ANNOTATED MINUTES

Tuesday, April 25, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

CHAIR'S BUDGET PRESENTATION

B-1 Chair Beverly Stein Will Present the Chair's Proposed 1995-96 Multnomah County Budget to the Budget Committee. This is a Public Meeting and Citizens May Appear and Testify on the Budget.

CHAIR BEVERLY STEIN BUDGET PRESENTATION.

Tuesday, April 25, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:32 p.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

P-1 NSA 1-95 Review the March 23, 1995 Hearings Officer Decision APPROVING, Subject to Conditions, a Request for Columbia River Gorge National Scenic Area Site Review to Remove an Existing Residence and Accessory Buildings and to Construct Ball Fields, a Sewage Drain Field, and a Graveled Parking Area in Conjunction with the Existing Corbett Elementary, Middle and High School Complex, for Property Located at 35600 E HISTORIC COLUMBIA RIVER HIGHWAY

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 SEC 8-94 Review the April 3, 1995 Hearings Officer Decision AFFIRMING, AND MODIFYING the Planning Director Decision and DENYING an Appeal in the Matter of APPROVING, Subject to Conditions, a Requested Significant Environmental Concern (SEC) Permit for an Addition to an Existing Single Family Dwelling, for Property Located at 5830 NW CORNELL ROAD

DECISION READ, APPEAL FILED. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT A DE NOVO HEARING BE SCHEDULED FOR 1:30 PM, TUESDAY,

MAY 23, 1995, WITH TESTIMONY LIMITED TO MINUTES PER SIDE.

P-3 Request for Approval of FINAL ORDER MC 1-94/LD 13-94 Findings in Support of Decision to Uphold the Decisions of the Hearings Officer and Transportation Division Staff and Approve a Land Partition, Access by Easement and Variance to the Street Standards Code, for Property Located at 01400 SW MILITARY ROAD

FOLLOWING DISCUSSION AND AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT P-3 BE CONTINUED TO THURSDAY, MAY 4, 1995, IN ORDER TO ALLOW COUNTY COUNSEL TIME TO PREPARE AND SUBMIT A WRITTEN OPINION IN RESPONSE TO THE CONCERNS OF LEGAL COUNSEL FOR THE PARTIES.

P-4 CU 2-95/
HV 2-95 DE NOVO HEARING With Testimony Limited to 20 Minutes Per Side, Including Rebuttal, in the Matter of the March 3, 1995 Hearings Officer Decision DENYING Conditional Use Approval for a Single Family Dwelling Not Related to Forest Management and Variances to Two Side Yard Setback Requirements on a 16.43 Acre Existing Parcel in the Commercial Forest Use Zoning District, for Property Located at 16200 NW McNAMEE ROAD

PLANNER GARY CLIFFORD PRESENTED STAFF REPORT AND EXHIBITED SLIDES OF THE SUBJECT PROPERTY. HEARINGS OFFICER BARRY ADAMSON PRESENTATION AND SUBMITTAL OF APPLICABLE STATUTES USED IN ARRIVING AT HIS DECISION. APPELLANT ATTORNEY FRANK HAMMOND TESTIMONY IN SUPPORT OF REVERSAL OF HEARINGS OFFICER DECISION. CLIFFORD HAMBY TESTIMONY IN SUPPORT OF HEARINGS OFFICER DECISION. COUNTY COUNSEL JOHN DuBAY AND MR. ADAMSON EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, TO REVERSE THE HEARINGS OFFICER DECISION AND APPROVE THE CONDITIONAL USE APPROVAL. BOARD COMMENTS. REVERSAL APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND

STEIN VOTING AYE, AND COMMISSIONER SALTZMAN VOTING NO. AT THE SUGGESTION OF MR. DuBAY, CHAIR STEIN DIRECTED PLANNING STAFF TO PREPARE FINDINGS AND SUBMIT FINAL ORDER FOR BOARD APPROVAL.

There being no further business, the planning meeting was adjourned at 2:30 p.m. and the briefing convened at 2:40 p.m.

Tuesday, April 25, 1995
(IMMEDIATELY FOLLOWING PLANNING ITEMS)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

B-2 Oregon Health Plan and Managed Care Developments, Specifically Discussion of Issues Related to Oregon Health Plan Alcohol and Drug Services Implementation Scheduled for May 1, 1995 and Progress of Children's Capitation Planning Efforts. Presented by Lolenzo Poe, Howard Klink, Judy Robison, Norma Jaeger, James Edmondson, Tom Fronk and Karen Maki.

LOLENZO POE, KAREN MAKI, HOWARD KLINK, NORMA JAEGER, BILL THOMAS, JAMES EDMONDSON AND JUDY ROBISON PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

There being no further business, the meeting was adjourned at 3:15 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

Deborah C. Bogstad

Deborah L. Bogstad

Thursday, April 27, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:34 a.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

BOARD AND COUNSEL GUESTS TRACI AVALOS, LYNDSEY PIMENTEL, ADRIANNE SALTZMAN AND JENNY KRESSEL INTRODUCED THEMSELVES. BOARD ACKNOWLEDGED AUDIENCE GUESTS PARTICIPATING IN "BRING YOUR DAUGHTERS TO WORK" DAY.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-12) WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

C-1 In the Matter of the Reappointment of Rich Goheen to Serve as the City of Fairview Representative on the MULTNOMAH COUNTY ANIMAL CONTROL ADVISORY COMMITTEE, for a Term Ending March 30, 1997

C-2 RESOLUTION in the Matter of Establishing a Three Year Term for the Multnomah County Appointment to the MT. HOOD CABLE REGULATORY COMMISSION

RESOLUTION 95-84.

SHERIFF'S OFFICE

C-3 Ratification of Intergovernmental Agreement Contract 800026 Between Metro and Multnomah County, Wherein the Sheriff's Office Will Provide a Supervised Inmate Work Crew to Perform General Labor Such as Ground Maintenance, Yard and Nursery Work, Light Carpentry and Painting at Sites Owned, Operated or Managed by Metro, for the Period April 1, 1995 through June 30, 1996

AGING SERVICES DIVISION

C-4 Ratification of Intergovernmental Agreement Contract 104385 Between Washington County and Multnomah County, for Administration of the Korean American Senior Citizens Association Meal Site Contract, Providing Meals and Rides to Korean Elders Living in Multnomah County, for the Period July 1, 1994 through December 31, 1995

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-5 ORDER in the Matter of the Execution of Deed D951175 Upon Complete Performance of a Contract to R. C. Industries, Inc.

ORDER 95-85.

C-6 ORDER in the Matter of the Execution of Deed D951179 Upon Complete Performance of a Contract to William Scott Burlando, Personal Representative of the Estate of William F. Burlando, Deceased

ORDER 95-86.

C-7 ORDER in the Matter of the Execution of Deed D951182 for Repurchase of Tax Acquired Property to Former Owners Leroy Fleming, Sr. and Ethel V. Fleming

ORDER 95-87.

C-8 ORDER in the Matter of the Execution of Deed D951183 Upon Complete Performance of a Contract to Kevin L. Mullen

ORDER 95-88.

C-9 ORDER in the Matter of the Execution of Deed D951184 Upon Complete Performance of a Contract to Frank S. Rytel

ORDER 95-89.

COMMUNITY AND FAMILY SERVICES DIVISION

C-10 RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

RESOLUTION 95-90.

C-11 Budget Modification CFSD 9 Requesting Authorization to Increase the Alcohol and Drug Community Awareness and Prevention Budget by $45,762 to Reflect Renewal of the Regional Drug Initiative Contract

C-12 Ratification of Intergovernmental Agreement Contract 101665 Between Multnomah County and the State Board of Higher Education, Oregon Health Sciences University, University Hospital, Providing Emergency Psychiatric Hold Beds at Set Rates for Involuntary Commitment Placement Clients of Multnomah County, for the Period July 1, 1994 through June 30, 1995

REGULAR AGENDA

PUBLIC COMMENT

R-1 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited

to Three Minutes Per Person.

NO ONE WISHED TO COMMENT.

MANAGEMENT SUPPORT SERVICES

R-2 Presentation in the Matter of Employee Service Awards Honoring Multnomah County Employees with Five to Twenty-Five Years of Service

BOARD GREETED, ACKNOWLEDGED AND PRESENTED 5 YEAR AWARDS TO SANDRA KIRKLAND OF ASD, ELIZABETH TERRELL OF CFS, SUSAN HOWE OF DA, SCOTT RAYFIELD OF DCC, MOLLIE BALLEW, KENNETH COLLMER, LANCE DUNCAN, PAUL HEINE AND DIANE ILG OF DES, BEVERLY COOK AND JOHN MILLER OF JJD, WESLEY STEVENS AND CONNIE THELIN OF DLS, AND GERALD ITKIN AND CARL STEWARD OF NOND; 10 YEAR AWARDS TO BUNNY HARROLD OF CFS, ALFREDO RANGEL OF DCC, BRIAN FOWLES OF DES, LAVORIS JACKSON OF JJD AND DONNA THOMPSON OF DLS; 15 YEAR AWARDS TO PRISCILLA MURRAY OF CFS, LISA MOORE OF DA, LAWRENCE MONAGON OF DCC, LAUREN ARMSTRACHAN, TERRY RUDD AND DUANE SPERL OF DES AND KATHERINE CHARTIER OF DLS; 20 YEAR AWARDS TO SAUNDRA WEDGE OF DCC AND EUNICE BUTLER OF DES; AND 25 YEAR AWARDS TO JOAN VIELHAUER OF DES. CURTIS SMITH ANNOUNCED NEXT PRESENTATION WILL BE JULY 20, 1995.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-3 PUBLIC HEARING and Consideration of an ORDER in the Matter of Approving Request for Transfer of Tax Foreclosed Property to City of Portland for Low Income Housing Development

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-3. RICHARD PAYNE EXPLANATION. GRETCHEN DURSCH FROM HOUSING OUR FAMILIES AND GREG CARLSON FROM CITY OF PORTLAND TESTIMONY IN SUPPORT. ORDER 95-91 UNANIMOUSLY APPROVED.

R-4 ORDER Setting May 11, 1995 as a Hearing Date in the Matter of Approving

Requests for Transfers of Tax Foreclosed Properties to Portland Public Schools for Public Uses

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-4. MR. PAYNE EXPLANATION AND RESPONSE TO BOARD QUESTION. ORDER 95-92 UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY CORRECTIONS

R-5 Ratification of the 1993-1995 Community Corrections Plan Amendment Contract 900374 Between the State of Oregon Department of Corrections and Multnomah County, Reflecting Various Changes in Program Funding

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. SUSAN KAESER AND CARY HARKAWAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING ITEMS R-5 AND R-6. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, TO RETAIN $20,000 OF THE $247,000 BUDGETED IN INTENSIVE CASE MANAGEMENT, TO BE USED IN THE FINAL TWO MONTHS OF THIS FISCAL YEAR TO PROVIDE A SALARY INCENTIVE TO GET AN EXISTING PAROLE OFFICER TO GO INTO INTENSIVE SUPERVISION AND MONITOR PREDATORY SEX OFFENDERS, OR TO USE THE $20,000 FOR A TARGETED RECRUITMENT CAMPAIGN FOR THIS POSITION. MS. KAESER EXPLANATION IN RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COMMISSIONERS SALTZMAN AND COLLIER WITHDREW THEIR MOTION AND SECOND. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, THAT A PLAN REGARDING STAFFING OF THE INTENSIVE CASE MANAGEMENT UNIT BE DEVELOPED IN WRITING BY MAY 15, 1995. MR. HARKAWAY EXPLANATION IN RESPONSE TO BOARD QUESTIONS AND DISCUSSION. AMENDMENT UNANIMOUSLY APPROVED. BOARD COMMENTS. AGREEMENT APPROVED, WITH COMMISSIONERS HANSEN, KELLEY, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER COLLIER VOTING NO.

R-6 Budget Modification DCC 5 Requesting Authorization to Increase the Department's Management Information Systems Budget from Personnel Cost Savings and Unfilled Sanction Violation Beds, to Add 3 Positions, Materials and Services and Equipment for System Development and Support within the Department

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, BUDGET MODIFICATION IS APPROVED, WITH COMMISSIONERS HANSEN, KELLEY, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER COLLIER VOTING NO.

NON-DEPARTMENTAL

R-7 RESOLUTION in the Matter of Approving the Chair's Proposed 1995-96 Budget for Submittal to the Tax Supervising and Conservation Commission as Required by Law

R-10 RESOLUTION in the Matter of Constructing 32 Additional Beds at the Multnomah County Juvenile Justice Complex and Exploring the Feasibility of Constructing a Triage Center on that Site

R-11 RESOLUTION in the Matter of Constructing Additional Beds for the Multnomah County Juvenile Justice Complex and Examining the Feasibility of Using a Portion of that Facility for a Mental Health Crisis Triage Center

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, ITEMS R-7, R-10 AND R-11 WERE UNANIMOUSLY CONTINUED TO THURSDAY, MAY 4, 1995.

R-8 RESOLUTION in the Matter of Endorsing and Siting the Gladys McCoy Citizen Participation Award

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-8. JOHN LEGRY AND DERRY JACKSON PRESENTATION AND COMMENTS. CHAIR STEIN ACKNOWLEDGED BILL GORDON AS FIRST RECIPIENT OF AWARD. RESOLUTION 95-93 UNANIMOUSLY APPROVED.

R-9 Presentation and Request for Approval of the Proposed 1995-96 Mt. Hood Cable Regulatory Commission Budget

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-9. JACK ADAMS AND BLYTHE OLSON TESTIMONY IN SUPPORT OF BUDGET. DAVID OLSON EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER SALTZMAN REQUESTED A BRIEFING TO DISCUSS CABLE FOR INMATES. JIM WHITTENBURG TESTIMONY. BUDGET UNANIMOUSLY APPROVED.

The regular meeting was adjourned at 10:58 a.m., and the briefing convened at 11:03 a.m.

Thursday, April 27, 1995
IMMEDIATELY FOLLOWING REGULAR MEETING
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

B-3 Presentation of the Results of the Multnomah County Animal Control Budget Study. Presented by David Flagler, Heidi Soderberg and Keri Hardwick.

HEIDI SODERBERG, DAUGHTER LYNDSEY PIMENTEL, DAVE FLAGLER AND DAUGHTER STACY FLAGLER PRESENTATION. MR. FLAGLER, KERI HARDWICK AND MS. SODERBERG RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

There being no further business, the meeting was adjourned at 11:30 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS

BEVERLY STEIN •	CHAIR	• 248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	• 248-5219
TANYA COLLIER •	DISTRICT 3	• 248-5217
SHARRON KELLEY •	DISTRICT 4	• 248-5213
CLERK'S OFFICE •	248-3277	• 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

APRIL 24, 1995 - APRIL 28, 1995

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

Thursday, 6:00 PM, Channel 30
Friday, 10:00 PM, Channel 30
Saturday, 12:30 PM, Channel 30
Sunday, 1:00 PM, Channel 30

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

Tuesday, April 25, 1995 - 9:30 AM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

CHAIR'S BUDGET PRESENTATION

B-1 *Chair Beverly Stein Will Present the Chair's Proposed 1995-96 Multnomah County Budget to the Budget Committee. This is a Public Meeting and Citizens May Appear and Testify on the Budget.*

Tuesday, April 25, 1995 - 1:30 PM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

P-1 *NSA 1-95 Review the March 23, 1995 Hearings Officer Decision APPROVING, Subject to Conditions, a Request for Columbia River Gorge National Scenic Area Site Review to Remove an Existing Residence and Accessory Buildings and to Construct Ball Fields, a Sewage Drain Field, and a Graveled Parking Area in Conjunction with the Existing Corbett Elementary, Middle and High School Complex, for Property Located at 35600 E HISTORIC COLUMBIA RIVER HIGHWAY*

P-2 *SEC 8-94 Review the April 3, 1995 Hearings Officer Decision AFFIRMING, AND MODIFYING the Planning Director Decision and DENYING an Appeal in the Matter of APPROVING, Subject to Conditions, a Requested Significant Environmental Concern (SEC) Permit for an Addition to an Existing Single Family Dwelling, for Property Located at 5830 NW CORNELL ROAD*

P-3 *Request for Approval of FINAL ORDER MC 1-94/LD 13-94 Findings in Support of Decision to Uphold the Decisions of the Hearings Officer and Transportation Division Staff and Approve a Land Partition, Access by Easement and Variance to the Street Standards Code, for Property Located at 01400 SW MILITARY ROAD*

P-4 *CU 2-95/*
HV 2-95 DE NOVO HEARING With Testimony Limited to 20 Minutes Per Side, Including Rebuttal, in the Matter of the March 3, 1995 Hearings Officer Decision DENYING Conditional Use Approval for a Single Family Dwelling Not Related to Forest Management and Variances to Two Side Yard Setback Requirements on a 16.43 Acre Existing Parcel in the Commercial Forest Use Zoning District, for Property Located at 16200 NW McNAMEE ROAD

Tuesday, April 25, 1995

(IMMEDIATELY FOLLOWING PLANNING ITEMS)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

B-2 *Oregon Health Plan and Managed Care Developments, Specifically Discussion of Issues Related to Oregon Health Plan Alcohol and Drug Services Implementation Scheduled for May 1, 1995 and Progress of Children's Capitation Planning Efforts. Presented by Lolenzo Poe, Howard Klink, Judy Robison, Norma Jaeger, James Edmondson, Tom Fronk and Karen Maki. 1 HOUR REQUESTED.*

Thursday, April 27, 1995 - 9:30 AM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

C-1 *In the Matter of the Reappointment of Rich Goheen to Serve as the City of Fairview Representative on the MULTNOMAH COUNTY ANIMAL CONTROL ADVISORY COMMITTEE, for a Term Ending March 30, 1997*

C-2 *RESOLUTION in the Matter of Establishing a Three Year Term for the Multnomah County Appointment to the MT. HOOD CABLE REGULATORY COMMISSION*

SHERIFF'S OFFICE

C-3 *Ratification of Intergovernmental Agreement Contract 800026 Between Metro and Multnomah County, Wherein the Sheriff's Office Will Provide a Supervised Inmate Work Crew to Perform General Labor Such as Ground Maintenance, Yard and Nursery Work, Light Carpentry and Painting at Sites Owned, Operated or Managed by Metro, for the Period April 1, 1995 through June 30, 1996*

AGING SERVICES DIVISION

C-4 *Ratification of Intergovernmental Agreement Contract 104385 Between Washington County and Multnomah County, for Administration of the Korean*

American Senior Citizens Association Meal Site Contract, Providing Meals and Rides to Korean Elders Living in Multnomah County, for the Period July 1, 1994 through December 31, 1995

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-5 *ORDER in the Matter of the Execution of Deed D951175 Upon Complete Performance of a Contract to R. C. Industries, Inc.*

C-6 *ORDER in the Matter of the Execution of Deed D951179 Upon Complete Performance of a Contract to William Scott Burlando, Personal Representative of the Estate of William F. Burlando, Deceased*

C-7 *ORDER in the Matter of the Execution of Deed D951182 for Repurchase of Tax Acquired Property to Former Owners Leroy Fleming, Sr. and Ethel V. Fleming*

C-8 *ORDER in the Matter of the Execution of Deed D951183 Upon Complete Performance of a Contract to Kevin L. Mullen*

C-9 *ORDER in the Matter of the Execution of Deed D951184 Upon Complete Performance of a Contract to Frank S. Rytel*

COMMUNITY AND FAMILY SERVICES DIVISION

C-10 *RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody*

C-11 *Budget Modification CFSD 9 Requesting Authorization to Increase the Alcohol and Drug Community Awareness and Prevention Budget by $45,762 to Reflect Renewal of the Regional Drug Initiative Contract*

C-12 *Ratification of Intergovernmental Agreement Contract 101665 Between Multnomah County and the State Board of Higher Education, Oregon Health Sciences University, University Hospital, Providing Emergency Psychiatric Hold Beds at Set Rates for Involuntary Commitment Placement Clients of Multnomah County, for the Period July 1, 1994 through June 30, 1995*

REGULAR AGENDA

PUBLIC COMMENT

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

MANAGEMENT SUPPORT SERVICES

R-2 *Presentation in the Matter of Employee Service Awards Honoring Multnomah County Employees with Five to Twenty-Five Years of Service*

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-3 *PUBLIC HEARING and Consideration of an ORDER in the Matter of Approving Request for Transfer of Tax Foreclosed Property to City of Portland for Low Income Housing Development*

R-4 *ORDER Setting May 11, 1995 as a Hearing Date in the Matter of Approving Requests for Transfers of Tax Foreclosed Properties to Portland Public Schools for Public Uses*

DEPARTMENT OF COMMUNITY CORRECTIONS

R-5 *Ratification of the 1993-1995 Community Corrections Plan Amendment Contract 900374 Between the State of Oregon Department of Corrections and Multnomah County, Reflecting Various Changes in Program Funding*

R-6 *Budget Modification DCC 5 Requesting Authorization to Increase the Department's Management Information Systems Budget from Personnel Cost Savings and Unfilled Sanction Violation Beds, to Add 3 Positions, Materials and Services and Equipment for System Development and Support within the Department*

NON-DEPARTMENTAL

R-7 *RESOLUTION in the Matter of Approving the Chair's Proposed 1995-96 Budget for Submittal to the Tax Supervising and Conservation Commission as Required by Law*

R-8 *RESOLUTION in the Matter of Endorsing and Siting the Gladys McCoy Citizen Participation Award*

R-9 *Presentation and Request for Approval of the Proposed 1995-96 Mt. Hood Cable Regulatory Commission Budget*

R-10 *RESOLUTION in the Matter of Constructing 32 Additional Beds at the Multnomah County Juvenile Justice Complex and Exploring the Feasibility of Constructing a Triage Center on that Site*

R-11 *RESOLUTION in the Matter of Constructing Additional Beds for the Multnomah County Juvenile Justice Complex and Examining the Feasibility of Using a Portion of that Facility for a Mental Health Crisis Triage Center*

IMMEDIATELY FOLLOWING REGULAR MEETING
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

B-3 *Presentation of the Results of the Multnomah County Animal Control Budget Study. Presented by David Flagler, Heidi Soderberg and Keri Hardwick. 30 MINUTES REQUESTED.*

Meeting Date: APR 2 5 1995

Agenda No: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Reporting of Hearing Officer Decision in the matter of NSA 1-95.

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: April 25, 1995

Amount of Time Needed: 1 minute

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sarah Ewing TELEPHONE: 248-3043
BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION:

ACTION REQUESTED

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

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Reporting of a Hearings Officer's decision approving, subject to conditions, Columbia River Gorge National Scenic Area Site Review to remove an existing residence and accessory buildings and to construct a new football field, softball field, sewage drain field and gravel parking area in conjunction with the existing Corbett Elementary, Middle and High School complex.

BOARD OF COUNTY COMMISSIONERS
1995 APR -4 AM 9:15
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: RSP Betsy Williams

MULTNOMAH COUNTY

BOARD HEARING OF April 25, 1995

TIME 1:30pm

CASE NAME Corbett Grade School NUMBER NSA 1–95

1. Applicant Name/Address

   Corbett School District

   35600 Historic Columbia River Highway

   Corbett 97019

ACTION REQUESTED OF BOARD

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

2. Action Requested by applicant

   Applicant requests Columbia River Gorge National Scenic Area Site Review approval to remove an existing residence and accessory buildings and develop this property with a permanent football field, softball field, sewage drain-field area, and graveled parking area.

3. Planning Staff Recommendation

   Approval

4. Hearings Officer Decision:

   Approval

5. If recommendation and decision are different, why?

ISSUES

(who raised them?)

None

Do any of these issues have policy implications? Explain.

NA

MULTNOMAH COUNTY OREGON

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

Multnomah County Hearings Officer Decision

Attached please find a copy of the Hearings Officer's decision in the matter of NSA 1-95. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of $300.00 plus a $3.50 per minute charge not to exceed $500.00 for a transcript of the initial hearings(s) [ref MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development Office located at 2115 SE Morrison Street, Portland, Oregon.

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

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at (503) 248-3043.

Signed by the Hearings Officer	March 23, 1995
Decision mailed to Parties	April 3, 1995
Decision submitted to Board Clerk	April 3, 1995
Last day to appeal decision	4:30 pm, April 12, 1995
Reported to the board of County Commissioners:	1:30 pm, Aprtil 25, 1995

MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
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

BEFORE THE HEARINGS OFFICER FOR MULTNOMAH COUNTY, OREGON

REGARDING A CONDITIONAL USE REQUEST BY CORBETT SCHOOL DISTRICT #39 FOR COLUMBIA RIVER GORGE NATIONAL SCENIC AREA SITE REVIEW TO REMOVE AN EXISTING RESIDENCE, AND ACCESSORY BUILDINGS, AND TO CONSTRUCT BALL FIELDS, A SEWAGE DRAIN FIELD, AND A GRAVELED PARKING AREA, IN CONJUNCTION WITH THE EXISTING CORBETT MIDDLE AND HIGH SCHOOL COMPLEX LOCATED IN UNINCORPORATED MULTNOMAH COUNTY, OREGON.	FINAL ORDER NSA 1-95

I. HEARING AND RECORD

A public hearing concerning this application was held on March 15, 1995. Bruce Barton with Soderstrom Architects testified on behalf of the applicant. All exhibits submitted and a tape of all testimony received in relation to this matter are on file with the Division of Planning and Development.

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings and conclusions contained in the Staff Report submitted to the Hearings Officer dated March 15, 1995, except to the extent supplemented or expressly modified herein.

At the hearing, staff representative Bob Hall added a "conclusion" paragraph to the Staff Report following Paragraph 2f, as follows:

> "Conclusion - This proposal will not adversely impact scenic resources with the recommended conditions."

III. CONCLUSIONS

Based upon the above mentioned findings, the Staff Report and the testimony received at the hearing, the Hearings Officer concludes that

NSA 1-95 should be approved because it does, or can, comply with the applicable criteria.

IV. DECISION

The applicant's request for Columbia River Gorge National Scenic Area Site Review to remove an existing residence, and accessory buildings, and to construct ball fields, a sewage drain field, and a graveled parking area, in conjunction with the existing Corbett Middle and High School complex, is approved, subject to the following conditions:

1. No permits for this project shall be issued until the conclusion of the Cultural Review Process.

2. Should any cultural resource, historic or prehistoric, be uncovered during construction of the proposed development, construction activity shall stop immediately and the applicant or parties of interest shall notify the Planning Director and the Oregon State Office of Historic Preservation within 24 hours. If the cultural resource is, prehistoric or otherwise, associated with Native Americans, the project applicant shall also notify the Indian Tribal Governments within 24 hours.

3. If the proposed development involves more than 100 cubic yards of grading, the applicant shall submit a grading plan, as per MCZO 11.15.3814(B)(21)

It is so ordered this 23rd day of March, 1995.

JOAN M. CHAMBERS
Hearings Officer
Multnomah County

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

Staff Report

This Staff Report consists of Findings of Fact and Conclusions

March 15, 1995

NSA 1-95 **Conditional Use Request**
(Removal of existing residence and accessory buildings and construction of a new Football field, softball field, sewage drain field area, and graveled parking area)

Applicant requests Columbia River Gorge National Scenic Area Site Review approval to remove an existing residence and accessory buildings and to construct ball fields, a sewage drain field and a graveled parking area in conjunction with the existing Corbett Elementary, Middle and High School complex.

Location: 35600 E. Historic Columbia River Highway

Legal: Tax Lot '55', Section 34, T1N, R4E (see attached map)

Site Size: 6 acres

Size Requested: Same

Property Owner: Corbett School District #39
35600 E. Historic Columbia River Highway
Corbett 97019

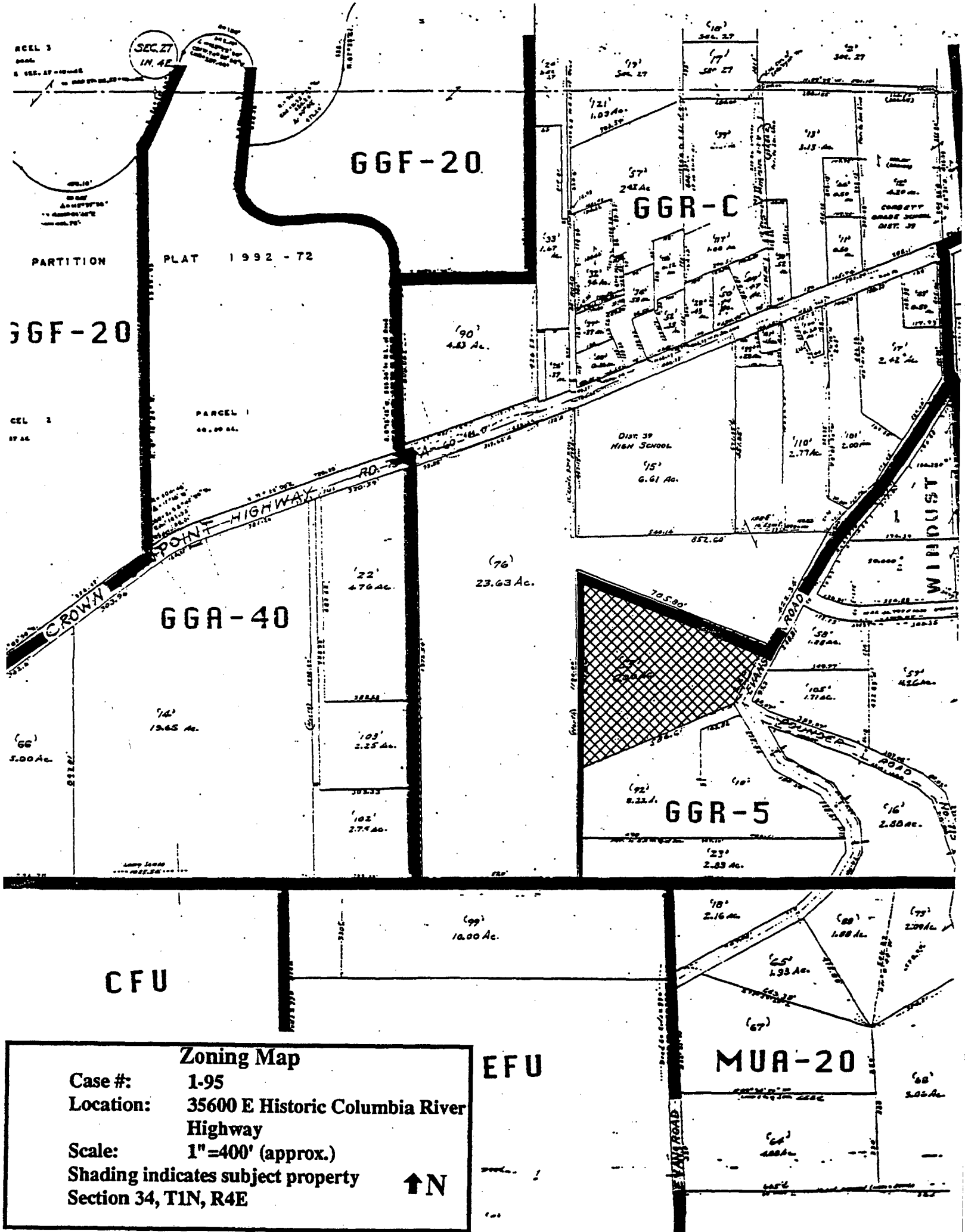
Applicant: Soderstrom Architects
1200 NW Front Avenue Suite 410
Portland, OR 97209

Comprehensive Plan: General Management, General Residential

Present Zoning: GGR-5

Recommended Hearings Officer Decision: **Approve**, subject to conditions, Columbia River Gorge National Scenic Area Site Review to remove an existing residence and accessory buildings and to construct a new football field, softball field, sewage drain field and gravel parking area in conjunction with the existing Corbett Elementary, Middle and High School complex, based on the following Findings and Conclusions.

Staff Contact:
Bob Hall



Zoning Map

Case #: 1-95

Location: 35600 E Historic Columbia River Highway

Scale: 1"=400' (approx.)

Shading indicates subject property

Section 34, T1N, R4E

N

Conditions:

(1) No permits for this project shall be issued until conclusion of the Cultural Review Process.

(2) Should any cultural resource, historic or prehistoric, be uncovered during construction of the proposed development, construction activity shall stop immediately and the applicant or parties of interest shall notify the Planning Director and the Oregon State Office of Historic Preservation within 24 hours. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(3) Should the proposed development involve more than 100 cubic yards of grading, the applicant shall submit a grading plan as per 11.15.3814(B)(21).

COMMENTS FROM OTHER AGENCIES/INDIVIDUALS:

Notice of the subject request was mailed to the following agencies/individuals:

Columbia River Gorge Commission/Cultural Advisory Committee
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Nez Perce Tribe
OR State Historic Preservation Office
U.S. Forest Service NSA Office
Yakima Indian Nation
Friends of the Columbia Gorge
14 surrounding property owners

Comments were received from the Friends of the Columbia Gorge, and the Oregon State Historic Preservation Office. No negative comments were received.

FINDINGS OF FACT:

A. **Applicants Request:** Applicant requests Columbia River Gorge National Scenic Area Site Review approval to remove an existing residence and accessory buildings and to construct a new football field, softball field, sewage drain field area, and graveled parking area in conjunction with the existing Corbett Elementary, Middle and High School complex. The new facilities are to be located on the south end of existing district property, located at 35600 E. Historical Columbia River Highway, Corbett, Oregon. The school district has recently acquired this property for their planned expansion. The school district is requesting a conditional use to allow removal of the existing residence and accessory buildings and the construction of a new football field, softball field, sewage drainage system and gravel parking lot.

B. **Site and Vicinity Characteristics:**

The proposed football field, softball field, sewage drainage field and graveled parking area will be located on district property, which is currently zoned "GGR-5", located within the Columbia

River Gorge National Scenic Area overlay. The property is six acres in size. The existing Corbett Elementary, Middle and High Schools are located to the north of the site, pasture to the south and east, and existing play fields for the school to the west.

According to Section 11.15.3568 and 11.15.3586 of the Multnomah County Columbia River Gorge National Scenic Area General Provisions, conditional uses are allowed pursuant to provisions of Multnomah County Code (MCC) .7110 through .7115 and .8205 through .8250 of the same title.

C. Compliance with Ordinance Criteria:

MCC 11.15.3678(A)(4) permits the "Construction or reconstruction of roads" as an allowed use in the GGR-5 district when approved under the provisions of MCC 11.15.3564. MCC 11.15.3680 states that "Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities." may be allowed as conditional uses. MCC 11.15.3568(D) states, "The burden of proof is upon the person initiating the request to persuade the Approval Authority that the NSA Site Review standards of MCC .3800 through .3834 and applicable policies of the Management Plan have been satisfied."

1. National Park and Recreation Society Requirements

The Recreation, Park and Open Space Standards and Guidelines outlined by the National Recreation and Park Association recommends a minimum of 1.5 acres for a football field, a minimum 3 acres for a baseball field, and a minimum 1.5 acres for a softball field.

Staff Response: The development proposal meets the minimum recommendations on the newly acquired six acres of property. The proposal exceeds these size guidelines when the existing school property, on which some of these facilities will be constructed, is taken into account.

Conclusion:

The proposed development will be consistent with the standards of the National Park and Recreation Society.

2. Scenic Resources

This property is in a Rural Residential landscape setting and visible from the Historic Columbia River Highway which is a Key Viewing Area. As such, the proposal must satisfy the applicable standards of MCC .3814(A), (B) and (C)(6). The applicant has provided responses to those criteria as follows:

a. MCC 11.15.3814(A)(1) requires "New buildings and roads shall be sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable."

Applicant's Response: New graveled parking areas and access road will be constructed

along an existing gravel lane off of Evans Road, for access to new/existing school/community play fields. The play field and access road to the play field were proposed and laid out by a committee made up of community residents. The layout, placement location of the play fields are a direct reflection of the community desires and needs

b. MCC 11.15.3814(A)(4) states "Project applicants shall be responsible for the proper maintenance and survival of any required vegetation."

Staff Comment: There is no required vegetation for this project.

c. MCC 11.15.3814(A)(5) requires "For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan."

Staff Comment: The applicant has submitted site plans sufficient to determine compatibility with the Rural Residential landscape setting. Those plans also demonstrate compliance with the applicable stands of MCC 11.15.3814(B) subsections (1), (6), (7), and (8).

d. MCC 11.15.(B)(21) requires that "All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope between 10 and 30 percent shall include submittal of a grading plan. This plan shall be reviewed by the Planning Director for compliance with Key Viewing Area policies.

Staff Comment: If the proposed development involves moving more than 100 cubic yards of grading, the applicant shall be required to submit a grading plan pursuant to MCC 11.15.3814(B)(21) to be reviewed and approved by the Planning Director.

e. MCC 11.15.3814(C)(3)(b) states "Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices".

Staff Comment: It is necessary to remove the existing trees on site near the existing residence for site development purposes.

f. MCC 11.15.3814(C)(3)(d) states "Compatible recreation uses should be limited to small community park facilities, but occasional low-intensity resource based recreation uses (such as small scenic overlooks) may be allowed."

Applicant's Response: In general, the community is the School District and the School District is the community. The majority of land area on all District properties, not used for buildings, is used for play fields and recreational areas for use by the entire community at all times. Baseball, softball , and football fields will all be used extensively by the community/school all year long.

3. Cultural Resources

Thomas Turck, archaeologist with the U.S.D.A. Forest Service, National Scenic Area Office indicated that a reconnaissance survey would be required of this application because con-

struction would take place within 500 feet of a known cultural resource. A reconnaissance survey was conducted by Terry Lee Ozbun of Archaeological Investigations Northwest, Inc. which concludes, "Archival research and surface survey of the 6-acre project area indicate that it lacks cultural resources relevant to the history or pre-history of the area...AINW recommends that the project proceed without further cultural resources evaluation within the surveyed area." The reconnaissance survey is currently in the comment stage; therefore, the cultural review process is not complete. In view of the results of the reconnaissance survey and lack of any other substantiated comment, it is probable that the cultural review process will end on March 24, 1995, which would be prior to the earliest possible effective date of this decision. This decision should be conditioned upon completion of the cultural review process

The Oregon State Historic Preservation Office was notified of the request and submitted comment indicating that they had no objection to the proposal.

MCC .3818(L) requires cessation of work and notification of the Planning Director and the Gorge Commission within twenty-four hours should a cultural resource be discovered during the course of the project.

Conclusion:

The proposed development would not affect known cultural resources. To protect unknown cultural resources, the applicant is required to immediately cease work and notify the Planning Director and the Gorge Commission in the event that cultural resources are inadvertently discovered during construction activity.

4. Recreation Resources

The property is in Recreation Intensity Classes 2 and 4. The proposed use is three ball fields, a septic drain field area and a graveled parking area, none of which are included on the identified recreation uses listed in the Management Plan, nor are there any such uses within the immediate area.

Conclusion:

The proposed development would not adversely affect recreation resources within the Scenic Area.

5. Natural Resources

Maps provided by the Gorge Commission indicate that:

a. No sensitive, threatened and endangered plant or animal species have been identified on the subject property.

b. No known natural areas, endemic plant species or sensitive wildlife areas have been identified in the subject area.

c. The site is not used as winter range by deer or elk.

d. The property is not within a wetland.

Conclusion:

The proposed development would not adversely affect natural resources.

C. Conclusion:

The request for Columbia River Gorge National Scenic Area Site Review approval to construct a new football field, softball field, sewage drainage system and graveled parking area in conjunction with the existing Corbett Elementary, Middle and High School complex meets the minimum recommendations of the National Parks and Recreation Society and satisfies, with the recommended conditions, the applicable provisions of the Zoning Code.

This Staff Report and recommendation was available on March 8, 1995, seven days before March 15, 1995 public hearing scheduled before Joan Chambers County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.

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

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* form and a fee of $300.00 plus a $3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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

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

1 SITE PLAN
1" = 80'-0"

Vicinity Map

PROPERTY ADDRESS:
725 N.E. EVANS ROAD
CORBETT, OREGON
97019

COUNTY:
MULTNOMAH

TAX LOT NUMBER:
TL 46 - 6.0 ACRES

TAX ROLL:
NORTHWEST 1/4 OF SECTION 34,
TOWNSHIP 1 NORTH,
RANGE 4 EAST, WILLAMETTE MERIDIAN

ZONING DISTRICT:
GG - RB

PROPERTY OWNER:
CORBETT SCHOOL DISTRICT NO. 39
35800 E. HISTORICAL COLUMBIA RIVER HWY.
CORBETT, OREGON 97019

APPLICANT:
SODERSTROM ARCHITECTS, P.C.
0 SW 1ST AVE., SUITE 440
PORTLAND, OREGON 97204
503-226-3617
503-273-8684(F)
BRUCE C. BARTON

SODERSTROM ARCHITECTS, P.C.
ARCHITECTURE, PLANNING, SPECIALIZED STUDIES
1120 SW FIFTH AVE. PORTLAND, OR 97204 (503) 226-3617

CORBETT SCHOOL DISTRICT NO. 39
ELEMENTARY SCHOOL
E. HISTORIC COLUMBIA RIVER HWY. CORBETT, OREGON 97019

Drawn: RT
Date: 01/20/94
Plot: 01/20/95
File: GRGSITE
Revised:

Sheet Title
SITE PLAN

PRELIMINARY

Sheet Number
GORGE

Job No: 94098

Meeting Date: APR 2 5 1995

Agenda No: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Reporting of Hearing Officer's Decision in the matter of SEC 8-94

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: April 25, 1995

Amount of Time Needed: 2 minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sarah Ewing TELEPHONE: 248-3043
BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Mark Hess

ACTION REQUESTED

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

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Reporting of the Hearing's Officer decision in the matter of SEC 8-94 which approved a Significant Environmental Concern (SEC) permit for an addition to an existing single-family dwelling at 5830 NW Cornell Road.

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: Betsy Williams

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

NOTICE OF REVIEW

1. Name: McKenzie (*Last*), _____ (*Middle*), Dan (*First*)
2. Address: 6125 NW Thompson Rd (*Street or Box*), Portland (*City*), OR 97210 (*State and Zip Code*)
3. Telephone: (503) 292-6970
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.*)? SEC 8-94
6. The decision was announced by the ~~Planning Commission~~ Hearings officer on 4/13, 1995
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

I appeared and submitted testimony at the HO hearing. The decision list's my name as a party.

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

The HO Decision is not based on evidence in the record. The decision is in violation of county code. The HO misinterpreted county code. The HO misinterpreted the appellant's reasons for appeal.

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

(a) ☐ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☒ *De Novo* (*i.e.*, Full Rehearing)

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

New evidence will be introduced contradicting the applicant's testimony.

Signed: Dan McKenzie Date: 4/21/95

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing Not Applicable - De Novo Review x $3.50/minute = $

Total Fee = $ 300.00

Received by: M. Hess Date: 1/21/95 Case No. SEC 8-94

RECEIVED
APR 24 1995
Multnomah County
Zoning Division

SEC 8-94
Attachment to Notice of Appeal

The following memo is an attachment to the Notice of Appeal of the Hearings Officer's decision of SEC 8-94, and is in addition to the paragraph listed on the Notice of Appeal form.

8. Grounds for Reversal of the decision.

a. The appellant challenges all parts of the HO decision and all findings.

b. The appellant believes the HO was wrong in denying all assignments of error listed in the original Appeal Notice of the Administrative Decision. The appellant hereby preserves the right to dispute all assignments of error listed in the Notice of Appeal of the Administrative Decision (copy attached).

c. The expansion of a single family dwelling may be an allowed use (use permitted outright), however it is also an alteration of a non-conforming use since the second dwelling was constructed prior to the adoption of zoning ordinances and not in conformance with existing county code. The expansion is a permitted use, however the applicant is not exempted from addressing the criteria for alteration of a non-conforming use.

d. The second dwelling does not meet the criteria in MCC .2052 and .2074.

e. The HO decision is in violation of MCC .8810 for not addressing the criteria in MCC .8810(E) listed for alterations of non-conforming uses.

f. The HO decision is in error for not requiring HDP approval for development on lands in the slope hazard area.

g. The HO decision is in error for not requiring HDP approval for development on lands with average slope of 25% or more. The HO apparently did not visit the site.

h. The decision is in error for finding that an additional bedroom is not being added upstairs during the proposed project.

i. The Decision is in error for not requiring Final Design Review approval for the proposed project.

j. The alteration of the non-conforming use affects the area to a greater negative extent than the existing use.

10. The public interest would be better served by a de novo hearing since evidence will show that the proposed use affects the area to a greater negative extent than the existing use.

Dan McKenzie

Dan McKenzie
Appellant

APPEAL OF ADMINISTRATIVE DECISION
SEC 8-94
Attachment to Notice of Appeal

Describe specific grounds relied upon for reversal or modification of the decision:

1. The decision approving SEC 8-94 is in violation of MCC 11.15.2046. The subject lot has two dwellings, and an expansion is not permitted for a two dwelling lot.
2. The existence of two dwellings on the subject lot constitute a Non-Conforming Use pursuant to MCC 11,15.7605(B) and (E). The structures were built in 1941, and pursuant to MCC .7605(B), the use on the subject lot occurred before the adoption of the Development Pattern, Comprehensive Plan, and Zoning Ordinances. The the zoning ordinces do not permit two single family dwellings on a substandard lot, and thus the use on the subject lot is a Non-Conforming Use. An expansion of a Non-Conforming Use must meet the criteria of MCC 11.15.8810. The decision is in violation of MCC 11.15.8810, for not meeting or addressing the applicable criteria.
3. The decision is in violation of MCC .8810(A) for altering a use with a physical improvement of greater impact to the neighborhood.
4. The decision is in violation of MCC 11.15.8810(D) since the alteration of a Non-Conforming Use is considered a contested case and requires a hearing.
5. The decision is in violation of MCC 11.15.8810(E), since the alteration will affect the surrounding area to a greater negative extent than the current use. The expansion of an additional bedroom will put additional demands on the septic system which is already in violation of current standards for being too close to a Class 1 stream.
6. The expansion of a substandard lot with two dwellings is an unlisted use. The decision is in violation of county code for not addressing the criteria listed in MCC 11.15.7640.
7. The expansion of the existing structure is in violation of OAR 340-71-205(2) for an increase in sewage flow by the addition of one bedroom without first obtaining an Authorization Notice.
8. The construction of pools and ponds in a Class 1 stream are in violation of MCC 11.15.6404(C), for not obtaining SEC approval for that modification of the stream banks.
9. The building of a concrete wall next to a Class 1 stream isin violation of MCC 11.15.6404(C) for not obtaining SEC approval for that physical improvement.
10. The decision is in violation of MCC 11.15.6710(A) for not obtaining a Hillside Development permit for development and construction in an area identified on the Slope Hazard map.
11. The decision is in violation of MCC 11.15.6710(C) for not obtaining a Grading and Erosion Controll permit for land disturbing activities in the Balch creek drainage basin.
12. I challenge compliance with all SEC criteria as the application includes inaccurate information.

Received 1/20/95
M. Hess

13. The expansion of the building, the construction of the concrete wall adjacent to Balch creek, and the disturbance of the streambed and banks to build pools in Balch creek are in violation of SEC criteria a, e, g, h, k, l, n, and p.
14. The expansion of the structure requires a Final Design Review approval since two dwellings on the lot amount to a multiplex pursuant to MCC 11.15.7820.
15. The structure exceeds maximum height restrictions.
16. Drainage from the roof should not be diverted into a pond in Balch Creek.
17. The proposal is in conflict with the following policies of the Comprehensive Plan: 14, 16, 16D, 16E, 16G, and 37.

Received 1/20/95
2

MULTNOMAH COUNTY

BOARD HEARING OF *April 25, 1995*

TIME *01:30 p.m.*

CASE NAME **Appeal of a *SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT*** NUMBER *SEC 8-94*

1. Applicant Name/Address

Scott Rosenlund
5830 NW Cornell Road
Portland, Oregon 97210

Appellant:

Dan McKenzie
6125 NW Thompson Road
Portland, Oregon 97210

ACTION REQUESTED OF BOARD

- ☑ Affirm Plan.Com./Hearings Officer
- ☐ Hearing/Rehearing
- ☐ Scope of Review
  - ☐ On the record
  - ☐ De Novo
  - ☐ New Information allowed

2. Action Requested by applicant

Approve the Hearings Officer decision for SEC 8-94, which approved a Significant Environmental Concern (SEC) Permit for an addition to an existing single-family dwelling at 5830 NW Cornell Road. Applicant's propose to complete an addition to an existing single family dwelling. The project includes a new roof which increases the height of the house.

3. Planning Staff Recommendation

SEC 8-94: APPROVED by the Planning Director

4. Hearings Officer Decisions:

AFFIRM AND MODIFY the Planning Director decision; and,

DENY the Appeal

5. If recommendation and decision are different, why?

The Hearings Officer decision modifies conditions to respond to testimony received at the hearing and in the open record period. The Hearings Officer decision addressed issues raised at the hearing and added more specific conditions than those presented in the Planning Staff decision.

ISSUES

(who raised them?)

The decision concerns an appeal to the Hearings Officer of an administrative decision by the Planning Director. The Appellant claims that that the SEC 8-94 application does not encompass all site work performed or underway. In addition to the zoning provisions and citations detailed in the SEC 8-94 decision, appellant asserts that Non-conforming Use sections of the Multnomah County Plan and Zoning Code (MCC) 11.15 apply to the property.

Do any of these issues have policy implications? Explain.

Yes. The Hearings Officer decision explains how existing policy and code were applied to reach the conclusions and decision to APPROVE with CONDITIONS. New policies were not established by the Hearings Officer. The scope of subsequent building plan reviews was discussed during the hearing.

MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
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

Multnomah County Hearings Officer Decision

Attached please find a copy of the Hearings Officer's decision in the matter of SEC 8 - 94. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of $300.00 plus a $3.50 per minute charge not to exceed $500.00 for a transcript of the initial hearings(s) [ref MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development Office located at 2115 SE Morrison Street, Portland, Oregon.

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

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at (503) 248-3043.

Signed by the Hearings Officer	April 3, 1995
Decision mailed to Parties	April 13, 1995
Decision submitted to Board Clerk	April 13, 1995
Last day to appeal decision	4:30 pm, April 24, 1995
Reported to the board of County Commissioners:	1:30 pm, Aprtil 25, 1995

MULTNOMAH COUNTY OREGON

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

HEARINGS OFFICER DECISION

This Decision consists of Conditions, Findings of Fact and Conclusions.

APRIL 3, 1995

SEC 8-94 APPEAL OF AN ADMINISTRATIVE DECISION

Appeal of an administrative decision which conditionally approved a Significant Environmental Concern (SEC) Permit (Application SEC 8-94). Applicants proposed to complete an addition to an existing single family dwelling. The project includes a new roof which increases the height of the house.

LOCATION:	5830 NW Cornell Road
LEGAL DESCRIPTION:	Tax Lots 31 and 32, of Lot 25, Mountain View Park,
SITE SIZE:	2.00 Acres (Approximate)
PLAN DESIGNATION:	Commercial Forest Land
ZONING DISTRICT:	CFU (Commercial Forest Use District)
OWNERS:	Ralph and Nancy Rosenlund 5830 NW Cornell Road Portland, Oregon 97210
APPLICANT:	Scott Rosenlund 5830 NW Cornell Road Portland, Oregon 97210
APPELLANT:	Dan McKenzie 7125 NW Thompson Road Portland, Oregon 97210
HEARINGS OFFICER DECISION:	Deny appeal and affirm administrative decision which conditionally approved a Significant Environmental Concern Permit Application subject to conditions based on the following Findings and Conclusions:

CONDITIONS OF APPROVAL

1. Except as modified by the conditions below, construct the addition as illustrated and specified in the application.

2. Obtain applicable structural, electrical, and/or plumbing permits from the Portland Building Bureau.

3. Exterior colors on the house shall be natural wood tone(s) or dark earthtones which blend into and do not noticeably contrast with landscape features on the site, and shall be examined in the final inspection.

4. This SEC Permit does not authorize grading, tree removal, or other site or stream work not described in the application narrative or indicated on the site plan. Any areas disturbed due to the construction of the addition shall be protected from erosion, stabilized as soon as practicable, and restored to their prior condition before final inspections(s) or use of the added/remodeled living areas. Future development of the subject site shall occur only in accordance with applicable law and Multnomah County's Zoning Ordinance provisions in effect at the time that development occurs.

PARTY STATUS

PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

1. Parties:

The persons, agencies and organizations who submitted written or oral testimony in this proceeding on their own behalf are parties to the proceeding. MCC 11.15.8225(A)(1). These persons were:

A. Applicant, Scott Rosenlund, 5830 NW Cornell Road, Portland, Oregon 97210;

B. Property Owners, Ralph and Nancy Rosenlund, 5830 NW Cornell Road, Portland, Oregon 97210;

C. Other Persons Supporting the Application:

(1) Arnold Rochlin, P. O. Box 83645, Portland, Oregon 97283-0645 (Appeared in person and through written testimony);

(2) Ron and Marilyn Bastron, 5750 NW Cornell Road, Portland, Oregon 97210 (Appeared by letter dated March 3, 1995);

(3) Barbara J. Telford. MD and Barry D. Olson, MD, 6000 NW Cornell Road, Portland, Oregon 97210 (Appeared by letter dated March 10, 1995).

D. Person Opposed to the Application/Appellant, Dan McKenzie, 6125 NW Thompson Road, Portland, Oregon 97210;

E. Determination of Party Status:

(1) Ronald and Marilyn Bastron, Barbara J. Telford, and Barry D. Olson made appearance of record pursuant to MCC 11.15.8225(B)(2), and had party status pursuant to MCC 11.15.8225(A)(1), as persons entitled to notice under MCC 11.15.8220(C).

(2) Arnold Rochlin is entitled to party status and submitted a letter regarding the basis of entitlement to party status. He is entitled to party status pursuant to MCC 11.15.8225(A)(2), and made an appearance of record both personally and in writing, in accordance with MCC 11.15.8225(B)(2).

2. Agents for Parties:

Persons who submitted testimony, but only in the capacity of a representative for one of the parties and not on their own behalf, are agents of the parties to these proceedings. Those persons were:

A. Agent for the Applicant, Ed Sullivan, Attorney at Law, 3200 U. S. Bancorp Tower, 111 SW Fifth Avenue, Portland, Oregon 97204;

B. Jean Ochsner, Adolfson & Associates, Inc., 10 SW Ash Street, Portland, Oregon 97204; and

C. Carleen Pagni, Wintrowd Planning, #385, 700 N Hayden Island Drive, Portland, Oregon 97217.

3. Agent for Opponents: None.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer.

A. No ex parte contacts. I did not have any ex parte contacts prior to the initial hearing of this matter. Subsequent communications after the continuation of the hearing held on March 15, 1995, have been made through the mail or telecopier with simultaneous service on the other parties.

B. No conflicting personal, financial or family interests. I have no financial interests in the outcome of this procedure. I have no family or financial relationship with any of the parties.

2. Procedural Issues.

At both sessions of the hearing I asked the participants to indicate if they had any objections to jurisdiction. The participants did not allege any jurisdictional or procedural violations regarding the conduct of the hearing. Mr. Sullivan, on behalf of the applicants, did indicate that he was not waiving his ability to challenge the form and content of the appeal document.

BURDEN OF PROOF

In this proceeding, the burden of proof is upon the applicants.

BASIS OF APPEAL

Specific grounds alleged by Appellant for reversal and modification of the Administrative Decision of Staff granting an SEC Permit are as follows:

1. The decision approving SEC 8-94 is in violation of MCC 11.15.2046. The subject lot has two dwellings, and an expansion is not permitted for a two dwelling lot.

2. The existence of two dwellings on the subject lot constitute a Non-Conforming Use pursuant to MCC 11.15.7605(B) and (E). The structures were built in 1941, and pursuant to MCC .7605(B), the use on the subject lot occurred before the adoption of the Development Pattern, Comprehensive Plan, and Zoning Ordinances. The the [sic] zoning ordinces [sic] do not permit two single family dwellings on a substandard lot, and thus the use on the subject lot is a Non-Conforming Use. An expansion of a Non-Conforming Use must meet the criteria of MCC 11.15.8810. The decision is in violation of MCC 11.15.8810, for not meeting or addressing the applicable criteria.

3. The decision is in violation of MCC 11.15.8810(A) for altering a use with a physical improvement of greater impact to the neighborhood.

4. The decision is in violation of MCC 11.15.8810(D) since the alteration of a Non-Conforming Use is considered a contested case and requires a hearing.

5. The decision is in violation of MCC 11.15.8810(E), since the alteration will affect the surrounding area to a greater negative extent than the current use. The expansion of an additional bedroom will put additional demands on the septic system which is already in violation of current standards for being too close to a Class 1 Stream.

6. The expansion of a substandard lot with two dwellings is an unlisted use. The decision is in violation of county code for not addressing the criteria listed in MCC 11.15.7640.

7. The expansion of the existing structure is in violation of OAR 340-71-205(2) for an increase in sewage flow by the addition of one bedroom without first obtaining an Authorization Notice.

8. The construction of pools and ponds in a Class 1 stream are in violation of MCC 11.15.6404(C), for not obtaining SEC approval for that modification of the stream banks.

9. The building of a concrete wall next to a Class 1 stream isin [sic] violation of MCC 11.15.6404(C) for not obtaining SEC approval for that physical improvement.

10. The decision is in violation of MCC 11.15.6710(A) for not obtaining a Hillside Development permit for development and construction in an area identified on the Slope Hazard map.

11. The decision is in violation of MCC 11.15.6710(C) for not obtaining a Grading and Erosion Control permit for land disturbing activities in the Balch creek drainage basin.

12. I challenge compliance with all SEC criteria as the application includes inaccurate information.

13. The expansion of the building, the construction of the concrete wall adjacent to Balch creek, and the disturbance of the streambed and banks to build pools in Balch creek are in violation of SEC criteria a, e, h, k, l, n, and p.

14. The expansion of the structure requires a Final Design Review approval since two dwellings on the lot amount to a multiplex pursuant to MCC 11.15.7820.

15. The structure exceeds maximum height restrictions.

16. Drainage from the roof should not be diverted into a pond in Balch creek.

17. The proposal is in conflict with the following policies of the Comprehensive Plan: 14, 16, 16D, 16E, 16G, and 37.

FACTS

1. Applicant's Proposal.

Applicant requests that a Significant Environmental Concern (SEC) Permit be issued to complete construction of the new roof and increase the height of an existing single family dwelling, located within 100 feet of Balch Creek. The proposed addition would add square footage to the second floor living space without expanding the original exterior footprint of the house. Applicant proposed to raise the eve height and extend exterior walls vertically to provide full height ceilings on the entire second floor. Part of the second floor area was formerly attic storage area with limited head room outside the "knee walls".

2. Site and Vicinity Information.

A. The site is located on the northwest side of NW Cornell Road. It is generally sloping to the south. The existing single family dwelling is one of two houses located on the 1.32 acre Lot of Record. Both houses are situated within 100 feet of Balch Creek. Except for the house, deck and driveway areas, the property is covered with a natural forest about 75 years old. Map 1 and Map 2 which depict the site plan and main residence respectively, are attached hereto and incorporated by this reference herein.

B. The site consists of two tax lots, aggregated for building permit purposes. There is a small guest cottage on the same tax lot as the Rosenlunds' residence. The guest house is used occasionally by visiting family or friends. It is currently unoccupied and not a part of the SEC Permit Request.

C. The smaller guest house was constructed in 1940. The larger house was constructed in 1946. At the time of the construction of the larger house, it became the primary residential dwelling on the parcel. Both dwellings were constructed prior to the adoption of County Zoning in the area.

3. Testimony and Evidence Presented.

A. During the course of the hearing, both on March 15, 1995, and as continued to March 24, 1995, the following exhibits were received by the Hearings Officer:

1. Photographs (17 color prints) taken 3/14/95 at and around the site;

2. Topography and Soils Map of Balch Creek basin; Rosenlunds' site is noted on center of map;

3. Applicant's memorandum, submitted by Ed Sullivan, dated and received March 15, 1995;

4. County Assessor's information/printout; Ralph Rosenlund submitted with oral testimony;

5. Photographs of the Project Site (8 color copies, mounted on oversized stock);

6. Arnold Rochlin letter RE: *Party Status*; dated and received March 15, 1995;

7. Arnold Rochlin written testimony on: *Appeal of SEC 8-94*; dated/received March 15, 1995;

8. Bastron letter dated March 3, 1995; received March 15, 1995; *Supports Rosenlund Application*;

9. Telford letter dated March 10, 1995; received March 15, 1995; *Supports Rosenlund Application*;

10. Portion of Slope Hazard Map (9/30/78) detailing property involved (received March 15, 1995);

11. Dan McKenzie (appellant) written testimony: *Appeal of SEC 8-94*; dated/received 3/15/95;

    a. Attachment 1, September 29, 1994, letter from M. Ebeling RE sewage disposal violation;

    b. Attachment 2, October 4, 1994, responses by R. Rosenlund;

    c. Attachment 3, October 25, 1994, letter from M. Ebeling RE sewage disposal issue; and

    d. Assessor's info. (printout) RE: improvements on the site: account R-59030-1560;

12. Irv Ewen letter, dated October 17, 1994, RE: Zoning Enforcement status of Rosenlund project; received by Hearings Officer March 15, 1995;

13. Ralph Rosenlund letter, dated July 29, 1994, RE Zoning Enforcement issues in Balch Creek area; received by Hearings Office March 15, 1995;

14. Nancy Rosenlund letter, dated August 25, 1992, and 2-page written testimony RE: driveway crossing design on Thompson Fork and Zoning Enforcement issues generally in Balch Canyon; submitted to Hearings Officer March 15, 1995;

15. *Friends of Balch Creek* letter, dated January 12, 1992, RE: driveway crossing design on Thompson Fork of Balch Creek and Zoning Enforcement issues generally; submitted to Hearings Officer March 15, 1995;

16. Page 7-4 Excerpt from *Balch Creek Watershed Stormwater Management Plan Background Report* (April, 1993, Draft);

17. Site plan enlargement from SEC 8-94 application; details drainfield, roof drain infiltration on property involved (received March 15, 1995);

18. Arnold Rochlin Letter containing argument on issues, dated March 22, 1995; and

19. Multnomah County building permit history on subject parcel.

B. Mark Hess testified for the county, summarized the history of the application and the administrative decision and subsequent appeal therefrom. Mr. Hess also stated that the two structures on the parcel in question are not located in hazard areas identified on the "Slope Hazard Map". In addition, he also indicated that the land beneath the primary residential dwelling has slopes of less than 25%. In interpreting the provisions of MCC 11.15.6710, the county has looked at the lands beneath the construction area. In this case, the county would look at the land beneath the home to determine if the provisions of the Hillside Development Permit section of the code were applicable.

C. Ralph Rosenlund, the property owner, testified that he bought the house in 1981. In 1994, he started to re-roof the house, but found that significant water damage had occurred and additional work would need to be done. He proceeded to hire an architect and proceed to the county administrative approval requirements.

D. Ralph Rosenlund also testified that there was no concrete wall adjacent to Balch Creek. There was an existing rock wall in place when he purchased the property. He and his wife had done some work in replacing rocks in 1983, 1984 and 1985 and in repairing the wall. No further work had been done since the provisions of the SEC code sections were adopted by Multnomah County.

E. Ralph Rosenlund also testified that there were only three bedrooms in the house prior to commencing work, and there were only three bedrooms that would be in the house after the work would be complete. He indicated that there is no downstairs bedroom and that, at the present time, he and his wife are sleeping on the floor because they had to stop

construction on the second floor. They do not currently have access to their bedrooms.

F. Mr. Scott Rosenlund testified that no soil disturbance would occur or had occurred on the project site. All construction was located on the second floor and that no soil was ever disturbed. Mr. Scott Rosenlund also testified that the average height of the structure would be thirty feet, after completion of the improvement. The highest point of the peak is at 34 feet. The height of the structure is less than the maximum 35 feet allowed in the zone.

G. Carleen Pagni, of Wintrowd Planning, testified and identified photos submitted as Exhibits in the record.

H. Jean Ochsner, of Adolphson Associates, Inc., testified that she has been to the Rosenlund house. The remodeling project is entirely vertical. The house is not touching the stream. There would be no wetland or environmental impacts.

I. Arnold Rochlin testified on his own behalf and submitted a letter establishing his party status.

J. Mr. Rochlin discussed Mr. McKenzie's experience and prior proceedings with Multnomah County and LUBA. Mr. Rochlin contended that the twelfth assignment of error was unanswerable.

K. Mr. Rochlin also questioned the second sentence on both Conditions 3 and 4 of the approval, contending that the conditions were an attempt to legislate by an Administrative Decision and suggested that both provisions should be eliminated from the conditions of approval. Mr. Rochlin also contended that Section 11.15.2070 of Multnomah County Code was applicable to this decision. He contended that a dwelling not related to forest management is a conditional use listed in MCC .2050, and should, therefore, be deemed conforming pursuant to 11.15.2070.

L. Mr. McKenzie contended that if the use in question was a conditional use pursuant to 11.15.2050, it should be subject to design review and that, furthermore, the provisions of MCC .2052 and .2074 would be applicable.

M. Mr. Sullivan testifying on behalf of the applicant, argued that the reference in MCC 11.15.2070 to conditional uses listed in MCC .2050, was intended to be a categorization of those uses rather than a requirement that such uses had to meet the current conditional use standards.

N. Mr. Sullivan also testified that there is no provision in the CFU zone that specifies that there could only be one single family dwelling per lot.

O. Mr. McKenzie, at the time of the continued hearing on March 24, 1995, indicated that he understood that the applicant was not requesting authorization for work in Balch Creek, and that he withdrew his objection to the Administrative permit on those grounds.

P. Mr. Sullivan indicated that the house constructed in 1946 was the principal residential dwelling on the property. The other dwelling was a secondary dwelling/guest house, which was accessory to the principal use on the site.

Q. Mark Hess provided information from the county indicating that the county had not recently issued any permits for work on the house constructed in 1940. The county had issued a permit for the dwelling in question in 1969 (Exhibit "19").

4. Zoning Ordinance Criteria

11.15.2044 Area Affected

MCC .2042 through .2074 shall apply to those lands designated CFU on the Multnomah County Zoning Map.

11.15.2046 Uses

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2048 through .2056.

11.15.2048 Uses Permitted Outright

(D) Maintenance, repair, or expansion of an existing single family dwelling.

The Rosenlund project requires SEC Permit approval because the proposed addition is a physical improvement which is located within 100 feet of a Class I stream (the main stem of Balch Creek). MCC 11.15.6404(C) requires an SEC Permit in such instances. MCC 11.15.6404(C) is set forth as follows:

> **"Any building, structure or physical improvement within 100 feet of a normal high water level of a Class I stream, as defined by the State of Oregon Forest Practice Rules, shall require a SEC Permit under MCC .6412, regardless of the zoning designation of the site."**

The approval criteria for a SEC Permit are set forth as follows: 11.15.6420 Criteria for Approval of SEC Permit.

(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake or floodwater storage area.

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

(C) The harvesting of timber on lands designated SEC shall be conducted in a manner which will insure that natural, scenic, and watershed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.

(D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

(E) Recreational needs shall 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.

(F) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

(G) Significant fish and wildlife habitats shall be protected.

(H) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

(I) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

(J) Extraction of aggregates and minerals, the depositing of dredge spoils, and similar activities permitted pursuant to the provisions of MCC .7105 through .7640, shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, historical or archaeological features, vegetation, erosion, stream flow, visual quality, noise, and safety, and to guarantee necessary reclamation.

(K) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

(L) Significant wetland areas shall be protected as provided in MCC .6422.

(M) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.

(N) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

(O) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

(P) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

(Q) The applicable policies of the Comprehensive Plan shall be satisfied.

The appellant contends that the following additional sections of the zoning ordinance are also applicable to this decision:

11.15.2058 Dimensional Requirements

(C) . . .

Maximum Structure Height - 35 feet

. . .

11.15.6710 Permits Required

(A) Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.

(C) Grading and Erosion Control Permit: All persons proposing land-disturbing activities within the Tualatin River and Balch Creek Drainage Basins shall first obtain a Grading and

Erosion Control Permit, except as provided by MCC 11.15.6715(C) below.

11.15.7605 Findings Concerning Certain Pre-existing Uses

(B) Certain land uses established prior to the enactment of the development Pattern, Comprehensive Plans, and zoning ordinances were found to be inconsistent with plan and ordinance purposes and were therefore declared non-conforming uses and subject to limitations of change or alteration.

(E) The pre-existing uses described in subpart (C) are distinguishable from those non-conforming uses described in subpart (B) which pre-dated any County land use plans or regulations, since the former were established in conformity with the adopted pattern, plans and ordinances, and the latter were not.

11.15.7640 Expansion or Change of Unlisted Use Approval Criteria

SECTION OMITTED

(In the Notice of Appeal, the appellant indicated that he felt the criteria in MCC 11.15.7640 should be addressed. However, during the course of the hearing he testified that he felt the use was non-conforming use rather than a pre-existing use. Accordingly, provisions of 11.15.7640 would not be applicable to the application in question.)

11.15.7820 Application of Regulations

The provisions of MCC .7805 through .7865 shall apply to all conditional and community service uses in any district and to the following:

A. A multiplex, garden apartment or apartment dwelling or structure;

. . .

11.15.8810 Alteration of a Non-Conforming Use.

(A) Alteration of a non-conforming use includes:

(1) A change in the use of no greater adverse impact on the neighborhood.

(2) A change in the structure or physical improvements of no greater impact to the neighborhood.

(B) Alteration of a non-conforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

(C) An alteration as defined in (A) above may be permitted to reasonably continue the use.

(D) A proposal for an alteration under (C) above shall be considered a contested case and a hearing conducted under the provisions of MCC .8205 - .8295 using the standards of (E) below.

(E) An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:

(1) The character and history of the use and of development in the surrounding area;

(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;

(3) The comparative numbers and kinds of vehicular trips to the site;

(4) The comparative amount and nature of outside storage, loading and parking;

(5) The comparative visual appearance;

(6) The comparative hours of operation;

(7) The comparative effect on existing vegetation;

(8) The comparative effect on water drainage;

(9) The degree of service or other benefit to the area; and

(10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

Arnold Rochlin, a party to the proceeding, argued that Section 11.15.2070(A) was applicable.

11.15.2070 Exemptions From Non-Conforming Use

(A) Conditional Uses listed in MCC .2050, legally established

prior to October 6, 1977, shall be deemed conforming and not subject to the provisions of MCC .8805, provided, however, that any change of use shall be subject to approval pursuant to the provisions of MCC .2050.

Mr. Rochlin also contended that Section 11.15.2050(B) was applicable to this decision.

11.15.2050 Conditional Uses

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

(B) A dwelling not related to forest management pursuant to the provisions of MCC .2052 and .2074.

5. Comprehensive Plan

Plan Policies found applicable to the proposal are No. 14, No. 16D, No. 16E, No. 16F, No 16G, No. 37 and No. 38. Appellant contends that the proposal is in conflict with Policies 14, 16, 16D, 16E, 16G and 37.

Policy 14 is set forth as follows:

Policy 14: Developmental Limitations

The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

A. Slopes exceeding 20%;

B. Severe soil erosion potential;

C. Lane Within the 100 year flood plain;

D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;

E. A fragipan less than 30 inches from the surface;

F. Lane subject to slumping, earth slides or movement.

Policy 16: Natural Resources

Policy 16 dealing with natural resources has been implemented by the adoption of the overlay classification "Significant Environmental Concern". Therefore, this policy will not be listed as an approval criteria. Proof of compliance with the SEC provisions and the ordinance will satisfy the plan requirements of Policy 16, and support a finding that the decision is consistent with Policy 16.

Policy 37 is set forth as follows:

Policy 37: Utilities

The county's policy is to require a finding prior to approval of a legislative or quasijudicial action that:

Water and Disposal System

A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or

B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ)

will approve a subsurface sewage disposal system on the site; or

C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or

D. There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. There is adequate capacity in the storm water system to handle the run-off; or

F. The water run-off can be handled on the site or adequate provisions can be made; and

G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

I. Communications facilities are available.

Furthermore, the county's policy is to continue cooperation with the Department of Environmental Quality, for the development and

implementation of a groundwater quality plan to meet the needs of the county.

FINDINGS

1. **COMPLIANCE WITH MCC 11.15.2046**

Appellant contends that the Administrative Decision approving SEC 8-94 violates MCC 11.15.2046 because the subject lot has two dwellings, and appellant contends an expansion is not permitted for a two dwelling lot. MCC 11.15.2046 provides that "no building . . . shall be altered or enlarged in this district except for the uses listed in MCC .2048 through .2056."

Section 11.15.2048(D) lists the "maintenance, repair or expansion of an existing single family dwelling" as a use permitted outright. The code does not limit that maintenance to a situation where there is only one dwelling on a lot.

As the applicant's representative, Ed Sullivan, has pointed out, there is no specific requirement in the CFU zone that there be only one dwelling per lot. In fact, the various code provisions relating to the CFU district seem to contemplate additional structures under certain circumstances. Section 11.15.2051 allows a new forest management dwelling when there are no other dwellings on the property. There are no similar restrictions in Section 11.15.2052, the section dealing with "dwellings not related to forest management".

The provisions of Oregon Administrative Rules adopted subsequent to the adoption of the code provisions just referenced no longer distinguish between forest management dwellings and non-forest dwellings. I have referenced the MCC code sections which have not yet been revised, as some indication of the legislative intent at the time these code provisions were originally adopted.

The language in MCC 11.15.2048(D) is actually quite broad. The term "existing dwelling" is not defined nor specifically limited to those dwellings existing at the time of the adoption of the code provision. Similarly, there is no restriction that the dwelling be conforming or even lawful. A non-conforming use is a use to which a building or land was put at the time this chapter became effective, and which does not conform with the use regulation of the district in which it is located. It was, however, lawful at the time it was constructed. The code provision in question herein seems to apply to any "existing

single family dwelling" whether lawful or not. That is not likely to have been the legislative intent, but the code provision is very broad as currently enacted.

The evidence in the record indicates that there are, in fact, two dwellings on the lot in question. One dwelling was constructed in 1940. A second dwelling was constructed in 1946. Upon construction of the larger second dwelling, it became the primary residential dwelling on the property and the smaller dwelling became a guest house.

At the time of the adoption of the Multnomah County Zoning Ordinance provisions, the dwelling constructed in 1946 was the primary residential dwelling on the property. Thus, that dwelling was a "existing single family dwelling" as of the date of the adoption of the CFU zoning ordinance provisions. Since the maintenance, repair or expansion of an existing single family dwelling is a use permitted outright in the CFU zone, I find that the Administrative Decision approving SEC 8-94 complies with MCC 11.15.2046.

Both Mr. Rochlin and Mr. Sullivan have contended that the provisions of MCC 11.15.2070 are applicable and that the subject dwelling could be considered a conforming use by virtue of the exception process of 11.15.2070. Mr. Rochlin contended that a dwelling not related to forest management is conditional use in 11.15.2050. Mr. Sullivan contended that the reference in 11.15.2070(A) is intended to be a categorization of uses. Mr. McKenzie contended that the reference to MCC .2050 required a determination that the "conditional use" in question was actually in compliance with MCC .2052 and .2074. Mr. McKenzie also contended that as a "conditional use", the matter was subject to design review. Since I have already found that the "maintenance, repair, or expansion of an existing single family dwelling" is a conforming use within the CFU zone, I find it unnecessary to reach the issues raised by the parties in regard to whether the dwelling in question would be considered a conforming use pursuant to MCC 11.15.2070 for purposes other than maintenance, repair or expansion of the dwelling.

2. **ARE THE NON-CONFORMING USE PROVISIONS OF MCC 11.15.8810 APPLICABLE TO THIS DECISION?**

Multnomah County Zoning Ordinance defines a "non-conforming use" as "A use to which a building or land was put at the time this chapter became effective and which does not conform with the use regulations of the district in which it is located."

The primary residential dwelling occupied by the Rosenlunds, which was constructed in 1946, is an existing dwelling in the commercial/forest use zone. The use regulations of that zone list the maintenance, repair or expansion of an existing single family dwelling as a use permitted outright.

Since the maintenance, repair or expansion of an existing single family dwelling in the CFU zone is a use conforming with the use regulations of the district, it does not fall under the definition of non-conforming use.

3. **DOES THE ADMINISTRATIVE DECISION VIOLATE MCC 11.15.8810(A)?**

For the reasons stated in Paragraph 2 above, I find that the provisions of MCC 11.15.8810(A) are not applicable to this decisions. Furthermore, in Paragraph 7 below, I find that there is no increase in sewage flow which would constitute an alteration of the physical improvement causing greater impact to the neighborhood. For these reasons, I find that this decision does not violate MCC 11.15.8810(A), and that, in fact, the provisions of MCC 11.15.8810(A) are not applicable to this decision.

4. **DOES THE ADMINISTRATIVE DECISION VIOLATE MCC 11.15.8810(D)?**

The appellant is correct in contending that the alteration of a non-conforming use is considered a contested case and requires a hearing. However, I have found above in Finding 2 and 3 that the maintenance, repair and expansion of an existing single family dwelling in the CFU zone is a use permitted outright and, accordingly, the provisions of the non-conforming use section of the zoning ordinance are not applicable. Accordingly, the administrative decision in SEC 8-94 does not violate the provisions of MCC 11.15.8810(D), since this code provision is not applicable to the decision in question.

5. **DOES THE ADMINISTRATIVE DECISION VIOLATE MCC 11.15.8810(E)?**

Pursuant to Finding No. 7 below, I found that there has been no expansion of an additional bedroom and that there are, therefore, no additional demands on a septic system. Furthermore, pursuant to Findings No. 2 through 4 above, I have found that the non-conforming use provisions of Section MCC 11.15.8810 are not applicable to this decision, since, in fact, the maintenance, repair or expansion of an existing single family dwelling is a use permitted outright in the commercial forest use zone. Accordingly, I find that the Administrative Decision in question does not violate the provisions of MCC 11.15.8810(E).

6. **ARE THE PROVISIONS OF MCC 11.15.7640 RELATING TO PRE-EXISTING USES APPLICABLE TO THE ADMINISTRATIVE DECISION IN QUESTION?**

Appellant contends that the expansion of "substandard lot with two dwellings is an unlisted use." He also contends that the decision is in violation of County Code by not addressing the criteria listed in MCC 11.15.7640.

Section 11.15.7640 deals with the expansion or change of an unlisted use beyond a lot of record. Accordingly, in order to find those provisions applicable, I would have to find that the existing dwelling in question is both a pre-existing use, pursuant to the provisions of 11.15.7605, and that expansion was proposed beyond the lot of record legally occupied by the use on July 21, 1979.

The record clearly indicates that the dwelling in question was constructed in 1946 prior to the adoption of any county zoning requirements. The record also clearly indicated that the proposed maintenance, repair and/or expansion of the dwelling in question was not being expanded to an adjacent lot or lots.

In addition, during the course of his testimony, appellant indicated that he felt that the dwelling in question was a non-conforming use rather than the pre-existing use. Accordingly, I find that the provisions of MCC 11.15.7640 are not applicable to this decisions because this is not a pre-existing use and no expansion of the use is proposed beyond the lot of record. Accordingly, the Administrative Decision approving this use did not violate the criteria listed in MCC 11.15.7640.

7. **HAS THE APPLICANT ADDED A BEDROOM TO THE EXISTING STRUCTURE, WHICH WOULD THEREBY INCREASE SEWAGE FLOW?**

Appellant contends that the applicant has added one bedroom which would increase sewage flow and thereby violate OAR 340-71-2052 by increasing sewage flow without first obtaining an authorization notice. Appellant has not indicated how an alleged violation of OAR 340-71-2052 relates to any of the approval criteria for an SEC permit. However, since the Comprehensive Plan Policy 37 is a policy that must be considered, and does relate to utilities, I will discuss the issues raised by appellant in relation to sewage flow.

All materials submitted by applicants for this application indicate that there are three bedrooms in the house, and that no increase in the number of bedrooms will occur.

The appellant contends that the assessor's information, which is listed as Attachment "D" to Exhibit "11", indicates that there is one bedroom downstairs and that there are two bedrooms upstairs. He thereby argues that there are actually four bedrooms in the house since, after the construction proposed, there would be three bedrooms upstairs, and one downstairs. However, when questioned, Mr. McKenzie did testify that he had never been in the house and had no personal knowledge regarding the number of bedrooms in the house.

Mr. Rosenlund testified that there are only three bedrooms, total, in the house, and that there are no bedrooms downstairs. In fact, during the course of the hearing, he rather vehemently

interjected that he and his wife were sleeping on the floor in their downstairs living room, because they did not have access to the only bedrooms in their house, which were located upstairs.

During the course of the hearing, Mr. Rochlin testified that he had been in the house and that the number of bedrooms (three) would be unchanged. There were no bedrooms downstairs, just the three bedrooms which had previously existed upstairs.

In a letter dated October 25, 1994, Michael Ebeling, Senior Environmental Soils Inspector, for the City of Portland, wrote to the Rosenlunds indicating that in his inspection he noted three bedrooms under reconstruction. "This coincides with assessment and taxation records of this dwelling having three bedrooms."

Mr. Ebeling's investigation of this matter originally began as a result of a complaint to his office that three new bedrooms were being constructed. In a letter to the Rosenlunds dated September 29, 1994, which is included in the record as Attachment "A" to Exhibit "11", Mr. Ebeling indicated that the addition of three new bedrooms would violate OAR 340.71.205(2). In a subsequent letter dated October 25, 1994, he indicated that the number of bedrooms coincided with assessment and taxation records. A subsequent letter, which is dated December 23, 1994, is included as Exhibit "2" in Attachment "E" to Rosenlunds' report, and is referenced in the Administrative Decision. That letter indicates that the complaint was dropped by the City of Portland and the Senior Environmental and Soils Inspector found that no violation of OAR 340-71-205(2) had occurred.

I find the testimony of the Rosenlunds and Mr. Rochlin to be credible in that, in fact, there are only three bedrooms in the dwelling in question. Accordingly, I find that there is no expansion of the existing structure by the addition of one bedroom and that there is no increased impact in sewage flow or on the septic system. Thus, the application in questions does not violate OAR 340-71-205(2).

8. **DOES THE ALLEGED CONSTRUCTION OF POOLS AND PONDS IN A CLASS I STREAM HAVE ANY BEARING ON THE ADMINISTRATIVE DECISION IN QUESTION?**

In an attachment to the Notice of Appeal, the appellant contended that the construction of pools and ponds in a Class I stream violates MCC 11.15.6404(C) for not obtaining SEC approval for that modification of the stream banks. The evidence in the hearing indicated that the applicants had not constructed pools and ponds in a Class I stream and that some stream enhancement work had been done by the Oregon Department of Fish and Wildlife.

The administrative permit in question did not authorize grading, trimming or other site or stream work not described in the application narrative or indicated on the site plan. Since the

alleged construction of pools and ponds was not described in the application narrative and is not the subject of the application in question, the allegation that pools or ponds had been constructed would be the subject of a separate enforcement action or permit application.

In addition, at the time of the continued hearing on March 24, 1995, the appellant indicated that since the applicants were not requesting authorization to do work in Balch Creek, he withdrew his objection or appeal on those grounds. Accordingly, I find that there has been no violation of MCC 11.15.6404(C) in regards to modification of stream banks, in relation to the subject application and administrative decision.

9. **CONCRETE WALL**

Similarly, in stated grounds for appeal No. 9, the appellant has contended that the building of a concrete wall next to a Class I stream violates MCC 11.15.6404(C) for not obtaining SEC approval for the physical improvement. At the hearing, the applicants testified that there was no concrete wall adjacent to the stream, that there was a rock wall in place, and that while some work on the rock wall had been done in 1983, 1984 and 1985, no work or improvement to that wall had been made since the provisions of SEC Section of the zoning ordinance were in place. Accordingly, I find that the applicants have not built a concrete wall next to a Class I stream, and that no violation of MCC 11.15.6404(C) has occurred in that regard, in relation to the subject application and administrative decision.

10. **IS A HILLSIDE DEVELOPMENT PERMIT REQUIRED AND, IF SO, WOULD SUCH A PERMIT HAVE TO BE OBTAINED BEFORE THE SEC PERMIT IN QUESTION COULD BE ISSUED?**

MCC 11.15.6710 provides that development or construction occurring on property located in hazard areas, as identified on the slope hazard map, or on lands with average slopes of 25% or more, shall obtain a Hillside Development Permit. At the hearing on March 15, 1995, Mark Hess stated that he had reviewed the Slope Hazard Maps and determined that the two structures were not within hazard areas as identified on the Slope Hazard Map.

Mr. McKenzie did contend that he was familiar with the general slope of the property in that area, and that he felt that the lands in question average slopes of 25% or more and would, therefore, still be subject to the requirement of obtaining a Hillside Development Permit.

During the continuation of the hearing on March 24, 1995, Mark Hess explained that in interpreting this section of the code, the planning staff looked at the land where the construction was proposed. The provisions of the hillside development erosion control permits requirements were intended to apply to lands on

steeper slopes. He indicated that he thought that the land beneath the house had slopes of less than 25%.

Also on March 24, 1995, Ed Sullivan, on behalf of the applicant, offered additional testimony that the dwelling in question was situated on a flat "bench area". As such, the land in question averaged slopes of less than 25% and a Hillside Development Permit would not be required.

While the evidence on the slope percentage differed, I found the greater weight of evidence to indicate that the land in question averaged a slope of 25% or less and that a Hillside Development Permit was not required. However, even if a Hillside Development Permit were required, there are no provisions in the SEC section of the code that would require the HDP Permit to be issued prior to issuance of the SEC Permit. If an HDP Permit were at some point determined to be necessary, that could be listed as a condition of approval and obtained at a subsequent time.

11. **IS A GRADING AND EXCAVATION CONTROL PERMIT REQUIRED IN CONJUNCTION WITH THE APPLICATION UNDER REVIEW AND, IF SO, WAS THE OBTAINING OF SUCH A PERMIT A CONDITION PRECEDENT TO THE ISSUANCE OF AN SEC PERMIT?**

MCC 11.15.6710(C) provides that all persons proposing land disturbing activities within the Balch Creek Drainage Basin shall first obtain a grading and erosion control permit. It is clear from the evidence and testimony in the record that the applicant was not proposing land disturbing activities. All proposed work will be confined within the present footprint of the existing structure. No land disturbing activity was proposed which would necessitate a grading and erosion control permit review.

Furthermore, even if such a permit were required, there is nothing in the provisions of SEC sections of the zoning ordinance that would require that such a permit be issued as condition precedent for the issuance of the SEC Permit. Accordingly, I find that the Administrative Decision in question does not violate the provisions of MCC 11.15.6710(C), because no land disturbing activities were proposed, and a grading and erosion control permit would, therefore, not be required.

12. **ACCURACY OF THE INFORMATION IN THE APPLICATION**

Appellant challenges compliance with all SEC criteria because he contends that the application included inaccurate information. Appellant also seemed to be contending that the house actually had four bedrooms, not three, and therefore, the application was inaccurate. As stated in Finding 7 above, I did find that there are three bedrooms in the house. Accordingly, I have no basis for finding that there is inaccurate information in the application, or for upholding appellant's challenge to the Administrative Decision on that basis. The application and the

staff decision contain detailed findings and conclusions regarding each SEC criteria. Accordingly, I find that there is no basis for overturning the Administrative Decision on the allegation that the application included inaccurate information.

The applicants have contended that a portion of the conditions imposed as a requirement for the SEC Permit have exceeded or differ from the SEC criteria considerations. Although the applicants have not filed a cross-appeal, the appellant has challenged compliance with all SEC criteria, accordingly, I do feel that it would be appropriate to examine the conditions to determine if they are, in fact, appropriate.

SEC criteria "O" does require that the design of all construction materials, color and lighting of buildings, structures and signs, shall be compatible with the character and visual quality of areas of significant environmental concern. There is no provision in the code that limits color considerations to houses visible from a public right-of-way. I found no provisions in the code that would make a future change of color a matter subject to SEC approval. At the hearing, Mr. Hess indicated that there was concern that while the color of the house may not currently be visible from the right-of-way, in the future, if pruning or tree cutting occurred, the house may become visible.

Accordingly, I will alter this condition to provide that the exterior colors on the house shall be natural wood tones or dark earth tones which blend into and do not noticeably contrast with landscape features on the site, and such color will be examined in final inspection. The restrictions to future color changes will be eliminated from this condition.

Similarly, the parties discussed and questioned the last sentence in Condition 4. I will modify that condition by changing the last sentence to read "Future development of the subject site shall occur only in accordance with applicable law and Multnomah County's Zoning Ordinance provisions in effect at the time that development occurs."

13. **WERE THE APPROVAL CRITERIA SET FORTH IN MCC 11.15.6420(A), (E), (G), (H), (K), (L), (N) AND (P) VIOLATED?**

The evidence in the record clearly indicates that if any disturbance in the streambed occurred, it is the result of work done by ODFW. Similarly, the evidence also indicated that there was no construction of a concrete wall, and that no work had been done on the existing rock wall after enactment of the SEC ordinance provisions. Furthermore, at the time of the continuation of the hearing on March 24, 1995, appellant indicated that he was withdrawing his objection to granting a permit based on any work or allegation of work done in Balch Creek. Accordingly, I find that as a factual matter, no concrete wall was constructed and the applicants have not caused any

disturbance of the streambed which would violate any of the SEC criteria. The following discussion of SEC criteria will be limited to the building structure.

(A) **The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation, shall be provided between any use and a river, stream, lake, or floodwater storage.**

Information provided in the Rosenlund application supports a finding that the maximum possible landscaped area and vegetation shall be provided between any river, stream, or lake and the proposed use. The applicants' house is 15 feet from the stream at its nearest point. The area between the house and stream is filled with native cedar trees, hemlock, vine maples, rhododendrons and ferns. The photographs submitted in support of the applications (Exhibit "1") demonstrate that the area in question is landscaped to the maximum extent and is densely forested. No vegetation will be removed during the remodeling process. All work is to occur within the existing footprint with no excavation or other work being done on the ground. Although the new roof line is several feet higher, the proposed installation will require no tree pruning or vegetation disruption. The testimony and evidence and supportive photographs all demonstrate that the maximum possible landscaped area, scenic and aesthetic enhancement and vegetation has been provided between Balch Creek and the existing single family dwelling.

(E) **Recreational needs shall 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.**

There is no public access to Balch Creek on the Rosenlund property. The remodeling will not result in a new need for recreational opportunities as it will not intensify the use of the property. The vertical expansion of the building does not violate SEC criteria 11.15.6420(E).

(G) **Significant fish and wildlife habitats shall be protected**

The Rosenlund report, Page 5, indicates "The reconstructed second story will have no impact on significant fish and wildlife habitat because all work is being done within the existing building footprint and at a minimum fifteen feet from the stream. No trees are being removed, no branches will be cut, and no grading will be needed. The use will not intensify as a result of the remodeling". Prior to remodeling, the house had three roof drains. The proposal under consideration will eliminate one drain on the front of the house. The north side of the roof drains, as

previously, into a recessed area near the septic drainfield and is absorbed into the ground. The roof area, and thus the amount of runoff, is not increasing. The septic tank and drainfield are not affected by the remodeling project. Native cutthroat trout continue to live and thrive in the pools and stream on the property. Accordingly, the proposed application is in compliance with SEC criteria 11.15.6420(G).

(H) **The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to insure scenic quality and protection from erosion and continuous riparian corridors.**

The Rosenlund report, prepared by Wintrowd Planning Services, indicates "All vegetation on the house has been protected during installation of the roof. No vegetation on the property has been, or will be, cut or otherwise impacted during the remainder of the remodeling work.

The Rosenlunds have enhanced the natural vegetation present by planting native trees, ferns (lady ferns, sword ferns, deer ferns, maidenhair ferns). Oregon Grape, salal, trillium, yellow wood violets, wild lilies, wild ginger, vine maples, salmon berry and huckleberry are present. Balch Creek flows through a vegetated corridor." The information provided in the application supports a finding that SEC criteria 11.15.6420(H) has been met and that the natural vegetation has been protected and enhanced to the maximum extent possible.

(K) **Areas of annual flooding, flood plains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention overflow and natural functions.**

At the hearing Jean Ochsner testified that the proposed remodeling project will have no wetland or environmental impacts. All of the remodeling is within the present footprint of the existing dwelling.

Since all work will be done within the existing footprint of the house, all natural areas will not be disturbed. A finding can be made that this criteria of the SEC provisions has been met and that the Administrative Decision in question is consistent with this criteria.

(L) **Significant wetland area shall be protected as provided in MCC .6422.**

At the hearing, and in a letter dated October 21, 1994, Jean J. Ochsner, Senior Environmental Scientist, testified that the proposed project will have no wetland impacts.

Accordingly, the record demonstrates that there is a factual basis for finding that the provisions of MCC .6422 are not applicable since there is no proposed activity which would impact wetlands. Accordingly, the Administrative Decision in question has adequately addressed SEC criteria 11.15.6420(L).

(N) **The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such area.**

The proposed remodeling is being done within the building's existing footprint. The proposed use will not intensify. The quality of the air, water, and land resources will be the same as before the remodeling. When the new roof insulation is installed, noise levels outside will decrease. Accordingly, I find that the standards of SEC criteria 11.15.6420(N) have been met.

(P) **An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

There will be virtually no impact to natural vegetation from the remodeling project. Even replacing the roof will not require tree or shrub pruning. Replacement can be done without disturbing the overhanging trees or vegetation. The materials to be removed from the house can be removed via an existing walkway. No vegetation will be impacted and no clearing work is to be done. The remaining work will be done inside the house. The intensity of the use will not increase as a result of replacing the roof and walls. The evidence clearly supports that the area in question will be retained in a natural state to the maximum extent possible, and that no intensification of use is to occur.

Accordingly, I find that the expansion of the building does not violate SEC criteria 11.15.6420(A), (E), (G), (H), (K), (L), (N) or (P). No concrete wall was constructed and no work within the streambed has been done by appellant. Accordingly, the allegations regarding concrete wall and work in the streambed did not support a finding that SEC criteria had been violated.

14. **ARE TWO SINGLE FAMILY DWELLINGS ON AN EXISTING LOT OF RECORD A MULTI-PLEX WHICH WOULD SUBJECT THE EXPANSION OF THE STRUCTURE TO FINAL DESIGN REVIEW?**

A multi-plex is defined as a row house or townhouse apartment structure. A row house is defined as a one story apartment structure having three or more dwelling units. A townhouse is an

apartment structure of two or more stories having three or more dwelling units that share common walls but not the floor and ceilings. Since both the row house and townhouse definition require that three or more dwelling units be contained within an apartment like structure, two detached single family dwellings do not fall within the definition of multi-plex and, accordingly, the provisions of MCC 11.15.7820(A) requiring design review for multi-plex are not applicable to the decision in question.

15. **DOES THE STRUCTURE EXCEED MAXIMUM HEIGHT RESTRICTIONS?**

MCC 11.15.2058(C) provides that the maximum structure height in the CFU district is 35 feet. Scott Rosenlund, on behalf of the applicants, testified that he had actually measured the structure and that the peak of the building was at 34 feet. Mr. McKenzie testified that he thought the building looked like it was taller than 35 feet. The plans, as submitted, were approved by the building department and found to be in compliance with the height requirements. The applicant presented evidence indicating that the building height was below the maximum allowed. Accordingly, I find the greater weight of evidence to indicate that the building height, in fact, was less than the maximum which could be allowed of 35 feet. Accordingly, I do find that the structure height complies with the height restrictions of the CFU zone.

16. **IS DRAINAGE FROM THE ROOF DIVERTED INTO A POND ON BALCH CREEK?**

The appellant contends that drainage from the roof should not be diverted to a pond on Balch Creek. The appellant reviewed the materials submitted in support of the application and assumed that the reference to drainage going into the "pond" was a reference to a pond in Balch Creek. At the hearing on February 15, 1995, applicant Scott Rosenlund testified that the "pond" in question is a natural drainage area. The water is not channeled directly into Balch Creek.

After remodeling, there will be two drains going into a drywell and the natural drainage swale area or "pond". Since the total roof area is not increasing, the amount of run-off will be the same and no diversion into Balch Creek is proposed. Accordingly, I find that the proposed roof drain system does not violate SEC criteria and does not provide a basis for overturning the Administrative Decision in this matter.

17. **ALLEGED VIOLATION OF COMPREHENSIVE PLAN POLICIES 14, 16, 16D, 16E, 16G AND 37**

A. <u>Policy 14: Developmental Limitations</u>.

Plan Policy 14 was set forth in full earlier in this Final Order of Findings and Fact document. This policy directs

development away from the areas with development limitations except upon the showing that design and construction techniques can mitigate any public harm or associated public costs, and mitigate any adverse effects to surrounding persons or properties. The county has furthered this policy by the adoption of specific ordinance provisions relating to hillside development and erosion control.

Testimony on March 24, 1995, indicated that the area for proposed development is one which occurs on a flat bench area where no steep slopes are present. The testimony and evidence also indicated that the remodeling project will not result in any public harm or public cost nor require mitigation as there are no offsite impacts. Any areas on the parcel as a whole with possible development limitations are not involved in or impacted by the remodeling. The proposed remodeling which is confined to the specific footprint of the existing dwelling structure is designed to utilize construction techniques which mitigate any public harm or associated public cost and negate any possibility of adverse impacts to surrounding persons or properties. Accordingly, I find that the proposed development complies with Policy 14 of the Comprehensive Plan.

B. Policy 16: Natural Resources.

The county's policy is to protect natural resources, conserve open space and to protect scenic and historic areas and sites. These resources are addressed within subpolicies 16(A) through 16(L).

Policy 16 appears to contain policies which are guidelines rather than mandatory approval criteria. For example, 16 B. provides that certain areas identified as having one or more significant resource values will be protected by the designation of Significant Environment Concern (SEC). This overlay zone will require special procedures for the review of certain types of development allowed in the base zones.

The adoption of the SEC code provisions and the application of those provisions to the parcel in question, implements the concerns and policies set forth in Policy 16 of the Comprehensive Plan. Thus, the findings above in Findings No. 12 and No. 13, that the applicant has complied with the SEC approval criteria supports a finding that the subject application also complies with Plan Policy 16, 16(D), 16(E), and 16(G). I do find that the Administrative Decision has considered these plan policies, and complies therewith.

C. Policy 37: Utilities.

The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that the

water and disposal system is adequate, that drainage is adequate and that energy and communication facilities are available.

Water and Disposal System. Evidence indicated that water is provided by private well, as are all other homes within the Balch Creek Basin. The well has provided adequate water during the 14 years the Rosenlunds have used it. The Rosenlunds' septic system was recently inspected and found adequate by Michael G. Ebeling, Senior Environmental Soils Inspector, Portland Bureau of Buildings. The remodeling will not increase the intensity of use or number of bedrooms on the site. It will only reconfigure existing space. Water and septic use will be unchanged.

Accordingly, I find that an adequate private water system exists on site and that the Oregon Department of Environmental Quality has approved of the subsurface sewage disposal system.

Drainage. Prior to remodeling, there were three roof drains going into a pond and drywell on the site. The water is gradually absorbed into the ground. After remodeling, there will be two drains going into the same drywell and pond. Because the total roof area is not increasing, the amount of run-off will be the same. Applicant, Scott Rosenlund, testified that the "pond" in question is actually a natural drainage area and that the run-off from the site does not go into the adjacent Balch Creek or negatively affect the water quality of said creek. Accordingly, a finding can be made that the drainage is adequate and that adequate provisions have been made to handle the water run-off and that the run-off from site will not adversely affect the water quality in the adjacent Balch Creek or drainage on adjoining lands.

Energy and Communications. Evidence in the file indicating requests for electrical inspections and present service by PGE, and phone numbers listed on the building permit application, indicate that there is an adequate energy supply to handle the needs of the proposal and that communication facilities are available.

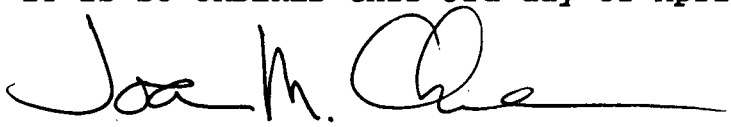
Accordingly, I do hereby make the finding that the water and disposal system, drainage system, and energy and communications systems are adequate for the proposed development.

CONCLUSION

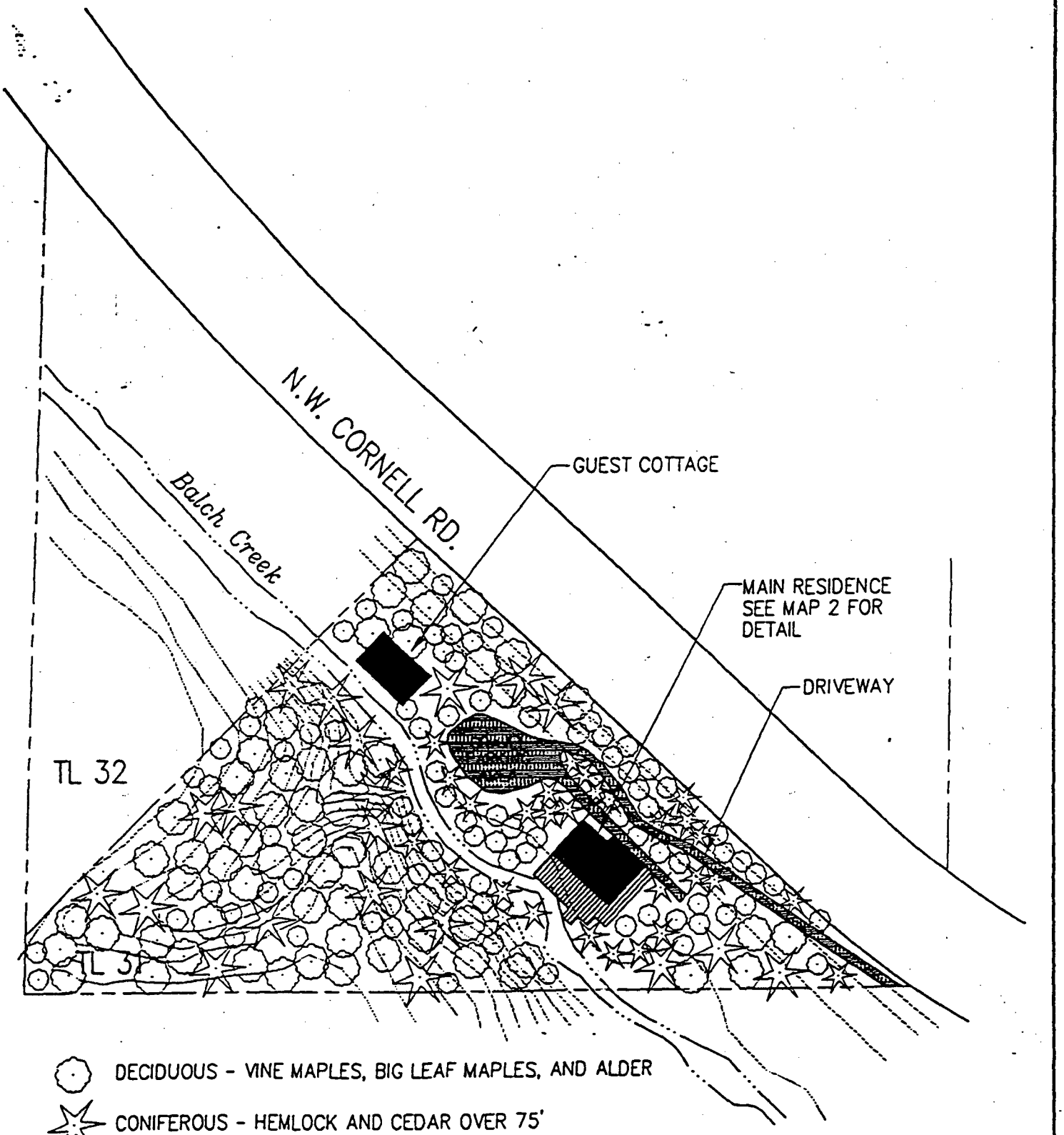
The Hearings Officer concludes that the proposed application for a SEC Permit will satisfy all applicable approval criteria so long as

the conditions of approval are complied with. Accordingly, appellant's appeal is denied and the Administrative Decision of Staff is affirmed, subject to the conditions of approval set forth at the beginning of this decision.

IT IS SO ORDERED this 3rd day of April, 1995.



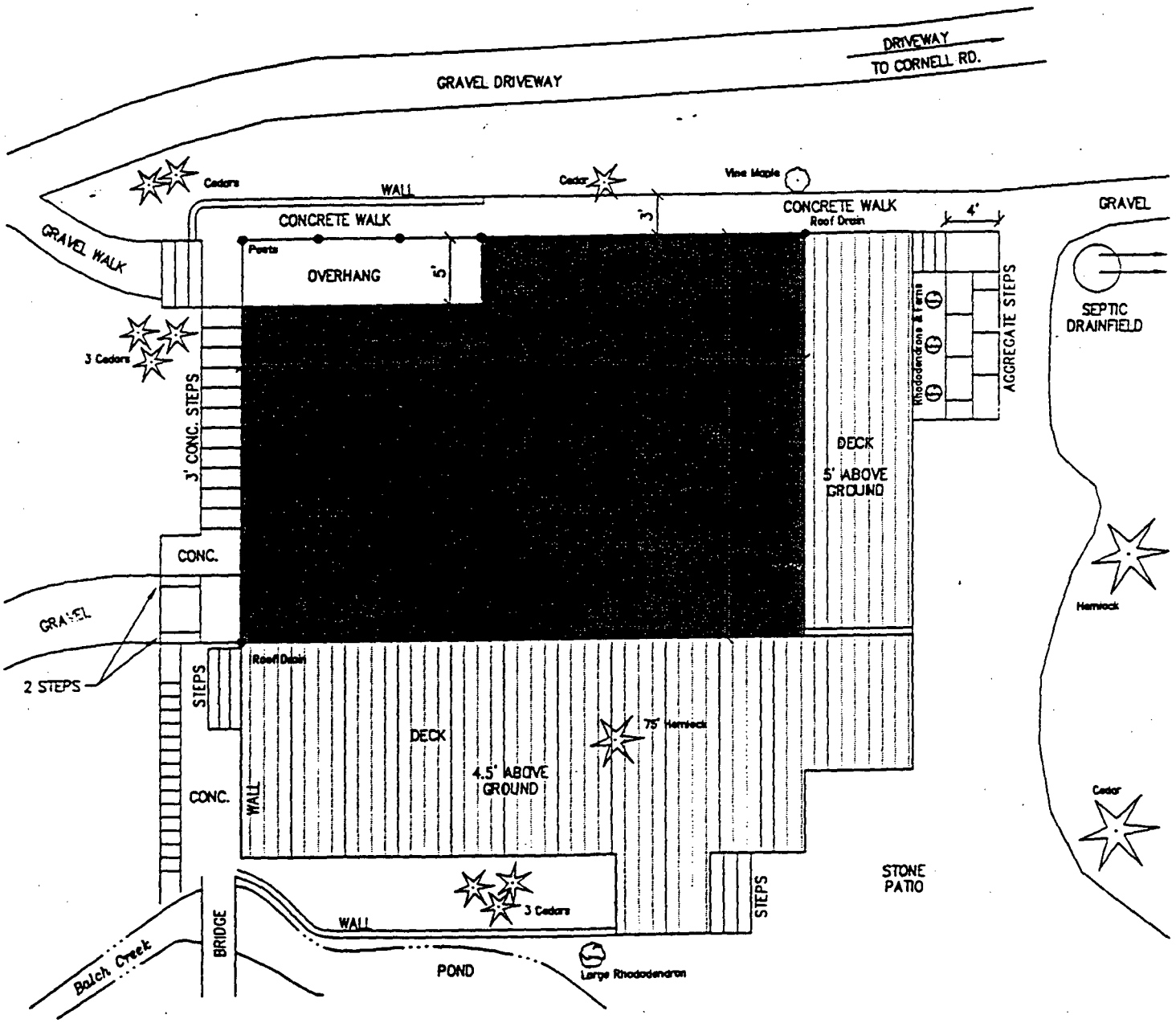
JOAN M. CHAMBERS
HEARINGS OFFICER



MAP 1
SITE PLAN
SEC Analysis - Rosenlund Residence

Winterowd Planning Services

SCALE: 1" = 80' APPROXIMATE



MAP 2
MAIN RESIDENCE
SEC Analysis - Rosenlund Residence

Winterowd Planning Services

SCALE: 1" = 12'

Meeting Date: APR 2 5 1995

Agenda No: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order for MC 1-94/LD 13-94

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: April 25, 1995

Amount of Time Needed: 15 minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sarah Ewing TELEPHONE: 248-3043
BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford - 6782

ACTION REQUESTED

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

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Findings in support of decision to uphold the decisions of the Hearings Officer and Transportation Division staff and approve a land partition, access by easement and variance to the Street Standards Code.

BOARD OF COUNTY COMMISSIONERS
1995 APR 18 AM 10: 19
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: Betsy Williams

P-3
4/25/95

PRESTON GATES & ELLIS
ATTORNEYS

JOHN H. NELSON

April 20, 1995

Ms. Debbie Bogstad
Office of Board Clerk
Multnomah County Board of Commissioners
1510 Portland Building
1120 S.W. Fifth Avenue
Portland, OR 97204

Re: *Proposed findings and final order*
MC 1-94/LD 13-94

Dear Ms. Bogstad:

I received the proposed final order and findings prepared by Gran Marque's lawyer, Timothy V. Ramis, for adoption by the Board of Commissioners in the above matter. I represent the appellant, Don Feldman, and offer the following comments on behalf of my client:

1. At Section II.A.3, the findings address appellant Feldman's point that the applicant intends to place another dwelling on Parcel 1, but did not include such a request in this application in order to avoid the more stringent subdivision regulations. In response, the findings refer to an "agreement" (to which Gran Marque is presumably a party) that limits development of this property to a total of three houses. This agreement has not been entered into the record, nor has the appellant had an opportunity to review this agreement. If the Board intends to adopt findings relying on this agreement, appellant respectfully requests an opportunity to review the agreement and further requests that it be entered into the record.

2. Appellant raised throughout the proceedings the failure of the applicant to demonstrate that Parcel 3 is suitable for development. In Section I (Introduction) the findings adopt by reference a memorandum drafted by Robert W. Price of David Evans & Associates, in which Mr. Price opines on the suitability of Parcel 3's soils, slopes and geologic characteristics. The findings also refer to Mr. Price several times regarding this issue. *See* Final Order at 5, 9, 10 and 24. Mr. Price, however, is a planner. He did not offer any credentials establishing his expertise in the geotechnical field. These findings, therefore, cannot rely on Mr. Price's "expert" opinion to support conclusions about geotechnical issues.

Appellant appreciates the opportunity to comment on the proposed final order and findings. By providing these comments, however, appellant does not waive any right to further raise or challenge any finding, conclusion or issue, including the deficiencies noted in this correspondence.

Very truly yours,

John H. Nelson

N/A:jhn
cc: client
Timothy V. Ramis, Esq.
J:\JHN\33186-00.001\8ML0X9.DOC

O'DONNELL RAMIS CREW CORRIGAN & BACHRACH

JEFF H. BACHRACH
THEODORE W. BAIRD
PAMELA J. BEERY
MARK L. BUSCH
DOMINIC G. COLLETTA**
CHARLES E. CORRIGAN*
STEPHEN F. CREW
GARY F. FIRESTONE*
WILLIAM E. GAAR
G. FRANK HAMMOND*
MALCOLM JOHNSON*
MARK P. O'DONNELL
TIMOTHY V. RAMIS
WILLIAM J. STALNAKER
TY K. WYMAN

* ALSO ADMITTED TO PRACTICE IN WASHINGTON
** ADMITTED TO PRACTICE IN CALIFORNIA ONLY

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

PLEASE REPLY TO PORTLAND OFFICE

CLACKAMAS COUNTY OFFICE
181 N. Grant, Suite 202
Canby, Oregon 97013
TELEPHONE: (503) 266-1149

VANCOUVER, WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 570
Vancouver, Washington 98660-2964
TELEPHONE: (360) 699-7287
FAX: (360) 696-2051

JAMES M. COLEMAN
SUSAN J. WIDDER
SPECIAL COUNSEL

April 25, 1995

1995 APR 25 AM 11:24
MULTNOMAH COUNTY
OREGON

Ms. Deborah L. Bogstad
Staff Assistant
Office of the Board Clerk
1120 S.W. Fifth, Suite 1510
Portland, OR 97204

Re: Proposed findings and final order
MC 1-94/LD 13-94

Dear Ms. Bogstad:

I am writing in response to comments made in a letter from John H. Nelson to you, dated April 20, 1995.

1. Nelson requests an opportunity to review the agreement not to build another dwelling on Parcel 1.

There is evidence in the record in the form of testimony that there is an agreement that limits the development of this property to a total of three houses. The testimony was not rebutted or challenged by the appellant's attorney, and the hearing is now closed. Moreover, there is agreement among the experts on both sides that steep areas of the site are not suitable for another house. Since the record is closed, this request for further evidentiary debate should not be granted.

2. Nelson states that Robert W. Price is not an expert geotechnician, and cannot be the basis relied upon for a finding the suitability of Parcel 3.

As clearly stated in the Final Order, the basis for finding that Parcel 3 is suitable is the applicant's written geotechnical evidence. Mr. Price is a development expert who has the ability to understand, describe, interpret and answer questions about the applicant's written geotechnical reports in the record. In fact, there is evidence in the record that the geotechnical reports were sent to Price as the key consultant on the project. It was his role to interpret the geotechnical evidence and other information in light of the approval criteria. The citation in the findings to Mr. Price's remarks, as well as those of the geotech, are perfectly appropriate.

Conclusion

For these reasons, I urge the Board to adopt the Final Order as written.

Very truly yours,

Timothy V. Ramis

TVR/gws

cc: John Nelson
Gran Marque, Inc.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Findings in support of decision to uphold the Decisions of the Hearings Officer and Transportation Div. staff and approve a land partition, access by easement and variance to the Street Standards Code	**FINAL ORDER** **MC 1-94 / LD 13-94**

1. INTRODUCTION

These applications were approved by the Multnomah County Hearings Officer December 23, 1994. The decision was appealed, and the Board took testimony in a de novo hearing February 14,1995. The Division of Transportation variance to the Street Standards Code was also appealed and reviewed at this hearing. The Board also reviewed the record below. During the hearing, the Board considered the arguments and evidence of the appellant and attorney, and the response from the applicant's attorney, traffic engineer and planning consultant. There was no other testimony. The Board voted 4-0 to deny the appeal and uphold the Hearings Officer approval of the partition and the access to the partition, and to uphold the Division of Transportation variance to the Street Standards Code requirements for the private street that provides the access.

The Board adopts by this reference the findings of the December 23 Hearings Officer Final Order, including all conditions of approval, and exhibits #1 (staff report findings), #2 (memorandum from Robert W. Price) and #3 (Division of Transportation access variance), excepting those portions of the variance decision that are inconsistent with the Hearing Officer's decision. As the county's governing body, the Board adopts the specific interpretations of the code decided by the Hearings Officer. In addition, the Board adopts the following supplemental findings based on the testimony and evidence presented at the February 14 hearing.

II. SUPPLEMENTAL FINDINGS FROM THE FEBRUARY 14 DE NOVO HEARING

A. GENERAL FINDINGS

1. The appellant's representative raised broad questions about county policy regarding access and land division. This decision and these findings reflect the Board's interpretation and application of the code in this particular application.

2. This project will add only two dwellings, and in this low density neighborhood, a full width urban street is not necessary. There was testimony from the applicant's representatives that there are no sidewalks in this area, including none on the public street, S.W. Military Road. The applicant's traffic expert testified that the project would create only two additional vehicle trips during the peak hour traffic on the access road. This fact was not disputed. This evidence is not sufficient to show that a condition imposing a wide street with improvements would be roughly proportional to the impact of the development.

3. The appellant's representative argued that because Parcel 1 is large enough for two lots in the R-30 district, there is the potential for a third new house on this property in the future. The appellant claimed that the applicant was "hiding" this additional house to avoid meeting more stringent subdivision regulations. The applicant's undisputed testimony established that the property is subject to an agreement that limits development to a total of three houses, including the existing house. The site plan shows the existing dwelling is nearly centered on Parcel 1. We do not believe it is practical or likely that another dwelling comparable to those in the area will meet required setbacks and other standards in the R-30 district. For these reasons, the Board finds that further division of this property is unlikely, and that only two additional dwellings will result from this approval.

4. The appellant testified that the rights and wishes of the neighboring property owners should be considered, and that the benefits to the existing neighborhood should control whether this application is approved. The Board understands these comments, but finds

that the application was properly reviewed under the County's land use and land division regulations and the Comprehensive Plan. The Board also notes that the narrow street approved through administrative variance is in keeping with the appellant's stated wish to avoid a wide street in this neighborhood.

5. The validity of the access easements used to support this application has been questioned by the appellant. We interpret our code to mean that the requirement for suitable access to the subject property (Section 11.15.2844(G)) can be satisfied when an applicant submits documentation that on its face shows the subject property is served by an easement. The applicant's attorney submitted two memoranda and real estate documents concerning the legal right to use the road easements serving this parcel. (See August 3 memorandum from Timothy V. Ramis.) The Hearings Officer held that "the legality of the easement was not within the Hearings Officer's jurisdiction to decide, and that this issue could be argued in an appropriate forum if it was in dispute." (Final Order, page 8) The easements are currently in use for access to the subject property and to neighboring properties. Arguments that the easement is not valid or that someone is exceeding the scope of the easement are beyond the scope of the governing body's land use authority.

B. SPECIFIC FINDINGS FOR MC 1-94/LD 13-94

1. COMPREHENSIVE PLAN POLICIES

The Notice of Review alleged that the Hearings Officer decision did not comply with Plan Policies 14, 24 and 33a. Based on review of the record, and the testimony February 14, the Board finds that these applications comply with the policies described in the November 17 Staff Report (pages 10-14), and with the following policies:

a. Policy 14 Development Limitations[1]

The notice of review alleged a failure to comply with this policy. At the hearing, the appellant's attorney cited two areas of concern on the site, steep slopes and potential soil movement.

As it applies here, Policy 14 identifies slopes exceeding 20% (Subsection A) and land subject to movement (Subsection F) as development limitations that must be mitigated prior to development. The policy also suggests that development be directed away from these areas. The record shows that a portion of the subject property (the westernmost area of proposed Parcel 3) contains slopes in excess of 20% and has some land that may be subject to movement. In such circumstances, Policy 14 requires either that development be directed away from the problem areas or a showing that design and construction techniques can mitigate any public harm and mitigate adverse effects to surrounding persons or properties.

The record includes the written testimony of experts from each party on the issues of slope and stability. Both experts, David Rankin for the applicant and Roger Redfern for the appellant, are well qualified. Both visited the site, and both agreed that there are steep slopes and potentially unstable conditions on the western portion of the site. Rankin's original report (March 25, 1994) concluded that the proposed parcels are suitable for residential structures, and recommended several design and construction techniques to mitigate any adverse effects. The list of techniques included placing the footprint of the dwellings away from the steeper slopes as close to the east line of the parcels as possible, minimizing tree removal, limiting site grading to minimize cuts and fills, and hydro-seeding all newly graded areas. Rankin suggested techniques to stabilize the building foundations, and suggested a method of drainage to remove runoff from the site. In his response (July 20, 1994), Redfern generally agreed with Rankin's assessment of

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[1] *The County's policy is to direct development and land from alterations away from areas with development limitations except upon a showing that design and constructions techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties." The policy lists six areas of development limitations. Only two were addressed by the appellant: slopes exceeding 20% (subsection A) and land subject to slumping, earth slides or movement (subsection F).*

the geology and soils, but felt the soils on the steeper portions of the site may be less stable and more attention should be given to vegetation and drainage. Rankin issued a rebuttal to Redfern's report, on August 3, 1994. Rankin included a map showing the possible building areas on Parcels 2 and 3. Rankin pointed out that there are no plans to remove any trees on the steepest portion of the property, as suggested by Redfern. Rankin agreed with Redfern's point that on-site drainage collection disposal does not appear feasible and proposed a system for removing water runoff for off-site disposal. Subsequently, an engineer at David Evans & Associates (David Bick) wrote a letter that certifies the feasibility of the drainage system described by Rankin. All of the points raised the Redfern were addressed convincingly by Rankin and Bick, and summarized by a planner at Evans & Associates (Robert Price memorandum of August 3). In addition, the applicant submitted a survey by an arborist who concluded that the proposed access drive on the subject property could be constructed with minimal loss of mature trees on the site.

The applicant also produced a hearing witness from the engineering company (Robert Price) whom we could cross examine. The appellant did not produce an expert witness who could be questioned, not at the Hearings Officer level or before the Board, and therefore appellant's evidence is less persuasive.

In sum, the applicant has done a more complete and thorough analysis of the site problems, and found ways to mitigate impacts. We are persuaded by this evidence. In response to this standard, the applicant has presented expert testimony that explains how development of the site can be directed away from the steeper slopes, and how the potential public harm and potential adverse impacts on surrounding persons or properties can be mitigated. This satisfies the standard.

We do not interpret the standard to require complete elimination of all possible impacts. Rather, it requires, first, that development be directed away from problem areas as this application does. Second, the reference to mitigation requires reasonable engineering measures to assure that impacts will be minimal. This is also done in this case.

At the hearing the appellant's attorney repeated that Parcel 3 contains slopes in excess of 30 degrees, and that Parcel 3 is unsuitable for development. We are convinced by the applicant's rebuttal and expert testimony in the record that only a portion of Parcel 3 has steep slopes, and that the northeast portion of the parcel is suitable for housing development. We specifically agree with the Hearings Officer's findings on Page 5 of the decision.

b. Policy 22 Energy Conservation[2]

This policy promotes the conservation of energy, through efficient development. The applicant proposes development of two additional houses in an existing residential area that will improve and use an existing private street for access. This is in keeping with Subsection B of this policy, which calls for "increased density and intensity of development in urban areas." We find that infill development such as this is also energy efficient because the project will reduce new construction energy use by making use of the existing transportation facilities, with minimal operational impact on those facilities. The street layout and lot pattern will require minimal tree removal, in keeping with maintaining the existing natural environment on the property. There is persuasive testimony from the applicant's traffic engineer that the proposed private street will continue to be safe and useable for pedestrians and bicyclists. For these reasons, the Board finds that all of the factors listed in the policy have been considered.

This is one of the policies identified by the applicant as the foundation of the county's infill policy. Another, Policy 35, calls for a safe, efficient public transportation system by increasing overall density in the urban area. (See subsection (e) below for further findings on Policy 35.) The Board agrees with the applicant's attorney that the proposed partition and development of two additional houses in this neighborhood complies with the County's infill policy embodied in Policies 22 and 35.

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[2] *The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In quasi-judicial cases such as this, the policy requires a finding that several factors have been considered, including (A) the development of energy-efficient land uses; (B) increased density and intensity of development in urban areas; (C) an energy efficient transportation system; (D) street layouts that utilize natural environmental conditions to advantage; and (E) allow greater flexibility in the development and use of renewable energy resources.*

c. Policy 24 Housing Location[3]

The notice of review alleged a failure to comply with this policy, but the appellant did not explain why at the hearing.

The policy has several elements regarding housing location. We interpret the basic policy to accommodate housing, in accordance with the applicable policies of the plan, and with the locational criteria detailed in Policy 24, not to prevent infill development. As described elsewhere in these findings (Section II.B.1) and in the appealed decisions, we find that these applications do comply with applicable plan policies. We also find the proposal satisfies the locational criteria under Policy 24, for reasons that follow.

First, under Subsection B, this is a minor residential project because it will serve fewer than 50 people. The housing type is single family, and the proposed density of approximately one dwelling per acre is well within the maximum allowed of 6.5 dwellings per acre.

The proposed development satisfies the locational criteria under Subsection B.2, which are underlined in the outline below, for the following reasons:

24.B.2.A. Access.

(1) "Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and projected traffic counts, speed limits, and number of turning movements."

The appellant argued that the proposed narrow street and additional traffic would be unsafe, especially for children who play in the street. However, the applicant's traffic engineer effectively countered this claim. She testified that there is very good sight distance for safety and operation of this private street, considering the low volume and low speeds of traffic. The engineer testified that the two additional dwellings would produce an additional 20 vehicle trips a day, for a total of 80 vehicle trips a day. During the busiest hour, she said, the new dwellings

[3] *The county's policy is to accommodate the location of a broad range of housing types in accordance with the applicable policies of this plan, and with the locational criteria applicable to the project scale and standards. The proposed development of two dwellings is a minor residential project. The locational criteria for this use include access, site characteristics and impact on adjacent lands.*

would increase traffic from one vehicle every fifteen minutes to one vehicle every ten minutes, for a new total of 6 trips in the peak hour. The engineer testified that the design capacity of a 20-foot wide two-lane street such as this is more than 400-500 trips per day. Thus the 80 trips per day expected on this street is well below the capacity. As shown on the tentative plan, only four dwellings are served by the existing street, which minimizes the number of turning movements. For these reasons, we find that the proposed access will not cause dangerous intersections or traffic congestion, in compliance with this subsection.

(2) "There is direct access from the project to a public street."

The Board adopts the interpretation of the Hearings Officer on this standard. The Hearings Officer held that "[t]he proposed lots have direct access to Military Road, a public street, by way of a set of private easements which burden three underlying tax lots. From these existing easements, the applicants are proposing the extension of an additional easement to serve parcels 2 and 3. The Hearings Officer finds that the project has direct access to a public street (Military Road) via the private easements described." The Board agrees, with the additional finding that the existence of the present driveway over these easements supports continued reliance on these easements for the proposed access street. The proposed access will not change the direct access afforded the other properties served by the existing private access road over a set of private easements. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

24.B.2.B. Site Characteristics.

"(1) The site is of the size and shape which can reasonably accommodate the proposed and future allowable uses in a manner which emphasizes user convenience and energy conservation."

As shown on the tentative plan, the size and shape of the site suit the proposed development. The access drive on the subject property uses the shortest and most convenient route to Parcels 2 and 3, with minimal disruption of the existing housing on Parcel 1. This policy emphasizes energy efficiency. As discussed above under Policy 22, this project promotes energy

conservation by using the existing transportation infrastructure where possible. The proposed parcels exceed the minimum sizes for the R-30 district, and are large enough to allow construction of a dwelling suitable to this neighborhood while avoiding the steep slopes on the west end of the site. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

"(2) The unique natural features, if any, can be incorporated into the design of the facilities or arrangement of land uses."

The appellant testified of his concern that large fir trees on the subject property will be cut down to make way for the driveway to Parcels 2 and 3. The applicant has submitted expert testimony that describes how the natural features of the site can be maintained. A tree expert testified that the proposed street can be improved with minimal removal of large trees, which means these unique features will be incorporated into the development. The building envelopes submitted by the applicant's geotechnical engineer avoid development on the steep slopes on the west end of the property, thus preserving that natural feature as well. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

"(3) The land intended for development has an average site topography of less than 20% grade, or it can be demonstrated that through engineering techniques, all limitations to development and the provision of services can be mitigated."

The appellant's attorney and soil expert (Redfern) alleged that the proposed Parcel 3 is unbuildable because of steep slopes and soil instability. The applicant's geotechnical engineer (Rankin) responded to these allegations point by point, and identified design and construction techniques that will mitigate potential impacts caused by the steep slopes. Rankin submitted potential housing sites on the proposed parcels that avoid the steep areas of the site entirely. Another engineer, David Bick from Evans and Associates, certified that the drainage system proposed by Rankin would be feasible to remove runoff from the property when it is developed. In addition, the applicant provided a representative of Evans & Associates (Price) to testify and answer questions before the Hearings Officer and the Board. Redfern's expert testimony was in writing only, and it came early in the approval process. Redfern did not rebut the Rankin

response, including the building envelopes, or the drainage plan certified by Bick. Based on the building envelopes suggested by Rankin and the topography shown on the tentative plan, Price testified that there is plenty of buildable land under 20% slope on parcel 3. The applicant's engineering testimony was more complete and on point than the appellant's. (See discussion under Policy 14 for further findings on this point, Section II.B.1.a)

For these reasons, we find that the applicant has demonstrated through expert testimony that all development limitations can be mitigated through engineering techniques. Regarding limitations on services, the record includes evidence that services are not limited. The Hearings Officer's conditions satisfy the access requirements of the Lake Oswego fire marshall for fire fighting services, and the record includes evidence that adequate police, water and sewer services can be provided.

For all of these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

24.B.2.C. Impact of the Proposed Change on Adjacent Lands.

"(1) The scale is compatible with surrounding uses."

The scale of the proposed development matches the character and quality of this low density residential neighborhood. The three parcels resulting from this decision all exceed the minimum lot size required in the R-30 zoning for this area. The tentative plan shows that most of the parcels in this neighborhood are similar to the proposed parcels or larger. All of the buildings indicated on the plan are large. The variance to the street standards width and improvement requirements means the development will be relatively unobtrusive with only minor modifications to the existing driveway. In addition, the fact that the street improvements will be made within the existing 20-foot wide easement will mean a minimal change in the character of the neighborhood.

The appellant argued that the proposed narrow street and additional traffic would be unsafe, especially for children who play in the street. The applicant's traffic engineer has testified

convincingly that existing access road will still be safe and adequate with the proposed development. At peak hour of traffic, the engineer said that traffic will only increase from four to six trips, or from one trip every fifteen minutes to one trip every ten minutes. The engineer said the street has very good sight distance and the narrow width of the street will hold vehicle speeds to 15 to 20 miles an hour. For these reasons, she said, the street will be safe for pedestrians, for children and for bicyclists, at a width of twenty feet, without sidewalks. The applicant's witnesses also pointed out that there are no sidewalks in this neighborhood now, not even on Military Road. The appellant testified that he does not desire a wider street.

The applicant submitted testimony from an arborist that the proposed access street can be constructed without removing the large trees, thus maintaining that aspect of the neighborhood character.

For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

"(2) It will reinforce orderly and timely development and delivery of urban services."

The improvements to the access street will benefit all the properties served by the street by meeting the fire marshall's access requirements. The applicant has submitted evidence that existing urban services can be extended to serve the proposed development, including water, sewer, police and fire. Clearly infill development will reinforce orderly provision of services because of its use of facilities already in place. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

"(3) Privacy of adjacent residential developments can be protected."

The tentative plan shows that the partition is designed to minimize the impact on adjacent properties. The access point for the two new dwellings is at the extreme northeastern corner of the subject property, following the existing access route. The driveway for the new dwellings will turn in front of only a corner of the appellant's property, which is located directly on the easement. In addition, as demonstrated by the staff's slide presentation February 14, the appellant's property

is buffered from the new development by the existing house on the subject property. The new housing will be further separated from the appellant's house by Parcel 1, which contains more than an acre, and by the trees on Parcel 1. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

"(4) The project can be integrated into the existing community."

The project will provide two additional residences but will use the existing access road with minimal improvements. As discussed under (2) above, the increase in motor vehicle traffic will also be minimal, with an increase of only two vehicle trips during the peak hour of the day, according to the applicant's traffic engineer.

The Board recognizes that this is a high quality residential area. The proposed lots are large enough to support this type of residence. For these reasons, the Board finds that this subsection of Policy 24 is satisfied by this project.

For these reasons, the Board finds that the development satisfies the locational criteria, and therefore complies with Policy 24.

d. Policy 33a Transportation System[4]

The appellant alleged failure to comply with this policy in the notice of review, but did not explain why at the hearing.

This policy calls for a balanced, safe and efficient transportation system. The policy requires us to support proposals which implement the comprehensive plan (Subsection A), best achieve the objectives of a specific project (Subsection B), protect the quality of neighborhoods (Subsection D), and provide a safe, functional and convenient system (Subsection F).

Based on review of the record, and testimony at the hearing, we do not find a failure to comply with this policy. The applications implement the comprehensive plan, as detailed in these

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[4] *The County's policy is to implement a balanced, safe and efficient transportation system. In evaluating parts of the system, the County will support proposals which implement the comprehensive plan (A), best achieve the objectives of the specific project (B), protect social values and the quality of neighborhoods and communities (D), and provide a safe, functional and convenient system (F), among other reasons.*

findings (Section II.B.1) and in the appealed decisions. The Hearings Officer has noted that this property could not be developed without the proposed access. We agree with the applicant's attorney that it is unlikely that a wider easement could be obtained crossing the several private properties already developed along the long-standing 20-foot easement. Thus this access street is necessary to achieve the objectives of this proposal. The continued use of a "skinny" street will help to maintain the quality of this low-density neighborhood despite the addition of two new homes.

The appellant stated his concern that the proposed narrow street and additional traffic would be unsafe, especially for children who play in the street. The applicant's traffic engineer has provided persuasive testimony that the proposed street will be safe, functional and convenient, because there is good sight distance, low traffic volumes and speeds, and the existing system will continue to be used. The streets surrounding the site are similar to the proposed street, without sidewalks or on-street parking. The upper branch of this access off Military Road (developed under LD 10-93) was improved to a width of 20 feet or less, without sidewalks.

We agree with the findings of the Transportation staff that a narrow street is appropriate here, because of the low traffic volume, low traffic speeds, adequate sight distance and the fact that there are no sidewalks in the surrounding streets.

For these reasons, the Board finds that these applications comply with Policy 33a.

e. Policy 35 Public Transportation[5]

This policy supports a safe, efficient and convenient public transportation system by increasing overall density levels in the urban area. (Subsection A) The applicant's team of experts has testified that the proposed street can safely handle the additional traffic generated by the two proposed dwellings. It would be inefficient to require additional width or street improvements when they are not needed for safety. For these reasons, the proposed density

[5] *"The County's policy is to support a safe, efficient and convenient public transportation system by:*
A. Increasing overall density levels in the urban area...."

increase of two new dwellings satisfies this policy.

f. Policy 37 Utilities[6]

The applicant submitted comments from the water and sewer districts serving this area the area that there is adequate capacity to serve the proposed development, and that the services can be extended to connect with the subject property, thus satisfying subsection A.

The appellant's geologist (Redfern) stated that the subject property site cannot adequately handle runoff on site. The applicant's engineers have certified a drainage plan that will remove runoff from the development without damage to the site itself or to adjacent properties. We believe this report, and it has not been disputed by Mr. Redfern.

The appellant raised concern about a spring located to the west of the subject property. The drainage plan certified by David Bick would discharge runoff from the site below the spring. For these reasons, the Board finds that adequate provisions can be made to remove water run-off from the site, in compliance with subsection F. The Board also finds that the run-off from the site will not adversely affect water quality on adjacent lands, in compliance with subsection G, based on Bick's report. The other findings under Policy 37 are found in the November 17 Staff Report, pages 12-13. (Exhibit 2 of the Hearings Officer Final Order.)

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[6] *"The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:*

* * *

A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity;

* * *

F. The water run-off can be handled on the site or adequate provisions can be made; and

G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

* * *"

g. Policy 38 Facilities[7]

The appellant alleged a failure to comply with this policy prior to the initial July 20 hearing. The policy requires findings prior to approval. The Board makes the following findings in compliance with this policy. The applicant has submitted comments from the Riverdale School District 51JT, as required by Subsection A. The applicant has submitted testimony from the Lake Oswego Fire Marshall that there is adequate water pressure and flow for fire fighting purposes, as required by Subsection B. The applicant has submitted a letter from the fire marshall commenting on the proposal, as required by Subsection C. Finally, the applicant has submitted comments from the Multnomah County Sheriff that the level of police service is adequate to serve the proposed project, as required by Subsection D. (See also the November 17 staff report, page 13.)

Conclusions on Comprehensive Plan Policies

In our interpretation of Comprehensive Plan policies, we consider them individually and then balance them against each other. Under the above findings, each policy is satisfied. Taken as a whole, we also find that in balance the application satisfies the Comprehensive Plan.

2. MCC 11.15.2844(G)[8]

The primary approval standard for the access decision (MC 1-94) is found in MCC 11.15.2844(G). Under that section, the Hearings Officer must find the access to the subject property is "suitable." In determining suitability, the Hearings Officer reviewed the subdivision standards and plan policies that affect the street system. The Hearings Officer did not rule on

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[7] *"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 in accordance with the standards of the jurisdiction providing police protection."

[8] *"All lots in this district shall abut a street, or shall have such other access held suitable by the Hearings Officer."*

the merits of the Street Standards Variance, but held that if the variance were granted, then the partition access would be suitable. The Board finds that there is evidence to support the finding of suitable access, for the reasons that follow.

The appellant's representative argued that the Street Standards Code requires a full width street for this development, including a 50-foot right-of-way, 28-32 foot pavement width, parking on both sides, curbs, and sidewalks.

The Hearings Officer agreed that these standards would apply unless a variance to the street standards code were granted. The applicant was granted a variance in a Division of Transportation administrative decision. We affirm the administrative variance on appeal, and find that the variance supports a findings that the access to the proposed partition is suitable under MCC 11.15.2844(G).

We have adopted those findings of the administrative variance that are consistent with the Hearings Officer's decision. The Transportation staff found that this is not a typical urban setting with normal residential densities that would need on-street parking and sidewalks. Rather, it is a unique area of the county developed with homes located on very large lots. The low density means low traffic volumes and minimal pedestrian/auto conflicts.

The applicant's traffic engineer testified at the hearing and in the record that the proposed 20-foot wide street will be safe because of low traffic volume and low vehicle speeds, and the minimal impact of two additional homes in this neighborhood. The traffic engineer testified that the additional traffic caused by the development would be two vehicle trips in the peak hour, for a total of six trips in the peak hour. The Lake Oswego Fire Marshall has approved a 20-width for this street. The county Division of Transportation found that the street qualifies for a variance to the width, curb and sidewalk improvements that would be required in a more urban setting.

The appellant, on the other hand, offered no expert testimony to deflect the applicant's arguments. The appellant argued that the proposed narrow street would be unsafe, primarily because children play in the street. While the Board appreciates his concern for the safety of

children in this area, we find the expert testimony overwhelmingly supports the conclusion of the Hearings Officer that the street will provide adequate access and will remain safe when this property is developed with two new dwellings as planned.

3. TRANSPORTATION PLANNING RULE (OAR CHAPTER 660 DIVISION 12)

a. The appellant's attorney alleged that sidewalks, bike paths and parking on this street would be demanded by new development in this area in the future. The attorney claimed that the state's Transportation Planning Rule (TPR) requires the County to consider future needs up front in the development process. The appellant offered no explanation or analysis of this claim.

OAR 660-12-055(3)[9] requires that this County must adopt land use and subdivision ordinances or amendments required by OAR 660-12-045(3), (4)(a)-(e) and 5 (d), by May 1994. If not, the county must apply those TPR rules directly to all land use decisions and limited land use decisions. The County has not adopted the required amendments, so the rules apply directly to this decision.

[9] *(3) ..."By May 8, 1994 affected cities and counties within MPO areas shall adopt land use and subdivision ordinances or amendments required by OAR 660-12-045(3), (4)(a)-(e) and (5)(d). Affected cities and counties which do not have acknowledged ordinances addressing the requirements of this section by the deadlines listed above shall apply OAR 660-12-045(3), (4)(a)-(e) and (5)(d) directly to all land use decisions and limited land use decisions."*

I. OAR 660-12-045(3)[10]

Under this subsection, the County must require the following improvements for new residential projects:

(a) Bicycle parking facilities as part of new multi-family residential developments of four units....

(b) Facilities providing safe and convenient pedestrian and bicycle access within and from new subdivisions, planned developments.... This shall include:

(A) Sidewalks along arterials and collectors in urban areas;

(B) Bikeways along arterials and major collectors;

(C) Where appropriate, separate bike and pedestrian ways to minimize travel distance...."

None of these subsections apply to this application because it is a partition, not a subdivision; it is not multi-family; and it is not located on an arterial or major collector. Furthermore, it is not appropriate under subsection (C) to provide separate facilities for the reasons discussed in the staff variance decision: the area was developed as a rural area with

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[10] *"(3) Local governments shall adopt land use or subdivision regulations for urban areas and rural communities to require:*

(a) Bicycle parking facilities as part of new multi-family residential developments of four units or more, new retail, office or institutional developments, and all transit transfer stations and park and ride lots;

(b) Facilities providing safe and convenient pedestrian and bicycle access within and from new subdivisions, planned developments, shopping centers and industrial parks to nearby residential areas, transit stops, and neighborhood activity centers, such as schools, parks and shopping. This shall include:

(A) Sidewalks along arterials and collectors in urban areas;

(B) Bikeways along arterials and major collectors;

(C) Where appropriate, separate bike or pedestrian ways to minimize travel distances within and between the areas and developments listed above.

(c) For purposes of subsection(b) of this section, "safe, convenient and adequate" means bicycle and pedestrian routes, facilities and improvements which:

(A) Are reasonably free from hazards, particularly types or levels of automobile traffic which would interfere with or discourage pedestrian or cycle travel for short trips;

(B) Provide a direct route of travel between destinations such as between a transit stop and a store; and

(C) Meet the travel needs of cyclists and pedestrians considering the destination and length of trip.

large lots with narrow access roads and no sidewalks. Because density is low, pedestrian/auto conflicts are low.

Subsection 045(3)(c) explains the detail requirements for implementing (b); subsection 045(3)(d) addresses internal circulation in office and commercial developments. Neither apply to this application.

Even if subsection (b) did apply, the proposed access meets the definition of "safe, convenient and adequate" pedestrian and bicycle access in subsection (c), because the applicant's traffic engineer has shown that it is safe to use this private street for pedestrians and bikes, due to continued low traffic volumes, low traffic speeds, good sight distance and the historic use of this quiet rural lane by pedestrians and bicyclists. Therefore, the street is reasonably free from hazards and should continue to meet the same travel needs of pedestrians and cyclists as the existing street. As noted by the applicant's traffic engineer, sidewalks and bikeways are not required private local streets such as this. The TPR only requires sidewalks along arterials and collectors.

For these reasons, it is clear that the rules required under this subsection do not have any effect on the narrow private access street in this application. Therefore, we find that OAR 660-12-045(3) does not apply in this case.

II. OAR 660-12-045(4)(a)-(e)[11]

OAR 660-12-045(4) requires the County to adopt regulations to support transit in urban areas. Subsection (a) concerns the design of transit routes and transit facilities, "as appropriate." It is not appropriate to require such facilities in this case because this proposal adds only two single-family residence in a low density residential area, with access over an existing dead end, narrow private street. In addition the record shows that there is no bus service on Military Road and that the site is at least 1/2 mile from the nearest transit route. This is a low density residential area application will add two new single family dwellings to an existing private street. For these reasons, it is not appropriate to require transit related facilities, and this subsection is not violated by this approval.

Subsection (b) deals with building orientation of new retail, office and institutional buildings. Because this application concerns two new single-family residential buildings, not retail, office or institutional buildings, this subsection is not violated by this development.

Subsection (c) requires preferential parking for van pools in new industrial and commercial developments. Because this development proposes two new single-family dwellings, and not industrial or commercial development, this subsection is not violated by this approval.

Subsection (d) deals with redeveloping existing parking areas into pedestrian access for transit routes "where appropriate." It is not appropriate to redevelop existing parking areas in this

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[11] *To support transit in urban areas containing a population greater than 25,000, where the area is already served by a public transit system or where a determination has been made that a public transit system is feasible, local governments shall adopt land use and subdivision regulations to require:*

(a) Design of transit routes and facilities to support transit use through provisions of bus stops, pullouts...as appropriate;

(b) New retail, office and institutional buildings at or near existing or planned transit stops to provide preferential access to transit...

(c) New industrial and commercial development to provide preferential parking...

(d) An opportunity for existing development to redevelop a portion of existing parking areas for transit oriented uses...

(e) Road systems for new development which can be adequately served by transit, including provision of pedestrian access to existing and future transit routes. This shall include, where appropriate, separate bicycle and pedestrian ways to minimize travel distances."

residential neighborhood because there are no parking areas on the narrow private access street (and none will be added), only private parking for the individual dwellings. There is no bus line in the immediate vicinity. For these reasons, this subsection is not violated by this approval.

Subsection (e) concerns road systems for new development which can be adequately served by transit, including pedestrian access to existing and future bus routes. The applicant's traffic engineer testified convincingly that the private access street will remain accessible and safe for pedestrians and bicyclists because of low motor vehicle traffic volumes and low speeds, with good sight distance. Parking will not be allowed along the private street, as required by the fire marshall. For these reasons, this subsection is not violated by this approval.

Based on the discussion above, we find that OAR 660-12-045(4) is not violated by approval of this project.

iii. OAR 660-12-045(5)(d)[12]

This subsection requires installation of transit stops at major non-residential developments. Subsection (d) does not apply to this partition, because it proposes two new single-family dwellings, and does not include retail, office or institutional buildings.

iv. Other findings under the TPR

The appellant also suggested, as a reason for requiring a fully improved street now, that the TPR required it because it imposed the requirement to provide infrastructure to handle possible future changes in zoning. We do not see this requirement in the TPR.

Appellant's reasoning is also flawed because requiring improvements now for uncertain future development is unconstitutional, under the U.S. Supreme Court decision in Dolan v. City of Tigard.[13] The applicant would be building improvements that are not in rough proportion to

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[12] *"In MPO areas, local governments shall adopt land use and subdivision regulations to reduce reliance on the automobile which:*

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(d) Require all major industrial, institutional, retail and office developments to provide either a transit stop on site or connection to s transit stop along a major transit trunk route..."

[13] *Dolan v. City of Tigard, 114 S. Ct. 2309 (1994)*

the impacts of the requested development.

The Board also finds that infill development is encouraged by the TPR, because the rule aims to reduce air pollution and traffic and livability problems by reducing reliance on the automobile. Infill supports this goal by adding density within the existing urban area and therefore reducing the pressure to develop non-urban areas.

For all the reasons stated above, contrary to the comments of appellant's attorney, we find that the application complies with the Transportation Planning Rule.

4. MCC Chapter 11.45 MULTNOMAH COUNTY LAND DIVISION ORDINANCE

The Notice of Review alleges that the Hearings Officer decision does not comply with seven subsections of Chapter 11.45. The presentation at the February 14 hearing by the appellant's attorney addressed broad issues, not specific code sections. In general, the appellant claimed that the proposed access is inadequate and unsafe, and that the terrain is not suitable for a dwelling on Parcel 3. These findings will list the challenged code sections, and address compliance with supplemental findings or by reference to the Hearings Officer's decision.

a. **MCC 11.45.230 Criteria for Approval of Tentative Plan**

The Hearings Officer adopted the findings of fact in the November 17 Staff Report (pages 9-17) for the basic approval criteria, and by this reference, we do the same. The appellant raised specific concerns about subsection .230(G) below, and continued to assert that the application fails to meet certain Plan policies, which is contrary to subsection .230(A). In addition to the Staff Report findings, we add the following:

i. **11.45.230(A)**[14] This subsection requires compliance with applicable elements of the comprehensive plan. At the de novo hearing, the appellant's attorney offered argument concerning Policy 14. Compliance with specific comprehensive plan policies is addressed on pages 10-14 of the November 17

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[14] *In granting approval of a tentative plan, the approval authority shall find that:*
"(A) The tentative plan...is in accordance with the applicable elements of the Comprehensive Plan."

staff report (Exhibit 1 of the Hearings Officer decision.) The supplemental findings of compliance with specific policies are found in Section II.B.1 of these findings.

ii. **MCC 11.45.230(G)**[15] The appellant's attorney alleged below that this subsection was not met because the applicant had not addresses MCC 11.45.490 and 11.45.500. In subsequent testimony, the applicant has adequately addressed these subsections. (See findings on MCC 11.45.490 at II.B.4.d and findings on MCC 11.45.500 at II.B.4.e.)

As far as the Board could tell without specific references, the appellant did not testify regarding the remainder of MCC 11.45.230 at the hearing. After reviewing the record, we agree with the previous findings for the remaining subsections in 11.45.230 found in the Hearings Officer's decision and the November 17 staff report. (See pages 14-17 of the November 17 staff report, Exhibit #1 of the Hearings Officer's decision.) For these reasons, we find that the application satisfies MCC 11.45.230.

b. **MCC 11.45.460 Land Suitability**[16]

This code section implements Policy 14, and addresses the necessary response to certain development limitations. The Board's findings of compliance with Policy 14 are also relevant under this section. (See Section II.B.1.a.)

The appellant's attorney testified that there are slopes of 30-75% and weak foundation soils on Parcel 3, and that it is therefore unsuitable for development. The attorney said that

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[15] *In granting approval of a tentative plan, the approval authority shall find that:*

* * *

"(G) Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance...."

[16] *A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:*

(A) Slopes exceeding 20%;
(B) Severe erosion potential;
(C) Within the 100-year flood plain;
(D) A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;
(E) A fragipan or other impervious layer less than 30 inches from the soil;
(F) Subject to slumping, earth slides or movement."

drainage would be harmful, and that there is no suitable provision for handling runoff from the property.

The record includes testimony from geotechnical experts on both sides of the case, concerned mainly with the suitability of the site for home construction. Both experts, David Rankin for the applicant and Roger Redfern for the appellant, are well qualified. Both visited the site, and both agreed that there are steep slopes and potentially unstable conditions on the western portion of the site. As described under our Policy 14 findings, we found Rankin's testimony more persuasive because he described the engineering techniques that could be used to develop the site despite the slope problems. Rankin addressed Redfern's comments satisfactorily, and neither Redfern nor any other expert was heard from again in the record. Rankin's drainage plan was certified by another engineer (Bick). Rankin included a map showing the possible building areas on Parcels 2 and 3 that avoid the steep areas of the site. All of the points raised the Redfern were addressed convincingly by Rankin and Bick, and summarized by a planner at Evans & Associates (Robert Price) in writing and in oral testimony before the Board February 14.

The applicant produced a witness of the engineering company (Robert Price) whom we could cross examine. The appellant never did produce an engineering witness, not at the Hearings Officer level or before the Board, and this makes his evidence less persuasive than the applicant's evidence.

In sum, the applicant has done a more complete and thorough analysis of the site problems, and found ways to mitigate impacts. In response to this standard, the applicant has presented expert testimony that explains how development of the site can be directed away from the steeper slopes, and how the potential public harm and potential adverse impacts on surrounding persons or properties can be mitigated. At the hearing the appellant's attorney alleged that Parcel 3 contains slopes in excess of 30 degrees, and that Parcel 3 is unsuitable for development. We are convinced by the applicant's rebuttal and expert testimony in the record

that only a portion of Parcel 3 has steep slopes, and that the northeast portion of the parcel is suitable for housing development. We specifically agree with the Hearings Officer's findings on Page 5 of the decision.

The applicant's planning consultant referred to the expert testimony in the record that refutes the appellant's claims. He stated that there is plenty of buildable land on Parcel 3 with less than 20% slope, and referred the Board to the Rankin's map showing possible building envelopes on the site.

As with Policy 14, this standard does not prohibit development on sites with development limitations. Rather, it prohibits approval of a land division where the site is both unsuitable and incapable of being made suitable for the intended uses. To the extent that portions of this site may be unsuitable (the steepest areas of Parcel 3), we find that the applicant has provided expert testimony by qualified engineers to support our finding that the site can be made suitable for the intended housing development, in compliance with this standard.

c. **MCC 11.45.470 Lots and Parcels**[17]

This subsection limits the design of parcels. The record includes appellant challenges to portions of this code section. The Board agrees with the Hearings Officer's findings on this subsection. (See Final Order, page 5 and Exhibit 2 (R. Price memorandum).) In addition, the

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[17] *"The design of lots and parcels shall comply with the following:*

(A) The size, shape, width, orientation and access shall be appropriate:

(1) To the types of development and uses contemplated;

(2) To the nature of existing or potential development on adjacent tracts;

(3) For the maximum preservation of existing slopes, vegetation and natural drainage;

(4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens;

(5) To the climactic conditions including solar orientation and winter wind and rain.

(B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practical;

(C) Double frontage or reverse frontage lots...;

(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:

(1) When a flag lot does not adjoin another flag lot...the portion of the flag lot shall be at least 16 feet wide."

Board makes the following interpretation and findings.

MCC 11.45.470(A)(3) requires the maximum preservation of existing slopes, vegetation and natural drainage in the design of parcels. We interpret "maximum" to mean "maximum feasible." No residential development can leave the entire slope, vegetation and natural drainage in place. In this case, the parcels are laid out so they will be developed away from the steepest portion of the property. The applicant's engineers have proposed homesites and a drainage system on Parcels 2 and 3 that will minimize impact on the slope, vegetation and drainage. The tentative plan shows a shared driveway serving the two parcels. The applicant's arborist has testified that the driveway can be built with minimal loss of trees. We are persuaded by the applicant's engineers, in response to the criticisms of the appellant's engineer, that the property can be developed while preserving to the maximum extent feasible the slope, vegetation and natural drainage. (The same interpretation of "maximum" applies to MCC 11.45.490(A)(3), discussed in the next section of these findings.)

The appellant's attorney alleged that the applicant did not adequately address the impact of the project on a spring located west of the subject property. The spring was pointed out by the applicant's geotechnical engineer (Rankin). Rankin's proposed drainage plan to remove runoff from the proposed development was certified by another engineer (Bick). The applicant's plan is to avoid construction on the steep slopes of Parcel 3. Rankin located proposed building envelopes that place a dwelling on the far northeast corner of Parcel 3, well away from the steep slopes on the western end of the parcel.

The appellant's attorney also claimed that Policy 16C (energy resources), Policy 13B (support plans that reduce pollution), and Policy 37 (effect of runoff from the site) require examination of the impact on the spring. The Board finds that neither 13B nor 16C apply to this issue, because Policy 16C concerns energy resources, not water supply, and Policy 13B requires the county to support state and regional plans, and is not related to specific developments. Policy 37 is addressed in Section II.B.1.f of these findings.

d. **MCC 11.45.490 Street Layout**

The Board agrees with the extensive findings on Subsection .490(A) in Pages 2-4 of the Hearings Officer's decision, which includes the text of the code provisions. The appellant's attorney alleged that the proposal cannot meet the standard of Subsection .490(A)(3)[18]. The issue is the meaning of the word "maximum" in this context. We interpret "maximum possible" to mean "maximum extent feasible." No residential development can leave the entire slope, vegetation and natural drainage in place. This provision concerns refinement of a street system in a land division, which assumes that a street will be constructed to serve the land division. To the maximum extent feasible, the street layout should preserve existing slopes, vegetation and natural drainage. The applicant has submitted expert evidence from an arborist that the minimal number of trees need be taken to construct the proposed private street. The applicant's engineers have testified that a drainage system can be built that will remove runoff from the new development, thus preserving the natural drainage to the maximum extent feasible.

The remaining subsections do not apply to this application, except subsection (C)[19]. The application complies with (C) because the driveway in the partition conforms to the existing private street layout, which is part of the future streets plan adopted under LD 10-93, and is part of the record in this case. For these reasons, the Board finds that the decision is in compliance with MCC 11.45.490.

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[18] *(A)...[T]he arrangement of streets in a land division shall be designed to:*

* * *

(3) To assure the maximum possible preservation of slopes, vegetation and natural drainage."

[19] "*(C) Where a street layout affecting the proposed land division has been established by the Comprehensive Plan, a future street plan under MCC 11.45.160...the arrangement of streets in the land division shall conform to the established layout.*"

e. **MCC 11.45.500 Street Design** [20]

Subsection (B) requires that the width, design and configuration of private streets in or abutting the land division comply with the Street Standards Ordinance. MCC 11.60.080 provides for a variance from the standards of Chapter MCC 11.60 (the Street Standards Ordinance) and its adopted rules. The Division of Transportation staff granted a variance to the applicant to the minimum development standards of street width and design (sidewalks and curbs), and the Board has affirmed that decision. Therefore, the Board finds that the proposal has complied with the Street Standards Ordinance, and this section has been satisfied.

f. **MCC 11.45.540 Sidewalks, Pedestrian Paths and Bikeways**[21]

Subsection (B) requires sidewalks on any private street that serves more than six dwellings. The street at issue is one of two access roads which branch off after a shared connection with S.W. Military Road. The lower branch serving the subject property heads south into the subject neighborhood. The tentative plan map shows that the upper branch heads west parallel to Military Road. The record shows it serves a subdivision approved in late 1994 (LD 10-93).

There is evidence in the record that this lower branch serves only four dwellings, on Tax Lots 14 (existing residence on subject property), 15 (the appellant's residence), 36 and 38. Residents on this branch do not use the other branch for access, and vice versa. During the February 14 hearing before the Board, the appellant himself stated that only four dwellings currently use the subject easements. This accounting is consistent the Hearings Officer's decision in LD 10-93, which did not require sidewalks on the upper branch of the access road because these four dwellings were not counted as served by the upper branch.

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[20] *The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:*

* * *

(B) For a private street -- in accordance with the Street Standards Ordinance...."

[21] "*(B) A sidewalk shall be required along any private street serving more than six dwelling units.*"

For these reasons, the Board agrees with the applicant and the Hearings Officer that this private street currently serves four dwellings. The proposed partition would add two more dwellings, for a total of six. Because the standard does not require sidewalks until more than six dwellings are served, the Board finds that sidewalks are not required under this subsection, and that the application satisfies MCC 11.45.540.

g. **MCC 11.45.630 Streets, Sidewalks, Pedestrian Paths and Bikeways**[22]

Under subsection (B), the code requires that any private street shall be improved in accordance with the Street Standards Ordinance. The Board agrees with the Hearings Officer's interpretation that this access is a private street. (See Final Order, Pages 5-6.) The Board also upholds the administrative variance of the SSC. (See discussion under the next section II.C of these findings.) Therefore, because the applicant has been granted a variance to street standards under Section 11.60.080 of that ordinance, the Board finds that the applicant has met this code provision.

MC 1-94/LD 13-94 CONCLUSIONS

For all of the reasons stated above, the Board finds that the applicant has satisfied the approval standards for these applications under Chapters 11.15 and 11.45 of the Multnomah County Zoning Ordinance, as detailed above and in the Hearings Officer's Final Order. The applications are hereby approved.

C. SPECIFIC FINDINGS FOR STREET STANDARDS VARIANCE

The Board has the authority to review the administrative variance to the standards and requirements of the Street Standards Code, under Section 04.100.d of the Street Standards Rules, which requires the we follow the applicable procedures of MCC 11.15.8260 through .8280. These are the normal procedures for land use appeals. Under MCC.11.15.8280, the Board may affirm, reverse or modify the

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[22] *"Any street, pedestrian path or bikeway shall be improved as follows:*

* * *

(B) In a private street -- in accordance with the Street Standards Ordinance."

appealed decisions.

The appellant did not raise the basic approval standard for the variance decision (SSC § 11.60.080.A[23]) Nonetheless, the Board finds it important to set forth the standard and explain how the variance decision complies. The standard required for such a variance is that the variance is 1) in keeping with the intent and purpose of the SSC, and 2) that the variance will not adversely affect the fire access or the function of the street. The intent of the Street Standards Code is to implement and enforce the Comprehensive Plan. (MCC 11.60.020)

1. INTENT AND PURPOSE OF THE STREET STANDARDS CODE AND RULES

The Notice of Review alleges failure to comply with the intent and purpose of the Street Standards Code (SSC) and Rules. However, the appellant did not explain the reasoning in detail at the hearing. As described in Section 11.60.020, the intent of the SSC is "to implement and enforce" the Comprehensive Plan. That section also directs that interpretation of the code "shall be liberally construed to effectuate" the purpose, which is to implement and enforce the Plan. The Board finds that the intent of the Street Standards Code is met by compliance with the Comprehensive Plan, for the reasons discussed in the following section II.C.2.

2. COMPREHENSIVE PLAN POLICIES

The Notice of Review alleged that the variance decision did not comply with Plan Policies 24 and 34. Based on review of the record, and the testimony February 14, the Board finds that these applications comply with the following policies:

a. **Policy 24 Housing Location**

The Notice of Review alleges failure to comply with this policy in the street standards variance. However, the appellant did not explain the allegation in relation to the detailed standards found in this policy. The Board's findings on compliance with Policy 24 are found in

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[23] *"The requirements of this chapter or rules adopted under it may be varied by the director when written information substantiates that such requested variance is in keeping with the intent and purpose of the chapter and adopted rules, and the requested variance will not adversely affect the intended function of the street or other related facility."*

Section II.B.c of these findings. Because the variance concerns only the street access to the subject property, we find that the variance decision must comply with only the access provisions of Policy 24, Section 2.A[24].

Under the Street Standards Rules, without the variance the private access street would require a 50-foot right-of-way, paving 24-32 feet wide, parking, sidewalks and curbs. The variance grants approval to a 20-foot wide street, without curbs, parking or sidewalks. The only reasonable way to address this issue is to examine whether the private street allowed under the variance can comply with Policy 24.

The appellant argued that the proposed narrow street and additional traffic would be unsafe, especially for children who play in the street. The applicant's traffic engineer has convincingly explained why this narrow street will be safe and adequate to serve the total of six dwellings. Her analysis parallels the considerations required under Section 2.A of Policy 24. Approval of the variance allows approval of the partition and the basic approval for two new dwellings. The traffic engineer testified that the two new dwellings will add of two vehicle trips during peak hour, for a total of six vehicle trips in peak hour. That is strong evidence that there will not be any traffic congestion on this private street. The engineer testified that vehicles on this street can be expected to travel at 15-20 miles an hour, and that there is adequate sight distance for safe driving decisions. This testimony convinced us that the street will continue to be safe for pedestrians, including children playing in the street, which was the appellant's main traffic concern.

As discussed in Section II.B.c of these findings, the Board agrees with the Hearings Officer's interpretation of "direct access." We find that the use of the existing private easements along with a new easement to serve the proposed parcels 2 and 3 provide the property with direct

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[24] "*A. Access*

(1) Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and projected traffic counts, speed limits, and number of turning movements.

(2) There is direct access from the project to a public street."

access to a public road, S.W. Military Road. Thus the private street will connect directly to S.W Military Road, a public street, in compliance with Section 2.A(2)

For these reasons, the Board finds that the administrative variance complies with Policy 24.

b. Policy 34 Trafficways[25]

The Notice of Review alleges failure to comply with this policy in the street standards variance. However, the appellant did not explain the reasoning at the hearing. The basic tenant of this policy is to develop a safe and efficient traffic system using the existing road network. As discussed above, the variance allows minimal improvements to the existing street, to a total width of 20 feet.

The appellant testified that he is concerned that any additional traffic will make the street less safe than it is now. The applicant's traffic engineer testified that, even with the additional traffic from the two proposed dwellings, the street will be safe and adequate in terms of sight distance, capacity and operation. The engineer said that the narrow width of the street will keep traffic speeds low, and the two houses will generate only 2 additional vehicle trips during the peak hour. We understand the appellant's concern, but find that the proposed street will remain safe and efficient for neighborhood use, as required by this policy.

We also find that the street improvements that would otherwise be required for a private street are not necessary, under subsection (B) of this policy, for all the reasons discussed in granting this variance to the Street Standards Code. (See Section II.C of these findings.)

Subsection H of the policy authorizes a procedure for allowing variances from that

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[25] *"The County's policy is to develop a safe and efficient trafficway system using the existing road network, and by:*

* * *

B. Improving streets to the standards established by the classification system, where necessary, and/or appropriate to identified transportation problems.

* * *

H. Implementing the Street Standards Chapter 11.60 and Ordinance 162, including adherence to access control and intersection design guideline criteria, and establishing a procedure for allowing variances from that ordinance."

ordinance. The applicant pursued such a variance to the street standards, in keeping with the intent of this policy. The administrative approval of the variance is also in keeping with this policy.

For these reasons, the Board finds that the variance decision complies with Policy 34.

3. THE VARIANCE WILL NOT ADVERSELY AFFECT THE FIRE ACCESS OR THE FUNCTION OF THE STREET.

The applicant provided a letter from the Lake Oswego Fire Marshall explaining that the proposed 20-foot wide street would be adequate for fire fighting if certain development standards are met. The conditions outlined by the fire marshall have been included word for word in the Hearings Officer's decision. The appellant's attorney alleged without detail that it is "not clear" whether the fire marshall's requirements are met by the conditions of approval in the Hearings Officer's decision. The only item mentioned in the letter that is not a condition of approval is the water flow testing. The record includes a subsequent communication from the Fire Marshall stating that there is adequate water flow for fire fighting. The Hearings Officer, the staff, the applicant and the Board have no problem understanding the fire marshall's requirements reflected in the conditions of approval. The Board finds that the fire marshall's concerns have been met with the conditions of approval in the Hearings Officer's decision.

The applicant has provided substantial evidence that the function of the street will not be harmed by the addition of two dwellings. The appellant did not offer any expert testimony to the contrary. We are persuaded that the street will continue to function as it does now, based particularly on the statement of the applicant's traffic engineer that the peak hour traffic on the street would increase from one vehicle every 15 minutes to one every ten minutes -- an increase of only two vehicles in the peak traffic hour.

At the February 14 hearing the appellant alleged that the variance should not be granted in this situation because more than a single property is involved in the access street. That issue is not related to the approval standard cited above because it does not relate to the function of the street.

For these reasons, we find that the staff decision to grant a variance to the street

standards satisfies the approval standard of Section 11.60.080, including the intent and purpose of the street standards code.

4. STREET STANDARDS RULES SUBSECTION 04.100 (VARIANCE PROCEDURES).

Section 04 authorizes variances from the standards and requirements of MCC 11.60 and the adopted rules. Subsection 04.100 requires that the request for a variance be made in writing (a), requires the applicant to supply data describing the situation that needs a variance (b), and requires the administration to respond with a written decision within 10 days receipt of the necessary data (c). The record includes a written request from the applicant (October 20, 1994), as required by (a), submitted with the necessary data required by (b). The administrative decision on the variance is not dated, but was issued prior to the November 17, 1994 hearing. Finally, under subsection 04.100(d), the Board is authorized to hear appeals from the Division of Transportation variance decision. Subsection (d) requires that an appeal must follow the applicable appeals procedure of MCC 11.15.8260 through .8280.

The appellant's attorney objected below that the appellant did not have enough time to respond to the administrative variance. The record shows that the Hearings Officer granted extra time for the appellant to respond to the variance decision, and the appellant subsequently filed an appeal with the Board pursuant to MCC 11.15.8260 through .8280, which was heard February 14. For these reasons, the Board finds that the appellant had adequate opportunity to respond to the Division's variance decision, and the appellant's objections were heard at a public hearing before the this Board. The Board finds that the appellant was therefore not prejudiced by the alleged procedural errors.

For these reasons, the Board finds that the variance decision complies with Section 04.100.

VARIANCE CONCLUSION

For the reasons stated above, the Board finds that the variance decision by the Division of Transportation satisfies the approval standards of SSC § 11.60.080.A, and is hereby affirmed.

ADOPTED THIS _____ day of _____, 1995, being the date of its _____ reading before the Board of County Commissioners of Multnomah County.

(SEAL)

By _____
Beverly Stein
Multnomah County Chair

REVIEWED:

JOHN DUBAY, CHIEF ASSISTANT COUNTY COUNSEL
for MULTNOMAH COUNTY, OREGON

By _____

BEFORE THE LAND USE HEARINGS OFFICER

FOR MULTNOMAH COUNTY, OREGON

Regarding an application by Gran Marque, Inc. for a 3 lot partition and use of a private easement for access to the partition, located at 01400 S.W. Military Road, in unincorporated Multnomah County, Oregon	)))))))	FINAL ORDER MC 1-94/LD 13-94

I. SUMMARY OF THE REQUEST

A. LAND DIVISION

The applicant seeks to partition the site into three parcels. The existing site contains approximately 3.60 acres. Proposed Parcel 1 has an existing single family dwelling and will contain approximately 62,460 square feet. Parcels 2 and 3 are currently vacant and contain approximately 37,280 and 44,238 square feet, respectively.

B. ACCESS BY EASEMENT

The site does not currently abut a public road. The existing house on Parcel 1 has access to S.W. Military Road via a set of existing private easements. Access to Parcels 2 and 3 is proposed via an easement along the northern edge of the site that would connect to the existing private easements previously mentioned.

II. HEARING AND RECORD

The initial public hearing on these applications was held on July 20, 1994. At that hearing, testimony was presented by the applicant and by neighboring property owners concerning the application. At the close of the hearing, the Hearings Officer kept the record open until August 24, 1994, to allow the applicant to respond to testimony from the opponents and to allow for written rebuttal testimony. Subsequently, the applicant requested a continuance in order to initiate a variance from certain provisions of the County Street Standards Code. The Hearings Officer issued an Intermediate Ruling granting the applicant's request. The Intermediate Ruling also re-opened the hearing to allow for further public testimony concerning the relevance of the variance request, and to allow the Hearings Officer

to pose questions to the parties based upon the additional information that had been submitted since the last hearing in July.

A hearing was held on November 17, 1994 where the parties presented additional testimony concerning the relevance of the variance, and responded to questions raised by the Hearings Officer. The written record was left open until November 30, 1994 in order for the parties to submit final rebuttal memorandums.

III. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings of fact as contained in the November 17, 1994 staff report, beginning on page 8 of that report and concluding on page 19 of that report (attached as Exhibit 1), except to the extent expressly modified or supplemented below.

IV. DISCUSSION

A. LAND DIVISION

1. Conformance With Comprehensive Plan Policies

Policy 24 (Housing Location) § 2(A)(2) requires that minor residential projects have "direct access from the project to a public street." The proposed lots have direct access to Military Road, a public street, by way of a set of private easements which burden three underlying tax lots. From these existing easements, the applicants are proposing the extension of an additional easement to serve parcels 2 and 3. Therefore, the Hearings Officer finds that the project has direct access to a public street (Military Road) via the private easements described.

2. Conformance With MCC 11.45.490 (Street Layout)

This section requires the arrangement of streets in a land division to be designed as follows:

> "1. To conform to the arrangement established or approved in adjoining land divisions."

Findings. The Hearings Officer finds that the parent parcel, and other adjoining parcels in the area, were laid out in such a manner so as to be served by the private easements which currently serve these parcels. The existing private easements are the only viable access to the parent parcel and to the other parcels they currently serve. The

applicant's proposal to create additional parcels that would be served off the existing easements reasonably conforms to the arrangement established by adjoining land divisions. Therefore, this criteria is met.

> "2. To continue streets to the boundary of any adjoining undivided tract where such is necessary to the proper development of the adjoining land."

Findings. The Hearings Officer finds that in this case, it is not necessary to continue the easement (private street) to the boundary of adjoining land, because additional development to the west is not contemplated. Therefore, there is no need to extend the private street easement beyond where it is proposed to be located.

> "3. To assure the maximum possible preservation of existing slopes, vegetation and natural drainage."

Findings. The Hearings Officer finds that the path of the new easement can be built so as to maintain reasonable distances from significant slopes, vegetation or natural drainage patterns. The Hearings Officer agrees with the conclusions set forth in the May 17, 1994 letter from the applicant's arborist which indicated that the large trees and row of Poplars along the northern portion of the property can be avoided by meandering the easement. Therefore, the proposed access and site layout can assure the maximum possible preservation of existing vegetation.

Proposed Parcel 2 contains a small pond and some slopes and Parcel 3 contains more significant slopes. A report from geologist David Rankin adequately addresses the suitability of Parcels 2 and 3 for residential construction and discusses how erosion and drainage issues can be dealt with in the future development of these parcels. Additional review by the County will be required prior to development to consider specific proposals for erosion control for any hillside development. Therefore, the Hearings Officer concludes that this criteria can and will be met subject to further review by the County, as required in the conditions of approval.

> "4. To limit unnecessary through traffic in residential areas."

Findings. The Hearings Officer finds that the additional traffic that will be attracted and generated by the proposed development will not be "through traffic", because the local roadway system (i.e. the private easements) do not create an opportunity for through traffic. Therefore, this criteria is met, to the extent it applies.

> "5. To permit surveillance of street areas by residents and users for maximum safety."

Findings. The Hearings Officer finds that the lay of the land and the nature of surrounding development permits adequate surveillance of the street area by residents and users. Therefore, this criteria is met.

"6. To assure building sites with appropriate solar orientation and protection from winter wind and rain."

Findings. The proposed land division satisfies the solar access provisions of the zoning ordinance as detailed in the staff report. The size of the building sites and the relatively protected nature of the area provide reasonable assurances that the site will be protected from winter wind and rain.

"7. To assure stormwater drainage to an approved means of disposal."

Findings. The Hearings Officer finds that there is substantial evidence in the record that it is technically feasible to provide hardline drainage as called for in the geotechnical report prepared by Applied Geotechnical, Inc. The August 23, 1994 letter from David Bick of DEA confirms this technical feasibility and suggests additional temporary erosion control measures that may be required. Therefore, this criteria is met, because the evidence in the record demonstrates that it is technically feasible to assure adequate stormwater drainage to an approved means of disposal. The off-site disposal location of the stormwater will be reviewed and approved by the County Engineer.

"8. To provide safe and convenient access."

Findings. The issue of safe and convenient access has been the subject of considerable testimony in this case. The Hearings Officer finds that the relatively low traffic volumes on the local street system, plus the traffic from this additional development (approximately 20 vehicle trips per day) will not jeopardize the safety or convenience of the roadways in this area. Furthermore, the evidence indicates that the narrowness of the street effectively slows vehicle speeds. Evidence in the record indicates that vehicle speeds of 30 miles per hour can be expected. The Hearings Officer also finds that there is adequate sight distance along these easements so long as vehicle speeds do not exceed 30 miles per hour.

Given the above mentioned conditions (low volumes, low speeds and adequate sight distances), the Hearings Officer finds that pedestrian and vehicular access will be safe and convenient. Therefore, MCC 11.45.490(8) can be met.

3. MCC 11.45.540(B) (Sidewalks, Pedestrian Paths and Bikeways)

This section of the code requires that sidewalks shall be required in urban area public streets in accordance with provisions of the Street Standards ordinance. Subsection (B) requires that:

> "A sidewalk shall be required along any private street serving more than six dwelling units."

The Hearings Officer finds that the proposed access will only serve six dwellings, namely one dwelling each on Tax Lots 36, 15, 38, and the three proposed dwellings on Lot 14. The opponent has argued that access to Lot 9 is also provided by this set of easements. As the applicant points out, Lot 9 is served by a different branch of the easements as authorized in LD 10-93. MCC 11.45.540(B) was not triggered by the four dwellings on the south branch of the easement even though MCC 11.45.540(B) was in effect at that time. Sidewalks were not required in that case. The Hearings Officer finds that the main branch of the easement serving Lot 14 will serve only six dwellings and therefore that the sidewalk requirement contained in MCC 11.45.540(B), does not apply. However, as noted below, the Street Standards Code applies in this case and it requires sidewalks, unless a variance from those Standards are granted. Therefore, sidewalks would be required, unless or until a variance is obtained.

4. Site Suitability (MCC 11.45.460, MCC 11.45.470 and MCCP Policy 14)

The applicant has responded to these criteria with expert testimony from a registered geologist and engineer, and with testimony from a planner. The Hearings Officer has reviewed this evidence and has considered all contrary evidence and testimony submitted by the opponent. The Hearings Officer finds that the conclusions reached by the applicant's engineer as supplemented by the planner's analysis adequately establish that the site is not unsuitable nor incapable of being made suitable for the intended residential uses due to any of the characteristics set forth in the various provisions of the ordinance. Geologist David Rankin specifically addressed the suitability of Parcels 2 and 3. Mr. Rankin detailed how the erosion and drainage issues can be dealt with in developing these parcels. The report concludes that Parcels 2 and 3 are suitable for residential structures. Mr. Rankin's August 3rd letter further details his site suitability review and specifically responds to Mr. Redfern's report which was previously submitted by the opponent. With regard to the specific criteria in § 11.45.460 and § 11.45.470, the Hearings Officer incorporates and adopts by reference the statements of Robert W. Price as contained in his 3-19-94 rebuttal memorandum (attached as Exhibit 2).

B. ACCESS BY EASEMENT

There has been considerable evidence and testimony submitted concerning the applicability of various standards and requirements in the Street Standards Code (SSC) and how those requirements apply to the subject application. As Mr. Nelson correctly notes in

his November 23 memorandum, the standards and requirements in the Street Standards Code apply to this application. The Hearings Officer agrees with Mr. Nelson's conclusion that the requested private access must be considered to be a "private street" for purposes of this subdivision application, pursuant to the SSC. This private access does not quality as "private driveway" because it provides access to more than one lot or parcel. (See MCC 11.45.010(Z).) Furthermore, the private access does not quality as a "accessway" as defined in MCC 11.45.010(A) because it is part of a lot or parcel and it provides access to more than one lot or parcel. Rather, the proposed private access meets the definition of a "private street" in § 11.45.010(AA). That section defines "private street" to mean "a street which is either a private driveway or an accessway which is under private ownership and which passes through or along side the full length or width of a separate lot or parcel either existing or proposed." Since the proposed easement and the existing easement pass along side the sides of the relevant lots, the easement is a "private street" for purposes of § 11.45.

This private street as proposed by the applicant also meets the definition of a "local street," as set forth in the Street Standards Code. The definition of "local street" as set forth in § 3.100(a) indicates that local streets "provide access to abutting property and do not serve to move through traffic. They may be further classified by adjacent land use such as residential, commercial and industrial, and widths will reflect the needs of the adjacent uses." In this case, Table 5.1 (from the Street Standards Code and MCC Chapter 11.60) indicates that local residential streets require a right of way width of 50 feet, a pavement width of between 28 and 32 feet and requires curbs and sidewalks. Therefore, the Hearings Officer concludes that the Street Standards Code will require this private local street to comply with the County's right of way width, pavement width and other requirements, unless a variance from those standards is lawfully granted.

The applicant has requested a variance from the County Street Standards requirements. As part of the County's decision on the variance (attached as Exhibit A to the November 17, 1994 staff report and attached as Exhibit 3 for reference here), Mr. John Dorst, with the County's Transportation Department, concluded that based upon his interpretation of the code, the applicant is not required to comply with street standards that were written only to control "typical local street(s)." The Hearings Officer disagrees with staff's analysis in this regard. As noted by Mr. Nelson, the Board of Commissioners has recently amended the Land Division Ordinance to make the Street Standards Ordinance applicable to private streets. Also, § 11.60.030 of the SSC indicates that the Street Standards Code is applicable not only to all public roads, but also to "all easements or accessways which may be required by (sic) Multnomah County Code. Finally, the proposed access by easement clearly falls within the definition of a "private street" found in § 11.45.010(AA). Therefore, in order to subdivide and develop the site, the applicant's proposed private easement and the existing private easements that will be used to access the site, will be required to meet the requirements of the County Street Standards Code as set forth in Table 5.1, unless or until the applicant obtains a variance from those provisions.

C. EFFECT OF THE COUNTY'S VARIANCE DECISION

The merits of the variance decision issued by Mr. John Dorst are not before the Hearings Officer. One of the primary purposes for reopening the hearing in this case was to discuss the relevance of the County's variance decision. As noted by Mr. Dorst on page 3 of his decision, Table 5.1 of the Street Standards Code calls for a 50 foot right of way width, 28 to 32 foot pavement width, parking on both sides, curbs and sidewalks for local residential streets. Since the applicant is not proposing any of these improvements, the applicant must seek and receive a variance from all of these standards, in order for his proposed access to be acceptable. Mr. Dorst's decision, at page 10, concluded that the criteria for granting a variance were met. Mr. Dorst therefore granted the applicant a variance, by reducing the amount of right of way width from 50 to 20 feet, deleting the requirement for curbs, sidewalks and parking, and adjusting the required pavement width to 20 feet, as approved by the Fire Marshall.

The Hearings Officer concludes that to the extent this variance decision becomes final, it would allow the applicant to develop the property using the access he is currently proposing. Therefore, the Hearings Officer concludes that since the applicant has sought the required variance and has received tentative approval for the variance, it is reasonable to condition approval of these actions on obtaining a final decision granting that variance. In the alternative, the SSC requirements will apply.

If the SSC requirements apply, development of the site may not be possible. In any event, the applicant has not demonstrated whether it is able to meet the requirements of the SSC, and if so, whether it will still be able to meet the other approval criteria.

For instance, if the easement required by the SSC is to be 50 feet wide, and the required improved is 28 feet wide, plus curbs and sidewalks, these improvements may well impact the applicant's ability to meet various partion approval criteria.

Therefore, unless the applicant receives a final decision approving the requested variance, the partition and request for alternative access must be denied. However, since applicant has received administrative approval of the necessary variance, the decision can be conditioned upon final approval of that variance. If the variance is ultimately denied, the applicant will not be able to proceed to final plat approval, because the condition requiring final variance approval would not be met.

D. PROCEDURAL ISSUES

In Mr. Nelson's November 23 memorandum, he alleges that his client was entitled to a continuance of the November 17 hearing because he did not receive the supplemental staff report and the accompanying variance decision until November 15, 1994, two days prior to the hearing. Mr. Nelson cites the Hearings Officer to ORS 197.763(4) for the proposition

that the failure of his client to receive the staff report in a timely way entitled his client to a continuance of the hearing. The Hearings Officer denied Mr. Nelson's request for continuance, but allowed him to submit additional written rebuttal, by November 30.

The Hearings Officer finds that by its terms, ORS 197.763(4)(b) requires the staff report used at the hearing to "be made available at least 7 days prior to the hearing." The fact that Mr. Nelson did not receive the staff report until November 15, 1994 is irrelevant. The statute only requires that the staff report "be made available at least 7 days prior to the hearing."

Even if a procedural violation of ORS 197.763 occurred, the opponent has not alleged any substantial prejudice as a result of the Hearings Officer's alleged failure to grant a continuance. The opponent was provided with an opportunity to submit additional written testimony concerning issues that the Hearings Officer determined to be relevant to the proceeding. Therefore, since the opponent was afforded an opportunity to review the staff report for at least 7 days, and was given an opportunity to submit written rebuttal, no prejudice has occurred.

Finally, at the November 17 hearing, the opponent reraised an issue concerning the validity of the applicant's right to use the easement on Tax Lot 9 for the benefit of all three proposed parcels. The Hearings Officer determined that this issue was beyond the scope of the hearing. As noted in the Hearings Officer's Intermediate Ruling of September 19, 1994, the hearing was re-opened solely for the purpose of receiving evidence concerning the variance requested by the applicant. In addition, the Hearings Officer indicated that he intended to ask questions regarding other information contained within the record. The Hearings Officer indicated at the hearing that the legality of the easement was not within the Hearings Officer's jurisdiction to decide, and that this issue could be argued in an appropriate forum if it was in dispute. Therefore, the Hearings Officer declined the opponent's request to offer rebuttal testimony or evidence on that issue, because it had been determined that the issue was beyond the scope of the hearing.

IV. CONCLUSIONS

The Hearings Officer finds that LD 13-94 and MC 1-94 should be approved because the requests can do or comply with the applicable approval criteria, provided that the conditions of approval set out below are complied with.

V. DECISION

MC 1-94 and LD 13-94 are approved, subject to the following conditions:

1. Approval of this Tentative Plan shall expire one year of the effective date of this decision unless either the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's *Instructions for Finishing a Type I Land Division*. Make the following revision to the partition plat:

2. The applicant shall obtain a final decision from the County granting a variance from the street standards set forth in table 5.1 of the SSC. So long as the variance is granted, the following street standards shall apply, unless otherwise amended or supplemented by the County's variance decision:

   A. Existing Street Running South from Military Road

   Provide improvement of the private local street south of Military Road to a minimum of 20 foot wide unobstructed paved surface. The extent of the improvement shall include the street to the beginning of driveway turnaround at 01404 S.W. Military Road.

   B. Proposed Street Serving Parcels 2 and 3

   The proposed street shall have a 20-foot wide unobstructed paved surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the proposed street. The street shall be reduced to a width of 12 feet with the furthest wall of the furthest structure is less than 150 feet from the street.

   C. Turnarounds

   A turnaround shall be provided for the access road/driveway to Parcels #2 and #3. Turnaround requirements shall comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:

   > Outside front wheel radius of fifty (50) feet; inside rear wheel radius of twenty-five (25) feet.

   D. Grades

Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.

E. Curvature

Approach turns to the street serving Parcels 2 and 3 from the existing street shall be designed to accommodate standard fire apparatus.

F. Parking

Where parking of vehicles would diminish the minimum 20 foot wide fire access, no parking signs shall be required or additional widening of the street shall be required to accommodate the parking.

G. Fire Lane Declaration

The portion of the proposed street from the existing street that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents.

H. Hydrants

Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000 feet from any of the lots, nor more than 300 feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

I. Water Lines

An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would be approximately 250 feet.

J. Addressing

Addressing will comply with the Uniform Building Code.

K. Final Note

When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and the Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

3. Before the Planning Director signs the partition plat, the applicant shall comply with MCC 11.45.680 by executing and filing with the County Engineer an agreement with the County, which shall include:

   A. A schedule for the completion of required road improvements described in Condition 2 or 3 above, as the case may be;

   B. Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and workmanship in the improvements required by this Chapter against defects for a period of 12 months following the acceptance by the County Engineer of the engineer's report described in Condition 6 below; and

   C. A surety bond, executed by a surety company authorized to transact business in the State of Oregon, or a certified check or other assurance approved by the County Counsel, guaranteeing complete performance. Such assurance shall be for a sum equal to 110% of the actual costs of the improvements as estimated by the County Engineer.

4. Before any construction, site clearing, road building, or grading, obtain a Hillside Development or Grading and Erosion Control Permit pursuant to MCC 11.15.6700-.6730 if applicable. Compliance with the hillside development/grading and erosion control requirements shall be determined by the Planning Director. The decision by the Director shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). Contact the Planning Division at 248-3043 for information.

5. Before the issuance of occupancy permits for dwellings on either Parcel 2 or Parcel 3, provide the Planning Director and the County Engineer with an engineer's report certifying that the private access road that will serve Parcels 2 and 3 has been constructed to the specifications shown in the plans prepared for said road.

6. In conjunction with issuance of building permits for either parcel construct on-site water retention and/or control facilities adequate to insure that surface runoff volume after development is no greater than that before development per MCC 11.45.600. Plans for the retention and/or control facilities shall be subject to approval by the County Engineer with respect to potential surface runoff on the adjoining public right-of-way.

7. Before submitting the partition plat, demonstrate approval of a Property Line Adjustment to recognize the 1973 acquisition of the westerly .38 acre of Parcel 3 by the former owner of the subject site.

8. Before the Planning Director signs the final partition plat, provide a copy of the final plat that shows the location of the existing buildings on Parcel 1. Show the surveyed distance from the north and west lines of Parcel 1 to the closest building. To avoid delays, submit this item when you submit the partition plat.

9. Before the Planning Director signs the partition plat, provide a copy of the partition plat that shows the building setback lines (building envelopes) for each new vacant lot. The correct setbacks are 30 feet front, 10 feet side and 30 feet rear. To avoid delays, submit this item when you submit the partition plat. NOTE: The building envelope can be drawn on the same copy of the plat as the setback information required in Condition #7.

It is so Ordered this 23rd day of December, 1994.

Phillip E. Grillo
Hearings Officer

Findings Of Fact (LD 13-94)

1. **Applicant's Proposal:**

The Land Division Request: Applicant proposes to divide a land containing 3.60 acres into three parcels. Parcel 1 has an existing single-family dwelling and would contain 62,460 Square feet. Parcels 2 and 3 are vacant and would contain 37,280 and 44,238 square feet, respectively,

The Access by Easement Request: The site does not abut a public road. The existing house on Parcel 1 has access to SW Military Road over an existing easement that serves nine other parcels in addition to the subject site. Access to Parcels 2 and 3 is proposed by way of an easement that the applicant would provide along the north edge of the site as shown on the Tentative Plan Map.

Previous Hearing: The first public hearing for the subject application was held on July 20, 1994. At that hearing, testimony was presented by the applicant and by neighboring propriety owners. At the close of the hearing, the Hearings Officer kept the record open to August 24, 1994 to allow for the applicant to respond to testimony from opponents, and to allow for opponents to rebuts that testimony. Subsequently, the applicant applied to the Transportation Division for a variance from the provisions of the County Street Standards Ordinance (MCC 11.60) with respect to right-of-way width, pavement width and provision of curbs and sidewalks for the easement road. The Hearings Officer advised that the public hearing should be re-opened to allow for public testimony concerning the Transportation Division decision on the variance request. The decision of the Transportation Division staff is attached to this Staff Report as Exhibit A and incorporated by reference hereto.

2. **Site Conditions and Vicinity Information:** Site conditions as shown on the Tentative Plan Map are as follows:

A. The site is on the south side of SW Military Road and east of SW Terwilliger Boulevard. The northeast corner of the site is about 300 feet south of Military Road. The west edge of the site is about 400 feet east of Terwilliger Boulevard. Land to the west and south consists of a 6.5-acre parcel that fronts on Terwilliger. The 5-lot Tryon Vista subdivision adjoins the site on the north. The H. L. Corbett Estates subdivision adjoins the site to the south. To the east are two parcels containing .5 and .69 acre respectively. In addition to the subject site, the easement road immediately east of the site provides access from Military Road to nine lots and parcels. The easement road intersects Military Road generally opposite the point where SW Aventine Circus intersects Military Road

B. **Future Street Plan:** The subject site is within an area for which a Future Street Plan was adopted in 1993 as part of the approval of the Tryon Vista subdivision (Land Division case LD 10-93).

C. **Slope:** Portions of Parcel 3 contain slopes exceeding 40 percent. However, there are areas of Parcel 3 with slopes under 20 percent where a residence could be located. A letter from Engineer David K. Rankin dated March 25, 1994 outlines a preliminary geotechnical reconnaissance of the site and concludes that Parcels 2 and 3 are "suitable for residential structures" but cautions that development "must be sensitive to the delicate state of the slope equilibrium that apparently exists." A condition of approval requires that a Hillside Development and Grading and Erosion Control Permit be obtained before building permit issuance pursuant to MCC 11.15.6700..

EXHIBIT # 1

3. **Land Division Ordinance Considerations (MCC 11.45)**

A. The proposed land division is classified as a Type I because it is "[A]... *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . ."* [MCC 11.45.080(D)]. The proposed land division is associated with an application to use an easement as a means of access to a proposed lot that will not have any frontage on a dedicated public road. This staff report addresses the application for access by easement under Decision # 2 (MC 1-94).

B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:

(1) *The Tentative Plan is in accordance with the applicable elements of the Comprehensive Plan;* [MCC 11.45.230(A)]

(2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;* [MCC 11.45.230(B)]

(3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter;* [MCC 11.45.230(C)]

(4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal;* [MCC 11.45.230(D)]

(5) *If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed;* [MCC 11 11.45.230(E)]

(6) *The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern;* [MCC 11.45.230(F)] *and*

(7) *Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance are and are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon.* [MCC 11.45.230(G)]

(8) ***Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:***

(a) ***The infiltration of floodwater into the system; and***

(b) ***The discharge of matter from the system into flood waters [MCC 11.45.230(H)]***

4. Response to Type I Land Division Approval Criteria

A. Applicable Elements of the Comprehensive Plan: The following Comprehensive Plan Policies are applicable to the proposed land division.:

(1) Policy No. 13, Air, Water, and Noise Quality:

Applicant's Response: *"It is expected that the three parcels will support three single-family dwellings. There is currently one single-family dwelling on the property. The three parcels are large, vegetated, and capable of handling stormwater run-off through surface percolation or dry well construction. Sanitary sewer laterals are present in the easements +accessing the site from S.W. Military Road. Water will be provided by the Palatine Hills Water District, and the partition will pose no threat to water quality. Air and noise quality will be unaffected by the addition of two dwellings to this residential area."*

Staff Comment: No significant impact on air pollution will result from the two additional dwellings allowed by the proposed land division. The County Sanitarian has verified that public sewer is available to the site. For these reasons and those stated by the applicant, the proposal satisfies Policy 13.

(2) Policy No. 14, Development Limitations: This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement.

Applicant's Response: *"The site is characterized by slight to severe slopes, ranging from five to over 40 per cent. The steepest portion of the site is on Parcel 3, where the grounds slopes steeply to the west. However, there is an adequate building site on much flatter ground in the in northeast corner of Parcel 3. The remaining parcels are relatively flat in comparison and will not pose any geologic threat. The site is not located in the 100-year flood zone and is not in an earth movement area. Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."*

Staff Comment: Surface run-off will be handled by on-site water retention and/or control facilities to be approved by the County Engineer. Part of the site is in a hazard area as identified on the County's Slope Hazard Map. Development on the site will be subject to compliance with the

Hillside Development and Grading and Erosion Control requirements in MCC 11.15.6700. For these reasons and those stated by the applicant, the proposal satisfies Policy 14.

(3) **Policy No. 16, Natural Resources:**

Applicant's Response: *"The applicant's response to this policy is found in the attached letter from Lawrence Devroy, Natural Resources Manager for David Evans & Associates. Devroy concludes that 'policy 16 of Multnomah County does not apply to this parcel since there are no significant natural resources found upon it.'"*

Staff Comment: Mr. Devroy's letter is part of the case file and is incorporated in this staff report by reference. Staff concurs with Mr. Devroy's statement and concludes that Policy 16 is not applicable.

(4) **Policy No. 22, Energy Conservation:** This policy requires a finding that the following factors have been considered:

(a) *The development of energy-efficient land uses and practices;*

(b) *Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers.*

(c) *An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*

(d) *Street layouts, lotting patterns and designs that utilize natural environmental and climate conditions to advantage.*

(e) *Finally, the county will allow greater flexibility in the development and use of renewable energy resources.*

Applicant's Response: *"Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."*

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 22.

(5) **Policy No. 35, Public Transportation:**

Applicant's Response: *"The applicant has reviewed this policy and has found that it is primarily not applicable to this application."*

Staff Comment: While staff agrees with the applicant's statement the Policy 35 is not "primarily" applicable to the proposed land division, Tri-Met Line #39 does provide service between Lewis & Clark College and downtown Portland on SW Palatine Hill Road about .5 mile north of the

site. Line #35 provides service between Oregon City, Lake Oswego and downtown Portland on SW Macadam Avenue about .75 mile east of the site.

(6) Policy No. 37, Utilities: This policy requires a finding that water, sanitation, drainage and communication facilities are available:

Water And Disposal System

A. The proposed use can be connected to a public sewer and water system, both or 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 DEQ will approve a subsurface sewage disposal system on the site; or

D. There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. There is adequate capacity in the storm water system to handle the run-off; or

F. The water run-off can be handled on the site or adequate provisions can be made; and

G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

I. Communications facilities are available.

The proposal satisfies Policy 37 for the following reasons:

Water and Sanitation:

Applicant's Response: *"The Palatine Hill Water District has verified that water service is available to the property from a six-inch line in the 30-foot right-of-way serving the current residence. The County Sanitarian has identified sanitary sewer laterals in the 30-foot easement serving the parcels from S.W. Military Road. According to Rod Dildhouse of Multnomah County, the lateral can adequately serve the parcel without creating capacity*

problems. The existing residence has been connected to the sanitary lateral since 1969."

Staff Comment: For the reasons stated by the applicant, the proposal complies with Item *A* of Policy #37.

Drainage:

Applicant's Response: *"Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."*

As a condition of approval, the applicant will be responsible for constructing storm water retention facilities that will maintain pre-development flows for off site runoff. The applicant will perform a limited hydrology study to consider how the retention system will affect peak runoff for the immediate watershed. The applicant plans to provide storm water quality by the installing sump style storm water inlets and manholes to allow for settling of suspended material. Subject to that condition, the proposal is consistent with Items *E* through *G* above

Energy and Communication:

Staff Comment: Portland General Electric provides electric power, Northwest Natural Gas Co. provides gas service and US West Communications provides telephone service. The proposal satisfies Items *H* and *I* above.

(7) Policy No. 38, Facilities: The property is located in the Riverdale School District. Comments by the district do not indicate any inability to accommodate student enrollment from houses located on the subject property. Multnomah County Fire District #11 provides fire protection through a contract with the Lake Oswego Department of Fire Services. At the July 20, 1994 hearing, the applicant provided the Hearings Officer with written comment from the Department of Fire Services confirming that there is adequate water pressure and flow for fire-fighting purposes. The department has provided comments setting forth its requirements for the design of the easement road serving the site. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area

(8) Policy No. 40, Development Requirements:

Applicant's Response: *"Policy 40.A requires a finding pedestrian and bicycle path connections will be dedicated where appropriate and where designated in the county program and map. The site is not located in an area which is so designated, and there is no existing pedestrian and bicycle pathway connecting to recreation areas or community facilities. The dedication should not be required in this case.*

Policy 40.B requires a finding that landscaped areas with benches will be provided in commercial, industrial and multiple family developments. This is a single family development, and the landscaped areas should not be required.

Policy 40.C requires a finding that areas for bicycle parking be required in development proposals, where appropriate. The proposal will lead to the construction of two new single family dwellings. It is not necessary or appropriate to require bicycle parking facilities in such development."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 40.

B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response: *"Approval of this partition will not restrict access to or development of adjoining property. Access to the proposed parcels is via private easements in accordance with MCC 11.15.2844(G). The proposed partition is in compliance with the future street plan approved in LD 10-93. For these reasons, the proposal complies with this approval standard."*

Staff Comment: Staff concurs with the applicant's statement. Approval of the current proposal will not affect access to or development of adjacent properties. Adjacent land to the west has access to SW Terwilliger Boulevard and can be developed in accordance with the Future Street Plan adopted in 1993 as part of the approval of the Tryon Vista subdivision (LD 10-93). Other adjacent land has been divided to the extent possible under current zoning. For these reasons, the proposal satisfies MCC 11.45.230(B).

C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]

Applicant's Response: *"The purpose of Chapter 11.45 is to protect property values and further the public health, safety and welfare of county residents. The intent of the chapter is to minimize street congestion, secure safety from fire and geologic hazards, provide for adequate air and light, prevent overcrowding of land and to facilitate the provision of adequate public services. This proposal will enhance property values by creating infill opportunity on large residential parcels. The addition of two single-family dwellings will have little impact on the use or value of neighboring properties in the Dunthorpe area. The development would secure the large parcel low density and minimize the impact on crowding on streets or land.*

The applicant's property has been approved by the County Sanitarian as having available sanitary sewer service. The water provider has indicated that service is readily available. Slopes on Parcel 3 are severe, but pose no geologic threat, as the preferred building site is in the northeast corner of Parcel 3 on flatter ground. Steeper slopes will remain undisturbed. (See statement of applicant's engineer.) Two additional homes on large parcels will have little impact on existing services and facilities to this low-density residential area. The new parcels can be served without utility extensions or creation of new streets or overloading current facilities. The availability of light and air will not be significantly changed by the addition of two single family residences. Much of the property will remain wooded.

For these reasons, the proposed partition complies with the intent and purpose of the Land Division Ordinance. For reasons stated throughout this application, the proposal complies with other applicable provisions of Chapter 45."

Staff Comment:

(1) The size and shape of the proposed parcels meet the area and dimensional requirements of the R-30 zoning designation. The lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the R-30 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.

(2) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.

(3) The proposal minimizes street congestion by requiring improvements for the existing private easement road that runs from the subject site north to Military Road.

(4) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.

(5) The proposal meets the area and dimensional standards of the requested R-30 zoning district as explained in Finding 4.D below. Residential development on newly created lots will be required to comply with applicable R-30 setback, height, lot coverage and solar access requirements. In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.

(6) The finding for Decision #2 (MC 1-94) and for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities. The proposal satisfies MCC 11.45.230(C)

D. Zoning Compliance [MCC 11.45.390(D)]:

Area and Dimensional Standards

Applicant's Response: *"The proposal is the division of one 3.36 acre lot into three parcels in the R-30 zoning district. The proposed use of the land for single family dwellings is a permitted use in the R-30 district (MCC § 11.15.2842(A)) As shown on the tentative plan map, all three parcels will comply with the minimum lot area and dimension requirements of the R-30 zoning (§ 11.15.2844(A))."*

Staff Comment: Staff concurs with the applicants statement. The proposed land division meets applicable area and dimensional standards.

Solar Access Standards

Applicant's Response: *"The application complies with the solar access provisions of 11.15.6815 -.6822, for the following reasons. Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."*

Staff Comment: The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though Parcels 1 and 2 do not have a front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). Parcels 1 and 2 do not meet the basic design standard of MCC 11.15.6815(A) because the existing road pattern for the area prevents the parcels from being oriented for solar access. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 33 percent.

Property Line Adjustment to Correct Old Zoning Violation

Staff Comment: In 1973, a former owner of the subject site acquired land containing .38 acre from the owner of Tax Lot 51 to the west. The acquisition resulted in the creation of a separate cube-shaped parcel containing 16,553 square feet. Creation of the parcel constituted a zoning violation because the parcel contained less than the minimum 30,000 square feet required under the R-30 zoning standards. Although the the "cube" is now part of the subject site, completion of a property line adjustment is the appropriate method of correcting the original zoning violation.

Access by Easement See Findings for MC 1-94.

E. Subdivision Name [MCC 11.45.230(E)]: The proposed land division is not a subdivision because is does not result in four lots. Therefore, it will not have a name and MCC 11.45.230(E) is not applicable.

F. Street Layout [MCC 11.45.230(F)]: No new streets are necessary or proposed. Therefore, MCC 11.45.230(F) is not applicable.

G. Private Streets [MCC 11.45.230(G)]

Applicant's Response: *"The proposed access for the two new single family residences are restricted by the access easement* [requested for approval] *by the Hearings Officer. The access is clearly indicated on the tentative plan map.*

The two additional parcels will use the same driveway currently in use by the existing residence. As shown on the tentative plan map, Parcel 2 will have a "flag strip" driveway extending west from the existing driveway. Access to Parcel 3 will be provided by an access easement across Parcel 2, guaranteed as part of the deed creating the two parcels. Maintenance responsibilities for the new driveway/easement will be shared by Parcels 2 and 3, and will be set out in the deeds."

Staff Comment: Access to the site is by way of an existing private driveway in a private easement running from SW Military Road to the site. At the July 20, 1994 hearing, opponents of the proposed land division argued that the driveway should comply with the Street Standards Ordinance with respect to right-of-way width, pavement width and provision of curbs and sidewalks. Following the July 20 hearing, the applicant applied to the County Transportation Division for a variance from the provisions of the Street Standards Ordinance with respect to the private driveway. In a document titled "Decision on Requested Variance," attached to this Staff Report as Exhibit A and incorporated by reference hereto, the Transportation Division staff concludes that no variance is necessary because (1) the Street Standards Ordinance does not apply to access gained by private easement and (2) the design of the proposed access can satisfy all structural requirements , and its width is not regulated by the Transportation Division In the alternative, the Transportation Division staff concludes that if the Hearings Officer finds that a variance is in fact appropriate, the proposed access meets the Transportation Division criteria for such a variance. Staff concurs with the Transportation Division's findings and concludes that MCC 11.45.230(G) is satisfied.

H. Flooding and Flood Hazards [MCC 11.45.230(H)]: The criterion is not applicable because the site is not in a flood plain.

Conclusions (LD 13-94)

1. The land division satisfies applicable elements of the Comprehensive Plan.

2. The proposed land division satisfies the approval criteria for Type I land divisions.

3. Subject to Decision #2, the proposed land division complies with the Zoning Ordinance.

Findings of Fact (MC 1-94)

1. Applicant's Proposal: See Finding 1 for LD 13-94. A detailed description of the existing and proposed easements for the site appears below in finding 4.

2. Site and Vicinity Information: See Finding 2 for LD 13-94.

3. Zoning Ordinance Considerations (MCC 11.15): MCC 11.15.2844(G) states that all lots in the R-30, Single-Family Residential District *"shall abut a street or shall have such other access held suitable by the Hearings Officer."*

4. Response To Approval Criteria

Applicant's Response: *"The applicant is requesting permission from the Hearings Officer for access by easement to Parcels 2 and 3, pursuant to § 11.15.2844(G). The existing dwelling on Parcel 1 will continue to use the existing driveway. Access will be accommodated through the 30-foot and 20-foot wide easements serving the existing home on Tax Lot 14, and by creation of a flag lot and driveway easement on Parcel 2, to allow for extension of a private drive across Parcels 1 and 2 to reach Parcel 3. The applicant has secured agreements with the landowners of the land over which the easements are required. The first 20-foot wide easement extends from S.W. Military Road across the property owned by Gretchen Corbett Trommald. The subject partition has the right to that easement by agreement dated 1/18/94. The second 20-foot wide easement continues south from the end of the Trommald easement, across the property owned by John and Helen Mather. The*

subject partition has the right to that easement by agreement dated 9/12/91. The third easement is appurtenant to the subject property by deed, an easement "for road purposes." The easement is included in the legal description of "Parcel I" in Exhibit "A" of both the Tumpane deed (Book 2328, Page 605, Multnomah County Records) and in the Lease and Option to Buy granted to Gran Marque, dated July 27, 1990. Parcel I will be divided among all three of the proposed parcels; thus, all three parcels will benefit from the easement. In other words, the easement runs with the property described as Parcel I in the deed. Access to the new Parcels 2 and 3 will require the use of only the northernmost few feet of this easement."

Staff Comment: In reviewing the request for access by easement, staff has considered a letter dated June 6, 1994 from Tom Carman, Acting Fire Marshal for the Lake Oswego Department of Fire Services, which provides fire protection to the subject site. Below are portions of the letter that detail the department's requirements for improvement of ***both*** the existing easement road from Military Road to the subject site ***and*** the new road serving Parcels 2 and 3:

> *"Access: Provide improvement of Aventine Circus south of Military Road to a minimum of 20 foot wide unobstructed all weather surface. Extent of fire lane improvement to include road to where property line of 0140() S.W. Military Road intersects Aventine Circus. Further extension desirable to beginning of driveway turnaround at ()1404 S.W. Military Road.*
>
> *Access Road/Driveway to parcels #2 and #3 shall be 20 foot wide unobstructed all weather surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the access road/driveway. Access road/driveways within 15() feet of the furthest wall of the furthest structure shall be a minimum 12 foot wide all weather surface.*
>
> *Turnarounds:A turnaround shall be provided for the access road/driveway to parcels #2 and #3. Turnaround requirements will comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:*
>
> *Outside front wheel radius of fifty (5()) feet; inside rear wheel radius of twenty-five (25) feet.*
>
> *Grades: Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.*
>
> *Curvature: Approach turns to access road/driveway from Aventine Circus shall be such to accommodate standard fire apparatus.*
>
> *Parking: Where parking of vehicles would diminish the minimum 20 foot wide fire lane access, "No Parking Signs" will be required, or additional widening of the road/driveway will be required to accommodate the parking.*
>
> *Fire Lane Declaration: The extent of the access road/driveway from Aventine Circus that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents."*
>
> *Hydrants: Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000*

feet from any of the lots, nor more than 30() feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

Water Lines: An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would he approximately 250 feet.

Fire Flow: [please see Finding 4.A(7)]

Addressing: Addressing will comply with the Uniform Building Code.

Final Note :When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and The Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

Staff generally concurs with the comments of the Lake Oswego Department of Fire Services and recommends that roads serving the subject site and proposed parcels be improved in accordance with June 6, 1994 letter, as modified by Condition #3.

Conclusions (MC 1-94)

1. The use of easements as the means of access to the proposed new parcels satisfies MCC 11.15.2844(G) subject to the stated approval conditions.

2. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the landlocked nature of the subject site makes creation of a lots fronting on a public road impossible.

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

DATE: August 3, 1994

TO: Philip E. Grillo, Multnomah County Hearings Officer

FROM: Robert W. Price, Planner/Project Manager
Mitchell Nelson Welborn Reimann Partnership

RE: Rebuttal on MCC §§ 11.45.460 and 11.45.470

11.45.460

A. The site does contain slopes of more than 20%, but only on the westerly portion of Parcel 3, including the "cube" area. Neither Mr. Rankin in his letter reports, nor Mr. Redfern in his letter, suggest the parcels to be created are not buildable. Only the issues of concerns for managing drainage and runoff are discussed. The steeper slopes on Parcel 3, located on the westerly portion, leave enough buildable area to permit development of a single family dwelling without adverse impact on slopes.

B. Soil erosion can be minimized through proper management of drainage and runoff, as recommended by Mr. Rankin. Even Mr. Redfern's letter agrees with comments by Mr. Rankin and raises no new issues or concerns. Taking the input by both Mr. Rankin and Mr. Redfern relative to soil erosion issues, the site can be suitably developed.

C. The site is not within any identified 100 year flood-plain, and no comments to the contrary were made by any interested party.

D. No evidence has been provided to indicate a problem with a seasonally high water table.

E. No evidence has been provided to indicate a problem with a fragipan or other impervious layer on the site.

F. The issue of movement on the site was raised by Mr. Redfern, but only on a small area of the westerly portion of the site where slopes exceed 20% and which does not include a possible building envelope. Mr. Redfern notes in his letter that it may be important to retain vegetation in an undisturbed manner

EXHIBIT #2

on the westerly portion of the site to retain as much slope stability as possible. This would address the issue of slope stability and management of the previous movement on Parcel 3.

11.45.470

A. 1. Only single family development is proposed for the two new parcels to be created through this partition. One dwelling will be developed on each new parcel. Each parcel will significantly exceed the minimum standards for the R-30 zoning district for size, shape, width and orientation. Access will be provided through approval easements which will meet all five safety access requirements as set forth by the Fire Marshall.

2. The vicinity contains large lots with most exceeding the county's minimum development standards for size, shape and width. Adjacent tracts are either developed or available for development without adverse impact resulting from the proposed partitioning and single family development. Access, views and retention of vegetation on the subject parcel will not impact, or be impacted by, proposed development.

3. Only Parcel 3 contains slopes or vegetation which would be impacted by proposed development. Yet the parcel contains suitable building area to permit retention of slopes and vegetation as recommended by both Mr. Rankin and Mr. Redfern. Drainage and runoff can also be managed in accordance with recommendation of Mr. Rankin and Mr. Redfern. It is feasible on this site to handle runoff by the means described by Mr. Rankin without adverse effects on slopes, vegetation or natural drainage.

4. The size of the parcels and the retention of existing vegetation including many of the existing trees on Parcels 1 and 2 will provide suitable distances, barriers or screens to preserve privacy and individuality. The character of the Dunthorpe area is such that privacy and individuality are important considerations for new development. The proposed partition and development of two new single family dwellings will be consistent with the existing character of the area.

5. The new parcels are oriented to the greatest extent possible to solar requirements, given the orientation of the parent parcel and nature of other parcels in the immediate vicinity and their existing or future development. The proposed new dwellings will be no more nor less subject to winter wind and rain than other existing dwellings in the vicinity.

41018/jlh/GRILLO.LT2

DECISION ON REQUESTED VARIANCE
MC 1-94/LD 13-94

Summary of Decision:

The applicant has requested that the Division of Transportation initiate a variance to certain street standards for the proposed access road in this project. This is a difficult request, because as I interpret the language of the code and the plan, this Division has no jurisdiction to regulate the access by private easement proposed in this case. Under this interpretation, there is no applicable requirement or restriction in the Street Standards Ordinance or Street Standards Rules from which the application needs a variance.

There is a contrary contention, however, that the Code, as recently amended, makes private easements subject to the 50 foot wide right-of-way requirement found in Table 5.1 of the Street Standards Rules.

I, therefore, enter a decision on two alternative grounds. First, I find no need for a variance. Second, in the event that a 50 foot standard is applicable, I find that the criteria for a variance are met and grant a variance.

Facts:

The subject of this decision is the access to a proposed three lot partition in the Dunthorpe area. One dwelling is currently located on the site. The access would serve two additional homes off the existing access easement. The proposed private access is over a 20 foot wide easement extending South from SW Military Road. The Lake Oswego Fire Marshall has approved the access paved to a 20 foot width. The proposed access shares the entry/exit point at Military Road with the private access approved for the Tryon Vista subdivision (County File No. LD-10-93). There are no sidewalks or on-street parking in this area of Military Road.

EXHIBIT #3

Findings and Conclusions:

1. NO VARIANCE REQUIRED

I find that no variance is required for these reasons.

First, the Streets Standards Code and Rules do not apply to access gained by private easement. The definition of "local street" in Section 03.100 of the rules relates to public rights-of-way, not private easements such as this one. The county provisions are intended to implement ORS Chapter 368. In ORS 368.001, there is a definition of "local access road", which is "a public road that is not a county road, state highway or federal road". Based on that definition, we interpret "local street" to mean a public right-of-way.

Moreover, there are no definitions of "easement" or "privately maintained road" in the code, and there are no standards for either one in the code or the rules. The Transportation Division has never previously regulated private easements and we see no evidence of an intent to change this practice in any county code provisions. The Planning Division and Transportation Division have relied on fire district officials to approve the design of such private roads to assure a safe access prior to the issuance of building permits. For years we have simply used a handout sheet titled Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads, which contains only basic construction standards and a sign off by the authorized fire official.

I, therefore, interpret the code not to require compliance in this case with the standards that were written to control the typical local street.

Second, the only language in the code that might impose the Street Standards Rules on a private easement is not intended to dictate right-of-way width, but is instead intended to limit application of those rules to the drainage and structural design of the road bed.

MCC 11.45.500(B) requires that the width, design and configuration of private streets comply with the Street Standards Ordinance. In this case, I interpret the intent of that requirement to be that the basic drainage and structural design of the road bed must meet the requirements of the Multnomah County Design and Construction Manual, referenced at MCC 11.60.390 and 11.60.400.

The design of the proposed access can satisfy all structural requirements and its width is not regulated by this office.

Third, the applicable standard is whether the access is found "suitable" by the Hearings Officer under MCC 11.15.2844(G). It would not make logical sense, and it would not be internally consistent to interpret the code to require both a finding of "suitable" by the Hearings Officer and compliance with the Street Standards Rules. This would require two separate processes with different decision procedures and appeal provisions.

2. ALTERNATIVE DECISION:
VARIANCE GRANTED IF JURISDICTION EXISTS WITH THIS OFFICE

In order to expedite the decision making process, I enter an alternative ruling in the event that the initial decision finding no applicable standard is held to be incorrect by the Hearings Officer or the Board of Commissioners. By entering this ruling, I do not concede the jurisdictional issue, but simply recognize that it would be terribly inefficient for the county, the applicant and others to re-visit this matter if jurisdiction is found.

a. Proposed Variance

The application recounts the facts of the current partition application and the assertion by an opponent that the private access easement is subject to the Urban Area Standards shown in Table 5.1 of the Street Standards Rules. The table calls for a 50 foot right-of-way width, 28-32 foot pavement width, parking on both sides and curbs and sidewalks.

The applicant requests a variance from these requirements.[1] I am authorized to consider such requests under MCC 11.60.080 and Rule 04 of the Street Standards Rules.

b. Variance Criteria

Rule 04 requires submission of certain documentary information, all of which has been submitted by the applicant. The criteria require that two standards are met:

1) that the variance is in keeping with the intent and purpose of the code and the rules; and

2) that the variance will not adversely affect the fire access and/or the function of the street or related facility.

In interpreting the intent and purpose requirement, I am guided by certain key considerations. First, MCC 11.60.020 states that the intent of the Street Standards Code is to "implement and enforce the (Multnomah County Comprehensive) Plan, and it shall be liberally construed to effectuate that purpose". The rules were adopted under the provisions of MCC 11.60. Directly applicable plan policies include Policy 20, Arrangement of Land uses; Policy 22.B, Energy Conservation; Policy 24, Minor Residential Project Locational Criteria; Policy 33a, Transportation System and Policy 34, Trafficways.

Second, it is clear that the standards for a local street in the urban area are designed to provide adequate facilities for the typical urban situated with normal residential densities, an extensive sidewalk network and the need to park cars along the street.

---

[1] The applicant proposes another alternative, which is to consider this easement an "accessway" and grant relief from the 200 foot limit on accessway length. My understanding is that the central dispute is over the 50 foot width requirement for a local street, and therefore, I confine my decision to that issue.

These considerations will be applied in determining whether the variance satisfies the intent and purpose criteria.

c. Analysis of Criteria

(1). The variance is in keeping with the intent and purpose of the Code and Rules.

The applicant proposes to serve two additional homes off the existing access easement. The area is not a typical urban setting. In fact, it is a unique area of the county developed with homes located on very large lots, often exceeding an acre in size. The proposed partition of a lot with an existing house will result in three houses on 3.60 acres. Other lots in the area range from .50 acres to 4.26 acres. This is much closer to a rural setting than to a typical urban setting.

It is clear the area was developed as a rural area with large lots and narrow access roads. The proposed partition under the R-30 zoning will not alter that rural character with 30,000 square foot lots. The existing road is less than 20 feet wide on a 20 foot easement, with no curbs and no sidewalks. There are no curbs or sidewalks on S.E. Military Road. The proposed road would widen and pave 20 feet of the existing roadway to county standards. Other than width, the road can be constructed according to the structural roadbed requirements of the Multnomah County Design and Construction Manual.

The existing access is consistent with other accesses in this area and is consistent with a recent decision by the Hearings Officer. In LD 10-93, the Hearings Officer held that access over a 20 foot private easement is suitable to serve a subdivision. In a letter in that file, dated December 28, 1993, the state fire marshall approved a paved width of 19 feet when necessary to protect trees, providing "No Parking-Fire Lane Signs" are provided. The fire marshall added, "In no case will a road of less than 17 feet be approved".

The current access is adequate for the area. There is no sidewalk network, but the density is low and, therefore, pedestrian/auto conflicts are minimal. Residences have ample parking and, therefore, no on-street parking is needed.

I find that the intent and purpose of the Code and Rules is satisfied by the proposed access for several reasons.

First, the applicable Comprehensive Plan policies are satisfied. The applicant has submitted evidence that the proposed partition and access road comply with the following plan policies:

Policy 20 Arrangement of Land Uses

"The county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:

A. assure a complementary blend of uses;
B. reinforce community identity;
C. create a sense of pride and belonging; and
D. maintain or create neighborhood long term stability."

Finding:

The proposed partition will complement the existing dwelling in the area by improving their access road. It will reinforce community identity by maintaining the large size and expensive scale of homes in this area. The subject area is zoned for single family dwellings on large lots. The proposed partition could create a sense of pride and belonging when the owners of Parcels Two and Three build new dwellings. The proposed partition will maintain long term stability in the neighborhood because the new owners will construct new dwellings designed for large lots and commit the property to long term residential use. For these reasons, the proposed partition and access comply with Policy 20.

Policy 22.B Energy Conservation

"B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers."

Finding:

This policy calls for increased density in urban areas. The proposed partition will add two additional dwellings in an urban area. Without the requested access, the partition could not be approved, and the density on this parcel would not increase, contrary to this policy.

Policy 24 Housing Location

"The county's policy is to accommodate the location of a broad range of housing types in accordance with:

A. the applicable policies in this Plan;
B. the locational criteria applicable to the project scale and standards.

* * *

2. Minor Residential Project Locational Criteria

A. Access

(1) Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and projected traffic counts, speed limits and number of turning movements.

(2) There is direct access from the project to a public street."

Finding:

As shown discussed elsewhere in this decision, the proposed housing complies with applicable policies in the Plan. The proposed access complies with (A)(1) above, as described in the evidence submitted by the applicant's traffic engineer. The 20 foot width of the roadway is not a significant factor in analyzing this roadway because the housing density is very low, and there is little traffic.

The proposed access road provides direct access from the subject property to Military Road over easements. The access by easement required approval by the Hearings Officer (MC 1-94).

Policy 33a Trans tation System

"The county's policy is to implement a balanced, safe and efficient transportation system. In evaluating parts of the system, the county will support proposals which:

A. implement the Comprehensive Plan;
B. best achieve the objectives of the specific project;
* * *
F. provide a safe, functional and convenient system....."

Finding:

Although a private road, the proposed access is part of the transportation system in the county. As discussed by the applicant's traffic engineer, the widened driveway will provide improved safety and convenience to the existing dwellings now served by a substandard driveway. The objective of the proposed partition and access road is to improve access to all of the dwellings in this neighborhood. As described earlier in this decision, the proposed partition and access implement portions of the Comprehensive Plan.

Policy 34 Trafficways

"The county's policy is to develop a safe and efficient trafficway system using the existing road network, and by:

* * *
B. improving streets to the standards established by the classification system, where necessary, and/or appropriate to identified transportation problem;
* * *
H. implementing the Street Standards Chapter 11.60 and Ordinance 162.... and establishing a procedure for allowing variances from that ordinance."

Finding:

The proposed partition access road uses the existing access road, and improves it into a safe and efficient access. As discussed elsewhere in this decision, this is a unique low density residential area with no need for the extensive street width and improvement required in a typical urban neighborhood. Allowing the proposed access is in compliance with Policy B, because it is not necessary or appropriate to apply the full width standards of a local street to t his private access. This variance request follows the intent of Policy H to allow variance to the street standards. This variance request under the authority of rules established under Chapter 11.60 is in compliance with Policy 34.H.

In addition to compliance with the plan, I find there is no need in this unique area for the extensive width and improvements needed in a typical urban neighborhood. A sidewalk on this street would connect to nothing and serve no purpose. There are no sidewalks in the immediate area and the main access through the neighborhood, S.W. Military Road, lacks sidewalks. Moreover, the recent decision approving the Tryon Vista subdivision (LD 10-93), which adjoins this area, the Hearings Officer did not require sidewalks. The low density and low traffic counts in the area also establish the adequacy of the current easement, as documented by the reports and testimony of the applicant's traffic engineer.

Likewise, an additional width for on-street parking is not needed in this area where on-street parking is virtually non-existent.

In short, the requirement for a 50 foot right-of-way with full improvements is not needed to satisfy the intent of the Code, Plan and Rules, due to the unique character of the area.

(2) The variance will not adversely affect the fire access and/or the function of the street or related facility.

The applicant has presented letters from the city of Lake Oswego Department of Fire Services and the applicant's traffic engineer at David Evans and Associates. The width of the access road was not a safety issue for either of these experts.

The fire marshall requires improvement with a 20 foot wide all-weather surface from the northern boundary of the subject property to Military Road. A turn-around is required for the new driveway crossing the subject property. Parking may be restricted and fire hydrants may be required.

The traffic engineer, Jennifer Danziger, states that even with the two new dwellings made possible, the proposed partition "traffic volumes on this roadway would still be very low", and the accessway maintains a sight distance of approximately 250 feet. Danziger concluded:

"The access roadway can accommodate the additional traffic....without substantial inconvenience or risk to other residents served by it."

d. Conclusion Regarding the Variance

The criteria for granting a variance are met in this case and, therefore, a variance is granted as noted from the following requirements for a residential local street (Table 5.1, Street Standards Rules), to the extent they are otherwise found to be applicable:

- 50 foot right-of-way width, adjusted to 20 feet;
- curbs, not required;
- sidewalks, not required;
- parking, not required; and
- pavement width 24-32 feet, adjusted to 20 feet as approved by the fire marshall.

0636E

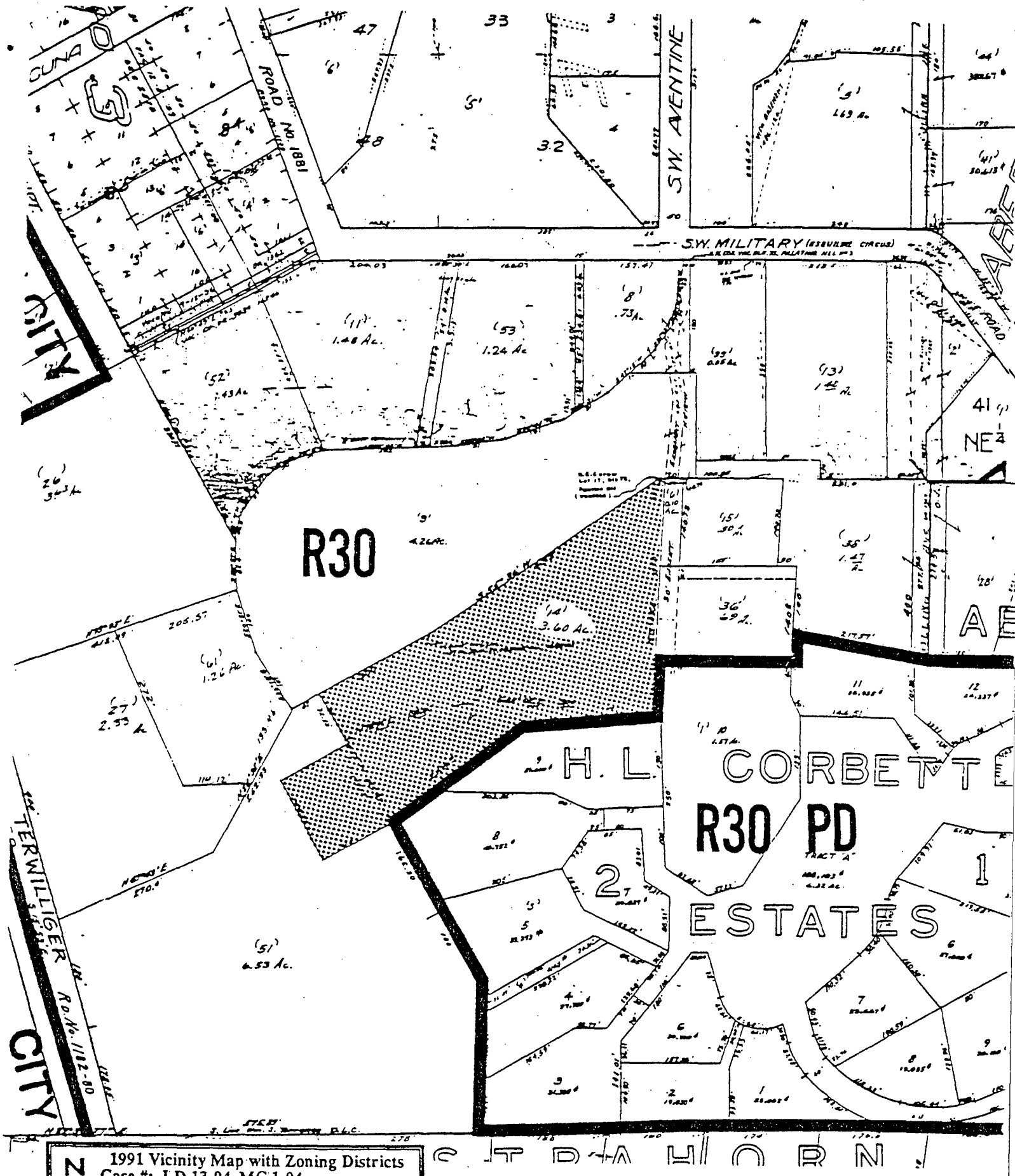
Appeal to the Board of County Commissioners:

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" form and a fee of $300.00 plus a $3.50 per minute charge not to exceed $500.00 for a transcript of the initial hearings(s) [ref MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)]. Instructions and forms are available at the County Planning and Development office located at 2115 SE Morrison Street, Portland, Oregon.

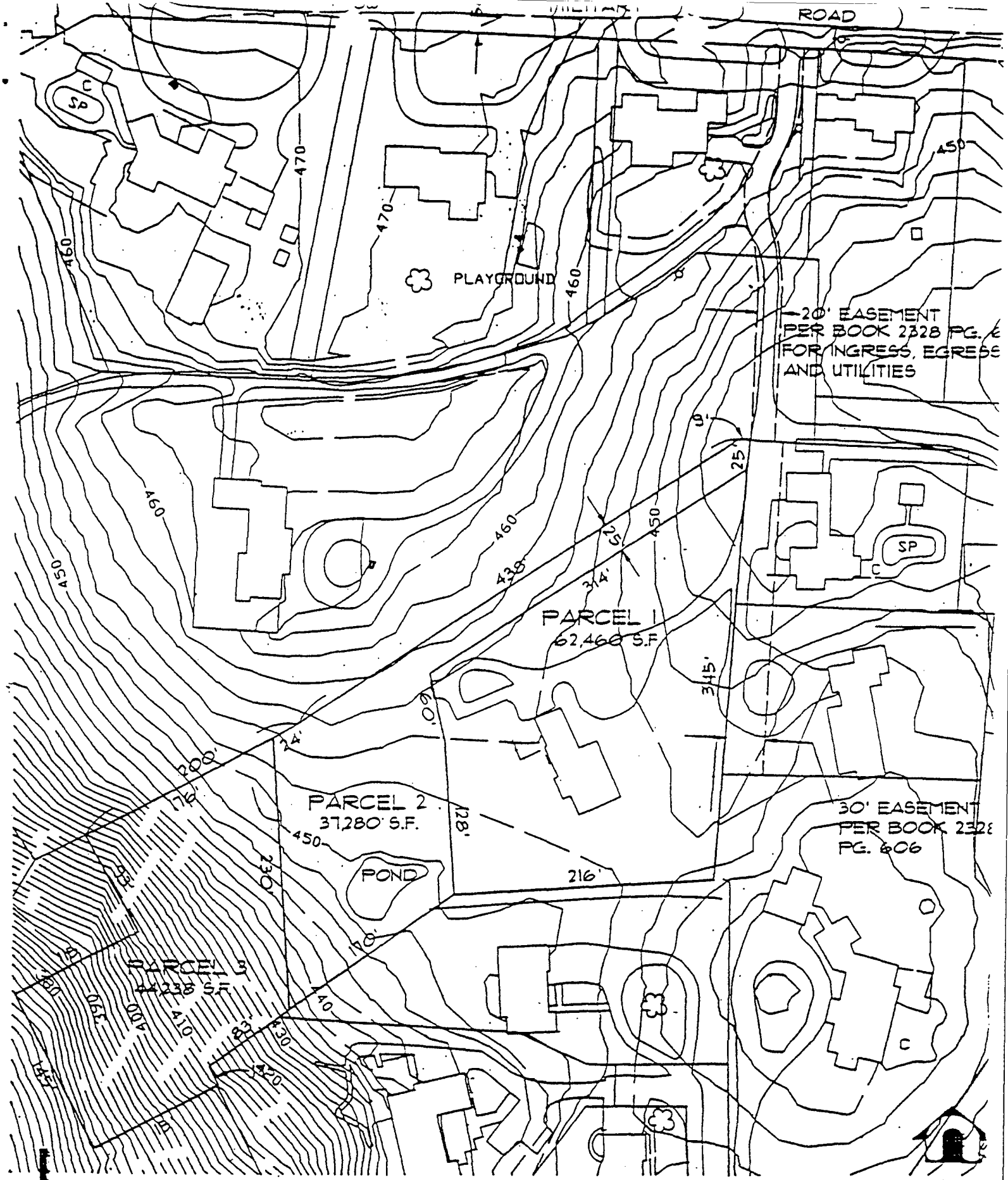
Failure to raise an issue by the close of the record at or following the final hearing (in person or by letter) precludes appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to provide specificity on an issue sufficient for the Board to respond precludes appeal to LUBA on that issue.

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at (503) 248-3043.

Signed by the Hearings Officer	December 23, 1994
Decision mailed to Parties	December 30, 1994
Decision submitted to Board Clerk	December 30, 1994
Last day to appeal decision	January 9, 1995
Reported to Board of County Commissioners:	January 10, 1995



1991 Vicinity Map with Zoning Districts
Case #: LD 13-94, MC 1-94
Location: 01400 SW Military Road
Scale: 1 inch to 200 feet (approx)
Shading indicates subject property
SZM 193; A&T Map 4230; Sec 34, 1S, 1E



DAVID EVANS AND ASSOCIATES, INC.
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4802
(503) 223-6663

PROJECT

TENTATIVE MAP PLAN

TITLE

01400 SW MILITARY ROAD

TL 14, SE 1/4, SEC. 34, T1S, R1E

SHEET 1

FILE	DRAWN BY	DESIGN BY	SCALE	DATE
GMBD0001	LNM	MC 1-94/BD 3-94	1" = 100'	6-3-94

DAVID EVANS AND ASSOCIATES, INC.

LD 13-94
MC 1-94

TENTATIVE PLAN MAP
01400 S.W. MILITARY ROAD
TL14, SE 1/4 SEC 34, T1S, R1E
PORTLAND, OREGON

E 1

PLEASE PRINT LEGIBLY!

MEETING DATE 4/25/95

NAME Frank Hammond (atty)

ADDRESS 1727 NW Hoyt

STREET

Portland 97219

CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. P-4

SUPPORT X ***OPPOSE*** _____

SUBMIT TO BOARD CLERK

I represent the applicant/appellant

#2

PLEASE PRINT LEGIBLY!

MEETING DATE April 25, 1995

NAME CLIFFORD HAMBY

ADDRESS 16238 NW McNamee Road
STREET

Portland OR 97231
CITY ***ZIP***

I WISH TO SPEAK ON AGENDA ITEM NO. P-4

SUPPORT _____ ***OPPOSE*** X

SUBMIT TO BOARD CLERK

Meeting Date: APR 2 5 1995

Agenda No: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Land Use Appeal Hearing in the matter of CU 2-95; HV 2-95

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: April 25, 1995

Amount of Time Needed: 1 hour

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sarah Ewing TELEPHONE: 248-3043
BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED

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

Summary (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Hearing for a Land Use Appeal as the result of a Hearing Officer's decision denying approval of a residence not related to forest use on a 16.43 acre existing parcel in the Commercial Forest Use zoning district and variance to the two required side yard setbacks. Property is located at 16200 N.W. NcNamee Road.

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: RSP Betsy Williams

1995 APR -4 AM 9:55
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

4/25/95 BARRY ADAMSON SUBMITTAL

ORS 215.705(1)

"(1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section ***and*** ORS 215.710, 215.720, 215.740 ***and*** 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

"(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

"(A) Prior to January 1, 1985; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"* * * * *"

ORS 215.720

"(1) A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forestland ***only if***:

"(a) The tract on which the dwelling will be sited is in western Oregon, . . . and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

"* * * * *

"(3) No dwelling other than those described in [1] this section ***and*** [2] ORS 215.740 ***and*** 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forestland.

ORS 215.740(1)

"(1) If a dwelling is not allowed ***under ORS 215.720(1)***, a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if **[1]** it complies with other provisions of law ***and*** **[2]** is sited on a tract:

"* * * * *

"(b) In western Oregon of at least 160 contiguous acres . . ."

"* * * * *"

ORS 215.750

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

"(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

"(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within the 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

"(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

"(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within the 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

"(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

"(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within the 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

"* * * * *

"(4) A proposed dwelling under this subsection is not allowed:

"(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations ***or other provisions of law***.

"(b) Unless it complies with the requirements of ORS ***215.730.***

"* * * * *"

4/25/95 FRANK HAMMOND SUBMITTAL

2. Dwellings

a. (§3.36) Dwellings Authorized by ORS chapter 215

Forest zones may include "[d]wellings authorized by ORS 215.720 to 215.750." OAR 660-06-025(1)(d). These statutory provisions authorize only three types of dwellings in land zoned for forest use, making no distinction between forest and nonforest dwellings.

(1) The lot-of-record dwellings set forth in ORS 215.705(1) and 215.720(1);

(2) Large-tract dwellings set forth in ORS 215.740(1); and

(3) Template dwellings set forth in ORS 215.750.

The criteria for these dwellings are set forth in OAR 660-06-027. "No dwelling other than those [three] may be sited on land zoned for forest use under a land use planning goal protecting forestland." ORS 215.720(3).

ORS 215.730 contains fire protection and stocking requirements that apply as conditions of approval for the lot-of-record and template dwellings, but not to the large tract dwellings. *See* ORS 215.720(1), 215.730(1) (lot-of-record), 215.750(4)(b) (template). OAR 660-06-035 contains fire siting standards for all new dwellings in forest and mixed farm/forest zones. OAR 660-06-029 has additional siting criteria for all dwellings in forest and mixed agriculture/forest zones, including the requirement to meet Oregon Department of Forestry minimum stocking requirements.

b. (§3.37) Other Dwellings

The Goal 4 administrative rule authorizes "other dwellings under prescribed conditions." OAR 660-06-025(1)(e). Other dwellings include (1) caretaker residences for public parks and fish hatcheries, OAR 660-06-025(3)(j); and (2) destination resorts approved under OAR 197.435 through 197.465, which include dwellings, OAR 660-06-025(3)(n). *See* Chapter 4, *infra.*

CAVEAT: The courts may find these provisions for dwellings prohibited by the legislature under ORS 215.720(3).

3. (§3.38) Uses Other than Dwellings

In addition to "dwellings authorized by law," Goal 4 authorizes only those nonforest uses that (1) conserve soil, water, and air quality and provide for fish and wildlife resources, agriculture, and recreational

4/25/95 FRANK HAMMOND SUBMITTAL

New Laws About New Dwellings In Forest Zones

A Summary of Key Provisions From 1993's House Bill 3661

The 1993 Legislature adopted some important new legislation on land use: House Bill 3661. Some of the bill's key provisions have to do with review and approval of permits for new dwellings in forest zones. Those provisions establish four new "tests" – sets of criteria under which a new home may be approved in a forest zone. This summary outlines those four tests.

The Lot-of-Record Test

The first way that a new dwelling may be permitted on land in a forest zone is under "lot-of-record" provisions in Section 2 of HB 3661. A lot of record is a lot or parcel that:

- was created before January 1, 1985,
- has been owned by the same person (or a relative or an heir) since then,
- has no dwelling on it,
- is not highly productive forestland, and
- meets other standards in Section 2.

The owner of a lot of record may get a permit for *one* dwelling there without having to satisfy certain other requirements. Once this provision has been used, no other new dwellings may be established on that tract.

In western Oregon, the new lot-of-record provisions for forestland apply only to tracts not capable of producing 5,000 cubic feet of commercial wood fiber per year and located within 1,500 feet of a public road (excluding BLM and Forest Service roads). Provisions for eastern Oregon are the same, except the productivity standard is 4,000 cubic feet per year.

The Large-Tract Test

The second way a new dwelling may be permitted on forestland is under the large-tract provisions of Section 4(2). These provisions allow a new dwelling on a tract that has at least 160 acres in western Oregon or 240 acres in eastern Oregon. A tract is "one or more contiguous lots or parcels under the same ownership."

The Multi-Tract Test

The third way is through provisions in Section 4(5) that allow an owner of several separate tracts to count them as one unit. A person who owns two or more tracts of forestland may establish a new dwelling there if:

- the total area of the tracts is at least 200 acres (in western Oregon) or 320 acres (eastern Oregon);
- the tracts are in the same county or in adjoining counties; and
- the owner agrees to deed restrictions that will ban additional dwellings on those tracts.

The Template Test

The fourth way is under the template provisions of Section 4(6). They allow new dwellings in areas where land has been divided into small holdings and some houses already exist. The template is a square or rectangular box applied to a map of the proposed homesite and surrounding area. If the number of parcels and houses in the area enclosed by the template meets the criteria of Section 4(6), a new dwelling may be allowed. See the matrix on the next page for details about the template test.

General Requirements

Section 5 of HB 3661 sets standards for fire protection, stocking of trees, and water supply. New dwellings approved under the lot-of-record or template tests will have to meet those standards. Also, HB 3661 doesn't repeal other laws such as building codes. A person who wants to build a new house on forestland still must get a building permit, approvals for a septic tank, and access to a public road, and satisfy any other regulations that may apply.

Local Planning and Zoning

House Bill 3661 takes effect on November 4, 1993. It will be administered by county officials through county land use plans and ordinances.

(Please see next page.)

Department of Land Conservation and Development, September 1993

However, it will be some time before local ordinances can be amended to conform with all of the bill's new provisions.

Also, the bill calls for the Land Conservation and Development Commission to amend its rules so they comply with the new legislation. LCDC will be eliminating rule provisions for "forest dwellings," "nonforest dwellings," and "small-scale forest lands." HB 3661 calls for LCDC to make those changes before March 1, 1994.

For More Information . . .

This is a summary, not a complete statement of provisions from HB 3661. For a copy of the entire 33-page bill, call the Legislature's bill distribution center at 503 378-8891. Also, this new legislation soon will be added to Oregon's statutes, which are available in most public libraries. If you have questions about how HB 3661 will affect a certain piece of property or a specific county, please contact your county planning department. ❑

OUTLINE OF HOUSE BILL 3661'S "TEMPLATE TEST" FOR NEW DWELLINGS ON FORESTLAND

STEP 1: Use a map that shows:
- Parcel where new dwelling is proposed;
- Nearby parcels and dwellings that existed on January 1, 1993; and
- Public roads as of January 1, 1993.

STEP 2: Place the template (a square frame that encompasses 160 acres on map) on the map, centering it on proposed homesite parcel.

If homesite tract abuts a road, then a rectangular template, one mile by one-quarter mile, may be used. See Section 4(7) of HB 3661.

If homesite tract has at least 60 acres and abuts a road or perennial stream, then the rectangular template must be used, and special criteria on location of dwellings apply. See Section 4(8).

STEP 3: Find whether the number of other parcels and dwellings within template meets criteria from table below. If yes, a new dwelling may be approved on parcel.

STEP 4: Meet requirements of Section 5: homesite parcel must be stocked with trees; dwelling must meet standards for fire protection and water supply.

Check capacity of parcel's soils to grow timber. Classify parcel using categories below. Find applicable criteria in column on right. ► ► ►		The template must encompass at least this many parcels and dwellings:
IN WESTERN OREGON	IN EASTERN OREGON	
0-49 Cubic Feet of Wood Fiber Per Acre Per Year	0-20 Cubic Feet/Ac/Yr	• All or part of 3 parcels • 3 dwellings
50-85 Cubic Feet/Ac/Yr	21-50 Cubic Feet/Ac/Yr	• All or part of 7 parcels • 3 dwellings
>85 Cubic Feet/Ac/Yr	>50 Cubic Feet/Ac/Yr	• All or part of 11 parcels • 3 dwellings

4/25/95 Clifford Hamby
Submittal

TO THE HONORABLE BOARD OF COMMISSIONERS FOR MULTNOMAH COUNTY

CASE FILE: CU 2-95; HV 2-95

CONDITIONAL USE APPROVAL FOR SINGLE FAMILY RESIDENCE RELATED TO FOREST MANAGEMENT AND VARIANCES TO SIDE YARD REQUIREMENTS OF THE CFU (COMMERCIAL FOREST USE) ZONING DISTRICT

I would first like to state that, to my knowledge, I have not met the applicant until today at this hearing. My wife testified at the time the original application was presented to the Hearing's Officer and we are on record with our concerns and comments. It is my understanding that this is a DE NOVO Hearing and that material and information may be submitted and discussed in relation to the entire application.

As stated by the Hearing's Officer, although this may seem to be a simple matter of approving a dwelling on a parcel of land that is zoned as a Commercial Forested Use, it is very important to note that this application falls within the parameters and criteria set by the 1993 legislature that broadly controls the extent to which dwellings can be developed on forest land.

The most important item to note is that the Hearings Officer has **DENIED** this application for failure to fulfill the "lot of record" provision required by state statute under ORS 215.705(1)(a) and OAR 660-06-027(1)(g). Basically, the current owner did not **"acquire"** the subject property prior to Jan. 1, 1985, nor can the record substantiate any finding that the current owner **acquired title** to the subject property via devise or intestate secession from someone who acquired said property prior to January 1, 1985. For the record, I have attached a copy of the deed under which the applicant acquired title to the subject site.(Recorded as Document No. 94-119846, Book of Records for Multnomah County)

The owner purchased the subject site from Western International Forest Products, Inc. whose sole purpose is to acquire CFU zoned properties and to harvest (log) them for profit, a use that does conform to CFU zoned sites and the Oregon Forestry Practices Act. The owner has erroneously stated in their response to the hearings officer on 2/17/95 that "while it is true that Western International Forest Products ..., a private timber company purchased the property solely for the purpose of harvesting the timber on it... the owner doubts that Western International Forest Products would have done so if they could not have resold the property."

Just because an owner, i.e. Western International Forest Products, places a parcel of land on the market does not mean that the parcel may be buildable. The applicants deed specifically states that "This instrument (i.e. deed) will not allow use of the property described in this instrument in violation of applicable land use laws and restrictions. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any lawsuits against farming or forest practices as defined in ORS 30.930." This statement is required on all deeds that transfer any type of interest to land in the state of Oregon by ORS specifically to provide warning to purchasers that they must beware promises made or advice to the contrary.

The Hearings Officer correctly states that ORS 215.705(1)(a) provides that **"The lot or parcel was acquired by the present owner prior to January 1, 1985 or by devise or by intestate secession by the same date."** The record clearly shows that the current owner did not meet that criteria by their own deed of purchase. The applicant has also stated that the subject parcel meets the County requirements of ownership required under MCC 11.15.2052 and 11.15.2062, which do not address or even mention ownership. In addition to being lawfully created, ORS 215.705(1)(a) requires that the lot MUST have been acquired by the **"present owner"** before Jan. 1, 1985 or be acquired by the **"present owner"** prior to Jan 1, 1985 by devise or intestate succession. MCC however address only the date of creation and not ownership which is in violation of ORS 197.646(1)(3).

The Hearing's Officer correctly states that unless the legislature specifically grants a local government the option of implementing a particular statute as said local government sees fit, said local government must hold the statute to be dominate. This has been upheld by case law determined by Seto vs Tri County Metro; Transportation Dist, Mid-County Future Alternatives vs City of Portland; 1000 Friends of Oregon vs LCDC and LaGrand/Astoria vs Perb. Local governments retain pervasive (if not exclusive) authority over their form and structure, but **MUST** otherwise abide by all statues, particularly land use laws. A local government may further RESTRICT a property, but CANNOT DO LESS than the statutory law requires.

Staff has stated in their comments to the Hearing's Officer decision that the Hearing's Officer has added criteria to the County CFU zoning definition. In actuality, the Hearing's Officer has found that the MCC definition of Lot of Record is not in conformance with the definition required by ORS 215.705(1)(a) and that under ORS 197.646 (1) " A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction." Most importantly, ORS 197.646 (3) states that "When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or **statute shall be directly applicable to the local government's land use decisions.** Since the record shows that the MCC is less than the statute allows, then the MCC needs to be brought into conformance with said statue and not the lessening of the statue to meet the MCC. The fulfillment of ORS 215.705(1)(a) is an essential precedent to approval of this application and there is nothing in the ORS that will allow the County to supplant statutory requirements with land use laws.

The applicant and staff have stated that they believe that the Hearings Officer has erred and that, upon staff determination, that the MCC would take precedence over the law. To be noted is the comment that the statute pertains to Lot or Parcel of Record Dwellings while County CFU simply describes Lot of Record. I must admit to some confusion in this matter as this application directly pertains to placing a DWELLING on CFU land which is what the statute does address. I am also somewhat confused as this is an application for a residence not related to forest management, yet the applicant specifically addresses a forest related dwelling on a CFU zoned parcel and wish to ignore the existence of a statute which, since November 3, 1993, defines expressly the criteria required for a LOT of Record for the placement of a dwelling on CFU zoned parcels.

Staff's contention that the Legislative intent should not be included in the County definition is erroneous in that the County may not do less than the law allows. There is nothing in ORS 215.705(1)(a) that would support staffs contention. To the contrary, ORS 197.646(3) specifically states that the statute must take precedence over the local government code when said code is not in conformance.

It is understandable that staff would be very concerned if the Hearings Officer's decision in this matter is upheld as that would lead to bringing Multnomah County's land use requirement into conformance with the statute and not a lesser interpretation. Staff would certainly have their work cut out for them. However there is case law which correctly substantiates the Hearings Officer's decision. This is a significant issue and should be addressed.

Staff also comments that, in their opinion, if the Board of Commissioners upholds the Hearings Officer's decision, a consequence may be to render many properties unbuildable. Staff's concern is that your action may reduce the value of said properties and may reduce the opportunity for placing a dwelling on CFU zoned properties. In reality, upholding the Hearings Officer's decision will provide the opportunity for Multnomah County to be brought into conformance with ORS 215.705(1)(a) and ORS 197.646(1) & (3). It does not fall within the scope of staff to determine value for parcels nor to determine a loss in value based upon the comparison of a buildable parcel VS a parcel which is not buildable.

The subject site is a property that is zoned CFU and still retains its value as CFU, its intended use. The value of the subject parcel is determined by its zoning and use (CFU and the harvest of timber). Uniform Standards of Professional Appraisal Practices, as adopted by the state of Oregon, have determined that one of the criteria to determine the "Highest and Best use" of property relies on the properties current zoning. The record states that Western International Timber purchased the site solely for timber harvest and by deed made no determination of buildabilty to the applicant when the applicant purchased the parcel. Therefore, staff's comments pertaining to value are not applicable to this application.

Staffs concern over a change of definition and correction of the counties determination for "Lot of Record", which was adopted in 1980, is a valid concern. This definition should be reviewed, with full public notice and review by the Planning Commission. MCC is not in conformance with ORS 275.705(1)(a), Multnomah County in violation of and conflict with this ORS and under ORS 197.646(3) The failure to adopt comprehensive plan and land use regulation amendments required by subsection (1) of this section may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

As this is a De Novo Hearing, I would also like to take this opportunity to discuss the applicants request for a setback variance. The applicant has requested a setback variance due to the "unique" nature of the site. This parcel is no different than any of the parcels which lie within the 160 acre grid the applicant has chosen to address as comparable properties, nor as a matter of fact is the subject parcel different from parcels of land lying along the entire length (over 4 miles) of NW McNamee Road. As noted on the attached topographic maps, the properties which lie adjacent to the subject site all share equally difficult sloped terrain and soils. The applicant has stated, on the record, that other properties must have obtained variances in order to build in this vicinity. On 4/18/95, I spoke with staff for Multnomah County (Bob Hall). It was determined on that date that <u>there has not been a setback variance granted to any property along the entire length of NW McNamee Road</u>.

The applicant continues to confuse and compare properties which have different zoning and therefore different setback requirements. Adjacent properties zoned RR5 which abut the subject parcel do not require 200 foot setbacks. The subject parcel should not be compared to them for this variance request. The properties which share the same zoning as the subject property meet or exceed the setback criteria and have not required a setback variance.

The applicant continues to state that this property is unique, but the record does not support this criteria. The Hearing's Officer chose to expand the area for this parcel and determined that the parcel (by extension) <u>may</u> be different and that there <u>may</u> have been variances granted.

The Hearing's Officer did not state how far he chose to expand this boundary (perhaps comparing this parcel to Sauvie Island?) but by definition, this parcel should be compared to the surrounding parcels which lie within the 160 acre grid test. The Hearings Officer also was incorrect in assuming that there "may" have been other variances granted. As stated by Staff as previously noted, no variances have been granted in this area.

Clearly, staff and the hearings officer were mistaken in their assumptions pertaining to the request for a setback variance for the subject parcel and the applicant has not met the criteria required for this Board to grant a variance.

One additional note to be made is that this Board has adopted language that pertains to this area known as the West Hills Rural Plan. This plan designation includes all properties in this area, and even though staff have not had time to prepare more detailed maps which specifically delineate the areas, the language has been approved and adopted. Language contained in that document states that " The primary purpose of the Commercial Forest Use zoning district is to conserve and protect designated lands for the continued commercial growing and harvesting of timber." "The new Commercial Forest Use zoning district, mandated by state planning law, contains severe limitations on the construction of residences... (Page 6, West Hills Rural Plan). Re-designation of lands as exception lands could have significant adverse impacts upon resources such as streams, wildlife habitat, and scenic views if such re-designations occur in key areas related to these resources." The West Hills Rural Plan specifically addresses CFU zoned parcels and an agreed upon minimum size of 40 acres for any subdivision or dwelling criteria and to **"constrain development in the CFU zoning district** (Page 7).

If this Board decides to overturn the Hearing's Officer decision, I would ask that you place additional conditions of approval to this application.

1. That the alternate site the applicant has designated for a future log landing site for logging practices, be used for the house site. Therefore, the existing landing area would be left for the purpose of logging this site in the future.

2. That all continued clearing of timber for the building site be done during reasonable working hours and that any slash burn be conducted under the express guidance of the Fire Marshall with all relative permits being obtained form DEQ and the Fire Marshall.

3. That the owner not be allowed to build, disrupt, block or otherwise hinder ingress and egress over the existing water line easement which is shared between ourselves and the parcel lying to the south, on the other side of the subject parcel. The Johnson family and we share a well and access is necessary over this area.

4. If the home is allowed to be constructed upon the existing cleared log landing site, that mature landscaping or fencing no less that 8 feet in height be placed as a buffer between the properties, except over the existing water line easement.

It is the applicant's burden to prove beyond all reasonable doubt that they have met all the criteria that is required for approval of this application. I believe that I have presented the correct documentation that shows that the MCC is not in conformance with ORS and that the applicant cannot meet the Lot of Record requirement.

I appreciate your patience in this matter and hope that you will make the correct determination and uphold the Hearing's Officer decision and DENY this application. I also hope that you will direct staff to begin the process of bringing the MCC into conformance with ORS before an enforcement order is brought against Multnomah County.

Respectively,

Clifford Hamby

Clifford Hamby

April 25, 1995

(c) of subsection (2) of this section shall be approved by the governing body of the county and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall be mailed by first class mail to the affected owner at the address shown on the last available complete tax assessment roll. [1977 c.664 §37]

215.505 [1969 c.324 §1; repealed by 1977 c.664 §42]

215.508 Individual notice not required if funds not available. Except as otherwise provided by county charter, if funds are not available from the Department of Land Conservation and Development to reimburse a county for expenses incurred in giving additional individual notices of land use change as provided in ORS 215.503, the governing body of the county is not required to give those additional notices. [1977 c.664 §38]

215.510 [1969 c.324 §2; 1973 c.80 §47; repealed by 1977 c.664 §42]

215.513 Notice form; forwarding of notice to property purchaser. (1) A mortgagee, lienholder, vendor or seller of real property who receives a mailed notice required by this chapter shall promptly forward the notice to the purchaser of the property. Each mailed notice required by this chapter shall contain the following statement: "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

(2) Mailed notices to owners of real property required by this chapter shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance. [1977 c.664 §39]

215.515 [1969 c.324 §3; 1973 c.80 §48; repealed by 1977 c.766 §16]

215.520 [1969 c.324 §4; repealed by 1977 c.664 §42]

215.525 [1969 c.324 §6; repealed by 1977 c.664 §42]

215.530 [1969 c.324 §7; repealed by 1977 c.664 §42]

215.535 [1969 c.324 §5; 1973 c.80 §49; repealed by 1977 c.664 §42]

COUNTY HOUSING CODES

215.605 Counties authorized to adopt housing codes. For the protection of the public health, welfare and safety, the governing body of a county may adopt ordinances establishing housing codes for the county, or any portion thereof, except where housing code ordinances are in effect on August 22, 1969, or where such ordinances are enacted by an incorporated city subsequent to August 22, 1969. Such housing code ordinances may adopt by reference published codes, or any portion thereof, and a certified copy of such code or codes shall be filed with the county clerk of said county. [1969 c.418 §1]

215.610 [1969 c.418 §2; 1979 c.190 §407; repealed by 1983 c.327 §16]

215.615 Application and contents of housing ordinances. The provisions of housing code ordinances authorized by ORS 215.605 and this section shall apply to all buildings or portions thereof used, or designed or intended to be used for human habitation, and shall include, but not be limited to:

(1) Standards for space, occupancy, light, ventilation, sanitation, heating, exits and fire protection.

(2) Inspection of such buildings.

(3) Procedures whereby buildings or portions thereof which are determined to be substandard are declared to be public nuisances and are required to be abated by repair, rehabilitation, demolition or removal.

(4) An advisory and appeals board. [1969 c.418 §3]

FARMLAND AND FORESTLAND ZONES

(Lot or Parcel of Record Dwellings)

215.700 Resource land dwelling policy. The Legislative Assembly declares that land use regulations limit residential development on some less productive resource land acquired before the owners could reasonably be expected to know of the regulations. In order to assist these owners while protecting the state's more productive resource land from the detrimental effects of uses not related to agriculture and forestry, it is necessary to:

(1) Provide certain owners of less productive land an opportunity to build a dwelling on their land; and

(2) Limit the future division of and the siting of dwellings upon the state's more productive resource land. [1993 c.792 §10]

215.705 Dwellings in farm or forest zone; criteria (1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(b) The tract on which the dwelling will be sited does not include a dwelling.

(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law.

(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710 except as provided in subsections (2) and (3) of this section.

(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.

(f) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

(2) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(a) It meets the other requirements of ORS 215.705 to 215.750;

(b) The lot or parcel is protected as high-value farmland as described under ORS 215.710 (1); and

(c) A hearings officer of the State Department of Agriculture, under the provisions of ORS 183.413 to 183.497, determines that:

(A) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity.

(B) The dwelling will comply with the provisions of ORS 215.296 (1).

(C) The dwelling will not materially alter the stability of the overall land use pattern in the area.

(3) Notwithstanding the requirements of subsection (1)(d) of this section, a single-family dwelling not in conjunction with farm use may be sited on high-value farmland if:

(a) It meets the other requirements of ORS 215.705 to 215.750.

(b) The tract on which the dwelling will be sited is:

(A) Identified in ORS 215.710 (3) or (4);

(B) Not protected under ORS 215.710 (1); and

(C) Twenty-one acres or less in size.

(c)(A) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or

(B) The tract is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within the urban growth boundary, but only if the subject tract abuts an urban growth boundary.

(4) If land is in a zone that allows both farm and forest uses and is acknowledged to be in compliance with goals relating to both agriculture and forestry, the county may apply the standards for siting a dwelling under either subsection (1)(d) of this section or ORS 215.720, 215.740 and 215.750 as appropriate for the predominant use of the tract on January 1, 1993.

(5) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:

(a) Exceed the facilities and service capabilities of the area;

(b) Materially alter the stability of the overall land use pattern in the area; or

(c) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(6) For purposes of subsection (1)(a) of this section, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity

tested case hearing. If a state agency fails to provide information identified in the work program and required to complete a work program task, the local government shall not be subject to sanctions related to that task. Based on the findings and recommendation of the hearings officer, the commission shall issue an order either granting an extension or imposing one or more of the following sanctions until completion of required work:

(a) Requiring the local government to apply all or portions of the goals as applicable to land use decisions. Sanctions may only be imposed under this paragraph when the sanctions are necessary to resolve a specific goal or periodic review deficiency identified in the hearings officer's report.

(b) Forfeiting all or a portion of grant money received to conduct the review.

(c) Adopting other enforcement order provisions as provided for in this chapter.

(d) Applying interim measures or standards to local land use decisions.

(3) When a submittal is found to be inadequate pursuant to ORS 197.633 (2) and (3), the commission may impose sanctions set forth in subsection (2) of this section.

(4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 §4]

Note: See note under 197.628.

197.639 State assistance teams; alternative coordination process. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the department may establish one or more state assistance teams made up of representatives of various agencies and local governments or an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process.

(3) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds. [1991 c.612 §5]

Note: See note under 197.628.

197.640 [1981 c.748 §9; 1983 c.827 §11; 1987 c.69 §1; 1987 c.729 §7; 1987 c.856 §8; repealed by 1991 c.612 §23]

197.641 [1983 c.827 §11b; 1987 c.729 §8a; repealed by 1991 c.612 §23]

197.643 [1983 c.827 §11c; 1987 c.729 §9; repealed by 1991 c.612 §23]

197.644 Modification of work program; commission jurisdiction and rules; standards and procedures. (1) The commission may modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination; or

(b) Issues of goal compliance are raised as a result of completion of a work program task resulting in a need to undertake further review or revisions.

(2) The commission shall have exclusive jurisdiction for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.646. The commission shall adopt rules governing standing, the provision of notice, conduct of hearings, adoption of stays, extension of time periods and other matters related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.646, 197.649, 197.650, 197.712, 197.747, 197.840, 215.416, 227.175 and 466.385.

(3) The commission shall adopt standards and procedures for the review of extension of time for submittal dates, the evaluation, work program and other matters which are subject to review by the director.

(4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650. [1991 c.612 §6]

Note: See note under 197.628.

197.645 [1983 c.827 §11d; 1987 c.729 §10; repealed by 1991 c.612 §23]

197.646 Implementation of new or amended goals, rules or statutes. (1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the department as set forth in ORS 197.610 to 197.625.

(2) The department shall notify cities and counties of newly adopted commission goals and commission rules, including the effective date, as they are adopted. The department shall notify cities and counties of newly adopted land use statutes following the legislative session when such statutes are adopted.

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

land use regulation amendments required by subsection (1) of this section may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [1991 c.612 §7]

Note: See note under 197.628.

197.647 [1983 c.827 §11e; 1987 c.69 §2; 1987 c.729 §11; repealed by 1991 c.612 §23]

197.649 Fees for notice; establishment by rules. The commission may establish by rule fees to cover the cost of notice given to persons by the director under ORS 197.610 (1) and 197.615 (3). [1983 c.827 §11f; 1985 c.565 §28; 1991 c.612 §15]

197.650 Appeal to Court of Appeals; standing; petition content and service. (1) A commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;

(b) Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (6); or

(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or 197.633, 197.636 or 197.644.

(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the department, the local government and all persons who filed comments or objections. [1981 c.748 §10; 1983 c.827 §52; 1989 c.761 §8; 1991 c.612 §16]

SPECIAL RESIDENCES

197.660 Definitions. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 442.422:

(1) "Residential facility" means a residential care, residential training or residential treatment facility licensed or registered by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.460 or licensed by the Children's Services Division under ORS 418.205 to 418.327 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training or an adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 which applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement. [1989 c.564 §2; 1991 c.801 §6]

197.663 Legislative findings. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that disabled persons and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential homes and residential facilities to provide quality care and protection for disabled persons and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is often difficult to site and establish residential homes and residential facilities in the communities of this state;

(4) To meet the growing need for residential homes and residential facilities, it is the policy of this state that residential homes and residential facilities shall be considered a residential use of property for zoning purposes; and

(5) It is the policy of this state to integrate residential facilities into the communities of this state. The objective of integration cannot be accomplished if residential facilities are concentrated in any one area. [1989 c.564 §3]

4/25/95 Clifford Hamby Submittal

WARRANTY DEED - STATUTORY FORM

(INDIVIDUAL or CORPORATION)

WESTERN INTERNATIONAL FOREST PRODUCTS, INC., AN OREGON CORPORATION

Grantor, conveys and warrants to GEORGE S. BUTLER

M130481

Grantee, the following described real property free of encumbrances except as specifica set forth herein:

(Continued)

This instrument will not allow use of the property described in this instrument in viol: of applicable land use laws and regulations. Before signing or accepting this instrume: the person acquiring fee title to the property should check with the appropriate city o: county planning department to verify approved uses and to determine any limits on lawsu: against farming or forest practices as defined in ORS 30.930.

ENCUMBRANCES:

1994/1995 PROPERTY TAXES A LIEN BUT NOT YET PAYABLE, RIGHTS OF THE PUBLIC IN AND TO THAT PORTION OF THE PREMISES HEREIN DESCRIBED LYING WITHIN THE LIMITS OF N.W. MCNAMEE ROAD, PREMISES HEREIN DESCRIBED WERE SPECIALLY ASSESSED AS FOREST LAND, COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS RECORDED 5/2/67 IN BOOK 559 PAGE 403.

CHICAGO

The true consideration for this conveyance is $75,000.00

Dated August 5, 1994 ; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Western International Forest Products, Inc.

by: Milan Stoyanov, president

STATE OF OREGON, County of Washington)ss.

This instrument was acknowledged before me on _____, 19____,

by_____

This instrument was acknowledged before me on August 5, 1994,

by Milan Stoyanov

as president

of Western International Forest Products, Inc.

Frederick W Sunderman

Notary for Public for Oregon

My commission expires June 3, 1994

OFFICIAL SEAL
FREDERICK W. SUNDERMAN
NOTARY PUBLIC-OREGON
COMMISSION NO. 007228
MY COMMISSION EXPIRES JUNE 3, 1995

After recording return to:
George S. Butler

7222 SE 29th
Portland, OR 97202

Until a change is requested all tax statements shall be sent to the following address:
same as above

Escrow No. 4200-18950-PS

1 of 3

94 119846

Order No: 130481

LEGAL DESCRIPTION

A parcel of land in the Southeast one-quarter of Section 19, Township 2 North, Range 1 West, Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at a 5/8 inch iron rod in the East line of said section which bears South 4°12'50" West, 290.0 feet from the East one-quarter corner of said Section 19; thence South 4°12'50" West, 807.58 feet to a concrete monument at the Southwest corner of the J. Tomlinson D.L.C.; thence North 88°38'26" East 169.45 feet to a 1/2 inch iron pipe at the re-entrant corner of said D.L.C.; thence South 5°03'07" East, 442.45 feet along the East line of said Section 19; thence South 84°43'12" West, 1260.22 feet to a 5/8 inch iron rod thence South 89°23'13" West, 428.53 feet to a point on the centerline of McNamee Road as surveyed and monumented in September 1936; thence following said centerline along the arc of a 477.5 foot radius non-tangent curve right through a central angle of 13°47'04" a distance of 114.89 feet to a point which bears North 8°45'28" East, 114.61 feet from the last described point; thence North 15°39' East 408.71 feet to Road Station 185+70.47 B.C. thence along the arc of a 238.8 foot radius curve left through a central angle of 49°54' distance of 207.98 feet to a point which bears North 9°18' West 201.47 feet from the last described point; thence leaving the centerline of said McNamee Road, North 55°45' East, 30.0 feet; thence North 78°00' East, 250.0 feet; thence North 39°21' East, 551.32 feet; thence South 70°50' East, 210.0 feet; thence North 55°36'20" East, 524.78 feet; thence South 70°50' East, 200.0 feet to the point of beginning.

EXCEPTING THEREFROM that portion conveyed to Mark Roy Johnson and Susan Elizabeth Johnson by Warranty Deed, recorded May 22, 1975 in Book 1042, Page 379, being described as follows:

Beginning at a concrete monument which bears South 4°12'50" West, 1097.58 feet, more or less, from the East one-quarter corner of said Section 19, said point being also the Southwest corner of the J. Tomlinson Donation Land Claim; thence Southwesterly along the arc of a 450 foot radius curve right through a central angle of 41°00' a distance of 322.01 feet to a point which bears South 24°42'50" West, 315.19 feet from the point of beginning; thence South 76°31'05" West, 720.52 feet; thence North 74°21' West, 604.73 fee to the centerline of McNamee Road as monumented in September 1936; thence North 15°39' East, 250.0 feet to Engineers Centerline Station 185+70.47 B.C.; thence South 81°40' East 445.0 feet; thence North 68°30'49" East 994.49 feet to a point on the East line of said Section 19; thence South 4°12'50" West, 250.0 feet along said line to the point of beginning.

AND FURTHER EXCEPTING THEREFROM that portion conveyed to Rodger Carl Johnson and Marilyn Kaye Johnson by Warranty Deed recorded May 22, 1975 in Book 1042, Page 381, being described as follows:

Beginning at a concrete monument which bears South 4°12'50" West, 1097.58 feet, more or less, from the East one-quarter corner of said Section 19, said point also being the Southwest corner of the J. Tomlinson Donation Land Claim; thence North 88°36'26" East, 169.45 feet to a 1/2 inch iron pipe at the re-entrant corner of said D.L.C. with the East line of said Section 19; thence South 5°03'07" East, 442.45 feet along the East line of said Section 19; thence South 84°43'12" West, 1260.22 feet to a 5/8 inch iron rod; thence South 89°23'13" West, 428.53 feet to a point in the centerline of McNamee Road as locate

(Continued)

Order No: 130481

LEGAL DESCRIPTION

and monumented in September 1936; thence Northerly along the arc of a 477.5 foot radius non-tangent curve right through a central angle of 13°47'04" a distance of 114.89 feet to a point which bears North 8°45'28" East, 114.61 feet from the last described point and being Engineers Centerline Station 181+61.76 P.C.; thence North 15°39' East, 158.71 feet along said centerline to a point; thence South 74°21' East 604.73 feet; thence North 76°31'05" East 720.52 feet; thence along the arc of a 450 foot radius curve left through central angle of 41°00' a distance of 322.01 feet to the point of beginning which bears North 24°42'50" East, 315.19 feet from the last described point.

STATE OF OREGON }
Multnomah County } ss.

I, a Deputy for the Recorder of Conveyances, in and for said County, do hereby certify that the within instrument of writing was received for record and recorded in the records of said County

94 AUG 29 PM 1:40

RECORDING SECTION
MULTNOMAH COUNTY, OREGON

Deputy

Vol / Page On Page

94 119846

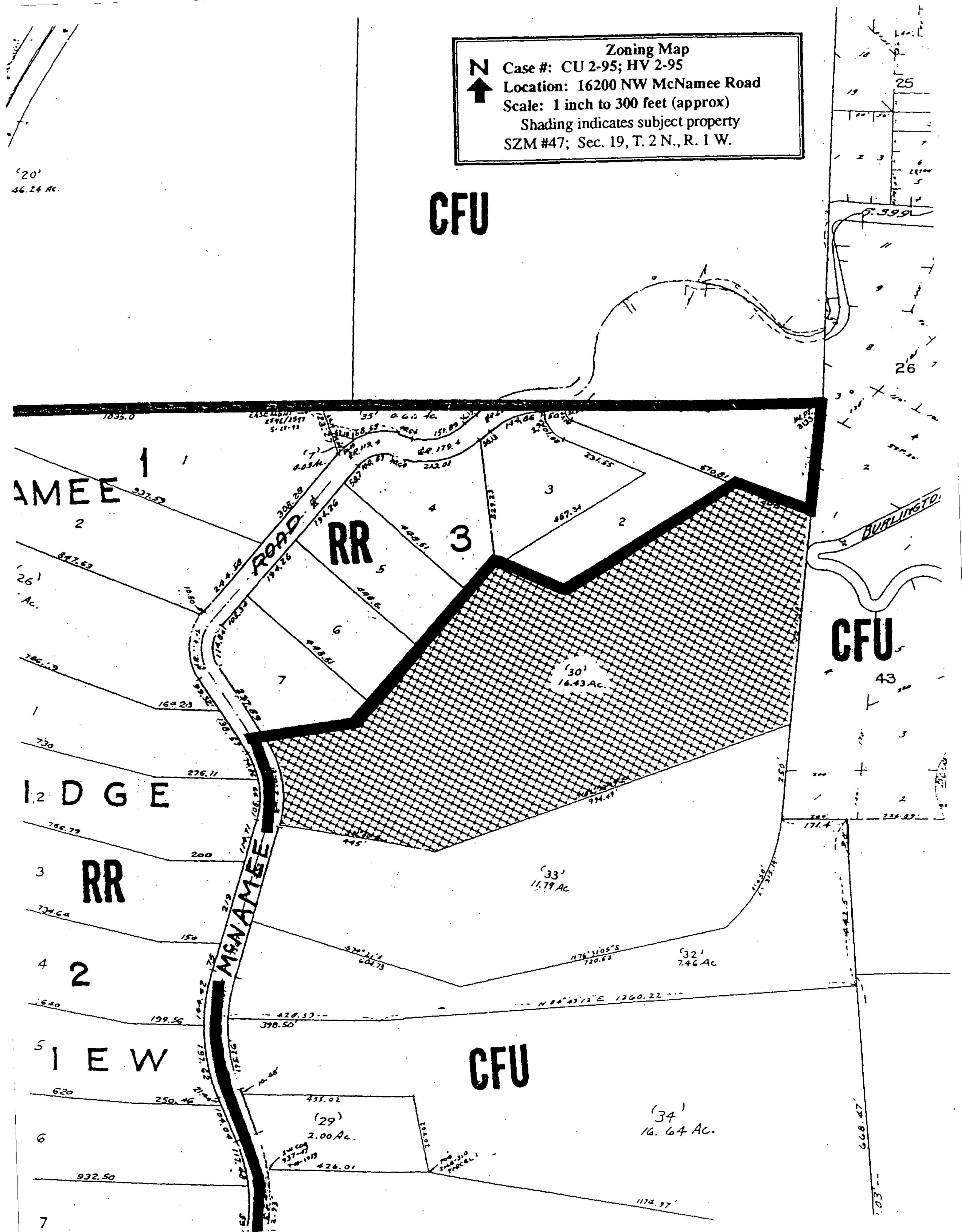
Witness my hand and seal of office affixed.

Recorder of Conveyances

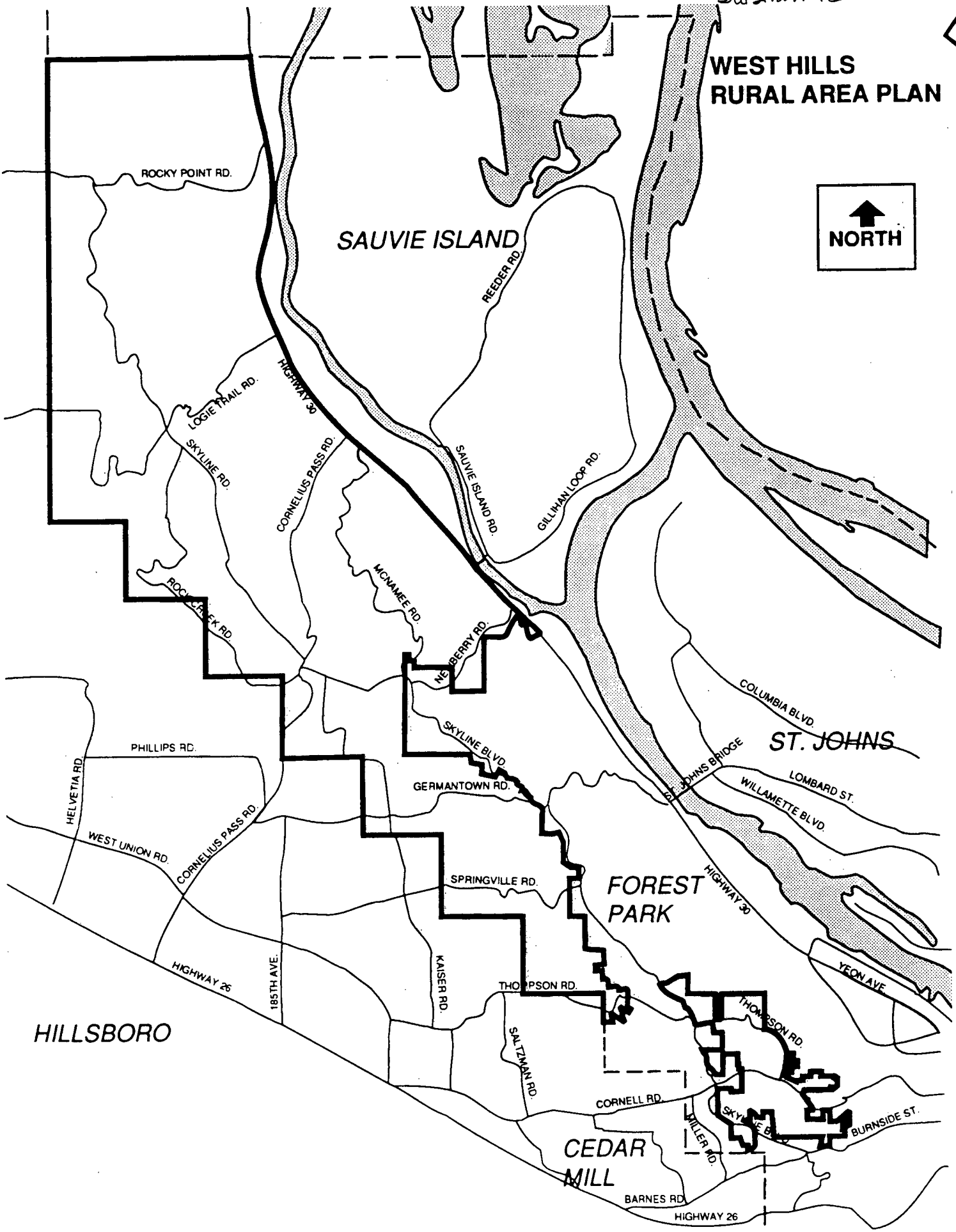
C Swick

Deputy

3


Zoning Map
N
Case #: CU 2-95; HV 2-95
Location: 16200 NW McNamee Road
Scale: 1 inch to 300 feet (approx)
Shading indicates subject property
SZM #47; Sec. 19, T. 2 N., R. 1 W.
CFU
CFU
CFU
RR
RR
AMEE
IDGE
IEW
ROAD
McNAMEE
BURLINGTO
'30'
16.43 Ac.
'33'
11.79 Ac
'32'
7.46 Ac
'34'
16. 64 Ac.
(29)
2.00 Ac.
'20'
46.24 Ac.
25
26
43

4/25/95 Clifford Hamby Submittal



County board names city's West Hills as scenic resource

■ The designation could mean property owners will face new development restrictions

By NANCY McCARTHY
of The Oregonian staff

Property owners in the hills west of Portland may encounter restrictions when they want to develop the area, which the Multnomah County Board of Commissioners has designated a "significant scenic resource."

The board made the designation Wednesday after hearing testimony that described the hills as a ridge of "undulating folds of green velvet" and an "emerald arm embracing the city."

The board also designated the area a natural wildlife habitat, which means that zoning overlays restricting some residential and commercial development will be established in the area. The board made the designations to comply with a state Land Use Conservation and Development Commission land use goal that requires counties to designate significant scenic resources.

The county planning commission had recommended against the designation. A staff report said that, compared to the Columbia and Sandy River gorges, the West Hills have less value. The area has no striking visual features and already contained roads, buildings, logging and mining activities, the report added.

In contrast, several persons told the county board that the hills provided a beautiful backdrop for views from Sauvie Island, Kelly Point Park and the Multnomah Channel.

"The accumulation of glimpses of the West Hills creates Portland's lifestyle," said Matthew Udziela, a management intern for the Metro Greenspaces program. "The outstanding significance of the West Hills will become apparent once we lose them."

Commissioner Dan Saltzman said the West Hills provided an "intrinsic part of the quality of life" in the Portland area.

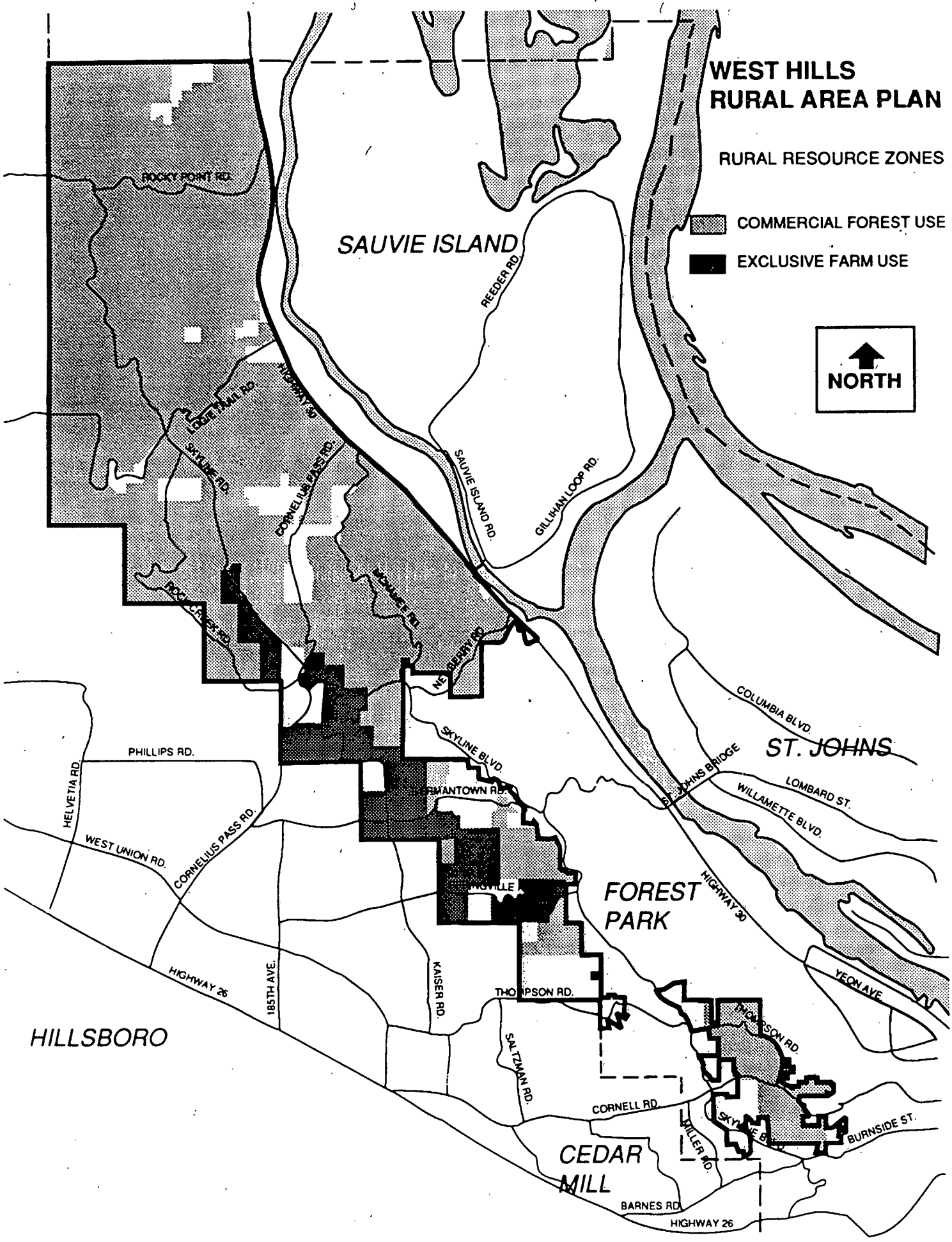
County Chairwoman Beverly Stein said the area is "a backdrop of our lives that we would miss. The urban contrast with the green hills is an outstanding scenic area."

The 20-square-mile area is north of the Tualatin Mountains ridgeline, from the Portland city limits to the Multnomah County line and from the Skyline ridge to Oregon Highway 30. It borders forest and agricultural areas in Washington and Columbia counties.

A request by Angell Brothers Rock to expand its quarry on Northwest St. Helens Road, across from the Sauvie Island Bridge, may be affected by the restrictions, said county planner Sandy Mathewson.

Much of the area is zoned for commercial forest use and falls under the state Forestry Practices Act, Mathewson said. The county has no authority to restrict logging on the ridge, she added.

However, before development restrictions are established, county planners must analyze the uses in the area. Restrictions could range from design guidelines that require buildings to be screened to outright prohibition of some uses. They must be approved by the county planning commission and the board of county commissioners.


WEST HILLS
RURAL AREA PLAN
RURAL RESOURCE ZONES
COMMERCIAL FOREST USE
EXCLUSIVE FARM USE
NORTH
SAUVIE ISLAND
ROCKY POINT RD.
REEDER RD.
SAUVIE ISLAND RD.
GILLIHAN LOOP RD.
HIGHWAY 30
LOGIE TRAIL RD.
SKYLINE RD.
CORNELIUS PASS RD.
McNAMEE RD.
NE BERNEY RD.
COLUMBIA BLVD.
ST. JOHNS
ST. JOHNS BRIDGE
LOMBARD ST.
WILLAMETTE BLVD.
SKYLINE BLVD.
GERMANTOWN RD.
PHILLIPS RD.
HELVETIA RD.
WEST UNION RD.
FOREST PARK
HIGHWAY 30
YEON AVE.
HIGHWAY 26
185TH AVE.
KAISER RD.
THOMPSON RD.
SALTZMAN RD.
CORNELL RD.
BURNSIDE ST.
WILLER RD.
HILLSBORO
CEDAR MILL
BARNES RD.
HIGHWAY 26

POLICIES

LAND USE

1. Preserve the vast majority of the West Hills for resource-based land uses related to forest practices and agriculture. Do not consider designating additional rural "exception" lands.

2. Adopt rules which allow residential dwellings on existing lots within Commercial Forest Use and Exclusive Farm Use Areas to the maximum extent permitted by Oregon Administrative Rules.

3. If current statewide planning regulations of Commercial Forest Use lands are changed, Multnomah County should not allow new subdivision lots of less than 40 acres in the Commercial Forest Use district in order to preserve forest practices and natural resources such as wildlife habitat, streams, and scenic views.

4. Do not expand the existing Burlington Rural Center unless 1) existing facilities of the Burlington Water District are upgraded, and 2) evidence of increased demand for housing in Burlington exists in the form of construction on vacant lots within the existing rural center boundaries.

5. Where possible, use incentives, rather than restrictions or disincentives, to accomplish land use and other policies contained in the West Hills Rural Area Plan.

URBAN GROWTH BOUNDARY

1. Forward to Metro a petition to amend the Urban Growth Boundary to remove approximately 88 acres within the Balch Creek basin. If Metro approves the petition, initiate rezoning action to designate this area as Rural Residential.

2. Rezone approximately 50 acres located along Walmer, Ramsey, and Ramsey Crest Drives from Rural Residential to R-20 and maintain this area within the Urban Growth Boundary.

3. Forward to Metro a resolution directing that only the southern and central portions of the Bonny Slope subarea of the West Hills Rural Area be considered as an urban reserve area as part of the Region 2040 project.

TRANSPORTATION

1. Discourage placement of a regional roadway in the Cornelius Pass area, should such a roadway be under consideration by O.D.O.T. in the future.

2. Accelerate re-paving and shoulder-paving on Skyline Blvd. to make the route safer for use of both automobiles and bicycles.

LAND USE

COMMERCIAL FOREST USE

Commercial Forest Use areas constitute over 15,000 acres, or about 76% of the West Hills rural area. The primary purpose of the Commercial Forest Use zoning district is to conserve and protect designated lands for continued commercial growing and harvesting of timber.

Areas designated Commercial Forest Use in the West Hills were, until 1992, split between areas designated Commercial Forest Use (mostly in the far northwest of the County in the vicinity of Dixie Mountain and Rocky Point Rd.) and areas designated Multiple Use Forest. The Multiple Use Forest Zoning District allowed lot sizes as low as 19 or 38 acres, depending on location, and allowed construction of a residence on most any lot. The new Commercial Forest Use zoning district, mandated by state planning law, contains severe limitations on the construction of residences, and limits new subdivision lots to a minimum size of 80 acres. 1993 revisions to the state law provide some potential for relaxing these strict rules, if so desired by Multnomah County. Among issues the County must decide when implementing the new state rules is whether to allow owners of lots of record prior to 1985 an enhanced ability to construct a single-family dwelling, and whether the "template" test, used to determine whether there are enough residences within a given area to justify an additional residence, should be modified to make it slightly easier to justify such a residence.

Since much of the West Hills was formerly designated Multiple Use Forest, which was considered by the County (although not by the Oregon Land Conservation and Development Commission) as an "exceptions" land designation, the question arises as to whether areas of the West Hills formerly designated Multiple Use Forest should be considered for re-designation to an exception lands designation such as Rural Residential, Multiple Use Agriculture, or Rural Center. State planning law has two criteria for considering lands for "exceptions" to Goal 3 (Agricultural Lands) or Goal 4 (Forest Lands)

1. The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

2. The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.

When considering the re-designation of areas in the West Hills from Commercial Forest Use to "exception lands" status, Multnomah County must consider the following important factors:

1. Adoption of the most liberal rules possible regarding dwellings in the Commercial Forest Use zoning district would allow dwellings on existing lots in areas which are already subdivided and have existing dwellings — these same areas would be considered as potential exception lands. Therefore, the main purpose of re-designating these lands to exception lands — allowing construction of additional dwellings, could already be met within the guidelines of the existing Commercial Forest Use zoning district.

2. Re-designation of lands as exception lands would have significant benefits for landowners primarily in terms of other, conditional uses allowed, and siting criteria for new residences which constrain development in the Commercial Forest Use zoning district.

3. Re-designation of lands as exception lands could have significant adverse impacts upon natural resources such as streams, wildlife habitat, and scenic views if such redesignations occur in key areas related to these resources.

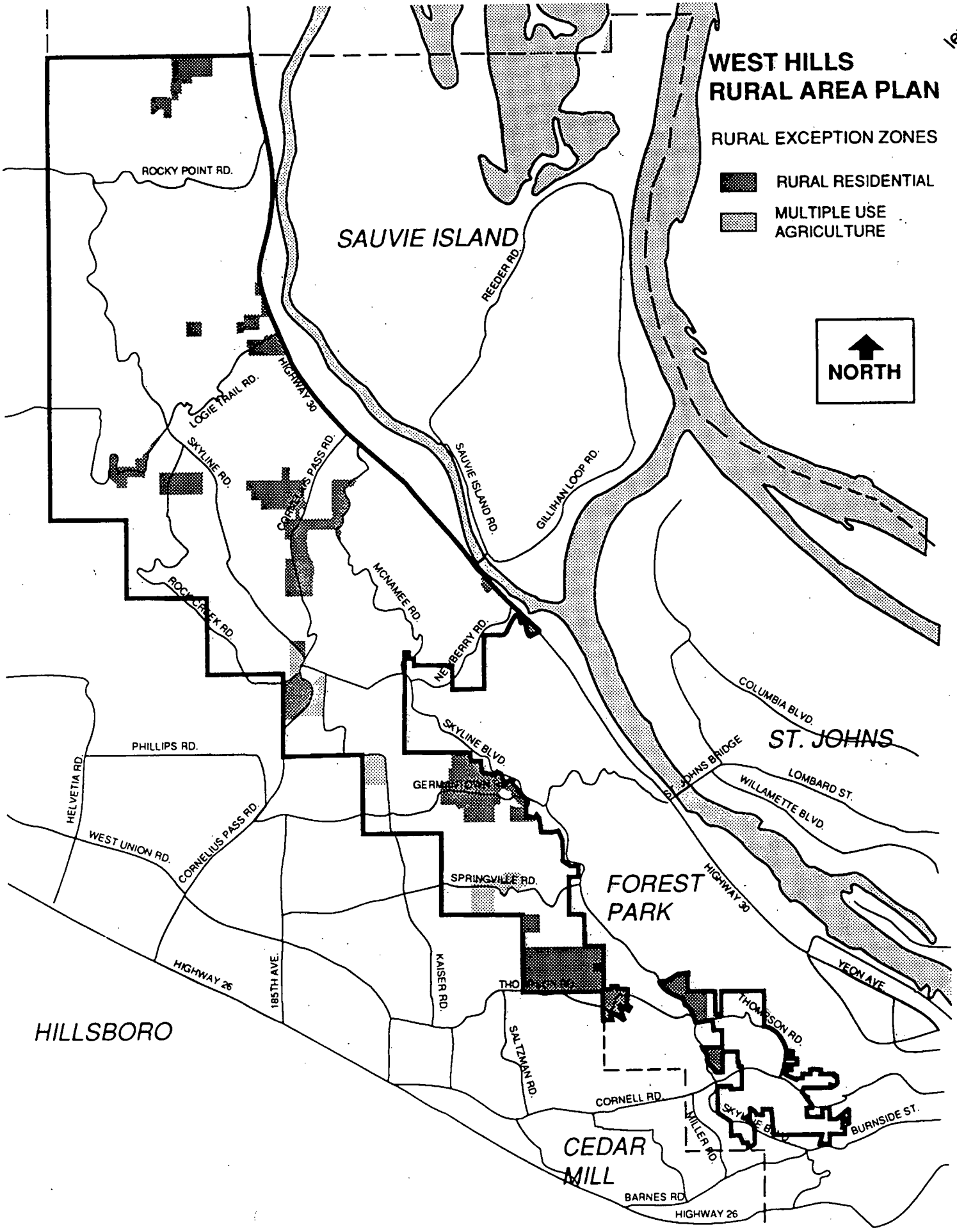
As a final point, the rural lands rules of the Statewide Planning Program have been the subject of much discussion and political controversy since the inception of the Statewide Planning Program in 1973. The rural lands rules have been changed many times, and may be changed in significant ways again. The existing Commercial Forest Use zoning district in the West Hills provides many benefits to environmental values, such as wildlife habitat and streams, which are ancillary to its primary resource-based purpose of providing protection of commercial timber lands. If state law changes to allow more liberal non-forest related uses, particularly residences, in the Commercial Forest designated areas, Multnomah County should consider maintaining a minimum lot size for new subdivision lots in order to protect environmental resources in the West Hills within Commercial Forest Use zoned areas that are important for the protection of wildlife habitat and significant streams. A generally-agreed upon lot size for the protection of environmental values would be approximately 40 acres.

EXCLUSIVE FARM USE

Exclusive Farm Use land constitutes approximately 2,000 acres, or 10%, of the West Hills rural area. Exclusive Farm Use areas in the West Hills are located along the west side of the Tualatin Mountains, draining into the Tualatin River watershed, in the Cornelius Pass, Germantown Road, and Bonny Slope subareas. Areas designated for exclusive farm use are intended for the preservation and maintenance of agricultural lands for farm use consistent with existing and future needs for agricultural products.

Changes in state law passed by the 1993 legislature significantly restrict the ability to subdivide land or build new dwellings on land designated Exclusive Farm Use. Multnomah County will amend the Exclusive Farm Use zoning district to implement the new state law in 195. Among issues the County must decide upon at that time is whether to allow owners of lots of record prior to 1985 an enhanced ability to construct a single-family dwelling. Among issues the County must implement in the new state law are further restrictions on non-farm uses within "high value farmlands," defined as all Class I and Class II, and some Class III and Class IV soils in the Willamette Valley. The location of these soils within the West Hills Exclusive Farm Use areas will be determined as part of the implementation of the new state law.

Similarly to the Commercial Forest Use zoned areas, Multnomah County may consider re-designating some Exclusive Farm Use zoned lands to "exception" lands. Factors to consider as to whether Multnomah County should consider re-designating some Exclusive Farm Use designated lands to the Multiple Use Agriculture Zoning District include:


WEST HILLS
RURAL AREA PLAN
RURAL EXCEPTION ZONES
RURAL RESIDENTIAL
MULTIPLE USE AGRICULTURE
NORTH
SAUVIE ISLAND
ROCKY POINT RD.
REEDER RD.
HIGHWAY 30
LOGIE TRAIL RD.
SKYLINE RD.
CORNELIUS PASS RD.
SAUVIE ISLAND RD.
GILLIHAN LOOP RD.
MCNAMEE RD.
ROCK CREEK RD.
NEWBERRY RD.
COLUMBIA BLVD.
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KAISER RD.
SALTZMAN RD.
THOMPSON RD.
CORNELL RD.
BURNSIDE ST.
MILLER RD.
CEDAR MILL
BARNES RD.
HIGHWAY 26
HILLSBORO

1. Almost all of the parcels within the Exclusive Farm Use Zoning District already have residences. A change to Multiple Use Agriculture would mainly benefit landowners in terms of allowing additional conditional uses on their property.

2. While the Exclusive Farm Use designated areas in the West Hills appear to be isolated in terms of Multnomah County land use, they are in fact the eastern edge of a large area of Exclusive Farm Use land in the Tualatin Basin, most of which lies in Washington County.

RURAL RESIDENTIAL

Rural Residential designated areas of the West Hills constitute approximately 2,000 acres, or 10% of the West Hills rural area. Pockets of this designation are scattered throughout the West Hills, generally coinciding with areas of existing smaller lots (1-5 acres) and existing homes. No changes in land use designation or zoning district are necessary for these areas within the West Hills since none of these areas do not merit "exceptions" status based upon the Statewide Planning Goals.

MULTIPLE USE AGRICULTURE

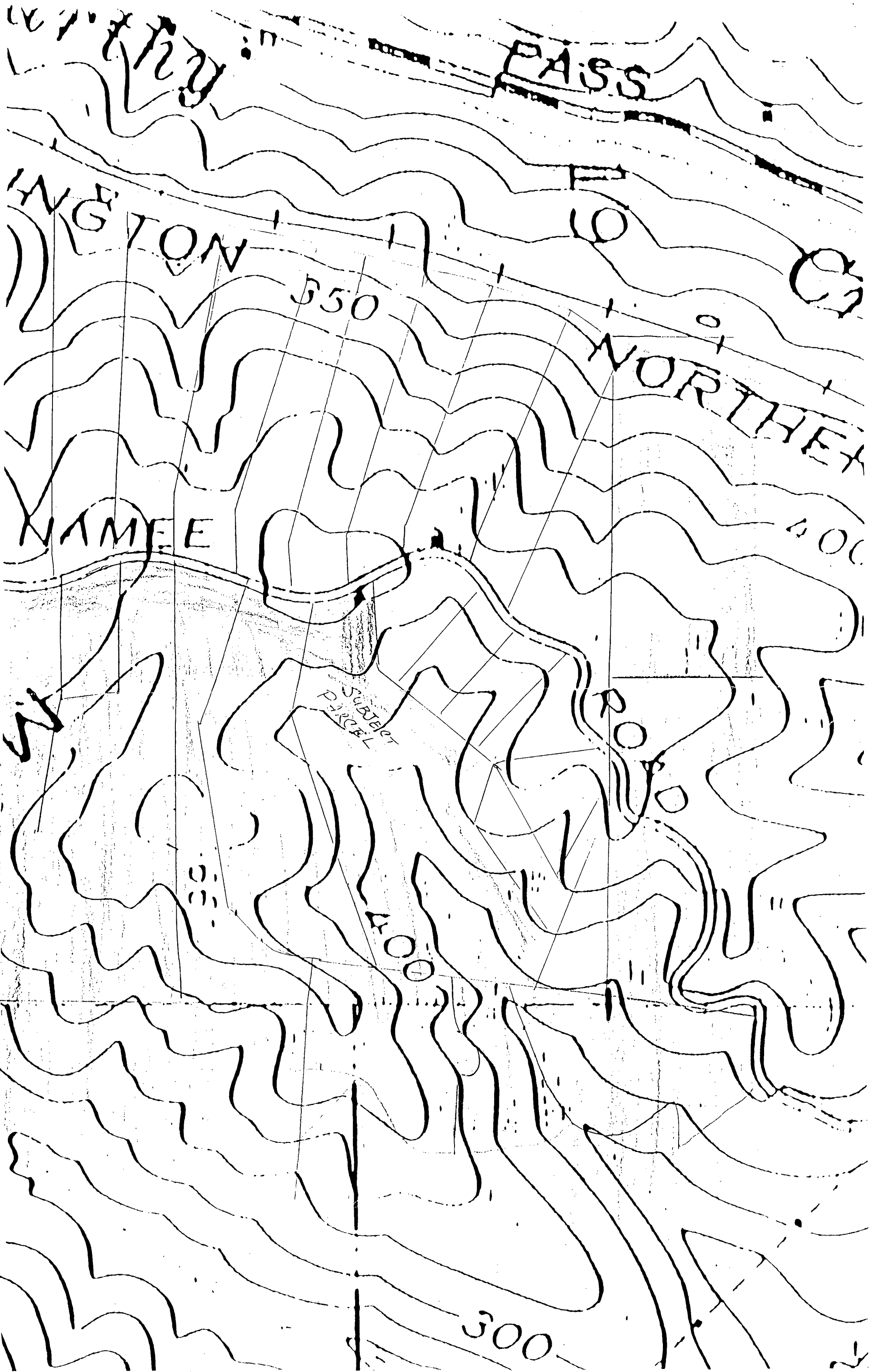
Multiple Use Agriculture land constitutes only 300 acres, or 1.5% of the West Hills rural area. Four small pockets of land with this designation lie along the western edge of the West Hills, in the Tualatin River basin. Lot sizes in this area are generally 5 to 10 acres, with existing homes on virtually every lot. No changes in land use designation or zoning district are necessary for these areas since none of these areas do not merit "exceptions" status based upon the Statewide Planning Goals.

RURAL CENTER

Burlington is the only identified rural center in the West Hills rural area. It was the subject of a land use study in 1981, which identified the current rural center boundaries (approximately 30 acres). The remainder of the 90 acre Burlington area is designated Commercial Forest Use, and is virtually undeveloped. This study area sits at the base of the Tualatin Mountains, and lies between the Burlington Northern Astoria line railroad tracks to the east of Highway 30, and the Burlington Northern Cornelius Pass line railroad tracks to the south and west.

Burlington has the distinction of being quite rural despite being near the Urban Growth Boundary of Portland. The study area contains four businesses, two public service facilities, and 41 homes. Additionally, an 11 acre site with an unoccupied building (formerly Holbrook School) is located at the north end of Burlington, at the intersection of Highway 30 and Cornelius Pass Rd. No new residences have been constructed within the Burlington Rural Center since 1981.

The elevation of the Burlington area ranges from close to sea level to 200 feet above sea level. Elevation rises severely from Highway 30 to the Burlington Northern Cornelius Pass line railroad tracks to the south, and more gently to the north. Property beyond the Burlington Northern Astoria line railroad tracks to the north and east is subject to flooding from high water


PASS
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SUBJECT
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4/25/95 JOHN DuBAY SUBMITTAL

M E M O R A N D U M

TO: Gary Clifford
Planning Division

FROM: John L. DuBay (106/1530)
Chief Assistant County Counsel

DATE: April 24, 1995

SUBJECT: CU 2-95, HV 2-95

This responds to a request for an opinion regarding an interpretation of state law concerning the criteria for establishing dwellings in forest zones. I reviewed the Hearings Officer's March 3, 1995, decision, the applicable statutes (ORS 215.700 - 215.750), Chapter 792 of the 1993 session laws (HB 3661), and LCDC's interpretive rules.

The Hearings Officer found the lot of record provisions in ORS 215.705 to be the controlling applicable criteria. He found the proposal did not meet the standards in that statute.

The staff contends ORS 215.705 is not applicable because ORS 215.750 provides an independent basis for allowing dwellings on forest land, and the application meets the standards in that statute.

I agree with the staff.

The statutes include three sets of criteria for allowing non-resource dwellings in farm and forest zones. The first set includes ORS 215.705, describing *lot-of-record* standards for both farm and forest zones. Other statutory provisions in the first set are ORS 215.720 and 215.730 which provide additional criteria for siting dwellings in forest zones under the lot-of-record provisions of ORS 215.705.

The second set consists of ORS 215.740, the *large tract* standards for dwellings in forest zones. The third set

consists of ORS 215.750. Dwellings may be established in forest zones under the latter statute if the land meets certain productivity standards and a stated number of dwellings exist within the surrounding 160 acres. These are referred to as the *template* standards.

LCDC's interpretive rules state these three sets constitute alternative methods to site nonresource dwellings in forest zones. OAR 660-06-027(a), (c) and (d). That is, a dwelling may be established if any one of the tests is met.[1] This view conforms to a provision in ORS 215.720, a statute which provides criteria for siting a dwelling under the lot-of-record statute, ORS 215.705.

ORS 215.720(3) states:

> "No dwelling other than those described in this section and ORS 215.740 and 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forestland."

The staff report attached to the agenda sheet for the appeal hearing on CU 2-95, says the application was evaluated for compliance with template test in OAR 660-06-027(1)(d)(B).[2] See, staff report to Hearings Officer at page 7.

The Hearings Officer did not consider the template test. Instead, he found the statutory lot-of-record provisions more restrictive than the County lot-of-record provisions, also evaluated in the staff report. He found the application did not meet the statutory lot-of-record

---

[1] LCDC's rules are somewhat convoluted, reflecting the complexities of HB 3661. But it is clear that the rule allows dwellings on forestland under either the lot-of-record test, the large lot test or the template test. For example, OAR 660-06-027(1)(c) states:

> "If a dwelling is not allowed pursuant to OAR 660-06-027(1)(a) or (b) [the lot of record provisions], a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract [meeting the large lot test]:"
>
> ". . . ."

OAR 660-06-027(1)(d) states a county may allow establishment of single family dwellings on forest land under criteria that mirror the template test described in ORS 215.750.

[2] The staff actually applied the template test as stated in LCDC's rules predating adoption of HB 3661. The former rules were more restrictive than the statute in that they required five dwellings within the 160 acre template rather than the three dwellings required by ORS 215.750(b)(B). Evidence of five dwellings existing on Jan. 1, 1993, within the prescribed area would meet either test.

tests but should have. He denied the application on that basis alone.

Even though the County has not amended its Comprehensive Plan and Zoning Code to incorporate the provisions of HB 3661, the County must apply its provisions. ORS 197.646(3); Blondeau v. Clackamas County, ___ OR LUBA ___ (1995) (Slip opinion dated March 21, 1995, (County could not deny an application for a dwelling on forest land for noncompliance with unamended code standards where the dwelling meets the lot-of-record criteria in HB 3661).

The Hearings Officer, correctly I believe, found the dwelling could not be allowed based on compliance only with the County lot-of-record standards which are less restrictive than the statutory lot-of-record provisions in ORS 215.705. However, a dwelling may be approved under the template test without considering the lot-of-record criteria or any conflicts between the statutory and County lot-of-record standards.

CC: Board of Commissioners
Scott Pemble

Blondeau v. Clackamas County, No. 94-222 (3/21/95) ----------

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JACQUES I. BLONDEAU, Petitioner, vs. CLACKAMAS COUNTY, Respondent.	)	LUBA No. 94-222 FINAL OPINION AND ORDER

Appeal from Clackamas County.

David B. Smith, Tigard, filed the petition for review and argued on behalf of petitioner.

Michael E. Judd, Chief Assistant County Counsel, Oregon City, filed the response brief and argued on behalf of respondent.

SHERTON, Referee; KELLINGTON, Referee, participated in the decision.

REMANDED 03/21/95

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Sherton.

NATURE OF THE DECISION

Petitioner appeals a county hearings officer's decision denying his application to establish a nonfarm dwelling on an existing parcel.

FACTS

The subject parcel is undeveloped and 2.54 acres in size. It is designated Agricultural in the Clackamas County Comprehensive Plan (plan) and is zoned General Agricultural District (GAD), an exclusive farm use zone. The subject parcel contains Class III soils.

On July 1, 1994, petitioner, the owner of the subject parcel, filed an application for a nonfarm dwelling. Petitioner appealed the planning department's denial of his application to the county hearings officer. After a public hearing, the hearings officer adopted the challenged decision denying petitioner's application.

INTRODUCTION

Prior to changes adopted by the 1993 Legislature, counties could approve a nonfarm dwelling in an exclusive farm use zone only if the dwelling:

> "(a) Is compatible with farm uses described in ORS 215.203(2) and is consistent with the intent and purposes set forth in ORS 215.243;
>
> "(b) Does not interfere seriously with accepted farming practices * * * on adjacent land devoted to farm use;

"(c) Does not materially alter the stability of the overall land use pattern of the area;

"(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering [certain factors]; and

"(e) Complies with such other conditions as the governing body or its designate considers necessary." ORS 215.283(3) (1991).

The county's comprehensive plan and land use regulations have been acknowledged by the Land Conservation and Development Commission (LCDC) under ORS 197.251. Clackamas County Zoning and Development Ordinance (ZDO) 402.05A includes approval standards for nonfarm dwellings in the GAD zone equivalent to the statutory standards quoted above. In addition, ZDO 402.05A(5) requires that a nonfarm dwelling in the GAD zone "[w]ill not be in conflict with the Comprehensive Plan or detrimental to surrounding property."

The 1993 Legislature adopted Oregon Laws 1993, chapter 792 (hereafter HB 3661), which took effect November 4, 1993. HB 3661 amended the above quoted provisions of ORS 215.283(3) (since renumbered as ORS 215.284) to provide that in the Willamette Valley, a nonfarm dwelling may be established on land zoned for exclusive farm use if the following standards are met:

"(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby land devoted to farm or forest use;

"(b) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils * * *;

The dwelling will be sited on a lot or parcel created before January 1, 1993;

"(d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and

"(e) The dwelling complies with such other conditions as the governing body or its designate considers necessary." ORS 215.284(1).

In addition, HB 3661 added to ORS chapter 215 an alternative basis on which counties may allow nonfarm dwellings in their exclusive farm use zones, generally referred to as the "lot of record" dwelling provision. As relevant here, the lot of record dwelling provision (ORS 215.705) states:

"(1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm * * * zone as set forth in this section * * *. A dwelling under this section may be allowed if:

"(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

"(A) Prior to January 1, 1985; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"(b) The tract on which the dwelling will be sited does not include a dwelling.

"(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and

land use regulations and other provisions of law.

"(d) The lot or parcel on which the dwelling will be sited, if zoned for farm use, is not on that high-value farmland described in ORS 215.710, except as provided in subsections (2) and (3) of this section.[

**[FOOTNOTE 1: As we understand it, the subject parcel is high-value farmland, as identified in ORS 215.710(3)(a), because it is composed of Class IIIe Jekia soils. However, the parties agree that the subject parcel satisfies the requirements of ORS 215.705(3) and, therefore, despite being high value farmland, is eligible for a lot of record dwelling if the other applicable

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

NOTICE OF A PUBLIC HEARING

This notice concerns a public hearing scheduled to consider the land use case cited and described below:

Case File:	**CU 2-95; HV 2-95**
Scheduled Before:	**Board of County Commissioners**
Hearing Date, Time, & Place:	**April 25, 1995; at 1:30 p.m.** **Multnomah County Courthouse, Room 602** **1021 SW 4th Avenue, Portland, OR 97204**
Scope of Review:	**De Novo**
Time Allowed for Testimony:	**20 minutes per side including rebuttal**

Proposed Action(s) and Use(s):	**Conditional Use** approval for a single family residence not related to forest management and variances to the side yard setback requirements of the CFU zoning district. The requested side yard setbacks are approximately 70 and 110 feet; the required setback is 200 feet.
Location of the Proposal:	16200 NW McNamee Road
Legal Description of Property:	Tax Lot '30', Sec. 19, T. 2 N., R. 1 W. (16.43 acres)
Plan & Zoning Designation:	Commercial Forest; Commercial Forest Use (CFU)
Applicant & Property Owner:	George Steve Butler 7222 SE 29th Avenue Portland, OR 97202
Appellant	Same

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

Notice
GC

Notice mailed 4/4/95
CU 2-95 / HV 2-95

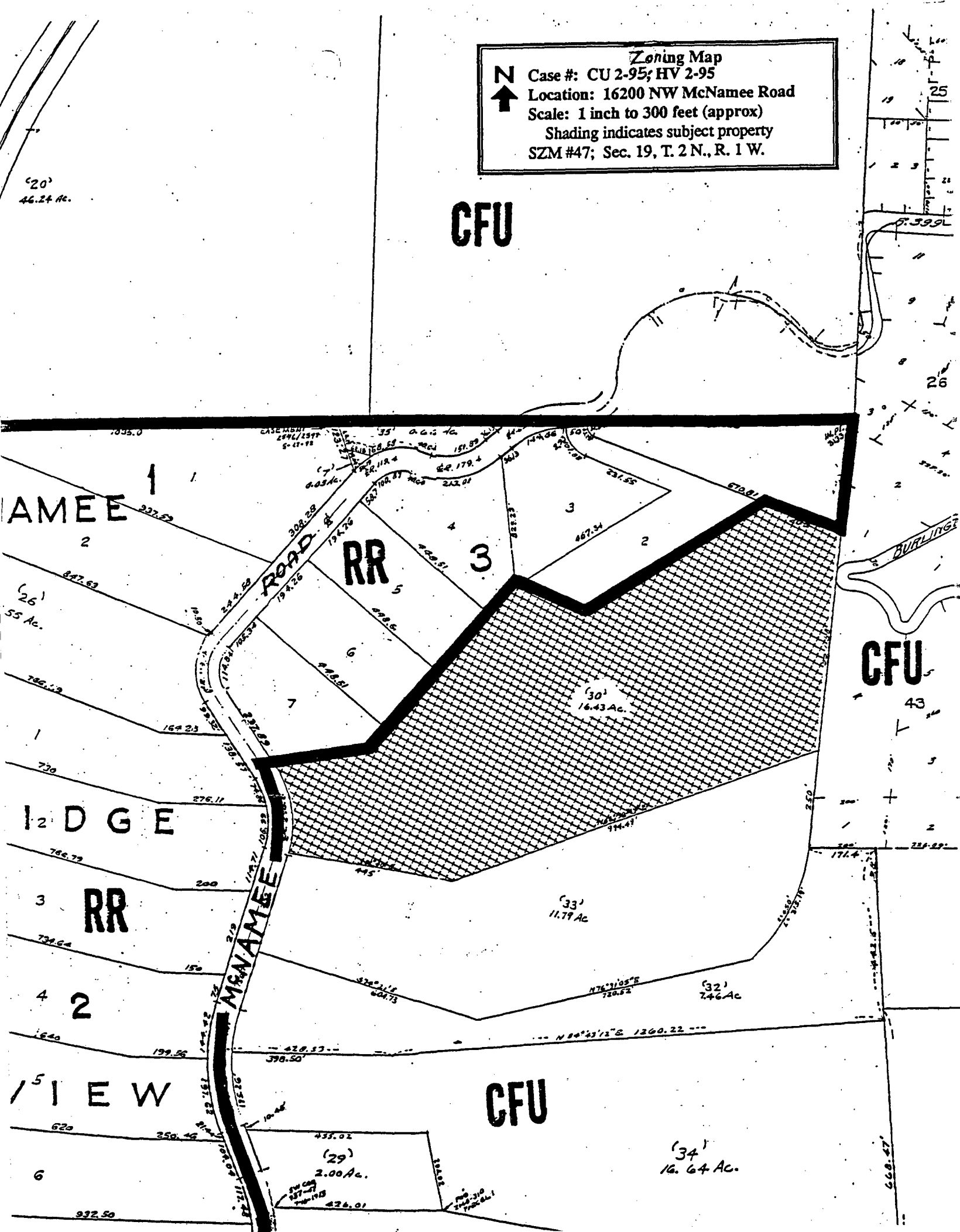
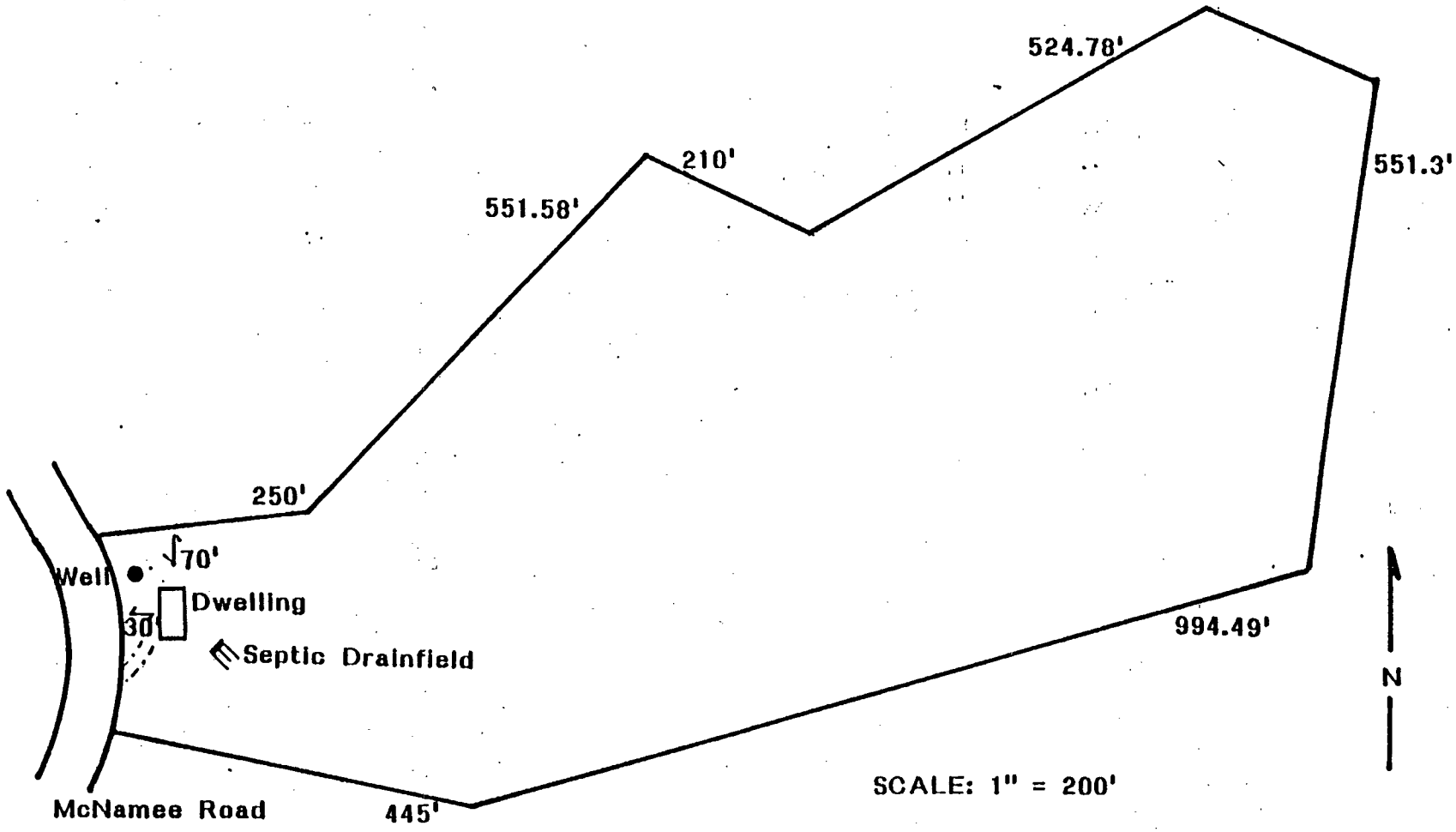

Zoning Map
N
Case #: CU 2-95; HV 2-95
Location: 16200 NW McNamee Road
Scale: 1 inch to 300 feet (approx)
Shading indicates subject property
SZM #47; Sec. 19, T. 2 N., R. 1 W.
CFU
RR
CFU
CFU
CFU
(30) 16.43 Ac.
(33) 11.79 Ac
(32) 7.46 Ac
(34) 16.64 Ac.
(29) 2.00 Ac.
(20) 46.24 Ac.
(26) 55 Ac.
MCNAMEE ROAD
BURLINGTON

FIGURE 4

PLOT PLAN

T2N, R1W, SEC. 19, TAX LOT 30



CU 2-95
HV 2-95

GP8/93

Proposal Summary: Appellant challenges the March 3, 1995 Hearings Officer decision which denied CU 2-95 / HV 2-95, a request for approval of a dwelling not related to forest management and variances to the side yard setback requirements of the CFU zoning district. A *Notice of Review* (appeal) was filed on March 22, 1995.

Public Participation and Hearing Process: Application materials are available for inspection at the Planning Division office 20 days prior to the hearing, at no cost. Copies may be purchased for 30-cents per page. For further information on this case, call Gary Clifford at 248-3043.

To comment on this proposal, you may write to or call the Planning Division or attend and speak at the hearing. All interested parties may appear and testify or submit written comment to the Board of County Commissioners. All comments should address the approval criteria applicable to the request (outlined below). The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* and will be explained at the hearing.

The Board's decision on the item may be announced at the close of the hearing, or upon continuance to a time certain. A written decision will be mailed to the participants and filed with the Clerk of the Board of County Commissioners usually within ten days of the announcement. The decision of the Board of County Commissioners may be appealed to the State Land Use Board of Appeals (LUBA) by either the applicant or other hearing participants.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board of County Commissioners an opportunity to respond to the issue precludes subsequent appeal to the State Land Use Board of Appeals on that issue.

APPROVAL CRITERIA:

1. DWELLING CONDITIONAL USE ORDINANCE CONSIDERATIONS:

A. MCC 11.15.7120 Conditional Use Approval Criteria (General): "(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply." The approval criteria listed below are listed in the district; therefore, the general criteria in this subsection **do not apply**.

B. Revisions to OAR 660-06, adopted on February 18, 1994, have not yet been adopted by the county. Consequently, any requirements of the OAR that are not included in the county code, as well as any OAR requirements that are more restrictive than county code criteria, must also be applied to this proposal. Applicable ordinance criteria are listed below in **bold**. Additional OAR requirements follow in ***[bold, italics and bracketed]***.

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

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

All currently contiguous ownerships must be considered to be the subject "tract" of this application. ***["Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. OAR 660-06-027(5)(a)]***
Under the OAR, an additional dwelling is not allowed if there is an existing dwelling on the "tract". ***[A proposed dwelling under this rule is not allowed: ... Unless no dwellings are allowed on other lots or parcels that make up the tract ... If the tract on which the dwelling will be sited includes a dwelling. OAR 660-06-027(4)(c)&(d)]***

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

(3) The lot shall meet the following standards: ...
(c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

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

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

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

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

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

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

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

(8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral;
The following OAR requirement supercedes the above requirement to disqualify the property from farm or forest deferral. If the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs.
[OAR 660-06 029(5): Approval of a dwelling shall be subject to the following requirements:
(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.
(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.
(c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.
(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.]

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

MCC .2074 Development Standards for Dwellings and Structures

Except as provided for the replacement or restoration of dwellings under MCC .2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:
(A) The dwelling or structure shall be located such that:
(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);

(2) Forest operations and accepted farming practices will not be curtailed or impeded;
[*OAR 660-06-029(1)(b): The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*]

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

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

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:
(a) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;
(b) Maintenance of a primary and a secondary fire safety zone.
(c) The building site must have a slope less than 40 percent.

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

[*OAR 660-06-035(5) The dwelling shall have a fire retardant roof.*]
[*OAR 660-06-035(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*]

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:
(1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon

Professional Engineer shall be provided for all bridges or culverts;

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

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

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

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

(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;

(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;

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

(7) Provide for the safe and convenient passage of vehicles by the placement of:

(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

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

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

D. **MCC 11.15.2052 (B): Dwellings not related to forest management shall not be allowed upon the effective date of a small scale resource land program adopted pursuant to the requirements of OAR 660, Division 6 and 33.**
No longer applicable. See below.
[*OAR 660-06-070, Small-Scale Resource Land, Repealed by LCDC February 18, 1994.*]

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

(1) **POLICY 11: COMMERCIAL FOREST LAND**
THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:

A. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, AND III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;

B. SUITABLE FOR COMMERCIAL FOREST USE AND SMALL WOODLOT MANAGEMENT;

C. POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY;

D. NOT IMPACTED BY URBAN SERVICES; AND

E. COHESIVE FOREST AREAS; OR

F. OTHER AREAS WHICH ARE:
   1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR
   2. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.

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

(2) **POLICY NO. 13, AIR, WATER AND NOISE QUALITY.** MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

(3) **POLICY NO. 14, DEVELOPMENTAL LIMITATIONS.** THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:
   A. Slopes exceeding 20%;
   B. Severe soil erosion potential;
   C. Land within the 100 year flood plain;
   D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
   E. A fragipan less than 30 inches from the surface;
   F. Land subject to slumping, earth slides or movement.

(4) **POLICY NO. 22, ENERGY CONSERVATION.** THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:
   A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;
   B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;

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

(5) **POLICY NO. 37, UTILITIES.** THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR
D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR
F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND
G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND
I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

(6) **POLICY NO. 38, FACILITIES.** THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

POLICE PROTECTION

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

(7) **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.

2. VARIANCE ORDINANCE CONSIDERATIONS:

A. Variance Approval Criteria MCC 11.15.8505(A):
The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.

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

(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.

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

(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.

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

CU-2-95
HV 2-95

NOTICE OF REVIEW

1. Name: BUTLER (*Last*), Steve (*Middle*), George (*First*)
2. Address: 7222 SE 29th Ave. (*Street or Box*), Portland (*City*), Oregon 97202 (*State and Zip Code*)
3. Telephone: (503) 777 - 2307
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.*)?
   Denial of conditional use request for single family dwelling in CFU zone.
6. The decision was announced by the ~~Planning Commission~~ Hearings Officer on 3/3, 1995
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
   I am the applicant.

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

Hearings Officer used the wrong statute and administrative rule, thus denying the request for conditional use for a single family dwelling in a CFU zone which would have been approved based on the correct statute and administrative rule. He denied the reques based on ORS 215.705(1)(a) and OAR 660-06-027(1)(g) which state: (see continuation sheets 1 and 2)

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*.

The Hearings Officer incorrectly used ORS 215.705(1)(a) and OAR 660-06-027(1)(g) which would have applied only if the applicant had applied for a dwelling based on ownership prior to January 1, 1985 and there would have been no need for the applicant to satisfy the 160-acre square/grid test. Since the applicant acquired the property after January 1, 1985, the Hearings Officer should have used ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) which allow the County to allow establishment of a single family dwelling in a forest zone if certain requirements are met. Applicant's application set forth how the parcel met, and exceded these requirements. (See continuation sheet 3)

Signed: George S. Butler Date: 3/22/95

RECEIVED
MAR 22 1995
Multnomah County
Zoning Division

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing _____ x $3.50/minute = $ _____

Total Fee = $ _____

Received by: _____ Date: _____ Case No. _____

8. (Continued)

ORS 215.705 Dwellings in farm or forest zone; criteria (1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710; 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:

(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(A) Prior to January 1, 1985; or

Dwellings in Forest Zones

OAR 660-06-027 (1) Dwellings authorized by OAR 660-06-025(1)(d) are:

(a) A dwelling on a tract in western Oregon that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall not be a United States Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock.

(b) A dwelling on a tract in eastern Oregon that is composed of soils not capable of producing 4,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. The road shall not be a United States Forest Service road or Bureau of Land Management road and shall be maintained and either paved or surfaced with rock.

...

(g) A dwelling authorized under subsections (a) and (b) or this section may be allowed only if the lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

(a) Prior to January 1, 1985; or

If the applicant had owned the property prior to January 1, 1985, he could have requested and would have been granted a single family dwelling permit based on this statute and administrative rule regardless of the number of lots or parcels or the number of dwellings within the 160-acre square. Applicant did not own the parcel prior to January 1, 1985 and therefore was not requesting dwelling permit based on ownership prior to January 1, 1985. Therefore, ORS 215.705(1)(a) was the wrong statute and OAR 660-06-027(1)(g) was the wrong administrative rule for the Hearings Officer to use in making his decision.

The Hearings Officer should have used ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) which state:

215.750 Alternative forestland dwellings; criteria. (1) In Western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

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

(B) At least three dwelling existed on January 1, 1993, on the other lots or parcels.

Dwellings in Forest Zones

660-06-027(1) Dwellings authorized by OAR 660-06-025(1)(d) are:

(c) If a dwelling is not allowed pursuant to OAR 660-06-027(1)(a) or (b), a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract:

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

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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels;

10. (continued)

ORS 215.750(1)(c)(A)(B) and OAR 660-06-027(1)(c)(C)(i)(ii) state:

215.750 Alternative forestland dwellings; criteria. (1) In Western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

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

(B) At least three dwelling existed on January 1, 1993, on the other lots or parcels.

Dwellings in Forest Zones

660-06-027(1) Dwellings authorized by OAR 660-06-025(1)(d) are:

(c) If a dwelling is not allowed pursuant to OAR 660-06-027(1)(a) or (b), a dwelling may be allowed on land zoned for forest use if it complies with other provisions of law and is sited on a tract:

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

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

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels;

MCC 11.15.2052(A)(1)(2)(3)(c)(i)(ii) requires five dwellings to be located within the 160-acre square instead of the three required by the ORS and OAR cited above. Since the Multnomah County Ordinances are more restrictive than the above cited statute and administrative rule, applicant cited the County Ordnance, MCC 11.15.2052, on his application instead of the ORS and OAR.

MULTNOMAH COUNTY

BOARD HEARING OF March 28, 1995

TIME: 1:30 pm

CASE NAME: Dwelling Not Related to Forest Use in Forest Zone NUMBER: CU 2-95; HV 2-95

1. Applicant Name/Address:

George Butler
7222 SE 29th Avenue
Portland, OR 97202

ACTION REQUESTED OF BOARD

- ☐ Affirm Plan.Com./Hearings Officer
- ☑ Hearing/Rehearing
  - ☑ Scope of Review
    - ☐ On the record
    - ☑ De Novo
    - ☐ New Information allowed

2. Action Requested by applicant:

Approval of a residence that is not related to forest use on a 16.43 acre existing parcel in the Commercial Forest Use zoning district. Approval of variances to the two required side yard setbacks is also requested.

3. Planning Staff Recommendation:

Approval.

4. Hearings Officer Decision:

Denied, for failure to demonstrate a fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) – the current owner did not acquire the subject property prior to January 1, 1985. However, the Hearings Officer Decision is written in such a manner that if the point of denial is resolved, the application could otherwise be approved.

5. If recommendation and decision are different, why?

The Hearings Officer took up the difficult task of interpreting how the Oregon Revised Statutes and corresponding Oregon Administrative Rules that resulted from the 1993 Oregon House Bill 3661 apply to this application. The Bill, Statute, and Rules are, in staff's opinion, badly constructed and not readily decipherable. Planning staff has had to contact DLCD staff many times for clarification of similar issues.

The Hearings Officer has taken the Statute and Rule criteria for approving "Lot or Parcel of Record Dwellings" and added those provisions to the County CFU zoning definition describing a "Lot of Record". The two names are similar, but the first is a set of development standards for approval of a dwelling in a specific set of circumstances and the second is a definition of separate ownerships of land that ensures other standards of the zoning code have been met, including applicable minimum lot areas.

Staff's interpretation is the Legislature established "Lot or Parcel of Record Dwellings" (ORS 215.705) as one of three options for property owners to apply for dwellings on forest lands. The other two options are "Large Tract Forest Land Dwellings" (ie. if applicant owns 160 acres, ORS 215.740) and "Alternative Forestland Dwellings" (a template test where 11 other parcels and 3 existing dwellings must be within a 160 acre square centered on the property, 215.750). The three types are found in the Statutes under the main heading of "FARMLAND AND FORESTLAND ZONES" (page 1993-20-110), but are organized with the standards for the "Lot or Parcel of Record Dwellings" under the subheading of the same name in parentheses, and the standards for the "Large Tract Forest Land Dwellings" and "Alternative Forestland Dwellings" under the subheading "(Other Forestland Dwellings)". The OAR citations are 660-06-027(1)(a)&(g) for "Lot or Parcel of Record Dwellings", 660-06-027(c) for "Large Tract Forestland Dwellings", and 660-06-027(d) for "Alternative Forestland (template test) Dwellings".

It is staff's understanding that the "Lot or Parcel of Record Dwellings" option was put into effect by the Legislature to allow dwellings on lots that were "acquired before the owners could reasonably be expected to know of the regulations" (ORS 215.700). The qualifying date for "Lot or Parcel of Record Dwellings" picked by the Legislature was January 1, 1985. This date was roughly when all counties were determined by the Land Conservation and Development Commission to be in compliance with Statewide Planning Goals.

The "Lot or Parcel of Record Dwellings" option allows the approval of one dwelling on a lot or parcel if owned by the applicant prior to January 1, 1985 and meets several other standards. If a property changed hands after that date, then a dwelling in a forest zone could only be approved under one of the other two options provided for in the Statutes and Rules. It is staff's contention that the "Lot or Parcel of Record Dwellings" option was not intended by the Legislature to broaden nor be included in the County's definition of "Lot of Record". We believe the Legislative intent was to provide a specific set of dwelling approval criteria for the special circumstance where vacant property has been in the same ownership since 1985 and that requirement was not meant to be applied to the other two forest dwelling options.

The dwelling application on McNamee Road was applied for and evaluated in the staff report under the "Alternative Forestland Dwellings" (template test) approval criteria as contained in the County's CFU zoning district and as modified by the applicable ORS and OAR provisions not yet adopted into the County Code. The application met all of those approval criteria. However, the application was denied by the Hearings Officer when the "Lot or Parcel of Record Dwelling" Standards were applied and it was found that the property was purchased in 1994.

ISSUES
(who raised them?)

1. The Hearings Officer's interpretation which added the "Lot or Parcel of Record Dwellings" development standards to the "Lot of Record" definition in the CFU zoning district is a significant issue to staff if those criteria are also applied to similar applications in the future. The result would be that no forest lot or parcel could qualify for a dwelling if the property changed hands after January 1, 1985.

2. Owners of a neighboring property submitted written objections that the County failed to comply with the notice requirements of the zoning code and the subject application should be subject to the Significant Environmental Concern (SEC) subdistrict requirements. The Hearings Officer decision found that the objector was mailed notice and received sufficient information regarding the application prior to the hearing. In addition, it was found that the SEC subdistrict does not apply to the property.

Do any of these issues have policy implications? Explain.

If the Hearings Officer's Decision in CU 2-95 stands, the development standards for "Lots or Parcels of Record Dwellings" would , in effect, be added to the "Lot of Record" definition in the CFU zone and would be applied to all future forest dwelling applications. The consequence would be that applications for dwellings which met all other standards for approval would still be denied if the applicant purchased the property after January 1, 1985. This would result in situations where a person meeting the standards for a "Large Tract Forest Land Dwelling" (owning 160 acres of contiguous forestland) or an "Alternative Forestland Dwelling" (ie. a small lot surrounded by eleven other small lots already containing dwellings) would still not qualify for a dwelling if the property was purchased after 1/1/85. This would significantly reduce opportunities for placing a dwelling on forest land properties and, as a result, the value of those properties.

The change would add a restrictive dwelling approval criteria to the County's definition of "Lot of Record". The current version of the "Lot of Record" definition has been in the Code since 1980 and has received a great deal of scrutiny by the Planning Commission and Board of County Commissioners during public hearings on farm and forest lands Code amendments since 1980. To change the definition, if there is uncertainty of the need to, without full public notice and review by the Planning Commission would be counter to citizen participation goals and the advisory and oversight functions of the Planning Commission.

MULTNOMAH COUNTY OREGON

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

DECISION

This Decision consists of Conditions, Findings of Fact, and Conclusions

March 3, 1995

CU 2–95; HV 2–95 #47 **Conditional Use Request**

Applicant requests condition use approval of a single–family dwelling not related to forest management and variances to the side yard setback requirements on a 16.43–acre lot of record in the CFU zoning district.

Location:	16200 N.W. McNamee Road
Legal:	Tax Lot 30, Sec. 10, T2N, R1W, WM
Site Size:	16.43 acres
Applicant:	George Butler 7222 S.E. 29th Avenue Portland, Oregon 97202
Property Owner:	Same as applicant
Comprehensive Plan:	Commercial Forest
Zoning:	CFU (Commercial Forest Use)

HEARINGS OFFICER DECISION:

DENIED, for failure to demonstrate a fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g). The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

However, in the event the applicant appeals this denial, I have considered all of the remaining criteria in order to avoid the necessity of repetitive proceedings. I find that, but for the applicant's failure to demonstrate the fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g), the application would otherwise be:

Approved, subject to the conditions set forth below, the development of the subject property with a single-family dwelling not related to forest management, based on the following Findings and Conclusions.

Approved, subject to the conditions set forth below, the side yard setbacks of 70 feet and 110 feet between the proposed dwelling and the side property lines, which are variances of 130 and 90 feet from the required 200 feet, based on the following Findings and Conclusions.

CONDITIONS OF APPROVAL
(If Denial Is Appealed And Remanded/Reversed)

1. Approval of this Conditional Use shall expire two years from the date of the Board's final order unless substantial construction has taken place in accordance with MCC 11.15.7110(C).

2. The dwelling location is restricted to the area near to that proposed on the submitted site plan.

3. Prior to approval of building permits, the property owner shall comply with OAR 660-06-029(5), which provides, among other things, that "[a]pproval of a dwelling" requires that:

"(c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. . . ."[1]

4. Prior to the issuance of a building permit, the property owner shall provide to the Division of Planning and Development a copy of the following:

   A. A site plan showing a proposed log landing area on the high part of the property and the proposed building locations and other improvements. This plan shall be verified as appropriate for standard forestry practices by a forester with experience and expertise.

   B. Upon approval by the Planning Director of the provisions in subparagraph A, above, proof that a deed restriction has been recorded with the property that establishes the landing area as unbuildable as long as the property is zoned for forestry resource use as a primary land use.

5. Prior to the issuance of a building permit, the property owner shall provide to the Division of Planning and Development a copy of the recorded restrictions acknowledging the rights of nearby properties to conduct farm and forest practices.

6. Prior to the issuance of a building permit, the applicant shall complete applicable requirements of the County Engineering Services regarding McNamee Road.

7. Prior to the issuance of a building permit, the applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the

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1 ORS 215.730(1)(a) similarly provides that

> "[a] local government ***shall require as a condition of approval*** of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:
>
> > "(a) The property owner ***submits a stocking survey report*** to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met."

Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

8. Prior to the issuance of a building permit, the applicant shall submit a copy of the well report. At that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity for comment and appeal of those particular findings.

9. Prior to the issuance of a building permit, and as long as the property is under forest resource zoning, the applicant shall maintain primary and secondary fire safety zones around all structures, in accordance with MCC 11.15.2074(A)(5).

10. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters.

11. Prior to the issuance of a building permit, applicant shall demonstrate that the applicable "private road" criteria in MCC 11.15.2074(D) have been observed and fulfilled.

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I.

I.

A. ANALYSIS OF THE PROPOSAL — PART ONE
Request For Conditional Use

1. BACKGROUND / PROPOSAL SUMMARY

Applicant requests approval to develop a 16.43-acre lot in designated forest land with a single-family dwelling that would not be related to forest management. Applicant also requests a related variance from setback requirements that is the subject of Part II of this decision.

For all its external simplicity, the proposal falls squarely within the relatively new parameters and criteria promulgated by the 1993 legislature via HB 3661 that broadly control the extent to which such dwellings can be developed on forestland.

2. Site And Vicinity Descriptions

The subject property is located on the east side of, and abutting, McNamee Road. The property abuts the Rural Residential zoning district that contains smaller properties and several dwellings to the north and to the west. To the south lies a CFU-zoned lot of 11.79 acres that contains a dwelling. To the east lies a large holding of CFU-zoned property used for industrial timber production, which has recently been clear-cut.

The shortest north-south dimension of the parcel is the 238 feet of frontage on the road. All of the property slopes downward from McNamee Road, whth sharply increased steepness about one hundred feet east of the road. The area with the least slope — which will be the proposed building site — is located adjacent to the road.

The proposed building site has been used as a landing area for the clear-cut logging that took place on the property in 1993.

3. Comprehensive Plan and Zoning Ordinance Considerations

The subject property is classified as "commercial forest" in the Comprehensive Plan and zoned "CFU," Commercial Forest Use.

B. APPLICABLE CRITERIA — PART ONE
Request For Conditional Use

The following criteria apply to the proposed development:[2]

1.
ORS 215.705 - 215.750

ORS 215.705 to 215.750 set forth criteria adopted by the legislature to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

2.
OAR 660-06-027, 660-06-029, AND 660-06-035

OAR 660-06-027, 660-06-029, and 660-06-035 set forth criteria adopted by administrative rule by LCDC to control dwellings in forest zones. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

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[2] Donna Green and Clifford Hamby filed written objections, and also testified at the February 15 hearing, that the County had failed to comply with the notice provisions in MCC 11.15.8220(A)(4) because the hearing notice failed to identify the applicant's variance request. Because, however, Ms. Green and Mr. Hamby did learn of that request in time to prepare and articulate objections, they have not demonstrated any prejudice. Moreover, although the cover page of the public hearing notice does not plainly identify the variance aspect of the application, the notice does mention the variance criteria. The staff report likewise covers the variance criteria in depth, and the staff report is (and was) available prior to the hearing.

Ms. Green and Mr. Hamby also contend that MCC 11.15.6400 *et seq.* apply. However, there is nothing in the record to indicate that the subject property lies within an SEC district as so designated on the Multnomah County Zoning Map.

In evidentiary materials submitted within the one-week period in which the applicant requested that the record remain open, Ms. Green and Mr. Hamby discuss the West Hills Rural Area Plan. However, nothing in that plan — assuming the plan is yet adopted — pertains to this application.

3.
MCC 11.15.2050

MCC 11.15.2050 provides that

> "[t]he following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:
>
> "* * * * *
>
> "(B) A ***dwelling not related to forest management*** pursuant to the provisions of ***MCC .2052 and .2074***."

4.
MCC 11.15.2052[3]

MCC 11.15.2052 provides that "[a] dwelling not related to forest management may be allowed subject to" the criteria in .2052(A)(1)–(10). Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

5.
MCC 11.15.2074

MCC 11.15.2074 — made applicable by MCC 11.15.2052(A)(9) — provides that ". . . all dwellings and structures located in the CFU district after January 7, 1993[,] shall comply" with the provisions in .2074(A)–(D). Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

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3 MCC 11.15.7120(A) provides, in general, that

> "[a] ***Conditional Use*** shall be governed by the approval criteria listed ***in the district under which the conditional use is allowed. . . .***"

Because MCC 11.15.2052 contains specific criteria applicable to uses within the CFU district, the general provisions in MCC 11.15.7120(A) will not apply.

6.
COMPREHENSIVE PLAN PROVISIONS

The County has determined COMPREHENSIVE PLAN policies 13 (Air, Water, and Noise Quality), 14 (Developmental Limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities), and 40 (Development Requirements) to apply. These criteria appear in detail within the separate discussion in the "Findings" portion of this decision.

C. FINDINGS — PART ONE

1. ORS 215.705 – 215.750

ORS 215.705(1) provides, in pertinent part, that "**[a] dwelling under this section may be allowed if:**

> **"(a) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:**
>
> > **"(A) Prior to January 1, 1985; or**
> >
> > **"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.**
>
> **"(b) The tract on which the dwelling will be sited does not include a dwelling.**
>
> **"(c) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of the law.**
>
> **"* * * * ***
>
> **"(e) The lot or parcel on which the dwelling will be sited, if zoned for forest use, is described in ORS 215.720, 215.740 or 215.750.**

"* * * * *"

The record contains evidentiary submittals directed toward compliance only with MCC 11.15.2052(A)(1) and 11.15.2062(A)(1) and(2). The "lot of record" criteria in both ORS 215.705(1)(a) and OAR 660-06-027(1)(g), on the other hand, implicate somewhat different requirements.

ORS 215.705(1)(a) became effective in November, 1993, as did all of HB 3661 (1993). The mirror-image provisions in OAR 660-06-027(1)(g) became effective in March, 1994. Thus, notwithstanding the fact that applicant does not address either ORS 215.705(1)(a) or OAR 660-06-027(1)(g), I perceive no implied suggestion that either or both do not otherwise apply. The County, however, has not yet incorporated the provisions of ORS 215.705(1)(a) or OAR 660-06-027(1)(g) into its Code.

In evidentiary materials dated February 17, 1995,[4] applicant mentions an earlier application for conditional use (CU 24-93) filed in August, 1993. At that time, ORS 215.705(1)(a) was not yet effective and OAR 660-06-027(1)(g) did not exist. Thus, the only pertinent "lot of record" criteria as of August, 1993, would have been MCC 11.15.2052 and 11.15.2074. Unfortunately, as noted by the applicant,

> "the Portland Sanitarian did not submit the septic feasibility approval report until February 24, 1994, ***therefore, missing the deadline required to continue under CU 24-93***.

Had this application been merely a continuation of the earlier one, then neither ORS 215.705(1)(a) nor OAR 660-06-027(1)(g) in their present wording would — or could — apply.

The following columnar comparison highlights the critical differences between the "lot of record" provisions in ORS 215.705(1)(a) and MCC 11.15.2052 and 11.15.2072:

[see chart on next page]

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4 At applicant's request during the February 15 hearing, the record remained open until February 22; applicant was to submit any additional evidence by 4:30 p.m. on February 21, and any other person could respond with additional evidence by 4:30 p.m. on February 22.

PROVISIONS PRESCRIBING "LOT OF RECORD" REQUIREMENTS	
ORS 215.705(1)(a) [5]	**MCC 11.15.2052(A)(1)**
"A dwelling under this section may be allowed if: "(a) The lot or parcel on which the dwelling will be sited [1] was lawfully ***created*** and [2] was ***acquired by the present owner***: "(A) ***Prior to January 1, 1985***; or "(B) By devise or by intestate succession from a person who acquired the lot or parcel ***prior to January 1, 1985***." (Emphasis and enumeration added.)	" The lot ***shall*** [1] meet the lot of record standards of MCC .2062(A) and (B) ***and*** [2] have been lawfully ***created prior to January 25, 1990*** [.]" (Emphasis and enumeration added.) **MCC 11.15.2062(A)** "For the purposes of this district, a Lot of Record is: "(1) A parcel of land: "(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form ***prior to August 14, 1980***; "(b) Which satisfied all applicable laws when the parcel was created; ***and*** "(c) Which ***satisfies the minimum lot size requirements*** of MCC .2058; ***or*** "(2) A parcel of land: "(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form ***prior to February 20, 1990***; "(b) Which satisfied all applicable laws when the parcel was created; and "(c) ***Does not meet the minimum lot size requirements*** of MCC .2058."

5 OAR 660-06-027(1)(g) mirrors the provisions in ORS 215.705(1)(a), except that it provides that a dwelling "may be allowed ***only if***" it fulfills one of the two criteria.

Unfortunately, the statutory provisions do not squarely align with the County provisions. Most predominately, ORS 215.705(1)(a) focuses primarily on ***ownership*** as of January 1, 1985; MCC 11.15.2052 and 11.15.2062 do not even mention "ownership."

In addition to having been "lawfully created," ORS 215.705(1)(a) requires that the lot:

- must have been "acquired by the ***present owner***" before January 1, 1985; or

- "acquired by the ***present owner***" at any time as long as that owner acquired it by devise or intestate succession from someone who had acquired the property before January 1, 1985.

The record reflects that the the current owner — who is also the applicant — acquired the property by deed from an Oregon corporation in August, 1994. However, because the "present" owner did not acquire the property until after January 1, 1985, and because nothing in the record suggests that it was acquired by the "present" owner by way of devise or intestate succession from someone who acquired it prior to January 1, 1985, it certainly appears that the subject property does ***not*** fulfill the requirements of ORS 215.705(1)(a), notwithstanding the fact that the lot itself may have been lawfully created years ago.

MCC 11.15.2052 and 11.15.2062, on the other hand, focus on different criteria — albeit somewhat redundantly in that both provisions require the lot to have been lawfully created, but at different dates. In addition to having been "lawfully created" before January 25, 1990 (MCC 11.15.2052), MCC 11.15.2062 requires that the lot:

- be lawfully created by an instrument that either was or could have been recorded before August 14, 1980, and be at least 80 acres in size; or

- be lawfully created by an instrument that either was or could have been recorded before February 20, 1990, and be less than 80 acres in size. [6]

---

6 Thankfully, this case does not present the question whether MCC 11.15.2052 and 11.15.2062 *together* preclude development on an undersized parcel lawfully created *between* January 25, 1990, and February 19, 1990.

In other words, MCC 11.15.2052 and 11.15.2062 focus primarily on the ***date of creation***.

The record reflects, among other things, a 1975 deed from Joseph Johnson to Susan Johnson. Whether that deed "created" the subject property by carving it from a larger parcel, or whether the deed merely transferred ownership of the subject property, is not clear from the record. Nevertheless, it appears from the record that at least as of 1975 the parcel was lawfully created in that it fulfilled the then-existing zoning laws. Thus, the subject property fulfills both MCC 11.15.2052(A)(1) and 11.15.2062(A)(2).

In any event, applicant's evidence does ***not*** support a finding that ORS 215.705(1)(a) — or OAR 660-06-027(1)(g) for that matter — has been fulfilled.

The question then becomes whether ORS 215.705(1)(a) binds the County, or whether it somehow comprises an option that the County can either embrace or ignore. Nothing in HB 3661 (1993 Or Law, ch. 792) — from whence sprang ORS 215.705(1)(a) — answers that question. Nor does anything about ORS 215.705(1)(a) itself yield any clue; although that provision recites that a "dwelling under this section ***may*** be allowed," the reference to "may" simply suggests that a county might well impose stricter requirements. *See*, for instance, ORS 215.705(5), which empowers counties to ***deny*** approval of a dwelling otherwise "allowed" under ORS 215.705. But the reference to "may" for one purpose does not thereby translate into an implicit option to either abide by the statute or ignore it. As if to underscore that point, in OAR 660-06-027(1)(g) LCDC interpreted the statutory phrase "may be allowed" to mean that a "dwelling . . . may be allowed ***only if***" it fulfills one of the two date-oriented criteria.

Unless the legislature specifically grants a local government the option of implementing a particular statute as the local government sees fit, the lesson of cases such as *Seto v. Tri-County Metro. Transportation Dist.*, 311 Or 456, 814 P2d 1060 (1991), *Mid-County Future Alternatives v. City of Portland*, 310 Or 152, 795 P2d 541 (1990), *1000 Friends of Oregon v. LCDC (Tillamook Co.)*, 303 Or 430, 737 P2d 607 (1987), and *LaGrande/Astoria v. PERB*, 281 Or 137, 576 P2d 1204 (1978), is this: local governments retain pervasive (if not exclusive) authority over their "form and structure," but otherwise must abide by all statutes, particularly land use laws.

Because the fulfillment of ORS 215.705(1)(a) is an essential condition precedent to approval, and because nothing in either ORS 215.705 or any other law allows the County to supplant statutory requirements with local land use laws, the application must be DENIED. The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

In the event that the applicant appeals this decision, I will proceed to consider all of the remaining criteria in order to avoid the necessity for further proceedings with respect to applicability or fulfillment of those criteria. Thus, the remainder of the decision simply assumes that the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) do not otherwise control this application.

The tract on which the dwelling will be sited does not already contain a dwelling, and the proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that ORS 215.705(1)(b) and (c) have been fulfilled.

Whether the subject property is described in ORS 215.720 or 215.750 (ORS 215.740 being inapplicable) — and whether the applicant's evidence supports a finding that ORS 215.705(1)(c) has been fulfilled — is discussed in the next few paragraphs.

ORS 215.720 provides, in pertinent part:

> **"(1) A dwelling authorized under ORS 215.705 may be allowed on land zoned for forest use under a goal protecting forest land only if:**
>
> > **"(a) The tract on which the dwelling will be sited is in western Oregon, as defined in ORS 321.257, and is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .**
> >
> > **"* * * * ***
>
> **"(3) No dwelling other than those described in this section and ORS 215.740 and 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forest land."**

ORS 215.750 further provides:

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

"* * * * *

"(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if: [7]

"(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

"(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.

"* * * * *

"(3) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under this subsection.

With one significant exception (addressed in the next paragraph), the County has implemented the criteria in ORS 215.720 and 215.750 via MCC 11.15.2052, discussed later. Because the applicant's evidence supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph the dwelling concurrently fulfills the criteria in ORS 215.720 and 215.750, and, in turn, fulfills the remaining criterion in ORS 215.705(1)(e).

The exception is the requirement in ORS 215.720(1)(a) that the subject parcel be located "within 1,500 feet of a public road as defined under ORS 368.001." MCC 11.15.2052 does not appear to incorporate that particular criterion. The various maps in the record makes it readily apparent, however, that the distance from the parcel to

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7 Applicant's evidence reveals that neither subparts (a) nor (b) of ORS 215.750(1) would apply in any event.

McNamee Road is considerably less than 1,500 feet; the property fronts on the road. Applicant has manifestly fulfilled this particular requirement.

ORS 215.730 further provides, in pertinent part:

> **"(1) A local government shall require as a condition of approval of a single-family dwelling allowed under ORS 215.705 on lands zoned forest land that:**
>
> > **"(a) The property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met.**
> >
> > **"(b) The dwelling meets the following requirements:**
> >
> > > **"(A) The dwelling has a fire retardant roof.**
> > >
> > > **"(B) The dwelling will not be sited on a slope of greater than 40 percent.**
> > >
> > > **"(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.**
> > >
> > > **"(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.**
> > >
> > > **"(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.**
> > >
> > > **"(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.**

"(G) The owner provides and maintains primary fuel-free break and secondary break areas."

Because some of these criteria in ORS 215.730(1) represent "conditions" pertaining to the design or construction process itself, they can be superimposed upon an approval for a particular use, rather than functioning as criteria that must necessarily be fulfilled before conditional approval can be granted. Thus, appropriate conditions will fulfill the criteria in ORS 215.730(1)(b)(A), (F), and (G).

However, the County has implemented most of the conditions in ORS 215.730(1) via mandatory approval criteria in MCC 11.15.2074. Because the applicant has demonstrated a fulfillment of ORS 215.730(1)(a) and (b)(B), (C), (D), and (E), as discussed later, the proposed dwelling concurrently fulfills the criterion in ORS 215.730(1)(a) and (b)(B), (C), (D), and (E).

2. OAR 660-06-027, 660-06-029, and 660-06-035

In many respects, the criteria in OAR 660-06-027 mirror the various statutory criteria in ORS 215.705 to 215.750. They nevertheless apply independently.

OAR 660-06-027(1) provides, in pertinent part, that

"[d]wellings authorized by OAR 660-06-025(1)(d)[8] are:

"(a) A dwelling on a tract in western Oregon that is composed of soil not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined under ORS 368.001. . . .

"* * * * *

---

8 OAR 660-06-025(1)(d) provides that "[d]wellings authorized by ORS 215.720 to 215.750" comprise one of the "general types of uses" permitted in forest land.

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

"* * * * *

"(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:[9]

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

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

"* * * * *

"(g) A dwelling authoirzed under subsections (a) and (b) of this section may be allowed only if the lot or parcel on which the dwelling will be sited was lawfully created and was acquired by the present owner:

"(A) Prior to January 1, 1985; or

"(B) By devise or by intestate succession from a person who acquired the lot or parcel prior to January 1, 1985.

"* * * * *"

---

9 Applicant's evidence reveals that neither subparts (A) nor (B) of OAR 660-06-027(1)(d) would apply in any event.

With two exceptions, one of which is noted in the next paragraph, the County has implemented these criteria via the criteria in MCC 11.15.2052. Because the applicant's evidence otherwise supports the finding that the proposed dwelling fulfills the criteria in MCC 11.15.2052 (discussed later), then with the one exception noted in the next paragraph, and assuming for the remainder of this decision that the County's "lot of record" provisions — which constitute the other exception — allow the proposed development, the dwelling concurrently fulfills the criterion in OAR 660–06–027(1)(a) and (d).

One of the two exceptions is the requirement in OAR 660–06–027(1)(a) that the subject parcel be located "within 1,500 feet of a public road as defined under ORS 368.001." MCC 11.15.2052 does not appear to incorporate that particular criterion. The various maps in the record makes it readily apparent, however, that the distance from the parcel to McNamee Road is considerably less than 1,500 feet; the property fronts on the road. Applicant has manifestly fulfilled this particular requirement.

The other exception is, of course, the fact that the County has not yet incorporated the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g) into MCC 11.15.2052(A) or 11.15.2062(A). That issue has been dealt with earlier in detail.

OAR 660–06–027(4) further provides that **"[a] proposed dwelling under this rule is not allowed:**

> **"(a) If it is prohibited by or will not comply with the requirements or an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law;**
>
> **"(b) Unless it complies with the requirements of OAR 660–06–029 and 660–06–035;**
>
> **"(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for the other lots or parcels that make up the tract are met;**
>
> **"(d) If the tract on which the dwelling will be sited includes a dwelling.**

The proposed dwelling is not prohibited by the comprehensive plan and approval criteria (*see later discussion*). Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(a) has been fulfilled.

Because the proposed dwelling complies with the requirements of OAR 660-06-029 and 660-06-035 (discussed below), it fulfills the requirements of OAR 660-06-027(4)(b).

There are no other "lots or parcels that make up the tract," and no other dwellings will be allowed on the parcel. Thus, applicant's evidence supports a finding either that OAR 660-06-027(4)(c) does not apply or that it has been fulfilled.

There exists no dwelling on the subject property. Thus, applicant's evidence supports a finding that OAR 660-06-027(4)(d) has been fulfilled.

OAR 660-06-029 provides that

> **"[t]he following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agricultural/forest zones. . . .:**
>
> > **"(1) Dwellings and structures shall be sited on the parcel so that:**
> >
> > > **"(a) They have the least impact on nearby or adjoining forest or agricultural lands;**
> > >
> > > **"(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**
> > >
> > > **"(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and**
> > >
> > > **"(d) The risks associated with wildfire are minimized.**
> > >
> > > **"* * * * ***

"(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). . . .

"(4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party . . . , then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to accept responsibility for road maintenance.

"(5) Approval of a dwelling shall be subject to the following requirements:

> **"(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;**
>
> **"(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**

"(c) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

"(d) Upon notification by the assessor the Department of Forestry shall determine whether that tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372."

The County has implemented the various criteria in OAR 660–06–029(1) via the development standards in MCC 11.15.2074. Because the applicant's evidence supports a finding that MCC 11.15.2074 has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660–06–029(1).

The County has implemented the criterion in OAR 660–06–029(3) via MCC 11.15.2074(C). Because the applicant's evidence supports a finding that MCC 11.15.2074(C) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660–06–029(3).

The condition in OAR 660–06–029(4) has been implemented by the County via MCC 11.15.2052(A)(7). Because the applicant's evidence supports a finding that MCC 11.15.2052(A)(7) has been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660–06–029(4).

Although OAR 660–06–029(5) makes the "approval" of a dwelling subject to the criteria specified therein, only part (c) could reasonably comprise a condition of ap-

proval of the proposed dwelling itself; parts (a), (b), and (d) all pertain to post-approval, post-development activities that impact only the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

Finally, **OAR 660-06-035** implements certain "fire siting standards" that mirror requirements in ORS 215.730(1)(b) and 215.730(2). The County also implemented some of the same criteria in MCC 11.15.2052 and .2074. Because the applicant's evidence supports a finding that MCC 11.15.2052 and .2074 have been fulfilled (as discussed later), the applicant has likewise fulfilled OAR 660-06-035.

3. MCC 11.15.2052

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

MCC 11.15.2062(A) provides that "[f]or the purposes of this district, a Lot of Record is:

"(1) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form ***prior to August 14, 1980***;

"(b) Which satisfied all applicable laws when the parcel was created; and

"(c) ***Which satisfies the minimum lot size requirements of MCC .2058; or***

"(2) A parcel of land:

"(a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form ***prior to February 20, 1990***;

"(b) Which satisfied all applicable laws when the parcel was created; and

"(c) ***Does not meet the minimum lot size requirements of MCC .2058; and***

"(d) ***Which is not contiguous to another substandard parcel or parcels under the same ownership*** [.]

"* * * * *"

Applicant relies upon .2062(A)(2). The minimum lot size, per MCC 11.15.2058(A), is 80 acres; thus, .2062(A)(1) would not apply.

As discussed in some detail earlier, the record reflects, among other things, a 1975 deed from Joseph Johnson to Susan Johnson. Whether that deed "created" the subject property by carving it from a larger parcel, or whether the deed merely transferred ownership of the subject property, is not clear from the record. Nevertheless, it appears from the record that at least as of 1975 the parcel was lawfully created in that it fulfilled the then-existing zoning laws. It also appears from the record that the property is not contiguous to another substandard parcel owned by the applicant/owner. The subject property fulfills MCC 11.15.2062(A)(2).

Chris McCurdy of 14250 S.W. McNamee Road filed a written objection reciting, among other things, that the "parcel is so small." However, the size of the parcel is irrelevant under MCC 11.15.2062(A)(2) as long as the other criteria are fulfilled.

Thus, applicant's evidence supports the finding that the criterion in MCC 11.15.2052(A)(1) has been fulfilled.

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

Although the siting of the proposed dwelling complies with the 60-foot setback requirement with respect to McNamee Road, the physical conditions on the property (*viz*, the slope) necessitates siting the dwelling in a location that will not comply with the 200-foot setback requirement. Thus, the applicant concurrently seeks a variance to the 200-foot setback requirement due to the slope of the lot and the re-

sultant limitation on siting alternatives. The variance is the subject of Part II of this decision.

Because the applicant has successfully demonstrated an entitlement to a variance (as discussed later), the evidence supports a finding that the criterion in MCC 11.15.2052(A)(2) has been fulfilled.

"(3) The lot shall meet the following standards:

"* * * * *

"(c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; [10] **and**

"(I) The lot and at least all or part of 11 other lots exist within a 160–acre square when centered on the center of the subject lot parallel and perpendicular to section lines; [11] **and**

"(ii) Five dwellings exist within the 160–acre square. [12]

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

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

Applicant's evidence reveals that the subject property is composed primarily of Goble silt loam soil. The potential yield of Douglas Fir for this soil, according to the County's soil survey, ranges from 135 to 145 cubic feet per acre per year. Thus, at

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10 Applicant relies only upon MCC 11.15.2052(A)(3)(c).

11 Both ORS 215.750(1)(c)(A) and OAR 660–06–027(1)(d)(C)(I) further specify that the 11 other lots must have existed as of January 1, 1993.

12 Both ORS 215.750(1)(c)(B) and OAR 660–06–027(1)(d)(C)(ii) specify "***[a]t least three*** dwellings [must have] existed on January 1, 1993, on the other lots or parcels."

16.43 acres the subject property is capable of producing in excess of 85 cf/ac/yr of Douglas Fir.

Applicant's evidence further reveals that the parcel is not capable of producing 5,000 cubic feet of wood fiber per year; 16.43 acres times 135 to 145 cubic feet per acre per year equals only 2,218 to 2,232 cubic feet per year.

At least 29 other parcels (or parts thereof) and at least 8 dwellings exist within the 160–acre square. None of those parcels or dwellings is located within an urban growth boundary. Although it may be correct, as written objections by Donna Green and Clifford Hamby dated February 12 emphasize (hereafter simply *"Green"*), that some of the surrounding dwellings lie in a Rural Residential zone, that fact does not suggest that they may be treated as if they are located "within an urban growth boundary." To do so would be to rewrite applicable criteria by mere fiat.

Thus, applicant's evidence supports a finding that the criteria in MCC 11.15.2052(A)(3)(c), (d), and (e) have been fulfilled.

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

There appears to be a large-scale forestry operation to the east of the subject property. Nothing about the proposed dwelling, however, appears likely to either change, increase the costs of, or otherwise impede that adjacent forestry operation. No other significant forestry operations take place on the small Rural Residential zoned properties in the McNamee Ridge View Subdivision.

The majority of the subject property consists of slopes between 50% and 60%. Those conditions limit the potential for homesite locations. Consequently, the most practical site is near the western-most property line, adjacent to McNamee Road, which has slopes of between 15% and 30%. As so situated, the proposed dwelling will be located as far from the large-scale forestry operation to the east as is possible on the site.

Green contends that the proposed dwelling does not comply with MCC 11.15.2052(A)(4) because the applicant does not adequately explain what, if anything will happen to the preexisting loading station for log trucks that was apparently located in the area where the dwelling is to be sited. If the subject property itself comprises "surrounding" forest land, then obviously MCC 11.15.2052(A)(4) requires the applicant

to explain such things. If, on the other hand, "surrounding" means property ***other than*** the subject property, then Green's concerns are not pertinent to ***this*** criterion. MCC 11.15.2074(A)(1) (***discussed later***) tracks the language from OAR 660-06-029(1)(a) that discusses a proposal's impact on "***nearby or adjacent***" forest lands. Because OAR 660–06-029(1)(b) separately mentions "adverse impacts . . . on ***the tract,***" I construe the terms "nearby or adjacent" in both OAR 660-06-029(1)(a) and MCC 11.15.2074(A)(1) to mean forest lands ***other than*** the subject property itself. Thus, to construe MCC 11.15.2052(A)(4) to refer to that same category of property would be redundant. Therefore, I conclude that the term "surrounding" can refer to property within the subject property that literally "surrounds" the proposed dwelling.

In materials dated February 17, 1995, applicant mentions a "logging landing" and acknowledges that "[t]here is more than ample room for a loggin landing south of the proposed house site which would support both the subject property and the adjoining property to the south." Because there is evidence of preexisting logging operations of some sort on the subject property that might well be adversely impacted by the proposed dwelling if those preexisting operations are not taken into account as MCC 11.15.2052(A)(4) requires, it shall be a condition of approval that the applicant shall, before obtaining a building permit, provide a site plan showing a proposed log landing area on the high part of the property (*viz*, close to McNamee Road), which plan shall be verified by a forester for compliance with appropriate forestry practices.

Green also objects because "[t]he subject property clearly is suitable for commercial forest use." She does not, however, specifically relate that objection to MCC 11.15.2052(A)(4), but this seems to be an appropriate place to address it. Suffice it to say that nothing about any applicable criteria purports to exclude dwellings from property that may well be "suitable for commercial forest use" solely on the basis that the property fits that description. To the contrary, HB 3661, LCDC's administrative rules, and the County's criteria purport to allow just such dwellings on forestland under regulated, prescribed conditions.

There exists no evidence that the proposed dwelling will run afoul of the proscription in MCC 11.15.2052(A)(4); the evidence is to the contrary. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(4) has been fulfilled.

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

The dwelling is not located inside a big game winter habitat area. Although written objections by Chris McCurdy of 14250 N.W. McNamee Road declare that "the proposed homesite is directly in the middle of the wildlife corridor between Forest Park and the Coast Range," Mr. McCurdy does not suggest that that fact — if true — necessarily yields any adverse impact. Moreover, no applicable criterion makes this consideration pertinent.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(5) has been fulfilled.

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

The proposed dwelling will be located on a lot within a rural fire protection district. Fire protection in the area is provided by Rural Fire Protection District No. 20.

Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(6) has been fulfilled.

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

The subject property fronts on McNamee Road, which provides direct access to the property. Thus, applicant's evidence supports a finding that the criterion in MCC 11.15.2052(A)(7) has been fulfilled.

"(8) **The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral[.]"**

This criterion has been superseded by ORS 215.730(1)(a) and OAR 660–06–029(5), discussed above.

As observed earlier, although OAR 660–06–029(5) makes the "approval" of a dwelling subject to the criteria specified therein, only part (c) could reasonably comprise a condition of approval of the development of the dwelling itself; parts (a), (b), and (d) all pertain to post–approval, post–development activities that only impact the property's tax status. The criterion in part (c) can be fulfilled via a condition of approval.

"(9) **The dwelling meets the applicable development standards of MCC .2074[.]"**

The criteria in MCC 11.15.2074 are discussed in the next section. Because applicant's evidence supports a finding that the criteria in MCC 11.15.2074 have been fulfilled (***discussed later***), this criterion in MCC 11.15.2052(A)(9) has been fulfilled.

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

The record reflects that the statement has yet to be recorded. The criterion plainly says "***has*** been recorded," which unambiguously conveys the requirement that the recordation of the statement must precede approval.

Thus, applicant's compliance with this criterion shall be a condition of approval.

4. MCC 11.15.2074

MCC 11.15.2074 — made operative via MCC 11.15.2052(A)(9), above — provides that

> ". . . [A]ll dwellings and structures located in the CFU district after January 7, 1993[,] shall comply with the following[.]"

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

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

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

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

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

"(5) The risks associated with wildfire are minimized. . . ."

Maps appear to reflect that the proposed location of the dwelling is situated so as to have the least impact on all nearby or adjoining lands. Applicant cannot, however, fulfill the setback requirements of MCC 11.15.2058(C) through (G), and has requested a variance. The criteria for that request are discussed below. Because applicant has successfully demonstrated an entitlement to the variance (***discussed later***), applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(1) have been fulfilled.

MCC 11.15.2074(A)(2) has been supplanted by OAR 660-06-029(1)(b), which requires that "[t]he siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized[.]" With the exception of some references in the record to logging or forestry practices on the property to the east that may or may not occur "on the tract" in some fashion (perhaps via landing sites), the record contains no evidence that any forest operations or farming practices occur on the site. Thus, no "adverse impacts" will occur, and applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(2), supplanted and supplemented by OAR 660-06-029(1)(b), has been fulfilled.

Applicant has documented that the homesite, including well, septic, and all outbuildings, will be confined to an approximate one-acre area near McNamee Road. As such, the proximity of the dwelling to the road will result in a minimal amount of property used for driveway and utility easements. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(3) has been fulfilled.

There will be no need for any "access road or service road" beyond a driveway to the proposed dwelling. Thus, applicant's evidence supports a finding that the provision in MCC 11.15.2074(A)(4) has been fulfilled.

Applicant assures that a primary fire safety zone of 130 feet will be maintained around all structures, followed by a secondary fire safety zone of 100 feet. Applicant also ensures that all existing and future ornamental trees shall not have a distance of less than 15 feet between crowns within the primary fire safety zone, that all existing and future trees will be pruned eight feet in height, and, finally, that ornamental shrubs shall not exceed 2 feet in height. The immediate around the proposed dwelling does not have slopes exceeding 40 percent. With applicant's observance of the safety zone conditions as an enduring condition of approval, applicant's evidence supports a finding that the provisions in MCC 11.15.2074(A)(5) have been fulfilled.

"(B) The dwelling shall:

"(1) Comply with the standards of the Uniform Building Code . . . ;

"(2) Be attached to a foundation for which a building permit has been obtained; and

"(3) Have a minimum floor area of 600 square feet."

Because these criteria condition *pre*–construction approval of the proposed use based upon the applicant's compliance with *post*–approval construction requirements, applicant's post–approval compliance with the criteria in MCC 11.15.2074(B)(1) to (3) shall be met during the building permit process.

In addition, ORS 215.730(1)(b)(A) and (F), as well as OAR 660–06–035(4) and (6), require that the proposed dwelling have a fire retardant roof and that any chimney have a spark arrester. Thus, applicant's post–approval compliance with these requirements shall likewise be an enduring condition of approval.

As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(B) has been fulfilled.

"(C) **The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners."**

Applicant acknowledges that there exists no proven source of water on the the site at this time. Thus, applicant's compliance with this criterion shall be a condition of approval. With the observance of that condition, applicant's evidence supports a finding that the provision in MCC 11.15.2074(C) has been fulfilled.

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

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

Because these criteria condition *pre*–construction approval of the proposed use on the applicant's *post*–approval compliance with requirements for the construction and maintenance of the required road, applicant's post–approval compliance with the "private road" criteria in MCC 11.15.2074(D) shall be an enduring condition of approval. As so conditioned, applicant's evidence supports a finding that MCC 11.15.2074(D) has been fulfilled.

5. Comprehensive Plan Provisions

Comprehensive Plan Policy 13 (Air, Water, and Noise Quality) provides, in pertinent part:

> **". . . [I]t 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. . . ."**

Nothing about applicant's proposed use gives rise to any suggestion that the dwelling will have any impact on existing air quality, water quality, or noise levels in the area, or that all applicable standards cannot be met.

The subject property is located outside the Tualatin River Basin; all of the surface water originating in or on the property drains to the east toward the Multnomah Channel. Thus, no drainage study, as otherwise required in the Tualatin River Basin, needs to be done.

Although the proposed dwelling will, according to the applicant, have a wood stove, the expected emissions will not produce a significant impact on existing air quality.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 13.

Comprehensive Plan Policy 14 (Developmental Limitations) provides:

> "The County's policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:
>
> "A. Slopes exceeding 20%;
>
> "B. Severe soil erosion potential;
>
> "C. Land within the 100-year flood plain;

"D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;

"E. A fragipan less than 30 inches from the surface;

"F. Land subject to slumping, earth slides or movement."

The location for the proposed dwelling has a slope of approximately 15% to 20%. It lies outside of the Slope Hazards area. If actual development is to occur on slopes exceeding 20% (but less than 40%), applicant assures that the potential hazards shall be mitigated through engineered design and construction techniques, to be approved by the County.

None of the other considerations apply to the subject property. Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 14.

Comprehensive Plan Policy 22 (Energy Conversation) provides, in pertinent part:

> **". . . The County shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:**
>
> **"A. The development of energy-efficient land use practices;**
>
> **"B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers;**
>
> **"C. An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;**
>
> **"D. Street layouts, lotting patterns and designs that utilize natural environmental and climactic conditions to advantage.**

"E. Finally, the County will allow greater flexibility in the development and use of renewable energy resources."

The proposed dwelling is manifestly located in a rural area, thus parts B and C have no direct relevance. Also, there is nothing in the record to support the suggestion that the proposed dwelling will not be constructed and designed so as to promote energy-efficient practices. The proposed dwelling has been situated so as to utilize the natural environment to the greatest extent possible. All of the above factors have been considered.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 22.

Comprehensive Plan Policy 37 (Utilities) provides:

"The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

"WATER AND DISPOSAL SYSTEM

"A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or

"B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental quality (DEQ) will approve a subsurface sewage disposal system on the site; or

"C. There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or

"D. There is an adequate private water system, and a public sewer with adequate capacity.

"DRAINAGE

"E. There is adequate capacity in the storm water system to handle the run–off; or

"F. The water run–off can be handled on the site or adequate provisions can be made; and

"G. The run–off from the site will not adversely affect the water quality in adjacent streams, ponds, lares or alter the drainage on adjoining lands.

"ENERGY AND COMMUNICATIONS

"H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

"I. Communications facilities are available.

"* * * * *"

Applicant's evidence reveals that the proposed dwelling will utilize a private water system (*viz*, a well), and that DEQ will approve a subsurface sewage disposal system. Because neither of these eventualities has yet occurred, applicant's demonstration of compliance shall be subject to a condition of approval.

Applicant's evidence reveals that the water run–off can be handled on–site and will not adversely affect the drainage of adjoining lands.

PGE will provide electric power, and Northwest Natural Gas will provide natural gas. U.S. West will provide telephone service.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 37.

Comprehensive Plan Policy 38 (Facilities) provides:

"The County's policy is to require a finding prior to approval of a legislative or quasi–judicial action that:

"SCHOOL

"A. The appropriate school district has had an opportunity to review and comment on the proposal.

"FIRE PROTECTION

"B. There is an adequate water pressure and flow for fire fighting purposes; and

"C. The appropriate fire district has had an opportunity to review and comment on the proposal.

"POLICE PROTECTION

"D. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection."

The Portland School District No. 1 has had an opportunity to review and comment on the proposal, and it did so. RFPD #20 indicates that adequate service levels can be provided. Multnomah County Sheriff's Office will provide the necessary police protection.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 38.

Comprehensive Plan Policy 40 (Development Requirements) provides that:

"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."**

Nothing about the proposed dwelling or the location gives rise to a suggestion that pedestrian or bicycle path connections would be appropriate. Neither benches nor bicycle parking facilities would be appropriate.

Thus, applicant's evidence supports a finding that the proposed use fulfills Comprehensive Plan Policy 40.

Green objects that the applicant has not fulfilled **Comprehensive Plan Policy 11** (Commercial Forest Land), but she does not articulate in what manner the applicant runs afoul of that policy. The initial question is whether that policy applies in light of HB 3661 and the corollary LCDC administrative rules. I conclude that, because Policy 11 does not purport to regulate the ***development*** of forest land, but instead purports by its terms to regulate the ***designation*** of forest land, it does not apply at this point. If anything, I conclude that Policy 11 purports to regulate the zoning designation applied to the subject property and vicinity; in other words, Green has confused property designations applied to a district or vicinity with development criteria applicable to a particular parcel of property. Moreover, even if Policy 11 did purport to regulate development, Green has not articulated any portion of Policy 11 that is contravened by the application.

D. CONCLUSION — PART ONE

With the exception of the "lot of record" provisions in ORS 215.705(1)(a), Applicant has fulfilled all of the applicable criteria in ORS 215.705–215.750, OAR 660.06.027, .029, and .025, MCC 11.15.2052 and .2074, and the applicable Comprehensive Plan provisions, either by providing evidence that demonstrates pre–approval compliance, or by demonstrating an entitlement to variances from certain criteria.

However, applicant has failed to demonstrate the fulfillment of the "lot of record" provisions in ORS 215.705(1)(a) and OAR 660-06-027(1)(g), which are essential conditions precedent to approval. The "current owner" did not "acquire" the subject property prior to January 1, 1985, nor does the record substantiate a finding that the "current owner" acquired the property via devise or intestate succession from someone who acquired the property prior to January 1, 1985.

II.

A. Analysis Of The Proposal — Part Two
Request For Variances

1. Background / Proposal Summary

Applicant requests approval of variances to the required 200-foot yard setbacks. The slope of the subject property dictates that the proposed dwelling be sited in a corner of the property that does not otherwise allow 200-foot setbacks as required by MCC 11.15.2058(C).

2. Site And Vicinity Descriptions

This topic has been generally discussed in Section I of this decision.

3. Comprehensive Plan and Zoning Ordinance Considerations

This topic has been discussed in Section I of this decision.

B. Applicable Criteria — Part Two
Request For Variances

MCC 11.15.8505 contains criteria applicable to requests for a variance from other approval requirements. Those criteria appear in detail within the separate discussion in the "Findings" portion of this decision, below.

C. FINDINGS — PART TWO

MCC 11.15.8505 provides, in pertinent part:

"(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).**

VARIANCE FROM SETBACK REQUIREMENTS

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

The shape of the subject parcel is irregular and the terrain is sloped if differing degrees. The slope is approximately 15% to 30% within the first 200 feet or so from the road, increasing after that to between 30% to 60%. The slope requires that the proposed dwelling be sited in the northwest portion of the property, which, in turn, makes it impossible to fulfill a 200-foot setback requirement. The north side setback will be approximately 70 feet and the south side setback will be approximately 110 feet.

The question whether applicant's evidence demonstrates a condition of the property not shared "generally" by other property "in the same vicinity" is a difficult one. Green, for example, contends that applicant's property labors under no burdens that are not also common to other properties in the area, which, if true, would preclude compliance with the above criterion. The answer depends, in part, on the geographic breadth of "the same vicinity." The record, while factually "thin," appears to suggest that other dwellings in the vicinity have obtained setback variances, but there is nothing to suggest the reason(s) for the variances. This, in turn, suggests prior findings in those situations that the terrain of the sloped properties indeed comprises a peculiarity not otherwise shared by other properties within the same district.

I interpret the reference to "other property in the same vicinity or district" so as to not restrict its application simply to properties on McNamee that have slopes. Rather, I interpret "vicinity" to a larger area. Otherwise, no property on McNamee with excessively sloped conditions that otherwise preclude placement of a dwelling in conformity with setback requirements would ever be entitled to a variance. The very notion of a "variance" presupposes that not all of the properties by which the request is to be measured share the same problem. Thus, Green's focus on only those properties in the "vicinity" with similar slope concerns proves to be too narrow of a focus.

Green also contends that, because other lots in the vicinity are irregular in shape, that shape alone does not fulfill the criterion in this case. However, applicant has not requested a variance because of shape alone; rather, the dwelling's placement is dictated primarily by an excessive slope to most of the property.

Applicant's evidence thus supports a finding that MCC 11.15.8505(A)(1) has been fulfilled, in that the size and shape of the lot yields a condition that does not apply to other properties in the area.

"(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 setback requirement would restrict the use of the subject property in a manner that does not restrict other properties in the vicinity or district. Of the nine homes situated within the 160-acre grid, none apparently comply with the 200-foot setback requirement. These other properties have apparently been granted variances for the same reason that the applicant now requests one. Without a variance in this case, it appears that no reasonable dwelling could be built.

Green contends that the setback requirement would not restrict the use of the subject property any more so that it restricts the use of other properties in the vicinity. The setback requirement in this case would, it seems, preclude development altogether. Logic would yield the conclusion that applicant would suffer a greater restriction than other properties that already have approved dwellings on them. Also, because the record suggests that other properties in the vicinity have variances (for one reason or another), it seems logical to conclude that the failure to grant a variance in this case because of the topography of the property would likewise restrict the use of

the property to a greater degree than it has restricted development of other properties in the vicinity.[13]

Applicant's evidence supports a finding that MCC 11.15.8505(A)(2) has been fulfilled, in that the setback requirement would otherwise prevent the development of the property, and thus restrict the use of the subject property to a greater degree than other properties in the vicinity or district.

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

Nothing about the requested variance suggests that a variance under the circumstances could be materially detrimental to the public welfare or injurious to property in the vicinity or district. The home to the north is approximately 276 feet from the proposed building site; while the home to the south is approximately 400 to 500 feet from the proposed building site.

Green objects because the proposed dwelling will be "detrimental" to her view and to the value of her home.[14] She provides no specifics, however, other than a complaint that she was led to believe when she purchased her property that no construction would be likely to take place on the subject property. This latter fact does not, unfortunately, provide a reason to conclude that applicant has not fulfilled the current criterion. This criterion serves to assess "material" detriment to the "public welfare" or the propensity to materially "injur[e]" other properties. General complaints such as Ms. Green's do not reach to this level, particularly without more in the way of supportive factual data.

Written objections filed by Chris McCurdy of 14250 N.W. McNamee Road recite that, because of increased development in the area, "the road is substantially

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13 Green contends that "the question is were they required to meet it [*viz*, any setback requirement] when they were built?" Because applicant has provided "substantial evidence" of the existence of variances for other homes in the vicinity, I view it as Green's burden to rebut that evidence with evidence that would answer the "question."

14 Green also objects that the proposed dwelling will interfere with a neighbor's view. It seems to me that, unless the neighbors themselves so attest, Green's objection does not constitute "substantial evidence" to that effect for purposes of these proceedings.

more hazardous than it was. Some of the new residents are chronic speeders." However, not only is there no objective or verifiable data accompanying that opinion, but the objection does not suggest that the ***applicant*** will either cause or exacerbate such conditions — assuming that they exist.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(3) has been fulfilled.

"(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."**

The proposed dwelling complies in all respects with all other applicable approval provisions and Comprehensive Plan policies. Also, the resultant home would not comprise a use ***not*** listed in the underlying zone.

Applicant's evidence supports a finding that MCC 11.15.8505(A)(4) has been fulfilled.

D. CONCLUSION — PART TWO

Applicant has demonstrated a fulfillment of all of the various criteria in MCC 11.15.8505 that determine whether a variance will be granted under the circumstances to accommodate the setback requirements of the proposed dwelling.

DATED this 3rd day of March, 1995.

BARRY L. ADAMSON, Hearings Officer

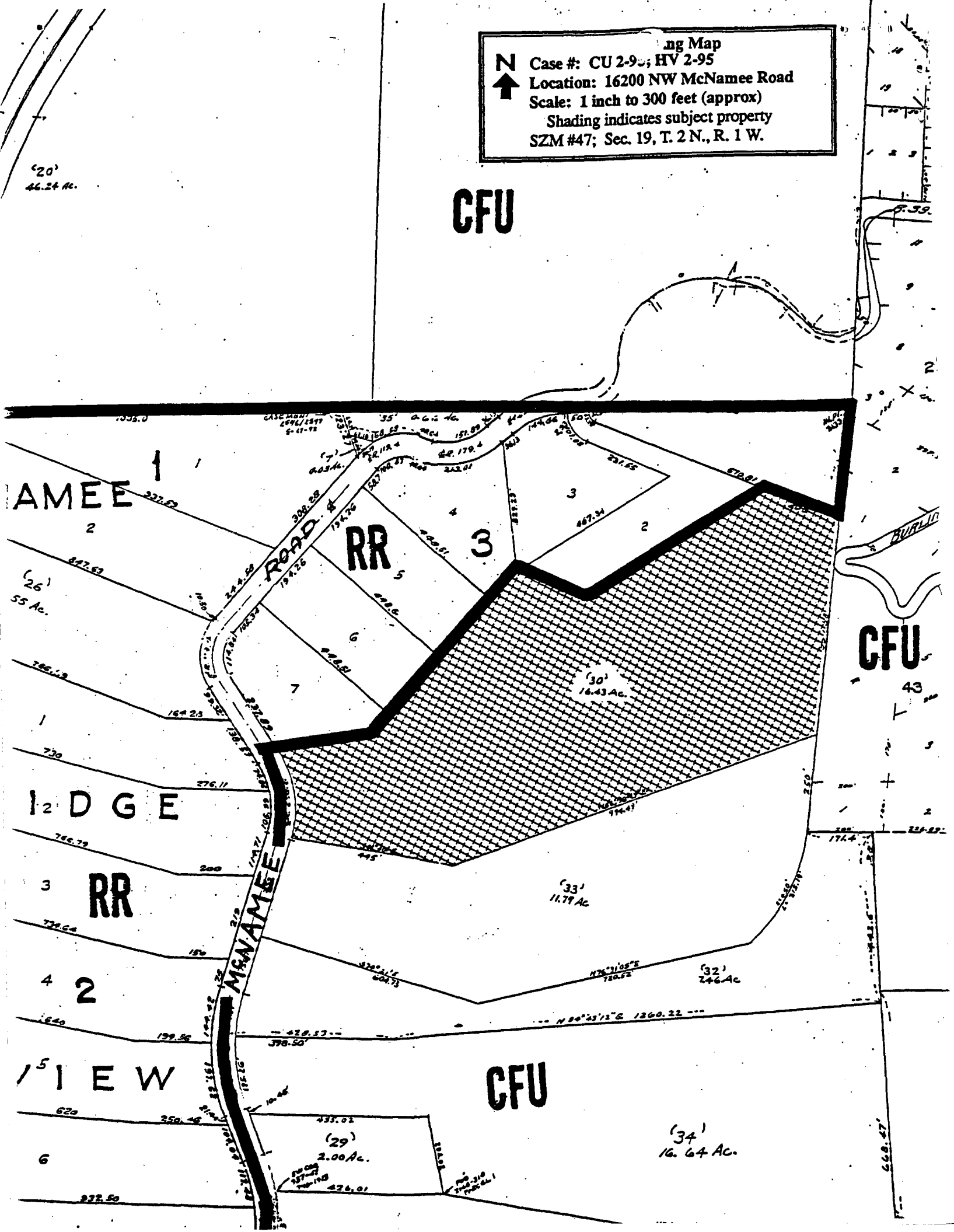
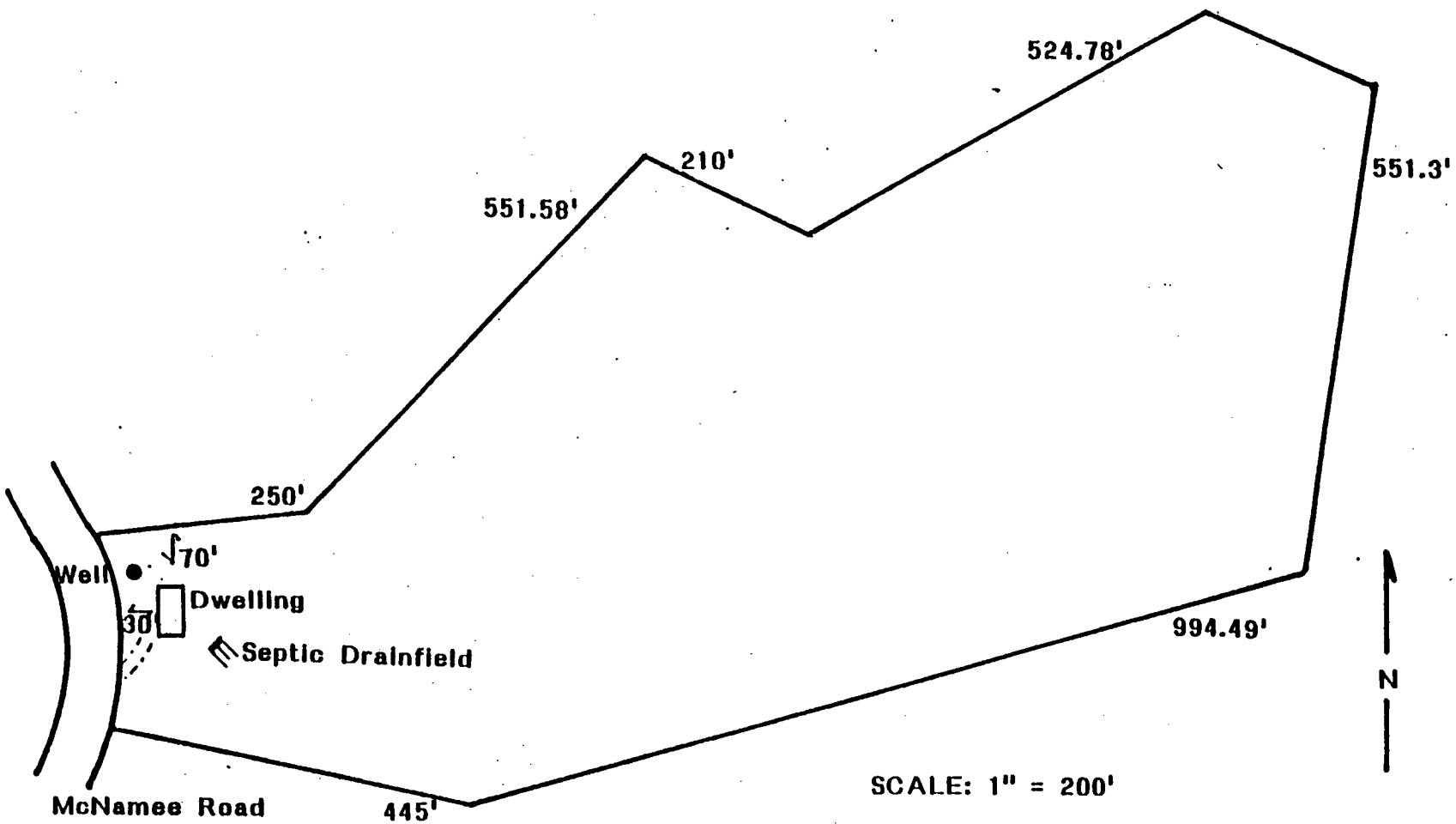

ng Map
N
Case #: CU 2-9-; HV 2-95
Location: 16200 NW McNamee Road
Scale: 1 inch to 300 feet (approx)
Shading indicates subject property
SZM #47; Sec. 19, T. 2 N., R. 1 W.
CFU
RR
CFU
CFU
RR
(20)
46.24 Ac.
(26)
55 Ac.
(30)
16.43 Ac.
(33)
11.79 Ac
(32)
2.46 Ac
(29)
2.00 Ac.
(34)
16.64 Ac.
McNAMEE ROAD
AMEE
RIDGE
VIEW
BURLIN

FIGURE 4

PLOT PLAN

T2N, R1W, SEC. 19, TAX LOT 30



CU 2-95

GP8/93