

ANNOTATED MINUTES

Tuesday, May 6, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

MERIT SYSTEM CIVIL SERVICE APPEAL HEARING

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

PH-1 The Board of Commissioners Will Consider the Appeal of the Multnomah County Merit System Civil Service Council Decision Issued March 18, 1997 on the Merit Appeal of James B. Griffith, Jr. At the Conclusion of the Hearing, the Board Options are to: Uphold the Merit System Civil Service Council Decision; Overturn the Decision; or Remand the Case to the Council for Further Proceedings. Presentations by Anna Kanwit, Steve Nemirow and Garvin Reiter.

BOARD COUNSEL, CITY ATTORNEY ANNA KANWIT, EXPLANATION OF ISSUES, JURISDICTION TO HEAR APPEAL, BACKGROUND INFORMATION BASED ON PERSONNEL RULES, COUNSELS TO BE ARGUING APPEAL, WRIT OF REVIEW ON THE RECORD, AND THREE VOTES NEEDED FOR ACTION. APPELLANT'S ATTORNEY, COUNTY COUNSEL STEVE NEMIROW PRESENTATION AND ARGUMENTS IN SUPPORT OF BOARD OVERTURNING THE COUNCIL DECISION AND ADOPTING HIS FINDINGS REGARDING COUNTY CODE JURISDICTION IN MATTERS PERTAINING TO EXEMPT EMPLOYEES, AND RESPONSE TO QUESTION OF COMMISSIONER SALTZMAN REGARDING WRITTEN WAIVER OF RIGHT TO LOOK AT BACKGROUND FILE. ATTORNEY GARVIN REITER, REPRESENTING JAMES GRIFFITH, PRESENTATION AND ARGUMENTS IN SUPPORT OF COUNCIL DECISION, IN SUPPORT OF BOARD REMANDING DECISION BACK TO COUNCIL IN ORDER FOR COUNCIL TO CONSIDER AN AWARD

FOR CONTRACT DAMAGES, AND RESPONSE TO BOARD QUESTIONS REGARDING WRITTEN PROCEDURES PERTAINING TO BACKGROUND CHECKS, AND DECEMBER 23, 1996 CUT OFF DATE FOR HIRING PROCESS. MR. NEMIROW RESPONSE TO QUESTIONS OF COMMISSIONER KELLEY REGARDING RULES FOR UNCLASSIFIED EMPLOYEES, ADVISING COUNTY EXEMPT EMPLOYEES ARE PROTECTED UNDER STATE LAW AND CAN BE FIRED AT WILL. MR. NEMIROW REBUTTAL TO MR. REITER'S PRESENTATION.

COMMISSIONER KELLEY ADVISED IT IS HER POSITION THAT THIS CASE IS NOT THE JURISDICTION OF THE MERIT SYSTEM CIVIL SERVICE COUNCIL, BUT IS ADDRESSED IN THE COUNTY CODE, THAT SHE IS CONCERNED ABOUT MR. GRIFFITH'S TREATMENT, AND THAT SHE SUPPORTS MR. NEMIROW'S RECOMMENDATION. COMMISSIONER SALTZMAN AND VICE-CHAIR HANSEN CONCURRED WITH COMMISSIONER KELLEY'S POSITION REGARDING JURISDICTION, CONCERN ABOUT MR. GRIFFITH'S TREATMENT, AND SUPPORT OF MR. NEMIROW'S RECOMMENDATION. FOLLOWING DISCUSSION AND RESPONSE TO BOARD QUESTIONS WITH MS. KANWIT, AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT THE MERIT SYSTEM CIVIL SERVICE COUNCIL DID NOT HAVE JURISDICTION TO CONSIDER AN APPEAL OF AN UNCLASSIFIED POSITION, THAT THE DECISION OF THE MERIT SYSTEM CIVIL SERVICE COUNCIL IS OVERTURNED, AND THAT THE APPEAL OF JAMES GRIFFITH IS DISMISSED. [ORDER 97-98] MS. KANWIT RESPONSE TO BOARD QUESTIONS REGARDING OTHER AVENUES OF REDRESS FOR MR. GRIFFITH. COMMISSIONER SALTZMAN SUGGESTED THAT FUTURE POTENTIAL HIRES ARE NOT OFFERED POSITIONS UNTIL BACKGROUND CHECKS ARE COMPLETED.

There being no further business, the hearing was adjourned at 10:25 a.m. and the briefings convened at 10:28 a.m.

Tuesday, May 6, 1997 - 10:15 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

BOARD BRIEFINGS

- B-1 Audit: 1997 Report on the Financial Condition of the County. Presented by Gary Blackmer.

GARY BLACKMER PRESENTATION OF REPORT AND RECOMMENDATIONS. MR. BLACKMER INTRODUCED AUDITOR JUDITH DEVILLIERS.

Following a short recess, the briefings were reconvened at 10:58 a.m.

- B-2 Overview of Five Year Financial Forecast and Discussion of Revenue Projections for the 1997-98 Proposed Multnomah County Budget. Presented by Mark Campbell.

MARK CAMPBELL AND DAVE WARREN PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION ON ISSUES INCLUDING REVENUE PROJECTIONS; CPI's; COLA's; ECONOMIC TRENDS; PROPERTY TAXES; AND CONTINGENCY ASSUMPTION FOR MEASURE 47-50 OUTCOME.

There being no further business, the meeting was adjourned at 11:20 a.m.

Thursday, May 8, 1997 - 9:30 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

REGULAR MEETING

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

CONSENT CALENDAR

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSENT CALENDAR ITEMS C-1 THROUGH C-6 AND C-8 THROUGH C-13 WERE UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-1 Intergovernmental Agreement 103787 with Oregon Health Sciences University Hospital Providing Inpatient Psychiatric Services for Children and Young Adults Enrolled in Multnomah County CAPCare

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-2 CU 1-97/HV 2-97 Report the Hearings Officer Decision Regarding Approval of a Conditional Use Permit and Major Variance from the Side Yard Setback Requirements to Establish a Single Family Dwelling on Lands Designated Commercial Forest Use for Property at 8383 SE RODLUN RD, GRESHAM
- C-3 CU 2-97 Report the Hearings Officer Decision Regarding Approval of a Conditional Use Permit to Establish a Single Family Dwelling on Lands Designated Commercial Forest Use for Property at 43000 SE HAINES RD, CORBETT
- C-4 CU 3-97 Report the Hearings Officer Decision Regarding Approval of a Conditional Use Permit to Establish a Retail Nursery on Lands Zoned Rural Center for Property at 29943 SE ORIENT DR, GRESHAM
- C-5 CU 4-97/SEC 7-97 Report the Hearings Officer Decision Regarding Approval of a Conditional Use Permit and a Significant Environmental Concern Permit for a Single Family Dwelling on Lands Designated Commercial Forest Use for Property at 14625 NW SKYLINE BLVD, PORTLAND
- C-6 SEC 23-96 Report the Hearings Officer Decision Regarding Approval of a Significant Environmental Concern Permit for a Replacement Dwelling and a Detached Accessory Building on Lands Designated Commercial Forest Use for Property at 18600 NW SKYLINE BLVD, PORTLAND

- C-8 ORDER Authorizing Execution of Deed D971480 for Repurchase of Tax Foreclosed Property to Former Owner Tokoyo Akiyama Becker

ORDER 97-87.

- C-9 ORDER Authorizing Execution of Deed D971484 Upon Complete Performance of a Contract to James L. Berry

ORDER 97-88.

- C-10 Intergovernmental Agreement 301267 with the Oregon Department of Transportation for Phase II of the Westside Transportation System Plan

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

- C-11 Intergovernmental Revenue Agreement 700727 with Metro Providing a Work Crew and Supervisor for Twice Weekly Litter Pick-up Services in Connection with the Payback Restitution Program for Adjudicated or Diverted Youth

- C-12 Budget Modification DJJS 3 Adding \$93,773 in Office of Justice Program "Weed and Seed" Grant Dollars to the Counseling and Court Services and Department Management and Support Services Division Budgets to Fund a Juvenile Counselor Lead and Contracted Services to Youth through September 30, 1997

- C-13 Budget Modification DJJS 5 Adding \$15,000 Washington County Revenue to the Counseling and Court Services Division Budget to Fund Facilitation of the Save Our Youth Program in Washington County

REGULAR AGENDA

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 FINAL ORDER for Land Use Planning Case CU 7-96/SEC 33-96 Amending the March 5, 1997 Hearings Officer Decision Denying a Conditional Use Permit and a Significant Environmental Concern Permit

DOROTHY COFIELD, ATTORNEY FOR APPLICANT APPELLANT ANDREW MILLER, TESTIMONY IN SUPPORT OF A WRIT OF MANDAMAS REMEDY; REFUND OF HALF OF APPLICANT'S \$2,270 FEES; AND DELETION OF LATIN PHRASE "NUNC PRO TUNC APRIL 1, 1997" FROM FINAL ORDER DATE.

COUNTY COUNSEL SANDRA DUFFY ADDRESSED MS. COFIELD'S TESTIMONY, EXPLAINING THE COUNTY'S USE OF THE NUNC PRO TUNC PHRASE; ADVISING SHE FEELS THE COUNTY HAS NO LIABILITY FOR RETURN OF THE FEES; AND THAT MS. COFIELD COULD RAISE ISSUE ON APPEAL TO THE LAND USE BOARD OF APPEALS. IN RESPONSE TO A QUESTION OF MS. COFIELD, MS. DUFFY ADVISED THEY HAVE A DIFFERENCE OF OPINION IN CASE LAW INTERPRETATIONS. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF C-7. COMMISSIONER KELLEY COMMENTS IN SUPPORT OF MOTION, ADVISING SHE IS ALSO SYMPATHETIC TO MR. MILLER. FINAL ORDER 97-89 UNANIMOUSLY APPROVED.

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

UC-1 ORDER Authorizing Execution of Deed D971483 Upon Complete Performance of a Contract to Estate of Harry C. Kirkelie, Deceased, and Elaine J. Kirkelie

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF UC-1. CHAIR STEIN EXPLANATION. ORDER 97-90 UNANIMOUSLY APPROVED.

PUBLIC COMMENT

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

PAUL FRANK COMMENTS AND WRITTEN TESTIMONY IN OPPOSITION TO PROPOSED REDUCTION OF PAROLE AND PROBATION OFFICERS. CHAIR STEIN ADVISED THE ISSUE

**WILL BE DISCUSSED DURING UPCOMING
BUDGET DELIBERATIONS.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 PROCLAMATION Declaring the Week of May 18 through 24, 1997 as NATIONAL PUBLIC WORKS WEEK, and Recognizing the Contributions of All Multnomah County Public Works Employees

***AT THE REQUEST OF CHAIR STEIN AND UPON
MOTION OF COMMISSIONER KELLEY, SECONDED
BY COMMISSIONER COLLIER, R-2 WAS
UNANIMOUSLY CONTINUED TO THURSDAY, MAY
15, 1997.***

SHERIFF'S OFFICE

- R-3 Intergovernmental Agreement 801007 with the City of Portland Providing Fingerprints and Photographs of Individuals Arrested for Crimes for Fiscal Year 1996-97

***COMMISSIONER COLLIER MOVED AND
COMMISSIONER HANSEN SECONDED, APPROVAL
OF R-3. LARRY AAB EXPLANATION. SANDRA
DUFFY RESPONSE TO QUESTION OF
COMMISSIONER COLLIER REGARDING LONG
RANGE RATHER THAN ANNUAL CONTRACTING.
AGREEMENT UNANIMOUSLY APPROVED.***

- R-4 Intergovernmental Agreement 801027 with Grant County Providing Jail Beds, Custody, Care and Safekeeping for the Detention of Multnomah County Inmates Effective May 1, 1997

***COMMISSIONER COLLIER MOVED AND
COMMISSIONER KELLEY SECONDED, APPROVAL
OF R-4. LARRY AAB EXPLANATION AND
RESPONSE TO BOARD QUESTIONS. AGREEMENT
UNANIMOUSLY APPROVED.***

DEPARTMENT OF SUPPORT SERVICES

R-5 RESOLUTION Authorizing Issuance and Sale of Short Term Promissory Notes (Tax and Revenue Anticipation Notes, Series 1997) in the Amount of \$11,000,000 to Meet Current Expenses of the County for Fiscal Year 1997-98

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. DAVE BOYER EXPLANATION AND RESPONSE TO QUESTION OF COMMISSIONER SALTZMAN. RESOLUTION 97-91 UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

R-6 Executive Budget Message and Presentation of Chair Beverly Stein's Proposed 1997-98 Budget

CHAIR BEVERLY STEIN PRESENTATION, COPIES AVAILABLE.

MULTNOMAH COUNTY BUDGET COMMITTEE

(Recess as the Board of County Commissioners and convene as the Multnomah County Budget Committee)

R-7 RESOLUTION Approving the Chair's Proposed 1997-98 Budget for Submittal to the Tax Supervising and Conservation Commission as Required by Law

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-7. DAVE WARREN EXPLANATION. RESOLUTION 97-92 UNANIMOUSLY APPROVED.

(Adjourn as the Multnomah County Budget Committee and reconvene as the Board of County Commissioners)

There being no further business, the regular meeting was adjourned at 10:15 a.m.

Thursday, May 8, 1997 - 11:00 AM
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

EXECUTIVE SESSION

Chair Beverly Stein convened the meeting at 10:30 a.m., with Vice-Chair Gary Hansen and Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for Consultation with Counsel Concerning Legal Rights and Duties Regarding Current Litigation or Litigation Likely to be Filed. Presented by Jacquie Weber and Sheriff Dan Noelle.

EXECUTIVE SESSION HELD.

There being no further business, the meeting was adjourned at 11:07 a.m.

BOARD CLERK FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

BOARD CLERK

OFFICE OF BEVERLY STEIN, COUNTY CHAIR
1120 SW FIFTH AVENUE, SUITE 1515
PORTLAND, OREGON 97204
TELEPHONE • (503) 248-3277
FAX • (503) 248-3013

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

**MEETINGS OF THE MULTNOMAH COUNTY
BOARD OF COMMISSIONERS**

AGENDA

FOR THE WEEK OF

MAY 5, 1997 - MAY 9, 1997

- Tuesday, May 6, 1997 - 9:30 AM - Appeal Hearing.....Page 2
- Tuesday, May 6, 1997 - 10:15 AM - Board Briefings..... Page 2
- Thursday, May 8, 1997 - 9:30 AM - Regular Meeting Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are *cable-cast* 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 BOARD CLERK AT (503) 248-3277, OR MULTNOMAH COUNTY TDD PHONE (503) 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

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-

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BOARD BRIEFINGS

- B-1 Audit: 1997 Report on the Financial Condition of the County. Presented by Gary Blackmer. 30 MINUTES REQUESTED.
- B-2 Overview of Five Year Financial Forecast and Discussion of Revenue Projections for the 1997-98 Proposed Multnomah County Budget. Presented by Mark Campbell. 30 MINUTES REQUESTED.

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REGULAR MEETING

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DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-1 Intergovernmental Agreement 103787 with Oregon Health Sciences University Hospital Providing Inpatient Psychiatric Services for Children and Young Adults Enrolled in Multnomah County CAPCare

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-2 CU 1-97/HV 2-97 Report the Hearings Officer Decision Regarding Approval of a Conditional Use Permit and Major Variance from the Side Yard Setback Requirements to Establish a Single Family Dwelling on Lands Designated Commercial Forest Use for Property at 8383 SE RODLUN RD, GRESHAM
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- C-9 ORDER Authorizing Execution of Deed D971484 Upon Complete Performance of a Contract to James L. Berry
- C-10 Intergovernmental Agreement 301267 with the Oregon Department of Transportation for Phase II of the Westside Transportation System Plan

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE

- C-11 Intergovernmental Revenue Agreement 700727 with Metro Providing a Work Crew and Supervisor for Twice Weekly Litter Pick-up Services in Connection with the Payback Restitution Program for Adjudicated or Diverted Youth
- C-12 Budget Modification DJJS 3 Adding \$93,773 in Office of Justice Program "Weed and Seed" Grant Dollars to the Counseling and Court Services and Department Management and Support Services Division Budgets to Fund a Juvenile Counselor Lead and Contracted Services to Youth through September 30, 1997
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PUBLIC COMMENT

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

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 PROCLAMATION Declaring the Week of May 18 through 24, 1997 as NATIONAL PUBLIC WORKS WEEK, and Recognizing the Contributions of All Multnomah County Public Works Employees

SHERIFF'S OFFICE

- R-3 Intergovernmental Agreement 801007 with the City of Portland Providing Fingerprints and Photographs of Individuals Arrested for Crimes for Fiscal Year 1996-97

- R-4 Intergovernmental Agreement 801027 with Grant County Providing Jail Beds, Custody, Care and Safekeeping for the Detention of Multnomah County Inmates Effective May 1, 1997

DEPARTMENT OF SUPPORT SERVICES

- R-5 RESOLUTION Authorizing Issuance and Sale of Short Term Promissory Notes (Tax and Revenue Anticipation Notes, Series 1997) in the Amount of \$11,000,000 to Meet Current Expenses of the County for Fiscal Year 1997-98

NON-DEPARTMENTAL

- R-6 Executive Budget Message and Presentation of Chair Beverly Stein's Proposed 1997-98 Budget

MULTNOMAH COUNTY BUDGET COMMITTEE

(Recess as the Board of County Commissioners and convene as the Multnomah County Budget Committee)

- R-7 RESOLUTION Approving the Chair's Proposed 1997-98 Budget for Submittal to the Tax Supervising and Conservation Commission as Required by Law

(Adjourn as the Multnomah County Budget Committee and reconvene as the Board of County Commissioners)



MULTNOMAH COUNTY OREGON

BOARD CLERK

OFFICE OF BEVERLY STEIN, COUNTY CHAIR
1120 SW FIFTH AVENUE, SUITE 1515
PORTLAND, OREGON 97204
TELEPHONE • (503) 248-3277
FAX • (503) 248-3013

BOARD OF COUNTY COMMISSIONERS

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TANYA COLLIER •	DISTRICT 3	•248-5217
SHARRON KELLEY •	DISTRICT 4	•248-5213

MULTNOMAH COUNTY BOARD OF COMMISSIONERS

SUPPLEMENTAL AGENDA

Thursday, May 8, 1997 - 11:00 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Portland Building, Second Floor Auditorium
1120 SW Fifth Avenue, Portland

EXECUTIVE SESSION

- E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for Consultation with Counsel Concerning Legal Rights and Duties Regarding Current Litigation or Litigation Likely to be Filed. Presented by Jacquie Weber and Sheriff Dan Noelle. 30 MINUTES REQUESTED.

MEETING DATE: MAY 08 1997

AGENDA NO: C-1

ESTIMATED START TIME: 9:30

(Above space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental agreement with Oregon Health Science University Hospital to fund in-patient psychiatric services for young adult CAPCare enrolles under the age of 21.

BOARD BRIEFING

Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING

Date Requested: Next available

Amount of Time Needed: Consent

DEPARTMENT: Community and Family Services

DIVISION: _____

CONTACT: Lorenzo Poe/Bill Thomas 22095

TELEPHONE: 248-3691

BLDG/ROOM: B166/7th

PERSON(S) MAKING PRESENTATION: Lorenzo Poe/Bill Thomas

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE

OHSU University Hospital psychiatric in-patient services for young adults enrolled in CAPCare.

5/8/97 ORIGINALS TO IRENE FINLEY

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 28 PM 2:54

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Lorenzo Poe ma

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES
421 SW SIXTH AVENUE, SUITE 700
PORTLAND, OREGON 97204
PHONE (503) 248-3691
FAX (503) 248-3379
TDD (503) 248-3598

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

TO: Board of County Commissioners

FROM: Lorenzo Poe, Director *Lorenzo Poe*
Department of Community and Family Services

DATE: April 9, 1997

SUBJECT: Intergovernmental Agreement between the Department of Community and Family Services and Oregon Health Sciences University Hospital

I. Retroactive Status: This contract is retroactive to April 1, 1996 to cover ongoing services. Preparation of the contract was not finalized due to staff oversight.

II. Recommendation/Action Requested: The Department of Community and Family Services recommends Board of County Commissioner approval of the retroactive agreement for in-patient hospitalization for CAPCare enrollees between the ages of 18-21, for the period April 1, 1996 through June 30, 1997.

III. Background/Analysis: The Department of Community and Family Services is contracting with Oregon Health Sciences University Hospital for psychiatric hospital services for adolescents and young adults under the age of 21 who are served by Multnomah CAPCare. Services are authorized by County staff. This extends the service capacity for the young adult population. Funds for this contract and Multnomah CAPCare are provided under a capitation agreement with the Oregon Mental Health and Developmental Disabilities Services Division. Funds are in the Department budget. The contract is covered under a blanket exception in PUR-1 for hospital in-patient services.

V. Legal Issues: None

VI. Controversial Issues: None

VII. Link to Current County Policies: This is linked to the Benchmark concerning access to mental health services.

VIII. Citizen Participation: not applicable

IX. Other Government Participation: This contract is with OHSU, another public agency and formerly a branch of the State of Oregon.



MULTNOMAH COUNTY OREGON

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES
BEHAVIORAL HEALTH DIVISION
421 SW SIXTH, SUITE 600
PORTLAND, OREGON 97204
(503) 248-5464 FAX (503) 248-3926
TDD (503) 248-3598

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

MEMORANDUM

To: Irene Finley
From: Bill Thomas *Bill*
Date: Apr. 16, 1997
Subject: OHSU and Pacific Gateway Hospitals: Retroactive Status

This is to confirm our conversation regarding the retroactive status of inpatient contracts for Pacific Gateway and OHSU. (Both should be effective as of April 1, 1996). These are contracts for overflow and supplemental hospital beds. Final access and payment arrangements were dependent upon risk-pool agreements with our two major inpatient providers (Legacy/Caremark and Providence). Negotiations with OHSU and Pacific Gateway could not be finalized until contracts with Legacy/Caremark and Providence were in place. Execution of the Legacy/Caremark and Providence contracts was not complete until January 1997.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Contract # **103787**

Prior Approved Contract XX Boilerplate Attached; Not Attached

Amendment # 0

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Intergovernmental Agreement under \$50,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input checked="" type="checkbox"/> Intergovernmental Agreement <input type="checkbox"/> Intergovernmental Revenue Agreement <div style="text-align: center;"> APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-1</u> DATE <u>5/8/97</u> <u>DEB BOGSTAD</u> BOARD CLERK </div>

Department: Community & Family Services Division: _____ Date: April 9, 1997

Administrative Contact: Irene Finley Phone: 248-3691 ext. 26296 Bldg/Room: 166/7

Description of Contract: **Retroactive contract for in-patient hospitalization for children and young adults under the age of 21, who are served by Multnomah CAPCare.**

RFP/BID #: RFP 2P1611 Date of RFP/BID: 6/92 Exemption Expiration Date: _____

ORS/AR # _____ Contractor is MBE WBE QRF

Contractor Name: Oregon Health Sciences University Hospital Mailing Address: 3181 SW Sam Jackson Park Road Portland, OR 97201-3098 Phone: (503) 494-4854 FAX (503) 494-7787 Employer ID# or SS#: 93-1176109 Effective Date: April 1, 1996 Termination Date: June 30, 1997 Original Contract Amount: \$ Requirements Total Amt of Previous Amendments: \$-0- Amount of Amendment: \$-0- Total Amount of Agreement: \$Requirements	Remittance Address (if different) _____ Payment Schedule _____ Terms _____ <input type="checkbox"/> Lump Sum \$ _____ <input checked="" type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30 <input type="checkbox"/> Other \$ <u>per invoice</u> <input type="checkbox"/> Other _____ <input type="checkbox"/> Requirements contract - Requisition Required Purchase Order No. _____ <input checked="" type="checkbox"/> Requirements Not to Exceed \$ <u>See Attached</u> Encumber: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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REQUIRED SIGNATURES:

Department Manager: *Lorenzo Pae mus* Date: 4/25/97

Purchasing Director: _____ Date: _____

(Class II Contracts Only)
County Counsel: *Katrin Gutz* Date: 4/28/97

County Chair/Sheriff: *Marilyn Stein* Date: 5/8/97
(Class I, Class II Contracts Only)

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

VENDOR CODE CAP028				VENDOR NAME Oregon Health Science University Hospital				TOTAL AMOUNT: \$ Requirements			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INCD EC IND
	See	Attached									

If additional space is needed, attach separate page. Write contract # on top of page.

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COMMUNITY AND FAMILY SERVICES DEPARTMENT
 CONTRACT APPROVAL FORM SUPPLEMENT
 Contractor : OHSU-UNIVERSITY HOSPITAL

Vendor Code : CAP028

Fiscal Year : 96/97

Amendment Number : 0

Contract Number : 103787

LINE	FUND	AGEN	ORG CODE	ACTIVIY CODE	OBJECT CODE	REPORTING CATEGORY	LGFS DESCRIPTION	ORIGINAL AMOUNT	AMENDMET AMOUNT	FINAL AMOUNT	REQT'S ESTIMATE
54	395	010	1663	C11H	6060	9601X	CMH XIX Capitation CC/CCPlus Hospitalization	Requirements		Requirement	\$50,000.00
TOTAL								\$0.00	\$0.00	\$0.00	\$50,000.00

CONTRACT FOR SERVICES Contract #103787
MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

TERM OF CONTRACT: From April 1, 1996 To: June 30, 1997
CONTRACTOR NAME: Oregon Health Sciences University Hospital TELEPHONE: 503-234-5353
CONTRACTOR ADDRESS: 3181 SW Sam Jackson Park Road IRS NUMBER: 93-1176109
Portland, OR 97201-3098

This contract is between the Department of Community and Family Services, acting on behalf of Multnomah County, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY" and Oregon Health Sciences University Hospital, hereinafter referred to as "HOSPITAL".

I. TERM

The term of this contract shall be from April 1, 1996, and shall remain in force until June 30, 1997, unless sooner terminated under the provisions hereof.

II. SERVICES

- A. The **HOSPITAL** shall provide pre-authorized, medically necessary and appropriate urgent and emergent psychiatric inpatient assessment, care and treatment related to or resulting from psychiatric conditions and meeting Multnomah County CAPCare criteria for acute psychiatric inpatient hospitalization for children, adolescents and young adults under 21 years of age in acute psychiatric crisis, who are receiving services through Multnomah County CAPCare, hereinafter referred to as "enrollees", for the period of time necessary to evaluate, stabilize and recommend a discharge plan for appropriate aftercare, or screen for an appropriate level of care and placement.
- B. **HOSPITAL** must assure that services provided under this contract are accessible to enrollees in Multnomah County CAPCare (hereinafter referred to as CAPCare), a prepaid health plan providing mental health services pursuant to the provisions of the Intergovernmental Agreement between the COUNTY and the Oregon Mental Health and Developmental Disability Services Division for the Multnomah County Children's Capitation Project (hereinafter known as the STATE AGREEMENT) and the Multnomah County CAPCare Provider Manual (hereinafter referred to as the PROVIDER MANUAL). **HOSPITAL** may not discriminate between CAPCare enrollees and non-CAPCare enrollees with respect to the provision of services consistent with OAR 410-141-220, Oregon Health Plan Prepaid Health Plan Accessibility.
- C. **HOSPITAL** shall provide and staff an area to interview and evaluate for admission CAPCare enrollees and their families presenting at the emergency room with a reported psychiatric emergency. **HOSPITAL** medical staff shall assess CAPCare enrollees and their families presenting at the emergency room who report a psychiatric emergency.

For all persons hospitalized under the terms of the contract, a physician shall have examined the patient and documented clear evidence according to CAPCare criteria and protocols that the patient is in need of urgent or emergent psychiatric care and treatment for mental/emotional disorder. The examining physician shall be a permanent staff member, or be under the supervision of a member of the permanent staff of the **HOSPITAL's** Emergency Room.

CAPCare enrollees under age 18 who are hospitalized under the terms of this contract shall be provided acute inpatient hospital psychiatric care in units designated for children and adolescents. CAPCare enrollees age 18 through 20 years of age hospitalized under this contract shall be provided acute inpatient hospital psychiatric care in units separate from children and adolescents.

HOSPITAL is not required to deliver services to enrollees who do not meet the **COUNTY** criteria for acute psychiatric inpatient care, assessment and treatment. In the event that a CAPCare enrollee presents for admission by phone or in person to the **HOSPITAL** and the enrollee does not meet the criteria for inpatient admission contained in the **PROVIDER MANUAL** and it is appropriate to divert the CAPCare enrollee to less restrictive services, medical staff shall consult with CAPCare staff according to protocols described in the **PROVIDER MANUAL**. **HOSPITAL** shall document all denials for admission of CAPCare enrollees who present for admission by phone or in person to the **HOSPITAL** and provide notification to the **COUNTY** according to protocols described in the **PROVIDER MANUAL**.

- D. **HOSPITAL** agrees to follow the service authorization procedures described in the **PROVIDER MANUAL** for the purposes of obtaining an authorization number for enrollees admitted for inpatient services funded under this contract in order to facilitate enrollee tracking, billing and discharge coordination. Payment shall not be made to **HOSPITAL** unless an authorization number has been issued to **HOSPITAL**. County staff or designee shall be available by telephone 24 hours a day, 7 days a week for consultation or problem resolution related to inpatient admissions or discharge coordination.
- E. Within 24 hours of admission, **HOSPITAL** medical staff shall obtain health histories, perform physical exams and complete enrollee admission summaries, including a DSM 5 Axes diagnosis and treatment plan, for CAPCare enrollees admitted for inpatient psychiatric care.
- F. **HOSPITAL** agrees to cooperate with the **COUNTY**, community mental health agencies who contract with the **COUNTY**, and other service systems serving the enrollee (e.g., State Office of Services for Children & Families (SOSCF); Dept. of Juvenile Justice Services (JJD); Oregon Youth Authority (OYA)) to promote and utilize all alternatives to acute psychiatric inpatient hospitalization. **HOSPITAL** staff and physicians shall assist **COUNTY** to divert enrollees to less restrictive settings as soon as medically appropriate.
- G. Medically necessary inpatient services provided to CAPCare enrollees shall include administrative and direct patient care; emergency room services, assessment; and crisis intervention for the enrollee's mental/emotional disorder; identification of the level of care and mental health services required to treat the mental/emotional disorder; medication evaluation and titration; and discharge and aftercare planning for services for enrollees meeting the admission criteria contained in the **PROVIDER MANUAL**. **HOSPITAL** shall provide all medically necessary and appropriate services on a 24-hour-per-day, 7-day-per-week, continuous basis. Specific services shall include, but are not limited to:
- a secure, safe setting;
 - medical screening;
 - mental health assessment;
 - medication monitoring;
 - physician supervision;
 - treatment and discharge planning;
 - daily milieu structure;
 - skill training;
 - behavior intervention;
 - an academic program;
 - recreational services;
 - individual, family, and group therapy;

- social service care coordination;
 - consultation with family, school, and other agencies and individuals involved with the enrollee and family;
 - physical health exam;
 - physical health care;
 - psychiatric services;
 - chemical screening for alcohol and drug use; and
 - psychological and other evaluations
- H. Services provided shall be culturally competent, relevant, flexible and individualized for enrollees and their families. Services should be provided orally in the language that the enrollee and family understand (e.g., interpreters provided; sign language for the hearing impaired, TTY). As available, written materials in languages of non-English speaking enrollees shall be provided to enrollees and their families.
- I. Services shall be delivered with a family focus. The enrollee and the family or guardian shall be partners in decision making. Enrollee's family/legal guardian, COUNTY staff person, the treating psychiatrist and hospital "social worker" shall work together as a minimum core team to identify and clearly state the individual goals for an enrollee's stay (specific questions to be answered), and the level of care recommended and to plan the aftercare resources for enrollee at discharge from the HOSPITAL. The HOSPITAL is required to make every effort to involve other individuals in the enrollee's community and professionals serving the enrollee (e.g., primary physician, SOSCF, JJD, OYA, and community mental health providers) in the planning process.
- J. HOSPITAL agrees to provide services in compliance with applicable federal laws, applicable OARs and statutes including OARs 309-31-200 through 309-31-255 Admission and Discharge of Mentally Ill Person, and OARs 309-33-700 through 309-33-740 Standards for the Approval of Community Hospitals and Non-hospital Facilities to Provide Seclusion and Restraint to Committed Persons and to Persons in Custody or in Diversion, and CAPCare protocols. HOSPITAL shall provide services consistent and in compliance with the COUNTY and STATE AGREEMENT requirements, OARs, policies, procedures, program instructions, the PROVIDER MANUAL and service manuals, all of which are incorporated herein by reference and are binding on the HOSPITAL.
- K. HOSPITAL representatives shall meet with representatives of CAPCare as necessary to evaluate overall system functioning, review HOSPITAL performance under this contract, resolve disputes, solve problems that may arise in the implementation of contract services, and identify needs for technical assistance from the COUNTY. COUNTY shall provide such technical assistance upon reasonable request from HOSPITAL.

III. COORDINATION OF SERVICES

A. Coordination with COUNTY and State Care Management Services

HOSPITAL shall cooperate fully with COUNTY care coordination and case management for CAPCare enrollees who are receiving acute inpatient psychiatric care, outpatient treatment or mental health services covered by the STATE AGREEMENT's capitated rate, and for Medicaid eligible children, adolescents and young adults under 21 years of age who are receiving acute inpatient psychiatric care, outpatient treatment or mental health service not covered by the STATE AGREEMENT's capitated rate. Upon request, HOSPITAL shall provide information necessary for COUNTY to perform care coordination and case management for CAPCare enrollees, and for Medicaid eligible children, adolescents and young adults under 21 years of age who are not CAPCare enrollees. For CAPCare enrollees aged 18 to 20 years who meet the criteria for extended care services for adults in a hospital or community setting, HOSPITAL shall cooperate fully with the State of Oregon Mental Health and Developmental Disabilities Division's Extended Care Management Unit.

B. Coordination with Physical Health Care Providers

As clinically necessary and within laws governing confidentiality, **HOSPITAL** shall assure that coordination of care, consultation and communication occurs with the physical health care providers for CAPCare enrollees receiving services from **HOSPITAL**. **HOSPITAL** shall assist CAPCare enrollees receiving services from **HOSPITAL** in gaining access to physical health care providers able to meet identified intensive or complex needs by communicating or collaborating with Exceptional Needs Care Coordinators or Oregon Health Plan physical health care contractors, identifying barriers to obtaining physical health care, and helping remove barriers if possible.

C. Service Coordination and CAPCare Enrollee Referrals

HOSPITAL shall assure coordination with community mental health programs within the geographic region served by the STATE AGREEMENT, for the purpose of assuring CAPCare enrollees access to mental health services under ORS Chapter 430, which are not provided under the STATE AGREEMENT. **HOSPITAL** shall coordinate with emergency service agencies in the community. **HOSPITAL** shall communicate with community support and social service systems as necessary to link social and psychiatric services for CAPCare enrollees. **HOSPITAL** shall coordinate and document all mental health service referrals made by itself on behalf of CAPCare enrollees.

D. Coordination of CAPCare Enrollee Termination and Discharge

When **HOSPITAL** assesses that the enrollee no longer requires psychiatric inpatient hospitalization, **HOSPITAL** shall notify **COUNTY** of intent to discharge the enrollee at least 24 hours prior to discharge. **HOSPITAL** shall also notify **COUNTY** within 24 hours when enrollee is absent from **HOSPITAL** without permission. Acute care staff shall facilitate coordination of termination or discharge process with enrollee, family guardian and the **COUNTY**. Prior to discharge, **HOSPITAL** will contact a CAPCare mental health provider who will accept a patient referral prior to patient's discharge. If no referral is accepted after all providers have been contacted, **HOSPITAL** will notify CAPCare within twenty four hours prior to discharge.

E. Coordination with State Child and Adolescent Treatment Services

If the CAPCare enrollee is under the age of 18 and the **HOSPITAL** anticipates that the CAPCare enrollee will require more than five working days of acute inpatient hospital psychiatric care, the **HOSPITAL** shall consult with the Community Coordinating Committee (CCC) Chair regarding the need for state hospital screening. Within ten working days of a continued acute inpatient hospital psychiatric stay, **HOSPITAL** shall notify the CCC that the CAPCare enrollee may require a screening for long-term care. The screening shall follow established procedures and shall be conducted on or before the 14th day of stay following the admission.

If the CCC determines that admission to the Child and Adolescent Treatment Services (CATS) program of the state hospital is necessary and the CATS liaison is in agreement, the transfer to CATS shall be made within ten working days following the determination. **HOSPITAL** shall arrange for transportation of CAPCare enrollees to CATS.

If no bed is available at CATS after the 28th consecutive day of a CAPCare enrollee's acute inpatient hospital psychiatric stay, in accordance with the STATE AGREEMENT the State is required to reimburse **COUNTY** up to \$450 per day for hospital costs incurred for the CAPCare enrollee beginning with the 29th consecutive day of acute inpatient hospital psychiatric care stay, provided the enrollee has been approved for admission to CATS and continues to meet state hospital admission criteria. Beginning with the 29th consecutive day of acute inpatient hospital psychiatric care stay, the **COUNTY** shall compensate **HOSPITAL** at payment levels made by the State to the **COUNTY**. Such payments shall be made by the **COUNTY** to **HOSPITAL** within

15 working days of receipt of payments from the State and shall be in lieu of the payment provisions contained in Section IV of this contract.

IV. PAYMENT AND BILLING

- A. COUNTY agrees to reimburse HOSPITAL for services provided in accordance with authorization procedures contained in the PROVIDER MANUAL. For authorized admissions during the contract period, COUNTY will pay HOSPITAL a) \$612 per day for hospital services; b) \$155 physician charges for day one; and, c) \$52 physician charges for each additional day, less any third party reimbursement collected by HOSPITAL. HOSPITAL agrees to follow billing and claims submission procedures contained in the PROVIDER MANUAL. All encounter data for inpatient psychiatric admissions funded under this contract shall be submitted within sixty (60) calendar days of the date of enrollee discharge, except for encounter data for enrollees requiring the collection of third party resources which shall be submitted within 150 calendar days of the date of enrollee discharge.
- B. Payment shall be made for care provided starting at the time enrollee is admitted with COUNTY authorization. This also applies to enrollees admitted on an emergency basis, who are determined by the COUNTY, within 24 hours of next working day, to meet the COUNTY criteria for acute psychiatric inpatient hospitalization. COUNTY staff or designees shall notify HOSPITAL in person or by phone when an enrollee is no longer authorized for acute psychiatric inpatient hospitalization.
- C. HOSPITAL shall also notify COUNTY within 24 hours when enrollee is absent from HOSPITAL without permission; COUNTY ceases payment at this point. Last day room charges shall not be paid unless duration of hospitalization is only one day.
- D. All final requests for payment shall be received by the COUNTY within six (6) calendar months following the end of this contract term. Final requests for payment documents not received within the specified time frame shall not be processed and the expense shall be the sole responsibility of the HOSPITAL.
- E. HOSPITAL shall notify the State of Oregon Mental Health and Developmental Disability Services Division through OMAP within 30 calendar days from the time the HOSPITAL learns that a CAPCare enrollee might have third party resources or other resources for medical benefits or reimbursement of health care or services, including any legally liable third party or liability insurance. This notification shall include the name and address of the resource and any other identifying information available to the HOSPITAL, such as the CAPCare enrollee's policy number, dates of coverage, etc.
- HOSPITAL shall make reasonable effort to ensure CAPCare enrollees cooperate in securing third party resources other than liability insurance, and to the extent permitted by law, HOSPITAL shall collect such resources on behalf of the Multnomah County Children's Mental Health Capitation Project.
- HOSPITAL shall be responsible for maintaining records in such a manner so as to assure that all monies collected from third party resources on behalf of CAPCare enrollees are identified and reported to the COUNTY. HOSPITAL shall make these records available for audit and review by the COUNTY or the State of Oregon Mental Health and Developmental Disabilities Services Division.
- F. HOSPITAL shall aggressively pursue all avenues to obtain Medicaid, Medicare, Veterans Administration, and insurance for care provided to patients served under this contract, as it does for all other patients under its standard collection practices. HOSPITAL shall bill the COUNTY when it has been determined that all other third party resources have been exhausted. HOSPITAL shall maintain documentation of uncollectability for a minimum of three years.

- G. **HOSPITAL** agrees to reimburse **COUNTY** in the amount of any payments received at **HOSPITAL** by or on behalf of patients for whose care **COUNTY** has paid.
- H. **HOSPITAL** is not required to deliver nor shall **HOSPITAL** bill the **COUNTY** for services to enrollees admitted without authorization who do not meet the **COUNTY** criteria for acute psychiatric inpatient care, assessment and treatment. **HOSPITAL** may not request or obtain payment from the State of Oregon Mental Health and Developmental Disability Services Division or any CAPCare enrollee for covered services provided during the contract period for which capitation payments were made by the Division to the **COUNTY** through the Office of Medical Assistance Programs (OMAP), even if the **COUNTY** becomes insolvent. If the **COUNTY** becomes insolvent, this agreement will terminate.

V. **LIABILITY, BONDING AND WORKERS COMPENSATION**

- A. By signing this contract, **HOSPITAL** certifies that it has and shall at all times keep in effect, a Comprehensive or Commercial General Liability Insurance Policy issued by a company authorized to do business in Oregon. Such liability insurance shall have limits provided therein of at least \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence, \$200,000 for injury to any one person, and \$500,000 for total injuries and/or damages arising out of a single accident or occurrence. These limits shall not limit indemnities under the Indemnification section of this contract. **COUNTY**, and the State of Oregon if contract funds come through that office, shall be named as an additional certificate holder on the insurance policy. **HOSPITAL** shall also submit proof of insurance renewal if the insurance period ends during the contract period.
- B. While this contract continues in effect, the liability insurance policy shall provide for notice of nonpayment of premiums by the insuring carrier to **COUNTY** and a statement that such insurance shall not be canceled or released except upon thirty (30) days prior written notice to **COUNTY**. In addition, in the event of unilateral cancellation or restriction by **HOSPITAL**'s insurance company of any insurance required herein, **HOSPITAL** shall notify **COUNTY** orally and in writing within three (3) days of notification by the insurance company to the **HOSPITAL**. **HOSPITAL** shall promptly pay when due the cost of all such insurance. If it fails to do so, the **COUNTY** may, at its option, pay the same and **HOSPITAL** shall reimburse **COUNTY** immediately upon demand. Failure to maintain liability insurance as provided in this contract may be cause, at **COUNTY**'s option, for immediate termination of this contract.
- C. **HOSPITAL** (except City, County, and State Governments, municipalities, and public school districts) shall obtain and maintain at all times during the term of this contract a fidelity bond (dishonesty policy) of not less than \$10,000 effective at the time the contract commences, covering activities of all persons responsible for collection and expenditures of funds in accordance with OAR 309-13-020(7) EXPENSES, subsection (b)(C) Audit Guidelines.
- D. **HOSPITAL** shall maintain Workers Compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes. Contractors who perform the work without assistance or labor of any employee need not obtain such coverage.
- E. If **HOSPITAL** provides transportation under this contract, **HOSPITAL** shall maintain in effect during the term of this contract, Automobile Liability Insurance with a combined single limit per occurrence of not less than \$500,000.
- F. **HOSPITAL** shall obtain and keep in effect during the term of this contract professional liability insurance which provides coverage of direct and vicarious liability relating to damages caused by an error, omission or

any negligent acts. **HOSPITAL** shall maintain coverage of not less than the amount of \$500,000 per person per incident and not less than \$500,000 in the aggregate either through a binder issued by an insurance carrier by self-insurance with proof provided to the **COUNTY**.

- G. In lieu of filing the certificates of insurance, bonding, and Workers Compensation as required by **COUNTY**, **HOSPITAL** may furnish to **COUNTY** a declaration that **HOSPITAL** is self-insured with public liability and property damage coverage at least equivalent to the amounts set forth in this section.
- H. **HOSPITAL** shall hold and save harmless **COUNTY**, its officers, agents, and employees from damages arising out of the tortious or intentional acts of **HOSPITAL**, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this contract, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.060 through 30.000, and the applicable sections of the Oregon Constitution.
- I. **COUNTY** shall hold and save harmless **HOSPITAL**, its officers, agents, and employees from damages arising out of the tortious or intentional acts of **COUNTY**, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this contract subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the applicable sections of the Oregon Constitution.

VI. RECORDS, DATA COLLECTION AND REPORTING

- A. **HOSPITAL** shall participate in the **COUNTY** or its designee's system of State or **COUNTY** data collection providing information about persons admitted to and discharged from the program. Such information shall include but is not limited to patient name, DSM-IV diagnosis, admission date, discharge date, legal status, Medicaid eligibility, Medicaid Prime Number, **HOSPITAL** charges, **COUNTY** billing information, encounter data and various patient demographics. Generally, such information shall be entered on the day of admission and updated as necessary on the day of discharge. This information shall be submitted to the **COUNTY** or its designee in accordance with instructions contained in the **PROVIDER MANUAL**.
- B. **HOSPITAL** shall maintain client information concerning admission sufficient to respond to inquiries by the **COUNTY**.
- C. **HOSPITAL** shall have written policies and procedures for reporting, gathering and analyzing data, and investigating reports of critical incidents consistent with OAR 309-40-220 through OAR 309-40-290, Abuse Reporting and Protective Services in Community Programs and Community Facilities. "Critical incident" means an incident as a result of staff action or inaction that punishes, endangers or otherwise harms a CAPCare enrollee. **HOSPITAL** shall comply with the Critical Incident Policy of Multnomah CAPCare in accordance with protocols contained in the **PROVIDER MANUAL**. **HOSPITAL** shall:
 - 1. report to **COUNTY** by telephone all serious injuries or deaths that occur to CAPCare enrollees on the same working day that they occur. If the injury or death occurs after normal business hours or on a weekend, it is to be reported within 24 hours of the incident. The report should be directed to the CAPCare Director or designee;
 - 2. follow-up telephone reports with a written Critical Incident Report to the **COUNTY** in accordance with procedures and timelines established by the **COUNTY**;
 - 3. submit to the **COUNTY** thirty (30) calendar days following the end of each calendar quarter, cumulative data on critical incidents;

4. report within 24 hours any staff member charged with a crime involving an CAPCare enrollee.

COUNTY shall conduct a fact-finding inquiry into all critical incident reports involving serious injury or death to CAPCare enrollees.

- D. At the time of discharge, enrollees (if over 17 years of age), guardians and families shall receive all information necessary for the continuation of care. Within seven (7) calendar days of enrollee discharge, HOSPITAL shall send a copy of the enrollee's discharge summary and recommendations to the COUNTY and, if a release of information has been obtained, any outpatient agency providing aftercare treatment. Within thirty (30) calendar days of enrollee discharge, HOSPITAL shall send to the COUNTY the full, detailed mental health assessment or psychiatric evaluation reports as well as any standard or special evaluation reports in writing. If the enrollee is recommended for placement in more restrictive levels of care such as psychiatric residential (JCAHO), day treatment (DARTS), or residential (RES MED) programs, clinical evaluations and reports must meet the necessary criteria for referral to these programs.
- E. For enrollees referred to the Oregon State Hospital/Child and Adolescent Treatment Services (CATS) the psychiatric, physical admission, and current progress/treatment summaries are required in their entirety at point of referral.
- F. HOSPITAL shall maintain a clinical record keeping system which fully documents the mental condition of the CAPCare enrollee and the extent of mental health services received by CAPCare enrollees.
 1. Clinical records maintained for each CAPCare enrollee shall document all types of mental health services delivered whether during or after office hours and the extent of agreement or disagreement of the CAPCare enrollee with the initial and subsequent services plans. If the clinical record does not reflect the consent of the CAPCare enrollee, the clinical records shall document the reason.
 2. Clinical records shall include signatures of the individual providing the clinical service and, if applicable, the individual providing clinical, medical or direct supervision of the case.
 3. The clinical record shall include data which forms the basis of the diagnostic impression of the CAPCare enrollee's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The clinical record shall include, as medically appropriate, for each CAPCare enrollee, all of the following data as applicable:
 - Date(s) of services;
 - Name(s) and title(s) of person(s) performing the service(s);
 - Description of medical services that includes medications administered and prescribed; tests ordered or performed and results; goods or supplies dispensed or prescribed;
 - A mental health assessment;
 - A plan of care;
 - Documentation of treatment given, progress made and relevance to findings of the mental health assessment and goals of the treatment plan or plan of care;
 - Copies of hospitalization order and discharge summaries for each acute or long term psychiatric hospitalization;
 - Copies of screening documents; and
 - Copies of consultation reports and psychological evaluations.
 4. The clinical record keeping system shall:
 - Conform with accepted professional practice;

- Permit internal and external clinical audit;
 - Permit encounter claim review; and
 - Facilitate an adequate system for follow-up treatment.
5. **HOSPITAL** shall maintain a system for documenting, recording and reporting CAPCare enrollee encounters.
- G. **HOSPITAL** shall maintain a nonclinical record keeping system. The nonclinical record shall include, for each CAPCare enrollee, all of the following data as applicable:
- 1.. CAPCare enrollee's name, date of birth, gender, marital status, address, and telephone number;
 2. Next of kin, sponsor, or responsible party and the name, address and telephone number of the person to be contacted in an emergency;
 3. Copies of signed release of information forms; and
 4. Other data elements required by the Encounter Data system.
- H. **HOSPITAL** agrees to permit authorized representatives of **COUNTY** or the State Mental Health division to make such reviews of the fiscal or clinical records related to payments authorized by this contract as **COUNTY** or State Mental Health and Developmental Disability Services Division may deem necessary to satisfy audit and/or program evaluation purposes.
- I. **HOSPITAL** shall provide State Mental Health and Developmental Disability Services Division, the Health Care Financing Administration (HCFA), the Comptroller General of the United States, the Oregon Secretary of State, the Office of Medical Assistant Programs (OMAP) and all their duly authorized representatives the right of access to facilities and to financial (including all accompanying billing records), clinical, and personnel records that are directly pertinent to mental health services.
1. Records shall be made available for the purposes of:
 - Monitoring and evaluating cost, performance, compliance, quality, appropriateness, and timeliness of services provided;
 - Monitoring and evaluating the capacity of providers to bear the risk of potential financial losses; and
 - Making audit, examination, excerpts and transcriptions.
 2. Upon request and without charge, **HOSPITAL** shall provide a suitable work area and copying capabilities to facilitate such a review or audit.
- J. All nonclinical records relevant to services delivered under this contract shall be retained for at least five years after final payment is made and all pending matters are closed. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the five year period, the records must be retained until all issues arising out of the action are resolved or until the end of the five year period, whichever is later.
- K. All clinical records relevant to services delivered under this contract shall be retained for at least seven years after the date of clinical services for which claims are made, encounters reported, final payment is made, or for such length of time as may be dictated by the generally accepted standards for record keeping within the applicable provider type and all pending matters are closed, whichever time period is longer. If an audit,

litigation, research and evaluation, or other action involving the records is started before the end of the seven year period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven year period, whichever is later.

- L. **HOSPITAL** shall cooperate with the **COUNTY** in collection of information through encounter data, consumer surveys, on-site reviews, medical chart reviews, interviews with staff, utilization and financial reports, and other data or information as required for purposes of monitoring compliance with this contract, for research and evaluation purposes, and for the purpose of developing and monitoring performance objectives. Failure to submit encounter data in accordance with these requirements shall be grounds for the **COUNTY** withholding payment to **HOSPITAL**.
- M. **HOSPITAL** shall complete Report E2: Mental Health Monthly Reporting Utilization Overview contained in the **PROVIDER MANUAL** and submit the completed report to the **COUNTY** within 20 calendar days of the end of each calendar month

VII. CAPCare ENROLLEE RIGHTS AND COMPLAINTS

HOSPITAL shall:

- A. jointly develop treatment plans with all CAPCare enrollees receiving mental health services on a continuing basis from the **HOSPITAL** and shall, upon request and reimbursement for duplication costs, provide CAPCare enrollees access to their service records, unless access is restricted in accordance with ORS 179.505 (9).
- B. assure that self-referred CAPCare enrollees have equal access to services provided under the Multnomah County Children's Mental Health Capitation Project.
- C. comply with **COUNTY** policies and procedures for accepting, processing and responding to all complaints for CAPCare enrollees. These policies and procedures are included in the **PROVIDER MANUAL**.
- D. complete and submit to **COUNTY** the Health Plan Complaint Log contained in the **PROVIDER MANUAL** within 45 calendar days of the end of each calendar quarter.

VIII. QUALITY ASSURANCE AND PROGRAM EVALUATION

- A. **HOSPITAL** shall maintain a written quality assurance and peer review plan and process for hospital services provided herein, which conforms to all state and federal, and **COUNTY** laws, regulations and guidelines. **HOSPITAL** shall administer this process internally. At a minimum, this quality assurance system shall have the capacity to:
 - 1. Identify important single clinical events and trends in the process and outcome of care that warrant further evaluation;
 - 2. Identify and correct patterns and trends that have an important negative effect on CAPCare enrollee care;
 - 3. Assure management of actual and potential high risk cases; and
 - 4. Assure action is taken when an opportunity to improve the quality and appropriateness of care is identified.

In addition, **HOSPITAL** shall fully coordinate and comply with the policies and procedure adopted by the **COUNTY** in accordance with the **STATE AGREEMENT**.

- B. **HOSPITAL** shall participate in the evaluation of contracted service outcomes and performance and make available all information required by such evaluation process. This includes providing the data necessary to verify client counts, service provision, client satisfaction and outcome measures. **HOSPITAL** agrees to cooperate fully with contract compliance monitoring and program evaluation activities of the **COUNTY** and the State of Oregon Mental Health and Developmental Disability Services Division related to the Multnomah County Children's Mental Health Capitation Project.
- C. Within 30 days of the execution of the contract, **HOSPITAL** agrees to provide to **COUNTY** a copy of **HOSPITAL**'s Utilization Review and Quality Assurance Plans. If these Plans are amended during the period of this contract, **HOSPITAL** shall provide a copy of the amended Plan(s) to the **COUNTY** within 30 days of such amendments.

IX. STATE MANDATED REQUIREMENTS

- A. **HOSPITAL** shall assure that requirement of 42 CFR Part 434 that are appropriate to the services or activity required under the Multnomah County Children's Mental Health Capitation Project are fulfilled.
- B. **HOSPITAL** shall comply with the requirements of 42 CFR Part 489, Subpart I OBRA 1990, Patient Self Determination Act, and Oregon Revised Statute 127 as amended by the 1993 Oregon Legislative Assembly, pertaining to advance directives.
- C. **HOSPITAL** shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 1738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit use of facilities included on the EPA List of Violating Facilities. Any violation shall be reported to the **COUNTY**, the State Mental Health Division, the Department of Health and Human Services, and to the US EPA Assistant Administrator for Enforcement (EN-329).
- D. **HOSPITAL** shall comply with applicable mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Title III, Part C, Public Law 94-165).

X. CONFIDENTIALITY OF CLIENT INFORMATION

HOSPITAL shall keep records related to CAPCare enrollees receiving services under this contract confidential in accordance with ORS 179.505, ORS 411.320, 45 CFR 205.50 and 42 CFR Part 2 and 42 CFR Part 431 Subpart F and shall maintain CAPCare enrollee privacy in accordance with ORS 192.502(2).

- A. **HOSPITAL** shall not use, release or disclose any information concerning an CAPCare enrollee for any purpose not directly connected with the administration of Title XIX of the Social Security Act or integration and coordination of services and shall obtain a written consent from the CAPCare enrollee or the legal guardian of the CAPCare enrollee allowing release of mental health service information to non-mental health providers.
- B. **HOSPITAL** shall release mental health service information required by the receiving provider in order to make appropriate service delivery decisions.
- C. **HOSPITAL** shall assure that the **COUNTY** and any subcontracted service components, as well as other cooperating mental health service providers, have access to the applicable contents of an CAPCare enrollee's

clinical record when necessary for use in the diagnosis or treatment of the CAPCare enrollee, to the extent such access is permitted under ORS 179.505 (6).

- D. **HOSPITAL** shall, upon request and reimbursement for duplication costs, provide the CAPCare enrollee or the legal guardian of the CAPCare enrollee access to the CAPCare enrollee's clinical record.

XI. LOBBYING

Pursuant to the requirements of Section 1352 of Public Law 101-121, the **HOSPITAL** certifies, to the best of its knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the **HOSPITAL**, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the **HOSPITAL** agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

XII. CERTIFICATIONS AND LICENSING

- A. **HOSPITAL** agrees to provide Community Hospital Services in compliance with applicable OARs and statutes including OARs 309-31-200 through 309-31-255, Admission and Discharge of Mentally Ill Persons, and OARs 309-33-700 through 309-33-740, Standards for Approval of Community Hospitals and Nonhospital Facilities to Provide Seclusion and Restraint to Committed Persons and to Persons in Custody or Diversion, and COUNTY protocols.
- B. **HOSPITAL** shall maintain State certificate of compliance with the applicable administrative rules cited in subsection A. of this section, as required by the State Office of Mental Health Services and as determined through the site review process. **HOSPITAL** shall maintain certification by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), licensure under ORS 441.015 by the Oregon State Health Division for the hospital services, and a state certified holding room.
- C. **HOSPITAL** shall submit to COUNTY those portions of any reports of JCAHO or Health Division reviews which relate to the services under this contract. COUNTY agrees to treat any such reports confidentially in accordance with ORS 192.502(9) and not release them without prior notice to **HOSPITAL**.
- D. **HOSPITAL** shall be a legal entity, registered to do business on the State of Oregon and must be administratively qualified under the Multnomah County Qualified Vendor Status Application (QVSA) process.

Public agencies are exempt from the QVSA process. HOSPITAL shall be subject to a COUNTY administrative review to monitor compliance with the COUNTY's QVSA requirements. The review shall be conducted generally no more than once every two years, unless warranted by administrative changes by HOSPITAL or deficiencies in results of a prior review.

- E. HOSPITAL must maintain personnel files documenting academic credentials and licenses of staff who provide services to CAPCare enrollees. If such staff are not licensed or certified by a state board or licensing agency, HOSPITAL shall assure that staff and program meet definitions for Qualified Mental Health Associates (QMHA) and Qualified Mental Health Professionals (QMHP) appearing in PROVIDER MANUAL. HOSPITAL shall complete the Mental Health Services Practitioner Report contained in the PROVIDER MANUAL within 30 days from the end of each calendar quarter.

XIII. DISCRIMINATION

HOSPITAL shall not unlawfully discriminate against any individual with respect to hiring, compensation, terms, conditions or privileges or employment, nor shall any person be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity because of such individual's race, color, religion, sex, national origin, age or handicap. Unless exempted under the rules, regulations and relevant orders of the Secretary of Labor, 41 CFR, Ch. 60, HOSPITAL agrees to comply with all applicable provisions of Executive Order Number 11246 as amended by Executive Order Number 11375 of the President of the United States dated September 24, 1965, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)), Section 504 of the Rehabilitation act of 1973 as implemented by 45 CFR 84.4, and the Americans with Disabilities Act of 1990, Public Law 101-336 and enacting regulations of the EEOC and the Department of Justice. HOSPITAL shall also comply with all applicable rules, regulations and orders of the Secretary of Labor concerning equal opportunity in employment and the provisions of ORS Chapter 659.

XIV. FISCAL AND AUDIT REQUIREMENTS

- A. HOSPITAL agrees to use, document, and maintain accounting policies, practices, and procedures, and cost allocations, and to maintain fiscal, clinical, and other records pertinent to this contract consistent with Generally Accepted Accounting Principles (GAAP), Office of Management and Budget (OMB) Circulars, Oregon Administrative Rules, COUNTY financial procedures, and applicable federal rules and regulations, including Single Audit Act of 1984; other records shall be maintained to the extent necessary to clearly reflect any actions taken. Accounting records shall be up-to-date and shall accurately reflect all revenue by source, all expenses by object of expense, all assets, liabilities and equities consistent with Generally Accepted Accounting Principles, Oregon Administrative Rules, and COUNTY procedures.
- B. COUNTY shall have the right, at reasonable times during this contract, to conduct site visits and audits of all HOSPITAL's books, documents, papers, and records necessary to establish that such charges to COUNTY are reasonable in relation to services provided under this contract. HOSPITAL further agrees to provide access to any books, documents, papers, and records of HOSPITAL which are pertinent to this contract, and further, to allow the making of audits, examinations, excerpts, and transcripts. Such access shall be freely allowed to state, federal, and COUNTY personnel and their duly authorized agents. Contract costs disallowed as a result of such audits, reviews, site visits or program monitoring activities shall be the sole responsibility of the HOSPITAL. If a contract cost is disallowed after reimbursement has occurred, the HOSPITAL shall make prompt repayment of such cost.
- C. HOSPITAL shall be subject to a COUNTY administrative and fiscal review to monitor compliance with the COUNTY's qualifications requirements as contained in the current version of the *Request for Qualified Vendor*

Status. The review shall be conducted generally no more than once every two years, unless warranted by administrative changes by HOSPITAL or deficiencies in results of a prior review.

- D. HOSPITAL shall be subject to Audit Requirements pursuant to the Community and Family Services Division's current *Subcontractor's Financial Procedures*. Reviews and audits must meet criteria outlined in these *Procedures*. HOSPITAL may be subject to a fiscal compliance review and/or may be required to conduct an external limited scope or full audit under any of the following conditions:
1. Multnomah County contract funds exceed \$25,000 and total agency budget exceeds \$150,000; or
 2. Multnomah County contract funds exceed \$100,000; or
 3. Total agency budget exceeds \$500,000;
- E. HOSPITAL agrees that Limited Scope and Full Audits will be performed by a qualified and independent external Certified Public Accountant and that HOSPITAL shall secure such an audit. If HOSPITAL is a state or local government, such audit shall be performed in conformity with the federal Single Audit Act of 1984, Public Law 98-502, Title 31, Section (2),v, Chapter 75, U.S.C. If HOSPITAL is a private non-profit entity, the auditor shall meet the independence criteria of Chapter 3, Part 3 of the U.S. General Accounting Office publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions". If HOSPITAL is affiliated with a university system, HOSPITAL will comply with OMB Circular A-133 audit requirements unless otherwise required by the federal government. If HOSPITAL is not affiliated with a university system, HOSPITAL is exempt from compliance with OMB Circular A-133 but must comply with audit requirements of Medicaid and Medicare.
- F. Limited Scope and Full Audits, including the Management Letter accompanying the audit, shall be submitted to the COUNTY within two weeks from the date of the report, but in no case later than the 20th calendar day of the 6th month after the end of the HOSPITAL's fiscal year. If HOSPITAL's fiscal year ends during the term of this contract, the audit may cover the HOSPITAL's fiscal year. Failure to submit required audits by specified deadlines shall be cause for withholding of contract payments until audits and Management Letter are submitted.
- G. HOSPITAL shall establish and maintain systematic written methods to assure timely and appropriate resolution of review/audit findings and recommendations.

XV. CONTRACT ENFORCEMENT AND WITHHOLDING OF CONTRACT PAYMENTS

If HOSPITAL materially fails to comply with terms of this contract and all attempts to resolve the issue at the lowest possible administrative level have been exhausted, COUNTY may take one or more of the following actions:

- A. Temporarily withhold cash payments pending correction of the deficiency by HOSPITAL or pending more severe enforcement action by COUNTY.
- B. Disallow all or part of the cost of the activity or action not in compliance.
- C. Wholly or partly suspend or terminate the current contract for the HOSPITAL's services.
- D. Withhold further contracts for the services.
- E. Take other remedies that may be legally available.

XVI. MISCELLANEOUS PROVISIONS

- A. **HOSPITAL** shall designate a hospital representative with administrative expertise to oversee the patient care program and serve as liaison between the **HOSPITAL** and **COUNTY** mental health personnel.
- B. In the event of a dispute, the parties agree to attempt resolution at the lowest level and to strive for mutual agreement prior to taking other action. **HOSPITAL** shall have the right to appeal actions by the **COUNTY** or decisions concerning the interpretation of the **STATE AGREEMENT**, or the **COUNTY**'s responsibilities thereunder in accordance with the procedures contained in the **PROVIDER MANUAL**.
- C. All notices, certificates, or communications shall be delivered or mailed postage prepaid to the parties at their respective places of business as identified below, unless otherwise designated in writing.
- D. Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.
- E. This contract contains the entire contract between the parties and supersedes all prior written or oral discussions or agreements.
- F. **HOSPITAL** shall not assign or subcontract in whole or in part, any contractual duties without prior approval by **COUNTY**. **HOSPITAL** expressly acknowledges responsibility for performance of any subcontractor chosen without prior **COUNTY** approval. **HOSPITAL** shall require its subcontractors to comply with the same terms and provide the same assurances as the **HOSPITAL** must in its use of federal and state funds. **HOSPITAL** shall not be relieved of any responsibility for the performance of its duties under the contract, regardless of any into which subcontract it enters.
- G. **HOSPITAL** submit to **COUNTY** and implement a written plan which will outline policies and activities that assure culturally competent services. The plan must address, at a minimum, the following topics:
 - 1. Diversity of Agency Board of Directors, staff, and volunteers;
 - 2. Agency Board of Directors, staff, and volunteers training in issues regarding diversity and cultural competency;
 - 3. How principles and values of the agency's Nondiscrimination Policy are incorporated into agency policies and procedures, agency publicity, and printed materials directed to program participants, employees, and applicants; and
 - 4. Culturally relevant and appropriate service delivery.

This plan shall be submitted to **COUNTY** no later than 60 calendar days after contract execution. Additionally, **HOSPITAL** shall submit an annual report 30 calendar days following end of the contract period indicating progress on the plan.

XVII. EARLY TERMINATION

- A. Violation of any of the terms of the contract shall, at the option of either party, be cause for termination of the contract and unless and until corrected, of funding support by the **COUNTY** and services by **HOSPITAL** or be cause for placing conditions on said funding and/or services, which may include withholding of funds. Waiver by either party of any violation of this contract shall not prevent said party from invoking the remedies of this paragraph for any succeeding violations of the contract.

- B. This contract may be terminated prior the expiration of the agreed-upon term:
1. Immediately upon mutual written consent of the parties, or at such time as the parties agree; or
 2. By either party upon 30 calendar days written notice to the other, delivered by certified mail or in person.
- C. Termination under any provision of this paragraph shall not affect any right, obligation or liability of HOSPITAL or COUNTY which accrued prior to such termination.

SIGNATURES

In witness whereof, the parties hereto have caused this contract to be executed by their authorized officers.

MULTNOMAH COUNTY

OREGON HEALTH SCIENCES UNIVERSITY
HOSPITAL

BY *Lorenzo T. Poe, Jr.* 4/25/97
Lorenzo T. Poe, Jr., Director Date
Department of Community and
Family Services

BY _____
Agency Authorized Signature Date

BY *Beverly Stein* 5/8/97
Beverly Stein Date
Multnomah County Chair

BY _____
Agency Authorized Signature Date

Reviewed: SANDRA DUFFY, Acting County Counsel
for Multnomah County, Oregon

BY *Katie Gaetjens* 4/28/97
Katie Gaetjens Date
Assistant County Counsel

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-1 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

CONTRACT FOR SERVICES
MULTNOMAH COUNTY COMMUNITY AND FAMILY SERVICES DEPARTMENT

**Attachment A:
Service Elements and Contract Amounts**

Contractor Name : OHSU-UNIVERSITY HOSPITAL	Vendor Code: CAP028	
Contractor Address : 3181 SW SAM JACKSON PARK ROAD PORTLAND OR 97201-3098		
Telephone : 494-4854	Fiscal Year : 96/97	Federal ID # : 93-1176109

Program Office Name : BHP Childrens Mental Health Contracts

Service Element Name : CC/CCPlus Hospitalization (C11H); in-patient 18-21 CAP only

<u>Mod. #</u>	<u>Begin Date</u>	<u>End Date</u>	<u>Payment Method</u>	<u>Payment Basis</u>	<u># of Units</u>	<u>Unit Description</u>	<u>Unit Rate</u>	<u>Amount</u>
0	4/1/96	6/30/97	Per Invoice	Fee for Service	Reqt's	see rate schedl		Reqt's
Total					Reqt's			Reqt's



CASE NAME Planning Design Group

NUMBER CU 1-97; HV 2-97

1. Applicant Name/Address

Planning Design Group
Brian DeMarco
122 SE 27th Ave
Portland, OR 97214

Property Address:
8383 SE Rodlun Road
Gresham, OR 97080

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Hearings Officer Dec.
<input type="checkbox"/>	Hearing/Rehearing
Scope of Review	
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New information allowed

2. Action Requested by Applicant

Conditional Use approval and Variance to establish a single family residence on lands designated for Commercial Forest Use.

3. Planning Staff Recommendation

Approval, with conditions.

4. Hearings Officer Decision

Approval, with conditions.

5. If recommendation and decision are different, why?

They were the same.

6. Issues:

No issues were raised. The applicant agreed with the Staff Report and the Hearings Officer concurred.

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

No policy implications have been identified.

**BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON
FINAL ORDER**

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

April 18 1997

CU 1-97 HV 2-97

Conditional Use and Major Variance Request

Applicant requests Conditional Use approval to establish a single family residence and approval of an application for a Major Variance from a side yard requirement on lands designated for Commercial Forest Use.

Location:

Approximate address: 8569 SE Rodlun Road

Property Description:

Tax lot 1200, SW ¼ of SW ¼ Section 21, T1S, R3W;
4.63 acres; Tax Account # R99321-0340

Zoning Designation:

Commercial Forest Use

Property Owner:

Ambrosie & Susana Halmagean
492 SE Hale Drive
Gresham, OR 97080

Applicant:

Planning Design Group
Brian DeMarco
122 SE 27th Ave.
Portland, OR 97214

Hearings Officer Decision:

Approve applicant's request for Conditional Use approval and Variance from the side yard setback requirements to allow a single family residence on lands designated for Commercial Forest Use, subject to the specific conditions contained herein.

Conditions of Approval:

1. A Hillside Development Permit will be required for all areas where site clearing is done on slopes exceeding 25% and a Grading and Erosion Control Permit will be required where 50 or more cubic yards of earth is disturbed.
2. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with the Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
3. A stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6).
4. Prior to issuance of a building permit, provide verification that the driveway surface can support 52,000 lbs. GVW along with construction drawings demonstrating the width and grade of the driveway comply with the standards of MCC 11.15.2074 (D).
5. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074 (C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
6. Prior to the issuance of a building permit, apply for and obtain approval of Design Review for all structures and site development.
7. Prior to issuance of a building permit and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, to the extent possible within the limits of the yard setbacks approved herein, in accordance with MCC 11.15.2074 (A)(5).
8. Prior to issuance of a building permit, the property owners will be required to sign a Covenants, Conditions and Restrictions form as provided in 11.15.2052(A)(9).
9. Prior to issuance of a building permit, verification is required that the property owners' signed statements acknowledging the rights of nearby property owners to conduct forest operations, have been recorded.
10. Prior to issuance of a building permit the property owners will be required to sign deed restrictions or other similar deferred improvement agreements in format

approved by the County agreeing to participate in future right-of-way improvements on Rodlun Road.

11. Approval of this Conditional Use shall expire two years from the date of this Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C) (3).

PROCEDURAL ISSUES

1. Impartiality of the Hearings Officer

- A. No ex parte contacts. I did not have any ex parte contacts prior to the hearing of this matter. I did not make a site visit.
- B. No conflicting personal or financial or family interest. I have no financial interest in the outcome of this proceeding. I have no family or financial relationship with any of the parties.

2. Procedural Issues

At the commencement 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.

FACTS

1. Applicant's Proposal

The applicant requests Conditional Use Approval to establish a single family residence in the Commercial Forest Use zone. Applicant is also requested a Major Variance from the 200 foot setback on the parcel's west property line.

2. Site and Vicinity Information

The subject parcel is 5.12 acres, with a narrow configuration. Other similar sized and smaller tracts are located in the immediate area. The location proposed for the dwelling is in an area on the side already cleared of trees and is located 30 feet from the west boundary line. A site plan is attached hereto as Exhibit "A" and is incorporated by this reference herein.

3. Testimony and Evidence Presented

- A. The exhibits which are listed on the attached exhibit list, which is marked Exhibit "B", were received by the hearings officer and are incorporated by this reference herein.
- B. Multnomah County Planner Phil Bourquin submitted a staff report and testified at the hearing.
- C. The applicant Brian DeMarco of Planning Design Group appeared at the hearing and testified in support of the application.
- D. Tony Sepich submitted written documents for consideration at the hearing.

STANDARDS AND CRITERIA - ANALYSIS AND FINDINGS OF FACT

1. MULTNOMAH COUNTY ZONING CODE CRITERIA:

Zoning Ordinance Requirements:

CONDITIONAL USE ORDINANCE CONSIDERATIONS:

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 Template Dwelling pursuant to the provisions of MCC .2052 and .2074.

11.15.2052 Template Dwelling

- (A) A template dwelling may be sited on a *tract*, subject to the following:
 - (1) The lot or lots in the *tract* shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;

Finding: The subject property is a legal Lot of Record. Lot of Exception case #LE14-90 establishes the lot as a lot of record. Title documents submitted by the applicant demonstrate that there are no adjacent parcels in contiguous ownership with the subject parcel.

- (2) The *tract* shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

Finding: The subject property is 5.12 acres. However, because of the narrow configuration of the property – the subject property is 368.19 feet in width on the site plan – it would be impossible to locate the dwelling within the setback requirement. There is no opportunity to meet the minimum 200' setbacks from both side property lines on the property. The location proposed for the dwelling is in an area already cleared of trees setback 30' from the west boundary line. The 288' setback from the east property line meets the required setback. The proposed location of the dwelling minimizes the disruption of the property without excessive excavation and tree clearing work and, therefore preserves the environmental qualities of the property. Because of the size and shape of the property, the applicant is requesting a variance in the 200' setback from the west property line, pursuant to MCC .8505 through .8525 to place the dwelling in the most appropriate location for development. The variance criteria will be discussed later in these findings.

- (3) The *tract* shall meet the following standards:

...

- (c) The *tract* shall be composed primarily of soils which are capable of producing 85 *cubic feet* of Douglas Fir timber *per acre per year (cf/ac/yr)*; and

Finding: The applicant presented the Soil Survey of Multnomah County for the subject property, which indicates that the property has Goble silt loam. The soil exposure in the area consists of silt, a structureless brown to yellow-brown mottled clay to sandy soil. The underlying geologic unit consists of bedrock of volcanic origin. The soil is capable of producing between 145 to 155 cf/ac/yr, of Douglas Fir timber based on the Soil Survey of Multnomah County from a fully stocked stand of 70 year old trees.

- (i) The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject *tract* parallel and perpendicular to section lines; and

Finding: The applicant referenced Multnomah County and Clackamas County Tax Assessor's maps to demonstrate that all or part of the following Multnomah County Tax Lots are within the 160 acre square Template:

R993210310	R993210610
R993211060	R993211070
R993210320	R993210940
R993210120	R993210130
R993210120	R993210510

All or part of the following Clackamas County Tax Lots are within the 160 acre square template:

13E28B00500	13E28B00400
13E28B00600	13E28B00301
13E28B00900	13E28B00300
13E28B00700	13E28B00303
13E28B00800	13E28B01000

Because the applicant has demonstrated that all or part of 20 other lawfully created lots existed on January 1, 1993 within a 160 acre square Template, the applicant has met this criteria.

(ii) **At least 5 dwellings lawfully existed on January 1, 1993 within the 160-acre square, or**

Finding: Five dwellings lawfully existed on January 1, 1993, on the following tax lots within the 160 acre square Template in Multnomah County:

R993210310
R993210120
R993210610
R993210130
R993210510

Two dwellings lawfully existed on January 1, 1993, on the following tax lots within the 160 acre square Template in Clackamas County:

13E28B00400
13E28B00300

Because the applicant has demonstrated that 7 lawfully created dwellings existed on January 1, 1993 within the 160 acre square Template, the applicant has met this criteria.

- (d) **Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

Finding: None of the lots and dwellings noted above under (c)(i) and (c)(ii) are currently located within the urban growth boundary. The parcel meets the requirement of 11 lots and 5 dwellings within the 160 acre template.

- (e) **There is no other dwelling on the tract,**

Finding: No dwelling is located on the tract or on lots that make up the tract.

- (f) **No other dwellings are allowed on other lots (or parcels) that make up the tract,**

Finding: No other lots make up the tract, therefore this criteria is met.

- (g) **Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

Finding: No other lot is part of this tract.

- (h) **No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

Finding: Since this tract consists of only one lot or parcel, no part of this tract will be used to qualify another tract for the siting of a dwelling.

- (4) **The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

Finding: The subject property and proposed dwelling is located outside any big game winter area.

- (5) **Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United**

States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;

Finding: The applicant is proposing to establish a driveway from an existing paved private easement road and has provided a copy of a Warranty Deed with road easement.

- (6) A condition of approval requires the owner of the *tract* to plant a sufficient number of trees on the *tract* to demonstrate that the *tract* is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:**
 - (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**
 - (b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;**
 - (c) Upon notification by the assessor the Department of Forestry will determine whether the *tract* meets minimum stocking requirements of the Forest Practices Act. If the department determines that the *tract* does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;**

Finding: These criteria require the County to impose approval conditions to meet these requirements. The owner has agreed to a condition of approval requiring that a stocking survey be submitted showing compliance with this requirement prior to issuance of a building permit, and such a condition will be imposed.

- (7) The dwelling meets the applicable development standards of MCC .2074;**

Demonstration of compliance with this criteria is addressed later in these findings.

- (8) **A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Finding: The applicant has submitted concurrent herewith a signed and notarized statement binding successors in interest to the property to the restriction that the owner or owners accept as normal and necessary the farming or forest practice on surrounding forest and agricultural lands. A condition of approval is hereby imposed requiring verification of recordation of the statements prior to issuance of a building permit.

- (9) **Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

- (a) **The covenants, conditions and restrictions shall specify that:**

(i) **All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and**

(ii) **No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;**

- (b) **The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**

- (c) **Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).**

Finding: These criteria are to be met prior to issuance of a building permit. A condition will be imposed requiring compliance with this criteria.

11.15.2058 Dimensional Requirements

- (A) Except as provided in MCC .2060,.2061, .2062, and .2064, the minimum lot size shall be 80 acres.

Finding: The subject lot meets the lot of record standard of MCC .2062(A) and (B) and was lawfully created prior to January 25, 1990.

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

Finding: This section is not applicable in the instant case.

- (C) **Minimum Yard Dimensions - Feet:**

Frontage on County Maintained Road	Other Front	Side	Rear
60 from centerline	200	200	200

Finding: The subject property fronts on SE Rodlun Road for approximately 387'. The east property boundary has a dimension of 501.30', the south property boundary has a dimension of 305.19' and a west property boundary has a dimension of 656.36'.

The proposed dwelling would be sited 30 feet from the west (side) property line, approximately 288 feet from the east (side) property line, 332 feet from the south (rear) property line and approximately 206 feet from the north property line adjacent to Rodlun Road.

The subject parcel is approximately 368.19 feet wide. It is not physically possible to comply with the 200 foot side yard requirement with both side yards. The residence can only be constructed if a variance is granted. The applicant has applied for a variance to the side yard requirement, as addressed later in these findings. The variance is being approved and accordingly the subject property will meet the approved yard dimensions.

Maximum Structure Height - 35 feet

Finding: The dwelling will not exceed 35 feet in height.

Minimum Front Lot Line Length - 50 feet.

Finding: The subject property fronts on SE Rodlun Road for approximately 387 feet, which exceeds the minimum standard.

These yard dimensions and height limits shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Variances to dimensional standards shall be pursuant to MCC .8505 through .8525, as applicable. [Amended 1984, Ord. 428 § 2]

Finding: The application being reviewed is a Conditional Use Permit and not a "use permitted outright". The applicant has applied for a Variance.

- (D) To allow for clustering of dwellings and potential sharing of access, a minimum yard requirement may be decreased to 30 feet if there is a dwelling on an adjacent lot within a distance of 100 feet of the new dwelling.**

Finding: No dwelling on an adjacent lot is located within 100 feet of the proposed location or the new driveway.

Based on Multnomah County Assessment and Taxation Records and the applicant's submittal, there are no dwellings on lots immediately adjacent to the subject parcel. Therefore, this criteria is not applicable.

- (E) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**

Finding: Multnomah County has indicated that no additional right-of-way dedications are required. The existing right-of-way in front of the subject site is 60 feet. However, the Transportation Division has requested that the property owner sign deed restrictions committing the property owner to participate in future right-of-way improvements. At the hearing, the applicant was questioned regarding this requirement and indicated a willingness to comply with the condition. Accordingly, a condition will be imposed requiring the property owner to commit to participation in future right-of-way improvements.

- (F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.**

Finding: No accessory structures are being applied for at this time.

11.15.2074 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

(A) The dwelling or structure shall be located such that:

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);**

Finding: The proposed location of the dwelling appears to have the least impact on surrounding forest or agricultural lands for the subject property. The proposed location for the dwelling is sited away from surrounding properties and minimizes the need for additional tree clearing. The site is located adjacent to the recorded access easement currently bisecting the property. The proposed dwelling site is at the western edge of the subject property and utilizes an existing cleared area for its building footprint. There is no reason to believe that the construction of a dwelling as proposed will interfere in any manner with accepted farm or forestry practices on surrounding lands.

The applicant has submitted a signed and notarized statement binding successors in interest to the property to the restriction that the owner or owners accept as normal and necessary the farming or forest practice on surrounding forest or agricultural lands.

Because of the existing property dimensions, it is not possible for the dwelling to be located in compliance with all minimum yard setback requirements. The applicant is applying for a variance to the one side setback.

- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Finding: The criteria is addressing impacts "on the tract". In this case the tract includes only the subject parcel. The subject parcel is not receiving special assessment for farm or forest production and based on a site visit by staff on March 3, 1997, it does not appear to be in either farm or forest production. Since no farm or forest practices are currently present, adverse impacts will not occur. Additionally, the size of the parcel and the location of the road easement make it unlikely the parcel would become part of a large tract in the future. The criteria is satisfied.

- (3) **The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

Finding: The amount of forest land used to site the dwelling has been kept to a minimum of approximately 3,000 square feet including the proposed driveway. The proposed driveway will be located close to the existing paved easement bisecting the property and will utilize an area previously cleared of trees.

- (4) **Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Finding: The proposed dwelling will be located close to the existing paved easement. No service or access roads will be required. The proposed driveway will be no longer than 100'.

- (5) **The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) **The proposed dwelling will be located upon a *tract* within a fire protection district or the dwelling shall be provided with residential fire protection by contract; [Added 1996, Ord. 859 § III]**

Finding: The subject property is served by Gresham Fire and Emergency Services District.

- (b) **Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;**

Finding: There is no perennial water source on the subject property, therefore this criteria is not applicable.

- (c) **Maintenance of a primary and a secondary fire safety zone on the subject *tract*.**
- (i) **A primary fire safety zone is a fuel break extending a minimum of 30 feet in all directions around a**

dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

- (ii) On lands with 10 percent or greater slope the primary safety zone shall be extended down the slope from a dwelling or structure as follows:

<u>Percent Slope</u>	<u>Distance In Feet</u>
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.
- (iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line). *[Added 1996, Ord. 859 § III]*

Finding: A primary fire break of 30 feet can be met. However, the secondary fire break would extend into adjoining property. This secondary fire break of 100 feet will be met to the greatest extent practicable within the limits of the yard setbacks approved herein. A condition will be placed on approval which requires maintenance of the primary and secondary fire safety zones.

- (d) **The building site must have a slope less than 40 percent.**
[Renumbered 1996, Ord. 859 § III]

Finding: The slopes do not exceed 20 percent.

(B) The dwelling shall:

- (1) **Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) **Be attached to a foundation for which a building permit has been obtained;**
- (3) **Have a minimum floor area of 600 square feet;**
- (4) **Have a fire retardant roof; and**
- (5) **Have a spark arrester on each chimney.**

Finding: These applicant has indicated that the dwelling will comply with this criteria. A condition requiring such compliance will be imposed.

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.

- (1) **If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

Finding: The property owner intends to obtain domestic water from a well drilled on site.

- (2) Evidence of a domestic water supply means:
- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water, or
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Finding: A condition of approval will require that a well report be submitted and a finding of compliance with this condition be re-noticed to applicable property owners prior to the issuance of a building permit.

- (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:
- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
 - (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
 - (3) Provide minimum curve radii of 48 feet or greater,
 - (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
 - (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;

- (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
 - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

Finding: The property owner will be required to submit plans demonstrating compliance with this condition prior to issuance of a building permit.

VARIANCE ORDINANCE CONSIDERATIONS:

- (A) The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are practical difficulties in the application of the Chapter. A Major Variance shall be granted only when all of the following criteria are met. . . .
 - (1) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.

Finding: The subject parcel is 368.19 feet in width on the site plan. There is no opportunity to meet the minimum 200' setback from both side property lines on the property. The location proposed for the dwelling is in an area already cleared of trees setback 30' from the west boundary line. Because the proposed dwelling is setback 288' from the east property line, that setback requirement is met, for that yard. The size and shape of the property is a circumstance that applies to the property and intended use which is not applicable generally to other property in the same vicinity in the district.

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

Finding: Other similar sized and smaller tracts are located in the area. Because the subject property is only 368.19 feet in width, there is no opportunity to meet the minimum 200' setback requirement from the west property line.

The "vicinity" includes those parcels within the 160 acre template. The district refers to the Commercial Forest Use Zoning District. The 200 foot side yard requirement would preclude use of the property for residential purposes. As demonstrated through this application other parcels in the vicinity include small lots with single family dwellings. Other larger lots also zoned CFU and in the vicinity would be provided a dwelling under standards of this section.

In reviewing the applicant's site plan, the location of the proposed dwelling should be weighed against other siting criteria in order to determine whether the variance could be minimized (e.g. setback 50 feet instead of 30 feet is a variance of 75% instead of 85%). It appears the proposed site is in an already cleared area, the primary fuel break of 30-feet could be maintained, and the area is relatively flat in relation to other areas of the site.

The applicant has demonstrated compliance with this criteria.

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

Finding: The applicant has demonstrated compliance with the Template Test and siting criteria with the exception of the side yard requirement along the west property line. The site is the most suitable location on the property and a dwelling could not be approved anywhere on the property without a variance. Provided the applicant complies with the conditions placed on approval the authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or adversely affect the appropriate development of adjoining property.

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

Finding: The current Comprehensive Plan states that the minimum lot size shall be 80 acres with lots of exception allowed. Because the majority of the lots in the vicinity are

considerably less than 80 acres and are "Lots of Record" prior to January 25, 1990, the current Comprehensive Plan precludes further division of the lots and also does not allow for more than one dwelling per lot. Therefore, the granting of a variance for a dimensional change would not adversely affect the realization of the Comprehensive Plan nor would it establish a use in the vicinity which is not listed.

COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

1. **POLICY 13: AIR, WATER AND NOISE QUALITY:** Multnomah County, ... Supports efforts to improve air and water quality and to reduce noise levels. ... Furthermore, it is the County's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to Air Quality, Water Quality, and Noise Levels.

Finding: No significant impact on air pollution will result from the construction of a single-family residence. The single family dwelling will preserve air, water and noise quality by exceeding code in several building requirements. Finally, water will be provided to the site in compliance with D.E.Q. and State Water Resource Requirements.

2. **POLICY 14: DEVELOPMENT LIMITATIONS:** The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

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

Finding: Based on the applicant's submitted site plan, and narrative as well as review of the soil types on the subject parcel, I find that the subject parcel exhibits none of the development limitations listed above. Accordingly, development on this parcel would not be effected with this Plan policy.

3. **POLICY 22: ENERGY CONSERVATION:** The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. ... The County shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

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

Staff: The proposal satisfies subpart "A" of this policy because the dwelling and accessory building will meet current energy conservation standards of the Uniform Building Code. Subparts "B", "C" and "D" of this policy are not applicable because the site is not in an urban area. Approval of the applicant's proposal will not adversely impact the ability of the owner of the parcel to take advantage of subpart "E". The proposal satisfies Policy 22.

4. **POLICY 37: UTILITIES:** The County's policy is to require a finding prior to approval of a legislative hearing or quasi-judicial action that:

WATER DISPOSAL SYSTEM:

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

Finding: The applicant has submitted a Land Feasibility Study (LFS) 99-91 relating to the site which approves a septic tank and drainfield system. The property owner proposes to provide an adequate private water system in the form of a well drilled on site. However, the applicant has not yet drilled the well and the County has no documentation for finding adequacy of a water supply.

Prior to the hearing, Tony Sepich submitted documents for inclusion in the record relating to the J&W landfill site. Apparently, the J&W landfill was operated in the late 1960's and the early 1970's, near SE 190th and SE Rodlun Road. In late 1971, the landfill was declared a health hazard and subsequently closed. At this time it appears that there is some potential for the release of hazardous substances from the landfill property.

The documentation submitted by Mr. Sepich indicates that the J&W landfill may raise some questions regarding the quality of the ground water in the general area of Rodlun Road and the potential for contamination of ground water at the time new wells are drilled. However, Mr. Sepich did not appear personally at the hearing or present any written or oral testimony for the hearings officer's consideration.

The property owner will be required to submit a well report before a building permit is issued. The report must demonstrate that the property can in fact be served by a safe and adequate private water system, consisting of a well drilled on site. Upon submission of such a report, the County will be required to notify property owners in accordance with applicable requirements and provide the opportunity to appeal the finding that the water source is adequate.

DRAINAGE:

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

Finding: The site plan project description and other the materials furnished by the applicant demonstrate that the water run-off to be handled on the site or adequate provisions can be made therefore, and that the run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjacent lands.

ENERGY AND COMMUNICATIONS:

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

Finding: Portland General Electric and US West Communication provide necessary power and phone service to the area. Adequate energy supply and communications facilities are available to service a single family home.

5. **POLICY 38: FACILITIES:** The County's Policy is to require a finding prior to approval of a legislative or quasi-judicial action that:
- A. The appropriate School District has had an opportunity to review and comment on the proposal.
 - B. There is adequate water pressure and flow for fire fighting purposes; and
 - C. The appropriate fire district has had an opportunity to review and comment on the proposal.
 - D. The proposal can receive adequate local police protection with the standards of the jurisdiction providing police protection.

Findings: The applicant has submitted Service Provider Forms from Multnomah County Sheriff's Office, the Gresham Barlow School District, and Gresham Fire & Emergency Services indicating that the parcel is located within the respective districts and service is available.

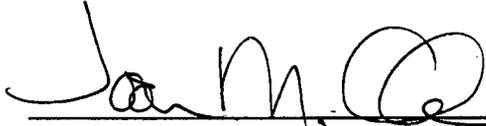
6. **POLICY 40: DEVELOPMENT REQUIREMENTS:** The County's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:
- A. Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.
 - B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.
 - C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.

Finding: There are no pedestrian or bicycle path connections to parks, recreation areas or community facilities from or to the site. No dedications would be appropriate.

CONCLUSION

Based upon the Staff Report and the findings and substantial evidence cited or referenced therein, I conclude that the application for Conditional Use Approval to establish a single family residence on land designated for Commercial Forest Use and for a Major Variance from the side yard setback, satisfies all applicable approval criteria provided that the conditions of approval included herein are complied with. The application is hereby approved, subject to the conditions of approval contained herein.

IT IS SO ORDERED, this 18th day of April, 1997.



JOAN M. CHAMBERS, Hearings Officer



BOARD HEARING OF MAY 8, 1997

TIME 9:30am

CASE NAME: Template Dwelling in CFU Zone

NUMBER: CU 2-97

1. Applicant Name/Address

James T. Kunz
2217 SW McGinnis
Troutdale, OR 97060

Property Address: 43000 SE Haines Road
Tax Lot 10, Section 32, T. 1 N., R. 5 E.
5 acre Lot of Record

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Hearings Officer Dec.
<input type="checkbox"/>	Hearing/Rehearing
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

Conditional Use approval for a single family residence on property located in the Commercial Forest Use (CFU) zoning district (a "template dwelling").

3. Planning Staff Recommendation

Approval, with conditions.

4. Hearings Officer Decision

Approval, with conditions.

5. If recommendation and decision are different, why?

They were the same.

6. Issues:

No issues were raised. The applicant agreed with the Staff Report.

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

No policy implications have been identified.



MULTNOMAH COUNTY

Department of Environmental Services
Transportation and Land Use Planning Division
2115 SE Morrison Street
Portland, OR 97214 Phone: (503) 248-3043

DECISION OF HEARINGS OFFICER

Case File: CU 2-97
Hearings Officer: Liz Fancher
Hearing Date, Time, & Place: Wed., April 16, 1997; at 2:30 p.m.
2115 SE Morrison Street, Room 111
Portland, OR 97214

WHAT: Conditional Use application to establish a single family residence on lands designated for Commercial Forest Use (under the template dwelling approval standards).

PROPERTY LOCATION: Address: 43000 SE Haines Road
Tax lot '10', Section 32, Township 1 North, Range 5 East
5 acres, Tax Account # R94532-0100

WHO: *Property Owner:* Mabel Loomis
495 Whitetail Drive
Rexford, MT 59930

*Applicant &
Contract Purchaser:* James T. Kunz
2217 SW McGinnis
Troutdale, OR 97060

Hearings Officer Decision: APPROVAL, subject to compliance with the following conditions of approval:

CONDITIONS:

MULTNOMAH COUNTY
PLANNING SECTION

97 APR 21 PM 4:28

RECEIVED

1. A Hillside Development Permit will be required for all areas where site clearing and earth disturbance is proposed on slopes exceeding 25 percent. A Grading and Erosion Control Permit is required for slopes of 25 percent or less.
2. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arresters. The dwelling shall also comply with Uniform Building Code, be attached to a foundation for which a building permit has been obtained, and have a minimum floor area of 600 square feet.
3. A forest stocking survey shall be submitted prior to issuance of a building permit in accordance with the procedures and provisions of MCC 11.15.2052 (A)(6).
4. Prior to issuance of a dwelling building permit, provide verification that the driveway design submitted with the application has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW. [MCC 11.15.2074 (D)]
5. Prior to the issuance of a building permit, a well report shall be submitted demonstrating compliance with MCC 11.15.2074 (C), and at that time, persons entitled to notice will again be notified that the water service part of the approval criteria is being reviewed and there is the opportunity to comment and appeal of those particular findings.
6. Prior to issuance of a building permit, and as long as the property is under forest resource zoning, maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074(A)(5).
7. Approval of this Conditional Use shall expire two years from the date of the Board Order unless "substantial construction" has taken place in accordance with MCC 11.15.7110 (C) or the subject proposal is completed as approved. For the purposes of this decision, "completion" of the development under this conditional use review will involve at a minimum the following (summarized actions) to have taken place prior to the expiration date of the Conditional Use:
 - A. Applying for and approval of a Hillside Development Permit;
 - B. Forest stocking survey report submitted;
 - C. Fire safety zones cleared and inspected by planning staff;
 - D. Application for and approval of Design Review for the dwelling, access, and landscaping;

E. Submittal of well drilling report, then 10 day opportunity for parties entitled to notice to appeal determination that the well report satisfies the service requirements of Plan Policy 37, Utilities;

F. Application to Right-of-Way Permits for a new driveway and construction of that driveway to the design and specifications shown on plans submitted with the Conditional Use application; and

G. The conditions of approval relating to the fire retardant roof, chimney spark arresters, foundation, and floor area are shown on the building plans.

H. The constructed building shall be a single family dwelling based on the following characteristics: be lawfully established under required building permits; have intact exterior walls and roof structures inspected under that building permit; has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to an approved and permitted sanitary waste disposal system; has interior wiring for interior lights inspected under an electrical permit; and has a heating system.

I. Record the Notarized Deed Restriction re Forest Practices provided with the Application so that it is binding upon the subject property and owners of the subject property. The Applicant does not presently own the subject property so the deed restriction will need to be recorded once the Applicant becomes the owner of the real property.

J. If the dwelling is not completed, then the method of determining that "substantial construction" has taken place is an application to the Planning Director. The application must be submitted on a General Application Form with supporting documentation at least 30 days prior to the expiration date. The decision of the Planning Director will be a land use decision that may be appealed to a Hearings Officer by a party entitled to notice [MCC 11.15.7110(C)(3)].

LEGAL BASIS FOR APPROVAL

The Hearings Officer hereby accepts the following findings of fact and conclusions of law prepared by Mr. Clifford and Mr. Kunz. Where the findings and conclusions made by Mr. Clifford conflict with, modify or qualify the findings and conclusions proposed by Mr. Kunz, the findings proposed by Mr. Clifford shall control.

Zoning Ordinance Requirements:

CONDITIONAL USE ORDINANCE CONSIDERATIONS:

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 Template Dwelling pursuant to the provisions of MCC .2052 and .2074.

...
11.15.2052 Template Dwelling

(A) A template dwelling may be sited on a tract, subject to the following:

- (1) The lot or lots in the tract shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;**

Applicant: This parcel was created by deed on July 15, 1964. See deed exhibit. The lot satisfied all applicable laws when created. There is not contiguous parcels in the same ownership. The lot meets the requirements of MCC 11.15.2062(A)(2).

Staff Comment: The copy of the 1964 deed submitted (Exhibit A2, Item 3) refers to "Tax Lot Ten" which existed on the November 15, 1962 zoning maps adopted with Ordinance 100 (the Zoning Ordinance). Therefore, the subject parcel was created prior to enactment of Ordinance 100 and therefore was lawfully created before a zoning designation was in place. As evidenced by the copies of 1980 microfiche of property owners and current property ownership printouts (Exhibit A2, Item 9), there is no evidence of adjacent same ownership since 1980 (MCC 11.15.Lot of Record). The subject property is a Lot of Record.

There is only one Lot of Record in the subject tract. As defined in MCC 11.15.2045(H), a tract is one or more contiguous Lots of Record.

The "Tax Lot Three" also referred to on the 1964 deed is a parcel that is a quarter mile to the east and is not contiguous to Tax Lot Ten.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;**

Applicant: This 5 acre site is of sufficient size to accommodate a single family residence. The dimensions of the parcel lends itself to meet all the required setbacks to other property lines. The proposed dwelling will be 70 feet from Haines Rd. and the proposed dwelling 320 feet from the East line, 240 feet from the North line, 280 feet from the West line and 250 feet from the South line. The dwelling site is 100 feet from the bank of the Lattourel Creek, a seasonal creek. It is also 50 feet from the beginning of a slope hazard area. see Site Plan, exhibit 10 [Staff labeled Exhibit A2, Item 10].

(3) **The tract shall meet the following standards:**

(a) (3)(c) **The tract shall be composed primarily of soils which are capable of producing 85 cubic feet of Douglas Fir timber per acre per year (cf/ac/yr); and**

(i) **The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**

(ii) **At least 5 dwellings lawfully existed on January 1, 1993 within the 160-acre square, or**

(d) **Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.**

(e) **There is no other dwelling on the tract,-**

(f) **No other dwellings are allowed on other lots (or parcels) that make up the tract,-**

(g) **Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

(h) **No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

Applicant: The U.S. Department of Agriculture Soil Conservation Service indicates that the soils on this parcel are primarily that which are capable of producing above 85 cf/ac/yr. of Douglas Fir timber. The annual cubic feet production calculates out to be 680. There are at least five dwellings that were lawfully existing on or before January 1, 1993 within the 160 acre square. There are 11 tax lots within the 160 acre square. See soils report from Mult. Co. and the template map locating the tax lots and dwellings referred to.

The tax lots included in this 160 acre analysis are lots 13,23,22,12,8,9,14,18,20 and 7 of Tax Map 1 North, Range 5, Sec 32 of Multnomah County, Oregon. Tax lots with dwellings are as follows: Tax lot 13 built in 1980, Tax lot 18, built in 1969, Tax lot 20, built in 1975, Tax lot 22, built in 1977, and Tax lot 23, built in 1979. None of these dwellings are within the UGB. See county records provided, exhibit # 9, (7 pages included) [Staff labeled Exhibit A2, Item 9].

There are no dwellings or other structural improvements on the tract. There are no lots contiguous to this parcel under the same ownership. The lot is of sufficient size to accommodate siting the dwelling in accordance with the minimum yards of 60 feet to the centerline of any adjacent County maintained road and 200 feet to all other property lines. There are no other homes near enough to cluster with or have potential for sharing access.

Staff: The soils on the property are Bull Run Silt Loam which has a potential yield of Douglas Fir of 145 to 170 cubic feet per acre. Therefore, the applicable "template test" are the standards in MCC 11.15.2052(A)(3)(c) above.

- (4) **The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.**

Applicant: The Department of Fish and Wildlife determined that there will be no negative impact to the existing wildlife in the area. The only comment of a conflict identified is that of the wildlife impact on domestic living activities such as gardening and pets. Grazing wildlife may be invited by a garden and natural predators may see certain pets or livestock as fair game. This request does not propose to change the forest district designation or the forestry land use.

Staff: Exhibit A2, Item 13 is a letter stating that the Department "will not oppose the project".

- (5) **Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;**

Applicant: Not applicable. A private driveway from the county road will provide access to the proposed dwelling.

- (6) **A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:**

- (a) **The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**

- (b) **The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;**
- (c) **Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;**

Applicant: The applicant agrees to provide a restocking certification upon conditional approval of this application. Currently the entire parcel is covered in conifer and deciduous trees. Only one acre will be dedicated to the dwelling site and driveway.

Staff: The tax lot is presently in forest deferral tax status. A condition of approval requires the submittal of the above requirements prior to approval of a building permit.

- (7) **The dwelling meets the applicable development standards of MCC .2074;**

Staff: Demonstration of compliance with this criteria is addressed under MCC 11.15.2074, of this report.

- (8) **A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;**

Applicant: This will be recorded upon approval of this CFU dwelling request. [Staff labeled Exhibit A2, Item 17]

- (9) **Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

- (a) **The covenants, conditions and restrictions shall specify that:**
 - (i) **All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and**
 - (ii) **No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;**
- (b) **The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**
- (c) **Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).**

Finding: The subject property is a *tract* that consists of only one Lot of Record. The above deed restriction is not required.

11.15.2058 Dimensional Requirements

(A) Except as provided in MCC .2060,.2061, .2062, and .2064, the minimum lot size shall be 80 acres.

Staff: The property is a Lot of Record as defined in MCC .2062(A)(2).

* * *

(C) Minimum Yard Dimensions - Feet:

Frontage on County Main- tained Road	Other Front	Side	Rear
60 from centerline	200	200	200
* * *			

Staff: The site plan submitted, Exhibit A2, Item 10 shows a proposed house location that meets all of the above yard requirements.

11.15.2074 Development Standards for Dwellings and Structures

Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following:

(A) The dwelling or structure shall be located such that:

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);

Applicant: Due to the setbacks of the proposed dwelling and the mature conifer and deciduous growth on the parcel any impact on surrounding forest or agricultural lands has been mitigated.

- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Applicant: Forest operations and accepted farming practices will not be curtailed or impeded as a result of the dwelling on subject property due to the fact that the dwelling will be 200 feet from all property lines and impact from any adjacent forest or farming practice will be mitigated as the natural topography and mature trees that separate the parcel from these activities. The home is placed in such a way as to decrease the risk of fire, (i.e.) slope and also to not impede the access of logging related equipment from accessing the log deck which will be to the west of the home site. The proposed driveway will facilitate the residential and commercial needs of the property.

Staff: The criteria is addressing impacts "on the tract". In this case the tract includes only the subject parcel. The subject parcel is receiving special assessment for forest production. The area proposed for the dwelling has been cleared some time in the past.

- (3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Applicant: The dwelling site will not exceed one acre including the driveway.

Staff: The driveway is somewhat longer than a direct connection to the home in order to reduce the steepness of the grade and enter the public road at a location that has better sight distance in both directions.

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Applicant: The designed driveway is approximately 150 feet in length to the dwelling site.

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) The proposed dwelling will be located upon a *tract* within a fire protection district or the dwelling shall be provided with residential fire protection by contract;

Staff: The *tract* is in Multnomah County Rural Fire District #14.

(b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;

Applicant: There are no consistent emergency water sources within 15 feet of the lot.

Staff: Latourell Creek, a seasonal stream on the south part of the property enters a culvert in Haines Road at the southwest frontage of the property. At times it could be a water source.

(c) Maintenance of a primary and a secondary fire safety zone on the subject *tract*.

(i) A primary fire safety zone is a fuel break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(ii) On lands with 10 percent or greater slope the primary safety zone shall be extended down the slope from a dwelling or structure as follows:

<u>Percent Slope</u>	<u>Distance In Feet</u>
Less than 10	Not required
Less than 20	50
Less than 25	75
Less than 40	100

- (iii) **A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.**
 - (iv) **No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**
 - (v) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**
- (d) **The building site must have a slope less than 40 percent.**

Applicant: Primary and Secondary fire safety zones will be maintained around the proposed dwelling. The home site is in an area of slopes of approximately 5%. The area immediately surrounding the home site area is less than 20% slope, therefore an additional 50 feet for a secondary break will be implemented. If the slopes of the entire parcel are to be referenced to, i.e. up to 70% per the geotech report then the secondary firebreak will be increased to 100 feet in all directions around the primary one. See site plan, exhibit 10 and geotech report, exhibit 11 [Staff labeled Exhibits A2, Items 10 & 11].

Staff: A requirement to clear the fire safety zones prior to issuance of a building permit is a condition of approval.

(B) The dwelling shall:

- (1) **Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**
- (2) **Be attached to a foundation for which a building permit has been obtained;**
- (3) **Have a minimum floor area of 600 square feet;**

- (4) **Have a fire retardant roof; and**
- (5) **Have a spark arrester on each chimney.**

Applicant: The dwelling shall comply with the Uniform Building Code Standards. The dwelling will be attached to a foundation for which a building permit will be obtained.

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water, or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Applicant: The water source for the property will consist of a domestic well drilled on the site. Wells drilled for domestic purposes are permitted by the Oregon Water Resources Department. This water supply proposed is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Staff: A condition of approval will require that a well report be submitted and a finding of compliance with this condition be re-noticed to applicable property owners prior to the issuance of a building permit.

- (D) A private road (including approved easements) accessing two or more dwellings, or a driveway accessing a single dwelling, shall be designed, built, and maintained to:**
- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**
 - (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**
 - (3) Provide minimum curve radii of 48 feet or greater,**
 - (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**
 - (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**
 - (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**
 - (7) Provide for the safe and convenient passage of vehicles by the placement of.**
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or**
 - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.**

Applicant: See exhibits 15 and 16 [Staff labeled Exhibits A2, Items 15 & 16]. The driveway will be 20 feet wide approximately 150 feet in length to the home site and extending west for future commercial use, i.e. decking area truck access. This driveway design meets approved subject to final inspection. Grades and turnarounds all meet the standards. See driveway design for specs of rock base, grades, culverts, and cuts. The maximum grade is 20% for approximately 60 feet, then it is 15% for approx. 60 feet, this is unavoidable in order to access the property to Haines Road. The local Fire Marshall

has been on site with the engineer and has approved this design to meet his GVW of 52,000 lbs. and radii of 48 feet or greater, as well as vertical clearance of 14 feet and 12 foot wide surface area, with turnouts that are at least 20 X 40 feet in dimension.

Finding: A condition of approval requires that prior to issuance of a dwelling building permit, verification be provided that the driveway design submitted with the application has been constructed to the specified width, grade, and location and that the surface can support 52,000 lbs. GVW.

COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

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

Applicant: Activities associated with the proposed dwelling are those customarily anticipated with a single family residence. It can be assumed that outdoor recreational activities, raising of domestic animals, landscape maintenance, and occasional entertainment of guest will be encountered over the period of the dwelling's existence. It is certain, due to the size of the lot, the setbacks from adjacent parcels, the topography, and the reforestation of the property, that the air, water, and noise pollution would be minimal.

2. **Policy No. 14, Development Limitations.** The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

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

Applicant: This proposed home site was chosen due to the slopes of 5% in an area large enough to accommodate the dwelling and the required Primary and Secondary firebreaks most efficiently. It is already essentially cleared and has the best accessibility to the County road. The dwelling will be developed according to the Commercial Forest Use zoning district standards and the standards for Goal 5 with regard to the protection of streams and wildlife, as well as be in compliance with the Hillside Development and Erosion Control standards. The dwelling is sited on a slope of less than 5% and there is no indication of slope instability, seasonally high water table or fragipan less than 30 inches from the surface. Erosion potential will be addressed in the erosion control permit process. Nominal amounts of soil will be disturbed to develop this site, approximately 22 cu. ft. See exhibit 11 [Staff labeled Exhibit A2, Item 11].

Staff: The Multnomah County "Potential Slope Hazard Areas" map shows that the proposed building site appears to be outside of a potential hazard area, but the areas of this parcel nearest Latourell Creek are labeled as hazard areas for earth movement. The applicant submitted a "Geotechnical Reconnaissance and Stability Preliminary Study". The submitted report did not include a page four that would have the State of Oregon Registration Stamp of a Certified Engineering Geologist or Geotechnical Engineer.

A condition of approval requires the application and approval of a Hillside Development Permit (HDP) prior to issuance of a building permit. The HDP application must have the required reports of a Certified Engineering Geologist or Geotechnical Engineer to be a complete application. Those reports will verify the stability of the slopes on the site prior to construction or placement of the proposed house.

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

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

Staff: This policy encourages energy conservation. This parcel is adjacent to an existing county road and other dwellings. It can be readily served by existing utilities. This lot of record can rely on its own resources for domestic water and due to its size and soil types, provide its own sewage disposal system.

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

WATER DISPOSAL SYSTEM:

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

Applicant: A septic system and drainfield have already been approved for this tax lot. Utilities are located on Haines Rd. Storm water drainage will be further analyzed in the Hillside Development and Erosion Control process prior to obtaining building permit approval.

Staff: Water will be obtained from an on-site well. A "Land Feasibility Study" (LFS 198-91) determined that an on-site sanitation system could be approved in the form of a steep slope serial distribution system, see Exhibit A2, Item 5.

DRAINAGE:

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

Staff: The City of Portland Bureau of Buildings regulates the flow of water coming off single family residences. Multnomah County will require a Hillside Development Permit for development on this land. In the Hillside Development Permit review will be the requirement to design erosion control mechanisms to prevent erosion off the property and the requirement to determine the best method of handling water run-off resulting from future development.

ENERGY AND COMMUNICATIONS:

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

Staff: Portland General Electric and US West Communication provide necessary power and phone service to the area. A single family residence is unlikely to result in inadequate services or facilities for those services.

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

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

Applicant: The county Fire Department, Police Department, and Corbett Public Schools all verified service availability to the proposed dwelling. There were no negative comments or concerns expressed. [Staff labeled Exhibit A2, Item 4]

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

- A. **Pedestrian and bicycle path connections to parks, recreation areas and community facilities will be dedicated where appropriate and where**

designated in the bicycle corridor capital improvements program and map.

- B. Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.**
- C. Areas for bicycle parking facilities will be required in development proposals, where appropriate.**

Finding There are no pedestrian or bicycle path connections to parks, recreation areas or community facilities from or to the site.

CONCLUSION:

1. The subject parcel meets the template tests of the Commercial Forest Use zoning district.
2. Conditions of approval are necessary to ensure some criteria of approval are met.

Dated this 18th day of April, 1997.



LIZ FANCHER, Hearings Officer

Appeal to the Board of County Commissioners:

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

CU 2-97 APPLICATION TIMELINE:

Pre-Application Conference (PA 24-96): September 26, 1996

Application received with full fees: February 20, 1997 **Begin "120 day timeline"**

Determination that application is complete (letter mailed): March 21, 1997 **Day 29**

Staff Report available: April 9, 1997 (seven days before hearing)

Public Hearing before Hearings Officer: April 16, 1996 **Day 55**

CU 2-97 LIST OF EXHIBITS

"A" -

Applicant Submittals:

A 1 - Conditional Use Application Form

A 2 - Applicant's Response to Approval Criteria

Eight pages of narrative and labeled exhibits

Applicant's labeled exhibits:

Item 1 Owner's authorization letter (Applicant's Exhibit 1)

Item 2 Assessment and Taxation Information (Applicant's Exhibit 2)

Item 3 Property Deed, 2 pages (Applicant's Exhibit 3)

Item 4 Service Availability Letters, 4 pages (Applicant's Exhibit 4)

Item 5 Land Feasibility Study (on-site sanitation), 6 pg. (Applicant's Exhibit 5)

Item 6 Soils productivity chart (Applicant's Exhibit 6)

No Item 7. Note is made that the "Certification of reforestation" is pending

Item 8 County tax map with template overlay (Applicant's Exhibit 8)

Item 9 Tax Roll Information on parcels in template, 7 pages (Appl. Exhibit 9)

Item 10 Site Plan reduced to 8 1/2 inches by 11 inches (Applicant's Exhibit 10)

Item 11 HDP "Geotechnical Reconnaissance" form, 4 pg (Applicant's Exhibit 11)

Item 12 Multnomah County wildlife habitat map (Applicant's Exhibit 12)

Item 13 Letter from Oregon Fish and Wildlife Dept. (Applicant's Exhibit 13)

Item 14 Large map showing topography (Applicant's Exhibit 14)

Item 15 Large map showing proposed driveway design (Applicant's Exhibit 15)

Item 16 Fire Chief approval of driveway design (Applicant's Exhibit 16)

Item 17 Notarized Deed Restriction re: forest practices (Applicant's Exhibit 17)

Item 18 Vicinity map on USGS base map (Applicant's Exhibit 18)

"B" -

Notification Information:

B 1 - "Complete application" Letter

B 2 - Notice of hearing, 10 pages

B 3 - Affidavit of posting, 2 pages

"C" -

Staff Report (4/16/97)

"D" -

Documents Submitted at 4/16/97 Public Hearing:

D 1 - HDP "Geotechnical Reconnaissance" Form, 5 pages



MULTNOMAH COUNTY

BOARD HEARING OF MAY 8, 1997

TIME 9:30am

CASE NAME Steven Kreofsky

NUMBER CU 3-97

1. Applicant Name/Address

Steven Kreofsky
29943 SE Orient Drive
Gresham, OR 97080

2. Action Requested by Applicant

Conditional Use approval to establish a nursery business to include the sales of bonsai plants, wooden containers, clay pots, soils mixes, ground covers and other small plants on property zoned Rural Center (RC).

3. Planning Staff Recommendation

Approval, with conditions.

4. Hearings Officer Decision

Approval, with conditions.

5. If recommendation and decision are different, why?

They were the same.

6. Issues:

No issues were raised. The applicant agreed with the Staff Report and the Hearings Officer concured.

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

No policy implications have been identified.

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Hearings Officer Dec.
<input type="checkbox"/>	Hearing/Rehearing
Scope of Review	
On the record	
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New information allowed



MULTNOMAH COUNTY

Department of Environmental Services
Transportation and Land Use Planning Division
2115 SE Morrison Street
Portland, OR 97214 Phone: (503) 248-3043

DECISION OF HEARINGS OFFICER

Case File: CU 3-97
Hearings Officer: Liz Fancher
Hearing Date, Time, & Place: Wed., April 16, 1997 at 9:00 a.m.
2115 SE Morrison Street, Room 111
Portland, OR 97214

WHAT: Conditional Use application to establish a nursery business to include the sales of bonsai plants, wooden containers, clay pots, soils mixes, ground covers and other small plants on property zoned Rural Center (RC)

PROPERTY LOCATION: 29943 SE Orient Drive. T1S, R4E, Section 19, Tax lot '59';
Tax Account # R-99419-0590

WHO: *Property Owner/Applicant:*
Steven Kreofsky
29943 SE Orient Drive
Gresham, OR 97080

Hearings Officer Decision: APPROVAL, subject to compliance with the following conditions of approval:

CONDITIONS:

1. Approval is for a retail nursery as proposed. The business will include one full time employee (applicant) and no more than one part time employee. Any changes in the hours of operation, use, or scale of use will require a new hearing.
2. Prior to commencement of the nursery business the applicant apply for and obtain approval of Design Review for site development.
3. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).

MULTNOMAH COUNTY
PLANNING SECTION

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This approval is granted based upon the following findings of compliance with applicable approval criteria supplied by the Applicant, Staff and Hearings Officer:

Applicable Criteria:

CONDITIONAL USE ORDINANCE CONSIDERATIONS:

11.15.2252 - Rural Center; Conditional Uses

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

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

(1) Limited rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses;

(2) Tourist commercial uses such as restaurants, taverns, gas stations, motels, guest ranches, and similar uses;

...
11.15.7212 Conditional Use Approval Criteria

(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

(1) Is consistent with the character of the area;

Applicant: The use is consistent with the character of the area. The property is located in a commercial area in the middle of Orient. It has a barber shop on one side and Orient Industries on the other. On the same side of the road two parcels east is a retail nursery. There is a metal fabrication shop no longer operating on the same side of the road to the west. Orient school playground is located on the north side of the property. Across Orient Drive to the south is the Orient store, nursery fields, a retail nursery and a home.

The traffic patterns will not be affected because there is plenty of parking up front. This will keep the noise level in front towards the road. There is also a solid wood fencing on the east side of the property and a solid wall on the west that will confine noise.

(2) Will not adversely effect natural resources;

Applicant: The use will not adversely affect natural resources like rivers, streams, wetlands and forest because the property is not located near any natural resources.

(3) Will not conflict with farm or forest uses in the area;

Applicant: The proposed land use will not affect the nursery fields located across the street from the property. I have been coexisting with the field since 1990 and I see no change in the future.

Staff: The farm uses in the area include a nursery. The sales of nursery plants will promote the areas agricultural enterprises. The subject parcel is located within an exception area and is committed to Rural Commercial type enterprises. There are no clear forest uses in the immediate area.

HO: The site of the proposed use is the Applicant's residence. All agricultural uses in the area are nursery uses. The Applicant's proposed use will support these wholesale nurseries by providing baskets for plants which may be used for shipping and retailing plants. No aspect of the Applicant's proposed operation will conflict with these nurseries. There are no commercial forest uses in the area. There are a couple of small forested areas which are located away from Orient Drive, the road that will carry traffic to and from the Applicant's business. No aspect of the Applicant's operation will conflict with these limited forest uses.

(4) Will not require public services other than those existing or programmed for the area;

Applicant: The use will not change any public services because I will not be adding any septic service. There is also adequate water supply for the intended use.

Staff: The subject parcel includes a mobile home currently occupied by the applicant. The dwelling is connected to public water and an on site septic system. The applicant has not proposed restroom facilities for the business. Pleasant Home Water District currently provides water to the site and has indicated it will continue to provide service from a 6 inch line located on Orient Drive.

HO: County staff has confirmed with the Gresham Building and Development Department that no additional septic service is required to serve the proposed use and that public restrooms are not required to serve the proposed use. Based on the foregoing, no public services other than those existing or programmed for the area are required to serve the proposed use.

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

Applicant: Does not apply.

Staff: The subject parcel is not located within a big game winter habitat area based on the Multnomah County Wildlife Habitat map.

(6) Will not create hazardous conditions; and

Applicant: The property use will not create a hazardous situation because all sales will take place in a fenced area. The impact on the soils, slopes, and natural resources will not change as planned.

Staff: The proposed use is a small scale nursery located in a rural area. The nursery will not be utilizing hazardous material other than fertilizer used for plants.

HO: Under ordinary operating conditions, the quantities and types of fertilizer used by the nursery will not create a hazardous condition.

(7) Will satisfy the applicable policies of the Comprehensive Plan.

Staff: The applicant has addressed the applicable Comprehensive Plan Policies as indicated in this report (below).

COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:

Applicable Comprehensive Framework Plan Policies (including those Policies requiring a Finding prior to a quasi-judicial decision):

(1) POLICY NO. 13, AIR, WATER AND NOISE QUALITY. MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.

Applicant: The use will satisfy policies of the Comprehensive plan because the noise will be blocked by fence placement. Also, the business itself will not generate much noise. The air and water quality will not change because of the land use planned.

Staff: Nurseries are generally a low impact use. The only air and noise quality issues are a result of the public coming to and from the site. There is a very direct relationship between plants and air quality. It can be argued the nursery will actually promote clean air.

HO: County staff has advised the Hearings Officer that for this type of application that the County serves as the "appropriate agency" for purposes of this Plan policy. The

County has determined that all standards, if any, can be met with respect to air quality, water quality and noise quality.

(2) POLICY NO. 14, DEVELOPMENTAL LIMITATIONS. THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

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

Applicant: The land use now complies with the Comprehensive Plan at this time because I have no development or alterations planned at this time. The land also does not have the development limitations areas described.

Staff: The applicant is not proposing any land altering activities (eg. buildings or grading) to accommodate the use. The proposed area for development is relatively flat and is not located in an area designated as a flood plain. The presence of nursery stock growing in the immediate vicinity is adequate to demonstrate the soils on the parcel likely do not include a fragipan.

HO: The subject property does not include any areas which meet the Plan definition of a "development limitations area."

(3) POLICY 27: COMMERCIAL LOCATION. THE COUNTY'S POLICY IS TO:

- A. IMPROVE THE AVAILABILITY AND ACCESSIBILITY OF CONSUMER GOODS AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMERCIAL DEVELOPMENT TO MEET THE NEEDS OF THE COMMUNITY AND TO REINFORCE COMMUNITY IDENTITY.**

Applicant: The Comprehensive plan is satisfied because the location improves the availability of the nursery and garden goods to the community. The location also promotes products from the local community and it also reinforces community identity.

HO: The area is a commercial agricultural area. The proposed use will reinforce the area's identify as such by providing an additional nursery use to the area.

**(4) POLICY NO. 37, UTILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:
WATER AND DISPOSAL SYSTEM**

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;

DRAINAGE

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.

Applicant: The current utilities satisfy the policies of the Comprehensive Plan. There is an adequate private water system and no public sewer will be added. There is also capacity to handle run-off. There are Communications facilities available and the energy supply will handle the proposed needs.

HO: The water system which will serve the subject property is a public system. There is an existing septic system on site which is adequate to serve the existing and proposed use. County site and design review will assure that any run-off from the site will not adversely affect the water quality nor alter the drainage on adjoining lands.

**(4) POLICY NO. 38, FACILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:
SCHOOL**

A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

FIRE PROTECTION

B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

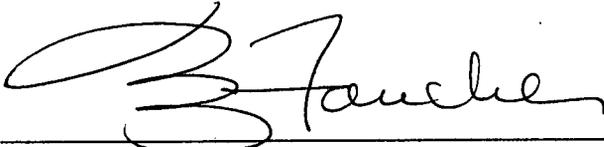
POLICE PROTECTION

D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.

Applicant: The land use facilities complies with the County's Policy. Approval for School, Fire Protection and Police was obtained when the General Application Form was filled out.

Note: In addition to the criteria listed above, if approved the applicant would be required to apply for and receive approval of a Design Review Permit. The Design Review Permit includes compliance with the Off-Street Parking and Loading Section of the Zoning Ordinance. Design Review and Off-Street Parking will require a paved parking area, buffered and maintained landscaped areas between Orient Drive and any off-street parking areas, as well as other requirements. A variance may be required if applicable dimensional standards under Design Review (& Off Street Parking) cannot be met.

DATED this 18th day of April, 1997.



LIZ FANCHER, Hearings Officer

Appeal to the Board of County Commissioners:

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



BOARD HEARING OF MAY 8, 1997

TIME 9:30am

CASE NAME: Michael and Marilyn Oliver

NUMBER: CU 4-97 & SEC 7-97

1. Applicant Name/Address

Michael and Marilyn Oliver
9665 SW Ventura Ct.
Tigard, OR 97223

2. Action Requested by Applicant

Approval of a single family dwelling.

3. Planning Staff Recommendation

Approval with conditions.

4. Hearings Officer Decision

Approval with conditions.

5. If recommendation and decision are different, why?

ISSUES
(who raised them?)

6. The following issues were raised:

None

7. Do any of these issues have policy implications? Explain: None identified at this time.

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Hearings Officer Dec.
<input type="checkbox"/>	Hearing/Rehearing
Scope of Review	
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New information allowed



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

DECISION OF HEARINGS OFFICER

Case File: CU 4-97 & SEC 7-97
Scheduled Before: Liz Fancher, Hearings Officer
Hearing Place, & Time: 2115 SE Morrison Street, Room 111
Portland, Oregon 97214
Time: 4:00 pm

Proposed Action and Use: The applicant requests Conditional Use review and approval for development of a single family dwelling on the subject property.

Location: 14625 NW Skyline Blvd.

Property Description: TL '10', Section 25, T2N, R2W

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

Applicant/Owner: Michael R. and Marilyn Oliver
9665 SW Ventura Ct.
Tigard, OR 97223

Decision: Approval of the single family dwelling approved in Design Review case DR 13-96, based on the findings and conclusions contained below and subject to the conditions herein.

Conditions:

- I. The site plan is approved as submitted and as approved in Design Review case DR 13-96 and Grading and Erosion Control Permit GEC 22-96.

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2. No fencing shall be built and existing fencing shall be removed outside of areas cleared for site development except for existing areas used for agricultural purposes. Any such fences shall comply with the requirements of MCC 11.15.6426. Approval for the construction of fences must be obtained from Multnomah County, prior to construction.
3. Maintain primary and secondary fire safety zones around all new structures, in accordance with MCC 11.15.2074 (A)(5).
4. The nuisance plants listed in MCC .6426(B)(7) shall not be planted on the property and shall be removed from cleared areas of the property. The Applicant shall comply with this condition during the life of this permit.
5. The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules and comply with all provisions of MCC11.15.2052(A)(6).
6. Every chimney must have a spark arrester.
7. Approval of these applications is granted for the use described in the land use application. Commitments made by the Applicant in the land use applications regarding activities on the subject property which were relied upon by the County in approving this application and which were relevant to compliance with approval criteria are conditions of approval of this application.
8. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).

Decision Format

This decision is based upon the staff report which was prepared by County Planning Division staff. The Applicant's response to an approval criteria is indicated by the notation "Applicant's Response." Planning Staff comments and analysis follow the Applicant's responses to the criteria, where supplemental information was needed or where staff did not concur with the applicant's statements. If no staff remarks were indicated, staff concurred with the applicant. The Hearings Officer has added her own findings below the Applicant and staff comments. Where no findings are listed, the Hearings Officer concurs with the findings made by the Applicant and staff and adopts such findings as her own.

Background

Applicant's Proposal: The Applicant is requesting approval of a single family dwelling in the CFU zone. The request is the same as that approved in CU 8-94, which expired 2/14/97 due to lack of substantial construction pursuant to MCC 11.15.7110 (C) (3). During the two year period that CU 8-94 was in effect, the applicants successfully completed the Design Review and Grading and Erosion control permit processes by obtaining both permits (DR 13-96 and GEC 22-96). This request is to re-approve the same dwelling and development plan that was considered and approved for DR 13-96 and GEC 22-96, which remain in effect.

Description of Site and Vicinity: The subject property is situated on the west side of NW Skyline Blvd., approximately one-half mile south of its intersection with Rock Creek Road. Land uses in the area consist of small fields near Skyline Blvd., with primarily forest uses on the steeper slopes. Dwellings in the area south of the subject site are spaced at intervals of up to one-fourth mile along Skyline Blvd, with wider spacing in the area north to Rock Creek Rd. These existing dwellings range from 100' to 1000' feet from the road, with the majority located less than 400' from Skyline Blvd.

The property is triangular in shape and is undeveloped, with the central portion along the road consisting of a clearing. Forested areas exist along the south property line and along the southwest to northeast property line which follows a ravine. The proposed dwelling site is located on slopes of approximately 15% in the central portion of the property, and is set back between 97' and 116' west of the Skyline Blvd. right-of-way. Slopes increase to 40% with distance from the road.

Access to the dwelling site is from Skyline Blvd., with electrical power and telephone available at the road. Potable water will be from an existing well located on the property, and sewage disposal will be accommodated on-site, with a sandfilter subsurface system. Fire protection will be provided by the Tualatin Valley Fire and Rescue District.

Notification and Public Participation: Notice of the hearing Scheduled for April 16, 1997 and applicable criteria was sent to 14 neighboring property owners, interested parties, and applicable agencies on March 26, 1997.

Approval Criteria

The Hearings Officer finds that the Applicant's proposals meet the following Multnomah County Zoning Code approval criteria and Comprehensive Plan Policies and that such ordinances and policies are the approval criteria which govern review of this application:

1. Criteria for Approval of a Dwelling in the CFU Zone:

MCC 11.15.2052 (A): A template dwelling may be sited on a *tract*, subject to the following:

MCC 11.15.2052 (A)(1): The lot or lots in the *tract* shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;

Applicant: The property complies with the county "Lot of Record" requirements set forth in MCC 11.15.2062: Section 2, (a - d). There is only one lot in the tract.

The property was created in 1987 through an Exempt Minor Partition approved by the county in 1987. A copy of the tax assessor records is included to so verify. The lot satisfied all applicable laws when the parcel was created. The lot does not meet the minimum lot size requirements (80 acres) of MCC.2058. The lot is not contiguous to another substandard parcel under the same ownership.

Staff: The evidence for parcel creation is included in the form of a deed description and map in Exhibit A5, and in the Tax Assessor's Deed History included on the fourth page of Exhibit A8. Staff agrees that the parcel meets the lot of record requirements.

HO: The Hearings Officer finds that the subject property is a legal lot of record.

MCC 11.15.2052 (A)(2): The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC.2074 with minimum yards of 60 feet to the centerline of any adjacent County Maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

Applicant: The dwelling site is located 93 feet from the centerline of the road at the front garage corner and 116 feet from the centerline of the road at the house front. It is more than 200 feet from all other property lines, approximately 437.5 feet from the south property line and 416 feet from the northwest property line by perpendicular measure.

HO: The proposed dwelling site meets the referenced setback standards.

MCC 11.15.2052 (A)(3): The *tract* shall meet the following standards:

- (c) **The *tract* shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**
- (iii) **The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject *tract* parallel and perpendicular to section lines; and**

(iv) **At least five dwellings lawfully existed on January 1, 1993 within the 160 acre square.**

Applicant: Soils on the property are Cascade silt loam, with a potential yield of 140-164 cubic feet per acre. The potential yield on the 18.89 acre property is approximately 3000 cubic feet per year.

Tax assessor records show that all or part of 11 lots exist within a 160 acre template. Four houses had occupancy permits prior to January 1, 1993. A fifth house was determined by the hearings officer to have "existed" based on the following:

"for the purposes of MCC 11.15.2052, a dwelling "exists" when a substantial investment has been made in that dwelling. This interpretation of the term "exist" is reasonable under the circumstances because the purpose of the ordinance is to insure there has already been a significant investment in the development of residential dwellings in the area, such that the area already has a significant residential character. In other words, the purpose of this provision in the ordinance is to identify rural areas that have already experienced significant residential development."

In the case of the 5th house, evidence was presented that showed that prior to January 1, 1993, the foundation, foundation drains, posts and beam work were completed on the house located on tax lot 29. The Hearings Officer found that such level of development constituted a substantial investment in the dwelling and therefore, for the purposes of MCC 11.15.2052, that the fifth dwelling existed prior to January 1, 1993. An occupancy permit was issued for the dwelling in January.

Staff: The findings regarding the fifth dwelling are located on the second page of the Hearings Officer decision in CU 8-94, which is included as Exhibit C1 of this report.

HO: The County has previously determined that the fifth dwelling was a dwelling for purposes of the template test. This Hearings Officer finds that as the Applicant has acted in reliance upon this County determination and as the law regarding template dwellings has not changed since the Applicant applied for the prior conditional use permit, the Hearings Officer believes that she is bound to apply the law in the same manner as the prior Hearings Officer. The findings of Hearings Officer Phil Grillo, included in the record of this decision are, therefore, adopted as findings of compliance with this requirement of the template test.

MCC 11.15.2052 (A)(3)(d): Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

MCC 11.15.2052 (A)(3)(e): There is no other dwelling on the tract;

MCC 11.15.2052 (A)(3)(f): No other dwellings are allowed on other lots (or parcels) that make up the *tract*;

MCC 11.15.2052 (A)(3)(g): Except as provided for a replacement dwelling, all lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and

MCC 11.15.2052 (A)(3)(h): No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;

Applicant: No lots or dwellings are within the urban growth boundary. There are no other dwellings on the tract. Sections f - h do not apply because there are no other lots comprising the tract.

HO: The Hearings Officer concurs with the Applicant's proposed finding regarding subsections (d) - (h).

MCC 11.15.2052 (A)(4): The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive plan in 1980, will be acceptable.

Applicant: Documentation showing that Section 25 does not contain any significant wildlife or big game winter habitat has been submitted. A copy of the Comprehensive Plan Wildlife Habitat map is included with the application.

Staff: The Wildlife Habitat map is included as Exhibit A9.

HO: The Applicant has established that the proposed dwelling site is located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife.

MCC 11.15.2052 (A)(5): Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of forestry, the Bureau of Land Management or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Applicant: This provision does not apply. Public road access is available on Skyline Blvd. An application to construct driveway access to the right of way was filed and a rural driveway approach permit has been granted.

HO: Road access is not provided by a road owned and maintained by a private party or by the Oregon Department of Forestry, BLM or the US Forest Service.

MCC 11.15.2052 (A)(6): A condition of approval requires the owner of the *tract* to plant a sufficient number of trees on the *tract* to demonstrate that the *tract* is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided however, that:

- (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.**
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.**
- (c) Upon notification by the assessor the Department of Forestry shall determine whether the *tract* meets minimum stocking requirements of the Forest Practices Act. If the department determines that the *tract* does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;**

Applicant: At least 200 well distributed seedlings per acre are required to qualify for forestland status. In January 1997, 3300 seedlings were planted on 11 acres of meadow (300 trees per acre). The Oregon Department of Forestry reviewed and approved this plan prior to its implementation. Prior to planting, a stocking survey was submitted in May 1996. An updated stocking survey reflecting the recent planting will be submitted as soon as possible. Because of 12.76 acres of non use all 18.89 acres were removed from deferral status June 25, 1996 subsequent to submitting a stocking survey. Eleven acres have been replanted, so that now 17.39 acres of parcel is forested. Re-application for deferral status is underway.

Staff: A new stocking survey report dated March 14, 1997, which evaluates the reforestation which occurred in 1997, is included as Exhibit A14. Other than a recommendation to fertilize the recently planted trees in 5 years, no impediments for the tract to achieve the Department of Forestry stocking requirement after 5 years are identified. This, and the statement in the report that "overall natural fir is already dominant over alder competition", indicate that the parcel should be able to meet the stocking requirement.

HO: The Hearings Officer has included a requirement that the Applicant comply with the stocking requirement as the County code requires that such a condition be included in any conditional use permit for a template dwelling. The Hearings Officer recognizes, however, that the Applicant has taken significant steps to comply with the requirements

of a similar requirement in a prior conditional use approval and that those efforts may be sufficient to satisfy the condition of approval imposed in this decision.

MCC 11.15.2052 (A)(7): The dwelling meets the applicable development standards of MCC.2074;

Applicant: Documentation of compliance follows under the appropriate section.

MCC 11.15.2052 (A)(8): A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;

Applicant: The required statements was filed on October 14, 1994. A copy of this statement and receipt have been provided.

Staff: A copy of the statement is included as Exhibit A10.

MCC 11.15.2052 (A)(9): Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;

- (a) The covenants, conditions and restrictions shall specify that:
 - (i) All lots (or parcels) that are part of the *tract* shall be precluded from all future rights to site a dwelling; and
 - (ii) No lot (or parcel) that is part of the *tract* may be used to qualify another *tract* for the siting of a dwelling;
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the *tract* is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;
- (c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December, 1995).

Applicant: This section does not apply. The tract has only one lot.

MCC .2074 - Development Standards for Dwellings and Structures: Except as provided for the alteration, replacement or restoration of dwellings under MCC

.2048 (E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

MCC .2074 (A) The dwelling or structure shall be located such that:

- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058 (C) through (G);**

Applicant: The dwelling has been sited in a previously cleared area of open field. It does not require destruction of wooded wildlife habitat or the removal of any trees. In compliance with MCC.2058 (C) - (G), the east (front) corner of the garage is approximately 93 feet from the centerline of the county road which exceeds the minimum requirement of 60 feet. The front of home is 116 feet from the road. The lot exceeds the minimum 200 feet required for yard dimensions in all other directions. The lot exceeds the minimum lot line length. Refer to the attached site plan for dimensions. The proposed structure will not exceed 35 feet in height.

Staff: Forest lands adjacent to the subject parcel exist to the east across Skyline Blvd., and along the northwest and south property lines. The site plan on the third page of Exhibit A15 identifies the dwelling location as 416' to the northeast property line, which is the closest distance to any forest land not separated from the parcel by a road. This location places the dwelling nearly equidistant from the south and northeast property lines. In addition, the setback from Skyline Blvd. places the dwelling below the road and creates both a visual and audio buffer with the parcel across the road to the east.

HO: The above findings of fact establish that the proposed homesite will have the least impact on nearby or adjoining forest or agricultural lands of any potential homesite allowed by law. The findings also establish that the proposed homesite complies with the minimum yard and setback requirements of .2058 (C) through (G);

- (2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Applicant: Current forest and farming practices will not be curtailed or impeded by the placement of the dwelling. Available forest land on the parcel remains accessible from Skyline Boulevard and from the proposed driveway. The property has been reforested. A contract for management of the forest resource has been signed with Meristem Reforestation Company. The plan was developed in consultation with Jay Worley of the Oregon Department of Forestry.

HO: The Applicant's proposed plan minimizes any adverse impacts on forest operations and accepted farming practices for the reasons given above and by the home location midway between the side lot lines and toward Skyline Boulevard. This home placement leaves a large area of the Applicant's property where commercial forestry practices could be conducted without interfering with the residential use of the property.

(3) The amount of land used to site the dwelling or other structures, access roads, and service corridor is minimized.

Applicant: Less than 2 acres of land will be removed from forest production. The dwelling site is between the well and the approved septic field. Moving the house closer to the road would put it on top of the well. The land area between the house and the road has been planted with Douglas fir seedlings and will remain in forest production. The placement of the driveway was determined by assuring a 300 foot minimum sight distance from the curve in the road. A driveway access permit has been received.

HO: The Applicant has minimized the amount of land needed to site the dwelling and other structures, access roads and service corridor by placing the home relatively close to Skyline Boulevard.

(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Applicant: The driveway is less than 500 feet in length. This section does not apply.

(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

- (a) The proposed dwelling will be located on a tract within a rural fire protection district, or the dwelling shall be provided with residential fire protection by contract;**
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet driveway standards of MCC .2074 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;**
- (c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**
 - (i) A primary safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure**
 - (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance in Feet
Less than 10	Not Required
Less than 20	50
Less than 30	75
Less than 40	100

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone... .
- (iv) No requirement in (i), (ii) , or (iii) above may restrict or contradict a forest management plan approved by the state of Oregon Department of Forestry pursuant to the state Forest Practices Rules; and
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

(d) The building site must have a slope less than 40 percent.

Applicant: (a) The property is within Multnomah County RFPD #20. Fire District Review and Fire Marshal Access Certification have been provided to the county.

(b) Access for a pumping truck will be provided including signs noting the location of a perennial water source within 15 feet of the drive.

(c) (I) A primary fire safely zone will be maintained as required.

(c) (ii) The slope of the property below the building site is greater than 10% but less than 20%. The primary fire safety zone will be extended as required.

(c) (iii) A secondary fire safety zone will be maintained as required.

(d) The slope at the building site is approximately 15%, less than the 40 percent maximum.

Staff: The slopes on the property vary from roughly 15 % to 20% in the area of the dwelling, to 24% to 32% for the first 50' behind and to the west of the dwelling site. This is based on the elevation survey provided by the applicant. A reduced scale of this survey is included as Map 4 of Exhibit A15. The increasing steepness of slopes west of the dwelling site require a primary fire break distance of 100', and this is indicated on Map 3 of exhibit A15. Maintenance of the necessary secondary fire safety zone can be added as a condition of approval.

MCC .2074 (B) The dwelling shall:

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (2) Be attached to a foundation for which a building permit has been obtained; and
- (3) Have a minimum floor area of 600 square feet.
- (4) Have a spark arrester on each chimney.

Applicant: The building will be attached to a foundation. It exceeds 600 square feet. There will be one chimney equipped with a spark arrester. The plan provides for a fire retardant roof of composition shingles (Arch 80 type). Plans and documents are currently under review by the city of Portland under application for a building permit.

Staff: Building plans which meet the applicable requirements of this section were approved by Multnomah County Planning on January 3, 1997.

MCC .2074 (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of groundwater (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Applicant: A copy of the well log has been provided attached to the county form certifying water service.

Staff: See Exhibit A11.

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
- (3) Provide minimum curve radii of 48 feet or greater;
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below;
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

- (b) **Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of ½ the driveway length or 400 feet whichever is less.**

Applicant: The Fire Marshall has approved the driveway plan, which meets the standards of MCC.2074(D) Documentation has been provided to the county. Driveway specifications can be met during construction. An all weather surface 12 in diameter will be provided with a minimum curve radii of 48 feet. The driveway is 125 feet in length and therefore does not require a turnaround for the fire truck nor turnouts for passage of vehicles. The average slope of the driveway is less than 8% and does not exceed 12%. Landscape design and forestation plans comply with the required 13 foot 6 inch vertical clearance and 12 foot width required for the fire truck.

Staff: The applicant has designed a driveway which meets the requirements of this section. The site plan which shows the driveway location, width, length, and grade is included at the end of the staff report for DR 13-96, attached hereto as Exhibit C2.

2. Criteria for approval of SEC-h Permit, Wildlife Habitat:

A. MCC 11.15.6420: Criteria for Approval of SEC Permit (General Provisions):

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on the Multnomah County sectional maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

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.

Applicant: There are no rivers, streams, lakes or floodwater storage areas on the property. Two small seasonal creeks run along the property lines. The amount of water in the creeks vary with the season and are comprised of runoff from the subject property as well as from the adjacent properties to the south and north. One creek runs through the ravine on the south property line starting about three fourths of the way between the east and west property boundaries. A second seasonal creek runs through a deep ravine at the west end of the property. The northwest creek runs from approximately 450 feet below the building site on the north west boundary to 800 feet below the site on the west boundary (see plot plan). Sufficient drainage systems are in place for the dwelling so that no runoff from the house will reach the creek. A report of a soil engineer was submitted and a grading and erosion control permit has been issued by the county.

HO: The maximum possible open space has been provided between the residential use proposed in this application and a river, stream, lake, or floodwater storage area.

MCC 11.15.6420 (B): Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Applicant: The attached site map illustrates areas of mature Douglas fir and western red cedar as well as the recently planted 11 acres of Douglas fir seedlings which cover the previous meadow / grass field areas. The subject parcel is designated Commercial Forest Use (CFU) under the Multnomah County Comprehensive Framework Plan. Statewide Planning Goal 3 - Agricultural Lands and Goal 4 - Forest Lands were established in part to preserve and maintain agricultural lands and to conserve forest lands for forest uses. The County CFU zone has been deemed consistent with Goal 4 and provides for dwellings in certain instances. Compliance with the requirements of the CFU zone as demonstrated through this report ensures agricultural land and forest land will be preserved and maintained.

HO: The subject property is in the process of being reforested as required by the State forest resource rules. The subject property is not located in an area of agricultural lands.

MCC11.15.6420 (C): 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.

Applicant: The building site was selected because it is just downhill (25 feet) from the existing well (installed in 1988) and just uphill from the approved septic field. Moving the building site from this location between the well and the septic field would require additional trenching, plumbing, and would take more land out of forest production. The site is situated approximately half way between the north and south boundaries of the property to minimize its impact on the farming and forest practices of the surrounding parcels.

MCC 11.15.6420 (D): 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.

Applicant: There is currently no recreational use on this piece of private property, nor is any proposed. The property is not identified as being a necessary connection between recreation areas or bicycle corridors.

MCC 11.15.6420 (E): 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.

Applicant: The issues pertaining to public safety are the location of the driveway access, preservation of visibility along the road for motor vehicles, and assurances that site maintenance and construction standards will minimize fire risks.

The driveway access was selected to provide an unobstructed view of at least 300 feet to the curve in the road on the south and 750 feet to the curve to the north. Tree planting has been kept at least 30 feet from the road. Trees will be pruned up so as not to obscure the visibility from neighboring driveways. A contract has been signed for grass control by backpack spraying to reduce fire fuels. The dwelling will include an alarm system, a fire retardant roof, and spark arrester for the single chimney.

MCC 11.15.6420 (F): Significant fish and wildlife habitats shall be protected.

Applicant: There are no fish habitats in the area. The property does not lie within a big game winter wildlife habitat. Wildlife in the area includes coyotes, birds, rodents, insects amphibians (lizards and snakes), and elk. Two elk herds have been known to roam the area. Recent reforestation has provided an environment akin to that of the surrounding residential parcels, which the elk seem to enjoy. There are no fences on the property and there are no plans for installing fences. Natural vegetation in the ravines will be preserved. There is no possibility of contamination of the seasonal creek at the west end of the property from erosion or runoff. The hillside has been re-forested and plans provide for storm runoff and household waste according to approved septic standards. No chemicals shall be used except those allowed under the State Forest Practices Act.

MCC 11.15.6420 (G): 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.

Applicant: The only water on the property are two small seasonal creeks. There are no plans to remove any vegetation within over 500 feet of either creek. (refer also to sections A and F)

MCC 11.15.6420 (H): Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Applicant: There are no identified archaeological areas, or areas with historic, scientific or cultural value on the property. This section does not apply.

Staff: Staff acknowledges the likelihood of items of archaeological being located on site is limited. The applicant is advised that, if archaeological object are discovered during construction, state statutes require construction be stopped and the State Historic Preservation Office be notified.

MCC 11.15.6420 (I): 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.

Applicant: There are no such areas on the property. This section does not apply.

MCC 11.15.6420 (J): Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restrictions on timing of soil disturbing activities.

Applicant: A Grading and Erosion Control Permit was issued by the county December 26, 1996. Landscaping to control erosion includes landscape fabric, mulch, groundcover (lawn) and shrubs which will be in place before November. Erosion control practices (as per the plan) will be implemented during construction. Reforestation of the hillside has been completed.

Staff: A copy of the staff report and erosion control plan approved in GEC 22-96 is included as Exhibit C3 of this report. This approval remains in effect for the project as approved, and demonstrates compliance with this criterion.

MCC 11.15.6420 (K): 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.

Applicant: The proposed residence is not a noise generator and is not in a noise impacted area. Set backs from the north and south property boundaries will insure minimum impact on the adjacent residences. Water quality standards can be met as evidenced by the approved Land Feasibility Study for on-site sewage disposal.

MCC 11.15.6420 (L): 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.

Applicant: The design review has been completed by the county. A Design Review Permit was issued by the county December 23, 1996. The building is a daylight basement residence, designed to take advantage of the natural slope of the land, and requires a minimum of excavation. The house shall be barely visible from the road because it is a single story and a tree buffer has been planted. The home takes advantage of passive solar heating through window placement on the west side. The color will be an earth tone in the gray - taupe range.

Staff: See Exhibit C2 for the staff report demonstrating compliance with the Design Review ordinance requirements. This approval remains in effect for 18 months consistent with the provisions of MCC .7870.

MCC 11.15.6420 (M): 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 natural vegetation, shall be retained in a natural state to the maximum extent possible.

Applicant: The area has not been recognized as fragile, nor have any endangered plants been identified on the parcel. If there were any, they would have to be deep within the wooded ravines. No removal of plants or vegetation is planned for those areas. They are to be retained in their natural state. This criteria is not applicable.

MCC 11.15.6420 (N): The applicable Policies of the Comprehensive Plan shall be satisfied.

Applicant: It is intended to follow the applicable policies of the Comprehensive Plan.

Staff: The County requires a finding prior to approval of a Legislative or Quasi-Judicial Action that the following factors have been considered. Since this application involves a Quasi-Judicial Action, Plan Policies 13, 22, 37, 38, and 40, are addressed in part 3. of this report.

B. MCC 11.15.6426: Criteria for approval of SEC-h Permit Wildlife Habitat:

MCC 11.15.6426 (B): Development Standards:

Applicant: The applicants believe the project complies with Section B. However, if the planning director disagrees with the applicants' analysis of subsection 4, the applicants wish also to argue for approval under (C) (2) and (C) (3). Such argument follows the written description for Section B.

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Applicant: The building site is in a cleared area. The site was approved in CU 8-94 (now expired). The site was not replanted in anticipation of the dwelling. No trees or vegetation other than grass / weeds need to be removed to construct the dwelling at this site.

Staff: The ordinance defines "non-forested cleared areas" in section .6426(A)(1), as areas which are not forested, and which are "not being reforested pursuant to a forest management plan." The proposed dwelling site is the only cleared area on the site.

Exhibit A-14 is the stocking survey which reflects planting which has already occurred to implement the reforestation plan the applicant references under subsection (4) below. The survey report map confirms that all of the previously non-forested areas of the property except for the proposed building site have been replanted.

- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

Applicant: The building site is 93 feet from the public road at the garage corner and 116 feet from the public road at the house corner. (see plot plan)

- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Applicant: The driveway is 125 feet long. (see plan)

- (4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.**

Applicant: The adjacent property to the north has a driveway within 200 feet of the subject property boundary. In fact the driveway is at the property boundary. Owners of that property (parcel 8) had no other option for driveway / access placement due to the triangular shape of their parcel which provides only 75 feet of frontage on Skyline Blvd.

However, the criteria of MCC.6426 (B) (4) cannot apply to the subject property for the following reasons:

MCC 11.15.6426 (B) Development Standards require (1) "Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, . . ." MCC 11.15.6426 (A) (1) defines "non forested "cleared" areas as "an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan."

The reforestation plan for the subject property was developed in the summer of 1995 and approved by the Oregon Department of Forestry in October 1995 for implementation between October 1996 and March 1997. Site preparation took place as scheduled in the fall of 1996 and replanting was completed in February 1997 in accordance with the pre-approved plan. Also in accordance with the plan, slightly more than one acre was left unplanted or "cleared" to accommodate the dwelling site which was approved under CU 8-94 (now expired).

Any alternate sites on the subject property within 200 - 300 feet of the north boundary cannot be approved for building because they qualify, according to the definition of MCC 11.15.6426 (A) (1) as a forested area, including areas which have "at least 75%

crown closure” as well as areas which are “being reforested pursuant to Forest Practice Rules of the Oregon Department of Forestry.”

Locating the dwelling within 200 - 300 feet of the northwest property line would require removal of trees (both mature trees and seedling trees) from within a forested area. Such development would be in conflict with the Development Standards (B) which require that where a parcel contains “**any non-forested cleared areas, development shall only occur in these areas,**” (bold mine)

Staff: The site plan of the third page of Exhibit A-15 identifies the driveway location as 612' south of the north property line, therefore this standard is not met. The applicant's response above demonstrates that the standard cannot be met because the only cleared area which can meet the standard under (1) above exists further than 100 feet from the north property line. In addition, staff notes that the 200' dwelling setback requirement from a side property line under MCC .2058(C) results in a minimum dwelling location of approximately 300' when the dwelling would meet the minimum front setback of 60' from the center of Skyline. This circumstance results from the triangular shape of the parcel. In this situation, the only way the applicant could comply with the setback standards of the CFU zone, and both standards (1) and (4) of this section would be to construct a driveway parallel to Skyline for a distance of 500', rather than taking the shortest route as is proposed. The physical circumstance of the location of the only cleared area on the site, and the triangular shape of the parcel do not allow this standard to be met.

HO: The requirements of this section apply to the subject property. As the Applicant's plan does not comply with the requirements of the section, a wildlife conservation plan is required. MCC 11.15.6426(C).

(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.

Applicant: There are no structures within 200 feet of the property lines.

(6) Fencing within a required setback from a public road shall meet the following criteria:

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

- (e) **Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**

Applicant: No fencing is currently planned. This section does not apply.

HO: Any future fencing on the subject property must comply with the requirements of this section during the life of the template dwelling.

- (7) **The nuisance plants listed shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.**

Applicant: None of the listed "nuisance" plants are in the landscaping plan or will be introduced. There is a small patch of scotch broom and moderate sized patches of blackberries on the parcel. A contract is in place with Meristem Reforestation to remove them.

HO: The Applicant shall keep the subject property free of nuisance plants. This requirement has been made a condition of approval of this application.

MCC 11.15.6426 (C): Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) **The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**
- (2) **The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having less detrimental impact on forested wildlife habitat than the standards in Section B.**
- (3) **The wildlife conservation plan must demonstrate the following:**
 - (a) **That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**
 - (b) **That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**
 - (c) **That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing areas used for agricultural purposes.**

(d) That revegetation and enhancement of disturbed stream riparian areas occurs along drainage's and streams located on the property occurs.

Applicant: The proposed location of the dwelling is preferable to any alternative site with driveway access within 100 feet of the north boundary. Such driveway access would require siting the dwelling within 200 - 300 feet of the north boundary (to comply with required driveway length limitations). Any such siting would be undesirable for the following reasons:

1. Issues relating to the seasonal creek

The boundary due north is very close to the seasonal creek. In fact the seasonal creek begins here as drainage from the road, the subject property, and the adjacent property to the north. That drainage runoff becomes a creek and flows through the ravine which defines the northwest boundary between the two parcels.

MCC .6420 (A) requires that "the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream," etc. Any dwelling site within 200 - 300 feet of the northwest boundary does not meet this criteria because there is clearly a better alternative. The site as proposed in the application does comply with this criteria stated in MCC .6420 (A).

There would most likely be a greater possibility of pesticides and fertilizers finding their way into the drainage if the dwelling were located just 200 - 300 feet above the seasonal creek, as opposed to the more than 400 foot distance proposed in the application.

Relocating the dwelling site to within 200 - 300 feet of the north boundary would place the on-site drainage of the sand filtration / trench type required by the Sanitarian undesirably close to the creek. Moreover, locating the dwelling within 200 - 300 feet of the north property boundary would require removing vegetation from within 500 feet of the creek, an activity prohibited by MCC .6420 Section G.

Staff: The provisions of subsection (C)(1) apply because Development Standard (B)(4) cannot be met due the physical circumstances unique to the property. The standard of (B)(1) which requires development to be located in a cleared area can only be met by the proposed dwelling location as addressed in the findings for that section. Staff interprets the ordinance requirements of (C)(1) and (2) to be met when the provisions of (C)(3) are satisfied.

A finding that subsection (C)(3) is satisfied is supported by the applicant for the following reasons. The minimization of impacts to forested areas under (C)(3)(a) are satisfied because establishment of the dwelling site occurred through reforestation rather than clearing. No forest canopy cover was disturbed. The newly cleared area standard of (b) is shown to be satisfied on the maps in Exhibit A-15 by designation of less than

one acre for the dwelling and yard. The fencing requirement of (c) can be addressed by a condition of approval which requires compliance with the standards of MCC .6426(B)(6) and this standard. No disturbance of the seasonal drainage along the northwest property line has occurred based on Map 3 on the 6th page of Exhibit A-15.

HO: A condition of approval has been included with this decision to assure compliance with the limitations upon fencing imposed by this section.

3. Multnomah County Comprehensive Plan Policies:

Policies in the Comprehensive Plan which are applicable to this Quasi-judicial Decision are addressed as follows:

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

Applicant: The area has not been recognized as fragile, nor have any endangered plants been identified on the parcel. If there were any, they would have to be deep within the wooded ravines. No removal of plants or vegetation is planned for those areas. They are to be retained in their natural state. This criteria is not applicable.

HO: The County is responsible for determining the applicable review criteria for a land use application. County staff has accepted the Applicant's position that this plan policy does not apply to review of this application. No party has challenged this determination.

Policy No. 14, Development Limitations. The County's Policy is to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties. Development limitations areas are those which have any of the following characteristics:

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

Applicant: Slope on the property ranges from 8 to 15 % according to the Department of Agriculture's data. However, there are steeper areas on the property, although no

alteration is planned in those areas. The proposed dwelling site has a slope of 15%. No development is planned for the steep areas in the ravines on the south and northwest boundaries. County Geological and Slope Hazard Maps indicate that the property has low erosion potential. The property is not within a 100 year flood plain.

The soil on the property is cascade silt loam, symbol 7C at the building site. The soil survey does not indicate that the land is subject to slumping, earth slides or movement.

Findings from auger borings taken in December are as follows:

0-18 inches (silt soil and wet), 18-42 inches (silt soil and moist to wet)

The content of the soil is such that it drains slowly. Therefore a sand filtration / trench septic system will be required to meet the requirements of the sanitation department. Such a system is in the design plan and was approved based on the moisture content of the soils.

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

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

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

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

WATER DISPOSAL SYSTEM:

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

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

DRAINAGE:

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

ENERGY AND COMMUNICATIONS:

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

Applicant: Approval forms have been submitted showing there is a private well with a yield of 10 gallons per minute, that the site is served by PGE and US West, and that the dwelling can be served by an on-site septic system. Additional documentation was provided as part of the Grading and Erosion Permit application documenting provisions to handle runoff on the site.

Staff: The applicable service provider forms are in Exhibit A-11. The Grading and Erosion Control Permit is in Exhibit C-3.

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

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

Applicant: Review forms and appropriate comments have been included from the school district, fire district and police district which show that services can be provided and the development shall not negatively impact those departments or agencies.

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

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

Applicant: The property is not identified as being a necessary connection between recreation areas or bicycle corridors.

CONCLUSIONS:

1. The subject parcel and proposed dwelling meet the template tests and development standards of the CFU zone.
2. The development plan meets the requirements of the SEC overlay zone.
3. The applicant has carried the burden of demonstrating compliance with the applicable Comprehensive Plan Policies.

Appeal to the Board of County Commissioners:

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

CU 4-97 and SEC 7-97 Application Timeline:

Application received with full fees: 3/7/97

Determination that application is complete: 3/7/97 **Begin "120 day timeline"**

Staff Report available: 4/9/97

Public Hearing before Hearings Officer: 4/16/97 **Day 40**

List of Exhibits for CU 4-97 and SEC 7-97

"A" Applicant Initial Submittals:

- A1 Conditional Use App. Form
- A2 SEC App. Form
- A3 CU Narrative 3/6/97 (4 pgs)
- A4 SEC Narrative 3/6/97 (9pgs)
- A5 "Exhibit A" Legal Description
- A6 Soils Productivity / Wood Fiber
Production Information
- A7 Lot Creation / Existing Dwelling List
- A8 Assessor's Tax Lot Deed History
(11pgs)
- A9 Wildlife Habitat Map
- A10 Deed Record of Farm/Forest
Management Practices
Acknowledgement
- A11 Service Provider Forms
- A12 Approved Road Approach Permit
- A13 Assessor's Map with Subject Parcel
Highlighted
- A14 Forest Stocking Survey Report
- A15 Map and Site Plan Index and
Maps/Plans (9pgs)

"B" Notification Information

- B1 2/26/97 Notice of Public Hearing
- B2 Affidavit of Posting 4/7/97

"C" Staff Report

- C1 CU 8-94 Hearings Officer Decision
- C2 DR 13-96 Staff Report
- C3 GEC 22-96 Permit



CASE NAME: Benua Replacment Dwelling

NUMBER: SEC 23-96

1. Applicant Name/Address

Daniel & Sun Benua
2730 SW Schiller Terrace
Portland, OR 97225

2. Action Requested by Applicant

Applicant appealed Condition No. 4 & 5 of the Planning Director's Decision of SEC 23-96 for the replacement of a manufactured home with a stick built single family dwelling and construct a detached accessory building on a 38 acre parcel in the CFU zoning district.

Action Requested of Board
[checked] Affirm Hearings Officer Dec.
[] Hearing/Rehearing
Scope of Review
On the record
[] De Novo
[] New information allowed

3. Planning Staff Recommendation

Staff recommended that the Hearings Officer uphold Condition No. 4 & 5 of the Planning Director's Decision of SEC 23-96.

4. Hearings Officer Decision

The Hearings Officer found that Condition No. 4 & 5 would not have an effect on the visual subordination of the single family dwelling and accessory structure and removed the conditions from SEC 23-96.

5. If recommendation and decision are different, why?

Applicant submitted in additional evidence showing that window glare would not be a problem and the amount of reflectivity from the window glass would not in all likelihood contribute to the building being dominant in the landscape.

ISSUES
(who raised them?)

6. The following issues were raised:

The applicant appealed the reduction of window area on the northeast elevation of the accessory building and the northeast elevation of the dwelling. A condition of approval reduced the amount of window surface on the third and basement floor of the three story structure to show compliance with the reflectivity criteria contained in Significant Environmental Concern- Views Ordinance. These conditions were placed on the permit in order for staff to make the determination of visual subordination for the building as required by SEC-v criteria.

7. Do any of these issues have policy implications? Explain: None identified at this time.



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

DECISION OF HEARINGS OFFICER
 APPEAL OF ADMINISTRATIVE DECISION

SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT

File No.: SEC 23-96

Proposal: Replacement dwelling and a detached accessory building on a 38 acre parcel in the CFU zoning district.

Location: 18600 NW Skyline Blvd., Portland, Oregon

Legal: Parcel 2, Partition Plat 1991-137.

Zoning: CFU, Commercial Forest Use/ SEC-h, v & s, Significant Environmental Concern (Wildlife Habitat, Views & Streams).

**Applicants/
 Property Owners:** Daniel & Sun Benua
 2730 SW Schiller Terrace.
 Portland, OR 97225

MULTNOMAH COUNTY
 PLANNING SECTION

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I. MATTERS APPEALED.

The Applicants have appealed Conditions 4 and 5 of the Administrative Decision approving the issuance of Significant Environmental Concern Permit for a replacement dwelling in the CFU zone. Conditions 4 and 5 require the following:

4. Prior to building plan check for the accessory structure, the windows on the northeast elevation shall be removed. The accessory structure may have windows on the other three elevations.

SEC 23-96
 Hearings Officer: Liz Fancher

_____	Notices
11	Decision Notices
mailed on	4/25/97
by	SH

Page 1

5. Prior to building plan check for the dwelling, the rear elevation shall be modified reducing the number and size of the windows on the basement and third floors. Windows on these floors shall be reduced to minimum required for natural light, ventilation and egress to the Oregon One and Two Family Dwelling code. The mandooors on the basement and third floors shall not utilize glass or other reflective materials. In addition, all windows on the rear elevation shall be tinted or coated with a dark, non-metallic coating to reduce the amount of interior light extrusion to the outside at night. The rear elevation may maintain the proposed windows on the basement and third floor, if permanent non-reflective or low reflective and light penetration materials can be utilized to reduce interior light extrusion to the outside at night and the glass' high reflectivity.

II. GROUNDS FOR APPEAL

The following are the Grounds for Appeal listed in the Applicant's Notice of Appeal. All grounds relate solely to Conditions 4 and 5 of the Director's decision.

1. The conditions are inconsistent with the guidelines for determination of visual subordination stated in MCC .6424 (B).
2. The conditions lack objective criteria that the applicant can use to determine if a proposed remedy is conforming.
3. The Planning Director has improperly construed the applicable law by imposing these conditions.
4. The conditions are not supported by substantial evidence in the whole record.
5. The Planning Director has exceeded her jurisdiction.
6. The Planning Director has failed to follow the applicable law.

III. SCOPE OF REVIEW

The scope of review of this appeal is prescribed by MCC 11.15.8295. That section provides as follows:

- A. A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal.

- B. The provisions of subsection MCC .8230(D) and (E) shall not apply to hearings on appeals filed under MCC .8290(A).
- C. The findings adopted by the Hearings Officer shall specifically address the relationships between the grounds for reversal or modification of decision as stated in the Notice of Appeal and the criteria on which the Planning Director's decision was required to be based under this Chapter.

The Hearings Officer notes that the scope of review is strictly limited to the issues raised on appeal by the Applicants. This fact prevents the Applicants from raising issues not specified in their notice of appeal and prevents the Hearings Officer from considering issues not raised in the notice.

In this case, the Planning Director determined that the Benua home was dominant, rather than subordinate to its surroundings. The Hearings Officer agrees with this determination. The County zoning ordinance, however, requires that the home be subordinate to its surroundings. The dominance of the building would have allowed the Director to deny approval of the SEC-v permit requested by the Benuas. The Director chose, however, to impose conditions of approval to assure compliance with the approval criteria. Two of the conditions that were designed to assure that the home would not dominate its surroundings have been appealed by the Benuas. Those conditions and the law that relates to those conditions are the only issues on appeal.

IV. EXHIBIT LIST

No exhibit list was made to index the Administrative Record. The following is an exhibit list of exhibits received at the hearing held by the Hearings Officer on April 16, 1997:

- H-1 Report on SEC-View Application, 18600 NW Skyline Blvd., Multnomah County SEC 23-96, April 7, 1997. Report prepared by Neil Thorgerson, Architect.
- H-2 April 14, 1997 Letter from Jeff H. Bachrach to Liz Fancher re SEC No. 23-96
- H-3 Landscape Plan for Benua Residence

V. RELEVANT CRITERIA & FINDINGS

The following criteria, identified as relevant approval criteria in the Administrative Decision, are related to the grounds for reversal raised by the Applicant. The findings regarding the approval criteria are also included as it is the interpretation of the criteria which are the basis of this appeal.

11.15.6420 - Criteria for Approval of SEC Permit: The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and

scenic waterways that are designated SEC on the Multnomah County sectional maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

- (c) **.6420 (C):** 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.

Applicant: The proposed replacement dwelling is located on the most level portion of the lot for functional and cost considerations while preserving areas of environmental significance.

Staff: The applicant has submitted a wildlife mitigation plan which balances the location of the dwelling with the need to preserve wildlife habitat. Conditions of approval are necessary to reduce the visual dominance this building will have on the landscape. The current proposed location of the building is visible from a number of view areas. No mature trees exist on the site because of recent logging activity. The applicant is proposing a structure which maximizes the height limitation of the zoning district and is large in scale. The current house design contains a large number of windows with a high reflectivity value on the elevation which is viewable. A condition of approval to balance and protect the areas of significance has been included to reduce the reflection potential and screen the massing of the structure.

- (l) **.6420 (L):** 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.

Applicant: The design, bulk, construction materials, color, and lighting of the proposed structure is compatible with the visual character of the area. This issue is addressed in detail in the SEC-View portion of the application.

Staff: The size, shape and configuration of the dwelling is similar to those in the surrounding vicinity. The placement and design of the proposed dwelling may affect the visual quality of the SEC view areas. The rear elevation facing Sauvie Island and Highway 30 has a large number of windows which have a high reflectivity level. In addition, the dwelling will be dominant on the landscape at night due to the large level of interior light which may exit the building during its use. A condition of approval to reduce the amount of reflectivity and light penetration emanating from the structure. Additional findings are addressed under the SEC-v criteria later in this report.

- (d) **MCC 11.15.6424 - Criteria for Approval of SEC-v Permit: Significant Scenic Views:**

(a) **MCC .6424 (A):** In addition to the information required by MCC .6408 (C), an application for development in an area designated SEC-v shall include:

(i) **MCC .6424 (A)(1):** Details on the height, shape colors, outdoor lighting, and exterior building materials of any proposed structure;

Staff: Applicant has submitted in elevations, proposed colors, materials and lighting restrictions for the proposed dwelling.

(ii) **MCC .6424 (A)(2):** Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;

Staff: The subject parcel is terraced with areas of modest and steeper slopes. The proposed location for the dwelling is on the second terrace, approximately 700 feet into the property. The height, size and configuration of the building as indicated on the site plan, conceptual drawings, and narrative are sufficiently detailed to grant an approval.

(iii) **MCC .6424 (A)(3):** A list of identified viewing areas from which the proposed use would be visible;

Staff: The applicant has indicated that the proposed development will be visible from portions of the following identified viewing areas: Sauvie Island Wildlife Refuge, Highway 30, Multnomah Channel, and public roads on Sauvie Island.

(iv) **MCC .6424 (A)(4):** A written description and drawings demonstrating how the proposed development will be *visually subordinate* as required by (B) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas. Visually subordinate means development does not noticeably contrast with the surrounding landscape, as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not visually dominant in relation to its surroundings.

Staff: The applicant has submitted in photographs, a sketch and other materials to help demonstrate visual subordination for the proposed dwelling. Conditions of Approval have been included with this decision to reduce the amount of reflective materials and night visibility in order to have the building visually subordinate on the site.

(b) **MCC .6424(B):** Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be *visually subordinate*. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:

- (1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.
- (2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.
- (3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.
- (4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.
- (5) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.
- (6) Limiting structure height to remain below the surrounding forest canopy level.
- (7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:
 - (a) New communication facilities....

Applicant: The proposed development will be visually subordinate given the definition of MCC 11.15.6424(B). The guidelines for determination of visual subordination contained in the regulations relate to the proposal as follows:

- (1) The site is a recent clear-cut with topography sloping toward the identified viewing areas. There are no build-able sites on the property at which a dwelling would be screened by topography or existing vegetation. The existing and proposed driveway segments will be screened by the trees in the reforested areas, or by the dwelling itself, and will not be visible from the identified viewing areas.
- (2) The proposal specifies the use of non-reflective building materials and dark natural colors that will blend in with the hillside behind the dwelling.

- (3) Limited exterior lighting is proposed; as illustrated on the elevation drawings. Exterior lights will be hooded with opaque shields that direct light toward the ground and prevent it from shining toward the viewing areas.
- (4) The area immediately surrounding of the shop and dwelling will be landscaped to provide screening of foundation structures from the proposed viewing areas.
- (5) The development is sited on the most level portion of the property to minimize visible grading or other land form modifications.
- (6) The structure height will be less than the height of the mature forest canopy.
- (7) The silhouette of the buildings will be below the ridge-line as seen from the identified viewing areas.

Conclusion

The proposed development will be consistent with the regulations for areas of Significant Environmental Concern for View and is consistent in character with other residential developments in the area.

Staff: Visual subordination of the proposed structure is very difficult due to the recent forest practices on the property, the terrain and size of the proposed dwelling. While there is no area of the property where the proposed house could be screened by the topography and/or existing vegetation, the applicant has chosen to place it at a edge of the second terrace on the property. This location sets the dwelling at the maximum visibility point of the site. This location is at the crest of a steep drop and is like the dwelling being set near a ridgeline. This placement makes it quite difficult to achieve visual subordination. Greater attention to the rear elevation and materials is necessary to reduce the dominance of the proposed dwelling at this setting.

The dwelling as proposed has a large number of windows facing towards the identified viewing areas. The applicant is attempting to maximize the view from the property towards Sauvie Island. Glass is reflective and at night allow interior light to shine outwards drawing attention to the building. The location of the dwelling and the large amount of windows proposed will cause the dwelling to be visually dominant at night and on sunny days. Guideline #2 above identifies nonreflective or low reflective building materials and dark natural or earthtone colors as being the acceptable types of materials. A reduction in the amount of glass surface on the rear elevation will reduce the large amount of reflective material being utilized and allow less interior light extrusion. Conditions of approval have been included with this decision to reduce the amount of reflectivity generated by the rear elevation. In addition, the proposed accessory building will have windows facing towards the SEC-view areas. A condition of approval requires that the windows be removed from the northeast elevation.

The project as proposed will have foundation plantings to help hide concrete work from the SEC-view areas. As this is helpful, it does not meet the intent of guideline #4. The use of screening vegetation is to block or disrupt the views of the entire dwelling. Coniferous plantings of tall growing species to break up the massiveness of the dwelling should be used. A condition of approval to plant groupings of evergreen species at the rear elevation has been included to help increase the visual subordination of the building.

- (c) **.6424 (D)**: The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC .6418, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.

Staff: Conditions of approval have been included with this decision to ensure that the proposed buildings are visually subordinate in the landscape. As proposed, the rear elevation has a high reflectivity level based upon the amount of window glass included in the elevation. The reduction in glass surface and the inclusion of tall, evergreen trees or shrubs will help to visually subordinate the dwelling into its surroundings. In addition, the trim color should reflect the darker tone in the earhtone color palette.

V. FINDINGS OF FACT & CONCLUSIONS OF LAW

The Hearings Officer makes the following findings of fact and conclusions of law regarding the grounds of appeal contained in the Applicants' Notice of Appeal. Each issue raised by the Applicants is stated in bold and is followed by the findings and conclusions of the Hearings Officer.

- 1. The conditions are inconsistent with the guidelines for determination of visual subordination stated in MCC .6424 (B).**

FINDINGS: The guidelines for determination of visual subordination are listed in MCC 11.15.6424(B). The challenged conditions of approval impose limitations upon the number and type of windows of the proposed residence. Guideline 2 was relied upon by the Planning Director to justify Conditions of Approval 4 and 5. At the appeal hearing, Ms. Estrin, on behalf of the Planning Director, also referenced Guideline 3 as a basis for requiring that the numbers of windows on the proposed dwelling to be reduced.

The Notice of Appeal does not identify which guidelines are allegedly inconsistent with the conditions of approval nor does it explain why the guidelines are inconsistent with the conditions. The record lacks any clear statement that explains why the Applicants believe that the conditions of approval are *inconsistent* with the guidelines. As the burden of proof in this appeal is upon the Applicants and the lack of proof on this issue requires denial of this ground for appeal.

2. The conditions lack objective criteria that the applicant can use to determine if a proposed remedy is conforming.

FINDINGS: The Applicants have failed to provide any legal argument in favor of their claim that the conditions of approval of the SEC permit must be limited to objective criteria. The burden of making this argument falls upon the Applicants. As they have failed to meet that burden, this objection must be denied.

3. The Planning Director has improperly construed the applicable law by imposing these conditions.

4. The conditions are not supported by substantial evidence in the whole record.

FINDING: Objection 3 is the primary argument advanced by the Applicants in support of their appeal of Conditions of Approval 4 and 5. This argument is the only argument addressed by the Applicants' attorney, Jeff Bachrach. Objection 4 supports Objection 3. The Hearings Officer reads these objections, together, as being a claim that the facts of this case do not logically lead to the imposition of Conditions 4 and 5 as conditions of approval of the requested SEC-v permit.

Condition of Approval 4 requires the Applicants to remove all windows from the northeast elevation of the accessory structure. Condition of Approval 5 requires the elimination of a number of windows on the rear of the home and the tinting of all windows on the rear of the home. The condition allows retention of all windows, except those used in the exterior doors of the home, if "permanent non-reflective or low reflective and light penetration materials can be utilized to reduce interior light extrusion to the outside at night" and the reflectivity of the glass. These conditions were imposed to assure compliance with MCC .6424 (B), which requires that the proposed residence be visually subordinate from County identified viewing areas. The condition was also imposed to satisfy the requirements of subsections (C) and (L) of 11.15.6420 of the SEC permit criteria, which are discussed above. In determining visual subordination, the Planning Director and Hearings Officer are required to consider the extent to which the Applicants have made use of nonreflective or low reflective building materials and dark natural or earthtone colors. Guideline 3 appears to prohibit exterior lighting. The apparent prohibition is, however, followed by what appear to be restrictions on exterior lighting.

The Applicants make a number of arguments which are encompassed by Grounds of Appeal 3 and 4. First, the Applicants argue that window glass is a low reflective building material because the glass itself absorbs more light than ordinary home siding. While this may be true, the Applicants also admit that the smooth surface of window glass, the form of the material proposed for the Applicants' dwelling, causes "specular reflections" and bright glare. As a result, the Hearings Officer is unable to agree with the Applicants that smooth surfaced window glass is a low reflective building material, as that term is used in the County's zoning ordinance.

Second, the Applicants argue that Director failed to explain how the concern regarding the use of reflective windows violates the requirement of visual subordination. The Hearings Officer finds, however, that such a determination is implicit in Guideline 2. The reason that the Director and Hearings Officer must consider a home's use of nonreflective and low reflective building materials is that such materials make a home less dominant in a natural setting. Windows that create bright solar glare shine like a beacon. If that beacon shines toward protected view areas, it could easily dominate the backdrop of the Benua home. The Applicants' attorney argues that visual dominance must be determined by reference to the amount of glare being generated by other area homes. The Hearings Officer rejects this contention, however, because the photographs submitted into the record by the County and the Applicant demonstrate that the surrounding landscape is dominated by forested and clear-cut hillsides, not by residences. As a result, the Benua home must be shown to be subordinate to the natural environment.

Third, the Applicants argue that Conditions of Approval 4 and 5 will not affect the visual subordination or dominance of the proposed home. Given the setting and orientation of the Benua home, the Hearings Officer agrees with the Applicant that the number and tinting of the home's windows will have little or no impact upon the visual dominance of the home during the day-time. This conclusion is based upon the opinion of the Applicants' architect Neil Thorgerson that the design and orientation of the home and its location with respect to the viewing areas and surrounding terrain make it impossible for the windows to reflect solar glare toward the viewing areas. Mr. Thorgerson's opinion is supported by a detailed analysis of the location of the home, the sun and the viewing areas. Further, there is no evidence to the contrary in the record. As a result, the fact that the Benua house makes liberal use of reflective window glass does not cause the home to dominate over its surroundings.¹ The

¹ Other features of the home, in the opinion of the Hearings Officer, may cause the home to dominate its surroundings. These features include the placement of the home in the middle of a clear-cut without an effective landscape screen and the height of the home. The Hearings Officer has not denied this application, however, because the scope of review is limited to a consideration of the specific grounds raised by the Applicant on appeal. MCC 11.15.8295(A).

Hearings Officer notes that at the time that the Planning Director rendered her decision, the record did not include the Thorgerson evidence.²

The remaining question is whether the numerous windows planned for the view side of the Benua home prevent the home from being visually subordinate to its surroundings at night. It is the Applicants' position that only the exterior lighting of a home is relevant to the visual subordination test of the County's zoning ordinance. The Hearings Officer agrees with this position for the following reasons:

MCC .6424(A)(1) requires the Applicant to submit information regarding outdoor lighting only. If the County intended to consider the impact of interior lighting, it would have sought information upon that type of lighting; and

MCC .6424(A)(4) states that visually subordinate development does not *noticeably* contrast with the surrounding landscape. The interior lighting of any home with windows will noticeably contrast with the surrounding landscape so that an outright ban on windows is required to effectuate this requirement if the ordinance is read to treat the black of night as the surroundings of the home. There is no evidence in the language of the ordinance to suggest that the ordinance is intended to prevent homeowners from placing windows on the side of their homes that faces the protected viewpoint; and

Most of the factors listed in the Guidelines are relevant to whether a structure is subordinate or dominant when the structure, rather than its lights, are visible; and

Guideline 4 begins with what appears to be a prohibition against exterior lighting but then states that lighting should be directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. This guideline could be read as regulating interior lighting because there is no reason to regulate what is prohibited. The Hearings Officer finds, however, that the section is actually written to prohibit exterior lighting *unless* it is shielded and directed downward. The lighting regulations make sense for outdoor lighting which is generally placed above the point it lights and which is usually intended to light the ground to allow safe passage over darkened yards and walkways. Interior lighting, however, typically emanates throughout the interior of a home. A shielding and downward lighting requirement would prohibit halogen lamps and chandeliers and other ceiling mounted light fixtures. Further, Guideline 3 requires that shielded lighting be shielded with nonreflective and opaque materials. The type of material used to shield outdoor lighting could affect the visual subordination of a home but the type

² A narrow reading of the grounds for appeal could lead the Hearings Officer to uphold the decision of the Planning Director. The decision could be upheld because it was reasonable for the Director to render such a decision based upon the record before her. The Hearings Officer has applied such a narrow reading of the grounds of appeal however, as the County's zoning ordinance grants the Applicant the right to a de novo hearing before the Board of Commissioners when the concerns addressed in this appeal could be fully addressed.

of material used to shield indoor lighting would, typically, have little or no impact upon the visual subordination of a home when viewed from a protected viewing area.

5. The Planning Director has exceeded her jurisdiction.

FINDINGS: The Applicants have failed to provide any legal argument in favor of their claim that the Planning Director has exceeded her jurisdiction in rendering this decision. The Applicant's have also failed to explain why they believe the Director has exceeded her jurisdiction. ORS 197.763 requires the Applicant's to raise their objections to the administrative decision with sufficient specificity to allow the Hearings Officer an opportunity to respond to the objections. The Applicants have not done so with this assignment of error. As a result, the Hearings Officer finds that the Applicants have failed to establish that the Planning Director exceeded her jurisdiction when she rendered the SEC permit decision.

The Hearings Officer finds no apparent relationship between this claimed error and the criteria on which the Planning Director's decision was required to be based under this Chapter.

6. The Planning Director has failed to follow the applicable law.

FINDINGS: The Applicants have not explained what law the Director failed to follow when making her decision. Further, the record of this appeal shows that the Director followed the applicable law in rendering the decision but reached conclusions about the law and the facts of this case which differ from the conclusions the Applicant believes are supported by the evidence now before the Hearings Officer.

VI. DECISION

Based upon the new evidence provided at the appeal hearing, the Hearings Officer strikes Conditions of Approval 4 and 5. Nothing in this decision shall be construed to be an acceptance of the Applicants' landscaping plan that is required by Condition of Approval 8. Review and approval of that plan must be obtained from the Planning Division.

Dated this 21st day of April, 1997.



LIZ FANCHER, Hearings Officer

Appeal to the Board of County Commissioners:

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

MEETING DATE: May 8, 1997
AGENDA #: C-7
ESTIMATED START TIME: 9:30 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order for Land Use Planning Case CU 7-96/SEC 33-96

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

REGULAR MEETING: DATE REQUESTED: Thursday, May 8, 1997
AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Susan Muir TELEPHONE #: 248-3043, ext. 22682
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: N/A

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

FINAL ORDER for Land Use Planning Case CU 7-96/SEC 33-96 Amending the
March 5, 1997 Hearings Officer Decision Denying a Conditional Use Permit
and a Significant Environmental Concern Permit

5/8/97 copies to Stuart Farmer

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

Beverly Stein

(OR)
DEPARTMENT
MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 MAY - 2 AM 10:56

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES
Any Questions? Call the Board Clerk @ 248-3277

PLEASE PRINT LEGIBLY!

MEETING DATE May 8, 97

NAME DOROTHY S. COFIELD

ADDRESS 12725 SW 166th Ave.

STREET

Portland OR 97223

CITY ZIP

I WISH TO SPEAK ON AGENDA ITEM NO. C-7

SUPPORT OPPOSE

SUBMIT TO BOARD CLERK FINAL FORM OF ORDER



MULTNOMAH COUNTY

CASE NAME : Andrew Miller Residence
SEC 33-96

NUMBER: CU 7-96,

1. Applicant Name/Address: Represented by:
Andrew Miller Dorothy Cofield
2130 SW 21st Ave Attorney at Law
Portland, OR 97201 12725 SW 66th Ave.
Executive Center, Ste 107
Portland, OR 97229

Action Requested of Board	
<input checked="" type="checkbox"/>	Affirm Hearings Officer Dec.
<input type="checkbox"/>	Hearing/Rehearing
Scope of Review	
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
New information allowed	

2. Action Requested by Applicant

Staff is returning to you with the amended Hearings Officer decision and suggested Board Order regarding the De Novo hearing for this case held April 1, 1997.

3. Planning Staff Recommendation

Staff recommends the Board approve the amended Hearings Officer decision because the parcel does not meet the template test of Multnomah County, the amount of land used to site the development had not been minimized in the preferred location, and also based on the preferred location, the applicant had not demonstrated that the access road was the minimum length required. In addition, the staff found that the applicant failed to comply with OAR 660-06-027(4)(a).

4. Hearings Officer Decision

Denied the applicant's request and adopted the staff recommendation.

5. If recommendation and decision are different, why?

Not applicable.

ISSUES

(who raised them?)

6. The following issues were raised: The applicant argues that the County incorrectly applied an unacknowledged portion of the Multnomah County Zoning Ordinance by requiring there be 5 dwellings within the template instead of the less restrictive requirement from the state of 3 dwellings. The applicant filed a notice of appeal on March 14, 1997.

7. Do any of these issues have policy implications? Explain: Policy implications for this type of case were discussed at length with the Board of County Commissioners in the Evans Conditional Use Permit appeal process (CU 7-95). One implication associated with reversing the Hearings Officer decision could include the determination that local governments do not have the ability to make their own codes more restrictive than the state codes.

LAW OFFICE OF
DOROTHY S. COFIELD

Executive Centre, Suite 107
12725 S.W. 66th Avenue
Portland, OR 97223

Telephone (503) 639-5566
Facsimile (503) 598-7758

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON**

IN THE MATTER OF THE FINAL ORDER)
FOR LAND USE PLANNING CASE)
CU-7-96/SEC 33-96 AMENDING THE) MEMORANDUM
HEARING OFFICER DECISION DENYING)
THE CONDITIONAL USE PERMIT AND)
SIGNIFICANT ENVIRONMENTAL CONCERN)
PERMIT)

I. INTRODUCTION

The applicant Andrew Miller (hereinafter "appellant") requested conditional use and significant environmental concern review and approval for development of a single family dwelling on the owner's property, zoned commercial forest use ("CFU") with a Significant Environmental Concern overlay. The application was submitted on July 5, 1996 and was completed on January 2, 1997.¹ The 120th day on the application was May 2, 1997.

An appeal to this Board was heard on April 1, 1997. At the close of the hearing, as provided for in MCC 11.15.8280(B), a decision was announced at the close of the hearing. The Board directed Staff to amend the Hearings Officer decision. The Amended Hearing Officer decision was signed by the Hearings Officer on April 28, 1997 and placed on the Board's May 8, 1997 agenda for review and approval.

Under the 120-Day Rule provisions, if the governing body does not take final action on a permit within 120 days, the applicant may apply to circuit court for a writ of mandamus. ORS

¹ An application is deemed complete for purposes of the 120-Day Rule upon receipt by the governing body or its designate of the missing information. ORS 215.428(3). The applicant was notified of the incomplete application on July 26, 1995. The applicant submitted the missing information on January 2, 1997. See Amended Hearings Officer Decision at p. 24.

215.428(7)(b). Additionally, and not dependent on whether the applicant files a writ of mandamus, the "county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater."

The Board is attempting to "backdate" its order by use of the phrase "*nunc pro tunc*" (now for then), making the May 8th Final Order take effect on April 1, when there were no amended findings. The county cannot escape its statutory duty to comply with the 120-Day Rule by making today's Order retroactive to April 1, 1997. The applicant is hereby requesting that the Board amend its Final Order deleting the *nunc pro tunc* phrase and ordering payment of the refund for the following reasons.

II. Legal Analysis

A final decision is defined as "reduced to writing and bears the necessary signatures of the decision maker(s)". OAR 661-10-010(3). Local rules provide that written findings of facts and conclusions must be signed by the Board before the decision can be filed. MCC 11.15.8280. The decision is final 10 days after the decision is filed with the Clerk of the Board. MCC 11.15.8280(D). For purposes of both appeals to the Land Use Board of Appeals or compelling approval by writ of mandamus, finality has the same legal definition.

Case law provides that a decision is not final until there are findings and conclusions to support a final order. Sokol v. City of Lake Oswego, 18 Or LUBA 375, 401 (1989) (city council's decision only tentative decision, subject to preparation of findings of fact and reasoning needed to support decision so that it could be adopted as final order.)

In Sokol, the city council made a tentative decision at an appeals hearing, and written findings and conclusions were adopted at a later hearing. LUBA determined that the decision at the earlier hearing, was "only a tentative decision, subject to the preparation of the findings of fact and reasoning needed to support the decision so that it could be adopted as a final order." Sokol at 401.

The same is true in the present case. The Board orally made a decision on April 1, 1997, but did not sign the Findings of Fact, Conclusion & Order until May 8, 1997. The Board only adopted a tentative decision on April 1, 1997, and asked Staff to amend the findings and conclusions to support its tentative decision. Only after adoption of the findings of fact and

conclusions, can the Board's decision be considered "a final action" for purposes of the 120-Day Rule. As the Oregon Supreme Court explained in Sunnyside Neighborhood v. Clackamas Co., Comm., 280 Or 3, 569 P2d 1063 (1977):

"We wish to make it clear that by insisting on adequate findings of fact we are not simply imposing legalistic notions of proper form, or setting an empty exercise for local governments to follow. No particular form is required and no magic words need be employed. What is

needed for adequate judicial review is a clear statement of what, specifically, the decision making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. * * *"

Based on the above-cited cases, it is illegal for the Board to make its order signed on May 8, 1997, retroactive to April 1, 1997, because on April 1 the findings and conclusions were not a true statement of what the Board was basing its decision on. Without a final order, the Board's action was not "final" for purpose of the 120-Day Rule.

The policy reason for the 120-Day Rule is to uphold ORS 197.805 ("time is of the essence in reaching final decisions in matters involving land use"). SB 245 amended ORS 215.428 in order to strengthen the 120-Day Rule by creating monetary penalties for violations of the 120-Day Rule.

Under ORS 215.428, as amended by SB 245, ch 812:

"(7) Except when an applicant requests an extension under subsection (4) of this section, if the governing body of the county or its designate does not take final action on an application for a permit, limited land use decision or zone change within 120 days after the application is deemed complete:
(a) The county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information

to address relevant issues identified in the consideration of the application. (*Emphasis added*).

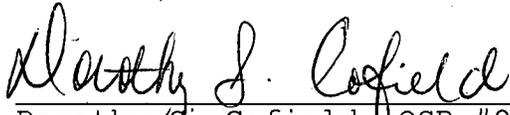
In Chapter 9 of "Local Government Land Use Law: Tort and Mandamus Issues," (OLI-CLE, March 8, 1996), Former Referee Kellington discusses the return of fees provision in ORS 215.428(7)(a) and opines: "Note that this "remedy" is not dependent upon whether the applicant files a petition for a writ of mandamus or whether the applicant is successful in the mandamus proceeding."

III. Conclusion

The appellant, Andrew Miller by and through his attorney, Dorothy S. Cofield, respectfully asks that the Board amend its Final Order deleting the *nunc pro tunc* phrase and amending the order to read "The Board hereby orders that a refund be paid to the appellant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater."²

DATED this 8th day of May, 1997.

Respectfully Submitted,



Dorothy S. Cofield, OSB #92261
Attorney for Appellant

C:\LAW\CLIENT\MILLER\REFUND2.MEM

² The applicant paid \$1460.00 for the conditional use permit; \$270.00 for the preapplication conference; and \$540.00 for the SEC permit for a total of \$ 2,270.00.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

Land Use Planning Case CU 7-96)
SEC 33-96 Amending the March 5, 1997) FINAL ORDER
Hearings Officer Decision Denying a) 97-89
Conditional Use Permit and a Significant)
Environmental Concern Permit)

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal filed by Dorothy Cofield representing Andrew Miller of the Hearing Officer's decision in land use cases CU 8-96 and SEC 33-96; and

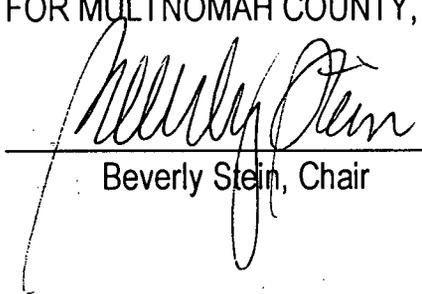
WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a de novo hearing on April 1, 1997, and the Board of County Commissioners being fully advised; now therefore

IT IS HEREBY ORDERED that the Hearing Officer's decision dated March 1, 1997 regarding CU 7-96 and SEC 33-97 is amended to include separate findings for the State and County criteria and additional findings relating to MCC 11.15.2074 (3) (see attached amended Hearings Officer decision dated April 28, 1997) and is AFFIRMED.

DATED this 8th day of May, 1997, nunc pro tunc April 1, 1997.

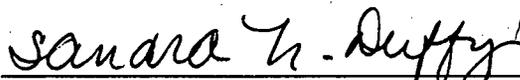


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

SANDRA N. DUFFY, ACTING COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON


Sandra N. Duffy, Acting County Counsel

AMENDED HEARINGS OFFICER DECISION

April 28, 1997

This Decision Consists of Findings of Fact and Conclusions

CU 7-96

SEC 33-96

Conditional Use Permit for a "Template Dwelling"

Significant Environmental Concern Permit. The applicant has requested a Conditional Use Permit for a "template dwelling" and a Significant Environmental Concern Permit for this tract which is in the Commercial Forest District.

Site Address

10220 NW 160th Avenue

**Tax Roll
Description**

**Tax Lot 13 in Section 5, T1N R1W, W.M., Multnomah
County, Oregon**

Site Size

20 acres

**Property Owner
and Applicant**

**Andrew Miller
2130 SW 21st Avenue
Portland, OR 97201**

**Comprehensive Plan
Designation**

Commercial Forest

Zoning Designation

**Commercial Forest (CFU)
SEC-h (wildlife habitat)**

I. SUMMARY OF THE REQUEST

The applicant requests a Conditional Use Permit for a "template dwelling" and a Significant Environmental Concern Permit for this tract which is in the Commercial Forest District and has a Significant Environmental Concern (wildlife habitat and streams) overlay zone.

The lot consists of 20 acres. The lot generally slopes gently up from Kaiser Road to the north and contains slopes up to 25 percent in areas.

II. PUBLIC HEARING

A. Hearing

Hearings Officer Deniece Won held a duly noticed public hearing regarding the application on February 19, 1997.

B. Summary of Testimony and Evidence Presented

1. Susan Muir, County planner, showed a video of the site and summarized the staff report.

2. Dorothy Cofield, attorney for the applicant, Andrew Miller. Submitted four copies of her original testimony, Exhibit F1. The staff report erroneously says that Ms Cofield is the applicant, but Mr. Miller is the applicant. There are two main issues. First, is what template dwelling standards apply and second, is whether the access is the minimum necessary. She asked that the petitioner's brief and Hearings Officer findings in *Evans v. Multnomah County*, LUBA No. 96-198 be adopted by the hearings officer. She testified that in 1993 and 1994 the State legislature and LCDC respectively adopted template dwelling standards. Ms. Cofield said the County, at the time this application was filed, had not adopted the State standards into the County Code. The County had a preexisting template dwelling in the County Code that required five (5) houses and eleven (11) parcels in the 160-acre template square. She said the application meets the State standards for a template dwelling which requires three (3) houses and eleven (11) parcels in the 160-acre template square, which can be rotated or turned.

Ms. Cofield made several legal arguments on the question of which template dwelling apply.

Ms. Cofield said the second main issue is the access road. Attached to her memorandum, Exhibit F1, is a report from a wildlife biologist, SRI Shapiro. The wildlife biologist made an evaluation of the alternative site. He found that if the

applicant uses the alternative site, the slopes average 21 percent, ranging from 18 to 25 percent. The public will save somewhere between 160 and 180 feet by using the alternative site. There's no existing road for the alternative site, so the applicant will have to clear a road. She argued the existing road will not be abolished because the applicant is going to need to use it for forestry practices and to access the well. She contended that consequently there will be two impacts from two roads. She said the wildlife biologist also pointed out that the applicant would have to clear the alternative site. Even though the County Code would require reforestation of the preferred site, she doesn't think that the quality of the reforestation would be of much benefit to wildlife. For the alternative site there will be more cut and fill because there is 7.5 percent more slope. The wildlife biologist has provided evidence that there will be more soil sedimentation into Rock Creek at the alternative site because the construction is closer to Rock Creek and there are steeper slopes than exist at the preferred site. The applicant argues that for all of these additional impacts at the alternative site only 160 feet on the access road will be saved and in addition the existing road isn't going to go away so nothing would be gained.

Ms. Cofield said that on the back of her written testimony there is a map to scale provided by the wildlife biologist showing that the setback is 210 feet.

3. Arnold Rochlin, PO Box 83645 Portland, Oregon, testified that he agrees with the staff findings of noncompliance on the issues on which they have found noncompliance. Relating to the length of the road, he pointed out that the Multnomah County Code (MCC) section .2074(4) limits the length of the road to 500 feet unless there is a showing that a longer road is necessary. He thinks that both the County and State standards apply. Mr. Rochlin made several legal arguments on the question of which template dwelling provisions apply.

4. Chris Foster, 15400 N.W. McNamee Road, testified that he agrees with Mr. Rochlin. Mr. Foster said he has one further concern about this site. His concern is with OAR 660-06-029(1)(b) that requires that adverse impacts on forest practices on the site will be minimized. He said that people typically want to maximize the view opportunity when siting houses. Usually the best view site corresponds to a landing site. He said that this parcel was recently harvested and it appears to him that the house may be located at the highest point which was the landing site for the harvesting operation. He concludes that if a house is located on a site that has been engineered and determined to be the preferable site for harvesting logs then the site will be rendered useless for timber harvesting. Therefore, there will be adverse impacts on harvesting operations. He testified that logging from a landing site and a tower operation has been determined to be the most economical way to harvest logs. He said that there is a question about whether there is another suitable landing site on the property. He testified that he

hasn't confirmed the preferred dwelling site, but he suspects that it is the former landing site. He said the housing location should make sure that it provides an alternative landing site. Otherwise the resource value has been diminished and the standard in OAR 660-06-029(1)(b) has not been met.

5. Ms. Cofield, on rebuttal responded to Mr. Foster's statement that the house site would impact forest practices. The applicant, a professional forester, submitted a statement, Exhibit A3, applicant's Exhibit V, showing there won't be an adverse impact on forest practices if a dwelling is located on this parcel. She said he's well aware of not siting the dwelling so that it will get in the way of any logging practices. She said there won't be any adverse impact on forest operations on the tract.

Ms. Cofield said that the applicant is willing to use the alternative site if the access to the preferred site is found not to be the minimum access length required. She argued that the access length standard doesn't say that the Hearings Officer can deny the application if it exceeds the minimum access standard. Ms. Cofield said that if the Hearings Officer were to find that the preferred site didn't meet the access standard, the applicant wants to be able to appeal that issue.

6. Andrew Miller, applicant, testified that he is the vice president for Stimpson Lumber Company, a Forest Grove based timber company that owns about 200,000 acres throughout Oregon, Washington and California. He said one of his responsibilities is to manage Stimpson Lumber Company's operations in California, so he has extensive experience dealing with all the regulatory, environmental and wildlife issues relative to the management of timber land and the growing and harvesting of timber.

Mr. Miller testified that the alternative dwelling site has been cleared and will work well as an area from which to conduct logging operations. He said that the alternative site is a flat area at the top of the hill. He corrected Mr. Foster, stating that there has never been any logging operation on the property, that it was the adjacent owners that have clear-cut their timber. He said he is well aware of the impacts of logging and the conditions that need to exist for fishing and for the cost-efficient management of timber land. He said he has incorporated that knowledge into his application.

He said that he is not completely knowledgeable about the controlling criteria but it impresses him that there is a great interest in the environmental effects and water resource effects on fisheries. He thinks that the staff and the opponents are saying that some significantly greater environmental effects should be created to build a technically shorter access road. He said that future forestry operations can be conducted with equal effectiveness regardless of which site is chosen for the

dwelling. Mr. Miller testified that he allowed the land owner lots 5 and 6 of Schoppe Acres to use his property for logging. He said that the southwest and northwest corners of the property are relatively flat and that the area has bench topography and slopes downhill to a stream on the east of his property, so either area would be appropriate for a basis of logging.

7. Susan Muir, Planning Staff, said the applicant will be required to get a grading and erosion control permit if they build on the steeper slopes. She said that the County compromises between the minimum length of the driveway and the environmental issues. She doesn't believe that the applicant has demonstrated that the preferred dwelling site has minimized the amount of area used for the access road. Ms. Muir stated that the minimum setbacks are 200 feet and the staff wouldn't recommend any less of a setback than that in this case. Therefore, the staff recommendation is that the minimum length required would be what the setback of 200 feet from the property lines, which is 10 feet over on their alternative.

8. Ms. Cofield said that the code says is you can have a road longer than the 500 feet so long as you show that it is the minimum. The applicant is willing to go with the alternative site and that would be the minimum because due to the unique limitations of the site you need 1,550 feet to get from N.W. Kaiser Road to the southwest corner of TL 13. Mr. Miller could place the dwelling on the farthest southwest corner and then the Hearings Officer has to find that is the minimum due to the unique location of this property.

III. STANDARDS AND CRITERIA, FINDINGS OF FACT AND EVALUATION OF REQUEST

A. Conditional Use Permit Request for Template Dwelling

1. Under the County Code a "template dwelling" may be approved as a conditional use permit in a Commercial Forest zone when it is found to satisfy the standards of the Multnomah County Code. MCC 11.15.2050(B). The standards are in subsections .2052 and .2074. Section 11.15.2052 contains the siting criteria for and 11.15.2074 contains development standards.

At issue is whether the County Code or the State standards in ORS 215 and OAR 660-06-027 apply to siting template dwellings. OAR 660 Division 6 was first adopted by LCDC in 1990 and was amended in 1990 and 1992. In December 1991 Multnomah County amended its Commercial Forest Use (CFU) zone to full comply with State standards. The 1993 legislature amended ORS 215 to incorporate template dwelling provisions, effective in November 1993. Following that amendment the County initiated a policy to apply the County CFU standards

and the statutory standards where the State law is more restrictive than the County standards. In 1995 LCDC amended OAR 660 Division 6. This application was filed on July 5, 1996. On January 2, 1997, 180 days after the original application was filed, the applicant filed completed application materials with Multnomah County. The Hearings Officer, in this order, will first address all the criteria that are alleged to apply to the conditional use permit and conclude in subsection B with a discussion about which criteria are found by the Hearings Officer to apply.

2. Oregon Revised Statutes

ORS 215.750: Alternative forestland dwellings:

- (1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:
 - (c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
 - (A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
 - (B) At least three dwellings existed on January 1, 1993, on the other lots or parcels.
- (4) A proposed dwelling under this subsection is not allowed:
 - (a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law.
 - (b) Unless it complies with the requirements of ORS 215.730.¹
 - (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740 (3) for the other lots or parcels that make up the tract are met.
 - (d) If the tract on which the dwelling will be sited includes a dwelling.

Finding. The subject parcel is a twenty-acre parcel located off of N.W. Kaiser Road. The property is composed of soils capable of producing 145 to 165

¹ ORS 215.730 requires the County to condition approval of forest land dwellings to have a fire retardant roof, not be sited on slopes greater than 40 percent, have fire protection, have a spark arrester on any chimney and to provide primary and secondary fire breaks.

cubic feet per acre per year of wood fiber. The 160-acre square template, centered over the subject parcel, and twisted so the southern point of the square is aligned with TL 30, shows that there are 11 parcels within the 160-acre square that existed prior to January 1, 1993. The staff does not disagree with this statement of the petitioner.

At least three dwellings existed on January 1, 1993. Tax Lot 11, Section 8 T1N R1W of Partition Plat 1990-107 has a dwelling built in 1975. Tax Lot 2 of Lot 8 *Schoppe Acres*, Section 5 T1N R1W has a dwelling built in 1907. Tax Lot 9 Section 5 T1N R1W has a dwelling built in 1972. The staff does not disagree with this statement of the petitioner.

ORS 215 and OAR 660 Division 6 defines "tract" as one or more contiguous lots or parcels in the same ownership. This applicant does not own any additional contiguous parcels of land. Therefore, this criterion is satisfied.

ORS 215.740(3)(b): If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

Finding. This application is for a parcel 20 acres in size. Therefore, this criterion is not applicable.

3. Oregon Administrative Rules

The following OAR 660 Division 6 requirements are applicable:

660-06-027(1)(d): In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are: (C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if: (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and (ii) At least three dwelling existed on January 1, 1993 on the other lots or parcels.

Finding. The OAR is the same as ORS 215.750. Both are complied with.

OAR 660-06-027(4): A proposed dwelling under this rule is not allowed:

- (a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law;
- (b) Unless it complies with the requirements of OAR 660-06-029 and 660-06-035
- (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (6) of this rule for other lots or parcels that make up the tract are met;
- (d) If the tract on which the dwelling will be sited includes a dwelling.

Finding. This OAR is the same as ORS 215.750. Both are met by this application.

OAR 660-06-029: The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements in this rule to identify the building site:

- (1) Dwellings and structures shall be sited on the parcel so that:
 - (a) They have the least impact on nearby or adjoining forest or agricultural lands;
 - (b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
 - (c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and
 - (d) The risks associated with wildfire are minimized.
- (2) Siting criteria satisfying section (1) of this rule may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.

Finding. These criteria are implemented through the siting standards of MCC 11.15.2074.

- (3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance

with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR Chapter 629). For purposes of this section, evidence of a domestic water supply means:

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Finding. The applicant submitted a water well report from the State of Oregon. The well report log is evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources. This criterion is met.

- (4) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Finding. The applicant provided copies of an Easement Reservation (Exhibit C) and Easement Agreement for road (Exhibit S). This criterion is met.

- (5) Approval of a dwelling shall be subject to the following requirements:
 - (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

Findings. The applicant intends to reforest the subject property as shown on the Forest Management Plan, Exhibit J, planting cleared areas of the property with

2-0 Douglas-fir seedlings from a suitable seed source. The current stand of timber is Big Leaf Maple and alder. Crown closure is 100 percent. The hardwoods range in age from 20 to 70 years and are in a general state of decay. The applicant intends to selectively clear-cut and reforest the site. The applicant agrees to apply for Department of Forestry forest practices permits as a condition of approval. This criterion can be met

OAR 660-06-035: Fire Siting Standards for Dwellings and Structures: The following fire siting standards or their equivalent shall apply to new dwelling or structures in a forest or agriculture/forest zone:

(1) The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the governing body determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the governing body may provide an alternative means for protecting the dwelling from fire hazards. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fires season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

Finding. The property is within the Tualatin Valley Fire and Rescue District. This criterion is met.

(2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.

660-06-040 Fire Safety Design Standards for Roads: The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and

driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards.

Finding. The County has adopted these standards and they will be addressed in MCC 11.15.2074.

(3) The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry.

Finding. The applicant has stated throughout his application that he intends to comply with this standard. Multnomah County verifies compliance with this standard at the building permit stage when the clearing has been completed. This criterion can be met.

(4) The dwelling shall have a fire retardant roof.

Finding. The applicant is proposing that this criterion be met as a condition of building permit issuance and has stated he intends to comply. Multnomah County verifies compliance with this standard at the building permit stage when the clearing has been completed. This criterion can be met.

(5) The dwelling shall not be sited on a slope of greater than 40 percent.

Finding. The slope where the dwelling is to be sited does not exceed 25 percent and the property is not identified on the County Slope Hazard map. This criterion is met.

(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.

Finding. The applicant proposed that this criterion be met as a condition of building permit issuance. This criterion can be met.

3. Multnomah County Code (Zoning Ordinance)

Under MCC 11.15.2052(A) as applicable on July 5, 1996, "A dwelling not related to forest management may be allowed subject to the following:

- (1) The lot shall meet the lot of record standards of MCC .2062(A) and (B) and have been lawfully created prior to January 25, 1990;

Finding. Tax Lot 13 was created by a Bargain and Sale deed, recorded December 1942 with the Multnomah County Recording section in Book 725, Page 159. The subject parcel is 20 acres in size and satisfied all applicable laws when the parcel was created. The parcel is currently less than 80 acres in size and thereby does not meet the current minimum lot size requirements in the CFU zone. The applicant does not own contiguous property except for an access easement and an additional 10-foot easement entered into in 1996. The subject property (Tax Lot 13) is a lawfully created lot of record.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent County maintained road and 200 feet to all other property lines. Variances to this standard shall be pursuant to MCC .8505 through .8525, as applicable;

Findings. The subject property contains 20 acres, generally sufficient to accommodate a dwelling. When applying the 200-foot setback requirement from the back and sides and the 60-foot requirement from the county road, a rectangular envelope is identified. This envelope is the area where development would meet the setback standards of MCC .2074. The area in the envelope leaves much area for the location of a dwelling. The applicant has demonstrated that the site is of sufficient size to accommodate a dwelling that meets all of the setback requirements of the Multnomah County Code. The subject parcel meets this criterion.

- (3) The lot shall meet the following standards:
 - (c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir

- (i) The lot and at least all or part of 11 other lots existed within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and
 - (ii) Five dwellings exist within the 160-acre square.

Findings. The application has failed to demonstrate the parcel in question meets the above listed criteria specifically with regards to the number of dwellings existing within the 160-acre template. Five dwellings do not exist within the template.

(d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (a) through (c) above.

Finding. No dwellings or lots within an urban growth boundary were utilized in verifying the number of dwellings and lots which existed on January 1, 1993.

(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.

Finding. The applicant's parcel has a site index of 145-155 for Douglas Fir, resulting in a capability of 3,100 cubic feet per year of wood fiber from Douglas-Fir. Based on the Multnomah County Public Assessment and Taxation records and a staff visit to the site, no dwellings currently exist on the property. The application complies with this criterion.

(4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands.

Finding. In the area between N.W. Kaiser Road and Skyline Boulevard there are numerous residential dwellings on large lots. There is little commercial forestry or agricultural use in this area.

The applicant has visited his property on a regular basis (every one to two months) since he purchased it in 1992. He has observed and kept track of activities on adjoining and nearby lots. His comments on forestry and agricultural activities on adjacent and nearby lots are based on regular personal observations during the 1992-1996 period.

Farming that occurs is hay and alfalfa production for pasturing animals. These farming activities will not be affected by construction of a house on tax Lot 13 because the house with the 200 foot setbacks will not prevent landowners on nearby lots from engaging in farming activities.

Little sustained commercial forestry is practiced in the area. Adjacent lots have been clear-cut. Lots 5, 6, and 7 of Schoppe Acres are each twenty-acre

parcels that were clear-cut in 1994-1995. The owner of lots 5 and 6, Mr. Steinberg, informed the applicant at the time of harvesting his timber that his long-term plan was to sell his lots for residential development. According to the unrebutted evidence, his timber harvest was economically feasible because of a historic spike in Northwest wood chip and pulpwood prices. Prices have declined 67% since mid-1995 and are not expected to rebound due to structural changes in world pulp paper markets. The timber on Tax Lot 12 was harvested during the same period of time for similar reasons.

Should Mr. Steinberg maintain his land as forest, he, or succeeding owners, will not be impeded from engaging in forestry activities by construction of a house on Tax Lot 13 because lots 5 and 6 have their own, separate access, and construction of a house on Tax Lot 13 will not create conditions that will impede or restrict forestry activities on lots 5 and 6 of Schoppe Acres.

Lots 5, 6, and 7 of Schoppe Acres have legal access from the west. Access for future land use activities is not dependent on the applicant's road, Lots 5, 6, and 7 of Schoppe Acres and Tax Lot 12 have been restocked with Douglas Fir. Future timber management activities would be twelve to fifteen years in the future when pre-commercial thinning would be appropriate. Harvest of timber would be forty to fifty years in the future. Construction of a house on Tax Lot 13 will not impede or increase the costs of forestry practices on lots 5, 6 and 7 of Schoppe Acres and Tax Lot 12. Forestry practices on those lots would be self-contained.

Tax Lot 11 is a forty-acre parcel with a residential dwelling located in its center. The applicant has observed no farming activity on Tax Lot 11 since acquiring Tax Lot 13 in 1992. Access to Tax Lot 11 is a private driveway from N.W. Kaiser Road. Future farming or forestry activities on Tax Lot 11 will not be impacted by construction of a house on Tax Lot 13 because Tax Lot 11 has its own access.

Lot 8 of Schoppe Acres is a twenty-acre parcel with a residential dwelling located in its southwest corner. The owner engages in occasional harvesting of timber. Construction of a house on Tax Lot 13 as proposed will not hinder, or add to the cost of, his continuing this forest practice because access to his timber is through his own driveway off N.W. Kaiser Road. The applicant observed the owner of Lot 8 harvest timber in 1993 and 1994. In both cases the timber was removed through the owner's driveway. Construction of a house on Tax Lot 13 will not impact future forestry activities on Lot 8 of Schoppe Acres because the house on Tax Lot 13 will be more than 1,500 feet from Lot 8, and past forestry operations have not been dependent on activities on Tax Lot 13.

Lots 3 and 4 of Schoppe Acres, located to the west of lots 5, 6 and 7 of Schoppe Acres are owned by the same individual. A large house sits on the northeast corner of Lot 3. The remaining acreage on Lot 3 and all of Lot 4 are pasture. No farming practices have been observed on these tax lots.

Tax Lots 6 and 7 which lie north of lot 5 of Schoppe Acres are timbered with small areas of pasture. No farming practices have been observed on these tax lots. Farm and forest activities on these tax lots will not be affected by construction of a house on Tax Lot 13. Access to Tax Lots 6 and 7 is from Skyline Blvd. They are 660 feet removed from Tax Lot 13. The proposed house on Tax Lot 13 will not be visible from Tax Lots 6 and 7.

The proposed dwelling, in either the preferred location or the alternative location, will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands because both sites meet the minimum setback requirements of 200 feet.

(5) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgment of the Comprehensive Plan in 1980, will be acceptable.

Finding. The subject parcel is not identified as a big game winter habitat area on the Multnomah County Wildlife Habitat map. Therefore, this criterion has been met.

(6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection.

Finding. The property is within the Tualatin Valley Fire and Rescue District. This criterion is met.

(7) Proof of a long-term road access use permit or agreement shall be provided if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, and the Bureau of Land Management, or the United States Forest Service. The road use permit may require the applicant to agree to accept responsibility for road maintenance;

Finding. The applicant has submitted an Easement Reservation (Exhibit C) and an easement Agreement for Road (Exhibit S). This criterion is met.

(8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest deferral.

Finding. OAR 660-06-029(5) and Senate Bill 245 (1995 session) supersede the requirement to disqualify the property from farm or forest deferral. If the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs

(9) The dwelling meets the applicable development standards of MCC .2074;

MCC .2074 - Development Standards for Dwellings and Structures: Except as provided for the replacement or restoration of dwellings under MCC .248(E) and .2049(B), all dwellings and structures located in the CFU district after January 7, 1993, shall comply with the following:

(A) The dwelling or structure shall be located such that:

(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G).

Finding. The preferred house site, Exhibit 1, is located in the northwest corner of the tax lot. The two story house being planned for construction measures 38 feet in width by 56 feet in length, contains 3,800 square feet of living space and 600 feet of garage space. The distance from the property line separating Tax Lot 13 from Lot 6 of Schoppe Acres (west) to the proposed house is 210 feet. The distance from the house to the property line separating Tax Lot 13 from Tax Lot 11 (south) is 440 feet. The distance from the house to the eastern property line, which borders the urban growth boundary, is 1,110 feet. The slope in the preferred home site area ranges from 10 to 15 percent.

A private road accesses the property from N.W. Kaiser Road. The distance from Kaiser Road to the southwest corner of Tax Lot 13 is 1,575 feet the road then arches northeast for a distance of about 200 feet to the preferred site. The road is an all-weather rock road twenty feet in width. The road has been used by logging trucks, logging equipment, and heavy duty equipment trailers in conjunction with the clear-cut logging of lots 5, 6, and 7 of *Schoppe Acres* and Tax Lot 12, and drilling a well on Tax Lot 13. The applicant granted the neighbor's logging contractor permission to use his road on a temporary basis in return for monetary

payment and road maintenance. The road is clear of all overhead obstacles to a height of 14 feet.

The road slope is zero to six degrees throughout its distance with the exception of a 28 percent slope that runs for a distance of 190 feet. The slope of this segment of the access road can be reduced by grading, which can be done as a condition of building permit approval. The road can be modified to satisfy the Tualatin Valley Fire and Rescue District's Fire Marshall.

The road was designed for access of construction and well drilling equipment, much of which weighed in excess of 52,000 gross vehicle weight. A turnaround with a radius of fifty feet for emergency vehicles is planned for the area shown on applicant's Exhibit 1, in the southwest corner of the tax lot. The turnaround will be located approximately 350 feet from the preferred site. The applicant said he would post permanent signs along the access road indicating the location of the emergency water source and vehicle turnaround. Multnomah County verifies compliance with this standard at the building permit stage.

The applicant proposes a turnout for fire equipment and other emergency vehicles for the area identified on Exhibit 1, 97 feet from the southwest corner of Tax Lot 13 and 350 feet from the preferred site.

The applicant selected the preferred site because it conforms to the 200 foot minimum setbacks from other property lines, set forth in MCC .2074, and results in minimal land disturbance in comparison to the alternative house site. The applicant argued that minimizing land disturbance is important to maintain a maximum forested acreage and wildlife habitat, and to provide the best setting to buffer the house from adjacent lots using timber and other vegetation.

The alternative home site (Exhibit 2) is in the southwest corner of the property. This site would require substantially more soil disturbance due to requirements of MCC .2074. To meet the 200-foot setback requirement a house at the alternative site would have to be located on slopes of 19 to 25 percent. Although construction is allowable on slopes up to 40 percent, construction on these steeper slopes will require a larger forest clearing (at least one acre) for construction and fire safety zone purposes, and have a greater potential of sedimentation impact on the intermittent stream that is located 790 feet from the west property line, and 590 feet from the alternative home site.

The applicant contended that the minimum impact on wildlife and water resources will occur with the preferred house site. The alternative home site will require a larger clearing, (at least one acre), more cut and fill, and could create long-term erosion conditions. However, the code's least impact requirement does not

concern effects on wildlife, water resources, or erosion. The Code requires that the location of the dwelling should have the least impact on nearby forest or farm lands.

The difference between the two home sites is that the preferred site is 180 feet closer to N.W. Kaiser Road than the alternative home site. The preferred site is closer to Tax Lot 12 whereas the alternative site is closer to Tax Lot II. The locational choice between these sites alters which neighboring parcel is affected but not the extent of that affect. Because both sites can demonstrate that they satisfy the minimum setback requirements of 200 feet both have the least impact on nearby or adjoining forest or agricultural lands. The proposed dwelling at either location meets the least impact criterion of the Code.

(2) Forest operations and accepted farming practices will not be curtailed or impeded.

Finding. Based on the applicant's statements regarding the location of the proposed dwelling and the access for this site and the surrounding properties, this criterion is met.

(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

Finding. The applicant has not demonstrated that the preferred home location has minimized the amount of land used to site the access road. The existing driveway and site clearing was done under a forest management permit. To obtain that permit the applicant was not required to show compliance with development standards. The fact that the road was constructed under a forest permit does not exempt the applicant from complying with the requirement that the minimum amount of land be used for development. Multnomah County has consistently determined that existing roads and cleared areas do not always comply with all code sections. Therefore, parcels that have some clearing for constructed roads must still comply with all code criteria. The fact that cleared areas must be replanted at a 2:1 ratio under the Significant Environmental concern Permit disputes the argument that building in an already cleared area and utilizing the already constructed road will limit cleared areas on the site, because any cleared areas will be required to be revegetated.

Each application is evaluated for compliance with all applicable criteria considering all site conditions and the best building location must be determined regarding all of the applicable criteria. Although there may be some slope issues with the alternative site, development is supposed to be directed away from slopes of 25 percent or greater. The slope on the areas described by the applicant for the

alternative development site are 18 to 25 percent. This degree of slope does not support a decision to extend the access length. The site plans referenced as Exhibits 1 and 2 indicate that the access corridor would be approximately 180 feet shorter in length in the alternative site.

This site has not been identified as a significant view area. The parcel and is in a resource protection area in which the County Comprehensive Plan and Zoning Ordinance have determined that minimization of the amount of land used for access is more important than criteria relating to visibility of development.

This criterion states that the amount of land to site the dwelling or other structures, access roads, and service corridor is to be minimized. The preferred development site does not do this. The reasons listed by the applicant that the alternative site has greater slopes, additional cleared areas, more visible development, and additional cleared areas for driveway construction do not support the conclusion that the amount of land used to site the dwelling or other structures, access roads, and service corridor at the preferred site is minimized. Therefore, this criterion is not met at the preferred site. It can be met at the alternate site.

- (4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Findings. The access road to the property is already constructed of all-weather rock and is 1,575 feet from N.W. Kaiser Road to the southwest corner of Tax Lot 13. The driveway access across Tax Lot 13 to the preferred site will be an additional 600 feet of driveway access. See applicant's Statement Exhibit V and Exhibit R, SRI/Shapiro report. Due to the location of the subject parcel, the access road can not meet the 500-foot limitation. The applicant has prepared an alternative home site analysis which would reduce the access driveway by 180 feet. However, with the alternative site there are potentially negative impacts on wildlife and water resources because of steeper slopes and larger forest openings. The applicant argued that access road for the preferred site is the minimum length required due to the location of the subject parcel and the placement of N.W. Kaiser Road.

The detrimental impact on wildlife and water resources the alternate site would have compared to the preferred site are not relevant to this criterion. The fact that there are slopes of up to 25 percent at the alternative home site is not sufficient evidence to determine that the additional 180 feet of length of road is required. Although the steep slopes are a concern during development and for erosion control during construction (and would therefore require a Hillside

Development Permit if more than 25 percent), a building area with a maximum slope of 25 percent would not restrain or restrict building in that area. To demonstrate that the road is the minimum length required, the house would need to be located 200 feet from the south and west property lines. The applicant has not proved that this criterion has been satisfied based on the preferred home site. This criterion is not met by the preferred site, but is met by the alternative site.

(5) The risks associated with wildfire are minimized. Provisions of reducing such risk shall include:

(a) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source;

(B) Maintenance of a primary and a secondary fire safety zone;

(i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure.

(ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Slope	(iii) Distance	Percent
		In Feet
Less than 10		Not required
Less than 20		50
Less than 25		75
Less than 40		100

(iv) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. . . .

(ix) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(C) The building site must have slope less than 40 percent.

Findings. There is no perennial water source on the lot, but the lot is serviced by the Tualatin Valley Fire and Rescue District. There is a fire break of 40 feet in all directions from the dwelling site (applicant's statement Exhibit V). Slopes in the cleared area range from 10 to 17 percent (applicant's statement Exhibit V). For lands with slopes between 10 and 20 percent an additional 50 feet is required for the primary fire safety zone, a total of 70 feet. With this larger primary fire safety zone, the total primary and secondary fire safety zone required is 170 feet. Verification of the clearing to the fire safety zones is done by the County at the building permit stage. This criterion can be met at either site.

(B) The dwelling shall:

- (1) Comply with the standards of the uniform Building code or as prescribed in ORS 445.092 through 446.200 relating to mobile homes;**
- (2) Be attached to a foundation for which a building permit has been obtained; and**
- (3) Have a minimum floor area of 600 square feet.**

Finding. The two story house planned for construction measures 38 feet in width by 56 feet in length, contains 3,800 feet of living space and 600 square feet of garage space. Compliance with this criterion can be verified at the building permit stage.

(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rules. If the water supply is unavailable from a public source, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

Findings. The applicant has submitted a well report from the State of Oregon (Exhibit D). The well-log report is evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources. This criterion is met.

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;
- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;
- (3) Provide minimum curve radii of 48 feet or greater;
- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:
 - (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;
 - (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;
- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;
- (7) Provide for the safe and convenient passage of vehicles by the placement of:
 - (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
 - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of $\frac{1}{2}$ of the driveway length or 400 feet whichever is less.

Findings. The private easement will only access the applicant's proposed dwelling. The applicant has provided a drawing in Exhibit 3 to show that the road meets the minimum standards of the Tualatin Valley Fire and Rescue District for

minimum gross weight, surface preparation, radii, vertical clearance, maximum grades not to exceed 8 to 12 percent, and turn-around radius of 48 feet (applicant's statement, Exhibit V and Exhibit 3). The applicant will provide confirmation by a Professional Engineer that the driveway/private road has been constructed as proposed as a condition of approval of obtaining his building permit. This criterion can be met but the applicant may need to obtain either a Grading and Erosion Control Permit or Hillside Development Permit before a finding of compliance can be made because of the nature of the grading that must occur to get the sections of the road that are 28% to meet the standards of the Tualatin Valley Fire and Rescue District. It is also possible that another easement from the adjoining property owners for the grading work required on the road may be necessary because the easement submitted is only 10 feet wide.

MCC 11.15.2052(A)(10): A statement has been recorded with the Division of Records that the owner and the successor in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with Forest Practices Act and Rules, and to conduct accepted farming practices.

Finding. The applicant has stated he will submit a recorded deed restriction as a condition of approval as shown in Exhibit X. This criterion can be met.

B. Conclusions Concerning Applicable Conditional Use Permit Criteria

4. **ORS 215.428** provides that:

(1) Except as provided in subsections (3) and (4) of this section, the governing body of a county or its designate shall take final action on an application for a permit . . . within 120 days after the application is deemed complete.

(2) If an application for a permit . . . is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. . . .

(3) If the . . . the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

Finding. The application is deemed complete for purposes of the 120-day time limitation when the local jurisdiction receives any missing information. This application was first received by Multnomah County on July 5, 1996. On January 2, 1997, Multnomah County received a revised application from the applicant. January 2, 1997 was 180 days from the date of the original filing of the application on July 5, 1996. Because the applicant submitted the requested additional information within 180 days of the date the application was first submitted and the county has acknowledged comprehensive plan and land use regulations, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted.

C. At issue are differences between OAR 660-06-027(1)(d)(C), effective on March 1, 1994 and MCC 11.15.2052(A)(3)(c), effective in 1992. The question is whether the County Code's template dwelling provisions, which were adopted before the legislative and OAR 660, division 6 template dwelling provisions, were adopted, apply as well as state law or whether only the legislative enactment as interpreted by the administrative rule apply. The applicant does not dispute that the County regulations are not met. The applicant only contends that the County regulations do not apply.

a. The primary directives for determining applicable standards are ORS 197.175(2)(d), ORS 215.416(4) and (8) and ORS 197.646(1) and (3).

(1) **ORS 197.175.** Cities' and counties' planning responsibilities; rules on incorporations; compliance with goals.

(2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and

(2) **ORS 215.416.** Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. . . .

(8) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county . . .

(3) 197.646. Implementation of new or amended goals, rules or statutes.

(1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission administrative rules and land use statutes when such goals, rules or statutes become applicable to the jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the department as set forth in ORS 197.610 to 197.625. [post acknowledgment procedures]

(3) When a local government does not adopt comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions. . . .

b. Ms. Cofield stated that ORS 197.646(3) says a new state law or rule applies directly until the County adopts that new standard into the County Code. The County had not adopted the State standards on July 5, 1996 when this application was filed. She argued that only the State law applies directly to this application, as the petitioner argued in *Evans*.

She said that the staff argued that if there isn't a County template test then the application violates the County's Comprehensive plan because the County doesn't have a template test. She argued that ORS 197.646(3) however, says that state laws, rules and goals apply directly. She said that LUBA found in *Blondeau v. Clackamas County*, 29 Or LUBA (1995) that State law could apply directly. She does not think that the argument that you can't approve a template dwelling if there is no county template test holds merit. She urged that the Hearings Officer

should make a finding and approve the application based on the template dwelling portion of state law disregarding County standards.

Evans argued that after state laws are amended local governments are required to amend their regulations. The applicant contends that ORS 197.646 states that when a local government does not adopt land use regulations to implement amended state administrative rules when those rules become applicable the amended rules shall be directly applicable to the local government's land use decision, and further contends that only the state rules are applicable.

The applicant disputes the County's claim that the County regulations that are stricter than the state law and administrative rules are also applicable arguing that the County tried to add an exception to the statute that both contain. The applicant argues that the plain language of the statute must be construed to mean what it says and if the legislature had wanted the statute to read as the County contends it does the legislature would have included terms such as "more restrictive" or "less restrictive" in ORS 197.646(1). Rather than ending with "when such goals, rules, or statutes become applicable to the jurisdiction," the statute would need to read "when such goals, rules, or statutes are more restrictive than local regulations."

The applicant argues that *Dilworth v. Clackamas County* does not apply because the decision was not related to ORS 197.646. In *Dilworth*, Clackamas County denied a template dwelling application because the applicant did not meet Clackamas County requirements that the dwellings exist at the time of the application. LUBA considered the application of ORS 215.750 because the statutory provision does not require that the other dwellings exist on the date of application but only on January 1, 1993. LUBA held that a county is not precluded from regulating the establishment of dwellings more stringently than is required under ORS 215.750. *Dilworth* did not challenge the County's authority to set standards more stringent than those in the statute, nor did *Dilworth* address the issue of whether preexisting more restrictive County regulations apply after state law is amended.

The applicant argued that the hearings officer should consider *Blondeau* for the proposition that the legislature intended that the state template dwelling criteria should be the only applicable criteria. At the time of *Blondeau's* application for a farm dwelling, "lot of record" farm dwellings had been authorized by ORS 215.705, but not by County regulations which had not been updated after the enactment of the statute. The County denied the application because it did not comply with previously adopted county standards adopted to satisfy a previous statutory prohibition against non-farm dwellings on prime farm lands.

LUBA held that the County could not deny the dwelling because it hadn't updated its code to comply with the new law. LUBA interpreted ORS 215.705(5) as allowing the county to deny the non-farm dwelling for the reasons given in that subsection only by enacting or reenacting local legislation.² Addressing the statutory context, LUBA found that ORS 215.705(1)(c) does not explicitly prohibit the application of local land use regulations, but that ORS 215.705(5) allows a county to adopt ordinance standards that would allow it to deny a lot of record dwelling otherwise approvable under ORS 215.705. LUBA found that for both sections to have meaning, subsection .705(5) should be understood to imply a requirement of subsequent enactment for the county regulation to be effective. Addressing the legislative intent, LUBA found that the legislature intended to allow counties to approve lot of record dwellings under ORS 215.705 without first requiring amendments to their plans and regulations. This would be impossible if ORS 215.705(1)(c) requires lot of record dwellings to comply with plan and regulation provisions previously adopted to protect agricultural soils. LUBA held that ORS 215.705(1)(c) does not allow a county to deny a lot of record dwelling because it fails to comply with code provisions previously adopted to implement ORS 215.283(3) (1991) or with comprehensive plan provisions generally requiring protection of agricultural land.

She said that Blondeau cited in the *Evans* case isn't on point because it concerned farm zones. In the farm zone lots of record provisions there is a specific prohibition that says that a County has to re-adopt their ordinances if the County wants to apply additional criteria to lots of record. She agreed that there isn't a similar provision in the forest-land provisions. But, she argued that the Hearings Officer should take the idea from *Blondeau* and consider legislative intent. She thinks that the legislature said that if a county opts-in and uses the State's forest-land dwelling provisions they have to use them as provided in the state statute, and no other forest land dwellings are allowed.

The applicant argues that ORS 197.646 was an attempt by the legislature to promote uniformity in the regulation of land use activities and to prevent inconsistencies among County codes from interfering with the State's attempt to regulate forest land uses. Essentially the applicant argues that when the legislature

² ORS 215.705(5): "A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under this section in any area where the county determines that approval of the dwelling would:

- (A) Exceed the facilities and service capabilities of the area;
- (B) Materially alter the stability of the overall land use pattern in the area; or
- (C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations."

addresses a subject it preempts local governments from adopting different more restrictive regulations on that subject. The applicant cites no authority for this proposition.

The applicant argued that if both the County Code and the State template dwelling criteria are applied that would mean for each application someone would have to sort through the criteria and determine whether a County provision is in conflict with a State provision. She argued that if these different criteria apply then an applicant would have to decide whether: 1) he or she can apply directly under state law, 2) the County Code is inconsistent with State law, and 3) which criteria are more restrictive. She argued that the reason for acknowledgment and post-acknowledgment procedures is to require that new local government enactments go to the State and be reviewed so that which criteria apply need not be decided in a particular case.

The applicant argued that ORS 215.720(3), concerning forest land dwellings, says that "no other dwellings than those described in this section and ORS 215.740 and 215.750 may be sited on land zoned for forest use under a land use planning goal protecting forest land." The dwellings referred to are the "lot of record forest land dwelling," the "template dwelling" and the "large acreage dwelling." She argued that the County's template test that requires the five (5) houses and other prohibitions, is not a dwelling that is described in 215.750 and it can't be applied.

C. Mr. Rochlin said that ORS 215.705 and 215.750 begin by saying that "counties may allow the following uses." He argued that the provisions of ORS 215.705 and 215.704 are contrasted with ORS 215.283 or 215.213 which start out using the passive voice saying "uses may be allowed" which led the Supreme Court to rule that under that language the uses that may be allowed must be allowed by the county. *Brentmar v. Jackson County*, 321 Or 481, P2d 1030 (1995). Mr. Rochlin argued that the language applicable here is completely distinguished removing the ambiguity.

He argued that there are other provisions, for example ORS 215.750(4), that provide that dwellings can't be allowed if they conflict with the County's plan or land use regulations. He discussed *Blondeau* arguing that in *DeBates v. Clackamas County*, ___ Or LUBA ___, (LUBA No. 96-100 01/03/97) the court held that the application of *Blondeau* is very limited to requiring that counties reenact any legislation if they want to prohibit nonfarm lot of record dwellings. He said that if a County's lot of record regulations had been adopted only to enforce ORS 215.283 intended specifically to preserve farm land then they would have to reenact those provisions to make them make the more restrictive regulations effective. Mr. Rochlin said that *DeBates* very carefully pointed out that *Blondeau* is limited to just

the lot of record farm regulation. He said the reason for that is that ORS 215.705, which addresses farm dwellings, has two provisions, one of which can be interpreted to require re-enactment of regulations. He said that ORS 215.750 doesn't have a comparable provision; 215.750 simply has the general statement that dwellings may not be allowed if they conflict with county regulations. He submitted brief written testimony.

The Multnomah County Board of Commissioners, in *Evans v. Multnomah County*, has considered its interpretation of ORS 197.646(3). The Board of County Commissioners rejected Evan's argument that only the OAR applies and concluded that both the County regulations and the OAR apply.

The County argues that the context of ORS 197.646(3) includes 197.175(2) and 215.416(8) which require a local government to make land use decisions in compliance with the local government's acknowledged regulations and comprehensive plan. The County's plan and regulations are acknowledged. The County argues that the applicant tries to add a provision to ORS 197.646(3) that would extinguish County regulations, but that ORS 197.646(3) only requires that the relevant statutes and OAR be applied directly.

The County argues that reliance on only the state law and rules would be impossible to administer and that if the OAR is the only applicable criteria this application would not comply with the rule's requirement of compliance with an acknowledged comprehensive plan or land use regulations because there would be no local provision allowing a template dwelling. Addressing the argument that new state law extinguishes preexisting local regulations the County says that it would be impossible to determine which local law remains applicable and which is extinguished. The problem of knowing which county regulations are extinguished by state law is avoided by applying both local and state requirements whenever county regulations have not been updated to reflect amended state requirements. Even if this results in applying standards unnecessarily by mistake, the method does not lead to erroneous determinations of compliance, because state law will alter the result only when the county regulation does not satisfy state law. The mandate of the statute is achieved, while preserving the meaning of ORS 197.175(2)(d) and (e) and 215.416(8) by applying the relevant state rules in addition to the relevant county regulations, setting aside a county rule only if it is inconsistent with a state rule.

The County argued that LUBA agreed in *Dilworth* that a local government can implement a non-forest dwelling regulation stricter than those found in the OAR and state statute. The option of stricter local regulation is the express intent of the legislature. ORS 215.750(4)(a) provides that the template dwellings allowed by the section may be prohibited by provisions in local regulations. The County did not

introduce Dilworth to define ORS 197.646 but rather to argue that local governments can implement local regulations stricter than state requirements.

The County argued that the only authority for the interpretation that the state's not the county's template test applies is *Blondeau*. The County argues that *Blondeau* does not apply here because (1) that case concerned lot of record provisions for nonfarm dwellings for agricultural lands (ORS 215.705) whereas this case concerns template dwelling provisions for forest lands (ORS 215.750), (2) while in *Blondeau* Clackamas County had not addressed lot of record provisions, Multnomah County has addressed template dwellings in its regulations, and (3) in *Blondeau* LUBA relied on ORS 215.705(5) for its decision that a local government cannot rely on previously acknowledged code provisions when a statute is subsequently amended whereas ORS 215.750 does not contain similar language. The County therefore concludes that *Blondeau* does not prevent the County from relying on both its already acknowledged standards and subsequently amended statutes and administrative rules.

The County argued, and the applicant agrees, that *Blondeau* concerns only farm zone dwellings and ORS 215.705, and not forest zone dwellings or ORS 215.750 which applies to this forest lands case. ORS 215.750(4)(a) like ORS 215.705(1)(c) disallows a dwelling prohibited by, or not complying with, local regulations. ORS 215.705(5), applying to farm zones, has no counterpart in ORS 215.750, applying to forest zones. Therefore there is nothing in ORS 215.750 that requires a county to reenact template dwelling provisions for a County to deny a non-forest dwelling because it fails to comply with county regulations.

The County further argues that the statute and the administrative rule allows for a local government to apply its own standards. ORS 215.750 says that a County "may" allow a dwelling in a forest zone under the standards that follow in the statute. The statute does not say a County "must" use those standards. This, combined with no wording having been inserted into ORS 197.646(3) negating the effect of a previously adopted and acknowledged county code, allows a county to apply its stricter standards.

Finally, the County has an April 30, 1996 letter from the Department of Land Conservation and Development in which the DLCD staff disagrees with the argument that the county may not apply its more stringent standards in addition to the applicable state laws.

Thus, in applying both template tests, the stricter standards of the County test are that five, not three, houses must exist within the 160 acre square, not somewhere on the lot, and the square is aligned with the section lines as opposed

to any way. The state standard provides only two stricter standards, the houses and the other eleven lots must have existed on January 1, 1993.

Conclusion. Nothing in ORS 197.646(3) says that the County's ordinance does not also apply and its language does not imply that the County's ordinance does not apply unless local regulations are inconsistent with the state rule required to be directly applied. In *Evans*, the County Board of Commissioners applied the stricter features of each test. The County staff, in this application, applied the stricter features of both the County Code and the OAR. The Hearings Officer agrees with the County that both State law and County code criteria are applicable. The issue is whether the County can have more restrictive regulations. It was established that the County can have more restrictive template dwelling regulations by *Dilworth v. Clackamas County*, 30 Or LUBA 319 (1996).

D. Significant Environmental Concern Permit

1. Uses Permitted in Significant Environmental Concern lands

MCC 11.15.6404(A): All uses permitted under the provision of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alternation of a use, except as provided in MCC. 6506, shall be subject to an SEC permit.

Finding. A single family dwelling in the CFU zoning district requires review and approval of a conditional use permit. Provided a Conditional Use Permit is approved, an SEC permit for the single family dwelling may obtain an SEC approval. However, with the findings that the application cannot be permitted on the subject lot as a Conditional Use because it cannot demonstrate compliance with applicable Commercial Forest Use criteria, the SEC should be denied due to the fact that a dwelling on the lot will not be considered a permitted use.

2. Criteria for Approval of SEC Permit.

MCC 11.15.6420. The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

(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.

Finding. The applicant has preserved the maximum space between the stream on the site which is designated a significant stream. The SEC-stream overlay extends 300 feet from the centerline of the stream and this application exceeds that. The application has maintained the minimum setback allowed (with the addition of 10 feet to allow a setback of 210 feet) to the property line opposite the stream. This criterion is met.

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

Finding. The subject parcel is designated Commercial Forest Use (CFU) under the Multnomah County Comprehensive Framework Plan. Statewide Planning Goal 3 - Agricultural lands and Goal 4 - Forest Lands were established in part to preserve and maintain agricultural lands and to conserve forest lands for forest uses. The County CFU zone has been deemed consistent with Goal 4 and provides for dwellings in certain instances. Only the footprint area of the proposed dwelling, the fire safety zone area and the driveway access area will be affected. The applicant proposes to remove 2/3 of an acre from the 20 acres of forest property. This amount of land is included to be able to maintain the minimum required fire safety zones around the proposed dwelling. The remaining 19 1/3 acres will be maintained for forest use. This criteria is met.

(C) 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.

Finding. This application has balanced the functional considerations of proposing a dwelling in a Commercial forest Use District with those of cost while maintaining the minimum standards allowed under the CFU District.

(D) 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.

Findings. The proposed use and location do not conflict with any known recreational plans nor is recreational use proposed. The proposed use is a single family residence. This criterion does not apply.

(E) 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.

Finding. The applicant has submitted a Police Services Review form signed by the Multnomah County Sheriff's Office indicating the level of police service available to serve the project is adequate. No significant concerns for vandalism and trespass are in the record. The added presence of a dwelling will likely provide protection for the property owner by having a permanent presence on the site. This criterion is met.

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

Findings. The applicant has made the effort to maintain a substantial buffer between the identified stream and the proposed dwelling to preserve fish habitat. The applicant can addressing the wildlife habitat criteria through the implementation of a wildlife conservation plan that satisfies the criteria of MCC 11.15.6426(B) . This criterion can be met.

(G) 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.

Finding. The proposed dwelling at either the preferred or the alternative site is further removed from the stream than required by the code and would maintain the largest buffer from the on-site stream. Other than the removal and thinning of vegetation required for the fire safety zones, the applicant intends to implement a forest management plan that outlines the intentions of the owner to "grow Douglas-fir for commercial purposes. He proposes to selectively thin trees when the trees reach 30 to 35 years. This is the only proposal the application contains for the removal of vegetation other than for the required fire safety zones and all forest management plans are specifically exempted from these provisions (MCC 11.15.6404(B). This criterion is met.

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

Finding. There are no archaeological areas identified on this property as part of the County's Goal 5 inventory. The applicant is advised that, if archaeological objects are discovered during construction, state statutes require construction be stopped and the State Historic Preservation Office be notified. This criterion is met.

(I) 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.

Finding. There are no identified wetlands or areas of flooding as identified on the FEMA floodplain maps and no wetlands by the Army Corps of Engineers. This criterion does not apply.

(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Finding. The applicant will be required to obtain a Grading and Erosion Control Permit for any earth movement under MCC 11.15.6710(C) because this site is located within the Tualatin River Drainage Basin. This criterion can be met.

(K) 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.

Finding. Construction of the dwelling and improvement of the driveway is not expected to cause any adverse affect on the air, water and land quality or noise levels in the area. The impacts of a single family dwelling have not been determined to be detrimental to the existing levels. This criterion is met.

(L) 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.

Finding. Under the provisions of MCC 11.15.7820 this application will be required to go through the Design Review process. The process looks at design issues. This criterion will be ensured through the design review process.

(M) 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.

Finding. This site has not been identified as having any fragile or endangered plant habitats or specific vegetative features other than as an asset to wildlife habitats. These issues can be addressed more specifically through the wildlife conservation plan, therefore, this criteria can be met.

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

Findings. The County requires a finding before approval of a quasi-judicial action of certain factors have been considered. Since this application involves a Quasi-judicial action, Plan Policies 13, 22, 37, 38, and 40 are applicable. These are addressed in the staff report and incorporated herein. The Comprehensive Plan policies are themselves approval criteria if they have not be incorporated into the zoning code.

3. Criteria of Approval of SEC-h Permit

MCC 11.15.6426. Criteria for approval of SEC-h Wildlife Habitat:

(A) In addition to the information required by MCC .6409(C), an applicant for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas; For purposes of this section, a forested area is defined as an area that has at least 75% crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practices Rules of the Oregon Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.

(2) Location of existing and proposed structures;

(3) Location and width of existing and proposed public roads, private access road, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;

(4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties entirely or partially within 200 feet of the subject property.

(B) Development Standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Finding. The home site location is an area of approximately 2 acres that was cleared of vegetation in 1992. This criterion is met.

(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Finding. The preferred home site is 1,950 feet from N.W. Kaiser Road at the closest point. A right-of-way gravel road approximately 1,575 feet long provides access from N.W. Kaiser Road to the southeastern corner of the property. It provides the only reasonable and practical access to the property and proposed home site. The proposed driveway from the end of the right-of-way to the home site is 375 feet long. The driveway to the alternate home site is 180 feet closer to N.W. Kaiser Road. This is the closest the home site can be and meet the County's setback requirements.

(3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Finding. The access road and driveway are approximately 1,950 feet long. This criteria cannot be met. The applicant has submitted a response to 11.15.6426(C) for a wildlife conservation plan.

(4) The access road/driveway shall be located within 100 feet of the property boundary if adjacent property has an access road or driveway within 200 feet of the property boundary.

Finding. Adjacent properties access roads are greater than 200 feet from the subject property boundary. The proposed access road will be located along the western edge of the property within 100 feet of the property boundary. This criteria does not apply because the adjacent properties do not have access roads or driveways within 100 feet of the property boundary.

(5) The development shall be within 300 feet of the property boundary if adjacent property has structures and developed areas within 200 feet of the property boundary.

Findings. Developed areas on adjacent properties are greater than 200 feet from the subject property boundary. The proposed home site will be located 170 feet from the western property boundary, 220 feet from the northern property boundary, 370 feet from the southern property boundary, and 1,030 feet from the eastern property. This criteria is not applicable because the adjacent property development is not located within 200 feet of the property boundary. This application has gone through at least two versions of site plans, and apparently the first one had a property setback of 170 feet. Revised maps drawn to scale by the wildlife expert were submitted at the hearing show a distance of 210. This criterion is met.

(6) Fencing within a required setback from a public road shall meet the following criteria:

(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code

(c) Cyclone, woven wire, and chain link fences are prohibited.

(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.

(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

Finding. No fencing is proposed. This criterion is met.

(7) The nuisance plants listed shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Finding. The applicant stated that landscaping will not include any plants on the Multnomah County nuisance plant list and that nuisance plants that currently occur on the property (Himalayan blackberry, Canada thistle, and English Ivy) will be removed and kept clear from at least a 1 acre area surrounding the home site. This criteria can be met.

(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having less detrimental impact on forested wildlife habitat than the standards in Section B.

Finding. A wildlife conservation plan is necessary because the applicant cannot meet the requirements of MCC 11.15.6426(B)(3). The siting of a home at any location on the property will require an access road in excess of 500 feet from a public road. To offset any impacts from the siting of a home outside the requirements of Section B, the following wildlife conservation plan addresses the guidelines of Section C, Criteria 1, has been submitted.

Selected harvest and reforestation is recommended to improve the overall wildlife habitat of the forest stand while not negatively impacting the continuation of forestry practices on the parcel. Small areas (1-2 acres) should be harvested over a number of years and reforested with conifer species. This will eventually convert the existing hardwood forest stand to conifer. A few selected trees from each acre harvested should be killed and retained for the creation of snags and/or downed logs.

This harvest method will minimize disturbances to the land and wildlife habitat. Over time, wildlife habitat would be enhanced by the successful establishment of a conifer forest on the parcel. In addition, the structural diversity of the stand would be improved through establishment of multiple age classes and diversity of species. A forest stand of this type is a natural condition for this area.

(3) The wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Finding. The home site is proposed to be located in the non-forested area in the northwestern portion of the property. No additional forested areas will be cleared for siting of the home. This criterion is met.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Finding. The proposed home site is currently cleared of large diameter trees. Vegetation is dominated by hardwood species at a sapling/pole seral stage that have reestablished since 1992 when the site was cleared of trees. This criterion is met.

(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for the existing areas used for agricultural purposes.

Finding. The applicant is not proposing fencing. If the applicant chooses to have fencing at a later date, the applicant will be required to obtain a Significant Environmental Concern Permit for the proposed fencing before installation unless it is identified as fencing for agricultural purposes. This criterion is met.

(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

Finding. The home is proposed to be sited in the only non-forested area on the property. No additional forest cover will be removed. This criterion is met.

(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property occurs.

Finding. The stream on the site is not disturbed and riparian vegetation occurs in a natural, functioning condition. No disturbance or alteration of the stream and/or riparian area is expected to occur as a result of the proposed residence. Construction activities will be approximately 800 feet from the creek channel and 500 feet from the edge of the SCA area. No enhancement of the stream and/or riparian area is recommended. This criterion is met.

(4) For protected Aggregate and Mineral (PAM) subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Finding. The site is not in the protected Aggregate and Mineral (PAM) subdistrict. This criterion does not apply.

4. MCC 11.15.6428: Criteria for approval of SEC-s Permit - Streams:

Finding. Although this parcel does contain an identified significant environmental stream, the application as proposed does not contain any development within 300 feet of the centerline of the stream and is therefore not subject to the SEC-s criteria.

IV. CONCLUSION AND DECISION

A. Conclusions for Conditional Use Request for Template Dwelling

1. Both the State and the County template dwelling standards apply with the more stringent standard controlling. The Hearings Officer directly applied the state template dwelling standards for forest lands and also applied the Multnomah County template dwelling standards for forest lands. The County's template dwelling standards fall within the template dwelling standards allowed by ORS 215.710, although more restrictive than the Statute and the Administrative rules. The County Code does not allow a dwelling that is not allowed by the Statute and the Administrative Rules. However, the County Code does prohibit dwellings that are allowed by the Statute and the Administrative rules. The application for the template dwelling does not comply with the Multnomah County Code tests for a template dwelling which are more stringent than the State template dwelling standards. ORS 197.646(1) requires counties to amend their comprehensive plans and implementing regulations to comply with new statutes and administrative rules following post acknowledgment procedures. When this application was filed the

County had not done so. ORS 197.646(3) provides that "when" a county has not amended its plan and land use regulations, "the new or amended goal, rule or statute shall be directly applicable to the local government's land use decisions..." Nothing in these provisions provide that a county's previously adopted standards do not also apply. The general principal is that, unless the legislature has expressly provided otherwise, a local government must comply with the minimal protections of forest lands provided by state statute and administrative rules, but that the local government may apply more restrictive standards if they chose to. The applicant has provided no authority for the concept that only the State Statute and Administrative Rules apply and that a local government can not apply more stringent requirements.

2. The State Statute and Administrative rules provide for a template dwelling if there are 11 other lots within a 160 acre template centered on the property and three dwellings that existed on the lots within the template on January 1, 1993. The Multnomah County Code provides for a template dwelling, MCC 11.15.2052(A), as authorized by the State and Administrative Rules. ORS 215.705(1) and OAR 660-06-027(1). The County's template dwelling provisions were enacted before the Statute and the Administrative Rules. The applicant has provided no authority to support the idea that a local government's non-forest template dwelling provisions which are more restrictive than State Statute and Administrative rule standards must be reenacted before they might apply to a land use application made after the State Statute and Administrative rules were adopted. The Hearings Officer found that the plain language of ORS 215.646(1) and (3) provide for just such a situation. These State provisions require that the State law shall be directly applicable to assure that the State's minimum forest protections will be met. However, they do not prohibit a local government from applying more restrictive standards, even if the local government's more restrictive standards were enacted before the enactment of State Law. *Dilworth* stands for the general concept that a local government may have more restrictive standards than State law. *Dilworth* does not address the question of whether more restrictive local standards need to be reenacted after the State enacts law applying to the subject matter. However, the general principal is that local government may apply local laws unless the state has specifically preempted the subject area, in which case only the state law applies. The State has not specifically preempted the field of regulating non-forest dwellings. As long as local regulations allow only those categories of non-forest dwellings authorized by State law, more restrictive local regulations may apply to land use decisions relating to non-forest dwellings.

3. The County Code requires that eleven (11) parcels and five (5) dwelling within the template existed at the time of application. State law requires that eleven (11) parcels and three (3) dwellings within the template existed on January 1, 1993. The County's requirements concerning the number of dwellings is more

restrictive than State law, therefore the County's regulations control. The state law requirements concerning the date that the parcels and dwellings existed are more restrictive than the County's requirements, therefore the State law controls. The County's regulations require that the template be aligned with the section lines while the State's regulations allow for the template to be rotated. The County's regulations are more restrictive and control. This application satisfies State law requirements for template dwelling. This application does not satisfy County Code Template dwelling requirements that five (5) dwellings (five v. three) existed (on 1/1/93 v. at the time application) within the template, (aligned with section lines v. rotated) and whether the dwellings existing on 1/1/93 are within the template or on parcels within the template.

3. The preferred site does not comply with the requirement to minimize the access length but the alternative site does. The application complies with other requirements of the County Code and Multnomah County Comprehensive Framework Plan.

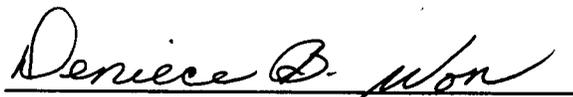
B. Conclusions for significant Environmental Concern Permit

The application for development of this property with a single family dwelling not related to forest management, demonstrates compliance with the Multnomah County Code standards for development within an identified wildlife habitat area.

V. Final Order and Conditions of Approval

Based on the findings of fact and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the Hearings Officer hereby denies CU 7-96 and SEC 33-96.

Dated this 28th day of April, 1997



Deniece B. Won, Attorney at Law
Hearings Officer

MEETING DATE: MAY 08 1997

AGENDA NO: C-8
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Repurchase Deed to Former Owner

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Request approval of Repurchase Deed to former owner, TOKOYO AKIYAMA BECKER.

Deed D971480 and Board Order attached.

5/8/97 ORIGINAL DEED & COPIES OF ALL
TO TAX TITLE

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)
DEPARTMENT MANAGER: K. A. Tuneberg W. E. Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES
Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 25 AM 9:12

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the Matter of the Execution of Deed)
D971480 for Repurchase of Tax Foreclosed) ORDER
Property to Former Owner) 97-87
TOKOYO AKIYAMA BECKER)

It appearing that heretofore Multnomah County acquired the real property hereinafter described through foreclosure of liens for delinquent taxes, and that TOKOYO AKIYAMA BECKER is the former record owner thereof, and have applied to the county to repurchase said property for the amount of \$417.56 which amount is not less than that required by Section 275.180 ORS; and that it is for the best interests of the County that said application be accepted and that said property be sold to said former owner for said amount;

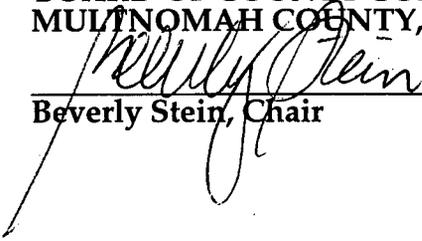
NOW, THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the former owner the following described property situated in the County of Multnomah, State of Oregon:

SEE ATTACHED EXHIBIT "A"

Dated at Portland, Oregon this 8th day of May, 1997.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:
Sandra N. Duffy, Acting County Counsel
for Multnomah County, Oregon

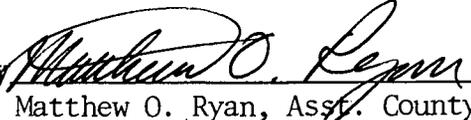
By 
Matthew O. Ryan, Asst. County Counsel

EXHIBIT "A"

A tract of land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, Township 1 South, Range 3 East, W.M., Multnomah County described as follows:

Beginning at the NW corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence East along North line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ to a point 1248.8 feet West of the North $\frac{1}{4}$ corner of said section; thence South 668 feet more or less to the NW corner of Lot 28, Block 1, Plat of CALABRIA; thence West along the north line of said lot of the West line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9; thence N 0° 43' 30" West, 668.30 feet along said West line to the point of beginning.

EXCEPT part in S.E. Division Street.

R-99309-4340
MAP 1S3E09BA 11500

DEED D971480

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to TOKOYO AKIYAMA BECKER, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

SEE ATTACHED EXHIBIT "A"

The true and actual consideration paid for this transfer, stated in terms of dollars is \$417.56.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSONS ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Until a change is requested, all tax statements shall be sent to the following address:

TOKOYO AKIYAMA BECKER
1720 NW DIVISION ST
GRESHAM OR 97030

IN WITNESS, WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 8th day of May, 1997, by authority of an Order of said Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED:
Laurence Kressel, County Counsel
for Multnomah County, Oregon

By

Matthew O. Ryan
Matthew O. Ryan, Asst. County Counsel

DEED APPROVED:
Kathy Tuneberg, Acting Director
Assessment & Taxation

By

Kathy Tuneberg
Kathleen A. Tuneberg, Acting Director

After recording return to 166/300/Multnomah County Tax Title

EXHIBIT "A"

A tract of land in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, Township 1 South, Range 3 East, W.M., Multnomah County described as follows:

Beginning at the NW corner of said NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence East along North line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ to a point 1248.8 feet West of the North $\frac{1}{4}$ corner of said section; thence South 668 feet more or less to the NW corner of Lot 28, Block 1, Plat of CALABRIA; thence West along the north line of said lot of the West line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9; thence N 0° 43' 30" West, 668.30 feet along said West line to the point of beginning.

EXCEPT part in S.E. Division Street.

R-99309-4340
MAP 1S3E09BA 11500

MEETING DATE: MAY 08 1997

AGENDA NO: C-9
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: **Request Approval of Deed to Contract Purchaser for Completion of Contract.**

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: Consent

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Request approval of deed to contract purchaser, JAMES L. BERRY, for completion of Contract #15436R1 (**Property repurchased by former owner**).

Deed D971484 and Board Order attached.

5/8/97 ORIGINAL DEED & COPIES of ALL to TAX TITLE

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 30 AM 10:00

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)
DEPARTMENT MANAGER: *K A Tuneberg* *Kurt E. Nicholas*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES
Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of the Execution of
Deed D971484 Upon Complete Performance of
a Contract to

JAMES L. BERRY

} ORDER
97-88

It appearing that heretofore, on July 26, 1991, Multnomah County entered into a contract with JAMES L. BERRY for the sale of the real property hereinafter described; and

That the above contract purchaser have fully performed the terms and conditions of said contract and are now entitled to a deed conveying said property to said purchaser;

NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

LOTS 1 & 2, BLOCK 3, OAKHURST, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

Dated at Portland, Oregon this 8th day of May, 1997.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein, Chair



REVIEWED:
Sandra N. Duffy, Acting County Counsel
Multnomah County, Oregon

By Matthew O. Ryan
Matthew O. Ryan, Asst. County Counsel

DEED D971484

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to JAMES L. BERRY, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

LOTS 1 & 2, BLOCK 3, OAKHURST, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$69,443.03.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Until a change is requested, all tax statements shall be sent to the following address:

JAMES L. BERRY
6003 N MICHIGAN AVE
PORTLAND, OR 97217

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 8th day of May, 1997, by authority of an Order of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein, Chair

REVIEWED:
Sandra N. Duffy, Acting County Counsel
Multnomah County, Oregon

By Matthew O. Ryan
Matthew O. Ryan, Asst. County Counsel

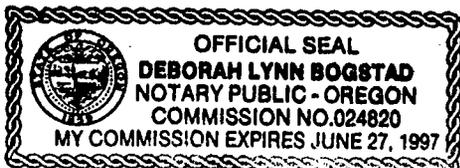
DEED APPROVED:
Kathy Tuneberg, Acting Director
Assessment & Taxation

By K. A. Tuneberg
Kathleen A. Tuneberg, Acting Director

After recording, return to Multnomah County Tax Title/166/300

STATE OF OREGON)
) **ss**
COUNTY OF MULTNOMAH)

The foregoing instrument was acknowledged before me this 8th day of May, 1997, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/97

MEETING DATE: MAY 08 1997

AGENDA NO: C-10

ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Approval of Intergovt. Agrmt. with ODOT for Westside Transp. System Plan

BOARD BRIEFING *Date Requested:* _____

Requested by: _____

Amount of Time Needed: _____

REGULAR MEETING: *Date Requested:* May 8, 1997

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services

DIVISION: Transp. & Land Use Plan

CONTACT: Karen Schilling

TELEPHONE #: x83636

BLDG/ROOM #: #425/Yeon

PERSON(S) MAKING PRESENTATION: Karen Schilling

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Approval of an Intergovernmental Agreement for Westside Transportation System Plan.

5/8/97 originals to Cathy Kramer

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Janet Nicholas

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 MAY -2 PM 3:18

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

AGEN.PL

KSCK2153.AGEN

12/95



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
1620 SE 190TH AVENUE
PORTLAND, OREGON 97233
(503) 248-5050

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Larry Nicholas, P. E, Director
Karen Schilling, Transportation Planning Administrator

TODAY'S DATE: April 28, 1997

REQUESTED PLACEMENT DATE: May 8, 1997

RE: Approval of an Intergovernmental Agreement with ODOT for Westside Transportation System Plan

I. Recommendation/Action Requested:

Approval of an Intergovernmental Agreement with the Oregon Department of Transportation for the Westside Transportation System Plan (TSP).

II. Background/Analysis:

Phase I of the Transportation System Plan (TSP) was funded by ODOT through Corridor Planning. Continuing Phase II of the Westside TSP is appropriate at this time since the Rural Area Plans for the two West County areas are nearly completed. Phase II will use the transportation issues identified in the Rural Area Plan studies as a basis for the TSP.

III. Financial Impact:

Multnomah County's contribution is \$60,000 and is currently budgeted in the Transportation and Land Use Planning Division budget for FY96-97. In addition, one month of staff time is budgeted to assist with public involvement. ODOT will administer the consultant contract and contribute \$20,000 to complete the Plan.

IV. Legal Issues:

There are no legal issues.

V. Controversial Issues:

There are no controversial issues.

VI. Link to Current County Policies:

It is the County's policy to implement a balanced, safe, and efficient transportation system as identified in Policy 33a in the County Comprehensive Framework Plan. The goal of Policy 33c is to implement a bicycle and pedestrian system for the County to provide a balanced transportation system.

VII. Citizen Participation:

Citizens will be invited to participate through surveys and open houses to identify needs and review proposals for developing the Transportation System Plan.

VIII. Other Government Participation:

Washington County and the City of Portland will be included in discussions concerning consistency with their respective Transportation System Plans.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal []

Contract # 301267

Prior-Approved Contract Boilerplate: Attached: Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$25,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRFB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p style="text-align: center;">AGENDA # <u>C-10</u> DATE <u>5/8/97</u></p> <p style="text-align: center;"><u>DEB BOGSTAD</u></p> <p style="text-align: center;">BOARD CLERK</p>
---	---	--

Department: Environmental Services Division: Transportation & Land Use Planning Date: 4/28/97

Contract Originator: Karen Schilling Phone: 248-3636 Bldg/Room: #425/Yeon

Administrative Contact: Cathey Kramer Phone: 248-5050 x2589 Bldg/Room: #425/Yeon

Description of Contract: **An intergovernmental agreement with Oregon Dept. of Transportation for Phase II of the Westside Transportation System Plan (TSP). Phase I was funded by ODOT Corridor Planning.**

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR # _____ (Check all boxes that apply) Contractor is [] MBE [] WBE [] QRF [] N/A [] None

Original Contract No. _____ (ONLY FOR ORIGINAL RENEWALS)

<p>Contractor Name: <u>Oregon Dept. of Transportation</u></p> <p>Mailing Address: <u>123 NW Flanders St.</u></p> <p>City/State/Zip: <u>Portland OR 97209-4037</u></p> <p>Point of Contact: <u>Michael Ray</u></p> <p>Phone: <u>(503) 731-8283</u></p> <p>Employer ID# or SS#: _____</p> <p>Effective Date: <u>April 24, 1997</u></p> <p>Termination Date: <u>December 31, 1997</u></p> <p>Original Contract Amount: _____</p> <p>Total Amt of Previous Amendments: _____</p> <p>Amount of Amendment: _____</p> <p>Total Amount of Agreement: <u>\$60,000.00</u></p>	<p>Remittance Address (if different) <u>\$60,000 County Contribution</u></p> <p style="text-align: right;"><u>+20,000 ODOT Contribution</u></p> <p style="text-align: right;"><u>\$80,000 Project Total</u></p> <p>Payment Schedule Terms</p> <p>[] Lump Sum \$ _____ [] Due on Receipt</p> <p>[] Monthly \$ _____ [] Net 30</p> <p>[<input checked="" type="checkbox"/>] Other <u>\$60,000.00</u> [] Other</p> <p>[] Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p>[] Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes [] No []</p>
---	---

REQUIRED SIGNATURES:

Department Manager: *[Signature]* Date: 4/30/97

Purchasing Manager: _____ Date: _____

(Class II Contracts Only)

County Counsel: *[Signature]* Date: May 5, 1997

County Chair/Sheriff: *[Signature]* Date: May 8, 1997

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	150	030	6104			6110					
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

INTERGOVERNMENTAL TRANSPORTATION SYSTEM PLAN AGREEMENT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and MULTNOMAH COUNTY, a municipal corporation of the State of Oregon, acting by and through its County Officials, hereinafter referred to as "COUNTY."

WITNESSETH

RECITALS

1. The Lower Columbia River Highway (US 30) is a part of the State Highway System under the jurisdiction and control of the Oregon Transportation Commission. ODOT is currently conducting Corridor Planning for US 30 through the COUNTY rural area.
2. By the authority granted in ORS 190.110 and 283.110, State Agencies may enter into agreements with the counties, cities and units of local government or other State Agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. Under such authority, ODOT in cooperation with the COUNTY, plans to provide the consulting services of CH2M Hill, Inc. (under ODOT's existing flexible Services Contract #12704) to perform the work shown on Exhibit "A" attached hereto and by this reference made a part hereof. Said work includes developing a Transportation System Plan (TSP) to facilitate improved transportation options including multi-modal transportation options to help identify and prioritize the area infrastructure and land use issues for the future, hereinafter referred to as "Project."
4. Payment for said services shall not exceed a maximum amount of \$80,000, with a maximum of \$20,000 in ODOT Corridor Planning Funds and the remaining \$60,000 to be paid with funds available to the COUNTY. The COUNTY's \$60,000 should first be applied to the Project as described in Exhibit "A." If total project costs are to exceed \$80,000, a supplement to this agreement will be required before additional costs are incurred. Any portion of the COUNTY's \$60,000 that may be remaining after the TSP is completed will revert to the COUNTY.

ODOT has approved a program and system of Access Oregon Highways (AOH) to improve movement of through traffic between geographic areas within Oregon and between Oregon and neighboring states. A key objective of the program is to manage and preserve the AOH corridors to achieve the highest safe operating speeds whenever practical and appropriate while being sensitive to the needs and desires of existing communities.

5. ODOT has adopted a Highway Plan which contains policies on Highway Level of Importance, Access Management and managing AOH systems. These policies classify state highways by level of importance and establish operating level of service standards, access management requirements, and requirements for the AOH system. US 30 is on the AOH system and is classified in the Highway Plan as having a statewide level of importance.
6. The Land Conservation and Development Commission (LCDC) has adopted an Administrative Rule (OAR 660-Division 12) which establishes requirements for transportation system planning. This rule, hereinafter referred to as the Transportation Planning Rule (TPR), is relevant to this project.
7. The purpose of the TSP is:
 - To develop a transportation plan which complies with the provisions of the TPR;
 - To develop a plan that improves personal mobility and access to transportation services by expanding the variety and availability of travel modes throughout the community;
 - To develop recommendations for improving the overall quality of life in the community by increasing the compatibility of the transportation system with existing and future land use patterns, and minimizing the impacts of transportation system development on the natural and built environment;
 - To develop a plan that provides pedestrian linkages between neighborhoods, shopping areas, schools, parks and other services areas;
 - To actively involve the citizens of Multnomah County in the transportation planning process; and
 - To ensure that local transportation systems are consistent with state and regional transportation system plans.

The TSP is scheduled to begin in April 1997, and is limited to the rural area of the COUNTY, northwest of the city of Portland.

NOW, THEREFORE, the premise being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

ODOT OBLIGATIONS

1. ODOT shall provide for consulting services as described in Recitals No. 3. ODOT, in consultation with the COUNTY, shall approve all work completed as outlined in Exhibit "A". Payments will be made by ODOT to the consultant according to the terms agreed upon in the Flexible Services Contract. ODOT shall submit monthly statements to COUNTY reflecting the costs incurred on the project. ODOT shall not direct consultant to perform any work prior to execution of this agreement and not before COUNTY makes its deposit under COUNTY Obligation #3.
2. ODOT shall, at its own expense, provide sufficient staff for the participation in and review of the work outlined in Exhibit "A". ODOT's project coordinator for this agreement and project shall be a Corridor Planner in the Region 1 Planning Unit. The coordinator shall ensure compliance with State plans, regulations, and standards and with the terms of this agreement, and shall review, approve, and pay all billings.
3. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of the agreement within ODOT's current appropriation of limitation or current biennial budget.
4. Publication of any reports by either party shall give credit to the other party. However, if ODOT does not wish to subscribe to the findings or conclusion of the project, the following statement will be added:

"The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of Oregon."
5. ODOT's failure to object to any breach of this agreement shall not constitute a waiver of ODOT's right to object to any additional breach and to require strict performance of the agreement.
6. ODOT shall, upon execution of this agreement, request COUNTY to forward an advance deposit of \$60,000 to a local investment pool for its share of funding for the project.
7. ODOT shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this agreement shall be retained by representatives of ODOT for a period of three years following final payment. Copies shall be made available upon request. COUNTY may request a copy of ODOT's records at any time.
8. ODOT shall be responsible for all costs and expenses related to its employees who perform work under this agreement, including but not limited to PERS contributions, worker's compensation, unemployment taxes, and state and federal income tax withholdings.

COUNTY OBLIGATIONS

1. COUNTY shall, provide overall management to the project, including management of ODOT consultants provided through ODOT Flexible Services Contract #12704 to perform any of the work items in Exhibit "A". COUNTY shall review all billings submitted by consultant for this project and forward to ODOT's project coordinator with recommendations for payment.
2. COUNTY shall contribute \$60,000 and sufficient staff time and other COUNTY resources as their share of the cost of this project, including but not limited to the following:
 - Provide the consulting firm any information that it requests, provided the COUNTY has access to such information.
 - Monthly progress reports indicating tasks worked on or completed.
3. COUNTY shall, upon ODOT's request and prior to assignment of work to consultant, deposit in a local investment pool, the sum of \$60,000 to go toward payment of the consultant. The COUNTY shall give ODOT a project specific Power of Attorney to draw off of this account to pay the consultant. Any portion of COUNTY's deposit which when added to ODOT's \$20,000, exceeds the actual total cost of the project will be refunded or released to the COUNTY.
4. COUNTY shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from ODOT. Such approval shall include ODOT's required contract format and billing method.
5. COUNTY agrees to comply with all applicable federal, state and local laws, and ordinances applicable to the work under this agreement. COUNTY agrees that the provisions of ORS 279.312, 279.314, 279.320, and 279.555 shall apply to and govern the performance of this agreement.
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7. COUNTY further agrees to cooperate fully with liaison personnel assigned to the project by ODOT. Conferences with these personnel shall be held at the request of COUNTY and/or ODOT.

8. COUNTY authorizes ODOT to review and inspect the project activities.
9. COUNTY shall be responsible for all costs and expenses related to its employees who perform work under this agreement, including but not limited to PERS contributions, worker's compensation, unemployment taxes, and state and federal income tax withholdings.
10. COUNTY shall be free to copyright materials developed under this contract. ODOT reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.
11. COUNTY shall enter into and execute this agreement during a duly authorized session of its COUNTY Commission.

GENERAL OBLIGATIONS

1. The County and ODOT, their subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide worker's compensation coverage for all their subject employees.
2. The parties hereto agree that if any terms or provisions of this contract is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
3. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice in writing and delivered by certified mail or in person.
4. ODOT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the COUNTY which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

Funds for this project were approved by the Oregon Transportation Commission on 17 February, 1993, at which time the Manager of the Transportation Development Branch was authorized to sign this agreement for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

On 12 April, 1995, the Oregon Transportation Commission adopted Delegation Order 2, which became effective 01 May, 1995. The order grants authority to branch managers to approve and execute agreements for work in the current approved workplan budget.

APPROVAL RECOMMENDED:

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

By: *Beverly Stein* 5/8/97
Beverly Stein, Chair Date

By: _____
Region Manager Date

MULTNOMAH COUNTY, OREGON
Department of Environmental Services

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

By: *Larry F. Nicholas* 5/8/97
Larry F. Nicholas, Director Date

By: _____
TDB Manager Date

REVIEWED:

APPROVED AS TO LEGAL
SUFFICIENCY:

SANDRA N. DUFFY, Acting County Counsel
for Multnomah County, Oregon

By: _____
Assistant Attorney General Date

By: *Sandra N. Duffy* 5-5-97
County Counsel Date

KSCCK2154. APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-10 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

EXHIBIT A

Scope of Work for the Continuation of the West Rural Multnomah County Transportation System Plan

Introduction

The product of the second phase of the study will be Transportation System Plan (TSP) for the rural and unincorporated areas of western Multnomah County commonly known as the West Hills, Sauvie Island and the Multnomah Channel area. The "Westside" TSP is intended to address all transportation modes, to be consistent with State and regional transportation plans, to be coordinated with the needs of the County and adjacent jurisdictions, and to plan for improved accessibility while reducing reliance on the private automobile. The documents will be prepared in accordance with the applicable portions of the ODOT publication Transportation System Plan Guidelines.

This scope covers the remainder of the work to complete the Multnomah County Westside TSP. In the first phase of the work, Task 3 - Study Background Development, Task 4 - Work Session on Travel Demand Model, Task 5A - Data Base Preparation, Task 5B - Bridge Inventory Review/Assessment, and Task 7 - Develop Phase 2 Work Program were completed, so those tasks are not repeated in this scope of work. A description of the remainder of Task 1 - Project Management, Task 2 - Coordination with Other Planning Activity, and the continuation of Task 6 - Identification of Existing Transportation Needs are contained within this scope of work because these tasks will continue throughout the study in varying degrees of intensity. Tasks 8-12 are described in their entirety.

Task 1. Project Management

Purpose: The management of all tasks for the study to produce the Westside Transportation System Plans (TSP) for the unincorporated rural areas within Multnomah County as described above.

Discussion: Project management activities throughout the study will include coordination, direction and supervision of all study tasks, attendance at project progress meetings and project team meetings, coordination and correspondence with project team members, preparation of progress reports to ODOT and the County and project administration.

Deliverables:

- Project status reports throughout project duration.

Task 2. Other Planning Activity Coordination

Purpose: To ensure consistency between the rural Westside Multnomah County TSP and other ongoing planning activity in or near rural Multnomah County, including other TSPs and Corridor Studies.

Discussion: Information will be obtained and exchanged throughout the study with other ongoing studies, e.g., the City of Portland's TSP, the Rural Washington County TSP, and the Highway 30 Corridor Study. Information from the Westside Rural Multnomah County TSP will be provided as an information exchange with the local city staff and other affected agencies and consultants.

Deliverables:

- Contact reports from coordination with local municipal staff and other interested parties.

Task 3. Study Background Development

This task was completed during first phase of the study.

Task 4. Work Session on Travel Demand Model

This task was completed during first phase of the study.

Task 5A. Database Preparation

This task was completed during first phase of the study.

Task 5B. Bridge Inventory Review/Assessment

This task was completed during first phase of the study.

Task 6. Identification of Existing Transportation Needs (Continuation)

Purpose: To continue the determination of the needs for the roadway, transit, bicycle, and pedestrian elements of the transportation system in rural area.

Discussion: For roadways, existing capacity and level of service, safety, geometric, and operational needs will be identified. Standards for capacity and level of service, safety, and geometrics will be established for state routes and county roadways.

Planning level estimates of capacity and level of service will be developed for all roadway segments with a functional classification of rural collector or higher. Planning level estimates of level of service will also be developed for all signalized intersections and intersections of roadways with classifications of rural collector or higher. It is assumed no new counts, besides those in the phase I work, will need to be collected. The level of service estimates will be compared with the standards to determine locations with existing deficiencies.

Measures and standards for determining high accident locations will be established for roadway segments and locations. Accident rates/ratings will be calculated for all roadway segments with a functional classification of rural collector or higher and for roadway locations with suspected safety problems. These latter locations will be identified by ODOT and Multnomah County. The accident rates/ratings will be compared to the standards to determine locations with existing safety deficiencies.

Geometric deficiencies will be determined for roadway segments and intersections of roadways having a functional classification of rural arterial or higher based upon the established geometric standards. Deficiencies for state route segments will be identified using ODOT's Potential Development Impact Area (PDIA) estimation methods, including lane width, shoulder width, and horizontal and vertical alignment deficiencies. Deficiencies for county roadway segments may be identified using similar methods or based upon field survey and input from county staff. Intersection deficiencies will be related to lane width, stopping sight distance, and intersection sight distance. These will be identified based upon input from ODOT and Multnomah County staff.

Transit facility and operating needs will be determined based on available information from Tri-Met and other transit providers. Bicycle and pedestrian facility needs will be based on results from the field review and input from ODOT and Multnomah County staff.

Deliverables:

- Text and mapping showing existing:
 - Level of service for roadway segments and intersections
 - High accident roadway segments and intersections
 - Geometric deficiencies for roadway segments and intersections
 - Operational deficiencies for roadway segments and intersections
 - Transit, bicycle, and pedestrian system deficiencies

- Memorandum, in TSP chapter format, describing existing roadway, transit, bicycle, and pedestrian needs

Task 7. Develop Phase 2 Work Program

This task was completed during the first phase of the study.

Task 8. Public and Agency Involvement Program

Purpose: To develop a program to involve and inform residents, businesses, agencies and others in the preparation of the Rural Westside Multnomah County TSP.

Discussion: Multnomah County's Westside Transportation System Planning effort has two very different geographic areas - Sauvie Island and West Hills. Each has distinct technical and community needs. The following scope of work outlines a process that allows separate consideration of each area's issues, preferences, and projects but recognizes the need to build an integrated TSP.

The process begins with widespread mailing of an introductory information fact sheet which will include a response form that collects community concerns and allows self nomination for the Task Force. A phone survey follows to gather a representative sample of views on transportation needs and preferences. A separate task force for each of the areas will be formed (relying primarily on the self nominations for membership) to represent a cross section of the interested community. Self nominated citizens not chosen for Task Force service will serve as Sounding Board members. The Sounding Boards will provide input to the Task Force groups through worksheet mailings. The Task Force groups will meet at the same time and at the same location but will independently develop their recommendations. The groups will come together to integrate their findings into a unified Westside TSP. A second newsletter and Open House to invite review of the recommended TSP will complete the public involvement effort.

The following paragraphs provide additional information on the tasks necessary to complete the process as stated. The format consists of a brief description of the deliverables followed by a list of tasks to be performed by the consultant and remaining unassigned tasks (not part of consultant scope of work).

Fact Sheet 1 - Develop and distribute fact sheet #1. This fact sheet will introduce the project and proposed process to Sauvie Island and West Hills residents. The fact sheet will also include

a response form that will provide the community an opportunity to list and prioritize community issues and express interest in participating on the Task Force or Sounding Board.

Tasks Consultant Will Complete:

- Identify messages
- Develop response form questions
- Review and edit fact sheet

Phone Survey - Conduct a statistically valid survey of residents/businesses to identify community views on transportation needs and preferences. This information will provide additional information for the Task Force.

Tasks Consultant Will Complete:

- Participate in designing questionnaire

Sounding Board Input - The Sounding Board is a self-selected community group (from response forms and surveys) who will provide input on selected information for the Task Force to consider. The Sounding Board serves two primary functions: 1) It provides everyone the opportunity to participate in the process regardless if they are unwilling or unable to participate on the Task Force, and 2) Input received from the Sounding Board will be directly channeled to the Task Force to be used and considered. Sounding Board members will receive information in the mail, which will include a response form (or map to fill out).

****Action items incorporated in Task Force actions below****

Task Force Worksessions (2) - There will be two Task Force groups (Sauvie Island & West Hills). These groups will meet twice (at the same location) and will develop TSP recommendations for their separate geographic areas. Worksession 1 will focus on understanding and prioritizing issues, clarifying transportation needs, identifying TSP objectives, and drafting projects. Worksession 2 will refine project lists and prioritize TSP project recommendations. The Task Force groups (Sauvie Island and West Hills) will need to work together for part of worksession 2 to integrate their separate recommendations into a collective Westside TSP.

Tasks Consultant Will Complete:

- Design worksession formats, techniques, and tools (2)
- Facilitate Task Force meetings (2)

Fact Sheet 2 - Develop and distribute fact sheet #2. This fact sheet will update the community on the draft TSP and inform readers of an upcoming Open House.

Tasks Consultant Will Complete:

- Identify messages
- Review and edit fact sheet

Open House - Hold a public Open House to present the Draft Transportation System Plan to the public. This Open House will provide opportunities for the public to comment on the draft Plan.

Tasks Consultant Will Complete:

- Design Open House - identify objectives and layout meeting stations
- Review display materials
- Attend, set up and tear down Open House

Deliverables:

- Assistance with the content and development of Fact Sheet #1.
- Assistance in designing phone survey.
- Work session format design and facilitation.
- Assistance with the content and development of Fact Sheet #2.
- Technical materials and mapping displays.

Task 9. Identification of Future Transportation System Needs

Purpose: To determine the future needs for the roadway, transit, bicycle, and pedestrian elements of the transportation system for the Westside TSP area.

Discussion: Future transportation system needs will be based on 20-year travel forecasts and will look at the long-term needs of the systems. The future Westside roadway network modeling will use the expansion of the METRO model for standardization in rural areas that is being prepared by ODOT and METRO. If necessary, additional refinements to the Transportation Analysis Zones (TAZs) for the westside rural areas of Multnomah County will be done. The modeling will use existing Metro population, housing, and employment data for the existing conditions and Metro projections for the future.

Future transportation needs will be identified for the system consisting of roadways, transit, bicycle and pedestrian modes. Future roadway capacity and level of service will be estimated for all roadway segments with a functional classification of minor arterials/major collectors or higher. Where TSP studies are being or have been prepared adjacent to the Westside area, coordination between findings of those TSPs identified needs and the rural needs identification will be necessary for consistency.

Future roadway geometric deficiencies related to changes in functional classification and/or increased traffic volumes will be identified. The investigation and identification of future operational deficiencies will be limited to an analysis of the level of service at unsignalized intersections identified in Phase 1.

A technical memorandum will be prepared summarizing the travel demand forecasting methodology and travel forecasts. A second technical memorandum will be prepared describing the identification of future roadway, public transit, bicycle and pedestrian needs.

Deliverables:

- Text and mapping showing future :
 - LOS for unsignalized intersections.
 - geometric deficiencies for intersections.
 - operational deficiencies for intersections.
 - transit, bicycle and pedestrian needs.

- Technical memoranda that describes and identifies the future roadway, bicycle, transit and pedestrian needs.

Task 10. Development of Transportation System Alternatives

Purpose: To develop transportation system alternatives for the Westside TSP area that can reasonably be expected to meet the identified existing and future needs and that are consistent with existing Corridor Strategies, Transportation Goals and Objectives.

Discussion: A preliminary set of alternatives that address the needs identified for the Westside area in Task 9 will be drafted. The components of the alternatives will include roadways, bicycle and pedestrian facilities. Public transportation/transit will be included within the Westside rural area of the County under study. A "No Project" Alternative will be developed to be used for baseline comparisons. For the build alternatives, roadway improvements alternatives could include:

- Addition of -- travel lanes, through lanes, left or right turn lanes, medians (with or without left turn lanes), passing lanes on two-lane highways, acceleration or deceleration lanes, and/or climbing lanes.
- Implementation of -- lane or shoulder widenings, horizontal or vertical re-alignments (in conjunction with lane additions or widening only), access management including driveway consolidation, and signalization.

Signalization, if warranted, would be considered only at intersections for capacity improvements and on state routes would be limited to intersections within local urban areas. Improvements for safety problems would be based on the evaluation of accident data and input from County and ODOT staff.

Bicycle and pedestrian facility improvements for the alternatives will be based on information from the Metro land use and employment forecasts, the public involvement program, the County's Comprehensive Plan and other planning documents and input from the County and ODOT staff. Transit improvement alternatives will be determined based on available information and input from Tri-Met.

TDM and TSM measures where applicable will be considered as elements of the alternatives. The type and feasibility of potential these measures will be determined on a case by case basis when specific existing and future system needs are identified. The preliminary findings will be coordinated with other community plans and policies.

Deliverables:

- Mapping showing Westside roadway, bicycle, pedestrian and transit system alternatives.
- Technical memorandum that will describe the development of the Westside transportation system alternatives.

Task 11. Evaluation of Transportation System Alternatives

Purpose: To compare the proposed alternatives as to their ability to meet the Westside's transportation systems existing and future needs.

Discussion:

A set of evaluation criteria and screening methodology will be developed. Using all the information gathered and developed in the previous tasks, the screening methodology will be applied on the alternatives developed for the Westside rural area in Task 10. The objective is to evaluate the alternatives for "best" plan and strategy for the Westside rural area in Multnomah County. The improvement measures in the area's proposed alternative will be evaluated for potential inconsistencies with the County Comprehensive Plan and the requirements of the Transportation Planning Rule regarding transportation improvements in rural areas (OAR 660-12-065). The findings will be presented to the task force for recommendations for the locally preferred TSP for the Westside area.

Deliverables:

- Technical memorandum that will describe the screening and the selection of the recommended alternative for the Westside rural area.

Task 12. Preparation of Rural Transportation System Plans

Purpose: To develop and refine the proposed system plan into preliminary and final TSP reports for Westside rural area.

Discussion: After the screening of the alternatives in Task 11, the preferred transportation system alternative for the Westside area will be further developed and refined.

The existing roadway functional classifications will be examined in light of the inventory and identification of existing system needs, if warranted, modifications to the existing designation will be recommended. The future roadway system functional classifications will be recommended based on traffic volumes and patterns, amount and type of projected surrounding development, recommended roadway improvements, and the relationship of the roadway to the entire roadway network.

A method for prioritizing the system improvements recommended in the proposed alternative for the Westside area's TSP will be created and applied. The area's prioritized list will be evaluated for consistency and logic in the order of listing. Preliminary order of magnitude cost estimates will be developed for the system improvements in the proposed TSP alternative.

A TSP report will be prepared for area containing chapters on the following subjects:

- Description of the planning process, including descriptions of the existing inventory and the issues, opportunities and constraints found during the study process and a description of the methodologies used and findings of the database preparation and model development.
- The identification of the existing and future transportation system needs.
- Description of the alternatives examined, the screening methodology and the selected improvements (the proposed alternative).
- Preliminary cost estimates.

The preliminary TSP report will be revised, incorporating review comments from the County, ODOT and the task force and finalized as the Final TSP Report.

Deliverables:

- Preliminary draft Transportation System Plan.
- Final Transportation System Plans for the Westside rural areas.

Task 13. County and State to Perform

The following tasks are to performed in conjunction with Task 8 – Public and Agency Involvement Program:

Fact Sheet # 1

- Write and revise fact sheet
- Develop and revise fact sheet layout
- Identify carrier routes; coordinate and finance courier route mailings
- Identify, coordinate and finance mailings to other interested stakeholders
- Enter names and addresses from response form into database

Phone Survey

- Collect and compile response results into summary
- Design questionnaire - clarify informational needs and formulate questions
- Select interviewees and conduct survey
- Collect and compile information

Task Force Work Sessions (2)

- Form Task Force (may include asking certain people to participate to ensure the Task Force is representative)
- Identify Sounding Board members
- Develop and distribute materials for two Sounding Board mailings
- Collect, compile, and summarize Sounding Board input prior to the two Task Force Meetings
- Coordinate two Task Force meetings: room arrangements, refreshments, meeting reminder notices

Fact Sheet #2

- Write and revise fact sheet
- Develop and revise fact sheet layout
- Coordinate and finance courier route mailings
- Identify, coordinate and finance mailings to other interested stakeholders

Open House

- Coordinate Open House: Identify meeting room, refreshments
- Produce Open House summary report

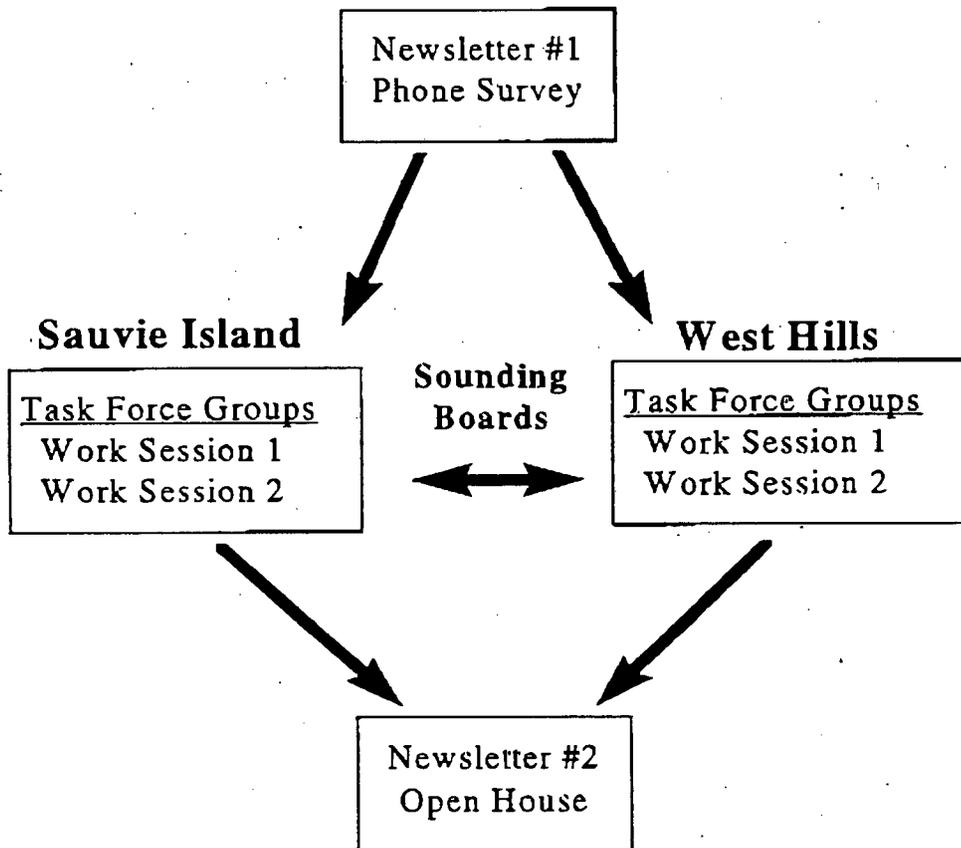
Media Relations

- Media Relations: Develop two press releases for local newspapers – one at the beginning of the project and one prior to the Open House. Distribute to newspapers
- Write and develop display ads to be inserted in local newspapers.

Deliverables:

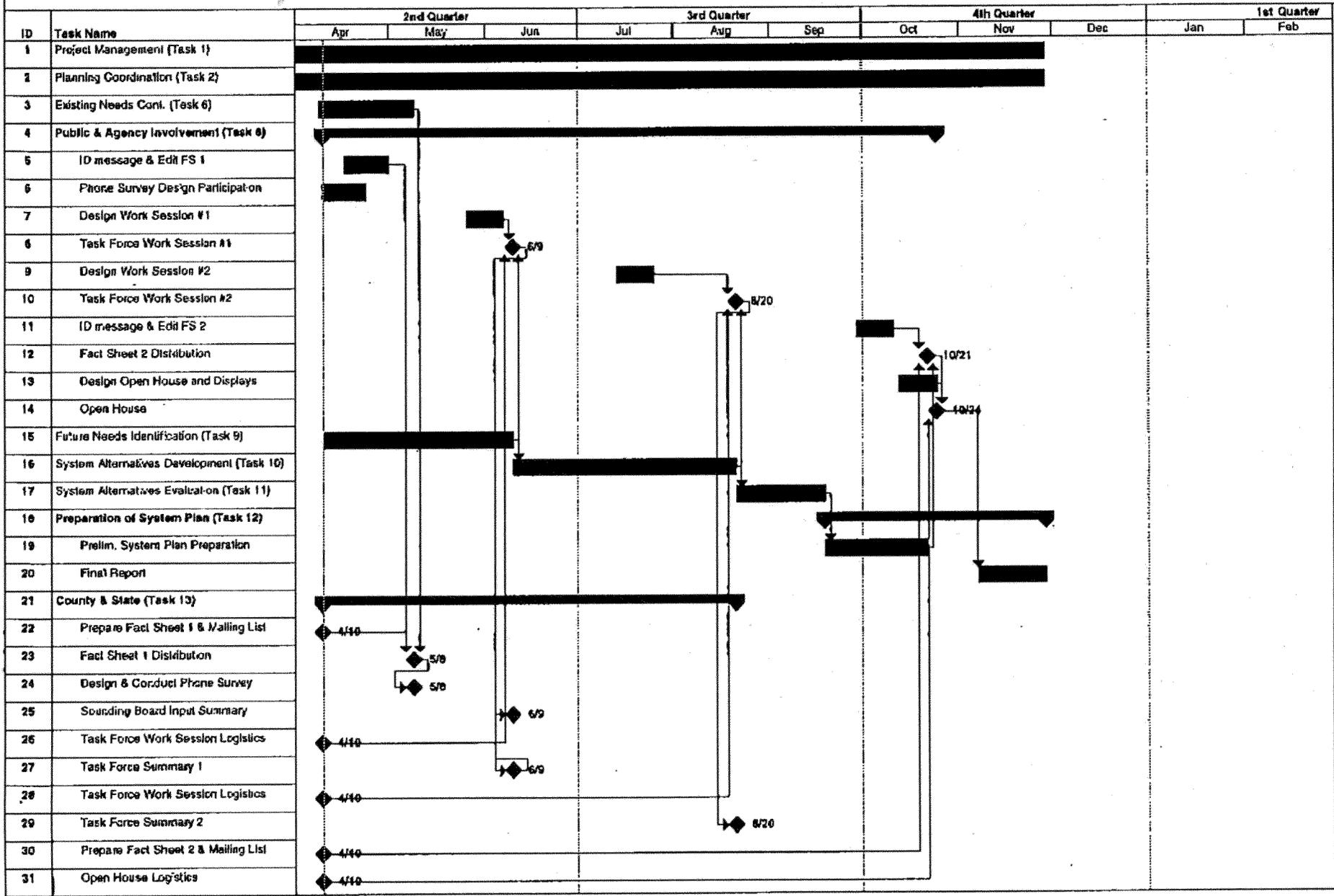
- Produce and distribute Fact Sheet #1
- Produce survey summary report
- Produce Sounding Board summary report
- Produce and distribute Fact Sheet #2
- Produce Open House summary report
- Produce two display ads

**Westside TSP
Public Involvement Approach**



04/10/97 12:11 P. 01/01

West Rural Multnomah County TSP



Project: Schedph2.MPP
Date: Thu 4/10/97

Task [Task Bar] Milestone [Diamond] Rolled Up Task [Thick Task Bar] Rolled Up Progress [Thick Task Bar]
 Progress [Thin Task Bar] Summary [Thin Task Bar] Rolled Up Milestone [Diamond]

INTERGOVERNMENTAL TRANSPORTATION SYSTEM PLAN AGREEMENT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT"; and MULTNOMAH COUNTY, a municipal corporation of the State of Oregon, acting by and through its County Officials, hereinafter referred to as "COUNTY".

WITNESSETH

RECITALS

1. The Lower Columbia River Highway (US 30) is a part of the State Highway System under the jurisdiction and control of the Oregon Transportation Commission. ODOT is currently conducting Corridor Planning for US 30 through the COUNTY rural area.
2. By the authority granted in ORS 190.110 and 283.110, State Agencies may enter into agreements with the counties, cities and units of local government or other State Agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
3. Under such authority, ODOT in cooperation with the COUNTY, plans to provide the consulting services of CH2M Hill, Inc. (under ODOT's existing flexible Services Contract #14563) to perform the work shown on Exhibit 'A' attached hereto and by this reference made a part hereof. Said work includes developing a Transportation System Plan (TSP) to facilitate improved transportation options including multi-modal transportation options to help identify and prioritize the area infrastructure and land use issues for the future, hereinafter referred to as "Project".
4. Payment for said services shall not exceed a maximum amount of \$80,000, with a maximum of \$20,000 in ODOT Corridor Planning Funds and the remaining \$60,000 to be paid with funds available to the COUNTY. The COUNTY's \$60,000 should first be applied to the Project as described in Exhibit 'A'. If total project costs are to exceed \$80,000, a supplement to this agreement will be required before additional costs are incurred. Any portion of the COUNTY's \$60,000 that may be remaining after the TSP is completed will revert to the COUNTY.

ODOT has approved a program and system of Access Oregon Highways (AOH) to improve movement of through traffic between geographic areas within Oregon and between Oregon and neighboring states. A key objective of the program is to manage and preserve the AOH corridors to achieve the highest safe operating speeds whenever practical and appropriate while being sensitive to the needs and desires of existing communities.

5. ODOT has adopted a Highway Plan which contains policies on Highway Level of Importance, Access Management and managing AOH systems. These policies classify state highways by level of importance and establish operating level of service standards, access management requirements, and requirements for the AOH system. US 30 is on the AOH system and is classified in the Highway Plan as having a statewide level of importance.
6. The Land Conservation and Development Commission (LCDC) has adopted an Administrative Rule (OAR 660-Division 12) which establishes requirements for transportation system planning. This rule, hereinafter referred to as the Transportation Planning Rule (TPR), is relevant to this project.
7. The purpose of the TSP is:
 - To develop a transportation plan which complies with the provisions of the TPR;
 - To develop a plan that improves personal mobility and access to transportation services by expanding the variety and availability of travel modes throughout the community;
 - To develop recommendations for improving the overall quality of life in the community by increasing the compatibility of the transportation system with existing and future land use patterns, and minimizing the impacts of transportation system development on the natural and built environment;
 - To develop a plan that provides pedestrian linkages between neighborhoods, shopping areas, schools, parks and other services areas;
 - To actively involve the citizens of Multnomah County in the transportation planning process; and
 - To ensure that local transportation systems are consistent with state and regional transportation system plans.

The TSP is scheduled to begin in April 1997, and is limited to the rural area of the COUNTY, northwest of the city of Portland.

NOW, THEREFORE, the premise being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

ODOT OBLIGATIONS

1. ODOT shall provide for consulting services as described in Recitals No. 3. ODOT, in consultation with the COUNTY, shall approve all work completed as outlined in Exhibit "A". Payments will be made by ODOT to the consultant according to the terms agreed upon in the Flexible Services Contract. ODOT shall submit monthly statements to COUNTY reflecting the costs incurred on the project. ODOT shall not direct consultant to perform any work prior to execution of this agreement and not before COUNTY makes its deposit under COUNTY Obligation #3.
2. ODOT shall, at its own expense, provide sufficient staff for the participation in and review of the work outlined in Exhibit "A". ODOT's project coordinator for this agreement and project shall be a Corridor Planner in the Region 1 Planning Unit. The coordinator shall ensure compliance with State plans, regulations, and standards and with the terms of this agreement, and shall review, approve, and pay all billings.
3. ODOT certifies, at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of the agreement within ODOT's current appropriation of limitation or current biennial budget.
4. Publication of any reports by either party shall give credit to the other party. However, if ODOT does not wish to subscribe to the findings or conclusion of the project, the following statement will be added:

"The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of Oregon."
5. ODOT's failure to object to any breach of this agreement shall not constitute a waiver of ODOT's right to object to any additional breach and to require strict performance of the agreement.
6. ODOT shall, upon execution of this agreement, request COUNTY to forward an advance deposit of \$60,000 to a local investment pool for its share of funding for the project.
7. ODOT shall keep accurate cost accounting records. The cost records and accounts pertaining to the work covered by this agreement shall be retained by representatives of ODOT for a period of three years following final payment. Copies shall be made available upon request. COUNTY may request a copy of ODOT's records at any time.
8. ODOT shall be responsible for all costs and expenses related to its employees who perform work under this agreement, including but not limited to PERS contributions, worker's compensation, unemployment taxes, and state and federal income tax withholdings.

COUNTY OBLIGATIONS

1. COUNTY shall, provide overall management to the project, including management of ODOT consultants provided through ODOT Flexible Services Contract #14563 to perform any of the work items in Exhibit "A". COUNTY shall review all billings submitted by consultant for this project and forward to ODOT's project coordinator with recommendations for payment
2. COUNTY shall contribute \$60,000 and sufficient staff time and other COUNTY resources as their share of the cost of this project, including but not limited to the following:
 - Provide the consulting firm any information that it requests, provided the COUNTY has access to such information.
 - Monthly progress reports indicating tasks worked on or completed.
3. COUNTY shall, upon ODOT's request and prior to assignment of work to consultant, deposit in a local investment pool, the sum of \$60,000 to go toward payment of the consultant. The COUNTY shall give ODOT a project specific Power of Attorney to draw off of this account to pay the consultant. Any portion of COUNTY's deposit which when added to ODOT's \$20,000, exceeds the actual total cost of the project will be refunded or released to the COUNTY.
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8. COUNTY authorizes ODOT to review and inspect the project activities.
9. COUNTY shall be responsible for all costs and expenses related to its employment of individuals to perform the work on behalf of the COUNTY under this agreement, including but not limited to PERS contributions, worker's compensation, unemployment taxes, and state and federal income tax withholdings.
10. COUNTY shall be free to copyright materials developed under this contract. ODOT reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.
11. COUNTY shall enter into and execute this agreement during a duly authorized session of its COUNTY Commission.

GENERAL OBLIGATIONS

1. The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide worker's compensation coverage for all their subject employees.
 2. The parties hereto agree that if any terms or provisions of this contract is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
 3. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice in writing and delivered by certified mail or in person.
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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

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APPROVAL RECOMMENDED:

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By:  5/8/97
Beverly Stein, Chair Date

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

By:  5-20-97
Region Manager Date

MULTNOMAH COUNTY, OREGON
Department of Environmental Services

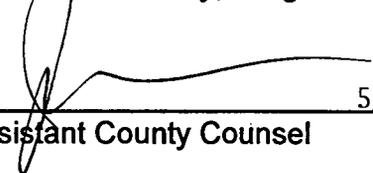
By:  5/20/97
Larry F. Nicholas, Director Date

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION

By:  5/20/97
TDB Manager Date

REVIEWED:

SANDRA N. DUFFY, Acting County Counsel
for Multnomah County, Oregon

By:  5/5/97
Assistant County Counsel Date

APPROVED AS TO LEGAL
SUFFICIENCY:

By:  12/4/97
Assistant Attorney General Date

KSCCK2154 AGB Rev
APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-10 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

EXHIBIT A

*Scope of Work for the Continuation of the
West Rural Multnomah County Transportation System Plan*

Introduction

The product of the second phase of the study will be Transportation System Plan (TSP) for the rural and unincorporated areas of western Multnomah County commonly known as the West Hills, Sauvie Island and the Multnomah Channel area. The "Westside" TSP is intended to address all transportation modes, to be consistent with State and regional transportation plans, to be coordinated with the needs of the County and adjacent jurisdictions, and to plan for improved accessibility while reducing reliance on the private automobile. The documents will be prepared in accordance with the applicable portions of the ODOT publication Transportation System Plan Guidelines.

This scope covers the remainder of the work to complete the Multnomah County Westside TSP. In the first phase of the work, Task 3 - Study Background Development, Task 4 - Work Session on Travel Demand Model, Task 5A - Data Base Preparation, Task 5B - Bridge Inventory Review/Assessment, and Task 7 - Develop Phase 2 Work Program were completed, so those tasks are not repeated in this scope of work. A description of the remainder of Task 1 - Project Management, Task 2 - Coordination with Other Planning Activity, and the continuation of Task 6 - Identification of Existing Transportation Needs are contained within this scope of work because these tasks will continue throughout the study in varying degrees of intensity. Tasks 8-12 are described in their entirety.

Task 1. Project Management

Purpose: The management of all tasks for the study to produce the Westside Transportation System Plans (TSP) for the unincorporated rural areas within Multnomah County as described above.

Discussion: Project management activities throughout the study will include coordination, direction and supervision of all study tasks, attendance at project progress meetings and project team meetings, coordination and correspondence with project team members, preparation of progress reports to ODOT and the County and project administration.

Deliverables:

- Project status reports throughout project duration.

Task 2. Other Planning Activity Coordination

Purpose: To ensure consistency between the rural Westside Multnomah County TSP and other ongoing planning activity in or near rural Multnomah County, including other TSPs and Corridor Studies.

Discussion: Information will be obtained and exchanged throughout the study with other ongoing studies, e.g., the City of Portland's TSP, the Rural Washington County TSP, and the Highway 30 Corridor Study. Information from the Westside Rural Multnomah County TSP will be provided as an information exchange with the local city staff and other affected agencies and consultants.

Deliverables:

- Contact reports from coordination with local municipal staff and other interested parties.

Task 3. Study Background Development

This task was completed during first phase of the study.

Task 4. Work Session on Travel Demand Model

This task was completed during first phase of the study.

Task 5A. Database Preparation

This task was completed during first phase of the study.

Task 5B. Bridge Inventory Review/Assessment

This task was completed during first phase of the study.

Task 6. Identification of Existing Transportation Needs (Continuation)

Purpose: To continue the determination of the needs for the roadway, transit, bicycle, and pedestrian elements of the transportation system in rural area.

Discussion: For roadways, existing capacity and level of service, safety, geometric, and operational needs will be identified. Standards for capacity and level of service, safety, and geometrics will be established for state routes and county roadways.

Planning level estimates of capacity and level of service will be developed for all roadway segments with a functional classification of rural collector or higher. Planning level estimates of level of service will also be developed for all signalized intersections and intersections of roadways with classifications of rural collector or higher. It is assumed no new counts, besides those in the phase I work, will need to be collected. The level of service estimates will be compared with the standards to determine locations with existing deficiencies.

Measures and standards for determining high accident locations will be established for roadway segments and locations. Accident rates/ratings will be calculated for all roadway segments with a functional classification of rural collector or higher and for roadway locations with suspected safety problems. These latter locations will be identified by ODOT and Multnomah County. The accident rates/ratings will be compared to the standards to determine locations with existing safety deficiencies.

Geometric deficiencies will be determined for roadway segments and intersections of roadways having a functional classification of rural arterial or higher based upon the established geometric standards. Deficiencies for state route segments will be identified using ODOT's Potential Development Impact Area (PDIA) estimation methods, including lane width, shoulder width, and horizontal and vertical alignment deficiencies. Deficiencies for county roadway segments may be identified using similar methods or based upon field survey and input from county staff. Intersection deficiencies will be related to lane width, stopping sight distance, and intersection sight distance. These will be identified based upon input from ODOT and Multnomah County staff.

Transit facility and operating needs will be determined based on available information from Tri-Met and other transit providers. Bicycle and pedestrian facility needs will be based on results from the field review and input from ODOT and Multnomah County staff.

Deliverables:

- Text and mapping showing existing:
 - Level of service for roadway segments and intersections
 - High accident roadway segments and intersections
 - Geometric deficiencies for roadway segments and intersections
 - Operational deficiencies for roadway segments and intersections
 - Transit, bicycle, and pedestrian system deficiencies
- Memorandum, in TSP chapter format, describing existing roadway, transit, bicycle, and pedestrian needs

Task 7. Develop Phase 2 Work Program

This task was completed during the first phase of the study.

Task 8. Public and Agency Involvement Program

Purpose: To develop a program to involve and inform residents, businesses, agencies and others in the preparation of the Rural Westside Multnomah County TSP.

Discussion: Multnomah County's Westside Transportation System Planning effort has two very different geographic areas - Sauvie Island and West Hills. Each has distinct technical and community needs. The following scope of work outlines a process that allows separate consideration of each area's issues, preferences, and projects but recognizes the need to build an integrated TSP.

The process begins with widespread mailing of an introductory information fact sheet which will include a response form that collects community concerns and allows self nomination for the Task Force. A phone survey follows to gather a representative sample of views on transportation needs and preferences. A separate task force for each of the areas will be formed (relying primarily on the self nominations for membership) to represent a cross section of the interested community. Self nominated citizens not chosen for Task Force service will serve as Sounding Board members. The Sounding Boards will provide input to the Task Force groups through worksheet mailings. The Task Force groups will meet at the same time and at the same location but will independently develop their recommendations. The groups will come together to integrate their findings into a unified Westside TSP. A second newsletter and Open House to invite review of the recommended TSP will complete the public involvement effort.

The following paragraphs provide additional information on the tasks necessary to complete the process as stated. The format consists of a brief description of the deliverables followed by a list of tasks to be performed by the consultant and remaining unassigned tasks (not part of consultant scope of work).

Fact Sheet 1 - Develop and distribute fact sheet #1. This fact sheet will introduce the project and proposed process to Sauvie Island and West Hills residents. The fact sheet will also include

a response form that will provide the community an opportunity to list and prioritize community issues and express interest in participating on the Task Force or Sounding Board.

Tasks Consultant Will Complete:

- Identify messages
- Develop response form questions
- Review and edit fact sheet

Phone Survey - Conduct a statistically valid survey of residents/businesses to identify community views on transportation needs and preferences. This information will provide additional information for the Task Force.

Tasks Consultant Will Complete:

- Participate in designing questionnaire

Sounding Board Input - The Sounding Board is a self-selected community group (from response forms and surveys) who will provide input on selected information for the Task Force to consider. The Sounding Board serves two primary functions: 1) It provides everyone the opportunity to participate in the process regardless if they are unwilling or unable to participate on the Task Force, and 2) Input received from the Sounding Board will be directly channeled to the Task Force to be used and considered. Sounding Board members will receive information in the mail, which will include a response form (or map to fill out) .

**** Action items incorporated in Task Force actions below****

Task Force Worksessions (2) - There will be two Task Force groups (Sauvie Island & West Hills). These groups will meet twice (at the same location) and will develop TSP recommendations for their separate geographic areas. Worksession 1 will focus on understanding and prioritizing issues, clarifying transportation needs, identifying TSP objectives, and drafting projects. Worksession 2 will refine project lists and prioritize TSP project recommendations. The Task Force groups (Sauvie Island and West Hills) will need to work together for part of worksession 2 to integrate their separate recommendations into a collective Westside TSP.

Tasks Consultant Will Complete:

- Design worksession formats, techniques, and tools (2)
- Facilitate Task Force meetings (2)

Fact Sheet 2 - Develop and distribute fact sheet #2. This fact sheet will update the community on the draft TSP and inform readers of an upcoming Open House.

Tasks Consultant Will Complete:

- Identify messages
- Review and edit fact sheet

Open House - Hold a public Open House to present the Draft Transportation System Plan to the public. This Open House will provide opportunities for the public to comment on the draft Plan.

Tasks Consultant Will Complete:

- Design Open House - identify objectives and layout meeting stations
- Review display materials
- Attend, set up and tear down Open House

Deliverables:

- Assistance with the content and development of Fact Sheet #1.
- Assistance in designing phone survey.
- Work session format design and facilitation.
- Assistance with the content and development of Fact Sheet #2.
- Technical materials and mapping displays.

Task 9. Identification of Future Transportation System Needs

Purpose: To determine the future needs for the roadway, transit, bicycle, and pedestrian elements of the transportation system for the Westside TSP area.

Discussion: Future transportation system needs will be based on 20-year travel forecasts and will look at the long-term needs of the systems. The future Westside roadway network modeling will use the expansion of the METRO model for standardization in rural areas that is being prepared by ODOT and METRO. If necessary, additional refinements to the Transportation Analysis Zones (TAZs) for the westside rural areas of Multnomah County will be done. The modeling will use existing Metro population, housing, and employment data for the existing conditions and Metro projections for the future.

Future transportation needs will be identified for the system consisting of roadways, transit, bicycle and pedestrian modes. Future roadway capacity and level of service will be estimated for all roadway segments with a functional classification of minor arterials/major collectors or higher. Where TSP studies are being or have been prepared adjacent to the Westside area, coordination between findings of those TSPs identified needs and the rural needs identification will be necessary for consistency.

Future roadway geometric deficiencies related to changes in functional classification and/or increased traffic volumes will be identified. The investigation and identification of future operational deficiencies will be limited to an analysis of the level of service at unsignalized intersections identified in Phase 1.

A technical memorandum will be prepared summarizing the travel demand forecasting methodology and travel forecasts. A second technical memorandum will be prepared describing the identification of future roadway, public transit, bicycle and pedestrian needs.

Deliverables:

- Text and mapping showing future :
 - LOS for unsignalized intersections.
 - geometric deficiencies for intersections.
 - operational deficiencies for intersections.
 - transit, bicycle and pedestrian needs.

- Technical memoranda that describes and identifies the future roadway, bicycle, transit and pedestrian needs.

Task 10. Development of Transportation System Alternatives

Purpose: To develop transportation system alternatives for the Westside TSP area that can reasonably be expected to meet the identified existing and future needs and that are consistent with existing Corridor Strategies, Transportation Goals and Objectives.

Discussion: A preliminary set of alternatives that address the needs identified for the Westside area in Task 9 will be drafted. The components of the alternatives will include roadways, bicycle and pedestrian facilities. Public transportation/transit will be included within the Westside rural area of the County under study. A "No Project" Alternative will be developed to be used for baseline comparisons. For the build alternatives, roadway improvements alternatives could include:

- Addition of -- travel lanes, through lanes, left or right turn lanes, medians (with or without left turn lanes), passing lanes on two-lane highways, acceleration or deceleration lanes, and/or climbing lanes.
- Implementation of -- lane or shoulder widenings, horizontal or vertical re-alignments (in conjunction with lane additions or widening only), access management including driveway consolidation, and signalization.

Signalization, if warranted, would be considered only at intersections for capacity improvements and on state routes would be limited to intersections within local urban areas. Improvements for safety problems would be based on the evaluation of accident data and input from County and ODOT staff.

Bicycle and pedestrian facility improvements for the alternatives will be based on information from the Metro land use and employment forecasts, the public involvement program, the County's Comprehensive Plan and other planning documents and input from the County and ODOT staff. Transit improvement alternatives will be determined based on available information and input from Tri-Met.

TDM and TSM measures where applicable will be considered as elements of the alternatives. The type and feasibility of potential these measures will be determined on a case by case basis when specific existing and future system needs are identified. The preliminary findings will be coordinated with other community plans and policies.

Deliverables:

- Mapping showing Westside roadway, bicycle, pedestrian and transit system alternatives.
- Technical memorandum that will describe the development of the Westside transportation system alternatives.

Task 11. Evaluation of Transportation System Alternatives

Purpose: To compare the proposed alternatives as to their ability to meet the Westside's transportation systems existing and future needs.

Discussion:

A set of evaluation criteria and screening methodology will be developed. Using all the information gathered and developed in the previous tasks, the screening methodology will be applied on the alternatives developed for the Westside rural area in Task 10. The objective is to evaluate the alternatives for "best" plan and strategy for the Westside rural area in Multnomah County. The improvement measures in the area's proposed alternative will be evaluated for potential inconsistencies with the County Comprehensive Plan and the requirements of the Transportation Planning Rule regarding transportation improvements in rural areas (OAR 660-12-065). The findings will be presented to the task force for recommendations for the locally preferred TSP for the Westside area.

Deliverables:

- Technical memorandum that will describe the screening and the selection of the recommended alternative for the Westside rural area.

Task 12. Preparation of Rural Transportation System Plans

Purpose: To develop and refine the proposed system plan into preliminary and final TSP reports for Westside rural area.

Discussion: After the screening of the alternatives in Task 11, the preferred transportation system alternative for the Westside area will be further developed and refined.

The existing roadway functional classifications will be examined in light of the inventory and identification of existing system needs, if warranted, modifications to the existing designation will be recommended. The future roadway system functional classifications will be recommended based on traffic volumes and patterns, amount and type of projected surrounding development, recommended roadway improvements, and the relationship of the roadway to the entire roadway network.

A method for prioritizing the system improvements recommended in the proposed alternative for the Westside area's TSP will be created and applied. The area's prioritized list will be evaluated for consistency and logic in the order of listing. Preliminary order of magnitude cost estimates will be developed for the system improvements in the proposed TSP alternative.

A TSP report will be prepared for area containing chapters on the following subjects:

- Description of the planning process, including descriptions of the existing inventory and the issues, opportunities and constraints found during the study process and a description of the methodologies used and findings of the database preparation and model development.
- The identification of the existing and future transportation system needs.
- Description of the alternatives examined, the screening methodology and the selected improvements (the proposed alternative).
- Preliminary cost estimates.

The preliminary TSP report will be revised, incorporating review comments from the County, ODOT and the task force and finalized as the Final TSP Report.

Deliverables:

- Preliminary draft Transportation System Plan.
- Final Transportation System Plans for the Westside rural areas.

Task 13. County and State to Perform

The following tasks are to be performed in conjunction with Task 8 – Public and Agency Involvement Program:

Fact Sheet # 1

- Write and revise fact sheet
- Develop and revise fact sheet layout
- Identify carrier routes; coordinate and finance courier route mailings
- Identify, coordinate and finance mailings to other interested stakeholders
- Enter names and addresses from response form into database

Phone Survey

- Collect and compile response results into summary
- Design questionnaire - clarify informational needs and formulate questions
- Select interviewees and conduct survey
- Collect and compile information

Task Force Work Sessions (2)

- Form Task Force (may include asking certain people to participate to ensure the Task Force is representative)
- Identify Sounding Board members
- Develop and distribute materials for two Sounding Board mailings
- Collect, compile, and summarize Sounding Board input prior to the two Task Force Meetings
- Coordinate two Task Force meetings: room arrangements, refreshments, meeting reminder notices

Fact Sheet #2

- Write and revise fact sheet
- Develop and revise fact sheet layout
- Coordinate and finance courier route mailings
- Identify, coordinate and finance mailings to other interested stakeholders

Open House

- Coordinate Open House: Identify meeting room, refreshments
- Produce Open House summary report

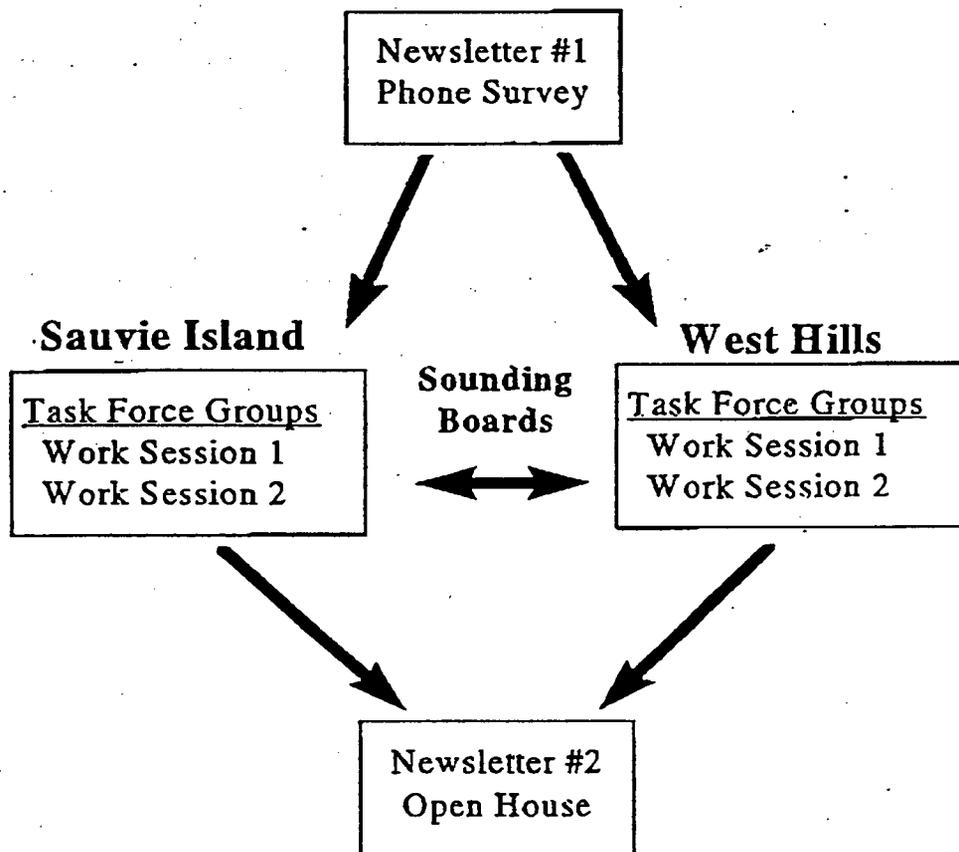
Media Relations

- Media Relations: Develop two press releases for local newspapers – one at the beginning of the project and one prior to the Open House. Distribute to newspapers
- Write and develop display ads to be inserted in local newspapers.

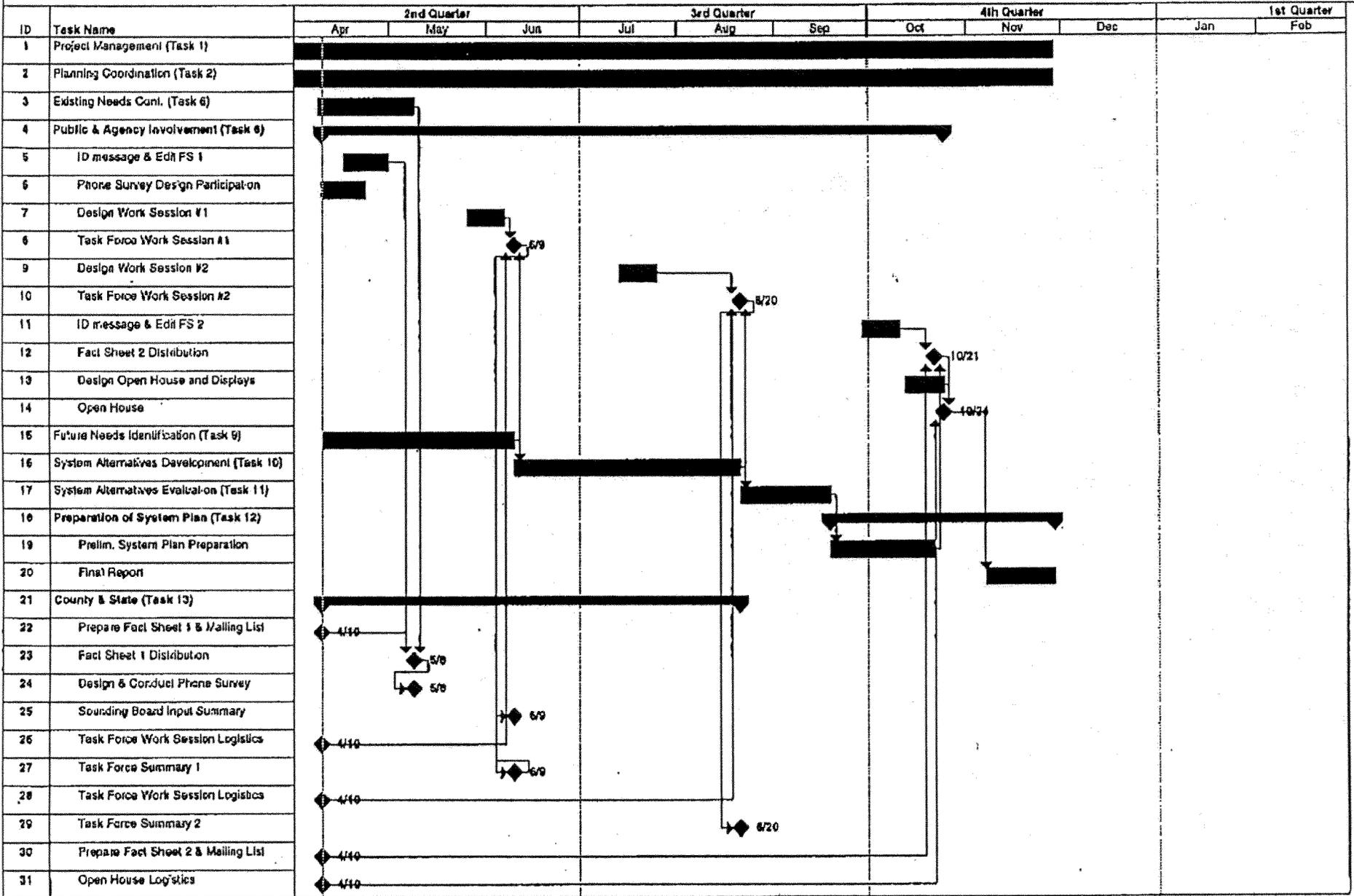
Deliverables:

- Produce and distribute Fact Sheet #1
- Produce survey summary report
- Produce Sounding Board summary report
- Produce and distribute Fact Sheet #2
- Produce Open House summary report
- Produce two display ads

Westside TSP Public Involvement Approach



West Rural Multnomah County TSP



Project: Schedph2.MPP
Date: Thu 4/10/97

Task		Milestone		Rolled Up Task		Rolled Up Progress	
Progress		Summary		Rolled Up Milestone			

Human Resources Reengineering Background and Process

There have been a number of efforts to look at important functions of our human resources systems including stakeholder groups centered on pieces of the system such as recruitment. As the County struggled with the implications of Measure 47, it became clear that the organization strongly required the human resource service delivery system to be rethought and reengineered to serve the County better. A group representing major departments and chaired by Support Services was commissioned for the task.

The first work of the committee was linked directly to the impact of Measure 47/50 with products such as a retirement incentive program and countywide coordination of layoff and assistance to displaced employees.

It was followed by a broader effort to identify the problems in the existing system, rethink the balance between central support and departmental operations, and to propose changes which would better fit the county's management vision and commitment to RESULTS. The committee reviewed the key functions of Multnomah County's human resource program including personnel services, employee benefits and labor relations to identify how to best align key functions.

Major problems with the existing system included:

- Lack of clarity on role and responsibility for major human resources functions
- Lack of clearly focussed accountability for the performance of human resource functions
- Recruitment processes perceived as slow and unable to produce quality outcomes
- Lack of clear and accessible policy
- Lack of strategic planning and organizational development support
- Lack of support for management in dealing with the day to day problems of employees
- Lack of capacity to address classification and compensation issues, both to assure consistency and equity in the existing classification plan and to consider new options
- Lack of proactive development of state of the art personnel systems and best practices

Alignment Between Departments and Central Support

Although the Human Resources committee has established a detailed matrix which addresses central and departmental roles in 19 broad human resource function areas, the policy vision for alignment can be more simply stated.

There should be a balance of responsibilities between the agencies and central services that assures the very best use of resources and expertise and produces the best management of the County's human resources:

Agencies are held responsible for the results of county programs and to enhance their ability to manage, they should be delegated key portions of the human resources program under central policies and procedures. Under this proposal, agencies will:

- assume primary responsibility for recruitment and selection;
- enhance their ability to offer consultation and support to management and employees;
- become active participants in the development of policies and procedures and coordination of the human resource functions.

The Department of Support Services central unit should maintain primary responsibility in areas where consistency, policy oversight and cost effectiveness are critical. This includes:

- countywide policy and procedure development and training;
- maintenance and development of the classification and compensation plan for the county;
- technical consultation and assistance;
- proactive development of state of the art systems and best practices;
- centralized coordination of county-wide HR programs as specified;
- monitoring and evaluating the county's human resource program.

Active partnership and collaborative sharing in development of human resource policies and strategies for the county is the vision. Values for the collaboration include:

- Maintenance of the principles of the merit system and assurance that laws, ordinances, procedures and bargaining contracts are enforced;
- Continued support for the affirmative action principles and goals of the County;
- Support and enhancement of the County's role as employer;
- Collaborative and collegial operations to meet customer needs.

Implementation

To achieve this change will require an investment of resources. The problems identified by the Human Resources Committee do not result solely from the failure to integrate and align these functions with a management vision, but primarily from a lack of resources for an increasing important and complex area of organizational and management support. While Multnomah County has grown with the transfer of responsibilities from the state and other external developments, we have failed to invest in the staff resources necessary to respond either to the increased numbers of employees or the increased complexity of the legal environment. As a result, customer service has suffered and the County has been unable to deal strategically and proactively with workforce issues and policies.

MEETING DATE: MAY 08 1997

AGENDA #: C-11

ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE AND METRO INTERGOVERNMENTAL REVENUE AGREEMENT

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: 3 Minutes

DEPARTMENT: Juvenile and Adult Community Justice

CONTACT: Alandria Taylor TELEPHONE#: 248-3968

BLDG/ROOM#: 311/DJJS

PERSON(S) MAKING PRESENTATION: Phil Lingelbach

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

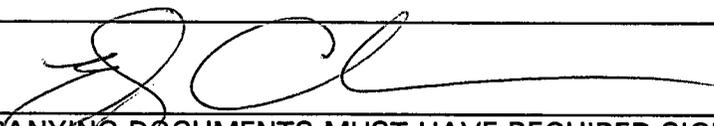
SUGGESTED AGENDA TITLE:

Ratification of a two year Intergovernmental Revenue Agreement between the Department of Juvenile and Adult Community Justice and METRO to provide litter pick-up services done at METRO's Central Transfer Station for Browning-Ferris Industries (BFI); the youth retain a portion of the stipend and release the remaining portion for restitution to their victims.

5/8/97 ORIGINALS to ALANDRIA TAYLOR

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT MANAGER: _____



ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

12/95

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 28 AM 8:46



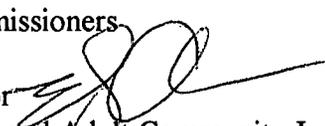
MULTNOMAH COUNTY OREGON

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE
JUVENILE COMMUNITY JUSTICE
1401 N.E. 68TH
PORTLAND, OREGON 97213
(503) 248-3460
TDD 248-3561

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

MEMORANDUM

TO: Beverly Stein, Chair
Board of County Commissioners

FROM: Elyse Clawson, Director 
Department of Juvenile and Adult Community Justice

DATE: April 21, 1997

RE: Approval of a two year Intergovernmental Revenue Agreement between the Department of Juvenile and Adult Community Justice and METRO, Regional Environmental Management, Environmental Services

- I. RECOMMENDATION: The Department of Juvenile and Adult Community Justice recommends the Chair's approval of a two year Intergovernmental Revenue Agreement between METRO, Regional Environmental Management, Environmental Services and DJACJ to provide a weekly restitution program for adjudicated and diverted youth.

- II. BACKGROUND/ANALYSIS: The Department's PayBack Restitution Program has operated for the last nine (9) years. The services under this agreement include one part-time juvenile offenders work crew with crew supervisor to provide litter pick-up services done at METRO's Central Transfer Station for Browning-Ferris Industries (BFI). Juvenile offenders will be referred through either the DJACJ Adjudication or Diversion Units and participate on work crews that provide a learning environment for job skill development, community services and a means of earning a stipend to make restitution payments.

Youth are responsible for paying 75% of their net earnings towards the balance owed on their restitution leaving the remaining 25% as a "Stipend" or allowance for their personal use.

- III. FINANCIAL IMPACT: \$26,208 is added to the DJACJ's budget providing a weekly restitution program "PayBack" for youth referred through the Department's Adjudication or Diversion Services

IV. LEGAL ISSUES:

N/A

V. CONTROVERSIAL ISSUES:

N/A

VI. LINK TO CURRENT COUNTY POLICIES: DJACJ continues to comply with the Court mandated restitution requirements in providing structured working environments for at-risk youth.

VII. CITIZEN PARTICIPATION:

N/A

VIII. OTHER GOVERNMENT PARTICIPATION: City of Portland Water Bureau is a partner with the Department's PayBack Restitution Program.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal

Contract # 700727

Prior-Approved Contract Boilerplate: Attached: Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$50,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input checked="" type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input type="checkbox"/> Intergovernmental Agreement over \$50,000</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p style="text-align: center;">AGENDA # <u>C-11</u> DATE <u>5/8/97</u></p> <p style="text-align: center;">DEB BOGSTAD BOARD CLERK</p>
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Department: Juvenile and Adult Community Justice

Date: April 18, 1997

Contract Originator: Phil Lingelbach

Phone: 306-5677

Bldg/Room: 311/DJJS

Administrative Contact: Alandria Taylor

Phone: 248-3968

Bldg/Room: 311/DJJS

Description of Contract: *This two year Intergovernmental Revenue Agreement between METRO and Juvenile and Adult Community Justice provides litter pick-up services done at METRO's Central Transfer Station for Browning-Ferris Industries (BFI); the youth retain a portion of the stipend and release the remaining portion for restitution to their victims.*

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR #: _____ (Check all boxes that apply) Contractor is MBE WBE QRF N/A None

Original Contract No. _____ (ONLY FOR ORIGINAL RENEWALS)

<p>Contractor Name: <u>METRO</u></p> <p>Mailing Address: <u>600 NE Grand Ave.</u> <u>Portland, Oregon 97232</u></p> <p>Phone: <u>797-1700</u></p> <p>Employer ID# or SS#: _____</p> <p>Effective Date: <u>July 1, 1997</u></p> <p>Termination Date: <u>June 30, 1999</u></p> <p>Original Contract Amount: \$ <u>26,208</u></p> <p>Total Amt of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ <u>26,208</u></p>	<p>Remittance Address (if different) _____</p> <p>Payment Schedule Terms</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p style="padding-left: 20px;">Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>
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REQUIRED SIGNATURES:

Department Manager: _____

Date: 4-23-97

Purchasing Manager: _____
(Class II Contracts Only)

Date: _____

County Counsel: Katie Gutzmer

Date: 4/25/97

County Chair/Sheriff: Melody Dean

Date: May 8, 1997

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

Date: _____

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01											
02											
03											

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

CONTRACT # 700727

INTERGOVERNMENTAL REVENUE AGREEMENT

THIS AGREEMENT is between METRO, Regional Environmental Management, Environmental Services Division, hereinafter referred to as "METRO", and Multnomah County; Department of Juvenile and Adult Community Justice; hereinafter referred to as "COUNTY".

WITNESSETH:

1. Term: The term of this Agreement will be from July 1, 1997 to and including June 30, 1999 unless sooner terminated under the provisions hereof.
2. Services: This Agreement provides for a twice weekly litter pick-up service by the PayBack Program, a restitution program for youth referred through the COUNTY'S Department of Juvenile and Adult Community Justice Adjudication, Probation or Diversion Units.

3. SCOPE OF COUNTY SERVICES:

A. The COUNTY shall provide to METRO those services set out below:

- 1) Provide a COUNTY Crew Leader for the youth crew;
- 2) Screen youth for appropriate crew composition;
- 3) Provide transportation for youth crew to and from activity site;
- 4) Provide continuous on-site supervision of youth crew;
- 5) Provide twice weekly litter pick-up services on road sides along the established route (both sides of the road on NW Front Avenue from NW Kitridge to Gills Lake Pump Station (1/2 mile North of NW 61st), NW 61st from NW Front to Hwy. 30, Hwy. 30 to St. Johns Bridge on/off ramp and Hwy. 30 to NW Kitridge, NW Kitridge to NW Front Avenue.);
- 6) Deliver bagged litter to METRO Central Transfer Station disposal site.

B. Services will be performed through the term of the Agreement.

INTERGOVERNMENTAL REVENUE AGREEMENT

METRO

Page 2 of 6

4. SCOPE OF METRO SERVICES:

A. To assist the COUNTY in carrying out its obligations hereunder, METRO or it's designee shall perform the services set out below:

- 1) Provide instructions, as needed, to COUNTY supervisors;
- 2) Inspect sites after completion;
- 3) Provide gloves and road safety vests for the youth crew;
- 4) Provide two portable road signs which alert traffic of the presence of crews on shoulders of the road;
- 5) Provide trash collection bags;
- 6) Accept bagged refuse at specified disposal site free of charge.

B. Services will be performed throughout the term of the Agreement.

5. **COMPENSATION:** METRO agrees to pay COUNTY \$2,184 per month, up to \$26,208 annually for performance of those services provided hereunder.

6. **BILLING AND PAYMENT PROCEDURES:** The COUNTY's billing and METRO's payment procedures will be set as follows:

A. COUNTY agrees to invoice METRO quarterly at the end of each quarter throughout the term of this Agreement retroactively from July 1, 1997 through September 1997 for \$6,552, and for October through December 1997 \$6,552 and \$6,552 each quarter thereafter through the term of this agreement.

1) COUNTY agrees to invoice METRO at the end of each quarter and mail them to:

METRO
Regional Environment Management Department
600 NE Grand Avenue
Portland, Oregon 97232

2) METRO agrees to notify COUNTY within 30 days if any change in the designated contact person for COUNTY occurs during the term of this agreement. COUNTY may contact:

INTERGOVERNMENTAL REVENUE AGREEMENT

METRO

Page 3 of 6

Ray Barker, Manager Assistant

Phone: (503) 797-1694

Fax: (503) 797-1795

B. METRO agrees to remit payment to COUNTY within 30 days of receipt of invoice from COUNTY.

- 1) METRO agrees to make a check payable to Multnomah County and mail it to:

Department of Juvenile and Adult Community Justice
1401 NE 68th Avenue
Portland, Oregon 97213

- 2) COUNTY agrees to notify METRO if any change in their designated contact person for METRO occurs during the term of this agreement. METRO may contact:

Phil Lingelbach, Supervisor
Phone: (503) 306-5677
Fax: (503) 248-3218

Gloria Schwindt, Program Coordinator
Phone: 248-3145

Paul Kelly, Crew Supervisor
Cell Phone: 329-2976

C. COUNTY agrees to provide METRO, as part of the quarterly invoice statement, a report that indicates number of days worked and total weight of debris picked up during the invoiced quarter.

7. CONFIDENTIALITY: METRO agrees to keep all COUNTY information confidential in accordance with state and federal statutes and rules governing confidentiality.

8. INDEMNIFICATION AND INSURANCE COVERAGE: The COUNTY will hold harmless, defend, and indemnify METRO and its officers, agents, and employees against all claims, demands, actions, and suits or expenses brought against any of them arising from the COUNTY's work under the terms of this Contract.

INTERGOVERNMENTAL REVENUE AGREEMENT

METRO

Page 4 of 6

A. METRO will hold harmless, defend, and indemnify the COUNTY and its officers, agents and employees against all claims, demands, actions and suits or expenses of any nature resulting from or arising out of the acts, errors or omissions of METRO or its officers, agents or employees who are under the direct supervision and control of METRO or its officers, agents or employees.

B. Insurance shall be the responsibility of the COUNTY. METRO may, upon request, obtain a declaration from the COUNTY that the COUNTY is self-insured for public liability and property damage.

9. WORKER'S COMPENSATION INSURANCE: county maintains Worker's Compensation insurance coverage for all employees as a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes.

10. MODIFICATION: Any modification of the provisions of the Agreement will be reduced to writing and signed by the parties

11. INTEGRATION: This Agreement including any attachments incorporated herein, contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements.

12. NONVIOLATION OF TAX LAWS: The COUNTY hereby certifies under penalty of perjury that to the best of COUNTY's knowledge, COUNTY is not in violation of any Oregon Tax laws described in ORS 305.380(4).

13. SEVERABILITY: If any terms or provisions of this contract are held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

14. EARLY TERMINATION: This Agreement may be terminated by either party prior to the expiration of the agreed-upon term:

A. Upon 30 days written notice to the other, delivered by certified mail or in person or;

INTERGOVERNMENTAL REVENUE AGREEMENT

METRO

Page 5 of 6

- B. Immediately upon mutual written consent of the parties or at such time as the parties agree.**
- C. Upon termination, unless Contract obligations have already been suspended, payment to the COUNTY will be prorated to and including the day of termination and will be in full satisfaction of all claims by COUNTY against METRO under the Agreement.**

INTERGOVERNMENTAL REVENUE AGREEMENT
METRO
Page 6 of 6

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers the date first written above.

MULTNOMAH COUNTY, OREGON

By: _____
Contractor (print)

By: Beverly Stein
Beverly Stein, Chair
Board of County Commissioner

Date: May 8, 1997

Signature & Title

Date: _____
APPROVED AS TO FORM:

By: _____
TITLE: _____
Metro Counsel

By: Elyse Clawson
Elyse Clawson, Director
Juvenile and Adult Community

Date: 4-24-97

DATE: _____

By: Phil Linglebach
Phil Linglebach
Juvenile Justice Supervisor

Date: 4/22/97

REVIEWED:

SANDRA DUFFY, Acting County Counsel
for Multnomah County, Oregon

By: Katie Gaetjens
Katie Gaetjens
Assistant County Counsel

Date: 4/25/97

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-11 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR: _____

DEPARTMENT: Juvenile Justice Services
CONTACT: Meganne Steele

DIVISIONS: Counseling/Court Svcs et al
Telephone: 248-3961

*NAME[S] OF PERSON MAKING PRESENTATION TO BOARD: Bill Morris

SUGGESTED AGENDA TITLE [To assist in preparing a description for the printed agenda]

The Department of Juvenile Justice Services Budget Modification DJJS3 adds \$93,773 in Office of Justice Program "Weed and Seed" grant dollars to fund a Juvenile Counselor Lead and contracted services to youth.

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

This budget modification adds new grant money to Counseling and Court Services, Department Management and Support Services divisions. The money spans two fiscal years, covering the period of October 1, 1996 through September 30, 1997. The money added this fiscal year funds .75 FTE Juvenile Counselor Lead; contract dollars for consultants, trainers and the Urban League of Portland's "Safe Haven" Project; and mileage reimbursement and travel. The grant covers its own Indirect Cost support.

3. REVENUE IMPACT [Explain revenues being changed and the reason for the change]

- Increases Federal/State Fund 156, Revenue Code 2104, by \$93,773.
- Increases Insurance reimbursement from Federal/State by \$3,905.
- Increases Contingency, via Indirect Cost, by \$2,819.

4. CONTINGENCY STATUS [to be completed by Finance/Budget]

_____	Contingency before this modification [as of _____	\$ _____
[Specify Fund]	[Date]	
	After this modification	\$ _____
<u>Therese E. Eggen</u>	<u>1-10-97</u>	<u>M. Steele</u>
[Originated By]	[Date]	[Department Manager]
<u>Kayne Dargen</u>	<u>4/23/97</u>	<u>C. Umbras</u>
[Finance/Budget]	[Date]	[Employee Relations]
<u>Rebecca L. Bousted</u>	<u>5/8/97</u>	
[Board Approval]	[Date]	

97 MAR 27 AM 8:29
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS



MULTNOMAH COUNTY OREGON

DEPARTMENT OF JUVENILE JUSTICE SERVICES
1401 N.E. 68TH
PORTLAND, OREGON 97213
(503) 248-3460
TDD 248-3561

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: ELYSE CLAWSON, DIRECTOR
JUVENILE AND ADULT COMMUNITY JUSTICE

DATE: March 18, 1997

RE: Department of Juvenile and Adult Community Justice request for budget modification approval

I. Recommendation/Action Requested:

Budget modification for the Department of Juvenile and Adult Community Justice to add \$93,773 in Office of Justice Program "Weed & Seed" grant dollars to fund a Juvenile Counselor Lead and contracted service to youth.

This budget modification adds new money to Counseling and Court Services, Department Management and Support Services divisions. The money added this fiscal year funds .75 FTE Juvenile Counselor Lead; contract dollars for consultants, trainers and the Urban League of Portland's "Safe Haven" Project; and mileage reimbursement and travel. The Grant covers its own Indirect Cost Support.

II. Background/Analysis:

Operation "Weed & Seed", is a U.S. Department of Justice community-based initiative, is an innovative and comprehensive multi-agency approach to law enforcement, crime prevention, and community revitalization.

The strategy involves a two-pronged approach. First, law enforcement agencies and prosecutors cooperate in "weeding out" criminals who participate in violent crime and drug abuse, attempting to prevent their return to the targeted area. Second, "seeding" brings human services to the area. Encompassing prevention, intervention, treatment, and neighborhood revitalization.

Official Recognition recognizes sites implementing a Weed & Seed strategy. Sites apply for Official Recognition by submitting their strategy to the Executive Office for Weed & Seed (EOWS) for review and approval. The strategy is locally driven and developed in accordance with EOWS guidelines. Funding for this program comes from the Executive Office for Weed and Seed, the Bureau of Justice Assistance, and the Asset Forfeiture Fund.

III. Financial Impact:

The Grant amount is \$93,773 which spans two fiscal years, covering the period of October 1, 1996 through September 30, 1997.

IV. Legal Issues:

None

V. Controversial Issues:

None

VI. Link to Current County Policies:

None

VII. Citizen Participation:

Urban League of Portland, Portland practitioners, and a committee of regional professionals from a diverse field of practice, Mental Health and Community Health Clinics are involved in this project.

VIII. Other Government Participation:

Portland Public Schools is a partner with Multnomah County Department of Juvenile and Adult Community Justice.

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR: _____

DEPARTMENT: Juvenile Justice Services
CONTACT: Meganne Steele

DIVISIONS: Counseling/Court Svcs et al
Telephone: 248-3961

*NAME[S] OF PERSON MAKING PRESENTATION TO BOARD: Bill Morris

SUGGESTED AGENDA TITLE [To assist in preparing a description for the printed agenda]

The Department of Juvenile and Adult Community Justice Budget Modification DJJS 5 adds \$15,000 Washington County Revenue To Provide Facilitation of A Save Our Youth Program For Washington County Youth and Their Families.

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

This budget modification adds the \$15,000 referenced in April 3's Consent Calendar item C-3, Washington County Juvenile Department's intergovernmental agreement 700617. The modification adds staff overtime, contracted facilitators, mileage reimbursement and operational supplies to fund the facilitation of the Save Our Youth Program in Washington County.

3. REVENUE IMPACT [Explain revenues being changed and the reason for the change]

- Increases County General Fund's Rev. Code 2777 by \$15,000.
- Increases Insurance reimbursement from General Fund by \$110.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 25 AM 11:25

4. CONTINGENCY STATUS [to be completed by Finance/Budget]

_____ Contingency before this modification [as of _____ \$ _____ [Specify Fund] [Date]		_____ After this modification \$ _____	
<u>Thomas H. Eighmey</u> [Originated By]	<u>3-31-97</u> [Date]	<u>M Steele</u> [Department Manager]	<u>4-4-97</u> [Date]
<u>Karime Dargam</u> [Finance/Budget]	<u>4-25-97</u> [Date]	_____	_____ [Date]
<u>Deborah C. Bogsted</u> [Board Approval]	<u>5/8/97</u> [Date]	_____	_____ [Date]



MULTNOMAH COUNTY OREGON

DEPARTMENT OF JUVENILE AND ADULT COMMUNITY JUSTICE
JUVENILE COMMUNITY JUSTICE
1401 N.E. 68TH
PORTLAND, OREGON 97213
(503) 248-3460
TDD 248-3561

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Elyse Clawson, Director
Department of Juvenile And Adult Community Justice

DATE: April 21, 1997

RE: Budget Modification Multnomah County Department of Juvenile And Adult Community Justice (DJACJ)

I. RECOMMENDATION/ACTION REQUESTED:

The Department of Juvenile And Adult Community Justice recommends the Board's approval of a Budget Modification increasing the DJACJ budget by \$15,000 referenced in April 3's Consent Calendar item C-3, Washington County Juvenile Department's Intergovernmental Agreement 700617. The modification adds staff overtime, contracted facilitators, mileage reimbursement and operational supplies to fund the facilitation of the Save Our Youth Program in Washington County.

II. BACKGROUND/ANALYSIS:

The SOY Program has been operational since September, 1993 and is a collaborative effort between Emanuel Hospital, Portland Public School and the Gang Resource Intervention Team (GRIT) Unit of the DJACJ. United Way and Emanuel Foundation provided overall funding the first year of operation supplemented with in-kind donations from each participating agency.

The project consists of a slide show depicting injuries occurring from assaultive behavior presented by medical professionals and follow-up groups. The project will serve 30 youth and 30 parents/guardians within a 3 cycle period between February 1, 1997 June 30, 1997.

RETROACTIVE STATUS

This Agreement is retroactive due to extended contract negotiations and coordination between the participating agencies.

BOARD OF COUNTY COMMISSIONERS
Intergovernmental Revenue Agreement
Page 2

III. FINANCIAL IMPACT:

This revenue allows Washington County to buy SOY Program services from DJACJ for a total of \$15,000.

IV. LEGAL ISSUES:

N/A

V. CONTROVERSIAL ISSUES:

N/A

VI. LINK TO CURRENT COUNTY POLICIES:

N/A

VII. CITIZEN PARTICIPATION:

N/A

VIII. OTHER GOVERNMENT PARTICIPATION:

N/A

MEETING DATE: MAY 08 1997

AGENDA NO: UC-1

ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Deed to Contract Purchasers for Completion of Contract.

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: Consent

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/300/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Request approval of Deed to ESTATE OF HARRY C. KIRKELIE, DECEASED & ELAINE J. KIRKELIE contract purchaser for completion of Contract #15724 (Property repurchased by former owner).

Deed D971483 and Board Order attached.

5/8/97 ORIGINAL DEED & COPIES OF ALL TO TAX TITLE

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)

DEPARTMENT MANAGER: *Pat Gruber Larry F. Nicholas*

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 MAY - 6 PM 4:43

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of the Execution of Deed D971483
Upon Complete Performance of a Contract to

ESTATE OF HARRY C. KIRKELIE, DECEASED
AND ELAINE J. KIRKELIE

ORDER
97-90

It appearing that heretofore, on February 18, 1992, Multnomah County entered into a contract with ESTATE OF HARRY C. KIRKELIE, DECEASED and ELAINE J. KIRKELIE for the sale of the real property hereinafter described; and

That the above contract purchasers have fully performed the terms and conditions of said contract and are now entitled to a deed conveying said property to said purchasers;

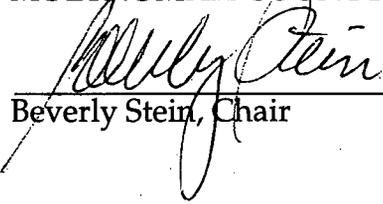
NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchasers the following described real property, situated in the County of Multnomah, State of Oregon:

LOT 2, BLOCK 5 WILLAMETTE, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

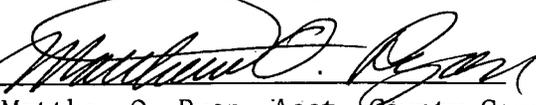
Dated at Portland, Oregon this 8th day of May, 1997.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:
Sandra N. Duffy, Acting County Counsel
Multnomah County, Oregon

By 
Matthew O. Ryan, Asst. County Counsel

DEED D971483

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to ESTATE OF HARRY C. KIRKELIE, DECEASED and ELAINE J. KIRKELIE, Grantees, the following described real property, situated in the County of Multnomah, State of Oregon:

LOT 2, BLOCK 5 WILLAMETTE, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$13,696.16.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

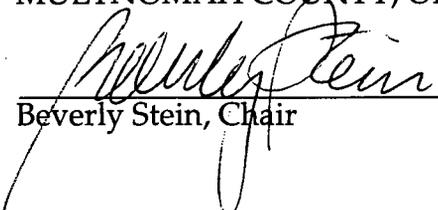
Until a change is requested, all tax statements shall be sent to the following address:

ESTATE OF HARRY C. KIRKELIE
ELAINE J KIRKELIE
5641 N WILBUR AVE
PORTLAND OR 97217

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 8th day of May 1997, by authority of an Order of the Board of County Commissioners heretofore entered of record.



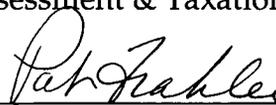
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:
Sandra N. Duffy, Acting County Counsel
Multnomah County, Oregon

DEED APPROVED:
Kathy Tuneberg, Acting Director
Assessment & Taxation

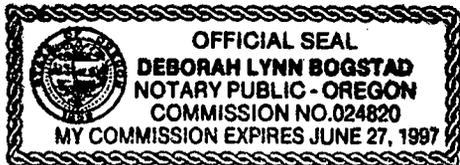
By 
Matthew O. Ryan, Asst. County Counsel

By 
Pat Frahler

After recording, return to Multnomah County Tax Title (166/300)

STATE OF OREGON)
) **ss**
COUNTY OF MULTNOMAH)

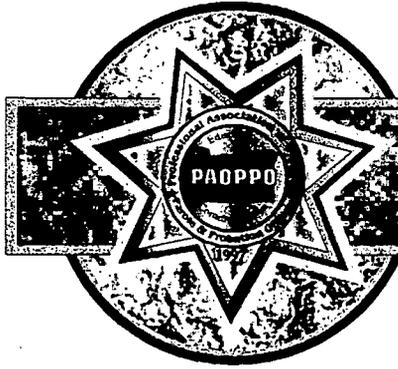
The foregoing instrument was acknowledged before me this 8th day of May, 1997, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/97



Professional Association of Oregon Parole & Probation Officers

5530 S.E. Pine Street Portland, OR 97215

PRESENTATION TO THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS MAY 8, 1997

Submitted by: The Professional Association of Oregon Parole and Probation Officers, Paul S. Frank, Presenter. I have been a Parole and Probation Officer for 31 years. I am Vice President of the Professional Association of Oregon Parole and Probation Officers, and am here in that capacity.

Today, we would like to address the Commission on several important issues as you begin to finalize the budget for the Department of Juvenile and Adult Community Justice. Before I present specifics, let me say that our management believes they have presented the best budget they could given the constraints created by the passage of Ballot Measure 47. However, the Board of Directors of our Association believes the public and the Commission need to be aware of critical issues and events that have occurred since the county adopted Option One as its community corrections strategy.

The first major issue that needs attention is the improper utilization of correctional technicians. A court case that began in Washington County in 1994 finally reached the Oregon Supreme Court in 1997. It is the case of the Federation of Parole and Probation Officers vs. Washington County, case # C940419cv. The crux of the case was that the government, i.e., Washington County Community Corrections Department, was intentionally violating Oregon statutes regarding the use of paraprofessionals who were performing the duties of parole and probation officers. After many years of legal maneuvering, first through grievance procedures and then through years in the court system, the Oregon Supreme Court upheld a Court of Appeals decision which ordered Washington County not to use Case Monitors to perform the duties of parole and probation officers. (Multnomah County has a similar classification of employee to case monitors named Correctional Technician). The court's decision was implemented in a Circuit court order dated March 24, 1997. That decision (copy attached) ordered Washington County to either appoint the Case Monitors as parole and probation officers and require them to be certified by the Board of Public Safety Standards and Training (BPSST) or only allow them to perform clerical functions under the direction of parole and probation officers. This court decision directly affects Multnomah County as it employs 56 correctional technicians, many of which perform duties of parole and probation officers. This issue has been brought to the attention of our Department's management on several occasions. Amazingly, our departments response was that, before any changes are implemented to bring it into compliance with the statutes and case law,

they would wait and see if the Legislature would change the applicable statutes. In essence, the County has seemingly made the decision will continue to violate the law, hoping it will be changed. Further, they have also based their budget on the hope these statutes will be amended. In effect, they have budgeted for many correctional technician positions which would continue to perform duties that are only legally performed by parole and probation officers. We believe this is an inappropriate use of the budget process and is bad public policy. Ultimately one has to ask the question: "Does the Department stand above the law?"

The second point we want to address is the budget. We are opposed to the budget as submitted to the Chair's office which called for cutting 13 parole and probation officer positions while eliminating only three correctional technician positions. Again, we view this as poor public policy. Apparently, the Department believes it can replace two parole and probation officers with three correctional technicians for about the same money. This proposed practice appears to be in violation of Oregon statutes and prevailing case law. Again, bad public policy. There are differences between the two positions. Parole and probation officers are sworn peace officers. They may receive accreditation through the American Correctional Association (ACA) and they have a national organization, the American Parole and Probation Officers Association (APPA). Parole and probation officers are required to have a college degree or equivalent, pass a criminal background investigation, and be trained and certified by the Board of Public Safety Standards and Training (BPSST). Correctional technicians have to have a high school diploma or equivalent and perhaps a driver's license. The attempt to de-professionalize our profession would be similar to the Portland Police Bureau hiring untrained and uneducated aides to police the city and then call in real police officers to make the arrests and execute the search warrants. While the last Legislature passed new laws requiring even private security guards to become certified under BPSST and many police agencies are now requiring college degrees for new police officers, our department is now proposing to lower the bar and allow a correctional technicians to perform parole and probation officer duties and functions without BPSST certification and training. Again, bad public policy. Further, it creates a danger to staff and citizens alike.

Third, we want to address the issue of casebank supervision. We believe the department, however well intentioned, is making a horrific mistake in their efforts to reduce the size of caseloads by transferring up to 4200 more offenders to the casebank. The casebank, a unit which monitors offenders by having them call a 1-900 number and answer some questions, already monitors 2000 offenders. These offenders are not, I repeat, not minor offenders. These are mostly criminals convicted of felonies, such as manufacturing and distribution of controlled substances, burglary, robbery, theft and more. If they are misdemeanants, they have most likely been convicted of DUI, DWS, Forgery, or person to person misdemeanors such as assault and harassment. The purpose of downsizing the caseload is to make them a more manageable size of about 50 offenders per officer. A certain part of every officer welcomes such a change. However, casebank monitoring is an inadequate substitute for direct field supervision.

We take this opportunity to remind the Commission that a few years ago the Legislature modified statutes and eliminated the requirement that each county have a community corrections advisory committee. Such committees were actually comprised of some real citizens. Multnomah County could have maintained its advisory committee but did not do so. Now the County is embarking on massive downsizing of supervision of its criminal population without adequate input from its citizens. We are not aware of any public meetings where this subject was the main topic on the agenda. The department's restructuring is predicated on this downsizing. The effect of these transfers to the casebank communicates to offenders that consequences for criminal offenses will be minimal.

We believe that, in spite of Ballot Measure 47, the Department should be restructured to create more parole and probation officer positions, more community based supervision of offenders, not less. How could this be accomplished? Certain program could be eliminated to accomplish that goal and create 49 additional parole and probation officer positions. The Learning Lab, which duplicates educational opportunities already paid for by the taxpayer, could be eliminated: savings-about \$333,000., which is equivalent to 8.5 parole and probation officer positions. The Day Reporting Center could be eliminated: savings-about \$964,000., which is equivalent to 21 parole and probation officers; and elimination of 24 correctional technicians would provide a savings of about \$888,000., which is equivalent to 19.5 parole and probation officer positions. The above changes would save or add an additional 49 parole and probation officer positions, which would provide real supervision to thousands of offenders currently being targeted for the casebank. We believe the primary function of the department should be field based supervision of offenders in order to offer maximum protection to the public. We do not believe that is going to happen under the budget submitted to the Chair by our department. Although we appreciate the Chair's willingness to help by her "addback" package, we believe the above issues need to be addressed at this time. We believe the public should be given ample opportunity to be included in the process be the commission votes on this budget.

Thank you for your considerations of these matters.

248-3234 246-3048

FILED
OREGON JUDICIAL DEPT.
WASHINGTON COUNTY
97 MAR 25 AM 11:09

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

FEDERATION OF PAROLE AND
PROBATION OFFICERS, an
unincorporated association,
Plaintiff,

Case No. C910419CV
FINAL JUDGMENT

v.
WASHINGTON COUNTY,
Defendant.

Based upon the Judgment of the court of appeals of the State of Oregon, effective the 30th day of January, 1997, and entered in the register of the Circuit Court of the State of Oregon for Washington County on February 11, 1997, and the pleadings, transcripts, exhibits and records on file herein, now, therefore, it is hereby

ADJUDGED that defendant Washington County is employing individuals as Case Monitors who are performing the duties of Parole and Probation Officers as defined by ORS 181.610(13) without having those individuals certified as Parole and Probation Officers by the Board of Public Safety Standards and Training under ORS 181.610 to 181.690, which actions violate ORS 181.653(1);

IT IS FURTHER ADJUDGED that defendant Washington County be and hereby is enjoined and restrained from such further

CM 3-21-97

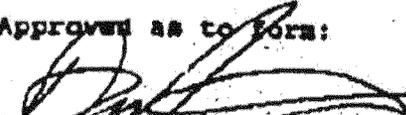
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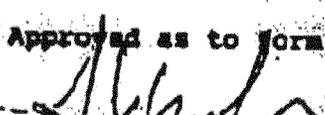
violations of ORS 181.683(1) as follows:

1. The defendant shall not charge non-certified employees with the performance of the duty of community protection by controlling, supervising and providing reformativa services for adult parolees and probationers; the use of non-certified personnel to perform those tasks set forth in the stipulated facts will be limited to clerical assistance at the specific direction of a certified Parole and Probation Officer; and
2. The defendant may, without violating this injunction, continue those individuals employed as case monitors, so long as those individuals are appointed as Parole and Probation Officers and certified by the Board of Public Safety Standards and Training within twelve months of said appointment.

DATED this 24 day of March, 1997.


 Edwin J. Peterson, Senior Judge

Approved as to form:

 Daryl E. Barrettson, OSB 76141
 of Attorneys for Plaintiff

Approved as to form:

 John N. Junkin, OSB 76580
 of Attorneys for Defendant

MEETING DATE: MAY 08 1997
AGENDA NO: R-2
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Proclamation for National Public Works Week

BOARD BRIEFING: Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: May 15, 1997

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Transportation-Land Use Plan.

CONTACT: John Dorst TELEPHONE #: 248-3599

BLDG/ROOM #: 425/Yeon Bldg.

PERSON(S) MAKING PRESENTATION: John Dorst

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Proclamation declaring week of May 18 through May 24, 1997, as National Public Works Week and recognizing contributions of all Multnomah County Public Works employees.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

(OR)
DEPARTMENT MANAGER:  _____

BOARD OF COUNTY COMMISSIONERS
MAY - 2 PM 3:36
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
1620 SE 190TH AVENUE
PORTLAND, OREGON 97233
(503) 248-5050

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

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS

FROM: John Dorst/Transportation Division

TODAY'S DATE: May 1, 1997

REQUESTED PLACEMENT DATE: May 15, 1997

RE: Proclamation for National Public Works Week

I. Recommendation/Action Requested:

Proclamation declaring May 18-24, 1997, as National Public Works Week and recognizing contributions of all Multnomah County Public Works employees.

II. Background/Analysis:

For the second year in a row, we have experienced significant weather events above and beyond the norm. This past year has seen numerous flooding events, a large ice storm, and land slides that significantly impacted the transportation system. The public works employees worked effectively, efficiently to insure public safety and minimize the impact to the public.

III. Financial Impact:

There is no financial impact.

IV. Legal Issues:

There are no legal issues.

V. Controversial Issues:

There are no controversial issues.

VI. Link to Current County Policies:

N.A.

VII. Citizen Participation:

This year a contractor, a developer and a representative from another jurisdiction will explain the involvement of private parties and of cooperative efforts regarding public works projects.

VIII. Other Government Participation:

N.A.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR
MULTNOMAH COUNTY, OREGON

For the Purpose of Recognizing) PROCLAMATION
National Public Works Week,) 97 -
May 18 through May 24, 1997)

WHEREAS, the public works services provided in Multnomah County are an integral part of the citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as streets, highways, bridge engineering, road maintenance, snow removal and public buildings; and

WHEREAS, it is vital that the citizens of Multnomah County understand and appreciate the public services provided and the value of public works built and maintained in Multnomah County; and

WHEREAS, the health, safety and comfort of Multnomah County citizens greatly depend on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities as well as their planning, design and construction are dependent upon the efforts and skills of the public works employees; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the citizens of Multnomah County and their understanding of the importance of the work they perform; now therefore

IT IS HEREBY PROCLAIMED that Multnomah County recognizes May 18 - 24, 1997, as NATIONAL PUBLIC WORKS WEEK, and calls upon the citizens of this community to recognize the contributions that all public works employees make every day to our health, safety and comfort.

APPROVED this ____ day of _____, 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

BEVERLY STEIN/Chair

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Declaring the Week of May 18 through May)
24, 1997 as National Public Works Week) PROCLAMATION
and Recognizing the Contributions of All)
Multnomah County Public Works Employees)

WHEREAS, the public works services provided in Multnomah County are an integral part of the citizens' everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as streets, highways, bridge engineering, road maintenance, snow removal and public buildings; and

WHEREAS, it is vital that the citizens of Multnomah County understand and appreciate the public services provided and the value of public works built and maintained in Multnomah County; and

WHEREAS, the health, safety and comfort of Multnomah County citizens greatly depend on these facilities and services; and

WHEREAS, the quality and effectiveness of these facilities as well as their planning, design and construction are dependent upon the efforts and skills of the public works employees; and

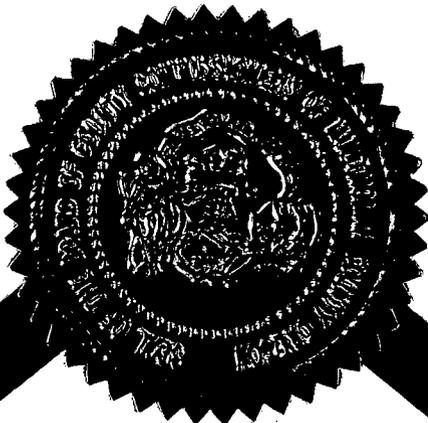
WHEREAS, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the citizens of Multnomah County and their understanding of the importance of the work they perform; now therefore

IT IS HEREBY PROCLAIMED that Multnomah County recognizes the week of May 18 through 24, 1997 as "NATIONAL PUBLIC WORKS WEEK", and calls upon the citizens of this community to recognize the contributions that all public works employees make every day to our health, safety and comfort.

DATED this 8th day of May, 1997.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Beverly Stein, Chair



MEETING DATE: MAY 08 1997
AGENDA #: R-3
ESTIMATED START TIME: 9:35

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA BETWEEN CITY OF PORTLAND AND THE SHERIFF'S OFFICE

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

REGULAR MEETING: DATE REQUESTED: NEXT AVAILABLE DATE
AMOUNT OF TIME NEEDED: 5 MINUTES

DEPARTMENT: SHERIFF'S OFFICE DIVISION: SUPPORT

CONTACT: LARRY AAB TELEPHONE #: 251-2489
BLDG/ROOM #: 313/288

PERSON(S) MAKING PRESENTATION: REGULAR
CONSENT ITEM

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

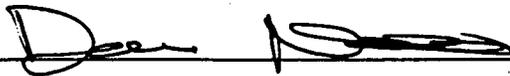
SUGGESTED AGENDA TITLE:

INTERGOVERNMENTAL AGREEMENT, CONTRACT #801007, BETWEEN THE CITY OF PORTLAND AND THE SHERIFF'S OFFICE, FOR THE CITY WILL PROVIDE FINGERPRINTS AND PHOTOGRAPHS OF INDIVIDUALS ARRESTED FOR CRIMES FOR THE FISCAL YEAR 1996-97.

5/8/97 ORIGINALS TO LARRY AAB

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: _____



ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BOARD OF
COUNTY COMMISSIONERS
CLATSOP COUNTY
ASTORIA, OREGON
APR 23 1997
APR 16 1997
PM 9:36
BULLYNOH COUNTY
OREGON

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: DAN NOELLE,
Sheriff

TODAY'S DATE: APRIL 28, 1997

REQUESTED PLACEMENT DATE: NEXT AVAILABLE BOARD MEETING

RE: INTERGOVERNMENTAL AGREEMENT, CONTRACT #8001007, BETWEEN THE CITY OF PORTLAND AND THE SHERIFF'S OFFICE, FOR THE CITY TO PROVIDE FINGERPRINTS AND PHOTOGRAPHS OF INDIVIDUALS ARRESTED FOR CRIMES FOR THE FISCAL YEAR 1996-97

I. Recommendation/Action Requested:

Request Board approval of intergovernmental agreement.

II. Background/Analysis:

For several years, the Sheriff's Office has contracted with the Portland Police Bureau to provide fingerprint identification of inmates booked into the Sheriff's jail system. Recently, new technology has introduced "Live Scan" into the facility. Under this agreement, the Portland Police Bureau will provide 2.7 FTE Identification Techs in the reception area of the Multnomah County Detention Center on an ongoing basis to take and identify fingerprints of people booked into jail. In return for the identification services provided to the Sheriff's Office by the Police Bureau, the Sheriff's Office agrees to pay the city for the wages of the Identification Techs.

MCSO and the Police Bureau initially tried to work out a barter agreement in which the Police Bureau would provide identification services and the Sheriff's Office would provide X-image services. This contract was submitted to the Board when a barter agreement could not be reached. For this reason, the contract is retroactive to July 1, 1996. The cost was anticipated and is in the MCSO fy 96-97 budget.

III. Financial Impact:

This contract will cost 163,301. The contract is an ongoing contract so funds are budgeted in the Sheriff's budget.

III. Legal Issues:

An intergovernmental agreement between the Police Bureau and the Sheriff's Office.

V. Controversial Issues:

None known

VI. Link to Current County Policies:

This contract fosters inter-agency cooperation and avoids a redundancy in having two identification units.

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

IGA with Portland Police Bureau.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Contract # **801007**

Prior-Approved Contract Boilerplate: Attached: Not Attached:

Amendment # _____

<p style="text-align: center;">CLASS I</p> <input type="checkbox"/> Professional Services under \$50,000 <input type="checkbox"/> Intergovernmental Agreement under \$25,000	<p style="text-align: center;">CLASS II</p> <input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption) <input type="checkbox"/> PCR B Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<p style="text-align: center;">CLASS III</p> <input checked="" type="checkbox"/> Intergovernmental Agreement over \$25,000 <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>R-3</u> DATE <u>5/8/97</u> <u>DEB BOGSTAD</u> BOARD CLERK</p>
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Department: SHERIFF'S OFFICE Division: SUPPORT Date: APRIL 10, 1997
 Contract Originator: CMDR VERA POOL Phone: 251-2542 Bldg/Room: _____
 Administrative Contact: LARRY AAB Phone: 251-2489 Bldg/Room: 313/228

Description of Contract: **CITY OF PORTLAND WILL PROVIDE FINGERPRINTS AND PHOTOGRAPHS OF INDIVIDUALS ARRESTED FOR CRIMES.**

BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____
 ORS/AR #: _____ Contractor is MBE WBE QRF

<p>Contractor Name: <u>CITY OF PORTLAND</u> <u>1111 SW 2ND, RM 1202</u> <u>PORTLAND OR 97204</u></p> <p>Phone: _____ Employer ID# or SS#: _____ Effective Date: <u>JULY 1, 1996</u> Termination Date: <u>JUNE 30, 1997</u> Original Contract Amount: <u>\$ 163,301</u> Total Amt of Previous Amendments: \$ _____ Amount of Amendment: \$ _____ Total Amount of Agreement: \$ _____</p>	<p>Remittance Address (if different): _____</p> <p>Payment Schedule Terms</p> <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30 <input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other <input type="checkbox"/> Requirements contract - Requisition Required Purchase Order No. _____ <input type="checkbox"/> Requirements Not to Exceed \$ _____ Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>
--	---

REQUIRED SIGNATURES:

Department Manager: *[Signature]*
 Purchasing Manager: _____
 (Class II Contracts Only)
 County Counsel: *[Signature]*
 County Chair/Sheriff: *[Signature]*
 Contract Administration: _____
 (Class I, Class II Contracts Only)

Date: 4-14-97
 Date: _____
 Date: 4-16-97
 Date: 4-14-97
 Date: _____

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB ORG	REPT CATEG	LGFS DESCRIP	AMOUNT	IN CE EC
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03											

If additional space is needed, attach separate page. Write contract number on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

INTERGOVERNMENTAL AGREEMENT

This agreement is made and entered into pursuant to the authority found in ORS 190.010 et seq. and ORS 206.345 by and between Multnomah County Sheriff's Office (MCSO), jointly with and behalf of Multnomah County, and the City of Portland (City).

1. GENERAL SCOPE

- A. The City of Portland Police Bureau (hereinafter referred to as PPB) maintains within the Justice Center an Identification Division which has the facilities, expertise, and equipment to process crime scene evidence, latent fingerprints, and the fingerprinting and identification of individuals, printing photographic film, and audio/video enhancement.
- B. The PPB personnel within the Identification Division have a national reputation of expertise in identification, fingerprinting, and Automatic Fingerprint Identification Systems (AFIS) through the Western Identification Network.
- C. The MCSO maintains within Multnomah County Detention Center a Reception Unit where fingerprints and photographs are taken when arrested individuals are detained and/or booked for criminal activity.
- D. MCSO requires proper and timely assistance with "major crime scene" investigations, latent print identification, AFIS, lab processing, printing photographic film, audio/video enhancements, and the fingerprinting and identification of individuals processed through the Reception Unit.
- E. A cooperative effort between MCSO and the PPB in the area of crime scene coverage, forensic evidence processing, XImage and printing photographic film, and AFIS, fosters coordination and cooperation.
- F. Therefore, MCSO and PPB agree to the following:
 1. The PPB and MCSO mutually agree to maintain an effective identification process for the purposes of fingerprinting and the identification of arrested persons, identifying crime scene latents, and the sharing of information. PPB will continue to provide all services existing under the previous contract.
 2. The PPB shall maintain the facilities and equipment necessary for the lab processing of latent prints, latent identification, AFIS and printing 35mm photographic film.

3. The PPB shall assign one Identification Technician to the Reception Unit each working shift. The Identification Technician shall operate within the Reception Unit on a seven day a week, 24 hour per day basis. As a result of MCSO assuming the photographing function within the Reception Unit, the MCSO shall reimburse City for wages and fringe benefits of 2.7 FTE Identification Technicians.
4. MCSO will staff and operate the LIVESCAN at the Multnomah County Court House at a level that they feel is appropriate.
5. MCSO will ensure that the "captured" LIVESCAN prints are of the highest quality possible.
6. MCSO will work with PPB to develop a plan for future services needed.
7. The PPB will provide verification of MCSO's latent print identification.
8. The PPB shall have administrative authority for the establishment of standards of performance of Identification Technicians, the Criminalist Training Program, standards for processing fingerprints, and other matters that are directly related to the technical aspect of the identification process.
9. The MCSO shall have the administrative authority for directing the identification process of fingerprinting and photographing persons brought into the Reception Unit of the Multnomah County Detention Center. The Reception Unit shall remain a function of the MCSO and the booking process is the responsibility of the Sheriff.
10. MCSO shall determine what level of support services it needs for training, latent prints identification, lab processing, and photography.
11. The MCSO shall provide an adequate and safe work environment for the PPB Criminalist for the performance of the agreed upon tasks pertaining to latent print identification and processing.
12. The MCSO shall provide and adequate and safe work environment for the City for the performance of the identification processing, fingerprint classifying, and telephonic communications.

2. COMPENSATION

- A. The City shall bill MCSO for \$163,301 for fiscal year 1996-97. This will be the cost of salary and fringe benefits of 2.7 FTE Identification Technicians based on fiscal year 1995-96 rate. Billings for fiscal year 1996-97 will be based on four payments submitted to the MCSO by September 30, December 31, 1996; March 31, and June 30, 1997. If MCSO is called upon by PPB for services, the PPB will credit MCSO the hourly wage with fringe benefits of the MCSO employee classification called upon.
- B. The paying party shall send payment within thirty (30) days after receipt of each billing.

3. COJIN SYSTEM

MCSO shall provide and maintain the imaging equipment in accordance with the COJIN Agreement. MCSO will ensure that the Inmate Management Cards will have all descriptors completed. All available resources such as PPDS, CPMS, CCH, will be utilized to determine identity prior to the fingerprint processing by the Identification Technicians.

4. HOLD HARMLESS

- A. To the maximum extent permitted by law, each party shall hold harmless and indemnify the other, and the officers, agents and employees of the other, from and against any claims for injury or damage to persons or property which may be caused by or arise from its own actions under this agreement.
- B. The agencies shall not be called upon to assume any liability for the direct payment of any salaries, wages, insurance, or other compensation or indemnity to any MCSO employee for any injury or sickness arising out of his/her participation in this section.
- C. All MCSO personnel assigned for training purposed in the Identification Division shall remain employees of MCSO. No MCSO employee shall have any City pension or other status rights under the provision of PPB employment.
- D. All City Identification personnel assigned to work in the Reception Unit shall remain employees of PPB. No police employee shall have any County pension or other status rights under the provision of County employment.

5. TERM

This agreement shall extend from July 1, 1996, through and including June 30, 1997, unless earlier terminated in accordance with Section 7 of this agreement or modified as provided in Section 10.

6. COMPLIANCE WITH LAWS

In connections with its activities under this agreement, the PPB and MCSO shall comply with all applicable federal, state, and local laws and regulations.

7. TERMINATION

- A. This agreement may be terminated upon sixty (60) days mutual written consent of the parties or upon ninety (90) days written notice by one party.
- B. Termination under any provision of this paragraph shall not affect any rights obligation, or liability of the MCSO which accrued prior such termination.

8. OREGON LAW AND FORUM

- A. This agreement shall be construed according to the laws of the State of Oregon.
- B. Any litigation between MCSO an PPB arising under this agreement or out of work performed under this agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the district of Oregon.

9. ASSIGNMENT

MCSO shall not assign this agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of PPB.

10. MODIFICATION

This agreement may be modified by mutual consent of the parties. Any modification to provisions of this agreement shall be reduced to writing and signed by all parties.

11. INTEGRATION

This agreement contains the entire agreement between the parties and supersedes all prior written or oral agreements.

12. NOTICES

All notices pursuant to the term of this agreement shall be address as follows:

Notice to Portland:	Charles A. Moose, Chief of Police Bureau of Portland Police
Notice to MCSO:	Dan Noelle, Sheriff Multnomah County Sheriff's Office

13. In the event of a dispute between the parties as to the extent and nature of the duties and function of personnel assigned to the Identification Division, the resolution shall be made by the Chief's of Police of Portland and the Sheriff or their delegated representative.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers on the last date written below.

MULTNOMAH COUNTY

CITY OF PORTLAND

By: *Beverly Stein*
Beverly Stein, Chair

By: _____
Vera Katz, Mayor

Date: May 8, 1997

Date: _____

MULTNOMAH COUNTY SHERIFF'S OFFICE

By: *Dan Noelle*
Dan Noelle, Sheriff

Date: 4-14-97

REVIEWED:
Sandra Duffy, Acting County Counsel
for Multnomah County, Oregon

APPROVED AS TO FORM:

By: *Steve Nemirow*
Steve Nemirow, Assistant Counsel

By: _____
Portland City Attorney

Date: 4/16/97

Date: _____

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-3 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

MEETING DATE: MAY 08 1997
AGENDA #: R-4
ESTIMATED START TIME: 9:40

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA BETWEEN GRANT COUNTY AND MULT CO SHERIFF'S OFFICE

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

REGULAR MEETING: DATE REQUESTED: (MAY 8, 1997) NEXT AVAILABLE DATE _____
AMOUNT OF TIME NEEDED: _____

DEPARTMENT: SHERIFF'S OFFICE DIVISION: FACILITIES

CONTACT: LARRY AAB TELEPHONE #: 251-2489
BLDG/ROOM #: 313/288

PERSON(S) MAKING PRESENTATION: REGULAR ITEM

ACTION REQUESTED:

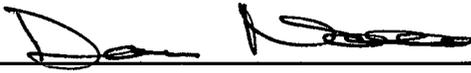
INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

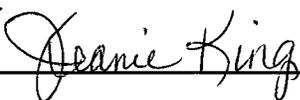
SUGGESTED AGENDA TITLE:

INTERGOVERNMENTAL AGREEMENT, CONTRACT #801027, BETWEEN GRANT COUNTY AND THE SHERIFF'S OFFICE, FOR GRANT COUNTY WILL PROVIDE JAIL SPACE FOR MULTNOMAH COUNTY FOR THE DETENTION OF MULTNOMAH COUNTY INMATES EFFECTIVE MAY 1, 1997.

5/8/97 ORIGINALS TO LARRY AAB

SIGNATURES REQUIRED:

ELECTED OFFICIAL: 

(OR)
DEPARTMENT MANAGER: 

BOARD OF COUNTY COMMISSIONERS
97 APR 30 AM 10:58
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: SHERIFF DAN NOELLE

TODAY'S DATE: April 22, 1997

REQUESTED PLACEMENT DATE: May 8, 1997

RE: IGA between Grant County and Multnomah County, whereby Multnomah County rents jail bed space for Multnomah County inmates, from Grant County.

- I. Recommendation/Action Requested: Approve the IGA.
- II. Background/Analysis: This IGA will provide for Grant County reserve and rent 15 jail beds for Multnomah County inmates. The Multnomah County Sheriff will pay Grant County \$45.00 per day, per bed. Grant County will provide custody, care and safekeeping of the inmates for such time as they are in a Grant County jail. Transportation to and from Grant County is provided jointly by both counties. Inmates will be brought back to Multnomah County for release.
- III. Financial Impact: This IGA will provides a revenue expenditure of up to \$246,375 per year from SB 1145 funds.
- IV. Legal Issues: The Multnomah County Sheriff is responsible for ensuring that inmates are legally committed to custody, and for providing commitment documentation and authorization before inmates are transported to Grant County. The Multnomah County Sheriff is responsible for determining release dates and credits for inmates involved.
- V. Controversial Issues: Grant County agrees to maintain the same level of inmate services and medical care provided local inmates. Inspections by Multnomah County officials are permitted.
- VI. Link to Current County Policies: The County is currently renting jail beds from the State using SB 1145 funds.

VII. Citizen Participation: N/A

VIII. Other Government Participation: None, other than Grant County.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Contract # **801027**

Prior-Approved Contract Boilerplate: Attached: Not Attached:

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$50,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$50,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCR B Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>R-4</u> DATE <u>5/8/97</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <hr/> <p style="text-align: center;">BOARD CLERK</p>
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Department: SHERIFF'S OFFICE Division: FACILITIES Date: APRIL 17, 1997

Contract Originator: CMR JEANIE KING Phone: 251-2514 Bldg/Room: _____

Administrative Contact: LARRY AAB Phone: 251-2489 Bldg/Room: 313/228

Description of Contract:

GRANT COUNTY WILL PROVIDE JAIL SPACE FOR MULTNOMAH COUNTY FOR THE DETENTION OF MULTNOMAH COUNTY INMATES

BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR #: _____ Contractor is MBE WBE QRF

<p>Contractor Name: <u>GRANT COUNTY SHERIFF'S OFFICE</u> <u>CANYON CITY, OR 97820</u></p> <p>Phone: <u>(541) 575-1131</u></p> <p>Employer ID# or SS#: _____</p> <p>Effective Date: <u>MAY 1, 1997</u></p> <p>Termination Date: <u>N/A</u></p> <p>Original Contract Amount: <u>\$45.00 per bed for 15 beds</u></p> <p>Total Amt of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ _____</p>	<p>Remittance Address (if different): _____</p> <p>Payment Schedule Terms</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input checked="" type="checkbox"/> Requirements Not to Exceed \$ <u>247,375 per year</u></p> <p>Encumber: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
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REQUIRED SIGNATURES:

Department Manager: *Jeanie King*

Date: April 17, 1997

Purchasing Manager: _____

Date: _____

(Class II Contracts Only)

County Counsel: *[Signature]*

Date: 4-25-97

County Chair/Sheriff: *[Signature]*

Date: April 25, 1997

Contract Administration: _____

Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB ORG	REPT CATEG	LGFS DESCRIP	AMOUNT	IN CE EC
01	156	025	9045			6060			96-97		
02	156	025	3911			6060			97-98		
03											

If additional space is needed, attach separate page. Write contract number on top of page.

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into pursuant to the authority found in ORS 190.010 et seq. and ORS 206.345 by and between the Multnomah County Sheriff's Office (MCSO), jointly with and on behalf of Multnomah County, and Grant County, a political subdivision of the State of Oregon.

PURPOSE

The purpose of this agreement is to establish the terms and conditions under which Grant County will provide jail space to Multnomah County.

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

AUTHORITY AND PER-DIEM RATE TO HOUSE MULTNOMAH COUNTY PRISONERS

1. Grant County agrees to rent and reserve for Multnomah County jail space in the amount of fifteen (15) beds. Multnomah County will pay Grant County a fixed rate of \$45.00 per bed for fifteen (15) beds.
2. The Multnomah County Sheriff represents that all inmates from Multnomah County confined in the Grant County Jail are legally committed to custody, and shall present commitment documentation for each person confined. It is the responsibility of the Multnomah County Sheriff to provide proper commitment authorization prior to the delivery or transport of any Multnomah County inmate. Multnomah County assumes all responsibility for any error or omission to this paragraph.

TRANSPORT RESPONSIBILITIES

3. Grant County agrees to transport Multnomah County inmates to the Grant County Jail from an agreed designated location, for the purpose of confining them pursuant to this agreement. Grant County will also return such inmates to the agreed designated location upon their scheduled release of confinement from the Grant County Jail or termination of their confinement with Grant County as determined by Multnomah County.

CARE, CUSTODY, AND TREATMENT OF INMATES

4. By this agreement, Grant County agrees to accept, and provide for the secure custody, care and safe keeping of Multnomah County inmates in

accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operation of the facility.

5. Inmate release dates including time credits shall be determined by Multnomah County. Multnomah County shall provide to Grant County documentation of inmate release dates. Multnomah County shall provide to Grant County any modifications requested, pertaining to inmates custody status.

MEDICAL SERVICES

6. Grant County agrees to provide Multnomah County inmates with the same level of medical care and services provided local inmates including transportation and security for inmates requiring removal from the facility for emergency medical services.
7. Grant County agrees to notify Multnomah County Corrections Health as soon as possible of any emergency medical cases who require removal from the facility. Grant County shall obtain prior authorization for all other outside medical services (hospital in patient out patient) required. Multnomah County inmates who require routine health care or non-urgent health care which is beyond the capabilities of Grant County shall be returned to Multnomah County.
8. Multnomah County shall pay all outside emergency medical expenses which might accrue for any Multnomah County inmate while that inmate is in the custody of Grant County. Emergency medical expenses include but are not limited to, expenses for doctors, medicine, ambulance, hospitalization, emergency surgical, or emergency treatment or care rendered by professionals outside of the Grant County Jail who are not regular jail medical staff and for which Grant county is billed. Any such bill received by Grant County for the care or treatment of Multnomah County inmates shall be forwarded immediately to Multnomah County Corrections Health. Whenever possible, Grant County shall arrange for such medical service providers to bill Multnomah County directly for medical expenses of Multnomah County inmates in a manner consistent with ORS 169.152.
9. Multnomah County shall notify Grant County of any pre-existing medical, dental, or mental health issues prior to Grant County taking custody of Multnomah County inmates and will provide any information that is received by Multnomah County after taking custody.

ACCESS/REPORTING/RELEASE OF INMATES

10. Grant County agrees to allow periodic access to and inspections of the Grant County Jail by Multnomah County officials at all reasonable times, for the purpose of visiting Multnomah County inmates confined therein. Findings of the inspection will be shared with the Grant County Sheriff in order to promote improvements to the facility operations, conditions of confinement and levels of services.
11. Grant County shall provide to Multnomah County, on request, all documentation and reports, pertaining to any Multnomah County inmate.
12. Inmates confined in Grant County for Multnomah County shall be returned to Multnomah County Officials or their designee for release in Multnomah County.

INDEMNIFICATION

13. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, MCSO and the County shall indemnify, defend, and hold harmless Grant County and its officers, employees and agents from all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever resulting from, arising out of, or incident to any act or omission of Multnomah County or it's officers, agents, or employees in the performance of this agreement or in arresting, detaining, charging, transporting, interrogating or otherwise dealing with persons either before or after delivery to Grant County. In the event that any suit is brought against Grant County, Multnomah County shall defend Grant County at its sole cost and expense. At the discretion of Multnomah County, Grant County may participate in the defense of such suit. If final judgment is entered against Grant County or it's officers, agents or employees, Multnomah County shall satisfy the same in full.
14. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, Grant County shall indemnify, defend, and hold harmless MCSO and Multnomah County and its officers, employees and agents from all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever resulting from, arising out of, or incident to any act or omission of Grant County or it's officers, agents, or employees in the performance of this agreement. In the event that any suit is brought against Multnomah County, Grant County shall defend Multnomah County at its sole cost and expense. At the discretion of Grant County, Multnomah County may participate in the defense of such

suit. If final judgment is entered against Multnomah County or its officers, agents or employees, Grant County shall satisfy the same in full.

IMPLEMENTATION/TERMINATION/DURATION

15. The Sheriff of Grant County and Multnomah County shall be responsible for the implementation and proper administration of this contract, and will refer any problems or disputes of implementation to the governing bodies of their counties as necessary.
16. This agreement shall be effective May 1, 1997, or the date on which the new Grant County Jail receives Multnomah County inmates. This agreement shall remain in effect until terminated as described below, or unless extended by written agreement by both parties.
17. Subject to the time limitations above, this agreement shall continue in force until one party gives written notice of termination. The county terminating this agreement shall give the governing bodies and the Sheriff's Office of the other county no less than 30 days written notice prior to the effective date of termination. Multnomah County shall remove from Grant County any Multnomah County inmates confined therein.

MODIFICATIONS/SEVERABILITY

18. Modification of this agreement may be accomplished by written agreement between Grant County and Multnomah County and no oral understandings or agreements shall be effective to alter the terms of this agreement.
19. Any judgment or finding that any clause, paragraph or section of this contract to be invalid shall not invalidate or terminate any other clause, paragraph or section of this agreement.

ENTIRE AGREEMENT

20. This Agreement represents the entire agreement between parties and supersedes any prior oral or written agreements or representations. This Agreement may only be modified in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly appointed officers on the date written below.

MULTNOMAH COUNTY

By: 
Beverly Stern, Chair

Date: May 8, 1997

GRANT COUNTY
SHERIFF'S OFFICE

By: _____
Fred Reusser, Sheriff

Date: _____

MULTNOMAH COUNTY
SHERIFF'S OFFICE

By: 
Dan Noelle, Sheriff

Date: 4-25-97

REVIEWED:

Sandra Duffy, Acting County Counsel
for Multnomah County, Oregon

By: 
Steve Nemirow, Assistant Counsel

Date: 4/30/97

APPROVED AS TO FORM:

By: _____

Date: _____

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-4 DATE 5/8/97
DEB BOGSTAD
BOARD CLERK

MEETING DATE: MAY 08 1997

AGENDA #: R-5

ESTIMATED START TIME: 9:45

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Approve Resolution Authorizing Issuance of \$11,000,000 Tax Revenue Anticipation Notes

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: May 8, 1997

AMOUNT OF TIME NEEDED: 5-10 minutes

DEPARTMENT: DSS

DIVISION: Finance

CONTACT: Dave Boyer

TELEPHONE #: 248-3903

BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Dave Boyer

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

Resolution authorizing the issuance and sale of \$11,000,000 Tax Revenue Anticipation Notes.

5/8/97 Copies to Dave Boyer

SIGNATURES REQUIRED:

ELECTED

OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: DB, Vickie S. Gale

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
97 APR 28 AM 8:29

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY, OREGON

COUNTY COMMISSIONERS		FINANCE DIVISION		
BEVERLY STEIN, CHAIR	DIRECTORS OFFICE	PORTLAND BUILDING	CENTRAL STORES	FORD BUILDING
TANYA COLLIER	ACCDUNTS PAYABLE	1120 SW FIFTH AVENUE, SUITE 1430	CONTRACTS	2505 SE 11TH
GARY HANSEN	GENERAL LEDGER	PO BOX 14700	PURCHASING	PORTLAND, OR 97202
SHARRON KELLEY	PAYROLL	PORTLAND, OR 97214-0700		PHONE (503) 248-5111
DAN SALTZMAN	TREASURY	PHONE (503)248-3312		FAX (503)248-3252
	LAN ADMINISTRATION	FAX (503) 248-3292		

MEMORANDUM

TO: Board of County Commissioners

FROM: Dave Boyer, Finance Director 

DATE: April 24, 1997

Requested Placement Date: May 8, 1997

SUBJECT: \$11,000,000 Tax and Revenue Anticipation Notes (TRANS)

I. Recommendation / Action:

Approve resolution authorizing the issuance of \$11,000,000 in Tax and Revenue Anticipation Notes for fiscal year 1997/98.

II. Background / Analysis:

Under ORS 288.165 the County is authorized to issue TRANS in an amount not to exceed 80% of the amount of revenues the County expects to receive in FY 1997/98. The notes represent about 10.5% of the County's 1997/98 property tax levy adjusted for delinquencies, prior year payments and discounts.

The proceeds from the notes will provide the needed cashflow to the General Fund, prior to the collection of property taxes, for the period July 1, 1997 through November 30, 1997.

Ater Wynne Hewitt Dodson & Skerritt is Bond Counsel, Regional Financial Advisors, and First Trust Bank Paying agent/Registrar have all been selected in accordance to County procurement processes. The County will issue a Request for Proposal to select an underwriter.

III. Financial Impact:

The fiscal year 1997/98 County budget includes \$550,000 to pay the estimated interest on the TRAns.

This TRAns issue meets all the requirements contained in Resolution 95-182, the Financial and Budget Policy.

IV. Legal Issues:

Bond Counsel and County Counsel have reviewed or will review all the necessary documents.

V. Controversial Issues:

None that I am aware of.

VI. Link to Current County Policy:

The "short-term and long-term Debt Financing" policy directs the County to evaluate the feasibility of issuing short-term debt if the financing has been determined to benefit the County.

VII. Citizen Participation:

None.

VIII. Other Government Participation:

None

BEFORE THE BOARD OF COUNTY COMMISSIONERS

MULTNOMAH COUNTY, OREGON

In the Matter of the Issuance and Sale)
of Short-Term Promissory Notes (Tax and)
Revenue Anticipation Notes, Series 1997))
in the Amount of \$11,000,000 for the)
Purpose of Meeting Current Expenses of)
the County for the 1997-98 Fiscal Year.)

RESOLUTION NO. 97- 91

WHEREAS, the above-entitled matter is before the Board of County Commissioners of Multnomah County, Oregon (the "County"), upon a showing by the Director, Finance Division, that, prior to the receipt of sufficient monies from tax collections and from other budgeted and unpledged revenues which the County estimates will be received from other sources during the fiscal year 1997-98, there is a need for the County to contract indebtedness, not to exceed in the aggregate its estimated maximum cumulative cash flow deficit as defined in regulations of the United States Treasury, by the issuance of tax and revenue anticipation notes (the "Notes") to meet the County's current expenses for fiscal year 1997-98; and

WHEREAS, it appearing to the Board that Oregon Revised Statutes Section 288.165(3) permits the issuance of tax and revenue anticipation notes in an amount which does not exceed 80% of the amount budgeted which the County estimates will be received during the 1997-98 fiscal year; and

WHEREAS, prior to the sale and delivery of the Notes, provision therefor shall have been made in the County's duly adopted budget which shall have been filed in the manner as provided by law, and ad valorem tax levies upon real and personal property for the fiscal year 1997-98 will be levied and in the process of collection by Multnomah County, Oregon;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. Issuance of Notes. The Board of County Commissioners of the County authorizes the issuance and negotiated sale of not to exceed \$11,000,000 of its Tax and Revenue Anticipation Notes, Series 1997. The Notes are issued pursuant to Oregon Revised Statutes Section 288.165(3). The Notes shall be issued in denominations of \$5,000 each, or integral multiples thereof, as negotiable notes of the County and shall bear interest at a true effective rate not to exceed six percent (6.00%). The County authorizes the Director, Finance Division or the Treasury Manager (the "Authorized Representatives") to determine the principal amount, interest rate, denominations and to determine the Underwriter for the purchase of the Notes, to evaluate the terms of the Note Purchase Agreement, and to execute and deliver an appropriate Note Purchase Agreement. The Notes shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year in which such taxes or other revenues are expected to be received. The Notes issued in anticipation of taxes or other revenues shall not be issued in an amount greater than eighty percent (80%) of the amount budgeted to be received in fiscal year 1997-98.

Section 2. Title and Execution of Notes. The Notes shall be entitled "Multnomah County, Oregon Tax and Revenue Anticipation Notes, Series 1997" and shall be executed on behalf of the County with the manual or facsimile signature of the Chair of the Board of County Commissioners and shall be attested by the Director, Finance Division. The Notes may be initially issued in book-entry form as a single, typewritten note and issued in the registered name of the nominee of The Depository Trust Company, New York, New York in book-entry form. The Notes may be issued without certificates being made available to the note holder except in the event that the book-entry form is discontinued in which event the Notes will be issued with certificates to be executed delivered and transferred as herein provided.

Section 3. Appointment of Paying Agent and Note Registrar. The Board appoints First Trust National Association, through its corporate trust office in Portland, Oregon, as Paying Agent and Note Registrar to the County for the issuance of the Notes.

Section 4. Book-Entry System. The ownership of the Notes shall be recorded through entries on the books of banks and broker-dealer participants and correspondents that are related to entries on The Depository Trust Company book-entry system. The Notes shall be initially issued in the form of a separate, fully registered typewritten note (the "Global Certificate"). The Global Certificate shall be registered in the name of Cede & Co. as nominee (the "Nominee") of The Depository Trust Company (the "Depository") as the "Registered Owner", and such Global Certificate shall be lodged with the Depository until maturity of the Note issue. The Paying Agent shall remit payment for the maturing principal and interest on the Notes to the Registered Owner for distribution by the Nominee for the benefit of the noteholder (the "Beneficial Owner" or "Record Owner") by recorded entry on the books of the Depository participants and correspondents. While the Notes are in book-entry-only form, the Notes will be available in denominations of \$5,000 or any integral multiple thereof.

The Authorized Representative has filed with the Depository a Blanket Issuer Letter of Representations to induce the Depository to accept the Notes as eligible for deposit at the Depository. The County is authorized to provide the Depository with the Preliminary Official Statement, together with the completed Depository's underwriting questionnaire.

The execution and delivery of the Blanket Letter of Representations and the providing to the Depository of the Preliminary Official Statement and the underwriting questionnaire shall not in any way impose upon the County any obligation whatsoever with respect to persons having interests in the Notes other than the Registered Owners of the Notes as shown on the registration books maintained by the Paying Agent and Note Registrar. The Paying Agent and Note Registrar, in writing, shall accept the book-entry system and shall agree to take all action necessary to at all times comply with the Depository's operational arrangements for the book-entry system. The Authorized Representative may take all other action to qualify the Notes for the Depository's book-entry system.

In the event (a) the Depository determines not to continue to act as securities depository for the Notes, or (b) the County determines that the Depository shall no longer so act, then the County will discontinue the book-entry system with the Depository. If the County fails to identify another qualified securities depository to replace the Depository, the Notes shall no longer be a book-entry-only issue but shall be registered in the registration books maintained by the Paying Agent and Note Registrar in the name of the Registered Owner as appearing on the registration books of the Paying Agent and Note Registrar and thereafter in the name or names of the owners of the Notes transferring or exchanging Notes in accordance with the provisions herein.

With respect to Notes registered in the registration books maintained by the Paying Agent and Note Registrar in the name of the Nominee of the Depository, the County, and the Paying Agent and Note Registrar shall have no responsibility or obligation to any participant or correspondent of the Depository or to any

Beneficial Owner on behalf of which such participants or correspondents act as agent for the Registered Owner with respect to:

(i) the accuracy of the records of the Depository, the Nominee or any participant or correspondent with respect to any ownership interest in the Notes,

(ii) the delivery to any participant or correspondent or any other person, other than a Registered Owner as shown in the registration books maintained by the Paying Agent and Note Registrar, of any notice with respect to the Notes, including any notice of redemption,

(iii) the payment to any participant, correspondent or any other person other than the Registered Owner of the Notes as shown in the registration books maintained by the Paying Agent and Note Registrar, of any amount with respect to principal or interest on the Notes. Notwithstanding the book-entry system, the County may treat and consider the Registered Owner in whose name each Note is registered in the registration books maintained by the Paying Agent and Note Registrar as the Registered Owner and absolute owner of such Note for the purpose of payment of principal and interest with respect to such Note, or for the purpose of registering transfers with respect to such Note, or for all other purposes whatsoever. The County shall pay or cause to be paid all principal of and interest on the Notes only to or upon the order of the Registered Owner, as shown in the registration books maintained by the Paying Agent and Note Registrar, or their representative attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the County's obligation with respect to payment thereof to the extent of the sum or sums so paid.

Upon delivery by the Depository to the County and to the Registered Owner of a Note of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee then the word "Nominee" in this Resolution shall refer to such new nominee of the Depository, and upon receipt of such notice, the County shall promptly deliver a copy thereof to the Paying Agent and Note Registrar.

Section 5. Payment of Notes. If the book-entry system has been discontinued, then the principal of and interest on the Notes shall be payable upon presentation of the Notes at maturity at the corporate trust office of the Paying Agent in Portland, Oregon.

Section 6. Special Account. The County shall establish a Special Account for the Notes. The County covenants for the benefit of the owners of the Notes to deposit into the Special Account not less than 100 percent of all monies received by the County from its ad valorem property tax levy for fiscal year 1997-98, excluding any payments received in respect of delinquent taxes from levies for prior fiscal years until the Special Account holds an amount sufficient to pay principal of and interest on the Notes at maturity; provided that, after payment of the Notes at maturity, any amounts remaining in the Special Account may be used by the County for any lawful purpose. Monies in the Special Account shall not be invested in instruments which mature after the maturity date of the Notes. Monies in the Special Account shall be used solely to pay principal of and interest on the Notes. Additional Notes cannot be issued which will have any claim upon the monies in the Special Account. The Special Account must be fully funded prior to establishing and financing any other special account which is fundable from the 1997-98 ad valorem tax levy.

Section 7. Optional Redemption. The Notes are not subject to optional redemption prior to their stated maturity date of June 30, 1998.

Section 8. Form of Notes. The Notes shall be issued substantially in the form as approved by the County and Note Counsel to the County.

Section 9. Negotiated Sale of Notes and Appointment of Underwriter. The Authorized Representative is authorized to negotiate and execute and deliver, on behalf of the County, a Note Purchase Agreement providing for the purchase of the Notes with an underwriter to be selected by the Authorized Representative.

Section 10. Appointment of Note Counsel. The Board appoints the firm of Ater Wynne Hewitt Dodson & Skerritt, LLP, of Portland, Oregon as Note Counsel.

Section 11. Appointment of Financial Advisor. The Board appoints Regional Financial Advisors, Inc. as Financial Advisor to the County for the issuance of the Notes.

Section 12. Covenant as to Arbitrage. The County covenants for the benefit of the owners of the Notes to comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") which are required for the interest on the Notes to be excluded from gross income for federal income tax purposes, unless the County obtains an opinion of nationally recognized bond counsel that such compliance is not required for the interest payable on the Notes to be excluded. The County makes the following specific covenants with respect to the Code:

- A. The County shall not take any action or omit any action, if it would cause the Notes to become "arbitrage bonds" under Section 148 of the Code and shall pay any rebates to the United States which are required by Section 148(f) of the Code.
- B. The County shall not use the proceeds of the Notes in a manner which would cause the Notes to be "private activity bonds" within the meaning of Section 141 of the Code.

The covenants contained herein and any covenants in the closing documents for the Notes shall constitute contracts with the owners of the Notes, and shall be enforceable by such owners.

Section 12. Notice of Material Events to Municipal Securities Rulemaking Board. Pursuant to SEC Rule 15c2-12(d)(3), the County agrees to provide or cause to be provided, in a timely manner, to the Municipal Securities Rulemaking Board (the "MSRB"), notice of the occurrence of any of the following events with respect to the Notes, if material:

- a. principal and interest payment delinquencies;
- b. non-payment related defaults;
- c. unscheduled draws on debt service reserves reflecting financial difficulties;
- d. unscheduled draws on credit enhancements reflecting financial difficulties;
- e. substitution of credit or liquidity providers, or their failure to perform;
- f. adverse tax opinions or events affecting the tax-exempt status of the Notes;
- g. modifications to rights of holders of the Notes;
- h. bond calls;
- i. defeasances;

- j. release, substitution, or sale of property securing repayment of the Notes; and
- k. rating changes.

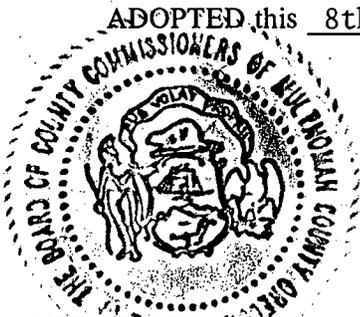
The County may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above, if, in the judgment of the County, such other event is material with respect to the Notes, but the County does not undertake any commitment to provide such notice of any event except those events listed above.

Section 13. Preliminary and Final Official Statement. The County shall, if required, cause the preparation of the preliminary official statement for the Notes which shall be available for distribution to prospective investors. In addition, if required, an official statement shall be prepared and ready for delivery to the purchasers of the Notes no later than the seventh (7th) business day after the sale of the Notes. When advised that the final official statement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained in the official statement not misleading in the light of the circumstances under which they are made, the Authorized Representative is authorized to certify the accuracy of the official statement on behalf of the County.

Section 14. Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the Notes by those who shall own the same from time to time (the "Noteowners"), the provisions of this Resolution shall be part of the contract of the County with the Noteowners and shall be deemed to be and shall constitute a contract between the County and the Noteowners. The covenants, pledges, representations and warranties contained in this Resolution or in the closing documents executed in connection with the Notes, including without limitation the County's covenants and pledges contained in Section 6 hereof, and the other covenants and agreements herein set forth to be performed by or on behalf of the County shall be contracts for the equal benefit, protection and security of the Noteowners, all of which shall be of equal rank without preference, priority or distinction of any of such Notes over any other thereof, except as expressly provided in or pursuant to this Resolution.

Section 15. Closing of the Sale and Delivery of the Notes. The Authorized Representative is authorized to execute and deliver such additional documents, including a Tax Certificate, and any and all other things or acts necessary for the sale and delivery of the Notes as herein authorized. Such acts of the Authorized Representative are for and on behalf of the County and are authorized by the Board of County Commissioners of the County.

ADOPTED this 8th day of May, 1997.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By *Beverly Stein*
Beverly Stein, Chair

REVIEWED BY: _____
COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

By *Sandra N. Duffy*
Sandra N. Duffy, Acting County Counsel

MEETING DATE: May 8, 1997
AGENDA #: R-6
ESTIMATED START TIME: 9:55 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Presentation of Chair Beverly Stein's Proposed 1997-98 Budget

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

REGULAR MEETING: DATE REQUESTED: Thursday, May 8, 1997
AMOUNT OF TIME NEEDED: 20 Minutes

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Bill Farver TELEPHONE #: 248-3958
BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION: Chair Beverly Stein

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

**Executive Budget Message and
Presentation of Chair Beverly Stein's
Proposed 1997-98 Budget**

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein

(OR)
DEPARTMENT
MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
97 MAY - 2 PM 1:20
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES
Any Questions? Call the Board Clerk @ 248-3277



Beverly Stein, Multnomah County Chair

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

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

Executive Budget Message

Thursday May 8, 1997

Presented by Chair Beverly Stein

Introduction

The passage of Measure 47 posed a major challenge for the county this year. I am pleased to report that county managers and workers have met this challenge with creativity, ingenuity and sensitivity. While mourning the necessity to reduce services and dismantle systems which have taken years to build, they have found opportunities to reduce administrative costs, to improve services, to leverage resources, to find new partners, and to implement the most promising practices gleaned from the best research.

This approach is consistent with our vision for quality service. We are committed to providing excellent, quality, customer-focused service which is a good value for the tax dollar. We are also committed to Multnomah County being a good place to work. This has not changed with Measure 47. My budget instructions to departments asked them not to "thin the soup", recognizing that whatever we continue to do needs to be done well. Measure 47 or Measure 50 will cap property tax growth at 3% which means we will not grow out of this problem and when inflation exceeds 3% we will lose more services.

Even with restricted resources in this budget I have also tried to keep faith with the mission the Board and department managers adopted last September. Our mission is very basic: every person should have an increasing sense of personal opportunity and success and every person should have an increasing sense of safety and security.

We are fortunate to have engaged in some planning efforts in recent years which are assisting us in making the service reductions due to Measure 47 in a responsible manner. Specifically, we have the benefit of the Strategic Plan for Information Technology, the Long Range Facilities Plan, the Commission on Children and Families strategic plan and the planning activities of the Local Public Safety Council. County employees have been learning about responding to change, improving systems and increasing productivity through our RESULTS initiative. These have all helped us in meeting the challenge of Measure 47.



Financial Assumptions and Legislative Actions

We had to make a number of assumptions in order to build this budget. The financial picture still remains cloudy because of large questions regarding the implementation of Measure 47 or Measure 50.

We are assuming that the property taxes in the General Fund and levy funds will be cut \$32.8 million by Measure 47 (without Measure 50). The 1996-97 expenditures in these funds totaled \$243.4 million. The 1997-98 budget is \$230.3 million – an absolute dollar reduction of \$13 million. If we compare what the planned services for 1997-98 would cost (including expanded public safety and library programs), the reduction is \$26.5 million.

The legislature could take actions in the next few months which would assist the county and other local governments to respond to Measure 47 cuts:

- ◆ vote by mail for all elections would save us \$750,000 over the biennium in elections costs;
- ◆ county costs of collecting school property taxes could be paid by the state as part of education funding;
- ◆ state funding for “safety net clinics” would help us leverage funds to maintain our primary health care clinics.

This budget went to press before we knew what the impact of Measure 50 would be on the county. Our current estimates are that Measure 50 would increase our revenues by approximately \$5.5 million. If it passes and we receive additional funds I will recommend restoration of:

- ◆ additional library hours at Central Library and in some branches;
- ◆ health services at neighborhood sites, in school based clinics and in primary care clinics;
- ◆ meals and transportation for low income elderly;
- ◆ programs to assist single mothers climb out of poverty;
- ◆ residential mental health services to adults;
- ◆ senior center services and intergenerational projects;
- ◆ Deputy District Attorneys to prosecute felonies and assist civil commitments and victims;
- ◆ community action programs to reduce poverty;
- ◆ groupworkers and mental health assistance for juveniles in custody;
- ◆ juvenile prevention and intervention services;
- ◆ alcohol and drug services and graduated sanctions for juveniles;
- ◆ transition services for women offenders;
- ◆ reducing deferred maintenance on county facilities;
- ◆ improving our information services system.

Response To Citizen Input

We conducted 10 community meetings early in this budget process to get citizen suggestions for services to target for the cuts required by Measure 47. The three top ranked areas were:

- ◆ public safety-specifically not building or waiting to build the new jail;
- ◆ environmental services including elections, assessment and taxation, and animal control;
- ◆ consolidation and elimination of service duplications as ways to reduce costs and improve services.

In response to this:

- ◆ this budget postpones operating the new jail but allocates money for double bunking 200 beds in existing jails (pending approval by the Board and Federal Court) and adding an additional 90 beds for county inmates at the Inverness jail;
- ◆ this budget proposes greatly reduced funding for assessment and taxation. The ongoing General Fund support is cut back \$2.8 million and 52 positions, mostly in the appraisal program. This cut becomes effective in October after the 1997 tax bill is out. If Measure 50 passes we will save an additional \$900,000 in assessment and taxation costs;
- ◆ proposes a one year phase out of general fund support for animal control to allow time to develop a partnership with the Humane Society, gain voter approved user fee increases, and receive ongoing contributions to a foundation from the pet food industry;
- ◆ Mayor Vera Katz and I have initiated discussions with elected officials regarding consolidation of cities and the county and are actively pursuing with them a variety of functional consolidations or new ways to cooperate in shared work.

Our Department Citizen Budget Advisory Committees have reviewed the budget submissions and identified the following areas as issues:

- ◆ Lack of stable funding and sufficient capital investment in county facilities;
- ◆ Need for location and co-location of services in neighborhoods to improve services, and to increased understanding and support of county programs;
- ◆ Need for emphasis on wider partnerships and collaborations to increase service levels.

This budget replaces the money for infrastructure which was taken out last year for our contribution to schools. We still have large liabilities regarding our facilities maintenance and renovation.

New efforts to co-locate programs in the county include One Stops for workforce development, Whitaker School program for health and truancy reduction programs, and a new school based health clinic.

The advocacy for locating programs in the community and the emphasis on partnerships is consistent with the community building initiative described below and I welcome the help of the citizens on our CBACs in advancing that initiative.

Measure 47 Reductions

The big losers under Measure 47 are services which are greatly dependent on the county's general fund dollars and don't have special public safety preference under Measure 47. This means that the cuts fall disproportionately on health care and libraries. Here is a sampling of just a few of the budget cuts:

In the Health Department:

- ◆ East County and North Portland health clinics will close, eliminating clinic capacity for about 10,000 uninsured clients due to a \$4 million budget cut. We are continuing to work with other health care partners and the State to address this issue;
- ◆ Eliminating \$700,000 in General Fund support for the Women's Infants and Children's nutrition (WIC) program;
- ◆ Reducing staff by 7.5 FTE in the Sexually Transmitted Disease and HIV Clinics for a cut of \$440,000.

In the Library:

- ◆ Cutting hours at eight library branches to 19 per week, cutting 31 FTE, saving \$1.2 million;
- ◆ Cutting hours at Central Library to 38.5 per week, cutting 10 FTE, saving \$500,000.

Plus:

- ◆ Cutting 52 positions in Assessment and Taxation to save \$2.5 million;
- ◆ Not opening a new jail, saving \$3 million;
- ◆ Not opening a new Alcohol and Drug facility saving \$1 million;
- ◆ Reducing the felony trial unit in the DA's Office saving \$286,000;
- ◆ Ending the Safety Action Team program saving \$230,000;
- ◆ Cutting the Budget and Quality Office by 3 positions saving \$230,000;
- ◆ Cutting 3 positions from Animal Control saving \$200,000.

And there are many, many more

Public Safety and Library Levies

The allocation formula still pending in the Legislature causes the property taxes paid by individuals to be distributed to taxing districts based on those districts' 1997-98 levies. Because the Public Safety Levy, in particular, is so much higher than it was in 1995-96, the Measure 47 base year, the County will collect a larger share of the property taxes than we did in 1995-96 minus ten percent.

While this is helpful, the proposed budget uses this levy to pay only for items which were described in the public safety levy campaign. However, we could legally use the \$2.1 million of unallocated Public Safety Levy Fund revenue for other public safety programs which could free up general funds for other uses. This will be a Board decision during our budget deliberations.

Library and public safety program advocates have approached the County with proposals to initiate levies outside the Measure 47 or Measure 50 limits in 1998. Some of the ways the proposed budget allocates one-time-only money are based on the assumption that such levies will be proposed and will be approved.

Use of One Time Only Resources

Immediately upon the passage of Measure 47 we made reductions in services and monitored new hires closely in order to build up a one time only fund to help with transition to a lower budget. This proved to be a worthwhile strategy. We will be using one time only money from the general fund and the jail levy to fund:

- ◆ animal control;
- ◆ corrections officers at Inverness Jail and on work crews;
- ◆ early out incentives to reduce disruption from bumping and acknowledge longtime loyalty of employees;
- ◆ providing bridge funding at Central Library and for library phone response to citizens;
- ◆ continuing Assessment and Taxation staff in full operation until the fall to get out the 1997 tax bill and developing a new computer system to respond to the numerous changes in the law.

Impact on Workforce

Ballot Measure 47 will cut approximately 232 positions from the county workforce this year. Sixty-eight more positions are funded on a one time only basis. The reductions are largest in Health with 120 positions, the Library with 86 positions and the Department of Environmental Services (DES) with 68 positions.

Unrelated to Ballot Measure 47, the State of Oregon is transferring various responsibilities to the County which will increase workforce in those areas. The Sheriff, the Department of Juvenile and Adult Community Justice and Corrections Health have added a total of 90 employees with state funds to implement SB 1145. The Department of Aging Services will add 136 employees due to the transfer of Disabled Services from the state to the county.

Meeting Our County Long Term Benchmarks

The Board of County Commissioners adopted a vision and three long term benchmarks in September 1996. We believe that making progress on these benchmarks is essential for reaching our vision. These benchmarks are:

- ◆ Reducing the number of children in poverty;
- ◆ Increasing the number of young people who graduate from high school prepared for their roles as citizens, workers and parents;
- ◆ Reducing crime.

Regardless of the constraints of Measure 47 this budget attempts to make modest and determined efforts towards these goals, recognizing that significant progress can only be achieved through increased collaboration, creative leveraging of resources, and the willingness to change how we work.

Reducing Children in Poverty

Reducing the number of children in poverty is clearly linked to job opportunities and family wages for parents. Currently the City of Portland, Washington County and Multnomah County are creating a new Workforce Development Board to address the needs of the emerging, transitional and current workforce.

We have recently completed an assessment of the county's role in workforce and found that the Strategic Investment Program is a cutting edge example of what works in connecting poor people to jobs. We are now ready to help make the links between our social services and workforce efforts.

If we have additional restorations, I would urge the Board to start a program recommended by the Community Action Commission to help single mothers to get and hold stable jobs that will begin their path out of poverty.

Increasing High School Graduation Rate

Increasing high school graduation can be assisted by family support efforts and social services linked to the schools. While the County is not in a position to repeat its 1995-6 \$10,000,000 one time only contribution to county schools, I am proposing that we continue to fund a number of initiatives that we assumed from schools last year - including school based alcohol and drug services, anti-violence programs, and early screening and referral services for children with

disabilities. In addition, we will continue our work in school based health clinics and propose to use additional revenue from health plan reimbursements to open a new clinic.

I am proposing modest increases in existing community based school retention efforts by opening a Family Resource Center at Whitaker School, providing assistance to the families of elementary and middle school Hispanic youth, and expanding the very successful Self Enhancement, Inc. Through the Health Department, I am providing additional community health nurses to assist clients through the Caring Communities and Family Resource Centers.

Reducing Crime

Crime is decreasing in our community and we need to make sure it continues to decline while we improve people's sense of safety. Juvenile crime is a problem which needs special attention, especially violent juvenile crime. The Local Public Safety Council and the Multnomah Commission on Children and Families have jointly designed a plan for fighting juvenile crime with sanctions, services and prevention measures.

This budget includes a three pronged effort:

- ◆ **Prevention and early intervention:** A combination of mentoring, anti-truancy efforts, parent training and after school activities designed to help youth at risk. Other programs will focus on youth accountability and staying in school.
- ◆ **Early intervention:** In cooperation with the Portland Public School District and North Portland Youth Service Center, we have developed two truancy reduction pilots. The focus is on truancy follow up, mentoring, and family services.
- ◆ **Sanctions:** The system of sanctions for youth on probation will include increased community service, victim restitution and a combined day reporting center and school for youth released from detention.

Using the latest research about what works to reduce recidivism, the Department of Juvenile and Adult Community Justice has designed a new system of supervision which targets resources to those who pose the greatest danger to the public. Sanctions are also being designed to be swift and sure to increase accountability. As part of this system, caseloads will be a more manageable size for probation officers and sanctions and resources will be available for those offenders who pose the greatest continuing danger to our community.

For adult offenders, Sheriff Dan Noelle has proposed a plan to reduce matrix releases, better expedite the booking process and to provide for better assessment and classification of inmates as they arrive in the jail. This increases safety and reduces the cost of transportation. The plan calls for adding more beds to the Justice Center Jail by double bunking. These beds will increase the capacity of the system and reduce matrix releases. This will allow inmates to be properly assessed prior to their movement in the system and gets them out of booking more quickly thus reducing the amount of time law enforcement officers spend waiting to book offenders. At the Sheriff's recommendation, we are also funding the Gresham Holding Facility. The funds are available because of the extra money in the levy.

Community Building Initiative

Progress in achieving our benchmark outcomes is dependent on our ability to leverage community, individual and family resources. A healthy community has good schools, well maintained physical infrastructure, affordable housing, social supports and opportunities for citizen involvement.

We have recently started working on a Community Building Initiative with the City of Portland and other partners. It is intended to be a comprehensive way of creating healthy communities and strong families by recognizing the need to connect our investments in human capital, physical capital and social capital at the neighborhood and community level.

Human capital investments are the things that we do to help people maximize their strengths and overcome problems through our social services and schools. Physical capital includes housing and other civic facilities. Social capital is about the relationships we have with each other and the ways we work together in congregations, community based organizations and other volunteer efforts. Combining these efforts at the local level has the potential of increased satisfaction with government, better service and stronger more resilient communities.

Citizen Assistance

Citizens can assist the County in several ways to help us through this financial crisis:

- ◆ approve user fee increases which I hope the Board will propose to voters in November, 1998;
- ◆ volunteer at a local branch library so we may continue Saturday services throughout the community;
- ◆ volunteer to help a child in school or become a Big Brother or Big Sister through a Family Center or get involved in other community activities;
- ◆ advocate for statewide tax reform so that our community can meet its shared goals for our children, our safety, and our future.

Conclusion

I want to thank the department directors and department staff for their cooperation in developing this budget. The stress of Measure 47 could have resulted in internal competition and distrust. It did not. Our management team held together and worked together to make sure this was a fair budget for all.

I also want to thank Vickie Gates, Dave Warren, the budget staff, and Bill Farver for their excellent work in trying times. Their dedication and skills made this budget one I am proud to present to you.

MEETING DATE: MAY 08 1997

AGENDA #: R-7

ESTIMATED START TIME: 10:15

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: 1997-98 Budget

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: May 8, 1996

AMOUNT OF TIME NEEDED: _____

DEPARTMENT: Support Services DIVISION: 248-3822

CONTACT: Dave Warren TELEPHONE #: 248-3822

BLDG/ROOM #: 106/1400

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

The item before the Board sitting as the Budget Committee will be a resolution to forward the 1996-97 Chair's Proposed Budget to the Tax Supervising and Conservation Commission (TSCC) to meet the legal requirement to provide TSCC with a budget prior to May 15
5/9/97 copies to Dave Warren

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
(OR)
DEPARTMENT MANAGER: *Dickie S. Gales*

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON
97 MAY - 1 AM 10:26

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY, OREGON

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

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

TO: Board of County Commissioners

FROM: Dave Warren

TODAY'S DATE: April 25, 1996

REQUESTED PLACEMENT DATE: May 8, 1997

SUBJECT: Submitting Budget to Tax Supervising

I. Recommendation / Action Requested:

Transmit the Executive Budget to Tax Supervising. Begin budget hearings May 12.

II. Background / Analysis:

The 1997-98 budget process is based on the plan to forward the budget to Tax Supervising on May 8. This will comply with the formal requirement that the Budget Committee submit a budget prior to May 15. It does not, of course, imply agreement on the part of the Board with the policies included in the budget, nor with the Chair's proposed allocation of resources.

III. Financial Impact:

None

IV. Legal Issues:

Approval of the Chair's Proposed Budget for submittal meets the legal requirement to submit a budget to Tax Supervising. After that budget has been submitted, no Fund may be increased by more than 10% in total revenue, and no property tax larger than the amounts included in the Executive Budget may be levied. However, neither of these problems is likely to arise this year.

V. Controversial Issues:

Voting to forward the budget without extensive public review and comment might produce adverse comment if it were not clearly understood that the process meets the technical requirement of the law, or if the Board were not to hold extensive public review before adopting the budget. Six weeks of hearings and work sessions have been scheduled prior to adopting the budget. This should give ample time for public review and comment.

VI. Link to Current County Policies:

n/a

VII. Citizen Participation:

CBAC's have reviewed the budget requests and made recommendations about those requests. Transmitting the Executive Budget will allow them time to review the Chair's recommendations before they make comments to the Board at the departmental hearings scheduled for May and June.

VIII. Other Government Participation:

n/a

RESOLUTION
BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of approving the Chair's)
Proposed 1997-98 Budget for submittal) RESOLUTION
to the Tax Supervising and Conservation)
Commission as required by law)

WHEREAS, the above-entitled matter is before the Board sitting as the Budget Committee under ORS Ch. 294 to consider approving the Multnomah County Chair's Proposed Budget for the fiscal year July 1, 1997 to June 30, 1998 for submittal to the Tax Supervising and Conservation Commission; and

WHEREAS, on May 8, 1997 the Board of County Commissioners, sitting as the Budget Committee under ORS Ch. 294, received the budget message from the Multnomah County Chair and the budget document in compliance with ORS Ch. 294.401; and

WHEREAS, the Board of County Commissioners intends to conduct an extensive review of the 1997-98 Budget which will avoid duplicate hearings and will permit them to deal with the full range of policy and resource allocations at one time; and

WHEREAS, the fluctuating nature of the County's Business Income Tax from year to year, and the uncertainty of property value growth often require budget adjustments after the end of May; and

WHEREAS, transmittal of the Budget to the Tax Supervising and Conservation Commission prior to May 15 is a statutory obligation; and

WHEREAS, the Budget submitted to the Tax Supervising and Conservation Commission establishes the maximum expenditure in each fund; the Board is aware it cannot subsequently increase these expenditures by more than ten percent; and

WHEREAS, the Budget submitted to the Tax Supervising and Conservation Commission establishes the maximum property tax levy for Multnomah County; the Board is aware it cannot subsequently increase these property tax levies, and

WHEREAS, the Board understands that submitting the Budget to the Tax Supervising and Conservation Commission does not prevent the Board from making reallocations within the parameters noted above; and

WHEREAS, at the time of adopting the 1997-98 Budget the Board anticipates making changes to the program allocations contained in the Budget submitted to the Tax Supervising and Conservation Commission; and

WHEREAS, the Board's approval of the 1997-98 Chair's Proposed Budget for submittal to the Tax Supervising and Conservation Commission is intended to express Budget Committee approval but to reflect the probability of changes before final budget adoption;

THEREFORE BE IT RESOLVED, that the Budget and Quality Office shall prepare the 1997-98 Approved Budget and forward it to the Tax Supervising and Conservation Commission.

Adopted this 8th day of May, 1997

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair

REVIEWED:

Sandra Duffy

Sandra Duffy, Acting County Counsel
of Multnomah County, Oregon

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Approving the Chair's Proposed 1997-98)
Budget for Submittal to the Tax Supervising) RESOLUTION
and Conservation Commission as) 97-92
Required by Law)

WHEREAS, the above-entitled matter is before the Board sitting as the Budget Committee under ORS Chapter 294 to consider approving the Multnomah County Chair's Proposed Budget for the fiscal year July 1, 1997 to June 30, 1998 for submittal to the Tax Supervising and Conservation Commission; and

WHEREAS, on May 8, 1997 the Board of County Commissioners, sitting as the Budget Committee under ORS Chapter 294, received the budget message from the Multnomah County Chair and the budget document in compliance with ORS 294.401; and

WHEREAS, the Board of County Commissioners intends to conduct an extensive review of the 1997-98 Budget which will avoid duplicate hearings and will permit them to deal with the full range of policy and resource allocations at one time; and

WHEREAS, the fluctuating nature of the County's Business Income Tax from year to year, and the uncertainty of property value growth often require budget adjustments after the end of May; and

WHEREAS, transmittal of the Budget to the Tax Supervising and Conservation Commission prior to May 15 is a statutory obligation; and

WHEREAS, the Budget submitted to the Tax Supervising and Conservation Commission establishes the maximum expenditure in each fund; the Board is aware it cannot subsequently increase these expenditures by more than ten percent; and

WHEREAS, the Budget submitted to the Tax Supervising and Conservation Commission establishes the maximum property tax levy for Multnomah County; the Board is aware it cannot subsequently increase these property tax levies; and

WHEREAS, the Board understands that submitting the Budget to the Tax Supervising and Conservation Commission does not prevent the Board from making reallocations within the parameters noted above; and

WHEREAS, at the time of adopting the 1997-98 Budget the Board anticipates making changes to the program allocations contained in the Budget submitted to the Tax Supervising and Conservation Commission; and

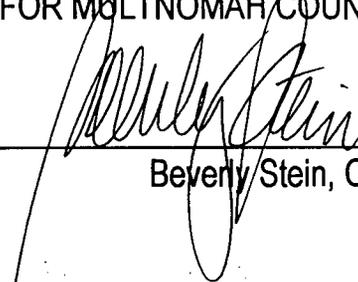
WHEREAS, the Board's approval of the 1997-98 Chair's Proposed Budget for submittal to the Tax Supervising and Conservation Commission is intended to express Budget Committee approval but to reflect the probability of changes before final budget adoption; now therefore

IT IS HEREBY RESOLVED that the Multnomah County Budget and Quality Office shall prepare the 1997-98 Approved Budget and forward it to the Tax Supervising and Conservation Commission.

APPROVED this 8th day of May, 1997.



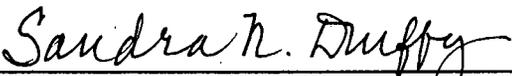
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Beverly Stein, Chair

REVIEWED:

SANDRA N. DUFFY, ACTING COUNTY COUNSEL
MULTNOMAH COUNTY, OREGON

By 

Sandra N. Duffy, Acting County Counsel