Hellenic Educational Center dated May 12, 1998
F-3 May 12, 1998 letter from Andre Protassy to Liz Fancher
F-4 Two-part May 21, 1998 letter from Andre Protassy to Liz Fancher, with map and photograph exhibits
F-5 May 18, 1998 letter from Chuck Beasley to Liz Fancher
F-6 Letter from Dorothy Cofield to Liz Fancher dated May 7, 1998

"H" Documents Submitted at 5/6/98 Public Hearing

H-1 Affidavit of Posting
H-2 May 5, 1998 Letter from Chuck Beasley to Liz Fancher, Hearings Officer
H-3 Twelve photographs of Protassy property and roadway numbered H-3-A through H-3-L
H-4 Map of private road, Protassy property and turnaround on adjoining property
H-5 HB 3508


660'
REPLACED FALLEN WALNUT TREES
EXISTING BIG WALNUT TREES
TEL. CABLE
DISTANCE BETWEEN TREES 33' and 38'
HOUSE
32152
GATE
PROPERTY LINE
PRIVATE ROAD
204'
198'
154'
ELECTR. POLES CABLE
TURNAROUND
CAMP
APPROX. 150'
EXHIBIT
#-4
PROPASSY
PROPERTY LINE
32152 SE STEVENS Rd.
LOT 44 SEC. 8, T 1S, R4E
HOUSE
32151
GARAGE

William C. Cox attorney at law

Land Use and Development Consultation

July 10, 1998

Board of County Commissioners
Multnomah County
c/o Multnomah County Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214

Re: Appeal of Hearings Officer Decision

Case File: Conditional Use CU 4-98
Minor Variance HV 7-98

Applicant: Andre Protassy
12120 SW Boones Ferry Road
Portland, Oregon 97219

Location of Proposal:

32152 SE Stevens Road
TL 44 of Section 8, T1S, R4E

Applicant, Andre Protassy, hereby requests the Multnomah County Board of County Commissioners, reverse, in part, the decision of the Hearings Officer denying Mr. Protassy's request for a minor variance. Mr. Protassy requested a variance from the roadway approval standards for a dwelling in the CFU zone imposed as a condition of approval in CU 12-96. The standards and condition, in part, require the construction of a 20 foot wide private driveway. Through the subject variance application, Mr. Protassy sought permission to allow the use of a 16 foot private driveway with a 40 foot long section, 20 feet in width, to provide a turnout. The Hearings Officer approved his variance request but with modifications, requiring the construction of an 18 foot driveway, except for the east 170 feet of the easement

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road, which must be improved the full 20 foot width. Mr. Protassy appeals the modification of his variance request and request Commission approval to permit the use of a 16 foot driveway the length of the easement road, except for the required turnout area. Mr. Protassy no longer is requesting immediate approval of the Building Permit. Mr. Protassy is in agreement that the Building permit should not be approved prior to actual construction or until assurance of timely construction is made in accordance with this Commissions ruling.

The staff continually refers to Mr. Protassy's home as an "illegally constructed home." The only thing that may be "illegal" about the Protassy home is construction without appropriate building permits. A lack of a building permit does not take away use rights Mr. Protassy enjoys under applicable law. The County planning staff has even said it does not have jurisdiction over the building permit. Mr. Protassy's home is an outright and permitted use in the zone and thus enjoys certain rights that may not be taken away by the planning staff. The lack of building permit does not take away these rights. The planning department is also without authority to do so.

Roadway History:

The private road serving the Protassy residence has been serving three sites for more than thirty years. The road served the location of the original Protassy residence since the 1960's. That residence was destroyed by fire. The roadway also has served another residence since the 1950's as well as Camp Angelos. In October of 1993, planning staff and the hearings officer gave approval to Camp Angelos to construct and make use of a 16 foot wide roadway for the entire length of the access road, including the easement area. (See DR 17-93). The applicable roadway standard required a 20 foot wide access road. The County later gave the camp a variance to further reduce the width of roadway to 12 feet over a 250 foot stretch. (See HV 12-

94). The camp has yet to make required roadway improvements even though it has received $100,000 for the requisite improvements.

Road Standards are not Applicable to Dwelling:

The Multnomah County Code standards relevant to this variance appeal are **MCC 11.15.2074 Development Standards for Dwellings and Structures.** That section provides in pertinent part.

> "Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(E) and .2049(B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:
>
> (D) A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintain to:
>
> X X X X X X
>
> (2) Provide an all-weather surface of at least 20 feet in width for a private road ..."

The standards in MCC 11.15.2074 do not apply to alteration, replacement or restoration dwellings and then only to dwellings and structures located in the CFU district after January 7, 1993. The current roadway standards were adopted in 1993. Exhibit H2. The Protassy restoration and/or replacement dwelling was located in the CFU district prior to January 3, 1993. As such, the roadway standards in MCC 11.15.2074 do not apply to Mr. Protassy's application.

Prior to 1980 no regulation of access roads existed. Exhibit H2. Between 1993 and 1980, a 16' wide roadway standard was in place. Mr. Protassy will meet any roadway requirements that legally apply to his replacement dwelling.

The Protassy dwelling is a replacement and/or restoration dwelling. Replacement and restoration dwellings can be sited pursuant to MCC 11.15.2048(E) or .2049(B).

MCC 11.15.2048(E) allows the replacement of a previously existing dwelling, on the same lot as the replaced dwelling. Pursuant to 11.15.2048(E) a replacement dwelling is a **use permitted outright**, and only subject to the following two conditions: (1) the replacement dwelling must be located within 200 feet of the existing dwellings; and (2) the existing dwelling must have been habitable. Mr. Protassy meets both conditions.

MCC 11.15.2049 regulates use permitted under prescribed conditions. MCC 11.15.2049(B) allows the restoration or replacement of a dwelling on the same lot and within 200 feet of the prior dwelling when the restoration or replacement is made necessary by fire, **subject to the following condition:** (1) restoration or replacement is commenced within 1 year of fire.

Substantial evidence in the record demonstrates that Mr. Protassy meets either of the above standards. Substantial evidence is evidence a reasonable person would rely on in reaching a decision. **City of Portland v. Bureau of Labor and Ind.**, 298 Or 104, 119, 690 P2d 475 (1984). Documents submitted as part of CU 12-96 show that the subject property was developed with a dwelling in July of 1987 when the property was recognized as one of two lots of exception pursuant to Multnomah County Ordinance No. 100. (Mult. Co. case file LE 6-87). The application of LE 6-87 shows the existence of 2 dwellings on the old tax lot 49 , with the location of the two houses shown on the approved Tentative Plan and on the approved survey. (**See Paul Norr CU 12-96 submission dated September 24, 1997** (hereinafter cited as just "CU 12-96"), Exhibit A, at A-1 through A-4 filed herein). One dwelling was situated on tax lot 49 and another on newly created tax lot 44. Id. Mr. Protassy has owned tax lot 44 since 1987, upon which a lawfully established habitable house was situated prior to and at purchase. The one-story 693 square foot home had running water for domestic use, a septic system, a kitchen, sleeping areas, and bathroom facilities. CU 12-96,

transcript at 13, 18-19. During Mr. Protassy's ownership, the home was occupied by renters. Mr. Protassy owned the residence when it was destroyed by fire on October 22, 1988. The destroyed home was built prior to 1960 and was occupied until its destruction. Mr. Protassy's testimony as to the existence of the prior habitable home is supported by testimony of a former owner, Mr. Pinheiro, old pictures (Exhibit E-4) and tax records. See CU 12-96, Exhibit A at A-1 through A-6, Exhibit B, Exhibit I, Transcript 16-20. Mr. Protassy received an insurance payment on December 15, 1988 for the loss associated with the destructive fire. (CU 12-96, Exhibit C, at C-1). Photographs and a floor plan provided to the insurance company demonstrate the layout of the home before the fire. CU 12-96, Exhibit C, at C-2. Nicholas O'Connell, an adjacent neighbor of Mr. Protassy, residing at 32202 SE Stevens since 1988, confirmed Mr. Protassy's testimony and verified the destructive fire occurring at the rental house. CU 12-96, Exhibit D.

Within one year after the fire, in May of 1989, Mr. Protassy began construction of the replacement dwelling by having a new septic tank and drain filed installed. Receipts document this work performed by Randy Lee. CU 12-96, Exhibit E, at E-1, E-2. A Multnomah County temporary electrical permit issued through the City of Gresham was secured June 7, 1989. CU 12-976, Exhibit F-1, F-2. Numerous other receipts also demonstrate construction undertaken within one year of the destructive fire. CU 12-96, Exhibit G. Furthermore, Mr. O'Connell also confirmed the fact that Mr. Protassy commenced rebuilding in the Spring of 1989, well within the 1 year deadline for replacement dwellings. CU 12-96, Exhibit D. The replacement house was built on the same spot as the replaced house. CU-12-96, Exhibit A. The hearings office also agreed with the evidence and acknowledged the existence of the prior residence. CU 12-96, tr. at 38. No evidence has been offered to contradict the evidence presented,

the testimony of Mr. Protassy, the prior owner, and adjacent neighbor, all of which clearly demonstrates a destructive fire necessitating the need for restoration and/or replacement of the prior habitable residence with construction commencing within one year after fire and on the same spot as the prior home.

Contrary to the staff statement in its Summary of Hearings Officer's Decision and Comments at page 1, overwhelming evidence demonstrates compliance with applicable replacement dwelling criteria: i.e. restoration or replacement within 200 feet of prior habitable dwelling and commencing construction within one year of the event making the restoration or replacement necessary. See CU 12-96, Paul Norr, September 24, 1997 submission with attached exhibits identified above, submitted into the record during this hearing. No reasonable person could reach a conclusion otherwise. As such, the standards of MCC .2074 do not apply to the Protassy restoration or replacement dwelling.

Conditional use roadway standards should have never been applied to the replacement or restoration dwelling constructed by Mr. Protassy. Apart from the failure to obtain a building permit, the dwelling is lawfully located and protected pursuant to MCC 11.15.2048(E) and/or MCC 11.15.2049(B).

Variance Request for 16 foot roadway request should have been granted:

In the alternative, Mr. Protassy seeks a minor variance from the requirements of MCC 11.15.2074(D)(2). Mr. Protassy does not dispute that the newly planted trees do not warrant a finding that practical difficulties exist. He does take issue with the staff's statement that the planting of the trees was an effort to create a difficulty to justify the variance. Early in 1997 Mr. Protassy was attempting to save some trees that were damaged by weather and neglect due to the fact he was prevented from living at the home by the County. During his efforts he fell from 20

feet directly on his head. This resulted in severe injuries, unconsciousness, extended hospital stays, two surgeries and much rehabilitation. Mr. Protassy was not trying to outdo the County. He was merely replanting trees that had died at the first chance he was able to do so. Continually and wrongly painting Mr. Protassy as a bad man does nothing to add to this hearing.

Approval of minor variances are regulated by MCC 11.15.8505 and to be given only when "there are practical difficulties in the application of the Chapter" and the applicant has demonstrated compliance with requirements of 11.15.8050(3) and (4).

MCC 11.15.8050(3) provides:

> "The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affects the appropriate development of the adjoining properties."

MCC 11.15.8050(4) provides:

> "The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone."

The staff concludes that the "primary reason that Mr. Protassy did not receive the variance approval he requested are:

> (1) No practical difficulty exists to support approval of a variance for the first 170' of the road; and
>
> (2) One of the two practical difficulties that may have justified a 16' wide road, the telephone poles, will be moved by Camp Angelos in the near future; and
>
> (3) Mr. Protassy failed to provide evidence to establish that the full 5' area is needed between the roadway and the edge of the roadway easement (the width that must be justified to warrant a 16' roadway width in the available 21 foot wide area)." Summary at 4.

Each of these reason either contains factual inaccuracies, mischaracterize circumstances surrounding roadway construction, ignores facts in evidence, is contrary to substantial evidence in the record, and cannot be supported by substantial evidence in the record.

First, practical difficulties exist to support approval of a variance for the entire stretch of roadway. The staff has determined that the difficulties do not exist for the eastern portion of the roadway, characterized by the staff as 170 feet. Based on the condition imposed, it is assumed that the eastern portion of the roadway is that area prior to the first mature Walnut tree. The distance, including an adequate buffer, to the first mature Walnut tree is not 170 feet long, as will be discussed infra. If Mr. Protassy is required to improve the entire roadway an additional 2 to 4 feet from the Camp's improvements, it will be practically difficult to ensure the safe use of the roadway. Furthermore, it will likely exacerbate a documented drainage concern, of which substantial evidence exists, and of which the County has largely ignored.

The purpose of the County roadway standards are to ensure a safe and adequate roadway surface for both users and emergency response teams. If the purpose of the statute is satisfied, enforcing it to the point of creating an unsafe situation defeats the legislative intent. The approved 16 foot wide access roadway with necessary turnouts meets the purpose of the County roadway standards. To require the construction of a wider roadway will not guarantee a safer roadway for both users and emergency vehicles but frustrate roadway standards by creating an unsafe and hazardous roadway. Substantial evidence in the record supports this conclusion.

Mr. Protassy, as do other impacted property owners, strongly believes that the hearings officer's decision will result in an unsafe situation. Owners and users of the roadway easement have

expressed valid safety concerns over allowing a wider roadway than the 16 feet already required. The American Hellenic Education Center, the operator of Camp Angelos, submitted written testimony that reiterated Mr. Protassy's concerns regarding safety. Specifically, concerns that a wider road will encourage individuals to drive faster and thus create an unsafe situation. American Hellenic Educational Center, letter to planning department dated 5/12/98, filed herein. They fear the young adults who travel the roadway will increase their speed on a wider roadway and thus make the roadway unsafe for travel. This situation gets more dangerous when buses full of school children, as is often the case, are traveling in the other direction. The only roadway that will keep speeds down is a roadway that is narrow enough to keep speeds down on its own. The County is taking this road away and instead requiring Mr. Protassy to build a road essentially the equivalent of a public street. Who is to enforce speed limits on the private drive? The County is creating an accident waiting to happen. This unsafe circumstance is further exacerbated by the hearings officer requirement that the road go from 20 feet to 18 feet at a certain point. This point is at the downhill section of the private drive. The result of squeezing a speeding vehicle into a tighter land with oncoming traffic is not difficult to image. Mr. Protassy pleads that such a situation is not created. Such hazards can be avoided by having a continuous 16 foot wide roadway. Awarding the variance will work towards preventing a detriment to the public welfare and injuries to property. The Commissioners have in there power to award Mr. Protassy his requested variance and act towards ensuring safe travel for the roadway users. The unsafe conditions of a wider roadway is a "practical difficulty" and should justify the variance.

The other purpose of the roadway standards are to ensure emergency vehicles can safely and effectively access the site as

needed. In this case, all of the emergency support providers have given approval to either a 12 foot or 16 foot wide access road. Dennis Bryson, Fire Chief, Multnomah County RFPD #14 has stated that the existing 12 foot wide roadway is sufficient to ensure safe and adequate emergency vehicle access. Exhibit A1, at E. Mr. Protassy has submitted a letter from Fire District Chief Tom Layton (RFPD), dated 4/20/98, which verifies that the easement road was considered and approved as adequate both for access to the applicant's property and Camp Angelos. Exhibit A3, Decision at 10. Chief Layton also gave roadway design review approval on June 5, 1996. Exhibit A1, at D. Furthermore, the Oregon State Fire Marshall gave Camp Angelos approval to use the existing twelve foot wide roadway in June of 1993. Exhibit A1, at G. It is the fire district that protects the public welfare in this area. They have determined that the existing 12 foot wide and expanded 16 foot wide road do NOT cause a material detriment to the public welfare. They have said they can safely serve the area. The county planning staff does not provide emergency rescue services to the property, the fire district does. Those who provide emergency services have determined it safe as proposed. Thus the proposed 16 foot wide roadway meets the purpose of the County's roadway standards.

Approving the 16 foot roadway also promotes the policy behind granting variances. The applicable variance criteria allows a variance request when it will not be materially detrimental to the public welfare or injurious to property in the vicinity. What should be strongly noted is that a denial of this request will have the very effect the variance criteria seek to avoid: the roadway required WILL be "detrimental to the public welfare" AND "injurious to property in the vicinity." Only through a grant of the variance can the County insure a safer roadway for its users and individuals living along it.

The existing access roadway now serves the Camp and two residences, including the Protassy residence. The road has existed for more than forty years. Dump trucks, busses, and other vehicles all use the road to access the camp. A wider roadway is not needed for emergency rescue crews, nor is a wider roadway needed for the individuals accessing their properties. No negative situation has ever developed with respect to the existing 12 foot wide access road.

The County's present findings are inconsistent and at opposite with past findings with respect to what size roadway is needed to adequately serve the subject site, including the Protassy dwelling. The County has consistently found that a 12-16 foot roadway could safely and sufficiently provide access and emergency access to the properties served by it. In 1993, the County determined a 20 foot wide roadway was not needed to ensure safe emergency access when it approved the use of a 16 foot wide roadway in approving Camp Angelo's design for the roadway. Exhibit A1, at J and I. Again, in 1994 the county planning staff approved a variance to the 16 foot requirement by concluding that a 12 foot wide section of roadway could sufficiently and safely accommodated emergency vehicles. Exhibit A1, at J. The County staff then made the following findings, which the hearings officer adopted:

> "The property is used as a camp and education center, with large numbers of people on the site at one time, which is dissimilar to other less intensive uses in the vicinity. (One of these other less intensive uses is the Protassy dwelling) That nature of the use thus led to the requirement for a 20 foot wide access road, **while other uses such as single family residences** (Protassy dwelling) **in the area would require only a 12 foot wide access road.** The subject property also exhibits steep slopes between the developed camp area and the nearest public road, a condition that does not generally apply to other properties in the area. The property also does not have direct road frontage, thus subjecting the property to the 20 foot access road

width, a condition that does not apply to other properties in the area which all have frontage on public roads." ***

"Other properties in the area are for the most part developed with single family residences which require access road widths of only 12 feet. The 20 foot road width thus more restrictive than the access required for other properties in the vicinity."

***

"Public welfare centers around the issue of fire safety. Dennis Bryson, Chief of Multnomah RFPD #14 has indicated that a 12 foot paved roadway is adequate to meet fire access requirements. ... A phone conversation with him on July 21, 1994 verified that the 12 foot width on one section of the road was adequate for emergency vehicle access." Exhibit A1, at J, Staff Report (emphasis added), and Ex. A1, at K.

In granting the Camp's requested reduction from a 20 foot wide roadway requirement to 16 feet for its entire length in 1993, the hearings officer and county staff made the following findings as reasons for the approval:

"a) To insure that site work and grading activity is conducted as represented in the application, and to minimize erosion and other adverse effects associated with soil disturbance proposed on the site.

b) To protect adjoining properties, right-of-ways, and stream near the site from turbidity and other erosion caused discharges associated with propose grading on the site.

c) To minimize tree clearing on wooded portion of the property, and thereby maintain slope stability and reduce erosion potential associated with the development." Exhibit A1, at I, page 4.

The same erosion and stability concerns are present in Mr. Protassy's variance request. Nothing has changed. Yet, contrary to past findings and conclusion reached concerning the sites stability and projected erosion for roadway construction, contrary to past decisions concerning what roadway width is

necessary to ensure safe access, and contrary to every emergency service provider who has given approval to the request, the County is requiring Mr. Protassy to construct the very roadway (18-20 feet wide) the County once determined was not appropriate in the area nor necessary for intended uses.

Denying the variance request will also result in "injury to neighboring property," a result variances seek to avoid. The 18-20 foot wide stretch required by the hearings officer will require significant excavation and filling of his neighbors property, upon which the easement is located. Expert testimony submitted herein from a certified engineer confirms this fact. The roadway stretch from the slow down pole to just past the turn around road will need to be excavated and the roadway cut into the hillside. The hillside, where the road would extend, and the excavation and fill needed, can all clearly be seen from pictures provided as evidence. Tape measurements taken on site on July 10 by Gary Shepherd, Of Attorneys for Applicant, and applicant, depicted on the pictures, clearly show the distance the road will extend into the neighboring property and the significant area that will be cut and filled.

The staff states that Mr. Protassy failed to prove that a full 5 feet area is needed to address erosion, stability and drainage concerns between the edge of the roadway easement and the requested 16 foot wide roadway. (Summary at 4). This statement ignores evidence in the record and confuses the issue.

The parties are in agreement that the south side of the easement roadway, having mature walnut trees, has "practical difficulties" that support the variance request. The easement roadway is 30 feet wide. The existing roadway is 12 feet wide, leaving 9 feet of easement on either side. The walnut trees prevent expansion to the south, thus leaving any expansion going to the north 9 feet. On the north side, telephone poles presently block any roadway expansion. It should be noted that

the staff found that the telephone poles could be found to be a practical difficulty as required for the requested variance. Staff Board Hearing Submission, #6. Although, the hearings officer found that since the telephone poles will be moved in the near future by Camp Angelos, Mr. Protassy has room to expand the roadway further to the north. Camp Angelos is required by a prior County land use approval to widen the Protassy roadway to 16 feet in width and has yet to do so. Widening the roadway to 16 feet would involve Camp Angelos moving the telephone poles as well.

It should be noted that Mr. Protassy has no control over the telephone poles being moved. The roadway was suppose to built years ago, as the condition was imposed in 1993. Other issues involving the approval of the Protassy dwelling including meeting the conditional use approval (CU 12-96) deadline, the Grading Permit and Building Permit are conditional on this variance approval. If the poles are not moved in a timely manner by Camp Angelos and the 16 foot wide roadway constructed, Mr. Protassy cannot meet his obligations to widen the roadway if the Commission so imposed such an obligation. Mr. Protassy is extremely concerned over losing development rights because some action is out of his control. Without adjustment to the decision, if the Camp does not make the requisite improvements, Mr. Protassy would be forced to pay for the entire roadway or risk loosing his conditional use approval from the delay. The staff concludes that it is unlikely Mr. Protassy will absorb the entire cost for roadway improvements. Summary at 4. There is no assurance that this will be true. The County has not assured him that the Camp will make the improvements in a timely fashion before Mr. Protassy's approvals expire. If the poles are not moved, practical difficulties in expanding to the north arise again. *See* Summary at 3.

Assuming the telephone poles will be moved by the Camp, there is a hypothetical 21 foot wide strip of area in which to place a roadway. The question then remains, what is the maximum size roadway that can fit within that 21 feet, allowing for buffers, erosion control and roadway stability concerns. The hearings officer concluded that a 21 foot wide road could be built if the existing road were widened to the north only. Decision at 12. If one were to just subtract nine feet (the distance from the south edge of the existing roadway to the walnut trees, the direction Mr. Protassy cannot go) from thirty (the easement width), they would end up with twenty one feet (the width the county staff came up with). If that is all the county staff is relying on, simple mathematics, that takes no account for conditions on site, it should not be considered as evidence to defeat Mr. Protassy's request and evidence submitted by him. Mr. Protassy does not know what evidence the hearings officer is speaking of as none supporting such a conclusion is in the record. If one were to visit the site, it would become clear that a twenty one foot road could not be accommodated by expanding to the north.

The hearings officer also found that 3 of the 5 feet is needed as a buffer between the relocated utility (not just telephone, but electric) poles, to be relocated by the Camp, and the roadway surface. This leaves only two feet for expansion. This comports to the hearings officer requirement of an 18 foot wide roadway. It should be noted that this 18 feet only becomes available after the telephone poles are moved by another property owner.

Ideally, an 18 foot wide roadway could be constructed, but only if the subject area were completely flat, had no ditches to fill or hills to excavate. Unfortunately, the subject site characteristics are not as such.

An eighteen foot wide roadway assumes that all the space from the utility pole buffer can be used to accommodate the pavement. The truth is that much area will be need to shore up the slopes being cut into, to prevent erosions and slides, and ensure proper drainage. See LaVielle Geotechnical submission. Even logic will tell you that you cannot simply just cut into a slope and put in a roadway. The engineering of road construction prevents an 18 foot wide roadway from being laid on an 18 foot wide piece of land. What makes the circumstances even more difficult here is that the subject land is rather hilly and creates a situation that does not allow for the expansion of the roadway more than 16 feet without creating serious erosion, control, and stability problems.

It is evident from the record and just plain logic that an 18-20 foot wide roadway cannot be accommodated in the space available at this site without running into practical difficulties that justify the variance requested. Evidence already in the record and that introduced during this hearing demonstrate, without being refuted, the substantial cut and fill will be needed to extend the roadway out further than 16 feet. While the landscape may accommodate a 16 foot wide roadway, it will not accommodate an 18-20 foot wide roadway without trespassing on neighboring property, undermining the stability of the surrounding landscape and roadway, and preventing the installation of needed erosions controls in the easement area.

If the roadway is expanded to the north the presently required 18-20 feet, it will involve a significant amount of cut and fill for its entire length. Upon entering the property off of Stevens Road, the first 75 feet will need to be cut. This involves moving a substantial amount of material as demonstrated by the pictures entered as exhibits and expert testimony. The next 125 feet will need to be filled. The hill slopes down significantly here as is demonstrated by pictures in the record.

The next 240 feet, from the slow down pole to past the turnaround driveway on the right, will need to be cut as demonstrated by the pictures. These measurements were documented by Gary Shepherd, and Andre Protassy on a July 10, 1998, at which time pictures entered into the record were taken. Extending the road 16 to 18 feet will require significantly more excavation work as the hillside slopes upwards. This will undermine the slope stability that presently exists.

Mr. Protassy has also demonstrated that a wider roadway will result in erosion concerns downhill. A wider roadway will result in more runoff affecting adjacent properties. Mr. Protassy and others made this point on many occasion through several mediums. Mr. Protassy commissioned a study performed by LaVielle Geotechnical which concluded that widening the roadway may have serious detrimental effects on surrounding properties. Exhibit F3, and attached hereto. The wider roadway will increase the impermeable surface thereby nearly double the stormwater run off that flows towards the steep slope above Mr. Protassy's and the Camp Angelos Property. An expert has concluded this increase runoff could greatly reduce the stability of the slopes on Mr. Protassy's and neighboring properties. Exhibit F3, letter from LaVielle Geotechnical. The projected increase in storm water runoff and it's potential effects on slope stability is especially of concern on the Protassy property because of the significant amount of rainwater that drains across and down the existing roadway and through his property. Another hydrological study performed on site revealed that approximately 52 acres could contribute runoff to the property and roadway area. This amounts to a volume of water ranging from 156 to 195 acre feet which must flow downhill and pass through the property as either surface or subsurface flow. These flows are sufficiently large that they can cause damage to roadways. See CU 12-96, Exhibit J filed herein. Camp Angelos' owner also expressed concerns over the

increased runoff in a letter submitted to the planning department dated 5/12/98, filed herein.

In spite of the volumes of water now traveling down the roadway as documented by experts, Mr. Protassy and Camp Angelos, the County is requiring Mr. Protassy to further increase the width of non-permeable surface, which will just worsen existing conditions. It seems the hearings officer and staff ignored substantial evidence regarding drainage, stability and erosion when it concluded that Mr. Protassy did not demonstrate erosion and slope stability concerns to justify the variance. The landscape creates the practical difficulties. The variance is need to avoid "injuries to property"; precisely what the variance criteria seeks to prevent.

The county decision requiring Mr. Protassy to construct a wider and more intrusive roadway is also in violation of County Policy No. 14. Policy No. 14, developmental limitations states:

> "The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:
>
> A: Slopes exceeding 20%;
> B. Severe soil erosion potential;
> C. Land within 100 year flood plain;
> D. A high seasonal water table...;
> E. A fragipan less than 30 inches from the surface;
> F. Land subject to slumping, earth slides or movement.

The county is violating Policy 14 by directing development in an area that will likely create erosion problems for the roadway and downhill property owners. The County is requiring applicant to widen the exiting roadway, thus requiring significant cut and fill. The roadway will have to be cut into the hillside because of the width the county is requiring. This will increase the

risk of slides and slumping in what is now a stable slope. Furthermore, the increase roadway surface will increase runoff and thus impact downhill property owners. Both owners have expressed concern over requiring the increase in width and roadway surface and have submitted testimony of expert witnesses regarding the impacts of the increased road surface.

Required 20 foot wide extension on East 170 feet, will destroy mature trees:

If the Commission disagrees with Mr. Protassy and is going to require Mr. Protassy to extend the Camp's roadway an additional 4 feet, to 20 feet, on the eastern portion of the roadway, the Commission needs to revisit the appropriate length for this expansion. Both the staff and hearings officer agree with Mr. Protassy that practical difficulties associated with the mature Walnut trees prevent expanding the roadway to the south and towards the mature trees. What is alarming is that the requirement that Mr. Protassy extend the roadway the full 20 feet for 170 feet will result in the destruction of mature walnut trees. The first mature walnut tree is 160 feet from the property line, not the 170 feet estimated by staff at page 11 of the hearings officer decision. This office and Mr. Protassy visited the site on Friday, July 10, 1998 and took accurate measurements. To require a twenty foot roadway for the first 170 feet would result in the lose of Walnut trees. Such a result is contrary to what the staff and hearings officer attempted to avoid. Thus, any 20 foot wide roadway requirement, or a 4 foot expansion of the Camp's 16 foot roadway, should only extend to a point that provides a sufficient buffer for the first mature Walnut tree. To flatly apply a condition that 170 feet needs to be 20 feet wide will result in the loss of mature trees. Expert arborists have testified that any movement to the south could impact the trees. Exhibit A1, at C. The trees are presently 9 feet from the roadway surface. Thus 9 feet is a needed buffer.

Therefore the Commission should only require Mr. Protassy to extend the Camp's 16 foot roadway to 20 feet for a length of 151 feet. Even better, rather than making a specific numerical condition, Mr. Protassy requests language that will protect the first mature walnut tree such as: 20 feet wide for length from Steven Road property line until nine feet from first mature tree.

Condition of Improvements needs to be rephrased:

If the Commission requires Mr. Protassy to construct improvements, the condition needs to be rephrased to ensure Mr. Protassy's land use and Constitutional rights are protected. The condition needs to ensure that any requirement of Mr. Protassy to expand the roadway will arise only after Camp Angelos has made its required roadway improvements to 16 feet. This is the only way to ensure that Mr. Protassy is not required to cover the entire cost of the improvement. If he is required to pay for the entire cost of the improvement it would be disproportional to the impacts he places on the roadway. Other users, including the Camp and public which use the roadway to access the Camp, would be reaping a benefit at Mr. Protassy's expense. The Camp has stated that up to 160 individuals are at the site for eighteen weekends of the year. The Camp has had over fifty cars on site at once, significantly more use than applicant's one residence generates. Thus, the decision of the county would amount to an unconstitutional taking of private property in violation of the Fifth Amendment to the United States Constitution and Article 1, section 18, of the Oregon Constitution under the **Dolan** rough-proportionality analysis. See **Clark v. City of Albany**, 137 Or. App. 293, 904 P2d 185 (1995), rev. den. 322 Or 644 (1996).

The Taking Clause of the Fifth Amendment to the United States Constitution provides: "[N]or shall private property be taken for public use without just compensation." Article I, section 18, of the Oregon Constitution states in pertinent part:

"Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation * * *."

In addition, making Mr. Protassy's performance conditional on the camp's performance will ensure that Mr. Protassy's conditional use approval, and timeline for performance associated with it, does not expire prior to him being permitted to make the required improvements. Mr. Protassy's ability to construct an 18-20 foot wide roadway without experiencing practical difficulties is dependent upon Camp Angelos meetings its requirement to construct a 16 foot wide roadway.

Mr. Protassy, applicant herein, respectfully requests the decision of the Hearings Officer be reversed and his variance request granted.

Respectfully submitted,

Gary P. Shepherd
Of Attorneys for Applicant

CC: client
Jeff Litwak, County Counsel
Board of County Commissioners

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September 24, 1997

Liz Fancher, Hearings Officer
Multnomah County Department of
Environmental Services
Transportation and Land Use Planning Division
Multnomah County
2115 S.E. Morrison St.
Portland, OR 97214-2865

Case File: Conditional Use CU 12-96
Significant Environmental Concern SEC 27-96
Major Variance HV 18-96

Applicant: Andre Protassy

Dear Madam Hearings Officer:

This office represents the Applicant, Andre Protassy. Mr. Protassy offers the following additional evidence and comments in response to the staff report and the questions outlined by the Hearings Officer at the July 16, 1997 hearing and in her subsequent written comments of July 18, 1997.

Submitted herewith are the following Exhibits:

Exhibit A - Materials from Multnomah County Planning Case No. LE 6-87

Exhibit B - Materials from Multnomah County Division of Assessment and Taxation Re: Accounts No. R-00403-0490 and R-00408-0440

Exhibit C - Materials relating to Insurance Settlement for Fire Loss of 10/22/88

Exhibit D - Letter from Nicholas O'Connell regarding fire loss and rebuilding the destroyed house

Exhibit E - Proposal and Contract for septic installation dated 5/18/89 and canceled payment checks

Exhibit F - City of Gresham Temporary Electrical Hookup Permit No. 10546 and Payment Receipt No. 78137, both dated 6/7/89

Exhibit G - Miscellaneous building materials receipts

Exhibit H - Transcript of July 16, 1997, hearing in CU 12-96/SEC 27-96/HV 18-96

Exhibit I - Photographs of the previously existing house prior to and after the October 22, 1988, fire

Exhibit J - Letter dated September 17, 1997, from Robert E. Rallison, P.E., Hydraulic Engineer, with attachments

Exhibit K - Letter dated September 18, 1997, from Daniel F. Green, Vice President, Woodland Management, Inc.

Exhibit L - Estimates from Emmert International dated September 9, 1997 and Watson Plumbing dated September 5, 1997.

I. APPLICANT'S HOME IS A REPLACEMENT DWELLING ALLOWED BY RIGHT UNDER MCC 11.15.2048(E) AS A USE PERMITTED OUTRIGHT AND ALSO UNDER MCC 11.15.2049(B) AS A USE PERMITTED UNDER PRESCRIBED CONDITIONS.

MCC 11.15.2048(E) allows the replacement of a previously existing dwelling, on the same lot as the replaced dwelling, a use permitted outright, subject to the following two conditions:

1. The replacement dwelling must be located within 200 feet of the replaced dwelling; and

2. The replaced dwelling must have been habitable, have had reliable running water for domestic use, and contained a cooking/eating area, a sleeping area and bathroom facilities connected tc a sewage disposal system.

MCC 11.15.2049(B) allows a restoration or replacement dwelling when replacement results from destruction by fire, subject to the following two conditions:

1. The restoration or replacement was commenced within 1 year of the fire; and

2. If the replacement dwelling is located more than 200 feet from the replaced dwelling the standards of MCC .2074 apply.

Prior to 1987, the properties now known as 32151 and 32152 SE Stevens Road were one property, then known as Tax Lot 49 (Account R-00403-0490), with the address of 32151 SE Stevens. This property was approximately 30 acres in size.

By Multnomah County Case No. LE 6-87, this property was divided into two legal Lots of Exception, creating an approximately 19.5 acre Parcel 1 which remained Tax Lot 49 (Account R-99405-0490) known as 32151 SE Stevens, and the newly created approximately 12 acre Parcel 2 which became Tax Lot 44 (Account R-99408-0440) known as 32152 SE Stevens. (See Exhibit A, pages A-1, A-3, and A-4).

The County tax records show slightly different acreage figures, however their Change Order records also show the division of the 29.88 acre Tax Lot 49 into an 18.35 acre Tax Lot 49 and an 11.53 acre Tax Lot 44 (See Exhibit B, page B-1).

The newly created 11.53 acre Tax Lot 44 is now the Protassy property, known as 35152 SE Stevens.

The following supports the conclusion that Mr. Protassy's house qualifies under both MCC 11.15.2048(E) and .2049(B) as a replacement dwelling:

1. The application in Case No. LE 6-87 shows the existence of 2 dwellings on the old Tax Lot 49 (See Exhibit A, page A-1), with the location of the two houses shown on the approved Tentative Plan (Exhibit A, page A-3) and on the approved survey (Exhibit A, page A-4). One house is shown on Tax Lot 49 (Parcel 1) and the other on Tax Lot 44 (Parcel 2).

2. The tax account Characteristics Card printout for Tax Lot 49 at 35151 SE Stevens (Account R-99405-0490), dated 7/06/89, although reflecting the new size of 18.35 acres, still shows the two improvements, one being an 880 sq.ft. 1 story house with a basement and attached garage built in 1900 (See Exhibit B, page B-6) and the other being a 693 sq.ft. 1 story bungalow type house built in 1940, as both being located on the 18.35 acre parcel.

   The tax account Characteristics Card printout for the new Tax Lot 44 of 11.53 acres (Account R-99408-0440), dated 7/6/89, shows that the separate account was set up, but does not show any characteristics for a house on that 11.53 acre parcel.

   The only logical conclusion is that the characteristics of the second house (the 693 sq.ft. 1 story bungalow house built in 1940), which was the house located on the new 11.53 acre Tax Lot 44 (now the Protassy property), were not transferred over to the right account as of 7/06/89. It is clear from Planning Case LE 6-87 that one house went with each lot, and the materials in Exhibit A show the specific location of that house on the Protassy property.

3. Mr. Protassy received an insurance payment on December 15, 1988, as the result of a fire loss occurring on October 22, 1988. (See Exhibit C, page C-1). Attached to the copy of the insurance draft is a floor plan diagram which Mr. Protassy provided to the insurance company, prepared by Mr. Protassy's tenant prior to the

fire, Stefan Gerov. (See Exhibit C, page C-2). The photographs on Exhibit I show the house prior to the fire and the kitchen area after the fire.

4. Mr. Protassy's neighbor, Nicholas O'Connell, at 32202 SE Stevens, verifies that the rental house on the Protassy property burned in October, 1988, and that Andre began rebuilding in the Spring of 1989. (See Exhibit D).

5. Mr. Protassy testified at the hearing that the pre-existing house was built before 1960, (Tr. p. 13) and had existed there for at least 30 to 40 years prior to its destruction by fire in October 1988. (Tr. p. 13). This testimony was supported by the testimony of Mr. Pinheiro, a prior owner, who supplied photos of the old house on the site. (Tr. p. 18-19).

6. Mr. Protassy began the replacement dwelling by having a new 1000 gallon septic tank and 225' drain field installed in May, 1989. The work was done by Randy Lee, of 42912 E. Larch Mt. Road. (See Exhibit E).

7. Mr. Protassy secured a Multnomah County temporary electrical permit for construction on June 7, 1989, Permit No. 10546 (Exhibit F, page F-1), issued through the City of Gresham, Receipt No. 78137 dated June 7, 1989 (Exhibit F, page F-2).

8. Mr. Protassy continued construction on his home (See Exhibit G). Exhibit G is comprised of numerous receipts for framing lumber, nails, cement, electrical, plumbing and roofing materials.

9. The replacement house was built on the same spot as the replaced house. (Tr. P. 13, 19, and Exhibit A).

The existence of the prior dwelling cannot seriously be doubted. The Hearings Officer apparently recognized this at the hearing (See Transcript of Hearing, pp. 19, 38), even before seeing the evidence submitted herewith. The evidence is undisputed that there was a previously existing dwelling, that the dwelling burned in a fire in October, 1988, and that construction commenced on the replacement dwelling by May, 1989.

In summary, the house partially completed at 32152 SE Stevens is a replacement dwelling, and it is allowed by right under MCC 11.15.2048(E) as a Use Permitted Outright and also is allowed under MCC 11.15.2049(B) as a Use Permitted Under Prescribed Conditions. As such, the Applicant is not required to show compliance with the other approval criteria contained in MCC 11.15 as set out in the Staff Report. Such criteria are not applicable to this replacement dwelling.

II. CRITERIA FOR CONDITIONAL USE APPROVAL OF A TEMPLATE DWELLING IN THE CFU ZONE

Even though Applicant believes MCC 11.15.2052(A) does not apply, these criteria will be addressed since they are addressed in the Staff Report.

MCC 11.15.2052(A) identifies the criteria for approval of a template dwelling in the CFU zone. Staff acknowledges that Applicant meets the criteria listed in MCC 11.15.2052(A)(1) - (6) and in (A)(8). Section (A)(6) requires submission of a stocking report which staff acknowledges could be validly implemented with a condition of approval.

Subsection (A)(7) requires conformance to the development standards set forth in MCC 11.15.2074. This section would, if applicable, bring into play the main issues identified by the Hearings Officer:

A. The impact of the Applicant's home on adjoining forest or agricultural lands; and

B. The impact of the drainage of water on siting this house.

A. COMPLIANCE WITH MCC 11.15.2074, DEVELOPMENT STANDARDS

Though it is Applicant's position that his home qualifies as a replacement dwelling and thus need not comply with the Development Standards set forth in Section 2074, the dwelling nonetheless can satisfy those requirements. The focal issue is siting and its relationship to forest and agricultural practices on Applicant's and his neighbors' properties.

Section A(1) requires the dwelling to be located such that "it has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G)". The application for a variance request is made in recognition that the current dwelling location does not meet the 200 foot side and front yard setbacks for this zone. That issue will be addressed separately.

The existing location of the home has the least impact on nearby or adjoining forest or agricultural lands. Attached as Exhibit K is a letter from Daniel F. Green, a forester with 28 years of professional experience, who has visited the property and evaluated the property and the neighboring properties. As expressed in his letter, it is Mr. Green's opinion that:

(1) the location of a house on any property typically does not affect the neighbors' farm or forestry practices, so whether it is located in the northwest corner or further east has no impact;

(2) for this specific property, locating the house where it is, tucked in the northwest corner, close to the previously existing road, power lines and the house to the north, minimizes any potential impact; and

(3) whatever questionable benefit there might possibly be to locating the Protassy house more centrally on his property would surely be outweighed by the obvious negative impact on the forest or farm production of his own property.

Mr. Green's professional opinion is apparently similar to the Hearings Officer intuitive observation at the July 16 hearing, that being that it the location of the house where it is might meet the "least impact" requirement because it would have the same impact if it were situated towards the center of the property and in compliance with the setback requirements. (Tr. p. 39).

With respect to the Camp property to the west, it is Mr. Green's opinion that the location of the house as constructed will not negatively impact forest practices on that site, and offers the advantage of clustering the house with the existing impacts caused by the exiting development (electrical lines, road, and house to the north). Such location also minimizes the

potential negative impact on farming that could be generated on property to the north and east. Mr. Green also states that the current location minimizes any negative impact on agricultural practices on Applicant's own property. In sum, Mr. Green's evaluation indicates that the dwelling as currently sited has the least impact on his own and on nearby or adjoining forest or agricultural land.

Again, the Staff Report acknowledges that Applicant meets all other Development Standards contained in Section A.

B. UNIFORM BUILDING CODE CONSIDERATIONS OF MCC 11.15.2074(B)

Section B requires the dwelling to comply with the standards of the Uniform Building Code. This would be an appropriate condition of approval.

It is clear that Mr. Protassy did not secure the required building permits at the time he began construction. Obviously, he must comply with the Uniform Building Code in order to be able to occupy the structure. Failure to comply with the Building Code, however, should not automatically disqualify him from the requested zoning approvals.

Mr. Protassy acknowledges that he must secure the appropriate building permits, and must comply with the applicable building codes.

III. CRITERIA FOR APPROVAL OF SEC PERMIT

The general issue with regard to approval of the SEC permit relates to the staff's questioning whether the house could be moved farther to the east, in other words farther from the Sandy River Gorge. Testimony at the hearing indicated that the house could not be moved farther to the east because the eastern portion of the property was generally covered with water during the winter months. This testimony was offered by Mr. Protassy, by Nicholas O'Connell, the owner of 32202 S.E. Stevens, and by Mr. Pinheiro, the prior owner of the Protassy property.

Attached as Exhibit J is a letter dated September 17, 1997, from Robert E. Rallison, P.E., a hydraulic engineer, who has been out to the site and performed certain calculations with regard to this property (see Exhibit J). Mr. Rallison concludes that approximately 52 acres of property drain onto the Protassy site, that the Protassy site being the low point between these 52 acres and the river is the natural drainage point, and that as a result of diking along the Protassy property to protect erosion along the top of the Sandy River bank escarpment, ponding occurs on the Protassy property. He concludes that this is an indicator that "excess water on the property is a long-standing problem." (See Exhibit J).

The Hearings Officer appears concerned about a report that the Protassy house where it exists has experienced flooding. Mr. Protassy states that the only time that his existing house flooded was when he failed to properly hook up the water lines, and had water backing up underneath his house. He states that he showed this condition to a representative of the Camp, and believes that the reason the representative of the Camp mentioned flooding of the house is this one incident in which the pipes were not properly hooked up.

Mr. Protassy indicates that he is not aware of any flooding at the current location during the period of time in which he owned the house, and there have been no reports of flooding from any of the prior owners or any of the neighbors.

To the contrary, the testimony of the prior owner and the neighbor, along with that of Mr. Protassy, as supported by the engineer, Mr. Rallison, is that it is the eastern portion of the Protassy property which experiences the annual water problems, not the site where a house has been located since the 1940's.

In terms of the SEC permit, the house is located as far to the east and as far from the Sandy River bank as possible, given the flooding problems and standing water to the east of the existing home.

There is evidence in the record from Mr. Protassy, in terms of photographs and his personal testimony, indicating that the house is not visible from across the Sandy River Gorge. Mr. O'Connell testified that the house is not visible from the Sandy River. (Tr. p. 23). Also, there is no evidence in the record that

his house is visible from any location downhill of the property within the Sandy River Gorge itself. The staff did note that there were portions of the river visible from the Protassy property, however this is not the same as saying that the house itself is visible from the river gorge. Given the problems with standing water and the wetness of the soil during the winter months, which results from the drainage of 52 acres downhill onto the Protassy property, the house is located as far as possible from the river gorge.

IV. CRITERIA FOR APPROVAL OF THE MAJOR VARIANCE

The variance approval criteria are contained in MCC 11.15.8505. The four criteria are addressed as follows:

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

This property is unique in that, as Mr. Rallison points out (see Exhibit J), this property is at the bottom of a 52-acre drainage area. The physical characteristics of the property, including natural features and topography, result in the entire eastern portion of the property being inundated with water during the winter months. Based on calculations made by Mr. Rallison, there are approximately 156 to 195 acre feet of water passing through the property during the average winter season of November through March. As Mr. Rallison points out, this results in the eastern portion of the property being wet, with ponding and a longstanding water problem. The original house built on this site was built, according to tax records, in 1940. Testimony at the hearing indicates that the house has been at that location for 30 years or more. The experience over this period of time is that the house at that location does not flood, making it the only location on the property for the appropriate location of a dwelling. The unique circumstances of this property do not apply to other property in the same vicinity or district.

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

The imposition of the standard 200 foot setback would prohibit the Applicant from placing the house on his property. The only portion of the property which would fall within the area 200 feet from the east, west and north property line lies in the area in which the neighbor and prior property owner, along with Mr. Protassy and Mr. Rallison, indicate is the area of principal water inundation. The 200 foot limit cannot be met, and the imposition of the 200 foot setback would prohibit Mr. Protassy from having a house on his property.

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

Surrounding properties are zoned CFU. A professional forester, Mr. Green, has evaluated the impact of the Protassy house on the neighboring properties, and finds that there would be no impact. To the extent that there could be some potential impact, Mr. Green finds that clustering his house at its location near the road, power lines, and a neighbor's house to the north, is the best location on the Protassy property in terms of any potential interference on neighboring farm and forest practices. (See Exhibit K).

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

Staff agrees that the approval of the variance would not adversely affect realization of the Comprehensive Plan, nor establish a use not allowed in the zone. Further, as noted by Mr. Green in his letter of September 18, 1997, location of the house on the Protassy property tucked in the northwest corner, maximizes the potential production of the Protassy property. (See Exhibit K).

As demonstrated, the variance approval criteria are met for this Application.

V. COST OF MOVING THE EXISTING HOME

The issue of the cost of moving the existing house was raised by the Staff at the hearing. (Tr. P. 11). Enclosed as Exhibit L are the estimates of Emmert International and Watson Plumbing Company with regard to the potential relocation of the existing structure. Emmert International estimates a cost of $31,500 to move the existing house any distance to the east, plus an additional approximately $4,500 for foundation work. Watson Plumbing indicates approximately $4,600 for plumbing work. These estimates combined total approximately $40,000 simply to move the house to the east, and place it on a foundation with adequate plumbing.

This estimate does not include the cost of running new electrical lines, nor does it include the cost of construction of an over 200 foot driveway to attempt to place the house 200 feet from all of the property lines. Total costs have been estimated by Mr. Protassy to be approximately $100,000.00 (Tr. p. 16).

Please, however, remember that based on the expert testimony of Mr. Rallison and Mr. Green, as well as the testimony of those people most familiar with the property (the owner Mr. Protassy, the prior owner Mr. Pinheiro, and the neighbor Mr. O'Connell), the only appropriate location is the northwest corner of the property where the home is currently located. No evidence has even been offered to contradict this testimony.

VI. SUMMARY

Mr. Protassy has demonstrated that his house should be allowed outright as a replacement dwelling, without the requirement of meeting the other approval criteria set out in the staff report. Nevertheless, the materials and testimony submitted prior to and at the hearing, along with the materials submitted with this letter, demonstrate that the approval

criteria are met for the template dwelling, for the SEC review, and for the variance to the setback requirements.

Mr. Protassy's house should be approved at its existing location.

Respectfully,

Paul Norr

PN:srs
Enclosures

RECEIVED

97 SEP 24 PM 2:28

PLANNING SECTION

MULTNOMAH COUNTY OREGON

Department of Environmental Services/Division of Planning and Development/2115 S.E. Morrison St./Portland, Oregon 97214 • 248-3043

APPLICATION FOR ADMINISTRATIVE APPROVAL - LOT OF EXCEPTION

Application is hereby made for Administrative Approval of one (two) Lot(s) of Exception, pursuant to the provisions of Subsection _____ of Ordinance No. 100.

No. G-87

Property Description: 32151 SE STEVENS RD
'TL 49' SEC 5, 1S 4E

Zone MUF19 SEC

Owner Name: WINIFRED PINHEIRD
address: 3007 NE 181st. PORTLAND, OREGON 97230
telephone: 665-4916

Associated File No. —

Date Filed 7-2-87

Applicant Name: FRANK A. WINDUST, JR.
address: 37935 SE RICKERT Rd., CORBETT, OR 97019
telephone: 695-5132

Decision Filed _____

Description of Proposal (attach map):

SZM No. 674, 683B

Rec'd by AP

Fee $40

Existing dwellings 2 Proposed dwellings 2

Receipt _____

State of Oregon)
County of Multnomah) ss

I, FRANK A. WINDUST, JR., Frank A. Windust, Jr.

I am(~~one of~~) the applicant(s) in the foregoing application and that the same is true as I verily believe.

each being first duly sworn, depose and say that

Frank A. Windust, Jr.

Subscribed and sworn to before me this 2nd day of July, 1987.

Barbara McVeigh
Notary Public for Oregon

My Commission Expires 12-9-88

Over

EXHIBIT A PAGE A-1

DECISION

Division of the property to create _____ Lot(s) of Exception is hereby APPROVED/DENIED on a finding that the number of permitted dwellings will not/will thereby be increased above that otherwise allowed in the district.

CONDITIONS

1. "Comply with requirements for Exempt Minor Partition"

2. Provide a report from the Division of Assessment and Taxation indicating the value of the dwelling unit on the property

3. All existing structures on the property shall meet all MUF-19 setback requirements with respect to new property line.

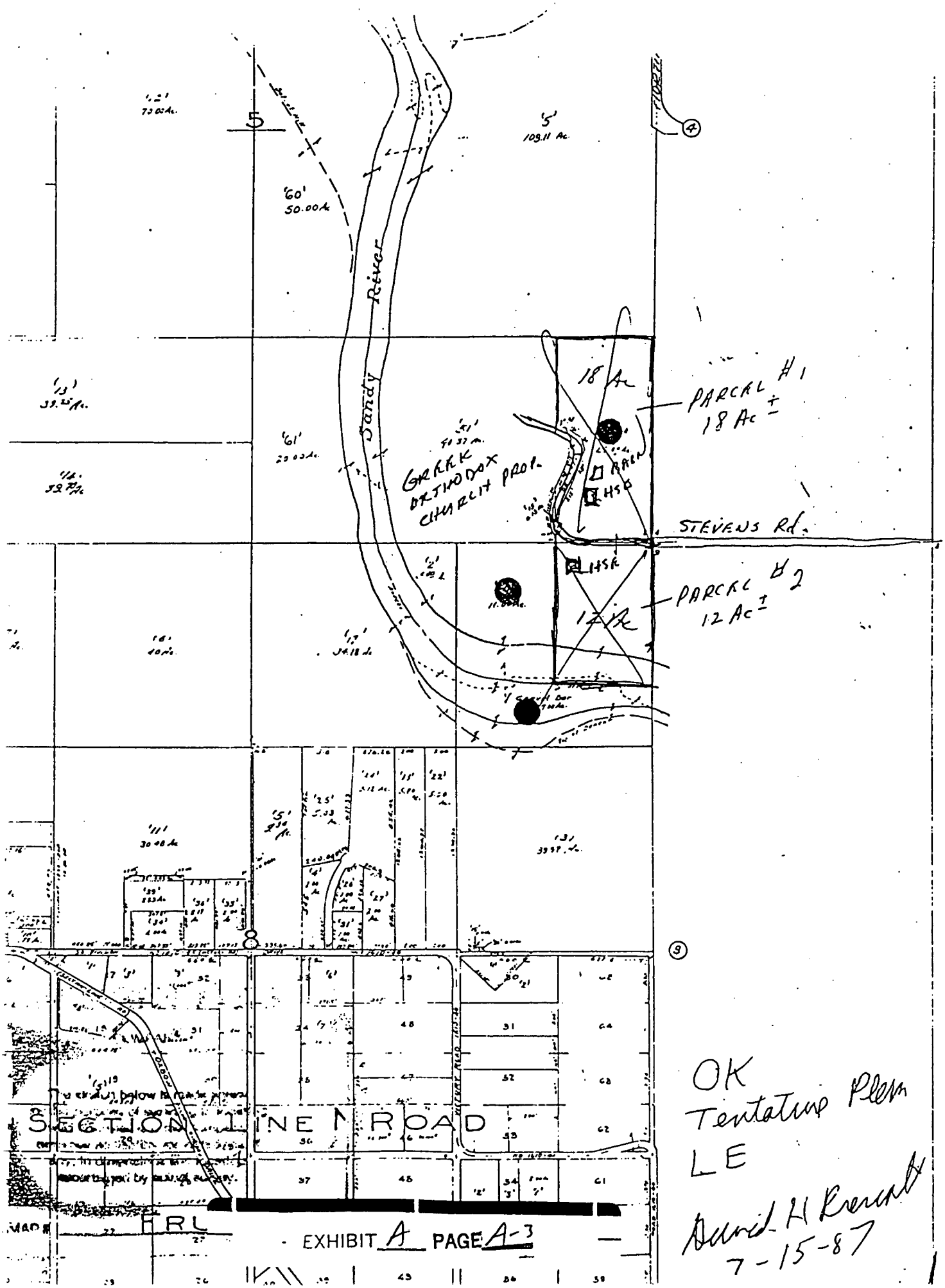
NOTICE: This decision maybe appealed within ten days, pursuant to the provisions of Subsection 12.38 of Ordinance No. 100. For information on appeal procedure, contact Land Development Section, 2115 S. E. Morrison Street / 248-3043.

MULTNOMAH COUNTY, OREGON
DEPARTMENT OF ENVIRONMENTAL SERVICES

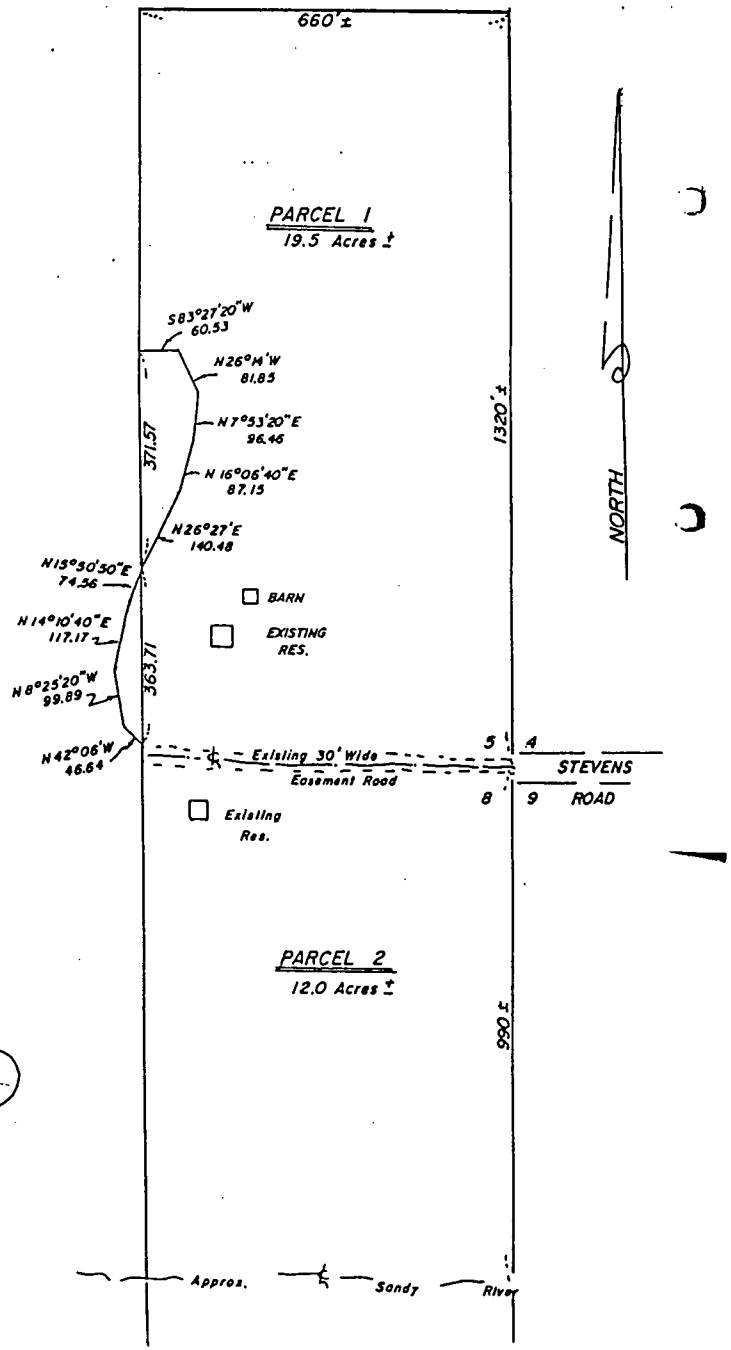
LE 6-87 APPROVED/DENIED

Title David H. Prescott, Planner
for Director, Planning & Development

Date: 7-15-87



OK
Tentative Plan
LE
David H Renard
7-15-87



REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
MAY 6, 1960
GENE A. LEUTHOLD
475

LE - 6 - 87

EXEMPT MINOR PARTITION

IN S.E. ¼ SECTION 5

& N.E. ¼ SECTION 8

EXEMPT MINOR PARTITION *
(Under Mult Co Ord #174)
29 OCT. 1987

ALLAN & LEUTHOLD, INC.
SURVEYING
6827 N. E. 105th AVENUE
PORTLAND, OREGON 97220
503 — 254-0734

PARCEL # 1

A tract of land in the S.E. ¼ of Section 5 T. 1 S., R. 4 E., W.M. Multnomah County, Oregon described as follows:

Beginning at the Southeast corner of Section 5 T. 1 S., R. 4 E., W.M. Multnomah County, Oregon; thence Westerly along the centerline of a 30.0 foot easement road a distance of 660.0 feet more or less to a point in the West line of the East ½ of the Southeast ¼ of the Southeast ¼ of said Section 5; thence North along said East line to a point that is 45.0 feet North of the Southwest corner of the East ½ of the S.E. ¼ of the S.E. ¼ of said Section; thence North 42° 06' West 46.64 feet; thence North 8° 25' 20" West 99.89 feet; thence North 14° 10' 40" East 117.17 feet; thence North 15° 50' 50" East 74.56 feet to a point in the East line of the afore said subdivision which is 363.71 feet North of the S.E. Corner thereof; thence North 26° 27' East 140.48 feet; thence North 16° 06' 40" East 87.15 feet; thence North 7° 53' 20" East 96.46 feet; thence North 26° 14' West 81.85 feet; thence South 83° 27' 20" West 60.53 feet to a point in the East line of the afore said subdivision; thence North along said East line 585.0 feet more or less to the Northwest corner of said East ½ of the S.E. ¼ of the S.E. ¼ of said Section 5; thence East along the North line of said East ½ a distance of 660.0 feet more or less to the Northeast corner of said East ½ and a point in the East line of said Section 5; thence South along said East line a distance of 1320.0 feet more or less to the point of beginning...

Containing 19.50 acres more or less....

Subject to and togeather with a 15.0 foot easement each side of the South line of the above described Tract..

EXEMPT MINOR PARTITION *
(Under Mult Co Ord #174)
date 29 OCT. 1987
by _____
Irving G Ewen
Land Development Section
MULT CO ENVIRON SERVICES
* REF: Case # LE 06-87

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
MAY 8, 1959
GENE A. LEUTHOLD
475

EXHIBIT A PAGE A-5

ALLAN & LEUTHOLD, INC.
SURVEYING
4827 N. E. 106th AVENUE
PORTLAND, OREGON 97220
503 — 254-0734

PARCEL # 2

A tract of land in the S.E. ¼ of Section 5 and the N. E.,¼ of Section 8 T. 1 S., R. 4 E., W.M. Multnomah County, Oregon described as follows:

Beginning at the Southeast corner of Section 5 T. 1 S., R. 4 E., W.M. Multnomah County, Oregon; thence Westerly along the centerline of a 30.0 foot easement road a distance of 660.0 feet more or less to a point in the West line of the East ½ of the Southeast ¼ of the Southeast ¼ of said Section 5; thence South along said West line 20.0 feet more or less to the Northwest corner of the East ½ of the Northeast ¼ of the Northeast ¼ of Section 8; thence South along the West line of the East ½ of the N.E. ¼ of the N.E. ¼ a distance of 900.0 feet more or less to the center of Sandy River; thence Easterly in the center of said Sandy River a distance of 660.0 feet more or less to a point in the East line of Section 8; thence North along the East line of said Section 8 a distance of 990.0 feet more or less to the point of beginning..

Containing 12.0 Acres more or less....

Subject to and togeather with a 15.0 foot easement each side of the North line of the above described Tract..

EXEMPT MINOR PARTITION *
(Under Mult Co Ord #174)
date 29 OCT. 1987
by Irving G Ewen
Irving G Ewen
Land Development Section
MULT CO ENVIRON SERVICES

* REF: Case # LE 06-87

REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
MAY 8, 1959
GENE A. LEUTHOLD
475

187 AM3745 112387 205453 00058

REPORT VER R042-AM37-01
DATE RUN 11/23/87

CHANGE ORDER

BATCH NBR=9734

PAGE 1
ACT SYSTEM

ACCOUNT R-99403-0490 VOUCHER 87-2007 CODE C13 YEAR 87

SPLIT DDPR DEFERRAL ACCT

OWN GRAHAM,ROBERT W
(01) Pinheiro, Winifred

XXXXXXOWNER NAME LINE2XXXXXX

YR ACQ= 75
(20) 87

BK & PG 10331900
(22) 2045/713

ML1 XXXXTAXPAYER NAME LINE1XXXXX
(02)

XXXXTAXPAYER NAME LINE2XXXXX

ML2 32151 SE STEVENS RD
(03) 3007 NE 181st AVE

CORBETT, OREGON
(04) 6

97019
(05) 30

ADD SECTION 05 1 S 4 E
(18)

MAP= 31S4E
(21)

A/D=2
(26)

LG1 TL 49 29.88 ACRES
(06) TL 49 18.35 Acres

XLOT1X
(07)

XBLK1X
(08)

XXXXXXLEGAL DESCRIPTION2XXXX
(09)

XLOT2X
(10)

XBLK2X
(11)

LG2 XXXXXXLEGAL DESCRIPTION3XXXX
(12)

XLOT3X
(13)

XBLK3X
(14)

XXXXXXLEGAL DESCRIPTION4XXXX
(15)

XLOT4X
(16)

XBLK4X
(17)

MSG GRAHAM, ROBERT
(27) Out

DIV
(28)

DIVISION 112387

XXXXXXINFORMATION NOTE3XXXXX
(29)

SIT 32151 SE STEVENS RD
(23)

CORBETT, OR
(24)

97019
(25)

REC

STA CS=P
(41) N

FS=
(42)

AC=C
(43) D

NT=
(44)

SC=
(45)

DM=
(47)

AV=868302
(51)

OV=103241
(49)

L/C=359
(63)

CHA ZN= MURSEC
(19)

RC=644
(50)

PT=A
(52) A

PW= 29.88
(53) 18.35

PL=
(54)

CENSUS=105.00
(55)

ID=71
(56)

YR=92
(57)

IMP CC= 6 0
(58)

YB=1900
(59)

LA= 1,090
(60)

LU= 1
(61)

YM=020
(62)

CT=
(63)

NS= 1.0
(64)

UC=8
(65)

AS=0
(66)

FP= 0
(67)

COMMENT
(59) MAP/LEG 6-87 10-29-87 2051-1379/EXC 11.53 AC into TL 44 Section 8 Deed. 9-28-87

EXHIBIT B PAGE B-1

B50B
8471

1A-002

H AM3745 122487 182736 00021

REPORT NBR R042-AM37-01
DATE RUN 12/24/87

CHANGE ORDER

BATCH NBR=8471

PAGE 1
ACT SYSTEM

ACCOUNT R-99405-0490 STATE ID - -

OWNER: PINHEIRO,WINIFRED
01) PINHEIRO,KENNETH W+ PINHEIRO,WINIFRED J
3007 NE 181ST AV
PORTLAND, OREGON 97230

MAILING

VOUCHER 87-2007

YR/AC 87 BEP 20451713

MESSAGES
22) 2055 0293

DIV DIVISION 112087

VOUCHER CODE YEAR

ADDITION
SECTION 05 1 S 4 E MAP 1S4E A/D 2

LEGAL
TL 49 18.35 ACRES

DEFERRAL

MESSAGES CONTINUED

CODE= SIT 32151 SE STEVENS RD (23) CORBETT, OR (24) 97019 (25)

C10

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CHA IN=MUFSEC (19) RC=644 (50) PT=A (52) PW= (53) 18.35 PL= (54) CENSUS=105.00 (55) ID=71 (56) YA=82 (57)

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V YR=87 CD=A DT=03/20/87 LAND= 32,950 IMP= 35,000
D 29660 34000

E YR= ET= LAND= IMP=

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D out	CD=~~FA~~	ACREAGE=	0.00	VAL= 0	440
D	CD=GB	ACREAGE=	13.45 6.92	VAL= 3030	5,880
D	CD=GE	ACREAGE=	2.00	VAL=	210
D	CD=MA	ACREAGE=	1.00	VAL=	25,000

H	YR=82	TYPE=F	TAXABLE= 4,220	L/C=358
H	YR=82	TYPE=G	TAXABLE= 7,390	L/C=358
H	YR=83	TYPE=F	TAXABLE= 3,570	L/C=358
H	YR=83	TYPE=G	TAXABLE= 6,990	L/C=358

CONTINUED

ROUTING	SEQ	INT	DATE
DIVISION			
DRAFTING			
EXEMPTION			
APPRAISAL BLVT.			11/2/88
TAX CONTROL			
DATA ENTRY			
PERS. PROPERTY			
2-3-17			

Release Do not include in land

EXHIBIT B PAGE B-2

8508

C 1 Bof 2

H AW3745 122487 182736 00022

REPORT NBR R042-AW37-01
DATE RUN 12/24/87

CHANGE ORDER

BATCH NBR=8471 PAGE 2
ACT SYSTEM

ACCOUNT R-99405-0490 STATE ID - -

OWNER
- PINNEIRO,WINIFRED -
- -
- YR/AC 87 BEP 20451713 -
- -
- DIV DIVISION 112087 -

MAILING
VOUCHER
3007 NE 181ST AV
PORTLAND, OREGON 97230
MESSAGES CONTINUED

CODE YEAR
ADDITION
SECTION 05 1 S 4 E MAP 1S4E A/D 2
LEGAL
- TL 49 18.35 ACRES

VOUCHER
~~R7-2007~~

MESSAGES

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87 F 1420
87 G 3240

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				T	YR=86	L/C=599	LEVIED=	100.00-	TAXABLE=	
T	YR=87	BALANCE=	31.33	T	YR=87	L/C=358	LEVIED=	2,350.40	TAXABLE=	67,950

COMMENT
(69) due 11-2-87

EXHIBIT B PAGE B-3

8508

ID AM3745 112087 205458 00102

REPORT NBR RO42-AM37-01
DATE RUN 11/20/87

C H A N G E O R D E R

BATCH NBR=9736

PAGE 1
ACT SYSTEM

ACCOUNT ~~R-99405-0440~~ 99408-0440 VOUCHER 87-2007 CODE A13 YEAR 87

N A L D A T A

OWN XXXXXXOWNER NAME LINE1XXXXXX (01) Pinheiro, Winifred
XXXXXXOWNER NAME LINE2XXXXXX
YR ACQ= (23) 87
SC & DS (22) 20451713

ML1 XXXXTAXPAYER NAME LINE1XXXXX (02)
XXXXTAXPAYER NAME LINE2XXXXX

ML2 XXXXTAXPAYER ADDRESS1XXXXXXX (03) 3007 NE 181st AVE
XXXXTAXPAYER ADDRESS2X (04) 6
XXTP ZIPX (05) 30

ADD XXXXADDITION NAMEXXXXXX (18) Section 8 1S 4E
MAP= (21) 815 4E A/D= (26) 2

LG1 XXXXXXLEGAL DESCRIPTION1XXXX (06) TL 44 11.53 Acres
XLOT1X (07)
XBLK1X (08)
XXXXXXLEGAL DESCRIPTION2XXXX (09)
XLOT2X (10)
XBLK2X (11)

LG2 XXXXXXLEGAL DESCRIPTION3XXXX (12)
XLOT3X (13)
XBLK3X (14)
XXXXXXLEGAL DESCRIPTION4XXXX (15)
XLOT4X (16)
XBLK4X (17)

MSG XXXXXXINFORMATION NOTE1XXXXX (27)
XXXXXXINFORMATION NOTE2XXXXX (28)
XXXXXXINFORMATION NOTE3XXXXX (29)

SIT XXXXSITUS ADDRESS1XXXXXXXXXX (23)
XXXXSITUS ADDRESS2XXXX (24)
XSITZIPX (25)

XEA

STA CS= (41) N FS= (42) AC= (43) D NT= (44) SC= (45) DM= (47) AV= (51) DV= (49) L/C= (69) 358

CHA ZN= (19) MUP SEC RC= (50) 673 PT= (52) A PW= (53) 11A 53 .00 PL= (54) CENSUS= (55) ID= (56) YA= (57)

IMP CC= (58) YB=0000 LA= (60) 0 LU= (61) 0 NH= (62) CT= (63) NS= 0.0 UC= (64) AS= (65) IP= (66) 0

COMMENT (69) MP LE 06-87 10-29-87 2051-1379/Out of TL 49 Sec 5/Parcel 2/

12-15-87

8508
3471

EXHIBIT B PAGE B-4

H AM3745 122487 182736 00023

REPORT NBR R042-AM37-01 CHANGE ORDER BATCH NBR=8471 PAGE 1
DATE RUN 12/24/87 ACT SYSTEM

ACCOUNT R-99408-0440 STATE ID - - VOUCHER CODE YEAR

OWNER
- PINHEIRO, WINIFRED
- C/O PINHEIRO, EFFIECTH W + / WIN/FRED J
- YR/AC 87 BGP 20451713 -
MESSAGES
- 22) 2055-293
- DIV DIVISION 122387 -

MAILING
3007 NE 181ST AV
PORTLAND, OREGON 97230
MESSAGES CONTINUED

ADDITION
SECTION 8 1S 4E MAP 8154E A/D ?
LEGAL
- TL 44 11.53 ACRES
-
-

VOUCHER 87-20077

CODE= SIT XXXXSITUS ADDRESS1XXXXXXXXXX (23) XXXXSITUS ADDRESS2XXXX (24) XSITZIPX (25)

STA CS=N (41) FS= (42) AC=D (43) NT= (44) SC= (45) UM= (47) AV=872007 (51) DV=872007 (49) ANNEX= (79) L/C=358 (68)

C 10

CHA ZN=MUFSEC (19) RC=673 (50) 644 PT=A (52) PW= (53) 11.53 PL= (54) CENSUS= (55) ID= (56) YA= (57)

IMP CC= (58) YB=0000 (59) LA= (60) 0 LU= (61) 0 NH= (62) 020 CT= (63) NS= 0.0 (64) UC= (65) B AS= (66) IP= (67) 0

V YR=87 CD=D DT LAND= 3290 IMP= 1000

E YR= ET= LAND= IMP=

D CD=GB ACREAGE=6.53 VAL= 2850
D FE 5.00 440
H 87 G
H YR=87 TYPE=G TAXABLE= 2850 L/C= 358
H 87 F 440 358

T YR= BALANCE= T YR= L/C= LEVIED= .00 TAXABLE=

ROUTING	SEQ	INT	DATE
DIVISION			
DRAFTING			
EXEMPTION			
APPRAISAL	1	T	1/4/88
TAX CONTROL			
DATA ENTRY			
PERS. PROPERTY			

COMMENT (69) Out of TL 49 Sec 5 (99405-0490) filed 11-2-87

C

8508

EXHIBIT B PAGE B-5

MAGE01AP PR023-1 07/06/89 — A & T CHARACTERISTICS CARD - RESIDENTIAL — 01:24:53.7 — 14249

ACCOUNT	TYPE	IMPS #	ACD	CHANGE DATE	# OF IMPS	STATED ID	BATCH NUMBER:
R-99405-0490	R	01	C	1988/02/26	2		11 22 11

OWNER
PINHEIRO,KENNETH W &
WINIFRED J
TAXPAYER

32151 SE STEVENS RD
CORBETT, OREGON 97019
SITUS ADDRESS
(187) 32151 SE STEVENS RD
(188) CORBETT, OR
(189) 97019
IMPROVEMENT ADDRESS
(100)

(101) STR CLASS: 4.0
(102) STR TYPE: D
1 ST W/BASE/ATT
(103) ARCH STYLE: O
OTHER

(190) APPR STATUS: K
(110) APPR DIST: 2
(111) NEIGH CODE: 020
(112) MAP NBR: 51S4E
(113) ZONING: MUFSEC
(114) RATIO CODE: 644
(115) USE CODE: B
LEVY CODE: .358
TAX STATUS:

IMPROVEMENTS BY LEVEL

LEVEL	(300) F	(301) A	(302) B	(303)	(304)
CLASS	(305) 4.0	(306) 4.0	(307) 4.0	(308)	(309)
FIN SQFT	(310) 880	(311) 200	(312)	(313)	(314)
UNF SQFT	(315)	(316)	(317) 880	(318)	(319)
BATHROOM	(320) 1	(321)	(322)	(323)	(324)
PART BATH	(325)	(326)	(327)	(328)	(329)
BEDROOM	(330)	(331) 1	(332)	(333)	(334)
REC HALL	(335)	(336)	(337)	(338)	(339)
SER HALL	(340)	(341)	(342)	(343)	(344)
OTH HALL	(345)	(346)	(347)	(348)	(349)
DEN	(350)	(351)	(352)	(353)	(354)
LIVING	(355) 1	(356)	(357)	(358)	(359)
DINING	(360) 1	(361)	(362)	(363)	(364)
KITCHEN	(365) 1	(366)	(367)	(368)	(369)
NOOK	(370)	(371)	(372)	(373)	(374)
UTILITY	(375)	(376)	(377)	(378)	(379)
FAMILY RM	(380)	(381)	(382)	(383)	(384)
OTHER RM	(385)	(386)	(387)	(388)	(389)

ADDITION NAME: SECTION 05 1 S 4 E
LEGAL LINE LOT BLOCK
TL 49 18.35 ACRES

GEN LAND ADJUST
200
201
202
203
204
205
206
207
208
209

GEN IMPS ADJUST
210
211
212
213
214
215
216
217
218
219

GARAGE
(116) CLASS 4.0
(117) TYPE
A,D,B,C: D
(118) FLOOR
C,O,D: C
(119) NBR CAR 2
(120) SQFT 1008

REMODELING EST YR
(121) BATH 80
(122) KITCHEN 80
(123) OTHER 80

VALUATION SUMMARY

YEAR	CD	DATE	LAND	IMPS	TOTAL
87	D	02/02/88	29660	34000	63660
88	A	03/16/88	29720	34000	63720
89	A	02/26/89	30900	34000	64900

SALES DATA

PRICE	DATE	TYPE	REASON	BOOK/PAGE
84950	1989-04	C	A	2203-1827
	-			-
	-			-
	-			-

LAND DATA
(001) SIZE 18.35 ACRES
(002) ROAD TYPE D,G,P,S: P
(003) ROAD COND A,B: A
(004) CUL DE SAC
(005) CORNER
(006) ALLEY
(007) PARKWAY
(008) TRAFFIC LEV L,M,H: L
(009) CURB 1
(010) SIDEWALK 1
(011) VIEW FACTOR 0
(012) VIEW ANGLE E,G,A,P: 0
(013) VIEW UTILITY E,G,A,P:
(014) VIEW SUBJECT C,M,V,W,I,A:
(015) UG UTIL
(016) SEWER STORM
(017) SEWER SANIT X,P,G,S:
(018) WATER X
SITES
(019) NBR VACANT
(020) NBR W/IMPS
(021) OSD -,0,+,V:

LAND APPRAISER (030) DATE 041682
(031) ID 71 (032) REV NBR

FOUNDATION	%
125 CONCRETE	100
126	
127	

ROOF COVER	%
128 COMP	100
129	
130	

ROOF TYPE
131 GABLE
132
133

EXTERIOR	%
134 WOOD	100
135	
136	
137	
138	

INTERIOR FLOOR
139 FIR
140
141
142
143
144

INTERIOR WALLS
145 GYP WALL
146
147

FIREPLACE	#
148 REGULAR	1
149	
150	

PLUMBING	#
151 SINK	1
152 TOILET	1
153 WASH BAS	1
154 TUB	1
155 WAT HTR	1
156	
157	
158	
159	
160	
161	
162	

FUEL TYPE
163 OIL

HEAT SQ FT
164 880

HEAT SYSTEM FNC
165 FOR AIR P
166
167
168
169

APPLIANCE	#
170	
171	
172	
173	
174	
175	
176	

REPLACEMENT COST

	TYPE	ADJ	AMOUNT
(500)	FOUNDATION		
(501)	LEVEL X F		26408
(502)	LEVEL X A		3067
(503)	LEVEL X B		6971
(504)	LEVEL X		
(505)	LEVEL X		
(506)	ROOF		
(507)	EXTERIOR		
(508)	INTERIOR		
(509)	PLUMBING		-991
(510)	HEAT/COOL		1061
(511)	APPLIANCE		
(512)	FIREPLACE X		1535
(513)	GARAGE X		6473
	TOTAL IMPS		44524
(514)	YR BUILT 1900		
(515)	EFF AGE 89		
(516)	FUNC-E,G,A,F,P: A		
(517)	ECON-E,G,A,F,P: A		
(518)	COND-E,G,A,F,P: A		
	REMAIN GOOD %	63.00	
(519)	ADJUST RG %	10.00	
	NET RG %	73.00	
	DEPR IMPS		32503
	MISC IMPS		1294
	TOTAL IMPS		33700
	LAND		33100

REMARKS
(900) 2 HOUSES.....
(901) B22+40+22+40SB350.....
(902) 87 DIV 2007 OUT TO TL 44 BLIXT 010488.....
(903) GB 6.92 AC $3030 GE 2.00 AC $210 FB 8.43.....
(904) AC $1420 NA 1.00 AC $25000 FOR 87.....
(905) INC QUESTIONAIRE SENT 080383.....
(906) .....
(907) .....
(908) .....
(909) .....

MISC IMPROVEMENTS

	TYPE		QUANITY		CLASS		RG		COST
(800)	DET GARAGE	(801)	1008	(802)	4.0	(803)	20		1294
(804)		(805)		(806)		(807)			
(808)		(809)		(810)		(811)			
(812)		(813)		(814)		(815)			
(816)		(817)		(818)		(819)			
(820)		(821)		(822)		(823)			
(824)		(825)		(826)		(827)			
(828)		(829)		(830)		(831)			
(832)		(833)		(834)		(835)			
(836)		(837)		(838)		(839)			
(840)		(841)		(842)		(843)			
(844)		(845)		(846)		(847)			
(848)		(849)		(850)		(851)			
(852)		(853)		(854)		(855)			
(856)		(857)		[illegible]					

IMPS APPRAISER (180) DATE
(181) ID 71 (182) REV N

REPLACEMENT COST

GENERATED IMPS VALUE
(520) YR VALUE

APPRAISER IMPS VALUE
(195) YEAR 8
(178) VALUE 300
(179) NON TAX 300

GENERATED LAND VALUE
(524) YR 89 VALUE

APPRAISER LAND VALUE
(027) YEAR 86
(022) VALUE 33100
[illegible] 8100

EXHIBIT 8 PAGE B-6

MAGE01AP PR023-1 07/06/89 A & T CHARACTERISTICS CARD - RESIDENTIAL 01:24:54.0 14250

ACCOUNT TYPE IMPS # ACD CHANGE DATE # OF IMPS STATED ID BATCH NUMBER: 11 22 11

R-99405-0490 R 02 C 1986/04/10 2

OWNER

PINHEIRO,KENNETH W &
WINIFRED J
TAXPAYER

32151 SE STEVENS RD
CORBETT, OREGON 97019
SITUS ADDRESS
(187) 32151 SE STEVENS RD
(188) CORBETT, OR
(189) 97019
IMPROVEMENT ADDRESS
(100)

(101) STR CLASS: 2.0
(102) STR TYPE: A
ONE STORY HOUSE
(103) ARCH STYLE: W
BUNGALOW

(190) APPR STATUS: K
(110) APPR DIST: 2
(111) NEIGH CODE: 020
(112) MAP NBR: 5154E
(113) ZONING: MUFSEC
(114) RATIO CODE: 644
(115) USE CODE: 8
LEVY CODE: 358
TAX STATUS:

ADDITION NAME: SECTION 05 1 S 4 E
LEGAL LINE LOT BLOCK
TL 49 18.35 ACRES

GEN LAND ADJUST
200
201
202
203
204
205
206
207
208
209

GEN IMPS ADJUST
210
211
212
213
214
215
216
217
218
219

GARAGE
(116) CLASS
(117) TYPE
A,D,B,C:
(118) FLOOR
C,O,D:
(119) NBR CAR
(120) SQFT

REMODELING EST YR
(121) BATH
(122) KITCHEN
(123) OTHER

IMPROVEMENTS BY LEVEL

LEVEL	(300) F	(301)	(302)	(303)	(304)	
CLASS	(305) 2.0	(306)	(307)	(308)	(309)	
FIN SQFT	(310) 693	(311)	(312)	(313)	(314)	
UNF SQFT	(315)	(316)	(317)	(318)	(319)	
BATHROOM	(320)	(321)	(322)	(323)	(324)	
PART BATH	(325) 1	(326)	(327)	(328)	(329)	
BEDROOM	(330) 1	(331)	(332)	(333)	(334)	
REC HALL	(335)	(336)	(337)	(338)	(339)	
SER HALL	(340)	(341)	(342)	(343)	(344)	
OTH HALL	(345)	(346)	(347)	(348)	(349)	
DEN	(350)	(351)	(352)	(353)	(354)	
LIVING	(355) 1	(356)	(357)	(358)	(359)	
DINING	(360)	(361)	(362)	(363)	(364)	
KITCHEN	(365) 1	(366)	(367)	(368)	(369)	
NOOK	(370)	(371)	(372)	(373)	(374)	
UTILITY	(375)	(376)	(377)	(378)	(379)	
FAMILY RM	(380)	(381)	(382)	(383)	(384)	
OTHER RM	(385)	(386)	(387)	(388)	(389)	

VALUATION SUMMARY

YEAR	CD	DATE	LAND	IMPS	TOTAL
87	D	02/02/88	29660	34000	63660
88	A	03/16/88	29720	34000	63720
89	A	02/26/89	30900	34000	64900

SALES DATA

PRICE	DATE	TYPE	REASON	BOOK/PAGE
84950	1989-04	C	A	2203-1827
	-			-
	-			-
	-			-

LAND DATA

(001) SIZE 18.35 ACRES
(002) ROAD TYPE D,G,P,S: P
(003) ROAD COND A,B: A
(004) CUL DE SAC
(005) CORNER
(006) ALLEY
(007) PARKWAY
(008) TRAFFIC LEV L,M,H: L
(009) CURB
10) SIDEWALK
11) VIEW FACTOR 0
(012) VIEW ANGLE E,G,A,P:
(013) VIEW UTILITY E,G,A,P:
(014) VIEW SUBJECT C,M,V,W,I,A:
(015) UG UTIL
(016) SEWER STORM
(017) SEWER SANIT X,P,G,S:
(018) WATER X
SITES
(019) NBR VACANT 1
(020) NBR W/IMPS 1
(021) OSD -,0,+,V: 0

LAND APPRAISER (030) DATE 041682
(031) ID 71 (032) REV NBR

FOUNDATION	%	PLUMBING	#
125 WOODPOST	100	151 SINK	1
126		152 TOILET	1
127		153 WASH BAS	1
ROOF COVER	%	154 ST SHW	1
128 COMP	100	155 LAUN TUB	1
129		156 WAT HTR	1
130		157	
ROOF TYPE		158	
131 GABLE		159	
132		160	
133		161	
		162	
EXTERIOR	%	FUEL TYPE	
134 WOOD	100	163 OIL	
135			
136		HEAT SQ FT	
137		164 693	
138		HEAT SYSTEM FNC	
INTERIOR FLOOR		165 OTHER	P
139 FIR		166	
140		167	
141		168	
142		169	
143			
144		APPLIANCE	#
INTERIOR WALLS		170	
145 GYP WALL		171	
146		172	
147		173	
		174	
FIREPLACE	#	175	
148		176	
149			
150			

REPLACEMENT COST TYPE	ADJ	AMOUNT
(500) FOUNDATION		-161
(501) LEVEL X F		17161
(502) LEVEL X		
(503) LEVEL X		
(504) LEVEL X		
(505) LEVEL X		
(506) ROOF		
(507) EXTERIOR		
(508) INTERIOR		
(509) PLUMBING		-596
(510) HEAT/COOL		290
(511) APPLIANCE		
(512) FIREPLACE X		
(513) GARAGE X		
TOTAL IMPS		16694
(514) YR BUILT	1940	
(515) EFF AGE	49	
(516) FUNC-E,G,A,F,P:	F	
(517) ECON-E,G,A,F,P:	P	
(518) COND-E,G,A,F,P:	P	
REMAIN GOOD %	69.00	
(519) ADJUST RG %		
NET RG %	69.00	
DEPR IMPS		11519
MISC IMPS		
TOTAL IMPS		11500
LAND		33100

REMARKS

(900) B21*33*21*33.....
(901) .....
(902) .....
(903) .....
(904) .....
(905) .....
(906) .....
(907) .....
(908) .....
(909) .....

MISC IMPROVEMENTS

TYPE	QUANITY	CLASS	RG	COST
(800)	(801)	(802)	(803)	
(804)	(805)	(806)	(807)	
(808)	(809)	(810)	(811)	
(812)	(813)	(814)	(815)	
(816)	(817)	(818)	(819)	
(820)	(821)	(822)	(823)	
(824)	(825)	(826)	(827)	
(828)	(829)	(830)	(831)	
(832)	(833)	(834)	(835)	
(836)	(837)	(838)	(839)	
(840)	(841)	(842)	(843)	
(844)	(845)	(846)	(847)	
(848)	(849)	(850)	(851)	
(852)	(853)	(854)	(855)	
(856)	(857)			

IMPS APPRAISER (180)
(181) ID (182)

REPLACEMENT COST

GENERATED IMPS VALUE
(520) YR VALUE

APPRAISER IMPS VALUE
(195) YEAR 86
(178) VALUE 5000
(179) NON TAX

GENERATED LAND VALUE
(524) YR 89 VALUE

APPRAISER LAND VALUE
(027) YEAR 86
(022) VALUE 33100
8100

IMPS: 1
LAND: 1

EXHIBIT B PAGE B-7

MAGE01AP PR023-1 07/06/89 — A & T CHARACTERISTICS CARD - RESIDENTIAL — 01:26:09.1 — 14456

ACCOUNT TYPE IMPS # ACD | CHANGE DATE # OF IMPS | STATED ID | BATCH NUMBER: 11 22 11

R-99408-0440 R 01 C | 1988/02/26 1

OWNER

PINHEIRO,KENNETH W &
WINIFRED J

TAXPAYER

TO PROTASSY,ANDRE

12120 SW BOONES FERRY RD
PORTLAND, OREGON 97219

SITUS ADDRESS

(187)
(188)
(189)

IMPROVEMENT ADDRESS

(100)

(101) STR CLASS:
(102) STR TYPE:
(103) ARCH STYLE:

(190) APPR STATUS: K
(110) APPR DIST: 2
(111) NEIGH CODE: 020
(112) MAP NBR: 81S4E
(113) ZONING: MUFSEC
(114) RATIO CODE: 644
(115) USE CODE: 8
LEVY CODE: 358
TAX STATUS:

ADDITION NAME: SECTION 8 1S 4E

LEGAL LINE LOT BLOCK

TL 44 11.53 ACRES

IMPROVEMENTS BY LEVEL

LEVEL	(300)	(301)	(302)	(303)	(304)
CLASS	(305)	(306)	(307)	(308)	(309)
FIN SQFT	(310)	(311)	(312)	(313)	(314)
UNF SQFT	(315)	(316)	(317)	(318)	(319)
BATHROOM	(320)	(321)	(322)	(323)	(324)
PART BATH	(325)	(326)	(327)	(328)	(329)
BEDROOM	(330)	(331)	(332)	(333)	(334)
REC HALL	(335)	(336)	(337)	(338)	(339)
SER HALL	(340)	(341)	(342)	(343)	(344)
OTH HALL	(345)	(346)	(347)	(348)	(349)
DEN	(350)	(351)	(352)	(353)	(354)
LIVING	(355)	(356)	(357)	(358)	(359)
DINING	(360)	(361)	(362)	(363)	(364)
KITCHEN	(365)	(366)	(367)	(368)	(369)
NOOK	(370)	(371)	(372)	(373)	(374)
UTILITY	(375)	(376)	(377)	(378)	(379)
FAMILY RM	(380)	(381)	(382)	(383)	(384)
OTHER RM	(385)	(386)	(387)	(388)	(389)

VALUATION SUMMARY

YEAR	CD	DATE	LAND	IMPS	TOTAL
87	D	02/02/88	3290	1000	4290
88	A	03/16/88	3330	1000	4330
89	A	02/26/89	4260	1000	5260

SALES DATA

PRICE	DATE	TYPE	REASON	BOOK/PAGE
45000	1987-11	C	14	2062-2250
	-			-
	-			-
	-			-

LAND DATA

(001) SIZE 11.53 ACRES
(002) ROAD TYPE D,G,P,S: P
(003) ROAD COND A,B: A
(004) CUL DE SAC
(005) CORNER
(006) ALLEY
(007) PARKWAY
(008) TRAFFIC LEV L,M,H: L
(009) CURB
(010) SIDEWALK
(011) VIEW FACTOR 0
(012) VIEW ANGLE E,G,A,P:
(013) VIEW UTILITY E,G,A,P:
(014) VIEW SUBJECT C,M,V,W,I,A:
(015) UG UTIL
(016) SEWER STORM
(017) SEWER SANIT X,P,G,S:
(018) WATER X
SITES
(019) NBR VACANT
(020) NBR W/IMPS
(021) OSD -,0,+,V:

LAND APPRAISER (030) DATE
(031) ID (032) REV NBR

GEN LAND ADJUST
200
201
202
203
204
205
206
207
208
209

GEN IMPS ADJUST
210
211
212
213
214
215
216
217
218
219

GARAGE
(116) CLASS
(117) TYPE A,D,B,C:
(118) FLOOR C,O,D:
(119) NBR CAR
(120) SQFT

REMODELING EST YR
(121) BATH
(122) KITCHEN
(123) OTHER

FOUNDATION X
125
126
127

ROOF COVER X
128
129
130

ROOF TYPE
131
132
133

EXTERIOR X
134
135
136
137
138

INTERIOR FLOOR
139
140
141
142
143
144

INTERIOR WALLS
145
146
147

FIREPLACE #
148
149
150

PLUMBING #
151
152
153
154
155
156
157
158
159
160
161
162

FUEL TYPE
163

HEAT SQ FT
164

HEAT SYSTEM FNC
165
166
167
168
169

APPLIANCE #
170
171
172
173
174
175
176

REPLACEMENT COST

	TYPE	ADJ	AMOUNT
(500)	FOUNDATION		
(501)	LEVEL X		
(502)	LEVEL X		
(503)	LEVEL X		
(504)	LEVEL X		
(505)	LEVEL X		
(506)	ROOF		
(507)	EXTERIOR		
(508)	INTERIOR		
(509)	PLUMBING		
(510)	HEAT/COOL		
(511)	APPLIANCE		
(512)	FIREPLACE X		
(513)	GARAGE X		
	TOTAL IMPS		
(514)	YR BUILT		
(515)	EFF AGE		
(516)	FUNC-E,G,A,F,P:		
(517)	ECON-E,G,A,F,P:		
(518)	COND-E,G,A,F,P:		
	REMAIN GOOD %		63.00
(519)	ADJUST RG %		
	NET RG %		63.00
	DEPR IMPS		
	MISC IMPS		1426
	TOTAL IMPS		1400
	LAND		

REPLACEMENT COST

REMARKS

(900) 87 DIV 2007 OUT OF TL 49 BLIXT 010488.....
(901) GB 6.53 AC $2850 FE 5.00 AC $440 FOR 87.....
(902) BARN.....
(903) .....
(904) .....
(905) .....
(906) .....
(907) .....
(908) .....
(909) .....

MISC IMPROVEMENTS

	TYPE	QUANITY		CLASS		RG	COST
(800)	FARM BLDG	(801) 680	(802)	4.0	(803)	20	1426
(804)		(805)	(806)		(807)		
(808)		(809)	(810)		(811)		
(812)		(813)	(814)		(815)		
(816)		(817)	(818)		(819)		
(820)		(821)	(822)		(823)		
(824)		(825)	(826)		(827)		
(828)		(829)	(830)		(831)		
(832)		(833)	(834)		(835)		
(836)		(837)	(838)		(839)		
(840)		(841)	(842)				
(844)		(845)					
(848)							
(852)							
(856)							

IMPS (181)

EXHIBIT B PAGE B-8

(194) INSIDE INSP:

GENERATED IMPS VALUE
(520) YR VALUE

APPRAISER IMPS VALUE
(195) YEAR
(178) VALUE
(179) NON TAX

GENERATED LAND VALUE
(524) YR 89 VALUE

APPRAISER LAND VALUE
(027) YEAR
(022) VALUE
(024) NON TAX

(528) VALUE SELECT IMPS: 1
(529) VALUE SELECT LAND: 1

RECEIVED
'97 SEP 24 PM 2:28
MULTNOMAH COUNTY
PLANNING SECTION

EXHIBIT C PAGE C-1

[X] New Hampshire Insurance Company
[ ] Granite State Insurance Company
[ ] American Fidelity Company
[ ] Illinois National Insurance Company
[ ] American Global Insurance Company
[ ] New Hampshire Indemnity Co., Inc.

DRAFT NO. 13-73-48 54-3 114

DATE OF ISSUE 12-15-88

INSURED	CL. OFF.	CASE NO.	PREFIX	POLICY NUMBER	AMOUNT
PROTASSY ANDRE	071	009575	DW	494-20-13	$7451.88**

CLAIMANT	DATE OF LOSS OR ACC.	TOTAL WEEKS PAID	TOTAL INDEMNITY	TOTAL MEDICAL	TYPE	IND. MED. EXP.	STATUS	F P A
	10-22-88				IND		P	

IN PAYMENT OF CLAIM OR ACCOUNT AS FOLLOWS:

PARTIAL ACV FIRE LOSS SETTLEMENT 1k

NOTICE TO HOLDER: VOID IF NOT PRESENTED WITHIN 90 DAYS

UPON ACCEPTANCE PAY TO THE ORDER OF

ANDRE PROTASSY
12120 SW Boones Ferry
Portland OR 97219

PRODUCER

Leonard Adams Company
PO Box AA
Beaverton OR 97223

Roger J. Aasen
AUTHORIZED SIGNATURE

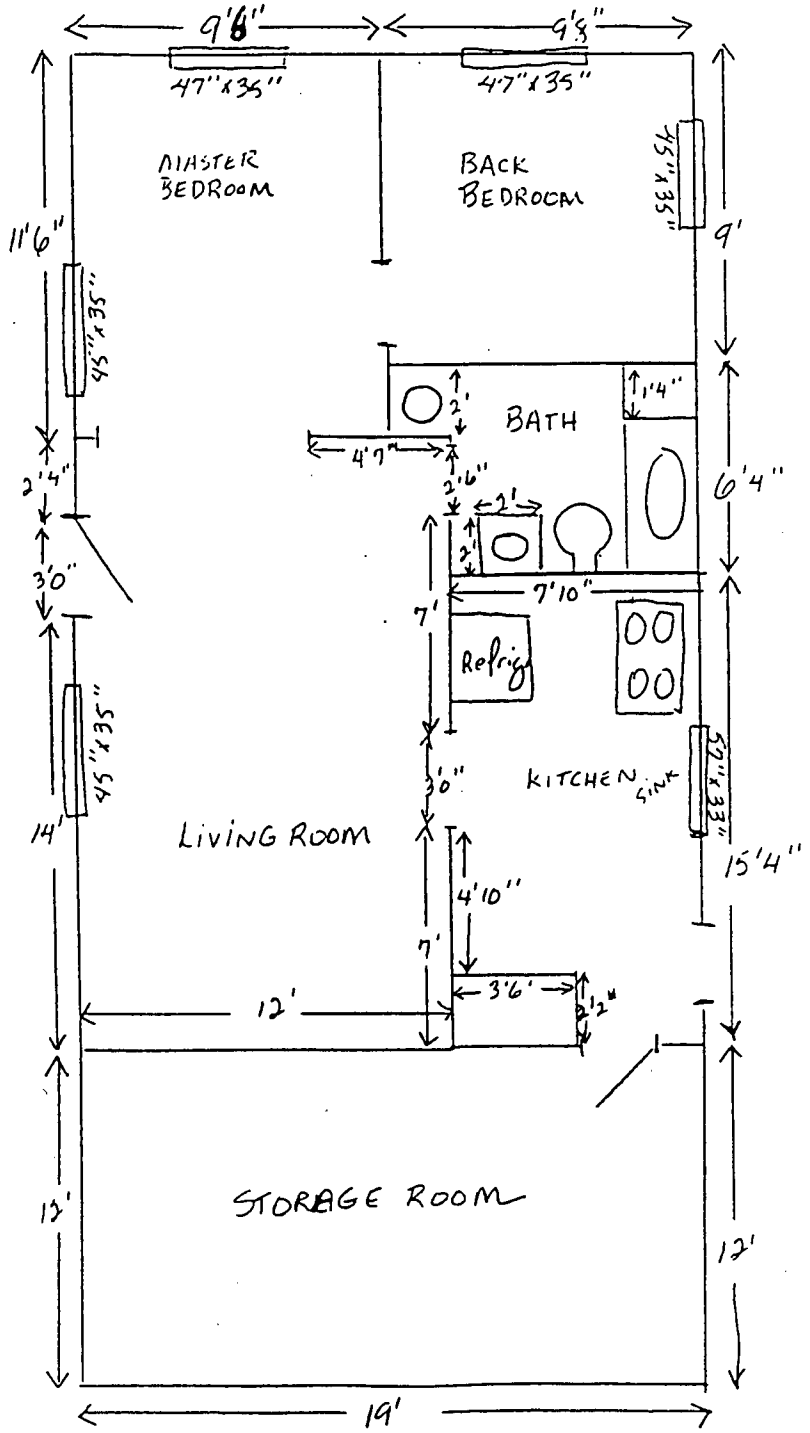
COLLECTIBLE THROUGH MERCHANTS NATIONAL BANK MANCHESTER, N.H.

⑈137348⑈ ⑆011400039⑆ 010136027 2⑈00 091

STEFAN GEROV -

32152 SE STEVENS RD
CORBETT, OR

DATE OF LOSS: 10-22-88



RECEIVED
97 SEP 24 PM 2:29
MULTNOMAH COUNTY
PLANNING SECTION

To Whom It May Concern:

In August of 1988 my wife and I purchased 19 acres in Corbett, Or. with a mailing address of 32202 SE Stevens Rd. This property is adjacent to 32152 SE Stevens which is owned by Andre Protassy. Shortly after the purchase I met Andre while there were still tenants in a house on his property. In Oct of 1988, the rental house burned down. After putting my septic system and driveway in that Fall, I started construction on my house in March of 1989 and finished in January of 1990. During the late Spring, probably in May of 1989, Andre started construction on rebuilding his property.

I remember the timing of the sequence of events very distinctly because Andre and I traded information on building problems from size of septic systems to concrete contractors. I had a slightly earlier start than Andre so he used me as a recource on different things.

The house that Andre built took much longer than mine to build because he did all the work by himself with maybe one helper on occasion. I always remarked on the craftmanship and care on his building. It is far better than the work one could get from an outside contractor.

Thank You:

Nicholas O'Connell

Nicholas O'Connell
32202 SE STevens Rd
Corbett, Or. 97019
503 695-3382

RECEIVED
97 SEP 24 PM 2:29
MULTNOMAH COUNTY
PLANNING SECTION

PROPOSAL and CONTRACT

Date 5-18, 19 89

TO Andre Protassy
12120 S.W. Boones Ferry Road
Portland Oregon 97219 245-8440

Dear Sir:

I propose to furnish all materials and perform all labor necessary to complete the following:

* install 1000 gal Concrete Septic Tank
* INSTALL 225' OF DRAINFEILD WITH drop box
* Clean up & BACK-FILL

All of the above work to be completed in a substantial and workmanlike manner according to standard practices for the sum of One Thousand Two Hundred Fifty Dollars ($ 1250.00)

Payments to be made 1000.00 IN ADVANCE & 250.00 ON Completion as the work progresses to the value of — per cent (— %) of all work completed. The entire amount of contract to be paid within — days after completion.

Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

Respectfully submitted, 695-59

By [signature]
42912 E. Larch Mt Rd
Corbett Ore 97019

ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which _____ agree to pay the amount mentioned in said proposal, and according to the terms thereof.

ACCEPTED [signature]

Date _____, 19 _____

EXHIBIT E PAGE E-1

AIGNER FORM NO. 55-037

PRINTED IN USA

0699

ANDRE PROTASSY
12120 SW BOONES FERRY RD.
PORTLAND, OREGON 97219

5-18 19 89

24-22 115
1230

PAY TO THE ORDER OF Randy Lee $ 1000.00

one thousand and no/100 DOLLARS

U.S. BANK
ONE PACIFIC SQUARE BRANCH
P.O. BOX 4386 PORTLAND, OR 97208
UNITED STATES NATIONAL BANK OF OREGON

NOV 19 1989
119-2

FOR

⑆123000220⑆ 115 0060 273⑈ 0699 ⑈0001000000⑈

© HARLAND 1988

0701

ANDRE PROTASSY
12120 SW BOONES FERRY RD.
PORTLAND, OREGON 97219

5-25 19 89

24-22 115
1230

PAY TO THE ORDER OF Randy Lee $ 250.00

two hundred fifty DOLLARS

U.S. BANK
ONE PACIFIC SQUARE BRANCH
P.O. BOX 4386 PORTLAND, OR 97208
UNITED STATES NATIONAL BANK OF OREGON

FOR

⑆123000220⑆ 115 0060 273⑈ 0701 ⑈0000025000⑈

© HARLAND 1988

FEDERAL RESERVE BANK REGULATION CC

DO NOT SIGN, WRITE, STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

ENDORSE CHECK HERE

x Randy Lee
OR 135519 1222-1249

x Deposit only
Acct # 153-0801-206
Randy Lee

RECEIVED
'89 SEP 24 PM 2:00
MULTNOMAH COUNTY
PLANNING SECTION

DEPARTMENT OF ENVIRONMENTAL SERVICES/BUILDING DIVISION

Gresham Office 669-2481 Inspection No.

OFFICE USE ONLY

Permit No 10545

Date Received

Date Issued

Approved by

ELECTRICAL PERMIT APPLICATION

This form is to be completed by the permit applicant. Thoroughness will expedite the processing. Fees must accompany the application. Plans if required must accompany the application. Return all sheets. State value of all work upon request

CONTRACTOR INSTALLATION ONLY

Installation Address 32152 SE STEVENS

Electrical Contractor

Property Owner ANDRE PROTASSY

Contractors License No.

Builders Board Reg. No.

Signature of Supervising Electrician

OWNER INSTALLATION ONLY ANDRE PROTASSY (PRINT OWNER'S NAME)

The actual installation will be made by [me] [or my ME (RELATIONSHIP)] on property I own described below which is not being constructed for sale, lease or rent. ANDRE PROTASSY (SIGNATURE)

Installation Address: 32152 SE STEVENS Phone No. 245-8445

Description of where work will be done when less than entire building is wired.

COMPLETE FEE SCHEDULE BELOW

Complete this PLAN REVIEW section only if the wiring is intended to supply a connected load over 200 amps; or is a wiring system for a building over 2 stories, or greater than 10,000 sq. ft. in area, or has an occupant load exceeding 300 persons; or is for a trailer park or involved a wiring system over 600 volts. Submit 2 sets of plans with any of the above.

PLAN REVIEW FEE SCHEDULE

Enter appropriate plan review fee below:

201-300	amperes	$ 25.00
301-400	"	$ 30.00
401-500	"	$ 40.00
501-600	"	$ 50.00
601-800	"	$ 60.00
801-1000	"	$ 75.00
1001-1400	"	$ 90.00
1401-2000	"	$115.00
2001-3000	"	$140.00

Over 3000 amperes shall be $140.00 plus $25.00 for each 1000 amperes or fraction there of over 3000.

For systems over six hundred volts, the plan check fee shall be $100.00 plus $.05 per KVA of transformer capacity.

PERMIT FEE SCHEDULE

		Enter appropriate amounts below
Residential Wiring (Exclusive of service)		
Residence wiring less than 1000 sq. ft.	$ 40.00	
Residence wiring less than 2000 sq. ft.	$ 60.00	
Residence wiring over 2000 sq. ft.	$ 80.00	
Electric heat installation in existing residence	$ 30.00	
Service Installations		
Temporary Construction Service	$ 30.00	1
Service not over 100 amperes	$ 40.00	
Service over 100 amps but not more than 200 amps	$ 60.00	
Service over 200 amps but not more than 400 amps	$ 80.00	
Service over 400 amps but not more than 600 amps	$120.00	
Service over 600 amps	$150.00	
Service over 600 volts	$300.00	
Feeders		
Installations or Alterations or Relocations of Distribution Feeders:		
Not more than 100 amps	$ 30.00	
Over 100 amps but not more than 200 amps	$ 40.00	
Over 200 amps but not more than 400 amps	$ 60.00	
Over 400 amps	$ 70.00	
Feeder over 600 volts	$100.00	
Miscellaneous		
Each farm building other than residence	$ 30.00	
Each irrigation pump	$ 30.00	
Each electric sign or outline lighting	$ 30.00	
Each residential swimming pool	$ 30.00	
Each rebar grounding	$ 30.00	
Each alarm system	$ 30.00	
Branch Circuits		
One new circuit: Alteration or extension	$ 30.00	
Two or more new circuits: Alteration or extension	$ 40.00	

INSPECTORS USE ONLY	DATE	INSPECTOR
Temporary Service		
Rough in Wiring		
Permanent Service		
Specialty (write in)		PAID JUN 1989
Final Wiring		

A. Enter total of above permit fees 30.00

B. Enter 5% of above total 1.50

C. Enter Plan Check Amount

PAY SUM OF A, B, & C ABOVE 31.50

YOU ARE REQUIRED TO CALL 248-3047 BETWEEN 8:00 AM & 4:30 PM WEEKDAYS AND 248-5272 ALL OTHER TIMES FOR THE FOLLOWING INSPECTIONS: Temporary or Permanent Service—Rough in wiring—Final Wiring. Other if required.

PERMITS ARE NO[redacted]T COMMENCED WITHIN 180 DAYS OF ISSUANCE OR IF —

EXHIBIT F PAGE F-1

78137

CITY OF GRESHAM

78137

1333 N.W. EASTMAN • GRESHAM, ORE. 97030

$ 31 50 — 6/7 — 19 89

RECEIVED FROM Andre Protassy

ADDRESS 32152 SE Stevens.

Thirty One 50/100 DOLLARS

BUDGET ACCT NO	DESCRIPTION	AMOUNT
~~11-452~~	~~Plumbing~~	~~30.00~~
11-414	Elect. P. # 10546	30.00
11-2531	Surcharge (5%)	1.50
	Cash	

PAID JUN 7 1989

CASH	CHECK	OTHER
X		

BY _____
CITY OF GRESHAM

RECEIPT

EXHIBIT F PAGE F-2

RECEIVED
89 SEP 24 PM 2:30
MULTNOMAH COUNTY
PLANNING SECTION

Oregon Nail Distributors, Inc.

735 S.E. Morrison • Portland, Oregon 97214
1-800-876-NAIL / (503) 232-3341

SHIPPING ORDER NO. 37627

CUST. #

SOLD TO

SHIP TO

TE	CUSTOMER P/O NO.	SALESMAN	NO. COPIES	SHIP VIA	TERRITORY NO.
7-2-89					2

INVENTORY NO.	DESCRIPTION	CASE QUANTITY	QUANTITY ORDERED	QUANTITY SHIPPED	QUANTITY B/O	UNIT PRICE		AMOUNT
			1	1				

Paid cash

# AND DATE	19 / /	CASH	CHECK NO.	FILLED BY	DATE	19 / /

SALES TAX

SUBTOTAL

FREIGHT

INVOICE AMOUNT

turing Products By HITACHI & Bea

Distributors: Nailing, Stapling, Stitching, Machinery & Supplies

CEIVED BY

EXHIBIT G PAGE G-1

☐ DATA SHEET ENCLOSED
☐ DATA SHEET ALREADY RECEIVED
☐ MSDS ENCLOSED
☐ MSDS ALREADY RECEIVED

NO CASH REFUND WILL BE MADE ON RETURNED MERCHANDISE WITHOUT PRESENTATION OF THIS SALES SLIP.

No returns on special orders, cuts or repackaged merchandise.

No credit will be issued for material returned 45 days after original purchase.

MASCO

MASONS SUPPLY CO.

Construction and Industrial Materials

2637 S.E. 12th AVE. • PORTLAND, OR 97202

(503) 234-4321 • FAX (503) 239-3777

CAUTION: FRESHLY MIXED CEMENT, MORTAR, CONCRETE, OR GROUT MAY CAUSE SKIN INJURY. AVOID C WITH SKIN WHERE POSSIBLE AND WASH EXPOSED SKIN AREAS PROMPTLY WITH WATER. IF ANY CEME TURES GET INTO EYES, RINSE IMMEDIATELY AND REPEATEDLY WITH WATER AND GET PROMPT MEDICAL TION. KEEP OUT OF REACH OF CHILDREN. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR DAMA SIDEWALKS, CURBS, DRIVEWAYS, OR OTHER PROPERTY ON THE PREMISES WHEN REQUESTING DELIVER MTLS. TO BE MADE OTHER THAN ON THE STREET. WHEN CUSTOMER REQUESTS MATERIAL, CUSTOMER AS RESPONSIBILITY FOR ANY DAMAGES RESULTING FROM LOADING MATERIALS ON VEHICLE. RETURNED ME DISE MUST HAVE PRIOR APPROVAL OF THE SELLER AND WILL BE SUBJECT TO A 15% HANDLING C MERCHANDISE MUST BE SALABLE AND RETURNED ON A FREIGHT PREPAID BASIS.

DATE: 3-18-89 72374

	Quan. Order	Quan. Shipped	DESCRIPTION	PRICE		TOTAL
	1	1	K CF 282			11

DISCLAIMER OF WARRANTIES: NEITHER SELLER NOR MANUFACTURERS HAS ANY KNOWLEDGE OR CONTROL CONCERNING THE PURCHASER'S USE OF THE PRODUCTS. NO EXPRESS WARRANTY IS MADE BY SELLER OR MANUFACTURERS WITH RESPECT TO THE RESULTS OF ANY USE OF THE PRODUCTS. NO IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO AN IMPLIED WARRANTY OF THE MERCHANTABILITY OR AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE MADE WITH RESPECT TO THESE PRODUCTS.

TOTAL 11

CASH SALE

INVOICE

G L T Staple & Nail
PO Bx 86218
Portland Oregon 97286
774-8297

42180

SOLD TO	SHIP TO
Andre –	224-5014
ADDRESS	ADDRESS
CITY, STATE, ZIP	CITY, STATE, ZIP

CUSTOMER ORDER NO.	SALESMAN	TERMS	F.O.B.	DATE
				6-13-89

ORDERED	SHIPPED	DESCRIPTION	PRICE	UNIT	AMOUNT
1	1	Case 3X13 framing			34 00

TC5840

☐ DATA SHEET ENCLOSED
☐ DATA SHEET ALREADY RECEIVED
☐ MSDS ENCLOSED
☐ MSDS ALREADY RECEIVED

NO CASH REFUND WILL BE MADE ON RETURNED MERCHANDISE WITHOUT PRESENTATION OF THIS SALES SLIP.

No returns on special orders, cuts or repackaged merchandise.

No credit will be issued for material returned 45 days after original purchase.

MASCO

MASONS SUPPLY CO.

Construction and Industrial Materials

2637 S.E. 12th AVE. • PORTLAND, OR 97202
(503) 234-4321 • FAX (503) 239-3777

CAUTION: Freshly mixed cement, mortar, concrete, or grout may ca
skin injury. Avoid contact with skin where possible and wash expo
skin areas promptly with water. If any cement mixtures get into e
rinse immediately and repeatedly with water and get prompt me
attention. KEEP OUT OF REACH OF CHILDREN.

24403

DATE: 8.30.8

	Quan. Order	Quan. Shipped	DESCRIPTION	PRICE		TOTAL	
	1	1	SY CALU			9	00
	1	1	SY 700 SILCA			1	11
	1	1	SY P.M. Concrete			3	2

DISCLAIMER OF WARRANTIES: NEITHER SELLER NOR MANUFACTURERS HAS ANY KNOWLEDGE OR CONTROL CONCERNING THE PURCHASER'S USE OF THE PRODUCTS. NO EXPRESS WARRANTY IS MADE BY SELLER OR MANUFACTURERS WITH RESPECT TO THE RESULTS OF ANY USE OF THE PRODUCTS. NO IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO AN IMPLIED WARRANTY OF THE MERCHANTABILITY, OR AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE MADE WITH RESPECT TO THESE PRODUCTS.

TOTAL 13 0

CASH SALE

Oregon Nail Distributors, Inc.

735 S.E. Morrison • Portland, Oregon 97214
1-800-876-NAIL / (503) 232-3341

SHIPPING ORDER NO. 50308

CUST. # _____

SOLD TO _____

SHIP TO Pd CASH

TE	CUSTOMER P/O NO.	SALESMAN	NO. COPIES	SHIP VIA	TERRITORY NO.
7-12-89					

INVENTORY NO.	DESCRIPTION	CASE QUANTITY	QUANTITY ORDERED	QUANTITY SHIPPED	QUANTITY B/O	UNIT PRICE		AMOUNT
N1020	3X131	1/2	1	1	0	8.00		32.00

O. # AND DATE	19 / /	CASH	CHECK NO.	FILLED BY	DATE	19 / /

SALES TAX	
SUBTOTAL	
FREIGHT	
INVOICE AMOUNT	32.00

aturing Products By HITACHI & BeA

Distributors: Nailing, Stapling, Stitching, Machinery & Supplies

ECEIVED BY _____

Gresham Sand & Gravel Co.

P.O. Box 450 Gresham, Oregon 97030
Phone 666-5577

CODING

INVOICE

ACCT. NO.

DATE 2-11 89

NAME [illegible]

ADDRESS

PHONE

DRIVER

CASH	CHECK	CHARGE	SOLD BY	DEL	CUSTOMER P.O.	JOB NO.

JOB SITE: ARRIVE ☐ AM ☐ PM | DEPART ☐ AM ☐ PM | STAND BY TIME

TONS	DESCRIPTION	UNIT PRICE	AMOUNT
5.45	[illegible]	7	
	[illegible]		
TOTAL 5.45			TOTAL 38 15

PLEASE NOTE!

DELIVERIES INSIDE THE CURB LINE AND ON THE LOT ARE MADE AT CUSTOMER'S RISK ONLY AND THE GRESHAM SAND AND GRAVEL CO. ACCEPTS NO RESPONSIBILITY WHATSOEVER FOR DAMAGES RESULTING FROM SUCH DELIVERIES.

TERMS: Net 10th

A FINANCE CHARGE OF 1½% (ANNUAL PERCENTAGE RATE OF 18%) WILL BE CHARGED ON ALL PAST DUE ACCOUNTS.

G 61176

ACKNOWLEDGED & RECEIVED BY

DELIVERY COPY

American Standard
PURE LUXURY

MESHER SUPPLY COMPANY

– WHOLESALE –

PLUMBING - PARTS - SPECIALTIES

312 S.E. STARK STREET PORTLAND, OREGON 97214
PHONE (503) 236-4148 • FAX (503) 235-9335

PAGE 1 OF 1 NO. 108175

SOLD TO AVDRE SHIP TO

CREDIT	SPECIAL INSTRUCTIONS				
INVOICE DATE		DATE SHIPPED 10-2-89			
CUST. ORDER NO.		POST FOLIO	FILLED BY		
SALESMAN	WHEN SHIP	PREPAID	COLLECT	CHARGE	
SHIP VIA →	M.S. TRUCK / AUTO FREIGHT	P.P.	U.P.S.	WILL CALL	

TERMS: NET 30 DAYS. 18% PER YEAR OR 1½% PER MONTH SERVICE CHARGE ON PAST DUE ACCOUNTS.

NO RETURNS ACCEPTED WITHOUT OUR WRITTEN APPROVAL. ALL CLAIMS MUST BE MADE WITHIN 3 DAYS AFTER RECEIPT OF GOODS. FOR GOODS LOST IN TRANSIT CLAIM MUST BE MADE PROMPTLY UPON TRANSPORTATION CO. AT POINT OF DELIVERY.

RETURNED MDSE. SUBJECT TO 15% HANDLING CHARGE

QUANTITY ORD	BACK ORDERED	DESCRIPTION	QUANTITY SHIPPED	PRICE	UNIT	GROSS AMOUNT	DISCOUNT	NET AMOUNT
280		3 "A135 Pipe 1c	260	75.00	C	2100		
6		2153 3 EE	6	446		2640		
280		4 Std Perf 10' *	280	3100	C	8680		
1		Quick ABS Cement Pt	1	800		800		33120
4		4 Std 90	4	300				12
								348.00
M		Boot T 120						365.00
=								1
		PD 348.00						
6		3 ABS Cplg		90		540		
3		3 90 Foundation drain		250		750		1300

BACK ORDER TO INVOICE NO.

RECEIVED IN GOOD CONDITION BY
X

SUB TOTAL	MISC. CHARGES	INVOICE TOTAL	350.00

INVOICE COPY

CANBY SAND & GRAVEL CO.
A Division of Parker Northwest Paving Company
Remit To: Box 269, Canby, Oregon 97013
Phone 266-5522
Not responsible for damage past property line

TARE
GROSS

Date 3 - 16 - 89

Address

CASH	CHARGE	ON ACCT.	SOLD BY	DEL.	CUSTOMER P.O.

QTY. TONS/ CU. YDS.	DESCRIPTION	PRICE	AMOUNT	GROSS WT.
	1½ - 0 Crushed Rock			
	¾ - 0 Crushed Rock			
	½ - ¼ Crushed Rock			
	Drain Rock			
	¾ - ¼ Round Rock			
	Pea Gravel			
	Concrete Sand			
	Mason Sand			
	Concrete Mix			

Rec'd by

KINGSLEY LUMBER

KING OF THE WOODS

530 S.E. 81st Ave. • Portland, Oregon 97215
(503) 253-7551 • FAX# (503) 253-9532

TYPE OF TRANSACTION		STORE NAME/NUMBER
CASH SALE	SERVICE YOU CAN COUNT ON!	KINGSLEY LUMBER

SHIP TO: (SAME AS SOLD TO UNLESS NOTED BELOW)

AFFORDABLE CONST

C.O.D. Amount

CUST. CODE	SEQ. NO.	TIME	INV. NO.	TRANS. DATE	STR. NO.	S'MAN	WRIT. BY	OPER. NO.		ORDER DATE	SHIP DATE
CASH	55103	13:21	56051	102290	1		7	50	62001		

REF. NO.	CUSTOMER P.O. NO.	PERSON WHO CHGD.		JOB PHONE #	SALESMAN
					STEVE P.

ITEM NO.	QUAN. ORDERED	QUAN. SHIPPED	DESCRIPTION	UNITS	PRICE/UNIT	EXTENSION
2618	24	24	2X6 18' 288TR GDF S4S	432.00	285.000/MBFT	123.12
16BD	4	4	16 BRIGHT DUPLEX NAILS PER POUND	4.00	.860/LB	3.44

SUB-TOTAL				TOTAL
.00	126.56	.00	.00	126.56

AMOUNT TENDERED: 126.56 CHANGE:

TERMS: 1% 10th, net 11th. 1½% Service Charge (18% ANNUAL PERCENTAGE RATE) after 30 days. Complaints of Shortage must be made within 24 hours. 15% restocking charge on all returns of stock items. Restocking charge on special order items may be higher. If this is a quote please examine carefully as we agree to furnish only the articles named and described hereon. All agreements contingent upon strikes, accidents or other causes of delays beyond our control. Quote prices are subject to change without notice.

RECEIVED IN GOOD CONDITION BY _____ DATE:

9060

CASCADE WHOLESALE

9050 Portland Rd. N.E. • Brooks, OR 97305

393-2655

CUSTOMER'S ORDER NO.	DEPT.	DATE
		11-16-90

NAME

ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD.	PAID OUT

QUAN.		DESCRIPTION	PRICE	AMOUNT	
ALL	1	2/6 x 10'		140.	00
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	14				
	15				
	16				
	17				
	18				

12 7

As-Is
No Refunds

REC'D BY

REDIFORM
5L320/01320

KEEP THIS SLIP
FOR REFERENCE

9059

CASCADE WHOLESALE

9050 Portland Rd. N.E. • Brooks, OR 97305

393-2655

CUSTOMER'S ORDER NO.	DEPT.	DATE
		11-16-90

NAME

ADDRESS

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD.	PAID OUT

QUAN.		DESCRIPTION	PRICE	AMOUNT	
1	1	D.T. Window		200	00
Trade		in Window		220.	00
	3	BAL. owed		80	00
	4				
	5				
	6				
	7				
	8				
	9				
	10	As-is			
	11	No Refunds			
	12				
	13				
	14				
	15				
	16				
	17				
	18				

REC'D BY

REDIFORM

20/01320

KEEP THIS SLIP
FOR REFERENCE

KINGSLEY LUMBER

KING OF THE WOODS

530 S.E. 81st Ave. • Portland, Oregon 97215
(503) 253-7551 • FAX# (503) 253-9532

TYPE OF TRANSACTION		STORE NAME/NUMBER
CASH SALE	WE HAVE VISION TO HELP YOU BUILD	KINGSLEY LUMBER

SHIP TO: (SAME AS SOLD TO UNLESS NOTED BELOW)

ANDRE

32152 SE STEVENS ROAD
SPRING DALE
ORE 224-5014

C.O.D. Amount

CUST. CODE	SEQ. NO.	TIME	INV. NO.	TRANS. DATE	STR. NO.	S'MAN	WRT. BY	OPER. NO.		ORDER DATE	SHIP DATE
CASH	67314	09:27	66480	30191	1		14	60	62001		

REF. NO.	CUSTOMER P.O. NO.	PERSON WHO CHGD.		JOB PHONE #	SALESMAN
					MIKE

ITEM NO.	QUAN. ORDERED	QUAN. SHIPPED	DESCRIPTION	UNITS	PRICE/UNIT	EXTENSION
12CD	100	100	1/2" CDX PLYWOOD 4X8 4/5 PLY	100.00	6.800/PC	680.00
34CD	40	40	3/4 CDX PLYWOOD 4X8	1280.00	308.370/MBFT	394.71
2692	30	30	2X6 92 5/8" PRECUT STUDS S&B	240.00	270.060/MBFT	64.81

SUB-TOTAL				TOTAL
00	1139.52	.00	.00	1139.52

AMOUNT TENDERED: 1139.52 CHANGE:

TERMS: 1% 10th, net 11th. 1½% Service Charge (18% ANNUAL PERCENTAGE RATE) after 30 days. Complaints of Shortage must be made within 24 hours. 15% restocking charge on all returns of stock items. Restocking charge on special order items may be higher. If this is a quote please examine carefully as we agree to furnish only the articles named and described hereon. All agreements contingent upon strikes, accidents or other causes of delays beyond our control. Quote prices are subject to change without notice.

RECEIVED IN GOOD CONDITION BY _____ DATE: _____

Telephone: 665-4121

TROUTDALE SAND & GRAVEL CO.

OFFICE: 2205 N.E. 244th Ave. Troutdale, Oregon 97060 MAIL: P.O. Box 397

106095

DRIVER	TRUCK NO.	CUSTOMER'S PHONE	PURCHASE ORDER NO.	DATE
[illegible]	31		O F. SIDE 2	9/30/91

DELIVERY ADDRESS 32152 SE. STEVENS

TERMS: NET UNLESS OTHERWISE INDICATED. A FINANCE CHARGE OF 1½% PER MONTH, WHICH IS AN ANNUAL RATE OF 18%, WILL BE CHARGED ON PAST DUE ACCOUNTS.

CHARGE ☐ C.O.D. ☑

SOLD TO ANDRE'

N. 1 Comm.
10/7/91

CUBIC YARDS THIS LOAD	CUBIC YARDS TOTAL	PUMP - FOOTINGS - FORMS - FLAT - CURBS MIX DESIGN	SLUMP	% ROCK	PRICE	AMOUNT
7	14	6 5k			27.5	811 30

% CALCIUM CHLORIDE HOT WATE

DELIVERY CHARGE: LATE SATURDAY

STANDBY TIME UNLOADING OVERTIME

Will bring to F r

George Flom 9/30/91

BATCH TIME: 7 27

ARRIVED ON JOB	STARTED UNLOADING	COMPLETED UNLOADING	TOTAL
7:50	7:55	8:25	

REC'D. BY DAN BS.

GALS. WATER ADDED ON JOBSITE AT CUSTOMER'S REQUEST 15

CAUTION: Freshly mixed cement, mortar, concrete, or grout may cause skin injury. Avoid contact with skin where possible and wash exposed skin areas promptly with water. If any cement mixtures get into eyes, rinse immediately and repeatedly with water and get prompt medical attention.

KEEP OUT OF REACH OF CHILDREN

MATERIAL SAFETY DATA SHEETS ARE AVAILABLE UPON REQUEST.

DELIVERIES INSIDE THE CURB LINE AND ON THE LOT ARE MADE AT CUSTOMER'S RISK ONLY AND THE TROUTDALE SAND & GRAVEL CO. ACCEPTS NO RESPONSIBILITY WHATSOEVER FOR DAMAGES RESULTING FROM SUCH DELIVERIES.

RELEASE _____

INVOICE DUPLICATE

KINGSLEY LUMBER

KING OF THE WOODS

530 S.E. 81st Ave. • Portland, Oregon 97215
(503) 253-7551 • FAX# (503) 253-9532

TYPE OF TRANSACTION		STORE NAME/NUMBER
CASH SALE	WHERE THE BUILDER IS KING	KINGSLEY LUMBER

SHIP TO: (SAME AS SOLD TO UNLESS NOTED BELOW)

TAKE

C.O.D. Amount

CUST. CODE	SEQ. NO.	TIME	INV. NO.	TRANS. DATE	STR. NO.	S'MAN	WRT. BY	OPER. NO.		ORDER DATE	SHIP DATE
CASH	56727	14:37	57442	110590	15		14	50	62001		

REF. NO.	CUSTOMER P.O. NO.	PERSON WHO CHGD.		JOB PHONE #	SALESMAN
					MIKE

ITEM NO.	QUAN. ORDERED	QUAN. SHIPPED	DESCRIPTION	UNITS	PRICE/UNIT	EXTENSION
248	216	216	2X4 8' S&B GDF S4S	1152.00	232.000/MBFT	267.26

10/15/90

SUB-TOTAL				TOTAL
.00	267.26	.00	.00	267.26

AMOUNT TENDERED: 267.26 CHANGE:

TERMS: 1% 10th, net 11th. 1½ % Service Charge (18% ANNUAL PERCENTAGE RATE) after 30 days. Complaints of Shortage must be made within 24 hours. 15% restocking charge on all returns of stock items. Restocking charge on special order items may be higher. If this is a quote please examine carefully as we agree to furnish only the articles named and described hereon. All agreements contingent upon strikes, accidents or other causes of delays beyond our control. Quote prices are subject to change without notice.

RECEIVED IN GOOD CONDITION BY _____ DATE _____

Evergreen Truss Co.

6312 NE 127TH AVE
VANCOUVER, WA 98662
(206) 256-2300 (503) 221-1475

INVOICE NO.

SOLD TO

SHIP TO

ORDER DATE	CUST. ORDER NO.	SHIP DATE	SHIP TIME	FOB / W/C	SLSM	BYR.

INVOICE DATE	DRIVER	CODE	OTHER TERMS	TERMS
				1% 10TH NET 11TH

ORDERED	SHIPPED	DESCRIPTION	AMOUNT
		Complete truss [illegible]	
		Raptors per Todd	
		Rec'd Cash 1700.00 Thomas J. Holder	

WARNING

JOB TIME IN _____ JOB TIME OUT _____

These trusses being delivered are not stable until they have been completely put into place. It is absolutely necessary that the trusses are braced while they are being worked with and before they have been completely put into place. It is the purchaser's duty to insure that proper bracing has been done. EVERGREEN TRUSS CO. are manufacturers of trusses and not experts in the methods and manner of their installation. You, the purchaser, are responsible for temporary construction bracing, lateral bracing and all other bracing necessary. EVERGREEN TRUSS CO. assumes that you the contractor or owner purchasing these trusses knows how to properly read the Engineers Report for bracing, if not contact a construction contractor.

DISCOUNT	INVOICE TOTAL	
	SALES TAX	
	TOTAL AMOUNT DUE	600.00

ALL PAST DUE ACCOUNTS WILL BE CHARGED 2% PER MONTH (24% PER ANNUM) PLUS ALL COLLECTION AND ATTORNEY FEES. NO RETURN ON SPECIAL ORDER MERCHANDISE. VENUE OF ANY SUIT SHALL BE IN CLARK COUNTY, WASHINGTON. TRUSSES ARE DELIVERED CURBSIDE ONLY. IF REQUESTED TO GO ONTO PROPERTY, ANY DAMAGE TO EQUIPMENT OR PROPERTY WILL BE BILLED TO BUYER'S ACCOUNT. THIS INCLUDES TOWING BILLS IF NECESSARY.

ALL CLAIMS FOR SHORTAGES & DAMAGES MUST BE MADE WITHIN 24 HOURS.

WHITE - Original Copy / GREEN - Duplicate Copy / CANARY - Numerical Copy / PINK - Office Shipping Receipt / GOLDENROD - Customer Shipping Receipt

CUSTOMER'S COPY

Parr Lumber Company

DATE SHIPPED
FILLED BY
DELIVERED BY
LICENSE PLATE NUMBER

PARR LUMBER - ROCKWOOD
18608 SE STARK ST
PORTLAND OR 97233
PHONE: (503) 665-0131

INVOICE NUMBER: 244721
INVOICE DATE: 10/03/91
ACCOUNT NUMBER: 1-000010
OUR ORDER NUMBER: 1
837283

SOLD TO: CASH CUSTOMER
****

SHIP TO: SAME

ORDER DATE	TIME	P.O. / ORDERED BY	HOW SOLD	SOLD BY	DATE PROMISED	PAGE
10/03/91	10:36 AM		CASH SALE	CLIFF TODD	10/03/91	1

LINE#	LOADED	ITEM NUMBER	DESCRIPTION	QUANTITY	UNITS	PRICE / UNITS	AMOUNT
1		7168WW	8" TEX LP WAFERBOARD LAP	350	3733	421.00 /MBF	1,571.78
			PAID CASH - THANK YOU!!				
			None Gone Yet				
			10-3-91 Cash				
			Siding				

NON-TAXABLE	TAXABLE SALE	TAX %	TAX	TOTAL
1,571.78	.00	.00	.00	1,571.78

MATERIALS RETURNED FOR CREDIT SUBJECT TO A 15% RETURN CHARGE AND MUST BE ACCOMPANIED BY ORIGINAL INVOICE.

A LATE CHARGE of 1.50% per month (18.00% ANNUAL PERCENTAGE RATE) will be

IMPORTANT
Read Terms and Conditions governing this sale on reverse side

X _____

INVOICE

WACO SCAFFOLD & EQUIPMENT CO., INC.
3220 S.E. 19th AVE./PORTLAND, OR 97202-2396
PORTLAND: 232-9226 VANCOUVER: 696-6219
FAX: 232-9166

SOLD TO
PROAND
PROTASSY, ANDRE
12120 SW BOONES FERRY RD
PORTLAND, OR 97219

SHIP TO
32152 S.E. STEVENS RD
GARAGE
CORBETT, OR

PROTASSY, ANDRE
PROAND

DATE	SLSMN	ORDER NO.	ORD. DATE	SHIPPED VIA	TERMS	INVOICE NO.	INV. DATE	INV. NO.
07/15/91				W/C	NET	00024101	07/15/91	00024101

ITEM/DESCRIPTION/SERIAL NO.	QUANTITIES		UNIT	UNIT PRICE	AMOUNT
SCAFFOLD RENTAL W/C	Ordered	1.0000	LOT	165.0000	165.00
FROM 6-14-91 TO 7-13-91 STILL OUT	Shipped	1.0000			
DELIVERY TICKET #5852					

DUE UPON RECEIPT

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

THANK YOU !!

NON-TAXABLE	TAXABLE	SALES TAX	FREIGHT	MISC.	INVOICE TOTAL	INVOICE TOTAL
165.00	.00	.00	.00	.00	165.00	165.00

1496 7-86
COMPATIBLE ENVELOPES AVAILABLE

CUSTOMER'S COPY

DATE SHIPPED
FILLED BY
DELIVERED BY
LICENSE PLATE NUMBER

Parr Lumber Company

PARR LUMBER - ROCKWOOD
18608 SE STARK ST
PORTLAND OR 97233
PHONE: (503) 665-0131

INVOICE NUMBER 212340

INVOICE DATE 5/20/91

ACCOUNT NUMBER 1-000010

OUR ORDER NUMBER 359806

SOLD TO: CASH CUSTOMER **********

SHIP TO: --- SAME ---

1

ORDER DATE	TIME	P.O. / ORDERED BY	HOW SOLD	SOLD BY	DATE PROMISED	PAGE
5/20/91	9:41 AM		CASH SALE	CLIFF TODD	5/20/91	1

LINE #	LOC	ITEM NUMBER	DESCRIPTION	QUANTITY	UNITS	PRICE / UNITS	AMOUNT
1		9TYVEK	9' TYVEK 1755 SQ FT	1		125.00 /RL	125.00
2		2622	2X6 22' #2 BTR	10	220	338.00 /MBF	74.36
			SELECT FOR EXPOSED!				
			PAID CASH - THANK YOU!!!				

NON-TAXABLE	TAXABLE SALE	TAX %	TAX	TOTAL
199.36	.00	.00	.00	199.36

MATERIALS RETURNED FOR CREDIT SUBJECT TO A 15% RETURN CHARGE AND MUST BE ACCOMPANIED BY ORIGINAL INVOICE.

A LATE CHARGE of 1.5% per month (18.0% ANNUAL PERCENTAGE RATE) will be

IMPORTANT

X _____

CUSTOMER'S COPY

DATE SHIPPED
FILLED BY
DELIVERED BY
LICENSE PLATE NUMBER

Parr Lumber Company

ROCKWOOD
18608 SE STARK ST
PORTLAND OR 97233
PHONE: (503) 665-0131

INVOICE NUMBER: 220835
INVOICE DATE: 6/28/91
ACCOUNT NUMBER: 1-000010
OUR ORDER NUMBER: 1 602260

SOLD TO: CASH CUSTOMER **********

SHIP TO: --- SAME ---

ORDER DATE	TIME	P.O./ORDERED BY	HOW SOLD	SOLD BY	DATE PROMISED	PAGE
6/28/91	3:33 PM		CASH SALE	ROBERT TOURNAY	6/28/91	1

LINE#	LOAD ID	ITEM NUMBER	DESCRIPTION	QUANTITY	UNITS	PRICE/ UNITS	AMOUNT
1		21837	FIXED ROOF BRACKET	4		6.00 /EA	24.00

NONTAXABLE	TAXABLE SALE	TAX %	TAX	TOTAL
24.00	.00	.00	.00	24.00

MATERIALS RETURNED FOR CREDIT SUBJECT TO A 15% RETURN CHARGE AND MUST BE ACCOMPANIED BY ORIGINAL INVOICE.

A LATE CHARGE of 1.5% per month (18.000% ANNUAL PERCENTAGE RATE) will be

IMPORTANT
Read Terms and Conditions governing this sale on reverse side.

X _____
Your signature certifies materials on this invoice

CUSTOMER'S COPY

PARR LUMBER

DATE SHIPPED
FILLED BY
DELIVERED BY
LICENSE PLATE NUMBER

PARR LUMBER - ROCKWOOD
18608 SE STARK ST
PORTLAND, OR 97233
PHONE: (503) 665-0131

INVOICE NUMBER 00326781
INVOICE DATE 11/15/92
ACCOUNT NUMBER 1-00000010
OUR ORDER NUMBER 00007594-00

SOLD TO: CASH CUSTOMER
****

SHIP TO:

ORDER DATE	TIME	P.O. ORDERED BY	HOW SOLD	SOLD BY	DATE PROMISED	PAGE
11/15/92	9:13 AM	NONE	CASH SALE	626-BOB SULLIVAN	11/15/92	001

LINE#	LOADED	ITEM NUMBER	DESCRIPTION	QUANTITY	UNITS	PRICE / UNITS	AMOUNT
10		25983	11OZ GREY VULKEM SEALANT	2		3.50 /EA	10.50
20		716BWW	7/16 CDX PLYWOOD	20		4.23 /EA	85.20
			THANK YOU!! PAID CASH				

NON-TAXABLE	TAXABLE SALE	TAX %	TAX	TOTAL
95.70	.00	.000	.00	95.70

MATERIALS RETURNED FOR CREDIT SUBJECT TO A 15% RETURN CHARGE AND MUST BE ACCOMPANIED BY ORIGINAL INVOICE.

A LATE CHARGE of 1.500% per month (18.000% ANNUAL PERCENTAGE RATE) will be

IMPORTANT
Read Terms and Conditions governing this sale on reverse side.

X _____
Your signature certifies materials on this invoice

23SL19505

FORM 101 REV. 4/92

MILLER PAINT CO.

SINCE 1890

MAIN OFFICE:
317 S.E. GRAND AVE.
PORTLAND, OR 97214
503-233-4491

STORE:

SALES #	CASH	CHARGE	RET.
7	✓		

DATE: 1/25/92

INVOICE NO:

PAYMENT TERMS: NET 30 DAYS

PLEASE . . .
REFER TO THIS
ACCOUNT NUMBER . . .

ACCOUNT NO.

CASH

PAYMENT METHOD:

CASH	CHECK	CARD
40.00		

PREVIOUS COLL.	CHECK #	CARD #

AMOUNT RENDERED #	CHANGE	PURCHASE ORDER NUMBER
40.00	8.27	

JOB NAME	JOB NUMBER

SPECIAL
INSTRUCTIONS:

PRODUCT CODE	TOTAL QTY. ORD.	PKG. QTY./SIZE	PRODUCT DESCRIPTION	LIST	PRICE	TOTAL
[illegible]	1	1 GALLON	[illegible]	24.45	14.[illegible]	14.[illegible]
[illegible]	1	1 GALLON	[illegible]	24.45	14.25	14.25
[illegible]	1	1 LIGHT MT.	[illegible]	1.40	1.05	1.05
1090	1	2 GALLON	PLASTIC PAINT LINERS #12	0.50	0.39	0.39

Service charge on past due accounts will be highest amount allowed by law.
No cash refunds made unless original sales slip is presented.
30 Day limit on returnable merchandise.

TAX

PAY THIS AMOUNT ▶ TOTAL [illegible]

SIGNATURE X: _____

PACKING/CUSTOMER COPY

ANDRE PROTASSY
DBA PASSPORT PHOTOS
12120 SW BOONES FERRY RD.
PORTLAND, OREGON 97219

1088

24-22/1230
BRANCH 115

8. 3 19 91

PAY TO THE ORDER OF PHILIPS INDUSTRIES $ 593.70

five hundred ninety three +70 DOLLARS
Too

U.S. BANK
ONE PACIFIC SQUARE BRANCH
P.O. BOX 4386 PORTLAND, OR 97208
UNITED STATES NATIONAL BANK OF OREGON

FOR WINDOWS

U.S. BA

60 2731 1088 "000005937 0"

INVOICE

WACO SCAFFOLD & EQUIPMENT CO., INC.
3220 S.E. 19th AVE./PORTLAND, OR 97202-2396
PORTLAND: 232-8226 VANCOUVER: 696-6219
FAX: 232-9166

 PAGE 1

SOLD TO
PROAND
PROTASSY, ANDRE
12120 SW BOONES FERRY RD
PORTLAND, OR 97219

SHIP TO
STEVENS RD
RESIDENCE
TROUTDALE, OR

PROTASSY, ANDRE
PROAND

DATE	SLSMN	ORDER NO.	ORD. DATE	SHIPPED VIA	TERMS	INVOICE NO.	INV. DATE	INV. NO.
10/30/92	DL			WILL CALL	NET	00026908	10/30/92	00026908

ITEM/DESCRIPTION/SERIAL NO.	QUANTITIES		UNIT	UNIT PRICE	AMOUNT
SCAFFOLD RENTAL W/C	Ordered	1.0000	LOT	180.7500	180.75
FROM 9-29 TO 10-28-92 STILL OUT	Shipped	1.0000			
DELIVERY TICKET #8046					

DUE UPON RECEIPT

PAID
9/29- 119.15

DUE- $61.60

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

THANK YOU!

NON-TAXABLE	TAXABLE	SALES TAX	FREIGHT	MISC.		INVOICE TOTAL
180.75	.00	.00	.00	.00	INVOICE TOTAL ▶ 180.75	180.75

1496 7-86
COMPATIBLE ENVELOPES AVAILABLE

RECEIVED
97 SEP 24 PM 2:32

TRANSCRIPT OF PROTASSY HEARING TYPED BY THE OFFICE OF PAUL NORR, ATTORNEY FOR APPLICANT, FROM TAPE PROVIDED BY PLANNING STAFF:

HEARING: July 16, 1997
CASE: CU 12-96/SEC 27-96/HV 18-96
HEARINGS OFFICER: LIZ FANCHER

HO Good morning. My name is Liz Fancher. I am one of Multnomah County's Land Use Hearings Officers. Now it's 10:30 in the morning on July 16, 1997. Now is the time scheduled for hearing in request for conditional use approval for a template dwelling, also request for significant environmental concern review in the Sandy River Scenic Waterway and a request for a major variance to reduce the minimum front yard setback from 200 to 45 feet and a variance to the minimum side yard setback of 200 feet to 35 feet. The application numbers are CU 12-96/SEC 27-96/HV 18-96. The staff person who reviewed this matter is Chuck Beasley. He's seated to my left and from your point of view to the right of me. The matters that will be considered are those I've listed here today. It relates to property at 32152 S.E. Stevens Road. This particular hearing is what's called a quasi-judicial proceeding and that means that in the land use hearing the hearings officer's responsibility is to apply the law as it's written. A hearings officer has no authority to change the law and what it's necessary for the hearings officer to decide is what the facts are that relate to the application and secure all relevant testimony from all parties, to decide if there are conflicts in the evidence what are the true facts and then to apply the facts to the law and render a decision that's in compliance with the law. If you feel that the way the law is written is not fair you can certainly raise legal objections to that based on legal errors and we will consider those. But if your real basis for arguing about the law is that it needs to be changed, you need to direct those concerns to the Board of County Commissioners. At the beginning of the hearing I am required by law to explain the applicable approval criteria, the rights of the different parties to present testimony and to explain how the process works. The applicable approval criteria are listed in the staff report that was prepared by Mr. Beasley for this land use application. It looks like this and it's located in the back of the room. At this time I'll ask if any party would like me to go through and explain the approval criteria that are listed in the staff report or if they will accept the staff report in setting forth those criteria. Would anyone like me to read the

EXHIBIT H PAGE

approval criteria?

?? [male - inaudible]

LF You want to go ahead and read it? Okay. The approval criteria are found in the County Code. They are listed on page 4 of the staff report. It's MCC 11-15-2052. It says _____ subject to the following conditions: the lot or lots in the tract shall meet the _____ standards of MCC Section 2062A and B and has been lawfully created prior to January 25, 1990. Additionally, MCC 11-15-2052A2 is applicable that _____ the tract shall be of sufficient size to accommodate the siting of the dwelling in accordance with the County Code Section .2074 with minimum yard of 60 feet to the center line of any adjacent county maintained road and 200 feet to all of the property lines. Variances have to be _____ under the applicable County Code. A tract shall also meet standards set out in MCC 11-15.2052A3. Those are the ones that are determined applicable. Those are listed in the report under "C" and then a little "i" and then two "i's" and that explains the template test that the county applies requiring 11 lots be in existence as of January 1, 1993, and also that five dwellings lawfully exist on January 1, 1993. Then various other rules are applied to the template test that are listed at the bottom of the page on page 5 indicating that you don't count lots within urban growth boundaries, that no other dwellings be located on the tract, that no other dwellings are allowed on any part of the tract and that provides specific regulations that would apply if and when the application is approved. The dwelling has to be located outside of big game winter habitat area, or the Oregon Department of Fish and Wildlife must certify that approval of dwellings in this area is acceptable in terms of its impact on wildlife, there has to be proof of a long-term road access permit or agreement, also there is a condition of approval in 11.15.2052A6 which requires the owner of the property to plant trees in order to demonstrate that the tract is reasonably expected to meet the Department of Forestry stocking requirements, that's a condition of approval _____ imposes condition of approval and there are consequences specified in the law for failing to meet the minimum stocking requirements which include disqualification of the property from forest tax deferral and payment of additional tax penalties. The law does not describe what happens in terms of farm deferral. Additionally, the dwelling must meet the development standards that are set forth in the County Ordinances. A

statement has to be recorded recognizing the rights of adjoining property owners to conduct forest operations. Additionally staff identified the replacement dwelling provisions of the County Code as being relevant to this matter, or at least to be considered. Whether or not that does apply is an issue in this matter. Also provision requires that the dwelling have the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements included in the County Code which involve the 200 foot setbacks. Adverse impacts on forest operations excepting farming practices on the tract must be minimized. Amount of land use _____ site the dwelling structures, access road service corridor must be minimized. Any access road or service corridor in excess of 500 feet must be necessary under standards specified in the ordinance. Risk with wildfire must be minimized. The proposed dwelling must be located on a tract within a rural fire district or the dwelling must have a residential fire protection by contract. Access for fire vehicles must be provided in accordance with state standards. Those standards are listed in the County Code, but those are also found in state law and apply to this application as well. Relating to slope and fire breaks around the property, the property cannot have a slope in excess of 40%. The dwelling must comply with Building Code requirements. It must be attached to a foundation, have a minimum square foot floor area of over 600 square feet, a fire retardant roof, spark _____ chimney. The applicant is required to provide evidence of a domestic water supply that meets the requirements of the Department of Water Resources under their administrative rules and the water source cannot come from a class 2 stream.

?? [male] Excuse me. Did you say something about fire _____. Did I understand you right on that? There has to be a fire plug down there?

LF No. A private road accessing two or more dwelling or driveway accessing a single dwelling shall be designed, built or maintained to support vehicles of a certain weight. That's specified in the staff report. That's on page 11. You can all follow along. We're on page 12 now. The various standards are set forth here in detail relating to grades and things of that nature. Then the additional approval criteria for the SEC permit are listed starting on page 13. You'll see that there's MCC 11-15.6404 uses of SEC permit required relating to scenic waterways. On the criteria themselves for approval _____ SEC permit are

listed in 11-15.6420 and that says it applies to certain areas that are mapped by the county. This particular property is in a mapped area. The code requires that the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a protected feature such as the river, stream or lake or floodwater storage area that's being protected. Agricultural land and forest land shall be preserved and maintained for farm and forest use. Building and structures shall be located on a lot in a manner which will balance functional considerations and _____ need to preserve or protect areas of environmental significance. Recreational needs should be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance, protection of public safety and public and private property especially from vandalism and trespass shall be provided to the maximum extent practicable. Significant fish and wildlife habitat shall be protected. Natural vegetation along the river, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to ensure scenic quality and protection from erosion _____, archeological areas must be preserved, areas of annual flooding, flood plains, water areas and wetlands shall be retained in their natural state to the maximum extent possible, areas of erosion or potential erosion shall be protected from loss by appropriate means, appropriate means are based on current best management practices and include restrictions on _____ soil disturbing activities, quality of air, water, land resources ambient noise levels in the area shall be preserved in the development and use of the area, design _____ construction materials, color, lighting of buildings, structures and _____ shall be compatible with the character and visual quality _____ significant environmental concerns. An area generally recognized as fragile and endangered plant habitat or which is valued for _____ features or which has an identified need for protection of natural vegetation shall be retained in a natural state to the maximum extent possible. Then the applicant is required to demonstrate that the applicable _____ of the comprehensive plan are satisfied by their application. That requires identification of all the provisions of the plan that are applicable. Staff then went through and identified the _____ policies that they believe are applicable and did not receive a response from the applicant on those policies for the most part or not at all. Apparently not at all.

?? [male - unidentified - inaudible]

LF Okay, well that's all right, I'm just reading what's in the staff report. That indicates there is no response, so applicant can respond to that during the hearing, but those particular policies are set forth here. They're found on page 18, 19 and 20 and include policy 13, policy 22, policy 37, policy 38 and policy 40. Criteria for approval of major variance are found at MCC 11-15 8505, page 20. It indicates that the approval authority may permit and authorize a variance only when there are practical difficulties in the application of the chapter and a major variance shall be granted only when all the following criteria are met. The criteria are listed in the staff report starting at page 21, a circumstance or condition applies to the property or to the intended use, it does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the comparative surrounding uses. A second requirement is the zoning requirement would restrict the use of _____ property to a greater degree than it restricts other properties in the vicinity or district. _____ the authorization of the variance will not be materially detrimental to the public welfare or injurious to the property in the vicinity or district in which the property is located or adversely affect the appropriate development of adjoining property. The granting of the variance will not adversely affect the realization of the comprehensive plan nor will it establish a use which is not listed in the underlying zone. Those are the applicable criteria. If you disagree with the applicable criteria or feel there should be additional criteria considered you may raise those objections during your testimony today. Testimony that you present and evidence that you present must be directed toward the criteria that I listed to you in great detail at this point. Other criteria which you believe applies I indicated must be mentioned by you and raised at this issue. Failure to raise an issue during this hearing accompanied by statements or evidence sufficient to afford the hearings officer and the parties to this matter an opportunity to respond to the issue may preclude appeal to the Land Use Board of Appeals based on that issue. Okay. At the close of the hearing there is an opportunity for all parties to request additional time to submit additional evidence to respond to any new evidence that's submitted by the applicant and I would consider any requests for additional

time to leave the record open. Generally the record must be left open for seven days. Following that time the applicant has an opportunity to submit written legal arguments, or written arguments relating to the matter before the hearings officer, they may not introduce new evidence at that time. And any new evidence that's submitted by the applicant in that final statement will not be considered by the hearings officer as evidence to support their case. And I want to be very clear about that so that the applicant understands that all evidence needs to come in before the close of the record in this matter and cannot come in in that final applicant statement. The applicant also has the right to waive the right to submit that final argument if they wish to obtain an earlier decision of the matter. Okay. Then, also at the start of the hearing I'm required to indicate if I have any bias or prejudgment related to this case, any potential or actual conflicts of interest, any ex parte contacts, or any site visits. On this matter I have not visited the site, I have not had any what are called ex parte contacts which are contacts with people who are parties to the matter that is pending before me. Also, I do not have any potential or actual conflict of interest relating to this particular matter. I do not own property in the area of this property. I do not have any investments that would in any way be affected by the outcome of this particular case and I have not reached a decision on the matter, have not prejudged it and don't have any particular bias one way or the other that would affect my ability to be fair and impartial in this matter. At this point does anyone wish to challenge my ability to hear this matter and if so raise your hand and then I'll have you come forward and put that on the record. Okay, seeing no one raised their hand I will find that there are no objections to my ability to hear the matter and I will proceed to hear and decide this matter. Okay, at this point, does anyone wish to challenge the hearing on procedural grounds, on terms of the notice or anything else and if you would, please raise your hand. Okay the gentleman in the blue. Would you come forward and state your name please?

GUS My name is Gus _____ and I'm president of Camp Angeles (?) Which is the adjoining property. We have 98 acres.

LF Okay. And your objection is?

GUS My objection is to a couple of things. The roadway is one of them.

LF Oh, okay. The only objections that you need to state at this point are related to the procedure [interrupted].

GUS [both talking at once]

LF Okay. Thanks. I'm sorry. Thanks. Then the final think that I'll cover is the order of the proceedings. What we do is just start with the staff report and staff indicates what their recommendations were on the case and summarizes their staff report. Then the applicant is given an opportunity to present evidence at the hearing in support of their application and people who support the applicant's position or generally are in favor of the application are asked to present testimony. After that people who wish to testify in opposition to the request filed by the applicant are given an opportunity to present evidence. Then the applicant is given the opportunity for rebuttal and, in my discretion, if I believe it's necessary to respond to new material that perhaps the applicant didn't mention in the first place and they bring that in in rebuttal, then I may allow the opponents also to have an opportunity to rebut that evidence. Then after the testimony is done, we'll decide whether or not there'll be an additional period of receiving evidence after the hearing in writing and people can raise the request for that and then the record will close or the date for closing the record will be established and we'll also make a determination about what the applicant wishes to do with the comments that they have a right to submit, the legal arguments, and then after that then staff will present their final staff comments on the matter and then at the end of that I generally indicate to the parties any of the issues that I think might be addressed in their written comments that follow close of the hearing today, if there is going to be additional comments. If the record is closed I'll generally give folks an idea of what I'm thinking about the case so they are not surprised when they receive my written decision. Okay. Staff report, Mr. Beasley.

CB First, I'd like to introduce a couple of exhibits into the record that came in after the record was _____ show a short video and then review the conclusions and I also have a correction to the record that I want to make. I'll do that before the video. The first exhibit that I want to add to the record is the affidavit of posting property for this hearing, that's Exhibit E-1. The second item is a _____ letter from a Frank _____ in support of the issue of the old dwelling, there was a dwelling in the past. I'm entering that as Exhibit E-2.

_____ photocopies of those two before we leave.

LF Okay.

CB The correction to the record is regarding the variance _____ the front yard setback. There are a couple of typos in the staff report. On the first page of the staff report it says that the front yard setback reduction is from 200 feet to 45 feet and it should say 60 feet, so the reduction is from 200 feet to 60 feet. That's reflected correctly in the summary conclusion on page 2 of the staff report. I find that there is another error and it's a different number of feet in the staff report on page 41 of the findings. In that first paragraph under the applicant's statements he's got it as 50 feet and my understanding is that Exhibit A3, which is the latest site plan that was submitted May 2, my understanding is that Mr. Protassy's indicating that the setback from the property line is 60 feet on that plan. So, that's the only. And as go through the video I don't know if it will help to look at Exhibit A3 or not.

LF _____ do you want to get the light? That one's okay. Yeah, leave that one on.

CB Okay. This is a picture of the property looking west along the easement road and this is the field to the south and then this would be east property line. There's a line of poplars along here, the Sandy River Canyon is down in here. Then we're looking again down the easement road to the property to the north. This is apparently managed as a pasture and agriculture at this time. This is the house and development adjacent to the north. Camp Angelos is down over the hill here. This is the easement road of the subject property here. Here's another picture of the house and we're looking toward the west side and this is the area where the edge of the Sandy River Canyon starts and this is a fairly steep slope according to the applicant about 60%. It shows primarily deciduous trees in that area. There are some small conifer in there. It looks like it was harvested years ago and never actually reforested with conifer. And this is the Sandy River down below. _____ this is April, so it's changed now. You can't see it. This is the south portion of the house, swinging around from the west toward the south. Generally the site is pretty flat until you get to the edge of the trees, the edge of the bluff and _____ it drops off.

LF So, what's the orientation of the property? Like, as

opposed to the map, what side are you looking on _____?

CB You're looking down this side. The trees are on the west and south.

LF Okay.

CB _____ the river down below.

?? [male - unidentified] The ice storm tore it up pretty good.

CB Yeah. Okay. This is the vineyard. There is four or five rows of grapes there. And this is swinging back toward the east where there's a little bit of a rise and the there's _____ it's pretty flat actually, and then rises up to the northeast corner. This is the adjacent dwelling on the east side. Beautiful day. Good day for field work. And then again, this is the northeast corner and the dwelling on the east. That's pretty much it.

?? [male - unidentified] You have tough duty.

CB What I want to is not take up a lot of time, but just quickly go through the conclusions for each of the three applications. Template dwelling and the SEC and variance. The summary conclusions on page 2 of the staff report. The detail conclusions for the template dwelling the conditional use are on page 12 and 13.

?? [male - unidentified; may be GUS] Where are you now?

CB Page 12 of the staff report. The first conclusion the staff makes is that the existing structure doesn't qualify as a replacement dwelling under the rules primarily because the dwelling that is replaced doesn't exist and needed to exist. That issue I think is resolved. Primarily the other....

LF Pardon me. How is it resolved?

CB Primarily because there's no record. I mean it's clear by the record that the original dwelling was destroyed in 1987 or 1988 and there was no evaluation of replacement issues _____ circumstances around replacement at that time _____ _____.

LF Okay. And was a permit required at that time?

CB Yes.

?? [male - unidentified] I'm sorry. When you say it's not resolved, does that mean that the conclusion was made that this _____.

CB I'm saying the issue of whether this application could be considered as a replacement dwelling _____ replacement dwelling provisions of the code is resolved by the fact _____ because the dwelling that is replaced does not exist and that's a primary finding that has to be made for replacement dwelling application to be considered.

?? [male - unidentified] Question. If I ....

LF You need to hold your questions until you testify and we have you on the record. Okay. So Mr. Beasley needs to finish his staff report and then other issues can be raised by participants when you're testifying. And that's necessary so that we can keep a good record of what we're doing here.

CB Okay. The -- generally, most of the other template dwelling criteria _____ are met. The main criteria that we think has not been shown to be met is 12074A1 which relates to protection of forest management activities on adjacent land. There isn't any analysis in the applicant's submittal that demonstrates why a 35 foot setback between dwellings and adjacent forest land to the west is adequate to protect forest management activities on that adjacent parcel to the west. Nothing in the SEC ordinance precludes forest management from occurring on that property _____ _____ forest zone. The -- you know, if the applicant can provide evidence that the scenic waterways administrative rules preclude forest management on _____ properties, then perhaps a finding could be made that forest management _____ occur and that the 35 foot setback is adequate to protect forest lands, but it's not on the record. And the other standard that isn't met is the development standards of .2074B primarily because there isn't a building permit for the existing structure. Regarding the SEC permit, the conclusions under that section are on pages 20 -- uh, regarding the comprehensive plan policies, staff's recommendation is that there is enough evidence in the record to make a finding that they're satisfied. We aren't arguing -- staff isn't arguing that those are not satisfied and I may have missed some information that Mr. Protassy submitted, but it wasn't in the one piece that I reviewed

for this. But, regarding two of the criteria that staff feels haven't been demonstrated to be met in the SEC zone, 16420A is the criterion that asks that the maximum amount of open space for vegetation is provided between the resource, in this case the Sandy River Gorge Scenic Area, and the development. And there's no demonstration that that's happened when you look at the exhibit on __3, if the house was moved further to the east then the distance would be increased. There's some limited visibility of the house from the gorge, it's not hugely visible so I don't think the impacts are great _____, still the finding requires the maximum distance and there is no evidence in the record that says it couldn't have been constructed further to the east. And then the second criterion was the staff felt wasn't met with the application was .6420C. This application asks for an evaluation of the balancing the functionality of the utility of the building site with the impacts that that building has on the scenic resources and the response didn't really take this issue up. And again, I think that unless we consider the cost of moving an existing structure that was constructed without a permit and staff is assuming that's its not _____ to do that, then we have to consider this as a new house. The _____ conclusion that we would give to is that some improvement could be made by moving it to the east and absent any other evidence we couldn't find that the criterion was met. If the case can be made that we can consider the existing house -- notwithstanding that it was built without a permit -- the value associated with that and the cost associated with moving it the staff would conclude that that criterion would be met because the cost would outweigh the judgment call. The staff would conclude the cost would outweigh the benefit. Okay, in regarding the conclusions on the variance, those are on pages 22 and 23. In general, the variance is the hardest part of this application to justify in staff's opinion because we're working from a situation where a house has been constructed on the site that doesn't comply with the code that we have to apply after the fact. And because there aren't any obvious physical limitations in the property that limit its location to where it is. Under the first criterion the justification that's provided is that other existing dwellings do not meet the setback requirement and therefore that's a hardship, but there isn't any demonstration that there's a practical difficulty in the land or its condition that limits the dwelling to the location proposed. It appears from a close reading of the variance criteria that the ordinance would allow consideration of physical improvements, but staff is making

a presumption that we would only include improvements that legally exist and that -- uh, _____ interpret that criterion. So we feel that it doesn't meet that criterion. In the second variance criterion, we feel it hasn't been met because there's no comparison made between the limitations _____ to the placement of the use, which is the dwelling, rather than its location in the contrast to placement of other dwellings in the area. _____ the setbacks of the commercial forestry zone don't appear to preclude placement of the dwelling in a reasonable location on this property. So, that's all.

LF Okay. Can you hold on a moment?

TAPE 1 - SIDE 2

LF All right. So at this point it's the applicant's opportunity to make a presentation.

?? [male unidentified - inaudible]

LF Yes. If you wish to present evidence at this time you do need to come forward here. Take a seat here, indicate your name and address for the record, please.

AP My name is Andre Protassy. I live at 12120 SW Boones Ferry Road and I am the owner of this property. You have to excuse my language. I am a foreigner as you hear and at the time I started this whole stuff I didn't speak very well English. I don't how well I speak now if you understand me, but I'll try my best.

LF You're very understandable.

AP Okay. I purchased this property in ninety-seven, 24th of November.

?? [male - unidentified] Eighty-seven.

AP Eighty-seven, I'm sorry. And I purchased land and house which a year approximately after I purchased burned down by the negligence of some tenant I had there. _____ the fire department. I have some documentation here from the insurance company which was disputed by this office. I've

been told that no house was existing there. That's why I have some witnesses here. The previous owner is here, et cetera. Now he is indicating the first point that today it's not possible to replace the house because no house was there, as far as I understood, or no legal house was there. The house was built way before building permit was necessary. _____ before 1960. I have some people who support this statement, as a matter of fact the previous owner is here. And when the house burned down I came to this office and talked to Mr. Bob Hall and probably it's my fault because I didn't understand how that's supposed to work. I was supposed to get a permit. I just started to rebuild the house. Actually was burnt almost completely down and I _____ to put the house on exactly the same spot where the old house was and existed for 30-40 years, I don't know how long. And I did that ...

LF When was that done?

AP I started in '89 with the foundation and the rest of it. You have to consider that I did everything that you saw in the picture of the house with my two hands with occasional help. So it took me longer than a contractor is going to do it.

LF So, when were you done with it?

AP About '92 -- I'm not completely done, but '92.

LF Okay.

AP And so then I came ...

LF And did you not apply for a building permit at that time?

AP No, I didn't.

LF Okay. No building permit.

AP I have the verbally agreeing to go ahead and rebuild the house is enough and I did not very much about it _____, so I started. If I knew that I wouldn't put the house there because I personally don't like this _____ but I did it in order not to _____ 200 feet to the east which is going to be in some kind of ditch where the water from _____ property comes through and where it will cost me enormous amount of money to fill the ditch with dirt and if I _____ this way, then the house is going to be

three-quarter of the year in the water. Excavation ...

LF Okay. At this point _____ where on the property this ditch is that you're referring to. Is it this? Is this it in the middle?

AP Yes, that is -- I measured it from the property line 200 feet and from the property line on the north 200 feet. That comes exactly in the middle where the water comes from above. Somewhere in this statements here it is indicated that there is no culvert. Here's a big culvert which takes the water from the above property and goes all the way through my property.

LF Okay. So how much of an area is there like at this side to place the dwelling and still be within the setback?

AP Actually, not at all because that whole place is -- when it starts to rain, and we get lots of rain here, almost the whole property is wet all the time. As a matter of fact when we had the strong rains here the entire property here was full of water. It was like a swamp. So that gives me the answer why the people before me and _____ put the house there. Because that is probably the safest place. And that was for many years nothing happened to it. No erosion or _____. Otherwise I would put the house somewhere here that I have a view, et cetera, and _____ spent almost $100,000. So that is about the history of the house and why it is there. The second thing _____, I've been hundreds of times down there in the river and I was yesterday over there all day. There are some pictures here. _____ whether on one end of my property or the other end of my property you _____ see the house, period. _____ everything to make sure that it's not visible even further up the river from the other side of the river I went all the way to the top of the other side and took pictures from there and that is probably 700-800 feet above the ground. You cannot even see the house from there. _____ I have the pictures here and I have them when there are not the leaves there and you can see through you cannot see down there anything else and I went on the roof of the house in all directions and you cannot see anything down there. _____ the entire roof _____. That is from the river up. The house is sitting here. Right here. This tree on the top is right in the middle of my garden. Also from all directions from the east, west and south and that is from the top. That is the property here.

You _____ see my neighbor's property, you _____ see the neighbor to the north property, but you don't see the house here. That is about -- that's my estimation, 800 feet, at least, high. Down there is the river. So, if I cannot see it from there and I cannot see it I guess from the river. That is also the house here. That is the ditch here. And the .....

LF Okay. At this point just for the record I need to -- if we're going to consider this evidence -- I need to put it into the record and give it an _____. So, what I need to do is have you put all those photos together and give those to me and I'll label them.

CB How many do you have there?

LF I'll count them. We'll just put them all in one exhibit number. Okay, exhibit 3 -- E-3. And I'll stick this on this photo that's the exhibit taken -- the photograph across the river and then _____ can label the rest of them, or I'll do it later so as not to take up everyone's time. [counting] There appears to be thirty photos. Okay, so I accept these photographs and they are marked Exhibit E3 if others wish to see them. I think I'll place them on this table over here so that any of the other parties can look at them. Okay.

AP I don't know if I forgot something about SEC[?], but I go to variance. I been told in this office that I have to pretend that no house there. And I try my best. I pretend _____ _____ I close my eyes and when I open them the house is there. Okay. It is a fact it is a build there. I try my best. I put all my money into it and I thought I didn't violate any zoning. I'm not an expert. I'm not a professional. I did violate probably the building laws and I try not to do and the house is built after the code and _____ ...

LF Who checked it for the composite code?

AP Builders I invited over there to advise me so ...

LF Okay. But not a county official?

AP Not the county.

LF Okay.

AP I cannot do that according to the staff report here. Anyways, the house is there. I wish it's not there, that I can put it somewhere else, but I can't and if I could, like I said before, _____ in an area that's going to be under the water most of the year. Or if _____ _____, then I have to spend probably $100,000 which I estimated just to move the house. _____ _____ been existing forever also before the house, before this house, base electricity, base plumbing, base septic tank which also was existing before _____ _____ with a bigger one _____ permit.

LF Okay. And when were those permits issued?

AP Couple years ago. Eighty-five [sic ?].

LF Was there an existing septic system on the property before it burned down. I assumed there would be.

AP Yes.

LF Okay.

AP Exactly in the same spot. This is bigger because the house is a little bigger.

LF Okay.

AP So, if I have to move the house _____ _____, but I estimate to move the house which I would -- my good faith I was willing to do something about it -- $30,000. _____ that is to move the house. The foundation is going to cost me at least $10,000 to $15,000. _____ cost approximately $10,000 five years ago or more, six years ago. If I have to _____ supposed to be according to the laws here I have to build a new driveway, 200 foot driveway, which is going to cost me again $30,000 to $40,000. Then electricity ...

LF Can you tell me why it would be _____ cost for a driveway?

AP That's what they told me. They asked me -- I have a place I _____ _____ under water now _____ _____, they asked me for $30,000 to replace the walls and the floor only. So ...

LF Is this just a plain asphalt driveway? On the property.

AP Well, in order to put the driveway _____ you have to put probably 200 feet _____ yards of dirt to raise the _____ property and be able to be above the water line which is created through the culvert and -- from the land which comes from above my property.

LF Okay. So that's included in this $30,000 to $40,000 cost? _____?

AP No, that is extra _____.

LF Oh. Okay.

AP And I took the lowest estimate from different people.

LF Okay.

AP That _____ cost me. Besides I understood that was much bigger ditch wherever _____ to put the property _____. _____ foundation on a _____ and on top of everything a long time ago this whole part has been washed down from a big storm _____ and they put a lot of garbage in there, like refrigerators and old cars. So maybe five or six or _____ feet under the place there are different things which after they rust completely they're going to create the whole place to fall down -- to sink. So I thought that is not a safe place to put a house. But it's like I said from the beginning. The house is there. I did it in good faith. I spent lots of money, lots of time. I've been working 15 sometimes 18 hours a day to create that and I was happy because I love the nature, _____ out there and all kinds of wild animals and I love the place and I'll do anything _____ _____ against the nature, against the scenic area, et cetera, I just want to live in peace there.

LF Okay. Great. Thank you very much. Would anyone else like to testify in support of the applicant's position?

AP _____ I have a contract here which says _____ a farm before _____ a purchase contract and also there was a house before there ...

LF Okay. Do you want to submit that as an exhibit. I'll accept that as evidence into the record.

CB I believe that's in Exhibit A.

LF Oh, it is?

AP That's right. Thank you.

LF Okay. Next person. Yes, come forward and give your name and address for the record, please.

KP My name is Ken Penaro, Sr. I live at 36250 Yokum Loop and I used to live on that property and then later on I inherited it. I have a picture and some answers if I may, because I'm one of the persons that told Andre, and I would do it with anybody, to where he should build his home after the fire. There was also a man that worked for me. There was also a volunteer fire department man for the City of Corbett, or the town however you want to word it. And I was called to come down and see the damage late at night and the man that was suggested to me was Bobby Layton, which is retired now also. He went to the place that night and also went to the place later and he said, Ken you're wasting time and money trying to rebuild this house. So that's why. The other reason. I have a picture that you would probably be interested in and you also. Back in the old days ...

LF [inaudible]

KP No, I do not. You can make a copy of it. You don't want to look at it either?

LF If you are submitting something to the record you need to give us something that we ...

KP This picture is an old picture lady and I'm not going to give it up. ...

LF Okay. Then it's not evidence. We can't accept it as evidence.

KP You can't take a picture of it?

LF We could take a xerox copy and have that in the record. That will be what will be used.

KP Okay, that will be fine.

LF But _____.

KP Because it shows pictures of the house being there many moons ago. The barn that's not there now that was there. Like I said, my in-laws bought it from Valbergs and it goes back further than that.

LF Okay. I don't think that there's any question that was a house on the property. ...

KP My information before I came down here, it was told to me that there was no house existing there. That's the story I got.

LF Well, looking at the staff report I believe they concede that there was a house on the property ...

KP All right. Do you want to know why the house was built where it was built? Because I was going to build there myself on that property at one time. Are you interested in that?

LF Why there was a house there?

KP The reason why the house was built there.

LF Oh. In that location? That's fine. Yes, that would be very relevant.

KP Okay. The reason why because it was coming from Larson's property -- the gentleman back here I think owns the property next door -- water is put on his property, then it ends up on our property and when we had the Columbus Storm and right after we had the Christmas storm the water came down from everybody else -- came down and made a ravine there. I am also one of the persons that stuck a car in there -- '64 XL -- and at that days things were happening so fast you had to do something. And then there was -- being honest with you -- there was dirt brought in from Multnomah County -- they had to get rid of it anyhow -- and it was brought there and dumped. But there was nothing dirty, what do you call it ....

?? [male unidentified] Waste, solid waste?

KP Yes, sir. Nothing bad, in those days -- even in those days.

LF So the property was _____

KP That's right. So, to build a house, if you don't mind

looking again. I was going to build the house right here at one time ...

LF Can you show me on this exhibit?

KP Same thing?

LF Yes.

KP Okay. I was going to build here at one time, if I stayed on the farm. I was going to buy this for myself at one time. And my wife and I lived over here. We lived there five or six years before I married her. And then I decided, no, why not move over here. Well any time you put four inch minus or five inch minus rock on there to build up -- so, because when the water comes you're not stopping Mother Nature, that _____ would have been another dam. Seriously. Besides the fence line, which is now his property, the water has to go somewhere, so if it didn't come through it would go over into the Sandy River that way. That meant laying more culverts here. But the water is going to go into this property whether you like it or not or anybody. This area where my wife lived and then my grandma and grandpa lived there for awhile was -- you can see how much land it used to be back in the old days, it's not that way now. That was about the best _____ and no water came down. If the water did come there it would be coming down the road and then maybe go over to the driveway. So I decided I didn't want to go through all that jazz, so I did not build or buy _____ we ended up inheriting it. But that's why ...

LF Okay. And this photo that shows this house here, this white house, is that the residence that existed prior to the current home?

KP Yes, ma'am. That's correct.

LF And do you know when this photo was taken, approximately?

KP No, ma'am, I do not. I wish I could answer. I've looked all over, is there a date on it? We have other pictures besides this ...

?? [male unidentified] It's got a 012 in the upper, left-hand corner.

LF Okay. So this is Exhibit E-4, I believe, is that right?

Okay.

KP And I think this gentleman here would agree with me that there was an old barn there at one time _____ date. Would you care for that.

LF Well [both talking at once].

KP Yeah. It's going back, way back, even before these gentlemen got involved with their land down below. But there was a house there and that was the reason why the house was built there years ago. Because the people knew about those things back in those days even. Now, what else would you like to ask me? Anything?

LF That will do it. Thanks.

KP You're quite welcome.

LF The next person who would like to speak in favor of the application?

O'C My name is _____ O'Connell. I live at 32202 Stevens, which is right next to Andre. [inaudible]

?? [male unidentified] To the east, uphill?

O'C Yes. Uphill

LF Okay.

O'C I'm a little confused over this myself. What I would like to recommend is that the record not be closed. I don't have a language barrier, I don't think, that Andre has to contend with ....

LF Well, the record will be kept open if any one requests it. I will keep the record open.

O'C Well, I'd certainly like to request it. What I would like to ask a question, I guess to begin with. We've gone over this record and there's a lot of things that Mr. Beasley has objected to. Is there any system that allows us to get together and try to appease the things that you see wrong with them before it goes on record and the decision made? Is there any process to do something like this? Once the record is closed, it's kind of closed. There's a couple Catch 22's here about the building permit. If he would get

a building permit it would satisfy a lot of your concerns. However, he can't get a building permit without a major variance, so we're in kind of a quandary here. Is there a system that would allow us to keep the record open and have some more communication with Andre to allow us to meet your specific objections?

CB The record in this proceeding can be kept open for another seven days to submit additional information. Another alternative would be theoretically for the applicant to ask for a continuance of the hearing and waive the 120 day decision rule to allow him more time to respond to the issues that are raised in the staff report. The way the process has gone up until now is a substantial amount of effort has gone into encouraging Mr. Protassy to provide more information. But at some point in time we need to continue on with the decision. So that's kind of where we are now. So I guess the answer is conditionally yes.

O'C Good. It's hard for me to understand as a layman to understand specifically what it is you're objecting to and if or if not it can be corrected.

?? [someone speaking in background - inaudible - unidentified]

LF Okay. Do have any evidence to put in the record other than ....

O'C Evidence, no. Some comments about the drainage portion.

LF Okay.

O'C I talked to Andre -- incidentally, he did a beautiful job in building that house, the craftsmanship he used in the structure, I mean it's, every line is straight, every line is perfect, he really took a lot of time and effort to put into it. To destroy that would certainly be a shame. There is a couple things. Do we agree that you cannot see it from the river? We don't agree on that?

CB I wouldn't agree that it would be shielded from the river for all months of the year. While I was out there the trees were leafing out and I could see the riverbed and small portions of the river, but that was -- and that's a function, in my mind, the type of trees that exist on that slope. Predominantly deciduous. But I don't feel that in the context of all of these three decisions, the conditional use, the SEC and the variance, that that's an issue of

primary concern.

O'C Okay. I can vouch you can't see it from the river. I've been down there several times and I had to go through the same stuff when I built my house. As far as the location criteria, I'm going to refer back to a section of your own record. MCC11.15.6420, page 14. Letter c. "A building structure _____ shall be located on a lot in a manner which will balance the functional considerations and costs with the need to preserve and protect area of environmental significance." From the farming standpoint of view and I think _____ is said about the same thing, the drainage. I can expand a little bit on that drainage if you had a property plat, do you have one?

LF _____ maps.

O'C Yes, the map will do. Let me expand a little bit ....

LF This is a little clearer. This is actually better.

O'C Okay. Well, this is the _____. I was hoping for a larger overview, because my property is over here and what happens is that

LF _____ [paper shuffling]

O'C Yes. Okay. He's right here, I'm here. I had to build my house here for exactly the same reason why this was the best location because of the drainage. Incidentally, I'm well within the 60 foot requirements also and the 200 foot here I was able to do mostly for my drainage field and septic system. All the drainage, this is the dairy farm here -- very sloped -- this all slopes from _____ Northway Road -- _____ starts sloping and everything drains into the river. When the water comes down here it runs down Christensen, across the dairy field at a diagonal direction like this. There is a culvert that diverts the water over to my property on the corner of my property, so I have an open spring right about here and I have another spring here as well as all this water, drainage water, coming into my property, so in effect I have a little rise here and a little rise here so the water all flows down and drains in this type of environment down to the river, so that I can guarantee you that at least half of my open property and probably more than that of Andre's is under water basically for a good four months of the year. You can go down and sink up to your knees in water and mud. Now, in order for

me to build my house in any other place here, it would require a special septic system, as well as foundation. Trying to get a driveway into a wet area like that is pretty tough too. When Andre and I were talking when he was working on his house, he said he didn't want to build here. It was my understanding also that the existing foundation that we were required to do that, if there was an existing foundation we thought you were required to build on that existing foundation. So there was a little interpretation there. He told me that he really didn't want to build on this particular spot, but he felt he was supposed to do it. So, because of the water drainage it's impractical. Another thing from the farming standpoint. This is one thing I considered, too. Andre, besides the grapes, he and I both raise hay and have it cut and sell it during the course of the year for our farming activities. If this house were any other place. If you take it 200 feet here, 200 feet here, it would basically from a farming standpoint ruin the field and take all the existing hay field that we have out. It would probably cut the production of that field in half. So, from a functional standpoint and I think that's I believe going back to the -- well whatever variance I referred to, I think that would have a lot to do with the location of the house and impact [coughing] _____ your decision where the house should be built also.

LF Good.

O'C And I guess that's about it. Like I say, there's a lot of things about this that I don't understand, that I would like to understand better to give more significant testimony. Particularly the questions asking about -- where was it -- the existing house when I was asking questions earlier. Oh, template dwelling conclusion. I don't understand that at all. The scenic waterways precluding forest management. I had to go through -- that's page 13. I had to go through about the same thing with the state and I agreed to the state, basically it's a greenbelt type area which would -- we can't log there for one, we're prohibited by the state to take any timber from that. I would certainly thing that would preclude forest management and it's considered a greenbelt type area. So, although it's listed as forest, it certainly can't be harvested or managed in any way because of the regulations for the scenic waterway. So I hope that would preclude any forest management application.

CB You wouldn't have a copy of that _____ regulations _____.

O'C I'm sorry, I don't. Most of what I based mine on was telephone conversations with people from the state. They did give me written approval for my building permit which should be on record here in this office.

LF Okay, just for your information. That approval is not part of the record in this matter and if you wish it to be a part of the record you need to get a copy of it and submit it into evidence during the seven-day comment period and then we'll consider it.

O'C Okay. I don't have the record actually, it's in ....

LF Okay. And I think more compelling evidence would be evidence from the state agency that makes a similar statement, like a letter or something, if you can get that. Okay? Thank you.

O'C You're welcome.

LF Anyone else wish to speak in favor. Okay. Time for opponents.

GF My name is Gus Fryeria. I am president of the Camp Angeles 98.6 track of land that is joining Andre's property.

LF Okay. Can you show me where it is on this map just so I can get my view.

GF Right, this here. We take all this right through here across the river over here and this part of the river here. We have 20 acres here, across the river.

LF Across the river. Okay.

GF So, I'm not against Andre's property per se. But there are certain thing that I'm adamant about and these are the pictures that I took July 4 of this year. I want to say that Andre is a very good photographer, but I'm just an amateur. But we have had this property for 20 years and the Multnomah School District _____ uses our property _____ outdoor school. We have 150 kids every day that are there for 18 weeks of the year.

LF How many weeks.

GF Eighteen. Nine weeks in the spring, nine weeks in the fall. And then we have retreats there. If I told you the trouble

we had to go through to get approval for the _____ that we have down there I'd take too much time. But it's just through different things and I'm not holding grudges, but what goes around comes around. All our comments is that from everybody that comes there says "what an eyesore, that property is." Now, when your man here took the pictures he did a good job, but they didn't show the things that we're concerned about. The cars that are parked on the easement, the junk that's on the easement. We have a 30 foot easement of _____ lumber ....

LF Thirty foot _____ okay.

GF Thirty foot. We are the ones that maintain it and I don't understand where he gets the idea on page 12 that he maintains the road.

LF Okay.

GF I don't understand that. But there -- this property was owned by Bob Graham and Bob Graham owned both those properties and where Andre built his house it's a hell of an improvement over what was there before because it was a drug house and they had fecal contamination all over the house. They'd taken axes and busted the walls and used the bathtub for a toilet and everything like that and it was a godsend that something happened to it because nobody could possibly remodel that and live in it. So, it's an act of God that they caught on fire. Here is his property, right here.

LF Okay.

GF There's the house. Here's our easement that comes from here, comes down here and we go in. Now, we have -- instead of going straight like this, we have a variance here that was on the deed and this barn that he lived in, the house he lived in, is right in the middle of our property line. So there's nothing we can do about it, but it's just the idea that if one thing gets away, what good are our rules? I mean rules are rules. I mean if we're going to make exceptions for everything. But I ...

LF So, this barn issue. Where ...

GF It's on this property here.

LF Oh, I see.

GF This was all one piece of property.

LF Oh. Oh, I see. So it was the prior owner ...

GF Yes. The prior owners did this.

LF Okay. I see.

GF Okay. What I did because I can't talk too good, I wrote this letter and if you want to read it to these people I'd appreciate it.

LF Okay. The American Hellenic Educational Center is the property owner to the north and west of the property in question owned by Andre Protassy located at 32152 SE Stevens Road, Corbett, Oregon in Multnomah County and operate Camp Angelos, a youth camp, _____ property used by many groups in the greater Portland and Vancouver area. We have two concerns. We request that Mr. Protassy not be allowed to store any vehicles or large equipment in the front of the existing dwelling. This would not exclude the normal parking of vehicles that are used on a day to day basis. This will greatly improve the appearance of the entrance to our property. Secondly we request that the rain drains from the existing dwelling be rerouted so that they do not _____ onto our property. We have enough trouble with the natural water runoff in this area and need to keep any additional water from draining onto our property. If our request will be carefully considered we register no complaints and have no reservations to the variance being granted. Thank you for your considerations of our request in this matter. Okay?

GF Well, that's ....

LF I'll make this Exhibit __ [coughing] 5.

GF If you want another copy of that I can give it to you.

LF This is fine. I think Mr. Beasley will make me an extra copy.

GF You don't need this one, because this doesn't pertain to this case at all.

LF Okay. All right. Thank you. Then I won't rely on that as evidence?

GF Oh, no, I don't care. That's something that has happened and we've gone through the hassle. But you can see what we have is an investment down there and we have people that come down there.

LF Okay, this will be E-6. Okay. Thank you.

CB _____ [coughing] _____ E-7 then?

LF And those will be _____.

GF And then, here. This was taken in 1995, an aerial view which shows it beautiful. Here's the ...

LF Okay. Are you going to read it to me? Okay.

GF This is right up to date, well '95, except for the '96 washout that we had.

LF Okay.

GF But, here's where the easement starts. We have 30 feet _____. We have walnut trees that are on the south side. They are inside the 30 foot easement. When we wanted to fix the road we were opposed. He wanted $5,000 a walnut tree.

LF Who was that?

GF Andre.

LF Oh. Okay. I'll put this on here.

GF So, in the meantime I think three of them died, but the other ones are hanging over and when trucks come in they're banging them.

LF Okay.

GF And, right here, right there the water comes down here and goes _____ a culvert underneath. It goes into this swale there and that there is full of trash from prior years. It's all grown over now. And where this -- where our road comes down here. Give me that E-6, I'll show you. When all this water comes down from here it goes right in front of his house and there's this little culvert here that's not enough to take care of it. Okay. _____ wants to fix that because it was on the original property

that was owned by Graham. This one big ...

?? [male unidentified (Andre?)] Excuse me.

LF No, it's not your turn. He needs to be able to testify, then you can ....

GF Here's where the opening is right like that. And this water comes down like that and there's a culvert here, but then the water comes down here and washed our road away.

LF Okay. To your property?

GF Yes.

LF Okay.

GF Now, if he would fix that culvert like it was before, then the water wouldn't come into his house.

LF Okay.

GF Because that water when it comes it really goes and especially now that they're cutting the hay and they clear the land and the water just gushes down with a _____.

LF So, the house you're referring to is the existing house or the location that would be required by the county?

GF No, no. That's his existing house right there. That's for the existing house. I don't know how he would ever build a house 200 feet back.

LF Okay. You think it's not feasible?

GF No, it's not feasible at all, no way. Because you would see it from the water and they already left one house across the river that you can see from the water. They let that go through.

LF Oh, you'd see a house 200 feet down from the water?

GF _____ another house over here that you can see from the river. Brand new house. Built maybe 4 or 5 years ago.

LF So, you're in favor of the house being left in this location as opposed to moving _____ ...

GF Oh, yes. I have no objection whatever to the house there. I just want to automobiles and the trucks and the boats moved into the back of the house, that's all we're asking. And the -- you see, when we mow we mow that easement and we can't mow it because he's got garbage on the easement in front of his house. Do you follow me where the driveway is.

LF Okay.

GF All these pictures were taken July 4 ...

LF I need to explain one thing about my authority to decide this case which is that I'm limited to the things that I read at the beginning of the hearing and so only to the extent that parking vehicles in front of the house has anything to do with the approval criteria that's all I can do. So, I cannot deal with that issue except to the extent it's tied to one of these criteria listed here and the only one I can think of is the access and then I'll look at that and see whether I can tie it to that or not ...

GF Yes, because we have a 30 foot -- and I dispute him saying that he maintains it. He does not maintain it.

LF Okay. So, I will look at that only to the extent that I have authority under that particular regulation do I have any ability to even talk about the cars. I don't want to disappoint you but ...

GF It's an eyesore, that's all.

LF Yes, I understand, I agree. I think it's ....

GF _____ when you got a fence right there and from the fence to the house is only 30 feet, and you've got big trucks there and boats and things like that and a car that you can't mow, it's not right.

LF And you might want to talk to the county staff about whether that violates any of the county ordinances. I wouldn't be -- I'm not dealing with it today.

GF _____ in '73 _____ I've had a heart attack, I've got cancer _____ I just want peace and quiet, that's all. I mean, we were there in '77 and run a nice clean operation, we've got over $2 million invested in it now. Everyone of us that are on the board, not one of us receives any money. We're _____ I've been president

for 20 years and I've seen this thing grow from nothing and it's a dream that we want to do something for the community and we are, so that's ....

LF All right. Thank you very much. Okay, anyone else wish to testify in opposition.

AP _____

LF You get rebuttal.

AP Okay, but maybe _____ call me in a little bit?

LF Yes, certainly. Okay. At this point _____ rebuttal by the applicant and by anyone else in support. And I'll ask that you keep it to short time because the time for this hearing is up right now. So, if you can keep it to five minutes, I'd appreciate it.

AP _____ all these vehicles are inside behind the fence and they are not within the 30 feet. _____ over here which was dumped by somebody else, it's not mine. Even was dumped by somebody else. I took it away. It's no longer there, _____ is outside the fence and Gus said that I don't maintain the road. That's not true. I've said this year I've maintained the road, cut the trees as much as I could and clean everything out. Now, a culvert it's clean, it's clear _____ and the water goes, but it's not big enough to take the whole water from the side because the person who _____ the property on the north covered the ditch that's supposed to be on both sides of the road and now the water goes _____ _____ there are lots of holes and that is some kind of mistake they did. They put the ditch on the side that would go _____ put the culvert underneath _____ where his property is go all the way down _____ solve the problem. On this side _____. So, the reason I have a little bit _____ this particular problem here with the car, I had a very bad accident on January 5. I tried to clear some trees above my gate, _____ walnut branches _____ and I fell from 30 feet on my face. I was two days unconscious. I was in the hospital and I had to stay in bed for almost three months. That's why I didn't take care of that. Before that I don't know if he remembers or not I've taken care of everything. _____ farm vehicles over there. I don't know. If you want me to put the behind _____ my pleasure. But

I have only two hands and I try to do my best and I am _____ to be declared for disabled because of this hit on my head. My skull was _____ inside and I have to go to another procedure, surgery. They have to _____ my skull, et cetera. So, I try to do my best and about the pipes going down the -- the water comes from the house. They didn't create for the last seven or eight years any erosion and I don't think _____ the clean water from the garden goes into their property is going to create any erosion to make some slides and et cetera. But if that is his problem I am willing to _____ to my problem _____ cause me to put some more pipe in, another probably 200 feet _____ _____. He didn't object to the house being there. That's true what he says that what was before with the house is a story I don't know. They know because they live longer there. _____ his property was first a religion camp _____ 30, 40, 50 years ago there was a roofing company as far as I know and now there is a camp over there which has, I don't know how many, log cabins and a big lodge and they're a little bit closer to the river than me, but I don't object. They are good friends of mine. I even received a key from the camp from Mr. Gus to go down there ....

GF I changed the lock yesterday.

AP Did you really?

GF Oh, no, no [laughter].

AP I don't want to oppose anybody else _____ of the trees, they are not on Gus's property. That's why ask a few days ago, what is the definition of easement?

GF [inaudible]

AP _____ but you don't own the property. If I have a tree on an easement, you cannot cut it because you have an easement. As long as it doesn't bother you going through it _____. Anyway, ...

LF Okay, I'm not going to settle that dispute.

AP Oh, that's fine. But the trees are not in the 30 foot easement. They are just above. And you know that to widen the road, to commercialize it more they have to cut the tree. And I said, I bought this property because of the

nature, because of the walnut trees, because I'm farming and I want to keep them there. They are 30, 40 year's old trees and _____ that you cut my trees.

?? [male, unidentified, inaudible]

LF Excuse me, at this point I think I've heard enough on this issue and if you ...

AP So that's the reason that I don't mind that he widen his road as long as the trees are there. For some strange reason three of my trees died and I smelled diesel oil out there. Okay, that's all I have to say.

LF Okay, thank you. Okay, any other people wish to testify in rebuttal?

KP Please.

LF Come forward and please state your name again.

KP Ken Penaro, Sr. Do you have to know where I live again?

LF No.

KP Okay. Now, one of the reasons why -- and still not against him -- one of the reasons why I didn't get to stay there is because of the traffic, because of the water situation. To say that this gentleman and that gentleman ....

LF Okay. I ask that you confine your comments to things that relate to the approval criteria.

KP I'm answering a question that he made.

LF Well, yes. A lot of the stuff is way outside. Like a lot of his comments are not relevant at all.

KP Okay. _____ it's not being paved _____ with the easement ...

LF Okay. If you want to just address the maintenance issue that may be relevant. Maintaining the road.

KP Okay, I'll comment that the property now is owned by two different people. At one time it was owned by my in-laws and then by me. We paid taxes on that easement, even though they were allowed to cut through. There's Valbergs, there's

a Girl Scout camp was down there at one time, and then the first one that I know of was a religious man and I think the building is still down there yet. Is it still down there, Gus? That building is gone? The one where the man sold prayers. That was the original owner as far as I know. And that's ...

LF Would you hold on a moment?

BEGIN TAPE 2, SIDE 1

KP I'm not against his statement, but I'm against his statement when he says Andre does not hold up his end. I figure both these two gentlemen that's here right now, plus that lady from Las Vegas that owns the other side, they're still paying their taxes and if you don't pay your taxes you get in trouble, right? So somewhere along the line somebody is paying for that road. If they want to come along and fix it up better to get their equipment down or whatever, I figure that's their business.

LF Okay. Thank you.

KP May I look at these pictures?

LF Yes.

KP Oh, may I answer the question -- do I have to go back on record again?

LF You can continue, you're still on the record.

KP About the dope addicts. If you people know anything about the law, which ....

LF Um, how is that relevant to the approval criteria?

KP _____ okay about the dope when the remark was made?

LF I don't really care about that.

KP Okay. It was taken care of ...

LF Okay, that's fine. Thanks.

KP Thank you.

LF No problem. Okay. Thank you.

AP _____, if I may.

LF Your rebuttal time is over, Mr. Protassy.

AP _____.

LF You can submit additional comments in writing during the comment period. There will be a seven day comment period. So that's the end, okay. We're done. Anyone else who has not already spoken in rebuttal, would you wish ....

O'C I'd just like to ask a question.

LF Okay, come forward and state your name again for the record.

O'C Mr. O'Connell, again. I just have a quick question. You indicated that you could tell us at the end of the hearing how you perceived the hearing.

LF That's correct.

O'C Could you give us that perspective now?

LF I'll do that after we're all done with the staff report and after we decide what we're going to do about procedures. Okay?

O'C Okay. In that case, my request to keep it open is still on the table?

LF Yes. So, no other people who testified in favor remain to provide rebuttal comments, therefore I will close testimony for now. Any other comments can be submitted in the one week period. I will leave the record open for one week following the close of this hearing. After that the applicant will have an opportunity to submit written comments about the new evidence, unless you wish to waive that. Do you wish to have the additional week? _____ Mr. Protassy. Would you like the additional week?

AP Actually, _____ a question, then I can tell you if I want a week or not. Just one question.

LF Okay. Why don't you talk to Gus here. Ask him a question off the record here.

AP [Gus & AP talk and are away from microphone - inaudible - something about cutting down trees]

LF I will consider all those comments since they were picked up on the record here. Okay, so at this point I just need to know from the applicant whether or not you want the additional seven days beyond the seven day ...

AP I should probably _____.

LF Okay. So we'll do seven days from today, which would be Wednesday, the 23rd -- July 23 at 4:30 pm all comments need to be received by the county. So if you put it in the mail and it doesn't get here by then, that doesn't work. So you can drop things off in person here, you can mail them and just verify they are received that last day, send it by fax is also acceptable so long as you confirm it's received by the county by that time. Then the seven day period after that through the 30th of July, the applicant will be able to submit a written argument in support of his position and may not submit any new evidence during that time period and then after that time I will render a decision. So that takes up to July 30th, that'll be at 4:30 pm, also -- must be received by the county by that time. Okay, at this point Mr. Beasley can make his staff comments.

CB I ask for a point of verification on holding the record open _____ the rebuttal. Does the second week period apply if no evidence in opposition comes in during the seven days?

LF The second period is to provide the applicant with the opportunity guaranteed to him by ORS 197.763(6)(e) which indicates that he can have the final written arguments to be submitted at least seven days after the record is closed to all other parties for final written arguments in support of the application, and so that's to provide him with that opportunity and no new evidence is admissible in that time. So, if there's no new evidence, nothing else comes in he still gets that opportunity.

?? [several people] [CB] If nothing else came in?

LF He will not know that, so the date for opportunity for additional comments and evidence to come in is the 23rd and there is a seven day period following that time. It would be impossible for him to know there will not be additional evidence, so.

?? [male - inaudible]

LF Okay. Yes. I understand. Okay. Where are we on the 120 day clock? _____ can see that.

?? [male] we're on 66.

LF Sixty-six, okay. On this case I'll probably begin writing it at the close of evidence and then just consider the written legal arguments in response to those and get the decision out almost immediately after that, because of the time clock. Okay. Additional comments?

CB Just a couple of points. Regarding the septic tank issue -- or the septic system construction issue and also to the permit. The only thing I'm relying on that the applicant needs to obtain a septic system construction permit at this time if the letter from Phil Crawford service provider response that _____ feasibility soil has been done, but that he needs a permit for the septic system. Not that's Steve _____, City of Portland on April 5, 1996. So if a septic system construction inspection and permit has been issued _____ since that time, then you should probably submit that. Otherwise, I would say that _____ another permit that hasn't been obtained.

LF Okay.

CB You heard a lot of information about the drainage on the property. I think that if there's sufficient evidence to show that the dwelling can't be located elsewhere on the property -- and, of course you'll use your judgment on that, then some of the problems in the -- certainly in the SEC and the variance can be resolved. When staff was out there is wasn't obvious that there was a drainage problem because it was April and whether those can be mitigated in reasonable ways, is your call based on the evidence you have. I want to talk about the scenic waterways issue relative to timber management. I did speak with J_____ Houk(?), Parks and Recreation before the hearing to talk to her about the issue of whether the Scenic Waterways Act regulates timber harvest and the answer that she provided me was the administrative rules for the Sandy River do not contain specific criteria for forest management operations that are administered in other Oregon Forest Practices Act _____ findings indicate her to the Oregon Forest Practices rules for timber harvest. She did say that the scenic rivers for

Oregon Parks and Recreation does have authority to review harvest management plans and _____ limitations to where harvest can occur and to what extent it can occur. So whether that constitutes that adjacent property can't be used for forest use is where that evidence would be _____.

LF Okay.

CB Do you need any more information on the existing dwelling issue? Pre-existing dwelling issue?

LF No. It was in existence, right? I think the record's pretty clear on that thing.

CB Okay. The only other thing I wanted to respond to was the farm management criteria in 2074A1. That's on page 8 of the staff report. Subsection 2 that talks about whether the dwelling location would have adverse impact on forest operations and accepted farming practices on the tract, that those will be minimized. The findings in the staff report indicate the location of the dwelling up in the corner of the property the way it is is probably the best location for the dwelling in terms of farm management of the parcel. The question is under the criteria above, whether it is the best location to minimize conflicts with forest management on adjacent parcels. Those are two very different analyses. And clearly I think the 200 foot setback requirements in this case would put the dwelling in an area that's more or less in the middle of the field and doesn't fit very well with farm management. Nonetheless those are the ordinance criteria and the process for changing those is the variance process that we're working with. I'd also like to mention that a minor variance where a 150 foot setback could be approved is available and I don't know if that _____ necessary _____ applied or would add substantial benefits in this case. That's it.

LF Okay. Thanks. Okay. At this point it's my opportunity to make comments relating to the application and I'll do this just to help people in figuring out their comments. I heard a lot of evidence that I believe at this point is irrelevant to the issues that I'm going to be able to decide here about what's been going on in this area that disputes between the neighbors about their easement and things of that nature. There is one criteria that relates to the easement and I will look at that and will consider the evidence as it relates to that criterion, but I do not have any authority

whatsoever to resolve the disputes about use of the easement. That's totally outside of what I have authority to do in this case, except to the extent authorized, as I said, and I'm not absolutely positive that -- there is just some vague language about use of the property coming -- the driveway, or having proper access, so that's as far as we'll be able to go on that issue, so you will know. I agree with Mr. Beasley that the main issue that I haven't heard that much about and still am interested in hearing evidence on is the siting of the home having the least impact on nearby or adjoining forest or agricultural lands that satisfies minimum yard and setback requirements of the ordinance. Obviously you're asking for a variance from the minimum yard and setback requirements, but at the very least you need to indicate that _____ prove that the least impact on the nearby forest activities of the camp. [speaker - unidentified - maybe AP] And that's why you _____ my question. That's fine, but that this location itself has to have the least impact of any location on your property that's legal to place the home on. So you need to compare that to the lawful dwelling site versus the location where it is now. And if there's no change, for instance, you can say _____ have the least impact because it's all the same impact, you know, so therefore it's the least. Something of that nature. But we need evidence on that particular point comparing it to the legal location. And then I also agree with Mr. Beasley that there now is evidence in the record relating to the variance criteria that indicates that this location where the home is is perhaps the only reasonable location for a dwelling given the drainage pattern on the property and that that could support a change in the county's position in this matter. And I'm going to look through the criteria carefully and consider that evidence in that way, but it appears that the drainage is sufficient justification to approve a variance on the location of the home. But I do need to have more evidence related to the forestry impacts. Okay? At this point then the hearing is closed. Thank you.

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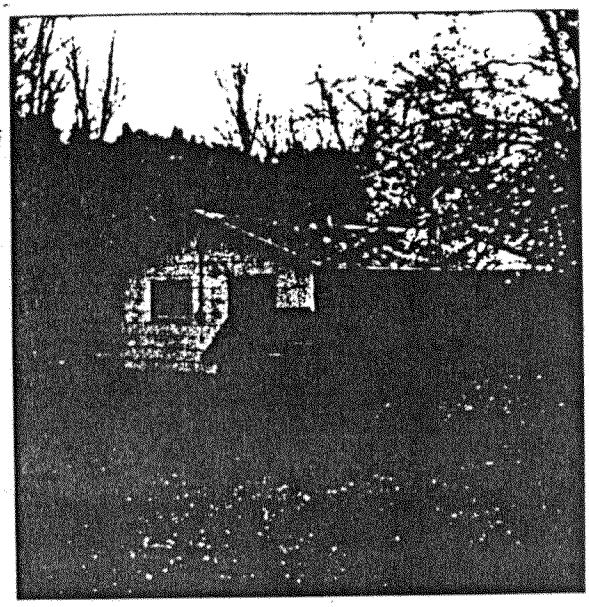
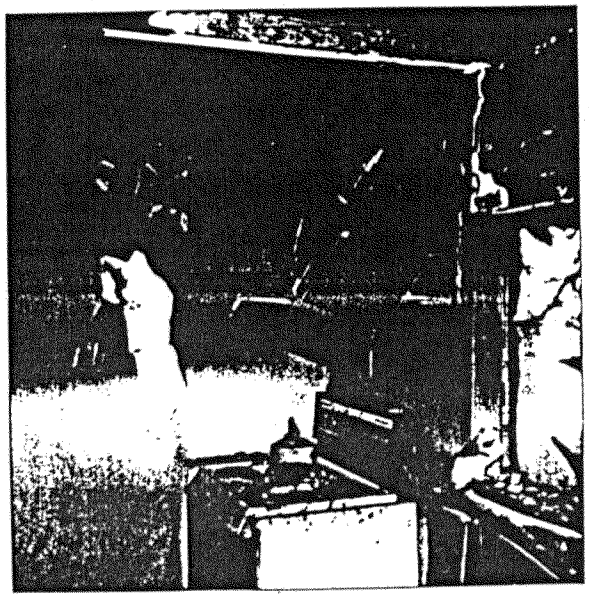
91 SEP 24 PM 2:33
MULTNOMAH COUNTY
PLANNING SECTION



Previously Existing House
prior to fire of October, 1987



Kitchen of Previously Existing
House After fire of October, 198

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COUNTY
SECTION

Sept 17, 1997

Paul Norr
1020 SW Taylor
Portland , Or

Dear Mr. Norr,

This is to summarize my findings from a hydrologic study which I made, at your request, for the property of Andre Protassy, 32152 SE Stevens, which is located in the NE corner of Sect 8, T 1S, R 4E. The property is bounded on the south and west by the Sandy River. My sources for information and basic data included the Soil Survey of Multnomah County, Oregon which was prepared by the US Department of Agriculture: NOAA Atlas 2, prepared by the National Weather Service and Urban Hydrology for Small Watersheds, prepared by the Natural Resource Conservation Service. The US Geological Survey Washougal quadrangle map was used to determine topographic information..

From the Soil Survey it was determined that the soil on the property is classified as the Mershon Series. This soil is a silt loam having moderately slow permeability and when cultivated excessively, forms a tillage pan, which impedes percolation. A perched water table at depths of 3 to 5 feet. during the period of Mar-Nov. is characteristic of this soil.

The land owner said that he gets a great deal of runoff from the areas to the north and east of his property during the winter months. From the topographic map, it was determined that approximately 52 acres could contribute runoff to the property.

Estimates were made of average annual runoff and peak rates of runoff from individual storms. Average annual precipitation is estimated to be in the range of 60 to 70 inches based upon measured precipitation in the general vicinity and the characteristics of the soil and vegetation. Storm precipitation has been analyzed for all Weather Service precipitation gages in Oregon and the results, which are a series of maps, provide a basis for determining the storm amounts for a 24 hour period. These amounts range from 3.25 inches for an event expected every other year to 6.25 inches expected once in a 100 years.

The volume of runoff from an annual precipitation of 60-70 inches is expected to be a minimum of 36 inches and may be as great as 45 inches, based upon measured runoff from streams in the general vicinity. Expressed as acre feet, each acre of land will generate 3 to 3.75 acre feet of runoff, principally during the winter season of Nov. through March. Since there are 52 acres that drain on to the property, this amounts to a volume of water ranging from 156 to 195 acre feet which must pass through the property as either surface or subsurface flow. This computation does not include the on-site runoff from the property. Typically in Oregon the first storms of the season result in principally subsurface flow, howecver as the wet season progresses and the soil becomes saturated , water will tend to pond and be very near the surface.

The analysis of peak rates of runoff expected from storm precipitation, which is usually rainfall, resulted in estimated flows ranging from 4 to 20 + cubic feet per second (cfs) for a range of frequencies. These flows are sufficiently large that they can cause damage to roadways and homes that have unprotected crawlspaces and basements. The vast majority of winter storms are relatively small with resultant small flows but often of long duration. A rough estimate of average flow can be made by considering the 5 month period when most of the runoff occurs, which is approximately 150 days, and assuming that a high percentage of the runoff will occur during that period. A conservative estimate of runoff is 150 acre feet or an average of 1 acre ft/day. A conversion rule of thumb is that 1 cubic foot/second flowing for a 12 hour period is equal to 1 acre foot. We of course don't know in advance either the sequence or magnitude of future years precipitation, but we can expect that there may be an almost continuous combination of surface and subsurface flow of some magnitude on to the property, during the period of Nov. through March.

An onsite visit to the area indicated that there has been an effort to limit the number of locations where runoff is permitted to flow over the steep escarpment that leads to the Sandy River. This is certainly understandable as water flowing continuously over this extremely steep area, could very easily develop a gully , which could be a serious hazard to the property. There is a noticeable dike along the edge of the escarpment both on the Protassy property and the property to the east, which appears to cause some ponding along the southern edge of the farmable property. Without more detailed topographic information, it is difficult to estimate either the extent or the depth of this ponding, however it is an indicator that excess water on the property is a long standing problem. Virtually all of the runoff from the property and runoff that comes from outside the property is channeled into 2 locations where it flows down the face of the escarpment into the Sandy River.

You have been provided with excerpts from several of the references used in this study and with detailed computations, If there is anything further that you need, please advise.

Sincerely

Robert E Rallison P.E.
Hydraulic Engineer

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An onsite visit to the area indicated that there has been an effort to limit the number of locations where runoff is permitted to flow over the steep escarpment that leads to the Sandy River. This is certainly understandable as water flowing continuously over this extremely steep area, could very easily develop a gully , which could be a serious hazard to the property. There is a noticeable dike along the edge of the escarpment both on the Protassy property and the property to the east, which appears to cause some ponding along the southern edge of the farmable property. Without more detailed topographic information, it is difficult to estimate either the extent or the depth of this ponding, however it is an indicator that excess water on the property is a long standing problem. Virtually all of the runoff from the property and runoff that comes from outside the property is channeled into 2 locations where it flows down the face of the escarpment into the Sandy River.

You have been provided with excerpts from several of the references used in this study and with detailed computations, If there is anything further that you need, please advise.

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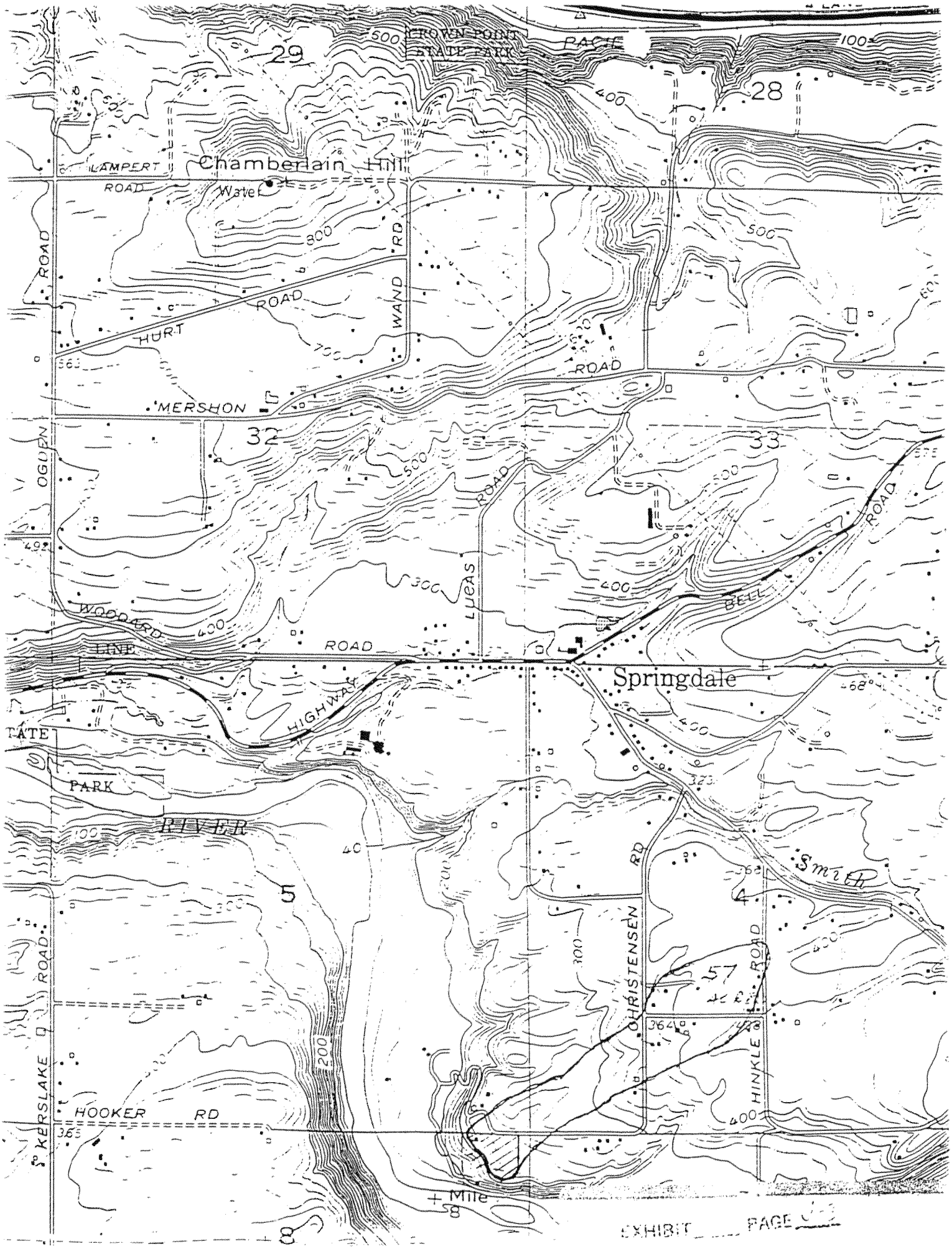

EXHIBIT ____ PAGE ____

GRAPHICAL PEAK DISCHARGE METHOD Version 2.00

Project : Andre-Sandy River User: RER Date: 09-14-97
County : Multnomah State: Or Checked: ____ Date: _____
Subtitle:

Data: Drainage Area : 57 Acres
Runoff Curve Number : 69
Time of Concentration: 1.00 Hours
Rainfall Type : IA
Pond and Swamp Area : NONE

Storm Number	1	2	3	4	5	6	7
Frequency (yrs)	2	5	10	25	50	100	1
24-Hr Rainfall (in)	3.25	3.8	4.25	5.00	5.75	6.25	2.0
Ia/P Ratio	0.28	0.24	0.21	0.18	0.16	0.14	0.45
Runoff (in)	0.81	1.14	1.43	1.96	2.52	2.91	0.22
Unit Peak Discharge (cfs/acre/in)	0.095	0.114	0.125	0.138	0.147	0.152	0.071
Pond and Swamp Factor 0.0% Ponds Used	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Peak Discharge (cfs)	4	7	10	15	21	25	1

ANNUALLY THIS AREA IS ESTIMATED TO GET 60-70" OF PRECIPITATION. RUNOFF FROM THIS AMOUNT OF RAINFALL WILL BE IN THE RANGE OF 36 TO 45 INCHES

IF WE SPECULATE THAT ALL OR MOST OF THIS RUNOFF FROM 57 ACRES COMES THROUGH THE PROPERTY THIS AMOUNTS TO 170 - 213 ACRE FEET. THIS IS CERTAINLY ENOUGH TO MAKE A SIGNIFICANT POOLING OF WATER IF THE OUTLETS INTO THE SANDY ARE RESTRICTED BY DIKES OR THE NATURAL TOPOGRAPHY.

EXHIBIT ___ PAGE ___

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In Cooperation with
United States Department
of Agriculture
Forest Service
and
Oregon Agricultural
Experiment Station

Soil Survey of Multnomah County, Oregon

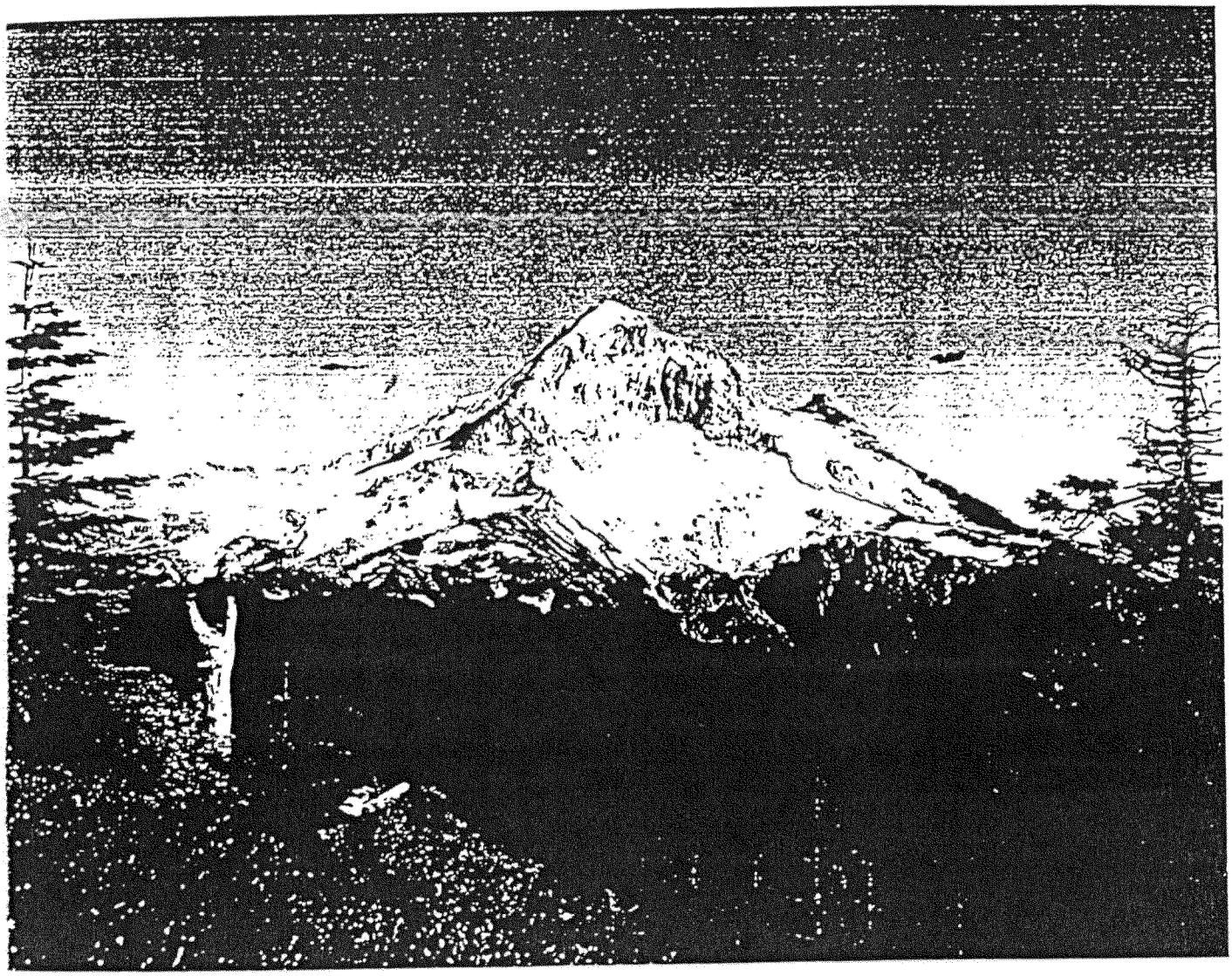

EXHIBIT 1 PAGE 1

EXHIBIT 2 PAGE 2

SOIL LEGEND

SYMBOL	NAME
1A	Aloha silt loam, 0 to 3 percent slopes
1B	Aloha silt loam, 3 to 8 percent slopes
2A	Aloha-Urban land complex, 0 to 3 percent slopes
3D	Aschoff cobbly loam, 5 to 30 percent slopes*
3E	Aschoff cobbly loam, 30 to 60 percent slopes*
3F	Aschoff cobbly loam, 60 to 80 percent slopes*
4F	Aschoff-Rock outcrop-Wahkeena association, very steep*
5B	Bull Run silt loam, 3 to 8 percent slopes
5C	Bull Run silt loam, 8 to 15 percent slopes
5D	Bull Run silt loam, 15 to 30 percent slopes
5E	Bull Run silt loam, 30 to 60 percent slopes
5F	Bull Run silt loam, 60 to 80 percent slopes
6B	Burlington fine sandy loam, 0 to 8 percent slopes
6C	Burlington fine sandy loam, 8 to 15 percent slopes
7B	Cascade silt loam, 3 to 8 percent slopes
7C	Cascade silt loam, 8 to 15 percent slopes
7D	Cascade silt loam, 15 to 30 percent slopes
7E	Cascade silt loam, 30 to 60 percent slopes
8B	Cascade-Urban land complex, 0 to 8 percent slopes
8C	Cascade-Urban land complex, 8 to 15 percent slopes
8D	Cascade-Urban land complex, 15 to 30 percent slopes
9B	Cazadero silty clay loam, 0 to 8 percent slopes
9C	Cazadero silty clay loam, 8 to 15 percent slopes
9D	Cazadero silty clay loam, 15 to 30 percent slopes
9E	Cazadero silty clay loam, 30 to 60 percent slopes
10B	Cornelius silt loam, 3 to 8 percent slopes
10C	Cornelius silt loam, 8 to 15 percent slopes
10D	Cornelius silt loam, 15 to 30 percent slopes
11B	Cornelius-Urban land complex, 3 to 8 percent slopes
11C	Cornelius-Urban land complex, 8 to 15 percent slopes
12	Cryofibrists, nearly level*
13	Dabney loamy sand
14C	Delena silt loam, 3 to 12 percent slopes
15	Faloma silt loam
16	Faloma silt loam, protected
17C	Goble silt loam, 3 to 15 percent slopes
17D	Goble silt loam, 15 to 30 percent slopes
17E	Goble silt loam, 30 to 60 percent slopes
18C	Goble-Urban land complex, 3 to 15 percent slopes
18D	Goble-Urban land complex, 15 to 30 percent slopes
19E	Haploxerolls, steep*
20C	Haplumbrepts, moderately steep*
20F	Haplumbrepts, very steep*
21B	Helvetia silt loam, 3 to 8 percent slopes
22D	Kinzel-Divers-Goodlow association, moderately steep*
22E	Kinzel-Divers-Goodlow association, steep*
23F	Kinzel-Lastance-Rubble land association, very steep*
24D	Lastance stony fine sandy loam, 5 to 30 percent slopes*
24E	Lastance stony fine sandy loam, 30 to 60 percent slopes*
25A	Latourell loam, 0 to 3 percent slopes
25B	Latourell loam, 3 to 8 percent slopes
25C	Latourell loam, 8 to 15 percent slopes
25D	Latourell loam, 15 to 30 percent slopes
26A	Latourell-Urban land complex, 0 to 3 percent slopes
26B	Latourell-Urban land complex, 3 to 8 percent slopes
27B	Mershon silt loam, 0 to 8 percent slopes
27C	Mershon silt loam, 8 to 15 percent slopes
27D	Mershon silt loam, 15 to 30 percent slopes
28	Moag silty clay loam, protected
29A	Multnomah silt loam, 0 to 3 percent slopes
29B	Multnomah silt loam, 3 to 8 percent slopes
29C	Multnomah silt loam, 8 to 15 percent slopes
29D	Multnomah silt loam, 15 to 30 percent slopes
29E	Multnomah silt loam, 30 to 60 percent slopes
30A	Multnomah-Urban land complex, 0 to 3 percent slopes
30B	Multnomah-Urban land complex, 3 to 8 percent slopes
31	Pilchuck sand
32	Pilchuck sand, protected
33A	Pilchuck-Urban land complex, 0 to 3 percent slopes
34A	Powell silt loam, 0 to 3 percent slopes
34B	Powell silt loam, 3 to 8 percent slopes
34C	Powell silt loam, 8 to 15 percent slopes
34D	Powell silt loam, 15 to 30 percent slopes
35A	Powell-Urban land complex, 0 to 3 percent slopes
36A	Quafeno loam, 0 to 3 percent slopes
36B	Quafeno loam, 3 to 8 percent slopes
36C	Quafeno loam, 8 to 15 percent slopes
37A	Quatama loam, 0 to 3 percent slopes
37B	Quatama loam, 3 to 8 percent slopes
37C	Quatama loam, 8 to 15 percent slopes
37D	Quatama loam, 15 to 30 percent slopes
38A	Quatama-Urban land complex, 0 to 3 percent slopes
39	Rafton silt loam
40	Rafton silt loam, protected
41	Riverwash
42F	Rock outcrop-Rubble land complex, very steep*
43C	Saum silt loam, 8 to 15 percent slopes
43E	Saum silt loam, 30 to 60 percent slopes
44	Sauvie silt loam
45	Sauvie silt loam, protected
46	Sauvie silty clay loam, protected
47A	Sauvie-Rafton-Urban land complex, 0 to 3 percent slopes
48	Sifton gravelly loam, occasionally flooded
49D	Talapus-Lastance association, moderately steep*
49E	Talapus-Lastance association, steep*
50A	Urban land, 0 to 3 percent slopes
50C	Urban land, 3 to 15 percent slopes
51A	Urban land-Latourell complex, 0 to 3 percent slopes
51B	Urban land-Latourell complex, 3 to 8 percent slopes
51C	Urban land-Latourell complex, 8 to 15 percent slopes
51D	Urban land-Latourell complex, 15 to 30 percent slopes
52A	Urban land-Multnomah complex, 0 to 3 percent slopes
52B	Urban land-Multnomah complex, 3 to 8 percent slopes
52C	Urban land-Multnomah complex, 8 to 15 percent slopes
53A	Urban land-Quafeno complex, 0 to 3 percent slopes
53B	Urban land-Quafeno complex, 3 to 8 percent slopes
53C	Urban land-Quafeno complex, 8 to 15 percent slopes
54B	Urban land-Quatama complex, 3 to 8 percent slopes
54C	Urban land-Quatama complex, 8 to 15 percent slopes
55	Wapato silt loam
56E	Wauld very gravelly loam, 30 to 70 percent slopes*
57	Wollent silt loam
58D	Zygore gravelly loam, 5 to 30 percent slopes*
58E	Zygore gravelly loam, 30 to 60 percent slopes*
59F	Zygore-Rock outcrop complex, 60 to 90 percent slopes*

*Broadly defined units

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EXHIBIT ____ PAGE ____

covered by as much as 30 inches of fill material, or as much as 40 inches of the original profile has been removed by cutting or grading. The fill material is generally from adjacent areas of Latourell soils that have been cut or graded.

About 40 percent of this complex is Urban land. The areas are largely covered by concrete, asphalt, buildings, or other impervious surfaces that so obscure or alter the soils that their identification is not feasible.

Included with this complex in mapping are areas of Multnomah, Powell, and Burlington soils and more steeply sloping Latourell soils. The included soils make up as much as 10 percent of this map unit.

In areas where the soils are relatively undisturbed, permeability is moderate and available water capacity is 8 to 12 inches. In areas dominated by cuts, fills, and urban land, permeability and available water capacity are variable. Runoff is slow, and the hazard of erosion is slight.

Areas of this complex that have not been disturbed include yards and openland around and between buildings. There are no major limitations for urban uses. Irrigation during summer is desirable for lawn grasses, shrubs, vines, vegetables, and most shade and ornamental trees. Plants that tolerate droughty conditions should be selected if irrigation is not provided.

This map unit is not assigned to a capability subclass.

26B—Latourell-Urban land complex, 3 to 8 percent slopes. This complex consists of well drained Latourell soils. In most areas of this complex the soils have been graded, cut, filled, or otherwise disturbed. This complex occupies broad terraces that have long, convex slopes. The areas are generally irregular in shape and 20 to 100 acres in size. Latourell soils and Urban land are in such an intricate pattern or so small in area that to separate them in mapping was not practical. Elevation is 50 to 800 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the frost-free period is 165 to 210 days.

About 20 percent of this complex are areas of Latourell soils that are relatively undisturbed. Typically, the surface layer is dark brown and brown loam about 16 inches thick. The subsoil is dark yellowish brown loam about 18 inches thick. The substratum is dark yellowish brown loam and very gravelly sandy loam to a depth of 60 inches or more.

About 30 percent of this complex are areas of Latourell soils that have been disturbed. These soils have been covered by as much as 30 inches of fill material, or as much as 40 inches of the original profile has been removed by cutting or grading. The fill material is generally from adjacent areas of Latourell soils that have been cut or graded.

About 40 percent of this complex is Urban land. The areas are largely covered by concrete, asphalt, buildings, or other impervious surfaces that so obscure or alter the soils that their identification is not feasible.

Included with this complex in mapping are areas of Multnomah, Powell, and Burlington soils and more steeply sloping Latourell soils. The included soils make up as much as 10 percent of this map unit.

In areas where the soils are relatively undisturbed, permeability is moderate and available water capacity is 8 to 12 inches. In areas dominated by cuts, fills, and Urban land, permeability and available water capacity are variable. Runoff is slow, and the hazard of erosion is slight.

Areas of this complex that have not been disturbed include yards and openland around and between buildings. There are no major limitations for urban uses. Some uses are restricted by slopes of 3 to 8 percent. Irrigation during summer is desirable for lawn grasses, shrubs, vines, vegetables, and most shade and ornamental trees. Plants that tolerate droughty conditions should be selected if irrigation is not provided.

This map unit is not assigned to a capability subclass.

27B—Mershon silt loam, 0 to 8 percent slopes. This moderately well drained soil is on broad, rolling ridgetops. This soil formed in loess and medium textured old alluvium. Elevation is 450 to 1,300 feet. The average annual precipitation is 60 to 70 inches, the average annual air temperature is 50 to 52 degrees F, and the frost-free period is 165 to 200 days.

Typically, the surface layer is very dark grayish brown silt loam about 15 inches thick. The subsoil is brown and dark brown silt loam about 41 inches thick. The substratum is dark brown loam to a depth of 60 inches or more.

Included with this soil in mapping are areas of Cazadero soils; Haplumbrepts, moderately steep; more steeply sloping Mershon soils; soils that have more than 35 percent coarse fragments; and soils that are similar to this Mershon soil and are well drained. The included soils make up as much as 10 percent of this map unit.

Permeability is moderately slow. Effective rooting depth is more than 60 inches. Available water capacity is 11 to 13 inches. Water-supplying capacity is 22 to 24 inches. Runoff is slow, and the hazard of erosion is slight. A water table is at a depth of 3 to 5 feet from November through April.

This soil is used for farming, urban development, timber production, and wildlife habitat.

This soil is well suited to farming. The major crops are hay and pasture. Other crops are berries and vegetables. Returning all crop residue to the soil and including grasses, legumes, or grass-legume mixtures in the cropping system help maintain fertility and tilth. If the soil is to be left bare during winter, it should be fertilized and planted to a cover crop in fall. A cloddy condition helps protect the soil from erosion during rainy periods.

Excessive cultivation can result in formation of a tillage pan in this soil. Subsoiling is required to break up this pan and is more successful if used when the soil is dry than when wet. Tile drainage systems are installed across the slope to intercept ground water. Sprinkler

irrigation can be used to increase crop production in dry periods in summer. Water needs to be applied slowly to prevent runoff. Grasses respond to nitrogen. Legumes respond to phosphorus, sulfur, boron, and lime. Berries respond to nitrogen, phosphorus, potassium, and sulfur and in places, to boron.

The vegetation in areas not cultivated is Douglas-fir, red alder, bigleaf maple, vine maple, willow, brackenfern, common snowberry, roses, western hazel, blue elderberry, creambush oceanspray, trailing blackberry, and western redcedar.

This soil is suited to Douglas-fir. The site index for Douglas-fir on this soil ranges from 120 to 135. Based on a site index of 130, this soil is capable of producing about 8,600 feet from a fully stocked stand of 70-year old trees, or 42,600 board feet (international rule, one-fourth inch kerf) of merchantable timber from a fully stocked stand of 80-year old trees.

Trees on this soil are subject to damage by ice breakage and wind blasting (fig. 11). Brushy species, including vine maple, willow, western hazel, common snowberry, bigleaf maple, and red alder restrict natural regeneration of Douglas-fir. When the soil is wet, the use of some conventional logging methods is limited. Roads and landings can be protected from erosion by constructing water bars and by seeding cuts and fills. All-season roads on this soil need a heavy base of rock.

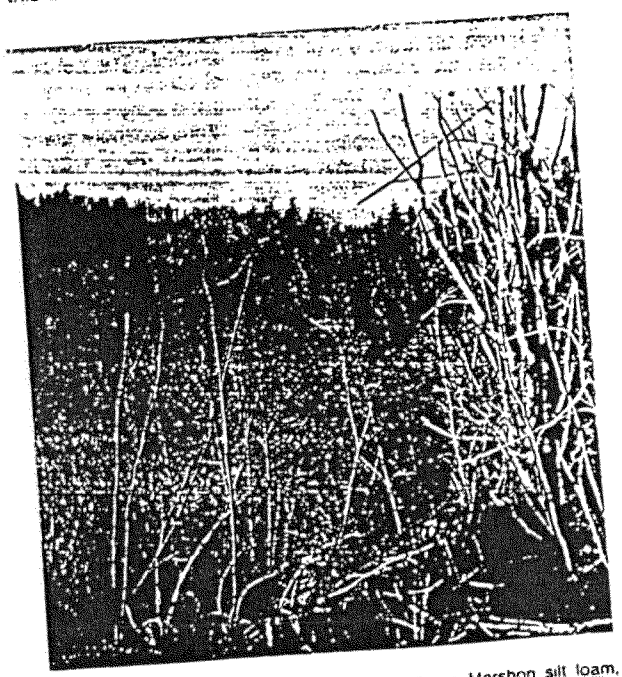

Figure 11.—Windblast damage to Douglas-fir on Mershon silt loam, 0 to 8 percent slopes.

A wide variety of grasses, forbs, fruits, and vegetables along with many shrubs and trees grow on this soil. This variety of plants furnishes food and cover for wildlife. Common wildlife species are black-tailed deer, foxes, skunks, raccoon, oppossum, rabbits, squirrels, and mice. Birdlife includes ring-necked pheasant, California quail, mountain quail, ruffed grouse, hawks, owls, vultures, jays, crows, woodpeckers, flycatchers, blackbirds, larks, starlings, and many kinds of small birds. The potential for wildlife habitat is good. Planting desirable vegetation and protecting existing vegetation improve the habitat.

The main limitations for urban development are a seasonal high water table and low strength. Dwellings and roads can be designed to offset these limitations if sewers are provided. Septic tank absorption fields in places do not function properly during rainy periods because of wetness and the moderately slow permeability. Irrigation during summer is desirable for best results with lawn grasses, shrubs, vines, vegetables, and shade and ornamental trees. To establish plants in areas in which the surface layer has been removed and the subsoil has been exposed is difficult. Mulching and fertilizing these areas help establish plants. Plants that tolerate droughty conditions should be selected if irrigation is not provided.

This soil is in capability subclass IIIe.

27C—Mershon silt loam, 8 to 15 percent slopes. This moderately well drained soil is on broad, rolling ridgetops. This soil formed in loess and medium textured old alluvium. Elevation is 450 to 1,300 feet. The average annual precipitation is 60 to 70 inches, the average annual air temperature is 50 to 52 degrees F, and the frost free period is 165 to 200 days.

Typically, the surface layer is very dark grayish brown silt loam about 15 inches thick. The subsoil is brown and dark brown silt loam about 41 inches thick. The substratum is dark brown loam to a depth of 60 inches or more.

Included with this soil in mapping are areas of Cazadero soils; Haplumbrepts, moderately steep; soils that have more than 35 percent coarse fragments; soils that are similar to this Mershon soil and are well drained; and other Mershon soils. The included soils make up as much as 10 percent of this map unit.

Permeability is moderately slow. Effective rooting depth is more than 60 inches. Available water capacity is 11 to 13 inches. Water-supplying capacity is 22 to 26 inches. Runoff is medium, and the hazard of erosion is moderate. A water table is at a depth of 3 to 5 feet from November through April.

This soil is used for farming, urban development, timber production, and wildlife habitat.

This soil is suited to farming. The major crops are hay and pasture. Other crops are berries and vegetables. Returning all crop residue to the soil and including grasses, legumes, or grass-legume mixtures in the cropping system help maintain fertility and tilth. If the

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Soil name and map symbol	Hydrologic group	Flooding			High water table			Bedrock		Potential frost action	Risk of corrosion	
		Frequency	Duration	Months	Depth	Kind	Months	Depth	Hardness		Uncoated steel	Concrete
					Ft			In				
24D, 24E---------- Lastance	B	None---------	---	---	>6.0	---	---	>60	---	Moderate	High-----	High.
25A, 25B, 25C, 25D---------- Latourell	B	None---------	---	---	>6.0	---	---	>60	---	---	Moderate	Moderate.
26A*, 26B*: Latourell-------- Urban land.	B	None---------	---	---	>6.0	---	---	>60	---	---	Moderate	Moderate.
27B, 27C, 27D----- Mershon	B	None---------	---	---	3.0-5.0	Perched	Nov-Mar	>60	---	---	High-----	Moderate.
28**---------- Moag	D	Protected---	---	---	+2-1.0	Apparent	Dec-Apr	>60	---	---	High-----	Moderate.
29A, 29B, 29C, 29D, 29E--------- Multnomah	B	None---------	---	---	>6.0	---	---	>60	---	---	High-----	Moderate.
30A*, 30B*: Multnomah-------- Urban land.	B	None---------	---	---	>6.0	---	---	>60	---	---	High-----	Moderate.
31---------- Pilchuck	A	Frequent----	Long------	Nov-Apr	2.0-4.0	Apparent	Nov-Apr	>60	---	Low------	Moderate	Moderate.
32---------- Pilchuck	A	Protected---	---	---	2.0-4.0	Apparent	Nov-Apr	>60	---	Low------	Moderate	Moderate.
33A*: Pilchuck--------- Urban land.	A	Protected---	---	---	2.0-4.0	Apparent	Nov-Apr	>60	---	Low------	Moderate	Moderate.
34A, 34B, 34C, 34D---------- Powell	C	None---------	---	---	1.5-2.0	Perched	Dec-Apr	>60	---	---	Moderate	Moderate.
35A*: Powell---------- Urban land.	C	None---------	---	---	1.5-2.0	Perched	Dec-Apr	>60	---	---	Moderate	Moderate.

See footnotes at end of table.

EXHIBIT ... PAGE ...

SOIL SURVEY—MULTNOMAH CO

TABLE 24.--SOIL AND WATER FEATURES--Continued

					High water table			Bedrock		Potential	Risk of corrosion	
												Concrete

No. 5505 Engineer's Computation Pad

SOILS

FROM A SOILS MAP (FIG 2) THE SOILS ON THE PROPERTY ARE MERSHON SILT LOAM WHICH IS DESCRIBED IN DETAIL IN THE ATTACHED PAGES FROM THE SOIL SURVEY FOR MULTNOMAH COUNTY.

MERSHON SOIL HAS SLOW PERMEABILITY AND HAS A PERCHED WATER TABLE AT A DEPTH OF 3 TO 5 FT FROM NOV THROUGH APRIL. ANNUAL PRECIPITATION IS 60-70 INCHES

A TABLE FROM THE SOIL SURVEY SHOWING SOIL & WATER FEATURES SUGGESTS THAT MERSHON SOILS ARE USUALLY SITUATED IN LOCATIONS WHERE THEY DO NOT SHOW EFFECTS OF FLOODING. A SOIL THAT IS FREQUENTLY FLOODED WILL OVER TIME DEVELOP CHARACTERISTICS THAT ARE ASSOCIATED WITH WET LAND SOILS. MERSHON SOILS ARE NOT IN THIS CATEGORY

ALL SOILS IDENTIFIED W/IN THE DRAINAGE AREA INCLUDE

SOIL DESIG.	SOIL SERIES	HYDROLOGIC SOIL GROUP	% TOTAL AREA
27B	MERSHON SILT LOAM 0-8% SLOPES	B	40
27C	MERSHON SILT LOAM 8-15% SLOPES	B	
10D	CORNELIUS SILT LOAM 15-30% SLOPES	C	40
10C	CORNELIUS SILT LOAM 8-15% SLOPE	C	
10B	CORNELIUS SILT LOAM 3-8% SLOPE	C	
34A	POWELL SILT LOAM	C	20

EXHIBIT ___ PAGE ___

No. 5505
Engineer's Computation Pad

SITUATION:

THE SUBJECT PROPERTY OF 11+ ACRES IS LOCATES ON THE NORTH SIDE OF THE SANDY RIVER AND IS ADJACENT TO THE RIVER. THE PROPERTY IS APPROXIMATELY 1 MILE SOUTH OF SPRINGDALE. THE LAND OWNER SAYS THAT MOST OF HIS PROPERTY IS SUBJECT TO FLOODING AND WATER STANDS ON HIS PROPERTY FOR THE ENTIRE WINTER SEASON - NOV - MARCH.

PROBLEM:

DETERMINE THE POTENTIAL FOR FLOODING OF THE AREA BY ESTIMATING THE VOLUME & PEAK RATES OF RUNOFF THAT MAY BE EXPECTED FROM THE AREA THAT NATURALLY DRAINS ON TO THE PROPERTY.

PROCEDURE:

THERE ARE NO MEASURED WATER DATA IN THE AREA SO A PROCEDURE DEVELOPED BY THE NATURAL RESOURCE CONSERVATION SERVICE WILL BE USED. THIS METHOD USES INFORMATION ON SOILS, LAND USE, TOPOGRAPHY AND RAINFALL AMOUNTS FOR A SPECIFIED DISTRIBUTION, DURATION & FREQUENCY TO OBTAIN A PEAK RATE OF RUNOFF.

THIS PEAK RATE CAN BE USED W/ LOCAL DETAILED TOPOGRAPHY TO ESTIMATE THE AREA ON THE PROPERTY THAT WOULD BE INUNDATED AS A RESULT OF THE FLOW.

GIVEN:

TOPOGRAPHIC INFORMATION IS AVAILABLE FROM THE U.S.G.S. 7½" QUAD - WASHOUGAL. SCALE IS 1:24000 AND CONTOUR INTERVAL IS 20 FT.

SOILS INFORMATION IS AVAILABLE FROM THE SOIL SURVEY OF MULTNOMAH COUNTY. THIS REPORT WAS COMPLETED IN 1975.

RAINFALL AMOUNTS FOR 24-HR STORMS ARE AVAILABLE FROM THE NATIONAL WEATHER SERVICE - PRECIPITATION FREQUENCY ATLAS FOR OREGON

DRAINAGE AREA

FROM THE 7½" QUAD TOPOGRAPHIC MAP THE DRAINAGE AREA WAS PLANIMETERED AND FOUND TO BE APPROXIMATELY 57 ACRES. THIS COULD VARY A FEW ACRES DUE TO SOME LOCALIZED DIKES ALONG THE SANDY RIVER ESCARPMENT WHERE NATURAL DRAINAGE HAS BEEN PREVENTED FROM FLOWING OVER THE STEEP BANKS TO THE RIVER. A TOPOGRAPHIC MAP SHOWING THE PROPERTY (CROSS-HATCHED) AND THE AREA THAT DRAINS INTO IT IS FIG 1.

No. 5505
Engineer's Computation Pad

CROPS

MOST OF THE AREA APPEARED TO BE IN SOME TYPE OF AGRICULTURAL CROP SUCH AS PASTURE, HAY, BLUEBERRY. IT IS EXPECTED THAT ALL COVER DURING THE WINTER MONTHS WILL BE CLASSIFIED AS GOOD HYDROLOGIC CONDITION. ASSUME 5% OF AREA IN ROADS, DRIVEWAYS, ROOFS, ETC

RUNOFF CURVE NUMBER

RUNOFF CURVE IS AN EXPRESSION OF RUNOFF POTENTIAL AND USES A COMBINATION OF A TYPE OF COVER AND A HYDROLOGIC SOIL GROUP

THE FOLLOWING DATA WAS EXCERPTED FROM NCRS PUBLICATION, "URBAN HYDROLOGY FOR SMALL WATERSHEDS"

COVER	HYD SOIL GP	HYD COND.	CURVE NUMBER	% AREA	WT C.N.
PASTURE	B	GOOD	61	35	21.4
PASTURE	C	"	74	40	29.6
BRUSH/GRASS	B	GOOD	48		
BLUEBERRIES	C		65	20	13.0
ROADS/ROOFS			98	5	4.9
				100	68.9

USE 69

PRECIPITATION

STORM RAINFALL AMOUNTS FOR 24 HR DURATION WERE OBTAINED FROM THE RAINFALL FREQUENCY ATLAS FOR OREGON.

PRECIP FREQ YRS	PRECIP AMOUNT (IN)
2	3.25
5	3.80
10	4.25
25	5.00
50	5.75
100	6.25

No. 5505
Engineer's Computation Pad

TIME OF CONCENTRATION

THIS IS THE TIME THAT IT TAKES WATER TO MOVE HYDRAULICALLY FROM THE UPPER MOST POINT OF THE WATERSHED. IT INCLUDES INITIALLY SHEET FLOW, FLOW IN SMALL POORLY DEFINED CHANNELS & FINALLY FLOW IN WELL DEFINED CHANNELS IN ANY COMBINATION

THE WATERSHED UNDER STUDY HAS A LENGTH OF 3/4 MILE OR APPROX 4000 FT

SLOPES RANGE FROM FLAT ON THE UPPER END TO STEEP & MODERATELY STEEP IN UPPER END

A FORMULA FOR SHEET FLOW IS

$$T_t = \frac{0.007(nL)^{.8}}{P_2^{0.5}\, S^{.4}}$$

n = MANNING'S "n"
L = LENGTH FLOW
P_2 = 2YR - 24 HR PRECIP
S = LAND SLOPE FT/FT.

$n = 0.15$
$L = 300$
$P_2 = 1.6$
$S = .015$

$$T_t = \frac{(0.007)[0.15 \times 300]^{.8}}{(1.6)(.015)^{.4}} = \frac{(.007)(21.)}{(1.6)(.19)} = .48 \text{ HRS}$$

SHEET FLOW

ASSUME 3000' - POORLY DEFINED FLOW

SLOPE = $\frac{110'}{3000} = .036$

$R \simeq d = 0.5$
$n = 0.10$
$S = .036$

$$V = \left(\frac{1.5}{.10}\right)(.5)^{.67}(.036)^{1/2}$$

$$= (15)(.63)(.19) = 1.79 \text{ '/SEC}$$

USE 1.8

$$\frac{3000}{1.8} = \frac{1667}{60} \text{ SEC} = 27 \text{ MIN} = .45 \text{ HRS}$$

ASSUME REMAINDER DISTANCE IN WELL DEFINED CHANNEL APPROX 700'

$\frac{40}{700} = .05$

$R = 1.0$
$S = .05$
$n = .08$

$$V = \frac{1.5}{n} R^{2/3} S^{1/2}$$

$$= \left(\frac{1.5}{.08}\right)(1)^{.67}(.05)^{1/2}$$

$$= (18.75)(1)(.22) = 4.1 \text{ '/SEC}$$

$$\frac{700}{4.1} = \frac{170}{60} = 3 = .05 \text{ HRS}$$

$T_c = .48 + .45 + .05 = .98 \text{ HRS}$
USE 1 HR

EXHIBIT ___ PAGE ___

WOOD LAND
MANAGEMENT INC.
Professional Foresters

MARK R. SMITH
DAN GREEN
JIM WICK

DARREN MAHR
STAN BEYER

Kruse Woods One Building
Suite 468
5285 S.W. Meadows Road
Lake Oswego, Oregon 97035

(503)684-4004
FAX (503)684-4005
e-mail:
woodland@teleport.com

RECEIVED
97 SEP 24 PM 2:33
COUNTY
PLANNING SECTION

September 18, 1997

Mr. Paul Norr
Attorney at Law
1020 SW Taylor Suite 530
Portland, Oregon 97205

Dear Mr. Norr:

Mr Andre Protassy has requested to be allowed to site a home on the extreme northwest corner of his property at 32152 SE Stevens Road near Corbett. He has asked us to provide comment about the effect of that site on his neighbors' ability to practice forestry and farming. Specifically, does the siting of this house in this location result in the least impact on his neighbors' opportunities to operate farm and forestry practices when compared to other potential sites. In my opinion it does.

I have visited the property and have viewed the neighboring properties. My opinion about these properties is based upon 28 years of practicing forestry, 9 of those as OSU Extension Agent in Clackamas County and the last 13 as a consulting forester practicing in this area. I have also been a Christmas tree farmer in the area for nearly 20 years. In that time I have worked on countless properties similar to this, both with and without houses.

With only a few exceptions, there are no material differences between properties with houses and those without. In terms of impacts on a neighbor's forest or farming practices, there is no clear effect of a house on a neighbor.

Forestry Activities

Forestry activities are cyclical and well known. The neighbor to the west has practiced forestry in the past and likely will again. In the most intensive forestry operation they might clear cut the property, replant with seedlings, spray brush, thin trees at a regular interval and eventually clear cut the property again. How would Mr. Protassy's house affect these actions?

Mr. Protassy has the right to expect his neighbors to remain on their properties and not to trespass upon him. That right applies regardless of whether a house is built. The neighbor must perform his forestry activities in such a manner that the trees he cuts, the machines he uses and the sprays he applies all stay on his property. The neighbor has the legal right to harvest and replant his trees and to apply chemicals, all of these things consistent with applicable laws and regulations. Not one of these laws restricts the neighbor because of a house being present or absent.

EXHIBIT ___ PAGE ___

The question could be raised as to whether the neighbor to the west might not be able to log and keep his operations entirely on this property. In other words, is it physically possible for logging to occur on the property to the west without entering Mr. Protassy's property. The answer is a clear yes. The property to the west has access below the short steep slope and all logging could take place from there.

The problems in logging close to property lines will be no different for the neighbor to the west than they are for all logging near property lines. Further the problems will not be materially different regardless whether or not Mr. Protassy builds his house. The neighbor to the west will need to avoid trespassing on Mr. Protassy and the neighbor to the north. Even without Mr. Protassy's house, logging will need to be done diligently to avoid the Neighbor to the north's property, house, electrical service lines, landscaping, farm field and the paved road immediately to the north of Mr. Protassy's home site. By clustering his house with these other improvements, Mr. Protassy has certainly minimized any likelihood of increased problems as a result of the siting of his house.

Agricultural Activities

It is unlikely that agricultural activities will ever take place on the property to the west. The steep hillside immediately adjacent to Mr. Protassy's property is totally unsuited to agriculture as we know it. There is a possibility that agriculture could take place on the flats further to the west but that has never happened in the past and seems unlikely in the future.

Agriculture can be practiced on the property immediately to the north of Mr. Protassy. The neighbors chose to locate their house near the extreme southwest corner of their property, leaving the bulk of their fields in one block to the east of their house, much as Mr. Protassy is attempting to do. There is a small width of field south of their house that separates their landscaping from the road and Mr. Protassy's property. If Mr. Protassy's house is going to have an effect on their agricultural activities, it will have to effect this small area. Were Mr. Protassy's house located any where else on the northern half of the property, it would potentially affect the larger open field instead of the small strip. His house could be located in the center of his property and be further away, but such a location would offer the greatest potential impact to the production off his own property, due to land taken out of production for a driveway and the subsequent division of his field into small fields that are more difficult to work.

In summary, I do not believe that Mr. Protassy's location of a house creates any greater impact on neighboring activities than the same property without a house. To the extent that problems might be generated, I believe that clustering this house with another pre-existing house will minimize those problems. And finally, if building the house in the center of Mr. Protassy's property offers the least impact on neighbors, the questionable benefit of that siting is surely outweighed by the obvious negative impact such a siting has upon production from the subject property itself.

I hope that this letter is of some use in this matter. Should there be any questions about what is said here, please contact me at 684 4004.

Sincerely,

Daniel F. Green
Vice President

EXHIBIT___ PAGE___

EMMERT INTERNATIONAL

DIVISION OF EMMERT INDUSTRIAL CORP.

11811 S.E. HIGHWAY 212, CLACKAMAS, OREGON 97015
PHONE (503) 655-7191 FAX (503) 655-3933
OREGON BB # 805 WASHINGTON BB # EMMERI *27115

September 9, 1997

Andre Protassy
12120 SW Boones Ferry Road
Portland, Oregon 97219

97 SEP 24 PM 2:33
COUNTY
PLANNING SECTION

Re: Proposal for On Site Structure Relocation and New Foundation

Dear Andre:

Thank you for affording Emmert International the opportunity to provide you with a proposal for relocating your home at 32152 SE Stevens Road in Corbett, Oregon.

The following are inclusions and exclusions to the scope of work.

INCLUSIONS FOR MOVE:

- Prep Structure
- Install Beam Pocket Openings
- Install Steel Beams and Support
- Raise Structure
- Crib and Support
- Load Structure
- Move Structure to New Location on-site
- Remove Cribbing and Lower on to New Foundation
- Remove Steel Beams
- Clean Up

EXCLUSIONS FOR MOVE:

*Dryrot repair (T&M)
*Excavation of new site (T&M)
*Utility Disconnects/Reconnects
*Fence removal
*Hand digging, if necessary (T&M)

QUOTE: $31,500

INCLUSIONS FOR FOUNDATION:

- 8" x 16" Footing
- 8" Thick Wall
- 18" minimum to 22" maximum wall height
- Strip Forms
- Clean Up

EXCLUSIONS FOR FOUNDATION:

*Post/Plating (T&M)
*Permits
*Slab work

QUOTE: $4,550

Once again, thank you for giving us the opportunity to provide you with a proposal. If you have any questions, please do not hesitate to call. I hope to hear from you soon.

Sincerely,

Deanna Olivas

EXHIBIT ___ PAGE ___

Proposal

WATSON PLUMBING CO.
Service & Remodeling
CCB #111855
7935 E. Burnside
PORTLAND, OR 97215
(503) 256-3720

PROPOSAL SUBMITTED TO	PHONE	DATE
ANDRE PROTASSY	245-5569	09-05-97
STREET	**JOB NAME**	
12120 SW Boones Ferry Rd.		
CITY, STATE and ZIP CODE	**JOB LOCATION**	
Portland, OR 97219	32152 SE Stephens Rd. Springdale, OR	
ARCHITECT / **DATE OF PLANS**		**JOB PHONE**

We hereby submit specifications and estimates for:

JOB DESCRIPTION:

Furnish and install 1½ copper water line from north side of road to point approximately 200' south.

BID INCLUDES:

Excavation
Backfill
Materials and Labor
Permit

NOT INCLUDED IN BID:

Meter and or installation tapping of main line.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Four Thousand Six Hundred Fifty Dollars dollars ($ 4,650.00).

Payment to be made as follows.

Due upon completion of job.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature _____

Note. This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Sig: [redacted]

Date of Acceptance: _____

Sig _____

EXHIBIT 4 PAGE 1

To: The Multnomah County Board Of Commissioners

From: Nicholas and Kimberley O'Connell
32202 SE Stevens Rd,
Corbett, Or. 97019
503 695-3382

Re: Andre Protassy Hearing

Dear Sirs:

We purchased our property in 1988 with one of the main reasons being that it was near the end of a dead end road. When we discovered in 1992 that the American Hellenic Association wanted to put a small village at the end of the road, we opposed the project to no avail before the Board of Commissioners. The board allowed the construction with certain limitations.

Since then it has been a long process, but being flexible on both sides, we co exist rather peacefully. There have been some occasions where we have had some questions and have tried to contact someone at the Division of Planning and Development but cannot even get them to return a phone call. Conditions imposed on zoning are nice, but it is obvious that there is no enforcement at all in Multnomah County.

One of the conditions of the 1992 decision on the Hellenic Association approval was the widening of the access road, inclusive of the access road running from Stevens Road through Mr. Protassy's property. In 1994, the neighborhood and the Hellenic Association requested a major variance to keep the existing road in its present state. From the beginning and throughout the process, **it was understood by everyone involved that the access road running from Stevens Road through Mr Protassy's property as well as the portion of the road on the Associations property was involved in the major variance request.** Somehow, inexplicably, the portion in question was not included on the final approval for the major variance. The camp run by the Helenic Association accounts for more than 95% of the traffic using the access road. To make Mr Protassy accountable for the entire improvement after the fact is ludicrous.

Now to address the safety issue. There are no sidewalks on Stevens Road and our children as well as many other of the neighborhood children play in the road. The road is the only place for bike riding and skate boarding. We do have problems when there is a function at Camp Angelos with the amount of traffic in and out of the campground. There could be as many as 150 vehicles which have to drive into and exit the site. I am not going to go into detail because that is not the issue; safety is the issue. In the conditions of approval in the 1992 decision of approval for Camp Angelos there were many safeguards included to provide safe access such as using buses for large groups, establishing traffic monitors, etc. **However, the main**

safeguard we have right now is the width of the existing access road. There is a clear line of sight down the whole portion of the access road and when there is oncoming traffic, the other traffic must stop before they can proceed. This is the **only** thing that slows traffic and gives limited protection to the 13 children living on this portion of Stevens Road. Widening the access road to 20 feet or even 16 feet is the same as putting a superhighway in front of our house. Any reasonable person can see this is courting disaster. On the slim chance there may be a case where emergency vehicles may be delayed slightly, this proposal puts our children at risk on a daily basis. Where is the safety in that?

We urge the Board to rule with intelligence and respect for the residents on Stevens Road and to allow the existing access road to remain as it is. This road has functioned with no major problems for the last 20 years. Give us a major variance and let us live in peace.

Nicholas and Kimberley O'Connell

OFFICE OF MULTNOMAH COUNTY COUNSEL

THOMAS SPONSLER
County Counsel

SANDRA N. DUFFY
Chief Assistant

1120 S.W. FIFTH AVENUE, SUITE 1530
PORTLAND, OREGON 97204-1977

FAX 248-3377
(503) 248-3138

SUSAN DUNAWAY
KATIE GAETJENS
GERALD H. ITKIN
JEFFREY B. LITWAK
STEVEN J. NEMIROW
MATTHEW O. RYAN
AGNES SOWLE
JOHN S. THOMAS
JACQUELINE A. WEBER
Assistants

MEMORANDUM

July 30, 1998

TO: Board of County Commissioners

FROM: Jeff Litwak, Assistant County Counsel

SUBJECT: Legal Issues Raised at the Protassy Appeal

On July 14, 1998, the Board heard an appeal by Andre Protassy regarding a variance to a road standard. The Board continued the hearing until July 30, 1998 to allow time for Mr. Protassy and Camp Angelos to negotiate a work schedule for widening the private road at issue in the case. The Board also raised three legal questions.

1. Does imposition of the road standard on Mr. Protassy violate Dolan?

The U.S. Supreme Court, in Dolan v. City of Tigard, 512 U.S. 374 (1994) stated that the Fifth Amendment requires that exactions of real property from a private individual must be "roughly proportional" to the impact created by that individual.

This "rough proportionality" test has been extended by the Oregon Court of Appeals to cover requirements to construct public improvements on public property. Clark v. City of Albany, 137 Or. App. 293 (1995). In this case, the Court also noted that not all conditions of approval are subject to Dolan.

The Court of Appeals has also noted that "rough proportionality" does not require individualized mathematical equivalency. The Court rejected an argument that since a project only generated 2.6% of the traffic on a specific public street, that it should only pay for 2.6% of the improvement. Art Piculell Group v. Clackamas County, 142 Or. App. 327 (1996).

Analysis of these and other cases and the facts relating to Mr. Protassy indicate that there is no constitutional "takings" claim. Mr. Protassy must improve a private road on private property. The Courts have not held that such conditions relating solely to private property can violate the constitution. There is no "public use" as required by the

Constitution. Further, there is no constitutional requirement that Mr. Protassy only widen the road to the extent that it is precisely attributable to his use.

2. Should the Board consider whether Mr. Protassy's dwelling is a replacement dwelling?

At the hearing, Mr. Protassy argued that because he "commenced" construction of his dwelling within one year after it was destroyed by fire, that the dwelling was a "replacement dwelling" and that the road standard at issue does not apply to replacement dwellings.

The Board may not consider this issue in this hearing because Mr. Protassy had an opportunity to appeal the determination that his dwelling was not a replacement dwelling when his conditional use permit for the dwelling was issued in 1997. Mr. Protassy accepted the County's conclusion that the dwelling was not a replacement dwelling and may not now raise the issue.

In the event that the Board wishes to consider the issue, MCC 11.15.2049(B) provides that restoration or replacement shall be commenced within one year of the casualty. Inherent in this provision (and all others in the code) is that the construction work be done legally with all required permits. Mr. Protassy failed to obtain the required permits for construction of the dwelling. Thus, even if Mr. Protassy did begin construction within 1 year, he did so in violation of the County's rules. He cannot rely on a violation of one County rule to establish compliance with another.

3. Is there a legal basis for the Board to "adopt" an agreement between Mr. Protassy and Camp Angelos regarding widening of the road?

There are two ways to address an agreement between Mr. Protassy and Camp Angelos. County Counsel expresses no preference between the two options.

1. The Board can modify the Hearings Officer's decision to allow staff to issue a building permit to Mr. Protassy after he either constructs, or provides a surety that he will construct, the portion of the road which he agrees to construct under the agreement.

2. Mr. Protassy can withdraw his appeal before the Board and carry out the agreement in compliance with the Hearings Officer's decision. This would require no action by the Board in regards to the agreement. In the event that either party fails to carry out their responsibilities under the agreement, the other party could have an action under the agreement.

The Board should keep in mind that both Mr. Protassy and Camp Angelos have independent obligations to widen the road to the widths required in the issued permits. No agreement can relieve one party of the obligation to construct the road, and the County can initiate an enforcement action against both parties to ensure the road is built.

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

RECEIVED
JUL 22 1998
COUNTY COUNSEL FOR
MULTNOMAH COUNTY, OR

To: Multnomah County Board of Commissioners

From: Chuck Beasley

Date: July 21, 1998

Re: Response to Applicant's Testimony at the July 14, 1998 Appeal Hearing in CU 4-98 and HV 7-98.

Camp Angelos Access Road Width Reduction

The applicant's attorney argues that the Hearings Officer decision is inconsistent with and opposite past findings that pertain to a prior approval for reduced road width for Camp Angelos. This was a reduction to a different road width standard for an application to which the standard currently at issue did not apply. The Hearings Officer found that as a matter of law, reduction in one standard in no way constitutes a variance to another different standard (see pg. 4 and 7 of the Hearings Officer decision).

The applicant's attorney states that the County Hearings Officer gave approval in October of 1993 for Camp Angelos to use a 16 foot wide road for the entire length of the access road in DR 17-93. This is incorrect. The DR 17-93 decision was an administrative staff decision. The Hearings Officer decision which followed in 1994 (HV 12-94) only finds the reduction to 16' in the design review decision was a past occurrence (see CU 4-98 exhibit A1.K.). The Hearings Officer did not approve a road width reduction to 16.'

Review of the zoning ordinance reveals the width reduction was not allowed by the process employed at that time. MCC 11.15.7860 Minor Exceptions: Yard, Parking, Sign and Landscape Requirements, provides that the Planning Director may grant minor exceptions to several dimensional requirements including yards, off-street parking, and minimum number of spaces. However, the 20' road width standard applied to Camp Angelos is an access standard under MCC 11.15.6128 Access, not a dimensional requirement under 11.15.6130 Dimensional Standards. Further, MCC .7860 Minor Exceptions does not list access standards as subject to the Planning Director's discretion. The ordinance requires written findings and lists specific criteria which must be met for minor yard exceptions, and for dimensional standards for off-street parking spaces or the minimum number of spaces. No approval criteria are listed as applicable to exceptions to the access standard, hence, no findings were made to approve the exception.

Road Safety
The applicant's attorney states that an unsafe circumstance would result if the road is required to be improved to a width greater than 16', and that this is a practical difficulty which should justify the requested variance. The nearby neighbor states that widening the road to the requested variance width of 16' will result in an unsafe circumstance. The concerns expressed by the attorney and neighbor are related primarily to traffic generated by users of Camp Angelos, and appear to have been considered in the land use decisions which relate to operations at the camp. Representatives of the Camp have already acknowledged that the camp is required to construct a 16 foot wide road.

The arguments advanced appear to maintain that the 20' standard is inherently unsafe. This is an argument against the standard itself, and as such is a policy argument not properly a part of the decision. The application before the Board is for a reduction to an established standard. The 20' road width is the standard improvement width for local access roads, is the width for this type of access road according to the Uniform Fire Code, and is the width recommended by the State of Oregon Department of Forestry for such roads (see Exhibits C4 and H1.).

Policy 14 Development Limitations/Drainage
The applicant's attorney states that the County is violating Policy 14 by directing development to an area which has development limitations. Policy 14 is intended to direct development away from potentially hazardous areas or to ensure that development and the public is protected from land hazards through design/engineering techniques. This policy was not addressed in the conditional use decision which allowed the dwelling (CU 12-96), or in this case, because the elements which identify land as subject to the policy were not found to be present (exhibit A2 at page 22). Attached are copies of the Slope Hazard Map and Soil Conservation Service soils classifications for the area. The roadway area which is the subject of this application is not identified as a hazardous area on the Slope Hazard Map. In addition, the soil types in the road area are 27B Mershon silt loam with 0 to 8% slopes, and 27C Mershon silt loam with 8 to 15% slopes. These soils are described as having slight to moderate erosion potential, a water table 3 to 5 feet deep in winter, no fragipan less than 30" from the surface, and no characteristic slumping. This soil does not fit the characteristics of soils where Policy 14 applies. It is interesting to note that the area which contains the road down the side slope of the canyon to Camp Angelos <u>is</u> designated as a hazard area, but a road was nevertheless constructed through this area down into the canyon in compliance with the Hillside Development ordinance. This highlights that Policy 14 does not prevent development in the identified areas, but requires that development in such areas must demonstrate design and construction techniques to overcome the limitations.

The applicant's attorney claims that evidence already in record demonstrates a practical difficulty, because excavation needed to construct the 18' to 20' roadway will undermine the slope stability that presently exists (July 10, 1998 letter at page 17 and 19). Staff is uncertain what evidence by a Geotechnical Engineer is being referenced by the applicant's attorney. The only Geotechnical letter staff has found is the May 12, 1998 letter from LaVielle Geotechnical,

in the record for CU 4-98 and HV 7-98 as part of Exhibit F3. The May 18, 1998 letter from staff to the Hearings Officer (see Exhibit F-5) responds to the stormwater impacts of road widening. The Hearings Officer decision and staff findings at pages 11 and 12 also respond to these issues. Staff has received no analysis prepared by an engineer of measures needed to maintain slope stability as of the date of this writing. This is because no road design has been submitted. All roads need drainage controls.

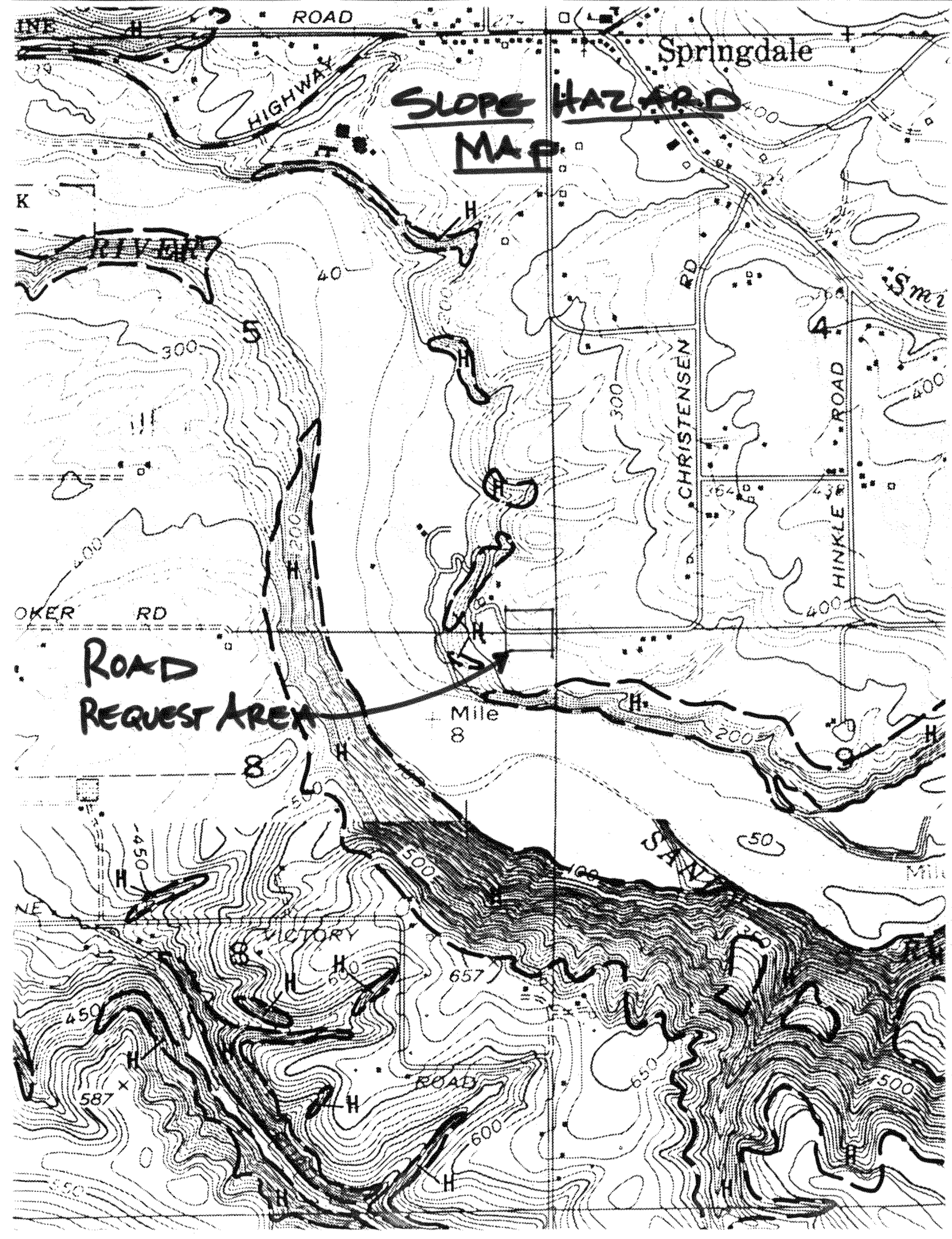
Destruction of Mature Trees on First 170' of Road

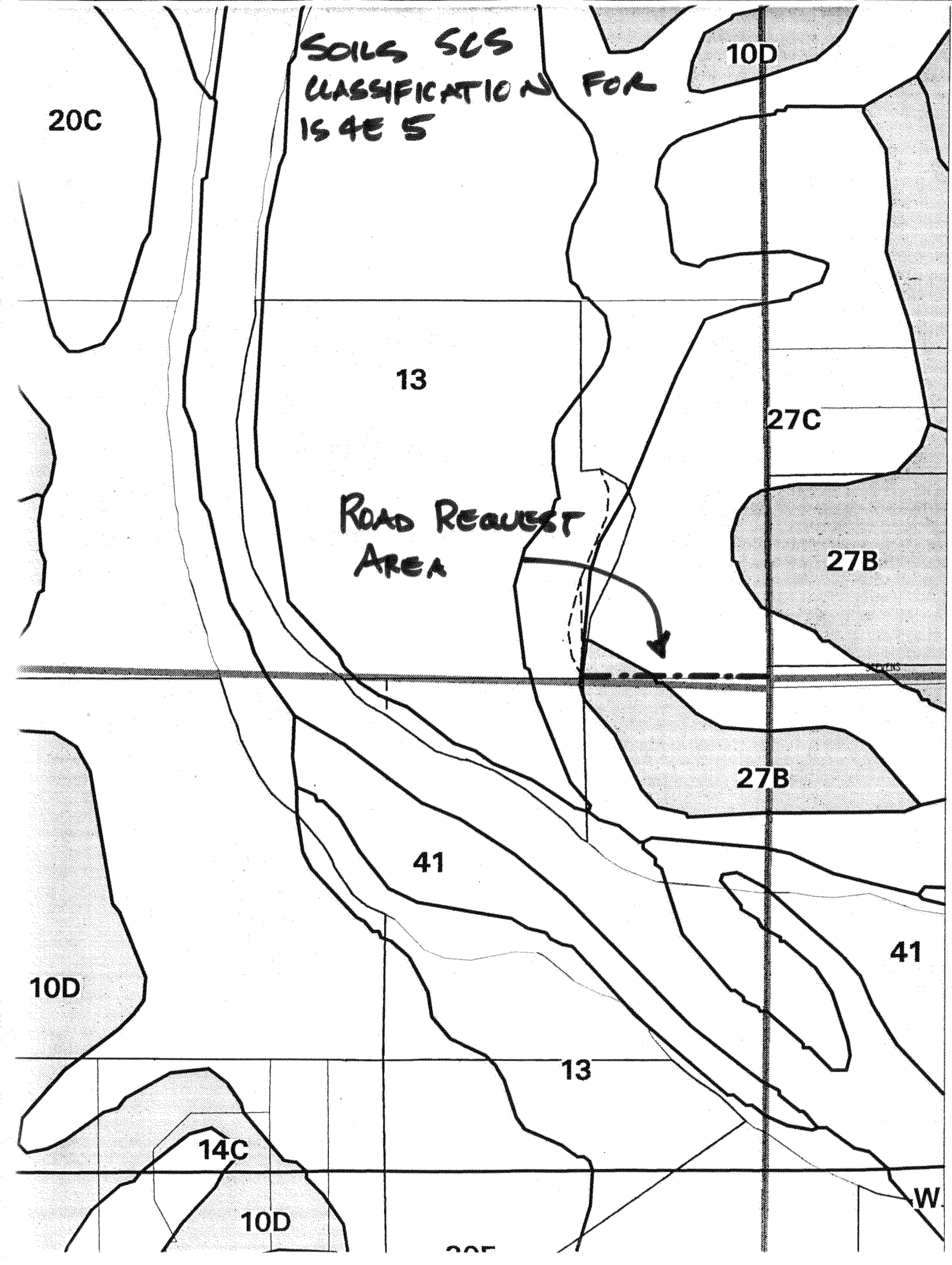
The applicant's attorney expresses alarm that staff would require the first 170' feet of roadway to be constructed to the full width because this would result in the destruction of mature Walnut trees. Staff accepted the applicant's Exhibit A5 which shows the first tree as 184' from the end of Stevens Road as accurate, and added the higher setback of 14' from the existing road to the existing tree as a buffer in order to arrive at the 170' improvement length. Now the applicant's attorney is apparently saying that the information in Exhibit A5 is inaccurate. Getting accurate and complete information has been a challenge during this application as indicated in the Hearings Officer decision and Summary.

Staff notes that acceptance of the existing mature Walnut trees as a practical difficulty which gives rise to the need for the variance is a very permissive reading of "practical difficulty." The Board could just as easily find that the trees do not constitute such a difficulty, especially in light of the Planning Commission decision in CS 4-92 which required construction of the 20' wide road notwithstanding that construction to this width could damage the trees (see condition of approval #1 of applicant's EX. H of CU 4-98 Exhibit A1).

If the Board accepts damage to the mature Walnut trees as a practical difficulty, the Hearings Officer decision could be amended, in light of the revised distance of 160' to the first mature Walnut tree, to read:

> **The Board of Commissioners denies the variance request for the first approximately 160' of roadway (as measured from the terminus of Stevens Road, east of the Protassy property).**
>
> **The Board approves the variance request for the remainder of the roadway at a width of 18 feet, except that the roadway shall be tapered from the 20 foot width to 18 feet in width to maintain a buffer of 9 feet between the road and the first mature Walnut tree, according to County specifications.**


SLOPE HAZARD MAP
ROAD REQUEST AREA
Springdale
HIGHWAY
RIVER
CHRISTENSEN RD
HINKLE ROAD
OKER RD
Mile 8
VICTORY
ROAD
SAW
ROAD
5
4
8
657
587


SOILS SCS CLASSIFICATION FOR ISAE 5
20C
10D
13
27C
ROAD REQUEST AREA
27B
27B
41
41
10D
13
14C
10D

ed by as much as 30 inches of fill material, or as as 40 inches of the original profile has been re- d by cutting or grading. The fill material is generally adjacent areas of Latourell soils that have been cut aded.

out 40 percent of this complex is Urban land. The are largely covered by concrete, asphalt, buildings, ner impervious surfaces that so obscure or alter the that their identification is not feasible.

luded with this complex in mapping are areas of omah, Powell, and Burlington soils and more steep- ping Latourell soils. The included soils make up as as 10 percent of this map unit.

areas where the soils are relatively undisturbed, eability is moderate and available water capacity is 12 inches. In areas dominated by cuts, fills, and land, permeability and available water capacity are ole. Runoff is slow, and the hazard of erosion is

eas of this complex that have not been disturbed de yards and openland around and between build- There are no major limitations for urban uses. Irri- n during summer is desirable for lawn grasses, s, vines, vegetables, and most shade and orna- al trees. Plants that tolerate droughty conditions ld be selected if irrigation is not provided.

is map unit is not assigned to a capability subclass.

8—Latourell-Urban land complex, 3 to 8 percent es. This complex consists of well drained Latourell In most areas of this complex the soils have been ed, cut, filled, or otherwise disturbed. This complex broad terraces that have long, convex slopes. s are generally irregular in shape and 20 to 100 in size. Latourell soils and Urban land are in such tricate pattern or so small in area that to separate in mapping was not practical. Elevation is 50 to feet. The average annual precipitation is 40 to 60 s, the average annual air temperature is 52 to 54 ees F, and the frost-free period is 165 to 210 days. out 20 percent of this complex are areas of Latour- ils that are relatively undisturbed. Typically, the sur- layer is dark brown and brown loam about 16 s thick. The subsoil is dark yellowish brown loam t 29 inches thick. The substratum is dark yellowish n loam and very gravelly sandy loam to a depth of ches or more.

out 30 percent of this complex are areas of Latour- ils that have been disturbed. These soils have been red by as much as 30 inches of fill material, or as as 40 inches of the original profile has been re- ed by cutting or grading. The fill material is generally adjacent areas of Latourell soils that have been cut aded.

out 40 percent of this complex is Urban land. The s are largely covered by concrete, asphalt, buildings, her impervious surfaces that so obscure or alter the that their identification is not feasible.

Included with this complex in mapping are areas of Multnomah, Powell, and Burlington soils and more steeply sloping Latourell soils. The included soils make up as much as 10 percent of this map unit.

In areas where the soils are relatively undisturbed, permeability is moderate and available water capacity is 8 to 12 inches. In areas dominated by cuts, fills, and Urban land, permeability and available water capacity are variable. Runoff is slow, and the hazard of erosion is slight.

Areas of this complex that have not been disturbed include yards and openland around and between buildings. There are no major limitations for urban uses. Some uses are restricted by slopes of 3 to 8 percent. Irrigation during summer is desirable for lawn grasses, shrubs, vines, vegetables, and most shade and ornamental trees. Plants that tolerate droughty conditions should be selected if irrigation is not provided.

This map unit is not assigned to a capability subclass.

27B—Mershon silt loam, 0 to 8 percent slopes. This moderately well drained soil is on broad, rolling ridgetops. This soil formed in loess and medium textured old alluvium. Elevation is 450 to 1,300 feet. The average annual precipitation is 60 to 70 inches, the average annual air temperature is 50 to 52 degrees F, and the frost-free period is 165 to 200 days.

Typically, the surface layer is very dark grayish brown silt loam about 15 inches thick. The subsoil is brown and dark brown silt loam about 41 inches thick. The substratum is dark brown loam to a depth of 60 inches or more.

Included with this soil in mapping are areas of Cazadero soils; Haplumbrepts, moderately steep; more steeply sloping Mershon soils; soils that have more than 35 percent coarse fragments; and soils that are similar to this Mershon soil and are well drained. The included soils make up as much as 10 percent of this map unit.

Permeability is moderately slow. Effective rooting depth is more than 60 inches. Available water capacity is 11 to 13 inches. Water-supplying capacity is 22 to 24 inches. Runoff is slow, and the hazard of erosion is slight. A water table is at a depth of 3 to 5 feet from November through April.

This soil is used for farming, urban development, timber production, and wildlife habitat.

This soil is well suited to farming. The major crops are hay and pasture. Other crops are berries and vegetables. Returning all crop residue to the soil and including grasses, legumes, or grass-legume mixtures in the cropping system help maintain fertility and tilth. If the soil is to be left bare during winter, it should be fertilized and planted to a cover crop in fall. A cloddy condition helps protect the soil from erosion during rainy periods.

Excessive cultivation can result in formation of a tillage pan in this soil. Subsoiling is required to break up this pan and is more successful if used when the soil is dry than when wet. Tile drainage systems are installed across the slope to intercept ground water. Sprinkler

irrigation can be used to increase crop production in dry periods in summer. Water needs to be applied slowly to prevent runoff. Grasses respond to nitrogen. Legumes respond to phosphorus, sulfur, boron, and lime. Berries respond to nitrogen, phosphorus, potassium, and sulfur and in places, to boron.

The vegetation in areas not cultivated is Douglas-fir, red alder, bigleaf maple, vine maple, willow, brackenfern, common snowberry, roses, western hazel, blue elderberry, creambush oceanspray, trailing blackberry, and western redcedar.

This soil is suited to Douglas-fir. The site index for Douglas-fir on this soil ranges from 120 to 135. Based on a site index of 130, this soil is capable of producing about 8,600 feet from a fully stocked stand of 70-year old trees, or 42,600 board feet (international rule, one-fourth inch kerf) of merchantable timber from a fully stocked stand of 80-year old trees.

Trees on this soil are subject to damage by ice breakage and wind blasting (fig. 11). Brushy species, including vine maple, willow, western hazel, common snowberry, bigleaf maple, and red alder restrict natural regeneration of Douglas-fir. When the soil is wet, the use of some conventional logging methods is limited. Roads and landings can be protected from erosion by constructing water bars and by seeding cuts and fills. All-season roads on this soil need a heavy base of rock.

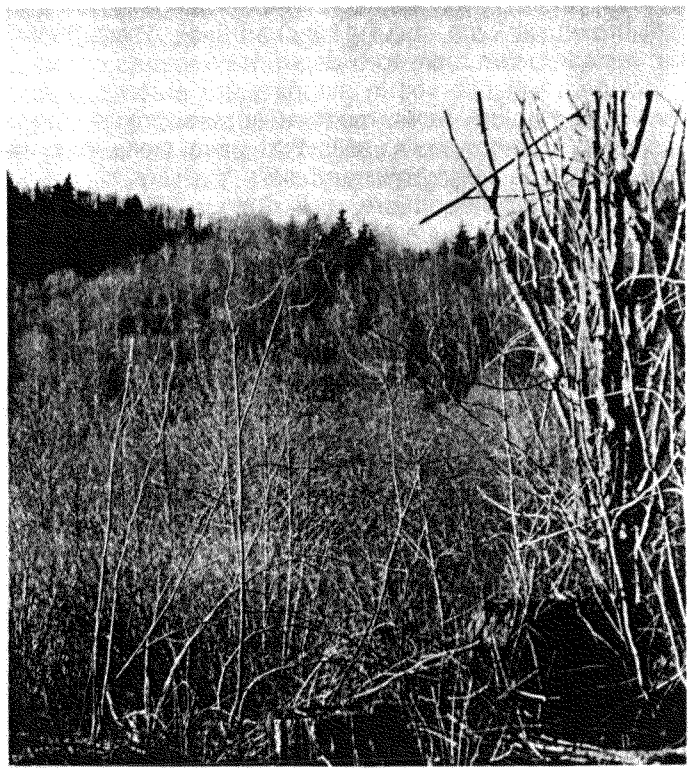


Figure 11.—Windblast damage to Douglas-fir on Mershon silt loam, 0 to 8 percent slopes.

A wide variety of grasses, forbs, fruits, and vegetable along with many shrubs and trees grow on this soil. Thi variety of plants furnishes food and cover for wildlife Common wildlife species are black-tailed deer, foxes skunks, raccoon, oppossum, rabbits, squirrels, and mice Birdlife includes ring-necked pheasant, California quai mountain quail, ruffed grouse, hawks, owls, vultures jays, crows, woodpeckers, flycatchers, blackbirds, larks starlings, and many kinds of small birds. The potential fo wildlife habitat is good. Planting desirable vegetation an protecting existing vegetation improve the habitat.

The main limitations for urban development are a sea sonal high water table and low strength. Dwellings an roads can be designed to offset these limitations sewers are provided. Septic tank absorption fields i places do not function properly during rainy periods be cause of wetness and the moderately slow permeability Irrigation during summer is desirable for best results wit lawn grasses, shrubs, vines, vegetables, and shade an ornamental trees. To establish plants in areas in whic the surface layer has been removed and the subsoil ha been exposed is difficult. Mulching and fertilizing thes areas help establish plants. Plants that tolerate drought conditions should be selected if irrigation is not provide

This soil is in capability subclass IIIe.

27C—Mershon silt loam, 8 to 15 percent slope This moderately well drained soil is on broad, rollin ridgetops. This soil formed in loess and medium texture old alluvium. Elevation is 450 to 1,300 feet. The averag annual precipitation is 60 to 70 inches, the averag annual air temperature is 50 to 52 degrees F, and th frost free period is 165 to 200 days.

Typically, the surface layer is very dark grayish brow silt loam about 15 inches thick. The subsoil is brown an dark brown silt loam about 41 inches thick. The substr tum is dark brown loam to a depth of 60 inches or mor

Included with this soil in mapping are areas of Caz dero soils; Haplumbrepts, moderately steep; soils th have more than 35 percent coarse fragments; soils th are similar to this Mershon soil and are well drained; ar other Mershon soils. The included soils make up a much as 10 percent of this map unit.

Permeability is moderately slow. Effective rootin depth is more than 60 inches. Available water capacity 11 to 13 inches. Water-supplying capacity is 22 to 2 inches. Runoff is medium, and the hazard of erosion moderate. A water table is at a depth of 3 to 5 feet fro November through April.

This soil is used for farming, urban developmer timber production, and wildlife habitat.

This soil is suited to farming. The major crops are h and pasture. Other crops are berries and vegetable Returning all crop residue to the soil and includi grasses, legumes, or grass-legume mixtures in the cro ping system help maintain fertility and tilth. If the soil

to be left bare during winter, it should be fertilized and planted to a cover crop in fall. Cross-slope farming, grassed waterways, and limiting tillage to seedbed preparation and weed control help control runoff and erosion. A cloddy condition helps protect the soil from erosion during rainy periods.

Excessive cultivation can result in formation of a tillage pan in this soil. Subsoiling is required to break up this pan and is more successful if used when the soil is dry than when wet. Sprinkler irrigation can be used to increase crop production in dry periods in summer. Water needs to be applied slowly to prevent runoff. Grasses respond to nitrogen. Legumes need phosphorus, sulfur, boron, and lime. Berries respond to nitrogen, phosphorus, potassium, and sulfur and in places, to boron.

The vegetation in areas not cultivated is Douglas-fir, red alder, bigleaf maple, vine maple, willow, brackenfern, common snowberry, roses, western hazel, blue elderberry, creambush oceanspray, trailing blackberry, and western redcedar.

This soil is suited to Douglas-fir. The site index for Douglas-fir on this soil ranges from 120 to 135. Based on a site index of 130, this soil is capable of producing about 8,600 cubic feet from a fully stocked stand of 70-year old trees, or 42,600 board feet (international rule, one-fourth inch kerf) of merchantable timber from a fully stocked stand of 80-year old trees.

Trees on this soil are subject to damage by ice breakage and wind blasting. Brushy species, including vine maple, willow, western hazel, common snowberry, bigleaf maple, and red alder, restrict natural regeneration of Douglas-fir. When this soil is wet, the use of some conventional logging methods is limited. Roads and landings can be protected from erosion by constructing water bars and by seeding cuts and fills. All-season roads on this soil need a heavy base of rock.

A wide variety of grasses, forbs, fruits, and vegetables along with many shrubs and trees grow on this soil. This variety of plants furnishes good food and cover for wildlife. Common wildlife species are black-tailed deer, foxes, skunks, raccoon, oppossum, rabbits, squirrels, and mice. Birdlife includes ring-necked pheasant, California quail, mountain quail, ruffed grouse, hawks, owls, vultures, jays, crows, woodpeckers, flycatchers, blackbirds, larks, starlings, and many kinds of small birds. The potential for wildlife habitat is good. Planting desirable vegetation and protecting existing vegetation improve the habitat.

The main limitations for urban development are the seasonal high water table, low strength, and slope. Dwellings and roads can be designed to offset these limitations if sewers are provided. In places, septic tank absorption fields do not function properly during rainy periods because of wetness and moderately slow permeability. Irrigation during summer is desirable for best results with lawn grasses, shrubs, vines, vegetables, and shade and ornamental trees. To establish plants in areas in which the surface layer has been removed and the subsoil has been exposed is difficult. Mulching and fertilizing these areas help establish plants. Plants that tolerate droughty conditions should be selected if irrigation is not provided.

This soil is in capability subclass IIIe.

27D—Mershon silt loam, 15 to 30 percent slopes. This moderately well drained soil is on broad, rolling ridgetops. This soil formed in loess and medium textured old alluvium. Elevation is 450 to 1,300 feet. The average annual precipitation is 60 to 70 inches, the average annual air temperature is 50 to 52 degrees F, and the frost-free period is 165 to 200 days.

Typically, the surface layer is very dark grayish brown silt loam about 15 inches thick. The subsoil is brown and dark brown silt loam about 41 inches thick. The substratum is dark brown loam to a depth of 60 inches or more.

Included with this soil in mapping are areas of Cazadero soils; Haplumbrepts, moderately steep; soils that have more than 35 percent coarse fragments; soils that are similar to this Mershon soil and are well drained; and other Mershon soils. The included soils make up as much as 10 percent of this map unit.

Permeability is moderately slow. Effective rooting depth is more than 60 inches. Available water capacity is 11 to 13 inches. Water-supplying capacity is 22 to 24 inches. Runoff is medium, and the hazard of erosion is high. A water table is at a depth of 3 to 5 feet from November through April.

This soil is used for timber production, urban development, farming, and wildlife habitat.

This soil is poorly suited to farming. The major crops are hay and pasture. Irrigation during summer is required for maximum production. Returning all crop residue to the soil and including grasses, legumes, or grass-legume mixtures in the cropping system help maintain fertility and tilth. If the soil is to be left bare during winter, it should be fertilized and planted to a cover crop in fall. Limiting slope length by stripcropping or terracing helps reduce sheet and rill erosion. Cross-slope farming, grassed waterways, and limiting tillage to seedbed preparation and weed control help control runoff and erosion. A cloddy condition helps protect the soil from erosion during rainy periods.

Excessive cultivation can result in formation of a tillage pan in this soil. Subsoiling is required to break up this pan and is more successful if used when the soil is dry than when wet. Sprinkler irrigation can be used to increase crop production in dry periods in summer. Water needs to be applied slowly to prevent runoff. Tile systems are installed across the slope to intercept ground water. Grass crops respond to nitrogen. Legumes respond to phosphorus, potassium, sulfur, and lime and in places, to boron.

The vegetation in areas not cultivated is Douglas-fir, red alder, bigleaf maple, vine maple, willow, brackenfern, common snowberry, western hazel, blue elderberry, cream oceanspray, trailing blackberry, roses, and western redcedar.

William C. Cox attorney at law

Land Use and Development Consultation

July 29, 1998 SENT VIA FAX

Tom Layton, Chief
Multnomah County RFPD #14
PO Box 1
Corbett, Oregon 97019

RE: Andre Protassy Residence - Emergency Access

Dear Mr. Layton:

This letter is to request your opinion on the roadway needed to access Mr. Protassy's residence at 32152 SE Stevens Road for the purposes of emergency response. It is my understanding that you are very familiar with the site and existing conditions.

This roadway has been the subject of continued review in connection with land use activities on Mr. Protassy's property and Camp Angelos, which also uses the roadway.

Mr. Protassy has a hearing before the Multnomah County Board of Commissioners on Thursday morning for the sole purpose of determining the roadway needed to ensure safe and efficient access for emergency vehicles. Your input is greatly needed to assist us in this process.

As it stands now, the Camp is required to improve the access roadway for its entire length, except a short section, to 16 feet wide. The existing roadway is approximately 12 feet wide. The County is now requiring Mr. Protassy to improve the roadway to 20 feet for the first hundred plus feet as you enter from Stevens Road, then narrow the roadway down to 18 feet up to the Protassy residence and then to 16 feet as it continues to the Camp. Please give us your opinion on this 20-18-16 configuration.

In addition, it is important that we know what you, as the emergency provider for this area, would deem sufficient to serve this site. It would be helpful if you could describe your experience with the site, its pros and cons as it exists now, and what improvements could be made on top of the 16 feet widening that the Camp is obligated to do. In other words, what, in your

0244 S.W. California Street • Portland, Oregon 97219 • (503) 246-5499 • FAX (503) 244-8750

professional opinion, is needed to ensure the safe and adequate use of this roadway by emergency vehicles.

I thank you for your time and effort in this matter.

Sincerely,

Gary P. Shepherd

cc: client

MULTNOMAH COUNTY
RURAL FIRE PROTECTION
DISTRICT NO. 14

P.O. BOX 1
CORBETT, OREGON 97019 - 0001

July 29, 1998

Gary P. Shepherd
William C. Cox Attorney at Law
0244 S.W. California Street
Portland, OR 97219

RE: Andre Protassy Residence - Emergency Vehicle Access

Mr. Shepherd:

In response to your letter of July 29, 1998, regarding the roadway providing emergency vehicle access to the Protassy residence at 32152 SE Stevens Road I will address the issues that your have brought up.

I inspected the roadway on June 5,1996 and approved the proposed access road as it was proposed. The reasons included the width, clearance both vertically and horizontally, and the visibility from Stevens Rd. to the dwelling in questions as well as the other house in the vicinity and the access gate to Camp Angelos. The existing roadway has been in place for at least 25 years that I personally know of, and the original house at this location has been there for that time also. Over the 18 years that I have been a member of this Fire Department I have had many occasions to respond to emergency calls on this roadway to Camp Angelos and this area. The existing roadway is approximately 12 feet wide, with adequate clearances as addressed by the roadway standards adopted by Multnomah County RFPD #14. I also feel that there is sufficient area for turning large equipment around due to the configuration of the driveways and houses in this area. I have done this at this location more than once so I speak from experience.

As an emergency responder I give strong consideration to access to any location in this District. As for the widening of the roadway to 16 feet to Camp Angelos, this would be a welcome improvement for emergency access, even though the existing access meets the minimum standards as adopted by the Fire District. As for the reasoning to widening the roadway from Stevens Rd. to the Camp in increments of 20-18-16 feet I am unaware of the need for this, while only widening the Camp access to 16. If the roadway to the Camp is not being required to be wider than 16 feet when it runs through switchback curves, I do not see the reason for the upper part of the road which is basically straight and with clear visibility to be wider than the part going to the Camp. I feel 16 feet throughout the length of the access road would greatly improve the access that already meets the Fire

District minimums, as we discussed in our conversations. The addition of a 20 by 40 foot turnout to be located between the Protassy driveway and Stevens Road would also be welcome in improving the access.

This roadway was inspected as noted by myself on June 5, 1996 and approved as proposed for meeting Fire District minimum standards, as well as on August 17, 1993 by my predecessor Dennis Bryson, who also gave approval, under the authorization as the Authorized Fire District Official. This was done with full knowledge of the location and with experience in responding to emergencies over this roadway over the course of many years.

If there is any further questions feel free to contact me again.

Sincerely,

Tom Layton

Tom Layton, Chief
Multnomah Co. RFPD #14

LaVIELLE GEOTECHNICAL P.C.

2313 NE Alameda
Portland, Oregon 97212
(503) 287-0511, FAX 282-7671

July 14, 1998

Our ref:98-1307.018

Mr. Andre Protassy
12120 SW Boones Ferry Road
Portland, Oregon 97219

RE: ROADWAY CUT SLOPE
32152 SE STEVENS ROAD
SPRINGDALE, OREGON

Dear Mr. Protassy:

We understand that the county has required that you widen the existing roadway at your property on SE Stevens Road to a full 18 feet. Based on our evaluation of soil conditions and topography along the north side of the roadway we expect the proposed widening will create a cut vertical slope approximately 5 feet high. The soil exposed in this cut will be a medium stiff, brown clayey silt. We recommend that any vertical cut slope in this soil be protected from erosion and be supported by a structural retaining wall.

If you have any questions or require additional information, please contact us.

Sincerely,

LaVIELLE GEOTECHNICAL, P.C.

REGISTERED PROFESSIONAL ENGINEER 14905 OREGON 3-27-90 CRAIG C. LA VIELLE

Exp 12/31/98

Craig C. LaVielle, P.E.
Principal

OFFICE OF
MULTNOMAH COUNTY COUNSEL

THOMAS SPONSLER
County Counsel

SANDRA N. DUFFY
Chief Assistant

1120 S.W. FIFTH AVENUE, SUITE 1530
PORTLAND, OREGON 97204-1977

FAX 248-3377
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SUSAN DUNAWAY
KATIE GAETJENS
GERALD H. ITKIN
JEFFREY B. LITWAK
STEVEN J. NEMIROW
MATTHEW O. RYAN
AGNES SOWLE
JOHN S. THOMAS
JACQUELINE A. WEBER
Assistants

MEMORANDUM

August 13, 1998

TO: Board of County Commissioners

FROM: Jeff Litwak, Assistant County Counsel

SUBJECT: Legal Standards of the "Practical Difficulties" Criteria for Variance

On July 14, 1998, the Board heard an appeal by Andre Protassy regarding a variance to a road standard. The Board continued the hearing until July 30, 1998 to allow time for Mr. Protassy and Camp Angelos to negotiate a work schedule for widening the private road at issue in the case. On July 30, the Board closed the public hearing and continued its decision until August 13, 1998 to permit the applicant to submit findings regarding the practical difficulties of a road wider than 16 feet.

In addition, the Board asked legal counsel for advice regarding what is a practical difficulty and how much discretion it has in finding a practical difficulty. These questions have been well settled in case law for many years.

1. What is a Practical Difficulty?

A practical difficulty must arise out of a condition inherent in the land. Lovell v. Independence Planning Comm., 37 Or. App. 3, 6-7 (1978). A condition inherent in the land is not one which an applicant creates. For example, LUBA determined that the location of a newly constructed home was not a condition inherent in the land giving rise to a practical difficulty that prevented a parcel from being divided. Godfrey v. Marion Cty, 3 Or. LUBA 5, 9 (1981).

Economic factors are not proper considerations for variances. Lovell v. Independence Planning Comm., 37 Or. App at 7 (a finding that the applicant could use her land more profitably with the approval of a variance is insufficient to establish a practical difficulty).

The Hearings Officer found that the large walnut trees on the south side of the road constituted a practical difficulty. This is a generous interpretation because removal

of the walnut trees would not render the property useless. However, this appears to be a policy decision balancing agriculture and road width. Similarly, the utility poles on the north side of the road would not constitute a practical difficulty, because they are not conditions inherent in the land. The poles could be moved. The cost of constructing of the road (including moving the utility poles) is not a proper factor to be considered as a "practical difficulty."

The Board must also consider the extent to which the difficulty is self-imposed. Evans v. Multnomah Cty., 34 Or. LUBA ___ (No. 96-198) (1997) (dwelling should be sited on the parcel in a location not requiring a variance).

2. Must the Variance be the Minimum Necessary?

Commissioner Naito asked whether a variance could be issued for the entire road, or whether it must be issued for only the precise sections of the road for which there is a practical difficulty. Commissioner Naito's concern was that the road width would vary between 16/18/20 feet over its entire length.

Typically, a variance must be only the minimum necessary to allow reasonable use of the property. Godfrey v. Marion Cty, 3 Or. LUBA at 9. However, there is no requirement that the result of the variance be a ridiculous road design.

The Hearings Officer approved a road design which would require a narrowing of the road at one point. This may be a reasonable design. A road which varied in width multiple times might not be reasonable. The Board should make a finding about the reasonableness of the road design which it ultimately approves.

3. Discretion in Finding a Practical Difficulty

The Courts and LUBA have strictly construed the "practical difficulty" criterion and interpreted it to allow a variance only if the subject property would be virtually useless without the variance. Land Use (Oregon CLE 1994) § 11.21. However, LUBA defers to a decision-maker's own interpretation of its ordinance. Salem Golf Club v. City of Salem, 28 Or LUBA 582 ___ (1995) (City's interpretation of "practical difficulty criterion to mean "extremely difficult" as opposed to "no reasonable use of the property" was proper).

Conclusions

If the Board wishes to approve the agreement for a 16 foot road, it should:

1. adopt an interpretation of the code which requires that an applicant only demonstrate "extreme difficulty" to establish a "practical difficulty." This may set some precedence for future variance requests.
2. make findings demonstrating practical difficulties exist. The Board asked Mr. Protassy's attorney to draft findings for its consideration.

If the Board wishes to deny Mr. Protassy's appeal, it should

1. adopt an interpretation of the code requiring an applicant to demonstrate that the property would be useless without the variance;
2. determine that neither the Walnut trees, nor the utility poles constitute a practical difficulty;
3. find that the cost of the road does not constitute a practical difficulty;
4. find that Mr. Protassy could have built his house closer to the public road, thus eliminating his need to widen the road.

William C. Cox attorney at law

Land Use and Development Consultation

98 AUG -7 PM 2:17
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONERS

August 7, 1998

Board of County Commissioners
Mult. County c/o Deborah Bogstad Clerk
1120 S.W. Fifth Avenue, Suite 1515
Portland, Oregon 97204

Via Facsimile to 248-3013

RE: Conditional Use CU 4-98
Minor Variance HV 7-98
Applicant Andre Protassy

Dear Ms. Bogstad,

This office requests a one week continuance of the above identified matter from August 13, 1998 until August 20, 1998 or a time suitable to the Commissions calendar. The purpose of the continuance is to allow additional time to prepare the proposed findings requested by the Commission and circulate them to the County Counsel's office and to whichever other offices the County Counsel suggests.

In making this request the applicant voluntarily extends the County's final decision due date by a number of days equivalent to the continuance granted.

Thank you for your continued courtesies in this matter. May I hear from you as soon as reasonable to know whether this continuance is granted and the new date if one is chosen.

Respectfully submitted,

William C. Cox, OSB 76110

WCC/abh

CC: *No copy or original by U.S Mail unless requested.
Jeff Litwak, Facsimile 248-3377
Client

0244 S.W. California Street • Portland, Oregon 97219 • (503) 246-5499 • FAX (503) 244-8750

BOGSTAD Deborah L

From: DIMEN Jason M
Sent: Friday, August 14, 1998 12:08 PM
To: LITWAK Jeff
Cc: BOGSTAD Deborah L
Subject: RE: Protassy

Jeff - Thanks, I'll forward this to Bev and board staff. It's probably a good idea to follow up with written correspondence to Cox summarizing our generous agreement for the additional setover and your referral to John Dorst, just in case this eventually goes to court or LUBA. You could add the above in your response to his findings.

From: LITWAK Jeff
Sent: Friday, August 14, 1998 11:54 AM
To: DIMEN Jason M
Subject: Protassy

I spoke with Bill Cox this morning. He told me that he would not prepare a road design as suggested at Monday's Board Staff meeting. I recommended that he speak with John Dorst to answer his questions about why a road design is necessary.

I have his draft findings and promised to review them for him and give him my comments.

I told him that he should get the final findings to the Board with ample time to review them and that the decision on whether a hardship exists would be made based on whatever he gave us.

The two questions for the Board on August 27 are:

1. Does the testimony presented and the findings of fact demonstrate a practical difficulty (as I defined in my memo)?

2. If a hardship exists, then how much of a hardship exists (i.e., a 2 foot hardship as determined by the hearings officer, or a 4 foot hardship as requested by the applicant)?

If you would like, I can talk with you about my comments on the draft findings and the final findings when I received them. Let me know if you have any questions.

BOGSTAD Deborah L

From: LITWAK Jeff
Sent: Friday, August 21, 1998 8:42 AM
To: STEIN Beverly E; HANSEN Gary D; KELLEY Sharron E; BOGSTAD Deborah L; LINN Diane M; NAITO Lisa H
Cc: BEASLEY Charles H; BUSSE Kathy A; ESTRIN Lisa M; FARMER Stuart L; COMITO Charlotte A; FORD Carol M; DELMAN Mike H; TRACHTENBERG Robert J; DIMEN Jason M; WEIT Ramsay; MARCH Steve J; SPONSLER Thomas
Subject: RE: Protassy Land Use Decision on 8/27/98 Board Meeting

I just received a second draft from Mr. Cox and the findings in that draft were much better. I made a few comments for his consideration and told him that if the Board wanted to approve Mr. Protassy's request, that legally, we could live with the findings. Of course, I will review the final findings and be prepared to advise you of their sufficiency at Thursday's hearing.

From: BOGSTAD Deborah L
Sent: Wednesday, August 19, 1998 2:04 PM
To: STEIN Beverly E; HANSEN Gary D; KELLEY Sharron E; LINN Diane M; NAITO Lisa H
Cc: BEASLEY Charles H; BUSSE Kathy A; ESTRIN Lisa M; FARMER Stuart L; COMITO Charlotte A; FORD Carol M; DELMAN Mike H; TRACHTENBERG Robert J; DIMEN Jason M; LITWAK Jeff; WEIT Ramsay; MARCH Steve J; SPONSLER Thomas
Subject: Protassy Land Use Decision on 8/27/98 Board Meeting

Our counsel Jeff Litwak reported the first draft of the proposed findings prepared by Bill Cox, attorney for Andre Protassy, were not acceptable. I just spoke to Mr. Cox asking if he would be able to submit the requested proposed findings by Friday morning so I could include them with your agenda packet materials. Mr. Cox advised me he was working with our counsel on the findings and would not be able to provide them until next week. I explained I would copy and distribute the proposed findings to the appropriate people as soon as I received them, but if he was not able to get them to me prior to the Board meeting, he would need to bring at least 10 copies with him on Thursday.

WILLIAM C. COX *attorney at law*

Land Use and Development Consultation

FAX TRANSMITTAL

THIS FACSIMILE CONTAINS CONFIDENTIAL, PRIVILEGED INFORMATION INTENDED FOR THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. DO NOT READ, COPY OR DISSEMINATE THIS INFORMATION UNLESS YOU ARE THE ADDRESSEE (OR THE PERSON RESPONSIBLE FOR DELIVERING IT). IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CALL US (COLLECT) IMMEDIATELY AT (503) 246-5499 AND RETURN THE ORIGINAL MESSAGE AND ANY ENCLOSURES TO THE ADDRESS BELOW VIA THE POSTAL SERVICE. THANK YOU.

DATE: 8/24/98 TO: Deb Bogstad

FAX PHONE NUMBER: 248-3043 NO. OF PAGES (INCL. THIS PAGE): 4

MESSAGE:

Proposed Findings in Protassy case. These findings include Jeff Peterkin's suggestions. Please let me know when you need the original submitted. Thanks Jeff

cc: Jeff Peterkin 248-3138

0244 S.W.California Street, Portland, Oregon 97219
Office (503) 246-5499.....FAX (503) 244-8750

BOARD OF COUNTY COMMISSIONERS
98 AUG 26 AM 10 23
MULTNOMAH COUNTY
OREGON

FINDINGS OF FACT AND CONCLUSIONS OF LAW
MODIFYING CONDITION OF APPROVAL IN
THE HEARINGS OFFICER DECISION
CU 4-98

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96. Condition #3 requires applicant to widen the improved surface of a 30 foot wide private roadway easement beyond the 16 feet allowed by an earlier exception governing the same roadway. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98.

The applicant's request follows approval of his forest dwelling application, CU 12-96, and approval of his Design Review permit, DR 14-97. The subject road presently consists of a 12 feet of improved surface within the easement. The private roadway serves three parcels: applicant's residence, Camp Angelos, a youth camp on the Sandy River, and another residence. The roadway has been serving the three sites for more than thirty years. A residence, which was destroyed by fire and gradually rebuilt by applicant has existed on applicant's property since the 1960's.

The Board of County Commissioners hereby modifies Condition of Approval #3 to indicate that 16 feet is sufficient width for the entire length of the subject private roadway and specifically finds that the staggered widths ordered by the Hearings Officer are inappropriate given the facts.

MCC 11.15.8505 VARIANCE APPROVAL CRITERIA

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter.

X X X X X

A Minor Variance shall meet criteria (3) and (4) which state:

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

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

(3) The Board finds that practical difficulties exist which justify the proposed variance. The Board concludes that the authorization of the requested variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, nor adversely affect the appropriate development of the adjoining properties.

The record indicates there was sufficient evidence introduced at an earlier request for an exception to the road width to justify, at that time, a reduction of improvement width from 20 to 16 feet (See DR 17-93). After reviewing the record as a whole this Board determines that insufficient evidence exists to prompt the Board to modify that earlier grant of an improvement width reduction. In part this Board's review incorporates consideration that the earlier exception approval for the 16 foot roadway was granted in conjunction with the approval to use property at the end of the subject road, beyond applicants residence, as a camp for youth, a much more traffic intense use than the applicant's single family residence. At that time, the applicable roadway standard required a 20 foot wide access road but the Board determined that a 16 foot wide roadway was both safe and adequate access for emergency vehicles. The Board recognizes that since the previous width reduction approval new code provisions have evolved. The Board finds insufficient evidence to convince us the addition of the negligible amount of traffic generated by applicant's use necessitates a reevaluation or rebalancing of considerations which lead to finding reasons existed justifying the earlier width reduction.

In support of the Board's decision the applicant has introduced updated evidence to indicate that nothing has changed regarding the characteristics or use of the subject road since this Board granted the previous road width exception. The applicant submitted a letter from Fire District Chief Tom Layton indicating that he had recently reinspected the road and again approved the proposed 16 foot wide road improvement. Chief Layton commented on the Hearings Officer's decision imposing Condition #3 in this matter which would result in a roadway from Stevens Road to the Camp in staggered widths of 20-18-16 feet. The Chief indicated he did not see the need or reason for such widths as the roadway is straight and has clear visibility. Chief Layton indicated that the addition of a 20 by 40 foot road turnout surface improvement located between the applicant's driveway and the end of Stevens Road would be an added safety feature but did not request the Board to mandate the turnout.

Applicant further revisited and updated evidence in the record indicating adverse impacts to the resource zoned property in the area would result if the improved roadway width were extended beyond 16 feet. Those adverse impacts include tree clearing and significant cuts and fills to maintain slope stability. In addition evidence indicates the topography of portions of the roadway easement area makes it difficult to incorporate drainage swales within the easement boundaries without having to increase the amount of cut and fill excavation. This in turn increases the potential for future erosion problems to occur.

In sum, the requested variance will avoid unnecessary tree removal and/or excessive cutting and filling. The variance will also work to ensure room for adequate erosion control thus reducing the potential for surface runoff impacting the surrounding area. The narrower improvement width will also act to reduce those safety problems associated with wider roadways in this unique area.

The above summarized negative consequences, which when considered as a whole establish that practical difficulties exist to justify the variance requested.

(4) The Board finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. As discussed above in item (3) the resource zone in which the subject road and land is located would be adversely affected if the variance is not approved. The increased erosion possibility and the need to remove trees both indicate that mandating a 20 foot road improvement, when safety is not being compromised by a 16 foot roadway, unnecessarily adversely impacts the resource zoned property. Therefore, approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

BOGSTAD Deborah L

From: LITWAK Jeff
Sent: Wednesday, August 26, 1998 12:15 PM
To: STEIN Beverly E; LINN Diane M; HANSEN Gary D; NAITO Lisa H; KELLEY Sharron E
Cc: BEASLEY Charles H; BUSSE Kathy A; COMITO Charlotte A; FORD Carol M; BOGSTAD Deborah L; DIMEN Jason M; DELMAN Mike H; TRACHTENBERG Robert J; WEIT Ramsay; DUFFY Sandra N; MARCH Steve J; DORST John K
Subject: Protassy Order for Tomorrow

Attached is the draft final order for the Protassy case tomorrow. Mr Protassy's attorney agrees with the findings and decision.

Yesterday Kathy Busse, John Dorst, and I met with the Chair's Office to discuss the final recommendation. The order reflects our conversation. In short, the recommendation is to approve a 16 foot road with two short 18 foot sections at the locations of the utility poles. These short wider sections will permit safer passing at those locations. They will be on the south side of the road where cars cannot pull over on the north side (due to the poles).

Please call me if you have any questions. You may also contact John Dorst at 83599 for specific questions regarding the road design.

protassy final order 2.doc

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

An application by Andre Protassy for a variance to MCC 11.15.2074(D) on property located at 32152 SE Stevens Road in unincorporated Multnomah County.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW and FINAL ORDER**
On appeal from Hearing Officer's decision Dated June 6, 1998.	)	**CU 4-98** **HV 7-98**

The Hearings Officer's decision dated June 7, 1998 in the matter of CU 4-98 and HV 7-98 is **AMENDED** to permit the road in question to be reduced to 16 feet with two 18 foot sections as described in the following findings of fact.

The Board finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY

This matter came before the Multnomah County Board of Commissioners as an appeal filed by Andre Protassy of the Hearings Officer's decision in land use cases CU 4-98 and hv 7-98.

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96. Condition #3 requires applicant to widen the improved surface of a 30-foot wide private roadway easement beyond the 16 feet allowed by an earlier exception governing the same roadway. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98. The applicant's request follows approval of his forest dwelling application, CU 12-96, and approval of his Design Review permit, DR 14-97.

After proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a hearing de novo on July 16, 1998 and on July 30, 1998; and

The Board of County Commissioners continued the matter until August 13, 1998 and again until August 27, 1998 to review the evidence and testimony presented.

II. CONTROLLING LAW

MCC 11.15.8505 VARIANCE APPROVAL CRITERIA

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter.

XXXXXX

A Minor Variance shall meet criteria (3) and (4) which state:

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

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

III. FINDINGS OF FACT

The subject road presently consists of a 12 feet of improved surface within the easement. The private roadway serves three parcels: applicant's residence, Camp Angelos, a youth camp on the Sandy River, and another residence. The roadway has been serving the three sites for more than thirty (30) years. A residence, which was destroyed by fire and gradually rebuilt by applicant, has existed on applicant's property since the 1960's

A. Findings related to .8505(A)(3)

The Board finds that practical difficulties exist which justify the proposed variance. The Board concludes that the authorization of the requested variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, nor adversely affect the appropriate development of the adjoining properties.

The record indicates there was sufficient evidence introduced at an earlier request for an exception to the road width to justify, at that time, a reduction of improvement width from 20 to 16 feet (See DR 17-93). After reviewing the record as a whole this Board determines that insufficient evidence exists to prompt the Board to modify that earlier grant of an improvement width reduction. In part this Board's review incorporates consideration that the earlier exception approval for the 16-foot roadway was granted in conjunction with the approval to use property at the end of the subject road, beyond applicant's residence, as a camp for youth, a much more traffic-intense use than the applicant's single family residence. At that time, the applicable roadway standard required a 20-foot wide access road but the Board determined that a 16-foot wide roadway was both safe and adequate access for emergency vehicles. The Board recognizes that since the previous width reduction

approval new code provisions have evolved. The Board finds insufficient evidence to convince us the addition of the negligible amount of traffic generated by applicant's use necessitates a reevaluation or rebalancing of considerations which led to finding reasons existed justifying the earlier width reduction.

In support of the Board's decision the applicant has introduced updated evidence to indicate that nothing has changed regarding the characteristics or use of the subject road since this Board granted the previous road width exception. The applicant submitted a letter from Fire District Chief Tom Layton indicating that he had recently reinspected the road and again approved the proposed 16-foot wide road improvement. Chief Layton commented on the Hearings Officer's decision imposing Condition #3 in this matter which would result in a roadway from Stevens Road to the Camp in staggered widths of 20-18-16 feet. The Chief indicated he did not see the need or reason for such widths as the roadway is straight and has clear visibility. Chief Layton indicated that the addition of a 20 by 40 foot road turnout surface improvement located between the applicant's driveway and the end of Stevens Road would be an added safety feature but did not request the Board to mandate the turnout.

Applicant further revisited the updated evidence in the record indicating adverse impacts to the resource-zoned property in the area would result if the improved roadway width were extended beyond sixteen (16) feet. Those adverse impacts include tree clearing and significant cuts and fills to maintain slope stability. In addition, evidence indicates the topography of portions of the roadway easement area makes it difficult to incorporate drainage swales within the easement boundaries without having to increase the amount of cut and fill excavation. This in turn increases the potential for future erosion problems to occur.

Evidence submitted by Land Use and Transportation Staff demonstrates that safety concerns regarding two emergency vehicles passing each other on Stevens Road would be better met by requiring Stevens Road to be widened where existing utility poles make passing on the road unsafe. There are two such locations. Utility poles exist on the north side of the road. Stevens Road should be widened to the south at these locations. Such widening could be done without impairing the existing significant walnut trees on the south side of the road.

In sum, the requested variance will avoid unnecessary tree removal and/or excessive cutting and filling. The variance will also work to ensure room for adequate erosion control thus reducing the potential for surface runoff impacting the surrounding area. The narrower improvement width will also act to reduce those safety problems associated with wider roadways in this unique area.

The above summarized negative consequences, which when considered as a whole establish that practical difficulties exist to justify the variance requested.

B. Findings related to .8505(A)(4)

The Board finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. As discussed above in item (3) the resource zone in which the subject road and land is located would be adversely affected if the variance is not approved. The increased erosion possibility and the need to remove trees both indicate that mandating a 20-foot road improvement, when safety is not being compromised by a 16-foot roadway, unnecessarily adversely impacts the resource zoned property. Therefore, approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

IV. CONCLUSION

Based upon the foregoing findings of fact and conclusions of law, we hereby modify Condition of Approval # 3.A. of Hearings Officer decision CU 12-96 to require that the applicant widen Stevens Road to 16 feet, except that the road shall be widened to 18 feet for a distance of 15 feet to the east and 15 feet to the west of all power poles located on the north side of the road. The additional widening to 18 feet shall be done on the south side of the road.

Prior to issuance of a building permit, the applicant shall post a bond or surety to cover 100% of the cost of widening Stevens Road from 16 feet to 18 feet as required herein.

IT IS SO ORDERED this ____ day of _____, 1998

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

_____
Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: _____
Jeffrey B. Litwak, Assistant County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

An application by Andre Protassy for a variance to MCC 11.15.2074(D) on property located at 32152 SE Stevens Road in unincorporated Multnomah County.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW and FINAL ORDER**
On appeal from Hearing Officer's decision Dated June 6, 1998.	)	**CU 4-98** **HV 7-98** 98-121

The Hearings Officer's decision dated June 7, 1998 in the matter of CU 4-98 and HV 7-98 is **AMENDED** to permit the road in question to be reduced to 16 feet with two 18 foot sections as described in the following findings of fact and conclusions of law.

The Board finds as follows:

I. PROCEDURE AND PROCEDURAL HISTORY

This matter came before the Multnomah County Board of Commissioners as an appeal filed by Andre Protassy of the Hearings Officer's decision in land use cases CU 4-98 and HV 7-98.

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96. Condition #3 requires applicant to widen the improved surface of a 30-foot wide private roadway easement beyond the 16 feet allowed by an earlier exception governing the same roadway. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98. The applicant's request follows approval of his forest dwelling application, CU 12-96, and approval of his Design Review permit, DR 14-97.

After proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a hearing de novo on July 16, 1998 and on July 30, 1998. The Board of County Commissioners continued the matter until August 13, 1998 and again until August 27, 1998 to review the evidence and testimony presented.

II. CONTROLLING LAW

MCC 11.15.8505 VARIANCE APPROVAL CRITERIA

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter.

XXXXX

A Minor Variance shall meet criteria (3) and (4) which state:

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

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

III. FINDINGS OF FACT

The subject road presently consists of a 12 feet of improved surface within the easement. The private roadway serves three parcels: applicant's residence, Camp Angelos, a youth camp on the Sandy River, and another residence. The roadway has been serving the three sites for more than thirty (30) years. A residence, which was destroyed by fire and gradually rebuilt by applicant, has existed on applicant's property since the 1960's

A. Findings related to .8505(A)(3)

The Board finds that practical difficulties exist which justify the proposed variance. The Board concludes that the authorization of the requested variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, nor adversely affect the appropriate development of the adjoining properties.

Multnomah County approved an earlier exception to the road width from 20 to 16 feet (See DR 17-93). After reviewing the record as a whole this Board determines that insufficient evidence exists to prompt the Board to modify that earlier grant of an improvement width reduction. In part this Board's review incorporates consideration that the earlier exception approval for the 16-foot roadway was granted in conjunction with the approval to use property at the end of the subject road, beyond applicant's residence, as a camp for youth, a much more traffic-intense use than the applicant's single family residence. At that time, the applicable roadway standard required a 20-foot wide access road but Multnomah County determined that a 16-foot wide roadway was both safe and adequate access for emergency vehicles. The Board recognizes that since the previous width reduction approval new code provisions have evolved. The Board finds

insufficient evidence to convince us the addition of the negligible amount of traffic generated by applicant's use necessitates a reevaluation or rebalancing of considerations which led to finding reasons existed justifying the earlier width reduction.

In support of the Board's decision the applicant has introduced updated evidence to indicate that nothing has changed regarding the characteristics or use of the subject road since this Board granted the previous road width exception. The applicant submitted a letter from Fire District Chief Tom Layton indicating that he had recently reinspected the road and again approved the proposed 16-foot wide road improvement. Chief Layton commented on the Hearings Officer's decision imposing Condition #3 in this matter which would result in a roadway from Stevens Road to the Camp in staggered widths of 20-18-16 feet. The Chief indicated he did not see the need or reason for such widths as the roadway is straight and has clear visibility. Chief Layton indicated that the addition of a 20 by 40 foot road turnout surface improvement located between the applicant's driveway and the end of Stevens Road would be an added safety feature but did not request the Board to mandate the turnout.

Applicant further revisited the updated evidence in the record indicating adverse impacts to the resource-zoned property in the area would result if the improved roadway width were extended beyond sixteen (16) feet. Those adverse impacts include tree clearing and significant cuts and fills to maintain slope stability. In addition, evidence indicates the topography of portions of the roadway easement area makes it difficult to incorporate drainage swales within the easement boundaries without having to increase the amount of cut and fill excavation. This in turn increases the potential for future erosion problems to occur.

Evidence submitted by Land Use and Transportation Staff demonstrates that safety concerns regarding two emergency vehicles passing each other on Stevens Road would be better met by requiring Stevens Road to be widened where existing utility poles make passing on the road unsafe. There are two such locations. Utility poles exist on the north side of the road. Stevens Road should be widened to the south at these locations to permit passing of oncoming vehicles. Such widening could be done without impairing the existing significant walnut trees on the south side of the road.

In sum, the requested variance will avoid unnecessary tree removal and/or excessive cutting and filling. The variance will also work to ensure room for adequate erosion control thus reducing the potential for surface runoff impacting the surrounding area. The narrower improvement width will also act to reduce those safety problems associated with wider roadways in this unique area.

The above summarized negative consequences, which when considered as a whole establish that practical difficulties exist to justify the variance requested.

B. Findings related to .8505(A)(4)

The Board finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone. As discussed above in item (3) the resource zone in which the subject road and land is located would be adversely affected if the variance is not approved. The increased erosion possibility and the need to remove trees both indicate that mandating a 20-foot road improvement, when safety is not being compromised by a 16-foot roadway, unnecessarily adversely impacts the resource zoned property. Therefore, approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

IV. CONCLUSION

Based upon the foregoing findings of fact and conclusions of law, we hereby modify Condition of Approval # 3.A. of Hearings Officer decision CU 12-96 to require that the applicant widen Stevens Road to 16 feet, except that the road shall be widened to 18 feet for a distance of 15 feet to the east and 15 feet to the west of all utility poles located on the north side of the road. The additional widening to 18 feet shall be done on the south side of the road.

Prior to issuance of a building permit, the applicant shall post a bond or surety to cover 100% of the cost of widening Stevens Road from 16 feet to 18 feet as required herein.

IT IS SO ORDERED this 27th day of August, 1998

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By: _____
Jeffrey B. Litwak, Assistant County Counsel

MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

Decision of Hearings Officer

Case File: Conditional Use CU 4-98
Minor Variance HV 7-98

Proposed Action and Use: CU 4-98 is a request for modification of a condition of approval imposed in case number CU 12-96, which approved a new dwelling in the Commercial Forest Use (CFU) district. The condition requires compliance with the private road standards of the CFU, which include a 20' wide access road and other standards. The applicant is also requesting immediate Building Permit approval. The variance request is to allow the minimum road width of 20' to be reduced to 16'.

Location: 32152 SE Stevens Road

Property Description: TL '44' of Section 8, T1S, R4E

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

Applicant/Owner: Andre Protassy
12120 SW Boones Ferry Road
Portland, OR 97219

RECEIVED
98 JUN 11 PM 2:46
MULTNOMAH COUNTY
PLANNING SECTION

Decision:

The Hearings Officer denies the variance request for the first 170' of roadway (as measured from the terminus of Stevens Road, east of the Protassy property).

The Hearings Officer approves the variance request for the remainder of the roadway at a width of 18 feet, except that the roadway shall be tapered from the 20' width at the 170' point from the end of Steven Road down to a width of 18 feet, according to County specifications.

The variance is granted upon the express condition that the Applicant obtain a Grading and Erosion Control permit from the County for all required road work and related drainage improvements prior to commencing roadway improvements.

The Hearings Officer modifies Condition of Approval 3 of CU-12-96 to require that the Applicant comply with the requirements of MCC 11.15.2074(D), except as varied by this variance application.

Applications:

CU 4-98 is a request for modification of Condition of Approval #3 for CU 12-96 which requires that the applicant demonstrate compliance with the private road standards of MCC 11.15.2074(D). MCC 11.15.2074(D) requires Mr. Protassy to widen the existing private roadway to the Protassy residence to a minimum width of 20 feet, to provide a vehicle turnaround and a vehicle turnout. Mr. Protassy proposes to improve the road to a width of sixteen rather than twenty feet. As the road improvement standards included in the conditional use application mirror mandatory County code road requirements, a variance is needed to authorize the requested modification of the conditional use permit.

Mr. Protassy's land use application includes a request that the Hearings Officer direct Multnomah County Planning staff to sign a Building Permit application for the Protassy residence immediately. Mr. Protassy does not identify any provision in the County Code to support this request. Further, the Hearings Officer's authority is strictly limited by law and does not include the authority to direct County staff to take any type of action regarding building permits.

Procedural Matters

A hearing was held on the variance and conditional use applications on May 6, 1998. The record of the application was held open until May 13, 1998 for additional evidence. The Hearings Officer also gave the parties until May 16, 1998 to request an opportunity to respond to new evidence. During the comment period new evidence was received regarding the need to remove the telephone poles in question in this matter to construct a 16' wide road. The Hearings Officer extended the comment period until May 22, 1998 in order to allow the applicant to respond to this new information. On May 21, 1998 the applicant submitted additional information responding to the telephone pole issue.

Decision Format

This decision addresses two requested actions, a request for modification of the Hearings Officer decision, and a Minor Variance. The Applicant's narrative or response to an approval criterion is indicated by the notation "Applicant." Planning staff comments and analysis follow the Applicant's responses to the criteria. Additional planning staff comments are added where supplemental information is needed or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff concurs with the applicant. The Hearings Officer's comments follow staff remarks. A lack of any findings indicates that the Hearings Officer concurs with applicant and staff comments. Where staff comments differ from the applicant's comments, those of staff shall serve as the controlling findings, unless the Hearings Officer's findings indicate

otherwise.

FINDINGS:

Case History: The applicant's requests follow approval of his forest dwelling application, CU 12-96, in December of 1997, and approval of his Design Review permit DR 14-97 in February of 1998. These cases were and are intended to resolve a zoning violation that entails construction of a dwelling by the applicant without required permits. Inspection of the property for DR 14-97 revealed that a substantial portion of the private easement road is approximately 12' wide, does not meet the 20' width standard of the Commercial Forest Use district, and is therefore not in compliance with CU 12-96.

The record of CU 12-96 includes a written statement from Mr. Protassy that his private road access was 20-feet wide. This statement was provided in order to demonstrate compliance with MCC 11.15.2074(D)(2). This statement is clearly wrong. The road is, *according to Mr. Protassy's current evidence*, a single lane road that is approximately 10 to 12 feet in width. Mr. Protassy claims that his misstatement in CU-12-96 was made because "I assumed that the road, since it has been used for so long, is legal and never bothered to measure it." Whether the road was or was not legal was not question asked in CU-12-96. The question asked was whether the road was 20-feet wide. That question was answered as follows: "The width of the road is at least 20 feet wide . . ." The Hearings Officer finds that Mr. Protassy's prior statement could not reasonably be confused with a statement regarding the legality of the road. Further, a review of the photographs of the roadway and of a car parked in the roadway make it obvious that the existing road is not 20-feet wide. As a result, the Hearings Officer concludes that, at a minimum, Mr. Protassy's prior statement exhibited a complete lack of concern for providing this hearings body with accurate evidence.

Other factual inaccuracies occur throughout Mr. Protassy's testimony, most notably, his statement that the trees that he replaced in April 1998 were lost in an ice storm in the winter of 1997. Photographs from CU-12-96 show that most of the walnut trees that Mr. Protassy claims were lost in the winter of 1997 were not present on the Protassy property in November of 1996. Mr. Protassy offers excuses for his inaccurate testimony, claiming that he was not referring to the loss of all of the trees but it is clear from the photographs that almost all of the walnut trees in question were missing from the Protassy property prior to November 16, 1996.

The fact that Mr. Protassy has provided such inaccurate testimony in this and the earlier conditional use proceeding casts a long shadow on the reliability of the remainder of Mr. Protassy's evidence. As a result, the Hearings Officer has carefully reviewed all of the evidence to determine whether Mr. Protassy has met his burden of proof in the variance and modification proceeding. The burden of proving this case rests on Mr. Protassy's shoulders. Without competent evidence, the requested variance and modification cannot be approved.

A 16' road width for the private road was approved in a Design Review permit for the adjacent Camp Angelos, in October of 1993. Camp Angeles has failed to improve the road to the approved 16' width. The County is currently proceeding to require Camp Angeles to comply with the road improvement requirements of its Design Review approval. The County's approval of a variance for this road in that case was made under different approval criteria and is not binding upon the County in this proceeding. Further, the hearings officer is not authorized to rely upon the fact that such a variance was approved to justify the approval of the requested variance to the road standards of the CFU zone. Approval must be granted based upon facts included in the record of this case and upon the law that relates to the approval of the Protassy dwelling.

The applicant requested immediate zoning sign-off of a Building Permit application in order to obtain the confirmation of compliance with building code requirements needed to meet Condition of Approval #6 of CU 12-96. This condition must be satisfied by June 14, 1998, which is six months from December 14, 1997, the date the decision was final. As discussed above, the Hearings Officer lacks the authority to direct the County to take administrative actions to order County staff to sign a building permit application. As such, this request is denied.

Description of Site and Vicinity: The access road is described in the applicant's Exhibits A. and B., which are contained in casefile Exhibit A1.

Notification and Public Participation: Notice of the hearing Scheduled for May 6, 1998 and applicable criteria was sent to 15 neighboring property owners, interested parties, and agencies on April 15, 1998. A copy of the notice is included as Exhibit "B1" of this report.

Requested Actions

1. CU 4-98, Request for Modification of Hearings Officer Decision

Applicant:

This request is for:

(a) Modification of condition #3D on a prior Hearings Officer decision from CU 12-96, HV 18-96, and SEC 27-96.
(b) Immediate permit for sign off from Planning Commission in order to obtain Building permit which is going to satisfy condition #6 of the Hearing's Officer decision from CU 12-96, HV 18-96, and SEC 27-96.

Submitted here with are the following exhibits:
Exhibit A- Site Plan
Exhibit B- Photographs
Exhibit C- letter from Halstead's Arborculture Consultants

Exhibit D- Signed statement from Thomas Layton (Fire Chief), Multnomah County Fire District #14.
Exhibit E- Signed statement from Dennis Bryson (Fire Chief), Multnomah County RFPD #14.
Exhibit F- Site Map.
Exhibit G- Robert E. Meyer Consultants Inc. Statement.
Exhibit H- CS 4-92 #574- #583-B from March 2, 1992.
Exhibit I- Administrative decision on an application for Hillside development permit and final design review plan. File numbers DR 17-93; HDP 21-93.
Exhibit J- Staff Report for Public hearing on August 3, 1994, HV 12-94 (Variance).
Exhibit K- Decision of the Hearings Officer HV 12-94.
Exhibit L- Variance request from Spencer H. Vail, Planning Consultant.

The Site: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens Road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

History: The private road has been serving more or less, three sites for more than thirty years. This road came to the attention of the Planning Commission on March 2. 1992, when a decision was made and approved for community serving expansion CS 4-92 #574/#583-B. Condition # 1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot 44, immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens Road Right-of-way.

On August 3, 1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve foot wide access is satisfactory to the Fire District.

On August 24, 1994, variance HV 12-94 was approved by the Hearings officer. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision. The fact that the road between Camp Angelos property and West end of Stevens road was inspected, accepted

and approved from Portland Planning Division, its staff and Hearings officer creates a confusing situation. I do not know why a road which was serving the area for many years and was approved by the County and Planning Commission for certain reasons, has to be approved twice or for the same reasons again. If the road was accepted and approved by the Planning Commission, it means that the road is legal and that is why I am asking the Hearings Officer to exclude or modify #3 D from the conditions of approval in CU 12-96.

Regardless of all the facts above, the access private road can not be widened without of causing tremendous hardship to tax lot 44 and all the adjoining properties for the following reasons:

(1) Widening the road is going to kill the ten forty years old walnut trees which are part of my farming. It was already mentioned from the Planning Commission as a condition #1 from March 2, 1992 decision CS 4-92, #574/#583-B and Halstead's Arboriculture Consultant's report from March 16, 1998.

(2) Widening the road will cause removal and replacement of all electrical polls and cable along the entire private road. The electrical polls sitting almost in the middle of the road will be unsafe for the drivers and causing eventual accidents. Especially dangerous will be for the school district buses full of children driving very often in dozens into the camp. That also will cost unnecessary and expensive work for PGE and Paramount Cable to remove all the electrical polls.

(3) Widening the road on the south will cause removing and replacing of the entire telephone line along the private road, which will also be expensive work for the telephone company.

(4) Widening the road (because of the slope) is going to carry twice the amount of water all the way down to the camp property and will cost tremendous erosion and eventual take the entire hill side down. This is regardless if ditches are built on the side of the road or not. It happened some time in the past, and widening the road will double the danger of land slide and erosion.

Staff Comment: The applicant notes under "The Site" above that the road is of varying widths and has two turn arounds. Staff is unable to find a description of the varying widths expressed in feet in the application. Only one turn around is indicated on Exhibit A1. A. It is not clear that the turn around meets the 48' radius turn-around requirement in MCC .2074(D)(7). A diagram of turn around types is included in Exhibit C4, and are referenced in the 6/5/96 fire district sign-off in Exhibit A3.

Staff notes that two statements above made by the applicant are not accurate. The applicant's statement that staff found the road to be 16' wide, and that the road was accepted and approved as it is, are not consistent with the record. These statements are addressed in the staff comments beginning on page 8. of this report.

The applicant questions why, since the road in question has already been approved for a reduced width, must he also request a variance. The portion of the access road from Stevens Road to the Camp Angelos property received a Minor Exception to the access road width requirement of the Off-Street Parking Standards. In order for the applicant to meet the code requirements for a dwelling in the CFU district, he must demonstrate compliance with the code requirements of that section, including the road standards of .2074(D). Conditions of approval were imposed to ensure compliance with these code requirements.

Hearings Officer: The standards of the CFU zone are different from the off-street parking standards considered in the Camp Angeles approval. The approval of the variance of one legal standard does not, in any way, justify the variance of the different legal standard of the CFU district. The CFU zone variance must rise or fall upon its own merits.

Applicant:
(b) In the decision of the Hearings officer CU 12-96, HV 18-96, and SEC 27-96, condition #6 cannot be satisfied without sign off from the Planning Commission, which has been refused to me. The condition has to be satisfied no later than six months from the date that approval has taken place. The dwelling is 90% finished and is sitting in this condition since 1992. I have suffered great loss of materials, furniture, tools and instruments because I do not have heat inside of the dwelling and the moisture destroyed and continues to destroy my belongings. That is why I seek immediate sign off from the Planning Commission in order to obtain building permit and satisfy all the building requirements of the Uniform building code, including the satisfaction of condition #6 of the Hearings officer decision from CU 12-96, SEC 27-96, and HV 18-96.

Staff Comment: In his application for a new dwelling under CU 12-96, the applicant stated that the road meets all of the standards of .2074(D), including that it is 20' wide. The County is holding a special hearing on May 6, 1998, in order to expedite processing of the variance request, notwithstanding that the road improvement standards could have been addressed at the July 16, 1997 hearing.

Staff believes that any needed road improvements should be constructed prior to building permit approval in order to ensure safe access to structures which are under construction, and after completion. This is also cited as an Oregon Uniform Fire Code requirement on the Multnomah County fire district response form in Exhibit A3.

Hearings Officer: The Hearings Officer lacks the authority to direct staff to "sign-off" the building permit application sought by Mr. Protassy.

<u>MCC .2074 - Development Standards for Dwellings and Structures:</u> Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

* * *

MCC .2074 (D) **A private road (including all easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**

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

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

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

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

(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;
- **(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
- **(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

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

(7) Provide for the safe and convenient passage of vehicles by the placement of:
- **(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
- **(b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

MODIFICATION OF CONDITIONAL USE CONCLUSION:

Staff:

1. The applicant has requested modification of the Hearings Officer decision through the variance application HV 7-98. Staff recommends approval of a modified variance which would reduce the road width requirement which must be met to satisfy Condition of Approval #3. A. and D.
2. Approval of request (b), building permit approval prior to construction of the required improvements is not found to be consistent with the purpose of the code because no assurance is provided that the road will be constructed. Staff recommends denial of this part of the request.

2. Minor Variance Request HV 7-98:

Applicant:
THE SITE: The site is located approximately one and a quarter miles South of the community of Springdale. It starts at westerly terminus of SE Stevens road and ends 660 feet to the westerly property line with American Hellenic Education Center Inc. (Camp Angelos). A private roadway provides the current access. This roadway is of varying widths and has two turn arounds.

Hearings Officer: The applicant has demonstrated that there is one loop road near the end of Stevens Road. A large portion of the loop road, however, is located on land that is not owned by Mr. Protassy and that is located outside of the 30' easement area provided for the private road. In order to qualify as the turnaround required by MCC .2074 and the Hearings Officer's conditional use approval, Mr. Protassy must provide proof of his right to use this turnaround in order to satisfy the conditions of approval of CU-12-96. This issue is not before the Hearings Officer for decision in this case. These comments are offered, however, as *dicta*, in an attempt to help Mr. Protassy understand the requirements of the approved conditional use permit.

HISTORY: The private road has been serving more or less, three sites for more than thirty years. The road came to the attention of the Planning Commission on March 2, 1992, when a decision was made and approved for the community serving expansion CS 4-92 #574/#583-B. Condition #1 of the approval was to widen the road to 20 feet. Nevertheless, the Planning Commission indicated quote: "Full placement and associated work necessary to widen the access drive shall avoid or minimize adverse effects to existing wall nut trees on tax lot @ immediately abutting the south boundary of the easement road.

On October 7, 1993, the application for Hillside development permit and final design review plan DR 17-93; HDP 21-93 was approved with conditions. Design review plan was calling for construction of a new access road there fore, for an administrative approval, the design review plan and Hillside development permit had to be modified to provide at least 16 feet of road width for the entire length of the private access from the SE Stevens road Right-of-way.

On August 3,1994, a public hearing was held to approve variance HV 12-94. Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director. A response of Fire Chief, Dennis Bryson of RFPD 14 indicated that a twelve-foot wide access is satisfactory to the Fire District.

On August 24, 1994, the Hearings Officer approved variance HV 12-94. The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property. The planning director granted 25% minor exception to the 20 foot road width requirement in the DR 17-93 decision.

The road between Camp Angeles property and west end of Stevens road was inspected, accepted, and approved from Portland Planning Division as a 16 feet wide access private road.

Staff Comment: The statement above which states; "Staff has indicated that the road starting from the end of Stevens road to the entry gate of Camp Angelos is 16 feet or wider which was previously approved from the planning director" appears to be in error in part. On page 7 of the staff report for HV 12-94 (see Exhibit A1. K.) the statement that the roadway is 16 feet or wider is the applicant's response, not staff's.

The applicant has submitted a letter from Fire District Chief Tom Layton, dated 4/20/98, which verifies that the easement road was considered and approved as adequate both for access to the applicant's property and for Camp Angelos. This letter and attached fire district responses are included in Exhibit A3. The attached responses include the June 5, 1996 letter from Chief Thomas Layton, and the August 17, 1993 letter from Chief Dennis Bryson. The letter from Chief Layton is in response to the request from Mr. Protassy, in connection with his dwelling request (CU 12-96). The response from Chief Bryson is apparently in response to a request from Camp Angelos in connection with the 1993 Design Review and Hillside Development Permits (DR 17-93 and HDP 21-93). Staff is unsure what this latter response means for the entire access road, extending from the end of Stevens Road to the camp facilities, for two reasons. The 8/17/93 response carries a notation by the Chief Bryson that the access road will serve two parcels of property. If the four tax lots owned by the camp are considered as one parcel, the access road served three parcels at the time, Mr. Protassy's parcel, the adjacent parcel to the north, Tax Lot '49', and the camp. Second, the staff comment on page 7 of HV 12-94 (see Exhibit A1. K.) relates that in a telephone conversation with Chief Bryson, he indicated that a 12' wide access road "on one section of the road was adequate for emergency vehicle access."

The statement above which states; "The road was accepted and approved the way it is except 250 feet on the American Hellenic Education Center Inc. property." appears to be in error in part. The Hearings Officer decision in HV 12-94 (see Exhibit A1. K.) does not "accept" or "approve" any portion of the access road. The decision clearly states on the first page that it is for one 250' section, cites the already approved reduction from 20' to 16' (DR 17-93 decision), and states in the staff comment on page 9 that improvements are required to other portions of the road outside of the 250' being considered for the variance.

Staff does not understand the last statement above because the Portland Planning Bureau has no review authority for implementation of land use decisions in unincorporated Multnomah County.

Hearings Officer:

The statement from Chief Tom Layton of the Multnomah County Rural Fire Protection District dated April 20, 1998 discusses the Protassy driveway and private driveway but

fails to explain why the District determined that a private roadway that does not meet the fire protection standards of the CFU zone that are plainly listed on the County's Fire Service comment sheet is adequate. The roadway width requirements were imposed by the County to satisfy fire safety concerns of area fire districts and departments. At a minimum, the Hearings Officer needs to know why this very narrow road will provide safe access to three properties, one of which is a very intensive use of land in a very isolated and vulnerable location. At the present roadway width, it is clear that residents and camp visitors fleeing a fire would prevent fire vehicles from driving down the private road. How this can be a safe situation is unclear from the evidence in this case.

MCC 11.15.8505 Variance Approval Criteria

(A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. A Minor Variance shall meet criteria (3) and (4).

Staff: This provision defines the circumstances under which a variance can be considered, and distinguishes between approval criteria for major and minor variances. A finding needs to be made that a practical difficulty to implementation of the 20' road width requirement exists for the application. The applicant makes three general arguments that there are practical difficulties in the application of the 20' road width requirement. These include potential damage to his walnut trees, re-locating existing utilities, and increased stormwater runoff and landslide hazard. See the numbered points under section 1. of this report. The statement of erosion effects or instability caused by road widening is unsubstantiated in the application.

The applicant has submitted a map to show the relationship between the easement road and the utility poles on the north side and the trees on the south side. Based on this map, the walnut trees start 184' from the end of Stevens Road, and the utility poles start 204' from the end. The practical difficulty described by the applicant begins at the point where widening of the road would begin to impact the trees on the south side of the road. Staff estimates that this would be approximately 170' from the end of Stevens Road.

A Minor Variance is defined as one that is within 25% of an applicable dimensional requirement. The dimensional requirement which is the subject of the variance is the CFU Development Standard in MCC 11.15.2074(D)(2), which requires an all-weather surface of at least 20 feet in width for a private road. The applicant is requesting a 4 foot variance for a reduction of 20% of the standard.

Hearings Officer: Mr. Protassy planted walnut trees in April 1998, long after approval of CU-12-96. Mr. Protassy claims that the locations he chose for these new trees must be protected from encroachment by any roadway improvements. These trees could have been planted elsewhere on the Protassy property where they would have not been effected by the road widening required by CU-12-96. As such, the location of the

newly planted trees is a self-created difficulty that, as a legal matter, does not warrant approval of a variance.

The evidence in the record indicates that the telephone poles located to the north of the private roadway will need to be moved by Camp Angeles when the camp widens the road to 16' in order to comply with its land use approvals. As a result, the current location of these poles is no longer a justification for this variance. Evidence from County staff reveals that a 21' wide road could be built if the existing road was widened to the north only. Mr. Protassy states that the existing telephone poles are two feet north of the easement area. As the poles in question have a diameter of less than one foot, a total of 3' feet may be required for the poles and a buffer area between the poles and the roadway. This means that Mr. Protassy should be able to widen the private roadway to a width of 18' without harming his walnut trees. This evidence does not, however, justify a variance to the 16' width sought by Mr. Protassy.

Mr. Protassy's evidence does not explain why it is not possible to construct storm drains and other drainage facilities to handle run-off from the private roadway. This may or may not require more than 3' of easement area. As the burden of proof is on the applicant in this proceeding and the hearings officer cannot go outside of the record of this matter to find this information. Without this information, the hearings officer may not justify a variance to a 16' wide road standard (from the 18' justified by the need to place telephone poles in the easement area and to avoid paving on the tree side of the roadway). The hearing officer she would like to approve a variance that will allow the roadway, drainage facilities and telephone poles to be constructed within the easement area without causing harm to the mature walnut trees. Hopefully, the 18' roadway width will allow Mr. Protassy to achieve this result.

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

Applicant: As mentioned above, the access private road is an existing road which has been serving Tax Lot 44 and the adjoining properties for more than thirty years. The owners of the adjoining properties have not expressed any concerns about this matter, and have signed a property owner consent of variance request. Approval of the Variance will only affect the subject property, and this proposal would not impede nor impact any of the neighboring practices. As for adversely affecting the development of adjoining properties, the adjoining properties are already developed and have been served by the same road. Also, as stated above, the Fire District has approved twice the 12 foot width as adequate for emergency vehicles.

Staff: The public welfare in this case is safe access and adequate fire access. The 20' road width requirement allows for two way traffic for emergency and private vehicles. Jerry Renfro, Tualatin Valley Fire and Rescue, confirmed in telephone conversation with staff that the 20' road width requirement is intended to allow two way access for

emergency vehicles. The proposed 16' wide road would allow a narrow two lane access for cars, but would not allow two emergency vehicles or a truck and an emergency vehicle to pass. Staff notes that the road development standard in the CFU zone in MCC .2074(D)(7) requires turnarounds or turnouts at intervals of less than 500 feet in order to provide safe and convenient passage of vehicles. The applicant has not shown that a turn around or turnout which meets the requirement of .2074(D)(7) exists within the first 400' or 500' from the end of Stevens Rd. The legal rights to the turn around shown on the applicant's Exhibit A1. A. are uncertain. If the turn around is not within a dedicated easement, then there is no assurance it will remain available because current or future property owners could restrict access.

As noted in the findings under (A) above, the applicant has not demonstrated a practical difficulty to meeting the 20' road width standard for the first approximately 170' from the end of Stevens Road. Improvement of the road to the full width for the first 170' would reduce the substandard road length to the end of the last utility pole to 386'. See Exhibit A5. Widening of the road to 16', plus improvement of a turnout in the middle of the section to 20' X 40' as provided in .2074(D)(7)(b), would meet that standard and substantially increase areas suitable for fire equipment and other vehicles to pass.

The two other adjoining properties are owned by the neighbor to the north, and by the American Hellenic Education Association. The CFU zoning on the property to the north limits that property to one dwelling. The Camp Angelos property received an initial Community Service Use approval in 1986, and approval for expansion in 1992. Future development requests by the Camp will be required to meet the access road requirements of the CFU district in MCC .2074(D), the minimum access road requirements in the Off-Street Parking ordinance .6128(A), and the Framework Plan Policy 31: Community Facilities and Uses.

Hearings Officer: Evidence received after the staff report was written show that the private road may be widened to a width of 18 feet because the telephone poles located to the north of the roadway will be need to be moved for construction of a 16' wide road and there is adequate room for such a road and the telephone poles within the existing easement area, without widening the road to the south toward the walnut trees.

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

Applicant: No use is being permitted that is not allowed either outright or through a conditional use permit. The approval of the Variance request, therefore, will not provide for the establishment of a use not listed in the underlining zone. Previous approvals from the County for the single family dwelling on Lot 44 have been based partially on Findings that the use was consistent with the comprehensive plan. Approval of this Variance concerning roadway width will not jeopardize compliance with the plan.

Staff: Staff agrees that approval of the variance would not adversely affect realization of the Comprehensive Plan or establish a use not allowed in the zone.

VARIANCE CONCLUSIONS:

1. Staff concludes that the applicant has not demonstrated that practical difficulties exist on the approximately 170' road segment beginning at Stevens Road. Since this threshold requirement for consideration of a variance has not been shown to have been met by the applicant, staff recommends that this area be excluded from consideration of the road width variance.

2. The requested variance reduces the road function from a two lane road suitable to all vehicles, to a narrow two lane road for cars. The applicant has not shown that no material detriment to the public welfare would occur if the variance is approved. In addition, the turn around and/or turn out standard of MCC .2074(D)(7) has not been shown to have been met. Staff feels that a conclusion of compliance with variance approval criterion #3. can be made if turnouts which meet the .2074(D)(7)(b) standard are provided. This would require improving one 40' long section in the middle of the 386' long variance area to the full 20' width.

Hearings Officer: The Hearings Officer concurs with staff's conclusion that the applicant has failed to demonstrate that a variance is justified for the eastern portion of the private roadway. The Hearings Officer also finds that, due to the fact that the telephone poles will be need to be moved to create a 16' wide road, that the road should be built to the maximum width possible in order to protect public safety. Although the evidence in the record is scanty, it appears that an area of approximately three feet is needed between the edge of the roadway and the northern boundary of the easement for power poles and buffer area. This 3 feet wide area will also allow some room for drainage facilities. Whether it is sufficient is unknown as the applicant has failed to provide this information. Yet, in the absence of proof from the applicant, the Hearings Officer may not grant a more generous variance upon the unproven assumption that a larger area is needed.

3. Multnomah County Comprehensive Plan Policies:

The Framework Plan Policies applicable to this Quasi-judicial Decision are addressed as follows:

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

Applicant: A single family dwelling is not a high emission source. Water quality is not degraded by the dwelling on the property and there are no streams or creeks on the property. This policy is satisfied because all necessary permits have been obtained, and the applicable sanitation regulations have been complied with.

Staff: The primary issue under this policy is water quality related to any construction which would be required to widen the road. This type of development impact can be addressed through the Grading and Erosion Control Permit.

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

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

Applicant: The parcel is in a rural area. For the proposed use, there are no new streets, power lines, or energy consumptive development requirements.

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

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

WATER DISPOSAL SYSTEM:

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

DRAINAGE:

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

ENERGY AND COMMUNICATIONS:

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

Applicant: There has been an approved site for on-site septic tank and drain field by the sanitarian. A septic tank permit has been obtained. the water run-off will be handled on site, and the property is serviced by PGE, Cascade Utilities, and Corbett Water District. The applicable service provider forms have been submitted in exhibit A from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The portion of this policy which is unmet by the submittal is Drainage. The applicable sub-policies are F. and G. The applicant has stated that widening the road will result in increased stormwater flow onto adjoining land, erosion, and increased danger of landslide. He notes that these effects will occur even if roadside ditching is constructed. This policy requires adequate stormwater measures to be provided, and absent expert testimony to the contrary, staff finds that the drainage policies can be met as part of the Grading and Erosion Control Permit process. A Grading and Erosion Control Permit is required for private road construction of the magnitude required to build to meet the revised width.

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

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

Applicant: All of the service provider forms have been signed and submitted, showing adequate service levels can be provided to the dwelling. The service provider forms are in exhibit A6 from CU 12-96, HV 18-96, and SEC 27-96.

Staff: The fire district has not commented on the proposed variance or modification of conditions requests. Staff assumes based on the 1996 response form that the district would not oppose the requests.

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

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

Applicant: This should not apply to a residential dwelling, nor is there a near by park or recreation area.

Staff: Concurs that this policy does not apply to the request related to a single family dwelling.

Dated this 7th day of June 1998.

Liz Fancher, Hearings Officer

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

List of Exhibits for CU 4-98, and HV 7-98

"A" Applicant Submittals:

A1 Combined CU, Variance Narrative and Exhibits, 4/9/98 submittal, form.
- A. Site Plan
- B. Photographs
- C. 3/16/98 ltr. Halstead Arboriculture
- D. 6/5/96 statement from T. Layton, Fire Chief
- E. 8/17/93 statement from D. Bryson, Fire Chief
- F. Site Map
- G. 6/29/93 statement from R. Meyer
- H. CS 4-92 Decision, 3/2/92
- I. Administrative decision, DR 17-93, HDP 21-93
- J. 8/3/94 hearing minutes and staff report, HV 12-94
- K. Hearings Officer decision HV 12-94
- L. HV 12-94 Variance request, Spencer Vail

A2 7/16/97 Hearings Officer decision, CU 12-96, HV 18-96, SEC 27-96

A3 4/20/98 letter, T. Layton, To Whom it may concern.

A4 12/9/88 Lot of Exception application, deed and survey.

A5 Road plan date stamped 4/27/98

A6 4/24/98 Framework Plan Summary

"B" Notification Information

B1 4/15/98 Notice of Public Hearing

B2 Staff Incomplete letter dated 4/15/98

"C" Staff Report, Documentation

C1 CU 4-98, HV 7-98 Staff Report, dated 4/29/98.

C2 Letters from staff to Andre Protassy, dated 1/7/98, 1/9/98, 1/30/98.

C3 4/24/98 letter from Lisa Estrin to American Hellenic Education Center, Inc.

C4 1996 Aerial photo of road and adjacent properties/Recommended Road Standards

"D" Agency Comment

"H" Documents Submitted at 5/6/98 Public Hearing:

H1 _____

H2 _____

H3 _____

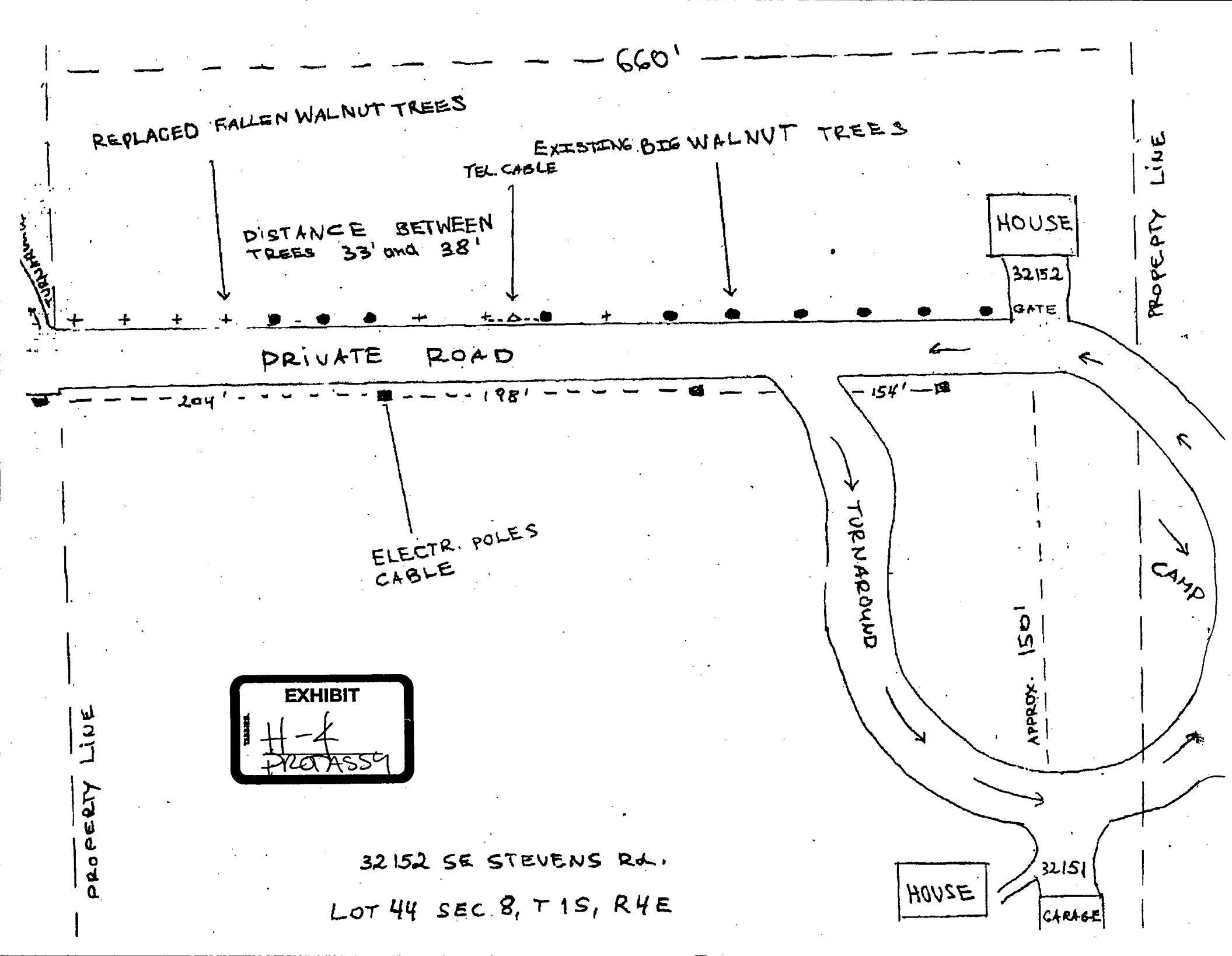
Exhibit List for CU 4-98 and HV 7-98, Continued

"F" Documents Submitted After 5/6/98 Public Hearing

F-1 May 13, 1998 letter from Chuck Beasley to Liz Fancher
F-2 Fax and letter from Jim Peterson, Vice President, American Hellenic Educational Center dated May 12, 1998
F-3 May 12, 1998 letter from Andre Protassy to Liz Fancher
F-4 Two-part May 21, 1998 letter from Andre Protassy to Liz Fancher, with map and photograph exhibits
F-5 May 18, 1998 letter from Chuck Beasley to Liz Fancher
F-6 Letter from Dorothy Cofield to Liz Fancher dated May 7, 1998

"H" Documents Submitted at 5/6/98 Public Hearing

H-1 Affidavit of Posting
H-2 May 5, 1998 Letter from Chuck Beasley to Liz Fancher, Hearings Officer
H-3 Twelve photographs of Protassy property and roadway numbered H-3-A through H-3-L
H-4 Map of private road, Protassy property and turnaround on adjoining property
H-5 HB 3508


660'
REPLACED FALLEN WALNUT TREES
EXISTING BIG WALNUT TREES
TEL. CABLE
DISTANCE BETWEEN TREES 33' and 38'
HOUSE
32152
GATE
PROPERTY LINE
PRIVATE ROAD
204'
198'
154'
ELECTR. POLES
CABLE
TURNAROUND
APPROX. 150'
CAMP
EXHIBIT
H-4
PROPASSY
PROPERTY LINE
32152 SE STEVENS Rd.
LOT 44 SEC. 8, T 1S, R4E
HOUSE
32151
CARAGE