



**MULTNOMAH COUNTY**  
**LAND USE PLANNING DIVISION**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 248-3043 FAX: (503) 248 -3389

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## Decision

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### Conditional Use Permit Application – Community Service Use

Case File: CU 0-2

Hearings Officer: Liz Fancher

Hearing Date: May 17, 2000

Application: A Conditional Use Permit application for development within Howell Territorial Park, as set forth in a Master Plan for the park adopted by the Metro Council, April 17, 1997.

Location: 13901 NW Howell Road  
Tax Lot 100, Section 21, T2N, R1W, W.M. (R97121-0120)

Applicant: Lora Price  
METRO  
600 NE Grand Avenue  
Portland, Oregon 97232

Site Size: 101.51 acres

Present Zoning: Exclusive Farm Use (EFU)  
Willamette River Greenway (WRG)  
Community Service (CS)

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MULTNOMAH COUNTY  
PLANNING SECTION

EXHIBIT  
J1

## Hearings Officer Decision:

**Denial.** The application and record lack sufficient factual information to allow the hearings officer to make findings that must be made in order to approve the application.

## Findings of Fact

(Formatting Note: Headings for each finding are underlined. Multnomah County Code requirements are referenced using a **bold** font. Written responses by the applicant, intended to demonstrate compliance with code criteria, are *italicized*. Planning staff comments and analysis may follow applicant responses. Where this occurs, the notation "Staff" precedes such comments. Findings written by the hearings officer are preceded by the notation "Hearings Officer." All findings and comments are adopted as findings of the hearings officer except those shown with strike-through markings.)

### 1. Property Location

*Howell Territorial Park [Howell Park] is located off of Sauvie Island Road on Howell Park Road in Section 21 of Township 2N, Range 1W. [See Exhibit 1, Location Map.]*

*The park area is approximately 101.51 acres. The master planning area subject to this application includes tax lots described as TL 12 (72.57 Ac.), TL 13 (20.76 Ac. now part of TL 12), TL 18 (5.66 Ac.), and TL 19 (2.53 Ac [See Exhibit 2, Existing Conditions and Exhibit 3, Proof of Ownership.]*

*Farms abut Howell Park to the north and south. The NW Sauvie Island Road and the Multnomah Channel border the western flank of the park. To the east, the Gilbert River bounds the park.*

Staff: The tax lots referenced above have been consolidated, as illustrated on current Assessment Maps (see Exhibit 4). Lands subject to this application are now referenced as Tax Lot 100.

### 2. Proof of Ownership

*Metro owns and maintains the land, buildings, and related park improvements. Metro occasionally conducts public educational programs on-site. Metro contracts with the Oregon Historical Society (OHS) for services related to historical interpretation and park visitor services. Multnomah County shares the cost of the OHS contract with Metro.*

*The OHS provides the following services at Howell Territorial Park:*

- *Research and interpretation for the Bybee-Howell House, grounds, and artifacts on exhibit.*
- *Hires, trains, and supervises interpretive staff who lead house tours, conduct living history programs and provide for public security.*
- *Provides interior housekeeping and security during open hours for structures and furnishings.*
- *Hosts special events.*

Staff: A deed recorded September 13, 1996, with instrument #96139415, establishes that Metro owns all lands subject to this application (see Exhibit 3).

### 3. Present Zoning

*Howell Territorial Park and all surrounding lands are zoned EFU, Exclusive Farm Use. Selected polices of the Multnomah County Comprehensive Framework Plan (Framework Plan) and the Sauvie Island Rural Area Plan (SIRAP) apply to this application.*

*The Willamette River Greenway (WRG) and Significant Environmental Concern – Wetlands (SEC-w) zoning sub-districts overlay the site...Howell Lake, the Gilbert River, Park wetlands, and Park historic sites are designated as significant Goal 5 resources. [See Framework Plan, Policy 16 (G) and Framework Plan Map.]*

*Multnomah County issued Community Service (CS) approvals for Howell Park in 1963, 1968, 1969 and 1974 for land acquisition and related park development.*

### 4. Existing Site Characteristics

#### Hydrology

*Flooding has had a major influence on Sauvie Island and the site over time. The construction of the dike system stabilized flooding. All mapped FH lands lie west of the dike and are outside the scope of this project.*

*A shrub/scrub wetland is located in the northwest corner of Howell Park. [See Exhibit 5, Vegetative Communities.] The amount of water in the wetland is determined by annual precipitation and ground water. Howell Lake is a large fresh water wetland, the level of which historically fluctuated with seasonal flooding and dry weather conditions. In 1992 Multnomah County added a well and submersible pump to maintain the lake at desired levels. An earthen dike separates Howell Lake from the Gilbert River, the eastern boundary of the site. The Gilbert River collects much of the storm water run-off on Sauvie Island and provides important food and cover sources for local wildlife.*

#### Topography and Soils

*From NW Sauvie Island Road on the west, the land drops down off of the dike onto a rolling plain. The Bybee-Howell house sits on an alluvial terrace above the plain. Immediately south and west of the house the terrace drops steeply into the ancient river channel, which predates the dike-building era. The balance of the site is a level ancient flood plain and present-day wetlands.*

*Three types of soil predominate the site: Sauvie Island Silt Loam, Burlington fine sandy loam, and Moag silt clay loam. Sauvie Island silt loam (soil type 45, Class II-w) is the dominant soil type and is found on the level areas of the park. It is poorly drained but supports agriculture and wildlife. Burlington fine sandy loam (soil type 6b, Class II-e, and soil type 6c, Class III-e) is found near the house and oak grove. It is well drained and well suited for farming. Moag silt loam (soil type 28, Class III-w) is found around and under the small wetland and Howell Lake. This hydric soil is poorly drained and supports wetland vegetation. [Source, Soil Survey of Multnomah County, Oregon, USDA Soil Conservation Service, 1983.]*

#### Vegetation Communities

*Howell Park has a variety of upland and wetland plant communities that are representative of the vegetation found on Sauvie Island. [See Figure C, Vegetation Communities.] For a more complete*

discussion of the vegetation communities on the site, see Exhibit 6, Howell Territorial Park Master Plan, prepared for Metro and the Oregon Historical Society, April 1997. No rare, threatened or endangered plant species have been found or are known to exist on the site. The vegetative communities include:

#### *Upland Vegetation.*

- *Pasture: A large portion of the site is currently in pasture use and is regularly mowed, grazed or hayed. Dominant vegetative species include non-native pasture grasses and forbs. Invasive plants, such as tansy and thistle, are common. Seven large oak trees, a remnant of the Savanna oaks community that existed on Sauvie Island for hundreds of years, are located in the pasture*
- *Hedgerows: Fence lines on the south and north property lines are planted in hedgerows. The hedgerows provide food sources, cover, and nesting opportunities for wildlife. The hedgerows also provide visual screens from adjoining properties.*
- *Forest: Small mixed deciduous forested areas are located primarily south of the Bybee-Howell house and along the Gilbert River. Bigleaf maple, red alder, and Oregon white oak are the dominant tree species.*
- *House Grounds / Orchards: Foundation plantings surround the perimeter of the house. East and north of the house are mature fruit, nut and ornamental tree orchards. The Home Orchard Society planted the orchard in 1974. Cuttings from historic fruit trees were grafted to dwarf rootstock to create the present fruit orchard. Douglas fir trees, north of the house, were planted in the 1970s.*

#### *Wetland and Riparian Vegetation.*

*Palustrine and riverine vegetation communities are found on the site.*

- *Shrub/scrub Wetland: North of the house is a small wetland dominated by smartweed and bidens (beggars tick) in the lowest portion of the wetland, and willows and reed canarygrass along the edges. This type of small seasonal wetland was common on Sauvie Island prior to water control practices. Seasonal wetlands are an important habitat area for migrating waterfowl.*
- *Emergent Wetland: Howell Lake is primarily open water with about five percent of the surface covered with emergent aquatic vegetation. Wetland plant composition includes two dominant species: reed canarygrass and soft rush. Wapato, an important food source for Native Americans, is found on the east side of the lake. (Wapato was once so abundant here that Lewis and Clark named the island 'Wapato Island'.)*
- *Riparian Forest: A narrow band of riparian vegetation exists along the Gilbert River and the culvert outfall of Howell Lake.*

#### *Wildlife*

*Sauvie Island is located on the Pacific Flyway and therefore attracts a large number of bird species year round. Public agencies have managed nearly 12,000 acres of the island for wildlife use since 1947. The park site contains habitat suitable for many waterfowl and songbird species. Howell Territorial Park prohibits all hunting on parklands. Common water birds observed include pied-billed grebe, American coot, Virginia rail, sora, great blue heron, double-crested cormorant, Canada goose, and a dozen different species of ducks. Thirty-five species of songbirds are common in the park including nesting purple martin, marsh wren, common yellowthroat, savannah sparrow, red-winged blackbird, occasional yellow-headed blackbird, and American goldfinch. Red-tailed hawk, American kestrel, and Cooper's hawk nest nearby and hunt in the park.*

Mammals observed include several bats, Townsend's mole, California ground squirrel, nutria, beaver, river otter, coyote, and black-tailed deer. Common reptiles and amphibians are Pacific tree frogs and two species of garter snake.

Bald eagles, a formerly endangered species, have been observed foraging at the site. No other rare, threatened, or endangered animal species have been found or are known to exist on-site.

Historic and Cultural Resources

The Oregon Archaeological Society completed an archaeological survey on-site in the summer of 1993 for the purpose of locating historic structures. The survey produced no conclusive evidence of historic structures, though the survey team found historic artifacts scattered on the site.

James Bybee built his home here in 1858. The Bybee-Howell House, as it is now called, is one of the most significant examples of settlement era Greek Revival architecture extant in Oregon. The 1,880 sq. ft. house and surrounding property are located on the National Register of Historic Places and are significant Goal 5 resources. Multnomah County acquired the property in 1962 and the house has been used for museum purposes since that time. The OHS provides historical interpretation of domestic and farm life in the house and on grounds.

Roads, Parking, and Circulation

Howell Park Road provides direct access from Sauvie Island Road to the park. Multnomah County owns and maintains Howell Park Road from Sauvie Island Road to the park maintenance entry. Howell Park Road becomes a private drive that is owned and maintained by adjacent property owners. A portion of the private drive is located within the park boundary. A maintenance road provides vehicle and emergency access to the barn, house and grounds. The roads are described in Table 1 below.

Table 1, Existing Roads

Road	Width (feet)	ROW (feet)	Surface	Length (feet)
Howell Park Rd.	20	60	Asphalt	790
Maintenance Rd.	10	-	Gravel	395
Private Rd.	14	-	Gravel	290

The park provides two parking areas on the north and south side of Howell Park Road. The parking areas are described in Table 2 below.

Table 2, Existing Parking

Area	# of Cars	Surface	Use	Season
North Field	295	Grass	Park	June – Sept.
South Field	310	Grass	Special Event	June – Sept.

Hearings Officer: Metro has not established that the Table 2 “Existing Parking” has ever been approved in the prior land use reviews of park use. It seeks approval for this parking so, from the point of assessing impacts to farm neighbors, the matter is being reviewed as though this parking does not yet exist. It is noted, however, that the parking space figures in this table do not match the figures used in the traffic study. Those figures indicate a total of 500 parking spaces in both fields. The difference in these numbers may arise from the fact that the fields are not formal, paved parking areas so lack space

striping. Without striping, vehicles may be parked closer to each other enabling Metro to fit more cars into the fields.

As this discrepancy has not been clearly addressed by Metro and the burden of proof rests on Metro, the hearings officer finds that Metro's proposal seeks approval for 605 unimproved parking spaces, 25 improved parking spaces, two improved bus parking spaces and two improved handicapped accessible parking spaces. This amount of parking will allow approximately 2000 persons to visit the park at any one time.

*Park visitors enter the site at a fence opening between the north parking area and the house grounds. There are no trails in the park. Pedestrian circulation is informal.*

*Parking, grounds, picnic areas, buildings, and restrooms were constructed or developed prior to the passage of the Americans with Disabilities Act (ADA) and are not in compliance with the Act.*

Non-Historic Buildings and Structures

*Barn. The barn is a slab on grade, wood framed building that was built for storage purposes. An agricultural museum was added as a use in 1980. Public restrooms and a small office/kitchen/meeting room are located in the northwest corner of the barn. The second floor is unfinished.*

*Finnish Cabin. The OHS built the log cabin for exhibit purposes in the 1970s. It is a small three-sided structure with an open front and is located between the barn and the house.*

*Fencing, Gates, Signs. The park employs a variety of fencing materials including barbed wire, split rail, and chain link. [See Table 3, Fencing and Gates below.] Fences are used to manage cattle, limit cattle access to Howell Lake, and separate the grounds from the road, and direct pedestrians to the park entry. There are two signs in the park, one identifying the park and the other listing the park regulations. Both signs are located at the park entry-point.*

Table 3, Fencing and Gates

Type	Lineal feet	Quantity
Barbed wire	12,000	-
Split rail	500	-
Chain link	200	-
Cable gate	-	2
Wooden gate	-	1
Pasture gates	-	11

*Picnic Area. The expansive grassy area around the house is used for casual and organized picnics, parties, and organized special events. The OHS 'Wintering-In' festival occurs at the end of September and attracts several thousand people to the park for a weekend of historic interpretive events, food and entertainment. [See Table 5, Park Furnishings.]*

Table 4, Park Furnishings

Item	Number	Material
Picnic Tables	15	Wood/steel
Barbecue	1	

<i>Park signs</i>	<i>2</i>	<i>Wood</i>
<i>Sculpture</i>	<i>1</i>	<i>Metal</i>

Farm Area. The pasture is used for grazing under a lease with Mrs. Marge Howell, a descendant of Thomas Howell. Metro will continue to lease the original property out for agricultural use through 1999 and will lease the recently purchased twenty acres for agricultural purposes through 2003. Thereafter, Metro can continue to use all or a portion of the park for agricultural purposes on an annual lease basis.

### Utilities and Services

Existing utilities are shown on Exhibit 7, Utility Plan, and in Table 6, Existing Underground Utilities. There is one private telephone onsite for Metro staff use only. The alarm system was installed in the 1960s and was updated in the 1970s. A septic system serves the barn restrooms and was installed in the late 1960s.

Table 5, Existing Underground Utilities

<i>Type</i>	<i>Description</i>
<i>Water system # 1</i>	
<i>Water</i>	<i>Potable</i>
<i>Location</i>	<i>House basement</i>
<i>Use</i>	<i>House, barn &amp; grounds maintenance</i>
<i>Pump capacity</i>	<i>86 gpm</i>
<i>Water lines</i>	<i>328 ft. from house to barn; hose bibs at house and barn</i>
<i>Water system # 2</i>	
<i>Water</i>	<i>Potable</i>
<i>Location</i>	<i>Pasture</i>
<i>Use</i>	<i>Howell Lake water supplement</i>
<i>Pump capacity</i>	<i>220 gpm.</i>
<i>Water lines</i>	<i>570 ft. of 4" PVC discharge line to wetland, 75 ft. of 3/4" PVC to watering trough</i>
<i>Pump depth</i>	<i>87 ft.</i>
<i>Pump type</i>	<i>7.5 HP submersible</i>
<i>Electrical</i>	
<i>Provider</i>	<i>PGE</i>
<i>Service</i>	<i>120/240 volt to house and barn for lighting and equipment 700 ft. of 3-phase to # 2 well pump for supplemental water for wetland</i>
<i>Natural gas</i>	
<i>Provider</i>	<i>Northwest Natural Gas</i>
<i>Use</i>	<i>Heating barn and house</i>

## 5. Project Description:

### 1. *Master Plan Goals*

*Metro adopted the Howell Territorial Park Master Plan in April 1997. Metro Regional Parks and Greenspaces, the Multnomah County Natural Area Fund and the Oregon Historical Society funded the master planning process. The essential goals of the park master plan are to:*

- *Protect, preserve and enhance natural and cultural resources of Howell Territorial Park while maintaining its pastoral quality;*
- *Provide recreational facilities and opportunities which are consistent with the character of Howell Territorial Park and compatible with its natural and cultural resources;*
- *Provide educational opportunities which enhance visitor understanding and appreciation of Sauvie Island's natural and cultural history; and*
- *Serve as an orientation center for Sauvie Island.*

## *2. Components of the Master Plan*

### *Land Management and Natural Resources*

- *Implement a program to control or eradicate invasive species including Himalayan blackberry, reed canarygrass, tansy ragwort and Canadian thistle.*
- *Enhance wildlife use of the site by establishing native shrub and tree plantings adjacent to Howell Lake, fence lines and the Gilbert River.*
- *Create a grove of Oregon white oak trees.*
- *Maintain healthy meadow / pasture through appropriate use of mowing, grazing and fertilization.*
- *Exclude livestock from wetland and riparian areas (subject to existing agreements).*
- *Control livestock access to the Gilbert River dike by installing a gate on the south side of the dike.*
- *Limit cultivation of crops.*
- *Implement a volunteer program to restore (plant) and enhance the orchard including removal of diseased trees, annual pruning and spraying, and control of ground cover.*
- *Any pesticide / herbicide spraying at the park needs to be done in a manner that does not harm wildlife that frequent the park throughout the year.*
- *Monitor water quality of park surface waters.*
- *Encourage natural seasonal water fluctuations in wetland areas.*
- *Acquire adjacent 20 acres on the southeast side of the park for buffer; improve access and other park use.*

### *Cultural Resources*

- *Regularly inspect all components of historic structures and develop a program to provide preventive and corrective maintenance as necessary to assure structural, historic, and aesthetic integrity.*
- *Provide security systems to protect artifact collections.*
- *Conduct an archaeology survey prior to development activities.*

### *Visual Character*

- *Maintain the pastoral and rural quality of the park by limiting facility development as illustrated in the master plan.*
- *Design new facilities to be compatible with the existing structures or screened from their view.*
- *Maintain or enhance scenic views from the park.*
- *Use natural vegetation for visual buffers around utilities.*

### Parking / Access

- Request county to install appropriate directional signage from near Sauvie Island Bridge to orient visitors toward the park.
- Create an all weather parking area with capacity for 25 standard vehicles, 2 handicapped vehicles, and 2 buses.
- Install security gates to control vehicle access into the site.
- Provide dry weather parking (turf) for an additional 530 vehicles.
- Install visitor orientation signage at the park.
- Provide separate access to barn area and shelters for maintenance and operations purposes.

### Trails

- Provide accessible trails from parking areas to all shelters, restrooms, barn, house, and wildlife viewing areas.
- Construct trails in a manner that allows for use by light equipment for operations and maintenance purposes.
- Locate trails adjacent to or within vegetation buffers where feasible.
- Provide informational displays related to park natural and cultural history and park regulations as necessary.

Table 6, Proposed Trails.

Type	Length
Soft Surface	3,000 linear feet
Hard Surface	1,200 linear feet

### Structures

#### House.

- Consult with the State Historic Preservation Office (SHPO) to determine level of accessibility appropriate for the house.
- Construct a replica of the detached kitchen structure, which was a component of the original house.
- Renovate and secure cellar as a separate outdoor exhibit.
- Convert existing kitchen to a self-guided introductory exhibit.
- Construct ADA accessible path to the south side of the porch.

#### Barn.

- Remove OHS artifacts from the barn.
- Improve barn to comply with ADA standards.
- Create 300 sq. ft. office.
- Create multi-purpose room with capacity for 60-100 people.
- Improve kitchen for catering.
- Expand and / or upgrade existing museum space.
- Create space for gift and coffee sales.

#### Finnish Log Cabin.

- Relocate cabin to an off-site location (to be coordinated with OHS).

New Structures.

Table 7, Proposed New Structures

Structure	Amount	Size (s. f.)
Park Admission Booth	1	60
Park Restrooms	2	---
Wildlife Viewing Blinds	4	72
Arbor	1	---
Picnic Shelters (60 person)	1	700
Picnic Shelter (125 person)	1	1,400
Entry Kiosk	1	---
Maintenance Buildings	1	480
Sub-Total	13	4,212

Other Infrastructure Components

- Install irrigation system in public use areas proximate to the house, barn, picnic shelters / restrooms, and parking.
- Upgrade electrical service to accommodate new facilities.
- Upgrade water system to accommodate new facilities.
- Install a pay telephone.
- Upgrade or replace septic system to accommodate new and upgraded facilities.

Operations and Maintenance

- Add planting to the perimeter of the site in remote areas to reduce mowing.
- Configure any new construction or plantings so that mowing can be accomplished with large deck mowers.
- Install shrubs and ground covers on slopes that are difficult to mow with large deck mowers.
- Develop additional gardens only where there is a demonstrated interpretive value and volunteer commitment for maintenance.
- Construct new facilities that are durable and reasonably vandal-proof.
- Remove split rail fencing (not historically accurate).

Security

- Limit access to the park during night times with security gates.
- Add appropriate outdoor lighting.
- Install a public telephone.
- Install a new security system for the house and barn.

6. Compliance with the Purpose of the Exclusive Farm Use Zone District:

**MCC 11.15.2002 Purposes**

The purposes of the Exclusive Farm Use District are to preserve and maintain agricultural lands for farm use consistent with existing and future needs for agricultural products, forests and open

spaces; to conserve and protect scenic and wildlife resources, to maintain and improve the quality of the air, water and land resources of the County and to establish criteria and standards for farm uses and related and compatible uses which are deemed appropriate. Land within this district shall be used exclusively for farm uses as provided in the Oregon Revised Statutes Chapter 215 (1995 edition) and the Oregon Administrative Rules Chapter 660, Division 33 (December 1995 edition) as interpreted by this Exclusive Farm Use code section.

*Howell Territorial Park employs a variety of uses that are consistent with the general purposes of the EFU district. The land historically has historically been put to use for agricultural purposes. One significant element of the mission of Howell Park is to interpret territorial and early statehood era agrarian life. Grazing, hay production, orchards and farm gardens have been and will continue to be an element of the park use in the near future. Howell Park has been used for public park purposes for more than 30 years ~~without any significant adverse impact on adjoining farm uses.~~ The adopted master plan demonstrates that proposed enhancements of the park will be concentrated in already developed areas and will not substantially reduce the amount of EFU land in the area. ~~As demonstrated below, the proposed Howell Park master plan is not inconsistent with the goal of preserving agricultural lands for agricultural uses.~~*

*In addition to preserving agricultural lands, a stated goal of EFU zoning is to preserve and protect scenic wildlife resources. Howell Park is in public ownership as public open space. The majority of the site will remain as public open space throughout the life of the master plan and beyond. The park master plan is predicated upon the assumption that Howell Lake and the wildlife areas will be protected. The plan also envisions the protection of the Bybee-Howell House as a significant historic and scenic resource. ~~For these reasons, the proposed Howell Park master plan is consistent with the purposes maintaining agricultural lands and open space and the conservation of scenic and wildlife resources.~~*

Farm uses in the area adjacent to the park are adversely impacted by two park conditions: the lack of well-maintained farm fencing and the presence of uncontrolled tansy ragwort, blackberries and Scotch broom in park field areas adjacent to area farms. Metro allows Marge Tabor to pasture livestock in park fields. These cows pass through holes in the fence and graze on adjoining farm lands. Weeds on the park property create weed seeds that are spread by the wind and animals onto adjoining farm lands. Adjoining farm owners bear the cost for controlling these weeds on their properties. According to a nearby farmer, tansy is poisonous to cattle that graze on his property.

It appears, however, that the expansion of activities in the park may not have a direct impact on these nuisance conditions. The conflicts between the park and its neighbors occur primarily because the park property is not owned or managed by a commercial farmer. Metro has made a conscious decision not to use pesticides to control the weeds on the property to protect the area ecosystem. Unfortunately, Metro has failed to implement adequate other measures to control weeds.

Additional park improvements may or may not help correct weed conditions and repair and replace farm fences. The new park improvements will allow Metro to attract more paying visitors to the park. New revenues could assist with park weed control. Metro's park plan, however, indicates that additional revenues will be used to reduce the percentage of park funding that comes from Metro and public tax funding. The record also indicates that Metro ultimately plans to remove fences and to

manage its property for wildlife use. In such a setting, it seems unlikely that additional revenues will result in improved weed control or fence maintenance.

**7. Uses Permitted in the Exclusive Farm Use Zone District Without Review:**

**Per MCC 11.15.2006, Uses, No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in this district except for the uses listed in MCC .2008 through .2014.**

**MCC 11.15.0010, Definitions, Primary Use, A use permitted in a district without the need for special administrative review and approval, upon satisfaction of the standards and requirements of this Chapter.**

**A. MCC 11.15.2008(A), Farm use, as defined in ORS 215.203.**

*Farm use, as a land use activity, includes the "raising, harvesting and selling of crops or the feeding, breeding, management and sale of or produce of, livestock...." [ORS 215.203(2)(a).] Cattle graze a portion of the pasture through an agreement with Mrs. Marge Howell, a descendant of Thomas Howell, who grew up on the property. Metro will honor the agreement with Mrs. Howell through 1999 on the original Howell Park lands and until the year 2003 on the recently purchased twenty acres. At that time Metro has the option of continuing the grazing agreement annually.*

*Other farm use activities occurring on-site include the cultivation of an apple orchard and pressing apples into juice as well as some hay production. Metro does not allege that the dominant use of the property is farm used, as defined by ORS 215.203, however, limited farm use activity occurs and may continue to occur on-site as Metro implements the master plan. As described above, a primary purpose of Howell Park has been and will continue to be the conservation and protection of wildlife resources consistent with MCC 11.15.2002.*

**B. MCC .2008(B), Buildings other than dwellings customarily provided in conjunction with farm use.**

*The park includes an historic house and a barn, both of which are customarily provided in conjunction with farm use. Other buildings will be subject to the conditional use approval criteria below and are accessory to park use.*

**8. Uses Permitted in the Exclusive Farm Use Zone District Subject to Conditional Use Approval:**

**Per MCC 11.15.2012, Conditional Uses, The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7135:**

**A. MCC .2012(E), Parks, playgrounds or community centers owned and operated by a governmental agency.**

*Howell Territorial Park is owned and operated by Metro, a governmental agency. Howell Park may continue to operate and may expand its operations subject to county conditional use review and approval.*

Staff: Outside of the farm uses listed above, proposed development, described in detail under Finding 5, are park related and, therefore, are subject to Conditional Use approval.

- B. **MCC .2012(M), Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.**

*No new parcels will be created as a result of improvements to any public right-of-way.*

9. Accessory Uses Permitted in the Exclusive Farm Use Zone District:

**Per MCC 11.15.2014, Accessory Uses, The uses or structures incidental and accessory to the uses permitted under MCC .2008 through .2012 are:**

- A. **MCC .2014(A), Structures such as garages, carports, studios, pergolas, private workshops, barns, loafing sheds, storage buildings, greenhouses or similar structures, whether attached or detached, when in accordance with the yard requirements of this district;**

*Accessory uses incidental and accessory to primary uses (MCC .2008), uses permitted under prescribed conditions (MCC .2020), and conditional uses (MCC .2012) are allowed in the EFU zone. The barn and maintenance areas are used for both agricultural and park purposes. The proposed outdoor kitchen and cellar are accessory structures used in association with the Bybee-Howell House. The public entry booth, parking area, picnic shelters, new restrooms and wildlife viewing areas are uses in conjunction with park use. [See Exhibit 8, Proposed Site Plan.]*

- B. **MCC .2014(B), Structures or fenced runs for the shelter or confinement of poultry or livestock;**

*Perimeter fencing along the eastern side of the site is used for management of cattle within the site itself. ~~Fencing along the northern and southern sides of the site prevents errant cattle from entering the site.~~*

Hearings Officer: The property is fenced on the north and south boundaries but the fencing is poorly maintained. Cattle are able to pass through the fence onto adjoining farm properties. Cattle from adjoining farms may also, therefore, be able to pass through the fence and enter Metro property where they may be poisoned by eating tansy that grows in Metro fields.

- C. **MCC .2014(C), Signs, pursuant to the provisions of MCC 11.15.7902 through .7982;**

*There are presently two signs on site, both near the park pedestrian entry. Additional*

*park informational and directional signs will be placed in the future entry and parking area. [See additional discussion of compliance with MCC .7902 – 7982 below.]*

- D. **MCC .2014(D), Off-street parking and loading pursuant to MCC 11.15.6100 through .6148.**

*The master plan envisions a paved parking area for 27 vehicles and two buses at the park entry. Overflow turf parking for special events, such as “Wintering-In” are proposed to accommodate 530 vehicles in the fields to the north and south of the entry road.*

Staff: Compliance with off-street parking and loading requirements is addressed under Finding 18.

Hearings Officer: The park master plan shows that Metro expects to park 605 vehicles in the overflow and event parking areas. An additional 27 vehicles and two buses may be parked in the improved parking area proposed by Metro.

#### 10. Compliance With MCC 11.15.2016, EFU Dimensional Requirements:

- A. **MCC .2016(A), Except as provided in MCC .2018, the minimum lot size for new parcels shall be 80 acres in the EFU district.**

*The site is 93 acres and exceeds the minimum lot size of 80 acres by 13 acres.*

Staff: No new parcels are to be created as a result of this application.

- B. **MCC .2016(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.**

*Howell Park Road bisects the park. If the street were vacated the additional land would accrue to the park, not to adjacent lands.*

- C. **MCC .2016(C), Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

*Exhibit 2, Existing Conditions, illustrates that park site exceeds the minimum yard dimension standards. No present or proposed structure exceeds 35 feet. The front lot line exceeds 50 feet.*

Staff: The location of the proposed maintenance building, as illustrated on the site plan (Exhibit 8), does not appear to satisfy the yard requirements. However, there is more than adequate area on-site to locate this structure in full compliance with these requirements.

- D. **MCC .2016(D), 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.**

*The pre-application conference notes do not indicate that additional yard is required.*

- E. **MCC .2016(E), Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

*The maximum structure height allowed in the zone is 35 feet. Any new structure shall comply with this standard.*

### 11. Compliance With MCC 11.15.2018, EFU Lot, Parcel, and Tract Requirements:

**Per MCC 11.15.2018(A) The Lot, Parcel and Tract requirement shall be applied to all uses in this district except for Single Family Lot or Parcel of Record Dwellings: MCC 11.15.2010(E), MCC 11.15.2012(O) or MCC 11.15.2012(P). For the purposes of this district, a lot, parcel or tract is defined as:**

**(1) A lot or parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of Environmental Services or its predecessors: and**
- (b) Which satisfied all applicable laws, including but not limited to land divisions and zoning ordinance, when the parcel was created; and**
- (c) Which satisfies the minimum lot size requirements of MCC .2016**

\* \* \*

**MCC 11.15.2018(C) establishes that a lot, parcel or tract which satisfies the applicable requirements of MCC .2018 and front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

*See Exhibit 3, Proof of Ownership. This land use application establishes compliance with the requirements of MCC. 2018 and other applicable requirements of the EFU district.*

Staff: The property configuration illustrated as Tax Lot 100 (Exhibit 4) corresponds with that which was approved with property line adjustment case #PLA 8-96, issued August 9, 1996 (see Exhibit 9). As discussed in the PLA decision, the adjustment authorized the creation of a 101.54 acre parcel, well in excess of the 80 acre minimum parcel size listed under MCC .2016. The PLA decision also contains the findings necessary to establish that the adjustment satisfied applicable land division and zoning ordinance requirements. Unfortunately, the deed submitted (Exhibit 3) does not describe the property as in its approved configuration. A copy of such a deed is needed to establish compliance with Exclusive Farm Use Lot, Parcel, and Tract requirements.

## 12. Compliance With MCC 11.15.2026, EFU Access Requirements:

**Per MCC 11.15.2026, Access, Any lot in this district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles.**

*Howell Territorial Park abuts Sauvie Island Road on the west and is bisected by Howell Park Road. Both roads are improved public rights-of-way. The Multnomah County Rural transportation Plan classifies Howell Park Road as a 'rural local road' with 20-foot pavement width and no shoulders. [See Exhibit 10, Traffic Study for additional street characteristics.]*

Hearings Officer: The applicant's traffic report and the comments of the County's Transportation Division establish that the intersection of Howell Park Road requires improvements to provide safe and convenient access for vehicles to the park property. On page 6, the Kittelson traffic study concludes "[t]o accommodate at a minimum school buses accessing the park, the NW Howell Park Road approach to NW Sauvie Island Road will need to be widened slightly." Ed Abrahamson of the Transportation Division of Multnomah County states that a turn lane "should be constructed at the intersection of Sauvie Island Road and Howell Park Road and the roadway along the Howell Territorial Park frontage should be widened."

Mr. Abrahamson's recommendation is based on the tremendous number of vehicles that use the park entrance when major events are held on the property. The approval of this application will make the park suitable for large event use. The turning movements of vehicles entering and leaving the park create the need for the road widening and turn lane improvements recommended by Mr. Abrahamson. The improvements minimize the amount of delay caused by turning vehicles at the intersection and increase safety by getting vehicles out of the travel lane when slowing and stopping to make a turn into the park road (NW Howell Park Road). The park is virtually the only user of NW Howell Park Road. A few area farms use the road but the event traffic of the park clearly constitutes the vast majority of the peak use traffic on the road. No improvements are needed to serve the farm uses. Improvements are needed to accommodate school buses associated with the park use and for the large event traffic generated by large special event traffic. Since Metro's peak use traffic creates the need for the improvements, it is Metro that should pay for the improvements. The County's proposed conditions of approval, therefore, are less than "roughly proportional" to the impact of the park use on the County's public road infrastructure. Metro claims that its use will generate a very small percentage of all traffic on Sauvie Island Road. While this may be true, its peak use of the road poses major problems to the safe operation of the traffic system. It is clear from the Metro park master plan that Metro intends to hold more major events and gatherings at the Park than at present. This will only increase the need for road improvements. It is Metro's proposal that large buses park on its property. It, therefore, should provide adequate room on that road for buses to make the turn onto and from NW Howell Park Road. Without these improvements, the hearings officer cannot find that the Metro access is safe and convenient for vehicles.

Oregon law requires the hearings officer to approve this application if it is possible to do so by the imposition of reasonable conditions of approval. Metro staff claims that Metro policy prohibits Metro from providing road right-of-way to the County without payment for the land. If this reading of the policy is correct and Metro is unwilling to make the reasonable and needed contributions requested by

the County, it is not possible for the hearings officer to assure compliance with the cited approval criterion through the imposition of conditions of approval.

**13. Compliance with the Purpose of the Conditional Use Section of the Zoning Ordinance:**

**11.15.7105 Purposes**

**Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.**

*Howell Territorial Park combines a mixture of permitted agricultural uses and park activities. The focus of the park use is to interpret the settlement and agrarian history of the site and to protect and interpret the natural history of Sauvie Island. ~~This application demonstrates that the proposed master plan is consistent with the comprehensive plan, the Sauvie Island Rural Area Plan and the relevant development code approval criteria.~~*

**14. Phased Development Timeline as an Alternative to the Two Year Fixed Timeframe Listed under MCC 11.15.7110:**

**MCC 11.15.7110(C)(2), General Provisions, establishes that except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless the Approval Authority establishes an expiration date in excess of the two year period**

*Sub-section (C)(2) establishes an expiration date in excess of the two-year period through approval of a phased development. The Howell Park master plan envisions five (5) phases of development over a ten (10) year period. [See Table 8, Implementation Phases.] Metro hopes to implement Phases I and II by the end of the year 2000. Metro hopes to implement the remaining phases (III – V) roughly two years apart. The exact duration of each phase will be dependent upon funding. [See also Exhibit 8, Proposed Site Plan, Phasing.] Metro anticipates that the total project cost will be approximately \$4,151,830.<sup>1</sup>*

*Each phase of the project may be subject to Multnomah County Design Review approval. Individual applications for design review shall be submitted for each phase of the project and shall demonstrate compliance with all master plan conditions of approval. Grading and erosion control permits will accompany each design review request, as required.*

Table 8, Master Plan Phases

Activity	Phase I 2000	Phase II 2000	Phase III 2002	Phase VI 2004	Phase V 2006
Parking Area – 27 cars	X				
Public Restroom	X				

<sup>1</sup> Phase estimated costs are: Phase I = \$221,347; Phase II = \$687,307; Phase III = \$463,039; Phase IV = \$2,468,975; and Phase V = \$320,162.

Activity	Phase I 2000	Phase II 2000	Phase III 2002	Phase VI 2004	Phase V 2006
Septic & Drain field	X				
Water Line Extension	X				
Electrical Extension, Phone	X				
Hard Surface Trails		X			
Porch Access		X			
Fencing at House		X			
Irrigation		X			
Signage		X			
Utilities: Well upgrade, water line and electrical to shelters & irrigations		X			
Interpretives: Picnic shelters, exterior sign base Structure, core trail		X			
Shelters: two 60 person and one 120 person		X			
Ticket Booth		X			
Landscaping and Stone Entry		X			
Exhibits: Bybee-Howell House			X		
Soft Surface Trails			X		
Wildlife viewing Area			X		
Scenic Mitigation / Habitat Restoration			X		
Interpretives: Wildlife trail, flip book			X		
Kitchen Garden			X		
Curricular			X		
Barn: Renovation, Elevator and Exhibits				X	
Outdoor: Kitchen, Fireplace & exhibits				X	
Water line and electrical				X	
Maintenance Access & Parking				X	
Maintenance Building: Water & electrical lines					X
Septic System					X
Electrical Line to Maintenance Building					X

**15. Compliance With MCC 11.15.7120, Conditional Use Approval Criteria:**

**Per MCC 11.15.7120(A) In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:**

- A. MCC .7120(A)(1), Is consistent with the character of the area;**

*For purposes of conditional use review, the 'area' shall be defined as a radius of 1/4 mile around the perimeter of the site. To the west lie NW Sauvie Island Road and dike and the Multnomah Channel. To the north and south lie agricultural lands and wetlands. To the east lie the Gilbert River, agricultural lands and additional wetlands.*

*Sauvie Island is a rural landscape, the general character defining features of which include agricultural production, such as dairy cattle, nurseries, truck gardening, pasture and grazing. There are several commercial nurseries and farm produce businesses on the*

southern end of Sauvie Island. The Sauvie Island Wildlife Refuge is a significant natural resource that provides wildlife habitat, cover and breeding ground. Commercial activity on the island is limited and includes a small grocery store, several farm produce stands, three (3) dogs kennels, and other small-scale business activities. Community services on the island are limited and include a fire hall, a grange and a school building.

Recreational activities are a significant element of the character of the island. Public swimming beaches line the eastern side of the island drawing thousands of bathers during warm summer days. Bird-watchers are attracted to the wildlife refuge for the spectacular seasonal viewing opportunities. Hunters gather from mid-October through early January to hunt waterfowl on private lands. Bicycling along the level island roads is becoming a significant recreational activity. Multnomah County encourages bike use of the island. During harvest seasons, the produce gardens attract thousands of urban berry pickers, flower gathers, and seekers of fresh garden produce. During the fall at least one of the produce farms attracts thousands of school children and adults looking for the perfect pumpkin.

The Howell Territorial Park attracts day use visitors in the summer months and school field trips to the Bybee-Howell House. Museum hours are from June through September between 12:00 noon and 5:00 PM. The park is used intermittently for living history workshops. The largest single event at the park is 'Wintering-In', an event sponsored by the OHS in early fall. It is a celebration of settlement era agrarian life on Sauvie Island. Several thousand visitors attend the annual three-day event.

Howell Territorial Park has been an integral park of island life since 1962. The restoration of the Bybee-Howell house in 1969 is a symbol of the commitment of government and volunteers to protect and interpret territorial agrarian life, customs, architecture and the landscape in which that development grew. Howell Park both reflects the island character and is one of the character defining elements of Sauvie Island.

The proposed park master plan, at its core, seeks to preserve the natural character of the site by protecting and enhancing wetlands, making wildlife viewing accessible, providing for increased opportunities for picnicking and learning, and restoring and interpreting the historical landscape. Agriculture will remain a part of the use of Howell Park for several years to come. Peak visitation times will occur during summer and early fall weekends when farm related traffic is at its lowest and recreational traffic rises. Essentially, the park will mirror the current ebb and flow of life on the island.

For these reasons, the uses proposed by the proposed conditional use master plan are consistent with the character of the area.

**B. MCC .7120(A)(2), Will not adversely affect natural resources;**

Howell Lake, on the eastern side of the park, is one of two significant open water areas on the island. As part of the Goal 5 survey and inventory process, the County identified additional riparian areas adjacent to the lakes and nearby wetlands as significant natural

resources. Howell Lake and the adjacent wetlands received a rating of 47 points. The lake currently receives limited human use by bird-watchers and visitors to the park. The inventory does not identify any other significant Goal 5 natural resources on site.

The master plan does not propose any significant development adjacent to these identified natural areas. The plan proposes to create defined soft trails towards Howell Lake and the wetlands for the purpose of enhancing wildlife viewing opportunities. The trails will help control and define areas for pedestrian movement as opposed to the present system of self-directed wandering. The master plan also envisions creating one wildlife viewing area during Phase III that will help control human impact upon the lake and wetlands.

Metro has positioned the wildlife viewing area to optimize opportunities to observe waterfowl on or near Lake Howell while at the same time with the minimal amount of disturbance of wildlife habitat or disruption of wildlife activity. Consequently, the trails and viewing area are located outside of the Howell Lake 50-foot wetland buffer area. Metro believes that the proposed trail and viewing area configuration will not adversely affect natural resources and will also enhance the public's appreciation of water-fowl and their habitat.

Therefore, the proposed master plan will not have an adverse impact upon identified Goal 5 natural resources.

Staff: Overflow parking is to occur on grassed areas to either side of Howell Park Road as illustrated on the applicant's parking and loading plan (See Exhibit 11). Such parking is to occur in close proximity to wetland areas illustrated on the applicant's various site plans and delineated in a report prepared by Shapiro and Associates, dated January 21, 2000 (see Exhibit 12). Heavy use of overflow parking areas could compact soils, damaging the turf and increasing soil erosion, a condition that would adversely impact adjoining wetlands. Use of overflow parking areas during wet weather months could also damage the turf and increase erosion.

The applicant's response to this issue is listed under item #3, of a letter dated April 18, 2000 (see Exhibit 13). Specifically, they indicate that overflow parking areas are to be used primarily in the summer months, on weekends and for limited special events.

Provided the use of these areas is limited, as indicated by the applicant, we concur that such parking will not adversely impact adjoining wetlands.

**Hearings Officer:** The hearings officer is not firmly convinced that, given Metro's poor track record in field "maintenance," that Metro will be a better steward of the wetlands that are located immediately adjacent to and downhill from the overflow (as opposed to special event) parking area.<sup>2</sup> If the parking area use is not properly monitored, there is a potential for contamination of the immediately adjoining wetland. For instance, car or motor home camping in the parking area near the wetland would present some risk of

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<sup>2</sup> In fairness, the hearings officer must acknowledge that the County was responsible for the condition of the park fields until the mid-1990s. The weed problem has not, however, been addressed during the time the land has been in Metro's ownership.

contamination by human wastes as the restroom facilities are found a considerable distance from this area. Vehicles that leak oil will leave oil on the land close to the wetland. The County, therefore, should consider imposing conditions of approval to address this issue if the application is ultimately approved.

C. **MCC .7120(A)(3), Will not conflict with farm or forest uses in the area;**

*There are no forest uses within the ¼ mile study area. Exhibit 14, Impact Area, illustrates the location of current farm zoning districts and uses within the ¼ mile study area. Farm uses occur to the north, east and south of the park. To the west is Multnomah Channel. The nearby commercial farm uses include grazing, hay production, nursery stock, and farm produce.*

*Metro currently allows grazing on the park site through a lease with Mrs. Howell. The lease expires in 2003 but may be renewed. The park operators also mow the large grass fields that are the north and south special events parking areas. In addition, Howell Park includes an apple orchard behind the Howell House. The orchard is planted with heritage species that were commonly grown during the settlement era. Annually, the apples are pressed during the Wintering Festival. Grazing and orchard activities are consistent with farm uses in the area.*

*The park interprets the farming history of Sauvie Island. It presently allows farm use activities on site and may continue to do so after the year 2003. During the life of the park, there have been no recorded conflicts between nearby farm uses and park uses.*

*Recreational use of the park occurs primarily during the summer weekends and will continue along this trend through the master planning period. ~~As discussed in the traffic analysis prepared by Kittelson and Associates (see Exhibit 10), the non agrarian use of the park will not interfere with present or projected farm use of the road system. The natural resource management activities planned will stabilize and enhance the wetlands and will continue to prevent cattle grazing in the riparian areas of Howell Lake and the Gilbert River.~~*

*~~For these reasons, the Howell Territorial Park master plan will not have an adverse effect upon forest or farm uses in the area.~~*

**Hearings Officer:** Metro has failed to analyze the impact of its special event traffic on area farmers who use Howell Territorial Road for access to their properties. It is possible that these large events could disrupt farm operations. Without evidence on this issue, the hearings officer is unable to find that the increase of special events and large gathering traffic will not conflict with area farm use.

The hearings officer also finds that the park use itself conflicts with area farm use due to lack of fence maintenance and weed control. Weed control is already a part of the Metro plan for the property but there is little evidence of any significant weed control efforts. Whether the park expansion proposed by this application causes any change to this existing conflict is not known and should be addressed by Metro if and when this decision

is appealed.

D. **MCC .7120(A)(3)(a), Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;**

*There are no known forest practices occurring on adjacent forestlands. Accepted farm practices on surrounding lands include grazing, nursery stock and farm produce fields. There are no recorded conflicts between these uses and the current park use. The proposed park master plan will help control pedestrian movement around the park, thereby reducing the risk of park visitors inadvertently crossing over onto surrounding farm lands. All roads around the site operate within adopted County parameters. The traffic analysis confirms that implementation of the proposed master plan will not cause any farm road system to operate inefficiently. The park will not produce glare, noise, dust, emissions or other trans-border effects that will significantly affect surrounding farm uses.*

~~*For these reasons, the Howell Territorial Park master plan will not force a significant change in accepted farm practices on surrounding lands devoted to farm use.*~~

**Hearings Officer:** This code requirement and the requirement found in .7120(A)(3)(b) mirror ORS 215.296 and OAR 660-033-0120/-0130(5), State laws that apply to certain uses in the EFU zone. The County code and state law require a specific type of analysis, based on detailed facts regarding area farm uses, that has not been conducted by Metro. As the factual basis for the analysis has not been provided, the hearings officer is unable to conduct the needed analysis. This lack of evidence and analysis is the primary reason the hearings officer must deny this application.

The hearings officer raised this issue at the hearing and requested that Metro address this deficiency. Metro did not, however, provide the needed information and analysis during the post-hearing comment period. If Metro wishes to obtain an approval that will be upheld by LUBA on appeal (if the application is approved by the Board of Commissioners and an appeal to LUBA is filed), it must correct this deficiency in its application.

The following discussion of the law and application illustrates the deficiencies that exist in the application at this time:

In order to establish compliance with ORS 215.296's requirement that approval of the park not force a significant change in accepted farm practices on surrounding lands devoted to farm use nor significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use, Metro and the County must do the following:

- A. Identify the accepted farm practices occurring on surrounding farm land. Turner Community Association v. Marion County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 99-024, 12/16/99); Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991). The Metro analysis identifies the adjoining farm uses but it fails to identify farm practices. Farm practices are activities that occur on the property that occur to allow farm use to occur. These are such things as the ground and aerial application of pesticides and herbicides,

irrigation of fields, field plowing, movement of farm machinery on the farms and on area roadways, disposal of animal waste, fertilizer application to fields, crop harvesting, pasture cultivation and other similar activities. These activities should be identified for each surrounding parcel.

- B. Analyze the use proposed park expansion and determine its likely impacts on all adjoining farm properties.
- C. Determine whether the impacts will cause a significant change in farm practices or significantly increase farm costs.
- D. Explain why identified farm practices will not be significantly affected by the park expansion rather than simply stating they will not be affected. Turner Community Association v. Marion County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 99-024, 12/16/99); McNulty v. City of Lake Oswego, 14 Or LUBA 366, 373 (1986).

In making these findings, Metro and the County must make its findings of compliance with ORS 215.296(1) for commercial and noncommercial farm uses alike. Metro's findings reference commercial farm uses only. It is unknown by the hearings officer whether all surrounding uses are commercial in nature or if Metro's proposed findings exclude noncommercial farm uses from their analysis of adjoining lands. Turner Community Association v. Marion County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 99-024, 12/16/99); O'Brien v. Lincoln County, 31 Or LUBA 262, 265-66 (1996)(findings that addressed only commercial farm uses violate the substantively identical requirement of OAR 660-033-0130(4)(C)(A)).

The County also must not rely upon the absence of information of information of conflicts in the record to conclude there will be no adverse impact. Just Co. v. Linn County, 32 Or LUBA 325 (1997). Metro's proposed finding that "[t]here are no recorded conflicts between these uses and the current park use" alone is inadequate to establish no impact.

It is also noted that ORS 215.283(2)(d) allows parks "operated primarily by and for residents of the local rural community." It also says that a public park may be established consistent with the provisions of ORS 195.120. This park is not operated primarily by and for Sauvie Island residents. Metro has not submitted a discussion of and findings of compliance with the requirements of ORS 195.120 for the park expansion. This information should be provided if this denial is appealed to the Board of Commissioners, as expected by the hearings officer.

- E. **MCC .7120(A)(3)(b), Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

~~Implementation of the Howell Territorial Park master plan will not increase the cost of public services for farm practices. The potential traffic increases generated by the expansion will occur on weekends, when commercial farm activities are low. Therefore, farmers hauling goods and materials on island roadways will not experience significant transportation delay or increased costs related to traffic delay.~~

~~For these reasons, the Howell Territorial Park master plan will not significantly increase the cost of accepted farm practices on surrounding farmlands.~~

Hearings Officer: These proposed findings are clearly inadequate for the reasons discussed above. It is the hearings officer's understanding that farm operations occur seven days a week. Crops and animals require care everyday. It might be that deliveries to farms are less frequent on weekends to certain types of farms but this has not been convincingly demonstrated.

F. **MCC .7120(A)(4), Will not require public services other than those existing or programmed for the area;**

*Public services in the area include: sheriff and fire protection, electricity, schools and roads. Water is pumped from existing wells on-site. Sanitation is handled by an on-site septic system. The incremental changes proposed during the phased master plan will not result in an increased demand for sheriff and fire protection. [See Exhibit 15 and 16, Service Provider Forms.] There is an existing single-phase power source near the south side of the Bybee-Howell House that extends to the house, the barn and pumps. During phases I, II and V, Metro will extend power to the parking area and tollbooth, [and] the picnic shelters... [See Exhibit 7, Utility Plan.] The park will not generate any demand for school services. The traffic analysis indicates that implementation of the master plan will not create a need for improvements to the island road system.*

*During phases I and II, Metro will extend the on-site water supply to the picnic shelters. The barn will receive enhanced water service... Metro will extend the septic drain fields in phase I for the picnic shelters, in phase IV for the barn...*

~~*For these reasons, the Howell Territorial Park master plan will not require the expansion of public services not already programmed or planned.*~~

Staff: The Multnomah County Transportation Division has indicated that Sauvie Island Road is substandard, having insufficient width and right-of-way for its functional classification (see Exhibit 17). Having reviewed this application, they are requesting that the applicant provide a ten foot right-of-way dedication where the subject property fronts this roadway along with a five foot slope/utility/landscape and drainage easement. A 25 foot radius dedication is being requested at the intersection of Sauvie Island Road and Howell Park Road, for a future turn pocket into the park, if needed. Deed restrictions are also being requested committing the property owner to participate in future right-of-way improvements adjacent to Sauvie Island Road.

Hearings Officer: Metro's own traffic analysis shows that some road widening is required by the proposed use. Metro has failed to show that the widening and road improvements needed to serve the use are "programmed" for the area.

G. **MCC .7120(A)(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;**

*The project is located outside a big game winter habitat area as defined by the Oregon*

H. **MCC .7120(A)(6), Will not create hazardous conditions;**

*Hazardous conditions might include fire, earthquake damage, landslide, flooding, hazardous materials or traffic related problems. The park is within the rural fire protection area. The fire district can accommodate the proposed park expansion over the planning period. The contours of the site are flat and there is no known likelihood of slide related damage. Building constructions must comply with all applicable seismic requirements and life safety codes. The park is outside the Flood Hazard overlay area. Metro will not generate any hazardous materials as a result of the park expansion and all use of pesticides, herbicides or other toxic materials will comply with local regulations and the manufacturer's specified recommendations. The traffic analysis indicates the implementation of the master plan will not create hazardous traffic conditions. There are no recorded incidences of hazardous conditions on-site.*

*For these reasons, implementation of the Howell Territorial Park master plan will not create hazardous conditions.*

Staff: The traffic study (Exhibit 10) contains a Transportation Management Plan for special events where 300 or more participants are anticipated. Due to the impacts that such events will have on County roads, our Transportation Division has indicated that implementation of the Transportation Management Plan should be required. Additionally, the Transportation Division has indicated that a special events permit is needed when such events require traffic controls (see Exhibit 17).

Hearings Officer: The traffic study was based on the 500 overflow and special event parking spaces identified in the land use application. The Master Plan indicates that the areas proposed for overflow and special event parking will accommodate 605 vehicles. It is the larger number that should have been analyzed, in the absence of evidence to explain this discrepancy. As the Wintering-In Festival attracts over 2,000 visitors per day, it is possible that Metro may need 605 vehicle parking spaces for this event.

I. **MCC .7120(A)(7), Will satisfy the applicable policies of the Comprehensive Plan;**

Staff: This requirement has been addressed under Findings 20 and 21.

**16. Willamette River Greenway Permit Not Required:**

**MCC 11.15.6350 Purposes**

**The purposes of the Willamette River Greenway subdistrict are to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River; to implement the County's responsibilities under ORS 390.310 to 390.368; to establish Greenway Compatibility Review Areas; and to establish criteria, standards and procedures for the intensification of uses, change of uses, or the development of lands within the Greenway.**

\* \* \*

### 11.15.6354 Uses – Greenway Permit Required

All uses permitted under the provisions of the underlying district are permitted on lands designated WRG; provided, however, that any development, change of use or intensification of use, except as provided in MCC .6358, shall be subject to a Greenway Permit issued under the provisions of MCC .6362.

\* \* \*

### 11.15.6358 Exceptions

A Greenway Permit shall not be required for the following:

\* \* \*

**(F) Activities to protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands;**

*MCC 11.15.6300 et seq. provides for changes or expansion of uses within the Willamette River Greenway (WRG) that are consistent with adopted approval criteria and purpose of the WRG. The primary purposes of the WRG include the protection, conservation, enhancement, and maintenance of the natural, scenic, historical, agricultural, economic, and recreational qualities of lands within the WRG.*

*The first stated goal of the Howell Territorial Park master plan is to “Protect, preserve and enhance the natural and cultural resources of Howell Territorial Park while maintaining its pastoral quality.” An additional primary goal is to provide recreational facilities and opportunities that are consistent with the character of the park and compatible with the natural and cultural resources of the area. Therefore, the purposes of the WRG and the Howell Territorial Park overlap and are consistent.*

*Howell Territorial Park is a ‘public land’ because it is owned by Metro, a public institution, and is open to the public for the use and enjoyment of the public. Howell Park has been held as public land since 1962. Table 9, WRG Exemption, analyzes why the implementation of the proposed master plan is exempt from WRG review.*

*Every activity proposed in the master plan will conserve, enhance, or maintain a recreational, scenic, historical, or natural aspect of the WRG and Howell Territorial Park. Therefore, the implementation of the park master plan is exempt from WRG review.*

Table 9, WRG Exemption

Activity	Conserve & Protect	Enhance	Maintain	Recreation	Scenic	Historical	Natural
Parking Area – 27 cars		X	X	X			
Public Restroom		X		X			
Septic & Drain field		X		X			
Water Line Extension		X		X			
Electrical Extension, Phone		X		X			
Hard Surface Trails		X		X	X		X

Activity	Conserve & Protect	Enhance	Maintain	Recreation	Scenic	Historical	Natural
Porch Access	X	X		X		X	
Fencing at House			X		X	X	
Irrigation		X		X	X		
Signage		X	X	X	X	X	X
Utilities: Well upgrade, water line and electrical to shelters & irrigations		X		X			
Interpretives: Picnic shelters, exterior sign base Structure, core trail		X	X	X			
Shelters: two @ 60 per. and one @ 120 per.		X		X			
Exhibits: Bybee-Howell House		X	X			X	
Ticket Booth		X		X			
Landscaping and Stone Entry		X		X	X	X	X
Soft Surface Trails		X		X	X		
Wildlife viewing Area	X	X	X	X			X
Scenic Mitigation / Habitat Restoration	X	X	X	X	X		X
Interpretives: Wildlife trail, flip book		X		X			X
Kitchen Garden		X				X	
Curricular		X	X	X	X	X	X
Barn: Renovation, Elevator and Exhibits		X		X		X	X
Outdoor: Kitchen, Fireplace & exhibits		X				X	
Water line and electrical		X		X			
Maintenance Access & Parking		X		X			
Maintenance Building: Water & electrical lines		X		X	X		X
Septic System	X	X		X			X
Electrical to Maintenance Building		X		X	X	X	X

**17. Significant Environmental Concern Permit Not Required:**

**MCC 11.15.6400 Purposes**

The purposes of the Significant Environmental Concern subdistrict are to protect, conserve, enhance, restore, and maintain significant natural and man-made features which are of public value, including among other things, river corridors, streams, lakes and islands, domestic water supply watersheds, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, tourist attractions, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures

for the development, change of use, or alteration of such features or of the lands adjacent thereto.

\* \* \*

#### 11.15.6404 Uses – SEC Permit Required

- (A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC .6406, shall be subject to an SEC permit.
- (B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

#### 11.15.6406 Exceptions

An SEC permit shall not be required for the following:

\* \* \*

- (E) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands;

*Throughout the application Metro has demonstrated that the primary goals of the Howell Park master plan are to protect, conserve, enhance, restore, and maintain significant natural and man-made features that are of public value. Among the resources effected by implementation of the master plan are: Howell Lake and associated wetlands and riparian areas, the park and Bybee-Howell House as tourist attractions, potential archaeological sites, and the rural scenic values.*

*Implementation of the master plan will result in greater protection of significant natural resources, i.e., Howell Lake and its associated wetlands. It will offer both greater protection and additional interpretation of the historic Bybee-Howell House. The master plan seeks to define the limits of public access to sensitive natural resources while enhancing the public's appreciation of those resources. For these reasons implementation of the Howell Park master plan is consistent with the purpose of protection, conservation, enhancement, restoration, and maintenance of significant natural and man-made features that are of public value.*

*The pre-application conference notes indicate that an SEC permit may be required for removal of the Finnish Cabin. The cabin was constructed as part of an exhibit prepared by the OHS after 1969 and therefore, does not contain materials of an archaeological or pre-historical nature. The question is whether the Finnish Cabin contains information of an historical or anthropological nature. The County's Goal 5 inventory historic resources does not recognize the Finnish Cabin as a significant historical resource, nor is this reproduction log cabin associated with any areas of known anthropological significance.*

*Therefore, because the Finnish Cabin is a modern era reproduction of a log cabin used for interpretive purposes and because the cabin is not known to have any archaeological, historical, pre-historical or anthropological significance, removal of the Finnish cabin is not subject to review under the provisions of MCC 11.15.6400.*

*As discussed above in response to the criteria pertaining to the WRG, an essential goal of the Howell Park master plan is to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands. All of the proposed activities identified in the master plan are designed to accomplish this goal. Therefore, implementation of the Howell Park master plan is exempt from the provisions of MCC 11.15.6400.*

#### 18. Compliance With MCC 11.15.6100, Off-Street Parking and Loading Requirements:

- A. **MCC .6100, Purposes, The purposes of this subdistrict and these off-street parking and loading regulations are to reduce traffic congestion associated with residential, commercial, manufacturing, and other land uses; to protect the character of neighborhoods; to protect the public's investment in streets and arterials and to provide standards for the development and maintenance of off-street parking and loading areas.**

*The applicant has prepared an off street parking and loading plans that illustrates compliance with the provisions of MCC.11.15.6100 and therefore, satisfies the multiple goals of this Section.*

- B. **MCC .6102, General Provisions, In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking and loading shall be provided according to the requirements of this Section.**

*The applicant proposes constructing several new structures and intensifying the park use. Therefore, this application is subject to the requirements of this Section.*

- C. **MCC .6108, Plan Required, A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.**

*Exhibit 11, Parking and Loading Plans, illustrates the lot dimensions, access and circulation layout for vehicles and pedestrians, space markings, setbacks, and abutting land uses with respect to off-street parking in satisfaction of this sub-section. The Parking and Loading Plans demonstrate that the proposal can satisfy the requirements of this section. As discussed in the pre-application conference notes, detailed illustrations demonstrating how the applicant will meet the requirements of this section will follow as part of Design Review.*

- D. **MCC .6114(A), Improvements Required, Required parking and loading areas shall be improved and placed in condition for use before the grant of a Certificate of Occupancy under MCC .8725, or a Performance Bond in favor of Multnomah County equivalent to the cost of completing such improvements shall be filed with the Planning Director.**

**MCC .6114(B) establishes that any such bond shall include the condition that if the**

improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited. Any bond filed hereunder shall be subject to the approval of the Planning Director and the County Counsel.

*The applicant shall comply with these requirements.*

F. **MCC .6130(A), Dimensional Standards, Parking spaces shall meet the following requirements;**

- **At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.**
- **Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**
- **For parallel parking, the length of the parking space shall be 23 feet.**
- **Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**

**MCC .6130(B), Aisle width shall be not less than:**

- **25 feet for 90 parking,**
- **20 feet for less than 90 parking, and**
- **12 feet for parallel parking.**
- **Angle measurements shall be between the center line of the parking space and the center line of the aisle.**

**MCC .6130(C), Loading spaces shall meet the following requirements:**

- |                     |                      |                      |
|---------------------|----------------------|----------------------|
| • <b>District</b>   | <b>Minimum Width</b> | <b>Minimum Depth</b> |
| • <b>All Others</b> | <b>12 Feet</b>       | <b>25 Feet</b>       |
- **Minimum vertical clearance shall be 13 feet.**

*Exhibit 11, Parking and Loading Plans, illustrates compliance with these standards.*

G. **MCC .6132(A), Improvements, Surfacing, All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.**

**Large parking fields for intermittent uses such as amusement parks, race tracks, stadiums, and the like may be surfaced with gravel or grass and spaces may be unmarked if the parking of vehicles is supervised.**

*The applicant proposes to develop one all weather parking area north of Howell Road as shown on Exhibit 8, Proposed Site Plan, and Exhibit 11, Parking and Loading Plans, in conformity with the design criteria of this sub-section.*

*The applicant proposes to continue to use two parking fields for intermittent use as described in response to MCC.6130 above. Although the applicant traditionally provides supervised parking during special events, the traffic analysis suggests that temporary space marking on the grass during special events would improve traffic and pedestrian safety.*

*Therefore, the applicant shall provide parking facilities as identified on the Parking and Loading Plans and as discussed in the traffic analysis in satisfaction of these criteria.*

Staff: The applicant is proposing a porous pavement, reinforced gravel surface for the new parking lot. The specifications for such surfacing are detailed in the document titled Gravelpave<sup>2</sup> (Exhibit 18). Essentially, this type of surfacing consists of a mat containing a large number of molded plastic cups, called paving units, placed over a sandy gravel base and filled with clean gravel. The load capability of each paving unit is 5,700 psi, therefore, the 4,000 pound wheel load requirement will be satisfied. Provided clean gravel is used, a dustless surface will be achieved. Since these paving units are cupped and placed close together, gravel will be contained, and wear down to a dirt surface should not occur. Given these factors, the applicant has satisfied this criterion.

- H. **MCC .6132(B), Curbs and Bumper Rails, All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.**

**The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.**

*Parking is not proposed near a lot line or required fence. To minimize potential erosion impacts, the down slope side of the paved parking area will sheet drain directly towards the drainage swale. See Exhibit 11, Parking and Loading Plans.*

- I. **MCC .6132(C), Marking, All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC .6108, and such marking shall be continually maintained.**

*The applicant will mark the permanent all-weather parking spaces and provide temporary space markings on the grass fields used during special events.*

- J. **MCC .6132(D), Drainage, All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.**

*Grading and drainage is not required for temporary grass fields used for intermittent special event parking. The applicant shall provide grading, erosion control, and drainage plans for the all-weather parking area at the time of application for Design Review approval for Phase I.*

Staff: New parking and maneuvering areas are considered in the applicant's drainage

analysis (Exhibit 19).

- K. **MCC .6132(E), Covered Walkways, Covered walkway structures for the shelter of pedestrians only, and consisting solely of roof surfaces and necessary supporting columns, posts and beams, may be located in an O-P district. Such structures shall meet the setback, height and other requirements of the district which apply.**

*The applicant is not proposing to construct covered walkways. Therefore, this sub-section does not apply.*

- L. **MCC .6134, Lighting, Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.**

*The applicant will light the all-weather permanent parking area in conformance with this sub-section. The applicant will provide detailed information on lighting type, location and intensity during Design Review.*

- M. **MCC .6136, Signs, pursuant to the provisions of 11.15.7964.**

Staff: Compliance with sign standards is addressed under Finding 19.

- N. **MCC .6138, Design Standards: Setbacks**

- **Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.**
- **A parking or loading area not in a residential or office district listed in MCC .2002 through MCC .2966, but which adjoins such district along the same street shall not be located closer to the street property line than the required setback of the adjoining district for a distance of 50 feet from the boundary of any such district.**
- **A parking or loading area not in a residential or other district listed in MCC .2002 through MCC .2966, but which is across a street from such district, shall have a setback of not less than five feet from the street property line, and such five foot setback area shall be permanently landscaped and maintained.**
- **A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.**

*The applicant does not propose to allow parking, loading, or vehicle maneuvering in a required street setback area other than for a drive connecting directly to a street. [See Exhibit 8, Proposed Site Plan.] The site does not adjoin an office or residential zoning district; therefore, this sub-section does not apply to this application. The parking area is on land zoned EFU (MCC .2002)...The all-weather parking area will be setback 80 feet from NW Howell Road. One existing access point off of Howell Road is proposed to be widened and improved...*

O. **MCC .6140, Landscape and Screening Requirements**

- **The landscaped areas requirements of MCC .7855(C)(3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC .6126(A).**
- **Parking or loading spaces located within 50 feet of a property line of a lot in a residential or other district listed in MCC .2002 through MCC .2966 shall be separated from such property line by a sight-obscuring fence with height and materials suitable to meet the requirements of subsection MCC .7850(A)(7).**

*As a condition of approval, the applicant shall demonstrate compliance with all applicable landscaping and screening standards found in MCC .7855(C)(3) to (7) during the Design Review portion of the land use review process.*

*No permanent parking facilities will be located within 50 feet of a property line as shown on Exhibit 8, Proposed Site plan. The all-weather parking area will be screened from NW Howell Road by an existing hedgerow, which shall be maintained.*

P. **MCC .6142(F), Minimum Required Off-Street Parking Spaces, Unspecified Uses, Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

*The applicant proposes to construct an all-weather parking area for 27 vehicles and two buses based upon the findings of traffic analysis prepared by Kittelson & Associates. [See Exhibit 10, Traffic Analysis.] The applicant shall provide temporary parking opportunities for 527 vehicles on two grass fields north and south of NW Howell Road. All proposed parking areas are sufficient to accommodate projected parking demand during the master plan period. In addition, the applicant shall implement the TMP Plan outlined in this section.*

~~Staff: The applicant's traffic study contains analysis sufficient to establish the parking needs of the proposed development.~~

Hearings Officer: The hearings officer recommends that Metro address the discrepancy between its Master Plan and the land use application regarding the amount of parking proposed (605 overflow and special events spaces vs. 500 such spaces).

Q. **MCC .6144(G), Minimum Required Off-Street Loading Spaces, Unspecified Uses, Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

*The applicant proposes to continue to use the existing loading area west of the barn for daily activities and special events. The loading area shall not be used as a permanent parking area.*

19. Compliance With MCC 11.15.7902, Sign Standards:

- A. **MCC .7902(A), Purpose, This Chapter regulates signs which are visible from the right-of-way and from beyond the property where erected. These regulations balance**

the need to protect the public safety and welfare, the need for a well maintained and attractive community, and the need for identification, communication and advertising for all land uses. The regulations for signs have the following specific objectives:

- To ensure that signs are designed, constructed, installed and maintained so that public safety and traffic safety are not compromised;
- To allow and promote positive conditions for meeting sign users' needs while at the same time avoiding nuisances to nearby properties;
- To reflect and support the desired character and development patterns of the various zones;
- To allow for a variety in number and type of signs in commercial and industrial while preventing signs from dominating the visual appearance of the area; and
- To ensure that the constitutionally guaranteed right of free speech is protected.

**MCC .7902(B)**, The regulations allow for a variety in number and type of signs for a site. The provisions do not necessarily assure or provide for a property owner's desired level of visibility for the signs.

*This section applies to on-site signs. Permits for on-site signs can be addressed during Design Review process. Metro will work directly with Multnomah County Right-of-way Supervisor and the Oregon Department of Transportation regarding off-site signs.*

*Currently there are two signs on-site. Both signs are visible from Howell Park Road where it curves past the Bybee-Howell House. The first sign is the park identification signs measuring approximately 20 square feet. The second sign is an informational sign that lists the park regulations and measures approximately 30 square feet. [See Exhibit 2, Existing Conditions.]*

*Metro proposes to maintain the existing location for the park identification sign. One or more small informational signs regarding the hours of operations and park admission will be mounted on the entry booth. On the north side of the all-weather parking area Metro will install an informational board that provides general information about the natural and historic resources of Howell Park and the recreational and educational opportunities therein. One or more small interpretive signs will be placed near strategic locations alongside the proposed trail system in accord with the Howell Territorial Park Interpretive Plan, adopted in January 1999.*

*The placement of any future signs will be addressed at Design Review for the phase in which the sign will be erected or can be addressed by application for a sign permit.*

*The number and placement of any sign erected on-site shall comply with applicable Multnomah County regulations.*

- B. MCC .7904, Applicability and Scope**, This Chapter regulates the number, size, placement and physical characteristics of signs. The regulations are not intended to, and do not restrict, limit or control the content or message of signs. The regulations

of this Chapter apply to all zones. The regulations of this Chapter are in addition to all other regulations in the Multnomah County Code and State Building Code applicable to signs.

*The number, size, placement, and physical characteristics of all signs shall comply with Multnomah County sign regulations in place at the time of sign permit application.*

- C. **MCC .7912(A), Exempt Signs, Signs not oriented or intended to be legible from a right-of-way, private road or other private property....**

*Interpretive signs not legible from a right-of-way or other private property and placed alongside trails or buildings, such as the barn, restroom or picnic shelter, are exempted.*

- D. **MCC .7914, Prohibited Signs, The following signs are prohibited and shall be removed:**

- **Strobe lights and signs containing strobe lights which are visible beyond the property;**
- **Signs placed on or painted on a motor vehicle or trailer and parked with the primary purpose of providing a sign not otherwise allowed for by this Code;**
- **Abandoned signs;**
- **Balloon signs; and**
- **Signs in the right-of-way in whole or in part, except signs legally erected for purposes on behalf of a government agency**

*The applicant does not propose the installation of any prohibited signs.*

- E. **MCC .7930, Base Zone Sign Regulations, Signs are allowed in unincorporated Multnomah County depending on the zoning district in which a property is situated as described in MCC .7932, et seq. Signs are allowed on properties that are zoned OP, PD, FH and LH or have CS designations to the extent that signs are allowed in the underlying zoning district except as provided herein. Signs are allowed in the SPA subdistricts to the extent provided for in the regulations for each such subdistrict.**

*Howell Territorial Park is on land zoned EFU.*

- F. **MCC .7942(A), Signs Generally in the EFU .... Zones, Free Standing Signs:**

**For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign regulations of MCC 11.15.7962 - .7978.**

- **Allowable Area - Free standing signs are allowed .25 square feet of sign face area per linear foot of site frontage, up to a maximum of 40 square feet.**
- **Number - One free standing sign is allowed per site frontage.**
- **Height - The maximum height of a free standing sign is 16 feet.**
- **Extension into the Right-Of-Way - Free standing signs may not extend into the**

- **Right-of-way.**

*Howell Territorial Park has frontage on two public right-of-ways: NW Sauvie Island Road and NW Howell Park Road. The combined frontage length exceeds 1,500 lineal feet. Therefore, the park may use a maximum of 40 square feet of free-standing sign area. One free standing identification sign will be placed so as to be visible from NW Howell Park Road; however, no sign shall extend into the public right-of-way. No free-standing sign shall exceed 16 feet in height.*

**G. MCC .7942(B), Signs Generally in the EFU .... Zones, Signs Attached to Buildings:**

**For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign regulations of MCC 11.15.7962 - .7978.**

- **Total Allowable Area - The total allowable area for all permanent signs attached to the building is determined as follows: Eighteen square feet of sign face area is allowed, or .25 square feet of sign face area per linear foot of the occupant's primary building frontage, whichever is more.**
- **Individual Sign Face Area - The maximum size of an individual sign within the total allowable area limit is 50 square feet.**
- **Types of Signs - Fascia, marquee, awning and painted wall signs are allowed.**
- **Projecting roof top and flush pitched roof signs are not allowed.**
- **Number of Signs - There is no limit on the number of signs if within the total allowable area limit.**
- **Extension into the Right-Of-Way - Signs attached to buildings may not extend into the right-of-way.**

*The Bybee-Howell House is the primary building facing a right-of-way. The house has 40 lineal feet of frontage on NW Howell Park Road. Therefore, the Bybee-Howell House may be credited with 10 square feet of allowable sign area. Because the house is a significant historic resource, Metro will not place any signs on this building.*

*Metro may place up to 10 square feet of signage, visible from a public right-of-way or private property, on other buildings in the park in compliance with this sub-section. Other small informational or interpretive signs, not visible from a public right-of-way or private property, may be placed on the barn, restroom, picnic shelter, etc., however, those signs are outside the reach of this sub-section. [See response to .7912.]*

**H. MCC .7942(C), Signs Generally in the EFU .... Zones, Sign Features:**

**For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign regulations of MCC 11.15.7962 - .7978.**

**Permanent signs may have the following features:**

- **Signs may be indirectly or internally illuminated.**

- Electronic message centers are not allowed.
- Flashing signs are not allowed.
- Rotating signs are not allowed.
- Moving parts are not allowed.

*Metro does not propose to install electronic message centers or signs with flashing, rotating or moving parts.*

**I. MCC .7942(D), Signs Generally in the EFU .... Zones, Additional Signs Allowed:**

**For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign regulations of MCC 11.15.7962 - .7978.**

**In addition to the sign amounts allowed based on the site and building frontages, the following signs are allowed in all zoning districts for all usages:**

- Directional signs pursuant to MCC 11.15.7974.
- Temporary lawn, banner and rigid signs.

*Metro will make use of temporary traffic direction signs during special events. These signs will be removed immediately following the conclusion of each event.*

**20. Compliance With Applicable Comprehensive Plan Policies:**

**A. Policy 9: Agricultural Lands**

**The county's policy is to designate and maintain as exclusive agricultural, land areas which are:**

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by u.s. soil conservation service;**
- B. Of parcel sizes suitable for commercial agriculture;**
- C. In predominantly commercial agriculture use; and**
- D. Not impacted by urban service; or**
- E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.**

**The county's policy is to restrict the use of these lands to exclusive agriculture and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development.**

*Howell Territorial Park is zoned Exclusive Farm Use (EFU). Howell Park has been used for a mixture of agricultural and public park uses since Multnomah County obtained title*

to the land in 1962. Under Metro's guidance the land has continued to be used for agricultural purposes, such as cattle grazing and haying, and for public park uses. The focus of the Howell Territorial Park has been on protecting and enhancing the natural resource values of the land and interpreting the settlement agrarian way of life that the Bybee-Howell House and farm represent. The park master plan, adopted by Metro in 1997, states that a primary goal of the master plan is to "Protect, preserve and enhance natural and cultural resources of Howell Territorial park while maintaining its pastoral setting." The applicant maintains that the adopted goals of the master plan will help preserve the remaining agricultural lands from inappropriate or incompatible development.

Public parks are allowed in the EFU zone subject to conditional use approval. ~~The applicant has demonstrated compliance with all conditional use approval criteria found in MCC .7120.~~ In addition, implementation of the master plan will help limit and define access and impact to the identified wetlands on-site, an activity allowed as a use of right in the EFU zone. [MCC .2008(K).]

The master plan proposes the continuation of commercial cattle grazing on the park through the year 2003 with an option to extend such use indefinitely. Cattle grazing is a farm use as defined in MCC .2008(A) and ORS 215.203. In addition, the applicant will continue the active cultivation of the apple orchard behind the historic house. The areas in which the picnic shelters, restrooms and other amenities are located have been dedicated to park use since 1962 and will continue to be used for park purposes. The only lands that may be taken out of farm production during the life of the master plan is the one quarter acre of land dedicated to the all-weather parking area and access drive off of NW Howell Park Road.

Howell Territorial Park provides the urban dweller with a connection to a rural landscape and rural way of life that once, but no longer, is the characteristic of Multnomah County. The park master plan celebrates that history and landscape and provides the visitor with a better appreciation of rural natural and cultural resources. For these reasons, implementation of the Howell Territorial Park master plan helps preserve agricultural lands from inappropriate or incompatible development.

A. **Policy 13: Air, Water And Noise Quality**

**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.**

~~Implementation of the master plan will not generate vehicle use of local roadways that exceeds adopted County standards.~~ The applicant proposes to implement TMP measures that will help reduce the impacts for vehicle use during special events. No other uses are proposed that will generate significant levels of air pollution. Therefore, the proposal will not adversely impact air quality levels.

Implementation of the master plan will help limit access to identified wetlands. Trails

*proposed in the pasture and meadow area will not create additional impervious surfaces. The applicant will keep cows away from Howell Lake and other sensitive water resources. Consistent with Metro Code 10 and in consideration of the primitive setting and the noise sensitivity of the neighbors, only acoustic music is allowed in Howell Park. Amplified sounds are expressly not permitted. On-site septic systems will be designed in compliance with adopted County standards. Surface water from the all-weather parking area and other impervious surfaces will be handled in compliance with adopted regulations. The applicant shall apply for erosion control and grading permits in conjunction with Design Review for each phase of development. Therefore, this proposal will help maintain healthful ground and surface water resources.*

*No activities proposed in the master plan are noise sensitive uses. As discussed above, Metro expressly prohibits amplified noises at Howell Park. This includes the use of the park for weddings, school tours, Wintering-In and other special events. No other significant noise generators are proposed.*

Hearings Officer: Evidence from the County's Public Works Division shows that Sauvie Island Road exceeds County standards for volume of traffic during the peak use period when special events will occur. The Wintering In Festival figures show that over 2100 persons attend the festival on at least one day of the festival. At the 2.5 to 3.0 persons per car projected by Kittelson, this festival will draw at least 700 to 840 vehicles a day. This translates to 1400 to 1680 vehicle trips per day on a road that is intended to serve 1000 to 4000 vehicle trips per day. As 5700 vehicle trips currently use this road for other uses, the festival and other similar special events make a failing situation much worse.

**B. Policy 14: Developmental Limitations**

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

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

*The only slopes within the site that exceed 20% are the dike slopes and the slope*

*immediately west of the Bybee-Howell House. No development is proposed on the dike slopes. The only improvements proposed for the slope near the historic house is the replacement of the split-rail fence with more appropriate historic fencing material and the a short reach of hard surfaced trail. The soils are not marked as having severe soil erosion potential. The site is exempt from Flood Hazard review. Generally the land has a grade of less than 6% and is not identified as being subject to slumping, slides or earth movement.*

*Development limitations on the land are related to the identified Goal 5 natural and historic resources. Implementation of the master plan will not result in substantial adverse impacts to any of these resources. Proposed development, which will result in soil disturbance, shall conform to the County's adopted erosion control standards.*

Hearings Officer: Metro fails to establish that the parking areas do not have a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year, a fragipan less than 30 inches from the surface or that the land is not land located within the 100 year flood plain. The fact that the property is exempt from Flood Hazard review does not excuse Metro from compliance with this comprehensive plan policy.

**Policy 15: Willamette River Greenway**

**The county's policy is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River.**

**Further, it is the county's policy to protect identified Willamette River Greenway areas by requiring special procedures for the review of certain types of development allowed in the base zone that will ensure the minimum impact on the values identified within the various areas. The procedures shall be designed to mitigate any lost values to the greatest extent possible.**

*Despite the fact that the majority of Tax Lot 12 is more than 150 feet beyond the statutory reach of the WRG Act, Multnomah County classifies all of TL 12 as being within the WRG overlay. The recently acquired 20 acres is beyond the reach of the WRG.*

*It is state policy to "to protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River, to preserve and restore historical sites, structures, facilities and objects on lands along the Willamette River for public education and enjoyment". [ORS 390.314(1).]*

*Activities that "protect, conserve, enhance and maintain public recreational, scenic, historical and natural uses on public lands" are exempt from filing a request for a Greenway permit. [MCC .6368(A).] The applicant has demonstrated that all activities proposed in the master plan will result in the protection, conservation, enhancement and maintenance of public recreational, scenic, historical and natural uses on public lands. Therefore, the proposal is consistent with this comprehensive plan policy.*

## **Policy 16: Natural Resources**

**The county's policy is to protect natural resources, conserve open space, and to protect scenic and historic areas and sites. These resources are addressed within sub-policies 16-a through 16-l.**

*The Natural Resources policy applies exclusively to Open Spaces, Scenic and Historic Areas, and Natural Resources that are subject to Goal 5. [See OAR 660-16.] There are three (3) Goal 5 resources on Howell Park lands: 1) Howell Lake and wetlands (natural resources), 2) the isolated wetlands in the northwest corner of TL 12 (natural resource), and 3) the Bybee-Howell House (an historic and scenic resource). There are no Goal 5 open space resources on the site. The County zoning map indicates that there is an SEC-w overlay on the property as it relates to Howell Lake and the isolated wetland.*

### **Policy 16-A: Open Space**

**It is the county's policy to conserve open space resources and protect open spaces from incompatible and conflicting land uses.**

*Howell Park is an open space resource. The adjacent areas are not dedicated public open space. Therefore, the proposed development activities at Howell Park are not incompatible with adjacent public open space areas.*

*A primary purpose of the park master plan is to ensure that the park is protected against incompatible and conflicting land uses. The plan proposes measures that will limit and direct access around sensitive areas. The clustering of new structures behind the barn and behind the existing picnic area will limit incursions of new structures onto open areas. The continued use and enhancement of Howell Park as a low impact, minor recreation area, pursuant to the adopted master plan, will prevent future use of the land that is incompatible with the open space character of the site.*

### **Policy 16-D: Fish And Wildlife Habitat**

**It is the county's policy to protect significant fish and wildlife habitat, and to specifically limit conflicting uses within natural ecosystems within the rural portions of the county and sensitive big game winter habitat areas.**

*There are no state or county adopted fish and wildlife habitat areas or big game winter habitat areas identified on the Howell Park site. Therefore, this policy is not applicable to this request.*

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

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

*Howell Park is a natural area. The primary natural resource values of the site are Howell Lake and the identified wetland. The adopted Metro master plan for Howell Territorial Park is designed to limit uses that would irreparably damage the natural values of the site. The plan would limit human and cattle access to these resources. No development is proposed within the resources or their buffers. The plan includes measures to enhance the function of the wetlands. No development actions, other than those provided for in the master plan, will be undertaken. Therefore, implementation of the park master plan will specifically limit uses that might otherwise irreparably damage the natural area values of the site.*

Hearings Officer: Parking immediately adjacent to a wetland may require the imposition of use restrictions to protect the wetland, as discussed earlier in this decision.

#### **Policy 16-F: Scenic Views And Sites**

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

*The County has adopted MCC .6424 as a mechanism to protect scenic views and sites. The Bybee-Howell House and public roads on Sauvie Island are identified as public viewing areas. [MCC .64424.] The subject property is not zoned SEC-v (significant scenic resource). Therefore, this plan policy does not apply to the subject application.*

#### **Policy 16-G: Water Resources And Wetlands**

**It is the county's policy to protect and, where appropriate, designate as areas of significant environmental concern, those water areas, streams, wetlands, watersheds, and groundwater resources having special public value in terms of the following:**

- A. Economic value;**
- B. Recreation value;**
- C. Educational research value (ecologically and scientifically significant lands);**
- D. Public safety, (municipal water supply watersheds, water quality, flood water storage areas, vegetation necessary to stabilize river banks and slopes);**
- E. Natural area value, (areas valued for their fragile character as habitats for plant, animal or aquatic life, or having endangered plant or animal species).**

*Multnomah County has designated Howell Lake and its associated wetlands and buffer, and the isolated wetland on the northwest portion of TL 12, as areas of significant environmental concern. The park master plan envisions no development within these areas. [See Exhibit 12, Wetland Delineation report and Exhibit 8, Proposed Site Plan.] Therefore, the application satisfies plan policy 16-G.*

**Policy 16-I: Historic Resources**

**It is the county's policy to recognize significant historic resources, and to apply appropriate historic preservation measures to all designated historic sites.**

*The Bybee Howell House is the only identified Goal 5 historic resource on the site. The master plan includes renovating the cellar as an outdoor exhibit, converting the kitchen into a self-guided introductory exhibit, and constructing an ADA accessible path to the south side of the porch. All activities shall be undertaken only after consultation with the State Historic Preservation Office to determine the appropriateness of the rehabilitation and restoration measures. Therefore, implementation of the master plan will apply appropriate historic preservation measures to all designated historic resources on site.*

Staff: Multnomah County implements Policy 16-G, with the Significant Environmental Concern for wetlands section of the Zoning ordinance (MCC 11.15.6422). This Section severely limits development within wetland areas and prohibits upland development from encroaching within 50 feet of such wetlands (MCC 11.15.6422(B)). Although the applicant has established that this project is exempt from the Significant Environmental Concern permit requirements, they are locating development such that no improvements are to be located within 50 feet of any wetland area within the park. Wetland areas and a 50 foot wetland buffer are illustrated on the site plan (Exhibit 8). Wetland locations are consistent with a wetland delineation report prepared by Shapiro and Associates (Exhibit 12). The Division of State Lands confirmed the delineation report, as evidenced in an April 27, 2000 letter (Exhibit 20).

**C. 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. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:**

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

renewable energy resources.

*The applicant proposes to implement a TMP plan that includes appropriate energy conservation measures, such as bus parking areas and encouraging an extension of Tri-Met Route #17 to the park during special events. These measures will help reduce dependence upon non-renewable resources.*

D. **Policy 31: Community Facilities And Uses**

The County's policy is to:

- Support the siting and development of a full range of community facilities and services by supporting the location and scaling of community facilities and uses meeting the needs of the community and reinforcing community identity.
- Encourage community facilities siting and expansion at locations reinforcing orderly and timely development and efficient provision of all public services and facilities.
- Encourage land use development which support the efficient use of existing and planned community facilities.
- Support the development of a unified approach to long range community facilities planning and capital investment programming in Multnomah County.

*Howell Territorial Park is an existing public park, a community facility. The park has full access to all available public services. In the mid-1990s, Metro initiated a public process to identify alternative approaches to increase the efficiency of services at Howell Park. After several years of working with island residents and interested parties, Metro adopted the present master plan in 1997. The master plan is a long-range planning and capital investment program for the park. The plan encourages orderly development of the park facilities consistent with policy # 31.*

- Classify community facilities according to their function and scale of operations.

<u>Scale</u>	<u>Type Of Facilities</u>
	* * *
<b>Minor Regional</b>	<b><u>Cemeteries</u></b> <b>Regional Parks</b>

*Multnomah County classifies Howell Territorial Park as a minor regional park.*

\* \* \*

- Locate community facilities on sites with average site grades consistent with a

project's scale and impacts, site slope requirements by scale are:

<u>Scale</u>	<u>Average Site Slope Standard</u>		
	*	*	*
<b>Minor Regional</b>			<b>6%</b>
	*	*	*

*Although the applicant has not completed a final topographic analysis of the site, a visual survey indicates that Howell Park is located on land with an average grade of less than 6 percent. The proposed major development activities will occur on slopes with an average grade of 6 percent or less. Trail locations are generally flat and, where required, all trails will be ADA compliant. Therefore, the proposed improvements, on average, will occur on slopes less than 6% as required in this subsection*

- **For sites with average slopes steeper than the standard the developer must be able to demonstrate that through engineering techniques all limitations to development and the provision of services can be mitigated.**

*The average slope of the site is less than 6%. No significant development is proposed on slopes steeper than 6% grade.*

- **Support the location of community facilities on existing transportation systems with volume capacities and modal mix splits available and appropriate to serve present and future scales of operation. Vehicular access requirements by scale of facility are:**

<u>Scale</u>	<u>Vehicular Access Standards</u>		
	*	*	*
<b>Minor Regional</b>	<b>Direct Access To A Collector Street And No Routing Of Traffic Through Local Neighborhood Streets</b>		
	<b>Public Transit Available Within ¼ Mile</b>		

*Howell Territorial Park is an existing community facility. It is served by NW Howell Park Road (a local farm road) and NW Sauvie Island Road (a rural collector). NW Sauvie Island Road serves as a collector street for the island.*

*Tri-Met operates a transit stop for bus route #17 within one-half mile of the park. There are no transit stops within one-quarter mile of the site.*

*The Multnomah County Comprehensive Plan classifies Plan Policy # 31 as a land use location policy. The Howell Park location cannot satisfy the plan requirement of a transit stop within one-quarter mile. The land use locational policies are to be construed flexibly where it can be found that the proposal is in the public interest.*

*Metro adopted the Howell Park master plan as a mechanism to implement the Metropolitan Greenspaces Master Plan, which calls for the adoption of park master plans as a primary strategy for balancing public use of natural areas with protection of the natural values of the area. In so doing, Metro made a determination that implementation of the Howell Park master plan is in the public interest and that the proposed park expansion is capable of harmonious integration into the community. The Howell Park master plan is designed to minimize impacts on the natural values of the site while expanding public educational, interpretive, and recreational experiences on-site.*

*Therefore, the applicant asks that Multnomah County similarly find that the proposal is in the public interest and is capable of harmonious integration into the Sauvie Island community, and thereafter, construe the location criteria in a flexible manner.*

\* \* \*

- **Restrict the siting of community facilities in locations where site access would cause dangerous intersections or traffic congestion considering the following:**
  - **Roadway capacities**
  - **Existing and projected traffic counts**
  - **Speed limits**
  - **Number of turning points**

*The traffic analysis provided by Kittelson & Associates considers each of these criteria and concludes that that implementation of the master plan will not reduce roadway levels of service (LOS) below LOS "B" during peak use times. The traffic analysis concludes that traffic operations at Howell Territorial Park will be adequate during normal hours of operation and during special events based upon the implementation of a TMP plan. [Exhibit 10]*

Hearings Officer: It is not clear that the Kittelson Report addressed the demand of a special event the magnitude of the Wintering In Festival (2100+ persons per day). It discusses a parking need for 500 vehicles. It is not clear from the text of the report how many cars a day are expected. The tables shows peak hour estimates of traffic but it is not clear to a non-expert whether the tables also show total trips per day. Metro should clarify this issue on appeal.

- **Support community facilities siting and development at sites of a size which can accommodate the present and future uses and is of a shape which allows for a site layout in a manner which maximizes user convenience, energy conservation, and**

**pedestrian and bicycle access to and within the site.**

*Metro has determined that the adopted park master plan is sized appropriately to the site. Proposed development activities, such as the picnic area and maintenance... area, are limited to areas already developed. The park master plan proposed to create a limited network of pedestrian trails within developed areas where no such system now exists. Paved trails will be ADA compliant. Soft trails will lead from the developed areas to wildlife viewing areas and around, but sufficiently away from, significant wetlands.*

- **Promote compatible development and minimize adverse impacts of site development on adjacent properties and the community through the application of design review standards codified in MCC 11.05.7805 - 11.05.7865.**

*The applicant will apply for Design Review Approval for each phase of development in satisfaction with this plan policy.*

- **Provide for the siting and expansion of community facilities in a manner which accords with the other applicable policies of this plan.**

*Implementation of the adopted park master plan is the appropriate vehicle to ensure conformity with all plan policies discussed herein.*

Staff: Transit is available within ½ mile of the subject property, a distance that does not meet the ¼ mile threshold listed above. However, the fact that Policy 31 is a locational policy allows the County to treat the criteria in a flexible manner, provided it can be established that the proposed development is in the public interest and is capable of harmonious integration into the community (see Exhibit 21). ~~As established herein, the applicant has demonstrated that the proposal is in the public interest and is capable of harmonious integration into the Sauvie Island community.~~

E. **Policy 37: Utilities**

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

\* \* \*

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

**Water Supply**

*An existing well (Oregon Water Resources Department #38514) will be used to supply domestic and irrigation water to the proposed facility. This well has exceptional yield of 220 gallons per minute. Water was first encountered at a depth of approximately 64 feet below ground surface. Static water level is presently found at 13 feet (bgs) with a total well depth of 87 feet. The well was recently constructed in January 1992. It is*

*assumed that the existing casing, well head, and seals are in good condition and will be adequate for the proposed use.*

*A 7.5 HP 4" Goulds Submersible Well Pump is installed at this well. With an assumed static lift requirement of 50 feet (which would allow 37 feet of drawdown and headloss) and a pump efficiency of 65%, the capacity of this well is calculated to have a maximum theoretical capacity of approximately 400 gallons per minute. This capacity is well in excess of maximum irrigation flow which has been estimated at 50 gallons per minute.*

*Chlorination equipment and a retention vessel providing a contact time of not less than 30 minutes will be provided for the domestic water system. The quality of the well water is generally good, although a full chemical analysis of the well water has not been completed to date. Otak will coordinate with the Oregon Health Division to meet all applicable drinking water standards.*

### Septic System

*The soils in the proposed drainfield area are predominantly Burlington fine sandy loam according to the SCS Soil Survey for Multnomah County, Oregon. This soil has rapid permeability and has a high hydraulic capacity. Because of this high permeability rate, the drainfield will be sited a sufficient distance from the existing wetland to prevent possible seepage and contamination into this area. The soil survey also indicates the presence of organic materials in the soil matrix which is conducive to biological treatment of the wastestream.*

*A Septic Site Evaluation request has been submitted to Mike Ebbing at the City of Portland Bureau of Buildings. This work will be completed as City of Portland staff becomes available. Information available to date indicates that the proposed drainfield site is adequate for its anticipated use. The viability of this site for a conventional septic tank and drainfield assembly will be verified by the City of Portland. If necessary, pretreatment in the form of sand or gravel filtration could be provided to reduce the biological loading to the drainfield. We are confident that the soil matrix has adequate hydraulic capacity to assimilate the projected wastewater volumes. All septic system design will be completed in accordance with Oregon Department of Environmental Quality standards.*

\* \* \*

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

*Evidence is required showing that the stormwater system can pass the 10-year, 24 hour storm and that the development will not degrade the water quality of the nearby wetlands.*

*The improvements at Howell Territorial Park include a new gravel parking lot. A*

*grassy area off NW Howell Road is currently used for parking. A portion of this area will be developed into a new pervious pavement parking lot. The remainder of the area will be kept in its current condition for overflow parking.*

*The overflow parking area does not require treatment since it will not be changed by the park improvements. Stormwater runoff from the new parking lot requires treatment and will drain directly to a vegetated filter strip without subsurface piping. After flowing through the vegetated filter strip, it will pass through a culvert and be discharged to a nearby wetland buffer area. A second culvert will be installed under the parking lot entrance to bypass runoff in the ditch along NW Howell Road.*

*The vegetated filter strip is provided to treat runoff from the new parking lot during the water quality storm event. The water quality storm event is 0.83 inches over a 24 hour period, as defined in the City of Portland's Stormwater Management Manual. The filter will be 16 feet wide and have a 9 minute residence time. Nine minutes was chosen because it is the standard minimum residence time for a vegetated filter strip and is the minimum residence time for biofiltration under the City of Portland's Stormwater Management Manual. This design will adequately treat the runoff before it is discharged to the wetlands.*

- **There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and**
- **Communications facilities are available.**

*Electricity service is available at the site. Telephone service is available at the site.*

Staff: A well log report, discharge calculations, pump description, repair invoice, and an application checklist from the Oregon Health Division, Drinking Water Program have been submitted by the applicant as evidence of an adequate, on-site private water supply (Exhibit 22). Evidence has not been provided establishing that they have received approval from the Oregon Health Division. Such evidence is needed to demonstrate that an adequate water supply exists.

Written evidence from the Oregon Department of Environmental Quality (DEQ) that they will approve a sub-surface sewage disposal system for proposed development is also required. The City of Portland Sanitarian is an agency authorized to review and approve certain subsurface disposal systems on behalf of DEQ. In a letter dated April 27, 2000 (Exhibit 23), the City of Portland Sanitarian confirmed that the subject property is suitable for a standard septic tank and drainfield system.

The applicant's drainage analysis (Exhibit 19) establishes that storm run-off attributed to this project can be handled on-site.

F. **Policy 38: Facilities**

**The County's policy is to require a finding prior to approval of a legislative or quasi-**

judicial action that:

- The appropriate school district has had an opportunity to review and comment on the proposal.
- There is adequate water pressure and flow for fire fighting purposes; and
- The appropriate fire district has had an opportunity to review and comment on the proposal.
- The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

*See attached service provider forms.*

Staff: Exhibits 15 and 16 demonstrate that police and fire protection services are adequate to serve the proposed uses.

Hearings Officer: The fire district has expressed concern about its ability to serve the expanded uses envisioned for this park, especially because it is a volunteer district. This policy does not, however, require that the fire district have the ability to serve the property. Adequate water pressure and an opportunity to comment are all that are required.

G. **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:

- 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.

*The Proposed Site Plan, Exhibit 8, shows a general location for an easement, approximately 20 feet wide, to accommodate a future bikeway in compliance with Multnomah County's transportation and bikeway plans.*

- Landscaped areas with benches will be provided in commercial, industrial and multiple family developments, where appropriate.

*This policy applies to industrial, commercial and multi-family development projects and is not applicable to this proposal.*

- Areas for bicycle parking facilities will be required in development proposals, where appropriate.

*See at Exhibit 11, Parking and Loading Plan, for location of proposed bicycle parking areas.*

21. Compliance With Applicable Sauvie Island/Multnomah Channel Rural Area Plan (SIMCRAP) Policies:

- A. **Policy 1: Support measures which will ensure that Sauvie Island maintains and enhances its agricultural diversity on Exclusive Farm Use lands.**

*The Howell Park master plan envisions continuation of cattle-grazing activities through the year 2003. Grazing may be continued beyond that time frame subject to negotiation with the lessee. The plan includes maintenance of the orchard and creation of a kitchen garden exhibit.*

- A. **Policy 20: Promote recreational activities within the rural plan area which are complementary to natural and environmental resources identified pursuant to Goal 5 of the Statewide Planning Program and regionally significant natural areas adopted in the Metro Greenspaces Master Plan and lands approved in Metro's Acquisition Refinement Plan.**

*Howell Territorial Park is a Goal 5 resource and is designated as a greenspace of regional significance. The Howell Park master plan as adopted by the Metro Council, implements the Metro Greenspaces Master Plan and, therefore, satisfies this plan policy. [See Exhibit 6, Appendices, Metro Council Resolution approving Howell Territorial Park Master Plan.]*

- B. **Policy 22: Have the Multnomah County Bicycle and Pedestrian Citizen Advisory Committee study and recommend to the Board of County Commissioners short and long term solutions to safely accommodate bicyclists, pedestrians, and motor vehicles on Sauvie Island including on-road bikeways, separated multi-use paths, and funding options.**

*The Sauvie Island Rural Area Plan illustrates a bikeway through the park site, along the east side of Sauvie Island Road. The bikeway is included in the Multnomah County Bicycle Master Plan. The Proposed Site Plan, Exhibit 8, shows a general location for an easement, approximately 20 feet wide, to accommodate a future bikeway in compliance with Multnomah County's transportation and bikeway plans.*

Staff: The Transportation Division confirmed that, provided the applicant complies with the proper right-of-way/easement dedications and commits to future improvements, the proposed bikeway complies with the County Bicycle Master Plan (Exhibit 17).

**Policy 24: Oppose placement of regional roadways in the Sauvie Island/Multnomah Channel Rural Area, should such roadways be under consideration by any regional transportation authority.**

**Policy 25: Review rural roadway standards to determine if 8-foot paved shoulder widths can be reduced to preserve the rural character of the area.**

*These two plan policies reflect the desire of Sauvie Island residents to see that Island roads and traffic volumes are maintained at rural levels.*

*As discussed above, Metro contracted with Kittelson and Associates to analyze the*

*projected traffic impacts that can be reasonably anticipated as a result of implementation of the Howell Park master plan.*

*Currently, Howell Park attracts an average of 20 vehicles per day spring the late spring, summer, early fall operating season. The park also attracts one school bus loaded with 60 children 25 times a year and several small weddings of 25-100 participants during the summer. Special events include one OHS annual fundraiser and the annual Wintering-In Festival, by far the largest generator of visitors attracting 5,000 visitors over one fall weekend.*

*These same events will continue when the master plan is implemented. The only change in park attractions that might attract more numbers of people at one time will be the construction of three picnic shelters with a combined capacity of 240 visitors. Metro anticipates that these shelters will be in use 10 – 12 Saturdays from mid-June to early September and might reach capacity during some of these weekends. Kittelson anticipates that vehicle occupancy will be 2.5 to 3.0 people per vehicle which will yield 80 to 96 additional vehicles on a Saturday afternoon.*

Hearings Officer: The master plan makes it clear that Metro intends to expand park use for events. The establishment of a legally approved large parking area will make the property suitable for such large events. As such, it is not reasonable to assume that the park use for special events will remain static. The dollars expected from special events, as shown by the Master Plan, are projected to increase dramatically. One way this would occur would be by expanding attendance at current events.

*Currently, the primary intersections vehicles use to reach Howell Park operate at LOS "B" during peak weekend hours. Kittelson anticipates that even with the potential increased number of visitors in vehicles attracted to the picnic shelters the level of service at the primary intersections will not decrease below LOS "B".*

~~*Consequently, from an empirical point of view, the rural character of the Sauvie Island Road system will not experience a measurable decline when the master plan is implemented. During the peak visitor season, when Sauvie Island roads are at their busiest, it will be difficult for the casual observer to distinguish between traffic generated by Howell Park, the beaches, the produce stands, or the wildlife refuge.*~~

*During annual special events when more than 300 visitors are expected, Metro will implement a TMP as recommended by Kittelson. The plan not only includes on-site parking management, but also includes coordination with the County Sheriff's office for traffic management, additional signs, and the possibility of support from Tri-Met. Again, the Wintering-In Festival and OHS fundraiser events already occur annually. Given the limited number of large special events and implementation of the TMP, Metro anticipates that implementation of the master plan will not result in loss of rural road character.*

Hearings Officer: Metro should, at a minimum, make the transportation system improvements recommended by the County.

**Policy 32: Make protection from flood waters the highest priority among competing uses on Sauvie Island.**

*County staff has concluded that lands west of the dike are Flood Hazard areas. Howell Park lies east of the dike; therefore, the Flood Hazard requirements do not apply to this request...*

**Policy 33: Encourage property owners to control vegetation along Sauvie Island levees through methods that are least environmentally damaging as determined by the Sauvie Island Drainage District in coordination with the Oregon Department of Fish and Wildlife.**

*The park master plan includes land management and natural resource management goals that:*

- *Implement a program to control or eradicate invasive species including Himalayan blackberry, reed canarygrass, tansy ragwort and Canadian thistle.*
- *Enhance wildlife use of the site by establishing native shrub and tree plantings adjacent to Howell Lake, fence lines and the Gilbert River.*
- *Create a grove of Oregon white oak trees.*
- *Maintain healthy meadow / pasture through appropriate use of mowing, grazing and fertilization.*
- *Exclude livestock from wetland and riparian areas (subject to existing agreements).*
- *Control livestock access to the Gilbert River dike by installing a gate on the south side of the dike.*
- *Implement a volunteer program to restore (plant) and enhance the orchard including removal of diseased trees, annual pruning and spraying, and control of ground cover.*
- *Any pesticide / herbicide spraying at the park will be done in a manner that does not harm wildlife that frequent the park throughout the year.*
- *Monitor water quality of park surface waters.*
- *Encourage natural seasonal water fluctuations in wetland areas.*

*Implementation of these policies is compatible with the goal of controlling vegetation along the island levees.*

**Policy 35: Consider methods of alleviating the compaction effects of roadways on levees through the relocation of such roadways or reconstruction of such roadways with additional fill under them to raise the levees.**

*Kittelson and Associates have concluded that implementation of the Howell Park master*

*plan will yield a 0.8 percent growth in traffic along the dike road. The majority of this park-generated traffic will be passenger vehicles. Therefore, Kittelson concludes that the implementation of the Howell Park master plan is not likely to have a measurable effect on the structural integrity of the dike roadway in comparison to the existing traffic loading.*

**Policy 42: Make recommendations and participate in the planning for Howell Park with METRO.**

*Land use review of this application is consistent with this plan policy.*

## **Conclusion**

Considering the findings and other information provided herein, this application for development within Howell Territorial Park fails to satisfy applicable Multnomah County Zoning Ordinance requirements.

## **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 \$530.00 plus a \$3.70 - 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 1600 SE 190th Avenue (in Portland) or you may call 248-3043, for additional instructions.

Dated this 2<sup>nd</sup> day of July 2000.



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Liz Fancher, Hearings Officer

# Reeve Kearns PC

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January 29, 2002

Multnomah County Board of Commissioners  
c/o Deb Bogstad, Board Clerk  
501 SE Hawthorne Blvd., Suite 600  
Portland, OR 97214

**SENT VIA FAX TO (503) 988-3013  
AND BY REGULAR MAIL**

**RE: Metro Conditional Use Permit to expand the Howell Territorial  
Park on Sauvie Island – County File No CU 0-2  
Final Rebuttal of the Sauvie Island Boosters**

Dear Commissioners:

This letter is the final submission of the Sauvie Island Boosters before you close the record and decide this matter. I had previously submitted a hearing memorandum at the January 2001 hearing outlining the legal issues. Even though it is more than a year old, the legal issues are still relevant, and I urge you to review that memo. I also urge you to review the July, 2000 decision of the County's Hearings Officer, Liz Fancher, who denied this application. That decision is also still relevant. According to ORS 197.763(e)(6), Richard Benner, Metro's attorney, has a right to final rebuttal and legal argument within 7 days of when the record closes but cannot submit new evidence. As I understand it, Mr. Benner's submission deadline is February 5, 2002.

The Board should not lose sight of the history of this application and the planning process for the Bybee-Howell Territorial Park. Metro has explicitly and repeatedly stated – both at the January 15, 2002 hearing and in its application materials – that it proposes to create a regional park designed to help meet the region's growing recreational needs in the same way as Blue Lake Park and Fairview Lake Park.<sup>1</sup> The proposed facilities and crowd projections confirm Metro's

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<sup>1</sup> Metro's grant application to the State Department of Parks and Recreation is clear in this regard when it states:

“The requested State Parks Grant funding will allow Metro to complete the necessary improvements at Howell, to develop this underutilized park facility into a prominent regional recreation destination.”

“Recreation Needs- There is a great need and demand for group picnic facilities in the Portland Metro region. At Blue Lake Park alone, counts taken from the last three years show that an average of 90,000

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plans for this park as a regional recreational destination – in effect “Blue Lake Park West” – despite the fact that Sauvie Island is outside the Metro UGB and outside Metro’s jurisdictional boundary. In addition to large numbers of weekend picnickers, the target market for this regional park is corporate picnics and parties, family reunions, wedding receptions and the like. In this way, Metro claims it will expose many tens of thousands of the region’s residents to this historic farmstead. The proposed facilities that will attract and accommodate these visitors and the target market include parking for approximately 630 cars plus buses, picnic shelters for 240, a gift shop and a coffee shop, plus an indoor kitchen for catering in the barn and seating for 60.

In contrast to Metro’s ambitious plans for the park and the many ways it will help meet the region’s growing recreational demands, Metro now makes the surprising promise to eliminate for the time being one of the big (120-person) picnic shelters and to limit the number of “big events.” However, Metro has not changed its plans or projections for this park and provides no hint as to how it could prevent multiple “small events,” that happen to overlap, from becoming de facto “big events.” Even the “small events” – especially multiple small events – stand to have a substantial impact on the under-sized, substandard road and bridge that serve the property, and all of the farmers that depend upon the smooth operation of Sauvie Island Road and the bridge.

Despite Metro’s eleventh hour promise to limit the crowds, there is every expectation that, if they build it, the crowds will come. Quite frankly, Metro has been very clear for more than two years as to what it plans for the park, and its promise to now ratchet-back the facilities – at least until it gains approval for some measure of the proposed expansion plan – seems disingenuous. The fundamental problem with Metro’s proposal is that it is simply too intensive, too large, and serves the recreational needs of too large an urban population, as opposed to the local community, to be placed on EFU land – especially on the highvalue farm land that comprises Sauvie Island. What follows is a discussion of the specific legal criteria which implement the state’s farmland preservation policies and which are violated by this proposal.

- 1. Even though public parks are a valuable public amenity, this particular park expansion proposal cannot be approved at this location because it violates state law and the County Code, i.e., ORS 215.296 and MCC 11.15.7120(A)(3) respectively.**

It is true that state law, in theory, allows parks on EFU land. However, Oregon’s land use system is founded upon the preservation of farm land for farm uses, and parks, by definition, are not farm uses.<sup>2</sup> Consequently, the only kind of park allowed on EFU land is one which does not

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people per year, that desire to reserve a picnic shelter, are turned away due to lack of availability. The demand for group picnic facilities exceeds availability for other recreation suppliers in the region as well.”

- 2 ORS 215.203 defines “farm use” as follows:

“farm use” means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or

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interfere with farm activities or increase the cost of farming. The critical approval criteria that are violated, and cannot be met, by Metro's proposal are ORS 215.296 (Standards for approval of certain uses in exclusive farm use zones) and the parallel county provisions which provide that.

- (1) A use allowed under ORS 215.213(2) or 215.283(2) may be approved only where the local governing body or its designee finds that the use will not:
  - (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
  - (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use
- (2) An applicant for a use allowed under ORS 215.213(2) or 215.283(2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.<sup>3</sup>

Liz Fancher, the County's Hearings Officer, denied this application after a full review of the record and a public hearing because it did not meet these requirements, due to the fact that Metro completely ignored them. The only response that Metro has provided in the intervening two years is a farm impacts analysis covering just ½ mile around the park and a traffic study that missed all of the traffic during the summer growing season and fall pumpkin season.<sup>4</sup>

Metro seems to assume that it is exempt from the land use laws and legal requirements that normally apply to private property owners. In particular, Metro's farm impacts analysis is far

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any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.

3 These state law standards are restated in MCC 11 15.7120(A)(3).

4 The testimony presented at the January 15<sup>th</sup> hearing demonstrates that farmers use Sauvie Island Road constantly throughout the summer growing season. Pumpkin season – essentially the second and third weekends of October, just before Halloween – is the other peak of traffic and farm activity on the Island. The Kittleson study did not collect any data during the summer. Kittleson only counted cars only on the first weekend of October – after the growing season is over but before the pumpkin season begins – and the weekend after Halloween – after pumpkin season ends. Kittleson skillfully avoided any time when there would be significant traffic on the Island's roads.

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too limited in geographic extent. Due to the park's proximity to the Sauvie Island Bridge, the only way on and off the Island, this expansion proposal will impact every farm on the Island that uses the bridge or the road leading to the bridge. The ½ mile radius is too small and does not begin to assess the real impact of this proposal on all of the farms that, in fact, will be impacted.

Virtually all of the testimony the Board heard on January 15, 2002 from farmers confirmed that this park will significantly impact farm operations and increase the cost of farming across the entire island. In particular, this testimony documented that the traffic and crowds of people will substantially impact every farmer that relies on the Sauvie Island Road or the Sauvie Island Bridge. The testimony also confirmed that the large numbers of people coming to the park will interfere with near-by farmers by limiting their ability to spray their fields with pesticides or apply fertilizers because of the spray drift.

Metro's ½-mile farm impact study is not sufficient to rebut any of this testimony. Likewise, Metro's traffic study, that managed to miss any weekend with significant farm or tourist traffic, is also not sufficient to rebut this testimony. The only credible evidence in the record about the actual likely impacts on farm operations is that of the farmers and other Island residents who testified that Metro's proposed expansion will have substantial impacts on all farms on the Island that use Sauvie Island Road and the bridge and that these impacts will significantly increase the cost of these farm operations, or put them out of business.

**2. Metro's proposed conditions do not eliminate conflict with farm uses or bring the application into compliance with the mandatory approval criteria.**

Metro's proposed conditions of approval do not fix the problem for several reasons. First, ORS 215.296(2) requires "clear and objective" conditions as the only way to make a non-farm use compatible with surrounding farm operations allowable on EFU land. Metro's proposed conditions are not clear or objective because there is absolutely no indication of how Metro will limit the numbers of people and cars that might attend weekend corporate picnics, family reunions, wedding receptions and the like. Much like Blue and Fairview Lake Parks, the Howell Territorial Park will have a substantial number picnic tables, lots of trees, parking for more than 600 cars and buses, and facilities and attractions for large numbers of people. But, unlike Blue and Fairview Lake Parks, Metro promises to limit attendance at the Howell Park – something for which Metro has provided no plan and has never endeavored to do with its other large, public recreational parks. There is no plan, much less a clear and objective plan, that will work.

It will be impossible for Metro to monitor or limit the numbers of people or cars attending company picnics, family reunions, wedding receptions and the like at the Howell Park or to limit them to just one or two "big events" each year. Even on non-big event weekends, the gates will be open, companies, families, weddings, etc. will have reservations at the park, many of which will overlap to some extent, and it will be impossible for Metro to know in advance or limit the numbers of people or cars that will attend any one of these events, much less the multiple overlapping events that will be scheduled for any single summer weekend. Consequently, there is no

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guarantee that Metro's proposed solution will work, or even could work, to avoid impacts on farm operations. ORS 215.296(2) requires that any conditions designed to avoid impacts on farm operations must be "clear and objective." There is no indication that Metro's proposed condition will even work, not to mention that it is not clear and objective.

Finally, Metro argues that it will help mitigate the park's impact on farmers by giving them 14 or 21 days notice of large events so that farmers can make alternative arrangements for using the Sauvie Island Road and bridge. This plan simply will not work, and even if it could work, it violates state law because it proposes to force a change in farm practices. ORS 215.296(1) prohibits this park expansion if it will "force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use." Metro's proposed "advance notice" system expressly proposes to force a change in how the Island's farmers do their jobs and conduct their farming operations, by making them schedule around announced park activities and virtually every weekend during the growing season. Even if we could believe Metro that there would be only one additional "big event," which we cannot, this still violates the mandatory prohibition in ORS 215.296(1). As a matter of law, Metro's proposal cannot be approved.

3. **The weight limit on the Sauvie Island Bridge further exacerbates the impact this park expansion will have on Island's farms because farm loads have to be divided into many truck loads to cross the bridge – all of which will have to be timed to coordinate with crowds and events at the Howell Territorial Park.**

As the Board knows, the Sauvie Island Bridge is weight limited, and that weight limit has recently been lowered and strictly enforced. Prior to the strict enforcement of the weight limit, farmers were sometimes able to transport produce off the Island and farm materials onto the Island in single truck loads. With the lower weight limit, the only way to transport farm materials and products across the bridge is to divide the single load into many loads and make many truck trips across the bridge.

The Board heard testimony from farmers that they use the Sauvie Island Road throughout the summer growing season, taking produce off of the Island, and throughout the year bringing farm materials and logs onto the island. Under Metro's most optimistic scenario, farmers would get advance notice of some "big events" and will know about the normal crowds on summer weekends. According to Metro, farmers should alter their transportation schedules around these events and weekends. Even if this were possible before, which it is not, with the new lower bridge weight limit, all farm loads have to be divided into many truck loads which then have to cross the bridge. This will make a difficult traffic coordination problem virtually impossible due to the substantial increase in farm truck traffic crossing the bridge. Island farmers already have a difficult time getting time-sensitive produce off the island to processors. The increased coordination problem will very likely put some farmers out of business. Under ORS 215.296(1)(a) and (b) this conflict requires denial of the proposal.

4. **Staff recommends approval. Should the Board accept that recommendation? No.**

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The Board should not put great weight on staff's recommendation regarding this application for two reasons. First, staff has always supported approval of Metro's proposal – even though the County's Hearings Officer, Liz Fancher, issued a strong denial on July 2, 2000 based on Metro's failure to meet its burden of demonstrating compliance with the approval criteria. In the intervening two years since the Hearings Officer's decision, the application has not changed appreciably – Metro has still not demonstrated compliance with the approval criteria, especially ORS 215.296 and MCC 11.15.7120(A)(3) – and the Board should up-hold the Hearings Officer's denial.

Second, once staff reaches a general recommendation on any application, it typically does not change that recommendation, even if the Hearings Officer denies an application. Staff's review is essentially limited to the abstract question of whether this or some similar park expansion could be approved at this location. The answer to this theoretical question has always been yes, because both state law and the County Code allow some parks on EFU land. However, this particular park expansion cannot be approved because it violates the principal approval criteria in ORS 215.296, MCC 11.15.7120 (A)(3) and others.

5. **According to the Chief of the Sauvie Island Fire Department, adequate emergency service cannot be assured because emergency medics may not be able to provide adequate coverage to large numbers of park visitors, and patients who need to be evacuated may not be able to get off the Island. This situation violates MCC 11.15.7120(A)(6) and 11.15.2026.**

MCC 11.17.2026 and 11.15.7120(A)(6) require that Metro demonstrate that the transportation system serving the expanded park, will be safe and convenient for pedestrian and for passenger and emergency vehicles.<sup>5</sup> Metro explicitly states that the Howell Territorial Park is planned as a regional park to serve the recreational needs of the region's growing population. The proposal includes parking for over 600 cars plus buses. The site is served by Sauvie Island Road – which the Rural Area Plan indicates is already substandard. The several hundred vehicles associated with even a small event can and does block traffic on the Sauvie Island Road and bridge. Such traffic congestion would make it difficult or impossible for emergency vehicles to get to the park or to evacuate patients who need more than just first aid.

Don Posvar, Chief of the Sauvie Island Fire Department, stated in two letters that are in the record that the crowds and traffic congestion associated with the planned events at this park will make it extremely difficult or impossible for the District to respond to emergency calls.<sup>6</sup>

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5 In particular, MCC 11.15.2026 requires that “[a]ny lot in this [EFU] district shall abut a street, or shall have other access determined by the Hearings Officer to be safe and convenient for pedestrians and for passenger and emergency vehicles.” MCC 11.17.7120(A)(6) prohibits approval where the proposed conditional use will “create hazardous conditions.”

6 Both of Chief Posvar's letters, dated September 6 and December 20, 2000 respectively, are in the record and

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There will be too many people and potentially too many medical calls, for this small volunteer fire department to handle. The Fire Chief also asserts that the narrow Sauvie Island Road with no right-turn or deceleration lane into the Park is certain to cause accidents which will also increase emergency calls. His opinion is corroborated by two of the County's Transportation Engineers – Ed Abrahamson and Ali Eghtedari.<sup>7</sup> Both of these County Engineers point out the inadequacy of the Sauvie Island Road and bridge and call into question Metro's promises that there will be no traffic safety problems.

The Fire Chief recommends that the Board deny the proposal in light of the Fire Department's inability to adequately cover the projected increase in demand caused by the park. The two County Engineers point out that substantial right-of-way improvements are required for Sauvie Island Road to function safely. Metro states it will not construct any such improvements to Sauvie Island Road and claims none are needed. In light of this testimony, the proposal must be denied under MCC 11.15.2026 and 7120(A)(6).

**6. This park is not allowed on EFU land, as the only parks allowed by ORS 215.283(2)(d) are those "operated primarily by and for residents of the local rural community."**

ORS 215.427(3) requires that approval or denial of a permit application, such as this one, "shall be based upon the standards and criteria that were applicable at the time the application was first submitted." One such standard that was in effect at the time Metro submitted its application was ORS 215.283(2) which placed a significant limitation on the kind of parks that are allowed on EFU land. In particular, the only type of park that the 1999 version of ORS 215.283(2)(d) allowed on EFU land is one "operated primarily by and for residents of the local rural community."<sup>8</sup> Even though the same provision is not also stated in the County's Code, this statutory provision was in place and it is applicable to this application. That was also the conclusion of the County's Hearings Officer.

This limitation on parks in EFU zones prohibits this park because Metro has clearly stated that it will be a regional park, serving a regional population of recreational users, much like Blue and Fairview Lake Parks. This park used to, but no long will, pertain to the rural farming community on Sauvie Island. Metro might argue that the statute is poorly worded and that the

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copies are attached.

7 County Engineer Ed Abrahamson's memo, dated October 12, 2000, and Ali Eghtedari memo, dated October 24, 2000, are also in the record and copies are attached.

8 ORS 215.283 provides the exclusive list of uses that are allowed on farm land, and no others are permitted. Applicable here, ORS 215.283(2)(d) allows only the following kind of parks on EFU land:

"Parks, playgrounds or community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A public park may be established consistent with the provisions of ORS 195.120." (emphasis added)

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Legislature really meant to place this limit only on rural community centers. However, even if that were true, legislation must be interpreted and applied as it is written, even if that is not exactly what some members of the Legislature “meant” or if the result is absurd<sup>9</sup> – which is not the case here because application of the statute as written serves to protect farm land as required by State-wide Planning Goal 3.

Metro successfully lobbied the 2001 Legislature to remove this provision precisely because it precludes approval of this expansion proposal. However, the so called “no changing the goal posts rule” in ORS 215.427 is still mandatory and subsequent changes in state law do not override this fundamental requirement.<sup>10</sup> In summary, the Hearings Officer and the County’s own attorney correctly concluded that the 1999 version of ORS 215.283(2)(d) applies, and it must be applied as written. The statute prohibits approval because this park, by design, will not be operated primarily by and for residents of the local rural community.

In conclusion, Metro’s proposal is too expansive, too intensive and too urban for this rural setting on an island comprising the largest area of highvalue farm land in Multnomah County. On policy grounds alone, the application should be denied, and Metro should develop an urban recreational destination park inside its own jurisdictional boundary and inside the Urban Growth Boundary. Policy issues aside, this proposal violates the mandatory approval criteria designed to protect farm land and farming communities from the disabling effects of encroaching urban development. The Board should deny this application because Metro has not demonstrated compliance with the approval criteria. As a final note, my clients were disappointed to learn that the Board’s final meeting on this application will not be held on Sauvie Island; however, we will all endeavor to attend the February 7<sup>th</sup> meeting downtown. Thank you.

Sincerely,



Daniel Kearns

cc: Richard Benner, Metro  
Sandra Duffy, County Counsel’s Office  
Susan Muir, Land Use Planning  
Clients

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<sup>9</sup> *Young v. State*, 161 Or.App. 32, 983 P.2d 1044, *rev den* 329 Or 447 (1999), citing *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 859 P.2d 1143 (1993).

<sup>10</sup> *East Lancaster Neighborhood Ass’n v. City of Salem*, 30 Or LUBA 147 (1995). The only way Metro can avoid the requirements and limitations of 1999 version of ORS 215.283(2)(d) is to withdraw its application and resubmit. *Cummings v. Tillamook County*, 26 Or LUBA 139 (1993).

December 20, 2000

Lora Price  
Metro Planner  
600 NE Grand  
Portland, Oregon 97232

Dear Ms. Price:

In response to your letter of Nov. 15, 2000: If your estimate regarding Metro's proposal were to result in less than one additional emergency response call a year, then we would not feel a severe impact to the Volunteer Fire Department. However, the traffic studies compiled by Kittelson & Associates, Inc. (Project#:3847.02) show very convincingly, the need for a right turn lane to accommodate the estimated 25,000 to 30,000 people per year visiting Howell Park. In addition, Mult. County Traffic Engineering Memorandum by Ali G. Eghtedari, PE (10-24-00) clearly states his concerns regarding quality of life of the residents by inviting thousands more people per year and he addresses safety in his last paragraph: " Our mission is to keep a sustainable environment that can benefit both residents and users of the park. Safety is our primary issue and this amount of right turn causes possibility of rear-end accidents on the one lane road more than every 2 minutes during peak hour."

We understand the right turn lane has been removed from the list of required components for the conditional use permit, therefore, it would seem logical that the potential of thousands more vehicles per year would also be removed from the proposal.

In the Master Plan of April 1997, un-numbered page under "Sauvie Island and Howell Territorial Park History", sub title Recreation, we see that there were reservations even then about inviting so many people. Last paragraph states, " More recently, urban residents flock to the Island seeking its sandy beaches, spectacular wildlife viewing, pastoral setting and produce markets. Unfortunately, some of these visitors create problems which include traffic, crime, trespassing, littering and emergency response needs which in some cases exceed the capabilities of the Island's resources."

In March of 1997, Multnomah Co. dept. of environmental services set up a meeting at the school to discuss the Policies to be reviewed for the Rural Area Plan. One of those policies was "Study methods by which the Sauvie Island Rural Fire Protection District can be reimbursed for providing fire and emergency medical services to island visitors." To this date, no funding from that plan has found it's way to our fire district.

We collect no income from the visitors who play at the beaches, bicyclists, picnickers, joggers and others who visit the Howell Park. Having an emergency medical team on the site during Wintering In is great, however, will not preclude our call to the site when 911 is called.

This fact remains, the greater the number of people - the greater incident of problems. When Metro first took over the site, our volunteers responded 4 or 5 times to false alarms, were those accounted for in the study? Even false alarms take a full response team to a site at any hour. There are un-named sources who have witnessed people fighting more than one grass fire at the Park caused by picnickers and 911 was not called for those fires and should have been!

There are too many things still up in the air with this proposal for us to accept it. Once accepted for the conditional use permit, we feel we would lose the opportunity to discuss options for phase 2,3, 4 and however many more phases Metro may come up with in the future.

Sincerely,

Don Posvar  
Chief Sauvie Island Fire Department

cc: Multnomah Co. Planning  
Multnomah Co. Commissioners

Multnomah County Commissioners  
1021 SW 4<sup>th</sup> Ave.  
Portland, Oregon 97204

September 6, 2000

***Regarding Case File CU 0-2***

Commissioners: Please do not approve the Conditional Use Permit application for further development of Howell Territorial Park.

The infrastructure of Sauvie Island can not support 20,000 more cars - not only the roads on the dike and all that is entailed in widening the approaches; or the bridge with new weight and speed limitations posted this year, but also, what would the impact of an *additional 20,000 people* per year have on the volunteer department as to the 911 Response -(these are the same people who respond to fires) ?

When the request came to this office regarding the new covered picnic tables, the response was that it would not be a significant impact on the volunteer fire department as far as fire suppression ( Putting out fires at picnic areas). At that time, we were not aware of the projection of significantly more people attending several more planned events.

The totally volunteer department we have worked so hard to build would be severely taxed. How many times on a Sunday would you be willing to run to an emergency accident, health problem, drug overdose, etc.? We have one tired bridge. Two lane roads. People live here.

The Sauvie Island Fire Department consists of 22 people as of this day. This includes the cadets and during the week, with most at work off the Island, that means the number of people arriving at a 911 call may be too few to take care of more than one incident within an hour or more of time. We are supported by a minimal tax base and a few contributions. How will the infrastructure of the Island be monetarily compensated for the additional people?

The request for the conditional use permit application for development within Howell Territorial Park brings up issues beyond the fire suppression issues. Please consider the entire story before making a decision.

Sincerely,

Don Posvar, Fire Chief, Sauvie Island Fire Department



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES  
TRANSPORTATION DIVISION  
1600 SE 190TH AVENUE  
PORTLAND, OREGON 97233  
(503) 988-5050

BOARD OF COUNTY COMMISSIONERS  
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SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## MEMORANDUM

**TO:** Derrick Tokos, Multnomah County Land Use Division  
**FROM:** Ed Abrahamson,  Multnomah County Transportation  
**DATE:** October 12, 2000  
**RE:** Howell Territorial Park Conditional Use Application

NW Sauvie Island Road, adjacent to Howell Territorial Park, is classified as a Rural Collector Road. Multnomah County Street Standards require a 60' right of way and a 28' pavement width. NW Sauvie Island Road is currently substandard as it has a 40' right of way and a 20' pavement width and no roadway shoulder.

NW Sauvie Island Road, along the Howell Territorial Park frontage is elevated on a dike. The road's location on the top of the dike poses some difficult problems not normally encountered when road frontage improvements are required. Aside from the geometrics alone of adding improvements is the capability of the dike to support additional roadway, or what may be needed to expand and/or strengthen the dike itself.

NW Sauvie Island Road in addition to serving approximately 5,700 motor vehicles per day also receives heavy use from recreational bicyclists, joggers, etc. The narrow pavement width (20' actual vs. 28' needed) coupled with virtually no shoulder causes some safety concerns. Additional motor vehicle traffic could amplify dangerous safety conditions.

Placing a cap on the number of events will help limit but not eliminate these safety concerns. Metro has now defined an event that triggers a Traffic Management Plan (TMP) as one that constitutes having 300 participants (100 vehicles at 3 persons per vehicle) not more than 3 times per year. A special event may last no more than 4 days.

We believe that this definition is not sufficient and needs further refinement. Metro's proposed picnic shelters for Howell Territorial Park would allow for 240 visitors at one time (excluding those visiting the house or other on-site facilities). Presuming that there could be turnover of use for the shelters of twice per day, there is an opportunity for doubling the number of visitors to 480 per day. While these might be several "separate" events in and amongst themselves, they could cumulatively trigger the need to implement the TMP.

EXHIBIT

K-18

What is required is for Metro to limit the use of the facilities through their permit process to ensure they remain at or below the cap of 240 visitors per day. Otherwise, the cumulative use would constitute a special event requiring implementation of the TMP. Should these cumulative events exceed 300 visitors per day, each individual day should be considered a special event requiring the TMP. Again, there can be no more than 3 special events per year.

Safety is a primary concern of the Multnomah County Transportation Division. As previously stated, NW Sauvie Island Road does not meet County standards with its narrow pavement width and lack of shoulders along the frontage of Howell Territorial Park. The location of the road on the dike makes it difficult to improve the roadway. Were the road not situated on the dike, the County would have required half-street improvements that at a minimum would be to add a 3' shoulder, but ideally an additional 4' of pavement width and a 6' shoulder. In addition to the lane widening and shoulder, a northbound right turn lane from NW Sauvie Island Road to NW Howell Park Road is needed to accommodate peak traffic for special events.

Most vehicle conflicts occur at intersections and access points. The intersection of Sauvie Island Road and Howell Park Road is one such point. A right turn lane would provide for safer ingress and egress at all times, not just for special events. Ideally, at a minimum, the right turn lane should be constructed to coincide with Howell Territorial Park's proposed improvements. The TMP might be capable of mitigating the need for the right turn lane, but it is not the best solution. The Transportation Division's concern is for the safety of the traveling public, and a right turn lane provides for safer travel on NW Sauvie Island Road.

*Jara*



: From Desk of Ali G. Eghtedari, P.E.  
: Traffic Engineering/Right of Way Administration  
: Phone 503-988 5050(X29622)  
: e-mail [ali.g.eghtedari@co.multnomah.or.us](mailto:ali.g.eghtedari@co.multnomah.or.us)  
: Fax. 503-988 3321

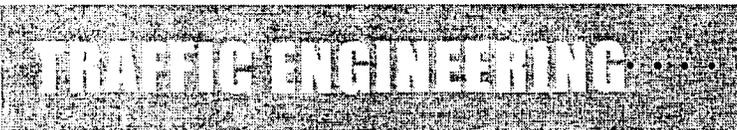
## MEMORANDUM

*Mike Phillips  
# 29628*

**To:** Ed. Abrahamson  
**From:** Ali G. Eghtedari, P.E.  
**Re:** Howell Park  
**CC:**  
**Date:** October 24, 2000

I reviewed KAI letter of Oct. 18<sup>th</sup> addressed to Multnomah County Commissioners. Let me say that we Traffic Engineers like lawyers can come down on the facts anyway we like to, this applies to my colleagues at KAI as well. An example of this would be how KAI receives at 6.7% of peak hour percentage for access to Park. It is obvious that the concentration of traffic volume to access a park can not be compared to average daily traffic of a road that connects a rural/recreational community on the same scale.

The fact of the matter is that there is no national warrants for right turn lane, thus any state has its own defined criteria for having a right turn lane. Our case in hand per information provided fall into different stages based on the approach you take. Highway capacity manual has a graph that is based on a research in Minnesota and shows the 30<sup>th</sup> hour of a rural route would carry about 14% of AADT (TRB special report 209- figure 2.13). The same graph suggests about 25% for a recreational access route. Situation in Sauvie Island road is something between these two and use of 16% AADT seems to be acceptable, thus an hourly volume of  $5700 \times 16\% = 912$  would be reasonable for both directions and assuming the 60% directional divide, a 547 DVH would be appropriate. Based on this number and using 38 right turns, ODOT's criteria warrants a right turn lane. Graph used by KAI is Virginia DOT's and recommends use of average 11% of



ADT for KxD, thus with  $5700 \times 11\% = 627$  and adjusted per graph for 45MPH = 607 and 38 right turn again it warrants a taper which is almost equal to add a right turn. I also attach a copy of Colorado DOT's criteria which again warrants this right turn lane.

What KAI is not paying attention to is that quality of life in Sauvie Island and residents concerns are more important to us than just the numbers. Our mission is to keep a sustainable environment that can benefit both residents and users of the park. Safety is our primary issue and this amount of right turn causes possibility of rear-end accidents on the one lane road more than every 2 minutes during peak hour. I don't have much of comments on the congestion management plan.