

**ANNOTATED MINUTES**

*Tuesday, June 27, 1995 - 1:30 PM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**PLANNING ITEM**

*Chair Beverly Stein convened the meeting at 9:30 a.m., with Vice-Chair Sharron Kelley and Commissioner Dan Saltzman present, and Commissioners Gary Hansen and Tanya Collier excused.*

*P-1 SEC 8-94 DE NOVO HEARING, with Testimony Limited to 20 Minutes Per Side, Including Rebuttal, in the Matter of an Appeal of the April 3, 1995 Hearings Officer Decision AFFIRMING, AND MODIFYING the Planning Director Decision and DENYING an Appeal in the Matter of APPROVING, Subject to Conditions, a Requested Significant Environmental Concern (SEC) Permit for an Addition to an Existing Single Family Dwelling, for Property Located at 5830 NW CORNELL ROAD. (Continued from May 23, 1995) 2 HOURS REQUESTED.*

***AT THE REQUEST OF THE APPLICANT DUE TO THE LACK THE PRESENTS OF A FULL BOARD AND FOLLOWING EXPLANATION FROM PLANNER MARK HESS, COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO CONTINUE P-1 TO TUESDAY, JULY 18, 1995, 1:30 PM. HEARING UNANIMOUSLY CONTINUED TO 1:30 PM, TUESDAY, JULY 18, 1995.***

*There being no further business, the meeting was adjourned at 9:35 a.m.*

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

  
Carrie A. Parkerson

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*Thursday, June 29, 1995 - 9:30 AM  
Multnomah County Courthouse, Room 602  
1021 SW Fourth, Portland*

**REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:35 a.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.*

## CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,  
SECONDED BY COMMISSIONER HANSEN, THE  
CONSENT CALENDAR (ITEMS C-1 THROUGH C-15)  
WAS UNANIMOUSLY APPROVED.**

### NON-DEPARTMENTAL

- C-1 *In the Matter of the Appointments of the Following County Employees to the 1995 CAMPAIGN MANAGEMENT COUNCIL: Darlene Young, Warren Cook, Ronnie Meyers, JoAnn Allen, Chris Cameron, Kathy Millard, Elizabeth Rothery, Bobbie Damiani, Linda Easley, Karen Rhein, Lance Duncan, Theresa Sullivan and Jim Stegmiller*
- C-2 *In the Matter of the Appointment of Elizabeth J. Warman, Maureen Casterline, Carol Matarazzo, Larry Hanson and Sheila Hitchen to the PRIVATE INDUSTRY COUNCIL*

### DEPARTMENT OF AGING SERVICES

- C-3 *Ratification of Amendment No. 1 to Intergovernmental Agreement, Contract #100145, between Tri-Met and Multnomah County to Extend the Current Agreement to Purchase Door-To-Door Rides for Frail Elderly Transportation, Effective July 1, 1995 through December 31, 1995*
- C-4 *Ratification of Amendment No. 1 to Intergovernmental Revenue Agreement, Contract #102575, between Multnomah County and the State Senior and Disabled Services Division to Increase FY 1994-95 State and Federal Revenues by \$780,002, Effective Upon Execution through June 30, 1995*

### DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-5 *Ratification of an Intergovernmental Agreement, Contract #101246, between Multnomah County and the City of Wood Village to Install a Main Supply Waterline to Improve Fire Flow and Water Quality to Area North of I-84, Effective July 1, 1995 through June 30, 1996*
- C-6 *Ratification of an Intergovernmental Agreement, Contract #102226, between Multnomah County and Burlington Water District to Replace Undersized Waterline to Reservoir Supply Using \$66,900 in Federal Community Development Block Grant Funds, Effective July 1, 1995 through June 30, 1996*
- C-7 *Ratification of an Intergovernmental Agreement, Contract #102236, between Multnomah County and the City of Fairview for the Conversion of Sub-Standard Fire Hydrants and Fifth Street Storm Drain Using \$46,723 in Federal Community Development Block Grant Funds, Effective July 1, 1995 through June 30, 1995*

- C-8 *Ratification of an Intergovernmental Agreement, Contract #102246, between Multnomah County and the City of Troutdale for Construction of Approximately 50 Wheelchair Ramps on Previously Constructed Sidewalks Using \$34,500 in Federal Community Development Block Grant Funds, Effective July 1, 1995 through June 30, 1996*
- C-9 *Ratification of an Intergovernmental Revenue Agreement, Contract #102266, between Multnomah County Community and Family Services Division and Centennial Public School District to Provide \$41,000 to Fund the Children's Mental Health Services through the Managed Care System, Effective July 1, 1995 through June 30, 1996*

#### **DEPARTMENT OF HEALTH**

- C-10 *Ratification of an Intergovernmental Agreement, Contract #200076, between Multnomah County and Oregon Health Sciences University for Hospital Services for Corrections Prisoners, Effective July 1, 1995 through June 30, 1996*
- C-11 *Ratification of an Intergovernmental Agreement, Contract #200556, between the State of Oregon Children's Services Division and Multnomah County Health Department to Provide 1.0 FTE Public Health Nurse to the State's Family Support Team Project, Midtown Branch Office, Effective July 1, 1995 through June 30, 1996*
- C-12 *Ratification of an Intergovernmental Agreement, Contract #200566, between the State of Oregon Children's Services Division and Multnomah County Health Department to Provide 1.0 FTE Public Health Nurse to the State's Family Support Team Project, East County Branch Office, Effective July 1, 1995 through June 30, 1996*
- C-13 *Ratification on an Intergovernmental Agreement, Contract #202195, between the Oregon Health Sciences University and Multnomah, on Behalf of CareOregon Providing Staff, Purchase Equipment, Software and Support Services to Create and Maintain CareOregon, Effective Upon Execution through June 30, 1998*

#### **SHERIFF'S OFFICE**

- C-14 *Ratification of Amendment No. 1 to Intergovernmental Revenue Agreement, Contract #800575, between the Multnomah County and the Oregon State Marine Board to Provide \$55,000 for the Sheriff's Office River Patrol to Purchase Needed Equipment and Supplies to Conduct Marine Law Enforcement Activities, Effective July 1, 1994 through June 30, 1995*
- C-15 *Budget Modification MCSO #19 Requesting Authorization to Add \$55,000 in Marine Board Revenue to the River Patrol Budget to Appropriate Funds the Marine Board will Provide for the Sheriff's Office to Purchase Needed Equipment and Supplies*

**PUBLIC COMMENT**

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

**RICHARD KOENIG COMMENTED IN OPPOSITION TO FAMILY SERVICES MEDIATION PROCESS.**

**UNANIMOUS CONSENT ITEM**

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, CONSIDERATION OF THE FOLLOWING WAS UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

UC-1 *PROCLAMATION in the Matter of Recognizing the Contributions of Neil Kelley*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF UC-1. COMMISSIONER GARY HANSEN EXPLANATION. PROCLAMATION 95-143 WAS UNANIMOUSLY APPROVED.**

**DISTRICT ATTORNEY'S OFFICE**

R-2 *Ratification of an Intergovernmental Agreement, Contract #700046, between Tri-Met Security Section and Multnomah County District Attorney's Office to Provide One FTE Deputy District Attorney to Implement a Neighborhood Based Prosecution Project in the Area Served by Tri-Met, Effective July 1, 1995 through June 30, 1996*

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. DISTRICT ATTORNEY MICHAEL SCHRUNK WITH STEVE TILLINGHAST, TRI-MET SECURITY PRESENTED EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

R-3 *Ratification of an Intergovernmental Agreement, Contract #500096, between Multnomah County and the Portland Development Commission to Administer the Distribution of \$200,000 Multnomah County Contribution to the Brentwood-Darlington Community Family Resource Center Project*

**COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. DARLENE CARLSON AND SAM GALBREATH PRESENTED EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED. COMMISSIONER COLLIER THANKED MS. CARLSON, MR. GALBREATH AND ALL OTHERS FOR THEIR WORK.**

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, ITEMS R-4 THROUGH R-9; R-11; R-12; R-14 THROUGH R-16; AND R-18 THROUGH R-20 WERE UNANIMOUSLY APPROVED.**

**NON-DEPARTMENTAL**

- R-4 *Budget Modification NOND #15 Requesting Authorization to Transfer \$10,000 from Personal Services to Materials and Services to Pay the City of Portland for Supplies Per Intergovernmental Agreement*
- R-5 *Budget Modification REVENUE #1 Requesting Authorization to Adjust Budgeted Revenues and Expenditure in the Justice Service Special Operation (JSSO) Fund to Match Actual Amounts*
- R-6 *Budget Modification REVENUE #2 Requesting Authorization to Adjust the Revenues to the Correct Amounts and Returns the Excess General Fund Support to Contingency within the 1994-95 Adopted Budget*

**DEPARTMENT OF AGING SERVICES**

- R-7 *Budget Modification ASD #9510 Requesting Authorization to Add \$3,537 in Title XVIII Funds and Expenses for the SHIBA Grant and Add \$86,203 in Administration on Aging "Beyond Bricks and Mortar" Grant Funds*
- R-8 *Budget Modification ASD #9511 Requesting Authorization to Adds \$221,280 to Various Funds from Federal and State Sources to Reflect Changes Made in the State of Oregon Senior and Disabled Services Allocation to Multnomah County*

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

- R-9 *Budget Modification CFSD #12 Requesting Authorization to Decrease the CFSD Target Cities Project Pass Through and Increase the Sheriff's Office Target Cities Budget*
- R-11 *Budget Modification CFSD #14 Requesting Authorization to Increase the Developmental Disabilities Program Budget by \$30,762 to Reflect a New Grant*

*with the University of Oregon and an Increase in Portland Public Schools Revenue*

*R-12 Budget Modification CFSD #15 Requesting Authorization to Make Year End Housekeeping Changes within the Community and Family Services Community Action Program Budget*

**DEPARTMENT OF JUVENILE JUSTICE SERVICES**

*R-14 Budget Modification JJD#6 Requesting Authorization to Delete \$515,366 in Casey Foundation Funds and Make Minor Changes to the Prior to Year End*

**SHERIFF'S OFFICE**

*R-15 Budget Modification MCSO #17 Requesting Authorization to Transfer \$19,833 from Various Materials and Services Line Items to the Equipment Line Item in Various Dedicated Budgets to Pay for the Purchase of Needed Equipment*

*R-16 Budget Modification MCSO #18 Requesting Authorization to Transfer \$1,120,451 from General Fund Cash Transfer to the Jail Levy Fund to Overtime in the Corrections Branch*

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

*R-18 Budget Modification DES #4 (Revised) Requesting Authorization to Transfer \$58,000 from General Fund Cash Transfer to the County Fair Fund to bring the Fair Fund Balance to Zero*

*R-19 Budget Modification DES #14 Requesting Authorization to Adjust the DES Natural Areas, Capital Improvement and Facilities Management Fund Appropriations to Match Anticipated Expenditures*

*R-20 Budget Modification DES #15 Requesting Authorization to Transfer Funds from Data Processing Fund Contingency and Maintenance Contracts to Equipment for Purchase of Disk Storage System*

**DEPARTMENT OF COMMUNITY AND FAMILY SERVICES**

*R-10 Budget Modification CFSD #13 Requesting Authorization to Transfer \$37,856 from General Fund Contingency into the AITP Budget of the Children and Youth Program to Cover a Shortfall in Title XIX Medicaid Revenues*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-10. BARRY CROOK PRESENTED EXPLANATION AND JANICE GRATTON RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF JUVENILE JUSTICE SERVICES**

*R-13 Budget Modification JJD #4 Requesting Authorization to Transfer \$153,993 from General Fund Contingency to Replace a Deficit in the Collection of Title XIX Medicaid Fees*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-13. MR. CROOK EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

*R-17 Second Reading and Possible Adoption of a Proposed ORDINANCE Amending MCC 8.10 Relating to Animal Control, Raising Various Fees and Raising the Minimum Fine Assessed Under MCC 8.10.900(B)*

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE SECOND READING AND ADOPTION. DAVE FLAGLER EXPLANATION. NO ONE WISHED TO TESTIFY. ORDINANCE NO. 823 UNANIMOUSLY APPROVED.**

*R-21 ORDER in the Matter of Accepting Roads Offered by the City of Gresham for Jurisdiction by Multnomah County Effective July 1, 1995 as Provided by ORS 368.062(5) and (7)*

**COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-21. BOB THOMAS EXPLANATION. ORDER 95-144 UNANIMOUSLY APPROVED.**

*There being no further business, the meeting was adjourned at 10:10 a.m.*

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

  
**Carrie A. Parkerson**



# 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

JUNE 26, 1995 - JUNE 30, 1995

*Tuesday, June 27, 1995 - 1:30 PM - Planning Items . . . . . Page 2*

*Thursday, June 29, 1995 - 9:30 AM - Regular Meeting . . . . . Page 2*

*Thursday Meetings of the Multnomah County Board of Commissioners are \*cablecast\* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

*Thursday, 9:30 AM, (LIVE) Channel 30*

*Friday, 10:00 PM, Channel 30*

*Sunday, 1:00 PM, Channel 30*

*\*Produced through Multnomah Community Television\**

**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, June 27, 1995 - 1:30 PM

Multnomah County Courthouse, Room 602  
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PLANNING ITEMS

*Continued A-1  
until 7-18-95  
TC 1:30 pm*

SEC 8-94 DE NOVO HEARING, with Testimony Limited to 20 Minutes Per Side, Including Rebuttal, in the Matter of an Appeal of the April 3, 1995 Hearings Officer Decision AFFIRMING, AND MODIFYING the Planning Director Decision and DENYING an Appeal in the Matter of APPROVING, Subject to Conditions, a Requested Significant Environmental Concern (SEC) Permit for an Addition to an Existing Single Family Dwelling, for Property Located at 5830 NW CORNELL ROAD. (Continued from May 23, 1995) 2 HOURS REQUESTED.

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Multnomah County Courthouse, Room 602  
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CONSENT CALENDAR

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**DEPARTMENT OF ENVIRONMENTAL SERVICES**

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GARY HANSEN  
Multnomah County Commissioner  
District 2



1120 S.W. Fifth Avenue, Suite 1500  
Portland, Oregon 97204  
(503) 248-5219

MEMORANDUM

Chair Stein,

I will be out of town attending an AOC meeting June 26 and 27. I will be back June 28.

Sincerely,

Commissioner Hansen

A handwritten signature in cursive script, appearing to read "Gary Hansen".

CC: Commissioner Kelley  
Commissioner Saltzman  
Commissioner Collier

BOARD OF  
COUNTY COMMISSIONERS  
1995 JUN 16 AM 10:09  
MULTNOMAH COUNTY  
OREGON

TANYA COLLIER  
Multnomah County Commissioner  
District 3



1120 SW Fifth St, Suite 1500  
Portland, OR 97204  
(503) 248-5217

M E M O R A N D U M

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TO: Board Clerks  
Chair, Beverly Stein  
Commissioner Gary Hansen  
Commissioner Sharron Kelley  
Commissioner Dan Saltzman

FROM: Stuart Farmer, Staff Assistant to Commissioner Collier

DATE: June 27, 1995

SUBJECT: Planning Meeting Absence

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Please excuse Commissioner Collier from today's Planning Meeting. The Commissioner has been delayed at the Association of Oregon Counties Legislative Retreat and will not arrive back in Portland in time to participate in the planning meeting.

Thank for your attention to this matter.

1995 JUN 27 AM 11:26  
MULTNOMAH COUNTY  
OREGON

Meeting Date: ~~MAY 23 1995~~ JUN 27 1995

Agenda No: ~~PA~~ P-1

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: Land Use Appeal Hearing in the matter of SEC 8-94.

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING Date Requested: May 23, 1995

Amount of Time Needed: 1 hour

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah Ewing

TELEPHONE: 248-3043

BLDG /ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Mark Hess

**ACTION REQUESTED**

Informational Only  Policy Direction  Approval  Other

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

Hearing for a Land Use Appeal as the result of a Hearing Officer's decision granting approval of a Significant Environmental Concern (SEC) permit for an addition to an existing single-family dwelling at 5830 NW Cornell Road.

1995 MAY 18 AM 9:12  
MULTI-COUNTY  
OREGON

**SIGNATURES REQUIRED:**

Elected Official: \_\_\_\_\_

OR

Department Manager: *[Signature]* *[Signature]*



DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT

2115 SE MORRISON STREET  
PORTLAND, OREGON 97214 (503) 248-3043

11#  
ZONING  
TOTAL  
0000-001  
2307 MAR

300.00  
300.00  
4/21/95  
4:26PM

### NOTICE OF REVIEW

1. Name: McKenzie, Dan
2. Address: <sup>Last</sup> 6125 NW Thompson Rd, <sup>Middle</sup> Portland, <sup>First</sup> OR 97210
3. Telephone: (<sup>Street or Box</sup> 503) <sup>City</sup> 292-6970 <sup>State and Zip Code</sup>

4. If serving as a representative of other persons, list their names and addresses:

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5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)? SEC 8-94

6. The decision was announced by the Hearing officer Planning Commission on 4/13, 1995

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

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

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

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

9. Scope of Review (Check One):

- (a)  On the Record
- (b)  On the Record plus Additional Testimony and Evidence
- (c)  De Novo (i.e., Full Rehearing)

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

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

Signed: Dan McKenzie Date: 4/21/95

**For Staff Use Only**

Fee:

Notice of Review = \$300.00

Transcription Fee: Not Applicable - De Novo Review

Length of Hearing                      x \$3.50/minute = \$                     

Total Fee = \$ 300.00

Received by: M. Hess Date: 4/21/95 Case No. SEC 8-99

RECEIVED

APR 24 1995

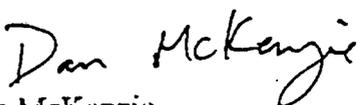
SEC 8-94  
Attachment to Notice of AppealMultnomah County  
Zoning Division

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

**8. Grounds for Reversal of the decision.**

- a. The appellant challenges all parts of the HO decision and all findings.
- b. The appellant believes the HO was wrong in denying all assignments of error listed in the original Appeal Notice of the Administrative Decision. The appellant hereby preserves the right to dispute all assignments of error listed in the Notice of Appeal of the Administrative Decision (copy attached).
- c. The expansion of a single family dwelling may be an allowed use (use permitted outright), however it is also an alteration of a non-conforming use since the second dwelling was constructed prior to the adoption of zoning ordinances and not in conformance with existing county code. The expansion is a permitted use, however the applicant is not exempted from addressing the criteria for alteration of a non-conforming use.
- d. The second dwelling does not meet the criteria in MCC .2052 and .2074.
- e. The HO decision is in violation of MCC .8810 for not addressing the criteria in MCC .8810(E) listed for alterations of non-conforming uses.
- f. The HO decision is in error for not requiring HDP approval for development on lands in the slope hazard area.
- g. The HO decision is in error for not requiring HDP approval for development on lands with average slope of 25% or more. The HO apparently did not visit the site.
- h. The decision is in error for finding that an additional bedroom is not being added upstairs during the proposed project.
- i. The Decision is in error for not requiring Final Design Review approval for the proposed project.
- j. The alteration of the non-conforming use affects the area to a greater negative extent than the existing use.

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

  
Dan McKenzie  
Appellant

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

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

1. The decision approving SEC 8-94 is in violation of MCC 11.15.2046. The subject lot has two dwellings, and an expansion is not permitted for a two dwelling lot.
2. The existence of two dwellings on the subject lot constitute a Non-Conforming Use pursuant to MCC 11.15.7605(B) and (E). The structures were built in 1941, and pursuant to MCC .7605(B), the use on the subject lot occurred before the adoption of the Development Pattern, Comprehensive Plan, and Zoning Ordinances. The the zoning ordinces do not permit two single family dwellings on a substandard lot, and thus the use on the subject lot is a Non-Conforming Use. An expansion of a Non-Conforming Use must meet the criteria of MCC 11.15.8810. The decision is in violation of MCC 11.15.8810, for not meeting or addressing the applicable criteria.
3. The decision is in violation of MCC .8810(A) for altering a use with a physical improvement of greater impact to the neighborhood.
4. The decision is in violation of MCC 11.15.8810(D) since the alteration of a Non-Conforming Use is considered a contested case and requires a hearing.
5. The decision is in violation of MCC 11.15.8810(E), since the alteration will affect the surrounding area to a greater negative extent than the current use. The expansion of an additional bedroom will put additional demands on the septic system which is already in violation of current standards for being too close to a Class 1 stream.
6. The expansion of a substandard lot with two dwellings is an unlisted use. The decision is in violation of county code for not addressing the criteria listed in MCC 11.15.7640.
7. The expansion of the existing structure is in violation of OAR 340-71-205(2) for an increase in sewage flow by the addition of one bedroom without first obtaining an Authorization Notice.
8. The construction of pools and ponds in a Class 1 stream are in violation of MCC 11.15.6404(C), for not obtaining SEC approval for that modification of the stream banks.
9. The building of a concrete wall next to a Class 1 stream is in violation of MCC 11.15.6404(C) for not obtaining SEC approval for that physical improvement.
10. The decision is in violation of MCC 11.15.6710(A) for not obtaining a Hillside Development permit for development and construction in an area identified on the Slope Hazard map.
11. The decision is in violation of MCC 11.15.6710(C) for not obtaining a Grading and Erosion Controll permit for land disturbing activities in the Balch creek drainage basin.
12. I challenge compliance with all SEC criteria as the application includes inaccurate information.

**RECEIVED**

JAN 20 1995

Multnomah County  
Planning Division

*Received 1/20/95*

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

RECEIVED

JAN 20 1995

Multnomah County  
Zoning Division

Received<sup>2</sup> 1/20/95



CASE NAME Appeal of a SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT

NUMBER SEC 8-94

1. Applicant Name/Address

Scott Rosenlund  
5830 NW Cornell Road  
Portland, Oregon 97210

Appellant:

Dan McKenzie  
6125 NW Thompson Road  
Portland, Oregon 97210

ACTION REQUESTED OF BOARD	
<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

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

3. Planning Staff Recommendation

SEC 8-94: APPROVED by the Planning Director

4. Hearings Officer Decisions:

AFFIRM AND MODIFY the Planning Director decision; and,  
DENY the Appeal

5. If recommendation and decision are different, why?

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

ISSUES

(who raised them?)

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

Do any of these issues have policy implications? Explain.

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



# MULTNOMAH COUNTY OREGON

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

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

## Multnomah County Hearings Officer Decision

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

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

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

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

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



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING  
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## HEARINGS OFFICER DECISION

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

APRIL 3, 1995

### SEC 8-94 APPEAL OF AN ADMINISTRATIVE DECISION

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

LOCATION: 5830 NW Cornell Road

LEGAL DESCRIPTION: Tax Lots 31 and 32, of Lot 25, Mountain View Park,

SITE SIZE: 2.00 Acres (Approximate)

PLAN DESIGNATION: Commercial Forest Land

ZONING DISTRICT: CFU (Commercial Forest Use District)

OWNERS: Ralph and Nancy Rosenlund  
5830 NW Cornell Road  
Portland, Oregon 97210

APPLICANT: Scott Rosenlund  
5830 NW Cornell Road  
Portland, Oregon 97210

APPELLANT: Dan McKenzie  
7125 NW Thompson Road  
Portland, Oregon 97210

**RECEIVED**

APR 04 1995

Multnomah County  
Zoning Division

HEARINGS OFFICER DECISION: Deny appeal and affirm administrative decision which conditionally approved a Significant Environmental Concern Permit Application subject to conditions based on the following Findings and Conclusions:

### CONDITIONS OF APPROVAL

1. Except as modified by the conditions below, construct the addition as illustrated and specified in the application.
2. Obtain applicable structural, electrical, and/or plumbing permits from the Portland Building Bureau.
3. Exterior colors on the house shall be natural wood tone(s) or dark earthtones which blend into and do not noticeably contrast with landscape features on the site, and shall be examined in the final inspection.
4. This SEC Permit does not authorize grading, tree removal, or other site or stream work not described in the application narrative or indicated on the site plan. Any areas disturbed due to the construction of the addition shall be protected from erosion, stabilized as soon as practicable, and restored to their prior condition before final inspections(s) or use of the added/remodeled living areas. Future development of the subject site shall occur only in accordance with applicable law and Multnomah County's Zoning Ordinance provisions in effect at the time that development occurs.

### PARTY STATUS

#### PARTIES, AGENTS AND WITNESSES TO THE PROCEEDING

1. Parties:

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

- A. Applicant, Scott Rosenlund, 5830 NW Cornell Road, Portland, Oregon 97210;
- B. Property Owners, Ralph and Nancy Rosenlund, 5830 NW Cornell Road, Portland, Oregon 97210;
- C. Other Persons Supporting the Application:
  - (1) Arnold Rochlin, P. O. Box 83645, Portland, Oregon 97283-0645 (Appeared in person and through written testimony);
  - (2) Ron and Marilyn Bastron, 5750 NW Cornell Road, Portland, Oregon 97210 (Appeared by letter dated March 3, 1995);

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

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

E. Determination of Party Status:

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

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

2. Agents for Parties:

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

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

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

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

3. Agent for Opponents: None.

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer.

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

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

2. Procedural Issues.

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

BURDEN OF PROOF

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

BASIS OF APPEAL

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

1. The decision approving SEC 8-94 is in violation of MCC 11.15.2046. The subject lot has two dwellings, and an expansion is not permitted for a two dwelling lot.
2. The existence of two dwellings on the subject lot constitute a Non-Conforming Use pursuant to MCC 11.15.7605(B) and (E). The structures were built in 1941, and pursuant to MCC .7605(B), the use on the subject lot occurred before the adoption of the Development Pattern, Comprehensive Plan, and Zoning Ordinances. The the [sic] zoning ordinces [sic] do not permit two single family dwellings on a substandard lot, and thus the use on the subject lot is a Non-Conforming Use. An expansion of a Non-Conforming Use must meet the criteria of MCC 11.15.8810. The decision is in violation of MCC 11.15.8810, for not meeting or addressing the applicable criteria.
3. The decision is in violation of MCC 11.15.8810(A) for altering a use with a physical improvement of greater impact to the neighborhood.
4. The decision is in violation of MCC 11.15.8810(D) since the alteration of a Non-Conforming Use is considered a contested case and requires a hearing.

5. The decision is in violation of MCC 11.15.8810(E), since the alteration will affect the surrounding area to a greater negative extent than the current use. The expansion of an additional bedroom will put additional demands on the septic system which is already in violation of current standards for being too close to a Class 1 Stream.
6. The expansion of a substandard lot with two dwellings is an unlisted use. The decision is in violation of county code for not addressing the criteria listed in MCC 11.15.7640.
7. The expansion of the existing structure is in violation of OAR 340-71-205(2) for an increase in sewage flow by the addition of one bedroom without first obtaining an Authorization Notice.
8. The construction of pools and ponds in a Class 1 stream are in violation of MCC 11.15.6404(C), for not obtaining SEC approval for that modification of the stream banks.
9. The building of a concrete wall next to a Class 1 stream is in [sic] violation of MCC 11.15.6404(C) for not obtaining SEC approval for that physical improvement.
10. The decision is in violation of MCC 11.15.6710(A) for not obtaining a Hillside Development permit for development and construction in an area identified on the Slope Hazard map.
11. The decision is in violation of MCC 11.15.6710(C) for not obtaining a Grading and Erosion Control permit for land disturbing activities in the Balch creek drainage basin.
12. I challenge compliance with all SEC criteria as the application includes inaccurate information.
13. The expansion of the building, the construction of the concrete wall adjacent to Balch creek, and the disturbance of the streambed and banks to build pools in Balch creek are in violation of SEC criteria a, e, h, k, l, n, and p.
14. The expansion of the structure requires a Final Design Review approval since two dwellings on the lot amount to a multiplex pursuant to MCC 11.15.7820.
15. The structure exceeds maximum height restrictions.
16. Drainage from the roof should not be diverted into a pond in Balch creek.
17. The proposal is in conflict with the following policies of the Comprehensive Plan: 14, 16, 16D, 16E, 16G, and 37.

## FACTS

### 1. Applicant's Proposal.

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

### 2. Site and Vicinity Information.

- A. The site is located on the northwest side of NW Cornell Road. It is generally sloping to the south. The existing single family dwelling is one of two houses located on the 1.32 acre Lot of Record. Both houses are situated within 100 feet of Balch Creek. Except for the house, deck and driveway areas, the property is covered with a natural forest about 75 years old. Map 1 and Map 2 which depict the site plan and main residence respectively, are attached hereto and incorporated by this reference herein.
- B. The site consists of two tax lots, aggregated for building permit purposes. There is a small guest cottage on the same tax lot as the Rosenlunds' residence. The guest house is used occasionally by visiting family or friends. It is currently unoccupied and not a part of the SEC Permit Request.
- C. The smaller guest house was constructed in 1940. The larger house was constructed in 1946. At the time of the construction of the larger house, it became the primary residential dwelling on the parcel. Both dwellings were constructed prior to the adoption of County Zoning in the area.

### 3. Testimony and Evidence Presented.

- A. During the course of the hearing, both on March 15, 1995, and as continued to March 24, 1995, the following exhibits were received by the Hearings Officer:
  - 1. Photographs (17 color prints) taken 3/14/95 at and around the site;
  - 2. Topography and Soils Map of Balch Creek basin; Rosenlunds' site is noted on center of map;

3. Applicant's memorandum, submitted by Ed Sullivan, dated and received March 15, 1995;
4. County Assessor's information/printout; Ralph Rosenlund submitted with oral testimony;
5. Photographs of the Project Site (8 color copies, mounted on oversized stock);
6. Arnold Rochlin letter RE: Party Status; dated and received March 15, 1995;
7. Arnold Rochlin written testimony on: Appeal of SEC 8-94; dated/received March 15, 1995;
8. Bastron letter dated March 3, 1995; received March 15, 1995; Supports Rosenlund Application;
9. Telford letter dated March 10, 1995; received March 15, 1995; Supports Rosenlund Application;
10. Portion of Slope Hazard Map (9/30/78) detailing property involved (received March 15, 1995);
11. Dan McKenzie (appellant) written testimony: Appeal of SEC 8-94; dated/received 3/15/95;
  - a. Attachment 1, September 29, 1994, letter from M. Ebeling RE sewage disposal violation;
  - b. Attachment 2, October 4, 1994, responses by R. Rosenlund;
  - c. Attachment 3, October 25, 1994, letter from M. Ebeling RE sewage disposal issue; and
  - d. Assessor's info. (printout) RE: improvements on the site: account R-59030-1560;
12. Irv Ewen letter, dated October 17, 1994, RE: Zoning Enforcement status of Rosenlund project; received by Hearings Officer March 15, 1995;
13. Ralph Rosenlund letter, dated July 29, 1994, RE Zoning Enforcement issues in Balch Creek area; received by Hearings Office March 15, 1995;
14. Nancy Rosenlund letter, dated August 25, 1992, and 2-page written testimony RE: driveway crossing design on Thompson Fork and Zoning Enforcement issues generally in Balch Canyon; submitted to Hearings Officer March 15, 1995;

15. Friends of Balch Creek letter, dated January 12, 1992, RE: driveway crossing design on Thompson Fork of Balch Creek and Zoning Enforcement issues generally; submitted to Hearings Officer March 15, 1995;
  16. Page 7-4 Excerpt from Balch Creek Watershed Stormwater Management Plan Background Report (April, 1993, Draft);
  17. Site plan enlargement from SEC 8-94 application; details drainfield, roof drain infiltration on property involved (received March 15, 1995);
  18. Arnold Rochlin Letter containing argument on issues, dated March 22, 1995; and
  19. Multnomah County building permit history on subject parcel.
- B. Mark Hess testified for the county, summarized the history of the application and the administrative decision and subsequent appeal therefrom. Mr. Hess also stated that the two structures on the parcel in question are not located in hazard areas identified on the "Slope Hazard Map". In addition, he also indicated that the land beneath the primary residential dwelling has slopes of less than 25%. In interpreting the provisions of MCC 11.15.6710, the county has looked at the lands beneath the construction area. In this case, the county would look at the land beneath the home to determine if the provisions of the Hillside Development Permit section of the code were applicable.
- C. Ralph Rosenlund, the property owner, testified that he bought the house in 1981. In 1994, he started to re-roof the house, but found that significant water damage had occurred and additional work would need to be done. He proceeded to hire an architect and proceed to the county administrative approval requirements.
- D. Ralph Rosenlund also testified that there was no concrete wall adjacent to Balch Creek. There was an existing rock wall in place when he purchased the property. He and his wife had done some work in replacing rocks in 1983, 1984 and 1985 and in repairing the wall. No further work had been done since the provisions of the SEC code sections were adopted by Multnomah County.
- E. Ralph Rosenlund also testified that there were only three bedrooms in the house prior to commencing work, and there were only three bedrooms that would be in the house after the work would be complete. He indicated that there is no downstairs bedroom and that, at the present time, he and his wife are sleeping on the floor because they had to stop

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

- F. Mr. Scott Rosenlund testified that no soil disturbance would occur or had occurred on the project site. All construction was located on the second floor and that no soil was ever disturbed. Mr. Scott Rosenlund also testified that the average height of the structure would be thirty feet, after completion of the improvement. The highest point of the peak is at 34 feet. The height of the structure is less than the maximum 35 feet allowed in the zone.
- G. Carleen Pagni, of Wintrowd Planning, testified and identified photos submitted as Exhibits in the record.
- H. Jean Ochsner, of Adolphson Associates, Inc., testified that she has been to the Rosenlund house. The remodeling project is entirely vertical. The house is not touching the stream. There would be no wetland or environmental impacts.
- I. Arnold Rochlin testified on his own behalf and submitted a letter establishing his party status.
- J. Mr. Rochlin discussed Mr. McKenzie's experience and prior proceedings with Multnomah County and LUBA. Mr. Rochlin contended that the twelfth assignment of error was unanswerable.
- K. Mr. Rochlin also questioned the second sentence on both Conditions 3 and 4 of the approval, contending that the conditions were an attempt to legislate by an Administrative Decision and suggested that both provisions should be eliminated from the conditions of approval. Mr. Rochlin also contended that Section 11.15.2070 of Multnomah County Code was applicable to this decision. He contended that a dwelling not related to forest management is a conditional use listed in MCC .2050, and should, therefore, be deemed conforming pursuant to 11.15.2070.
- L. Mr. McKenzie contended that if the use in question was a conditional use pursuant to 11.15.2050, it should be subject to design review and that, furthermore, the provisions of MCC .2052 and .2074 would be applicable.
- M. Mr. Sullivan testifying on behalf of the applicant, argued that the reference in MCC 11.15.2070 to conditional uses listed in MCC .2050, was intended to be a categorization of those uses rather than a requirement that such uses had to meet the current conditional use standards.
- N. Mr. Sullivan also testified that there is no provision in the CFU zone that specifies that there could only be one single family dwelling per lot.

- O. Mr. McKenzie, at the time of the continued hearing on March 24, 1995, indicated that he understood that the applicant was not requesting authorization for work in Balch Creek, and that he withdrew his objection to the Administrative permit on those grounds.
- P. Mr. Sullivan indicated that the house constructed in 1946 was the principal residential dwelling on the property. The other dwelling was a secondary dwelling/guest house, which was accessory to the principal use on the site.
- Q. Mark Hess provided information from the county indicating that the county had not recently issued any permits for work on the house constructed in 1940. The county had issued a permit for the dwelling in question in 1969 (Exhibit "19").

#### 4. Zoning Ordinance Criteria

##### 11.15.2044 Area Affected

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

##### 11.15.2046 Uses

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

##### 11.15.2048 Uses Permitted Outright

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

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

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

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

- (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake or floodwater storage area.
- (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.
- (C) The harvesting of timber on lands designated SEC shall be conducted in a manner which will insure that natural, scenic, and watershed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.
- (D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.
- (E) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.
- (F) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.
- (G) Significant fish and wildlife habitats shall be protected.
- (H) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.
- (I) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.
- (J) Extraction of aggregates and minerals, the depositing of dredge spoils, and similar activities permitted pursuant to the provisions of MCC .7105 through .7640, shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, historical or archaeological features, vegetation, erosion, stream flow, visual quality, noise, and safety, and to guarantee necessary reclamation.
- (K) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

- (L) Significant wetland areas shall be protected as provided in MCC .6422.
- (M) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.
- (N) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.
- (O) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.
- (P) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.
- (Q) The applicable policies of the Comprehensive Plan shall be satisfied.

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

11.15.2058 Dimensional Requirements

(C) . . .

Maximum Structure Height - 35 feet

. . .

11.15.6710 Permits Required

- (A) Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal on property located in hazard areas as identified on the "Slope Hazard Map", or on lands with average slopes of 25 percent or more shall obtain a Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC .6715.
- (C) Grading and Erosion Control Permit: All persons proposing land-disturbing activities within the Tualatin River and Balch Creek Drainage Basins shall first obtain a Grading and

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

11.15.7605 Findings Concerning Certain Pre-existing Uses

- (B) Certain land uses established prior to the enactment of the development Pattern, Comprehensive Plans, and zoning ordinances were found to be inconsistent with plan and ordinance purposes and were therefore declared non-conforming uses and subject to limitations of change or alteration.
- (E) The pre-existing uses described in subpart (C) are distinguishable from those non-conforming uses described in subpart (B) which pre-dated any County land use plans or regulations, since the former were established in conformity with the adopted pattern, plans and ordinances, and the latter were not.

11.15.7640 Expansion or Change of Unlisted Use Approval Criteria

**SECTION OMITTED**

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

11.15.7820 Application of Regulations

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

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

. . .

11.15.8810 Alteration of a Non-Conforming Use.

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

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

- (2) A change in the structure or physical improvements of no greater impact to the neighborhood.
- (B) Alteration of a non-conforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.
- (C) An alteration as defined in (A) above may be permitted to reasonably continue the use.
- (D) A proposal for an alteration under (C) above shall be considered a contested case and a hearing conducted under the provisions of MCC .8205 - .8295 using the standards of (E) below.
- (E) An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
  - (1) The character and history of the use and of development in the surrounding area;
  - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;
  - (3) The comparative numbers and kinds of vehicular trips to the site;
  - (4) The comparative amount and nature of outside storage, loading and parking;
  - (5) The comparative visual appearance;
  - (6) The comparative hours of operation;
  - (7) The comparative effect on existing vegetation;
  - (8) The comparative effect on water drainage;
  - (9) The degree of service or other benefit to the area; and
  - (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

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

11.15.2070      Exemptions From Non-Conforming Use

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

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

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

#### 11.15.2050 Conditional Uses

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

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

#### 5. Comprehensive Plan

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

Policy 14 is set forth as follows:

##### Policy 14: Developmental Limitations

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

- A. Slopes exceeding 20%;
- B. Severe soil erosion potential;
- C. Lane Within the 100 year flood plain;
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;
- E. A fragipan less than 30 inches from the surface;
- F. Lane subject to slumping, earth slides or movement.

Policy 16: Natural Resources

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

Policy 37 is set forth as follows:

Policy 37: Utilities

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

Water and Disposal System

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

Drainage

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

Energy and Communications

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

I. Communications facilities are available.

Furthermore, the county's policy is to continue cooperation with the Department of Environmental Quality, for the development and implementation of a groundwater quality plan to meet the needs of the county.

### FINDINGS

#### 1. COMPLIANCE WITH MCC 11.15.2046

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. CONCRETE WALL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (E) **Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. Policy 14: Developmental Limitations.**

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

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

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

B. Policy 16: Natural Resources.

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

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

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

C. Policy 37: Utilities.

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

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

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

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

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

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

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

#### CONCLUSION

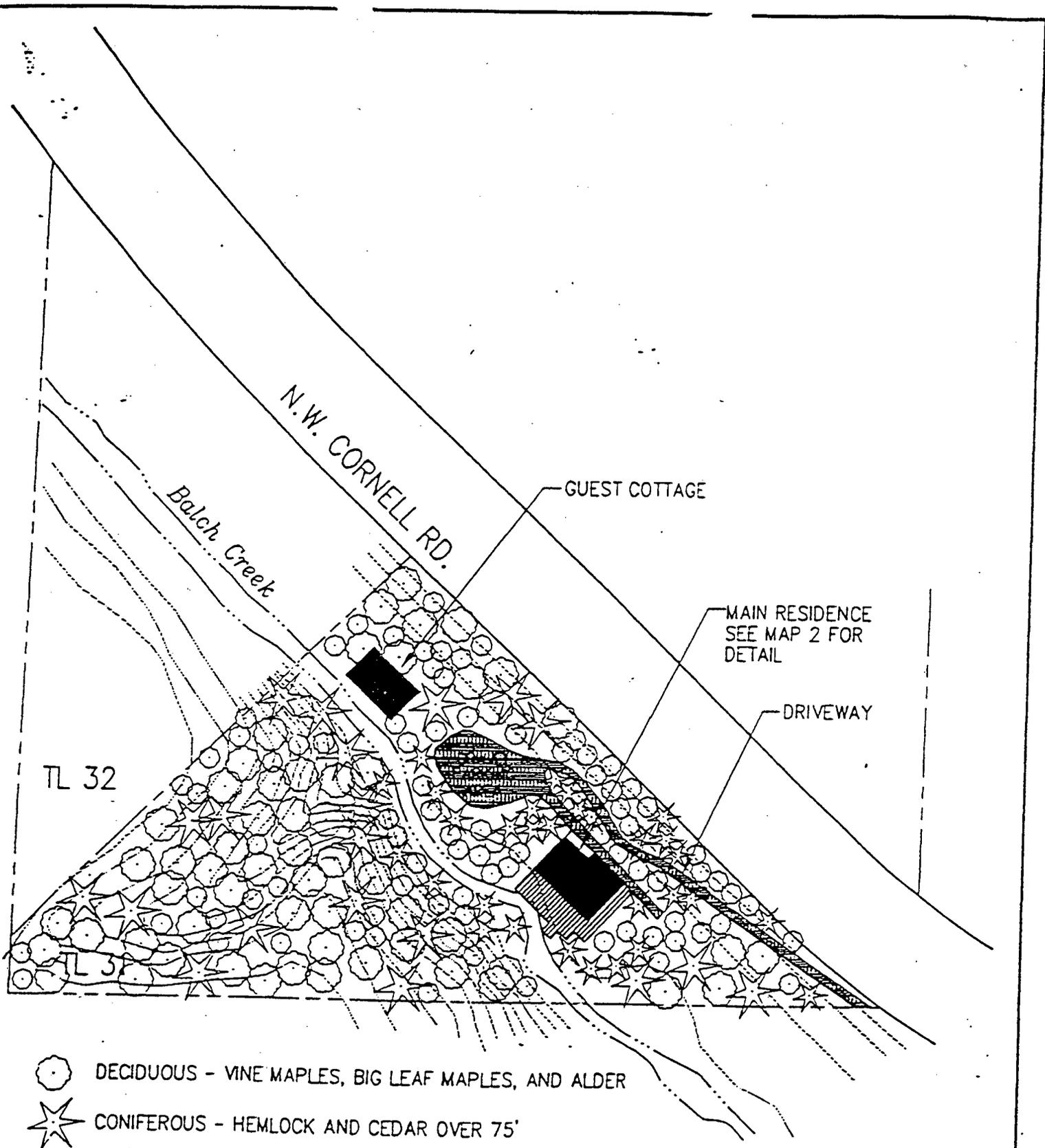
The Hearings Officer concludes that the proposed application for a SEC Permit will satisfy all applicable approval criteria so long as

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

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

A handwritten signature in black ink, appearing to read "Joan M. Chambers", with a long horizontal line extending to the right.

JOAN M. CHAMBERS  
HEARINGS OFFICER



-  DECIDUOUS - VINE MAPLES, BIG LEAF MAPLES, AND ALDER
-  CONIFEROUS - HEMLOCK AND CEDAR OVER 75'

MAP 1  
 SITE PLAN  
 SEC Analysis - Rosenlund Residence

*Winterowd Planning Services*

SCALE: 1" = 80' APPROXIMATE



CASE NAME Appeal of a SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT

NUMBER SEC 8-94

1. Applicant Name/Address

Scott Rosenlund  
5830 NW Cornell Road  
Portland, Oregon 97210

Appellant:

Dan McKenzie  
6125 NW Thompson Road  
Portland, Oregon 97210

ACTION REQUESTED OF BOARD	
<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

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

3. Planning Staff Recommendation

SEC 8-94: APPROVED by the Planning Director

4. Hearings Officer Decisions:

AFFIRM AND MODIFY the Planning Director decision; and,  
DENY the Appeal

5. If recommendation and decision are different, why?

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

ISSUES

(who raised them?)

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

Do any of these issues have policy implications? Explain.

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



# MULTNOMAH COUNTY OREGON

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

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

## Multnomah County Hearings Officer Decision

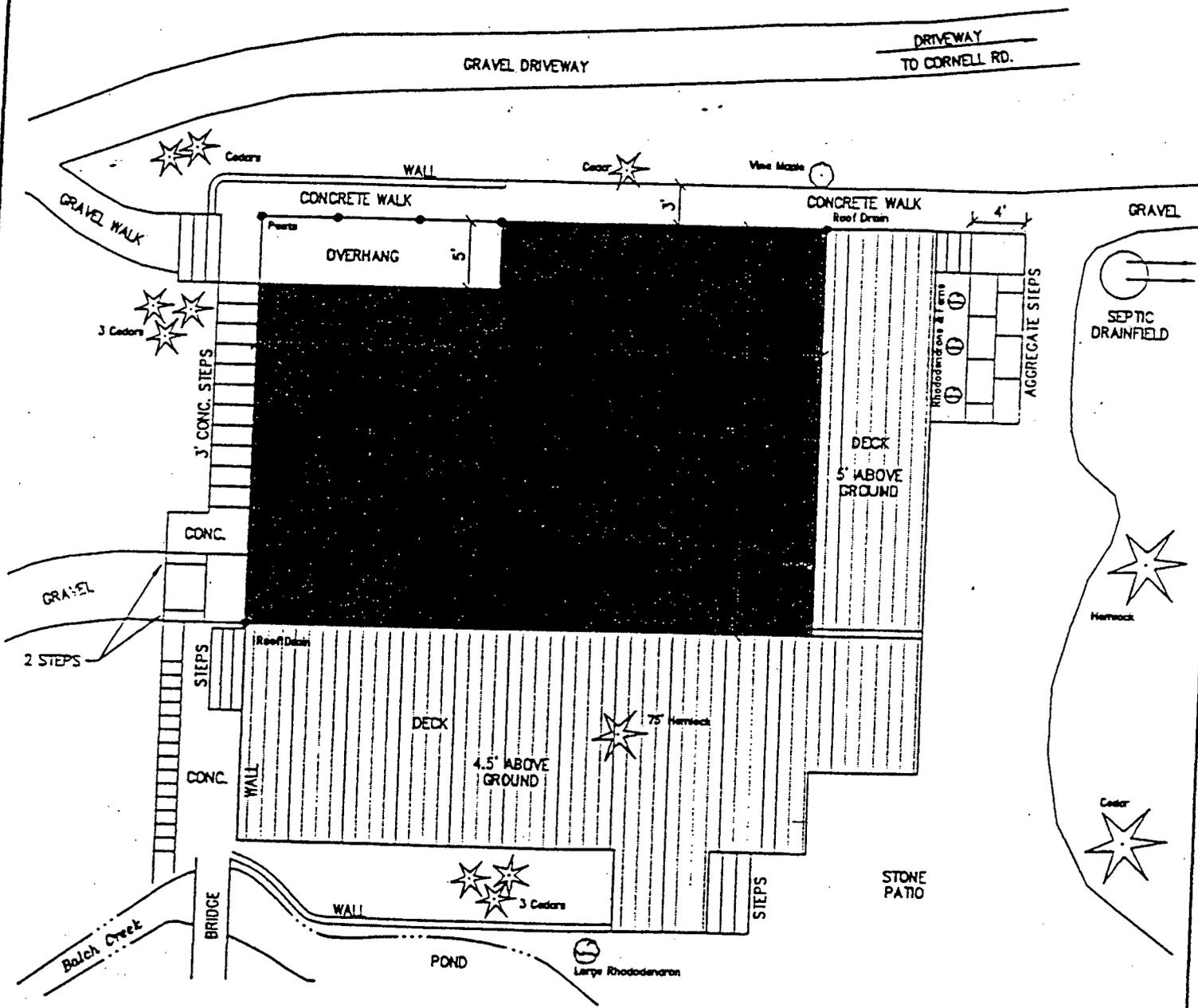
Attached please find a copy of the Hearings Officer's decision in the matter of SEC 8 - 94. A copy of the Hearings Officer's decision is being mailed to those persons entitled to be mailed notice under MCC 11.15.8220(C) and to other persons who have requested the same.

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

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

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

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



MAP 2  
 MAIN RESIDENCE  
 SEC Analysis - Rosenlund Residence

*Winterowd Planning Services*

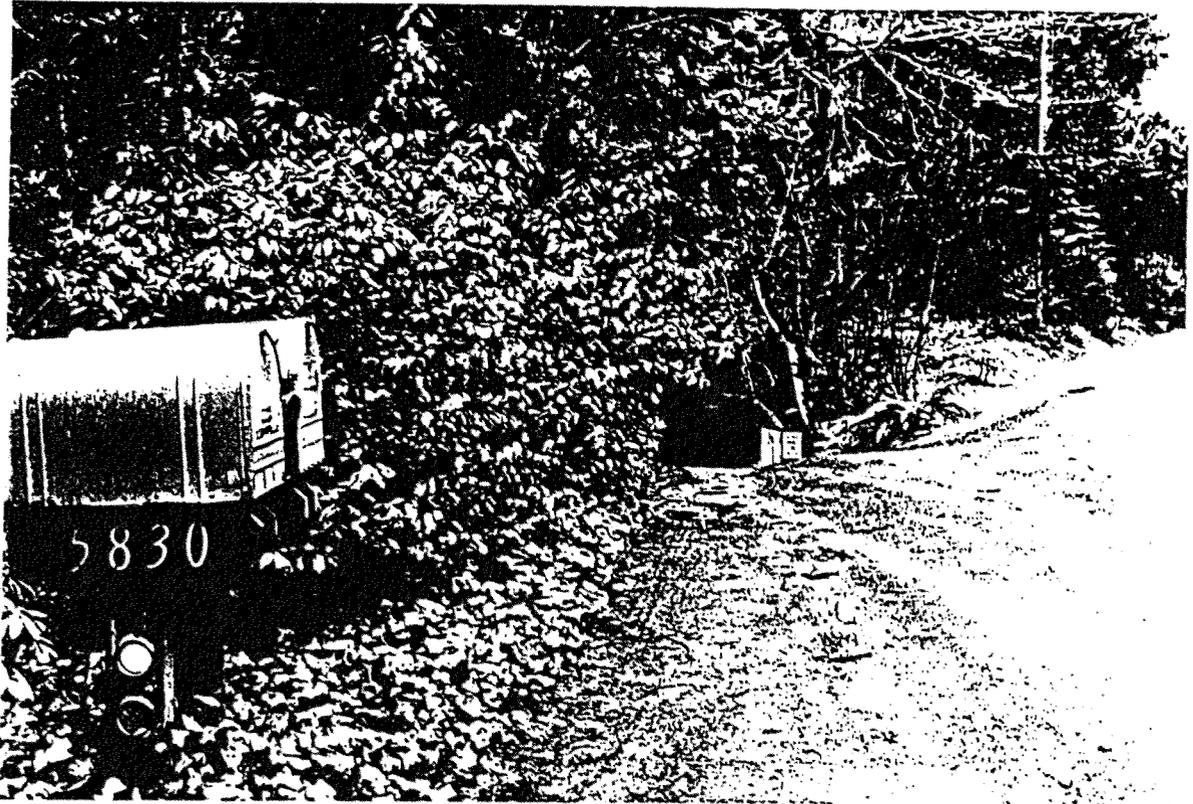
SCALE: 1" = 12'

EXHIBITS RECEIVED BY THE HEARINGS OFFICER

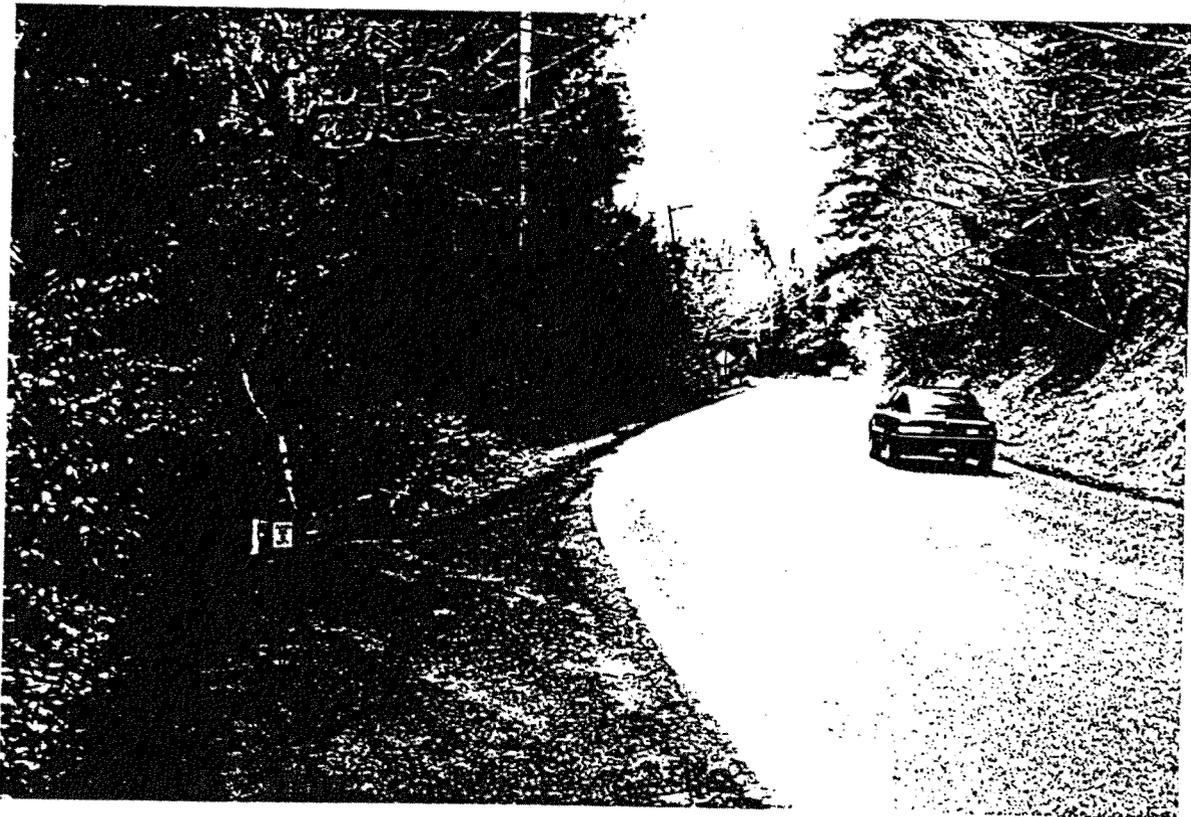
Application File: SEC 8-94

Exhibit	Description
1.	Photographs (17 color prints) taken 3/14/95 at and around the site;
2.	Topography and Soils Map of Balch Creek basin; Rosenlund's site is noted on center of map;
3.	Applicant's memorandum, submitted by Ed Sullivan, dated and received March 15, 1995;
4.	County Assessor's information/printout; Ralph Rosenlund submitted with oral testimony;
5.	Photographs of the Project Site (8 color copies, mounted on oversized stock);
6.	Arnold Rochlin letter RE: <i>Party Status</i> ; dated and received March 15, 1995;
7.	Arnold Rochlin written testimony on: <i>Appeal of SEC 8-94</i> ; dated/received March 15, 1995;
8.	Bastron letter dated March 3, 1995; received March 15, 1995; <i>Supports Rosenlund Application</i> ;
9.	Telford letter dated March 10, 1995; received March 15, 1995; <i>Supports Rosenlund Application</i> ;
10.	Portion of Slope Hazard Map (9/30/78) detailing property involved (received March 15, 1995)
11.	Dan McKenzie (appellant) written testimony: <i>Appeal of SEC 8-94</i> ; dated/received 3/15/95; <ul style="list-style-type: none"><li>a. Attachment 1, September 29, 1994 letter from M. Ebeling RE sewage disposal violation.</li><li>b. Attachment 2, October 4, 1994 responses by R. Rosenlund</li><li>c. Attachment 3, October 25, 1994 letter from M. Ebeling RE sewage disposal issue.</li><li>d. Assessor's info. (printout) RE: improvements on the site: account R-59030-1560</li></ul>
12.	Irv Ewen letter, dated October 17, 1994, RE: Zoning Enforcement status of Rosenlund project; received by Hearings Officer March 15, 1995;
13.	Ralph Rosenlund letter, dated July 29, 1994, RE: Zoning Enforcement issues in Balch Creek area; received by Hearings Officer March 15, 1995;
14.	Nancy Rosenlund letter, dated August 25, 1992, and 2-page written testimony RE: driveway crossing design on Thompson Fork and Zoning Enforcement issues generally in Balch Canyon; submitted to Hearings Officer March 15, 1995;
15.	<i>Friends of Balch Creek</i> letter, dated January 12, 1992, RE: driveway crossing design on Thompson Fork of Balch Creek and Zoning Enforcement issues generally; submitted to Hearings Officer March 15, 1995;
16.	Page 7-4 Excerpt from: <u><i>Balch Creek Watershed Stormwater Management Plan Background Report</i></u> (April, 1993 Draft);
17.	Site plan enlargement from SEC 8-94 application; details drainfield, roof drain infiltration on property involved (received March 15, 1995).

NOTE: above list/descriptions completed and mailed to parties on 3/22/95



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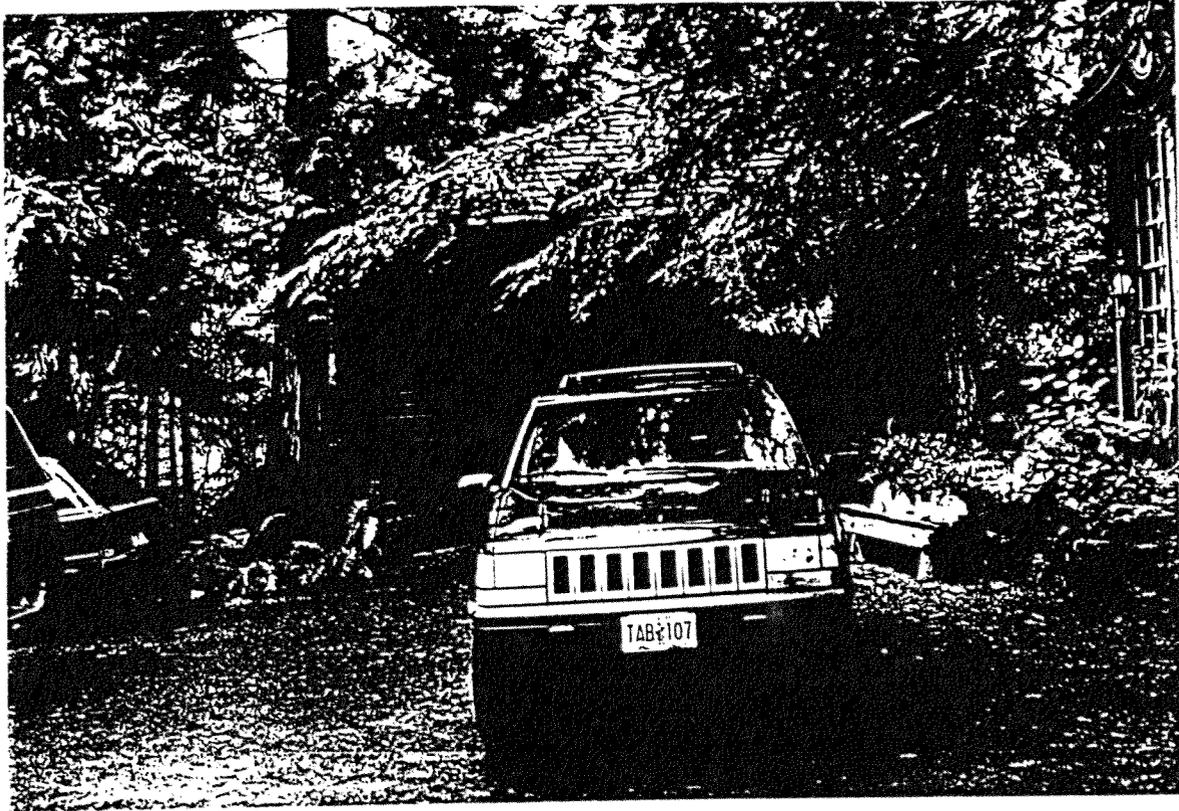
EXHIBIT  
1  
3-15-95



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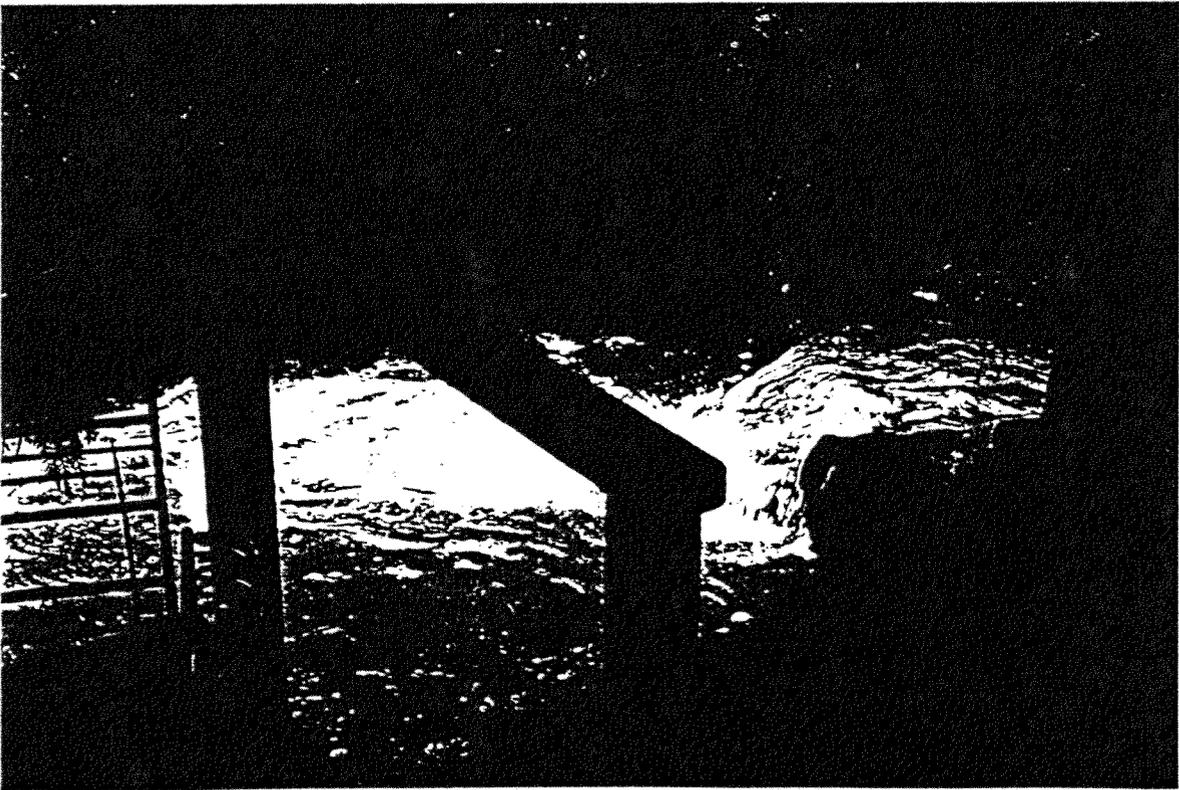


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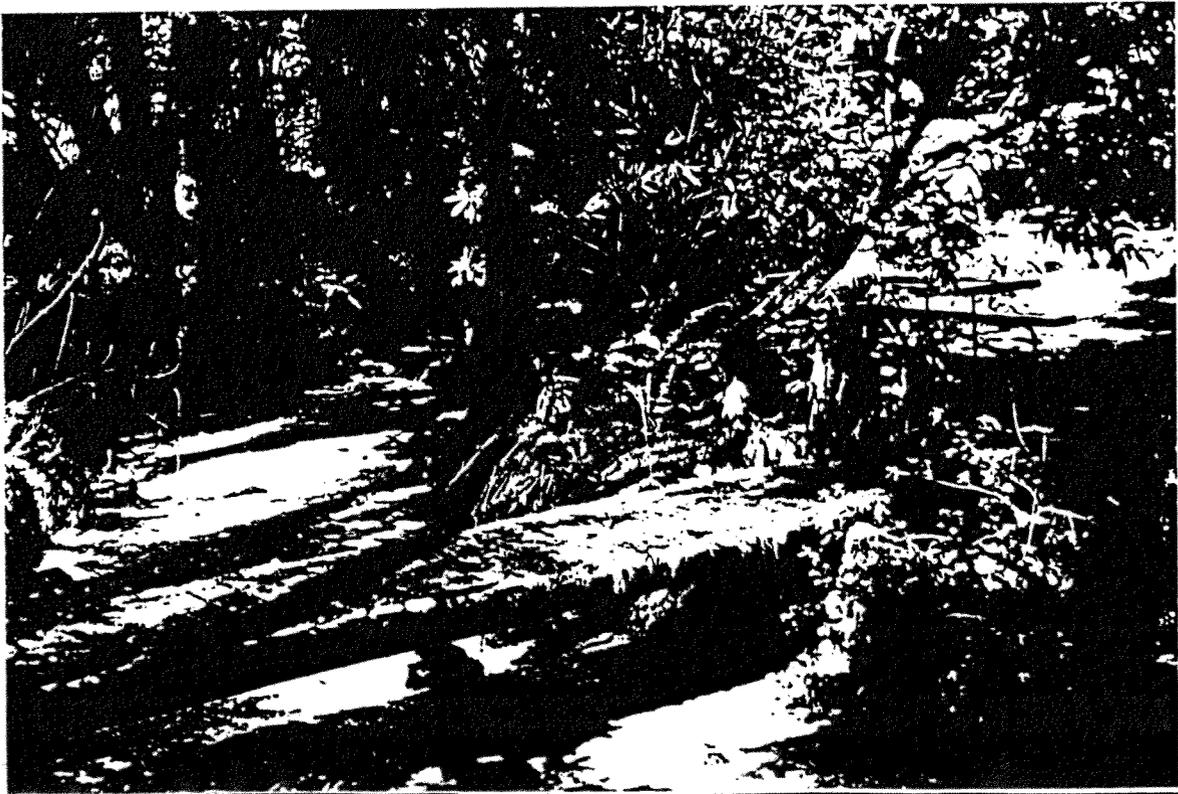
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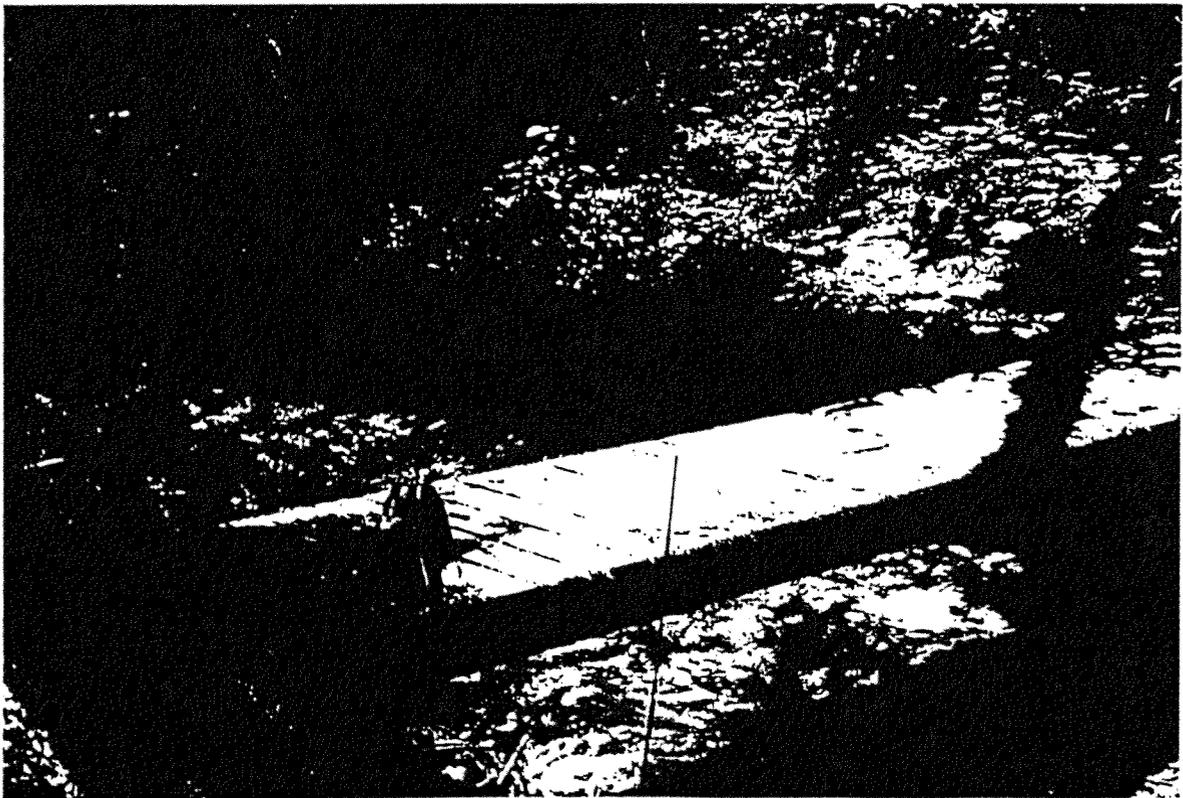
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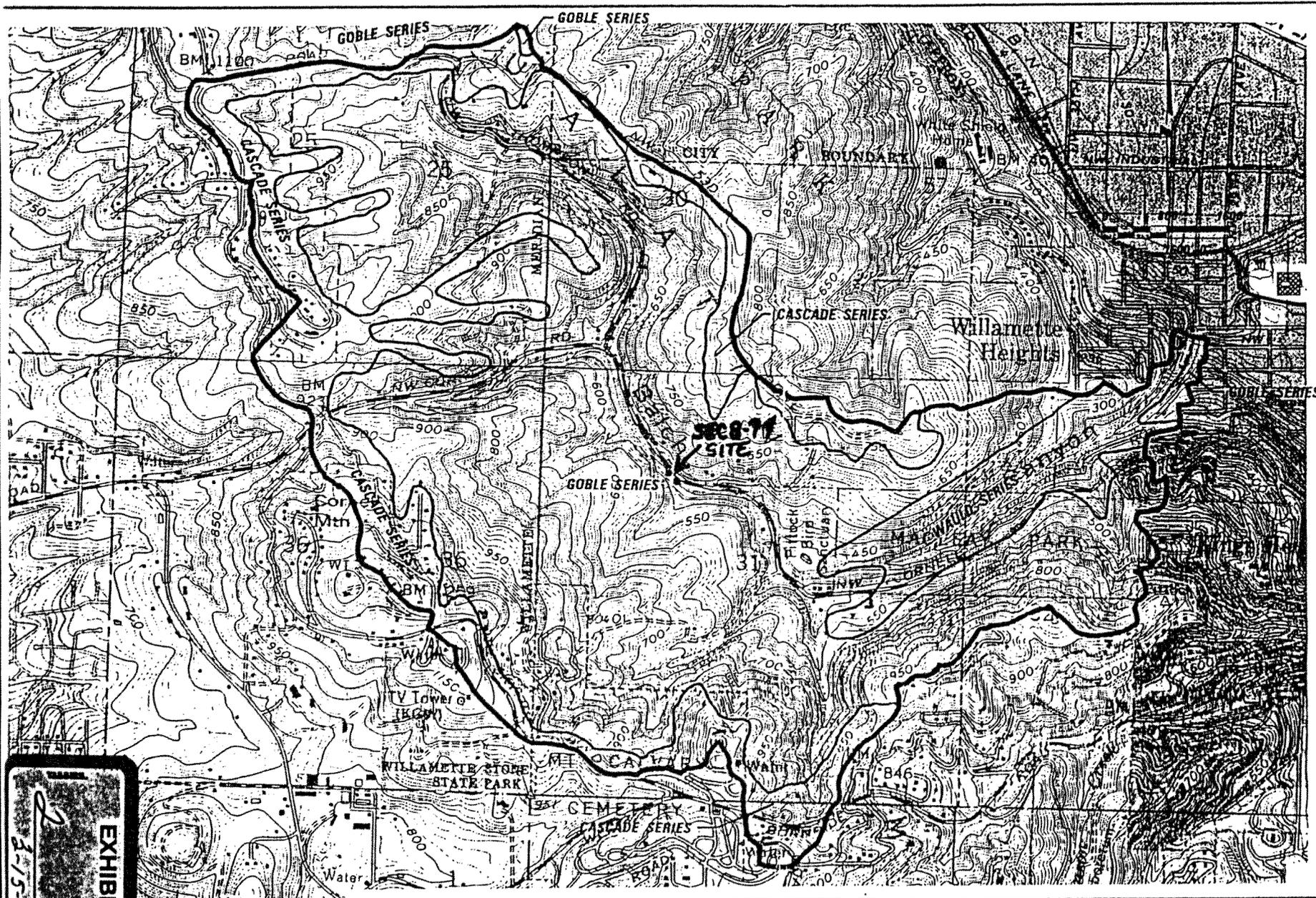


EXHIBIT  
3-15-95

SCALE: 1"=600'	 <b>JMM</b> James M. Montgomery Consulting Engineers, Inc. Portland, Oregon	CITY OF PORTLAND BUREAU OF ENVIRONMENTAL SERVICES	FIGURE 5-2
		BALCH CREEK STORMWATER MANAGEMENT PLAN	
		GENERAL SOIL MAP BALCH CREEK DRAINAGE BASIN	

SEC 8-94  
EXHIBIT 2  
11/11/17

**BEFORE THE LAND USE HEARINGS OFFICER  
OF MULTNOMAH COUNTY, OREGON**

**IN THE MATTER OF THE )  
APPLICATION OF SCOTT ) APPLICANTS'  
ROSENLUND, ET AL. FOR SEC ) MEMORANDUM  
APPROVAL. FILE NO. SEC 8-94. )**

Scott Rosenlund, on behalf of himself and his parents, Ralph and Nancy Rosenlund, has applied to Multnomah County for approval of a SEC Permit, i.e., for development in an area designated by the County as one of "Significant Environmental Concern" under Multnomah County Code ("MCC") 11.15.6404. The particulars of the property, the uses thereon, and this application are contained in pp. 3-4 of the Amended SEC Permit Request prepared by Winterowd Planning Services. The underlying zone is Commercial Forest Use ("CFU") and this zone allows maintenance, repair and expansion of a single family dwelling in such zone as a use permitted outright under MCC 11.15.2048(D). The applicants undertook to do this work last summer after checking with the Planning Department, which used its long-standing interpretation of the county code to the effect that an SEC permit was not required for the proposed work.

The Rosenlunds live on 1.32 acres they own and have a 50 year old dwelling on Balch Creek. The property is heavily wooded. Trees overhang the roof and there is a thick understory of native plants. The roof was damaged by the trees and had to be replaced. A building permit was secured for that work and, while underway, the Rosenlund's contractor removed the old roof and found that the supporting and interior walls, and part of the floor, were rotten and required replacement. Old, wet, rotting floor insulation also had to be removed and the brick work in the chimney also needed partial replacement.

Since at this point most of the second floor was torn up, the Rosenlunds hired a builder to design a replacement second floor. They decided on a shed-type metal roof with a steeper pitch, which was a more practical choice for the house, because of the need to carry off tree leaves and needles more efficiently and because of the lessened danger of forest fire.



The project did not change the number of bedrooms (three) on the second floor, nor the full bathroom which existed there, although its location was slightly adjusted to provide for a window and better ventilation. No work was proposed, done, or requested for the lower floor.

After building permits were issued, the County staff received complaints from the appellant, and changed its mind, determining that an SEC permit was, in fact, necessary. The County issued a stop work order last fall, though allowing the area to be closed up to avoid a complete loss of investment. However, the Rosenlunds, who are older people, have not been able to occupy the upper story of their home and are reduced to sleeping on their downstairs floor for the last six months. Their SEC application was approved by staff, however, appellant has challenged that grant on 17 grounds. Applicants will respond to each ground in this memorandum; however, since many of the grounds are related, applicants will group their responses as appropriate.

Perhaps the most important aspect of this appeal is the legal posture of the application. MCC 11.15.2048(D) states that maintenance, repair, and expansion of a single family dwelling in the CFU zone is an outright use. MCC 11.15.6404 states that the uses permitted in the underlying zone are also permitted in the SEC District, though the location, design, change or alteration of such a use is subject to the permit requirements of 11.15.6406. Thus, the issue is not whether the use may occur, but how it may be implemented.

#### **GROUND 1-6 (ALLEGED NONCONFORMING USE)**

In this portion of his appeal, appellant claims a violation of several portions of the County Code. Those claims all boil down to the contention that having two dwellings on property in the same ownership is a violation of the County Zoning Ordinance, specifically MCC 11.15.2046<sup>1</sup>.

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<sup>1</sup> This provision states:

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

Appellant ignores the fact that the second structure on this lot is only 851 square feet and is not the subject of this application.

While alleging the use is lawfully nonconforming, Appellant never really gets down to the claimed prohibited use in this district; merely assuming that this is the case. As indicated in MCC 11.15.2046, the prohibition does not apply to uses permitted in the district. There is an explicit category of permitted use for maintenance, repair, or enlargement of an existing single family dwelling. There is thus no nonconformity.<sup>2</sup> As a result, the provisions relating to pre-existing uses in MCC 11.15.7605, and the provisions relating to alterations of nonconforming uses in MCC 11.15.8810 are not applicable.<sup>3</sup>

#### **GROUND 7 (ALLEGED INCREASE IN SEWAGE FLOW)**

The first answer to this ground is that there is no added bedroom and therefore no increase in sewage flow. There are two appendices attached to the application which bear out these statements, viz. the letter from Jean Ochsner, Senior Environmental Scientist, dated October 21, 1994, finding no impacts to natural resources by these changes, and the letter of

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<sup>2</sup> This is different from the contention that only one dwelling or residential structure may be allowed in the typical single family zone. In the CFU district, existing dwellings are legislatively approved, as are the specified alterations listed in 11.15.2048(D).

<sup>3</sup> Appellant may wish the applicant to build a stormwater drainage facility in place of the pre-existing roof drain, which takes rainwater (plus cedar needles and bugs) directly into Balch Creek. Construction of such a facility would require movement of dirt and possible removal of vegetation, which would bring other SEC criteria into play, even if this application were not subject to the county's nonconforming use criteria. The applicant has sought to avoid such disturbance and to limit this application to the reconstruction activity at their home.

Moreover, MCC 11.15.2070(A) states:

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

MCC 11.15.2070(B) defines "change in use," which is not an issue in this case. The reference to MCC 11.15.2050 is to the listing of conditional uses in the CFU zone, which includes a reference to 11.15.2052 (non-forest dwellings). Thus, the nonconforming use provisions of MCC 11.15.8505 are not applicable in any event.

Michael G. Ebeling, RS, who indicates that the same number of bedrooms (three) are provided in this proposal as existed in the dwelling before the changes.<sup>4</sup>

Moreover, there is no approval criterion shown to be violated by the application now under consideration. And, contrary to the allegations in this ground, there will be no increase in sewage flow from the changes in the structure. Finally, the applicants have received all required subsurface disposal permits and authorizations.

#### **GROUND 8 AND 9 (CONSTRUCTION OF POOLS AND PONDS AND THE STONE WALL)**

As with Ground 7, there is no approval criterion shown to be violated even if the appellant were correct in its allegations. However, the appellant is not correct. There is no indication that any pools and ponds on the property are not pre-existing. And the stone wall improvements were undertaken and completed before the designation of Balch Creek as a Class I stream, which would have required an SEC permit for that structure. The stream enhancement, which consisted entirely of placing downed trees in the creek, was actually done by the Oregon Department of Fish and Wildlife and does not appear to require a SEC permit. Additionally, this application does not involve construction of pools, ponds or walls, as even a cursory review of the application materials will disclose.

#### **GROUND 10 (HILLSIDE DEVELOPMENT PERMIT)**

Appellant alleges a violation of MCC 11.15.6710(A) for the alleged failure of the applicants to secure a Hillside Development Permit. However, requiring a permit where there is no ground disturbing activity is contrary to the provisions of the Hillside Development regulations. A cursory review of MCC 11.15.6700 demonstrates that these provisions were enacted to provide review for ground disturbing activities. The purpose provisions show this permit is required to assure to "minimize public and private losses due to earth movement hazards

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<sup>4</sup> Mr. Ebeling also found no leak in the existing septic tank system which could pollute Balch Creek.

in specified areas and minimize erosion and related environmental damage".<sup>5</sup> Similarly, the provisions of MCC 11.15.6720 and .6725 both contemplate the presence of ground disturbing activities. The Hearings Officer should find, in construing these ordinance provisions, if there be no ground disturbing activities, there is no need for the HDP permit.

Even if such a permit were required, that separate obligation is unaffected by the permit before the Hearings Officer to which these proceedings are limited. An applicant need not combine all requested permits. ORS 215.416(2). Finally, if there were any connection between the two permits, the former may be made a condition of approval of the latter.

#### **GROUND 11 (GRADING AND EROSION CONTROL PERMIT)**

As with the previous ground, appellant asks that the applicants perform the superfluous by securing approval of a grading and erosion control permit in the absence of ground disturbing activities. The presence of such activities are a precondition for requiring the permit under MCC 11.15.6710(C).

#### **GROUND 12 (GENERAL CHALLENGE TO SEC CRITERIA)**

Appellant states under this appeal ground:

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

Given the detail with which appellant has favored the applicants under the other grounds for appeal, the omission of specific grounds is likely a deliberate attempt to extend the hardship caused to the applicants as long as possible. The application and the staff decision contained detailed findings and conclusions regarding each SEC criterion, which function as design (rather than use) criteria. Appellant should have provided fair notice of his concerns in its appeal. The

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<sup>5</sup> The more specific portions of this purpose statement state that the regulations are intended to:

(E) Regulate land development actions including excavation and fills, drainage controls and protect exposed soil surfaces from erosive forces; and

(F) Control stormwater discharges and protect streams, ponds and wetlands within the Tualatin Basin and Balch Creek Drainage Basin.

applicants will attempt to deal with any more specific grounds advanced at the time of the hearing in this case.

**GROUND 13 (VIOLATION OF CERTAIN SEC CRITERIA BY THE HOUSE EXPANSION, WALL AND POOLS)**

As indicated above, the wall and pool are not part of this application and are not an application before the Hearings Officer. As indicated above, these improvements were not part of the project for which the challenged SEC permit was issued. They were done by a state agency to manage its own instream natural resource. If they are subject at all to SEC permits, then this is a matter between the County's code enforcement personnel and ODFW. In any event, these matters are not part of the request before the Hearings Officer, nor relevant to the conformity of this request to the SEC permit standards.

That leaves the changes to the Rosenlund home. Appellant challenges conformity of this application to the provisions of MCC 11.15.6420(A), (E), (G), (H), (K), (L), (N) and (P), but fails to offer specific objections. In the absence of such objections to provide sufficient detail to respond to the same, applicants are unable to respond beyond the material contained in the application. Again, applicants will attempt to deal with the specific grounds advanced at the time of the hearing.

**GROUND 14 (NONCONFORMING MULTIPLEX USE)**

This ground is generally covered in the response to Grounds 1-6, with respect to the nonconforming use issue. However, the additional point to be made is that two separate houses on a lot are not a "multiplex" development, as that term is defined by MCC 11.15.0010.

**GROUND 15 (HEIGHT RESTRICTIONS)**

Under this ground, appellant states that the structure "exceeds maximum height restrictions." The maximum height is 35 feet under MCC 11.15.2058(C). The only reason for the zoning violation notice belatedly brought on the building permit issued for the home remodeling was that it did not have an SEC permit. The building inspectors did not find a height violation,

nor is height a criterion for approval of this permit utilizing the definition of "building height" in MCC 11.15.0010.

**GROUND 16 (DRAINAGE FROM THE ROOF SHOULD NOT BE DIVERTED INTO A POND IN BALCH CREEK)**

Besides the obvious precatory nature of the statement of this point, appellant fails to document violation of any approval criterion, regarding such drainage. See also note 3, infra.

**GROUND 17 (ALLEGED VIOLATION OF CERTAIN PLAN POLICIES)**

Under this heading, appellant lumps together certain policies of the MCCP by number and suggests, without elaboration, that the same are violated. The applicants has addressed all plan policies cited except Policies 14 and 16.

Policy 14 directs development away from areas with development limitations, except on a showing that construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or property. Appellant does not identify the harm, cost, or adverse effects on which he predicates application of this policy. Moreover, the strategies which implement this policy are directed at identification of development limitation and adoption of regulatory provisions to meet the challenges of such limitations. The policy is not aimed at a case by case evaluation of permits. See Rhyne v. Multnomah County, 23 Or LUBA 442, 445, n.1 (1992).

Policy 16 protects natural resource areas and require a finding in quasi-judicial cases that the long-range availability and use of certain resources (including fish and wildlife habitats) will not be limited and impaired. It is important to place this policy in context. The applicants are merely remodeling their home. There is no alternative for them, except allowing their roof to cave in or building elsewhere on their property, which would implicate additional harm. The Hearings Officer can conclude that this policy is met. Again, the strategies for this policy are aimed at the County's regulations, which include MCC 11.15.6420(A), (D), (G), (H), (K), (L), (M), (O), and (P). Compliance with these standards supports compliance with these policies.

## THE CONDITIONS OF APPROVAL

Generally, the applicants have no difficulties with the proposed conditions of approval; however, they do request additional precision in the wording of the conditions to avoid future difficulties.

For example, the last sentence of condition 3 provides that future color or material changes to the exterior be reviewed and approved by the design staff. This follows a sentence which provides that exterior colors on the house under the permit under consideration in this case, be reviewable only if visible from the public right of way. That same exception should also apply to future changes.

Secondly, the last sentence of condition 4, providing for future SEC permits may result in future unnecessary disputes. This sentence either requires an SEC permit where it is not otherwise required or redundantly states what the law already requires. In either case, the sentence should be deleted or changed to something like the following:

Future development of the subject site shall occur only in accordance with applicable law, including the provisions of County SEC regulations.<sup>6</sup>

## CONCLUSION

For the reasons given above, the appeal in this case should be dismissed and the SEC permit should issue.

DATED this 15th day of March, 1995.

\_\_\_\_\_  
Edward J. Sullivan, OSB 69167  
of Attorneys for Applicants

---

<sup>6</sup> This same sentence also purports to control timber harvesting, by requiring an SEC permit for tree cutting of trees over 8-inch diameter. State law prohibits such county regulation, however. 1000 Friends of Oregon v. LCDCC (Tillamook County), 303 Or 430, 737 P2d 607 (1987).

MAGK01AP M67  
MAGK120P MAGK120M

MULTNOMAH COUNTY PUBLIC A&T SYSTEM  
\*\*\* QUERY NAME - REAL PROPERTY \*\*\*

09/16/94  
QNAME 15:10

=====  
CMD: QNAME ACCT NBR: R590301560 TAX YEAR: \_\_\_\_\_  
=====

ACCT NBR: R-59030-1560

MAIL:

ACCT STATUS:

SOURCE NAME/ADDRESS

OWNER1 CARRASCO, PRISCILLA B  
TXPR1 TO ROSENLUND, RALPH E TR &  
TXPR2 ROSENLUND, NANCY J TR  
MAIL1 5900 NW CORNELL RD  
MAIL2 PORTLAND, OREGON 97210

SITUS

5830 NW CORNELL RD  
CITY: PORTLAND ZIP: SEQ: 1  
LEVY CODE: 217 VCHR ACTION: 808146  
ANNEX: 2733 DIVISION:  
APPR ST: APPR CODE: K  
MSG 1:  
MSG 2:  
MSG 3: ROSENLUND, R TR ET AL25461894  
RATIO CODE: 441  
STATE RATIO CODE:  
MAP: 2923  
SID:

BOOK/PAGE: 1000/0842 YEAR: 74

TAX ROLL DESCRIPTION

ADDN: MTN VIEW PARK & ADD 1 LOT  
TL# 31 OF 25

=====  
ENTER=QUERY F1=HELP F2=PRINT F3=EXIT F4=SITUS F6=PREV F9=NEXT F12=CANCEL  
=====

=> FUNCTION COMPLETE (9031)

MAGK01AP M67

MULTNOMAH COUNTY PUBLIC A&T SYSTEM

09/16/94

MAGK180P MAGK180M \*\*\* QUERY RESIDENTIAL CHARACTERISTICS \*\*\*

QCHAR 15:10

=====  
CMD: QCHAR ACCT NBR: R590301560 TAX YEAR: \_\_\_\_\_  
=====

ACCT NBR: R-59030-1560

ACCT STATUS:

SOURCE NAME/ADDRESS

OWNER1 CARRASCO, PRISCILLA B  
TXPR1 TO ROSENLUND, RALPH E TR &

SITUS

5830 NW CORNELL RD  
CITY: PORTLAND ZIP: SEQ: 1

RATIO CODE: 441 APPR DIST: 5 PARCEL SIZE: 1.32 ACRES

ST RATIO CODE: NEIGH CODE: 510

YEAR APPRAISED: 91 MAP: 2923 STATE ID:

IMPROVEMENTS CHARACTERISTICS:

IMP: 1 YEAR BUILT: 1946 USE CODE: B DWG SGL STR TYPE: D 1 ST W/BASE/ATTIC

ARCH STYLE BDRMS: 3 TOT FIN: 1652 TOT UNF: 1008

GARAGE-TYPE: SQ FT: STR CLS: 4.0

IMP: 2 YEAR BUILT: 1940 USE CODE: B DWG SGL STR TYPE: B 1 STORY W/BASE

ARCH STYLE BDRMS: 2 TOT FIN: 870 TOT UNF: 580

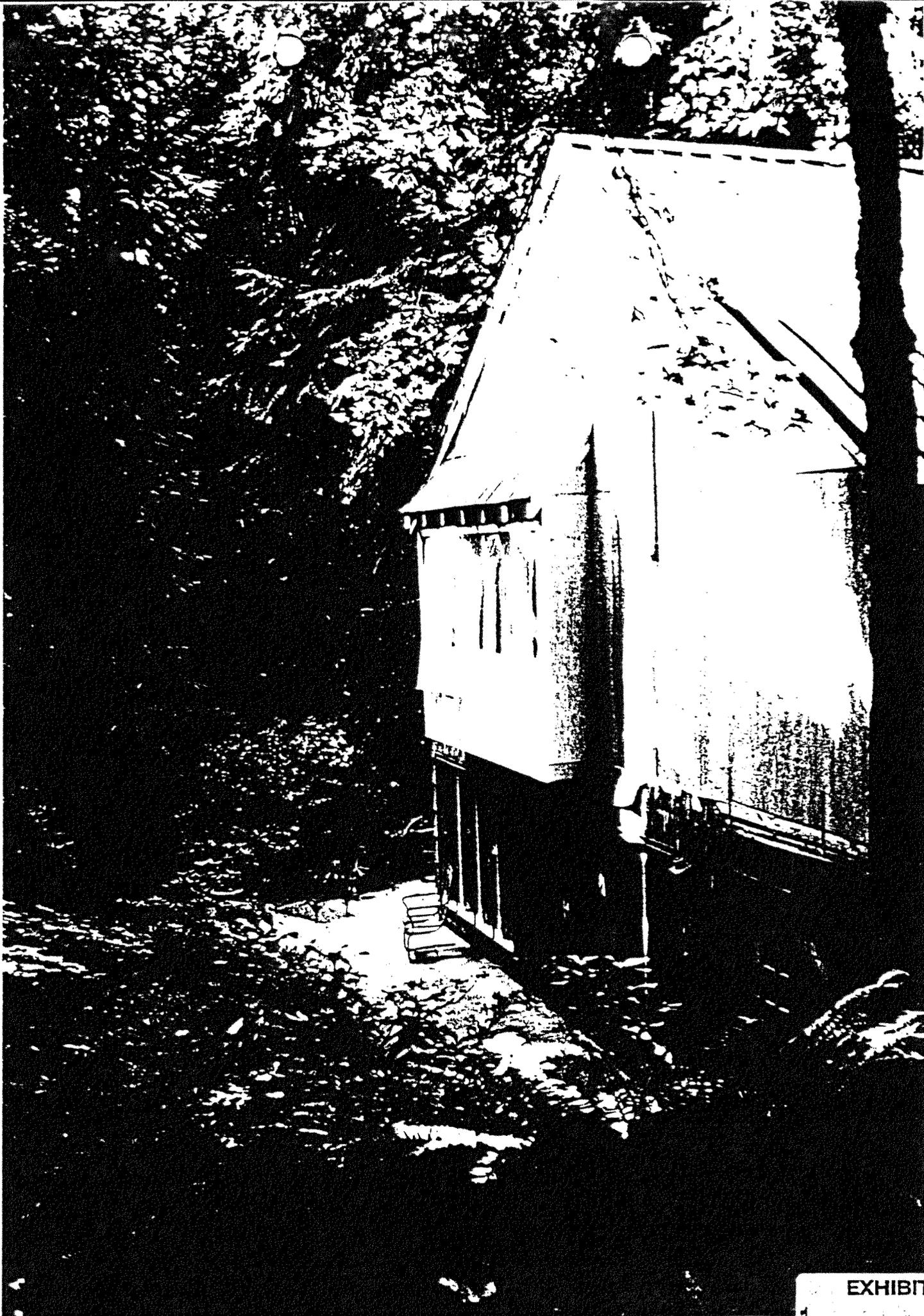
GARAGE-TYPE: SQ FT: STR CLS: 3.0

=====  
ENTER=QUERY F1=HELP F2=PRINT F3=EXIT F6=PREV F7=BKWD F8=FWD F9=NE

C.L. LL 0 L

EXHIBIT (H0)

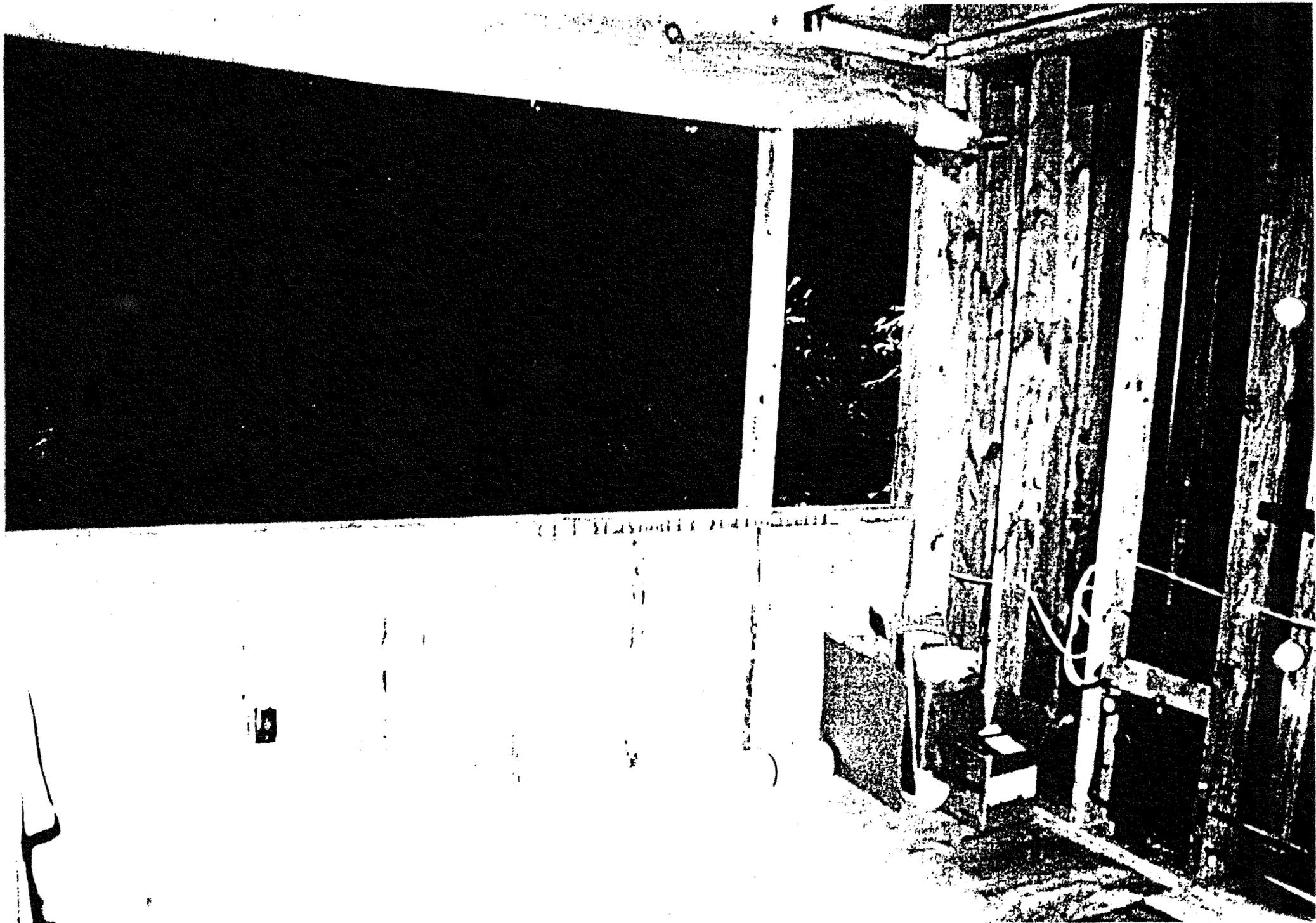




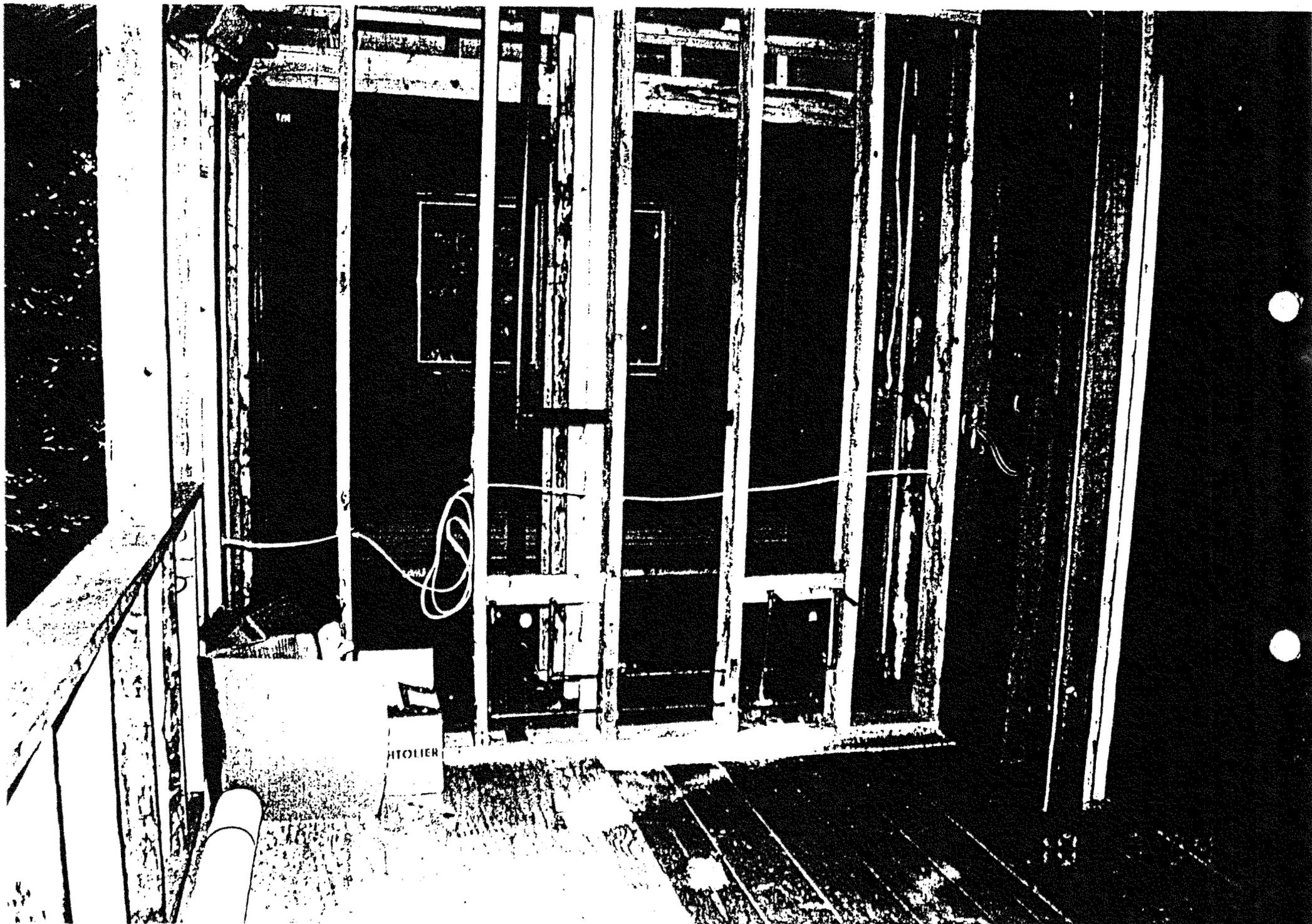
9/15/85

EXHIBIT

5

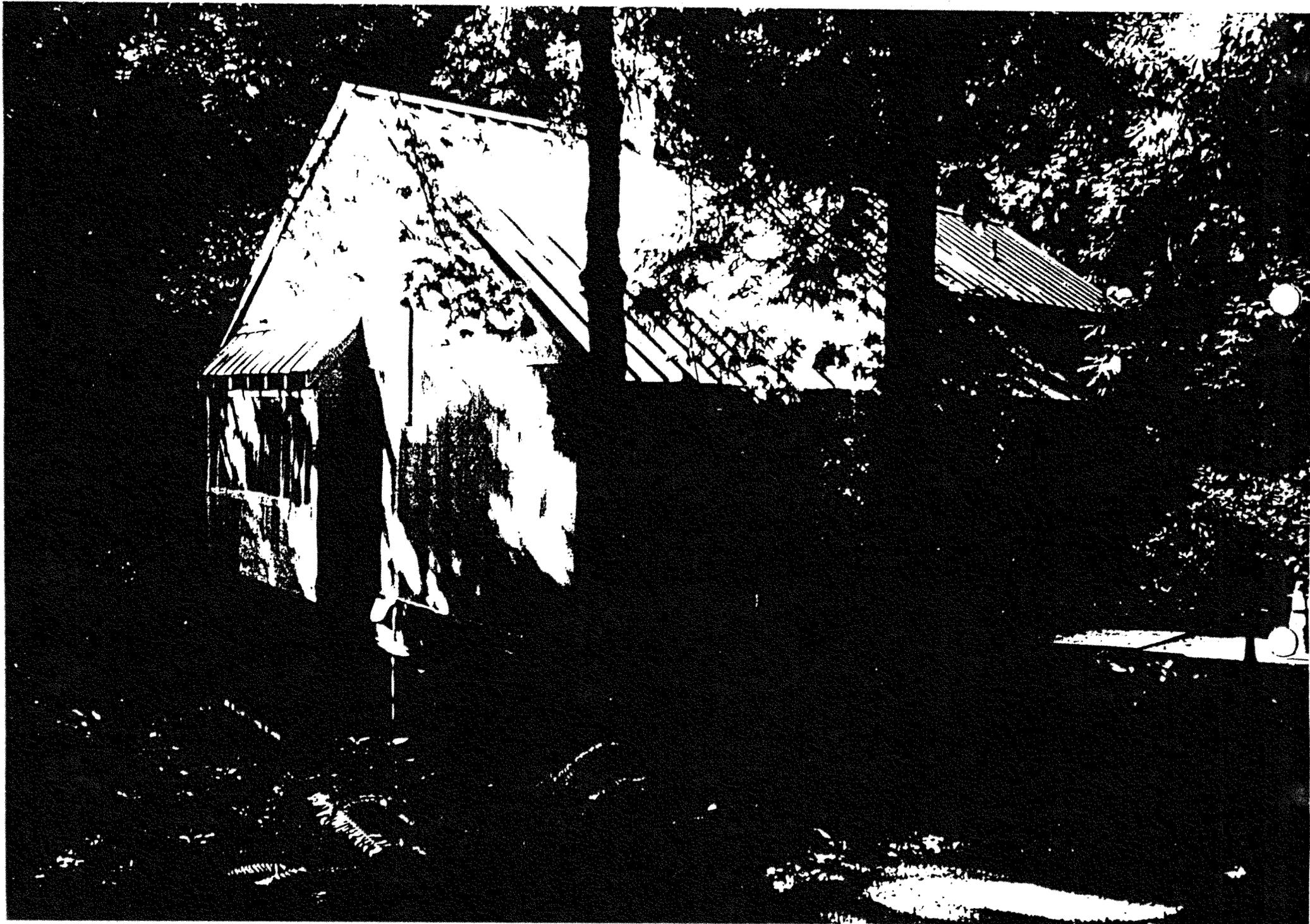


INCREASED ROOF HEIGHT MAINTAINS EXISTING VEGETATION



ROTTING WOOD REPLACED

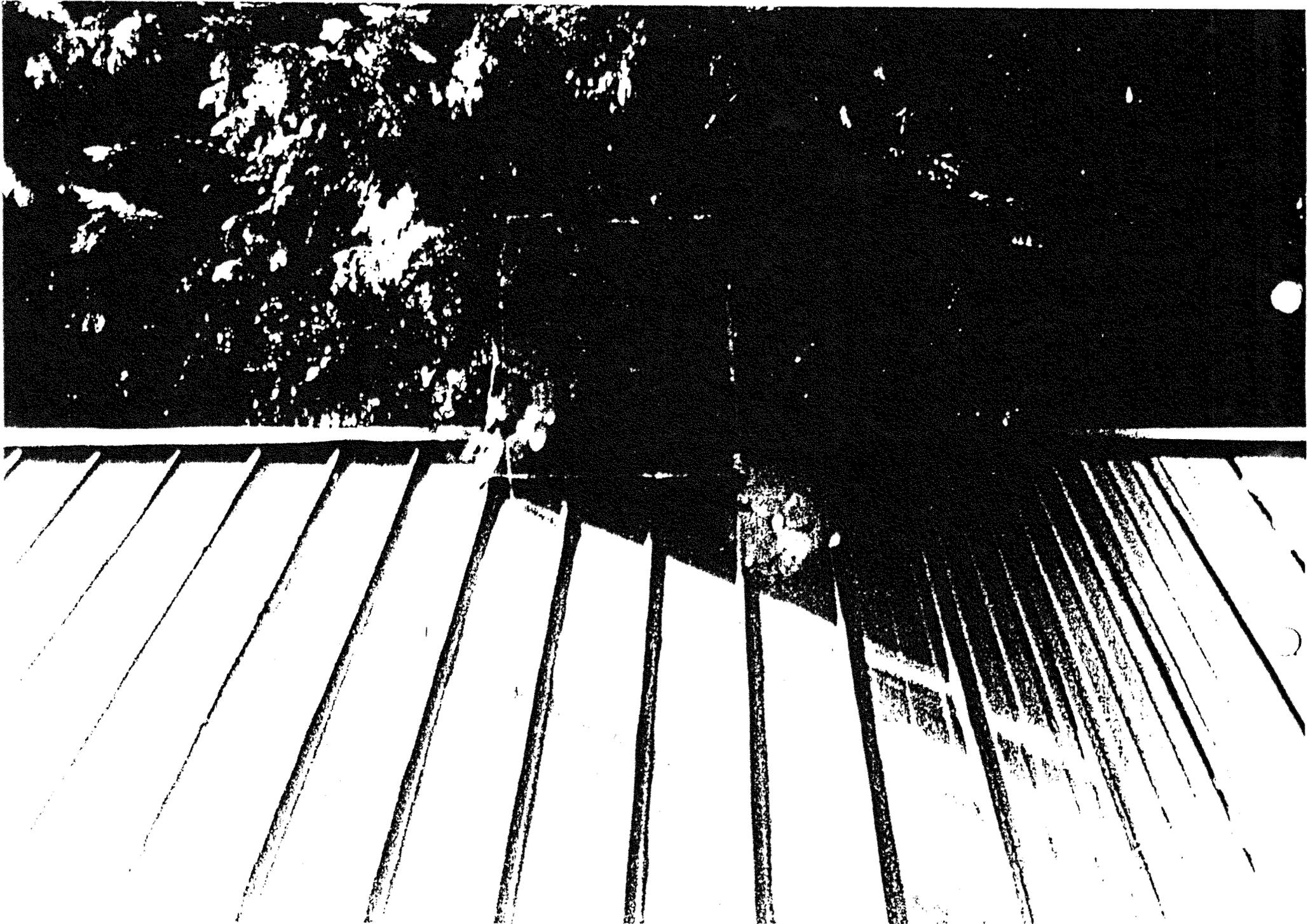
Roll 3/15/06



HOUSE "NESTLED" IN WOODS

3/19/95

7/17/15



NEW METAL ROOF AND OVER-HANGING TREES

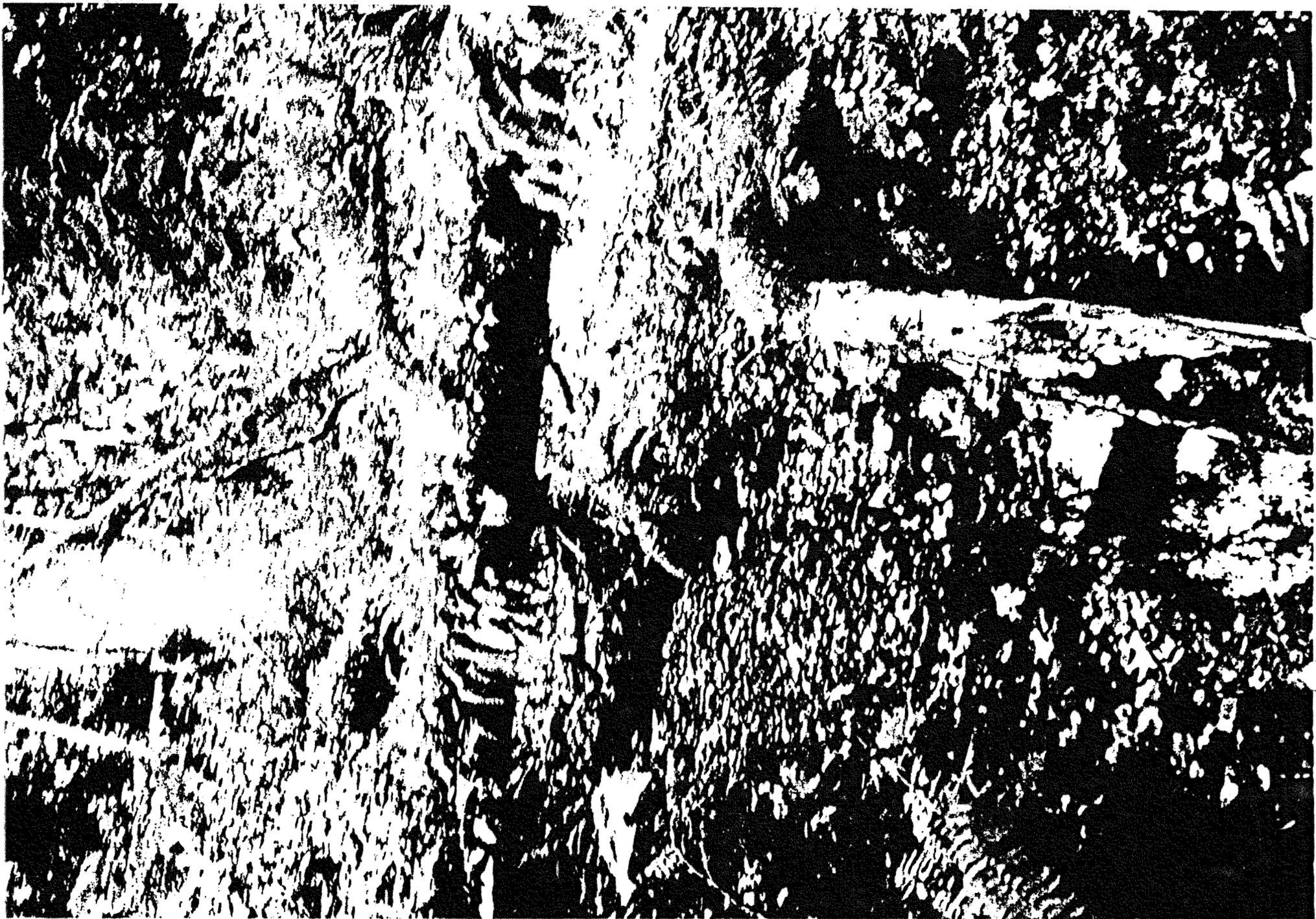


STREAMSIDE VEGETATION ADJACENT TO BALCH CREEK  
2/15/95



DENSE VEGETATION BETWEEN HOUSE & CREEK

3/15/95



BALCH CREEK NOT ADVERSELY AFFECTED

March 15, 1995

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283

Multnomah County Hearings Officer  
SEC 8-94 Appeal of Administrative Decision

BASIS OF ENTITLEMENT TO STATUS AS A PARTY

I would be aggrieved by a denial of the application in this case.

I have been concerned with correct interpretation and application of land use ordinances in this region and have expended considerable effort in furthering that interest over the last several years. I chair the Forest Park Neighborhood Land Use Committee and am a member of the Friends of Forest Park Land Use Committee. I have often testified on land use matters.

I believe that the appeal in this case is not motivated by a well founded belief that the applicant's proposal is not in compliance with approval criteria, and that such an appeal should be discouraged.

I am not here merely to offer information, such as would be offered by an expert witness. I have a philosophical and practical interest in the outcome and am here in hope of avoiding aggravement by a decision harmful to those interests.



March 15, 1995

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283-0645  
(503) 289-2657

Land Use Hearings Officer  
Multnomah County  
2115 SE Morrison St.  
Portland, OR 97214

Re: Testimony on SEC 8-94, Appeal of Administrative Decision

#### THE APPEAL

Mr. McKenzie's appeal makes 17 allegations under the heading "Describe specific grounds relied upon for reversal or modification of the decision". Most do not address either the SEC application or the improvement project at issue. An expansion of an existing dwelling is a permitted use in the CFU zone. A half-dozen challenges concern irrelevant non-conforming use criteria. Other allegations concern pre-existing walls and ponds or pools. Even if they were taken at face value, they would, at most, concern possible zoning code violations in years past. They have nothing to do with the project or with the SEC approval criteria. Only 4 of the 17 allegations, 8, 9, 12 and 13, even purport to address SEC regulations.

Numbers 8 and 9 do not allege defects in the application or the Planning Director's decision. They claim only that existing improvements on the site, a retaining wall and pools or ponds, are zoning code violations. These improvements were in place years before the current application and there is no connection with the project approved by the Planning Director. ODF&W put logs in the stream to improve fish habitat. That's all there is to the "pools and ponds". Deeper water provides refuge for fish during summer flows that are as little as 5 gallons per minute. Pools provide areas of slower water flow during rain storms. Without them, many more fish would be washed down the Creek. Because of watershed damage, extremes of high and low water have become the normal winter and summer conditions. ODF&W intervened to save the native cut-throat trout.

Number 12 makes the unfair and unreasonable claim that the application does not comply "with all SEC criteria" because of unidentified "inaccurate information" in the application. No facts or criteria are cited and no errors in the appealed decision are cited. The charge is unanswerable because it has no substance.

Number 13 includes mainly charges of code violations that are not related to the application. The one relevant charge concerns the "expansion of the building". It identifies SEC criteria a, e, g, h, k, l, n, and p, but does not say which of the criteria are violated by the retaining wall and pools, and which, if any, are violated by the building expansion. Obviously, it does not say how the building expansion or the Planning Director's approval of it, violates any standards. The applicant and the Planning Staff could only try to prepare to defend against another unspecified charge.

The deficiencies in the appeal are not the stumbling of an inexperienced citizen. Mr. McKenzie is an experienced land use advocate. He has appeared several times before hearings officers, always both in writing and in person. He has been represented by counsel and by himself. He has appeared in at least three land use appeal hearings before the County Board of Commissioners, twice as an appellant, and in all three, represented by



Rec'd 3/15/95  
SEC 8-94

land use attorneys and testifying for himself with guidance of counsel. He has several times testified in county proceedings on Goal 5 issues. Acting pro se, he filed an objection with DLCD to the county's amended Balch Creek plan which applies the SEC zone to his property. He has filed allegations of zoning code violations concerning the Rosenlunds and the Audubon Society. Mr. McKenzie appeared pro se twice before LUBA and once before the Court of Appeals. Unlike the broad allegations made here, on appeal to LUBA he was exhaustive in detail. In one case, LUBA noted that his second of five assignments of error, alone included 17 sub-assignments.<sup>1</sup>

Mr. McKenzie must have had specific errors in mind at the time he filed this appeal, errors that relate to the approval criteria. He knows that an appeal not grounded on specific and relevant errors could not achieve a change of outcome, which is the purpose of a legitimate appeal.

The SEC regulations were obviously not intended to apply to this kind of remodeling. But, a literal reading of some of the SEC language makes it impossible to exempt this project, with absolute certainty. Time and cost of development consultants and attorneys is probably more out of proportion for this project than for any other in the history of the zoning code. The record shows that the county code enforcement officer acknowledged that the work that preceded the SEC application was done in the belief, by county planning staff and the Rosenlunds, that the permits obtained were all that were necessary. The county changed its interpretation of the code in the middle of the project. The law is the law, and the Rosenlunds must obey it, whatever the earlier advice from county staff may have been. They have not at any time failed to make their project known to the proper authorities and to abide by their requirements. When told they needed an SEC permit, they engaged a land use consultant with the best reputation for environmental sensitivity in the county, to prepare the application. The Rosenlunds have done enough. The Planning Director has approved the application. He found it so complete, that he expressly adopted its provisions as his own findings, with only minor changes.

Considering that the Rosenlund's proposal is a use permitted outright, the SEC regulations can require no more than that the remodeling be done in a way that controls environmental impact. The proposal does not increase impact at all and therefore must comply with the letter and spirit of the code. The application and decision address the approval criteria point by point and clearly indicate compliance with every relevant standard.

## THE CONDITIONS

Conditions 3 and 4 include harmful and unlawful provisions and should be modified. SEC regulation MCC 11.15.6412(B) grants authority to the Planning Director to impose conditions "consistent with the Comprehensive Plan and necessary to assure compatibility with MCC .6420." MCC 11.15.8240(D)(2) allows conditions only for:

- (a) Protection of the public from the potentially deleterious effects of the proposed use; or
- (b) Fulfillment of the need for public services created by the proposed use.

The last sentence of Condition 3, requiring any color or material changes to undergo Design Review is not justified by .6420 or .8240(D). And, it violates .7820, which makes Design Review applicable to only specific listed developments which does not include expansion of a dwelling permitted outright in the zone. The first part of the condition

<sup>1</sup> *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994)

requires wood tones or earthtones. While there are no findings expressly justifying it, it's less of a problem. At least it doesn't try to make a land use decision out of painting a house, but, if something offensive is done, it allows it to be treated as a zoning violation.

The first part of Condition 4 is appropriate, but the last sentence, requiring an SEC permit for "future" activity, is unlawful under .6420 and .8240(D). That part of the condition, by use of the term "future site development" does not relate to the proposal at issue in this application and cannot be shown to be necessary for the current proposal to comply with the Comprehensive Plan or approval criteria. If some future development is required by the code to have an SEC permit, then the condition adds nothing. If future development is not required by the code to have an SEC permit, then the condition would be an unlawful attempt to legislate by an administrative order.

The objectionable parts of both conditions are an invitation to inappropriate and unnecessary burdens on both the Rosenlunds and the county. The conditions can be made acceptable by just deleting the last sentence of both 3 and 4.

A handwritten signature in cursive script, appearing to read "David M. ...".

Rec'd 3/15/95

March 3, 1995

Ronald & Marilyn Bastron  
5750 N. W. Cornell Road  
Portland, OR 97210  
503-297-7253  
Section 31 IN 1E TL # 23

Re: Roselund SEC Permit Request

Director, Planning & Development Division  
Multnomah County

Dear Director:

It has come to our attention that there seem to be some problems related to the physical improvements that the Roselunds prepare to do to their property. Our property is adjacent to and directly downstream from theirs. We had the opportunity to go over and see the changes they have planned.

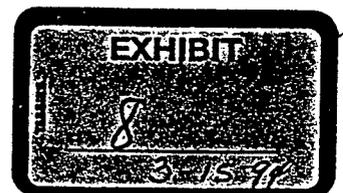
From our observation, we cannot see where these changes have any significant environmental impact on the surrounding area or more specifically to Balch Creek. If indeed these changes did have an environmental impact, our property would be the most affected since, as I mentioned before, we are the property immediately downstream from the Roselunds.

We do not have any concerns or problems regarding the Roselunds proposed changes. It appears they have merely added about an additional four feet upwards from its previous design, and have not added any square footage, bedrooms, bathrooms, or gone anywhere nearer the creek than where the structure was prior to these changes.

We consider ourselves to be environmentalists, and would not approve of anything that adversely affected our surroundings. Based upon the facts presented to us, both upon physical inspection, and written descriptions provided by Multnomah County, we do not see any problem with these proposed changes.

Sincerely yours,

*Ronald B Bastron*  
*Marilyn Bastron*  
Ronald & Marilyn Bastron



no 9 44

March 10, 1995

Barbara J. Telford, M.D.  
Barry D Olson, M.D.  
6000 NW Cornell Road  
Portland, Oregon 97210

Mark Hess  
Multnomah County Planning Commission  
2115 SE Morrison St.  
Portland, Oregon 97214

Dear Mr. Hess;

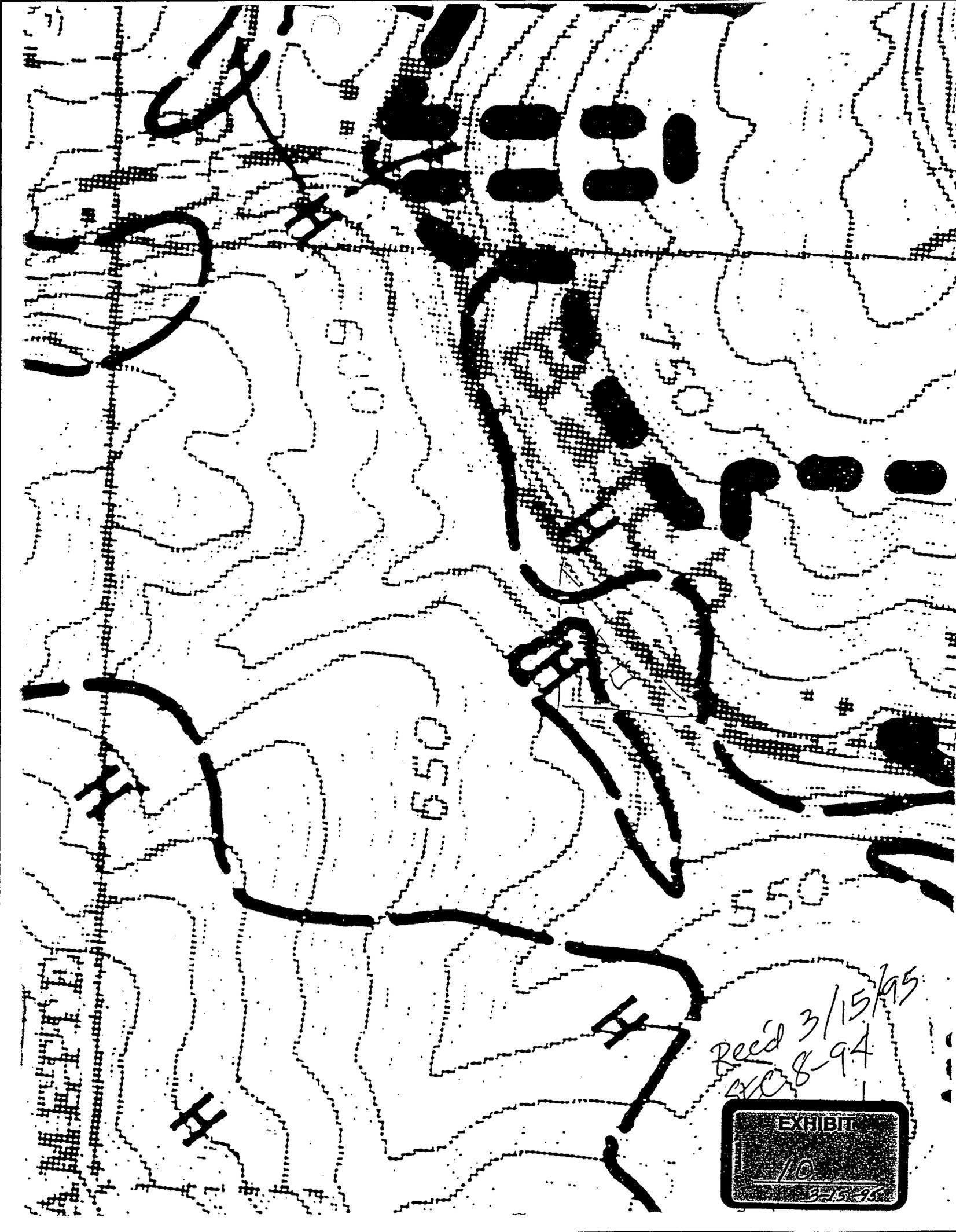
SEC Permit 8-94 clearly meets all necessary conditions. Mr. Mackenzie's appeal is totally without substance. Either he has no knowledge of the Rosenlund's planned improvements or he is using this appeal as a means to cause obstruction based solely on personal motives. We are in favor of approving the Rosenlund's permit without any further delay.

Sincerely,

*Barbara J. Telford*  
*Barry D. Olson*

Barbara Telford  
Barry Olson





Rec'd 3/15/95  
EX-8-94

EXHIBIT  
10  
3-15-95

Joan Chambers

3/15/95

Land Use Hearings Officer

Multnomah County Planning

2115 SE Morrison St.

Portland OR 97214

Subject: Testimony for Appeal Hearing of SEC 8-94

**I. Requirement of an SEC permit for the construction of ponds in Balch Creek.**

Before I begin my testimony, I ask the Hearing Officer if she has jurisdiction to cite the applicant with a zoning violation at the subject property, if there is evidence in the record which demonstrates that unpermitted work has occurred? The applicant has built ponds in the creek which clearly would require SEC and HDP approval for which they have not received. MCC 11.15.6710(C), and MCC 11.15.6404(A).

**II. The applicant is adding one additional bedroom beyond what currently exists.**

I would like to point out some inconsistencies that I have seen in the record:

1. Attachment 1 is a letter from the Environmental Soils Inspector citing the property owner with a Notice of Violation. The landowner is cited for

"An increase in sewage flow by the additional three bedrooms is a violation of OAR 340-71-205(2) without first obtaining an Authorization Notice \*\*\*".

2. Attachment 2 is a letter from the property owner stating that there have always been three bedrooms, and that all bedrooms are upstairs.



3. Attachment 3 is a later letter from the Environmental Soils Inspector citing that the "reconstruction" of three bedrooms, and indicating that the assesment and taxation records show that the dwelling previously had three bedrooms.

4. Attachment 4 is a printout from the assessment records, indicating that the house has three levels. Level "F" had a living room, dining room, kitchen, rec hall and bedroom, with a total of 1152 square feet. Level "A" (attic) showed two bedrooms and a total sqare footage (finished and unfinished) of 500 sq ft. Level "B" (basement) indicates 1008 of unfinished sqare footage. The assessment records indicate that two bedrooms were upstairs in the attic and one bedroom was on the central floor level.

It is unlikely that there were three bedrooms in the 500 sq ft level indicated as level "A" in the assessment records. It would appear that the applicant has converted the 500 sq ft level "A" into a full floor of living space, and added a new fourth floor level attic for "storage".

The assessment records show that one bedroom exists on level "F", and that only two bedrooms existed "upstairs". The applicant's plans for the new construction show that three bedroom now exist upstairs. This is in addition the the bedroom in existence on level "F".

Apparently the Environmental Soils Inspector was not aware that another bedroom existed on the central living level "F", below the level of the newly constructed floor.

The house previously had three bedrooms and now there are four bedrooms. Adding one additional bedroom without the proper approval is in violation of OAR 340-71-205(2).

### **III. Inadequate septic system for adding one additional bedroom.**

Adding an additional bedroom will put additional demands on the already inadequate septic system. Current rules require drainfields to be 100 feet from any year

When the Rosenlunds sell their four bedroom house, a family of 8 could easily move in and put even more strain on the septic system. If the Roenlunds had no dwelling on their lot , but the drainfield was in existence, the county would not allow the Rosenlunds to build a four bedroom house to be serviced by that inadequate septic system. By the same token, the county should not allow the addition of another bedroom on an already inadequate septic system.

Drainfields are designed based on the number of bedrooms. Adding additional bedrooms require reviewing the septic system to ensure thst it will adequately handle the increase in potential sewage. The Rosenlunds appear to not have been forthright about the total number of bedrooms in the newly rebuilt house. It also appears that the planned expansion of the upper floor and the additional bedroom were planned from the beginning, rather than an afterthought.

Adding more sewage than the eptic system can handle will overflow the septic system and the excess sewage will end up in the creek. This could be extremely harmful to the cutthroat trout in this creek. The City of Portland Bureau of Environmental Services (BES) has indicated that this lower portion of Balch Creek is the significant spawning grounds for the fish. The creek was tested for water quality by BES recently, and highest levels of nitrates and total phosphates were detected at a section of the creek near the Rosenlund residence. Attachment 5. The level of total phosphate exceeds national median levels.

The proposed use fails to protect the significant fish habitat.

#### **VI SEC criteria (N).**

The proposed use fails to meet SEC criteria (N). Criteria (N) requires the quality of water in areas classified SEC shall be preserved. As stated above, the additional sewage from adding another bedroom will exceed the capacity of the existing septic system. The closeness of the septic system to the creek will mean that any sewage flow

beyond what the septic system can handle will end up in the creek. The applicant fails to preserve the water quality in Balch Creek, and therefore does not meet SEC criteria (N).

Submitted 3/15/95

Dan McKenzie

6125 NW Thompson Rd

Portland OR 97210

(503) 292-6970



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF BUILDINGS

Attachment #1  
1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
(503) 823-7300  
FAX: (503) 823-6983  
TDD: (503) 823-6868

September 29, 1994

RALPH E AND NANCY J ROSENLUND  
5900 NW CORNELL RD  
PORTLAND OR 97210

RE: NOTICE OF VIOLATION  
5830 NW CORNELL RD

It has come to the attention of the City of Portland, Bureau of Buildings, Environmental Soils Division, that certain conditions relevant to the disposal of sewage wastes are in violation of present rules and regulations at the above noted location.

An increase in sewage flow by the addition of three (3) new bedrooms is a violation of OAR 340-71-205 (2) without first obtaining an Authorization Notice, see attached.

You are respectfully requested to correct this violation within thirty (30) days from receipt of this letter.

Our office does not have a record of your septic system which means that you will need to uncover the septic tank and have it pumped. The distribution unit will need to be uncovered (i.e. Distribution Box). All drain lines will need to be staked. I have enclosed the required Authorization Notice which will need to be completed and returned with a \$110.00 fee prior to inspection.

If you need professional help in solving your problem, you might consult a licensed septic system installer or septage pumper listed in the telephone directory.

It is hoped that this matter can be resolved in a voluntary cooperative manner. However, if a satisfactory correction has not been completed within thirty (30) days, the matter will be forwarded to the Department of Environmental Quality or the City of Portland, Hearings Officer, a fee may be assessed. If you have any questions or if we can be of any further assistance, please contact this office at 823-7247 or 823-7790.

Sincerely,

Michael G. Ebeling, RS  
Senior Environmental Soils Inspector

MGE:dmk

RECEIVED  
OCT - 5 1994

Multnomah County  
Zoning Division

Attachment #2

October 4, 1994

Mr. Michael G. Ebeling  
Sr. Environmental Soils Inspector  
1120 S.W. 5th Ave.  
c/o Bureau of Buildings  
Portland, OR 97204-1992

Dear Mr. Ebeling,

Pursuant to your inspection today you asked me to send a letter further confirming the conditions at 5830 N.W. Cornell Road.

This is to state the house has always had 3 bedrooms and still has only 3 bedrooms. All bedrooms are upstairs. When our replacement problems grew like topsy we went from a planned simple roof replacement to a second floor replacement. As we uncovered the roof we encountered so many unexpected problems it became clear we would be better off to bag the whole mess and start over. The principle changes upstairs are cosmetic and room arrangement. The footprint is unchanged. The basic usable living space is the same.

The bath situation is thus: The house has always had two full baths. When our remodeling is complete we will only have 1 1/2 baths.

Our ceptic system has been carefully maintained and is in excellent working order. We intend for it to remain so.

If you need any more information let us know and I will be glad to supply same.

Thankyou.



Ralph Rosenlund  
5830 N.W. Cornell Road  
Portland, OR 97210

FAX

to IRV

IZWIN

---

M.C. Planning

---

Attachment #3



CITY OF  
**PORTLAND, OREGON**

BUREAU OF BUILDINGS

1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
(503) 823-7300  
FAX: (503) 823-6983  
TDD: (503) 823-6868

October 25, 1994

RALPH AND NANCY ROSENLUND  
5830 NW CORNELL RD  
PORTLAND OR 97210

On October 4, 1994, I met with you at your property to inspect the reconstruction of the second story to your existing dwelling. Building permit number 94-03479 for the reconstruction was due to tree damage and water damage.

In my inspection I noted three (3) bedroom under reconstruction. This coincides with assessment and taxation records of this dwelling having three (3) bedrooms.

As to the condition of the existing on-site sewage disposal system I saw no evidence of sewage leaching onto the ground surface. However, I intend to conduct a follow up inspection in the spring.

Should you have any questions regarding this matter, feel free to contact me at 823-7247.

Sincerely,

Michael G. Ebeling, RS  
Senior Environmental Soils Inspector

MGE:dmk

cc: Mark Hess  
Irv Ewen ✓  
Jo Zettler

RECEIVED  
OCT 26 1994

Multnomah County  
Zoning Division

Attachment #3



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF BUILDINGS

1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
(503) 823-7300  
FAX: (503) 823-6983  
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Sincerely,

Michael G. Ebeling, RS  
Senior Environmental Soils Inspector

MGE:dmk

cc: Mark Hess  
Irv Ewen ✓  
Jo Zetler

RECEIVED  
OCT 26 1994

Multnomah County  
Zoning Division

MP003V	ACCOUNT ID	R590301560	IMPS #	1	TYPE	R	1994/08/19	11/09/94
MAGE01AF					LEVEL	SCREEN		
LEVEL	F	1 A	1 B	1		STRUCTURE		
CLASS	4.0	1 4.0	1 4.0	1		STR CLASS	4.0	
FIN SQFT	1152	500				STR TYPE	D	
UNF SQFT			1008			ARCH STYLE		
BATHROOM	1	1 1	1	1				
PART BATH		1	1	1				
BEDROOM	1	1 2	1	1		GARAGE		
REC HALL	1	1	1	1		CLASS		
SER HALL		1	1	1		TYPE		
OTH HALL		1 1	1	1		FLOOR TYPE		
DEN		1	1	1		NBR CARS		
LIVING	1	1	1	1		SQ FT		
DINING	1	1	1	1				
KITCHEN	1	1	1	1		REMODELING		
NOOK		1	1	1		BATH YEAR		
UTILITY		1	1	1		KITCHEN YEAR		
FAMILY RM		1	1	1		OTHER TYPE YR		
OTHER RM		1	1	1				

PF01	PF02	PF03	PF04	PF05	PF06	PF07	PF08	PF09	PF10	PF11	PF12	
			OWNER	LAND	LVL	ITEM	MISC	RMK	CALC	COND	MENU	
MAGK122P			MULTNOMAH COUNTY PUBLIC A&T SYSTEM								11/09/94 10:20	
MAGK01AF			*** QUERY NAME - REAL PROPERTY ***								PAGE: 1	



# 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

October 17, 1994

Edward J. Sullivan  
c/o Preston, Gates & Ellis  
111 SW 5th Avenue; Suite 3200  
Portland, Oregon 97204-3688

RE: ROOFING AND WEATHERPROOFING PROPOSED AT @ 5830 NW CORNELL ROAD  
[File ZV 29-94]

This letter authorizes roofing and weatherproofing work necessary to close-up a partially constructed addition at 5830 NW Cornell Road. The work authorized is described and is subject to caveats detailed in your letter to Mark R. Hess, Planner dated October 7, 1994. The intent of this letter is to authorize the minimum roofing and other work necessary to protect the existing house and partially constructed addition from the effects of weather. This authorization is based upon your clients' expressed acceptance of responsibility for removal or alteration of the structural additions pending the outcome of the land use review process.

Except for the work detailed herein, a 'Stop Work' should remain in effect until and unless applicable land use/zoning approvals have been received as required by Multnomah County Code (MCC) 11.15. As previously discussed, the County zoning code requires an SEC Permit for any *physical improvement* within 100 feet of a Class I stream. You indicated the addition to the Rosenlund's house is within 100 feet of Balch Creek. Planner, Mark Hess, confirmed that the State Department of Forestry identifies the main stem of Balch Creek as a Class I stream (below the confluence of the Thompson and Cornell forks). He also cautioned that the Rosenlund's project may require other zoning approvals (*i.e.*, Hillside Development or Erosion Control Permit(s)), depending upon the scope and extent of site alterations or other work proposed.

If you have questions regarding this matter, please call me at 248-3936.

Sincerely,

  
Irv Ewen, Zoning Enforcement

cc: Ralph and Nancy Rosenlund  
Jo Zenler, Residential Inspections Manager  
Michael Ebeling, Portland Building Bureau

EXHIBIT

July 29, 1994

RECEIVED  
AUG 09 1994  
BEVERLY STEIN  
MULTNOMAH COUNTY CHAIR

Commissioner Bev Stain  
Multnomah County Commissioner Chair  
1120 S. W. 5th, Room 1410  
Portland, Or. 97204

Dear Commissioner Stain,

This letter is to inform you that there is an on-going zoning code violation that your planning bureau refuses to do anything about. For about 3 years we have been talking to your planning bureau and your zoning code enforcement officer in an effort to get proper action taken concerning the Dan McKenzie "culvert" on Balch Creek. During these three years almost every action taken by your Planning Director has helped McKenzie keep his illegal culvert rather than make him remove it, and twice LUBA has overturned the actions you took on the Planning Director's recommendations.

I've written specifically to Sharron Kelley asking her to look into this case because she has shown special interest when she made the motion concerning this development; that the design review include a bridge over Balch Creek. This motion was approved by your Board. And because of this approved motion I feel you should also be apprised of the extent of the problems in this case. Thus far McKenzie has completely ignored all the legal requirements on his development that he doesn't like. Construction work has continued, all without proper permits and approvals. At this time he has no design review approval and his conditional use permit has long expired.

On July 21st, LUBA decided Dan McKenzie's and Arnold Rochlin's appeals of design review approval and determination of substantial construction (vesting) in a conditional use for a forest zone dwelling.\* McKenzie's appeal was denied. LUBA agreed with Rochlin that the county erred in both the design review and vesting in the conditional use approvals. LUBA remanded the case to the county to reconsider, based on correct law and actual substantial evidence. Unless and until the county takes action proper and favorable to McKenzie he has had no authority for any construction on his property. Yet the construction has continued unabated.

MCC 11.15.7815 says:

"No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section [design review], nor shall such a use be commenced,



enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance"

LUBA determined that the vesting determination was not valid, among other reasons, because there was no final design review plan approval. LUBA relied on MCC 11.15.7110(C)(3)(b)(i) (decision page 23) which requires the vesting decision to be based on findings that:

"Final Design Review approval has been granted under MCC [11.15].7845 on the total project."

With the LUBA remand, there is no design review approval, and, at the moment, only an expired conditional use permit. LUBA determined that the expiration date of the CU permit is April 26, 1993. (decision, page 22).

Now, if design review approval is ever to be granted it must be on the total project which includes the bridge over Balch Creek which you required.

It seems that the county planning staff has a philosophy of not enforcing the code if there is any excuse not to. Their regular excuse has been, if there is any chance that the violator may eventually get a permit then why not wait until it plays out. This is great for the perpetrator because though he may never get a permit, he is allowed by default to go forth with a project, and in McKenzie's case, continue the work of finishing it. McKenzie has manipulated this policy by repeatedly violating the code and then applying for permit change.

During all of this the zoning enforcement officer always replies to complaints by saying he needs authority from the Planning Director before he can do anything. He also always pleads ignorance of the facts of the case, the relevant regulations and the LUBA directives. And he always says he must talk to someone who conveniently isn't available. Also numerous Erosion Control Ordinance violations have never been acted upon. If your zoning officer only knows what other staff tell him, and can only do what other staff tell him to do, then you clearly have a useless position.

Action simply must be taken on this case. There is certainly no reason whatsoever to pass laws and ordinances only to have them violated in the most blatant manner. Either enforce the laws or don't pass them in the first place. And the zoning code will never be enforced unless you make it clear to the Director that a minimum requirement of his job is to enforce it. The only action taken was a violation citation in January, 1992 which was never enforced.

Therefore the absolute minimum action required in the Dan McKenzie case is an immediate stop work order. Also I suggest an examination of his premises should be made to determine how much construction he has started and/or completed under these illegal conditions.

Then let's see that enforcement goes forth, defined on the extent of the violations and the requirements of the case.

Sincerely,



Ralph Rosenlund  
5900 N.W. Cornell Road  
Portland, Oregon 97210

\*McKenzie v. Multnomah County...Or.LUBA....and Rochlin v.  
Multnomah County...Or. LUBA....(Final Opinion and Order LUBA  
NO. 93-205 and 93-209 July 21, 1994)

RECEIVED

SEP - 8 1992

ODONNELL, RAMIS,  
August 25, 1992

Commissioner Sharron Kelley  
1120 S. W. 5th  
Portland, Oregon  
97204

**COPY**

Dear Commissioner Kelley,

I think you were totally correct today, August 25th, in opposing the motion which would open the record to new evidence. I, along with you, fear it may well open Pandora's Box for future hearings by setting this precedent. This is especially true since the "new" evidence is based on incorrect assumptions. Mr. McKenzie referred to the Thompson section of Balch Creek as a tributary. Wrong. The ODFW clearly states this section to be the main stem of the creek, all of which carries the Class 1 classification. On the other hand the Dept. of Forestry map has only an arbitrary blue line drawn on their topography map (which has been open to the public for several years) and can offer no evidence as to why they made a determination which differs from ODFW. In fact there seems to be no documentation at all in Forest Grove concerning Balch Creek. I have repeatedly asked for it.

In the meantime, while the appeal is pending, Mr. McKenzie is continuing to build up and extend his road, install a sand filter, and violate the Hillside Erosion Control Ordinance by permitting soil to spill over practically into the creek, and is practicing no mitigation whatsoever.

Yes, we desperately need more protections for Balch Creek. And the sooner the better. Yet what is just as desperately needed is for the County Planners to implement the protections which are currently in place. Plus, we have pointed out several zoning violations, many still on-going, which aren't rectified, and no fines have been or are being assessed. This makes it seem to be a game by planner and developer alike to skirt the issues.

So it goes. At any rate we will see you in September.

Sincerely,

*Nancy Rosenlund*

Nancy Rosenlund  
Friends of Balch Creek

cc: Commissioner McCoy  
Commissioner Anderson  
Commissioner Bauman  
Commissioner Hansen



Testimony regarding the September 22nd hearing concerning the illegal culvert in Balch Creek.

SEC 6-91a

HDP 4-91a

Commissioners:

There is a bit of history regarding the culvert that we feel you should be aware of. When Mr. Mackenzie applied for a permit on his property at 6125 NW Thompson Road his plans included a bridge to cross Balch Creek. Molly O'Reilly and I testified at the hearing that we were pleased about the bridge since a bridge was the only acceptable way to cross the creek. At recent permit hearings in the city a bridge had been among the conditions of approval, so we assumed this was also true in Mr. Mackenzie's case. We were very surprised to learn that what a person goes before the Planning Commission with, and gets approval for, is not always what he has to do, or means to do. The members of the Planning Commission seemed as surprised as we were. This is a serious flaw in the process.

At the hearing both Ms. O'Reilly and myself told Mr. Mackenzie that we would be more than happy to help him in any way we could. We surveyed the market for various methods of economical bridge building and found that most types were in the \$4000.00 arena. These methods are widely used on farms and in East County. We talked to Mr. Mackenzie several times to offer ideas and aid.

Then a couple of weeks after October 1st (which is the deadline for any "land disturbance" in the Balch Creek Watershed according to the Balch Creek Watershed Erosion Control Ordinance) a culvert appeared in the creek instead of the bridge over it. And it wasn't even a box culvert which would have left the stream bed open. Mr. Mackenzie's excuse was that the bridge was too costly and he didn't think to check into box culverts or even consult with the ODFW for their advice.

The Bureau of Environmental Services has taken over the management of the Balch Creek Watershed in conjunction with their wetland storm water control plans, and their concept also includes enhancement and preservation practices for fisheries and wildlife habitat in the entire Watershed. Their concept plans also include using bridges or box culverts exclusively. Their current Wetland Project will most likely require a box culvert replacement under Cornell Road. At present there are only two private landowners which still have culverts and the Friends of Balch Creek and the Friends of Forest Park have it on their agendas to apply for grant money to pay for their exchange.

Balch Creek is a Class 1 stream which extends up Thompson Road. This has always been considered the main stem with the

Cornell stem being one of the primary contributors. Fish have been seen up beyond the point where the stream crosses Thompson Road. An even in these severe drought conditions there are still pools of water up there. When we regain our normal rainfall patterns there will be the normal heavy flow and the fish will be able to move and thrive and multiply in the upper reaches of the stream again. We must protect their habitat.

The Friends of Balch Creek and The Friends of Forest Park are in full agreement that Mr. Mackenzie's culvert must be removed. The fact that it might make a mess for a few hours during removal is nothing compared to the long range damage it can cause. And there are other compelling reasons. The culvert is illegal! So, what is the use of having Planning Bureaus, Planning Commissions, ordinances and laws if they are allowed to be circumvented or ignored. People will just go about their business doing what they want, ordinance or no ordinance, permit or no permit, expecting nothing to happen because it is "already there!" There must be recourse and we certainly don't feel Mr. Mackenzie should be rewarded for his unwise behavior.

Nancy Rosenlund  
Friends of Balch Creek  
5830 NW Cornell Road  
Portland, Oregon 97210

January 12, 1992

Mr. Scott Pemble, Director  
Multnomah County Bureau of Planning  
2115 S.E. Morrison Street  
Portland, Oregon 97214

C215-91

Dear Mr. Pemble,

It has come to our attention that a condition applied at the time of approval of a building site has been violated.

The site in question is at <sup>6125</sup>~~6331~~ N.W. Thompson Road and the owner is a Dan McKenzie. The condition in question is that he build a bridge to span Balch Creek, NOT install a culvert. This was agreeable to him at the time of application, and he didn't appeal the condition. Therefore the condition still stands. Also there was a specified building window. Now we have discovered that a few days before the end of the permitted building period Mr. McKenzie installed a road, with culvert, on Balch Creek. This is in direct violation of the planning commission's conditions for approval, and also in violation of the Fish and Wildlife conditions as applied to a Class 1 stream.

As you well know Balch Creek has special and careful protections applied to it due to its fragility and uniqueness. The Bureau of Environmental Services is in the process of restoring a wetland adjacent to Mr. McKenzie's portion of the stream, as well as one neighbor to the south. The culvert could impact the effectiveness of the wetland, and have a long term adverse effect on the stream and fish movement that the BES and Fish and Wildlife Service are striving to preserve.

The bottom line however is simply the fact that a culvert was under no circumstances to be installed on the creek. Mr. McKenzie understood this and willfully and knowingly violated the conditions. The culvert must be removed and the specified bridge installed. This could be an outright order, or perhaps could be a condition to approval of any forthcoming permits he may apply for.

The culvert versus bridge problem may seem on the surface like a fairly small event in the over-all scheme of things. What it really comes down to.....is the law going to be obeyed and respected, or isn't it! If these violations are to be ignored, or passed over with a small fine, then what is the use in having a planning commission or planning bureau? What is the use of having ordinances and conditions of approval if these are to be cavalierly ignored with the idea that no one may find out, or if discovered, only a small fine would be imposed. To our minds the

EXHIBIT

2/16/92

original conditions must be adhered to and no "fait accompli" be allowed to stand.

Sincerely,

*Walt Lucifft*  
*Green De Sant*  
*Barbara J. Telford*  
*Dwight Olson*  
*Mayde Handlin*  
*Robert E. Walker*  
*Nancy Caserlund*  
*Erion A. Cote*  
*William H. Hove*

Friends of Balch Creek  
5900 N.W. Cornell Road  
Portland, Oregon 97210

cc: Gladys McCoy, Chair, Multnomah County Commission  
Pauline Anderson, Multnomah County Commissioner  
John Sherman, Friends of Forest Park

RECEIVED

JAN 14 1991

Multnomah County  
Zoning Division

(33)

(32)

N. W. CORNELL RD.

Parcel I

Parcel II

Septic DRAIN FIELD

DRAIN INFILTRATION AREA

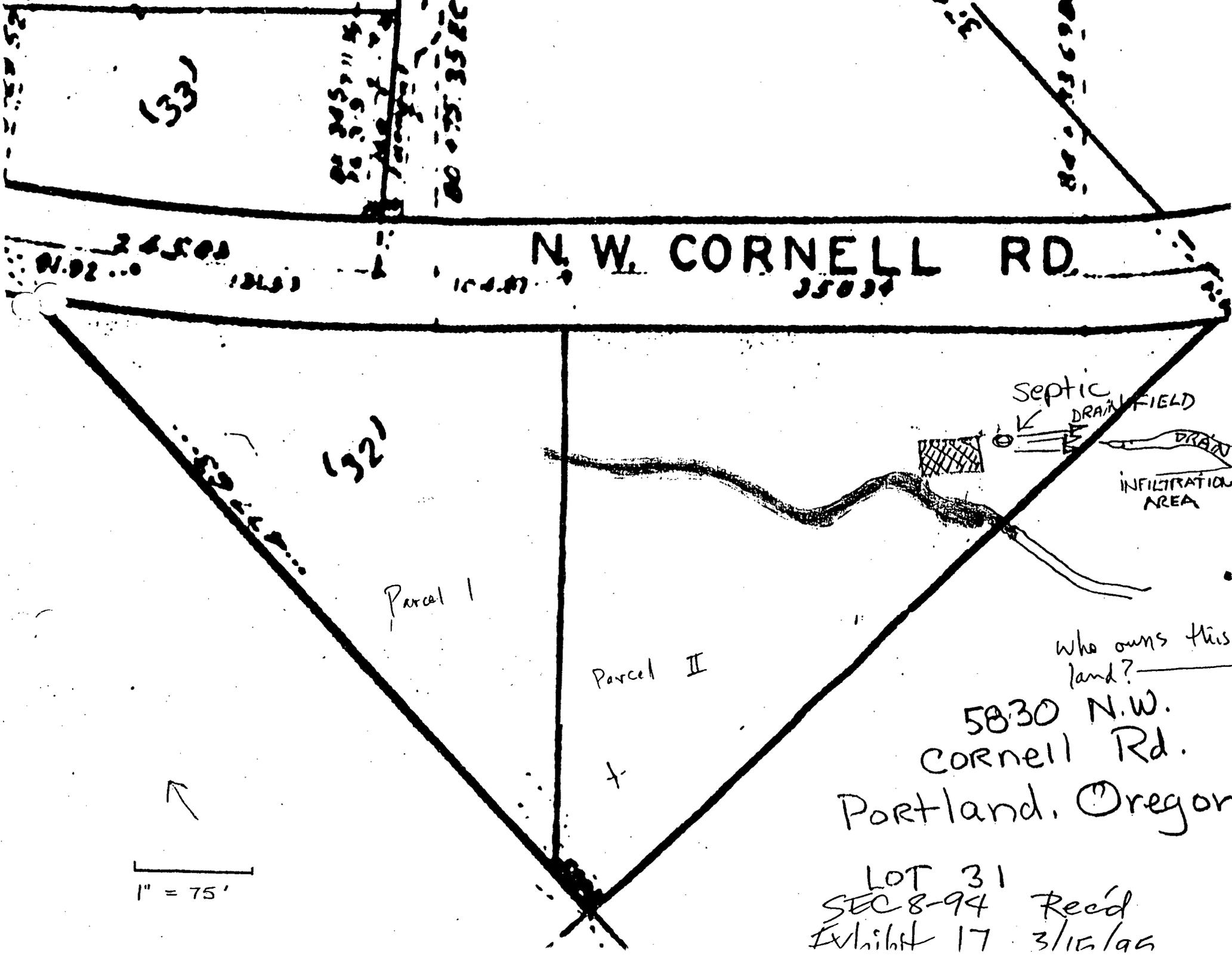
Who owns this land? \_\_\_\_\_

5830 N.W. Cornell Rd.

Portland, Oregon

LOT 31  
SEC 8-94 Rec'd  
Exhibit 17 3/15/95

1" = 75'



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City of Portland  
Bureau of Environmental Services

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*Balch Creek Watershed  
Stormwater Management Plan  
Background Report*

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*Draft  
April 1993*

 MONTGOMERY WATSON

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SEC 8-94  
EX #11

allow a series of steps up the obstacle or actual removal of the obstruction. Passage facilities such as ladders are probably not needed or appropriate.

The reach through the Rosenlund property is relatively less steep compared to the lower reach. Some stream enhancement has occurred in the past (and is also ongoing) to provide additional pool habitat. ODF&W has been providing consultation with the property owner for this enhancement work. Flow in this reach was low and appeared to be less than 1 cfs. Previous estimates by ODF&W at this site ranged from approximately 0.5 cfs in September 1987 to 1 cfs in October 1986.

The reach from the pilot project site upstream to the culvert at the Ripley property is a narrow, channelized section with rock retaining walls forming much of the streambank. Small pools do exist throughout this reach but are limited in size. Flow appears low in this reach by late summer to early fall; an estimate of 0.5 cfs was made by ODF&W in October 1986. Following the 1992 summer drought, a flow estimate of approximately 4 gpm was made by ODF&W for this reach in late October 1992 (ODF&W 1992a).

ODF&W did report enumerating fish in this reach during 1986 electroshocking and enumerated 43 fish during 1992. Most of the small pools available within the reach appeared to contain a few fish. ODF&W has indicated that fish passage around or through the proposed pilot project area would probably be required (ODF&W 1992b). The reach along Thompson Road above the Ripley property was not surveyed due to lack of permission to enter the properties.

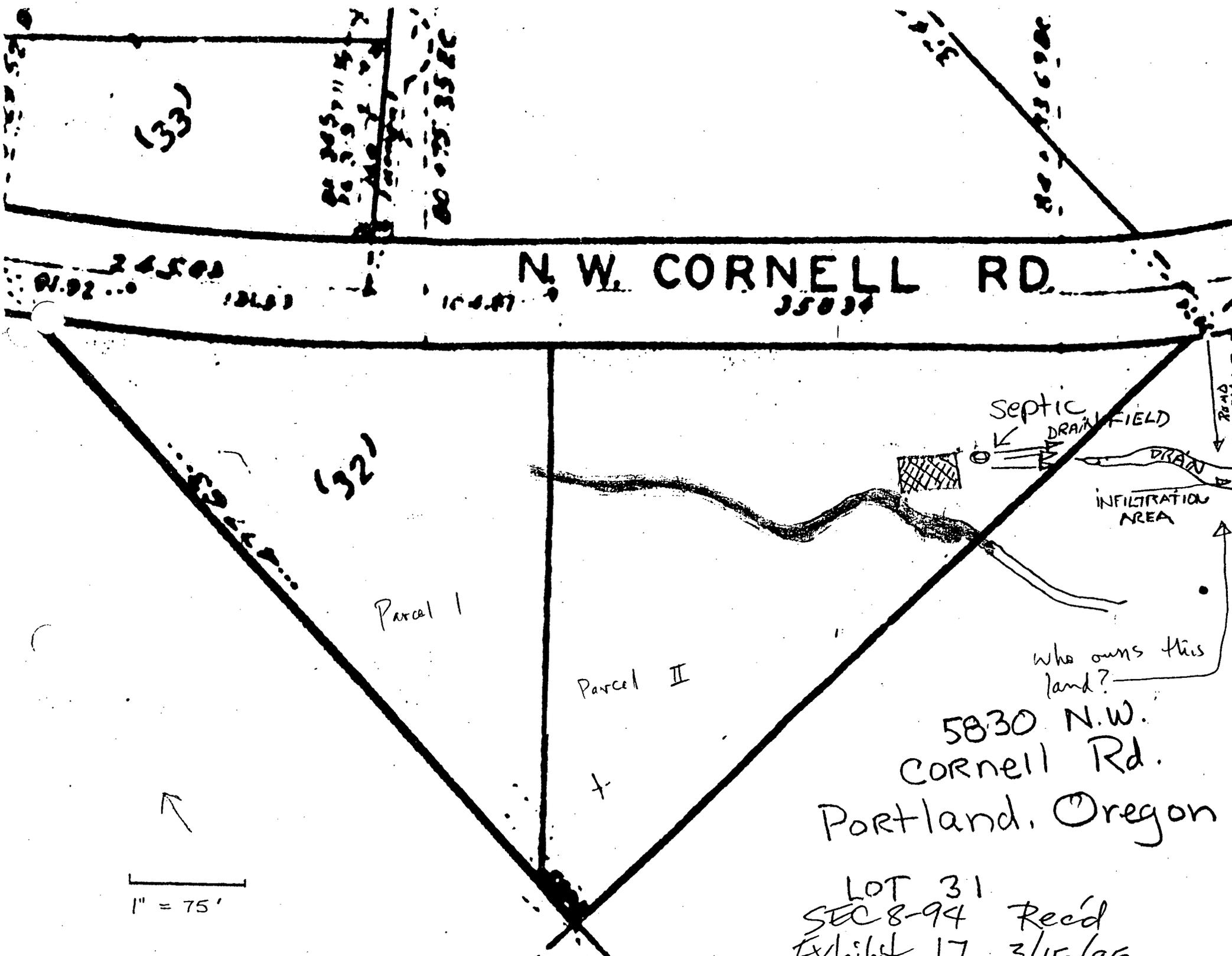
The reach of Balch Creek above the Audubon property is relatively undisturbed. Riparian cover is generally greater, probably due to lower human disturbance. The greatest limitation appears to be erosion of steep slope areas and resulting sedimentation. This sedimentation is apparent through the entire creek but conditions are definitely worse in the upstream, smaller channel reaches. This is tied to a recent landslide on a tributary stream as well as erosion resulting from residential development in the upper reaches of the watershed. Measurements of silt thickness in the streambed at the Rosenlund property showed approximately 1-2 inches of silt. This deposition was reportedly observed following the recent landslide.

Possible habitat improvements in the upper reach include water quality improvements, trash and debris removal, and some pool enhancement. Provision of water quality improvements to control erosion and sedimentation in the upper reaches would probably be of high value to the lower watershed. This includes regular removal of trash and debris such as tires that currently block some areas along Cornell Road between Thompson Road and Skyline Boulevard. The first Thompson Road culvert above the pilot project site also presents a low-flow barrier to fish movement upstream. There currently appears to be an approximate 4-foot drop from the culvert invert to the pool, this may be great enough to prevent passage during higher flows as well as during summer low flows. Pool enhancement similar to that being carried out on the Rosenlund property under the coordination of ODF&W could be encouraged for other property owners.

### Observations and Conclusions

Several observations and conclusions can be drawn from the information discussed above:

- Maintenance of summer, low flow pool habitat in Balch Creek is critical to the cutthroat trout population.
- Enhancement of this habitat through the use of instream/ponding structures, creation of pool habitat, and re-establishment of riparian vegetation would result in positive benefits to the trout population.



(33)

(32)

N. W. CORNELL RD.

Parcel I

Parcel II

Septic DRAIN FIELD

INFILTRATION AREA

Who owns this land?

5830 N.W. Cornell Rd.

Portland, Oregon

1" = 75'

LOT 31  
SEC 8-94 Rec'd  
Exhibit 17 3/15/95

March 22, 1995

Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283-0645  
(503) 289-2657

Joan Chambers  
County Hearings Officer  
Multnomah County  
2115 SE Morrison St.  
Portland, OR 97214

Re: Testimony on SEC 8-94, Appeal of Administrative Decision  
For Hearing Continued to March 24, 1995

This testimony in support of the application includes argument on issues raised in the March 15th hearing. It does not raise new issues or introduce new documents or evidence.

#### APPLICABILITY OF DESIGN REVIEW

This addresses the appellant's argument made in his final rebuttal.

I had cited MCC 11.15.2070, which exempts certain "Conditional Uses listed in MCC .2050" from non-conforming use regulations. I also argued that there is no authority for the Design Review requirement of the Planning Director's Condition #3, because MCC 11.15.7820 does not apply Design Review to "expansion of an existing single family dwelling", which is a use permitted outright under .2048(D). MCC 11.15.7820 does however require design review for "all conditional \* \* \* uses". The appellant argued that if the applicant would claim the benefit of the exemption of certain "Conditional Uses listed in MCC .2050", he must concede that the dwelling is a conditional use subject to Design Review under .7820.

That is a mis-interpretation of the regulations. There is no application for a conditional use that would invoke the Design Review requirement of .7820. This application is for "expansion", a use permitted outright. Nothing in MCC 11.15.2070 indicates intent to do more than exempt certain established uses from non-conforming use regulations. The appellant's argument ascribes a broader intent not justified by language or context. It would necessarily invoke Design Review for maintenance and repair of a dwelling, also permitted outright in .2048(D)<sup>1</sup>, because a dwelling is a use listed under .2050. Design review would be required to replace plumbing. That is an unreasonable inference to draw from a code provision that has no language hinting of such an intent. But, because maintenance and repair are treated by the code exactly the same as expansion, the appellant's interpretation would necessitate the inference.

#### COMPLIANCE WITH APPROVAL CRITERIA

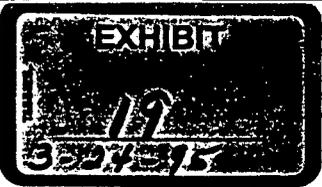
Through the proceedings to date, the appellant has not described how the decision, application and supporting evidence, fail to comply with any relevant approval criterion. He has listed criteria by section, but identified no lapses. The burden of proof of compliance is on the applicant (notwithstanding MCC 11.15.8295(B)) but an appellant should show how the burden was not carried. He has not done so, and the evidence and decision are in fact sufficient.

<sup>1</sup> MCC 11.15.2048(D) allows "Maintenance, repair, or expansion of an existing single family dwelling" as a use permitted outright.

*Arnold Rochlin*

SEC 8-94





CITY OF

PORTLAND, OREGON

BUREAU OF BUILDINGS

Mail  
R

F A X T R A N S M I T T E

10/14  
fw -  
This  
should be

DATE: 8-12  
TO: Sharon Cowley  
FAX #: 248-3389  
PHONE #: 248-3043

filed in  
Residential  
-1-1 location  
file

FROM: Carlyn

BUREAU SECTION: Records

PHONE #: 823-7660

TOTAL # OF PAGES (including transmittal sheet): \_\_\_\_\_

If you do not receive all pages, please call sender.

MESSAGE/SUBJECT: Sharon - This is the only permit I found for 5830 or 5900 NW Cornell

Carlyn

Address <u>5830 N.W. Cornell Road</u>	PERMIT NUMBER <b>49841</b>
Legal <u>TL '31' of Lot 25, Mt. View Park</u>	VALUATION <b>\$2000</b>
Prop. Owner <u>Carla Hawkins</u>	MAP NUMBER <b>2932</b>
Occupant _____	ZONE <b>R-10</b>
Contractor <u>owner</u>	OCC. GROUP
Use of Bldg. <u>residence</u>	CONST. TYPE
Work to be done <u>6' x 24' addition</u>	FIRE ZONE
_____	DATE ISSUED <b>10/28/</b>
Special Conditions _____	

MULTNOMAH COUNTY PERMIT FILE CARD

INSPECTION	DATE	TIME	REMARKS	INSPECTOR
Set Becks ✓	12-2-69		OK #1	Pat
Conc. Ft'gs. ✓				
" Fd'n. Walls ✓				
" Floor Slabs				
" Walks & Drives				
Frame Floors	12-19-69		OK but not to cover OK	Pat
" Walls ✓				
" Ceilings				
" Roof				
Roofing	5-6-70		OK #2	Pat
Vents Fd'n. ✓				
" Kitchen ✓				
" Attic				
Fireplace				
Chimney & Vents				
Parking Surface				
" Curbs				
" Screening				
Completed	5-6-70		alteration & addition completed to code	Pat



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

January 12, 1995  
PUBLIC NOTICE AND  
ADMINISTRATIVE DECISION

on an application for a:

SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT  
File No. SEC 8-94

**Proposed Action(s) and Use(s):** Applicant requests a Significant Environmental Concern (SEC) Permit to complete construction of a new roof and increase the height of an existing single family dwelling located within 100 feet of Balch Creek.

**Location of Proposal:** 5830 NW Cornell Road  
**Legal Description:** Tax Lots '31' & '32' of Lot 25, Mountain View Park;  
**Site Size:** 2.00 acres (approximate)  
**Plan Designation:** Commercial Forest Land  
**Zoning District(s):** CFU (Commercial Forest Use District)  
**Owner:** Ralph and Nancy Rosenlund (Contract Purchaser's)  
5830 NW Cornell Road  
Portland, Oregon 97210

**Applicant:** Scott Rosenlund  
5830 NW Cornell Road  
Portland, Oregon 97210

_____	Notices
_____ <u>12</u>	Decision Notices
mailed on	<u>1-12-95</u>
by	<u>[Signature]</u>

**SUMMARY OF DECISION:** This administrative decision approves a *Significant Environmental Concern Permit* – the approval is subject to conditions noted below. The applicant requests permit approvals needed to complete an addition to an existing single-family dwelling on the subject property. This administrative decision to approve the request is based on: review and analysis of zoning provisions and approval criteria in Multnomah County Code (MCC) section 11.15 applicable to the project; evaluation of application submittals, documents, permit records, and plans in the application file (SEC 8-94) and in related Planning Division case files PA 42-94 and ZV 29-94. Conditions are attached to the SEC permit to address specific zoning standards and to coordinate the County Planning process with related plan reviews, inspections, and permits which may be required by other agencies.

## CONDITIONS OF APPROVAL

1. Except as modified by the conditions below, construct the addition as illustrated and specified in the application.
2. Obtain applicable structural, electrical, and/or plumbing permits from the Portland Building Bureau.
3. Exterior colors on the house – if visible from the public right-of-way – shall be natural wood tone(s) or dark earthtones which blend into and do not noticeably contrast with landscape features on the site. Future color or material changes to the exterior (if any) shall be ministerially reviewed and approved by Design Review Staff prior to installation.
4. This SEC Permit does not authorize grading, tree removal, or other site or stream work not described in the application narrative or indicated on the site plan. Any areas disturbed due to the construction of the addition shall be protected from erosion, stabilized as soon as practicable, and restored to their prior condition before final inspection(s) or use of the added/remodeled living areas. Obtain an SEC Permit (as applicable) for any future site development, including, but not limited to: accessory structure(s), cutting or removal of trees with 8-inch or greater trunk diameter, or alterations or stabilization work on Balch Creek. MCC 11.15.6404; 11.15.6710(C)

## FINDINGS AND CONCLUSIONS

### 1. SUMMARY OF THE PROPOSAL:

The applicant requests approval to complete construction of a new roof and increase the height of an existing single family dwelling located within 100 feet of Balch Creek. The addition adds square footage to the second floor living space without expanding the original exterior footprint of the house. This is accomplished by raising the eave height and extending exterior walls vertically to provide full height ceilings on the entire second floor. Part of the second floor area was formerly 'attic' storage area with limited head room outside the 'knee-walls'.

### 2. SITE INFORMATION:

The site is located on the northwest side of NW Cornell Road. It is generally sloping to the south. The existing single family dwelling is one of two houses located on the 2.00 acre Lot of Record. Both houses are situated within 100 feet of Balch Creek. Refer to the application materials for further details.

**3. ZONING AND COMPREHENSIVE PLAN DESIGNATIONS.**

The plan designation of the parcel is Commercial Forest Land. The parcel is zoned CFU (Commercial Forest Use District).

**4. APPLICABLE ZONING CODE SECTIONS & APPROVAL CRITERIA**

**11.15.2044 Area Affected**

MCC .2042 through .2074 shall apply to those lands designated CFU on the Multnomah County Zoning Map. [Amended 1992, Ord. 743 § 2]

\* \* \*

**11.15.2046 Uses**

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

**11.15.2048 Uses Permitted Outright**

\* \* \*

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

\* \* \*

**SIGNIFICANT ENVIRONMENTAL CONCERN (SEC) PERMIT REQUIREMENT**

A. The Rosenlund project requires the SEC permit because the proposed addition is a *physical improvement* which is located within 100 feet of a Class I stream (the main stem of Balch Creek). MCC 11.15.6404(C) requires an SEC Permit in such instances. Approval criteria for the SEC permit are quoted below: MCC 11.15.6420

- (a) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.
- (b) Agricultural land and forest land shall be preserved and maintained for farm and forest use.
- (c) The harvesting of timber on lands designated SEC shall be conducted in a manner which shall insure that the natural, scenic, and watershed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.
- (d) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.
- (e) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with areas of environmental significance.

- (f) The protection of the public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.
- (g) Significant fish and wildlife habitats shall be protected.
- (h) The natural vegetative fringe along rivers, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.
- (i) Archeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.
- (j) Extraction of aggregates and minerals, the depositing of dredge spoils, and similar activities permitted pursuant to the provisions of MCC .7105 through .7640, shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, historical or archeological features, vegetation, erosion, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.
- (k) Areas of annual flooding, flood plains, water areas and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow and natural functions.
- (l) Significant wetland areas shall be protected as provided in MCC .6422.
- (m) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.
- (n) The quality of the air, water and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.
- (o) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of the areas of significant environmental concern.
- (p) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.
- (q) The applicable policies of the Comprehensive Plan shall be satisfied.

Plan Policies found applicable to the proposal are: #14, #16-D, #16-E, #16-F, #16-G, #37, & #38.

#### 5. EVALUATION OF THE REQUEST:

- A. The application findings and supplemental materials support a conclusion that the subject property is a two acre 'Lot of Record' in the CFU District. Records indicate the site is currently developed with two single family dwellings, both constructed prior to 1950.
- B. The application findings and supplemental materials support a conclusion that Significant Environmental Concern Permit criteria of MCC 11.15.6420 are or will be met if the pro-

ject is performed as described in the application and illustrated on the plans. The findings and conclusions in the application are amended as follows:

Page 6, item H., second paragraph, fourth line; amend to read: ... The *existing* dense vegetation *limits* further opportunities to enhance...

Page 7, top of page; delete phrase which starts: ... The presence of ...

The "Rosenlund Amended SEC Permit Request" dated December 12, 1994, [or 'Rosenlund Report'] and supplemental material attached – with amended text noted above – are adopted herein by reference [Exhibit 1]. The SEC 8-94 decision is also supported in part by the site inspection report dated December 23, 1994 by Michael Ebeling, Soils Inspector with Portland Building Bureau [Exhibit 2]

- C. The design of the addition does not significantly alter the existing forested setting or nearby stream resources. The expanded height of the structure is only superficial (approximately 4-feet) and it will be screened from most public views due to the topography and existing vegetation which will remain on the site. Conditions of approval are imposed to mitigate for potential scenic and other natural resource impacts.
- D. The site is not identified in the County's Historic Resource Inventory. The site is not known to possess archaeological resources. Minor features of the proposed addition may require excavation or grading near the house to address rain water drainage from the roof. Conditions address this issue.
- E. The administrative review and decision on the requested Significant Environmental Concern Permit application requires the exercise of legal or factual judgment to determine if all criteria are or can be met. State law requires the County Planning Division to provide a public notice of such decision(s) and allow an opportunity to appeal the case and consider the proposal at public hearing(s). ORS 215.416(1),(3),(11)(b)
- F. Notice of this decision was mailed January 12, 1995 in the manner required by ORS 197.763. Opportunity to appeal the decision for consideration at a public hearing will be provided until the close of business on January 23, 1995 (4:30 p.m.) Refer to *NOTICE* section for further instruction. ORS 215.416(11); MCC 11.15.8290

MULTNOMAH COUNTY, OREGON  
DEPARTMENT OF ENVIRONMENTAL SERVICES



By: Mark R. Hess, Planner  
For: Director, Planning & Development Division

Filed with the Director,  
Department of Environmental Services  
On January 12, 1995

NOTICE: State law requires a public notice (by mail) to nearby property owners and to any recognized Neighborhood Association of a Planning Director decision which applies "discretionary" or subjective standards or criteria to land use or development permit applications. The notice must describe the method to challenge the staff decision; and, if appealed, the County must hold a public hearing to consider the merits of the application. ORS 197.763 & 215.416

The Administrative Decision(s) detailed above will become final unless an appeal is filed within the 10-day appeal period which starts the day after the notice is mailed. If the 10th day falls on Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business-day. If an appeal is filed, a public hearing will be scheduled before a County Hearings Officer pursuant to Multnomah County Code section 11.15.8290 and in compliance with ORS 197.763.

To file, complete an APPEAL OF ADMINISTRATIVE DECISION form, and submit to the County Planning Division Office, together with a \$100.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. To review the application file(s), obtain appeal forms, or other instruction, call the Multnomah County Planning Division at (503) 248-3043, or visit our offices at 2115 SE Morrison Street, Portland, Oregon 97214 [hours: 8:30 a.m. - 4:30 p.m.; M-F].

## Rosenlund Amended SEC Permit Request

**APPLICANTS:** Ralph and Nancy Rosenlund, and  
Scott Rosenlund  
5830 NW Cornell Road  
Portland, OR 97210

*represented by*

Scott Rosenlund  
5830 NW Cornell Road  
Portland, OR 97210  
Phone: 297-6316

*application prepared by*

Winterowd Planning Services (WPS)  
Suite 385, 700 N Hayden Island Road  
Portland, OR 97217  
(Contact Carleen Pagni at 735-0853)

**LOCATION:** 5830 NW Cornell Road  
Tax Lot 31 of Lot 25, Mountain View Park and  
Addition Number 1  
(NW 1/4 of Section 31, T1N, R1E)

**ACREAGE:** 1.32 Acres

**ZONING:** CFU (Commercial Forest Use)  
SEC (Significant Environmental Concern) subdistrict

**REQUEST:** SEC permit approval for a new roof and vertical height increase for a  
single-family residence.

**DATE:** December 12, 1994

## LIST OF ATTACHMENTS

- A. Building Permit from City of Portland, and Approved Plan
- B. Site Plans prepared by Oakley Engineering, Inc.
- C. Site Photographs
- D. Letter from Jean Ochsner, Adolfson Associates, Inc.
- E. Letter from Michael G. Ebeling, Bureau of Buildings

## TABLE OF CONTENTS

	<u>Page</u>
I. PURPOSE OF THIS REPORT.....	3
II. DESCRIPTION OF THE PROPERTY .....	4
III. CRITERIA FOR APPROVAL OF SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT - MCC .6420. ....	4
IV. CONCLUSION.....	10

## L PURPOSE OF THIS REPORT

Ralph and Nancy Rosenlund live on 1.32 acres in a 50 year old house next to Balch Creek. The Rosenlund's property is heavily wooded, and has an understory of rhododendrons, ferns and other native plants. Trees overhang the roof of the house. The roof was damaged by the trees, and needed to be replaced. The Rosenlunds hired a contractor to do the reroofing. When the contractor removed the old roof, he discovered the walls under the roof were rotten. When he got to the bottom of the walls, he discovered the floor was partially rotten. Old, wet, rotting floor insulation had to be removed. Brick work on the chimney needed also partial replacement.

At this point, since most of the second floor was torn up, the Rosenlunds hired a builder to design a replacement second floor. They decided on a roof with a steeper pitch in the shed-style, a practical choice for this house, because it will better shed tree needles and leaves. For fire safety reasons, they chose a metal roof.

The three bedrooms in the house are all on the second floor, along with a full bathroom located in the center of the second floor. The Rosenlunds changed the location of that bathroom so that it will have a window and better ventilation, but they have not added any rooms. All of the work is being done on the second story of the house.

The Rosenlunds originally planned to replace the entry overhang (see Site Plan 2, Attachment B) with a greenhouse. However, they decided just to replace the previous overhang, because the greenhouse would have been difficult and expensive to build. The overhang is 5 feet wide by 15 feet long, supported by four posts which rest on the concrete walkway along the front of the house. The overhang protects the entry walkway to the first floor of the house.

While no photographs are available of the house prior to the remodeling, included as Attachment C are photos of the house as it now appears, including the upstairs interior showing the extent to which the rotten wood was replaced.

Prior to beginning their remodeling work, the Rosenlunds inquired at Multnomah County Planning if an SEC permit was needed. They were advised by Bob Hall, in May, 1994, that it was not. They obtained a building permit from the City of Portland (Attachment A) and began the repair work. However, on September 20, 1994, a Notice of Zoning Violation was issued by Irving G. Ewen of the Multnomah County Zoning Code Enforcement Office.<sup>1</sup>

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<sup>1</sup> Mr. Ewen's letter states in part:

*It had previously been assumed that since the "footprint" had not been enlarged from that of the original structure, that no SEC Permit was required. (However, a zoning "sign-off" would still have been required on your site plan to obtain a building permit through the City of Portland's Building Permit Center.)*

*It has since been determined by this office that an SEC Permit is required when any physical improvement is made in an area designated as SEC.*

Based on Mr. Ewen's letter, the Rosenlund's are submitting this application to secure SEC approval of the remodeling work in process on their house.

## **II. DESCRIPTION OF THE PROPERTY**

The Rosenlund's 1.32 acre property is located on Cornell Road. Their house is next to Balch Creek, which runs through the property (see Site Plans, Attachment B). The sloping driveway begins on Cornell Road and ends at the house, which is about 25 feet below street level and is under a tree canopy. Except for the house, deck, and driveway areas, the property is covered with a natural forest about 75 years old.

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

Most of the Rosenlund's property is included in Multnomah County's list of Protected Water Resource and Wetland Sites, adopted January 11, 1994.

The property is zoned CFU, with an SEC overlay. Under MCC 11.15.2048(D), "Maintenance, repair or expansion of an existing single family dwelling" is a use permitted outright. Therefore, this application addresses the criteria for an SEC permit only.

## **III. CRITERIA FOR APPROVAL OF SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT - MCC .6420**

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

The Rosenlund's house is 15' from the stream, at its nearest point. The area between the house and stream is filled with native cedar trees, hemlock, vine maples, rhododendrons, and ferns (see Attachment C, photographs of the yard and house.) The above standard is met, because no vegetation will be removed during the remodeling process. All work is structural; no excavation or other work is being done to the ground. The house will be no closer to the stream. The new metal roof is 6' higher, but installation required no tree pruning or vegetation disruption, i.e., there is no impact on the dense tree canopy from the remodeling. The Rosenlunds previously removed ivy, and replaced it with native plants. One large cedar and a large hemlock overhang both the pre-existing deck and the stream.

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

All work is being done within the existing building footprint.

**C. The harvesting of timber on lands designated SEC shall be conducted in a manner...**

There will be no timber harvesting.

**D. A building, structure, or use shall be located on a lot in a manner which will balance...**

There is no new building or relocation of an existing building. Retention of the existing building best addresses the purpose of this standard, because there will be no disturbance to the stream or vegetation from this project. The Rosenlunds chose to remodel within the existing footprint to avoid the disruption to the natural area around their house that would occur with an outward expansion.

**E. Recreational needs shall be satisfied...**

There is no public access to Balch Creek on the Rosenlund's property. The remodeling will not result in a new need for recreational opportunities as it will not intensify the use of the property.

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

The property is gated, fenced, has an alarm system and outdoor lights on the driveway and parking areas. These features will be retained.

**G. Significant fish and wildlife habitat shall be protected.**

The reconstructed second story will have no impact on significant fish and wildlife habitat because all work is being done within the existing building footprint, and at a minimum of 15' from the stream. No trees are being removed, no branches will be cut, and no grading is needed. The use will not intensify as a result of the remodeling.

Before the remodeling, the house had three roof drains. When the new roof was installed, one drain on the front of the house was eliminated (see Site Plan for location of existing two roof drains). The north side of the roof drains, as previously, into a recessed area near the septic drainfield, and is absorbed into the ground. The south side of the roof drains, as it always has, into Balch Creek. (The roof drains are shown on Site Plan 2, Attachment B.) The roof area, and thus the amount of runoff, is not increasing. The septic tank and drainfield are not affected by the

remodeling project. Native cutthroat trout continue to live and thrive in the pools and stream on the property.

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

All vegetation around the house has been protected during installation of the roof. No vegetation on the property has been or will be cut or otherwise impacted during the remainder of the remodeling work.

The Rosenlunds have enhanced the natural vegetation present by planting native trees, ferns (lady fern, sword fern, deer fern, maidenhair fern), Oregon grape, salal, trillium, yellow wood violets, wild lilies, wild ginger. Vine maples, salmonberry, and huckleberry are present. Balch Creek flows through a vegetated corridor. The dense vegetation There are few further opportunities to enhance the natural vegetation, because the property is densely planted, as the photographs show. Trees are up to 75' tall and the understory is thick.

**I. Archaeological areas shall be preserved...**

WPS spoke with Lee Gilson of the state Historic Preservation Office. Mr. Gilson said that this site has not been inventoried for archaeological artifacts. However, he said that areas with slopes over 10-15% were not preferred by Native Americans, although sometimes rock cliffs in steeply-sloped areas were used as "canvases" for paintings. There are no rock cliffs in the ravine at this site, and Mr. Gilson therefore believes the site has a low probability for presence of artifacts.

**J. Extraction of aggregates and minerals...**

There will be no extraction of aggregates and minerals.

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

Since all work will be done within the existing footprint of the house, all natural areas will be undisturbed and this standard is met.

All areas where these natural functions occur will be preserved. The Rosenlunds have not increased impervious surface areas. The dense trees and understory throughout the property slow rainwater runoff, allowing it to soak into the ground as it does naturally. The trees overhanging the entire length of Balch Creek keep water temperatures low and prevent water loss through evaporation. Again, the Rosenlunds have chosen to remodel only the upstairs of the house so as to not develop in any new area. There are no new impervious surfaces. Only the water from one

roof drain enters the Creek, as it has since the house was constructed. The presence of native cutthroat in the Creek

Before the Rosenlunds bought their property, a stone and concrete wall (26 foot-long by 2 foot high) was built next to Balch Creek. The wall was probably built for flood control, to keep the Creek from overflowing by the house. According to Scott Rosenlund, the Creek channel is 4 feet deep at this location, and the Creek has not overrun its banks during the time the Rosenlunds have owned the property.

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

**MCC .6422, *Significant Wetlands*, states "... Any proposed activity or use requiring an SEC permit which would impact those wetlands shall be subject to the following..."**

The Rosenlund's project is not impacting Balch Creek or any possible wetland on their property. Jean Ochsner, Senior Environmental Scientist with Adolfsen Associates, Inc., has visited the property and states in a letter included as Attachment D:

*There will be no impacts to natural resources resulting from this remodeling. For this reason, it appears that there is not a need to address the wetland section of the SEC regulation.*

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

No erosion will occur from this project because the remodeling is entirely within the existing footprint of the house and involves no disturbance of soil whatsoever. No excavation or grading will be done. There is no area of erosion and thus no "appropriate" protection required. No erosion will occur from this project because the remodeling is entirely within the existing footprint of the house and involves no disturbance of soil whatsoever. No excavation or grading will be done. The four posts which support the 5' overhang at the front of the house will be replaced. They sit on the previously existing concrete walkway on the front and side of the house. Therefore, no dirt will need to be moved in order to replace these posts. Otherwise, all remodeling work is being done on the second floor of the house.

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

Because the remodeling is being done within the building's existing footprint and the use will not intensify, the quality of these resources will be the same as before the remodeling. When the new roof insulation is installed, noise levels outside will decrease.

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

The house is over 50 years old and predates the SEC zone. It is "nestled" in the woods. In the front of the house, a maple tree and four cedar trees brush the roof; their trunks are inches from the side of the house. The height of the house is increasing from 25 feet to 28 feet. With 75 to 90 feet tall trees around it, the height increase will not have new visual or aesthetic impacts. The installed new metal roof is brown; the color was chosen to blend with surrounding vegetation. The house is dark blue-gray and blends in with the trees. The replaced siding will be painted the same color.

The Rosenlund's property is below street level of Cornell Road. The house cannot be seen from Cornell Road due to the thick vegetation between the driveway and the street. This vegetation consists of fir, hemlock, cedar, big leaf maple and vine maple. There is no public trail on or near the property from which the house might be seen.

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

There will be virtually no impact to natural vegetation from the remodeling project. Even replacing the roof did not require tree or shrub pruning; it was done without disturbing the overhanging trees or other vegetation. All old materials removed from the house were taken via a walkway that extended from the second story to a dumpster on the driveway. This arrangement was possible due to the driveway's slope. No vegetation was impacted while this work was done. No clearing is being done. The remaining work will be done in the inside of the house. The intensity of use will not increase as a result of replacing the roof and walls.

An approximate vegetation mix is shown on Site Plan 1, Attachment B.

- Q. The applicable policies of the Comprehensive Plan shall be satisfied.**

**Multnomah County Plan Policies:**

**Policy 14: Developmental Limitations.**

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

The Rosenlund's property has areas of steep slopes, and the house, at its nearest point, is 15 feet from Balch Creek. This remodeling project will not result in any public harm or public cost, nor

require mitigation, as there are no off-site impacts. The areas with possible developmental limitations are not involved in or impacted by the remodeling.

**Policy 16-D: Fish and Wildlife Habitat.** It is the County's policy to protect significant fish and wildlife habitat, and to specifically limit conflicting uses within sensitive big game winter habitat areas.

This policy is implemented by the SEC regulations listed and addressed above. The property is not within a sensitive big game habitat area.

**Policy 16-E: Natural Areas.**

It is the County's policy to protect natural areas from incompatible development and to specifically limit those uses which would irreparably damage the natural area values of the site.

This policy is implemented by the SEC regulations listed and addressed above. The house is a permitted use and predates the SEC zone. As previously stated, the remodeling will not result in a more intense use of the house.

**Policy 16-F: Scenic Views and Sites.**

It is the County's policy to conserve scenic resources and protect such areas from incompatible and conflicting land uses.

As stated previously, the house is entirely screened from public view by natural vegetation. It is a permitted use and predates the SEC zone.

**Policy 16-G: Water Resources and Wetlands.**

It is the County's policy to protect and, where appropriate, designate as areas of significant environmental concern, those water areas, streams, wetlands, watersheds, and groundwater resources having special public value . . .

This policy is implemented by the SEC regulations listed and addressed above.

**Policy 37: Utilities**

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

Water and disposal system

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

Water is provided by a private well, as are all other homes within the Balch Creek basin. The well has provided adequate water during the 14 years the Rosenlunds have used it.

The Rosenlund's septic system was recently inspected and found adequate by Michael G. Ebeling, Senior Environmental Soils Inspector, Portland's Bureau of Buildings. Mr. Ebeling's letter is included as Attachment E.

The remodeling will not increase the size of the house or intensity of use. It will only reconfigure the existing space, and water and septic use will be unchanged.

#### **Drainage**

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

Prior to remodeling, there were three roof drains going into a pond and dry well. The water is gradually absorbed into the ground. After remodeling, there will be two drains going into the same dry well and pond. Because the total roof area is not increasing, the amount of runoff will be the same.

#### **Policy 38: Facilities**

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

**School:** The appropriate school district has had an opportunity to review and comment on the proposal.

**Fire Protection:** There is adequate water pressure and flow for fire fighting purposes; and the appropriate fire district has had an opportunity to review and comment on the proposal.

**Police Protection:** The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

Scott Rosenlund will obtain the approval signatures from the agencies listed above.

#### **IV. CONCLUSION**

The partially-completed construction shows the Rosenlunds have taken great care to protect the surrounding vegetation. Even the trees overhanging the roof show no evidence of limb breakage from installation of the new roof. There was no sign of construction debris anywhere on the property. And all of this care was taken even when the Rosenlunds believed they would not have to submit an application for an SEC permit.

The Rosenlunds remodeling project will not impact the natural resources on their property. The Rosenlunds meet all applicable criteria, and ask approval of their request.

c:\client\rosenlund\report.fin

**ATTACHMENT A**

*Building Permit and Approved Plan*



BUREAU OF BUILDINGS
PERMIT APPLICATION CENTER

PO BOX 8120

PORTLAND, OREGON 97207-8120



CITY OF PORTLAND

MULTNOMAH COUNTY

BUILDING PERMIT NUMBER: BLD94-03479

06-JUN-94

JOB ADDRESS: 5830 NW CORNELL RD

JOB: roof reconstruction from tree damage. second floor plan as shown

Alter description to reconfigure on approved plans per inspection

RALPH ROSEN LUND
5830 NW CORNELL RD
PORTLAND OR 97210

Table with 2 columns: Description and FEE. Rows include PERMIT FEE\*, PLAN CHECK/PROCESS FEE\*, 5% STATE SURCHARGE\*, MICROFILM, and a total of \$277.52.

THIS DRAWING... CONSTRUCTION... ELECTRICAL... WORK NOT INCLUDED. AUG 05 1994 BUREAU OF BUILDINGS

PROPERTY OWNER: CARRASCO, PRISCILLA B

APPLICANT/ AUTHORIZED AGENT: \_\_\_\_\_

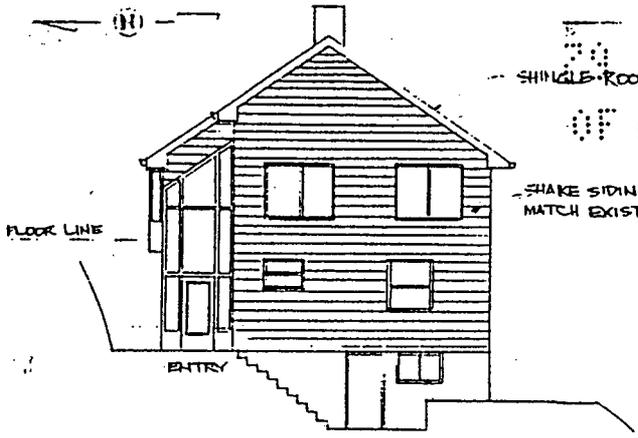
PAID JUN 6 - 1994 PORTLAND

FOR INSPECTION CALL: (503) 823-7000

TDD# (503) 823-6868

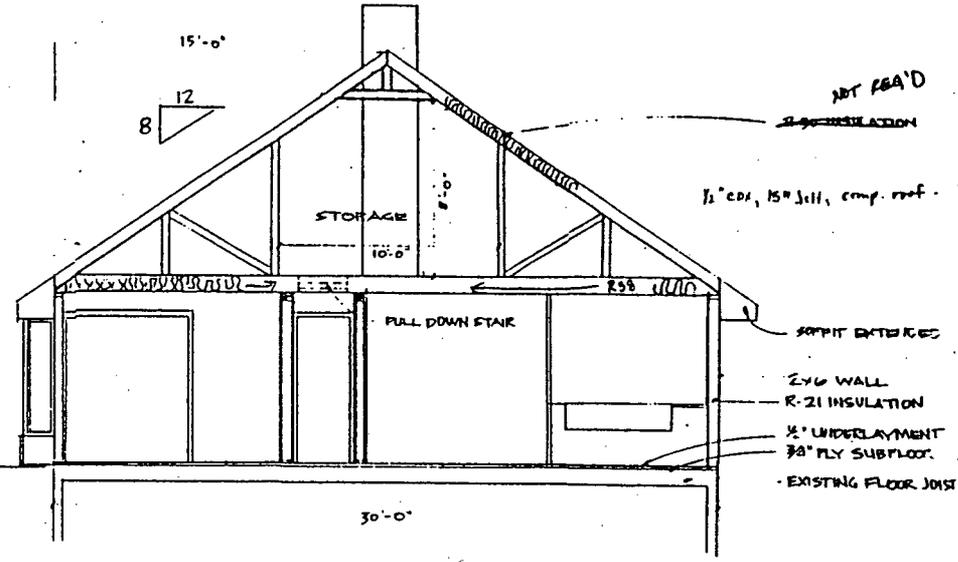
PERMITS ARE NON-TRANSFERABLE AND EXPIRE IF WORK IS NOT COMMENCED WITHIN 180 DAYS OF ISSUANCE OR IF WORK IS SUSPENDED FOR MORE THAN 180 DAYS.

NEW CONSTRUCTION  
EXISTING

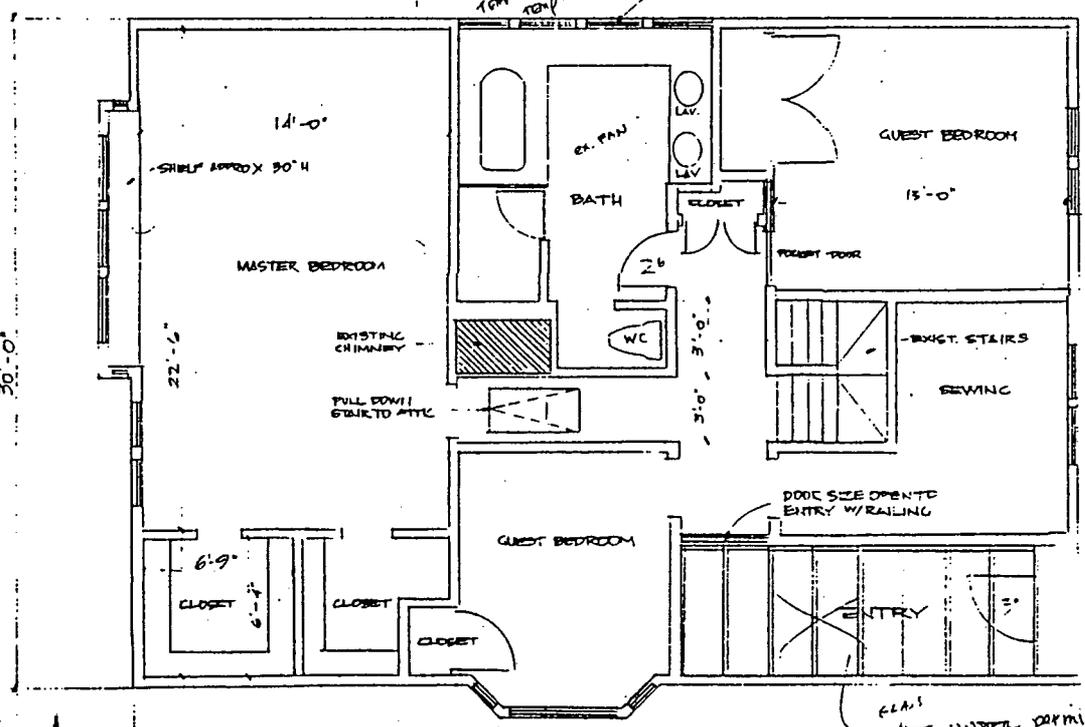


SHINGLE ROOF  
OF PORTLAND

SHAKE SIDING TO MATCH EXISTING



NOT REB'D  
INSULATION  
1 1/2" COP, 15" JELL, comp. roof.  
SOFFIT ENTRANCE  
2x6 WALL  
R-21 INSULATION  
1/2" UNDERLAYMENT  
3/8" PLY SUBFLOOR  
EXISTING FLOOR JOIST

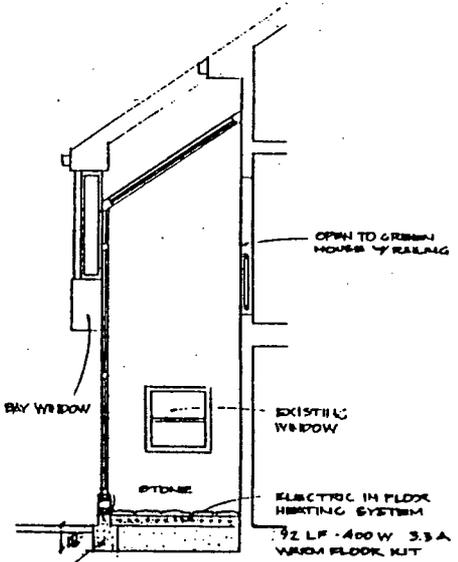


30'-0"

25'-0"

SECOND FLOOR PLAN 14'-11"

GLASS  
KIT UNDER PERMIT  
1/4" PLATE (3/32") LAMINATE OVER TEMP  
24" X 12" DOUBLE PANE 4 lbs. PER SQ. FT.  
15'-0"



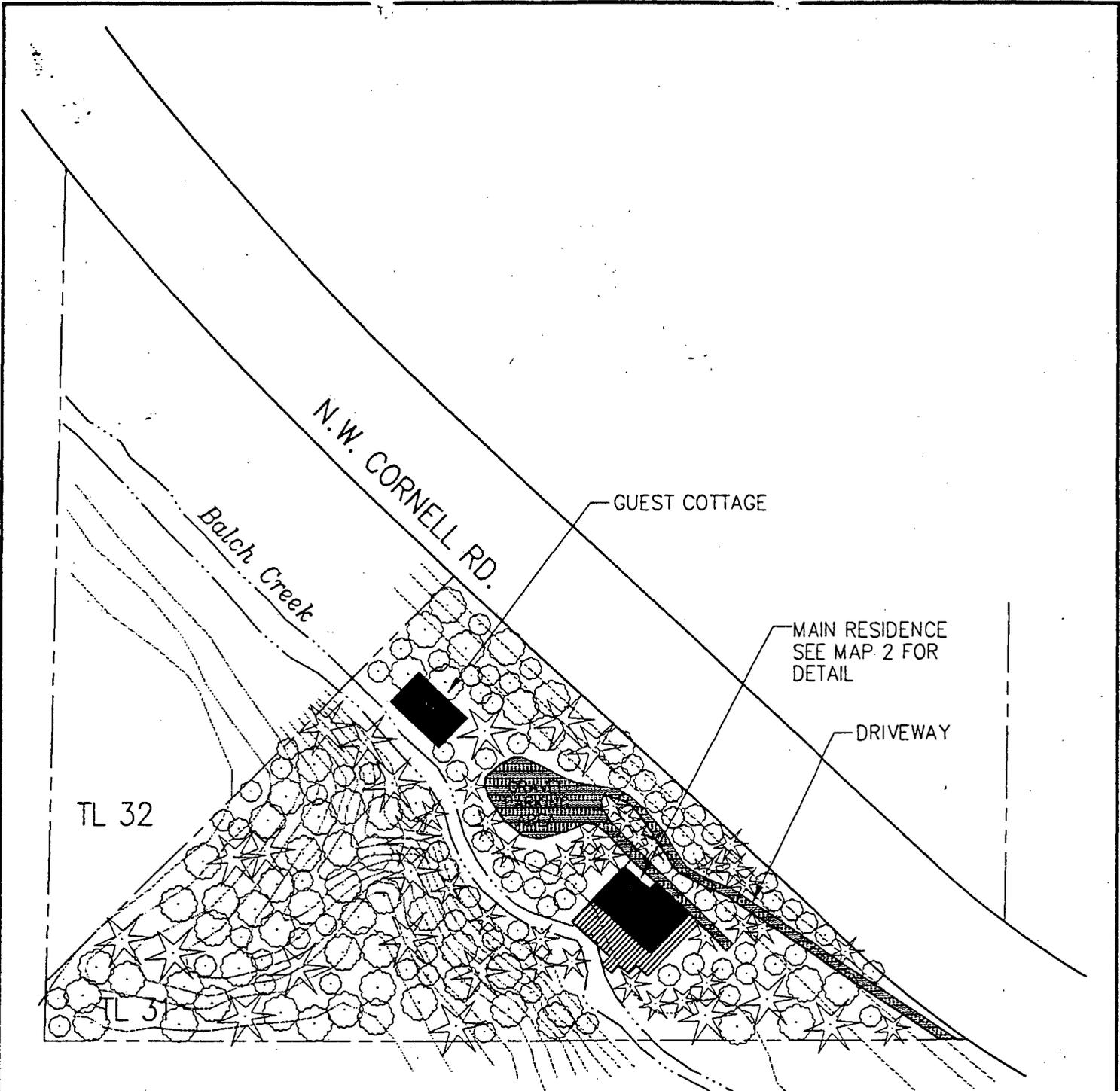
ENTRY 14'-11"



5830 NW Cornell Rd

**ATTACHMENT B**

*Site Plans*



TL 32

TL 3

N.W. CORNELL RD.

Balch Creek

GUEST COTTAGE

MAIN RESIDENCE  
SEE MAP 2 FOR  
DETAIL

DRIVEWAY

-  DECIDUOUS - VINE MAPLES, BIG LEAF MAPLES, AND ALDER
-  CONIFEROUS - HEMLOCK AND CEDAR OVER 75'

**MAP 1**  
**SITE PLAN**  
SEC Analysis - Rosenlund Residence

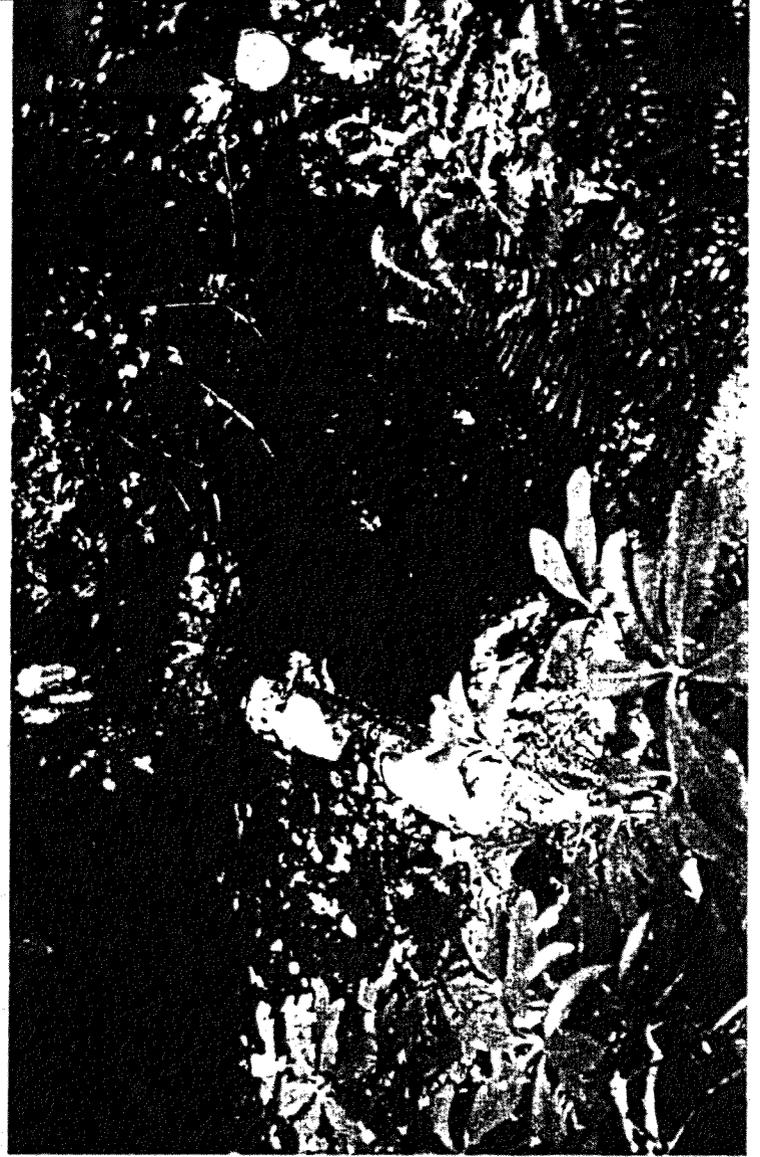
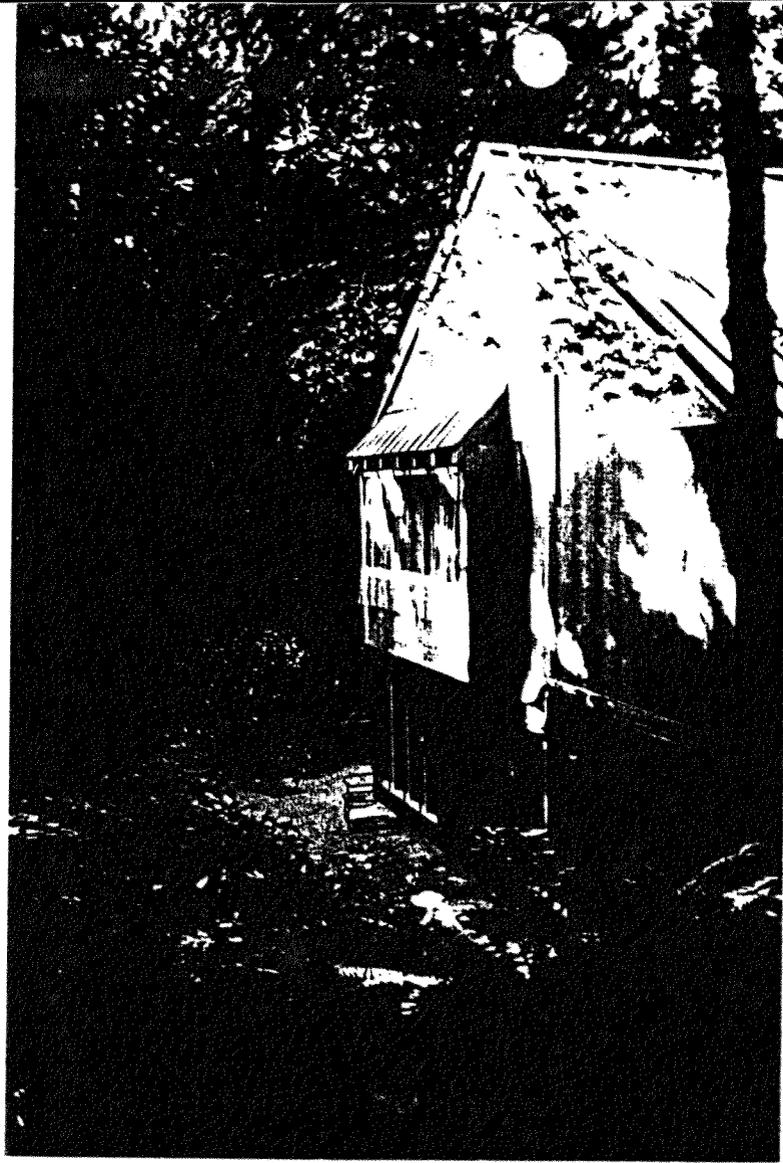
*Winterowd Planning Services*

SCALE: 1" = 80' APPROXIMATE



**ATTACHMENT C**

*Site Photographs*

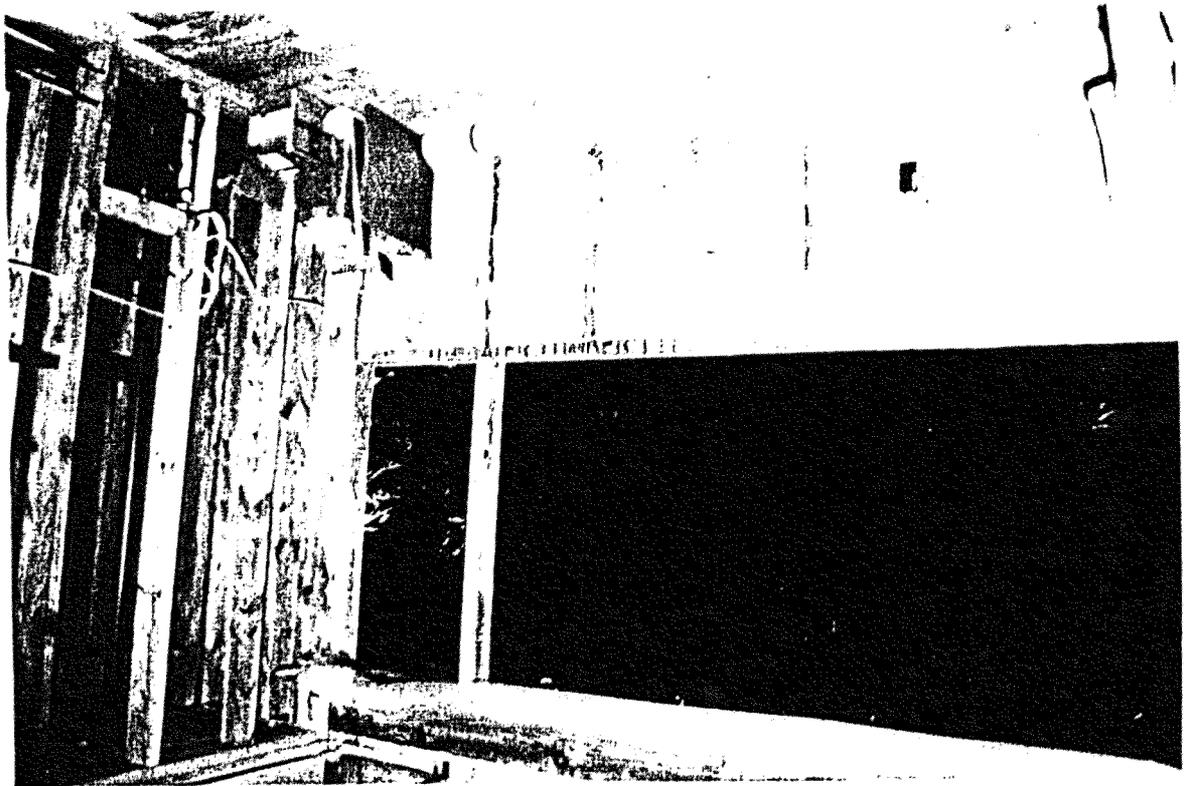
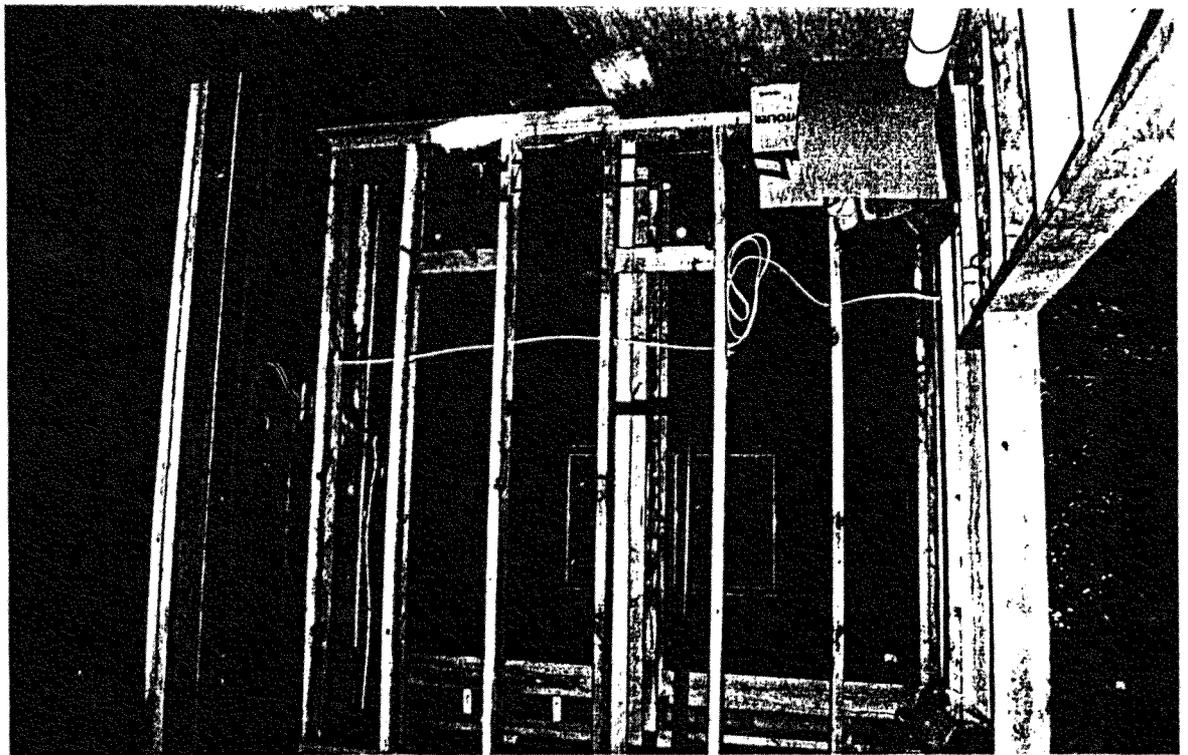




↑  
House  
↓



2 Creek



**ATTACHMENT D**

*Letter from Jean Ochsner, Adolfsen Associates, Inc.*



ADOLFSON  
ASSOCIATES, INC.

October 21, 1994

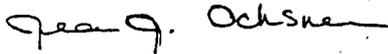
Attn: Mark Hess  
Multnomah County  
Planning and Development  
2115 SE Morrison  
Portland, OR 97214

Dear Mark,

At the request of Nancy Rosenlund, I reviewed the issues regarding the Rosenlund's remodeling project and the corresponding SEC requirements. Ms. Rosenlund requested my assistance due to past experience on Multnomah County planning issues and my background in aquatic biology. The remodeling on the house is vertical, thus keeping the original footprint of the house intact. There will be no impacts to natural resources resulting from this remodeling. For this reason, it appears that there is not a need to address the wetland section of the SEC regulation.

If you have any need for clarification regarding this matter, please feel free to contact me at 226-8018.

Sincerely,



Jean J. Ochsner  
Senior Environmental Scientist



**ATTACHMENT E**

*Letter from Michael G. Ebeling, Bureau of Buildings*

DEC 8-94  
EXHIBIT 2.



CITY OF

**PORTLAND, OREGON**

BUREAU OF BUILDINGS

1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
(503) 823-7300  
FAX: (503) 823-6983  
TDD: (503) 823-6868

December 23, 1994

MARK HESS  
MULTNOMAH COUNTY  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE MORRISON ST  
PORTLAND OR 97216

RE: 5830 NW CORNELL ROAD

On December 1, 1994, I introduced fluorescent dye into the existing septic system at the above property. A follow up inspection was conducted on December 2, 1994. No dye was present in the area claimed to be where the drainfield was located. I also inspected the area along Balch Creek and other portions of the property for possible sewage surfacing for violations of the on-site sewage disposal rule.

None were noted at that time. We will be dropping this complaint until we can establish a violation.

Should you have any questions regarding this matter, feel free to contact me at 823-7247.

Sincerely,

Michael G. Ebeling, RS  
Senior Environmental Soils Inspector

MGE:dmk

RECEIVED  
DEC 20 1994

Multnomah County  
Zoning Division