

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

An application by Tim and Angela  
Schillereff for the alteration of an existing  
nonconforming dog kennel use to allow up  
to 75 dogs. )  
)  
)  
)  
On remand from LUBA - LUBA No. 95-254 )  
County File No. CU4-95, MC1-95. )  
\_\_\_\_\_ )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW and  
FINAL ORDER**  
98-14

The Multnomah County Board of County Commissioners (the Board) hereby approves the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs pursuant to MCC 11.15.8810.

The Board finds as follows:

**I. PROCEDURE AND PROCEDURAL HISTORY:**

This matter originally came before us in the form of the following three alternative applications to allow the applicants' proposed 75-unit dog kennel:

- A. Authorization pursuant to MCC 11.15.8810 to allow the alteration of the applicants' existing nonconforming 50-unit dog kennel to a 75-unit dog kennel;
- B. A Conditional Use Permit pursuant to MCC 11.15.2028(B) to expand the applicants' existing, conforming 50-unit dog kennel to a 75-unit dog kennel; and
- C. A Conditional Use Permit to allow a new 75-unit dog kennel on high value farm land.

The applicants took this 3-part alternative approach due to ambiguities in the Multnomah County Code (MCC) as to the status of the applicants' existing 50-unit nonconforming kennel operation and uncertainty as to the avenues in the MCC for obtaining an increase in use to 75 units. In our original decision, we approved all three of the alternative applications based on the 110-page findings of fact and conclusions of law written by the Hearings Officer.

The opponent, Marquam Farms, appealed to LUBA, which remanded the decision back to this Board in a December 5, 1996 Final Opinion and Order for further consideration of the "nature and extent" of the applicants' existing kennel operation. We and the applicants appealed LUBA's decision to the Court of Appeals, which affirmed LUBA. Thus, this matter comes

before us on remand from LUBA for further consideration of the nature and extent of the applicants' existing nonconforming kennel use.

This matter was duly noticed and a public hearing was held before the Board of County Commissioners on December 16, 1997 (the "remand hearing"). Because we find the evidentiary record is adequate and compliance with LUBA's remand order does not require the evidentiary record to be re-opened, we did not allow the introduction of new factual evidence at the remand hearing. In this remand proceeding the applicants' representative was allowed to make summary legal arguments, based on the existing record, as were representatives from Marquam Farms. No other party has standing in this remand proceeding. That hearing was continued to allow staff to provide an excerpt of the record identifying the evidence in the record that supports the applicants' nonconforming use arguments. The hearing was reconvened December 30, 1997 for decision.

## **II. CONTROLLING LAW:**

We note at the onset, the applicants' original set of 3 alternative requests, coupled with the Hearings Officer's lengthy decision addressing all issues raised by all parties, created a certain amount of confusion on the part of LUBA and the Court of Appeals as to what the applicants had requested and what this Board had approved. On remand, the applicants have endeavored to simplify and make more clear their request and we too simplify our decision.

**A. New Dog Kennel on High Value Farm Land:** LUBA and the Court of Appeals eliminated the applicant's third alternative approach to this application, *i.e.*, establishment of a new 75-unit dog kennel on high value farmland. OAR 660-33-120 prohibits the "establishment" of a new dog kennel on high value farmland, but allows local governments to approve the expansion of an existing dog kennel on high value farmland. According to the Supreme Court's decision in *Lane County v. DLCD*, 325 Or 569 (1997), this rule is valid and prohibits our consideration of the applicants' third request in this matter, but specifically authorizes the expansion of an existing dog kennel on high value farmland under MCC 11.15.8810. Thus, in this remand decision, the applicants' have abandoned, and we do not address, any request to establish a new dog kennel on high value farmland.

**B. MCC 11.15.2028(B):** In its remand order, LUBA expressed strong reservations about the validity of MCC 11.15.2028(B) and our interpretation of this code provision that converts a nonconforming use into a lawful, conforming conditional use by operation of law without a separate permit. This was the applicants' second alternative basis which we approved. The applicants have withdrawn this aspect of their application, and for that reason we do not address MCC 11.15.2028 further.

**C. MCC 11.15.8810:** This code provision allows the alteration, including an expansion, of any existing nonconforming use so long as the alteration will affect the surrounding area to a lesser negative extent, considering certain criteria. This was the applicants' first basis for their application, which we approved. We agree with applicants that MCC 11.15.8810, on its face, does not require an evaluation of the nature or extent of the underlying nonconforming use. We also agree with applicants' assertion that MCC 11.15.8810 does not

require an applicant to re-prove the nature and extent of the underlying nonconforming use each time there is an alteration of the nonconforming use. We find that once an applicant has proven to the county its entitlement to a nonconforming use in some prior proceeding at a particular level of intensity, we are entitled to rely upon that prior showing as a conclusive determination that the nonconforming use exists and allows us to proceed with the request to modify that lawfully existing nonconforming use. However, in this application, no prior proceeding set a baseline nonconforming use from which the impacts of the altered use are to be measured. We begin our Findings and Decision with a discussion of this aspect of the applicants' application.

### **III. FINDINGS AND DECISION:**

#### **A. Nature and extent of applicants' nonconforming use.**

We reviewed the excerpted record prepared by the applicants which related to the kennel facility itself and to the number of dogs which have been housed in the kennel since the early 1950s.

##### **(1) The nature and extent of the use at the time the zoning code changed.**

While there is conflicting evidence in the record as to whether the zone change occurred in 1955 or 1958, we are satisfied that the record contains evidence that for at least several years prior to either of those dates, the kennel had the physical capacity to house 50-60 dogs and did, in fact, house 50-60 dogs during that time period. That record evidence includes:

- The County established F-2 (Agricultural) zoning over the property on either April 19, 1955 (Marquam Farms) or on July 10, 1958 (Schillereff) (County Record Tab B).
- The kennels were constructed on the subject site between the years 1954 and 1955.
- Letter and Affidavit of May Louise Rose: "My husband, Donald Rose, assisted Alport in building the kennels ... this was done in 1954." (County Record Tab J, pp. 2-4 and 27)
- Affidavit of George Douglas: "I personally remember there was a dog kennel on Schillereff's property well back into the 1950's." (County Record Tab J, p. 5)
- Letter of C. Dondo: "I know that the Lake Tree Kennels, of Rt. 1, Box 120B on Sauvie Island, Portland, Oregon have been in the business of boarding and training dogs since the year of 1952." (County Record Tab J, p. 7)
- Letter of Elden E. Persinger: "I have known the Lake Tree Kennels to have been in the business of boarding and training dogs since the year of 1954 located at Rt. 1 Box 120B on Sauvie Island, Portland, Oregon 97231." (County Record Tab J, p. 8)
- Assessor's record: "12' x 58' kennel 1954" and "12' x 20' [addition] 1955." (County Record Tab J p. 24)

- Affidavit of Neil Rose: "I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels on the property and place the older 'heights home' in position during May 1953." (County Record Tab J p. 26)
- Affidavit of Mairi Holman: "I remember my father, Donald Rose, helped Mr. Alport build the original dog kennels and place the house on the property during May 1953." (County Record Tab J p. 26)
- 50 - 60 dogs were boarded in the facility between 1953 and 1958.
- Affidavit of Neil Rose: "My father operated the kennel for two year [after we moved in May of 1953]. We had between 50 and 60 dogs present at all times, including Labradors, pointers, short hairs, springer spaniels and Chesapeake Bay retrievers. I was a student in junior high and high school during those years and clearly remember these events. My family remained on the property until the summer of 1955, when we moved off the island. When we moved from the island, my father turned the kennel operation over to Roy Wallace, who ran it for several years and kept about as many dogs as my father did." (County Record Tab J p. 26)
- Affidavit of May Louisa Rose: "My husband operated the kennel for two years, and I helped him out sometimes. We had between 50 and 60 dogs present at all times...My family remained on the property until the summer of 1955, when we moved off the island. When we moved from the island, my husband turned the kennel over to another operator, who ran it for several years and kept about as many dogs as my husband did." (County Record Tab J. p. 27)
- Assessor's records: "Date from Aug 1957 to Dec 1962 Occupant Evelyn T. Blitz; Description of Use: Commercial Kennel up to 50 dogs -boarding, breeding and training. Bought as kennel - buildings were here." (County Record Tab J p. 23)

We are convinced that at the time of the zone change the applicants had established a non-conforming use for a 50 dog capacity facility being used at capacity.

(2) The nature of a dog kennel.

We find that this kennel, and all kennel businesses have a periodic nature that results in a variation in the number of dogs boarded over the course of seasons and years. (See County Record Tab J p. 1 - a chronology of use of the facility from 1953 to present.) This is similar to nonconforming schools, hotels, churches, campgrounds and similar facilities which have a basic set of facilities with a particular capacity, but the actual number of occupants varies over time.

(3) Interruption or abandonment of the nonconforming use.

As set out above, we have found that the applicants have established that the subject property was used to kennel 50-60 dogs for several years prior to the zone change which made

this kennel a nonconforming use. We also find that all of the basic facilities for boarding 50 dogs have been in place on the applicants' property since the early 50s, and have been actively maintained and used to the present. The following evidence in the record support this finding:

- County Business License records indicating the kennel on this property was constructed in 1954 and 1955 as a commercial breeding and boarding kennel facility with the capacity for 50 dogs. (County Record Tab A)
- Affidavits of George Douglas, Elden E. Persinger, Timothy Schillereff, Norman Crowe, Mildred Meifert, Marguerite Persinger, Neil Rose, Louisa Rose, Mairi Holman, (County Record Tab J)
- Personal testimony before the Hearings Officer at the August 16, 1995 hearing from Fred Granata, Peter Davis, Kent Meyer, Bruce Cabbellero, Doug Johnston, Patty Larsen, Myron Meifert, Linda Reeder Burns, Tim and Angela Schillereff. We are particularly persuaded by the testimony of the dog kennel's early owners , Red and Marguerette Persinger . <sup>1</sup> (County Record Tab B)
- Letters from Neil Rose, Pat Baggett, Elden E. Persinger, C. Dondo and George Cashdollar.(County Record Tab J)

We specifically agree with and adopt as our own the Hearings Officer's conclusions with regard to this evidence found at pages 91 through 95 of his September 15, 1995 decision.

There is also substantial evidence in the record that the present existing use of the property is for the boarding of 50 dogs. (County Record Tabs F, G and H)

Marquam Farms has asserted that the nonconforming use has diminished over the intervening years and must be established for purposes of MCC 11.15.8810 at its lowest historical use. We do not find that there is any controlling legal authority which requires us to find the lowest historical use and establish that as the nonconforming use baseline for purposes of measuring impacts of proposed alterations.

---

<sup>1</sup> Representatives of Marquam Farms have objected that none of the testimony presented on behalf of the applicants before the hearings officer is credible. We disagree. Not only is much of this evidence given under oath, but the majority of it is very specific and detailed, especially that of the Persingers, who owned and lived on the property from 1973 until the applicants purchased it in 1989. We also note that no representative from Marquam Farms attended the August 16, 1996 hearings officer hearing, despite direct mail notice. Therefore, we reject Marquam Farms' opinions about the credibility of this testimony. Moreover, the testimony that Marquam Farms submitted in the 1994 design review proceeding and had incorporated into this record is from duck hunters that were on the Marquam Farms property, at most a few days each year. When compared with the detailed evidence from day-to-day activities submitted in support of the applicants, we were not persuaded by the evidence provided by Marquam Farms and do not find it credible.

The fact that there were less than 50 dogs at various times over the last 40 years (and the applicants do not dispute that), only relates to whether or not the established lawful nonconforming use was ever abandoned. We find that in the kennel business, like a quarry business, a church, a campground, a school, a hotel or other similar uses which generally have a basic set of facilities with a particular capacity, the actual number of occupants varies over time. The facility has always kenneled dogs, there was no demolition or conversion of the facility to another use; and, there is no evidence of an intention to abandon that use. When the basic facility and capacity have been actively maintained continuously over time and occasionally filled to that capacity, we will conclude the "use" has persisted throughout and that the nonconforming use right has been maintained. Just because the number of dogs, students, hotel guests, parishioners, campers, etc. fluctuates over time, we do not measure or limit the extent of the nonconforming use right by the number of occupants, which in virtually all cases would be zero at some point during every year. This interpretation of MCC .11.15.8810 and state law is modeled on the Oregon Supreme Court's decision in *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1997).

#### (4) Conclusion.

We conclude that applicants have proved that a 50 dog kennel nonconforming use has been established and maintained; that the nonconforming use has not been interrupted or abandoned; and, that is the baseline against which the impacts of an alteration to a kennel with a 75 dog capacity must be measured under MCC 11.15.8810.

#### **B. The applicants have a right to a nonconforming dog kennel with a capacity for 50 dogs by virtue of the County's prior approvals, representations made to the applicants by the County that such a right exists, and the applicants' detrimental reliance upon those representations:**

In addition to the evidence in this record to support the applicants' claim that their kennel has maintained a capacity for 50 dogs since before 1958, we are persuaded by previous County land use decisions that are premised upon, and therefore confirm, the fact that the applicants have a right to a nonconforming dog kennel with capacity for 50 dogs. In particular, each of the following unappealed land use approvals by Multnomah County is legally premised upon the fact of this nonconforming use:

- March 2, 1989 building permit to remodel the applicants' original kennel building. As part of that process, County staff specifically informed that a separate conditional use permit was not required for the use because it was nonconforming.
- August 6, 1990 Planning director's design review decision approving a remodeling of the applicants' existing 50-unit dog kennel.
- November 6, 1990 Planning Commission conditional use permit approval for a night watchman's residence for the applicants' existing 50-unit dog kennel, including a determination by the Chief Assistant County Counsel and an

acknowledgment by the planning commission that the applicants had a right to the existing nonconforming 50-unit dog kennel.

- March 7, 1996 Planning director's design review decision approving the applicants' remodel of the existing 50-unit kennel and the design for an additional 25 kennel units.

Each of the design review approvals specifically stated that the capacity of the applicants' kennel was 50 dogs.<sup>2</sup> Marquam Farms received notice of each of these applications, and in each had the opportunity to refute the stated kennel capacity of 50 dogs. Yet, Marquam farms failed to appeal any of these design review decisions, including the underlying kennel use with a 50-dog capacity. Moreover, in each of these applications, County Counsel and planning staff advised the applicants they did not need to make a separate application to establish the underlying kennel use.<sup>3</sup> The applicants justifiably relied upon that specific direction from County staff and upon the County's approval and continued to invest in and maintain their kennel facilities.<sup>4</sup>

With regard to the November 1990 conditional use, the permit approved was for a use accessory to the applicants' 50-dog kennel. The application for an accessory night watchman's residence, as a matter of law, could only be accepted and considered by Multnomah County if the underlying use existed, *i.e.*, a dog kennel with a capacity for 50 dogs. Again, Marquam Farms had notice of this application; its representatives participated in the Planning Commission hearing, yet Marquam Farms did not appeal. We find that Marquam Farms' failure to appeal the County's decisions and the applicants' reliance on those same decisions have resulted in the applicants' right to a nonconforming kennel use with a capacity for 50 dogs. We are estopped from concluding otherwise in this application even if we were inclined to do so.

Our acknowledgment of the applicants' right in this regard is also supported by the staff's position taken in 1994 when the applicants had applied for design review to expand their dog kennel from 50 to 75 units. At that time, planning staff again verified the applicants' legal right to a nonconforming 50-unit dog kennel with the same chief Assistant County Counsel, who again opined that the applicants' nonconforming use right was valid and need not be re-proven in the context of the 1994 design review application. On that basis, the applicants were advised to not submit any separate application or evidence to prove their existing nonconforming use right to a 50-unit kennel. This advice is memorialized in staff's February 2, 1994 Pre-application

---

<sup>2</sup> We acknowledge that only some portions, but by no means all, of the records for these prior proceedings are now before us. However, there is no requirement of state law or the MCC that requires us to first review the entire record of these prior decisions before acknowledging what these decisions approve.

<sup>3</sup> That acknowledgment was first explicitly stated in the October 8, 1990 opinion of chief Assistant County Counsel John DuBay that the applicants had a lawfully existing nonconforming use predating restrictive zoning. We accept and agree with that determination.

<sup>4</sup> Under our interpretation of MCC 11.15.8810, we find that, not only do the applicants have a right to continue the nonconforming use they claim based on prior County approvals and advice of staff, but that we are estopped from concluding at this late date that the right does not in fact exist.

Conference Notes. Because the record in the applicants' 1994 design review application did not include this evidence, which staff specifically advised the applicants to not include, the Hearings Officer denied the application without prejudice.<sup>5</sup>

We now have the full record before us; whereas, that does not appear to have been the case with the Hearings Officer in 1994. In light of the evidence in this record, we find the applicants have had a right to a nonconforming 50-dog kennel. We find that, had the Hearings Officer had before him the record which we do today, he would have had sufficient evidence of the applicants' nonconforming use right to approve the design review request. Regardless of the validity of that supposition, we find that today the applicants have established their nonconforming use right to a kennel with a capacity for 50 dogs, that the County acknowledged that fact on four occasions since 1989, and that none of those decisions were appealed by Marquam Farms despite its participation in those proceedings.

**C. The Applicants have demonstrated compliance with the criteria in MCC 11.15.8810 to allow expansion of the capacity of their dog kennel from 50 to 75 dogs:**

MCC 11.15.8810(A)&(E) provide 12 criteria that must be met before an alteration, such as the one proposed here, can be approved and specifically require findings on each of the following.

- (A)(1) A change in the use of no greater adverse impact on the neighborhood.
- (A)(2) A change in the structure of physical improvements of no greater adverse impact on the neighborhood.
- (E) An alteration of a non-conforming use may be permitted if the alteration will affect the surrounding area to a lesser negative extent than the current use, considering:
  - (1) The character and history of the use and of development in the surrounding area.
  - (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

---

<sup>5</sup> We place emphasis on the 1994 Hearings Officer's decision which made no particular determination about the applicants' nonconforming use claim, but instead said "if the applicant is able to obtain a conditional use permit or otherwise establish the use as a lawful use, this denial of Design Review should not prejudice such later action, if any. Therefore the applicant's request for Design Review is denied without prejudice." The future confirmation of the applicants' nonconforming use right anticipated by the Hearings Officer in 1994 is set forth in this decision.



- (3) The comparative numbers and kinds of vehicular trips to the site.
- (4) The comparative amount and nature of outside storage, loading and parking.
- (5) The comparative visual appearance.
- (6) The comparative hours of operation.
- (7) The comparative effect on existing vegetation.
- (8) The comparative effect on water drainage.
- (9) The degree of service or other benefit to the area, and
- (10) Other factors which tend to reduce conflicts or incompatibility with the character or needs of the area.

We address each criterion below separately. But first, we specifically find that MCC 11.15.8810(E) does not necessarily preclude an increase in the number of kennel units, and that an increase from 50 to 75 can meet this standard of a reduction in negative impacts. In particular, we find the applicants' specific proposal includes a redesign of kennel operation that, when taken as a whole, will achieve a reduction in overall negative impacts from that of the current 50 units.

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

The primary impact from this proposal, and the one which Marquam Farms complains of, is noise. We find this proposal and the design features it entails will result in an overall reduction in noise from this dog kennel operation. The specific design features that will bring about this degree of protectiveness is explained in detail in subsection (4) below.

2. A change in the structure of physical improvements of no greater adverse impact on the neighborhood.

The physical improvements that will accompany the applicants' increase from 50 to 75 dogs will reduce the operation's overall impact on the neighborhood, which in this case is limited to the Marquam Farms hunt club. The specific ways in which this will happen are described in detail in the subsections that follow.

3. The character and history of the use and of development in the surrounding area.

As already noted, the starting point for our inquiry is the applicants' lawful, existing, nonconforming 50-unit dog kennel. The history of use at this 9.4 acre site is characterized by a commercial dog kennel with a capacity for 50 dogs. The property is too small to be productively or economically put to a farm use. We define the "surrounding" area to be the area likely to be impacted by this proposed use. We find that a circle with a radius of 1,500 feet exceeds the

distance likely to experience impacts from this proposed kennel operation. For purposes of the criteria in MCC 11.15.8810(E), we address potential impacts within this area.<sup>6</sup>

The surrounding area is rural and sparsely developed (only 3 residences within a quarter mile radius). The kennel compliments recreational use of the island for hunting since hunting dogs are frequently boarded and trained at the kennel. The nearest residence is approximately 800 feet from the kennel, separated by Reeder Road and a 15-foot dike covered with an expansive blackberry bramble. The following improvements are not part of the current kennel operation, but are proposed by the applicants in this proposal: insulated roof, walls, parking and circulation. With these improvements, we find that barking dogs will not be audible at the nearest residence, and this conclusion is supported by the sound study conducted by the applicants and included in the record.<sup>7</sup>

The only commercial farming operation within a 1,500 foot radius is a dairy operation which reports no adverse impacts to date from the current 50-dog kennel operation or any of the other dog kennels on this property. We find that, with the proposed improvements, this farm will not experience any impacts from the proposed use in the future.

The only possible impact identified in the record is with Marquam Farms - the hunt club that abuts the subject site. Marquam Farms shares a common access easement with the applicants' kennel. We find that any dog barking problems previously experienced by Marquam Farms will no longer exist because of the proposed redesign. The applicants propose a new configuration that prevents dogs housed in the kennels from seeing hunters arriving and leaving Marquam Farms. With the new design, the dogs will no longer bark at arriving and departing hunters, thus the proposal, when taken as a whole, will reduce the impacts presently experienced by Marquam Farms from 50 dogs.

4. The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line.

With regard to noise, the applicants have submitted a credible, expert sound study that demonstrates that barking dog noise, even with the addition of 25 more dogs, will be reduced.<sup>8</sup> In particular, the following design features will collectively reduce the noise below what is currently experienced with a 50 dog kennel:

---

<sup>6</sup> In addition to the findings set forth herein, we also expressly accept and adopt as our own the compatibility analysis submitted by the applicant at pages 13-14 and 26 of their application narrative.

<sup>7</sup> The noise study (conducted by Rose City Sound in 1990) is attached to the applicants' narrative as Attachment E. We accept this study and its conclusions as credible expert testimony on the subject of noise impacts.

<sup>8</sup> In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicant at pages 26-28 of their application narrative.

- A 100' solid wall for the full length of the shared accessway that blocks the kennels' view of hunters entering and leaving the Marquam Farms hunt club,
- Kennels covered with an insulated roof to prevent sound transmission,
- A parking lot design that allows dogs to be taken to grooming, bathing, exercise and living facilities without being heard or seen by dogs in the kennel,
- A circulation design that allows dog owners to pick-up and leave-off dogs out of sight and sound of the kennels, thus not disturbing dogs housed in the kennels.

We find these measures will be adequate to prevent and, in fact, reduce noise impacts on all properties within the impact area. In light of the fact that the applicable zoning allows all of the surrounding properties to have up to 3 adult dogs with absolutely no mechanism to prevent any impacts, we find the applicants' proposal will prevent noise impacts.

With regard to dust, we find that the applicants' driveway is graveled and there is no evidence of dust from traffic on the driveway. Based on this record, we find that dust is not a factor that could adversely impact properties in the impact area. To the extent that dust from the gravel driveway could be construed to be a problem, we find that conventional tillage agricultural operations produce far more dust than could be produced from the applicants' driveway.

With regard to odor, we find no evidence of odor complaints in the record before us. Moreover, the applicants have installed an on-site septic system sufficient to handle all septic waste from a 75-unit dog kennel. Consequently, we find that odor from the proposed 75-unit kennel operation will not be a problem.

We find there will be no vibration, glare or smoke impacts from this proposed use. In summary, we conclude that the proposed alteration to expand the kennel to 75 dogs will affect the surrounding area to a lesser negative extent than the current 50-unit kennel considering noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line. Thus, we find that, pursuant to MCC 11.15.8810(E)(2), the alteration will have a reduced negative effect when compared to the current operation.

##### 5. The comparative numbers and kinds of vehicular trips to the site.

We find that, with an increase from 50 to 75 kennels, vehicular traffic will necessarily increase; however, with the proposed modifications to the kennel's design, we find that the negative impacts from traffic will be less.<sup>9</sup> The traffic benefits from the proposal are primarily from improved parking and circulation at the site - and issue discussed in the next subsection. Moreover, we find, based on evidence in the record, that none of the transportation facilities serving the applicants' kennel are near capacity, and thus there will be no capacity or safety impact from the proposed expansion. We also find to be persuasive the fact that the peak dog

---

<sup>9</sup> In addition to the findings set forth herein, we also expressly accept and adopt as our own the analysis submitted by the applicants at pages 28-30 of their application narrative.

boarding season (summer) does not overlap with the peak in duck club use at Marquam Farms (fall and winter). Accordingly, we find, pursuant to MCC 11.15.8810(E)(3), the alteration will have a reduced negative effect when compared to the current operation.

6. The comparative amount and nature of outside storage, loading and parking.

There is no outside storage associated with the current or proposed configuration, thus outside storage is not an issue. The proposal will improve the site's parking by adding wheel stops, thus maintaining better parking organization and by screening the parking and loading areas from dog kennels, thus limiting disturbance to boarded dogs. Also, the new parking configuration will prevent customer cars from blocking the access shared with Marquam Farms because of the proposed single office, replacing the current 2 offices, the location of circulation signs and the better organization of parking spaces marked with wheel stops. With these improvements, we find that, pursuant to MCC 11.15.8810(E)(4), the alteration will have a reduced negative effect when compared to the current operation.

7. The comparative visual appearance.

We find that the proposed improvements to the kennel will improve its visual appearance for the following reasons:

- The old Quonset huts on the property will be replaced with a new, state-of-the-art kennel building.
- The parking lot will be provided with wheel stops and signs to ensure that customer vehicles are parked in an orderly fashion.
- New landscaping and fencing will be installed as proposed which will enhance the appearance of the kennel and grounds.

With these improvements, we find that the expanded kennel will have a better visual appearance than does the present 50-dog operation. Accordingly, we find that, pursuant to MCC 11.15.8810(E)(5), the alteration will have a reduced negative effect when compared to the current operation.

8. The comparative hours of operation.

The hours of operation with the proposed expansion will not change; thus, MCC 11.15.8810(E)(6) is not a factor.

9. The comparative effect on existing vegetation.

With the proposed expansion of use to 75 dogs, the applicants propose new landscaping which will benefit and lessen the impacts to Marquam Farms. In particular, Marquam Farms will benefit from landscaping separating the parallel parking area from the northeast wall of the new

kennel building. With this improvement, we find that, pursuant to MCC 11.15.8810(E)(7), the alteration will have a reduced negative effect when compared to the current operation.

10. The comparative effect on water drainage.

The proposed alteration will increase slightly the impervious area and thus the runoff from the site. However given the site's 9.4-acre size, we find that the site's overall drainage will not be affected by the proposed expansion. As noted previously, the water quality of the runoff will not be negatively impacted by the use because of the septic system planned to serve the expanded operation. For these reasons, we find MCC 11.15.8810(E)(6) is not a factor.

11. The degree of service or other benefit to the area.

We find the alteration proposed by the applicants will benefit the surrounding area because of the substantial improvements in design, facilities and operations it represents. The only complaints received in this matter were from Marquam Farms, and we find that the proposed alteration, when taken as a whole, will not only eliminate those impacts that currently exist, but will benefit Marquam Farms. The expansion will allow the applicants to serve more of the dogs owned by hunt club members as well as dogs owned by other Sauvie Island residents. The proposal will reduce noise, improve the overall appearance of the property and buildings and improve parking and circulation. All of these improvements, and the increased capacity, stand to benefit the surrounding area. Thus, pursuant to MCC 11.15.8810(E)(9), the alteration will have a reduced negative effect when compared to the current operation

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

As noted previously, we find the present use has no measurable impact on surrounding resource uses or its neighbors, with the possible exception of Marquam Farms. With the proposed expansion, those few impacts will be substantially reduced or eliminated. The applicants' proposal is designed specifically to reduce impacts with Marquam Farms and provide a better standard of service to current and future customers. We believe the insulated and completely contained building design, the solid wall along the shared access way, the improved circulation measures and landscaping will make this kennel more compatible with Marquam Farms and the other properties within the surrounding area. We find these measures, taken as a

whole will reduce the overall conflicts with surrounding uses, to the extent they exist at all, and will make the use in its altered form more compatible with its neighbors as required by MCC 11.15.8810(E)(10).

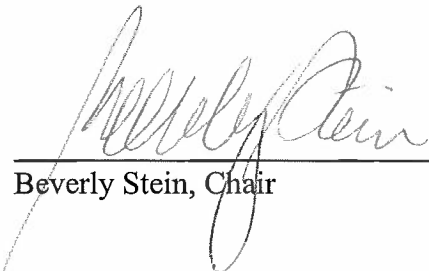
#### IV. CONCLUSION:

Based on the foregoing findings of fact and conclusions of law, we hereby approve the applicants' request for an alteration of their existing, lawful, nonconforming dog kennel with a capacity for 50 dogs to expand the kennel capacity to accommodate 75 dogs.

**IT IS SO ORDERED** this 5th day of February, 1998.

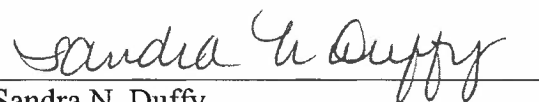


BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
\_\_\_\_\_  
Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By   
\_\_\_\_\_  
Sandra N. Duffy  
Chief Assistant County Counsel

J:\DHK\33536-00.003\BOCCFIND.DOC