

**ANNOTATED MINUTES**

*Tuesday, September 13, 1994 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

- B-1 Multnomah County Central Library Reconstruction Project Update. Presented by Ginnie Cooper, Jim Emerson and George Crandall.*

**JIM EMERSON, GINNIE COOPER, MIKE HARRINGTON AND GEORGE CRANDALL PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. BILL NAITO COMMENTS. BRIEFING/PRESS CONFERENCE REGARDING LIBRARY MOVE TO BE SCHEDULED FOR NOVEMBER, 1994. BRIEFING TO DISCUSS FINANCIAL UPDATE AND ADVERTISING SUBCOMMITTEE RECOMMENDATIONS TO BE SCHEDULED FOR JANUARY, 1995.**

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*Tuesday, September 13, 1994 - 1:30 PM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**PLANNING ITEMS**

*Chair Beverly Stein convened the meeting at 1:37 p.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley and Gary Hansen present, and Commissioner Dan Saltzman arriving at 1:39 p.m.*

- P-1 DR 4-94 Review the August 19, 1994 Hearings Officer Decision, APPROVING the Marquam Farms Appeal of an Administrative Decision, and DENYING Request for Final Design Review for the Expansion of an Existing Dog Kennel, (Sauvie Island Dog Kennel) Without Prejudice, for Property Located at 23200 NW REEDER ROAD*

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

- P-2 HV 12-94 Review the August 24, 1994 Hearings Officer Decision, APPROVING, Subject to a Condition, Requested Major Variance to Reduce the Required Road Width from 20 Feet to 12 Feet for Approximately 250 Foot Road Section of a Private Access Road into the American Hellenic Education Center, Located at 32149 SE STEVENS ROAD*

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

P-3

CS 5-94/CU 7-94/WRG 7-94/

HV 16-94 Review the August 24, 1994 Hearings Officer Decision, APPROVING, Subject to Conditions, a Community Service Request for a 28-Boathouse Moorage, 18-Houseboat Moorage, Plus a Variance from the Elevation and Pavement Standards for the Parking Area, Plus a Willamette River Greenway Permit, for Property Located at 25900 NW ST. HELENS ROAD

**DECISION READ, NO APPEAL FILED, DECISION STANDS.**

P-4

C 1-94a First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Volume I Findings to Include the West Hills Reconciliation Report, as Revised by the Board, in Partial Fulfillment of Periodic Review Work Program Tasks for Statewide Planning Goal 5 Resources in the West Hills

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE FIRST READING. SCOTT PEMBLE EXPLANATION AND SUBMISSION OF PROPOSED NON-SUBSTANTIVE AMENDMENTS TO RECONCILIATION REPORT. JOHN DuBAY RESPONSE TO QUESTIONS OF ARNOLD ROCHLIN. MR. ROCHLIN TESTIMONY IN SUPPORT OF RECONCILIATION REPORT, AS AMENDED. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER HANSEN, AMENDMENTS TO THE RECONCILIATION REPORT AND THE FIRST READING OF THE PROPOSED ORDINANCE AS AMENDED, WERE UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR THURSDAY, SEPTEMBER 22, 1994.**

P-5

C 2-94a First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Volume I Findings to Include the Howard Canyon Reconciliation Report, as Revised by the Board, in Partial Fulfillment of Periodic Review Work Program Tasks for Statewide Planning Goal 5 Resources in the Howard Canyon Area

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. MR. PEMBLE EXPLANATION. COMMISSIONER COLLIER MOVED AND**

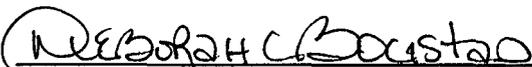
**COMMISSIONER SALTZMAN SECONDED, APPROVAL OF THE FIRST READING. SUSAN FRY TESTIMONY IN SUPPORT OF RECONCILIATION REPORT. MR. PEMBLE AND MR. DuBAY RESPONSE TO QUESTIONS OF MS. FRY AND THE BOARD. PAUL HRIBERNICK SUBMITTED AND PRESENTED TESTIMONY OUTLINING VARIOUS CONCERNS AND REQUESTING CLARIFICATION REGARDING PARAMETERS OF REQUIRED TRANSPORTATION STUDY. BOARD DISCUSSION. MR. PEMBLE RESPONSE TO BOARD QUESTIONS CONCERNING POSSIBLE DLCD MEDIATION. STAFF DIRECTED TO ADDRESS ISSUES RAISED IN MR. HRIBERNICK'S MEMORANDUM AND PROVIDE RESPONSE TO SAME PRIOR TO SECOND READING. FIRST READING UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR THURSDAY, SEPTEMBER 22, 1994.**

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**MR. PEMBLE REPORTED ON STATUS OF PLANNING COMMISSION CONCERNING NEXT PHASE OF GOAL 5 PROCESS AND ADVISED PROPOSED ORDINANCES ARE SCHEDULED TO COME BEFORE THE BOARD ON OCTOBER 11, 1994 AND OCTOBER 18, 1994. MR. PEMBLE ADVISED LCDC HAS GRANTED THE COUNTY'S REQUEST FOR EXTENSION TO OCTOBER 21, 1994.**

*There being no further business, the meeting was adjourned at 2:25 p.m.*

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

  
Deborah L. Bogstad

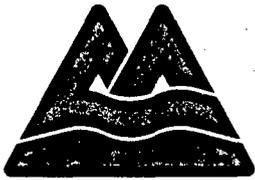
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*Thursday, September 15, 1994 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

**B-2** *History of the Development of The Oregon Option and the Specific Objectives of the Meetings to be Held Starting September 19, 1994. Presented by Duncan Wyse, Executive Director of the Oregon Progress Board.*

**DUNCAN WYSE, MEGANNE STEELE AND PAM WEV  
PRESENTATION AND RESPONSE TO BOARD  
QUESTIONS AND DISCUSSION REGARDING THREE  
DAY MEETING FOCUS, DESIRED OUTCOMES,  
PROPOSED AGENDA AND SCHEDULED SITE VISITS.**



# 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

#### SEPTEMBER 12, 1994 - SEPTEMBER 16, 1994

- Tuesday, September 13, 1994 - 9:30 AM - Board Briefing . . . . . Page 2*
- Tuesday, September 13, 1994 - 1:30 PM - Planning Items . . . . . Page 2*
- Thursday, September 15, 1994 - 9:30 AM - Board Briefing . . . . . Page 3*

*Thursday, September 15, 1994 - REGULAR MEETING CANCELLED*

*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, September 13, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

**BOARD BRIEFING**

- B-1 *Multnomah County Central Library Reconstruction Project Update. Presented by Ginnie Cooper, Jim Emerson and George Crandall. 1 HOUR REQUESTED.*
- 

Tuesday, September 13, 1994 - 1:30 PM

Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland

**PLANNING ITEMS**

- P-1 *DR 4-94 Review the August 19, 1994 Hearings Officer Decision, APPROVING the Marquam Farms Appeal of an Administrative Decision, and DENYING Request for Final Design Review for the Expansion of an Existing Dog Kennel, (Sauvie Island Dog Kennel) Without Prejudice, for Property Located at 23200 NW REEDER ROAD*
- P-2 *HV 12-94 Review the August 24, 1994 Hearings Officer Decision, APPROVING, Subject to a Condition, Requested Major Variance to Reduce the Required Road Width from 20 Feet to 12 Feet for Approximately 250 Foot Road Section of a Private Access Road into the American Hellenic Education Center, Located at 32149 SE STEVENS ROAD*
- P-3 *CS 5-94/CU 7-94/WRG 7-94/  
HV 16-94 Review the August 24, 1994 Hearings Officer Decision, APPROVING, Subject to Conditions, a Community Service Request for a 28-Boathouse Moorage, 18-Houseboat Moorage, Plus a Variance from the Elevation and Pavement Standards for the Parking Area, Plus a Willamette River Greenway Permit, for Property Located at 25900 NW ST. HELENS ROAD*
- P-4 *C 1-94a First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Volume I Findings to Include the West Hills Reconciliation Report, as Revised by the Board, in Partial Fulfillment of Periodic Review Work Program Tasks for Statewide Planning Goal 5 Resources in the West Hills (SECOND READING SCHEDULED FOR THURSDAY, SEPTEMBER 22, 1994)*

P-5      C 2-94a      *First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Volume I Findings to Include the Howard Canyon Reconciliation Report, as Revised by the Board, in Partial Fulfillment of Periodic Review Work Program Tasks for Statewide Planning Goal 5 Resources in the Howard Canyon Area (SECOND READING SCHEDULED FOR THURSDAY, SEPTEMBER 22, 1994)*

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*Thursday, September 15, 1994 - 9:30 AM*

*Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**BOARD BRIEFING**

B-2      *History of the Development of The Oregon Option and the Specific Objectives of the Meetings to be Held Starting September 19, 1994. Presented by Duncan Wyse, Executive Director of the Oregon Progress Board. 9:30 - 11:00 TIME CERTAIN REQUESTED.*

MEETING DATE: September 13, 1994

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Hearings Officer Decision - DR 4-94

**BOARD BRIEFING** Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

**REGULAR MEETING:** Date Requested: September 13, 1994

Amount of Time Needed: 2 Minutes

**DEPARTMENT:** DES **DIVISION:** Planning

**CONTACT:** R. Scott Pemble **TELEPHONE #:** 3182

**BLDG/ROOM #:** 412/103

**PERSON(S) MAKING PRESENTATION:** Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

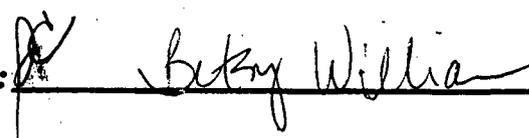
**SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):**

DR 4-94 Review the August 19, 1994 Hearings Officer Decision, approving the Marquam Farms appeal of an Administrative Decision, and denying request for final design review for the expansion of an existing dog kennel (Sauvie Island Dog Kennel), without prejudice, all for property located at 23200 NW Reeder Road.

**SIGNATURES REQUIRED:**

**ELECTED OFFICIAL:** \_\_\_\_\_

**OR**

**DEPARTMENT MANAGER:** 

1994 SEP - 8 AM 10:46  
MULTICOUNTY  
OREGON

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

**Any Questions: Call the Office of the Board Clerk 248-3277/248-5222**



1. Applicant Name/Address

Tim & Angela Schillereff  
23202 NW Reeder Road  
Portland OR 97231

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

2. Action Requested by applicant

Applicants wanted the Hearings Officer to affirm the Administrative Decision approving Final Design Review for demolition of 2 dog kennel buildings and replacement of them with one new kennel structure. (The hearing occurred because the appellatant, Marquam Farms, Inc. appealed the Administrative Decision approving Final Design Review.)

3. Planning Staff Recommendation

Denial of Appeal (and thereby affirm the Administrative Decision Approving Final Design Review)

4. Planning Commission or Hearings Officer Decision:

The Hearings Officer: (1) granted the Appeal; (2) reversed the Administrative Decision; and (3) denied the Final Design Review Plan for Application File DR 4-94.

5. If recommendation and decision are different, why?

Under the interpretation of the applicable Zoning Ordinance provisions that it believed to be correct, staff considered the kennel to be a legal use, and therefore allowed to be modified or expanded under the Design Review process. For reasons summarized below, the Hearings Officer found that the kennel was not currently a lawful use and was therefore not allowed to be modified or expanded through Design Review.

**ISSUES**

*(who raised them?)*

The Hearings Officer found that although the kennel was lawfully established before enactment of zoning on July 10, 1958, and thus became a lawful non-conforming use on that date, the kennel lost its non-conforming use status on or about January 1, 1964 because no substantial evidence has been provided that the site was being used as a kennel between December, 1962 and February, 1964. Therefore the use was discontinued for over one year, causing the kennel's non-conforming use rights to expire on or about January 1, 1964. The Hearings Officer found that once the kennel lost its non-conforming use rights, it could no longer expand through the Design Review process, because the use itself was no longer lawful and the Hearings Officer lacked authority to grant Design Review for the kennel use.



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

**DECISION  
OF THE HEARINGS OFFICER**

This decision consists of Findings and Conclusions

August 19, 1994

Concerning an appeal by Marquam Farms Corporation from an Administrative Decision, approving final design review for an expansion of the Sauvie Island Kennel, operated by the applicants, Tim and Angela Schillereff.

DR 4-94 Appeal of An Administrative Decision

**Location:** 23200 NW Reeder Road

**Legal:** Tax Lot '15', Section 3,2N-1W, 1990 Assessor's Map

**Site Size:** 9.41 acres

**Property Owner:** EE and MF Persinger  
23200 NW Reeder Road, 97231

**Applicant:** Tim and Angela Schillereff  
23202 NW Reeder Road  
Portland, Oregon 97231

**Comprehensive Plan:** Agricultural Land

**Present Zoning:** EFU, Exclusive Farm Use District

**Hearings Officer  
Decision:** Marquam Farm's Inc.'s appeal of the Administrative Decision approving Final Design Review in DR 4-94 is Granted. The Applicant's request for Final Design Review is Denied without Prejudice.

**FINDINGS AND CONCLUSIONS**

**A. BACKGROUND**

**1. Applicant's Proposal:**

The applicants, Tim and Angela Schillereff, operators of the Sauvie Island Kennels since 1989, request approval to demolish two existing kennel buildings and replace them with one, larger structure, designed to house 55 dogs. The other existing kennel structure would remain and would house up to 20 dogs. Overall, the applicant is requesting an expansion of the kennel from its existing license parameter of 50 dogs, to up to 75 dogs.

MUA-20  
SEC  
CS FF

**Zoning Map**  
Case #: DR 4-94  
Location: 23200 NW Reeder Road  
Scale: 1 inch to 400 feet (approx)  
Shading indicates subject property  
SZM 23; Sec 3, T2N, R1W, WM.

EFU  
FF  
Lot 8

MUA-20  
SEC  
CS FF

EFU

MUA-20  
SEC  
CS FF

9.41 AC  
(15)

EFU

EFU  
FF

SW. Cor.  
H.J. McIntire

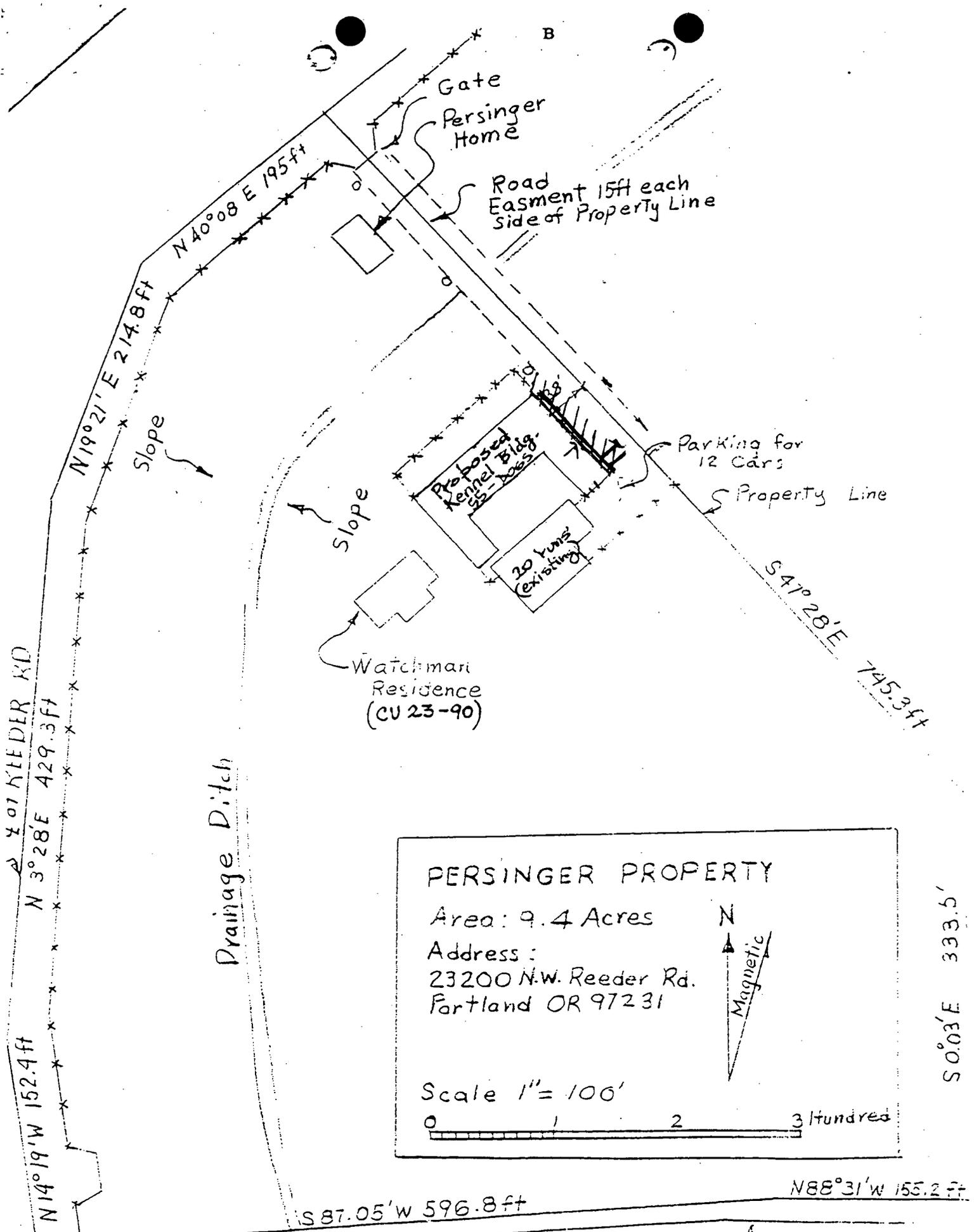
Govt Lot 6  
155+60.76  
BEQ. RD. 2325-60  
(8)  
35.14 AC.

EFU

EFU  
CS

(5)  
5.41  
Ac.

EFU



**PERSINGER PROPERTY**

Area: 9.4 Acres

Address:  
23200 N.W. Reeder Rd.  
Portland OR 97231

Scale 1" = 100'

0 1 2 3 hundred



S 0° 03' E 333.5'

Drainage Ditch

DR 4-94

## 2. Site and Vicinity Characteristics:

The 9.41 acre site is located in an EFU district on Sauvie Island. The property fronts on NW Reeder Road. Surrounding properties are primarily agricultural or open space in character.

The Sturgeon Lake Wildlife Refuge property lies to the northwest, across Reeder Road. This refuge is owned by the Oregon Department of Fish and Wildlife. The refuge is several thousand acres in size and serves as an important stop on the Pacific Flyway. It is also the home to many species of animals, and serves as an important local and regional recreational and open space resource.

Properties to the south and southwest contain agricultural uses with scattered farm houses and barns.

A duck hunting club operates on a 39-acre parcel east and north of the kennel site. The duck hunting club is owned by the appellant corporation, Marquam Farms Corp..

## 3. Land Use History

On August 6, 1990, the Planning Director approved Final Design Review (DR 90-07-02), authorizing remodeling plans for an existing 50-dog kennel.

On November 6, 1990, the Planning Commission approved a conditional use request for a watchman's residence for the dog kennel.

Both of the above mentioned approvals were issued to the present applicants, Tim and Angela Schillereff.

On or about January 10, 1994, the Schillereff's submitted a letter to the county planning department requesting a conditional use permit to expand and remodel the existing kennel. This request was consistent with a previous request made by Tim Schillereff in his February 24, 1989, letter to the county where he requested a conditional use permit for the kennel. It is of some note that Mr. Schillereff in his February 24, 1989 letter stated that:

"Please note that this request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

In both 1989, and in 1994, the county advised the Schillereff's that a conditional use permit would not be necessary, and that the respective expansions could be accomplished through design review. In the file pertaining to DR 90-07-02 (the initial remodel for 50 dogs), a notation appears beside a copy of code section 11.15.2028, indicating that pursuant to this section "The Persinger Kennel is therefore a conforming CU [conditional use] therefore (sic) does not expire per October 8, 1990 opinion from John DuBay.". Also, in the file pertaining to this case (DR-4-94), it is apparent that the county based its administrative decision to approve the kennel expansion through Design Review (as opposed to through a conditional use process as originally requested by the applicant) on staff's legal interpretation that MCC 11.15.2028 (B) results in the kennel being a "pre-existing

*conforming conditional use*, permitted to continue in the EFU District, and which may expand on its original lot without a CU hearing." (See staff report and notice of public hearing for DR 4-94).

The outcome of this case turns on whether or not staff's interpretation of MCC 11.15.2028 (B), is correct. If staff's interpretation of MCC 11.15.2028 (B) is wrong, and if the use is not otherwise a lawful use in the EFU zone, then the Hearings Officer lacks authority to approve this Design Review request, unless or until the underlying kennel use receives appropriate land use approval to make it a lawful use in the zone. See MCC 11.15.2006.

#### **4 . Relevant Approval Criteria**

Design review is governed by the criteria in MCC 11.15.7850.

MCC 11.15.2008 lists the uses permitted in the EFU zone. Dog kennels are not permitted uses in the EFU zone. The statutory corollary to this code provision is ORS 215.283(1). This statutory provision guides the county's ability to interpret its own ordinance with regard to its EFU provisions. The county cannot interpret its ordinance in a manner that provides less protection to EFU lands, or in a way that allows other uses outright in the EFU zone which are not listed in the statute.

MCC 11.15.2010 lists the relevant conditional uses permitted by the county in its EFU zone. Dog kennels are listed as conditional uses in this zone. The statutory corollary to this code provision is ORS 215.283(2).

MCC 11.15.0010 defines a kennel as follows: "**Kennel**-Any lot or premises on which four or more dogs, more than six months of age, are kept."

MCC 11.15.2028 lists the exemptions from Non-conforming Use Provisions.

MCC 11.15.8805 and .8810 are the county's existing non-conforming use provisions. The statutory corollary to these provisions are found in ORS 215.130.

## **B. ANALYSIS**

### **1. Lawfulness of the Existing Kennel**

#### **a. Status Under MCC 11.15.2028(B)**

As noted above, the staff and the applicant have argued that MCC 11.15.2028(B) should be interpreted to mean that so long as the dog kennel was listed as conditional use in subpart .2012 prior to August 14, 1980, and since the kennel was lawfully established by any means, prior to the enactment of zoning in the county, then, under .2028(B), the kennel becomes a lawful permitted use in the EFU zone. The appellant disagrees with the applicant's and staff's interpretations. The applicant's interpretation is set out in their various submissions.

The Hearings Officer finds that .2028(B) cannot be interpreted in the manner suggested by the applicant and the staff, without directly conflicting with ORS 215.283. Under the statutory scheme,

permitted uses and conditional uses are a static list. After 1958, when zoning was first applied in this area of the county, kennels were never allowed as outright permitted uses. Kennels were listed as conditional uses in the agricultural zone, but this particular kennel never received a conditional use permit. Therefore, the only way in which this particular kennel could have been lawful in 1958, when zoning came into effect, was if the use was a lawfully established non-conforming use.

The state statute that governs non-conforming uses does not permit a use that may have been a lawful non-conforming use to become an outright permitted use, simply because it was listed by the county as a conditional use prior to some arbitrary date. Under the statutory scheme, the only way a non-conforming use can expand is to satisfy the provisions of ORS 215.130, and any other relevant county ordinances not in conflict with the statutory scheme. Under the statutory scheme, in EFU zones, non-conforming uses never become conforming uses, unless the local ordinances and the state statutes governing exclusive farm uses are both amended to allow such uses outright, or unless both the local ordinance and the statute eventually list such uses as conditional uses, and if the governing body of the county, or its designate, actually issues an approval for such a use. Therefore, the only way that .2028(B) can be construed in such a way so as not to be in conflict with the statutory scheme, is to interpret the ordinance to mean that the kennel use must not only have been listed as a conditional use, but it must have been legally established as such, prior to August 14, 1980 (i.e. it must have actually obtained a conditional use permit).

In this case, the county issued Design Review approval for the kennel in 1990. However, the county did not issue a conditional use permit for the kennel operation itself. Since the county did not issue a conditional use permit for the kennel prior to August 14, 1980, the applicant cannot take advantage of whatever benefit MCC 11.15.2028(B) might confer. Therefore, the kennel did not become a lawful use pursuant to .2028(B), because it never received a conditional use permit. Under the statutory scheme, MCC.2028(B) cannot be read in such a way so as to elevate a non-conforming use to a permitted use in the EFU zone. The fact that the use was listed as a conditional use prior to August 14, 1990, is irrelevant under the statutory scheme, because the use did not actually obtain a conditional use permit. Therefore, since the kennel has never passed muster under the statutory scheme, which ultimately governs all uses permitted in exclusive farm use zones, it cannot be considered to have been a lawful use in the EFU zone, unless it was lawfully established as a non-conforming use, and if its status as such was maintained over time.

#### **b . Non-Conforming Use Status**

A considerable amount of evidence was received concerning the non-conforming use status of the kennel. Before the factual findings on this issue are discussed, the applicable law needs to be set out.

In Oregon, non-conforming uses are governed by state statutes and by local ordinances. ORS 215.130 provides that a "lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance may be continued." That same statute provides that a non-conforming use "may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of the zoning ordinances or regulations applicable at the time of the proposed resumption." MCC 11.15.8805(B) currently provides that: "If a non-conforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this code at the time of the proposed resumption."

The proponent of non-conforming use status has the burden of proving both that the use was "lawfully established", and must also establish the level or scope of the use that existed at the time the use became non-conforming. See Warner v Clackamas County, 25 Or LUBA 82 (1993). The code defines a "kennel" as "any lot or premises on which four or more dogs, more than six months of age, are kept." Therefore, in order to be a "kennel", four or more adult dogs must be kept on the site. If less than four adult dogs are kept, for the "discontinuance" period, the non-conforming use expires.

As noted above, a non-conforming use can be lost if it is discontinued for the "discontinuance" period. Also, a partial discontinuance can occur during the life of the non-conforming use. In such a situation, "factors such as intermittency and infrequency are relevant to the scope of the [nonconforming] use, not its existence." See Warner v. Clackamas County, 111 Or. App. 11, 824 P2d 423 (1992). See Also Rhine v. City of Portland, 120 Or. App. 308, P2d 874 (1993).

Based upon all the evidence and testimony in the record the Hearings Officer makes the following findings with regard to the status of the kennel as a non-conforming use:

1. County records indicate that from 1952 to August 1957, Roy Wallace had a kennel on the site. From August 1957 to December 1962, Evelyn Blitz operated the kennel, then known as Marquam Lake Kennel.
2. On April 19, 1955, the county enacted its first zoning ordinance. The ordinance was applied to the Northwest portion of the county, including this site, on July 10, 1958.
3. On July 10, 1958, the county placed this site in its F-2 zoning district. F-2 zoning did not permit kennels as allowed uses.
4. The kennel was lawfully established prior to July 10, 1958, when the county's first zoning code was amended. It was lawfully established because prior to July 10, 1958, the county did not restrict the use of this property. Prior to July 10, 1958, the county did not require zoning or other land use permits to be issued for the kennel. Therefore, the evidence in the record demonstrates that the Marquam Lake Kennel, operated by Evelyn Blitz became a lawful non-conforming use on July 10, 1958.
5. The level of the use that existed on July 10, 1958, is difficult to precisely determine. The best evidence is a county record which indicates that between August 1957 and December 1962, the use consisted of a "commercial kennel [of] up to 50 dogs-boarding breeding and training.....". This county record is corroborated by other evidence in the record, particularly the "Brief history of Sauvie Island Kennels" (history"), submitted by the applicant. This history is particularly helpful in that it describes the level and type of improvements constructed by the original owner, Roy Wallace, which were still in existence on July 10, 1958, when Mrs. Blitz operated the kennel. In short, the best evidence indicates that on July 10, 1958, the kennel consisted of a set of refurbished Army buildings which were moved to the site and located on concrete pads. Outside dogs runs were constructed with concrete bases, and a sloped drainage system connected the runs to a drainage system. A set of chain link fence dividers separated individual dog runs. The kennel operation was in active commercial use between 1952 and 1962, during the tenure of Mr. Wallace, and later, Mrs. Blitz. The best evidence indicates that on July 10, 1958, the active commercial operation housed up to 50 dogs. (Note: The code definition of the term "kennel" does not require that any commercial

activity occur. It merely requires that 5 or more dogs, aged six months or older, be kept on the premises. The Hearings Officer's reference to commercial activity is merely a reflection of what the evidence indicated.)

6. Between December, 1962, when Blitz operated the kennel, and February 1964, when Courtway operated the kennel, there is no information in the record concerning the existence and scope of the use. The county record is silent during this period. The applicant in their "history", does not mention the Courtway operation, and their discussion of Blitz's use of the property during this time period in the early 1960's is vague, and conclusory at best. During this period of time, the applicant's "history" is not based on any direct knowledge. The Persinger affidavit does not include this time period and is therefore of no help either. This lack of evidence does not meet the legal standard for "substantial evidence". Therefore, the Hearings Officer concludes that between December 1962 and February 1964, the applicant has not carried its burden of proof regarding the continued operation of the kennel.

7. Since the applicant has not provided substantial evidence in the record that the kennel use was maintained between the time period mentioned above, (December 1962 through February 1964), the Hearings Officer cannot find the kennel was in operation during that time (i.e. that 4 or more adult dogs were kept on the site). Therefore, the Hearings Officer must conclude that the kennel use, as that term is defined by the code, was discontinued between December 1962 and February 1964.

8. On November 15, 1962, the county adopted a new zoning ordinance (Ordinance #100). Section 8.23 of the 1962 code provided that: "If a non-conforming use is abandoned or discontinued for any reason for more than one year, it shall not be re-established unless specifically approved by the Planning Commission.". In other words, the "discontinuance" period in 1962 was 1 year, rather than 2 years as it is now. Therefore, under the then applicable law, since the non-conforming kennel use was discontinued for more than one year, (from December 1962 to February 1964), the non-conforming status of the kennel expired. Specifically, the non-conforming use status of the kennel expired on or about January 1, 1964, one year and one day after the use was discontinued in December of 1962.

9. Since the Hearings Officer finds that the non-conforming status of the kennel expired on or about January 1, 1964, the subsequent history of the kennel is not material. Under the law that was applicable in 1964, once a non-conforming use expires, either by discontinuation or abandonment, the use could not re-establish its non-conforming status, unless specifically approved by the Planning Commission. See MCC 8.23 (circa 1962). Under the current county code, once a non-conforming use is abandoned or discontinued, the use cannot be re-established unless the resumed use conforms with the requirements of the code at the time of the resumption. See MCC 11.15.8805(B).

## 2. Estoppel

In the Applicant's brief, submitted July 27, 1994, the Schillereff's raise the affirmative defense of estoppel. The defense of estoppel seeks to prevent a party, in this case the county and the appellant, from re-raising an issue that was previously decided in a different case involving the same parties. The applicable law with regard to the estoppel defense in land use proceedings is set out in Schoppert v. Clackamas County 23 Or LUBA 138 (1992), and Clackamas County v. Emmert, 14 Or App 493, 513 P2d 532 (1973). In those cases, it was established that in order for the petitioner to

establish estoppel, the petitioner must show (1) the county made a false representation with knowledge of the facts, (2) petitioner was ignorant of the truth, (3) the county intended that petitioner act upon the false representation, and (4) petitioner in fact acted upon the false representation.

The Hearings Officer finds the applicant's have not met their burden of proof concerning the estoppel defense. Based upon the evidence in the record, the only misrepresentation made by the county was a mistake of law, not fact. The fact that certain members of the planning staff advised the applicant and the Planning Commission that they considered the kennel to be a "conforming conditional use" under MCC 11.15.2028, and that the applicant and Planning Commission relied on this mistake, does not amount to the type of false factual representation required to establish estoppel. In short, mistake of the law is no defense. See Coos County v. State of Oregon, 303 Or 173, 743 P2d 1348 (1987).

Furthermore, the evidence in the record demonstrates that the applicant's themselves, on more than one occasion, doubted the continuing legality of the prior kennel use. The record shows that the applicants initially requested a conditional use permit for the remodelling and expansion of the kennel in both 1989 and in 1994. The 1989 request was accompanied by a February 24, 1989 letter from Mr. Schillereff, which stated:

"Enclosed you will find the following request for a conditional use permit for a dog kennel on Sauvie Island, Oregon.

"Please note that his request is pertaining to an existing kennel site, in other words, the buildings and structures are intact. However, the permits have lapsed for over 15 years, therefore a new request is now being sent."

This letter of February 24, 1989 demonstrates that the applicant either had knowledge or at least suspected that the prior kennel use had "lapsed". Therefore, the second element of the estoppel defense has not been met because the evidence indicates that applicant was not ignorant of the law. Furthermore, even if the second element of the defense had been met, the misrepresentation that was made by the county was as mistake of law, not a factual misrepresentation. Estoppel cannot be established based upon a mistake of law; the misrepresentation must be one of an existing material fact. The applicant has not demonstrated that the county made a misrepresentation of an existing material fact. Therefore, the estoppel defense has not been established.

### C. CONCLUSION

Because the Hearings Officer finds that the kennel use is currently not a lawful use in the zone, the appeal of Marquam Farms Inc. is granted, and the Administrative Decision granting Final Design Review in DR 4-94, is reversed. Because the use has been found to be unlawful at the present time, a request for Design Review for such a use cannot be granted. However, if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore, the applicant's request for Design Review is denied, without prejudice.

The Hearings Officer expressly declines to reach any of the other issues raised by the appellant in their May 6, 1994 Notice of Appeal. Specifically, the Hearings Officer lacks authority to determine whether the use is a public nuisance, or whether the 1990 permit for the watchman's

residence was obtained by fraud. Also, the Hearings Officer lacks authority in this proceeding to determine whether or not the 1990 conditional use permit for the watchman's residence (CU 23-90) is still valid. CU 23-90 was not appealed beyond the planning commission and it is therefore a final decision, which cannot be collaterally attacked in this proceeding. Depending upon the final outcome of this particular case, the County may chose to examine the continued validity of CU 23-90, in a separate appropriate action.

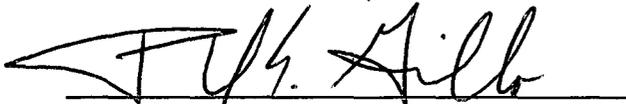
As to the defense of estoppel, the mistaken legal interpretation provided by the county staff to the applicant does not, upon careful examination of the law and the facts, rise to the kind of mistake that results in a successful estoppel defense against the county in this case. Furthermore, the evidence indicates that as early as 1989, when the applicant was initially seeking county permits for the kennel remodelling and expansion, Mr. Schillereff stated that he believed that a conditional use permit would be required because whatever other rights may have existed for the kennel use had previously lapsed. It should be noted that even if Mr. Schillereff had not made this statement in his 1989 letter concerning the need for a conditional use permit and the "lapse" of the prior use, the estoppel defense still could not have been maintained against the county, based upon the theory that the county took prior action based upon a mistake in law. Estoppel will not lie against a local government based upon a mistake of law, because the county has a continuing obligation to the public to apply the law correctly.

In conclusion, the Hearings Officer finds that although the kennel was lawfully established prior to the enactment of zoning in 1958, and therefore became a lawful non-conforming use on July 10, 1958, the kennel lost its non-conforming use status on or about January 1, 1964, because the applicant has not provided substantial evidence that the site was being used as a kennel during the period from December 1962 through February 1964. Because there is a lack of substantial evidence in the record concerning the continued operation of kennel during this period of time, the Hearings Officer concludes that the then applicable one year period of discontinuance ran, and the kennel's non-conforming use rights therefore expired on or about January 1, 1964. Once the kennel lost its non-conforming use rights, it could no longer expand through the Design Review process, because the use itself was no longer lawful. As a result of the determination that the kennel use is not presently lawful, the Hearings Officer concludes that he does not have authority to grant Design Review for this use at this time.

#### D. DECISION

The appeal of the Administrative Decision approving Final Design Review for DR-4-94 is granted. The applicant's request for Final Design Review is denied, without prejudice.

It is so Ordered this 19<sup>th</sup> day of August, 1994.



Phillip E. Grillo  
Hearings Officer

In the matter of DR 4-94:

Signed by the Hearings Officer: August 19, 1994  
[date]

Decision mailed to parties: September 1, 1994  
[date]

Submitted to Clerk of the Board: September 2, 1994  
[date]

Last day to Appeal to the Board: 4:30, Monday, September 12, 1994

Decision Reported to the Board 1:30 p.m., Tuesday, September 13, 1994  
[date]

### **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.*

MEETING DATE: September 13, 1994

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** Hearings Officer Decision - HV 12-94

**BOARD BRIEFING** Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

**REGULAR MEETING:** Date Requested: September 13, 1994

Amount of Time Needed: 2 Minutes

**DEPARTMENT:** DES **DIVISION:** Planning

**CONTACT:** R. Scott Pemble **TELEPHONE #:** 3182  
**BLDG/ROOM #:** 412/103

**PERSON(S) MAKING PRESENTATION:** Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

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

HV 12-94 Review the August 24, 1994 Hearings Officer Decision, approving, subject to a condition, requested major variance to reduce the required road width from 20 feet to 12 feet for approximately 250 foot road section of a private access road into the American Hellenic Education Center, located at 32149 SE Stevens Road.

BOARD OF  
COUNTY COMMISSIONERS  
1994 SEP - 8 AM 10:46  
MULTNOMAH COUNTY  
OREGON

**SIGNATURES REQUIRED:**

**ELECTED OFFICIAL:** \_\_\_\_\_

OR

**DEPARTMENT MANAGER:** *pc* *Betsy H Williams*

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

**Any Questions: Call the Office of the Board Clerk 248-3277/248-5222**



BOARD HEARING OF September 13, 1994

CASE NAME: American Hellenic Education Center  
Variance to reduce width of access road

TIME 1:30 pm  
NUMBER HV 12-94

1. Applicant Name/Address:

American Hellenic Education Center, Inc.  
3131 NE Glisan Street  
Portland, OR 97232

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

2. Action Requested by applicant:

Major variance to reduce a road width requirement from 20 feet to 12 feet wide for an approximately 250 foot long section of the private access road into Camp Angelos.

3. Planning Director Recommendation:

Approve, subject to the condition of complying with Fire District requirements.

4. Hearings Officer Decision (August 24, 1994):

Approve, subject to the condition of review and approval of final roadway design by County Engineer and Fire Chief prior to construction.

5. If recommendation and decision are different, why?

Same.

**ISSUES**  
(who raised them?)

None. No public comment or testimony at hearing.



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

**DECISION  
OF THE HEARINGS OFFICER**

This decision consists of Findings and Conclusions  
August 24, 1994

**HV 12-94**

**Variance**

**Request:** Applicant requests a major variance to reduce the required road width from 20 feet to 12 feet wide for an approximately 250 foot long section of the private access road into The American Hellenic Education Center ("Camp Angelos").

**Location:** 32149 SE Stevens Rd.  
**Legal:** Tax Lots '15', '51', '58' and '61', Section 8, 1S-4E  
1991 Assessor's Map  
**Owner:** American Hellenic Education Center, Inc.  
3131 NE Glisan Street, Portland, Oregon 97232  
**Applicant:** Spencer Vail, Planning Consultant  
4505 NE 24th Ave. Portland, Oregon 97232

**Comprehensive Plan:** Commercial Forest Use

**Zoning:** CFU, Commercial Forest Use District  
SEC, Significant Environmental Concern subdistrict

**FINDINGS AND CONCLUSIONS**

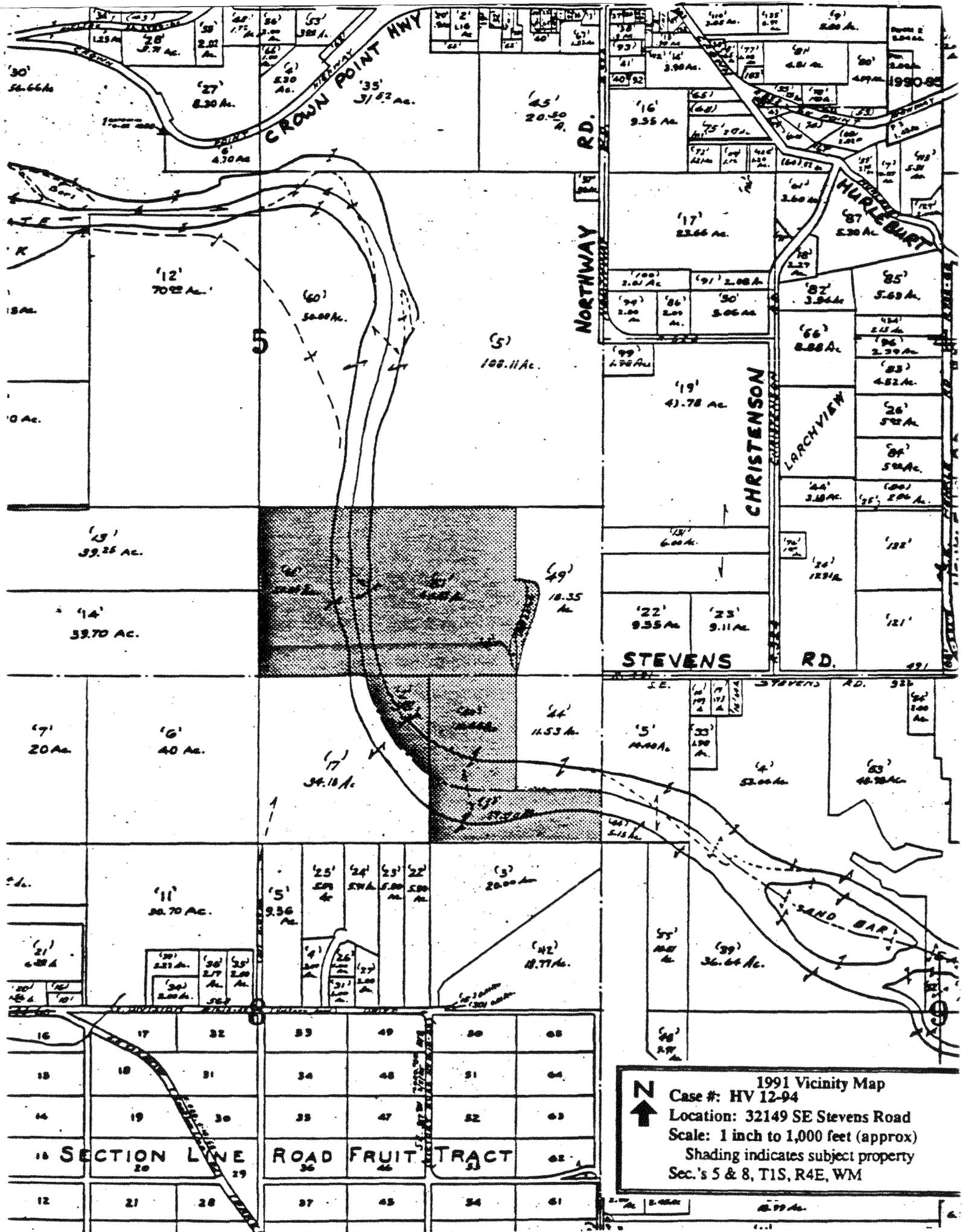
The Hearings Officer adopts and incorporates by reference the Findings and Conclusions contained within the Staff Report concerning this matter prepared by Sandy Mathewson, County Planner, for the Public Hearing that was conducted on August 3, 1994. (Attached)

**DECISION**

The Applicant's request for a major variance to reduce the required road width from 20 feet to 12 feet for approximately 250 foot section of a private access road into The American Hellenic Education Center is approved, subject to the following condition:

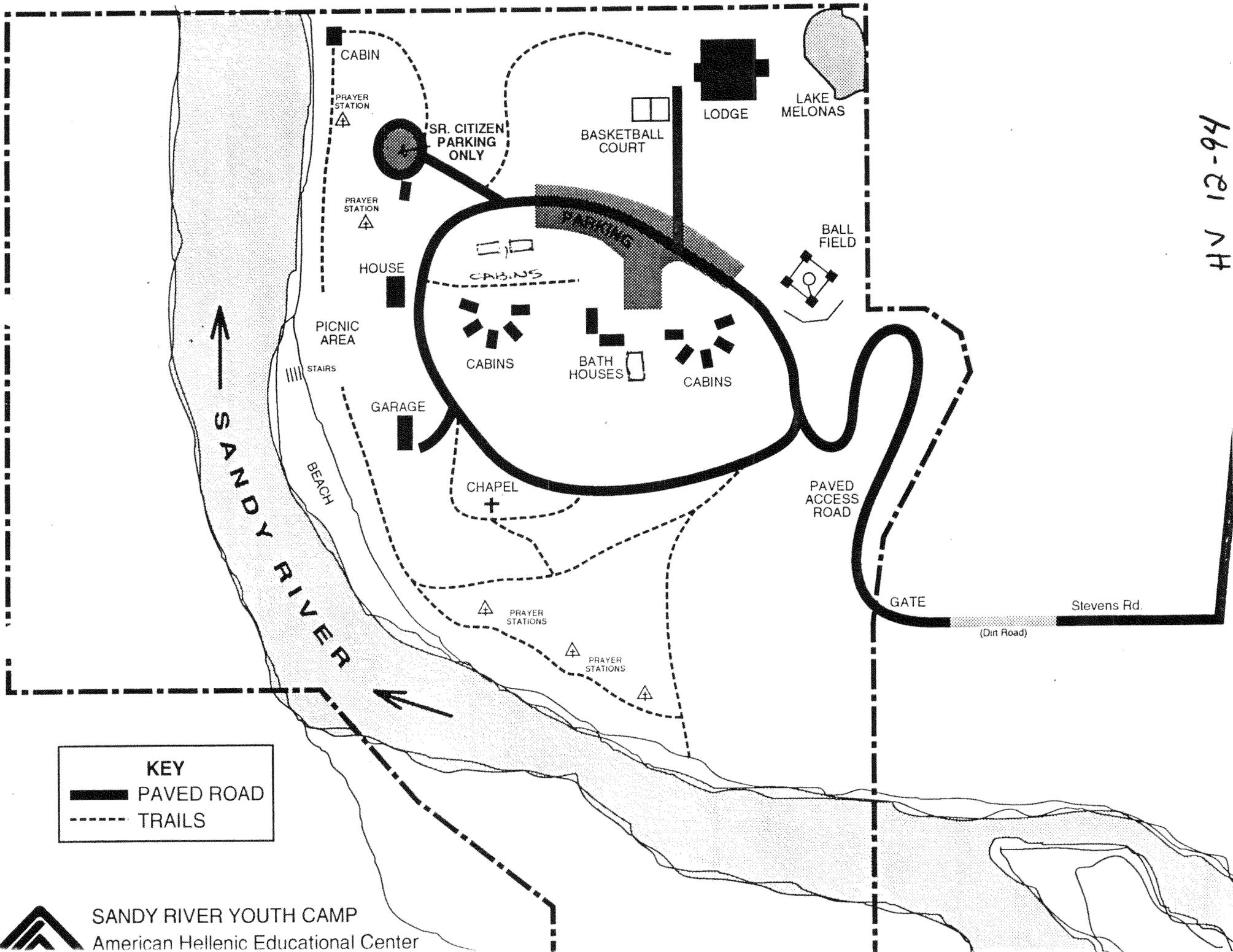
Final design for the roadway shall be reviewed and approved by the County Engineer and the Fire Chief prior to construction.





N  
 Case #: HV 12-94  
 Location: 32149 SE Stevens Road  
 Scale: 1 inch to 1,000 feet (approx)  
 Shading indicates subject property  
 Sec.'s 5 & 8, T1S, R4E, WM

HV 12-94

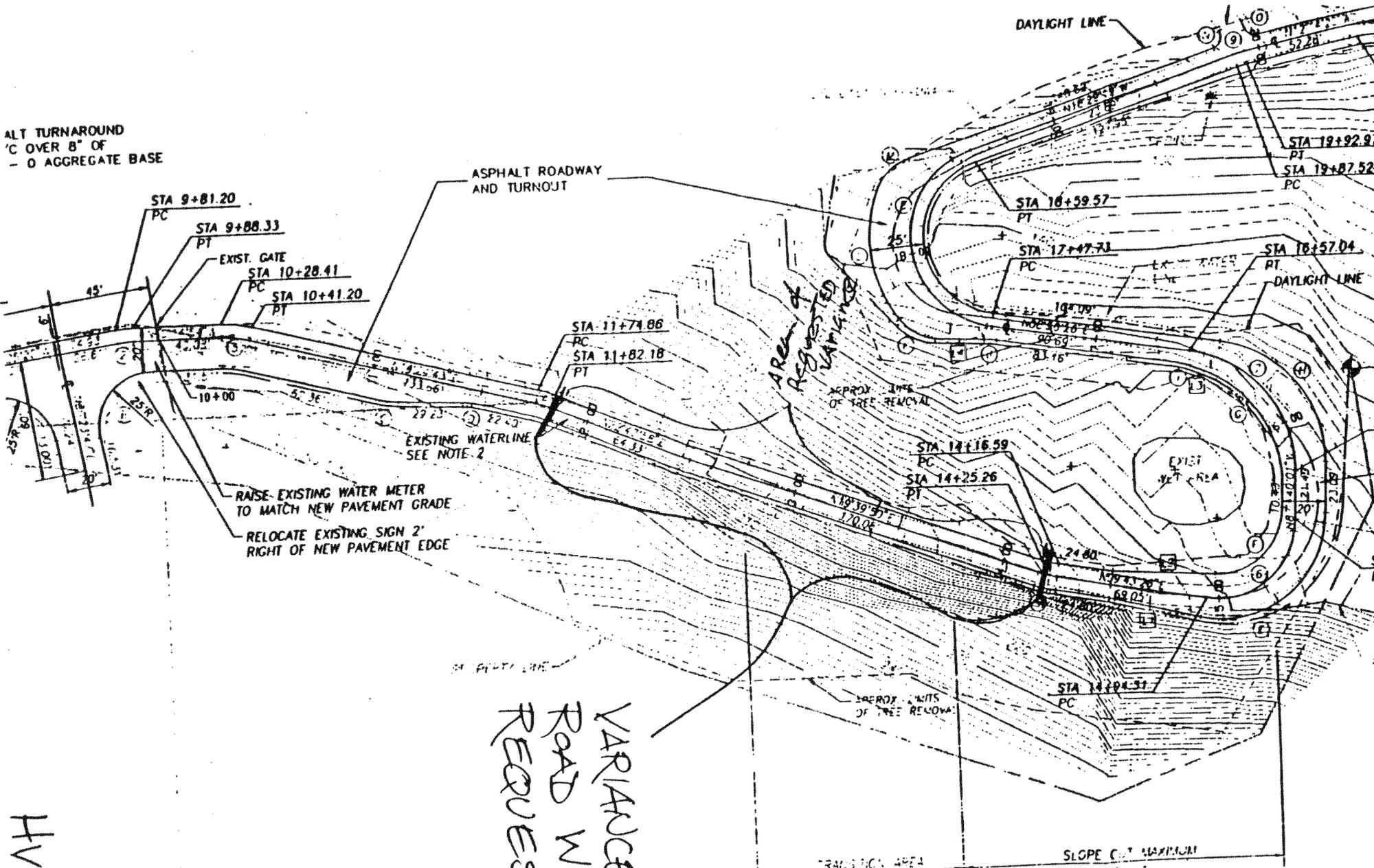


**KEY**  
— PAVED ROAD  
- - - TRAILS



SANDY RIVER YOUTH CAMP  
American Hellenic Educational Center

ALT TURNAROUND  
'C OVER 8" OF  
- 0 AGGREGATE BASE



VARIANCE TO  
ROAD WIDTH  
REQUESTED

HV 12-94

EXHI

## FINDINGS:

### 1. Background and Applicant Request:

The County approved development of a youth camp and retreat center on the site as a Community Service (CS) use in 1986 (CS 13-86). In 1992 the Planning Commission approved, with conditions, an expansion of the CS use (CS 4-92). A condition of the CS expansion was that Design Review approval be obtained, and "at a minimum, improve the access road and parking area to address minimum requirements in MCC .6128(A) [i.e., 20-foot wide access drive]". The Design Review and Hillside Development Permit applications in 1993 (DR 17-93/HDP 21-93) proposed only 12-feet of road width for certain sections. The Planning Director granted a 25 percent minor exception to the 20 foot road width requirement in the DR 17-93 decision, pursuant to MCC .7860(A), as indicated in condition #2, which reads as follows:

"2. The access drive plans and constructed facility shall provide at least 16-feet of road width [a 25% exception to the 20-foot standard in MCC .6128(A)]. Alternatively, the applicant could pursue a Major Variance to reduce the required road dimension below 16-feet."

This request is for a major variance to the 20 foot access road width required by CS 4-92 pursuant to requirements of MCC .6128(A).

### 2. Site Information:

The site is located approximately 600 feet west of SE Stevens Road, approximately 1 1/2 miles south of the community of Springdale. The site is approximately 96-acres in size and is forested. The Sandy River crosses the property to the west and south. The property is developed as a youth camp, education center and retreat. Improvements include cabins, a lodge, restroom/bathhouses, and various recreational facilities. CS approval authorizes use of the site for up to 150 overnight youth campers (including counselors and chaperones), and occasional use for adult functions such as picnics, social gatherings or other day-use events or overnight retreats. Approval of a temporary permit is required prior to any function involving a group of more than 60 adults. The temporary permit may require special traffic control, bus shuttles, car-pooling or other measures to reduce traffic impacts to surrounding properties and roads.

### 3. Ordinance Considerations:

The following section presents findings regarding the proposed Variance. The applicable criteria is in **bold**, followed by the applicant's response in *italics* and staff comments.

**MCC 11.15.6128 (A):** Where a parking or loading area does not abut directly on a public street or private street approved under MCC 11.45, the Land Division Chapter, there shall be provided an unobstructed paved drive not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

Staff comment: The parking/loading areas are not adjacent to a public street or private street approved as part of a land division. Access to the nearest public street, Stevens Road, is by easement.

**MCC 11.15.8515(A):** A Major Variance is one that is in excess of 25 percent of an applicable dimensional requirement. A Major Variance must be found to comply with MCC .8505(A).

Staff comment: The request is for a variance of 8 feet from the required 20 foot road width, which exceeds 25 percent.

**MCC 11.15.8505:** The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are cause practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met.

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

*Applicant Response: The entrance to the Camp facility is via a private road beginning at the westerly terminus of SE Stevens Road. It is a long narrow road descending along the bluff some 130 feet into the camp area. There is a turnout area at the top of the road and at each of the two switchbacks.*

*This roadway is 16 feet or wider as previously approved except in the area being considered for this Variance. In this area it is impossible to widen the road any further than the 12 feet being proposed because of the geological limitations of the bluff. The geotechnical report prepared by FUJITANI HILT AND ASSOC. indicates the presence of Troutdale Formation and is exposed to view in the subject area.*

*Any cutting into this bedrock would jeopardize the stability of the entire*

*hillside. Such a physical constraint limits the ability of provide [sic] a roadway any wider than the 12 feet being proposed. The roadway is the only realistic access to the camp area.*

*This criteria is satisfied because of the unique topographical and geotechnical features of the site.*

Staff comment: The property is used as a camp and education center, with large numbers of people on the site at one time, which is dissimilar to other less intensive uses in the vicinity. The nature of the use thus led to the requirement for a 20 foot wide access road, while other uses such as single family residences in the area would require only a 12 foot wide access road. The subject property also exhibits very steep slopes between the developed camp area and the nearest public road, a condition that does not generally apply to other properties in the area. The property also does not have direct road frontage, thus subjecting the property to the 20 foot access road width, a condition that does not apply to other properties in the area which all have frontage on public roads.

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

*Applicant Response: Without approval of this Variance, camp use would be severely restricted. Occupancy permits and the ability to comply with previously imposed conditions would be impossible.*

*The applicant is aware that roadway minimum widths have been incorporated into the Code for specific reasons. The need for vehicular traffic to enter and exit in a reasonable manner is a major concern as is the ability of emergency vehicles to get to the site in an expedient manner.*

*Attached as Exhibit 2 is a response from Chief Dennis Bryson of RFPD 14. This response indicates that a 12 foot wide access is satisfactory to the fire district.*

*Also, the creation of the two turnouts at the switchbacks and at the top of the road give clear vision to motor vehicles for one way traffic in the narrowest portions of the road.*

*(The other conditions imposed by the Chief's approval are being incorporated into the site improvements)*

Staff comment: Other properties in the area are for the most part developed with single family residences which require access road widths of only 12 feet. The 20 foot road width thus is more restrictive than the access required for other properties in the vicinity.

- (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.**

*Approval of the Variance will only affect the subject property. No other property gains its access from this roadway. And as stated above, the Fire District feels the 12 foot width is adequate for emergency vehicles.*

Staff Comment: Public welfare centers around the issue of fire safety. Dennis Bryson, Chief of Multnomah RFPD #14 has indicated that a 12 foot paved roadway is adequate to meet fire access requirements. (Other road improvements are also required, but do not affect this variance request.) The "Multnomah County Minimum Design Standards for Residential Driveways and Privately maintained Roads" was signed by him on 8/17/93, and is included in the application (see file HV 12-94). A phone conversation with him on July 21, 1994 verified that the 12 foot width on one section of the road was adequate for emergency vehicle access.

Adjoining properties are primarily utilized for farming and residential use. The section of road where the variance is requested is entirely on the subject property and below the level of the adjoining properties. The road is not utilized by any adjoining properties, and is not visible from any other property. Consequently, the variance will not adversely affect property or development in the vicinity.

- (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.**

*Community Service uses are listed as Conditional Uses in the MUF zone. The applicants facility is a listed Community Service in MCC .11.7020. The approval of the Variance request, therefore, will not provide for the establishment of a use not listed in the underlying zone.*

*Previous approvals from the County for the facility and its expansion have*

*been based partially on Findings that the use was consistent with the Comprehensive Plan. Approval of this Variance concerning roadway width will not jeopardize compliance with the Plan.*

Staff Comment: The property is currently zoned for Commercial Forest Use (CFU). While the CFU district would not allow the camp facility, approvals were received under the prior MUF zoning. In addition, the current request does not involve the structures or use, but focuses solely on a section of the access road.

Comprehensive Plan policies that are applicable to this request are Policy 14 Developmental Limitations, Policy 16-L, Wild and Scenic Waterways, and Policy 38, Facilities.

The section of road where the variance is requested is a slope hazard area as shown on the county Geologic and Slope hazard maps, and slopes exceed 20 percent. Soils are 20F - Haplumbrepts, very steep. The Multnomah County Soil Survey indicates that this soil is subject to slumping in areas of cut and fill. A geologic reconnaissance to evaluate the slopes along the existing access road was performed by Fujitani Hilts and Associates. The results of the reconnaissance, submitted as part of DR 17-93/HDP 21-93, indicated that changes in the slope geometry and drainage could adversely impact site stability. The proposal to retain the existing road width of 12 feet and not significantly change the existing cuts and slopes would be in compliance with Policy 14 by not allowing land form alterations in this area because of its severe developmental limitations.

The site is within the Sandy River Scenic Waterway. Policy 16-L requires coordination with the Oregon State Parks and Recreation Division in the review and regulation of development proposals and land management activities within the scenic waterway. A letter from Jim Payne, Land Management Representative, Oregon Parks and Recreation Department, was submitted as part of CS 4-92. The letter indicated that the proposed expansion of the camp/education center "would not have an adverse effect on the Sandy River Scenic Waterway." The expansion requested by CS 4-92 included improvements to the already existing roadway. Consequently, the requested variance to road width is in compliance with Policy 16-L.

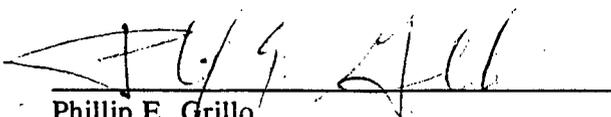
Policy 38 requires findings that the local fire district has had an opportunity to review and comment on the proposal. Evidence has been submitted concerning the road improvements and other fire safety improvements required by Multnomah County RFPD #14. Additional evidence was submitted as part of DR 17-93/HDP 21-93 indicating that the consultant for the project, Paul M.

Wright of Robert E. Meyer Consultants, Inc., received a verbal agreement from Don Mills, Oregon State Fire Marshall that a 12 foot width pavement with turnouts was adequate.

**CONCLUSIONS:**

1. This request is for a major variance to allow an approximately 250 foot section of a private access road to be 12 feet in width rather than 20 feet.
2. Sufficient information, as identified in the above Findings, is available to justify granting the requested variance, pursuant to MCC .8505 (reference files HV 12-94, DR17-93, HDP 21-93 and CS 4-92).

It is so Ordered this 31<sup>st</sup> day of August, 1994.

  
Phillip E. Grillo  
Hearings Officer

In the Matter of HV 12-94:

Signed by the Hearings Officer: August 24, 1994  
[date]

Decision mailed to parties: September 1, 1994  
[date]

Submitted to Clerk of the Board: September 2, 1994  
[date]

Last day to Appeal to the Board: 4:30. Monday, September 12, 1994

Decision Reported to the Board 1:30 p.m., Tuesday, September 13, 1994  
[date]

### **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.*

MEETING DATE: September 13, 1994

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

Hearings Officer Decision - CS 5-94/CU 7-94/WRG 7-94/HV 16-94

**SUBJECT:** \_\_\_\_\_

**BOARD BRIEFING** Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

**REGULAR MEETING:** Date Requested: September 13, 1994

Amount of Time Needed: 2 Minutes

**DEPARTMENT:** DES

**DIVISION:** Planning

**CONTACT:** R. Scott Pemble

**TELEPHONE #:** 3182

**BLDG/ROOM #:** 412/103

**PERSON(S) MAKING PRESENTATION:** Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

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

CS 5-94/CU 7-94/WRG 7-94/HV 16-94

Review the August 24, 1994 Hearings Officer Decision, approving, subject to conditions, a community service request for a 28-boathouse moorage, 18-houseboat moorage plus a variance from the elevation and pavement standards for the parking area, plus a Willamette River Greenway Permit, all for property located at 25900 NW St. Helens Road.

**SIGNATURES REQUIRED:**

**ELECTED OFFICIAL:** \_\_\_\_\_

OR

**DEPARTMENT MANAGER:** pc

*Betsy H Williams*

1994 SEP 13 PM 1:55  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

**Any Questions: Call the Office of the Board Clerk 248-3277/248-5222**



BOARD HEARING OF September 13, 1993

TIME 01:30 p.m.

CASE NAME Casselman Cove Sailboat Moorage Expansion

NUMBER CS 5-94, CU 7-94, WRG 7-94, HV 16-94

1. Applicant Name/Address

Casselmann Cove, Inc., c/o Bill and Sherry Casselman  
PO Box 1106 Scappoose, OR 97231

2. Action Requested by applicant

COMMUNITY SERVICE AND CONDITIONAL USE APPROVALS AND A WILLAMETTE RIVER GREENWAY PERMIT for a proposed expansion of "Casselmann Cove" sailboat moorage in Multnomah Channel. The project would add approximately 700 feet of moorage facilities and floating structures in the river off shore of a 14 acre property located north of a 20-acre site currently developed for marina uses.

The request includes a VARIANCE from the elevation and pavement standards for the parking area. Approved uses are:

- 18 houseboats [a Conditional Use];
- 38 covered boat slips [a Community Service Use]; and,
- accessory parking uses and structures on land.

3. Planning Staff Recommendation

APPROVAL WITH CONDITIONS

4. Hearings Officer Decision:

APPROVE WITH CONDITIONS

5. If recommendation and decision are different, why?

The Hearings Officer decision is essentially the same as the Planning Staff recommendations.

ISSUES

(who raised them?)

- What is the appropriate balance of Private versus Public Use of the river surface;
- What is the extent of fill appropriate in wetland areas on the site; and
- What scale of recreation, commercial, and residential (floating home) use is appropriate in a rural area which also has important natural resources and features?

[Opposition testimony received by the Hearings Officer was written comments from: State Parks Dept, Metro Parks, and US Dept. of Fish & Wildlife.]

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.

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



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

AUGUST 24, 1994

CS 5-94, Community Service Designation for a Marina  
CU 7-94, Conditional Use Permit for a HouseBoat Moorage  
WRG 7-94, Willamette River Greenway Permit for  
New Uses in the Greenway  
HV 16-94, Variance from the elevation and pavement  
requirements for the parking area

Applicant requests **COMMUNITY SERVICE AND CONDITIONAL USE APPROVALS AND A WILLAMETTE RIVER GREENWAY PERMIT** for a proposed expansion of "Casselman Cove" sailboat moorage in Multnomah Channel. The project would add approximately 700 feet of moorage facilities and floating structures in the river off shore of a 14 acre property located north of a 20-acre site currently developed for marina uses. The request includes a **VARIANCE** from the elevation and pavement standards for the parking area. Proposed uses are:

18 houseboats [a Conditional Use];  
28 boathouses **OR** 38 covered boat slips [a Community Service Use];  
and,  
accessory parking uses and structures on land.

**Location :** 25900 NW St. Helens Road (Casselman Cove Moorage)

**Owner/Applicant(s):** Casselman Cove, Inc., c/o Bill and Sherry Casselman  
PO Box 1106 Scappoose, OR 97231;

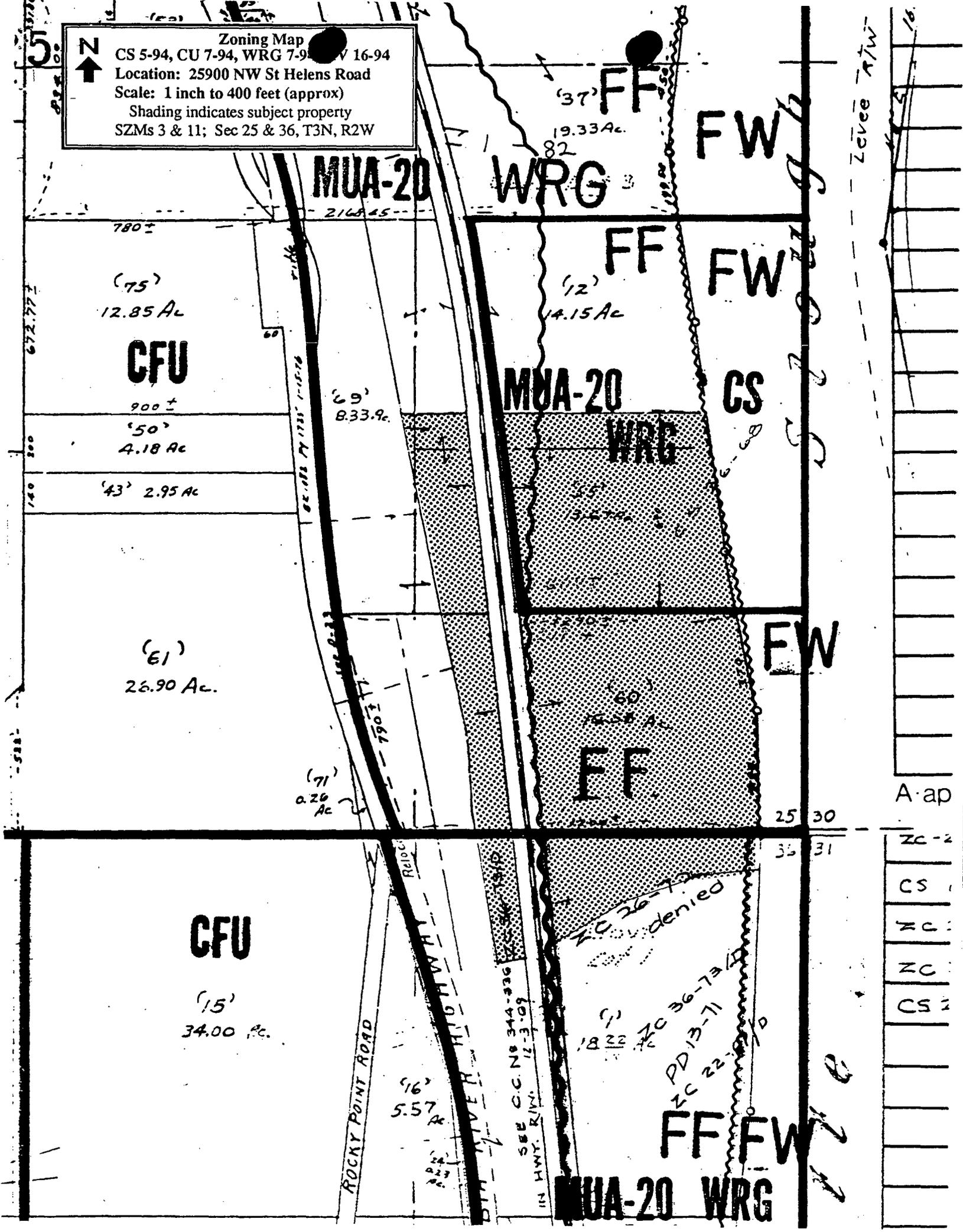
**Legal Description:** Tax Lots '1' & '34'; Section 36, 3N-2W, 1993 Assessor's Map  
Tax Lots '55' & '60'; Section 25, 3N-2W, 1993 Assessor's Map<sup>[1]</sup>

**Plan Designation(s):** Multiple Use Agriculture

**Zoning District(s):** MUA-20, Multiple Use Agricultural District  
WRG, Willamette River Greenway  
FH, Flood Hazard

<sup>1</sup> The easement access road to St. Helens Road is on Tax Lot '12'; Section 25, 3N-2W, owned by Weilert with a private crossing over the Burlington Northern railroad right-of-way.

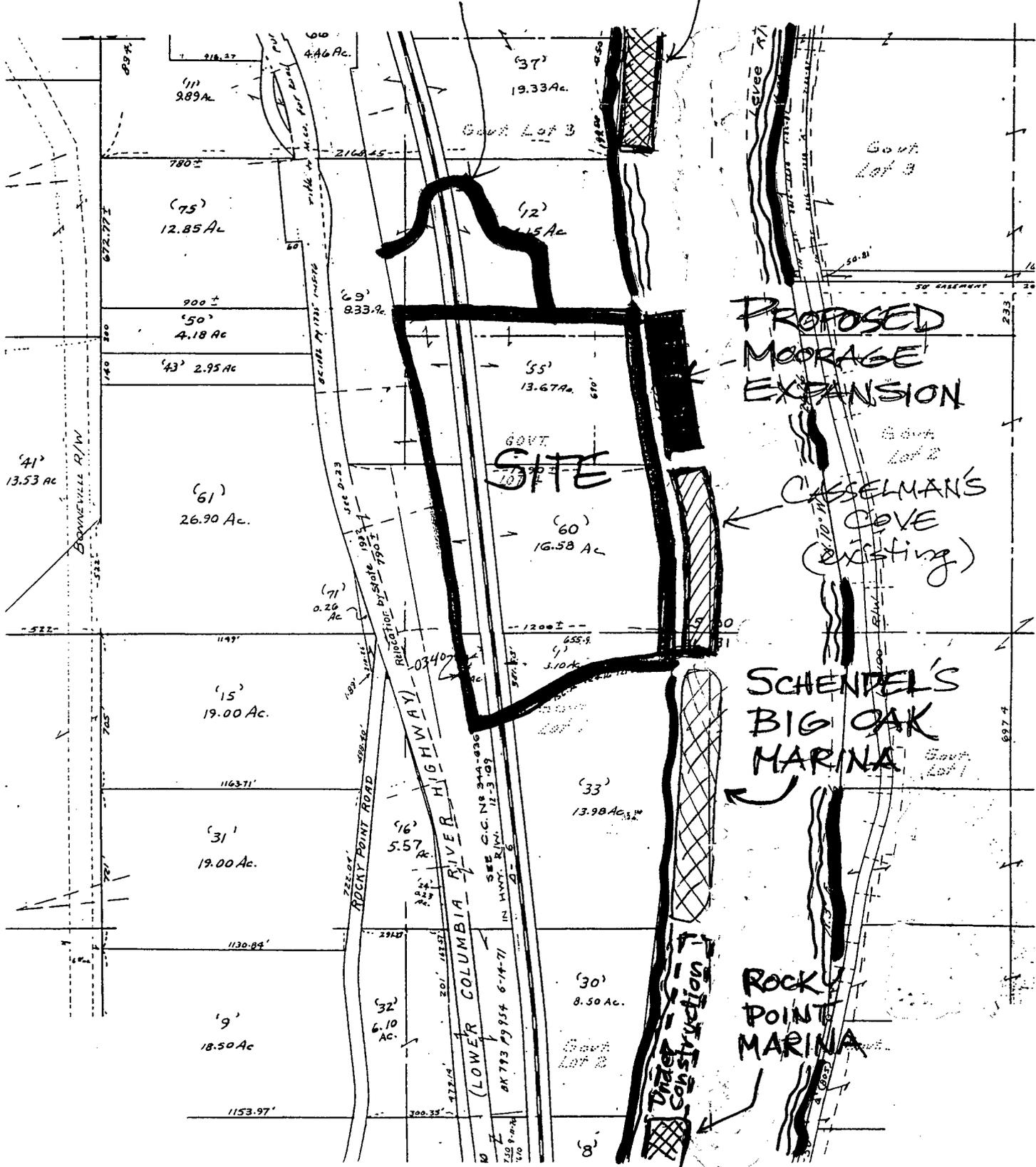
**Zoning Map**  
 CS 5-94, CU 7-94, WRG 7-94, V 16-94  
 Location: 25900 NW St Helens Road  
 Scale: 1 inch to 400 feet (approx)  
 Shading indicates subject property  
 SZMs 3 & 11; Sec 25 & 36, T3N, R2W

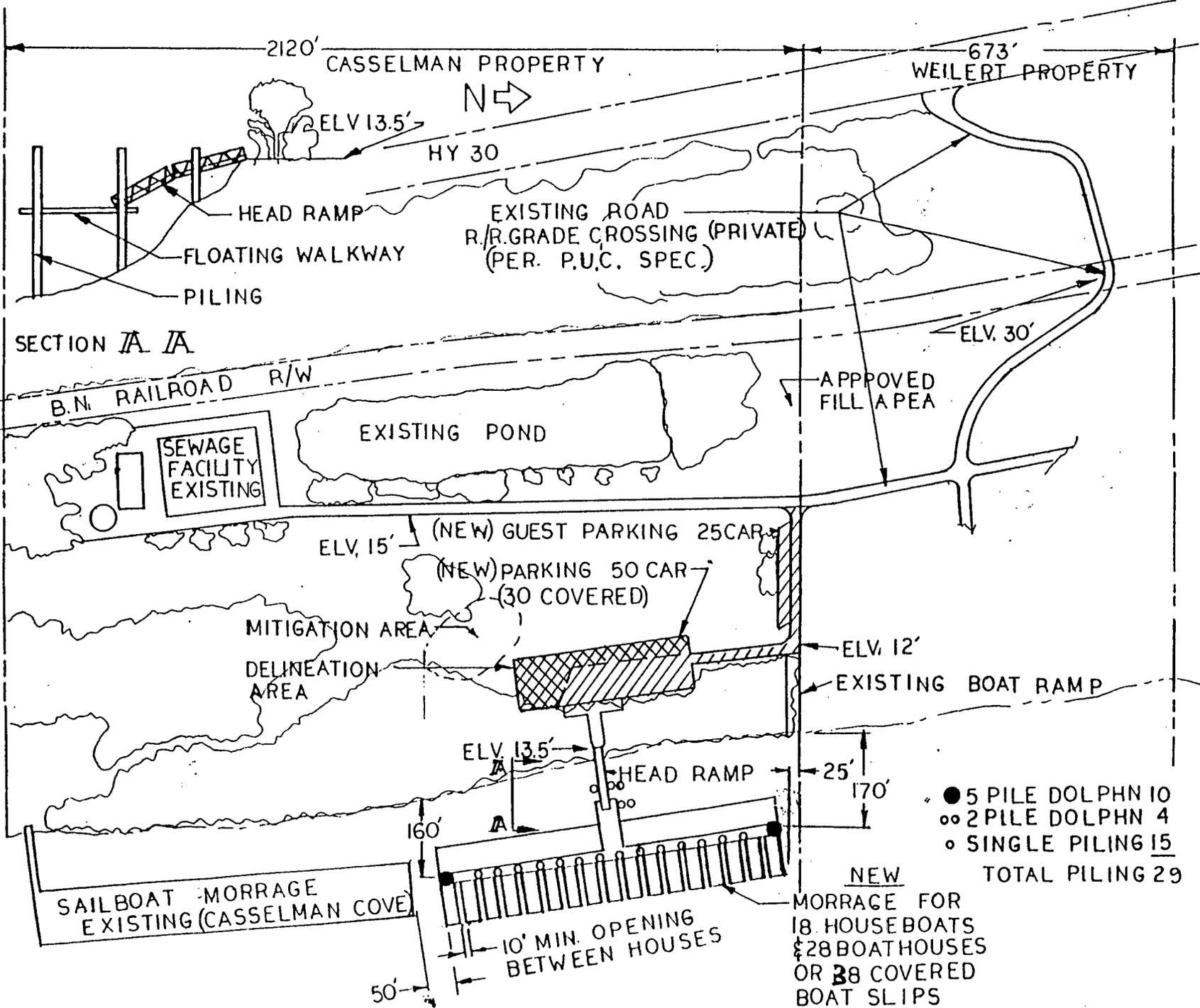


A-ap	ZC-2
	CS
	ZC
	ZC
	CS

**N**  
**↑**  
**Vicinity Map**  
**CS 5-94, CU 7-94, WRG 7-94, HV 16-94**  
**Location: 25900 NW St Helens Road**  
**Tax Lots 55 & 60, Sec 25, T3N, R2W, WM**  
**Tax Lots 1 & 34, Sec 36, T3N, R2W, WM**

Access EASEMENT  
 CASSELMAN'S WHARF (Existing Moorage)





SECTION A A

B.N. RAILROAD R/W

SEWAGE FACILITY EXISTING

EXISTING POND

ELV. 15' (NEW) GUEST PARKING 25 CAR

(NEW) PARKING 50 CAR (30 COVERED)

MITIGATION AREA

DELINEATION AREA

ELV. 13.5'

HEAD RAMP

ELV. 12'

EXISTING BOAT RAMP

SAILBOAT MORRAGE EXISTING (CASSELMAN COVE)

10' MIN. OPENING BETWEEN HOUSES

NEW MORRAGE FOR 18 HOUSEBOATS & 28 BOATHOUSES OR 38 COVERED BOAT SLIPS

- 5 PILE DOLPHN 10
- 2 PILE DOLPHN 4
- SINGLE PILING 15
- TOTAL PILING 29

OS 5-94  
 CU 7-94  
 WRG 7-94  
 HV 16-94

### HEARINGS OFFICER DECISION:

1. **Approved, subject to conditions**, a Conditional Use Permit for an 18-space houseboat moorage;
2. **Approved, subject to conditions**, the requested Community Service Use request for 38 covered boat slips;
3. **Approved, subject to conditions**, the requested Willamette River Greenway Permit; and
4. **Approved, subject to conditions**, the requested Variances to parking standards.

### CONDITIONS OF APPROVAL

The proposal does or can comply with most approval criteria. However, it does not comply with, or the applicant has not met the burden of proving it complies with, certain other criteria.

Thus, the proposal is approved subject to the modifications and conditions detailed below.

1. The applicant shall obtain Final Design Review Plan approval pursuant to MCC 11.15.7805-11.15.7865 for proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing, building materials, exterior colors, and the safety-related criteria set forth in MCC 11.15.7525.

Design Review shall include applications for a Grading and Erosion Control Permit (MCC 11.15.6710), and a Floodplain Development Permit (MCC 11.15.6307). Site work or construction of expanded moorage facilities or grading or construction on Tax Lot 55 shall not proceed before required Design Review and associated administrative approvals are obtained.

Minor changes to the site design may be allowed; however the Final Design Review Plan(s) approved shall not permit an increase in the number of houseboats (18 maximum), or covered boat slips (38 maximum). Separate "boathouse" spaces are not authorized.

2. The Community Service and Conditional Use approvals described herein shall expire two years from the effective date pursuant to MCC 11.15.8260(A) or 11.15.8280(D), unless the project is completed or substantial development has taken place within two years as specified in MCC 11.15.7010(C) and MCC 11.15.7110(C).

Construction of proposed development and uses approved under the CU/CS/WRG and HV decisions may be divided into stages. However, each phase or stage shall require a separate Final Design Review Plan and other approvals as prescribed by conditions herein.

3. The applicant shall obtain applicable approvals from the U.S. Army Corps of Engineers, the Division of State Lands, and the U.S. Fish and Wildlife Service before conducting site grading or fill work within identified wetlands on the site, and prior to installation of proposed pilings, docks, floating walkways, or structures in Multnomah Channel.

The riverward encroachment of the marina and its associated floating structures and uses shall not extend beyond the distances illustrated on approved CU/CS plans.

4. Prior to site development or construction of the proposed facilities, the applicant shall verify that applicable permits or approvals from the Oregon Department of Environmental Quality have been secured for existing or proposed sewage treatment facilities. The applicant shall provide documentation that facilities authorized have adequate capacity to serve the existing and proposed uses.

Also, prior to site development or construction of the proposed facilities, the applicant shall verify Fire District approval of the access road design and Burlington Northern and/or Oregon PUC approval of the crossing design.

5. Prior to site development or construction of the proposed facilities, the applicant shall provide documentation that water quality and quantity are adequate to serve both the existing and proposed uses.

6. Except as modified by conditions of approval, the land use permits shall be for the specific uses proposed and specified in the application. A maximum of 18 houseboats are authorized; only those houseboats that will be moored at this site may be constructed at this location, and only in their respective slips. Houseboat or other water dependent manufacturing for export to other locations is not authorized.
7. Each new, relocated, or replaced boathouse or floating home shall be individually authorized by a WRG Permit (Planning Director approval per MCC 11.15.6364). Applications for new, relocated, or replacement structures shall be consistent with the moorage expansion approved herein.

Any subsequent decision(s) by the Director that implement the above conditions and that require the exercise of legal or factual judgment shall include public notice and opportunity for public hearing(s) pursuant to ORS 197.763; ORS 215.416(11).

## **I. ANALYSIS OF THE PROPOSAL**

### **A. BACKGROUND**

The Casselman Cove sailboat moorage is part of a larger moorage/marina development originally approved by the County in 1976. The original development — formerly Big Oak Marina — included what is now called “Schendel’s Big Oak Marina” and the “Casselma Cove” moorage. [Refer to case files CS 16-76; CU 3-76g; DR 82-11-11; and, permit # 770736.]

### **B. PROPOSAL SUMMARY**

Applicant requests COMMUNITY SERVICE AND CONDITIONAL USE APPROVALS and a WILLAMETTE RIVER GREENWAY PERMIT for a proposed expansion of “Casselma Cove” sailboat moorage in Multnomah Channel. The project would add approximately 700 feet of moorage walks and associated floating structures in the river along side a 14-acre property and immediately north of the 20 acres previously authorized for marina and boat moorage uses (CS 16-76, DR 82-11-11). The request includes a VARIANCE from the flood elevation and pavement requirements for the parking area.

Proposed uses are:

- ◆ 18 houseboats (a Conditional Use request);
- ◆ 28 boathouses (boat storage only) OR 38 covered boat slips (a Community Service Use request); and
- ◆ accessory parking uses and structures on land.

The text and information — but not the “findings and conclusion” — contained in the “APPLICATION FOR A HOUSEBOAT AND BOATHOUSE MOORAGE ON THE MULTNOMAH CHANNEL” dated April, 1994, together with proposed site and landscape plans received by the Planning Division are incorporated into this decision by reference.

### C. SITE AND VICINITY DESCRIPTIONS

The 17.1-acre site is located on the west bank of Multnomah Channel and is bounded by the Burlington Northern rail-line (BN line) on the west, Multnomah Channel and Sauvie Island on the east, “Schendel’s Big Oak Marina” to the south, and “Casselman’s Wharf” moorage to the north. Highway 30 (St. Helens Road) is immediately west and up-slope of the BN line.

The south 20 acres contain the existing “Casselman Cove” sailboat moorage, including parking areas, a sewage treatment facility, and other structures associated with the boats and floating structures moored in the river. The riverward encroachment (*i.e.*, the distance from water edge to the outside edge of the structures secured in the river) varies from about 170 to about 200 feet. The upland property, including 13 acres on Tax Lot 55, is generally characterized by pasture and wetland grasses. Most of the site is located below the 100-year flood elevation (*i.e.*, 26-foot NGVD). A riparian forest of Oregon ash and cottonwood trees dominates the areas within 50 to 100 feet of the river bank.

Nearby sites to the north and south (between the Channel and the highway) are generally flat pastured areas with many wetland features and scattered patches of riparian forest. River-related recreation and residential (houseboat) development is also typical along this reach of Multnomah Channel, along the west bank. Lands west of Highway-30 are generally steep forested hillsides, with scattered rural residences. The “Wildwood Golf Course” is located about 1 mile to the southwest.

## D. COMPREHENSIVE PLAN AND ZONING ORDINANCE CONSIDERATIONS

The Framework Plan designates the site MULTIPLE USE AGRICULTURAL LAND within the Willamette River Greenway. The site is zoned MUA-20/FF/FW/WRG; Multiple Use Agriculture District, Flood Fringe, Floodway, Willamette River Greenway. Prior zoning actions applied CS designation on Tax Lots 1 & 34, Section 36, 3N-2W and on Tax Lot 60, Section 25, 3N-2W.

Prior zoning-related cases for the site are summarized below:

- 1976: The County approved CS designation on Tax Lots 60 & 1 for what is now called "Casselman Cove" sailboat moorage. This is the north portion of the former "Big Oak" moorage approved under Case Nos. CS 16-76, CU 3-76g (on microfiche).
- 1982: The County approved an accessory storage building for the moorage use located on the property to the south ("Schendel's Big Oak Marina") under Case No. DR 82-11-11.

## II. APPLICABLE CRITERIA

The following criteria apply to the proposed development:

### A. PERMITTED CONDITIONAL USES IN MULTIPLE USE AGRICULTURE DISTRICT [MCC 11.15.2132; MCC 11.15.7020]

Conditional uses allowed in Multiple Use Agriculture zones are specified in MCC 11.15.2132:

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

"(A) *Community Service Uses* pursuant to the provisions of MCC .7005 through .7401;

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

\* \* \* \* \*

(9) *Houseboats and Houseboat Moorages.*"

In turn, conditional uses allowed as a Community Service use are specified in MCC 11.15.7020:

"(A) Except as otherwise provided in MCC .2012, the following Community Service Uses and those of a similar nature, may be permitted in any district when approved at a public hearing by the approval authority.

"(1) *Boat moorage, marina or boathouse moorage.*"

**B. COMMUNITY SERVICE USE APPROVAL CRITERIA  
[MCC 11.15.7015]**

MCC 11.15.7015 provides that

"[i]n approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria. . .

- "(A) Is consistent with the character of the area;
- "(B) Will not adversely affect natural resources;
- "(C) Will not conflict with farm or forest uses in the area;
- "(D) Will not require public services other than those existing or programmed for the area;
- "(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife[,] or that agency has certified that the impacts will be acceptable;
- "(F) Will not create hazardous conditions;
- "(G) Will satisfy the applicable policies of the Comprehensive Plan[;] [and]

“(H) Will satisfy such other applicable approval criteria as are stated in this Section.”

**C. CONDITIONAL USE APPROVAL CRITERIA**  
**[MCC 11.15.7015 — 11.15.7120(A)]**  
**[MCC 11.15.7505–7525]**

MCC 11.15.7120(A) provides that:

“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.”

Because MCC 11.15.2132(A) approves “Community Service” uses as conditional uses with the MUA–20 district, and because MCC 11.15.7015 already lists approval criteria for Community Service uses, the proposed use will be governed by the criteria in MCC 11.15.7015 (the “Community Service Approval Criteria”), as opposed to the general conditional use criteria in MCC 11.15.7120.<sup>[2]</sup> The conditional use approval criteria for Community Service uses appears in the preceding section.

Also, because MCC 11.15.2132(B)(9) approves “Houseboats and Houseboat Moorages” as conditional uses with the MUA–20 district, and because MCC 11.15.7505–.7525 already lists additional approval criteria for “Houseboats and Houseboat Moorages,” the proposed use will also be governed by the criteria in MCC 11.15.7505–.7525 (“Waterfront Uses”), as opposed to the general conditional use criteria in MCC 11.15.7120. The approval criteria for houseboats and houseboat moorages appears in the following section.

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<sup>2</sup> The conditional use criteria in MCC 11.15.7015 and MCC 11.15.7120 are identical in any event.

## **D. HOUSEBOATS AND HOUSEBOAT MOORAGE CRITERIA**

### **(1). Houseboats and Houseboat Moorages [MCC 11.15.7505]**

MCC 11.15.7505 provides:

“[t]he location of a houseboat or the location or alteration of an existing houseboat moorage shall be subject to approval of the approval authority:

- “(A) Houseboats shall mean any floating structure designed as a dwelling for occupancy by one family and having only one cooking facility.
- “(B) Houseboat moorage shall mean the provision of facilities for two or more houseboats.
- “(C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.
- “(D) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:
  - “(1) The proposed development is in keeping with the overall land use pattern in the surrounding area;
  - “(2) The development will not adversely impact, or be adversely affected by normal fluvial processes;
  - “(3) All other applicable governmental regulations have, or can be satisfied; and
  - “(4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.”

**(2). Density**  
**[MCC 11.15.7510]**

MCC 11.15.7510 provides:

“The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. . . .”

**(3). Parking**  
**[MCC 11.15.7520]**

MCC 11.15.7520 provides:

- “(A) Two automobile spaces shall be provided for each houseboat.
- “(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provision of MCC [11.15].6100 through [11.15].6148.”

**(4). Other Requirements**  
**[MCC 11.15.7525]**

MCC 11.15.7525 provides:

- “(A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.
- “(B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.
- “(C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.”

**E. VARIANCE APPROVAL CRITERIA**  
**[MCC 11.15.8505]**

MCC 11.15.8505 provides, in pertinent part:

- “(A) . . . A Major Variance <sup>[3]</sup> 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 or topography of the property or the locations 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.”

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<sup>3</sup> MCC 11.15.8515(A) defines a “Major Variance” as

“one that is in excess of 25 percent of an applicable dimensional requirement.”

MCC 11.15.8515(B), on the other hand, defines a “Minor Variance” as

“one that is within 25 percent of an applicable dimensional requirement.”

F. WILLAMETTE RIVER GREENWAY PERMIT APPROVAL CRITERIA  
[MCC 11.15.6366-.6372]

MCC 11.15.6362 provides that "[a] decision on a Greenway Permit application shall be based upon findings of *compatibility with the elements of the Greenway Design plan* listed in MCC [11.15].6372."

In turn, MCC 11.15.6366 provides, in pertinent part:

"(A) A decision on a Greenway Permit application for a Conditional Use as specified either in the underlying district or in MCC .7150 through .7640, or for a Community Service Use as specified in MCC .7005 through .7030, shall be made by the Hearings Officer in conjunction with the decision on the use proposal associated therewith.

\* \* \* \* \*

"(C) The findings and conclusions made by the Hearings Officer, and the conditions or modifications of approval, if any, *shall specifically address the relationships between the proposal and the elements of the Greenway Design Plan.*"

MCC 11.15.6372 sets forth approval criteria for any use within the Willamette River Greenway:

"(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.

"(B) Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.

"(C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses.

"(D) Agricultural lands shall be preserved and maintained for farm use.

- “(E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.
- “(F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.
- “(G) Significant fish and wildlife habitats shall be protected.
- “(H) Significant natural and scenic areas and viewpoints and vistas shall be preserved.
- “(I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.
- “(J) The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.
- “(K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC .7105 through .7640, when economically feasible and when conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.
- “(L) Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.
- “(M) Significant wetland areas shall be protected as provided in MCC .6376.

- “(N) Areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.
- “(O) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway.
- “(P) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG.
- “(Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use.
- “(R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC .7805 through .7865, to the extent that such design review is consistent with the elements of the Greenway Design Plan.
- “(S) The applicable policies of the Comprehensive Plan are satisfied.”

### **III. FINDINGS**

#### **A. PERMITTED CONDITIONAL USES IN MULTIPLE USE AGRICULTURE DISTRICT [MCC 11.15.2132; MCC 11.15.7020]**

Because the proposal comprises the installation houseboat and houseboat moorage facilities, the proposed use constitutes a “Community Service” use under MCC 11.15.7020, which, in turn, constitutes a conditional use approved within the MUA-20 zone under MCC 11.15.2132(A).

In addition, the proposed use constitutes an outright conditional use within the

MUA-20 zone under MCC 11.15.2132(B)(9), whether or not it encompasses a "Community Service" use.

**B. COMMUNITY SERVICE USE APPROVAL CRITERIA  
[MCC 11.15.7015]**

***"(A) Is consistent with the character of the area"***

The area surrounding the subject site is described above in section IC ("Site And Vicinity Descriptions"). The in-water boat storage and water-related residential uses proposed are generally consistent with surrounding and nearby uses along the west bank of Multnomah Channel for approximately one mile upstream and two miles downstream. This three-mile reach along the west bank is an area characterized by houseboat and marina development.

The proposed development is compatible with the rural and water recreation-oriented character of the area. The site immediately south is developed as a boat marina (Schendel's Big Oak Marina). It contains several boathouses and covered boat slips in the channel, and associated parking areas on the land. Similarly, the Casselman's Wharf Moorage to the north has most of its shore frontage developed with floating structures (houseboats and boathouses) and associated parking areas on the land.

The Casselman's Wharf and Casselman's Cove moorage properties continue to have agricultural use of the majority of the acreage (*i.e.*, pasture/livestock). The proposed development would maintain this type of agricultural use for most of the upland property. Relatively small areas would be removed from agricultural use to accommodate the proposed moorage uses in the river. The proposed parking areas would occupy approximately 1.25 acres of the 13-acre property proposed for the expansion.

Based on review of proposed plans, site visits by staff, and analysis of aerial photographs of the area, the applicant's site design provides adequate landscaped and natural areas along the riverside. The plan maintains essentially all of the existing riparian forest which would screen new parking areas and structures (*i.e.*, carports/garages) from the river. Potential negative visual impacts to the Greenway would be further addressed through Design Review; Condition # 1 requires Design Review approval prior to initiating construction or site development. The topography and trees south and west of the site screen the waterfront area from most public views (*e.g.*, from Highway 30).

***“(B) Will not adversely affect natural resources”***

The site is within a rural area along the west bank of Multnomah Channel, characterized by agricultural, residential, and river-related moorage developments. It is not within an identified *Natural Area* listed under Policy 16-E.

However, there are natural resources and features on the site that will be affected by the proposed development. The natural resource impacts appear to have been avoided or minimized generally by the proposed design. Recommended modifications and conditions, including required approvals from the Corps of Engineers and the Division of State Lands, will further address natural resource concerns as have been expressed by the U.S. Fish and Wildlife Service, the State Parks and Recreation Department, and the Metro Parks and Greenspaces staff.

In particular, the U.S. Fish and Wildlife Service recommends that the proposal be denied because the proposed uses — *i.e.*, houseboats, as opposed to boat moorages — do not comprise “water dependent” uses, and thus represent an inappropriate use of a public resource. However, the County’s applicable criteria allow houseboat uses as permitted uses in the area, and those criteria also control any deleterious impacts that such development might have. Also, some of the U.S. Fish and Wildlife Service’s other concerns appear to be adequately handled via the separate approval processes of the Corps of Engineers and the Division of State Lands. To the extent that the U.S. Fish and Wildlife Service (or any other regulatory agencies) have regulatory control over the proposed development, applicant will be required by the Conditions above to fulfill any applicable requirements imposed by such other agencies.

Similarly, the Metro Regional Parks and Greenspaces Department voiced objections to the proposal based, in part, upon the development’s impacts upon wetlands and wildlife. However, the County’s applicable criteria allow the proposed uses as permitted uses in the area, and those criteria also control any deleterious impacts that such development might have on wetlands and wildlife. Also, some of Metro’s concerns appear to be adequately handled via the separate approval processes of the Corps of Engineers and the Division of State Lands.

Finally, the Oregon Parks and Recreation Department identified certain approval criteria that it contends “may not be consistent” with the proposed development. However, in the absence of any argument or discussion that correlates the identified criteria with any shortcomings in the proposed development, the Department’s concerns lose any impact.

***“(C) Will not conflict with farm or forest uses in the area”***

The proposal's effects on farm or forest uses are insignificant, primarily due to physical barriers between the site and nearby commercial farm or forest uses, and the non-farm/non-forest uses existing on immediately adjacent lands to the south. To the southwest, a railroad, a 5-lane highway, and steep slopes separate the subject site from nearby commercial forest lands. To the northeast, Multnomah Channel, a flood control dike, and Sauvie Island Road all separate the site from the nearest commercial farming operations on Sauvie Island. The channel is approximately 800 feet wide at this point.

The Casselman's Wharf and Casselman's Cove moorage properties continue to have agricultural use of the majority of their acreage (*i.e.*, pasture/livestock). The proposed development would maintain this type of agricultural use for much of the upland property. Relatively small areas would be removed from agricultural use to accommodate the proposed moorage uses in the river. The proposed parking areas would occupy approximately 1.25 acres of the 13-acre property involved with the expansion.

Metro questioned the propriety of the residential use of houseboats outside the Urban Growth Boundary. However, to the extent Metro may be in a position to assert and impose conditions of approval, applicant will certainly need to fulfill those conditions.

***“(D) Will not require public services other than those existing or programmed for the area”***

The application indicates all existing services for the Casselman Cove moorage have sufficient capacity to accommodate the proposed expansion. Conditions require that this excess capacity be verified by the appropriate authority (*i.e.*, DEQ, Fire District, *etc.*) prior to development or construction.

Subsequent documentation(s) regarding the public facilities may require the exercise of legal or factual judgment by County Planning Staff. Therefore, any decisions regarding these matters would include public notice and hearing opportunities consistent with ORS 197.763 and 215.416(11).

***“(E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable”***

The site is not identified as a big game winter habitat area in the Comprehensive Framework Plan or by the Oregon Department of Fish and Wildlife.

***“(F) Will not create hazardous conditions”***

Conditions of approval require Design Review of the site design, parking areas, and associated grading and structures. The applicant must obtain applicable approvals from the U.S. Army Corps of Engineers, and the Department of Environmental Quality. These additional permits and reviews will further address potential hazards associated with the proposed uses and site design.

An existing private road connects the site to Highway 30 across Tax Lot 12, Section 25, 3N-2W, and crosses the Burlington Northern Railroad right-of-way. The County typically requires a 20-foot drive width for two-way access. See MCC 11.15.6128(A). Applicants have not secured approval from either Burlington Northern Railroad, the State Public Utilities Commission, or State Highway Department regarding various designs to widen or improve the safety of the access into the site.

Condition #1 requires Design Review approval prior to site development. This review typically requires the applicant to document Fire District approval of the access road design and Burlington Northern and/or State PUC approval of the crossing design. These measures are sufficient to assure the proposal will meet the above criteria.

***“(G) Will satisfy the applicable policies of the Comprehensive Plan”***

The following policies of the County's Comprehensive Plan are found applicable to this request:

- ◆ Policy 2 (Off-site Effects);
- ◆ Policy 13 (Air, Water and Noise Quality);
- ◆ Policy 14 (Development Limitations);
- ◆ Policy 15 (Willamette River Greenway);
- ◆ Policy 16 (Natural Areas);
- ◆ Policy 24 (Housing Location);
- ◆ Policy 26 (Houseboats);
- ◆ Policy 31 (Community Uses & Facilities);
- ◆ Policy 37 (Utilities);
- ◆ Policy 38 (Facilities); and
- ◆ Policy 39 (Recreation).

The proposed development is generally consistent with the plan designation and policies applicable to the site. The proposed houseboat moorage and marina uses are approved subject to conditions and modifications to address Plan policies 14 (Development Limitations), 15 (Willamette River Greenway), 16 (Natural Resources), 37 (Utilities),

and 38 (Facilities).

Conditions of approval provide several means to mitigate or avoid a variety of potential off-site effects from the proposed use. The site location and design also addresses this policy by placing carport/garage structures as a buffer along the west boundary of the parking area.

The applicant proposes to accommodate sanitation demands from the uses through an on-site sewage treatment system, already approved by the State DEQ. The styrofoam floats for new structures will be enclosed within concrete to avoid off-site effects to downstream ecological systems.

**C. CONDITIONAL USE APPROVAL CRITERIA**  
**[MCC 11.15.7015 — 11.15.7120(A)]**  
**[MCC 11.15.7505-7525]**

**(1). Community Service Approval Criteria**

The findings with respect to the separate Community Service approval criteria appear in the preceding section.

**(2). Houseboat And Houseboat Moorages Approval Criteria**

MCC 11.15.7505 provides, in pertinent part:

\*\*\*\*\*

*“(C) Location Requirements: Houseboats shall be permitted only as designated by the Comprehensive Plan.”*

The site is located within an area of Multnomah Channel designated as suitable for houseboats by Policy #26 in the Plan. Conditions of approval require verification of applicable approvals from the U.S. Army Corps of Engineers, Division of State Lands, and State DEQ.

MCC 11.15.7505 further provides:

*“(D) Criteria for Approval: In approving an application pursuant to this subsection, the approval authority shall find that:*

*“(1) The proposed development is in keeping with the overall land use pattern in the surrounding area;*

*“(2) The development will not adversely impact, or be adversely affected by normal fluvial processes;*

*“(3) All other applicable governmental regulations have, or can be satisfied; and*

*“(4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.”*

*“(1) The proposed development is in keeping with the overall land use pattern in the surrounding area”*

The vicinity has been described above.

Casselman's Wharf and Schendel's Big Oak Marina, respectively, are existing houseboat and boathouse moorages located directly to the north and south of the site. The proposed moorage would be consistent with the surrounding development because it infills between existing moorages.

The Casselman Cove sailboat moorage has existed for about ten years. Commercial farm or forest uses in the immediate vicinity would not be affected by the proposed floating home development. The railroad tracks and St. Helens Highway (30) will buffer the use from the more rural land uses located on the west side of the highway.

***“(2) The development will not adversely impact, or be adversely affected by normal fluvial process”***

Since moorages already exist within and near the site, most of the potential adverse affects from such processes have already been experienced or have been accommodated as part of the normal life-style of living on this part of the river. The types of hazards associated with moorages are essentially:

- (a) Damage to walkways and houseboats from drifting debris during the Spring rains or other high water times. The proposed moorage expansion benefits from the previous experience of the existing moorages, and piling and dolphin locations can be designed and placed to avoid such hazards. The bends in the Channel, and flow rates of the river at this point, are well established by this and nearby moorage operators due to their long-term experience with these phenomenon.
- (b) Tilting of walkways due to unanticipated fluctuations in river tides, which may cause the jaws of the supporting rings to hang up on the associated piling due to lack of sufficient clearance to impending connections. This tilting can also result from sub-zero weather causing ice to support the walkway, suspending it above receding tide. This hazard is eliminated by proper design of the connections and supporting dolphins.

***“(3) All other applicable governmental regulations have, or can be satisfied”***

Applicants indicate the treatment system has been approved for the current and proposed site use. Condition #3 requires the applicant to show evidence that the existing system proposed is or can be approved by the Oregon Department of Environmental Quality.

The proposed pilings and floating structures in Multnomah Channel are also regulated by the U.S. Army Corps of Engineers and the Division of State Lands. Applications for the proposed project are currently pending before both agencies. Staff discussions with Corps and DSL personnel suggest that these other governmental regulations can be satisfied. Conditions of approval address applicable regulations for grading and erosion control, floodplain development, and other agencies (*i.e.*, Corps of Engineers, Division of State Lands, Department of Environmental Quality).

Undetermined at this juncture is the extent to which applicant will be allowed by either the Oregon Public Utility Commission, the Oregon Department of Transportation, or Burlington Northern Railroad to continue to use the existing private crossing right-of-way. Because Condition #1 requires Design Review approval prior to site development, that condition shall encompass proof by applicant that all necessary approvals have been obtained to utilize the existing access road for the proposed development.

***“(4) The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer”***

The service provider forms yield the conclusion that existing services are adequate. The applicant indicates the existing sewage treatment facility has been approved by the Department of Environmental Quality. However, the capacity of the existing system is not detailed, and the sewage disposal needs of the proposed moorage and commercial uses are not quantified. Conditions require DEQ approval of proposed sanitation facilities prior to development or construction.

The adequacy of the water quality or quantity has not been addressed. Conditions require that applicant demonstrate that the water supply is adequate to serve the needs of 18 floating homes and the other marina-related uses.

MCC 11.15.7510 also provides, in pertinent part:

***“The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage. . . .”***

The entire site has approximately 1,400 feet of waterfront frontage. This corresponds to a maximum density of 28 houseboats (floating homes). The proposed development would add 18 floating homes to the existing sailboat moorage. The project therefore satisfies the density standard.

MCC 11.15.7520 also provides:

***“(A) Two automobile spaces shall be provided for each houseboat.***

*“(B) The parking area and all ingress and egress thereto shall be constructed two feet above the elevation of the 100 year flood boundary, and under the provisions of MCC [11.15].6100 through [11.15].6148.”<sup>[4]</sup>*

Applicant proposes to provide additional parking spaces for 75 automobiles (30 covered spaces), 25 of which have been designated as guest parking. The minimum parking spaces required would be 36 under the circumstances, thus applicant has fulfilled the parking criterion.

The site, like the adjacent moorages, is located within the flood fringe of the Multnomah Channel 100 year floodplain. The 100-year flood elevation in this area, based on U.S. Army Corps of Engineers data, is 26 feet above mean sea level. The elevation of the subject site is between 10–15 feet above mean sea level.

In order to meet the above elevation requirement, the applicant would have to place the parking area on top of fill material as much as 18–feet above the existing grade. Instead, the applicant requests a variance to this requirement to allow the parking area at grade level. The variance approval criteria appear in the next topic.

MCC 11.15.7525 also provides:

- “(A) All ramps, walkways and moorage spaces shall be designed, constructed and maintained to provide maximum safety in all weather conditions.*
- “(B) Lighting adequate to provide for the safety of residents and visitors shall be provided throughout a houseboat moorage.*
- “(C) Siting and design of all pickup and delivery facilities shall insure maximum convenience with minimum adverse visual impacts.”*

With the exception of applicant's declaration that “[m]oorage construction would be adequate to handle any anticipated wind, water and current conditions,” and that “[t]he walkway system would be lighted and have a non-skid surface,” the adequacy of applicant's proposal with respect to the applicability of these particular criteria to new

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<sup>4</sup> MCC 11.15.6100 through 11.15.6148 implement “Off-Street Parking And Loading” criteria.

development has not been adequately addressed. Condition #1 requires Design Review approval prior to the site development. Within that approval process the applicant shall demonstrate that the above safety-related criteria have been fulfilled with respect to new development.

**D. VARIANCE APPROVAL CRITERIA**  
**[MCC 11.15.8505]**

***“(1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property”***

The proposed parking area location is within the flood fringe (FF) part of the 100-year floodplain. The delineation of the flood fringe and adjacent floodway of the Multnomah Channel 100-year floodplain was done as part of the County's implementation of the National Flood Insurance Program in 1982.

Also, the County amended its zoning ordinance that certain land uses could be regulated in the flood fringe and floodway areas (MCC 11.15.6301-.6323). Parking and land uses that do not involve structures are not generally regulated by the flood fringe standards of the County Zoning Ordinance.

The subject parking area requirement predates the flood fringe requirements and applies only to houseboat moorage parking areas. If the parking area proposed was to be used for any other use such as a commercial use or exclusively for the boat moorage, no variance would be necessary.

***“(2) The zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties”***

The existing and nearby moorages have similar property elevations below the 100 year flood level. The applicant is requesting that, like the neighboring moorages (Casselman's Wharf, Big Oak Marina and Rocky Point Marina), the parking area be located generally at existing grade levels and finished with a gravel rather than paved surface. Otherwise, satisfying the elevation requirement would entail a substantial amount of filling and grading of not only the proposed parking area, but of the existing road which will connect to it.

***“(3) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district”***

The authorization of the variance would not be detrimental to the public welfare or affect adjacent property, since the other parking areas are already at grade level, and there are upland areas above the 100-year flood level on the access road and NW St. Helens Road where cars could be parked during a flood event.

The placement of the fill material on the property in order to meet the requirement could, however, affect other properties during a 100 year flood. The fill would displace the floodwaters that would otherwise occupy the area. This could result in an increase in the flood elevation and flood coverage.

***“(4) The granting of the variance will not adversely affect the realization of the Comprehensive Plan”***

The granting of the variance will not adversely affect the realization of the Comprehensive Plan. As indicated earlier, the site is within the flood fringe (FF) of the 100-year floodplain and the flood fringe Zoning Ordinance standards do not require the elevation of parking areas above the 100-year flood level.

**E. WILLAMETTE GREENWAY PERMIT APPROVAL CRITERIA  
[MCC 11.15.6350-.6376]**

***“(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river”***

About 25% of the site is covered with large deciduous trees. The plan proposes parking areas and an access drive 50 to 100-feet from the river edge. The parked cars and trucks would be separated from the river by native shrubs and trees. The applicant's site design maintains natural forested areas along the riverside. The plan proposes landscaping to partially screen parking areas and uses near the river. Potential negative visual impacts to the Greenway would be further addressed through Design Review. Condition #1 requires Design Review approval prior to initiating construction or site development.

***“(B) Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas”***

If approved, the Department of Transportation recommends developing a crossing control over the rail line. The site is not in an urban or urbanizable area.

The Division Trainmaster for Burlington Northern Railroad indicates the existing private crossing must be upgraded before the increased site use is established. Improvements to the crossing would include flashing warning lights and gates to avoid vehicle/train collisions.

***“(C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses”***

It may be possible to direct the parking use away from the river to a greater degree. If approved, conditions should be applied to require that redesign as part of Design Review (to the extent feasible).

***“(D) Agricultural lands shall be preserved and maintained for farm use”***

The Casselman's Wharf and Casselman's Cove moorage properties continue to have agricultural use of the majority of the acreage (*i.e.*, pasture/livestock). The proposed development would maintain this type of agricultural use for most of the upland property. Relatively small areas would be removed from agricultural use to accommodate the proposed moorage uses in the river. The proposed parking areas would occupy approximately 1.25 acres of the 13-acre property proposed for the expansion.

***“(E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary”***

There is no timber harvest associated with the request.

***“(F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses”***

The design contains adequate areas for parking, maneuvering, and accessory buildings, while still providing significant areas for open space and natural landscaping along and near the river. The site is separated from the nearest commercial farming operations on Sauvie Island by Multnomah Channel, a dike, and Sauvie Island Road.

The boat moorage component will increase recreation opportunities in the Multnomah Channel/Sauvie Island vicinity. The marina would extend into the Channel no more than existing moorage developments to the north and south.

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

The structures proposed within the channel must be approved by the Army Corps of Engineers and the Division of State Lands. These agency reviews routinely include comments from, and address concerns of, the federal and state departments of Fish and Wildlife. The request does not indicate any dredging will be necessary to accommodate the proposed in-stream uses.

***“(H) Significant natural and scenic areas and viewpoints and vistas shall be preserved***

The site is within a predominantly developed rural area along the west bank of Multnomah Channel. The site itself has been significantly altered for marina uses in the past. Public views of the waterfront development area are limited. The areas north and south of the site along the west bank of the channel are already built and committed to water-related floating structures and uses.

The conditions of approval require that proposed floating structures would be reviewed individually for consistency with the Greenway Design Plan. These reviews can limit exterior colors and/or materials to avoid or lessen adverse scenic effects from new houses on the water. Floating structures (existing or proposed) along the west bank of the channel are not as intrusive into the Greenway. This is primarily due to steep wooded slopes west of the site which screen the site's water front area from most public views (e.g., from Highway 30), and form a backdrop, reducing the visual prominence of structures along the bank.

The site is visible from Sauvie Island Road. From this vantage point, houseboats and marinas already characterize the west bank of the channel. This project would essentially "infill" between existing moorage/marina developments to the north and south. The proposal could develop a continuous and unbroken wall of floating structures for approximately 700-feet along the side of the Channel. These effects could be somewhat ameliorated by segmenting the covered areas or groups of structures in the marina into shorter pieces, separated by sections of open boat storage or open water. The colors, materials, and heights of structures should be specified as part of Design Review to further mitigate for adverse scenic effects to the Greenway.

***"(I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable"***

Applicant proposes to restrict public access to walking paths along the shoreline, which eliminates the possibility of any vehicle-related vandalism and trespass. Applicant also proposes to eliminate public access to the dock by restricting dock access to users. Applicant will also provide full-time security personnel. The agricultural areas will be fenced.

***"(J) The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors"***

The site is within a predominantly developed rural area along the west bank of Multnomah Channel. The site itself has been altered for marina uses in the past. The proposal will maintain most natural areas on the site and along the channel bank. Significantly, photographic evidence yields the conclusion that the development of moorages and marina uses in the area have historically protected the shoreline from erosion; unprotected shoreline in the immediate vicinity of the proposed and existing developments depicts significant erosion and deterioration as compared to shoreline adjacent to — and protected by — marina-related developments in the area.

The applicant's site design provides adequate landscaped and natural areas along the riverside. The plan maintains essentially all of the existing riparian forest which would screen new parking areas and structures (*i.e.*, carports/garages) from the river.

Potential negative visual impacts to the Greenway would be further addressed through Design Review; Condition #1 requires Design Review approval prior to initiating

construction or site development. The topography and trees south and west of the site screen the waterfront area from most public views (e.g., from Highway 30).

***“(K) Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC .7105 through .7640, when economically feasible and when conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation”***

There is no aggregate extraction associated with this request.

***“(L) Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions”***

All of the site is in identified flood hazard areas. The development proposed is generally consistent with this criteria. The design of walkways, pilings, and related detailing of the moorage will employ current technologies to avoid flood damage to the proposed residences (Reference Condition #1). The variance request would avoid placement of a large fill area within the flood plain to elevate the parking.

***“(M) Significant wetland areas shall be protected as provided in MCC .6376”***

The proposal avoids “significant wetlands” as identified by the County Framework plan. Applicant has detailed the wetlands impacts from the proposed parking area in the Corps/DSL applications.

***“(N) Areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible”***

There are no known historic or archeological sites or resources on the property.

***“(O) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the character of the Greenway”***

The site is not identified in the County Slope Hazards inventory. Condition #1 requires a Grading and Erosion Control Permit as part of Design Review of proposed site improvements (including fill).

***“(P) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG”***

The proposed marina and houseboat uses should not generate significant noise or other polluting effects. During construction, excavation and other site work may effect water quality in the channel.

Condition #1 requires that erosion control measures be applied as part of Design Review approval. Conditions of approval also require approval of sewage disposal facilities by the State DEQ.

***“(Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use”***

The project proposes “accessory” garage or carports in the parking area. The application does not adequately persuade that these uses are water-related. Therefore, these structures shall meet the 150-foot setback on the upland area of the site.

***“(R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC .7805 through .7865, to the extent that such design review is consistent with the elements of the Greenway Design Plan”***

Condition #1 requires Design Review prior to site development or construction.

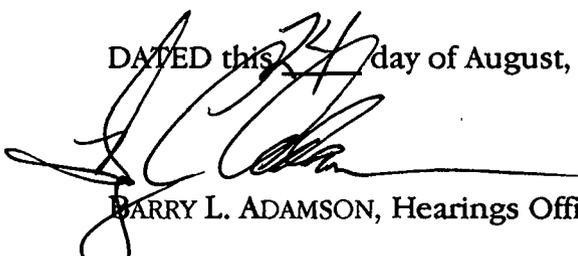
***"(S) The applicable policies of the Comprehensive Plan are satisfied"***

The proposed marina and houseboat moorage expansion is generally consistent with the plan designation. Conditions of approval will be applied to address Plan policies 13 (Air, Water, and Noise Qualities), 14 (Development Limitations) 15 (Willamette River Greenway), 16 (Natural Resources), 37 (Utilities), and 38 (Facilities).

**IV. CONCLUSIONS**

1. The application generally complies with, or can comply with, applicable approval criteria, as long as the applicant fulfills the conditions set forth earlier.
2. The Boat Moorage proposal — as conditioned — satisfies applicable approval criteria and Comprehensive Plan Policies.
3. The Houseboat Moorage proposal — as conditioned — satisfies applicable approval criteria and Comprehensive Plan Policies.
4. The proposed land uses satisfy Willamette River Greenway approval criteria.
5. Recommended conditions are necessary to resolve inconsistencies identified between the proposal and applicable Plan policies and Zoning Code provisions.

DATED this 24 day of August, 1994.

  
BARRY L. ADAMSON, Hearings Officer

In the matter of applications: CS 5-94, CU 7-94, WRG 7-94, and HV 16-94

Signed by the Hearings Officer: August 24, 1994  
[date]

Decision mailed to parties: September 1, 1994  
[date]

Submitted to Clerk of the Board: September 2, 1994  
[date]

Last day to Appeal to the Board: 4:30, Monday, September 12, 1994

Decision Reported to the Board 1:30 p.m., Tuesday, September 13, 1994  
[date]

**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.*

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

9/13/94

**NAME**

Arnold Rochlin

**ADDRESS**

PO Box 83645

**STREET**

Portland, OR

97283

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

P-4

**SUPPORT**

<sup>with</sup> concerns

**OPPOSE**

**SUBMIT TO BOARD CLERK**

MEETING DATE: September 13, 1994

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: C 1-94a First Reading - West Hills Reconciliation Report

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: September 13, 1994

Amount of Time Needed: 30 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182  
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

**ACTION REQUESTED:**

INFORMATIONAL ONLY     POLICY DIRECTION     APPROVAL     OTHER

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

C 1-94a Adopt an Ordinance amending the Multnomah County Comprehensive Framework Plan, Volume I, to include the West Hills Reconciliation Report  
First Reading

EXHIBIT A WITH  
9/22/94 AGENDA  
PACKET MATERIAL

1994 SEP - 8 AM 10:47  
MULTNOMAH COUNTY  
OREGON  
BOARD OF  
COUNTY COMMISSIONERS

**SIGNATURES REQUIRED:**

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

OR

DEPARTMENT MANAGER: *RC* Robey Willia

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

ORDINANCE FACT SHEET

Ordinance Title: Adoption of West Hills Reconciliation Report

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

This ordinance will amend the Multnomah County Comprehensive Plan, Volume 1 Findings to include the West Hills Reconciliation Report, in partial fulfillment of Periodic Review Remand Order requirements. The Remand Order required the county to complete the Statewide Planning Goal 5 process for wildlife habitat, scenic views, streams and mineral and aggregate resources in the West Hills. The persons benefited will be the public in general.

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

Every county and city in the state is subject to compliance with Statewide Planning Goal 5. The City of Portland has a number of Environmental zones to protect Goal 5 resources within city limits.

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

Additional regulations governing development in order to provide environmental protections.

What is the fiscal impact, if any?

There will be no fiscal impact from adoption of the Reconciliation Report, although subsequent permit requirements as part of the protection program will generate additional staff workload to process applications.

SIGNATURES

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

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

Department Manager/Elected Official: *ER Betty Willis* \_\_\_\_\_

1                   BEFORE THE BOARD OF COUNTY COMMISSIONERS  
2                   FOR MULTNOMAH COUNTY, OREGON  
3                   ORDINANCE NO. \_\_\_\_\_  
4

5           An Ordinance amending the Comprehensive Framework Plan Volume 1 Findings to  
6 include the West Hills Reconciliation Report, as revised by the Board, in partial fulfillment of  
7 Periodic Review Work Program tasks for Statewide Planning Goal 5 resources in the West  
8 Hills.

9  
10          Multnomah County Ordains as follows:

11  
12          Section I. Findings.

13  
14           (A). Periodic Review Remand Order 93-RA-876 required Multnomah County to com-  
15 plete additional work related to Statewide Planning Goal 5 resources in the West Hills.  
16

17           (B). On March 9, 1994, the Land Conservation and Development Commission  
18 approved the county's Work Program (WKPROG - 0038) which indicated work tasks that must  
19 be completed to fulfill the requirements of the Remand Order.  
20

21           (C). In accordance with WKPROG - 0038, staff conducted an analysis of resources in  
22 the West Hills and recommended that wildlife habitat, scenic views, streams and the Angell  
23 Brother's aggregate site be designated as significant Goal 5 resources and the appropriate level  
24 of protection for each resource is "3-C" (allow conflicting uses in a limited manner that will  
25 give some protection to the resource). This analysis and recommendation were incorporated  
26 into the West Hills Reconciliation Report.

1 (D). Notice and the opportunity for public comment were provided at several steps dur-  
2 ing the analysis and writing of the West Hills Reconciliation Report. A review and comment  
3 period on significance reports was provided from March 11 - March 21, 1994 and March 28 -  
4 April 5, 1994; on resource analysis reports from April 11 - April 25, 1994; and on the complet-  
5 ed Reconciliation Report from May 23 until June 20, 1994. The West Hills Rural Area Plan  
6 Citizen's Advisory Committee considered the issues at several meetings.

7  
8 (E). A joint public hearing with the Planning Commission and Board of County Com-  
9 missioners was conducted on June 13, 1994, to consider oral and written testimony on the West  
10 Hills Reconciliation Report.

11  
12 (F). The Planning Commission, after deliberation on June 21 and June 27, 1994 recom-  
13 mended that the West Hills Reconciliation Report with Addenda and Errata be adopted by the  
14 Board of County Commissioners.

15  
16 (G). On July 26, 1994, the Board conducted a *de novo* public hearing on appeal of the  
17 Planning Commission recommendation. After deliberation on August 9, 1994, the Board mod-  
18 ified the Planning Commission recommendation and the West Hills Reconciliation Report by  
19 designating the Angell Brother's aggregate site "3-B" (allow conflicting uses fully without pro-  
20 tecting the resource) because of the impacts mining would have on wildlife habitat, scenic  
21 views, streams, and the Burlington Bottoms wetlands.

22  
23 (H). The West Hills Reconciliation Report, attached hereto as Exhibit A, has been  
24 revised to reflect the reasons for the Board's decision.

25

26

1 Section II. Amendments

2

3 Multnomah County Comprehensive Framework Plan Volume 1 Findings is hereby amended to include  
4 the West Hills Reconciliation Report, as revised by the Board, attached hereto as Exhibit A.

5

6

7

8 ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1994, being the date of its \_\_\_\_\_  
9 reading before the Board of County Commissioners of Multnomah County.

10

11

12

13

(SEAL)

14

By \_\_\_\_\_

15

Beverly Stein, County Chair  
MULTNOMAH COUNTY, OREGON

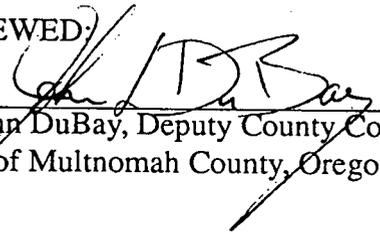
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REVIEWED:

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

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# 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

Date: September 7, 1994

**To:** BOARD OF COUNTY COMMISSIONERS  
PLANNING COMMISSIONERS

**From:** R. SCOTT PEMBLE, *Planning Director*

**Re:** LCDC REMAND ORDER MEETING SCHEDULE UPDATE

1994 SEP - 9 PM 4:15  
MULTNOMAH COUNTY  
OREGON

We have been involved in a rigorous public meeting schedule to complete Remand Order work over the summer months. This schedule has been driven by the LCDC approved work program. All of you are to be commended for the commitment and contributions made to complete the Remand Order work program. On behalf of the staff, we would like to thank each of you for your assistance and support.

The majority of the work has been completed, however, several tasks remain. The following is a summary of the remaining tasks and the schedule for completing them. Planning staff has discussed with you, and/or your staff, schedule options and we believe most, if not all conflicts, have been resolved. In the event there are still schedule issues, please bring them to my attention as soon as possible, and we will resolve the conflict(s).

In summary, the Planning Commission and Board have made decisions about the "Significance" and "Level of Protection" to be provided specific Goal 5 resources in the West Hills and Howard Canyon areas. Also, the Board at their August 9, 1994 meeting, directed staff to further refine protection strategies for some of these protected Goal 5 resources (*i.e.*, resources designated 2A, 3A, or 3C) and include them in the appropriate Reconciliation Report. The remaining Planning Commission and Board work involves completing protection programs for each of the 2A, 3A and 3C designated Goal 5 resources identified in the Howard Canyon Area and West Hills Reconciliation Reports.

The "Protection Program" consist of two basic components: specific strategies for each resource site as outlined in the Reconciliation Reports and land use permit requirements for the protection of each type of resource (*e.g.*, streams, scenic views, wildlife, mineral aggregate) outlined in the Zoning Code. Both the Reconciliation Report and Zoning Code requirements work together to protect Goal 5 resources. Using a mineral/aggregate site to illustrate the relationship, the Reconciliation Report may stipulate specific measures to resolve unique site issues identified during the ESEE analysis step of the Goal 5 process, such as requiring setbacks for all future mining operations from six existing residences surrounding the site, and limiting hours of mining operation. The Zoning Code would apply an overlay zone on the site, precluding the

establishment of new noise sensitive uses (dwelling units) that would further compromise the use of the site for mineral/aggregate development. Moreover, the Zoning Code would require the review and consideration of universal approval criteria (*e.g.*, standard setbacks, hours of operation, reclamation plan) for all requests for mineral/aggregate land use permits. The combination of both the Reconciliation Report strategy for the protected resource site and the Zoning Code requirements constitute the "Protection Program" for the protected Goal 5 resource.

The remaining schedule involves both Planning Commission and Board hearings to recommend/adopt respectively protection programs (Reconciliation Reports and Zoning Code amendments) for each of the protected Goal 5 resources discussed in the Howard Canyon Area and West Hills Reconciliation Reports. On September 12, 1994 the Planning Commission will hold a public hearing to take comments on the proposed amendments to the Zoning Code and corresponding Comprehensive Plan policies. A second hearing may be required, however, the intent is to forward the Planning Commission Zoning Code recommendation in time for the September 29, 1994 Board meeting. After the Planning Commission forwards Zoning Code recommendations, their Remand Order work will be completed.

On September 13, 1994, the Board will hold the first of two public hearings to adopt the Reconciliation Reports. Both reports will be adopted by ordinance, requiring two readings. Public comment may be taken at both hearings, however, comments should be limited to discussion of the Protection Program strategies outlined in the last chapters of the Reconciliation Reports. At both hearings, public comment may be taken without the requirements of quasi-judicial procedure (rebuttal and surrebuttal) since the hearing will be conducted as a legislative process. The second reading of the Reconciliation Report ordinance is scheduled for September 22, 1994.

On September 29, 1994 the Board will hold the first of two hearings on the Planning Commission's recommended Zoning Code amendments, the second part of the Protection program. The Board's second hearing (second reading of the ordinance) has been scheduled for October 6, 1994. Again, both of these hearings will be legislative in nature, not requiring quasi-judicial procedures.

If you have any questions concerning protection programs or schedules, please discuss with either me or Gordon Howard at your earliest convenience. In advance, thank you for your support of the remaining Remand Order work schedule.



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TANYA COLLIER • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

September 13, 1994

**To:** Board of County Commissioners

**From:** Planning Staff

**Re:** MINOR CHANGES TO CHAPTER VI OF THE WEST HILLS RECONCILIATION REPORT AND CORRECTION OF MINOR INCONSISTENCIES BETWEEN THE WEST HILLS RECONCILIATION REPORT (EXHIBIT "A") AND BOARD REVISIONS WEST HILLS RECONCILIATION REPORT

Attached are minor modifications to parts of Chapter VI intended to clarify the Board's action of August 9, 1994 on the West Hills Reconciliation Report and correct minor inconsistencies between the two documents provided.

## MINOR MODIFICATIONS

p. VI-17

c. Uses Which Will Be Allowed Conditionally (also subject to other code requirements)

Residences

Mining, excluding expansion of Angell Brothers beyond the existing approved mining area.

Any use or structure which is visible from a key viewing area, unless in Burlington

p. VI-19

c. Conflicting Uses to be allowed conditionally

Community Service/Commercial Uses

• Wood Processing (limited, sawmills, etc.)

Wholesale/retail for farm/forest products

Playgrounds, Churches, Schools

Parks/Golf Courses

Dog Kennels

Aircraft Landing Area

Cottage Industries

Rural Service/Commercial

Other Community Service Uses  
Transportation/Public Improvements  
Residential Uses  
Single-family Residential  
Farm/Forest Worker Housing  
Mining, excluding expansion of Angell Brothers beyond the existing approved mining area/Geothermal Uses

p. VI-24

c. Conflicting Uses to be allowed conditionally

Community Service/Conditional Uses

Wood Processing(limited, sawmills, etc.)

Wholesale/retail for farm/forest products

Campgrounds

Cemeteries

Fire Stations

Water infrastructure facilities

Utility facilities

Parks

Landfills

Hunting & Fishing lodges

Logging equipment repair and storage

Aircraft landing areas

Schools

Churches

Golf Courses

Road widening requiring additional right-of-way or building removal

Farm-related commercial activities

Dog Kennels

Group Care Facility

Cottage Industries

Rural Service/Commercial

Tourist Commercial

Other Community Service Uses

Residential Uses

Single-family Residential

Farm/Forest Worker Housing

Mining, excluding expansion of Angell Brothers beyond the existing approved mining area/Geothermal Uses

p. VI-26

## 5. SUMMARY

The scenic area, stream riparian areas, the 114 acre area of the Angell Brothers site approved for mining, and wildlife habitat areas ~~should be~~ are designated "3-C" and the ~~aggregate resource~~ Angell Brothers expansion area "3-B". This will provide a level of protection that recognizes and protects the attributes that make each resource significant.

The scenic area, stream riparian areas and wildlife habitat areas ~~should~~ shall be protected through implementation of the Significant Environmental Concern (SEC) overlay zone. Specific standards to govern new development have been outlined in the previous section. These standards will be drafted into code language and reviewed by the Planning Commission and Board of County Commissioners beginning in August. The standards in many cases provide overlapping protection to the significant resources. For example, the standard to limit the size of the area cleared of native vegetation around a house also protects scenic qualities because the break in the forest cover will be limited.

These designations and proposed protection standards provide overall protection to all four of the significant resources in the West Hills. This program complies with Statewide Planning Goal 5.

#### MINOR INCONSISTENCIES

p. VI-17

An inconsistency exists in the Scenic Views Section regarding uses allowed conditionally and uses not permitted. This inconsistency is resolved by the first modification (p. VI-17) listed above on the first page.

p. VI-21

The third paragraph in the blue-bound Reconciliation Report, relating to water quantity and quality of Burlington Bottoms vs. mining operations, should be deleted as is shown in the Board Revisions document.

#1

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** Sept. 13, 1994

**NAME** Susan Fry

**ADDRESS** 123 NE Tuttlepage Rd

**STREET**  
Corbett

**CITY** 0 **ZIP CODE** 97619

**I WISH TO SPEAK ON AGENDA ITEM #** Howard Canyon  
P-5

**SUPPORT** \_\_\_\_\_ **OPPOSE** \_\_\_\_\_  
**SUBMIT TO BOARD CLERK**

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 9-13-94

NAME Paul Hribernick

ADDRESS 1200 Bank of California Tower

STREET 707 S.W. Washington

CITY Portland OR. ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # (Howard Canyon) C 2-94a

SUPPORT X OPPOSE X

SUBMIT TO BOARD CLERK

MEETING DATE: September 13, 1994

AGENDA NO: P-5

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

C 2-94a First Reading - Howard Canyon Reconciliation Report

SUBJECT: \_\_\_\_\_

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: September 13, 1994

Amount of Time Needed: 30 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

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

**ACTION REQUESTED:**

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL  OTHER

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

C 2-94a Adopt an Ordinance amending the Multnomah County Comprehensive Framework Plan, Volume I, to include the Howard Canyon Reconciliation Report.

First Reading

EXHIBIT A WITH  
9/22/94 AGENDA  
PACKET MATERIAL

1994 SEP - 8 AM 10:47  
CLERK OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON

**SIGNATURES REQUIRED:**

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

OR

DEPARTMENT MANAGER: Betsy Wellis

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

ORDINANCE FACT SHEET

Ordinance Title: Adoption of Howard Canyon Reconciliation Report

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

This ordinance will amend the Multnomah County Comprehensive Plan, Volume 1 Findings to include the Howard Canyon Reconciliation Report, in partial fulfillment of Periodic Review Remand Order requirements. The Remand Order required the county to complete the Statewide Planning Goal 5 process for streams and mineral and aggregate resources in the Howard Canyon area. The persons benefited will be the public in general.

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

Every county and city in the state is subject to compliance with Statewide Planning Goal 5. The City of Portland has a number of Environmental zones to protect Goal 5 resources within city limits.

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

Additional regulations governing development in order to provide environmental protections.

What is the fiscal impact, if any?

There will be no fiscal impact from adoption of the Reconciliation Report, although subsequent permit requirements as part of the protection program will generate additional staff workload to process applications.

SIGNATURES

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

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

Department Manager/Elected Official: ESP Betty Willis

1                   BEFORE THE BOARD OF COUNTY COMMISSIONERS

2                               FOR MULTNOMAH COUNTY, OREGON

3                                       ORDINANCE NO. \_\_\_\_\_

4  
5           An Ordinance amending the Comprehensive Framework Plan Volume 1 Findings to  
6 include the Howard Canyon Reconciliation Report, as revised by the Board, in partial fulfill-  
7 ment of Periodic Review Work Program tasks for Statewide Planning Goal 5 resources in the  
8 Howard Canyon area.

9  
10           Multnomah County Ordains as follows:

11  
12   Section I. Findings.

13  
14           (A). Periodic Review Remand Order 93-RA-876 required Multnomah County to com-  
15 plete additional work related to Statewide Planning Goal 5 resources in the Howard Canyon  
16 area.

17  
18           (B). On March 9, 1994, the Land Conservation and Development Commission  
19 approved the county's Work Program (WKPROG - 0038) which indicated work tasks that must  
20 be completed to fulfill the requirements of the Remand Order.

21  
22           (C). In accordance with WKPROG - 0038, the Howard Canyon Reconciliation Report  
23 contains findings and reaches the conclusion that the subject three streams and aggregate  
24 resource are significant Goal 5 resources and the appropriate level of protection for each  
25 resource is "3-C" (allow conflicting uses in a limited manner that will give some protection to  
26 the resource).

1 (D). Notice and the opportunity for public comment were provided at several steps dur-  
2 ing the writing of the Howard Canyon Reconciliation Report. A review and comment period  
3 on significance reports was provided from March 11 - March 21, 1994 and March 28 - April 5,  
4 1994; on resource analysis reports from April 11 - April 25, 1994; and on the completed Rec-  
5 onciliation Report from May 23 until June 20, 1994. Additional explanation of the process uti-  
6 lized in completing the Reconciliation Report and information on opportunities for submitting  
7 oral and written testimony was presented at a North East Multnomah County Community  
8 Association meeting on May 25, 1994 in the Rural Center of Corbett.

9  
10 (E). A joint public hearing with the Planning Commission and Board of County Com-  
11 missioners was conducted on June 13, 1994, to consider oral and written testimony on the  
12 Howard Canyon Reconciliation Report.

13  
14 (F). The Planning Commission, after deliberation on June 21 and June 27, 1994 recom-  
15 mended that the Howard Canyon Reconciliation Report with Addenda be adopted by the Board  
16 of County Commissioners.

17  
18 (G). On July 26, 1994, the Board conducted a *de novo* public hearing on appeal of the  
19 Planning Commission recommendation. After deliberation on August 9, 1994, the Board  
20 adopted the Howard Canyon Reconciliation Report as recommended by the Planning Commis-  
21 sion with changes, principally to the "Programs to Acheive the Goal" in Chapter IV.

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1 Section II. Amendments

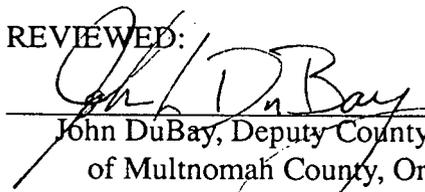
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Multnomah County Comprehensive Framework Plan Volume 1 Findings is hereby amended to include the Howard Canyon Reconciliation Report attached hereto as Exhibit A.

ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 1994, being the date of its \_\_\_\_\_ reading before the Board of County Commissioners of Multnomah County.

(SEAL)

By \_\_\_\_\_  
Beverly Stein, County Chair  
MULTNOMAH COUNTY, OREGON

REVIEWED:  
  
\_\_\_\_\_  
John DuBay, Deputy County Counsel  
of Multnomah County, Oregon

# BLACK HELTERLINE

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BORDEN F. BECK, JR. (1989)  
GUY J. RAPPLÉVEA (1993)

\*ALSO ADMITTED IN WASHINGTON  
†ADMITTED IN WASHINGTON ONLY

September 13, 1994

OUR FILE NUMBER  
S152

## HAND-DELIVERED

Honorable Beverly Stein, Chair  
Multnomah County Board of Commissioners  
602 Multnomah County Courthouse  
1021 S.W. Fourth Avenue  
Portland, OR 97201

Reference: Board Revisions to Howard Canyon  
Reconciliation Report

Dear Chair Stein and Members of the Board:

We have briefly reviewed the proposed Board revisions to the Reconciliation Report and have the following comments:

1. Page II-15, Sandy River/Salmonid Consideration. As noted in the record, there are no expected offsite sedimentation flows or impacts which will reach any of the creeks in the area from the Howard Canyon quarry. A site visit by both DOGAMI and DEQ reclamation of storm water personnel indicated that offsite sedimentation is highly unlikely, and in the event there was a threat of such offsite sedimentation, there are substantial flat areas in which sedimentation ponds may be constructed. Because the evidence demonstrates that there will be no expected effect, we believe it is appropriate to add additional language to the Reconciliation Report that indicate that no adverse effects are expected.

2. Removal of Tax Lots 25 and 16. The Commission has reduced the size of the Howard Canyon quarry by eliminating bigger resources shown on tax lots 25 and 16. We understand the Board's concern about these areas being closest to existing residences. However, the proposed extraction plan would protect existing residences that are closest to tax lots 16 and 25. We feel that these two tax lots should be retained because the evidence in the record demonstrates that there are no conflicts

which cannot be resolved between the conflicting residential and mining uses.

In the event the Board chooses to remove tax lots 16 and 25 from the protected area, the impact area must be recalculated. Specifically, the 1,200-foot impact area needs to be moved to the east, a distance equal to the east/west width of tax lots 16 and 25. We note that this would remove Big Creek from the impact area, as well as many of the houses that are presently shown in the impact area. The county should not change the protected resource area without revising its analysis of the impact area and conflicting uses as the county's existing analysis relied on the resource and impact areas, as designated. If the Board chooses to reduce the size of the site, it should re-identify conflicts and reanalyze the ESEE consequences in order to comply with the Goal 5 requirements.

3. Page IV-22. The final change in the last sentence of the first paragraph should be changed to read:

"No nonexempt mining operation shall commence without Oregon DEQ and ODF&W approval plus the proposed DOGAMI permit."

This language would recognize the county's existing exemption provision and eliminate any ambiguity about existing sites and the DOGAMI exemption permit.

4. Traffic Considerations, IV-22-27. In general, the county has used these revisions to do what DLCD, LCDC and the Oregon Court of Appeals has told the county that it may not do in the Goal 5 process: Expand the impact area to include the entire east county road system. The county's previous attempt to do this was specifically argued and rejected by the Court of Appeals in the *Friends of Forest Park* litigation (appeal of LCDC's rejection of the county's previous work concerning impact areas). In essence, the revised language requested by the Board expands its impact areas to include all "other roads" which may be impacted by heavy truck traffic. This position is no different from the position previously taken by the county and previously rejected by LCDC and the courts.

Additionally, the county road conditions are so onerous that they are a pretext for denial of protection to Goal 5 mineral and aggregate resources. The traffic management plan is so detailed and so extensive that it essentially requires one

use, the Howard Canyon Goal 5 mineral and aggregate resource, to bear the entire cost of the county's road planning efforts in the east county area. Not only is the operator expected to open up its checkbook to a consultant to be selected and approved by the county, the consultant must work under the supervision of the county and must address more than seven specific ASHTO, state, and local highway standards. The end study is required to contain both preliminary engineering designs and final engineering designs for all the roads in the entire east county area that could potentially be affected by the proposed use. The cost of this study, as outlined in the Board's revisions, will probably exceed \$250,000 and will provide the county with a complete blueprint for improvement of the entire road system in the east county area. The cost of the study will be several times the actual and expected gross annual receipts for the quarry. The county is planning a trompe l'oeil denial using the traffic safety brush. By any standard, this is simply a pretext for denial for protection of the Goal 5 mineral and aggregate resource. If protected under Goal 5, mineral and aggregate resources must be protected for economic use, not some esoteric concept of future use unrelated to economic reality. This rule is followed by LCDC, LUBA and, in the *Eckis v. Linn County* case, the Court of Appeals. By removing any economic ability to use the resource through onerous traffic conditions, the county simply denies protection of the resource.

While carefully attempting to maintain proportionality so as to avoid "taking" issues, the county in fact stumbles right into a taking situation by requiring, as a condition of application, conditions so onerous and so unrelated to the effects of the quarry that proportionality is destroyed. This is particularly true when the trucks involved already pay substantial weight/mile taxes, a portion of which are remitted to the county road fund.

In addition, the study requires a complicated, and expensive, analysis which has already been done by the county (e.g., survey of bridge and culvert structures in the area; survey of general road structural adequacy). The study is also not required to address the evidence in the record that gravel is already coming into the east county area (on county roads) from sources outside the county. These existing gravel truck uses must be specifically addressed in any study.

Mr. Smith has consistently stated his willingness to assist the county in road maintenance issues. More than four

years ago, he indicated that he would be willing to pave Howard Canyon Road, the primary traffic corridor. The county has established much more lofty requirements for this small business that the Board must know cannot economically be borne by the business. The result is a denial of protection for the resource. One use should not be responsible for all the county's regional road planning issues. It is that simple.

The County Board of Commissioners is treating the rural road system in eastern Multnomah County as though they were an urban system. The county assumes that the east county roads were developed to serve mobile and bicycle traffic. In reality, east county roads are a series of farm-to-market and forest roads, not recreational roads. They clearly have limits. All of the residents in the area recognize those limits and live with them on a daily basis. To require that one use shall be solely responsible for identifying, qualifying and eliminating those limitations in the county road system is simply unjust and incorrect. Log trucks use the road, but the county makes no effort to review the traffic impacts of timber harvesting in the area. Farm-to-market trucks have effects on the road system, and again, the county makes no provision to assess road impacts to these uses. Tour buses going through the Columbia Gorge have similar impacts. Finally, the record shows that existing gravel trucks coming from existing sources outside the area use the roads in the area and have the same effects. The county has made no efforts to assess the traffic impacts of these uses and require traffic studies from those operators. Instead, the county chooses to disproportionately single out a Goal 5 resource for an extremely onerous traffic planning project that the county should be undertaking as part of its responsibility to the citizens of Marion County.

We are concerned that the "ultimate annual cap" discussed in the revisions, as well as the traffic requirements discussed in the revisions, are not clear and objective standards that are in conformance with the Goal 5 rule.

We are concerned that the traffic conditions imposed by the county are not related to concerns identified in the county's ESEE analysis. There is further concern in this matter the cart is pushing the horse. Mr. Smith wants a small quarry but the road impact study assumes that there will be a big quarry. The size of the traffic study should be proportional to the size of the proposed quarry. We are concerned that there has been no budget for this traffic study. Presently, the budget is

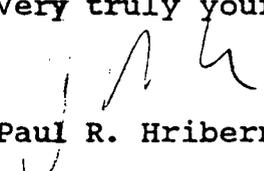
Honorable Beverly Stein, Chair  
September 13, 1994 - Page 5

limitless and may involve unrealistic six-figure expenditures. The study is not a clear and objective requirement which allows the property owner to determine what use and activities are allowed. If the study is a full-blown \$250,000 study, the small Howard Canyon quarry use is not allowed. If the county pays for the study, or there is a small budget assigned to the study, the use may be allowed. Goal 5 requires this should be resolved clearly and objectively.

Finally, we are concerned that the operating hours beginning at 8:30 a.m. are not sufficient to allow material to be brought to job sites in the area, particularly during the summer months when contractors generally choose to begin work early.

Thank you for the opportunity to comment and we will see you in court.

Very truly yours,

  
Paul R. Hribernick

PRH:vc  
S152\PRH42

cc: Mr. Raymond Smith