

ANNOTATED MINUTES

Tuesday, October 1, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

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

- B-1 Discussion on the Proposed Transit Oriented Development Tax Abatement Program. Presented by Rey España, Mike Saba and Wendy Cherubini.

***REY ESPAÑA, MIKE SABA, MARK CAMPBELL AND
HENRY MARCUS PRESENTATION AND RESPONSE
TO BOARD QUESTIONS AND DISCUSSION.***

The briefing was adjourned at 10:10 a.m. and the regular meeting convened at 10:11 a.m.

Tuesday, October 1, 1996 -10:00 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

CONSENT CALENDAR

***UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-10)
WAS UNANIMOUSLY APPROVED.***

NON-DEPARTMENTAL

- C-1 Appointments of Jim Robison and Scott Leibenguth to the DEPARTMENT OF SUPPORT SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

- C-2 Appointments of Mark Jones, Muriel Goldman, Martha McMurray, Shane Endicott and Charlotte Cook to the DEPARTMENT OF JUVENILE JUSTICE SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-3 Appointments of Karen Voiss and Keith Stengel to the DEPARTMENT OF ENVIRONMENTAL SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-4 Appointments of Deborah Whitefield and Tracee Larson to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE
- C-5 Appointment of Marion Hansen to the DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

SHERIFF'S OFFICE

- C-6 Intergovernmental Agreement 800357 with the City of Portland to Provide Certain Law Enforcement Services Involving Driving Under the Influence of Intoxicants

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 ORDER Authorizing Execution of Deed D971376 Upon Complete Performance of a Contract to Ronald Engesether, Jr.

ORDER 96-176.

- C-8 FINAL ORDER CU 7-95; HV 17-95 Affirming and Modifying the June 26, 1996 Hearings Officer Decision and Adopting Additional Findings

ORDER 96-177.

DEPARTMENT OF HEALTH

- C-9 Intergovernmental Agreement 200717 with Oregon Health Sciences University for the Provision of Sexual Assault Evidentiary Exams
- C-10 Intergovernmental Revenue Agreement 200787 with the Oregon Department of Human Resources to Fund a Research Analyst for the Students Today Aren't Ready for Sex (STARS) Program

REGULAR AGENDA

PUBLIC COMMENT

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

NO ONE WISHED TO COMMENT.

NON-DEPARTMENTAL

- R-2 PROCLAMATION Recognizing October, 1996 as DISABILITY AWARENESS MONTH in Multnomah County, Oregon

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. JAN CAMPBELL PRESENTATION AND EXPLANATION. PROCLAMATION READ. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT. PROCLAMATION 96-178 UNANIMOUSLY APPROVED.

- R-3 PROCLAMATION Proclaiming the Month of October, 1996 as PUBLIC SAFETY MONTH in Multnomah County, Oregon

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. DARLENE CARLSON EXPLANATION. PROCLAMATION READ. PROCLAMATION 96-179 UNANIMOUSLY APPROVED, AS CORRECTED BY COMMISSIONER KELLEY.

DEPARTMENT OF SUPPORT SERVICES

- R-4 First Reading of an ORDINANCE Amending Ordinance No. 856, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles and Make Special Adjustments

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF FIRST READING. SUSAN AYERS EXPLANATION. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED. SECOND READING THURSDAY, OCTOBER 17, 1996.

R-5

Budget Modification DSS 1 Reallocating Funds for Computer Training

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-5. BEN BERRY AND SHERY STUMP EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND COMMENTS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-6

RESOLUTION Authorizing an Application for a Loan from the Small Scale Energy Loan Program

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-6. AMY JOSLIN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 96-180 UNANIMOUSLY APPROVED.

There being no further business, the meeting was adjourned at 10:37 a.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 SW FIFTH AVENUE
PORTLAND, OREGON 97204
CLERK'S OFFICE • 248-3277 • 248-5222
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN	CHAIR	•248-3308
DAN SALTZMAN	DISTRICT 1	• 248-5220
GARY HANSEN	DISTRICT 2	•248-5219
TANYA COLLIER	DISTRICT 3	•248-5217
SHARRON KELLEY	DISTRICT 4	•248-5213

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

SEPTEMBER 30, 1996 - OCTOBER 4, 1996

Tuesday, October 1, 1996 - 9:30 AM - Board Briefing Page 2

Tuesday, October 1, 1996 - 10:00 AM - Regular Meeting Page 2

**PLEASE NOTE - BOARD MEETINGS HAVE BEEN
CANCELLED THURSDAY, OCTOBER 3, TUESDAY,
OCTOBER 8 AND THURSDAY, OCTOBER 10, 1996**

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, October 1, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFINGS

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- C-2 Appointments of Mark Jones, Muriel Goldman, Martha McMurray, Shane Endicott and Charlotte Cook to the DEPARTMENT OF JUVENILE JUSTICE SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
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- C-5 Appointment of Marion Hansen to the DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE

SHERIFF'S OFFICE

- C-6 *Intergovernmental Agreement 800357 with the City of Portland to Provide Certain Law Enforcement Services Involving Driving Under the Influence of Intoxicants*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 *ORDER Authorizing Execution of Deed D971376 Upon Complete Performance of a Contract to Ronald Engesether, Jr.*
- C-8 *FINAL ORDER CU 7-95; HV 17-95 Affirming and Modifying the June 26, 1996 Hearings Officer Decision and Adopting Additional Findings*

DEPARTMENT OF HEALTH

- C-9 *Intergovernmental Agreement 200717 with Oregon Health Sciences University for the Provision of Sexual Assault Evidentiary Exams*
- C-10 *Intergovernmental Revenue Agreement 200787 with the Oregon Department of Human Resources to Fund a Research Analyst for the Students Today Aren't Ready for Sex (STARS) Program*

REGULAR AGENDA

PUBLIC COMMENT

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

NON-DEPARTMENTAL

- R-2 *PROCLAMATION Recognizing October, 1996 as DISABILITY AWARENESS MONTH in Multnomah County, Oregon*
- R-3 *PROCLAMATION Proclaiming the Month of October, 1996 as PUBLIC SAFETY MONTH in Multnomah County, Oregon*

DEPARTMENT OF SUPPORT SERVICES

- R-4 *First Reading of an ORDINANCE Amending Ordinance No. 856, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles and Make Special Adjustments*
- R-5 *Budget Modification DSS 1 Reallocating Funds for Computer Training*

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-6

*RESOLUTION Authorizing an Application for a Loan from the Small
Scale Energy Loan Program*

TANYA COLLIER
Multnomah County Commissioner
District 3



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

MEMORANDUM

TO: Office of the Board Clerk
Board of County Commissioners

FROM: Michele Fuchs

DATE: July 22, 1996

SUBJECT: Commissioner Collier's absence from Board meetings

Commissioner Collier will be out of town from September 26th through October 4th and should be excused from any scheduled Board meetings during that time.

BOARD OF
COUNTY COMMISSIONERS
JUL 22 PM 1:45
MULTNOMAH COUNTY
OREGON

MEETING DATE: OCT 1 1996

AGENDA #: C-1 thru C-5
ESTIMATED START TIME: 10:00am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Appointments to Citizen Advisory Boards & Commissions

BOARD BRIEFING:

DATE REQUESTED:

REQUESTED BY:

AMOUNT OF TIME NEEDED:

REGULAR MEETING:

DATE REQUESTED: 10/3/96

AMOUNT OF TIME NEEDED: Consent Agenda

DEPARTMENT: Nondepartmental

DIVISION: Chair's Office

CONTACT: Delma Farrell

TELEPHONE #: 248-3953

BLDG/ROOM #: 106/1515

PERSON(S) MAKING PRESENTATION:

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Appointments:

NAME:	BOARD/POSITION	TERM ENDING
Jim Robison	Support Services/CBAC / #3	9/30/98
Scott Leibenguth	Support Services/CBAC / # 6	9/30/98
Mark Jones	Juvenile Justice/CBAC / #1	9/30/99
Muriel Goldman	Juvenile Justice/CBAC / #2	9/30/97
Martha McMurray	Juvenile Justice/CBAC / #3	9/30/98
Shane Endicott	Juvenile Justice/CBAC / #4	9/30/99
Charlotte Cook	Juvenile Justice/CBAC / #5	9/30/97
Karen Voiss	Environmental Services/CBAC / #2	9/30/99
Keith Stengel	Environmental Services/CBAC / #3	9/30/99
Deborah Whitefield	Nondepartmental/CBAC / #4	9/30/99
Tracee Larson	Nondepartmental/CBAC / #	9/30/99
Marion Hansen	Community & Family Services/CBAC / #2	9/30/99

BOARD OF
COUNTY COMMISSIONERS
96 SEP 18 PM 2:53
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Sten

(OR)

MEETING DATE: OCT 01 1996
AGENDA NO: C-6

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA BETWEEN CITY OF PORTLAND - POLICE BUREAU AND THE SHERIFF'S OFFICE

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 3, 1996

Amount of Time Needed: 5 MINUTES

DEPARTMENT: Sheriff's Office DIVISION: ENFORCEMENT

CONTACT: Larry Aab TELEPHONE #: 251-2489
BLDG/ROOM #: 313/228

PERSON(S) MAKING PRESENTATION: NO ONE - CONSENT ITEM

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

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

RATIFICATION OF INTERGOVERNMENTAL AGREEMENT, CONTRACT #800357, BETWEEN THE CITY OF PORTLAND - POLICE BUREAU AND THE SHERIFF'S OFFICE, TO PROVIDE CERTAIN LAW ENFORCEMENT SERVICES INVOLVING DUI.

10/1/96 ORIGINALS TO LARRY AAB

SIGNATURE REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Mel Hedgpeth

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/5222
0516C/63

CONSENT

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
96 SEP 25 AM 9:06
6/93

31. Any notice or notices provided for by this agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

Dan Noelle
Multnomah County Sheriff
12240 NE Glisan Street
Portland, OR 97230

M.F. Roberts
Sergeant, Traffic Division
Portland Police Bureau
210 NW 1st Avenue
Portland, OR 97209

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

CITY OF PORTLAND

MULTNOMAH COUNTY
SHERIFF'S OFFICE

By: _____
Vera Katz, Mayor

By: Dan Noelle
Dan Noelle, Sheriff

Date: _____

Date: 9/17/96

APPROVED AS TO FORM:

REVIEWED:
Laurence Kressel, County
Counsel for Multnomah County,
Oregon

By: _____

By: Jacqueline Weber
Jacqueline Weber, Asst Counsel

Date: _____

Date: 9/23/96

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By: _____
Vera Katz, Mayor

By: *Dan Noelle*
Dan Noelle, Sheriff

Date: _____

Date: 9/17/96

APPROVED AS TO FORM:

REVIEWED:

Laurence Kressel, County
Counsel for Multnomah County,
Oregon

By: _____

By: *Jacqueline Weber*
Jacqueline Weber, Asst Counsel

Date: _____

Date: 9/23/96

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By: _____
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By: x Dan Noelle by Be
Dan Noelle, Sheriff

Date: _____

Date: 9/17/96

APPROVED AS TO FORM:

REVIEWED:

Laurence Kressel, County
Counsel for Multnomah County,
Oregon

By: _____

By: Jacqueline Weber
Jacqueline Weber, Asst Counsel

Date: _____

Date: 9/23/96

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Contract # **800357**

Prior-Approved Contract Boilerplate: Attached: Not Attached:

Amendment # _____

CLASS I <input type="checkbox"/> Professional Services under \$25,000 <input type="checkbox"/> Intergovernmental Agreement under \$25,000	CLASS II <input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement over \$25,000 APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-6</u> DATE <u>10/1/96</u> <u>DEB BOGSTAD</u> BOARD CLERK
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Department: SHERIFF'S OFFICE Division: ENFORCEMENT Date: SEPTEMBER 10, 1996
 Contract Originator: SGT. DAVE HADLEY Phone: _____ Bldg/Room: _____
 Administrative Contact: LARRY AAB Phone: 251-2489 Bldg/Room: 313/228
 Description of Contract: PROVIDE CERTAIN LAW ENFORCEMENT SERVICES INVOLVING DUII.

BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____
 ORS/AR #: _____ Contractor is ☐MBE ☐WBE ☐QRF

Contractor Name: <u>CITY OF PORTLAND - Portland Police Bureau</u> <u>1111 SW 2nd Ave Room 1202</u> <u>Portland OR 97204</u> Phone: _____ Employer ID# or SS#: _____ Effective Date: <u>OCTOBER 1, 1996</u> Termination Date: <u>SEPTEMBER 30, 1997</u> Original Contract Amount: <u>\$26,430</u> Total Amt of Previous Amendments: \$ _____ Amount of Amendment: \$ _____ Total Amount of Agreement: \$ _____	Remittance Address (if different): _____ _____ Payment Schedule Terms <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30 <input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Other <input type="checkbox"/> Requirements contract - Requisition Required Purchase Order No. _____ <input type="checkbox"/> Requirements Not to Exceed \$ _____ Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>
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REQUIRED SIGNATURES:

Department Manager: *Neil Bogstad*
 Purchasing Manager: *[Signature]*
 (Class II Contracts Only)
 County Counsel: *[Signature]*
 County Chair/Sheriff: *[Signature]*
 Contract Administration: *[Signature]*
 (Class I, Class II Contracts Only)

Date: 9/14/96
 Date: _____
 Date: 9/23/96
 Date: 9/17/96
 Date: _____

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB ORG	REPT CATEG	LGFS DESCRIPT	AMOUNT	IN CE EC
01	1560	025	332			6060					
02											
03											

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

DISTRIBUTION: Original Signatures - Contract Administration, Initiator, Finance

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into pursuant to the authority found in ORS 190.010 et seq. and ORS 206.345 between the Multnomah County Sheriff's Office ("MCSO"), jointly with and on behalf of Multnomah County ("COUNTY"), and the Portland Police Bureau ("PPB"), jointly with and on behalf of the City of Portland ("CITY"). As used in this Agreement, MCSO, COUNTY, PPB and CITY will be referred to collectively as the "parties".

RECITALS

WHEREAS, Multnomah County is a political subdivision of the State of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to the provisions of ORS 190.010, et seq.; and

WHEREAS, the Multnomah County Sheriff is authorized to enter into intergovernmental agreements jointly with and on behalf of the County, pursuant to the provisions of ORS 206.345; and

WHEREAS, the Portland Police Bureau is a Municipal agency authorized to enter into intergovernmental agreements pursuant to the provisions of ORS 190.010, et seq.; and

WHEREAS, the parties desire to provide certain law enforcement services involving driving under the influence of intoxicants.

IN CONSIDERATION of those mutual promises and terms and conditions set forth hereafter, and pursuant to the provisions of ORS chapter 190, the parties agree to be bound as follows:

STATEMENT OF WORK:

1. PPB agrees to provide the services and accomplish the work described in the Enhanced DUII Enforcement/Education Project, Project No. J7-97-12-28, hereafter referred to as "Grant," and by this reference is made a part of this agreement. PPB further agrees that services provided in accordance with the Grant shall be accomplished by the dates set forth in the grant, unless the MCSO gives PPB prior approval for an extension of time.

REPORTING REQUIREMENTS

2. PPB agrees to prepare and submit to the MCSO quarterly progress reports. Each quarterly progress report shall:
 - a) identify project status regarding events and activities identified in the Grant,
 - b) summarize work performed, including a summary of accomplishments and problems encountered during the reporting period; and
 - c) a plan for the following quarter.
3. PPB agrees to submit the quarterly progress report by the 10th of the month following the end of the reporting period.
4. PPB agrees to prepare and submit to the MCSO a final report not later than September 30, 1997. The final report shall include the following:
 - a) A summary of PPB activities during the entire period of this agreement. Such summary shall include accomplishments and problems encountered.
5. PPB agrees to submit the quarterly reports and the final report to:

Sergeant Dave Hadley
Multnomah County Sheriff's Office
12240 NE Glisan Street
Portland, OR 97230
6. The parties agree that final payment under this agreement is conditioned upon PPB submitting to the MCSO the final report described in section 4 of this agreement.

CONSIDERATION

7. For services rendered under this agreement, the MCSO agrees to pay to PPB for all hours worked by PPB members under this agreement at the overtime rate as provided by the labor agreement between City of Portland and the Portland Police Association.

8. The parties agree that the total consideration paid by MCSO to PPB under this agreement shall not exceed \$26,430.
9. PPB agrees to maintain all financial records relating to PPB's participation in this agreement, including but not limited to all payroll records.
10. The parties agree that travel expenses incurred by PPB under this agreement shall not be reimbursed by the MCSO.
11. PPB agrees that it will not be directly compensated for work performed under this agreement by the Multnomah County or any of its departments, except as provided for by this agreement.
12. The MCSO certifies to the CITY and PPB that as of the effective date of this agreement the MCSO has sufficient funds available and authorized to finance costs incurred under this agreement, subject to appropriation limitations by the Oregon Department of Transportation.

PERSONNEL MATTERS

13. The parties agree that any and all PPB personnel provided hereunder by PPB shall be and remain employees of the CITY. Such PPB personnel shall be supervised by PPB and shall perform their duties in accordance with the administrative and operational procedures of PPB.
14. The parties agree that all matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment regarding PPB personnel performing services under this agreement shall be governed by the labor agreement between the City of Portland and the Portland Police Association and other applicable Bureau/City rules.
15. The parties agree that the COUNTY does not assume any liability for the direct payment of any wages, salaries or other compensation to PPB personnel performing services pursuant to the terms of this agreement or for any other liability not provided for in this agreement. The CITY further agrees to withhold and make any required contributions to PPB employees' retirement system.

16. The CITY agrees to maintain Workers' Compensation or City Self insurance coverage for PPB personnel; either as a carrier insured employer or a self-insured employer as provided in ORS chapter 656.
17. PPB hereby certifies that its employees are not currently employed by the Federal Government.

CONTRACT MODIFICATION AND TERMINATION

18. This agreement shall be effective October 1, 1996 and shall terminate on September 30, 1997.
19. The parties agree that this agreement may be terminated by any party upon 30 days written notice to the other parties, delivered by certified mail or in person.
20. Notwithstanding the provisions of section 18 of this agreement, the MCSO may terminate this agreement upon delivery of written notice to PPB under any of the following circumstances:
 - a) If the MCSO does not obtain from the state or other sources funding at a level sufficient to perform the services required under this agreement.
 - b) If the services provided under this agreement may no longer be provided due to changes in the law, or state regulations or guidelines.
21. Any party to this agreement, by written notice of default, may terminate this agreement if another party fails to provide any part of the services described herein within the time specified for completion of that part or any extension thereof.
22. Termination under any provision of this agreement shall not affect any right, obligation or liability of any party which accrued prior to termination.
23. The parties agree that this agreement may be modified or amended by mutual agreement of the parties. Any modification to this agreement shall be effective only when incorporated herein by written amendments and signed by both the PPB and the Multnomah County Sheriff, and approved by the Multnomah County Board of Commissioners.

OTHER PROVISIONS

24. The parties agree to comply with all federal, state and local laws and ordinances applicable to the work to be done under this agreement.
25. PPB agrees to provide the MCSO and COUNTY with access to the books, documents, papers and records of PPB which relate directly to the performance of work under this agreement for the purpose of making audit, examination, excerpts or transcripts. PPB agrees to retain all records related to work performed under this agreement for a period of not less than three years following the termination of this agreement.
26. The CITY and PPB agree not to assign or transfer their interests in this agreement without the written consent of the MCSO.

INDEMNIFICATION AND LIABILITY

27. Subject to the limitations of the Oregon Torts Claims Act and the Oregon Constitution, PPB and the CITY shall indemnify, defend and hold harmless MCSO, its officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of PPB personnel acting pursuant to the terms of this agreement.
28. Subject to the limitations of the Oregon Torts Claims Act and the Oregon Constitution, MCSO shall indemnify, defend and hold harmless CITY and PPB, their officers, employees and agents from all claims, suits, actions or expenses of any nature resulting from or arising out of the acts, errors or omissions of MCSO personnel acting pursuant to the terms of this agreement.

CONTRACT ADMINISTRATION

29. PPB designates Sergeant M.F. Roberts to represent PPB in all matters pertaining to administration of this agreement.
30. The MCSO and COUNTY designate Sergeant Dave Hadley to represent the MCSO and COUNTY in all matters pertaining to administration of this agreement.

Contract #: 800357

31. Any notice or notices provided for by this agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

Dan Noelle
Multnomah County Sheriff
12240 NE Glisan Street
Portland, OR 97230

M.F. Roberts
Sergeant, Traffic Division
Portland Police Bureau
210 NW 1st Avenue
Portland, OR 97209

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on the date written below.

CITY OF PORTLAND

MULTNOMAH COUNTY, OREGON

By: _____
Vera Katz, Mayor

By: 
Beverly Stein, Chair

Date: _____

Date: October 1, 1996

APPROVED AS TO FORM:

MULTNOMAH COUNTY
SHERIFF'S OFFICE

By: _____

By: _____
Dan Noelle, Sheriff

Date: _____

Date: _____

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-6 DATE 10/1/96
DEB BOGSTAD
BOARD CLERK

Reviewed:
Laurence Kressel, County Counsel for
Multnomah County, Oregon

By: 
Jacqueline Weber, Asst Counsel

Date: 9/30/96

ESTIMATED START TIME: 10:00am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Deed to Contract Purchaser for Completion of Contract.

BOARD BRIEFING: Date Requested:_____.

Amount of Time Needed: _____.

REGULAR MEETING: Date Requested:_____.

Amount of Time Needed: Consent_____.

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation .

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

TELEPHONE #: 248-3590.

BLDG/ROOM #: 166/300/Tax Title.

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Request approval of deed to contract purchaser, RONALD ENGESEETHER JR,
for completion of Contract #15794 (**Property purchased at auction**).

Deed D971376 and Board Order attached.

10/1/96 ORIGINAL DEED & COPIES OF ALL TO TAX TITLE

SIGNATURES REQUIRED:

ELECTED OFFICIAL: L

(OR)

DEPARTMENT MANAGER: Paul Hutter for Marko Jureber

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of the Execution of)
Deed D971376 Upon Complete Performance of) ORDER
a Contract to) 96-176
)
RONALD ENGESETH JR)

It appearing that heretofore, on June 7, 1995, Multnomah County entered into a contract with RONALD ENGESETH JR for the sale of the real property hereinafter described; and

That the above contract purchaser have fully performed the terms and conditions of said contract and are now entitled to a deed conveying said property to said purchaser;

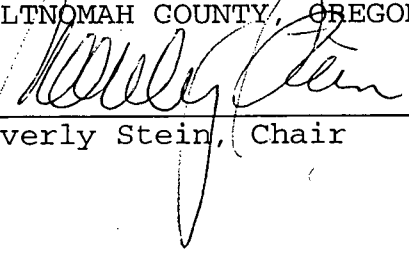
NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

PARCELS 1 & 2 OF PARTITION PLAT 1996-140, a recorded subdivision in Multnomah County, State of Oregon.

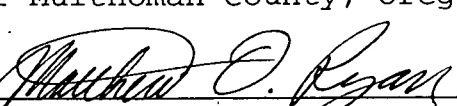
Dated at Portland, Oregon this 1st day of October, 1996.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:
Laurence Kressel, County Counsel
for Multnomah County, Oregon

By 
Matthew O. Ryan, Assistant Counsel

DEED D971376

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to RONALD ENGESETH JR, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

PARCELS 1 & 2 OF PARTITION PLAT 1996-140, a recorded subdivision in Multnomah County, State of Oregon.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$49,000.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

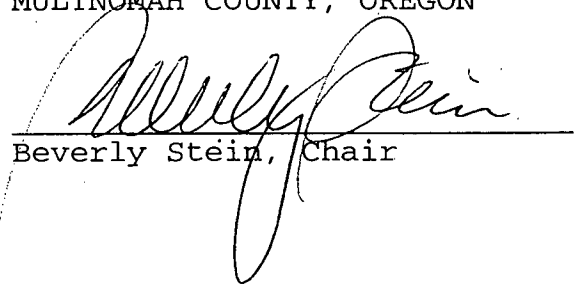
Until a change is requested, all tax statements shall be sent to the following address:

RONALD ENGESETH JR, PO BOX 91550, PORTLAND OR 97291

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 1st day of October, 1996, by authority of an Order of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

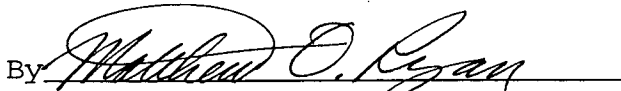

Beverly Stein, Chair

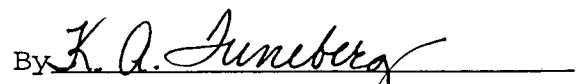
REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

DEED APPROVED:

Janice Druian, Director
Assessment & Taxation

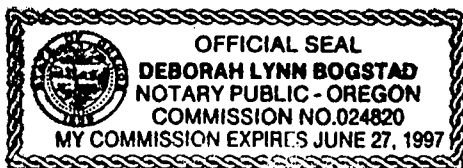
By 
Matthew O. Ryan, Assistant Counsel
After recording, return to Multnomah County Tax Title/166/300

By 
K. A. Tuneberg
After recording, return to Multnomah County Tax Title/166/300

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this 1st day of October, 1996, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.



Deborah Lynn Bogstad

Notary Public for Oregon
My Commission expires: 6/27/97

MEETING DATE: October 1, 1996
AGENDA #: C-8
ESTIMATED START TIME: 10:00 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Final Order CU 7-95; HV 17-95 (Kim Evans)

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: Tuesday, October 1, 1996

AMOUNT OF TIME NEEDED: Consent Calendar

DEPARTMENT: DES

DIVISION: Land Use Planning

CONTACT: Susan Muir

TELEPHONE #: 248-3043, ext. 2682

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: N/A

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

**FINAL ORDER, Land Use Planning Case CU 7-95; HV 17-95 Affirming
and Modifying the June 26, 1996**

Hearings Officer Decision and Adopting Additional Findings

*10/1/96 copies to Susan Muir & William Cox &
Arnold Roethlis*

SIGNATURES REQUIRED:

ELECTED

OFFICIAL: _____

(OR)

DEPARTMENT

MANAGER: _____

Peverly Stein

BOARD OF
COUNTY COMMISSIONERS
96 SEP 27 PM 3:44
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY

Land Use Planning Case CU 7-95;)	
HV 17-95 Affirming and Modifying the)	FINAL ORDER
June 26, 1996 Hearings Officer Decision))	96-177
and Adopting Additional Findings)	

WHEREAS, this matter is before the Multnomah County Board of Commissioners as an appeal, filed by William Cox representing Kim Evans, and a Board Order of Review (Order 96-128), of the Hearing Officer's decision in land use cases CU 7-95 and HV 17-95; and

WHEREAS, after proper notice of a public hearing, the Board of County Commissioners accepted testimony and evidence presented at a de novo hearing on August 27, 1996, and considered written testimony at a subsequent hearing on September 24, 1996, and the Board being fully advised; now therefore

IT IS HEREBY ORDERED that the Hearing Officer's decision dated June 26, 1996 in the matter of CU 7-95 and HV 17-95 is AFFIRMED related to code sections 11.15.2074(A)(1), 11.15.2074(A)(4), 11.15.8505(2) and OVERTURNED related to applicable code section 11.15.2052(A)(3)(c)(ii), and the determination of applicability of Goal 5 and the West Hills Reconciliation Report; and

IT IS FURTHER ORDERED that the Board of County Commissioners adopts the following findings and conclusions:

1. The Hearings Officer's findings in the decision dated June 26, 1996, relating to the appellate issues which were affirmed.
2. The Staff Report and supplemental staff report dated March 20, 1996 with regard to Code Sections 11.15.2052(A)(3)(c)(ii), and the determination of applicability of Goal 5 and the West Hills Reconciliation Report.

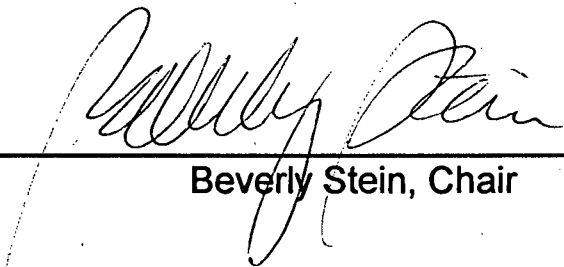
3. The Board rejects the appellant's arguments contained in the memorandums dated September 13, 1996 and September 18, 1996 and adopts the findings and conclusions in response to those memorandums contained in the submittals by Sandra Duffy, County Counsel dated September 18, 1996 and the findings and conclusions submitted by Arnold Rochlin dated September 13, 1996 and September 17, 1996.

4. The Board requires that any new application on this property meet the fire access standards listed in MCC 11.15.2074(A)(5) and 11.15.2074(D).

DATED this 1st day of October, 1996, nunc pro tunc September 26, 1996.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON


Sandra N. Duffy, Chief Assistant Counsel

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

Regarding a request for a Conditional Use Permit by)
Kim Evans for a single family dwelling not related)
to forest management and a Variance to side and)
rear yard setbacks for property located at 13913 NW)
Skyline Boulevard in unincorporated Multnomah)
County, Oregon.)

**FINAL ORDER
CU7-95 HV 17-95
(Evans)**

I. APPLICANT'S REQUEST

The applicant requests a Conditional Use Permit for a single family dwelling not related to forest management on a 20-acre Lot of Record in the Commercial Forest Use (CFU) zoning district. The applicant proposes to place the dwelling approximately 50 feet from both the north and west property lines which requires a Major Variance from the 200 foot side and rear yard setback requirements in this zone. The proposed development also requires findings under Statewide Planning Goal 5 because the proposed development is located in an area designated on the Comprehensive Plan as a Primary Wildlife Habitat.

II. HEARING AND RECORD

A public hearing concerning this application was held on March 20, April 3 and May 2. The written record was closed on May 17, 1996.

A list of exhibits received into the record by the Hearings Officer is attached as Exhibit 1.

III. PRELIMINARY ISSUES

1. Template Test

The Hearings Officer has previously found in his Intermediate Ruling dated April 29, 1996, that since the County has not yet amended its land use regulations to implement the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules "shall be directly applicable to the local government's land use decision." Therefore, the applicable template test is found in OAR 660-06-027.

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Since the Hearings Officer issued his intermediate ruling, the Oregon Department of Land Conservation and Development (DLCD) through Mr. James W. Johnson, Farm/Forest Coordinator and Sandra Duffy, Multnomah County Counsel, have argued that ORS 197.646(3) does not preclude the County from applying more restrictive county standards in the interim, before the local code has been amended to comply with the 1994 Goal 4 requirements. DLCD cites to Dilworth v. Clackamas County, ___ Or. LUBA ___ (LUBA No. 95-115, January 4, 1996). County Counsel cites to Kola Tepee v. Marion County, 17 Or. LUBA 910 (1989); Spathas v. Portland, 28 Or. LUBA 351 (1994); Brewster v. Keizer, 27 Or. LUBA 432 (1994); and Zorn v. Marion County, 19 Or. LUBA 54 (1985).

Although the Dilworth case was factually similar to this one, in Dilworth, LUBA was not called upon to consider the effects of ORS 197.646(3). Therefore, Dilworth is of no value here hence the central issue here is the effect of ORS 197.646(3). Furthermore, neither Koala Tepee, Spathas, Brewster or Zorn deal directly with the impact and meaning of ORS 197.646(3). Therefore, they are of little value to the issue at hand.

Unlike the situation with ORS 315.283 which is a standard that courts have interpreted to be only a minimum standard that must be applied to acknowledge plans for land zoned EFU, ORS 197.646(3) is a statute that applies certain legislative statutes and regulations to local decisions directly before post acknowledgement amendments have been incorporated into the local government's comprehensive plan and land use regulations.

In essence, the County and DLCD argue that in the interim, after plans and zoning codes are acknowledged, but before post-acknowledgement Goal amendments are incorporated into local land use regulations, local governments are free to follow more restrictive ordinances than the amended goals and administrative regulations that will eventually need to be complied with. In short, they argue that where local post acknowledgement ordinances have not been acknowledged by LCDC, but are more restrictive than the new goal amendments and rule changes that the local government will be required to implement, such local ordinances should not be suspended in favor of less restrictive state law provisions, despite the requirements of ORS 197.646(3).

While the Hearings Officer acknowledges the policy grounds on which the County and DLCD base their arguments, the Hearings Officer has reviewed the cited cases and finds that there is nothing in those cases, and nothing in the record before the Hearings Officer which demonstrates that the legislature intended that the requirements of ORS 197.646(3) somehow do not apply when a local government has already adopted a more restrictive but unacknowledged land use ordinance.

The cases cited by the County involve the application of statewide goals and administrative rules after acknowledgement of local implementing regulations has occurred. None of the cited cases addressed the situation presented here where the County has adopted more restrictive local regulations before post-acknowledgment. In such cases,

ORS 197.646(3) specifically provides that the new or amended goal, rule or statute "shall be directly applicable to the local government's land use decision." The statute is unambiguous and leaves no room for interpretation. Furthermore, even if the statute were ambiguous, none of the parties have cited to any legislative history that would shed light on relevant legislative intent. Therefore, the Hearings Officer finds that the template test set forth in OAR 660-06-027 applies directly to this application because the County has not yet obtained acknowledgement for its implementing regulations pursuant to the amended Goal 4 administrative rules.

2. Interpretation of the Term "Centered on the Center of the Subject Tract" for Purposes of Applying the Template Test in OAR 660-06-027

The Hearings Officer finds that although the so called "center of gravity" test was used by the County as a method for determining the center of the template for purposes of the County ordinance, the Hearings Officer finds that the same method is also a reasonable interpretation of the "center of the center" test for purposes of OAR 660-06-027.

There is no definition of the phrase "centered on the center of the subject tract" for purposes of OAR 660-06-027. Dictionary definitions are of no help in determining a methodology for finding the center of an irregular shape such as this. Staff's use of a "balance point" or "center of gravity" seems to be a reasonable method of uniformly determining the "center" of a tract of property, regardless of its shape. Furthermore, the analysis of Mr. Matthew A. Rochlin, from a mathematics standpoint, needs further support to staff's use of the "center of gravity" methodology for determining the "center" of irregularly shaped parcels.

Based upon the "center of gravity" established by staff and accepted by the Hearings Officer, there is uncontroverted evidence in the record indicating that three dwellings existed on January 1, 1993 within a 160 acre grid (template) centered on the center of the subject parcel. Therefore, the applicant has satisfied the applicable template test as set forth in OAR 660-06-027.

3. Goal 5 Application

The Hearings Officer agrees with the legal analysis of the applicant with regard to whether or not Ordinance 832 (amending the County's SEC zone) codified at MCC 11.15.6426, are the relevant approval standards in this case, or whether the requirements of Goal 5 and its administrative rules apply directly to this application.

The Hearings Officer finds that according to Ordinance 832, the County amended Ordinance 801, which included MCC 11.15.6426, establishing the SEC overlay district and SEC-h (wildlife habitat). Ordinance 801 implemented the previously adopted Ordinance 797 which adopted the "West Hills Reconciliation Report." In February of 1995, LCDC issued a

decision declaring the county Ordinance 797 and 801, et al. deficient as not meeting the requirements of Goal 5. In response, Multnomah County passed Ordinance 832, and Section 11.15.6400, et seq. of the code. As of approximately January 3, 1996 (see Exhibit X) when this application was deemed complete, the County did not have an acknowledged SEC overlay implementing regulation pursuant to Goal 5 on this site. Therefore, under ORS 197.625(3)(b), Goal 5 applies directly to this land use decision.

Based upon the findings prepared by the applicant which are adopted and incorporated by reference here, the Hearings Officer finds that the applicant can comply with the requirements of Goal 5.

4. Motion to Strike DLCD Letter

The applicant's attorney, William Cox, has objected to an April 30, 1996 letter from James W. Johnson, Farm/Forest Coordinator for DLCD. Mr. Cox has raised the following arguments in support of his motion to strike:

A. "Participation by DLCD not in accordance with statute."

Mr. Cox has cited ORS 197.090 for the proposition that only the "director" has authority to participate in a local land use proceeding. Therefore, since Mr. Johnson is not the "director" of DLCD, Mr. Cox argues that DLCD's participation is not accordance with the statute.

The Hearings Officer rejects Mr. Cox's proposition. ORS 197.090 does not say that only the director of DLCD can participate in a local land use proceeding. Rather it provides a methodology by which the director may participate. Furthermore, nothing in ORS 197.090 requires the Hearings Officer to exclude evidence submitted by someone other than DLCD's director even if such evidence from DLCD fails to follow the process called for in the statute.

B. "Failure to comply with local government requirements, MCC 11.15.8225(A) regarding record submissions."

In this argument, Mr. Cox asserts that only "parties" have the right to make an appearance of record and that Mr. Johnson, and DLCD have not qualified as a party in accordance with .8225(A).

The Hearings Officer finds that Mr. Cox is correct that only "parties" have the right to make an appearance of record according to the Multnomah County Code. However, the Hearings Officer finds that Mr. Johnson, acting in his role as a Farm/Forest Coordinator for DLCD, was presumably acting with the consent of the director of DLCD, and therefore, on behalf of DLCD and its director, and as such has the statutory duty and authority under ORS

197.090(B) to coordinate the activities of DLCD with regard to land conservation and development activities of various local governments in the state. In that regard, Mr. Johnson's letter asserts a position concerning what he believes to be the proper application of ORS 197.646(3) in this case. Because the Hearings Officer adopted a position contrary to DLCD's opinion, Mr. Johnson, on behalf of DLCD, satisfied the "adversely affected or aggrieved" test and therefore qualifies as a party under MCC .8825.

C. "Failure to comply with local government requirement, MCC 11.15.8225(B) regarding record."

Within this argument, Mr. Cox makes the following points:

1. DLCD letter was not submitted "at or prior to the hearing."

The Hearings Officer finds that Mr. Johnson's failure to assert a position at or prior to the hearing date on April 3 did not constitute a violation of .8225(B). The Hearings Officer received the letter into the record at the time it was submitted and allowed the applicant to provide additional oral and written rebuttal and testimony concerning the letter. Therefore, the evidence was received before the hearing itself was closed and the Hearings Officer finds that .8225(B) was not violated.

2. The letter fails to set forth evidence and argument either for or against the application being reviewed.

The Hearings Officer finds that Mr. Johnson's letter on behalf of DLCD provided argument contrary to the position taken by the applicant. Since the Hearings Officer tentatively adopted the position proposed by the applicant with regard to the so called "template test," DLCD's letter constitutes argument against the position taken by the applicant. Therefore this criteria is met.

3. The letter fails to show in what manner the interests of the person would be affected or aggrieved.

Because the letter is from DLCD and since that agency has a statutory duty to coordinate with local governments in relation to land conservation and development decisions, the Hearings Officer finds that the letter from DLCD contains sufficient facts indicating that the interests of DLCD would be adversely affected or aggrieved by a decision contrary to DLCD's position regarding the interpretation of ORS 197.646(3).

For the above stated reasons, the Hearings Officer rejects the applicant's motion to strike and allows the letter from DLCD to remain in the record.

5. Alternate Housing Locations

The subject site is a 20 acre parcel located in the CFU district. The parcel does not front on a public road, and instead takes access from a private easement and logging road that connects to NW Skyline Boulevard. The property has an unusual shape that contains slopes from approximately 7% to 40%.

Given the site's existing access limitations, size, configuration, slopes and surrounding uses, in order to locate a non-forest dwelling in the northwest corner of the site, the applicant would be required to seek variances from side yard and rear yard setbacks. Also, since the access road is in excess of 500 feet in length, the code requires finding that if such a road is longer than 500 feet, that such length is the minimum length required due to physical limitations unique to the property.

In response to these code criteria, the Hearings Officer encouraged the applicant to analyze alternative housing locations on site, so that appropriate findings could be made concerning staff's view that the proposed site was not the only acceptable building location. It should be noted that the Hearings Officer's purpose for requesting alternative dwelling location analysis was not to find the most acceptable building site, but rather to enable the Hearings Officer to make the appropriate comparative findings relevant to the approval criteria. For example, the following criteria require some level of comparative analysis:

A. An access road in excess of 500 feet is necessary due to physical limitations unique to the property and that the road is the minimum length required (see .2074(A)(4)).

B. The amount of forest land used to site the dwelling or other structure, access road and service corridor is minimized (see .2074(A)(3)).

C. The dwelling or structure is located such that it has the least impact on nearby or adjoining forest lands or agricultural lands that satisfies the minimum yard and setback requirements of .2048(C)-(G) (see .2074(A)(1)).

Based upon the above referenced criteria, all of which require some form of comparative analysis (e.g. minimum length required, minimization of forest land used, least impact on nearby forest and agricultural uses), the Hearings Officer finds that the applicant has undertaken a good faith effort to identify, analyze and compare other alternative locations for the proposed residence within the site, and in doing so, has enabled the Hearings Officer to make appropriate findings relative to other possible locations for the dwelling within the site. The applicant has identified the following other possible homesites:

1. Central Portion of the Site

This area is within the central portion of the site and is approximately one to one and one-half acres in size. This area would not require any setback variances in order to be developed. However, this area contains slopes in excess of 30% and would require significant engineering (cut, fill, retaining walls) to be developed. It would also require removal of a ten year old stand of Douglas Fir. Two potential homesites have been identified in this portion of the site.

2. Southeastern Portion of the Site

Two other alternative homesite locations have been identified here. One lies north of the roadway as the road enters the property. The other is the "meadow area" identified by staff. The "meadow area" is located between the existing road and the southern property line, in an area designated as a slope hazard area on the county's maps. However, based upon a site observation by staff, this area does not contain slopes steep enough to qualify as a slope hazard area. The evidence indicates that the "meadow area" appears to have slopes of approximately 10% -- comparable to those of the proposed homesite in the northwest portion of the parcel. Given the narrow width of the site in the "meadow area", setback variances may be required depending on the location of the dwelling.

The applicant has argued that the requested homesite location in the northwest corner of the site is the most viable and only feasible location for a dwelling on the property. Although the Hearings Officer tends to agree with the applicant that the proposed homesite in the northwest area is probably the most viable and feasible location from a development standpoint, "viability" and "feasibility" are not the relevant approval criteria. The relevant criteria are analyzed below relative to the facts in the record.

IV. CRITERIA AND FINDINGS

1. Conditional Use Permit

A. **MCC 11.15.2052(A): A dwelling not related to forest management may be allowed subject to the following:**

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

Findings

MCC .2062(A)(2) requires (a) a deed creating the parcel be recorded prior to 1990, and (b) that the parcel satisfy the applicable laws when created, (c) that the parcel does not meet the minimum lot size standards (80 acres), and (d) that the parcel is not contiguous to other substandard lots under the same ownership.

The evidence indicates that a warranty deed dated October 7, 1996 describing the site was recorded with the Multnomah Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit 83). The subject parcel is 20 acres in size and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is currently less than 80 acres in size and thereby does not meet the current minimum lot size requirements in the CFU zone. The applicant does not own contiguous property either in the CFU or EFU zoning districts. Therefore, this criteria is satisfied.

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

Findings

The subject property is not located adjacent to any county maintained roads, therefore the 200 foot setback standard applies. Due to the unusual configuration of this lot, limitations of the terrain, and surrounding uses, the applicant has chosen to request a variance to the standard. Therefore, this criteria can be met so long as a variance to a 200 foot setback standard is met.

- (3) The lots shall meet the following standards: [Note: Pursuant to ORS 197.646(3), since revisions to OAR 660-06, adopted by the State on February 18, 1994, have not yet been acknowledged by the county, the OAR requirements concerning lot standards requires that this amended goal and administrative rule apply directly to the local government's land use decision. Therefore, the following lot standards in OAR 660-06-027(1)(d)(c) apply]:

OAR 660-06-027(1)(d): In western Oregon, a governing body of a county or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:

(C) capable of producing more than 85 cubic feet per acre per year of wood fiber if

(i) all or part of at least 11 other parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(ii) at least three dwellings existed on January 1, 1993 on the other lots or parcels.

Findings

The template prepared by the Multnomah County staff (Exhibit C) demonstrates compliance with OAR 660-06-027(1)(d)(c). All or part of at least 11 other parcels that existed on January 1, 1993 are within the 160 acre square. These parcels include Parcels 2 and 3 of Plat 1990-43, Tax Lots (14), (24), and (36) on Map 2 and 2W-25, Tax Lots (5), (10) and (38) on Map 2 and 2W-26, Tax Lots 100, 101 and 200 on Map 2 and 2-35 in Washington County, Tax Lots (22 and 32 on Map 2 and 2W-36.) Furthermore, at least three dwellings existed on January 1, 1993 on the other lots or parcels within the 160 acre square. These dwellings are located on Tax Lot (24 on Map 2 and 2W-25, Tax Lots 101 and 200 on Map 2 and 2-35 in Washington County, and Tax Lots (22) and (32) on Map 2 and 2W-36.

- (4) The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands

Findings

The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted in Exhibit A5. Numerous dwellings exist in the surrounding area on parcels of this size or smaller.

There is very little commercial forestry or agricultural use in this section of Skyline Boulevard. While the subject property is in the CFU district, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep demography, lack of irrigation, high elevation, cold winds, occasionally heavy snow cover, and the threat of soil erosion from intensive farming and marginally steep ground. What little farming does exist is mostly in low yield hay production or pasture. Large parcels in the EFU district are used for hay production, pasture and forest, however, they are not producing commercial level yields.

Properties employed in hay production and pasture are located in all directions from the subject site distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc., including plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Pasture lands, except for unmanaged forage areas (cleared land), receive much of the same treatment as land used for field crops and similar farm equipment is used (tractors, plows, disc, etc.)

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south.

The applicant has selected a dwelling location in the northwest corner of the site. As discussed in more detail below, the Hearings Officer finds that the location of the dwelling in this portion of the site will not force a significant change in or significantly increase the costs of or impede accepted forestry or farming practices on surrounding forest or agricultural land, because although a secondary fire break needs to be located in forest land to the northwest, this easement change poses only a minor change in accepted forestry practices on the accepted forest practices on the applicant's site. Evidence clearly indicates that whatever minor change might be imposed by this secondary fire break, the result would not be significant either in terms of cost or in terms of accepted forestry practices. No other changes are evident based on the evidence in the record.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands developed to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities in the area. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and

Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

Summary of Farm/Forest Activities on Adjacent Properties

Tax Map	Tax Lot	Acreage	Owner	Use
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

Key

D = Dwelling, F = Forest/Timber, H = Hay

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

Findings

According to Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area as being located within a big game winter habitat area. Therefore, this criteria is met.

- (6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection

Findings

The parcel is located within the boundaries of the Tualatin Valley Fire and Rescue and Beaverton Fire Department boundary. Therefore, this criteria is met.

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

Findings

The parcel is served by an access easement for ingress-egress from Skyline Boulevard as noted in Exhibit A2. Therefore, this criteria is met.

- (8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral

Findings

According to the Multnomah County Assessment records, the parcel is not receiving farm or forest deferral at this time. As a condition of approval, the applicant will be required to demonstrate that the parcel has been disqualified from receiving farm or forest tax deferral prior to receiving any additional permits from the County.

- (9) The dwelling meets the applicable development standards of MCC .2074; (as follows)

MCC .2074 Development Standards for Dwellings and Structures

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

- (A) The dwelling or structure shall be located such that:
- (1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of .2058(C) through (G);

Findings

The applicant has undertaken an analysis of alternative housing locations as referred to in the preliminary issues discussed elsewhere in this report.

The Hearings Officer finds that this criteria requires that a dwelling or structure must be located such that it has the least impact on nearby or adjoining forest or agricultural land.

The Hearings Officer finds that the proposed dwelling, if it is located in the northwest corner as requested by the applicant, will not have the least impact on nearby forest lands because 50 feet of the secondary fire break would need to be located off-site, within adjoining forest land. Although the Hearings Officer has previously found that the impact to this adjoining forest land from the fire break would be minimal, there is clear evidence in the record demonstrating that by locating the dwelling in the central portion of the site, where setback variances would not be required and where all fire breaks could be accommodated on site, that such placement would have less impact on adjoining forest land. Therefore, the Hearings Officer finds that this criteria has not been met.

- (2) Forest operations and accepted farming practices will not be curtailed or impeded.

Findings

The Hearings Officer finds that by locating the dwelling on the northwest corner of the site, forest operations and accepted farming practices on site will not be significantly curtailed or impeded. It is unclear from the text of this criteria whether

the criteria requires a finding that forest operations and accepted farming practices will not be curtailed or impeded to any degree, or whether such impact must just be significant in degree. The Hearings Officer finds that based upon the overall context of this criteria and its application in past cases, the criteria should be interpreted to mean that forest operations and accepted farming practices may not be curtailed or impeded to a significant degree. Because the Hearings Officer finds that the only impact on adjoining resource uses would be the 50 foot off-site fire break, and because such impact is not significant, this criteria is met.

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

Findings

The Hearings Officer finds that there is an existing accessway to the subject property which extends from Skyline Boulevard to the proposed home site and beyond to adjacent lots west of the site. Although the access road will require some improvements in order to comply with applicable standards, the location of a dwelling along this access road will not require any new road building on land devoted to forest use and thereby would minimize the amount of forest land used to site the dwelling, even though the dwelling would be located in a more remote corner of the site.

Furthermore, the amount of forest land used to site the dwelling in the northwest corner of the site is minimized compared to locating the dwelling in the central or southern portion of the site where additional land would be required for retaining walls and other associated engineering features, given the slope of the land in these areas. Therefore, this criteria is met.

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

Findings

There has been considerable debate during the various hearings on this matter concerning this criteria. In this case, an access road in excess of 500 feet is necessary due to the fact that the site is more than 500 feet away from Skyline Boulevard. The distance from Skyline Boulevard constitutes a physical limitation unique to the property.

Although this access road, in its present condition, currently provides access to this property as well as other properties beyond this one, the question is whether the proposed length of the access road is the minimum length required to serve a dwelling on the site. The Hearings Officer finds that since the applicant could locate a dwelling in the central or southern portions of the site and thereby reduce the length of the access road, the applicant has not demonstrated that the access road is the minimum length required. Therefore, this criteria is not met.

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

- (a) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted long the access route to indicate the location of the emergency water source;**
- (b) Maintenance of a primary and a secondary fire safety zone.**
 - (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be space with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
 - (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50

Less than 25	75
Less than 40	100

(iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning, forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

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

Findings

The applicant has proposed an accessway that will meet the driveway standards of MCC .2074(D). Permanent signs posted along the access route could be used to indicate the location of an emergency water source. It is not clear based upon evidence in the record whether access for a pumping fire truck to within 15 feet of any perennial water source on the lot will be provided. However, since irrigation will be provided along the north property line with sprinkler heads, the Hearings Officer presumes that access for a fire truck within 15 feet of the perennial water source that would serve to irrigate the property by the sprinkler heads will be available. This could be required as a condition of approval.

The applicant has demonstrated that a 30-foot wide primary fire safety zone can be provided on site in the 50-foot setback proposed around the proposed homesite in the northwest corner of the site.

However, the code requires a 100-foot wide secondary fire safety zone. Within the secondary fire safety zone, trees need to be spaced with greater than 15 feet between their crowns. Also, trees must be pruned to remove low branches within eight feet of the ground as the maturity of the tree and accepted silviculture practices may allow. Finally, within the 100-foot secondary fire safety zone, all other vegetation must be maintained less than two feet in height. In other words, vegetation, including trees and underbrush must be thinned and cropped in order to provide an adequate secondary fire break.

In this case, along the north and west sides of the proposed dwelling site, only half (50 feet) of the 100-foot wide secondary fire safety zone can be provided on site. The remaining 50 feet of the secondary fire safety zone must be provided on forested land adjacent to the site by use of easement. The applicant indicates that an easement will be provided on the adjacent forested land to the west and north in order to accommodate the required secondary fire safety zone. Since there does not appear to be any prohibition providing the secondary fire safety zone adjacent property through the use of an easement, the Hearings Officer finds this criteria can be met.

Finally, the evidence indicates that the requirements for the fire safety zone would not restrict or contradict a forest plan approved by the State of Oregon pursuant to the State Forest Practice Rules. Therefore, these criteria can be met.

(B) The dwelling shall:

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

Findings

The proposed single family dwelling would be required to receive a building permit which will conform to the Uniform Building Code, would be attached to a foundation and would be required to have a minimum floor area of at least 600 square feet. Therefore this criteria can be met.

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

Findings

The applicant indicates that the proposed water supply for the dwelling would come from a well with a depth of approximately 550 feet located on the property. No surface water is involved in this request. Furthermore, the subject site does not involve a critical ground water area. Therefore this criteria can be met.

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

- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
- (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

Findings

The applicant has provided written verification that the culverts can comply with the 52,000 lb. gross vehicle weight standard. Furthermore criteria 2, 3 and 4 can be met based upon evidence in the record.

Criteria 5 requires that grades on the roadway cannot exceed 8 percent with a maximum of 12 percent on short segments except that the maximum grade may be exceeded upon written approval by the fire protection service provider having responsibility for the area. The proposed driveway exceeds the 12 percent limitation at various points along its course. However, Tualatin Valley Fire and Rescue has provided a letter dated February 27, 1996 approving the driveway subject to compliance with an exception standard detailed within the fire code. Based upon the letter dated February 27, 1996 from the fire protection service provider having responsibility, it appears that criteria 5 could be met.

Evidence in the record indicates that criteria 6 and 7 can be met based upon the proposed site plan. Therefore, these criteria can be met.

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

Findings

The above referenced statement was recorded with the Multnomah County Division of Records on September 27, 1995 and is included as Exhibit 5B in the record. Therefore this criteria has been met.

2. Variance

A. **Variance Approval Criteria MCC 11.15,8505(A)**

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

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

Findings

The applicant is requesting a variance to the 200-foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line in the northwest corner of the site. The Hearings Officer finds that the subject property is unique in that it is L-shaped with long narrow necks extending to the northeast. Furthermore, the contours on the property indicate that the legs of "L" are relatively level compared to the central portion of the "L" which generally contains greater slopes.

Based upon all of the evidence in the record, the Hearings Officer finds that the shape of the parcel and its topography relative to its shape does present a circumstance and condition relative to this property does not apply generally to other properties in the same vicinity. Therefore this criteria is met.

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

Findings

The applicant has argued that the most suitable homesite on the property is within the northwest corner of the site that a variance is required from the setbacks in this area. Due to the width of the lots in the northwest corner of the site, the zoning regulation requiring a 200-foot setback does restrict the parcel to a greater degree than the other parcels in the vicinity or district and unless the variance is approved it would eliminate the possibility of locating a dwelling in this area.

Even though the Hearings Officer agrees that locating the proposed dwelling in the northwest corner of the site may be the most suitable location from a development standpoint, the applicant has not provided substantial evidence in the record demonstrating that by locating the dwelling in the less suitable central portion of the site where no variances would be required, that such location would restrict the use of the property to a greater degree than it restricts other property in the vicinity. Since it is possible to locate a dwelling in the central location on the site without the variance and since there is no evidence that such a location would be unduly restrictive, the Hearings Officer finds that this criteria has not been met.

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

Findings

The Hearings Officer finds that authorizing the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located nor will it adversely affect appropriate development of adjoining properties, because the proposed dwelling site is overall, the most suitable building site. The only negative impact from locating the dwelling in the proposed location is the relatively insignificant impact of locating the 50-foot secondary fire break off-site in the forested area on the north and west portion of the site. To the extent that surrounding forest properties in the area of the proposed dwelling are willing to accommodate the secondary fire break in the adjacent forest land and to the extent that location of this off-site secondary forest break does not significantly affect forest use on that property, the Hearings Officer finds that authorization of this variance will not be materially detrimental to the public welfare or injurious to the property in the vicinity of the district nor will it adversely affect appropriate development of the adjoining forest properties. Therefore this criteria can be met.

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

Findings

The Hearings Officer finds that granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use that is not listed in the underlying zone so long as all the criteria in the zoning code and any applicable state laws are met. The Hearings Officer finds that provisions in the County's Comprehensive Plan are implemented through enacted County zoning ordinances,

applicable statutes and administrative rules. Therefore this criteria can be met if all applicable zoning ordinances, statutes, and administrative rules are satisfied.

The applicant's property has been identified as a Goal 5 resource where conflicting uses exist between residential and wildlife habitat. Goal 5 and its administrative rules in OAR Chapter 660 Division 16 require the conservation and protection of wildlife areas and habitats.

The application of Goal 5's administrative rules to individual sites in a quasi-judicial action is somewhat problematic. Nonetheless, the applicant has submitted limited information which has inventoried of the location, quantity and quality of plant and wildlife resources on the property, and has identified conflicting uses as required by the Goal. Furthermore, the applicant's conservation plan seeks to minimize potential impacts, while outlining means to protect and enhance habitat, conserve open space and promote the health of natural resources. Based upon the above-referenced information and record, the Hearings Officer finds that the applicant has satisfied the requirements of Goal 5. Since Multnomah County has not yet had its recent Goal 5 amendments acknowledged by the Land Conservation and Development Commission at the time this application was deemed complete, the requirements of Goal 5 and its administrative rules apply directly to this application. The Hearings Officer concludes that the requirements of Goal 5 and its administrative rules are or can be satisfied by the inventory, analysis of conflicting uses and conservation plan submitted by the applicant.

V. CONCLUSION AND DECISION

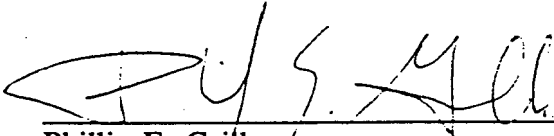
Although most of the relevant criteria have been satisfied, the Hearings Officer concludes that the applicant has not demonstrated that:

- 1) The location of the dwelling is located such that it has the least impact on adjoining forest or agricultural lands.
- 2) Any access road in excess of 500 feet in length is the minimum length required.

- 3) The zoning restriction (setback requirements) would restrict the use of the site to a greater degree than it restricts other property in the vicinity.

For these reasons, the proposed applications must be **Denied**.

It is so ordered this 28th day of June, 1996.

A handwritten signature in black ink, appearing to read "P. E. Grillo", is written over a horizontal line.

Phillip E. Grillo
Hearings Officer
Multnomah County

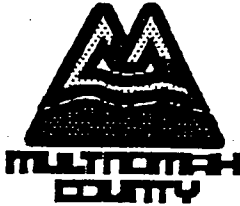
List of Exhibits
CU 7-95; HV 17-95
(Revised May 21, 1996)

- Exhibit A** Applicant's Statement Submitted July 12, 1995
- Exhibit A1** Site Plan and Grading Plan
 - Exhibit A2** Current Warranty Deed & Roadway Easement
 - Exhibit A3** Warranty Deed Dated October 7, 1976
 - Exhibit A4** SCS Soils Map and Description
 - Exhibit A5** Aerial Photographs (1984 & 1986)
 - Exhibit A6** Maps of 160-acre grid
 - Exhibit A7** Assessment/Ownership Records of Properties within 160 acre grid (Multnomah County and Washington County - Includes Washington County Tax Map)
 - Exhibit A8** Land Use Planning Notes, No's 1 and 2, Oregon Department of Forestry, March and September 1991.
 - Exhibit A9** "Geotechnical Reconnaissance and Stability Questionnaire"
 - Exhibit A10** Service Provider Statements
- Exhibit B** Applicant's Supplemental Statement Submitted January 4, 1996
- Exhibit B1** "Private On-Site Sewage Disposal Certification" Form with Approved Land Feasibility Study (LFS 138-95)
 - Exhibit B2** Letter to Multnomah County RFPD No. 20 Dated 12/21/95
 - Exhibit B3** Oregon Department of Forestry (ODF) Letter Dated 11/27/95
 - Exhibit B4** Returned Questionnaires from Adjacent Property Owners on Farm/Forest Activities
 - Exhibit B5** Multnomah County Conditions & Restrictions Statement Recorded 9/27/95 as Vol./Pg. No. 95-118085 in Multnomah County Book of Records
 - Exhibit B6** Sec-h Permit Application Prepared by AG Crook Company
 - Exhibit B7** 1994 Aerial Photograph (Vicinity Map)
 - Exhibit B8** Site Plan, Grading Plan & Driveway Profile (Revised 12/21/95)
- Exhibit C** Staff Template Map

- Exhibit D** Letter from Kevin Bender dated January 12, 1996
- Exhibit E** Letter from David Jossi dated January 15, 1996
- Exhibit F** Letter from Tualatin Valley Fire and Rescue dated February 14, 1996
- Exhibit G** Staff Report Prepared for March 20, 1997 Public Hearing
- Exhibit H** Letter from Mr. Kravitz dated March 18, 1996
- Exhibit I** Photocopy of Aerial with Distances to Nearby Residences
- Exhibit J** Aerial Photo indicating lots with Forest Use and Dwellings
- Exhibit K** Survey Submitted by Applicant at 3/20/96 Hearing Indicating Center of Property
- Exhibit L** Colored Overlay of Exhibit C Prepared by Applicant Submitted at 3/20/96 Hearing
- Exhibit M** Letter from Tualatin Valley Fire and Rescue Dated February 27, 1996
- Exhibit N** 1983 Aerial Photo
- Exhibit O** Applicant's Response to Staff Report Submitted at 3/20/96 Hearing
- Exhibit P** General Application Form, Receipt and Owner Authorization
- Exhibit Q** Zoning Map
- Exhibit R** Pre-Application Notice and Staff Notes
- Exhibit S** Washington County Assessment and Taxation Records
- Exhibit T** Notice of Public Hearing with Hearings Officer
- Exhibit U** Mailing List for Notification and Affidavit of Posting
- Exhibit V** August 8, 1995 Letter from Planning Staff
- Exhibit W** August 15, 1995 Letter from Land Development Consultants with Owner consent to Variance Form
- Exhibit X** January 3, 1996 Letter from Land Development Consultants
- Exhibit Y** January 18, 1996 Letter from Land Development Consultants
- Exhibit Z** January 18, 1996 Letter from Planning Staff
- Exhibit AA** January 24, 1996 Letter from Planning Staff
- Exhibit BB** January 31, 1996 Letter from Land Development Consultants

Items Submitted After March 20, 1996 Hearing

- Exhibit CC** March 25, 1996 Letter from Christopher Foster
- Exhibit DD** March 27, 1996 Letter from William Cox
- Exhibit EE** March 21, 1996 Letter from Michael Carlson
- Exhibit FF** March 28, 1996 Memo to File from Staff



DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
2115 SE Morrison Street
Portland, Oregon 97214 (503) 248-3043

Staff Report

This Staff Report consists of Conditions, Findings of Fact, and Conclusions.
Prepared for a Public Hearing to be held on March 20, 1996

CU 7-95; HV 17-95

**Conditional Use Request for a Single Family Dwelling Not Related to Forest Management
Variance to Side and Rear Yard Setback
Compliance with the West Hills Reconciliation Report (a component of the Comprehensive Plan)
to meet State Goal 5 requirements**

Applicant requests Conditional Use approval of a single family dwelling not related to forest management on a 20.00 acre Lot of Record in the Commercial Forest Use zoning district. Applicant proposes to place the dwelling 50' from both the north and west property lines which would require a major Variance from the 200 foot side and rear yard setback requirements. The proposed development requires a finding of State Planning Goal 5 Compliance for the development because it is located in an area designated as Primary Wildlife Habitat.

Location of Proposal: 13913 NW Skyline Blvd.

Tax Roll Description: Tax Lot '15', located in Sec 25, T 2N, R 2W

Plan Designation: Commercial Forest

Zoning District: Commercial Forest Use (CFU) with Primary Wildlife Habitat Designation

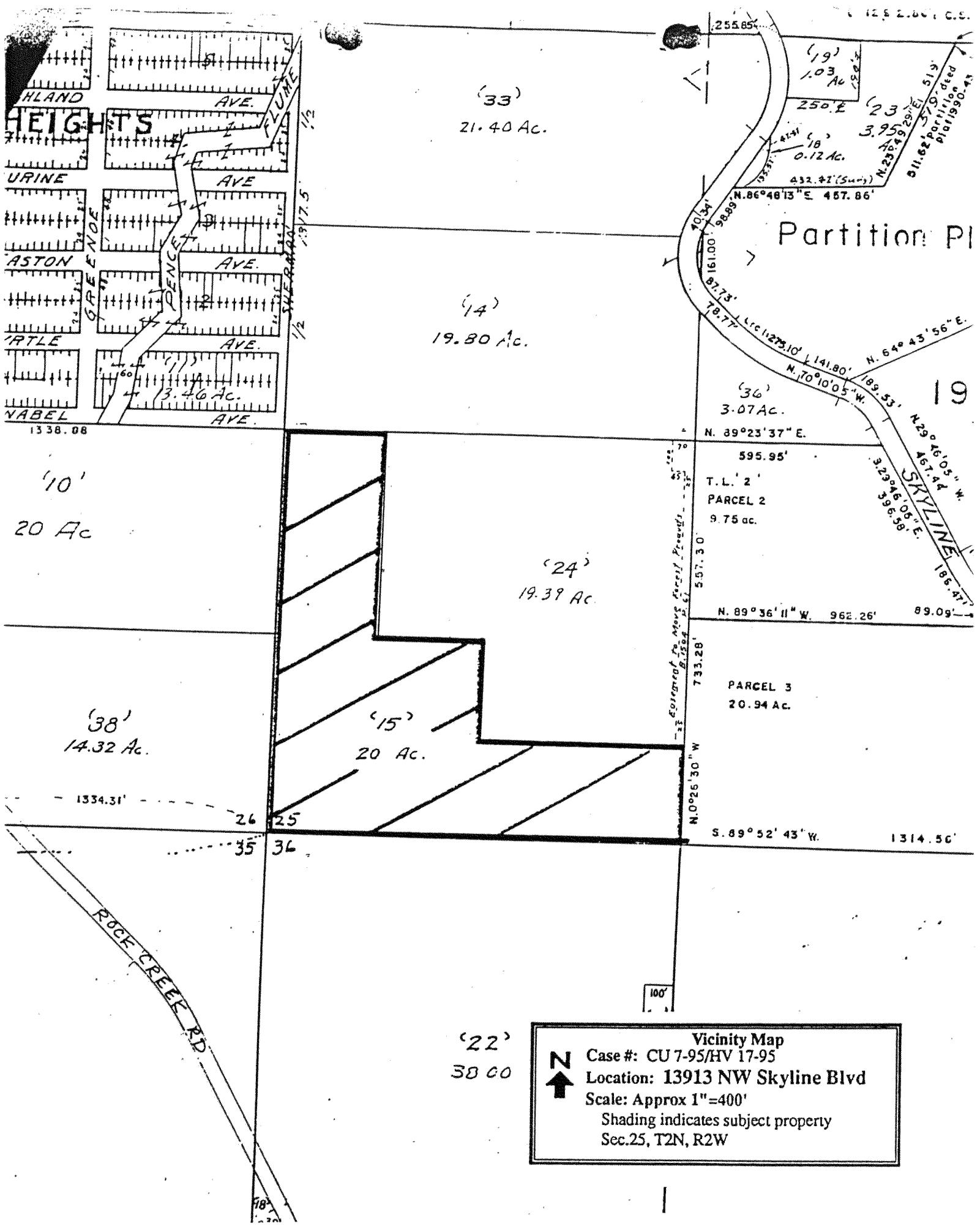
Applicant: Kim Evans
7555 NW 214th Place
Hillsboro, OR 97124

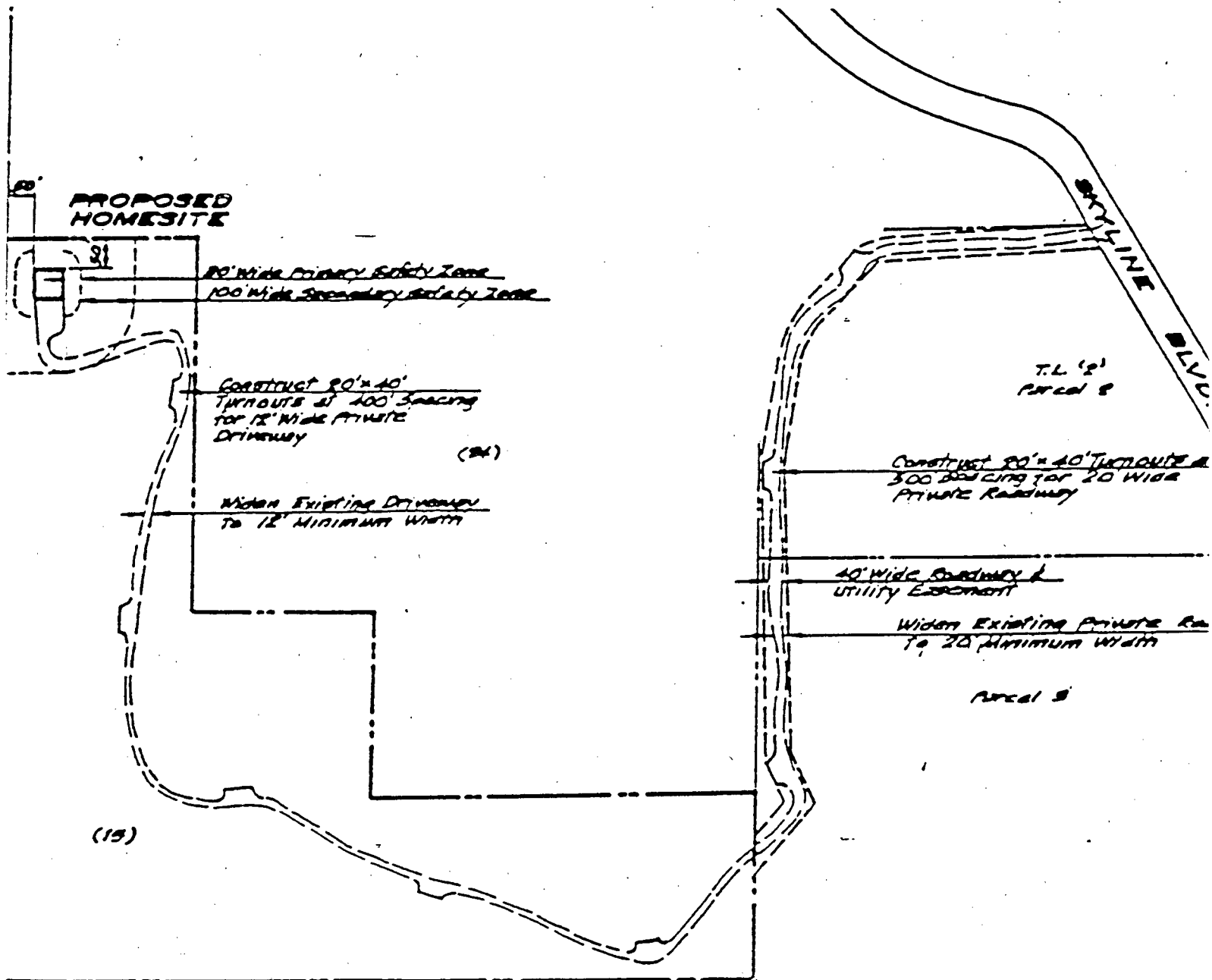
Owner: Eric D. and Kimberly R. Evans
7555 NW 214th Place
Hillsboro, OR 97124

Staff Contact: Susan Muir

EXHIBIT

G





Site Plan

Case #: CU 7-95/HV 17-95
 Location: 13913 NW Skyline Blvd
 Not to scale
 Sec.25, T2N, R2W

LIST OF EXHIBITS
CU 7-95; HV 17-95
(PREPARED MARCH 13, 1996)

- EXHIBIT A** **APPLICANT'S STATEMENT SUBMITTED JULY 12, 1995**
- EXHIBIT A1 SITE PLAN AND GRADING PLAN
 - EXHIBIT A2 CURRENT WARRANTY DEED & ROADWAY EASEMENT
 - EXHIBIT A3 WARRANTY DEED DATED OCTOBER 7, 1976
 - EXHIBIT A4 SCS SOILS MAP AND DESCRIPTION
 - EXHIBIT A5 AERIAL PHOTOGRAPHS (1984 & 1986)
 - EXHIBIT A6 MAPS OF 160-ACRE GRID
 - EXHIBIT A7 ASSESSMENT/OWNERSHIP RECORDS OF PROPERTIES WITHIN 160-
ACRE GRID (MULTNOMAH COUNTY AND WASHINGTON COUNTY -
INCLUDES WASHINGTON COUNTY TAX MAP)
 - EXHIBIT A8 LAND USE PLANNING NOTES, NO'S 1 AND 2, Oregon Department of
forestry, March and September 1991-
 - EXHIBIT A9 "GEOTECHNICAL RECONNAISSANCE AND STABILITY QUESTIONNAIRE"
 - EXHIBIT A10 SERVICE PROVIDER STATEMENTS
- EXHIBIT B** **APPLICANT'S SUPPLEMENTAL STATEMENT SUBMITTED JANUARY 4, 1996**
- EXHIBIT B1 "PRIVATE ON-SITE SEWAGE DISPOSAL CERTIFICATION" FORM WITH
APPROVED LAND FEASIBILITY STUDY (LFS 138-95).
 - EXHIBIT B2 LETTER TO MULTNOMAH COUNTY RFPD No. 20 DATED 12/21/95
 - EXHIBIT B3 OREGON DEPARTMENT OF FORESTRY (ODF) LETTER DATED 11/27/95
 - EXHIBIT B4 RETURNED QUESTIONNAIRES FROM ADJACENT PROPERTY OWNERS
ON FARM/FOREST ACTIVITIES
 - EXHIBIT B5 MULTNOMAH COUNTY CONDITIONS & RESTRICTIONS STATEMENT
RECORDED 9/27/95 AS VOL/Pg No. 95-118085 IN MULTNOMAH
COUNTY BOOK OF RECORDS.
 - EXHIBIT B6 SEC-H PERMIT APPLICATION PREPARED BY A.G. CROOK COMPANY
 - EXHIBIT B7 1994 AERIAL PHOTOGRAPH (VICINITY MAP)
 - EXHIBIT B8 SITE PLAN, GRADING PLAN & DRIVEWAY PROFILE (REVISED
12/21/95)
- EXHIBIT C** **STAFF TEMPLATE MAP**
- EXHIBIT D** **LETTER FROM KEVIN BENDER DATED JANUARY 12, 1996**
- EXHIBIT E** **LETTER FROM DAVID JOSSI DATED JANUARY 15, 1996**
- EXHIBIT F** **LETTER FROM TUALATIN VALLEY FIRE & RESCUE DATED FEBRUARY 14, 1996**
- EXHIBIT G** **STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING**

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CU 7-95; HV 17-95
(PREPARED MARCH 13, 1996)

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ACRE GRID (MULTNOMAH COUNTY AND WASHINGTON COUNTY -
INCLUDES WASHINGTON COUNTY TAX MAP)
 - EXHIBIT A8 LAND USE PLANNING NOTES, No's 1 AND 2, Oregon Department of
forestry, March and September 1991
 - EXHIBIT A9 "GEOTECHNICAL RECONNAISSANCE AND STABILITY QUESTIONNAIRE"
 - EXHIBIT A10 SERVICE PROVIDER STATEMENTS
- EXHIBIT B** **APPLICANT'S SUPPLEMENTAL STATEMENT SUBMITTED JANUARY 4, 1996**
- EXHIBIT B1 "PRIVATE ON-SITE SEWAGE DISPOSAL CERTIFICATION" FORM WITH
APPROVED LAND FEASIBILITY STUDY (LFS 138-95).
 - EXHIBIT B2 LETTER TO MULTNOMAH COUNTY RFPD No. 20 DATED 12/21/95
 - EXHIBIT B3 OREGON DEPARTMENT OF FORESTRY (ODF) LETTER DATED 11/27/95
 - EXHIBIT B4 RETURNED QUESTIONNAIRES FROM ADJACENT PROPERTY OWNERS
ON FARM/FOREST ACTIVITIES
 - EXHIBIT B5 MULTNOMAH COUNTY CONDITIONS & RESTRICTIONS STATEMENT
RECORDED 9/27/95 AS VOL/Pg No. 95-118085 IN MULTNOMAH
COUNTY BOOK OF RECORDS.
 - EXHIBIT B6 SEC-H PERMIT APPLICATION PREPARED BY A.G. CROOK COMPANY
 - EXHIBIT B7 1994 AERIAL PHOTOGRAPH (VICINITY MAP)
 - EXHIBIT B8 SITE PLAN, GRADING PLAN & DRIVEWAY PROFILE (REVISED
12/21/95)
- EXHIBIT C** **STAFF TEMPLATE MAP**
- EXHIBIT D** **LETTER FROM KEVIN BENDER DATED JANUARY 12, 1996**
- EXHIBIT E** **LETTER FROM DAVID JOSSI DATED JANUARY 15, 1996**
- EXHIBIT F** **LETTER FROM TUALATIN VALLEY FIRE & RESCUE DATED FEBRUARY 14, 1996**
- EXHIBIT G** **STAFF REPORT PREPARED FOR MARCH 20, 1996 PUBLIC HEARING**

Recommended Hearings Officer Decision:

CONDITIONAL USE:

(CU 7-95): DENY, development of this property with a single family dwelling not related to forest management because based on the following conclusions and findings, the application does not demonstrate compliance with the Oregon Administrative Rules 660-06, the Multnomah County Comprehensive Plan or the Multnomah County Zoning Code;

VARIANCE

(HV 17-95): DENY, the north yard and west yard setbacks of 50' for the proposed single family dwelling based on the following conclusions and findings;

/WEST HILLS RECONCILIATION REPORT AND GOAL 5 COMPLIANCE

DENY, Goal 5 compliance based on the following conclusions and findings;

Staff Report Format

This staff report addresses three requested actions: first, a request for conditional use approval for a dwelling not related to forest management; second, a request for approval of a variance to the side and rear yard setback standards for the single family; third, a determination of Goal 5 Compliance for development within a primary wildlife habitat area. The Findings of Fact and Conclusions for the Conditional Use appear first, followed by the Findings of Fact and Conclusions for the Variance second, followed third, by the Goal 5 Compliance discussion. There are two submittals by the applicant used in the response to the code criteria. Any Exhibit referenced by the applicant will have a letter, followed by a number. An Exhibit included in the original submittal dated July 11, 1995 will be lettered 'A' followed by the number, any Exhibit referenced as part of the second submittal received January 4, 1996 will be lettered 'B', followed by the number. Any additional Exhibits referenced in the Staff responses will be labeled only by letters.

FINDINGS OF FACT:

Applicant's Proposal:

The applicant requests the Hearings Officer approval to develop the above described property with a single family dwelling not related to forest management. The subject property is 20 acres in size and is predominantly wooded. The site has areas of moderate and steep slopes. The site does not front a public road, but is accessed by an existing roadway easement from Skyline Boulevard. Also requested is approval of a variance to the required yard setbacks of 200 feet. The applicant proposes setbacks of 50'. In addition, the proposed development is located within a designated Primary Wildlife Habitat which requires approval.

1. CONDITIONAL USE ORDINANCE CONSIDERATIONS AND FINDINGS:

NOTE: THE APPLICANT'S RESPONSE TO AN APPROVAL CRITERIA WILL BE INDICATED BY THE BEGINNING NOTATION "APPLICANT'S RESPONSE:". (Additional Planning Staff comments may be added where supplemental information is needed or where staff may not concur with the applicant's statements.)

- A. MCC 11.15.7120 Conditional Use Approval Criteria (General): "(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply." The approval criteria listed below are listed in the district; therefore, the general criteria in this subsection do not apply.
- B. Revisions to OAR 660-06, adopted on February 18, 1994, have not yet been adopted by the county. Consequently, any requirements of the OAR that are not included in the county code, as well as any OAR requirements that are more restrictive than county code criteria, must also be applied to this proposal. Applicable ordinance criteria are listed below in bold. Additional OAR requirements follow in [*bold, italics and bracketed*].
- C. MCC 11.15.2052 (A): A dwelling not related to forest management may be allowed subject to the following:
 - (1) The lot shall meet the lot of record standards of MCC .2062 (A) and (B) and have been lawfully created prior to January 25, 1990;

Applicant's Response: MCC .2062 (A)(2) requires (a) a deed prior to 1990, (b) that the parcel satisfied the applicable laws when created, (c) that the parcel does not meet the minimum lot size (80 acres), and (d) that the parcel is not contiguous to other standard lots under the same ownership. MCC .2062(B) offers definitions applicable to MCC .2062(A).

A warranty deed dated October 7, 1976 describing the site was recorded with the Multnomah County Recording Section on April 10, 1980 in Book 1432, Page 1782 (attached as Exhibit A3). The subject parcel is 20 acres in size, and exceeded the minimum lot size in the MUF-19 zone when it was originally created in 1951 (deed recorded with Multnomah County Recording Section in Book 1504, Page 61). The parcel is less than 80 acres in size and, thereby, does not meet the current minimum lot size in the CFU Zone. The applicant does not own contiguous property, either in CFU or EFU zoning. These findings demonstrate that the subject parcel satisfies the lot of record standards of MCC .2062 (A) and (B), and was lawfully created prior to January 25, 1990.

All currently contiguous ownerships must be considered to be the subject "tract" of this

application. ["Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. OAR 660-06-027(5)(a)]

Under the OAR, an additional dwelling is not allowed if there is an existing dwelling on the "tract". *[A proposed dwelling under this rule is not allowed: ... Unless no dwellings are allowed on other lots or parcels that make up the tract ... If the tract on which the dwelling will be sited includes a dwelling. OAR 660-06-027(4)(c)&(d)]*

Staff Comment: Assessor's printout is in the file and is made a part of the record as Exhibit A7.

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

Applicant's Response: The subject property is not located adjacent to any county maintained roads, therefore the required minimum yard of 60 feet to the centerline of any adjacent county maintained road cannot be applied to this property.

Due to the unusual configuration of this lot, the limitations of the terrain and the desire to preserve the densely forested areas on the property, the proposed homesite cannot satisfy the 200-foot setback standard. The only feasible location for a homesite is in the north-west corner, where the lot is approximately 325 feet in width, measured east-west. Given the width of the lot in this area, it is not possible to meet the 200-foot setback to the property lines. Therefore, the applicant requests a variance pursuant to MCC .8505, which is addressed below in this report.

Staff Comment: The lot is of sufficient size to accommodate siting the dwelling in accordance with the minimum yard setbacks as required in MCC .2074. Staff does not concur that the proposed location is the only feasible location for a homesite. The applicant has submitted the Variance application and addressed the criteria of MCC .8505 through .8525 as applicable (section 2 of this report).

- (3) The lot(s) shall meet the following standards: ...
(c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

Applicant's Response: According to the Multnomah County SCS Soil Survey (See Exhibit A4), the soils on the subject property are Cascade Silt Loam (7C, 7D, & 7E). The soils have a Site Index of 157, which translates into a yield of approximately 153 cubic feet per acre per year.

- (i) The lot and at least all or part of 11 other lots *[that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(i)]* exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section

lines; and

Applicant's Response: Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of 13 other lots within a 160 acre square centered on the center of the subject lot parallel and perpendicular to Section lines.

(ii) Five dwellings [*that existed on January 1, 1993, OAR 660-06-027(1)(d)(C)(ii)*] exist within the 160-acre square.

Applicant's Response: Aerial photographs and maps attached as Exhibits A5 and A6 demonstrate the existence of five (5) dwellings within the 160 acre square.

Staff Comment: Exhibit A6 submitted by the applicant includes 5 numbered arrows, and one arrow with the notation 'on the line' (tax lot '22'). The Assessment and Taxation information included with the applicant's submittal shows tax lot '36' as being 'vacant land', [Exhibit A7, p. 15] this tax lot shows an arrow number '1'. Staff cannot make the finding based on the A&T information and site visits that a dwelling existed on tax lot '36' on January 1, 1993. If the arrow labeled 'on the line' on Exhibit A6 is to be one of the five (5) dwellings included in the template test, staff would need reliable survey information verifying the dwelling on tax lot '22' is within the template. In addition, the 160 acre square template as positioned by Staff includes the house, arrow number 3 on tax lot '32', 'on the line' of the template and Staff would need survey information verifying the location of the dwelling. Without this additional survey information Staff can only verify 3 dwellings within the 160 acre template and the parcel does not meet the 5 dwelling minimum established in MCC 11.15.2052. The Staff's template overlay is included as Exhibit C.

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

Applicant's Response: No lots or dwellings within an urban growth boundary were counted in (a) through (c) above.

(e) The lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species recognized by the Forest Practices Rules.

Applicant's Response: Soils on the subject parcel have a Site Index of 157, which means that a fully stocked stand of 70 year old Douglas fir trees can produce 10,720 cubic feet of lumber per acre. The SCS survey says the "soil is suited to Douglas Fir. Dividing the yield by 70 years provides the average growth rate of 153 cubic feet per year per acre. When multiplied by the 20 acres on the site, the annual growth is approximately 3,060 cubic feet (See Exhibit A4). Therefore, this lot is not capable of producing 5,000 cubic feet of wood fiber per year from commercial tree species.

(4) The dwelling will not force a significant change in, significantly increase the costs of,

or impede accepted forestry or farming practices on surrounding forest or agricultural lands;

Applicant's Response: The Skyline Boulevard area is rural residential in character. Land uses in the surrounding area are depicted on the attached aerial photographs (Exhibit A5). Numerous dwellings exist in the surrounding area on parcels of this size or smaller. The addition of this single family dwelling will not alter that character. The proposed development is a single-family, detached dwelling not in relation to forest use. Water supply for the dwelling will be provided through an on-site well. An on-site septic system will be established in compliance with Multnomah County regulations. The proposed driveway will be constructed to Multnomah County and Fire District standards. It is anticipated that the proposed dwelling will not exceed an additional 10 vehicle trips per day along Skyline Boulevard or the existing roadway easement.

Since the proposed dwelling does not yet exist and is hypothetical at this time, no concrete evidence as to the actual activities of the future occupants can be provided with this analysis. However, it can be concluded from observation and prior knowledge of other existing rural residential uses that activities associated with single-family dwellings will likely be those customarily carried on, such as eating, sleeping, gardening, outdoor recreation, raising a family and occasional entertainment of guests.

There is very little commercial forestry or agriculture in this section of Skyline Ridge. While the subject property is in the CFU District, it is adjacent to EFU land. Farming has been inhibited by poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground. What little farming exists is mostly in low-yield hay production or pasture. The large parcels in the EFU District are used for hay production, pasture, and forest; however, they are not producing commercial-level yields.

Properties employed in hay production and pasture are located in all directions of the subject site at distances in excess of 300 feet. Practices associated with the cultivation of field crops such as grains, clover, hay, etc. include plowing, discing, harrowing, cultipacking, ground application of soil amendments (fertilizer, lime), herbicides and pesticides, seeding, harvesting, baling and gathering, and transport of the harvested material. These practices employ the use of various types of farm equipment, including tractors and towed appliances such as plows, rotovators, discs, harrows, cultipackers, spreaders, seed drills, sprayers and specialized mowers and balers. Trucks are employed for the transport of some of this equipment, as well as the seed, amendments, sprays and end products. Pasture lands, except for unmanaged forage areas (cleared land), receive much the same treatment as lands used for field crops and similar farm equipment is used (tractors, plows, disc, seed drills, etc.). Tilling and replanting of managed pastures ordinarily occurs on a seven year cycle. Harvesting is done by grazing animals instead of mechanized equipment.

Properties employed in some level of forest use, predominantly not on a commercial scale, are located in all directions of the site, with abutting parcels to the north, west and south. Forest practices include road building prior to harvest; timber harvest stock piling

and burning of slash subsequent to harvest; replanting; spraying of herbicides and pesticides and periodic thinning and trimming as the timber grows. Road building, harvesting, slash burning and thinning require the use of heavy equipment such as bulldozers, skidders, yarders (on steep sites) loaders and trucks. Chain saws are also used in harvesting and thinning operations. Replanting is accomplished using hand labor, as is trimming and some early thinning of the stand. Spraying in areas with moderate residential density on nearby lands is normally accomplished from the ground. However, spraying may also be accomplished from the air using low-flying fixed-wing aircraft or helicopters in order to limit drift of spray material to nearby properties. Effects from these activities include noise from heavy equipment and chain saws during harvest and thinning operations, smoke from slash fires, limited spray drift from herbicide and pesticide applications subsequent to harvest and replanting and periodic appearances by persons involved in ongoing stand management.

Nonfarm/nonforest uses and dwellings exist in all directions around the subject site. Farm and forest uses on lands near and adjacent to the site are currently being impacted by existing nonfarm/nonforest uses. Any potential impacts from the proposed dwelling to farm or forest activities beyond the existing nonfarm/nonforest uses is nullified by the impacts of these existing nonfarm/nonforest uses.

Impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors in addition to the presence of existing dwellings in the area. These factors include intervening distances and vegetation. The closest farm/forest operation to the north is located over 100 feet from the dwelling site. A farm operation is located over 100 feet to the east of the dwelling site. The dwelling site is separated from farm/forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from farm/forest uses to the west by a distance of approximately 100 feet. The subject property is densely wooded, as well as properties to the north, west and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

Potential physical impacts to the occupants of the dwelling from farm/forest uses and practices will be offset by location of the dwelling 200 feet from the east property line in compliance with required setbacks. A variance is sought as part of this application to allow the dwelling to be located 50 feet from the north property line and 50 feet from the west property line. A variance is necessary due to the limiting slopes, dense vegetation and unusual configuration of the parcel. Impacts to the dwelling from accepted farm and forest practices could include dust and noise from tilling and harvest operations, and possibly spray drift and smoke. Dust from tilling operations does not normally extend beyond 100 feet, nor does drift from spray operations. Tilling, planting, spraying and harvesting operation for field crops are likely to occur on only an 8 to 10 day spread in any given year. Farm tractors are generally equipped with mufflers. The configuration and location of fields to the north, west and south will place operating farm equipment over 100 feet away from the proposed dwelling all of the time during tilling and harvest operations. Observed ground spraying of herbicides and pesticides produces no significant spray drift or overspray beyond the ground area being sprayed, if it is done using an

accepted practice. Trespass and vandalism on nearby farm and forest properties is as likely to originate from outside the area as it is from dwellings in the vicinity. Trespass and vandalism on farm and forest land in the immediate vicinity of the development site cannot be effectively prevented by any physical means. However, the number of existing dwellings in the vicinity will discourage trespass and vandalism. Farm and forest lands are readily observable from nearby dwellings. Trespass and vandalism on these properties will be discouraged by the potential for observation. Trespass on nearby farm and forest lands by domestic animals (livestock, dogs) can be prevented by erection of strong fencing, if livestock are present, and by enforcement of the County's leash laws. However, livestock is not proposed on the subject site and adjacent properties with livestock are fenced.

The above findings demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

The aerial photograph (Exhibit B7) serves as a vicinity map of surrounding forestry and farming activities. The applicant has researched contiguous tax lots to determine the nature of adjacent farm/forest uses. Questionnaires were mailed to adjacent property owners to gather information regarding existing and planned forestry and farm practices. There are 9 tax lots adjacent to the subject site under 9 different ownerships. Nine (9) questionnaires were mailed out, one to each adjacent property owner. Of the mailed questionnaires, 4 were returned (Refer to Exhibit B4). The following information has been gathered from Multnomah County and Washington County Assessor's records, returned questionnaires and review of the aerial photograph.

Summary of Farm/Forest Activities on Adjacent Properties

<u>Tax Map</u>	<u>Tax Lot</u>	<u>Acreage</u>	<u>Owner</u>	<u>Use</u>
2N2W25	(14)	19.80	Paula M. Williams	F
2N2W25	(24)	19.39	Frederick/Carrie King	D/H/F
2N2W25	Parcel 3	20.94	Western States Dev. Corp.	H/F
2N2W26	(5)	26.71	Leon/Sen Speroff	D/F
2N2W26	(10)	20.00	Edward/Fritzi Parkinson	F
2N2W26	(38)	14.32	Vanport Manufacturing, Inc.	F
2N2W36	(22)	38.00	Gordon/Violet Nerheim	D/F
2N2W36	(32)	76.99	Blanche D. Miller	D/F
2N2W35	101	5.30	Adele M. Benyo	D/F

Key

D = Dwelling, F = Forest/Timber, H = Hay

Five (5) of the adjacent properties contain residential uses. All 9 of the adjacent properties contain forestry/timber uses. Two (2) of the adjacent properties contain farm uses

(hay production). Properties in all directions around the site are employed in forest/timber uses, while only the properties adjacent to the east are in farm use (Tax Lot (24) and Parcel 3, Map 2N2W-25, are employed in hay production). Since specific management information for these activities is not available, documentation of typical farm and forest management information has been obtained from the Oregon State University Extension Service (attached to the original Applicant's Narrative Statement as Exhibit A8). An abstraction of this information is contained within the original Applicant's Narrative Statement.

As discussed within the original Applicant's Narrative Statement, impacts to ongoing farm and forest uses from the dwelling site are mitigated by several factors, including the presence of numerous existing dwellings in the area. These factors include intervening distances and vegetation. The closest forest operation to the north is located over 50 feet from the dwelling site. A farm operation is located over 200 feet to the east of the dwelling site. The dwelling site is separated from forest uses to the south by a distance of over 1,000 feet. The dwelling site is separated from forest uses to the west by a distance of approximately 50 feet. The subject property is densely wooded, as are properties to the north, west, east and south. These factors combine to insulate the dwelling site from other farm and forest activities occurring on properties surrounding the site.

The above discussion, in conjunction with the discussion contained under the same section within the original Applicant's Narrative Statement, demonstrate that the proposed dwelling, and activities associated with the dwelling, will not force a significant change in accepted farm/forest practices on surrounding lands devoted to farm/forest use; nor will it significantly increase the cost of or impede accepted farm/forest practices on surrounding lands devoted to farm/forest use.

Staff Comment: The five (5) dwellings used in the applicant's survey are not the five dwellings used for the demonstration of the template test. Tax lot '5' in Section 26 is listed as having a dwelling on it and the Assessment and Taxation information lists this as 'Vacant Land'. This may be because it is in common ownership with tax lot '8' of Section 25 to the northeast of tax lot '5' and they would be considered a 'tract' (Exhibit A7 p. 38). The applicant states that "All 9 of the adjacent properties contain forestry/timber uses". The placement of the proposed dwelling will impact these surrounding uses by reducing the existing distance between other dwellings and any forest uses. Overspray by air of chemicals may have to be limited or reduced by siting the dwelling in the center of the narrow neck in the northwest corner. As explained in the Applicant's Submittal (Exhibit A8, No. 2, p. 3) "In the case of herbicide applications, the FPA (Forest Practices Act) requires that when applying herbicides by aircraft, the operator must leave an unsprayed strip of at least 60 feet adjacent to dwellings. The requirement of leaving an unsprayed strip of 60 feet may mean that the operator must stop spraying considerable distance away from any dwelling to avoid any drift within the 60 foot unsprayed strip." Therefore, Staff cannot determine compliance with MCC 11.15.2052(A)(4).

- (5) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife, or that agency has certified that the

impacts of the additional dwelling, considered with approvals of other dwellings in the area since acknowledgement of the Comprehensive Plan in 1980, will be acceptable;

Applicant's Response: According to the Comprehensive Plan findings on wildlife habitat, the Oregon Department of Fish and Wildlife maps do not list this area among the sensitive areas important to the survival of big game.

- (6) The proposed dwelling will be located on a lot within a rural fire protection district, or the proposed resident has contracted for residential fire protection;

Applicant's Response: The parcel is within the boundaries of Multnomah County RFPD #20.

Staff Comment: The parcel is within the Tualatin Valley Fire and Rescue and Beaverton fire Department boundary.

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

Applicant's Response: The parcel is served by an access easement for ingress-egress from Skyline Boulevard (Exhibit A2).

- (8) The parcel on which the dwelling will be located has been disqualified from receiving a farm or forest tax deferral;

The following OAR requirement supercedes the above requirement to disqualify the property from farm or forest deferral. If the property is planted to Department of Forestry standards then the property can be retained or added onto tax deferral programs.

[OAR 660-06 029(5): Approval of a dwelling shall be subject to the following requirements:

- (a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.**
- (b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.**
- (c) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.**

(d) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.]

Applicant's Response: According to Multnomah County Assessment records, the parcel is not receiving farm or forest deferral.

(9) The dwelling meets the applicable development standards of MCC .2074; (as follows:)

Applicant's Response: As demonstrated in the following sections of this report, the proposed dwelling meets, or can feasibly be conditioned to meet, the applicable standards of MCC .2074.

MCC .2074 Development Standards for Dwellings and Structures

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

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

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

(2) Forest operations and accepted farming practices will not be curtailed or impeded;

[OAR 660-06-029(1)(b): *The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*]

Applicant's Response: Sections MCC 11.15.2074 (A)(1) and (2) contain language similar to that found in Section MCC 11.15.2052 (A)(4). While it appears that the standards may be different in scope, they are both intended to ensure that dwellings not related to forest practices will not significantly conflict with nearby or adjoining farm/forest lands and practices. Therefore, since the standards are so similar, if compliance with .2052(A)(4), then it follows that compliance with .2074(A)(1) and (2) has also been demonstrated, provided the findings are adequate to demonstrate compliance with both.

Aerial photographs depicting adjacent and surrounding farm/forest uses are attached as Exhibit A5. As discussed above under .2050(A)(4), this development will not impact, curtail or impede farm/forest lands, operations or accepted practices due to the dense vegetation and steep terrain surrounding the homesite.

The proposed homesite location is the most suitable location for a dwelling on the parcel. The proposed dwelling location is a relatively flat area, near the highest point on the parcel. The majority of the parcel contains slopes above 20%, which are too steep for a dwelling site. Most of the parcel is also densely vegetated with Douglas Fir trees. The proposed homesite is already free of the dense vegetation found throughout the property. Construction of a dwelling on the proposed homesite would not require the removal of significant amounts of vegetation, whereas a homesite location elsewhere on the property would necessitate the removal of a significant amount of Douglas Fir trees. The steep terrain and existing vegetation on other parts of the parcel restrict the potential of locating a homesite in other locations on the parcel (refer to the attached site plan, Exhibit A1).

Due to the dense vegetation and steep slopes throughout the property, the impact of a dwelling on nearby or adjoining farm/forest lands will be virtually the same at any location on the site. Through compliance with the applicable criteria, listed within this report, and conditions of approval, the proposed house location will have minimal impact on existing and future farm/forest operations. Since the proposed roadway easement is already in existence and the proposed homesite will require the least amount of grading and vegetation removal, it is apparent that a dwelling in the proposed location will have the least impact on nearby or adjoining forest or agricultural lands, now existing or in the future.

As previously stated within this report, the proposed dwelling cannot meet the 200-foot setback requirement due to the width of the lot in this area. Therefore, a variance is requested as part of this application (Variance criteria are addressed in this report, below).

As previously stated within this report, no future forestry practices are planned for the subject property. The site was logged over 7 years ago and has been entirely replanted, except for the proposed house location. The proposed house location is the best one because it is cleared of trees and would not require the removal of any young trees that were recently replanted.

Staff Comment: Although Staff is reviewing the application for the cleared area in the north west corner of the site, there is another larger, relatively flat cleared area in the south east portion of the property that has not been reforested recently with young trees. Staff does not concur that the proposed house location is the best one based on the argument that it is cleared of trees and would not require the removal of any young trees that were recently replanted. The issue is that the development is required to demonstrate that it has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements for the CFU district and that forest operations and accepted farming practices will not be curtailed or impeded. The siting must ensure that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.

Two letters were submitted into the file one by Kevin Bender of Western States Development Corporation (Exhibit D), owner of the adjacent property (tax lot 2 of parcel

2 of partition plat 1990-43) and the other by David Jossi (Exhibit E), the contract farmer that manages the property for Mr. Bender. Both letters are in opposition to locating the homesite to the south east end of the property due to potential impacts of surrounding farm practices. Staff believes that due to the topography on the site that slopes down from the hay field and the dense vegetation between the two parcels that a different homesite may not affect the agriculture operation if it were closer to the east property site. However, Staff is reviewing the application for the development site proposed in the north west corner of the property and does not have the information necessary to review any other development proposal for another area on the property. According to information submitted by the applicant, there is one house existing within 160' of the boundary of the hay farm in question (tax lot 36), there are two homes within 500 feet of the boundary of the existing hay farm (tax lots 24 and tax lot '1' of parcel 2 of partition plat 1990-43, this home is not noted as a dwelling on the 'Vicinity Map' or aerial photograph submitted by the applicant on January 4, 1996) and there are two houses within 1,000 feet of the boundary of the existing hay operation. The proposed homesite is in excess of 1,000' from the hay farm and the nearest potential site in the south east corner is approximately 160-200' from the hay operation. In addition, the parcel currently being managed by Mr. Jossi went through a land division case in 1989 in which the application submitted by Western States Development Corporation stated:

"Past and Present Uses

All attempts at farming this parcel have failed to make a profit. Hay production failed because of the poor soils, steep slopes, and poor markets. Attempts to grow winter wheat and dry land wheat failed because the soil produced substandard grain. The 33 acres cleared on these tax lots are presently left in grass, which is mowed once a year, bundled, and removed. The applicant's attempts to make this land profitable, in conformance with ORS 215.203, have failed for reasons that remain problems even for Christmas tree farms.

The reasons for unprofitable farm operation include poor soils, steep topography, lack of irrigation, high elevation, cold winds, sometime heavy snow cover, and the threat of soil erosion from intensive farming on marginally steep ground.

The problems of soil and slope and weather are shared by all surrounding EFU properties. There is no intensive commercial farming on this portion of Skyline Ridge. What little farming exists is mostly in low-yield hay production for pasture. There is one Christmas tree farm on a nearby parcel--growing Nobil fir on approximately 7 acres.

* * *

In sum, numerous efforts to sustain commercial agriculture uses on the property have failed."

Staff cannot find that locating the proposed dwelling closer to the areas in forestry use and away from what has been termed a failing agricultural operation will have the least impact on nearby or adjoining forest or agriculture lands.

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

Applicant's Response: Publications provided by the Oregon Department of Forestry (ODF), attached as Exhibit A8, are pertinent to this section. These publications are Numbers 1 and 2 of Land Use Planning Notes, which were released in March and September 1991. Land Use Planning Notes indicates that the requirements for Section .2074(A)(3) are intended to minimize the amount of land taken out of forest production by residential uses. According to Notes, the standard can be met by siting dwellings close to existing dwellings and roadways, and by minimizing the length of access roads and service corridors. Notes also indicates that minimization of risks associated with wildfire, per Section .2074(A)(5), requires consideration of topography and slope direction, length of access and fuel supply for wildfire. Dwelling siting on level land is encouraged by ODF. Access drives should be as short and level as possible and must be capable of supporting fire fighting equipment.

The following discussion outlines significant factors which dictate the location of a dwelling and access drive on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. The access road may require some improvements in order to comply with applicable standards. Location of a home along this access road does not require any new road building on land devoted to forest use.

According to Land Use Planning Notes, No. 1, the ODF restricts the location of structures to areas of slope less than 40%. The slope of access drives is also limited to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running strait and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to maintain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site.

The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of

reducing fire hazards and preserving existing trees.

A dwelling exists on tax lot (24), which abuts the subject property to the east. The proposed homesite will be located approximately 700 feet west of the existing dwelling on tax lot (24). A homesite location south of this area on the subject property would be located at a greater distance from the existing dwelling on tax lot (24), as well as more than 700 feet from dwellings on other abutting properties. Theoretically the homesite could be located closer to the eastern property line in the northwestern corner, and thereby closer to the dwelling on tax lot (24), but the slopes in this area are greater than the chosen building site and exceed 40% at some points. The proposed dwelling location is approximately 1,300 feet from Skyline Boulevard and Rock Creek Road. A dwelling location anywhere else on the site would also be an estimated 1,300 feet from Skyline Boulevard. Areas on the property exist which would be closer to Rock Creek Road than the chosen site, but these areas are excessively steep.

The proposed homesite utilizes an existing access road. No matter where the proposed dwelling is located on the property the same amount of area will be devoted to roads, since this roadway is used to access lots to the west of the site. Therefore, any homesite location will utilize an equal amount of forest land to site the dwelling, access road and service corridors.

Based on the above findings, the subject property contains a number of limiting factors to development. The proposed dwelling location was designed in consideration of the characteristics of the site, the forest uses of the property, and requirements intended to minimize risks associated with wildfire. Given the existence of the access road to the proposed homesite, and slopes and vegetation found at the homesite, it is apparent that this proposal minimizes the amount of forest land used for development, as well as minimizes the risks associated with wildfire.

The discussion contained within the original Applicant's Narrative Statement under these sections demonstrates that the "amount of forest land used to site the dwelling, access road and service corridor is minimized. The access road is existing and will be improved, for the entire length, no matter where the dwelling is inevitably located. The area north of the existing road, just as the road enters the property, is not a suitable location for the proposed dwelling as it would necessitate the removal of recently replanted trees. In spite of this, the applicant does not believe that it is necessary to demonstrate that "a dwelling could not be built north of the drive just as the drive enters the property", since the roadway has been in existence for a number of years and is only proposed for improvement.

Staff Comment: Staff does agree that the siting standards in the State Code and Multnomah County Code are in part to minimize the risk of fire. As evident from the topography map submitted by the applicant, the proposed development site is relatively flat, however, the development site is located at the top of a site with slopes up to 40%. So, although the footprint of the building may indeed be flat, the fire considerations include the slope hazard area directly to the south and east of the proposed homesite, as well as other areas throughout the site. The OAR's and Multnomah County Code do

have requirements for fire safety zones that can mitigate building near steep slopes. The access road cannot meet the 15% maximum slope standard. In addition, the standard is for the proposed dwelling, not the other dwellings served by the access way.

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

Applicant's Response: The applicant proposes to utilize an existing roadway easement to access the proposed homesite. According to Land Use Planning Notes, No. 1, the ODF restricts the slope of access drives to a maximum of 15%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. Due to steep slopes on the property and limitations on the maximum slope of an accessway, a driveway running strait and directly to a dwelling cannot be constructed on the subject property if the existing access is to be utilized. The applicant's proposed driveway takes advantage of the existing access road and maintains a maximum 15% slope. In order for the driveway to attain a maximum 15% slope, it must follow the contours of the property and loop around to the proposed dwelling site. For these reasons, the proposed roadway is the minimum length required.

Staff Comment: The issue is whether physical limitations unique to the property make a road more than 500 feet long necessary in this case. The applicant must also demonstrate that the proposed length of the road is the minimum length necessary. The home cannot be built within 500 feet of a public road because the property is accessed by a private easement off of Skyline Boulevard. However, staff is not convinced that the farthest corner from Skyline Boulevard is the only acceptable building location. Any physical limitations on the subject property are not unique, as the majority of the property in the vicinity is steep terrain and forested. Staff does believe that slope, soil, waterbodies, habitats and drainage features are physical conditions. The existing cleared area, whether or not it was approved under a Forest plan is not a physical limitation. The County is not obligated to follow the plan or to approve a dwelling that is consistent with that plan. Any work which may have been completed under a Forest Plan, or the fact that there are existing cleared areas on a site does not preclude locating a dwelling at a different location which may be located closer to Skyline Boulevard in order to minimize the length of the accessway required, which is the standard. It is not relevant that there is an existing logging road and an existing cleared area for the proposed homesite. The Code does not say an access road longer than 500 feet is permitted when it is an existing road. The Code asks whether physical conditions make violation of the 500 foot standards essential. The fact there is an existing road and cleared area does not make it essential or necessary to use the access road and cleared area for the proposed dwelling.

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

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

(b) Maintenance of a primary and a secondary fire safety zone.

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

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

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

(in) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District.

(iv) No requirement in (i), (ii), or (in) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

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

Applicant's Response: No perennial water source is located on the site. The proposed dwelling will have an automatic sprinkler system. The sprinklers greatly reduce the risk of a home fire that could spread to the woods. The applicant proposes to install an irrigation system to include wet, stand pipes every 100 feet along west, north and east property

lines in vicinity of the homesite, each with 50 feet of hose. Plans also include tank storage for 1,000 gallons of water with 200 feet of hose and an operable gas driven pump. In addition, fire breaks, as outlined in this subsection, will be developed during construction. Fire breaks are indicated on the attached site plan (Exhibit A1). The proposed homesite has a slope of less than 40 percent, as required by Subsection (c) (See Exhibit A1). Driveway access will be improved and maintained to the standards of the Fire Marshal.

Staff Comment: The requirements of a secondary fire safety zone cannot be met because of the proposed setbacks of 50' to the north and west property lines..

(B) The dwelling shall:

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

[OAR 660-06-035(5) The dwelling shall have a fire retardant roof.]

[OAR 660-06-035(6) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.]

Applicant's Response: Upon approval of this application, the proposed dwelling will be designed and constructed in compliance with the standards of the Uniform Building Code. The dwelling will be attached to a foundation, for which a building permit will have been obtained, and have more than 600 square feet of floor area. The proposed dwelling will be constructed with a fire retardant roof. Any chimneys in the proposed dwelling will have spark arresters.

Staff Comment: The proposed single family dwelling will be required to receive a building permit which will require conformance with the Uniform Building Code.

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

Applicant's Response: The water supply will come from a well of about 550 feet, located on the property. No water lines across neighboring properties are necessary. No surface water is involved. OAR 690, Division 10 deals with critical groundwater areas; this is not a critical groundwater area and the rules do not apply. OAR 690, Division 20 deals with surface water and does not apply.

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

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

Applicant's Response: The dwelling is to be accessed by an existing private roadway easement from Skyline Boulevard. The roadway will be improved and maintained to support a minimum gross vehicle weight of 52,000 pounds. No bridges or culverts will be constructed. The roadway will have an all-weather surface 20 feet wide for the private road portion of the access serving Lot 24 and the subject property. The remainder of the access is a driveway serving only the proposed dwelling. That portion of the access will be covered with a 12-foot wide all-weather surface. All curves will have a minimum curve radii of 48 feet. The easement will have an unobstructed vertical clearance of 13 feet 6 inches or greater. Portions of the driveway on the subject property may exceed the 12% maximum. The Multnomah County RFPD #20 will review the proposed driveway. Their written approval will be supplemented at a later date. A turnaround with a radius of 48 feet or more will be provided at the end of the access. Additional turnarounds will be provided in compliance with the above standards. Refer to the attached site plan and grading plan for an illustration of the driveway (Exhibit A1).

A site plan, grading plan and driveway profile (revised 12/21/95) are attached as Exhibit B8. These plans contain detailed information regarding the existing and proposed road widths and grades, as well as typical improvement cross sections. These plans have been designed and certified by a registered professional engineer (Harris Hymen, P.E.).

As previously stated within this report, the road plans and a "Minimum Design Standards For Residential Driveways and Privately Maintained Roads" form were submitted to the Fire District for review on December 21, 1995 (copy of letter attached as Exhibit B2). A response from the Fire District has not been received at this date, but is expected within a few days. Since the 180 day period ends on January 8, 1996, this supplemental report is submitted without the necessary form from the Fire District. This form will be supplemented to Multnomah County as soon as it is available.

Staff Comment: There are three culverts existing on the proposed accessway (two noted on the Site Plan, Grading Plan & Profile sheet, one that is not indicated but located near the profile station 34.00) that have not been demonstrated to support a minimum gross vehicle weight (GVW) of 52,000 lbs. The Tualatin Valley Fire and Rescue has determined that the fire apparatus access roadway requirements cannot be complied with in the proposed development and accessway (Exhibit F). The Fire Chief also states that "when buildings are completely protected with an approved automatic fire sprinkler system, the provision of the requirements may be modified by the chief..." Staff cannot find that the fire department exemption to meet uniform fire code requirements addresses the Multnomah County Code and Oregon Administrative Rule requirement of providing grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except upon written approval from the fire district. Staff finds that the Multnomah County Code exemption is not included so that Multnomah County can approve developments with no fire access, but to allow for occasions where road grades may exceed 12% but where fire service providers are able to still access the site. For instance some Fire District Standards, including the Tualatin Valley, have less restrictive road standards that allow grades of up to 15%. The road accessway standards, including the exemption for short segments, still allow for fire equipment to access the site when a fire district has the equipment capable of maneuvering the higher grades. The proposed development site cannot be serviced by fire fighting equipment.

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

Applicant's Response: The above-described statement was recorded with the Multnomah County Division of Records on September 27, 1995 as Vol/Pg No. 95-118085, a copy of which is attached as Exhibit B5.

D. MCC 11.15.2052 (B): Dwellings not related to forest management shall not be allowed upon the effective date of a small scale resource land program adopted pursuant to the requirements of OAR 660, Division 6 and 33.

No longer applicable. See below.

[OAR 660-06-070, Small-Scale Resource Land, Repealed by LCDRC February 18, 1994.]

2. VARIANCE ORDINANCE CONSIDERATIONS:

G. Ordinance Considerations and Findings of Fact

Variance Approval Criteria MCC 11.15.8505(A):

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

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

Applicant's Response: The applicant is requesting a variance to the 200 foot setback requirement to allow the dwelling to be located 50 feet south of the north property line and 50 feet east of the west property line. The subject lot is uniquely "L" shaped with long narrow necks extending to the north and east. The contours depicted on the attached site plan (Exhibit A1) demonstrate that these necks are relatively level compared to the extreme slopes found on the remainder of the property.

The reason necessitating the variance is the proposed location of the homesite on a relatively flat area of land with minimal vegetation, which happens to be on one of the narrow necks of land in this parcel. The distance between the property lines in the neck is approximately 325 feet. It is physically impossible to locate the dwelling 200 feet from all property lines. If the home is placed 200 feet from one line, a variance in excess of 100 feet is required for the setback to the opposite property line.

The shape of the parcel and the terrain both require the location of the homesite on the narrow neck of land. The shape of this parcel is unique in this vicinity and in the CFU District. The following discussion outlines significant factors which dictate the location of a dwelling on the subject site. There is an existing accessway on the subject property, which extends from Skyline Boulevard to the proposed homesite and beyond to adjacent lots west of the site. Location of a home along this access road does not require any new road building on land devoted to forest use. According to Land Use Planning Notes, No. 1, the ODF restricts the location of structures to areas of slope less than 40%. Exhibit A1 depicts the slopes existing throughout the subject site. The highest area on the property is the northwest corner. The dwelling location contains slopes less than 40%. The slope near the proposed building site is 10%. The remainder of the property consists of slopes ranging from 10% to 50%, with the majority of the property in excess of 40% slopes. The steepest areas are in the southwestern portion of the site. Exhibit A1 indicates that portions of the property containing slopes less than 40% are predominantly found in the northwest and southeast parts of the property. The proposed location of the dwelling is one of the more level areas on the subject property. The proposed dwelling site also contains minimal amounts of vegetation as compared to the remainder of the property, thereby being an appropriate dwelling location in terms of reducing fire hazards. Therefore, due to the steep slopes and dense vegetation found throughout the site in conjunction with the unique configuration of the lot, a variance to the 200 foot setback requirement is

necessary in order to minimize the amount of grading and vegetation removal necessary to establish the dwelling, as well as to minimize the risks associated with wildfire.

Staff Response: Staff concurs that the shape of the property may be somewhat unique because it is "L" shaped but it is also a 20 acre parcel that does have areas that are not noted as 'Slope Hazard Areas' that could meet the setback requirements. The entire Skyline Ridge has lots with steep slopes that do not appear to be unique to this parcel. Staff does not concur that a previously cleared area is a circumstance or condition that would justify granting a variance on the property. The shape of the parcel and the terrain do not require the location of the homesite on the narrow neck of land as the applicant has stated. There may be areas with circumstances or conditions within the 20 acre parcel that do not apply generally to other areas within the 20 acre parcel, however, it appears there may be another area or areas without conditions such as steep slopes and vegetation as well as the proposed building site.

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

Applicant's Response: As discussed above, under Section .8505(1), the only suitable homesite on this property is within the narrow neck of land that requires this variance. Due to the width of the lot in this area, the zoning regulation requiring 200-foot setbacks restricts this parcel to a greater degree than other parcels in the vicinity or district as it eliminates the possibility of locating a dwelling in this area.

Staff Response: As stated earlier there are portions of the property that are wide enough to accommodate a dwelling within the setbacks. These areas may not be the ideal location for development for views because they are located in a valley, however the 200 foot setback would not restrict development of the property.

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

Applicant's Response: Properties surrounding the subject site are developed in a mixture of farm/forest and rural residential uses. Findings under Sections .2052(A)(4) and .2074(A)(1) through (3), above, evaluate the impact of the dwelling, in the proposed location, on adjoining properties. Given the topography and dense vegetation of the site, these findings demonstrate that authorization of this variance, allowing location of the dwelling as proposed, will not be materially detrimental to the public welfare, or injurious to property in the vicinity or district, or adversely affect development of adjacent properties.

Staff Comment: Staff believes the intent of the 200 foot setback requirement is to keep proposed development within the CFU zoning district away from forest practices occurring on nearby properties to protect existing forest operations against impacts of siting dwellings nearby. These new dwellings can be impacted by noise, fire and other impacts

associated with forest practices that in turn may affect how the forest and timber operations are managed and not allow them to continue in the manner that they are being managed prior to the dwelling. Staff believes by locating the development in the northernmost section of the property it is actually being pushed closer to the forested area and actually in essence being 'nestled' in between forested areas, creating a greater impact potential than other locations with similar physical conditions on the site. Staff cannot make the finding that this development area will have the least amount of impacts on the development of adjoining properties.

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

Applicant's Response: The proposed dwelling is consistent with Comprehensive Plan Policy 11, Commercial Forest Land ("The county's policy is to allow forest management with related and compatible uses") and Implementing Strategy A.1.c (dwellings not related to forest management are allowed as conditional uses.) The variance to allow the dwelling within 200 feet of a property line does not alter Multnomah County Code standards allowing a non-forest-related dwelling, which is listed in the CFU Zoning District under MCC 11.15.2052. Granting the variance will not establish a use that is not permitted in the CFU Zone. Applicable Comprehensive Plan policies are addressed in this report, below.

Staff Comment: The granting of a variance will not establish a use which is not listed in the underlying zone however Staff cannot make the finding that the variance will not affect the realization of the Comprehensive Plan by allowing development closer to areas reserved and designated for resource lands. Strategy A.1.c. states that "...dwellings not related to forest management...are to be allowed under approval criteria and siting standards designed to assure conservation of the natural resource base, protection from hazard, and protection of big game winter habitat". Staff believes that granting this variance will not assure conservation of the forest resource by locating it within the narrow portion of the property that extends into the narrow neck shaped portion of the property surrounded by forest uses.

3. STATE PLANNING GOAL 5 CONSIDERATIONS:

The following section of this Staff Report is required pursuant to ORS 197.625 §(3)(a) because Multnomah County has adopted amendments to its Comprehensive Framework Plan that had not been acknowledged by the Land Conservation and Development Commission at the time this application was submitted.

In response to the Land Conservation and Development Remand Order 93-RA-876 the Multnomah County Board on September 22, 1994 adopted the West Hills Rural Reconciliation Report (Effective date October 23, 1994), applying Goal 5 requirements to specific scenic, stream, wildlife and mineral resources in the West Hills. The West Hills Reconciliation Report is an unacknowledged amendment to the Multnomah County Comprehensive Framework Plan.

Wildlife.

The subject site includes a significant Goal 5 wildlife habitat area classified as a "primary wildlife area" for the reasons set out in the West Hills Reconciliation Report at pages V-3 through V-16. Conflict with the proposed use, and the Goal 5 analysis showing how conflicts are to be resolved to comply with Goal 5 are in the Reconciliation Report at pages V-18 through V-51. Except for findings showing how the proposal protects Goal 5 resources, which are set forth below, the findings of significance and Goal 5 analysis in the Reconciliation Report, together with the included relevant maps and tables, are hereby adopted by this reference.

Specific measures to protect primary wildlife habitat areas in the West Hills are at page VI-25 of the Reconciliation Report. These measures are applicable to this proposal which is in the Primary Wildlife Habitat and are discussed below.

Fencing should be prohibited along roadways, thus reducing barriers to wildlife movement. Design standards for fences outside of the "cultivated" area discussed below should be adopted which ensure that fences do not block passage for a wide range of wildlife species.

Applicant's Response: This request does not include any proposed fencing.

The "cultivated" area (i.e., lawns and gardens of residential lots in the primary habitat areas should be limited to one acre (consistent with fire safety standards), leaving the remaining land in the parcel in native vegetation, to be altered only in conjunction with approved forest management practices. This cultivated area should be designed to minimize the edge effect along roads.

Applicant's Response: The cultivated area will not exceed one acre on the subject site. The remainder of the land on this site will be maintained in native vegetation.

Certain introduced vegetation should be prohibited (e.g., English Ivy, Vinca, and other invasive species), even in cultivated areas.

Applicant's Response: Any introduced vegetation will be native to the area.

Erosion control standards should be adopted where there will be prolonged exposure of soils, or excavation, associated with residential development.

Applicant's Response: Erosion control methods in compliance with Multnomah County standards will be utilized during construction.

Development along significant streams should be regulated as proposed in the discussion of streams.

Applicant's Response: There are no significant streams located on or adjacent to the subject site.

The "Specific protection measures for primary wildlife habitat areas" on pages VI-25 and VI-26 do not address the "Program to Achieve the Goal" on page VI-24 which reads:

"Residential and Community Service/Conditional Uses

Standards for protection of wildlife habitat should consider various measures to ensure the maintenance and enhancement of the designated primary habitat areas as homes for various species of wildlife. Differing standards are necessary for protection of primary, secondary, and impacted wildlife habitat areas. Implementation of these standards as regards residential and community service/conditional uses should be accomplished through use of a Significant Environmental concern (SEC) overlay zone for wildlife habitat protection."

Although the subject property was not "zoned" SEC-h at the time of application, the Reconciliation Report had been adopted as a part of the County's Comprehensive Plan. In order to demonstrate compliance with the "Program to achieve the goal" in the Reconciliation Report, it has been determined by Counsel that the above language requires evaluation of the standards in the adopted Significant Environmental concern (SEC). Where a parcel to be developed contains both primary and secondary, or primary and impacted wildlife habitat areas, development activities should be limited to the secondary or impacted areas to the maximum extent feasible.

11.15.6426 Criteria for Approval of SEC-h Permit Wildlife Habitat

(B) Development Standards:

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

Applicant's Response: The proposed location for siting of the home is a non-forested area of approximately 0.75 acres in size.

Staff Response: The proposed location for development which is a 'cleared' area does not meet minimum clearance standards for fire safety.

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

Applicant's Response: The proposed home site is 1350 feet from NW Skyline Boulevard at the closest point. A right-of-way gravel road approximately 1100 feet in length provides access to the southeast corner of the property from NW Skyline Boulevard. It provides the only reasonable and practical access to the property and proposed homesite.

Staff Response: There is no location on the site that is within 200 feet of a public road, however there may be other areas on the subject parcel which may be suitable for devel-

opment that would reduce the distance from a public road.

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

Applicant's Response: The access road/driveway are approximately 2,200 feet in length. See Section C. Wildlife Conservation Plan below.

Staff Response: The private easement to the site is longer than 500 feet in length, however there may be other areas on the subject parcel which may be suitable for development that would reduce the distance from a public road.

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

Applicant's Response: Adjacent property access road greater than 200 feet from the subject property boundary.

Staff Response: The nearest access road is approximately 800' from the property boundary on tax lot 32.

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

Applicant's Response: Structures on adjacent property greater than 200 feet from the subject property boundary.

Staff Response: The only type of development occurring within 200 feet of the property boundary is the haying operation mentioned earlier.

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

Applicant's Response: No fencing is proposed.

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

Applicant's Response: Landscaping will not include any plants from the nuisance plant list. Nuisance plants that currently occur on the property (Himalayan blackberry, scotch broom, Canada Thistle) shall be removed and kept clear from a one acre area surrounding the homesite.

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

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section B and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section B.

Applicant's Response: Two non-forested areas currently occur on the property (see description of non-forested areas above). Siting a home at either of these areas will not meet the requirements of Section B. To site a home on the property within the requirements set forth in Section B would require that additional forest cover be cleared and a new driveway/access road be constructed. It is therefore recommended that the home be sited at one of the two existing non-forested areas on the property and that a wildlife conservation plan be established. It is believed that establishment of alternative conservation measures than those required under Section B will result in less detrimental impacts to the forested wildlife habitat of the property than the siting of a home within the requirements of Section B.

Staff Response: Staff will concur that the access drive/easement is required to be greater than 500' in length because of the extended private easement used to access the site. However, the staff does not believe that there are physical characteristics unique to the property that prevent minimizing the length of the access road more than the 2,200 feet that is proposed. Staff cannot make the finding that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use. Therefore, Staff cannot find Goal 5 compliance with a primary wildlife habitat area because the application has not demonstrated that there is a minimum departure from the standards in Section B.

Continued Applicant's Response: The siting of a home on the property will result in some adverse impacts to wildlife. However, impacts are not expected to be significant. The increased presence of humans on the property could result in adverse impacts to wildlife species that are intolerant to human activity. Anticipated impacts are considered to be unavoidable and expected to occur no matter where the home is sited on the property.

The greatest single impact to wildlife on the property will be the presence of domestic dogs and cats. Domestic dogs can cause serious impacts to wildlife. Dogs can prey on a wide on a variety of animals ranging from big game to rodents and birds. The presence of barking dogs can result in reduced use or avoidance of an area by wildlife. Domestic cats prey on small mammals, birds, and snakes. Repeated hunting by cats in the same area can result in locally reduced populations of some small bird and mammal species.

The limited car travel that will occur along the proposed driveway/access road is not

expected to result in any significant impacts to wildlife. The number of vehicle trips per day along the driveway/access road generated by a single residence are expected to be few. Due to the size and proposed gravel surface of the driveway vehicular travel is expected to be at a slow rate of speed. Therefore injury or death to wildlife from vehicle impact is not expected to occur.

(3) The wildlife conservation plan must demonstrate the following:

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Applicant's Response: Currently the home site is proposed to be sited at the non-forested area located at the northwestern portion of the property. No additional areas will be cleared for siting of the home. Lay down areas needed during the construction of the home will be revegetated with native plant species.

- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Applicant's Response: The clearing of vegetation associated with siting of the home will not exceed one acre in size.

- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

Applicant's Response: No fencing currently exists on the property and none is proposed.

- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

Applicant's Response: If the home is sited, at the non-forested area located at the northwestern portion of the property, the other larger non-forested area that is located in the central portion of the property could be reforested at a 2:1 or greater ratio. Reforestation with trees and shrubs to provide year round food and cover for wildlife would help to improve the overall habitat value of the property.

- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property occurs.

Applicant's Response: Currently the vegetation that occurs within the drainages is so dense that it likely prevents the use of these areas by many species of wildlife. The thin-

ning of vegetation along the drainages will improve the usefulness of these areas for wildlife. Enhancement of the drainages could occur through the thinning of the dense sapling pole red alder and big-leaf maple stand and the control of the dense understory growth with herbicide applications. Following the clearing of vegetation non-weedy trees and shrubs useful to wildlife could be planted. A detailed list of recommended plants is included in Appendix III.

- (4) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Applicant's Response: Not applicable.

Additional Applicant Comment: The proposed siting of a home on the property is expected to result in some adverse impacts to wildlife. These impacts in the form of human and domestic animal presence are expected to occur no matter where the home is located on the property. However, these impacts are not expected to be significant.

As currently proposed, the home is to be sited within a non-forested area in the northwestern portion of the property. The siting of a home at this location, requires the establishment of a wildlife conservation plan under Multnomah County Code 11.15.6426 Section B. The establishment of the wildlife conservation plan should improve the overall wildlife habitat value of the property and mitigate for any adverse impacts to wildlife as a result of siting the home on the property.

The wildlife conservation plan proposes the revegetation of non-forested areas, the planting of high value wildlife trees and shrubs, and the enhancement of the two drainages on the property. The implementation of these measures will likely improve the overall habitat value of the property and meet the requirements set forth in Multnomah County Code 11.15.6426 Section B.

COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:

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

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

Applicant's Response: The subject dwelling will generally have no impact on air quality. A well and on-site disposal system will be established on the site to serve the proposed dwelling, in compliance with all applicable standards. The dwelling location is

not within a noise impacted area and the dwelling is not a noise generator.

Staff Comment: The LFS is included as Exhibit B1.

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

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

Applicant's Response: Portions of the subject property contain slopes exceeding 20%. The proposed homesite will utilize an existing roadway easement for access. As illustrated on the attached site plan (Exhibit A1), the homesite is in one of the more level areas on the property. A completed "Geotechnical Reconnaissance and Stability Questionnaire" is attached as Exhibit A9.

Staff Comment: The Slope Hazard Map submitted by the applicant indicates that the road traverses slopes steeper than 25%. The Geotechnical Reconnaissance and Stability Preliminary Study indicates that the Maximum slope on the property is 20% which staff would conclude does not include the roadway to the site. Staff believes that the road is development and cannot find that it has been directed away from slopes exceeding 20%.

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

WATER AND DISPOSAL SYSTEM

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC

SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

Applicant's Response: The applicant plans to serve the proposed dwelling with an on-site well and an on-site disposal system. An on-site sewage verification form will be submitted at a later date. Service providers are listed on the attached application form.

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

SCHOOL

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

FIRE PROTECTION

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.

POLICE PROTECTION

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

Applicant's Response: Service provider forms for school, fire and police services are attached as Exhibit A10.

CONCLUSIONS FOR CONDITIONAL USE REQUEST

1. The application for development of this property with a single family dwelling not related to forest management does not demonstrate compliance with Multnomah County Code, the Oregon Administrative Rules or the Multnomah County Comprehensive Framework Plan.

CONCLUSIONS FOR VARIANCE REQUEST

1. The subject 20 acre parcel does not include circumstances of size and steep slopes that do not generally apply to other property in the same district.
2. The zoning requirement would not restrict the use of this property from development.
3. The authorization of the variance will not be detrimental to the public welfare or injurious to the property in the vicinity.
4. The variance requested will adversely affect the realization of the Comprehensive Plan if approved in conjunction with a Conditional Use Permit for a single family dwelling.

CONCLUSIONS FOR GOAL 5 COMPLIANCE

1. The application does not demonstrate that there is a minimum departure from the standards required to allow the use because of physical limitations to the 20 acre parcel.

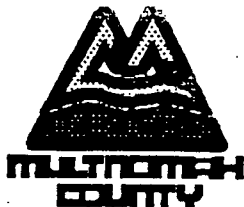
This Staff Report and recommendation was available on March 13, 1996 seven days before the March 20, 1996 public hearing scheduled before a County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.

A written decision is usually mailed to all parties and filed with the Clerk of the Board within ten days of the decision by the Hearings Officer.

Appeal to the Board of County Commissioners

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

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



DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE DIVISION
2115 SE Morrison Street
Portland, Oregon 97214 (503) 248-3043

Supplemental Staff Report

This Staff Report supplements the original staff report prepared for the Public Hearing held on March 20, 1996

Template Test

The Multnomah County Transportation and Land Use Division has been consistent in its interpretation of the center of a property being the 'center of gravity' and using the "pin method" as demonstrated at the March 20, 1996 hearing. Multnomah County demonstrated the "pin method" during the adoption of the CFU guidelines at public hearings in the fall and winter of 1992 and has consistently applied them to all inquiries regarding the template test.

Existing Dwellings within Template Test

The OAR's state that *"At least three other dwellings existing on January 1, 1993"*, Multnomah County Code states *"five dwellings exist within the 160-acre square"*. Staff recommends that a partially demolished dwelling not be counted in the template (Exhibit DD). The information that Multnomah County has from the Assessment and Taxation Records is that there was no dwelling on the property as of January 1, 1993. Any issues regarding the buildability or vesting of tax lot '36' cannot be determined under this application. In addition, Staff cannot make the determination that lots which at one time have had land use permits to build houses but no existing dwellings located on them can count in the template test. These dwellings do not exist and were not existing as of January 1, 1993. The applicant has submitted three different template overlays, one as Exhibit A6, the second as Exhibit K submitted at the hearing, and the third as Exhibit DD8. All three contain different numbers of dwellings and different locations of dwellings particularly on tax lots '22' and '32'. Staff would still request more detailed information to determine the location of these two dwellings if they are to be included in the template test. Staff has also consistently interpreted the Multnomah County Code to mean that the dwellings themselves be located within the 160 acre square, not just a portion of the parcel with the dwelling on it. As stated in the original staff report, staff can only verify 3 dwellings within the 160 acre template.

Impeding Accepted Forestry or Farming Practices

The staff report addressed the issue of aerial spraying regarding the code criteria which states that *"The dwelling will not force a significant change in, significantly increase the costs of, or impede accepted forestry or farming practices on surrounding forest or agricultural lands"*. The issue was whether or not the proposed fifty foot setback would affect the adjoining properties and their ability to spray as part of a forest management practice. The Staff is stating that the operator must leave an unsprayed strip of at least 60 feet to adjacent dwellings according to the Forest Practices Act. If the proposed home is located fifty feet from the property line, the



adjoining property could not be sprayed to it's property line, but rather ten feet in from it's property line. In other words, a portion of the forested area on the adjoining property would not be able to be sprayed because the proposed home would be located within sixty feet of the property line.

The secondary fire safety zone requires that "vegetation should be pruned and spaced so that fire will not spread between crowns of trees". The applicant has stated that they will be receiving agreements from adjoining property owners to maintain the secondary fire safety zone on adjoining properties because they do not meet these standards on-site. Staff has not reviewed these agreements and didn't review this proposal as part of the original submittal. Staff would conclude that the secondary fire break does affect the large trees and the spacing of them which affects the forestry operations which are occurring or may occur in the future on the adjoining properties.

Fire Access Standards

The applicant submitted a letter at the March 20, 1996 Hearing from the Tualatin Valley Fire & Rescue dated February 27, 1996 (Exhibit M). Staff would like to clarify that the staff recommendation regarding Multnomah County Code compliance and the State OAR's regarding road standards does not take into consideration the Fire Chief's ability to waive the access standards under the Uniform Fire Code. Staff understands that a Fire Chief does not have the mechanism to deny a building permit or development proposal, but rather they require developments to meet the Uniform Fire Code. Staff has interpreted the State OAR's regarding fire protection not only as a protection measure for the dwelling, but also to reduce the risk of wildfire to surrounding forest areas. In discussions with Fire Chiefs within Multnomah County, sprinkler systems within the dwellings are not designed to put the fire out, but rather to give the occupants of the dwelling extra time to get out alive in the case of a fire. The Fire District's purpose is to save lives and the sprinkler systems proposed assists them in decreasing the risk of deaths due to fire. However, in addition to addressing these life and safety issues, the State Code and Multnomah County Code are required to protect forest practices in those areas designated for State Planning Goal 4 protection areas, Forest Lands.

Variance Criteria

Due to the discussion at the March 20, 1996 hearing, a clarification of the Staff response to the Variance criteria that states "A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses" is needed. Staff is stating that there are some areas that are unique due to slope or natural features in places on the 20 acre parcel. But, there are not circumstances or conditions that apply to the entire 20 acre parcel that do not apply generally to other property in the same vicinity or district. The Staff report is not intended to suggest other locations that would be approvable, but it is required to make findings based on the information submitted. However, the Staff cannot reasonably make the finding that the zoning requirement would restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district because it appears from a site visit there is a cleared area that may meet the setbacks, is not steeper than 25% and is adjacent to the existing roadway. The applicant has submitted two proposed development sites within what was being called the 'Center' area at the March 20, 1996 hearing and is labeled so on Exhibit B8.

Goal 5 Compliance

On August 8, 1995 following a completeness check for the application materials submitted by the applicant on July 12, 1995 the Staff notified the applicant of the materials to be submitted to determine Goal 5 Compliance (Exhibit V) which included addressing the criteria of MCC 11.15.6426. The applicant submitted their responses to the criteria on January 4, 1996.

William C. Cox attorney at law

*Land Use and Development Consultation
Project Management*

Multnomah County
Zoning Division

SEP 13 1996

RECEIVED

September 13, 1996

Board of County Commissioners
Multnomah County
c/o Multnomah County Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214

RECEIVED

SEP 31 1996

Multnomah County
Zoning Division

8:40a.m.

Multnomah County
Zoning Division

SEP 31 1996

RECEIVED

Re: Applicant's Record submittal, Board of County Commissioners
Review

Kim Evans, Applicant
Case File: CU 7-95; HV 17-95

The following memorandum of law is offered in support of applicant, Kim Evans' request for conditional use approval of a dwelling not related to forest management.

Review of the Board is limited to the issues appealed by applicant:

The Board Order Review of the Hearings Officer decision in this matter was not timely made. Therefore, the scope of review is limited to those issues raised in applicant's Notice of Review. Applicant's notice was timely filed with the Board.

Multnomah County Code (MCC) § 11.15.8260(A) regulates the period in which an appeal or notice of review must be filed with the County. That section states:

Decisions of the Planning Commission or the Hearings Officer shall be *final at the close of business on the tenth day* following submittal of the written decision to the Clerk of the Board under MCC .8255, *unless*

(1) A Notice of Review from a party is received by the Planning Director... or

(2) The Board, on its own motion, orders review under MCC .8265. (emphasis added).

In this matter, the decision of the Hearings Officer was submitted to the Board Clerk on July 3, 1996. The last day to appeal the decision would have then been July 13, 1996. Because of an error by the County planning staff in delivering notice, the last day to appeal was extended to July 22, 1996. Applicant filed a Notice of Review on July 12, 1996. The Board of Commissioners did not Order a review of the Hearings Officer decision until July 25, 1996, after the extended ten day period for appeal had expired. Neither the County Planning Department, nor any opponents filed a Notice of Review to appeal the Hearings Officer decision. Because the Board was not timely in Ordering review of the Hearings Officer decision and the County Planning Department did not appeal the Hearings Officer decision, the only timely and effective appeal was the Notice of Review submitted by applicant. MCC .8270(G) provides that:

Review of the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B).

Therefore, in accordance with MCC .8620(A) and MCC .8270(G), the only issues reviewable are those issues timely raised on appeal by the applicant. Specifically this review should be limited to the Hearings Officer conclusion related to MCC .2074(A)(1) which

are located under item number 9, page 13 of the decision; MCC .2074(A)(4) also located under item number 9 pages 14/15 of the decision; and, MCC 11.15.8505(A)(2) located on pages 20/21 of the decision, as well as the Hearings Officer decision to allow a letter from DLCD into the record.

Determination by the Board that the Scope of Review is *de novo* deprives applicant of Constitutionally protected due process rights:

The determination of the Board that this review hearing will be *de novo* deprives applicant of due process rights provided for in Multnomah County Code. MCC 11.15.8270 governs the Scope of Review in a hearing before the Board of County Commissioners. MCC .8270 provides:

(A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

(1) On the record; or

(2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

...

(C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below ...

(E) The Board may hear the entire matter *de novo*: or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decisions, consider:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

The Board is relying on Resolution 95-55 for its authority to hear this review *de novo*. Resolution 95-55 neither wipes out the due process protections afforded by MCC .8270, nor replaces the required findings of MCC .8270. Only through the passage of an ordinance can the board alter the due process protection afforded to applicant in the Multnomah County Code.

Resolutions are not the equivalent of legislation. They do not have the full force and effect of law.

The power of the legislature to effectively legislate by resolution is confined within very narrow limits. ... it can not go outside and legislate generally on matters involving property or other rights. As to such matters, its resolutions have only the effect of an expression of opinion and no more. 'A resolution is not a law, but merely the form in which the legislative body expresses an opinion.' *Rowley v. City of Medford*, 132 Or 405, 414, 285 P 1111 (1930).

Multnomah County Home Rule Charter provides that all legislative action by the County shall be by ordinance, not by resolution. The procedures surrounding the adoption of a resolution do not equate with the procedural protection required for the adoption of an ordinance. Even Resolution 95-55 stated that it shall be implemented only on a trial basis and then be evaluated. After the evaluation period expired, if the Board wanted to continue the effect of the resolution, the Board should have taken legislative action to officially adopt the resolution's terms as an ordinance. The procedural protection afforded to an applicant in MCC .8270 cannot be taken away at the

whim of the Board through the adoption of a resolution. The Board's failure to adhere to the Code review provisions and procedures has substantially prejudiced the applicant.

Because of the lack of procedural protections afforded in the resolution process, by declaring all review to be de novo, the Board has redefined its procedural obligations to the applicant. Contrary to the requirements in MCC .8270, the Board has failed to make the required findings or considerations ordered in MCC .8270 (E). Such action has denied the applicant procedural due process protections.

If the Board adhered to Code requirements it would have been extremely difficult to justify de novo review in this matter. First, the applicant, the only party to timely file Notice of Review, requested review be limited to facts in the record. Second, the granting of a de novo hearing has resulted in more prejudice to the applicant than any other party who participated before the hearings officer or staff. Third, all the evidence being presented to the Board on its de novo review is evidence that was available and could have been presented at the time of the initial hearing.

The lack of due process afforded applicant throughout this appeal continues to occur. Applicant was only recently presented with a copy of an undated, unsigned form document requesting action of the Multnomah County Board. Applicant did not receive a copy of this document until after the August 27, 1996 Board hearing. Applicant was not made aware of the several issues the County Planning Staff intended to challenge, let alone of the County's staff intention to appeal, nor was she made aware of the scope of the Board ordered review. For applicant's Notice of Review, she was required to plead with specificity the issues

being appealed to enable the Board to respond. The same notice and issue clarification was not provided to the applicant. This system of justice does not create an even playing field. It was not until the hearing began did applicant learn that the County Planning Staff had requested the Board to review each and every decision of the Hearings Officer. These surprise tactics have no place in a quasi-judicial process and have resulted in a substantial prejudice and deprivation of applicant's due process rights.

Declaring this review *de novo* has opened up the review to a degree that was not necessary, nor needed for its proper and effective resolution. The failure to consider the requisite factors in ordering *de novo* review has resulted in a substantial prejudice, financial burden, and denial of due process to the applicant. The action of the County is exactly what was being criticized when former Chief Justice Peterson stated:

"under our monstrous system, the most intelligent layer rarely can advise the client with any measure of confidence. The wealthy client risks his fortune by venturing into the morass of review of a public bodies action. The middle class and the poor can't afford the risk." *Forman v. Clatsop County*, 297 Or 129 (1984).

Written and Oral Testimony of individuals not properly before the Board should be stricken from the record:

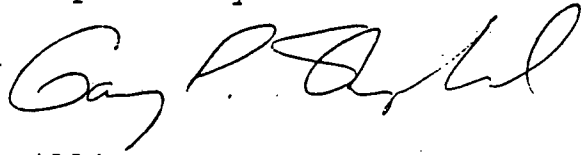
The admission of additional testimony by individuals who did not appear or submit evidence prior to the record of the Hearings Officer closing should be stricken from the record before the Board. MCC 11.15.8270 governs the scope of review. This section is designed to protect a party's due process rights. MCC .8270(E) provides that the Board may listen to additional testimony or new evidence "if it is established that the

additional testimony or other evidence could not reasonably have been presented at the prior hearing." This section requires "new" participants to present evidence and the Board to find a good reason why they failed to appear and participate earlier in the process. There is no evidence directed towards this standard nor any finding made by the Board that would justify the participation of either Arnold Rochlin or Christopher Foster at this stage in the proceeding

If these and other similarly situated individuals wanted to participate in this decision and voice their concerns, they were provided with ample notice and opportunity to do so at the hearing officer level. Neither Mr. Rochlin nor Mr. Foster chose to do so.

The standards and procedural protections in MCC .8270 are designed with the due process interests of applicants in mind. Participation at an earlier stage by interested individuals would place applicants on notice of arguments intended to be made and provide applicant with ample time to prepare. For the Board to allow individuals to participate who are appearing for the first time at the review hearing before the Board, allows individuals to literally lay in wait and spring upon an applicant at the last moment. Allowing individuals who have not appeared or submitted testimony prior to the Board hearings without establishing the foundation that the additional testimony or other evidence could not reasonably have been presented at the prior hearing is contrary to the Code and amounts to a deprivation of applicant's due process rights. The review process has been altered by the Board to favor opponents and substantially prejudiced the applicant.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Gary P. Shepherd". The signature is fluid and cursive, with the first name "Gary" being more prominent.

William C. Cox

Gary P. Shepherd

Of Attorneys for Applicant

William C. Cox attorney at law

*Land Use and Development Consultation
Project Management*

September 13, 1996

Board of County Commissioners
Multnomah County
c/o Multnomah County Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214

Re: Applicant's Record submittal, Board of County Commissioners
Review

Template test

ORS 197.646's effect on County regulations not incorporated
after state amendments

Compliance with Statewide Goal 5

Kim Evans, Applicant

Case File: CU 7-95; HV 17-95

The following memorandum of law addresses the issues of: (1) which template standards, the state's or the county's, applies in review of this application, (2) whether ORS 197.646 prevents County regulations from applying after the state has amended its administrative rules but the County has failed to incorporate the amended rules into its land use regulations, and (3) whether applicant has demonstrated compliance with Statewide Planning Goal 5 and effective implementing regulations. This submission should be read in conjunction with memorandums of law that are part of the record and relied in part by the Hearings Officer in reaching his decision on these three issues. (See Exhibits DD, II, and PP).

Template Test:

Applicant is in agreement with the Hearings Officer ruling on the issue of the applicable template test standard. "Since the County has not yet amended its land use regulations implementing the 1994 amendments to Goal 4 and its administrative rules, ORS 197.646(3) requires that the amended goal and administrative rules 'shall be directly applicable to the local government's land use decision.' Therefore, the applicable template test is found in OAR 660-06-027." This result is demanded by the plain language of the statute.

Prior to acknowledgment of local comprehensive plans and implementing regulations, land use decisions must be made in compliance with statewide goals. ORS 197.175(2)(c). Local government's have long relied on the proposition stated in *Byrd v. Stringer*, 295 Or 311 (1983), that statewide goals do not apply directly to land use decisions by local governments with acknowledged land use legislation. To some extent, this proposition has been legislatively abrogated with the adoption of ORS 197.646.

ORS 197.646 was enacted as Oregon Laws 1991, chapter 612, section 7. The statute's effective date was after the *Byrd* decision, as well as being after *Foland v. Jackson County*, 311 Or 167 (1991), where the court most recently confirmed the principals in *Byrd*. ORS 197.646 was an attempt by the legislature to promote uniformity in the regulation of land use activities. While it is recognized that local governments play an important role in the administration of land use regulations, the state legislature, within its power, enacted ORS 197.646 to

prevent inconsistencies from municipality to municipality from interfering with the states attempt to regulate land use activities.

ORS 197.646 provides in part:

(1) A local government shall amend the comprehensive plan and land use regulations to implement new or amended statewide planning goals, commission administrative rules and land use statutes when such goals, rules, or statutes become applicable to the jurisdiction.

(3) When a local government does not adopt . comprehensive plan or land use regulation amendments as required by subsection (1) of this section, the new or amended goal, rule or statute shall be directly applicable to the local government's land use decision. (emphasis added).

ORS 197.646 unequivocally and unambiguously states that when a local government does not adopt land use regulations to implement amended state administrative rules when such rules become applicable, the amended rule shall be directly applicable to the local governments land use decision. The opposition argues that this rule does not apply when the local governments have unacknowledged but more restrictive implementing regulations. Such an interpretation cannot be found in the plain terms and meaning of the statute.

When called upon to interpret a statute, Courts must first examine the statutes actual words. *Dept. of Human Resources, Mental Health and Development Disability Services Div. V. AFSCME Council 75*, 125 Or App 625, 866 P2d 498 (1994). If the intent of the legislature is clear from the plain language of the statutory provision, further inquiry is unnecessary. *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606,

857 P2d 1143 (1993). The plain language of a statute must be construed to mean what it says. *Myrick v. Freuhauf Corp.*, 13 F. 3d 1516 (1994). Here, the legislature has spoken directly and unambiguously to the precise questions at issue.

If the legislature wanted the statute to read as the opposition and staff argue, they would have included the terms "more restrictive" or "less restrictive" in ORS 197.646(1). Rather than ending with "when such goals, rules, or statutes become applicable to the jurisdiction," the statute would need to read when such rules are more restrictive than local regulations. But the legislature did not include the language the opposition and staff would now have the Board read into the statute. No where in the law does it say that the "more restrictive" provisions are not subject to acknowledgment procedures or the requirements of ORS 197.646. ORS 174.010 is the general rule for construction of statutes and contains a statutory enjoiner "not to insert what has been omitted, or to omit what had been inserted." Thus, the Board is prohibited by ORS 174.010 from reading a more restrictive or less restrictive requirement or standard into the statute.

ORS 197.646 is a statute that on its face requires certain state legislative statutes and regulations will apply directly to local government decisions before post acknowledgment amendments have been incorporated in to the local government's comprehensive plan and land use regulations. The statute cannot be read any other way. Such a result will not lead to absurd results as argued by the opposition.

As discussed before, ORS 197.646 was an attempt by the legislature to promote uniformity in the regulation of land use activities. The state legislature enacted ORS 197.646 to prevent

inconsistencies from municipality to municipality from interfering with the states attempt to regulate land use activities. It ensures that until a local government has its implementing regulations pursuant to an amended state goal acknowledged, state law will control a land use decision. It is not a question of more restrictive or less restrictive. The result legislature intended is clear from on the face of the statute.

The need for uniformity in land use regulations is never more prevalent than in the regulation of forest zones. The state adopted OAR 660-06-027 as a means to ensure the balance of competing interests within forest zones. It is often the case that tracts of land overlap from one county to another, resulting in different and conflicting regulation affecting a single tract of land. ORS 197.646 removes conflicts over the applicable law until a local government has its implementing regulations acknowledged by making the state law supreme.

Prior to July 1996 amendments, Multnomah County's 1995 zoning regulations were last amended in 1992. Multnomah County Ordinance No. 743 amended the Commercial Forest Use Zoning District to conform with 1990 amendments made by LCDC regarding OAR 660, Division 6 and Goal 4 lands. The County's attempt to regulate dwellings not related to forest management is found in MCC 11.15.2052. MCC 11.15.2052 sought to conform with and carry out the purposes of OAR 660-06-028. OAR 660-06-028 was repealed by the state in the 1994 amendments to the Oregon Administrative Rules, found in OAR 660-06-027. Thus, the Multnomah County regulations in effect when applicant submitted her application were based on a state rule that is no longer in effect. The significance of this fact cannot be overlooked. Multnomah County

has just recently amended it's land use regulations to implement 1994 amended statewide goals and rules as required by 197.646 and OAR 660-06-000(2)(c). The law that was effective at the time the application was submitted controls. ORS 197.646 (1) and (3) demand that state law apply to this land use decision.

For the Board to Read the statute as the opposition and staff argue, would be to rewrite a State administrative rule that is clear and unambiguous in its directive. The Board cannot alter the meaning and effect of a state administrative regulation just because it may impact a County's desired policy. ORS 197.646 is beyond a matter of merely County concern. Separation of powers principals establish it is the job of the Legislature to legislate and establish policy. It is not the job of the Board or even Article III Courts to determine whether a piece of legislation is good policy or bad. This would involve the Board exceeding its authority, and violating separation of powers principals.

Applicant agrees with the Hearings Officer that the statute is unambiguous and leaves no room for interpretation. As demanded by 197.646 (1) & (3), because the County has not yet obtained acknowledgment for its implementing regulations pursuant to the amended Goal 4 administrative rule, the states test found in OAR 660-06-027 shall be directly applicable to the local government's land use decision.

ORS 197.646 is mandatory:

Applicant does not, in this case, need to argue the authority of local governments to adopt more restrictive regulations. The staff, DLCD, and the opposition would have the

Board believe that ORS 197.646 does not prevent the County's template standards from applying solely because the County may, in some circumstances unique to the local governments, adopt regulations more restrictive than state law provides for. The County and DLCD claim that before post-acknowledgment Goal amendments are incorporated into local land use regulations, local governments are free to follow more restrictive local ordinances, rather than the amended state goals and regulations. There is no statutory authority for this argument. The County and DLCD cite to *Dilworth* and other similar cases for such authority. The Hearings Officer has found, and the applicant agrees, that the hold in *Dilworth v. Clackamas County* does not apply in this case.

Although the *Dilworth* case is factually similar, in *Dilworth*, LUBA was not called upon to consider the effect of 197.646 (1) & (3). In the case before the Board, Multnomah County failed to amend its land use regulations to implement the 1994 Oregon Administrative Rule amendments until nearly two and a half years after the state amended its Goal 4 administrative rules, and well after the applicant's application was submitted.

Dilworth is of no value here because application of ORS 197.646 is the central issue. Furthermore, neither of the cases relied upon by Sandra Duffy, Multnomah County Counsel (*Kola Teppe v. Marion County*, *Spathas v. Portland*, *Brewster v. Keizer*, nor *Zorn v. Marion County*) deal directly with the impact and meaning of ORS 197.646 (1) and (3). These cases deal with the application of statewide goals and administrative rules after acknowledgment of local implementing regulations has occurred. They do not deal with the situation presented here where a local

government has failed to amend its land use regulations to implement amended state administrative rules, when such rules become applicable to the jurisdiction. In such situations, ORS 197.646 controls. Thus the cases cited by the County and DLCD are of no use.

ORS 197.646 simply says if the County does not follow the procedures available to and required of it, state law will govern. These procedural protections ensure applicant's due process rights are protected and cannot be ignored by the Board. Because the County took nearly two and a half years to go through the acknowledgment procedures after state law was amended, they are subject to the provisions of ORS 197.646. The state template test controls this review.

In addition, applicant would like to reassert her position that DLCD is not properly before the Board, as testimony submitted by DLCD was improperly allowed to become part of the record. In support of her position, applicant urges the Board to review applicant's motion to strike the DLCD letter from the record, entered as Exhibit PP.

Goal 5 and its administrative rules apply directly to this application:

Applicant agrees with the Hearings Officer determination that Goal 5 and its administrative rules apply directly to this application. In making this determination the Hearings Officer relied in part upon a submission by applicant, entered as Exhibit II. Applicant hereby incorporates Exhibit II by reference.

Only the laws that are in effect at the time an application is submitted are applicable in review of a land use application. MCC 11.15.6426, establishing the SEC overlay district and SEC-h

(wildlife habitat), was unacknowledged and not effective when the applicant submitted her application. It is improper for the County to apply MCC 11.15.6426 to this application.

Ordinance No. 832 amended the Significant Environmental Concern (SEC) section of the Multnomah County Code and adopted the ordinance as part of the Multnomah County Comprehensive Framework Plan. When the application was submitted, these amendments to the County Comprehensive Plan had yet to be acknowledged by the Land Conservation and Development Commission. ORS 197.625(3) provides:

- (a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance
- (b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.

The "home rule charter" of Multnomah County, Chapter V. Ordinances, § 5.50 states that non-emergency ordinances shall be effective on the 30th day after it is signed by the Board of Commissioner Chair², unless a later date is provided for, or it is voted on by the county. Ordinance No. 832 was signed by the Multnomah County Chair on September 7, 1995. Thus, the Comprehensive Plan amendments in Ordinance No. 832 involving MCC 11.15.6426 did not become effective until October 7, 1995.

Only those laws that are legally effective according to local ordinance, whether acknowledged or unacknowledged, can be applied to a land use application. As of July 12, 1995, when this application was submitted, the County had neither acknowledge, nor effective SEC overlay implementing regulations.

Because the County neither had acknowledged nor effective SEC overlay implementing regulations, Goal 5 and its implementing regulations must apply. ORS 197.625 (3) (b). Applicant reached this conclusion based on the following timeline of events.

According to Ordinance No. 832, the County adopted Ordinance No. 801, which included MCC 11.15.6426, establishing Significant Environmental Concern overlay districts, and SEC-h(wildlife habitat). Ordinance No. 801 implemented the previously adopted Ordinance No. 797 (the "West Hills Reconciliation Report"). In February of 1995, LCDC issued reports declaring County Ordinances Nos. 797 and 801 among others, deficient as not meeting the requirements of Goal 5. In response to this, Multnomah County passed Ordinance No. 832 amending Section 11.15.6400 et. Seq. Of the Multnomah County Zoning Code. These standards, which include SEC-h (wildlife habitat) standards, remain unacknowledged, and, as stated above, did not become effective until after the application was submitted. It was thus improper for Multnomah County Staff to apply unacknowledged and ineffectual standards in reviewing applicant's request.

Applicant agrees with the Hearings Officer determination that the applicant can comply with the requirements of Goal 5. Biological studies and information prepared by A.G. Crook establish this fact. Applicant hereby incorporates the SEC-h report, entered as Exhibit B6, by reference.

At the August 27, 1996 hearing, opponent Arnold Rocklin, brought to the Boards' attention MCC .6420. Even though applicant argues in an attached memo that Mr. Rochlin was not properly before the Board, applicant, without waiving her other arguments, will address Mr. Rochlin's concerns. The decisions of the Hearings Officer regarding compliance with MCC .6420 was not

properly appealed in accordance with MCC .6416. Neither during applicant's pre-application conference, nor at any time thereafter, was it brought to applicant's attention that the criteria found in MCC .6420 needed to be addressed. The staff report and Hearings Officer decision also lack analysis with respect to MCC .6420. While neither the Hearings Officer, nor staff, specifically addressed it, the record before the Hearings Officer clearly establishes that applicant meets the standards in MCC .6420 (B), (C), (D), (E), (F), (G), (M), (N), (O), (P), and (Q). MCC .6420 (A), (H), (I), (J), (K), and (L) are not applicable to applicant. This fact is also established by evidence from the record before the Hearings Officer.

MCC .6420 (B), (C), (D), and (M):

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

Comment: Applicant meets this standard. The site is presently under a forest management plan and has recently been harvested and replanted. The area that applicant's proposes to build upon was identified as a clearing under the forest management plan. Applicant proposed homesite will result in the least amount of forest land being disturbed. See A.G. Crook, SEC-h permit application and Land Development Consultants submissions for more detail.

(C) The harvesting of timber on lands designated SEC shall be conducted in a manner which will insure that natural, scenic, and water shed qualities will be maintained to the greatest extent practicable or will be restored within a brief period of time.

Comment: Applicant meets this standard. Applicant has no immediate intention to harvest any trees that will be detrimental to the areas qualities. Applicant will conduct forest practices that will aid in tree growth and the productivity of the forest on the property. See A.G. Crook SEC-h permit report.

(D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Comment: Applicant meets this standard. Applicant has presented significant evidence that the area chosen in which to locate a dwelling is the area that best achieves this standard. Applicant has done significant studies on alternative housing locations at the request of the County staff and Hearings Officer. The site chosen was based upon input from professional, experts, and neighbors as to the best location for a home on the site. All the studies and comments point to the Northwest location as the site that best achieves the balance sought by the County. Applicant has presented evidence that the Northwest location best promotes forest practices as it disturbs the least amount of forested area. No trees would require removal to site a home there. Other sites looked at would require either significant tree removal, significant grading, and other disturbances to the land. These activities would not only be detrimental to the land, and increase erosion potential, but would be cost prohibitive to the applicant.

It has been the County's staff contention that the applicant has not adequately addressed alternative site locations. Not

only at the hearings officer level, but again at the County Board level, staff continues to represent that applicant has not addressed alternative site locations. Taken in its best light, such a statement is designed solely to mislead the Board. Applicant has gone out of its way to address each and every alternative homesite suggested by the staff. The record contains several professionally done evaluations of the impacts building a home on the other examined sites would have on this land. See the record. Applicant has complied with each County staff request and evaluated each alternative site identified by staff. Yet the County staff is alleging other sites exists. No other homesite identified by staff will better balance functional considerations and costs with the need to preserve and protect areas of environmental significance than the one proposed by applicant.

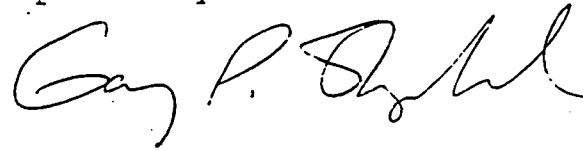
(M) Areas of erosion or potential erosion shall be protected from loss by appropriate means which are compatible with the environmental character.

Comment: Applicant meets this standard. Applicant has proposed to locate her home in an area where the construction will have the least impact on the soil and will not increase the possibility of erosion. The area is relatively flat and already cleared. Alternative site locations will require significant cut, fill, and grading, and retention because of the steep slopes present. Applicant has provided substantial evidence to this fact.

Evidence in the record as well as evidence presented at hearings before the Board has and will establish that applicant meets or exceeds the standards in MCC .6420. Applicant meets all

the related Goal 5 standards subject to the Board's review. Mr.
Rochlin's assertions otherwise have no basis in fact or law.

Respectfully Submitted

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

William C. Cox
Gary P. Shepherd
Of Attorneys for Applicant

FACSIMILE

RECEIVED

SEP 13 1996

Multnomah County
Zoning Division

Prior 10:12am

Date: 9-13

To: Susan Muir or @ fax # 248-3389
person receiving/handling this in her absence

From: Kim Evans

Message:

Please incorporate this into
the record, which is closed
as of 4:30 today.

Call to confirm you've received
this at (647-5861)

Number of pages including cover sheet: 2

Please respond X to above

Call 503-645-5544 if this transmission is incomplete.

Our fax # is: 503-645-8156

(Please incorporate this in the record)

Meeting with Susan Muir on Property.

As we walked down to the cleared area that she was suggesting to build on, she saw the stakes placed from the south property lines. Susan mentioned we could get a variance there, which is identical to the application site. We then stated that the plan for this site was for a mini-pasture & lawn area which would not hinder the road that exists. She agreed, and ultimately stated she did not know how to "word it" to indicate the clearing unbuildable. She then agreed to meet with Stacy Warren to work this out, which this meeting never took place. The application site was all staked out for her, yet she didn't feel it was important to walk up to it to discuss that site. She left agreeing the clearing was unbuildable, agreed to meet with Stacy Warren, and didn't feel it "necessary" to walk up to the site which is the application site.

List of Information Prepared by LDC on Alternative Homesites

(These items are in addition to the Applicant's Statement dated July 11, 1995 and the Applicant's Supplemental Statement dated January 3, 1996).

- Letter to Gary Clifford, Multnomah County Planning, dated January 18, 1996.
- "Narrative" dated March 27, 1996 and "Site Plan of Potential Alternate House & Driveway Locations" dated March 26, 1996.
- "Narrative - Alternative Building Site" dated May 2, 1996 with a colored map of development limitations and a site plan of an alternative house and driveway location dated May 2, 1996.
- "Supplemental Comments Regarding Homesite Location" dated May 17, 1996 with the following exhibits: Exhibit A - Washington County Zoning Map (District "A" - quarry site), Exhibit B - Washington County CDC Section 379, Mineral & Aggregated Overlay District, Exhibit C - Site Plan with District "B" boundary (impact area of District "A"), Exhibit D - Letter dated May 16, 1996 from Agra Earth & Environmental, Inc., and Exhibit E - Letter, not dated, from Mike Pihl Logging.

LDC
SW/sw

Notes of Meeting at Property Site
May 6, 1998

Parties present included Kim Evans, property owner, Fred Bender, client, and Susan Muir, Multnomah County Planner.

Alternate site was already staked by Kevin & Fred Bender. Susan Muir seemed to agree that this alternate location was no better than that being proposed. She wants to see an additional statement/report addressing the criteria with very specific arguments as to why this alternate location is no better than the proposed location and that the proposed location is the first/closest buildable site.

Susan Muir mentioned that she had received a letter from a private aggregate company regarding the house location. We were unable to determine the aggregate site location and proximity to the property at this time. She will fax over copy of the letter.

LDC
SW/sw

Notes of Meeting with Susan Muir at Mult. Co.
May 7, 1998

Discussed the County's siting standards. To alter staff's position on this application she would need to see a convincing argument that the proposed location is the best location, that other alternate sites are not buildable ("lesser of evils"). Her opinion is that this is not possible to demonstrate.

If continuing with the proposed homesite location, follow up on quarry site. Document Washington County's zoning and standards. Additional comments from the quarry owners regarding the homesite may be helpful to show interference with mineral resources. Additional comments from property owners to the south may also be useful to show interference with their agricultural/forestry resource uses. In this district, the County is most concerned about minimizing impacts to forestry resources. Interference with mineral resources and agricultural resources is less important than interference with forestry resources, in the County's interpretation.

May also be helpful to have additional comments from Tualatin Valley Fire & Rescue that the alternative house locations are no easier for them to provide service to than the proposed location, and additional comments from the Oregon Department of Forestry & Tualatin Valley Fire & Rescue that proposed fire breaks will be adequate.

LDC
SW/sw

William C. Cox attorney at law

*Land Use and Development Consultation
Project Management*

RECEIVED
SEP 18 1996

Multnomah County
Zoning Division

September 18, 1996

Board of County Commissioners
Multnomah County
c/o Multnomah County Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214

Re: Applicant's Record submittal, Board of County Commissioners
Scope of Review

Kim Evans, Applicant
Case File: CU 7-95; HV 17-95

The following memorandum of law is in response to testimony submitted by Arnold Rochlin. Applicant finds Mr. Rochlin's testimony highly suspect, drawing legal conclusions without support in law. Specifically applicant would like to address the proper scope of review before the Board of County Commissioners.

The scope of review in this matter is limited to the issues timely appealed by applicant. Mr. Rochlin cites to *Century 21 Properties v. City of Tigard*, 17 Or LUBA 1298 (1989) for the proposition that upon a proper motion, the Board can review issues on appeal not raised by applicant. Applicant, in this case, need not dispute that the Board, upon a proper motion, can review issues not appealed by applicant. The fact is here, the Board's motion to review the Hearings Officer decision was not timely, and therefore not proper. Therefore, the scope of review

is limited to those issues raised in applicant's timely filed Notice of Review.

Applicant would like to direct the Boards' attention to *Century 21 Properties, Inc., v. City of Tigard*, 99 Or App 435, 783 P2d 13 (1989), reversing and remanding the Land Use Board of Appeals case cited by Mr. Rochlin, but ignored in his analysis. A copy is attached to this memorandum. This case is factually and legally on point with the case now before the Board and therefore dictates the scope of review in this matter.

There, as here, the reviewing body acting on its own motion, took review of an earlier approval decision. There, as is here, the applicant argued the reviewing body did not initiate review within the time allowed by code, and that therefore, the earlier approval decision had become final. In *Century 21*, the Court, reversed LUBA's decision affirming the Tigard City Council's approval, and agreed with applicant "that the Council's review was untimely." *Century 21 Properties, Inc.*, 99 Or App at 437. The Court ruled that Tigard City Council did not initiate review within the ten days prescribed by City Code and therefore the planning commission's decision became final.

Tigard City Code provides that "review of a planning commission decision may be initiated, *inter alia*, if the council, 'on its own motion, seeks review by voice vote within ten days of mailed notice of the final decision.'" *Century 21*, 99 Or App at 437 (citing Tigard development code Section 18.32.310(b)(2)). Tigard City Code in 18.32.310(b)(1), also provides the applicant may appeal by filing a notice of review within the ten day period.

In *Century 21*, the City council did not initiate review by motion, although applicant did, within the required ten day

period, but purported to do so at a later meeting. See *Century 21*, 99 Or App at 437. There, the City argued that council's and LUBA's decision should nevertheless be affirmed because the "applicant brought a timely appeal to the council from the commissioner's decision and that the council could have taken the same action in that context as it did on its own motion."

Century 21, 99 Or App at 439. In response, the Court held:

"Without deciding whether the council could have done so (or whether an undecided appeal to the council is now pending), we conclude that the council *did not do so*. It acted on its own but untimely motion pursuant to section 18.32.310(b)(2). That is a jurisdictional defect, and the fact, if such it be, that the same substantive decision could have been made though a different route does not cure the defect." *Century 21*, 99 Or App at 439.

Similar to Tigard's development code, Multnomah County Code (MCC) § 11.15.8260(A) provides:

Decisions of the Planning Commission or the Hearings Officer shall be *final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board* under MCC .8255 unless

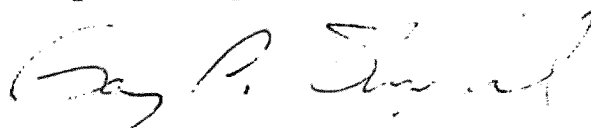
- (1) A Notice of Review from a party is received by the Planning Director... or
- (2) The Board, on its own motion, orders review under MCC .8265. (emphasis added).

As were the facts in *Century 21*, here the Board could have invoked its own review authority within the mandated 10 day period, but *did not do so*. The decision of the Hearings Officer was submitted to the Board Clerk on July 3, 1996. The last day to appeal the decision would have then been July 13, 1996. Because of an error by the County planning staff in delivering

notice, the last day to appeal was extended to July 22, 1996. Applicant filed a Notice of Review on July 12, 1996. The Board of Commissioners did not Order a review of the Hearings Officer decision until a meeting on July 25, 1996, after the extended ten day period for appeal had expired. As concluded by the Court of Appeals in *Century 21*, this is a "jurisdictional defect." Because the Board was not timely in Ordering review of the Hearings Officer decision, and neither the County Planning Department nor opponents appealed the Hearings Officer decision, the only timely and effective appeal was the Notice of Review submitted by applicant.

Therefore, the only issues reviewable by the Board in this matter, are those issues appealed in applicant's notice of review. With respect to the other decisions of the Hearings Officer not appealed by applicant, including his interim ruling regarding the template test and Goal 5 compliance, they have become final. To review elements of the Hearings Officer decision not appealed by applicant would, in this matter, violate County Code and established judicial precedence, resulting in substantial prejudice to applicant's rights.

Respectfully Submitted

A handwritten signature in dark ink, appearing to read "Gary P. Shepherd". The signature is fluid and cursive, with the first name "Gary" and last name "Shepherd" clearly distinguishable.

William C. Cox
Gary P. Shepherd
Of Attorneys for Applicant

435

Argued and submitted October 18, reversed and
remanded November 22, 1989, reconsideration
denied January 5, petition for review denied
February 22, 1990 (309 Or 334)

CENTURY 21 PROPERTIES, INC.,
Petitioner,

v.

CITY OF TIGARD,
Respondent.

(LUBA 89-043; CA A61910)

783 P2d 13

[Syllabi and synopses not included]

Judicial Review from Land Use Board of Appeals.

Paul G. Ellis, Portland, argued the cause for petitioner. On the brief was Forrest N. Rieke, Portland.

Jeff H. Bachrach, Portland, argued the cause for respondent. With him on the brief was O'Donnell, Ramis, Elliott & Crew, Portland.

Before Richardson, Presiding Judge, and Newman and Deits, Judges.

RICHARDSON, P.J.

Reversed and remanded.

RICHARDSON, P.J.

Petitioner seeks review of LUBA's affirmance of the Tigard city council's approval of an application to develop an apartment complex on property adjacent to petitioner's. Acting on its own motion pursuant to section 18.32.310(b)(2) of city's community development code, the council took review of the planning commission's earlier approval decision and added as a condition of approval that the applicant dedicate a right of way for street purposes along the boundary between the applicant's and petitioner's properties.¹ Petitioner contends that the council did not initiate review within the time allowed by section 18.32.310(b)(2) and that, therefore, the planning commission's decision had become final. Petitioner also argues that the added condition of approval will result in an unconstitutional taking of its property. LUBA rejected petitioner's contentions. We agree that the council's review was untimely. We therefore reverse, without reaching petitioner's taking argument.

Section 18.32.310(b) (2) of the development code provides that review of a planning commission decision may be initiated, *inter alia*, if the council,

"on its own motion, seeks review by voice vote within ten days of mailed notice of the final decision."

Section 18.32.270 provides that notice of planning commission decisions "shall be mailed to the applicant, to all the parties to the decision and shall be made available to the members of the council." The council did not initiate review within ten days of the mailing of notice to the participants, but purported to do so at a later meeting held less than ten days after the council members received an agenda that referred to the planning commission's action.

City argues, and LUBA concluded, that the ten-day period under section 18.32.310(b)(2) does not start to run until

¹ The city planning director had imposed that condition. On the applicant's appeal, the planning commission concluded that the applicant could satisfy the roadway requirement by a private driveway rather than a dedicated street. Petitioner contends that, under the code, the condition of a public street will require that it dedicate land to widen the roadway in the event that it develops an apartment complex on its property.

the decision is "made available" to the council members pursuant to section 18.32.270. Petitioner contends that the time begins to run when "mailed notice" is given to those entitled to receive it under section 18.32.270. We agree with petitioner. Section 18.32.270 specifies that notice is to be mailed to the applicant and other parties; the decision or notice of it is to be "made available" to council members, but nothing needs to be mailed to them. Section 18.32.310(b)(2), in turn, makes "mailed notice" the event that triggers the time for the council to initiate review on its own motion.

City and LUBA reasoned that the two sections fit together logically only if the "availability" of notice to the council members is the event from which the council's initiation of review is timed. However, there is nothing ambiguous in the two sections to leave room for that interpretation. There is also nothing illogical in a literal reading of the sections. They appear to contemplate that an informal mode of notice to the council members is sufficient to assure that they will be apprised but that the council's time for initiating review should coincide with the ten-day period, dating from the sending of notice, within which private parties may appeal a commission decision to the council under section 18.32.310(b)(1).

City relies on *League of Women Voters v. Coos County*, 82 Or App 673, 729 P2d 588 (1986), and argues that a "party's appeal clock cannot begin until the party has received proper notice." That reliance does not succeed, because the council is not a party. We said in *League of Women Voters*:

"[T]he variety and informality of local recordkeeping procedures give the decisionmaking bodies and their agents the familiarity that the parties who appear before them do not have with where the information resides in their courthouses and city halls. Although we suggest no evil motivation in this or in the generality of cases, the relationship between parties who seek to appeal a county's land use decision and officials of the county is hardly the same as the relationship between the clerk and the parties to a civil action. In the land use context, the county is the deciding body as well as the recordkeeper." 82 Or App at 679.

No comparable remoteness from or presumption of unfamiliarity with city's decisions is true of the city council.

We conclude that the council did not initiate its own motion review within the time permitted by section 18.32.310(b)(2).²

City argues, for a number of reasons, that the council's and LUBA's decisions should nevertheless be affirmed. It first contends that the applicant brought a timely appeal to the council from the commission's decision and that the council could have taken the same action in that context as it did on its own motion.³ Without deciding whether the council could have done so (or whether an undecided appeal to the council is now pending), we conclude that the council did not do so. It acted on its own but untimely motion pursuant to section 18.32.310(b)(2). That is a jurisdictional defect, and the fact, if such it be, that the same substantive decision could have been made through a different route does not cure the defect.

City's next argument, somewhat at odds with its first, is that the notice to the parties of the planning commission's decision was defective and that the ten-day period for initiating review was therefore tolled. The defect identified by city is:

"The notice incorrectly referenced CDC 18.230.290(A) as the appropriate appeal provision and informed the parties that an appeal to the city council must be filed by February 21, 1989. The correct reference should have been to CDC 18.32.290(b), which provides that a planning commission decision made on appeal from a director's decision can only be heard by the city council if the council itself calls it up for review."

That defect, if it was one, can have no bearing on jurisdictional matters. We said in *League of Women Voters v. Coos County, supra*, that

"the time for appeal by a party who has been given notice is not tolled by the fact that notice has not been given to other parties who are entitled to it." 82 Or App at 681.

Here, notice was sent to the parties entitled to it. The only defect that city ascribes to the notice is that it misinformed the parties that they could appeal, when in fact review could

² City argues that the ordinance, as we construe it, would create unworkable obstacles in the process of providing notice to the lay members of the council. However, the meaning of the ordinance is clear, and city is, of course, free to amend it.

³ The council refunded the appeal fee to the applicant when it decided to conduct review on its own motion, but the appeal has not been formally terminated.

only be initiated by the council. The council could have invoked its own review authority, whether or not the parties had an independent right of appeal or were correctly informed that they did or did not. The notice was not incorrect in any particular relating to the council's authority to initiate review, and city may not complain that its notice might have misinformed others about their right to seek review.

City next contends that petitioner's taking claim is not "ripe," because the right-of-way condition on the development of the adjacent parcel cannot affect petitioner's property unless certain future events occur. See n 1, *supra*. City also contends that the controversy is moot, because the applicant has already deeded the right-of-way to city and, therefore, "[n]o practical effect would result by reversing the city council's decision and replacing it with the planning commission's." City apparently understands that the asserted ripeness and mootness problems affect the reviewability of the entire controversy. They do not. Petitioner appealed to LUBA from the council's land use decision approving an application for an apartment complex.⁴ One of the issues that petitioner raised in that appeal was that the right-of-way dedication required by the council will result in a taking. If city's ripeness and mootness arguments were correct, they might affect the reviewability of that issue, which we do not reach in any event. However, they have no bearing on the justiciability of the other error that petitioner ascribes to the appealed decision and on which we base our conclusion that the city council had no authority to make the decision.⁵

Reversed and remanded.

⁴ Technically, there were applications for and approvals of site development, a minor land partition and a variance.

⁵ We reject without discussion city's argument that the error was a mere failure to follow local procedures and that petitioner alleged no prejudice to its substantial rights. See ORS 197.835(8)(a)(B).

TO: BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY

FROM: SANDRA DUFFY
CHIEF ASSISTANT COUNTY COUNSEL

RE: EVANS APPEAL CU 7-95; HV 17-95

DATE: SEPTEMBER 18, 1996

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SEP 18 1996

Multnomah County
Zoning Division

INTRODUCTION

This appeal from a decision of the hearings officer is ready for a decision by the Board. A de novo hearing was held on August 27, 1996. The record was closed but the parties were permitted to present written argument. Submittals were received from appellant's attorney, from opponent Arnold Rochlin and opponent Chris Foster. The Board's decision is scheduled for September 24, 1996.

Susan Muir of the County's Planning Staff and I have reviewed the submittals and will give you a brief opinion on three issues: (1) The Scope of Review; (2) The Record; and (3) The SEC criteria.

(1) The Scope of Review:

This Board has the authority to consider all issues contained in the decision of the Hearings Officer. The case cited by Mr. Cox (Century 21 Properties) v. City of Tigard, 99 Or App 435 (1989)) does not support his contention that you are limited to considering only the issues he has raised in his appeal. That case was distinguished by LUBA in Forest Park Estate v. Multnomah County, 20 Or LUBA 319 (1990) which interpreted Multnomah County Code (as opposed to City of Tigard code). Mr. Cox asserts that the County's decision to order a review of the decision was untimely because it was not within 10 days of the decision. While an aggrieved party must file an appeal within 10 days (MCC 11.15.8260(A)(1), the Board may order a review of a hearings officer decision without that 10 day time limit (MCC 11.15.8260(A)(2). LUBA stated in the Forest Heights case:

In contrast to MCC 11.15.8260(A)(1), there is no requirement in MCC 11.15.8260(A)(2) (or MCC 11.15.8265) that a board of commissioner's order of review be adopted within ten days after the planning commission decision is submitted to the clerk.

(2) Record.

Mr. Cox's submittal of September 13, 1996 has attached to it documentary evidence that is not part of the record and should not be included in the record of this matter. The last three pages are a fax transmittal from Kim Evans which requests that the cover sheet (with a handwritten narrative on the back) and two attachments be incorporated into the record "which is closed as of 4:30 today." The two attachments are typewritten notes of two meetings with a county planning staff person and a list of information regarding alternative homesites. The record was closed by the Board at the conclusion of the de novo hearing. This is new matter not in the record and not to be considered in the decision of this matter.

(3) SEC criteria.

The County concurs with the analysis done by Mr. Rochlin in his submittal regarding this issue. Mr. Rochlin and Mr. Cox both correctly note that the general criteria found in MCC 11.15.6420 for the Significant Environmental Concern (SEC) overlay is applicable to SEC applications. The County Staff did not apply these general criteria in this application. The reason that they did not do so is that at the time of the application the SEC code had just been newly drafted. When Staff began applying the SEC code, they were not applying the general criteria to the areas that had subdistrict designations (eg. SEC-h [wildlife]; SEC-v [views]; or, SEC-s [streams]), i.e. they did apply the general criteria to SEC overlay areas that did not have a subdistrict designation. (There are still some areas of Multnomah County with only SEC overlays that do not have any of the subdistricts identified.) Since this application was processed, and since the original staff report was written, the Staff has begun applying the general criteria to ALL SEC applications, with or without subdistricts and any new application would be required to meet both the general and specific criteria.

The application of the general SEC criteria could be anticipated to provide additional reasons for denial of the application.

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SEP 13 1996

Multnomah County
Zoning Division
Board of County Commissioners

Arnold Rochlin
P.O. Box 83645
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289-2657

Re. CU 7-95, HV 17-95—Post Hearing Testimony for September 13, 1996

I. Applicability of Purported Washington County Requirements.

Mr. Cox's peculiar claim that a dwelling cannot be sited as required by Multnomah County because Washington County has conflicting regulations or permit conditions, must fail:

No land use law allows or requires application of Washington County regulations or land use decisions in Multnomah County. ORS 215.416(8), quoted under IV B below, requires a decision based on this county's standards.

An advocate of an odd legal proposition must convince by reason and law. Mr. Cox's claim is utterly unsupported. Even if the Board were moved to uphold it, it could not, because it could give no reason in the findings for applying another county's requirements.

If Washington County requirements were to apply, and if they would preclude siting as required by Multnomah County, the proposal must be denied for being unable to satisfy with a single plan, what would be applicable criteria of both counties. Mr. Cox would not stretch the point to claim that only Washington County requirements apply in this county.

II. If Alternate Dwelling Site is in a Mapped Slope Hazard Area.

Slope hazard provisions of Comprehensive Plan Policy 14 are implemented by MCC Chapter 6700 which requires a Hillside Development Permit (HDP) in a mapped hazard area. HDP criteria have no prohibitions, only procedural safeguards for steeper slopes.

Slope hazard maps outline areas that are generally steep, but typically include flatter areas. Development is allowed by MCC .2074(A)(5)(c) on slopes up to 40%, which is not a limiting factor in this case. Staff believes the property has suitable and practical alternate sites that satisfy some criteria not met by the proposal, e.g. setbacks and access length. Preference for developing on a particular part of a property cannot justify a variance on grounds of hardship or necessity. *Hinzpeter v. Union County*, 16 Or LUBA 111 (1987)

III. SCOPE OF REVIEW

A. Review of Issues Not Raised by Appellant.

MCC .8270(G) limits issues only when a review is based on appeal by a party.

"Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review ..."

After an appeal had been filed by the applicant, the Board voted to review on its own motion, pursuant to MCC .8260(A)(2) and .8265. The motion could have no purpose but to hear additional issues. In *Century 21 Properties v. City of Tigard*, after appeal by a party, the city council voted to review on its own and considered an issue not in the notice of review. Tigard, like Multnomah County, limits review on appeal to issues in the notice of review. LUBA held the limit applies to appeals by parties, not

to review on a council motion.¹ A party cannot preempt Board authority to review issues by appealing on narrower grounds before a decision is even presented to the Board on the date specified by the MCC.

B. Notice to Parties.

Mr. Cox claims he first learned at the hearing of issues not in his notice of review. The claim is neither significant nor credible.²

1. A "Corrected Notice" of decision mailed to parties on July 11th, says the decision would be reported to the Board of Commissioners on July 25th. On that date the Board voted to hold a *de novo* review, on its own motion, without limitation of issues. Untimeliness aside, Mr. Cox's objection on August 27th has no legal or moral merit.

2. On August 7th, 20 days before the Board hearing, a "NOTICE OF DE NOVO HEARING" was mailed to all parties. The first page indicates the "Proposed Action(s) and Use(s) to be considered at the hearing as follows:"

- "(1) A Board ordered review (Order 96-128) of the Hearings Officer Decision and
- (2) Applicant is appealing the Decision of the Hearings Officer ..."

And, on page 4, the notice of hearing provides:

"Proposal Summary: The Board of County Commissioners issued an order of review on July 25, 1996, regarding the Hearings Officer Decision denying CU 7-95/HV 17-95 pursuant to MCC 11.15.8260 and .8265. Additionally, appellant challenges the Hearings Officer decision issued June 28, 1996 ..."

MCC .8265 concerns only review on the Board's own motion. Misreading of a notice by a party cannot deprive the Board and the public of the right to address important issues. Mr. Cox did not claim to have not received the notice, of which timing and substance are specified by law. If not served, he would have objected at or before the hearing (the time and place of which he did acquire).

- 3. Issues subject to review were identified in the March Staff Report, in oral and written testimony before the Hearings Officer, and in testimony placed in the record a week before the Board hearing. If a party was uninformed, it was not for lack of reasonable opportunity.
- 4. If Mr. Cox were to have learned of issues at the hearing, and if that were due to an actual procedural error not yet demonstrated, a remedy cannot deprive the public of consideration of lawful subjects of review. It suffices to allow time to address issues in writing, for which purpose the record was kept open to dates acceptable to Mr. Cox. *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

¹ *Century 21 Properties v. City of Tigard*, 17 Or LUBA 1298, *Reversed on other grounds*, 99 Or App 435 (1989). The City Council's motion to review was invalid because it was adopted after a time limit in the Tigard code. There has been no claim of an untimely motion in this case.

² Mr. Cox's own "Washington County" issue was not raised in his notice of review.

IV. TEMPLATE TEST

A. Differences Between State and County Versions.

OAR 660-06-027(1)(d)(C) and identical ORS 215.750(1)(c), require:

- (i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and
- (ii) At least 3 dwellings existed on January 1, 1993 on the other lots or parcels.

Corresponding county standards in MCC .2052(c) require:

- (i) The lot and at least all or part of 11 other lots exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to the section lines; and
- (ii) Five dwellings exist within the 160 acre square.

Significant differences are underlined above and listed in the following table:

	<u>State Qualification</u>	<u>County Qualification</u>
Lots and Dwellings in Place	January 1, 1993	Now
Number of Dwellings	Three	Five
Location of Dwellings	Anywhere on lots	Within template
Orientation of Template	Any	Aligned with section lines

B. Which Standards Apply; What Has Been the County's Past Practice?

The primary direction for applicable standards is ORS 215.416(8) which provides:

- (8) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county ...

A secondary direction is ORS 197.646(3) which provides:

- (3) When a local government does not adopt ... land use regulation amendments as required [to implement a new or amended statute or state administrative rule], the new or amended rule or statute shall be directly applicable to the local government's land use decisions.

Except when a state standard is preemptive, the county has complied with ORS 197.646(3) and 215.416(8) by applying the stricter features of both new state requirements and unamended corresponding county requirements. LUBA ruled in *Dilworth v. Clackamas County* that the state template standard is not preemptive. And, rejecting the hearings officer's ruling that only state standards apply, DLCD said:

"We do not disagree with the finding that the county must apply the applicable state laws directly as required by ORS 197.646(3). We do disagree with the conclusion that the county may not apply their more stringent standards in addition to the applicable state laws." (James W. Johnson, April 30, 1996)

Combining stricter features of different regulations is sometimes difficult. For example, 5 dwellings today or 3 dwellings 3 years ago satisfy the county or state requirements. But neither requires 5 dwellings 3 years ago. The solution is to apply

state and county standards consecutively, as sieves. A proposal must pass both. That method satisfies DLCD and gives full and fair meaning to ORS 215.416(8) and 197.646(3), which require a decision based on county regulations and on state standards not yet reflected in county regulations.

A problem presented if county standards are invalid when new state standards are effective, is the limits of the effect are indefinable! How closely or distantly related must county and state rules be for a county regulation to be deemed nullified or to remain valid? That uncertainty is what likely led the Hearings Officer to inconsistently apply sometimes county and sometimes state standards. The correct ruling is that county regulations not conflicting with a statute or OAR are effective. Serial application of state and county standards yields a correct result without having to perfectly identify regulations controlling the same matter, or determine which standard is stricter when there are multiple differences, or to devise a valid combination of the stricter requirements of both.

C. The Applicable County Template Standard is Not Met.

The application must be denied for failing the county test of 5 dwellings within the prescribed template. Mr. Cox admitted that one of 5 structures identified as qualifying dwellings by the applicant, is just a vestigial foundation.³ Also, the applicant has not proven that the other 4 dwellings are within the boundaries of the template.

V. Process Does Not Enable "Balancing" of Some Standards.

Some standards, such as the 200 foot setback, are absolute. No interpretation can turn 50 or 199 feet into 200. If, hypothetically, siting to minimize use of forest land (MCC .2074(3)) would require a setback of less than 200 feet, or a driveway longer than 500 feet, or would impede farm or forest practices on nearby land, that siting could not be allowed. Some standards that require "least" impact or "most" preservation of some resource may draw flexibility from context. Superlative terms are sometimes interpreted to mean the "most" or "least" that does not preclude permitted use. But there can be no stretching just to allow an applicant's preferred siting. Balancing of the few flexible standards is possible only to the extent that the purpose of a standard is not defeated and as necessary to avoid completely precluding a permitted use. The amount of stretch is hard to determine, which is why approval or denial of a forest dwelling is not a ministerial act, but is a discretionary proceeding requiring judgment and legal knowledge. The instant case does not require perfect resolution of this problem, because the applicant fails to meet absolute requirements as well as requirements having limited flexibility. And failure to comply with even one approval standard requires denial.



³ The standard applied in the March 20th staff report is 5 dwellings in place on January 1, 1993. But being in place on that date pertains to only the state standard of 3 dwellings. Outcome is unaffected; 5 dwellings weren't there in 1993 and aren't there today.

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SEP 17 1996

Multnomah County
Zoning Division

Board of County Commissioners

Arnold Rochlin
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289-2657

Re. CU 7-95, HV 17-95—Post Hearing Testimony for September 17, 1996

This is in reply to the applicant's two submittals dated September 13, 1996.¹

I. Scope of Review (A 1-6)

A. Timeliness of Board Motion to Review

Uncontested facts are: the deadline for appeal was July 22nd, only the applicant filed an appeal, and the Board Order for review was adopted on July 25th. Mr. Cox seems to no longer dispute that the Board can hear any issue on a timely review order. He now argues the order is null because it was late (A 1-3). It was not late.

Forest Park Estate v. Multnomah County, 20 Or LUBA 319 (1990) involved the same issue. Invoking regulations still in effect, LUBA upheld a Board review order adopted 12 days after a decision was filed with the Clerk of the Board. MCC .8260(A) provides:

Decisions of the Planning Commission or Hearings Officer shall be final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board under MCC .8255, unless:

(1) A Notice of Review from a party is received by the Planning Director within ten days after the decision has been submitted to the Clerk of the Board under MCC .8255; or

(2) The Board, on its own motion, orders review under MCC .8265.

Note that subsection (2) has no 10 day deadline. MCC .8265 provides:

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255 ...

The Order for Review was adopted on July 25th, when the summary appeared on the agenda as provided by .8255. But the applicant argues it was late because it was after the appeal deadline. In *Forest Park Estate v. Multnomah County, supra*, LUBA held:

"Under MCC 11.15.8260(A), a planning commission decision becomes final ten days after being submitted to the county clerk, unless either of two events occurs. One event is the filing of a notice of review by a party within ten days after the planning commission decision is submitted to the county clerk. MCC 11.15.8260(A)(1). The other event is the board of commissioners ordering review in accordance with MCC 11.15.8265. MCC 11.15.8260(A)(2). In contrast to MCC 11.15.8260(A)(1), there is no requirement in MCC 11.15.8260(A)(2) (or MCC 11.15.8265) that a board of

¹ Both are titled "Applicant's Record Submittal". One has no subtitle, the other has a bold face subtitle starting with "Template Test". Page references to the Cox memos are identified by "A" and "B", B being the one with the subtitle. Each memo bears the names of two attorneys, but for brevity, only Mr. Cox's name is used here.

commissioners' order of review be adopted within ten days after the planning commission decision is submitted to the clerk." *Id.* at 325. (footnote omitted)

B. There are no actual constitutional issues (A 3-5)

"Due process" is tossed about, but Mr. Cox does not formulate a constitutional argument. It merits no further discussion. A legitimate question is whether the Board has authority to order a *de novo* review. After waving the constitutional flag, Mr. Cox relies on the county code to claim that the review should be on the record. But the code expressly allows *de novo* review at the Board's discretion; his statute and case law citations on code interpretation are inapposite.

The applicable code section is .8270 Scope of Review, which provides in relevant part:

(A) The Board, upon receipt of a Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

(1) On the record; or

(2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

* * * * *

(E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

(1) Prejudice to parties;

(2) Convenience or availability of evidence at the time of the initial hearing;

(3) Surprise to opposing parties;

(4) The competency, relevancy and materiality of the proposed testimony or other evidence.

Mr. Cox supposes considerations pertaining to "additional testimony or other evidence" also apply to a decision to hold a *de novo* review. He is wrong. Note the semicolon in (E) separating Board authority to hear *de novo* from its restricted power to allow limited additional evidence. Note the use of "additional evidence and other testimony", the distinct alternative to *de novo*, in the phrase limiting new evidence. Note that in (E)(4), allowing only specific useful evidence is inconsistent with the meaning of *de novo*. A request to admit specific evidence is usually to establish a point favoring one side. The Board may not grant that advantage, except in prescribed circumstances. In contrast, the code requires no justification for *de novo* review because it opens a hearing impartially.

Mr. Cox argues that Board Resolution 95-55 is invalid because its policy can be effected by ordinance only. The Resolution only states the Board's intent to invoke existing authority to hear all reviews *de novo*. The review order is authorized by MCC .8270(A)(2) and (E)

and requires no other authority. Mr. Cox's argument is irrelevant and his quotations of judicial declamations concern only points not at issue.²

There was no abominable surprise; issues raised on review were before the Hearings Officer, and the Order of Review was adopted at the lawful time and place, in the prescribed manner and with service of required notices. Mr. Cox now claims injury by only lately receiving the agenda placement request for July 25th (A 5). That is not a required notice (but it was open to inspection in the case file). Notice that the decision would be presented to the Board on July 25th was in the notice of decision mailed to all parties. Mr. Cox has given no reason why the Board could not order review, or how service of the agenda packet could have changed anything. He has identified no objection that could have been effective only on or before July 25th. Finally, notice of review by Board Order was included in the lawfully served August 7th notice of the Board hearing.

II. Request to Strike Testimony (A 6-7 & B 8)

The applicant asks to strike my testimony and Chris Foster's, on grounds of not appearing before the Hearings Officer, and not justifying new evidence. Mr. Cox must know Foster testified (Exhibit CC, List of Exhibits in Hearings Officer's decision).

Regarding me, Mr. Cox cites MCC .8270(E) which has nothing to do with standing; it concerns scope of review. Admissibility of new evidence and argument is encompassed by the customary meaning of *de novo*. But, even in an on the record review, the Board can hear new argument at its discretion, as opposed to receiving new evidence (.8270(D)). All of my testimony (August 27th, September 13th, and this) consists of argument only.

Under MCC .8225, which controls standing, "persons who demonstrate to the approval authority ... that they could be aggrieved ..." are parties. I explained how I would be aggrieved in a statement submitted to the Board on August 27th. The Chair allowed my appearance as a party. Mr. Cox has not challenged my August 27th statement. He asserts a non-existent requirement of appearance before the Hearings Officer.³

Mr. Cox renews his request to strike the DLCD letter. It was properly placed before the Hearings Officer (Exhibit KK) and the Board. To bury the issue, Chris Foster and I submitted the letter in support of our own positions. The real concern is its authority and content, which clearly expresses how ORS 197.746(3) is to be applied.

III. Template Test (B 2-8)

ORS 197.646(3) applies state requirements to decisions when a county hasn't implemented the standards by amending its code. I agree the state template test is applicable, but so is the county's. Mr. Cox makes much of statutory and court admonitions to interpret a code without adding what is not there. But he does exactly that. Nothing in ORS 197.646(3) says county regulations are nullified. It says only that state requirements must be applied.

² If Resolution 95-55 were relevant, it would make no difference that it is a resolution and not an ordinance, if its substance and process of adoption were sufficient. *Multnomah County v. City of Fairview*, 17 LUBA 305 (1988). Substance and process of adoption of Resolution 95-55 have not been addressed.

³ Mr. Cox argues it is wrong to allow "individuals to literally [sic] lie in wait and spring upon an applicant at the last moment." I have addressed only issues before the Hearings Officer or raised by Mr. Cox. Written testimony was in the planning file for public review a week before the hearing. I participated after the Hearings Officer's decision because I didn't know I would be aggrieved by a decision on broadly significant issues until too late in that process. A rule as advocated by Mr. Cox would press people like me to enter a case on speculation of merely possible aggrievement.

And, ORS 215.416(8) requires a decision to be based on county standards.⁴ When 197.646(3) is invoked, unless a state requirement is preemptive, county and state standards apply; that is the only way to apply both statutes, not adding to or detracting from their language. *Dilworth v. Clackamas County* established that the state template standard is not preemptive, which Mr. Cox does not dispute. He disputes the relevance of *Dilworth*, mistaking the purpose for which it was cited. *Dilworth* has nothing to do with ORS 197.646(3). It establishes that the state template rule is not preemptive, allowing state and county template standards to be applied together. In discussion, the words "more" or "less" restrictive are used to describe the common result of applying both state and county standards; stricter provisions of either effectively determine disposition.

Mr. Cox wrongly makes an issue of acknowledgment. As discussed in my August 27th testimony, ORS 197.625(3)(a) and (b) provide that unacknowledged land use enactments are effective at the time provided by the local charter or code (though with added findings when statewide goals are involved). Actually, the disputed county template standard was acknowledged a few years ago. Either way, the proposal does not comply.⁵

IV. SEC/Goal 5—Applicability of State and County Regulations (B 8-13)

Applicability of General SEC Criteria in MCC .6420 (B 10-11)

The applicant now tacitly accepts that criteria of MCC .6420 would ordinarily apply to this development. He claims an exception on fallacious grounds (*italic*):

1. *The criteria should be disregarded because it was only I who cited them, and my standing is challenged.* Even if I did not have standing, Chris Foster, adopted all my testimony as his own at the August 27th hearing.
2. *The issue is not in the Notice of Review.* This review is also on the Board's motion.
3. *The applicant did not know that SEC applicants must address these SEC approval criteria.* If Mr. Cox's claim were true, that "neither during applicant's pre-application conference, nor at any time thereafter, was it brought to the applicant's attention that the criteria found in MCC .6420 needed to be addressed" the applicant is not thereby excused. It would be absurd to make criteria inapplicable because a party is unaware. If there was an error, the only remedy is to give more time to address the standards, which was done.

Mr. Cox now purports to address some of the criteria (B 11-13). But he makes no attempt to show how the following criteria are satisfied (the applicable version is Ord. 801, 1994):

(G) Significant fish and wildlife habitats shall be protected.

(M) The design, bulk, construction materials, color and lighting of buildings shall be compatible with the character and visual quality of areas of significant environmental concern.

⁴ ORS 215.416(8): "Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county ..."

ORS 197.646(3): "When a local government does not adopt ... land use regulation amendments as required [to implement a new or amended statute or state administrative rule], the new or amended rule or statute shall be directly applicable to the local government's land use decisions."

⁵ Mr. Cox tosses another red herring, ORS 197.175(2)(c). That statute applies only to a county or city that has no acknowledged comprehensive plan or zoning code.

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

(O) The applicable policies of the Comprehensive Plan shall be satisfied. (This would primarily incorporate the version of the West Hills Reconciliation Report adopted in Ord. 797.)

The applicant discusses, but does not prove compliance with other criteria:

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

The provision requires preservation of as much forest land as possible, consistent with a dwelling. The applicant confuses forest land with existing growth. That the proposal is to build in an unreplanted area doesn't convert land zoned for forest use, and capable of growing commercial quantities and quality of Douglas Fir, from forest land.

(D) A building, structure or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

The applicant has not shown that siting at an alternate location, as suggested by staff, would cost more, or negatively impact any functional considerations. A claim of added cost and greater resource impact, is without credible evidentiary support. Environmental, functional and cost elements are not shown to be balanced.

(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbance activities. (Mr. Cox cites a 1990 version, which is codified as (M), and which is substantially different, not including the Best Management Practices standard.)

The applicant claims evidence in the record shows compliance, but doesn't identify it. The applicant has not shown the proposal complies with Best Management Practices standards.

Applicability of SEC-h Criteria—MCC .6426

The applicant does not address these criteria. He claims they are inapplicable because they were adopted after the application was filed in July, 1995 (B 8-9). SEC-h criteria in MCC .6426 were in fact adopted in 1994, as part of Ord. 801, and were effective in 1994 as prescribed by ORS 197.625(3)(a). ORS 197.625(3)(b) requires additional findings of compliance with state goals "applicable to the amendment".⁶ That provision is in addition to, and not in place of, county standards. Neither the underlined phrase nor all of

⁶ ORS 197.625(3)(a) and (b) provide:

(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions ..."

(b) Any approval of a land use decision ... subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment."

subsection (3)(a) makes sense unless regulations are effective before acknowledgment. There has been no showing that criteria in MCC .6426(A) to (D) have been met.

Mr. Cox concludes with an assertion that Goal 5 requirements are met, and "Mr. Rochlin's assertions otherwise have no basis in fact or law." I make no assertions of fact. I rely on the applicant's failure to carry the burden of establishing the facts necessary to prove compliance with the criteria. My legal claims are specifically supported by reason and law that actually applies to the points at issue.

A handwritten signature in cursive script, appearing to read "Arnold Rochlin".

MEETING DATE: OCT 1 1996
AGENDA NO.: C-9
ESTIMATED START TIME: 10:00 am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with Oregon Health Sciences University

BOARD BRIEFING Date Requested: _____

Requested By: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____

Amount of Time Needed: 5 minutes or less

DEPARTMENT: Health DIVISION: _____

CONTACT: Tom Fronk* TELEPHONE #: x4274

BLDG/ROOM #: 160/8

PERSON(S) MAKING PRESENTATION: Tom Fronk

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUGGESTED AGENDA TITLE:

Renewal of Intergovernmental Agreement 200717 with Oregon Health Sciences University for the Provision of Sexual Assault Evidentiary Exams.

10/1/96 ORIGINALS TO KAREN GARBER

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

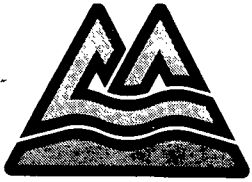
Or

DEPARTMENT MANAGER: Bill Odegard tomf

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
SEP 26 PM 3:45

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON



HEALTH DEPARTMENT
426 S.W. STARK STREET, 8TH FLOOR
PORTLAND, OREGON 97204-2394
(503) 248-3674
FAX (503) 248-3676
TDD (503) 248-3816

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

MEMORANDUM

Date: September 20, 1996
To: Board of County Commissioners
From: Billi Odegaard, Director, Health Department
Subject: Contract #200717 with Oregon Health Sciences University for sexual assault evidentiary exams

- I. Recommendation/Action Requested: The Health Department recommends Board ratification of Contract #200717 with Oregon Health Sciences University for the period September 1, 1996, through December 31, 1998. The agreement is retroactive due to delays by OHSU in finalizing the new payment terms.
- II. Background/Analysis: This is a renewal of an agreement which originated in January 1993. OHSU will continue to provide "chain of evidence" examinations for sexual assault victims aged 14 and over. The District Attorney's Office requires these examinations for prosecution. OHSU will also provide information, training and technical assistance to various law enforcement agencies within the County. The County has a similar agreement with Legacy Emanuel Hospital to provide examinations for child victims of sexual assault.
- III. Financial Impact: The County will reimburse OHSU \$227 per exam for FY 96-97. OHSU has the option to adjust its rates for each year thereafter, but annual increases cannot exceed the Portland-area medical CPI. Expenditures totaled approximately \$25,000 for FY 94-95 and \$14,000 for FY 95-96. Similar expenditure levels are anticipated for the term of this agreement.
- IV. Legal Issues: None
- V. Controversial Issues: None
- VI. Link to Current County Policies: Supporting the District Attorney's Office in prosecuting criminals.
- VII. Citizen Participation: None
- VIII. Other Government Participation: None

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☒ [X]

Contract # 200717

Previously Approved Contract Boilerplate: ☒ [X] Attached ☐ [] Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$25,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p> <p><input type="checkbox"/> Expenditure</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCR Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input checked="" type="checkbox"/> [X] Intergovernmental Agreement over \$25,000</p> <p><input checked="" type="checkbox"/> [X] Expenditure</p> <p><input type="checkbox"/> Revenue</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>C-9</u> DATE <u>10/1/96</u></p> <p style="text-align: center;">DEB BOGSTAD</p> <p style="text-align: right;">BOARD CLERK</p>
---	---	--

Department: Health Division: _____ Date: 8/22/96

Contract Originator: Tom Fronk Phone: x4274 Bldg/Room: 160/8

Administrative Contact: Karen Garber Phone: x6207 Bldg/Room: 160/7

Description of Contract:

Sexual assault evidentiary exams for for victims aged 14 and older.

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR # _____ Contractor is ☐ [] MBE ☐ [] WBE ☐ [] QRF ☒ [X] N/A ☐ [] None

Original Contract No. 201373* (FOR RENEWALS ONLY) *Then 200714, 200796, and now 200717.

<p>Contractor <u>Oregon Health Sciences University</u></p> <p>Address: <u>3181 SW Sam Jackson Park Road</u></p> <p style="padding-left: 40px;"><u>Portland, OR 97201</u></p> <p>Phone: _____</p> <p>Employer ID# or SS#: <u>93-1176109</u></p> <p>Effective Date: <u>September 1, 1996</u></p> <p>Termination Date: <u>December 31, 1998</u></p> <p>Original Contract Amount: \$ <u>Requirements*</u></p> <p>Total Amt of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ _____</p>	<p>Bill Brown, OHSU Contracts Manager</p> <p>Helen Smith, Director, Victims Assistance Program, Multnomah County DA's Office, 101/804</p> <p>Remittance Address (if different) _____</p> <p>_____</p> <p>_____</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">Payment Schedule</td> <td style="width: 50%;">Terms</td> </tr> <tr> <td><input type="checkbox"/> [] Lump Sum \$ _____</td> <td><input type="checkbox"/> [] Due on Receipt</td> </tr> <tr> <td><input type="checkbox"/> [] Monthly \$ _____</td> <td><input type="checkbox"/> [] Net 30</td> </tr> <tr> <td><input checked="" type="checkbox"/> [X] Other \$ <u>227 per exam</u></td> <td><input type="checkbox"/> [] Other</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> [] Requirements contract - Requisition Required</td> </tr> <tr> <td colspan="2">Purchase Order No. _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> [] Requirements Not to Exceed \$ _____</td> </tr> <tr> <td colspan="2">Encumber: Yes <input type="checkbox"/> [] No <input type="checkbox"/> []</td> </tr> <tr> <td colspan="2">*Estimated expenditures: \$15,000-\$30,000 annually</td> </tr> </table>	Payment Schedule	Terms	<input type="checkbox"/> [] Lump Sum \$ _____	<input type="checkbox"/> [] Due on Receipt	<input type="checkbox"/> [] Monthly \$ _____	<input type="checkbox"/> [] Net 30	<input checked="" type="checkbox"/> [X] Other \$ <u>227 per exam</u>	<input type="checkbox"/> [] Other	<input type="checkbox"/> [] Requirements contract - Requisition Required		Purchase Order No. _____		<input type="checkbox"/> [] Requirements Not to Exceed \$ _____		Encumber: Yes <input type="checkbox"/> [] No <input type="checkbox"/> []		*Estimated expenditures: \$15,000-\$30,000 annually	
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Purchase Order No. _____																			
<input type="checkbox"/> [] Requirements Not to Exceed \$ _____																			
Encumber: Yes <input type="checkbox"/> [] No <input type="checkbox"/> []																			
*Estimated expenditures: \$15,000-\$30,000 annually																			

REQUIRED SIGNATURES:

Department Manager: *Bill O'Leary* Date: 9-24-96

Purchasing Director: _____ Date: _____

(Class II Contracts Only)

County Counsel: *Kate Sant* Date: 9/26/96

County Chair/Sheriff: *Willie* Date: October 1, 1996

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIP	AMOUNT	INC DEC
01	156	015	0915			6110			Rape Exams		
02											
03											

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

DISTRIBUTION: Contract Administration, Finance, HD Contracts Unit, HD Payables/Receivables, HD Program Manager

**INTERGOVERNMENTAL AGREEMENT
FOR SEXUAL ASSAULT EVIDENTIARY EXAMS**

THIS INTERGOVERNMENTAL AGREEMENT is between MULTNOMAH COUNTY, acting by and through its Health Department, hereafter "COUNTY," and OREGON HEALTH SCIENCES UNIVERSITY, a public corporation, acting on behalf of its University Hospital, hereafter "HOSPITAL."

WITNESSETH:

WHEREAS, COUNTY wishes to obtain evidentiary exams (known as "chain of evidence" exams) for adult victims of sexual assaults occurring in Multnomah County, under the terms and conditions hereinafter described; and

WHEREAS, HOSPITAL is able and prepared to provide such services as COUNTY does hereinafter require, under those terms and conditions set forth; now therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. TERM

This Agreement shall become effective when fully executed retroactive to September 1, 1996, and shall expire December 31, 1998, unless sooner terminated under the provisions hereof. The compensation terms set out in Paragraph 3 below are guaranteed through June 30, 1997. HOSPITAL shall retain the right, upon written notice to COUNTY, to adjust its fees for each year thereafter. Annual fee increases shall not exceed the most recently published Portland-area medical CPI.

2. SERVICES

HOSPITAL's services under this Agreement shall consist of the following:

- A. Provide sexual assault evidentiary examinations for adult victims of sexual assaults on an as-needed emergency basis. Examinations shall be conducted according to Exhibit A which is attached to this Agreement and by this reference incorporated herein.
- B. Provide information, training and technical assistance, as deemed necessary by HOSPITAL, to COUNTY's District Attorney's Office and to various law enforcement agencies within Multnomah County.

3. COMPENSATION

A. COUNTY agrees to pay HOSPITAL for the performance of those services provided hereunder, which payment shall be based upon the following terms:

- 1) HOSPITAL will charge \$227 for each sexual assault examination performed under this Agreement.

- 2) HOSPITAL will promptly investigate and bill available third-party payers for each client served under this Agreement.
- 3) HOSPITAL will bill COUNTY at 60 days from billing date to third parties for all payments not received from billed third parties. Invoices will be sent to:

Multnomah County Health Department
Fiscal Services
P.O. Box 400046
Portland, OR 97204

- 4) COUNTY agrees that these efforts by HOSPITAL to bill and collect from third parties shall be sufficient in meeting the intent of this Agreement concerning collection efforts.
 - 5) COUNTY will pay HOSPITAL within 30 days following receipt of invoice.
 - 6) HOSPITAL will promptly refund to COUNTY any credit balance on an individual account in excess of billed charges resulting from the collection of third-party or personal payment for HOSPITAL services rendered in accordance with this Agreement.
- B. COUNTY certifies that sufficient funds are available and authorized to finance the costs of this Agreement through the fiscal year ending June 30, 1997. In the event that funds cease to be available to COUNTY in the amounts anticipated during the remainder of the fiscal year, or in the event that sufficient funds are not approved and authorized in the next fiscal year, either COUNTY or HOSPITAL may terminate the Agreement or the parties by mutual agreement may reduce Agreement funding accordingly. COUNTY will notify HOSPITAL as soon as it receives notification from funding source. Reduction or termination will not affect payment for accountable expenses prior to the effective date of such action.
- C. All final billings affecting Agreement payments must be received within forty-five (45) days after the end of the Agreement period. Agreement payments not triggered or billed within this specified time period will be the sole responsibility of HOSPITAL.

INTERGOVERNMENTAL AGREEMENT STANDARD CONDITIONS

1. INDEPENDENT CONTRACTOR STATUS

HOSPITAL is an independent contractor and is solely responsible for the conduct of its programs. HOSPITAL, its employees and agents shall not be deemed employees or agents of COUNTY.

2. INDEMNIFICATION

A. HOSPITAL shall defend, hold and save harmless COUNTY, its officers, agents, and employees from damages arising out of the tortious acts of HOSPITAL, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this Agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and any applicable provisions of the Oregon Constitution.

B. COUNTY shall defend, hold and save harmless HOSPITAL, its officers, agents, and employees from damages arising out of the tortious acts of COUNTY, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this Agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and any applicable provisions of the Oregon Constitution.

3. WORKERS' COMPENSATION INSURANCE

HOSPITAL shall maintain workers' compensation insurance coverage for all non-exempt workers, employees, and subcontractors either as a carrier-insured employer or a self-insured employer as provided in Chapter 656 of Oregon Revised Statutes.

4. TAXPAYER IDENTIFICATION NUMBER

HOSPITAL shall furnish to COUNTY its federal employer identification number, as designated by the Internal Revenue Service.

5. SUBCONTRACTS AND ASSIGNMENT

HOSPITAL shall neither subcontract with others for any of the work prescribed herein, nor assign any of HOSPITAL's rights acquired hereunder without obtaining prior written approval from COUNTY. COUNTY by this Agreement incurs no liability to third persons for payment of any compensation provided herein to HOSPITAL.

6. RECORD CONFIDENTIALITY

COUNTY and HOSPITAL agree to keep all client records confidential in accordance with state and federal statutes and rules governing confidentiality.

7. ACCESS TO RECORDS

HOSPITAL agrees to permit authorized representatives of COUNTY, and/or the applicable federal or state government audit agency to make such review of the records of HOSPITAL as COUNTY or auditor may deem necessary to satisfy audit and/or program evaluation purposes. HOSPITAL shall permit authorized representatives of COUNTY Health

Department to site-visit all programs covered by this Agreement. Agreement costs disallowed as the result of such audits, review or site visits will be the sole responsibility of HOSPITAL. If an Agreement cost is disallowed after reimbursement has occurred, HOSPITAL will make prompt repayment of such cost.

8. ADHERENCE TO LAW

- A. HOSPITAL shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations and policies concerning workers' compensation, and minimum and prevailing wage requirements.
- B. HOSPITAL shall not unlawfully discriminate against any individual with respect to hiring, compensation, terms, conditions or privileges or employment, nor shall any person be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity because of such individual's race, color, religion, sex, national origin, age or handicap. In that regard, HOSPITAL must comply with all applicable provisions of Executive Order Number 11246 as amended by Executive Order Number 11375 of the President of the United States dated September 24, 1965, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 C.F.R. 84.4 and the Americans with Disabilities Act of 1990, Public Law Number 101-336 and all enacting regulations of the EEOC and Department of Justice. HOSPITAL will also comply with all applicable rules, regulations and orders of the Secretary of Labor concerning equal opportunity in employment and the provision of ORS Chapter 659.

9. MODIFICATION

- A. In the event that COUNTY's Agreement obligation is amended by a federal- or state-initiated change, COUNTY shall amend this Agreement through written notification of changes sent to HOSPITAL by mail. HOSPITAL shall return to COUNTY within twenty (20) working days a signed acknowledgment of receipt of COUNTY's notification document.
- B. Any other amendments to the provisions of this Agreement, whether initiated by COUNTY or HOSPITAL, shall be reduced to writing and signed by both parties.

10. WAIVER OF DEFAULT

Waiver of a default shall not be deemed to be a waiver of any subsequent default. Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the provisions of this Agreement

11. EARLY TERMINATION

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

- B. This Agreement may be terminated by either party by sixty (60) days written notice to the other party.
- C. Immediate termination or amendment by COUNTY may occur under any of the following conditions:
 - 1) Upon notice of denial, revocation, suspension or non-renewal of any license or certificate required by law or regulation to be held by HOSPITAL to provide a service under this Agreement.
 - 2) Upon notice if HOSPITAL fails to begin services on the date specified in this Agreement, or if HOSPITAL fails to continue to provide service for the entire Agreement period.
 - 3) Upon notice to COUNTY of evidence that HOSPITAL has endangered or is endangering the health and safety of clients/residents, staff, or the public.
- D. Payment to HOSPITAL will include all services provided through the day of termination and shall be in full satisfaction of all claims by HOSPITAL against COUNTY under this Agreement.
- E. Termination under any provision of this section shall not affect any right, obligation or liability of HOSPITAL or COUNTY which accrued prior to such termination.

12. LITIGATION

- A. HOSPITAL shall give COUNTY immediate notice in writing of any action or suit filed or any claim made against HOSPITAL or any subcontractor of which HOSPITAL may be aware which may result in litigation related in any way to this Agreement.
- B. COUNTY shall give HOSPITAL immediate notice in writing of any action or suit filed or any claim made against COUNTY or any subcontractor of which COUNTY may be aware which may result in litigation related in any way to this Agreement.

13. OREGON LAW AND FORUM

This Agreement shall be construed and governed according to the laws of the State of Oregon.

14. INTEGRATION

This Agreement contains the entire Agreement between the parties pertaining to its subject matter and supersedes all prior written or oral discussions or agreements.

15. CERTIFICATION REGARDING LOBBYING

- A. No federal appropriated funds can be or will be paid, by or on behalf of HOSPITAL, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this Agreement, HOSPITAL shall complete and submit

Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

16. OMB CIRCULAR A-128

If HOSPITAL is a sub-recipient of federal funds passed through the COUNTY, HOSPITAL shall submit to COUNTY an annual federal compliance audit in conformity with OMB Circular A-128 and the federal Single Audit Act of 1984.

IN WITNESS WHEREOF, the parties have caused this Agreement, including the Standard Conditions and any attachments incorporated herein, to be executed by their duly authorized officers.

OREGON HEALTH SCIENCES
UNIVERSITY

By Timothy M. Goldfarb
Timothy M. Goldfarb

Title Director Healthcare Systems

Date 9/13/96

93-1176109

Federal Tax ID Number

MULTNOMAH COUNTY, OREGON

By Beverly Stein
Beverly Stein, Multnomah County Chair
Date October 1, 1996

HEALTH DEPARTMENT

By Billi Odegaard
Billi Odegaard, Director
Date 9-24-96

By Tom Fronk
Tom Fronk, Program Manager
Date 9-24-96

REVIEWED:

Laurence B. Kressel, County Counsel for
Multnomah County, Oregon

By Katie Gaetjens
Katie Gaetjens, Assistant Counsel
Date 9/26/96

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-9 DATE 10/1/96
DEB BOGSTAD
BOARD CLERK

EXHIBIT A

Addressograph

EGON HEALTH SCIENCES UNIVERSITY
UNIVERSITY HOSPITAL

MEDICAL REPORT-SEXUAL ASSAULT

A. PATIENT CONSENT

I understand that a separate medical examination for evidence of sexual assault at public expense can, with my consent, be conducted by a medical professional to discover and preserve evidence of the assault. If conducted, the report of the examination and any evidence obtained will be released to law enforcement authorities. I understand that the examination may include the collection of reference specimens at the time of the examination or at a later date. Knowing this, I consent to a medical examination for evidence of sexual assault. I understand that I may withdraw consent at any time for any portion of the examination.

Patient/Parent/Guardian (circle) OHSU Medical Personnel Date

B. AUTHORIZATION FOR EVIDENTIAL EXAM

Per ORS 147.375, I request a medical examination and collection of evidence for suspected sexual offense of the patient at no cost to the victim.

Law Enforcement Officer Agency BPST number Date

C. PATIENT HISTORY

1. Name of person providing history Relationship to Patient Date/time of Assault(s)

2. Acts described by patient:

Penetration of vagina by:

Penis

Finger

Foreign Object

Describe the object

Penetration of Rectum by:

Penis

Finger

Foreign Object

Describe the object

Oral copulation of genitals:

of victim by assailant

of assailant by victim

Oral copulation of anus:

of victim by assailant

of assailant by victim

Masturbation:

of victim by perpetrator

of perpetrator by victim

Other

Did ejaculation occur outside a body orifice

If yes describe location on the body

Foam, jelly, or condom used (circle)

Lubricant used

Other Acts

If more than one perpetrator, identify person

Yes	No	Attempt	Unsure

--	--	--	--

--	--	--	--

Emergency Department 2.7

EXHIBIT A

Addendum

3. Methods used by perpetrator:

Weapon inflicted injuries

Type of Weapon (s):

Physical blows by hands/feet (circle)

Grabbing/ grasping/ holding (circle)

Physical Restraints

Type used:

Bites

Choking

Burns (including chemical, toxic)

Threats of harm to whom:

Other method(s) used

Yes	No	Area of Body

4. Physical injuries and or pain described by patient

Lapse of consciousness

Vomited

Preexisting physical injuries

If yes, describe

Yes	No

5. Post Assault Hygiene/Activity

() not applicable if over 72 hours

urinated

defecated

genital wipe/ wash

bath/ shower/ douche

removed/ inserted tampon, sponge, diaphragm (circle)

brushed teeth

oral gargle/ swish

changed clothing

Yes	No

6. Pertinent Medical History

Last menstrual period:

Time of most recent consensual intercourse:

(Do not record any other information regarding sexual history on this form)

C. GENERAL PHYSICAL EXAM

1. Height _____ Weight _____ Eye Color _____ Hair Color _____

2. Condition of clothing upon arrival (rips, tears, presence of foreign materials)

3. General physical appearance

4. _____ The absence of visible trauma to the genitals or other body openings does not exclude forced sexual assault in that most assault victims will not have visible evidence of trauma in these areas.

5. Document physical injuries type and location on body diagram.

EXHIBIT A

Addressograph

6. Record evidence and specimens collected:

	Swabs	Dry Mount Slides	Yes	No	N/A
Oral					
Vaginal					
Rectal					
Cervical					
Penile					
Vaginal Wet Mount					
Sperm observed					
_____ motile					
_____ nonmotile					
Clothing					
Foreign materials on body					
Blood					
Dried secretions					
Fiber/ loose hair					
Vegetation					
Dirt/ gravel/ glass					
Pubic Hair combings/ comb					
Standards taken					

D. TREATMENT

STD Prophylaxis
Pregnancy Prophylaxis

Yes	No	N/A

_____ We have offered this patient the use of pregnancy prophylaxis information to prevent pregnancy resulting from this sexual assault incident. We have discussed the risks and side effects of this medication.

Attending Staff signature date

PHYSICAL EXAMINER

RN Signature

Emergency Medicine Resident Signature

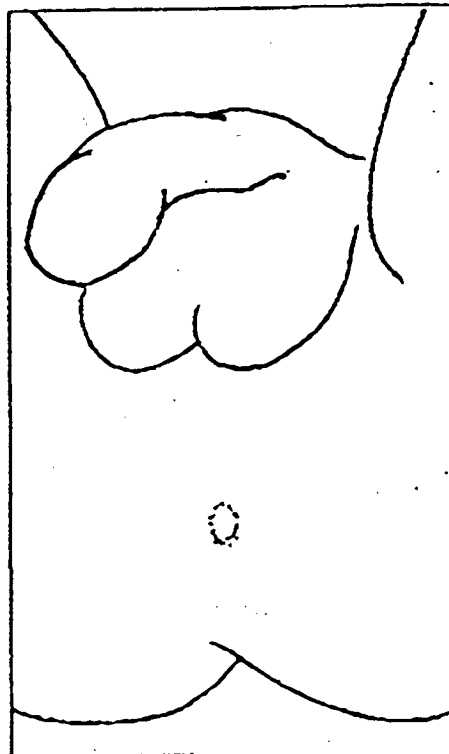
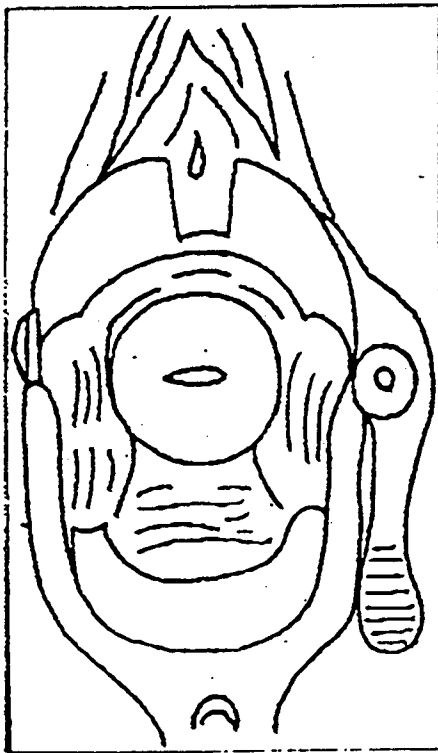
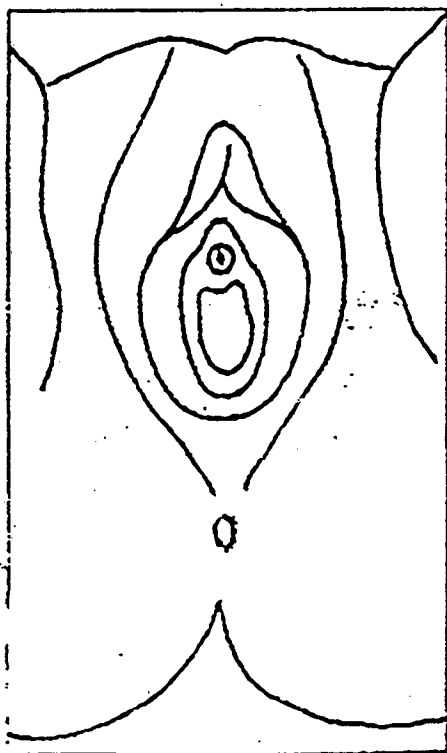
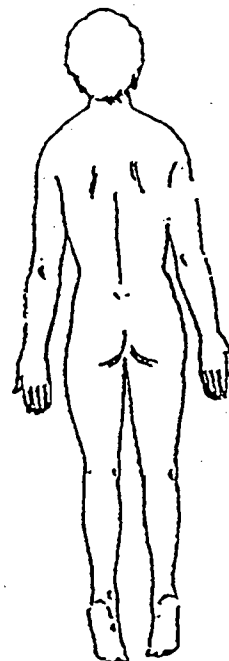
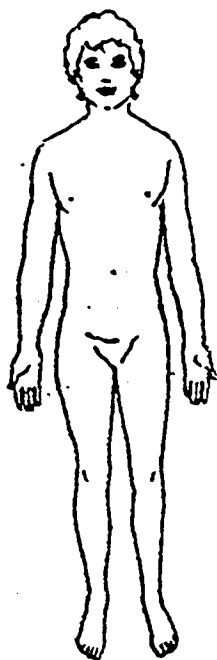
Attending Staff Signature

Emergency Department 2.7 _____



EXHIBIT A

Addressograph



MEETING DATE: OCT 1 1996
AGENDA NO.: C-10
ESTIMATED START TIME: 10:00 am

(Above space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with the State Department of Human Resources

BOARD BRIEFING Date Requested: _____
Requested By: _____
Amount of Time Needed: _____

REGULAR MEETING Date Requested: _____
Amount of Time Needed: 5 minutes or less

DEPARTMENT: Health DIVISION: _____

CONTACT: Kay Carlisle* TELEPHONE #: x8020

BLDG/ROOM #: 160/7

PERSON(S) MAKING PRESENTATION: Tom Fronk

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUGGESTED AGENDA TITLE:

Ratification of Intergovernmental Revenue Agreement 200787 with the State Department of Human Resources to fund a research analyst for the STARS Program.

10/1/96 ORIGINALS TO KAREN GARBER

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

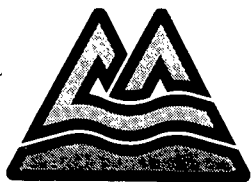
Or

DEPARTMENT MANAGER: Bill Odegaard *TR*

BOARD OF
COUNTY COMMISSIONERS
96 SEP 26 PM 3:45
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON



HEALTH DEPARTMENT
426 S.W. STARK STREET, 8TH FLOOR
PORTLAND, OREGON 97204-2394
(503) 248-3674
FAX (503) 248-3676
TDD (503) 248-3816

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

MEMORANDUM

Date: September 16, 1996
To: Board of County Commissioners
From: Billi Odegaard, Director, Health Department
Subject: Intergovernmental revenue agreement with the State Department of Human Resources to fund a research analyst for the STARS program

- I. Recommendation/Action Requested: The Health Department recommends Board ratification of Contract #200787 with the State Department of Human Resources for the period September 1, 1996, through August 31, 1997.
- II. Background/Analysis: This agreement provides funding for a research analyst for the STARS (Students Today Aren't Ready for Sex) Program. STARS is Oregon's program for sixth- and seventh-graders which uses teen leaders to deliver the message that it is best for teens not to have sex. STARS began as a demonstration project in Multnomah County, and is now being implemented statewide with the assistance of the Multnomah County Health Department. The research analyst will continue the evaluation of the demonstration site to determine if the program continues to be effective and if improvements can be made. This research will be used to determine how the statewide implementation will be conducted. Although the Health Department did not receive this agreement from the State until September 16, 1996, it is retroactive to September 1, 1996.
- III. Financial Impact: The State will provide the County a maximum of \$40,000 for the research analyst position. The remaining costs will be paid by the Health Department.
- IV. Legal Issues: None
- V. Controversial Issues: None
- VI. Link to Current County Policies: Continuing to work with other governmental agencies on teen pregnancy prevention.

- VII. Citizen Participation: Others collaborating in the statewide STARS effort include the STARS Foundation, a private non-profit founded by Sharon Kitzhaber to generate support and funding for the program; the Oregon Medical Association; Oregon Business Magazine; Templeton Foundation; the media (Channel 12, The Oregonian and Willamette Week) and private corporations (PGE, Fred Meyer, PacifiCorps, AT&T and Weiden and Kennedy).
- VIII. Other Government Participation: The 1995 Oregon Legislature appropriated \$250,000 to implement the STARS Program statewide. Grants were awarded to eleven counties throughout the state (Columbia, Curry, Douglas, Jackson, Jefferson, Josephine, Linn, Marion, Morrow, Union and Yamhill) to receive training and develop STARS programs for their communities. Other governmental agencies collaborating in the statewide STARS effort include the Multnomah Commission on Children and Families, the State of Oregon Community Partnership Program, AmeriCorp Volunteers, Representative Elizabeth Furse, and Sharon Kitzhaber.

MULTNOMAH COUNTY CONTRACT APPROVAL FORM

(See Administrative Procedures CON-1)

Renewal ☐

Contract # 200787

Previously Approved Contract Boilerplate: ☐ Attached ☒ Not Attached

Amendment # _____

<p style="text-align: center;">CLASS I</p> <p><input type="checkbox"/> Professional Services under \$25,000</p> <p><input type="checkbox"/> Intergovernmental Agreement under \$25,000</p> <p><input type="checkbox"/> Expenditure</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS II</p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p style="text-align: center;">CLASS III</p> <p><input type="checkbox"/> Intergovernmental Agreement over \$25,000</p> <p><input type="checkbox"/> Expenditure</p> <p><input checked="" type="checkbox"/> Revenue</p> <p style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p style="text-align: center;">AGENDA # <u>C-10</u> DATE <u>10/1/96</u></p>
---	--	---

Department: Health Division: _____

Contract Originator: Kay Carlisle Phone: x8020 Bldg/Room: 160/7

Administrative Contact: Karen Garber Phone: x6207 Bldg/Room: 160/7

Description of Contract:

Funding for a research analyst for the STARS (Students Today Aren't Ready for Sex) Program.

RFP/BID #: _____ Date of RFP/BID: _____ Exemption Expiration Date: _____

ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRF ☐ N/A ☒ None

Original Contract No. n/a (FOR RENEWALS ONLY)

<p>Contractor: <u>Oregon Dept of Human Resources</u></p> <p>Address: <u>Office of the Director</u></p> <p style="padding-left: 40px;"><u>500 Summer Street NE, 4th Floor</u></p> <p style="padding-left: 40px;"><u>Salem, OR 97310</u></p> <p>Phone: _____</p> <p>Employer ID# or SS#: <u>n/a</u></p> <p>Effective Date: <u>September 1, 1996</u></p> <p>Termination Date: <u>August 31, 1996</u></p> <p>Original Contract Amount: \$ <u>40,000</u></p> <p>Total Amt of Previous Amendments: \$ _____</p> <p>Amount of Amendment: \$ _____</p> <p>Total Amount of Agreement: \$ _____</p>	<p>Gary Weeks, Director</p> <p>Doug Wilson, Director, DHR Program & Finance 945-6892</p> <p>Clyde Saiki, Director of Contracts & Procurement</p> <p>Remittance Address (if different) _____</p> <p style="padding-left: 20px;">*Doug Wilson, Director, DHR Program & Finance;</p> <p style="padding-left: 40px;"><u>500 Summer St NE, 4th Floor; Salem, OR 97310-1012</u></p> <p>Payment Schedule _____ Terms _____</p> <p><input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Due on Receipt</p> <p><input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Net 30</p> <p><input checked="" type="checkbox"/> Other \$ <u>Quarterly invoice</u> <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Requirements contract - Requisition Required</p> <p>Purchase Order No. _____</p> <p><input type="checkbox"/> Requirements Not to Exceed \$ _____</p> <p>Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/></p>
---	---

REQUIRED SIGNATURES:

Department Manager: Billi Odegaard Date: 9-25-96

Purchasing Director: _____ Date: _____

(Class II Contracts only)

County Counsel: [Signature] Date: 9/26/95

County Chair/Sheriff: [Signature] Date: October 1, 1996

Contract Administration: _____ Date: _____

(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC DEC
01	156	015	0948								
02											
03											

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

DISTRIBUTION: Contract Administration, Finance, HD Contracts Unit, HD Payables/Receivables, HD Program Manager

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the Department of Human Resources, Office of the Director, hereinafter called DHR, and Multnomah County, acting by and through its Health Department, hereinafter called COUNTY.

DEPARTMENT OF
HUMAN
RESOURCES

Human Resources Building

I. PURPOSE

The purpose of this Agreement is to provide funding for technical support of the Students Aren't Ready for Sex (STARS) program as described in Exhibit A, and by this reference made a part hereof. The program began as a demonstration project in Multnomah county and is now being implemented statewide with the assistance of the Multnomah County Health Department. Funding is needed for a research analyst to continue the evaluation of the demonstration site. The research and evaluation of the demonstration site will determine how statewide implementation will be conducted.

II. TERM

This Agreement begins September 1, 1996 and ends August 31, 1997, unless otherwise terminated or extended in writing.

III. STATEMENT OF WORK

A. County agrees to:

1. Provide a research analyst who will provide the following technical support for the STARS program:
 - a. Conduct analyses of evaluation data from the STARS demonstration site.
 - b. Assist the planning and evaluation team in the development and design of the statewide STARS evaluation.
 - c. Prepare technical reports detailing results and findings.

IV. CONSIDERATION

- A. Payment for all work performed under this Agreement shall not exceed the maximum sum of \$40,000.00.



John A. Kitzhaber
Governor

- B.** COUNTY shall bill DHR for the work provided under this Agreement on a quarterly basis. Payments shall be made to COUNTY following DHR's receipt, review and approval of billing submitted by COUNTY. The DHR employee assigned to monitor contract compliance, authorize payment and act as DHR representative on matters concerning this Agreement shall be:

Doug Wilson, Director
DHR Program and Finance
500 Summer Street, 4th Floor
Salem, Oregon 97310-1012

- C.** COUNTY shall not exceed, and DHR will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment, the amendment must be fully effective before COUNTY performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement.

V. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

COUNTY may not enter into any subcontracts for any of the work scheduled under this Agreement or transfer any of its interest in the Agreement without obtaining prior approval from DHR.

C. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHR may terminate this Agreement, in whole or in part, effective upon delivery of written notice to COUNTY, or at such later date as may be established by DHR, under any of the following conditions:
 - a) If DHR funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified or terminated to accommodate a reduction in funds.

- b) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
 - c) If any license or certification required by law or regulation to be held by COUNTY to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
 - 3. DHR by written notice of default (including breach of Agreement) may terminate the whole or any part of this Agreement if:
 - a) If COUNTY fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or
 - b) If COUNTY fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from DHR, fails to correct such failures within 10 calendar days or such longer period as DHR may authorize.
- The rights and remedies of DHR provided in the above clause related to default (including breach of Agreement) by COUNTY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 4. Any such termination of this Agreement shall be without prejudice to any obligations or liabilities or either party already accrued prior to such termination.

D. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, except by written agreement signed by all parties.

E. INDEMNITY

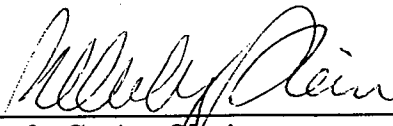
DHR and COUNTY shall be responsible exclusively with respect to their respective employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers compensation coverage, and Public Employees Retirement System Contributions.

COUNTY shall perform the services under this Agreement as an independent contractor. COUNTY and DHR each shall be responsible, to the extent required by the Oregon Tort Claims Act (ORS 30.260 - 30.300), only for the acts, omissions or negligence of its own officers, employees, subcontractors or agents.

F. Merger Clause

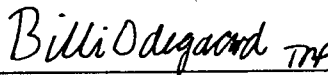
THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

VI. SIGNATURES



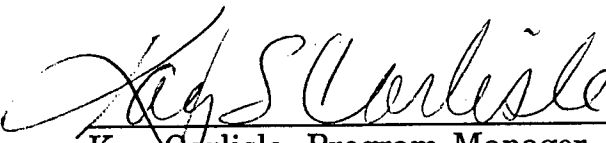
Beverly Stein, Chair
Multnomah County Board of Commissioners

October 1, 1996
Date



Billi Odegaard, Director
Multnomah County Health Department

9-25-96
Date



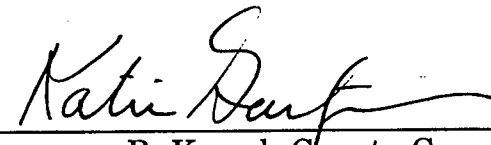
Kay Carlisle, Program Manager
Multnomah County Health Department

9/17/96
Date

Gary K. Weeks, Director
Department of Human Resources

Date

Reviewed by:



for Laurence B. Kessel, County Counsel
Multnomah County

9/26/96
Date

DHR Contracts

Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-10 DATE 10/1/96
DEB BOGSTAD
BOARD CLERK

EXHIBIT A

The Sky Is the Limit! Challenges and Opportunities for STARS

STARS (Students Today Aren't Ready for Sex) is Oregon's program which is targeted for sixth and seventh graders and focuses on the message "It's best for teens not to have sex." Five classroom sessions, based on Dr. Marion Howard's Postponing Sexual Involvement (PSI) curriculum, are led by teen leaders. The program began as a demonstration project in Multnomah County in January 1995 with over 1000 students participating; implementation and outcome evaluations were conducted. The treatment groups showed significant positive outcomes that supported the message "It's best for teens not to have sex". The students in the demonstration project will be followed for 5 years; the long term goals are to increase the age of onset of intercourse and decrease teen pregnancy. Following the evaluation, the Multnomah County commissioners voted to expand and fund 18 middle schools (4500 students) for the 95-96 academic year. In January, 1995, the Governor of Oregon budgeted funds for the implementation of PSI in 12 communities around the state. After seeing a PSI class "in action" and talking to teen leaders, the First Lady of Oregon announced that she wanted to invest time in this program; she initiated the STARS partnership which involves the State of Oregon and Multnomah County Health Department and she formed a private STARS foundation with the intent of making this program available to every sixth or seventh grader in the state by the year 2000. Businesses, corporations and foundations have been asked to support and expand implementation, training and statewide evaluation. A video has been developed that shows the economic as well as human costs of teen pregnancy to Oregon. Businesses that have invested in STARS include utilities, bankers, physicians, athletic manufacturers, insurance companies, investors, attorneys, public relation agencies and media. The advertising agency, Weiden and Kennedy, has created an organizational logo for STARS. Community partners have been asked to "Light up our STARS" by reinforcing the message of the intervention and by providing and developing community resources for the students. Community partners include health providers, educators, parents, teen groups, school boards, service agencies, religious leaders, business and civic leaders, and the media.

As of June, 1996, approximately 450 high school students have been trained and implemented the STARS program through the state to over 10,000 sixth and seventh graders. There is great demand from other communities throughout the state to be included in the STARS program. The biggest challenge of STARS is with expansion to maintain a high quality and consistent program that can be replicated and evaluated statewide. Multnomah County Health Department, the State of Oregon and the STARS Foundation are all committed to the highest quality training, implementation and evaluation with the long term goals of reducing teen pregnancy and helping to make better lives for the children of Oregon. The opportunities that come with this challenge are numerous; the sixth and seventh graders learn how to say "No" to sexual involvement and how it will make a better life for them, the teen leaders develop leadership skills and confidence, the communities become invested in their kids and provide opportunities for better life options, and the State of Oregon has the potential of a better work force and to reduce the costs in the budget associated with teen pregnancy. The challenges and opportunities that come with government, business, and private partnerships are endless; the sky is the limit!

BOARD OF
COUNTY COMMISSIONERS

96 SEP 25 PM 5:05

MULTNOMAH COUNTY
OREGON

MEETING DATE: OCT 1 1996

AGENDA #: R-2

ESTIMATED START TIME: 10:00 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Proclamation recognizing October as Disability Awareness Month in Multnomah County

BOARD BRIEFING:

DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING:

DATE REQUESTED: October 1, 1996

AMOUNT OF TIME NEEDED: 5 minutes

DEPARTMENT: Non-Departmental

DIVISION: BCC/Cmsnr Dan Saltzman

CONTACT: Cameron Vaughan-Tyler

TELEPHONE #: 248-5220

BLDG/ROOM #: 106/1500-1

PERSON(S) MAKING PRESENTATION: Commissioner Saltzman

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [x] APPROVAL [] OTHER

SUGGESTED AGENDA TITLE

Proclamation recognizing October 1996 as Disability Awareness Month in Multnomah County.

10/1/96 ORIGINAL TO JAN CAMPBELL; copy to
Commissioner Saltzman

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Don Saltzman

OR

DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the office of the Board Clerk 248-3277/248-5222

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Cameron Vaughan-Tyler

DATE: September 25, 1996

REQUESTED PLACEMENT DATE: October 1, 1996

RE: Proclamation recognizing October 1996 as Disability Awareness Month in Multnomah County.

I. Recommendation/Action Requested:

Approval of Proclamation

II. Background/Analysis:

Multnomah County does not have a proclamation on record that recognizes Disability Awareness Month or the contributions that the disabled community makes in our workplaces and in our community.

III. Financial Impact:

None

IV. Legal Issues:

None

V. Controversial Issues:

None

VI. Link to Current County Policies:

In keeping with Multnomah County's policy to fully comply with Americans with Disabilities ACT.

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

N/A

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Proclamation recognizing
October 1996 as **Disability**
Awareness Month in
Multnomah County, Oregon

)
)
)
)

PROCLAMATION
96-178

WHEREAS, the Americans with Disabilities ACT (ADA) was signed into law on July 26, 1990 to prohibit discrimination against individuals with disabilities in employment and access to goods and services; and

WHEREAS, the ADA provides anti-discrimination protection to over 49 million Americans with disabilities; through this act it is proclaimed that Americans with disabilities are integral, contributing, productive and valued citizens; and

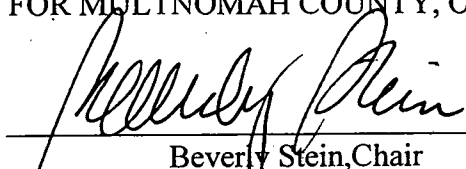
WHEREAS, the Board of Multnomah County Commissioners values the dignity and worth of every individual; and

WHEREAS, the Board of Multnomah County Commissioners is committed to full compliance with the ADA; now, therefore

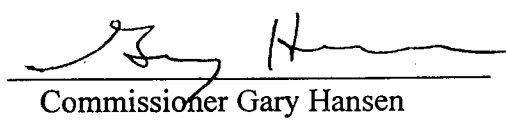
IT IS HEREBY PROCLAIMED that the Multnomah County Board of Commissioners hereby recognizes the month of October, 1996 as **DISABILITY AWARENESS MONTH**

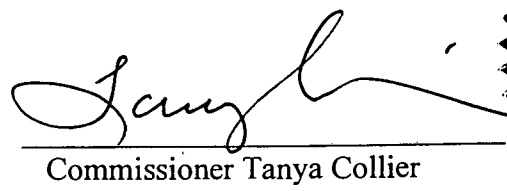
APPROVED this 1st day of October, 1996.

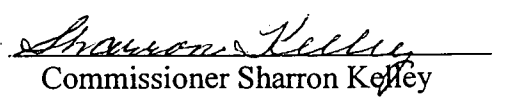
BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

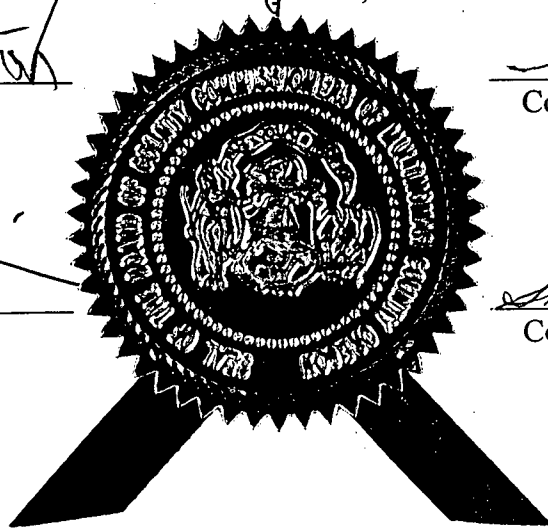

Beverly Stein, Chair


Commissioner Dan Saltzman


Commissioner Gary Hansen


Commissioner Tanya Collier


Commissioner Sharron Kelley



MEETING DATE: OCT 1 1996

AGENDA #: R-3

ESTIMATED START TIME: 10:05 am

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Proclaiming the month of October, 1966 as Public Safety Month

BOARD BRIEFING: DATE REQUESTED: _____

REQUESTED BY: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: October 1, 1966

AMOUNT OF TIME NEEDED: 5 mins

DEPARTMENT: District 3 DIVISION: _____

CONTACT: Darlene Carlson TELEPHONE #: 248-5126

BLDG/ROOM #: 106/1500

PERSON(S) MAKING PRESENTATION: Tom Chamberlain

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

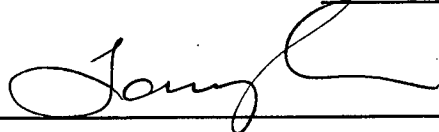
SUGGESTED AGENDA TITLE:

Proclamation of October, 1966 as Public Safety Month in Multnomah County

10/1/96 Original & copy to Darlene Carlson

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: _____



BOARD OF
COUNTY COMMISSIONERS
96 SEP 26 PM 11:47
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM BRIEFING
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Tanya Collier, Commissioner District 3

TODAY'S DATE: September 26, 1996

REQUESTED PLACEMENT DATE: October 1, 1996

RE: Proclaiming the month of October, 1996 as Public Safety Month in Multnomah County and recognizing of the exemplary and important work public safety employees do in our community.

I. Recommendation/Action Requested:

Request that the Multnomah County Board of Commissioners proclaim October, 1996 as Public Safety Month in Oregon. This is to honor the important work done by public safety employees in Multnomah County and across our fine state.

II. Background Analysis:

A request to bring this before the Multnomah County Board of Commissioners came from Tom Chamberlain of the Portland Firefighters. Commissioner Collier agreed to bring this to the Board and is most supportive of this effort to acknowledge the dedication and importance of the work of public safety employees.

III. Financial Impact:

None.

IV. Legal Issues:

None.

V. Controversial Issues:

None.

VI. Citizen Participation:

None.

VII. Other Government Participation:

State of Oregon has passed a similar proclamation which is included in this packet.

OFFICE OF THE GOVERNOR
STATE OF OREGON



PROCLAMATION

WHEREAS: Safety of persons and property is imperative to the well-being of the state of Oregon and our nation; and

WHEREAS: Public Safety employees act to preserve and enhance the well-being of Oregonians, and protect our people and property from misfortune and distress; and

WHEREAS: Whether fire fighter or police officer, corrections officer, 911 dispatcher or paramedic;

Whether fighting home fires or forest fires;

Whether maintaining prison security or conducting public safety education classes for school children;

Whether handling hazardous waste spilled on the road or extricating and transporting accident victims;

Whether lending a hand to the elderly or helping a lost or scared child feel safe;

Public safety employees interact directly with Oregonians of all ages.

WHEREAS: Public safety employees are dedicated and exemplary citizens who embody the spirit of Oregon engraved on the Capitol walls:

A free state is formed and is maintained by the voluntary
union of whole people joined together . . . for the common welfare.

NOW,

THEREFORE, I, John A. Kitzhaber, Governor of the State of Oregon, hereby proclaim October 1996 to be

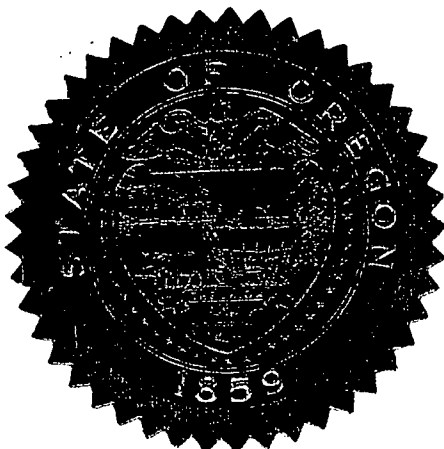
PUBLIC SAFETY MONTH

in Oregon and encourage all citizens to join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand
and cause the Great Seal of the State of Oregon to
be affixed. Done at the Capitol in the City of Salem
in the State of Oregon on this day, August 8, 1996.

John A. Kitzhaber, Governor

Phil Keisling, Secretary of State



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY**

Proclaiming the Month of October, 1996)
as **Public Safety Month** in Multnomah County)
and recognizing the dedication and hard work)
of public safety employees in preserving and)
enhancing the well-being of all Oregonians.)

PROCLAMATION
96-179

WHEREAS, the safety of persons and property is imperative to the well-being of our County, the State of Oregon and our nation; and

WHEREAS, public safety employees act to preserve and enhance the well-being of Oregonians, and protect our people and property from misfortune and distress; and

WHEREAS: Whether fire fighter or police officer, corrections officer, 911 dispatcher or paramedic;

Whether fighting home fires or forest fires;

Whether maintaining prison security or conducting public safety education classes for school children;

Whether handling hazardous waste spilled on the road or extricating and transporting accident victims;

Whether lending a hand to the elderly or helping a lost or scared child feel safe, public safety employees interact with Oregonians of all ages; and

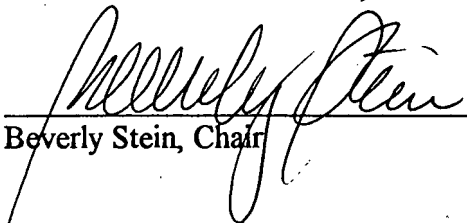
WHEREAS, public safety employees are dedicated and exemplary citizens who embody the spirit of Oregon engraved on the walls of the State Capitol:

"A free state is formed and is maintained by the voluntary union
of whole people joined together . . . for the common welfare."

**THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS HEREBY
PROCLAIMS** October, 1996 as **PUBLIC SAFETY MONTH** in Multnomah County, Oregon
and encourages all citizens to join in this observance.

October 1, 1996.

**BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON**



Beverly Stein, Chair



Meeting Date: OCT 1 1996

Agenda No: R-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Exempt employee job title and salary range revisions

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 3, 1996

Amount of Time Needed: 10 minutes

DEPARTMENT: Nondepartmental DIVISION: Employee Services

CONTACT: Curtis Smith TELEPHONE #: x5015

BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Curtis Smith

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

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

This proposed Ordinance amends Ordinance No. 856 and reflects routine updating of the exempt employee compensation system to: (1) Delete classifications no longer needed; (2) Create new classifications and restore classifications; (3) Revise salary ranges; (4) Describe the effect on employees; and (5) Award two special adjustments. As detailed in the briefing memo, the fiscal impact is less than \$2,000 annually.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Vickie L. Jones

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

BOARD OF
COUNTY COMMISSIONERS
96 SEP 23 AM 10:12
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97293

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Curtis Smith, Employee Services Manager

DATE: September 23, 1996

REQUESTED PLACEMENT DATE: October 3, 1996

RE: Ordinance amending Ordinance No. 856, in order to add, delete and revise exempt pay ranges and job titles and make special adjustments.

I. Recommendation/Action Requested: Adoption of Ordinance amending Ordinance No. 856.

II. Background/Analysis: The Board adopted a new exempt employee compensation system, effective July 1, 1991. Since that time, the Personnel Section has kept the system up to date by bringing periodic changes to the Board to adopt. This is the most recent update.

Section II of the Ordinance deletes 4 classifications that are no longer needed, due to departmental reorganization of responsibilities.

Section III of the Ordinance adds or restores five classifications that are necessary due to departmental reorganization of responsibilities. As each new position is created, the Board has or will consider a budget modification that adds the position and specifies the funding source for the position.

Section IV. of the Ordinance revises exempt salary ranges. The revisions of the salary ranges in the Bridge Section of the Transportation Division are based on increased responsibilities that these classifications have taken on over time.

The revision to the Payroll Supervisor range is included to implement the Order of the Merit System Civil Service Council which resulted from an appeal that was filed with the Council.

Section V. of the Ordinance specifies that employees in classifications at the time they are adopted or revised are reclassified and may be eligible for pay increases within the limits of Ordinance 778, Section IX (A).

Section VI. of the Ordinance awards special salary adjustments to the two Law Clerks in County Counsel's Office. These special adjustments are based on a local salary survey of governmental agencies that employ Law Clerks. After completion of the survey, the Employee Services Division recommended that no change in the Law Clerk range was necessary, but that these special adjustments would be appropriate to maintain the position of these incumbents in the local labor market.

III. Financial Impact: The financial impact of Special Adjustments of this Ordinance is less than \$2,000 on an annual basis and it is effective for the entire fiscal year. This money is included in current budgeted funds. Salary adjustments as a result of the reclassification provisions are optional and, if any, will be paid out of current budgeted funds by the respective departments.

IV. Legal Issues: None.

V. Controversial Issues: None

VI. Link to Current County Policies: Ordinance No. 778 requires that the exempt compensation plan be kept current.

VII. Citizen Participation: None

VIII. Other Government Participation: None

ORDINANCE FACT SHEET

Ordinance Title: Exempt employee job title and salary range revisions

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

This proposed Ordinance amends Ordinance No. 856 and reflects routine updating of the exempt employee compensation system to: (1) Delete classifications no longer needed; (2) Create new classifications or restore classifications; (3) Revise salary ranges; (4) Describe the effect on employees; and (5) Award two special adjustments.

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

Other jurisdictions establish and maintain exempt compensation plans.

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

Not applicable.

What is the fiscal impact, if any?

Less than \$2,000 annually for the special adjustments. The special adjustments and any payments as a result of the reclassification provisions will be absorbed within current budgeted funds.

(If space is inadequate, please use other side)

SIGNATURES:

Person Filling Out Form: _____

Planning & Budget Division (if fiscal impact): _____

Department Manager/Elected Official: _____

Curtis L. Smith
David J. Warren
Vickie S. Gales

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 FOR MULTNOMAH COUNTY OREGON

3 ORDINANCE NO. _____

4 An ordinance amending Ordinance No. 856, in order to add, delete and revise
5 exempt pay ranges and titles and make special adjustments.

6 MULTNOMAH COUNTY ORDAINS AS FOLLOWS:

7 Section I. Findings.

8 (A) Multnomah County, Oregon employs a variety of individuals excluded from
9 any collective bargaining agreement referred to as "exempt" employees.

10 (B) It is the County's policy to establish an exempt compensation plan that
11 provides such pay as necessary for the County to recruit, select, and retain qualified
12 management, supervisory, administrative, and professional employees; that recognizes
13 employee performance, growth, and development; that maintains an appropriate internal
14 relationship among classifications and employees based on job responsibilities,
15 qualifications, and authority; and that maintains parity between equivalent exempt and
16 non-exempt positions.

17 (C) The Personnel officer is responsible for developing and recommending
18 compensation plan adjustments to the Multnomah County Board of Commissioners.

19 Section II. Deletion of Job Titles.

20 The following job titles established in Exhibit A of Ordinance No. 856 are deleted,
21 effective August 1, 1996:

22 Civil Process Supervisor

23 Information Services Manager/Senior

24 Planning & Program Development Manager

25 Victim Services Administrator

1 Section III. Addition of Job Titles and Ranges:

2 The following job titles and pay ranges are added to Exhibit A of Ordinance No.
3 856, effective August 1, 1996:

4 <u>Job Title</u>	<u>Min</u>	<u>Mid</u>	<u>Max</u>
5 Dep Public Guardian/Senior	\$39,156	\$46,987	\$54,819
6 Facilities Coordinator	\$30,690	\$36,828	\$42,965
7 MCSO Info Systems Manager *	\$49,966	\$59,959	\$69,952
8 MCSO Human Resources Manager *	\$47,584	\$57,101	\$66,617
9 Planning Manager *	\$52,479	\$62,975	\$73,470

10 *Unclassified, non-Civil Service position pursuant to MCC 3.10.100.

11 Section IV. Revision of Ranges.

12 (A) The following pay ranges are established for existing positions, effective
13 August 1, 1996:

14 <u>Job Title</u>	<u>Min</u>	<u>Mid</u>	<u>Max</u>
15 Bridge Maintenance Supervisor	\$39,156	\$46,987	\$54,819
16 Bridge Operations Supervisor	\$30,690	\$36,828	\$42,965

17 (B) The pay range for Payroll Supervisor, effective January 1, 1996, is \$41,987
18 - \$50,385 - \$58,782. The pay range for Payroll Supervisor, effective July 1, 1996, is
19 \$43,162 - \$51,795 - \$60,427.

20 Section V. Effect on Employees.

21 Exempt employees in classifications which are adopted or revised in this
22 Ordinance shall be deemed reclassified, and may receive salary adjustments as
23 authorized in Ordinance 855, Section IX. (A) and (B).

1 Section VI. Special Adjustments.

2 The following employees will receive a one-time salary adjustment, effective July
3 1, 1996, to the following annual salary rate. This adjustment is necessary to maintain
4 appropriate internal and external relationships among exempt employees.

5 <u>Employee</u>	<u>Job Title</u>	<u>Annual Salary</u>
6 Elizabeth Katz	Law Clerk	\$40,824
7 Susan Dunaway	Law Clerk	\$40,723

8
9 ADOPTED the _____ day of _____, 1996, being the date of
10 its second reading before the Board of County Commissioners of Multnomah County,
11 Oregon.

12
13
14
15
16 By _____
17 Beverly Stein, Chair
MULTNOMAH COUNTY, OREGON

18 REVIEWED:

19 Sandra Duffy for
20 Laurence Kressel, County Counsel
of Multnomah County, Oregon

21 N:\DATA\EMP\SERI\WP\DATA\EX\UPDATE.DOC

BUDGET MODIFICATION NO.

DSS-1

(For Clerk's Use) Meeting Date OCT 1 1996Agenda No. R-51. REQUEST FOR PLACEMENT ON THE AGENDA FOR October 3, 1996

DEPARTMENT Support Services
 CONTACT Shery Stump
 * NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

DIVISION Employee Services
 TELEPHONE 2203
Shery Stump, Ben Berry

SUGGESTEDAGENDA TITLE (to assist in preparing a description for the printed agenda)

Budget Modification DSS-1, reallocating funds for computer training

(Estimated Time Needed on the Agenda)

2. DESCRIPTION OF MODIFICATION (Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

☒ Personnel changes are shown in detail on the attached sheet

This budget modification moves \$57,134 from Professional Services to Personal Services, and \$4,400 from Prof. Svcs. to Capital Equipment. This modification creates two new positions, a Training Coordinator and a Training Assistant. The Training Assistant's functions will be included in the RFP for the vendors who will provide training. If a satisfactory bid is received for these services, the Training Assistant will not be hired. Job descriptions are attached for the two positions.

3. REVENUE IMPACT (Explain revenues being changed and reason for the change)

None

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
96 SEP 23 AM 9:30

4. CONTINGENCY STATUS (to be completed by Budget & Quality)

N/A

Fund Contingency before this modification , _____

Originated By	Date	Department Director	Date
<u>Shery M. Stump</u>	<u>9/19/96</u>	<u>Vickie S. Craves</u>	<u>9/20/96</u>
Plan/Budget Analyst	Date	Employee Services	Date
<u>Kui Chadwick</u>	<u>9/19/96</u>	<u>Daniel Winkley</u>	<u>9/20/96</u>
Board Approval	Date		
<u>Wendy C. Boast</u>	<u>10/1/96</u>		

PERSONNEL DETAIL FOR BUDGET MODIFICATION NO.
DSS-1
5. ANNUALIZED PERSONNEL CHANGES

(Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

FTE Increase (Decrease)	POSITION TITLE	ANNUALIZED			
		BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
1.0	Employee Services Specialist 2 403/070/7937	44,765	7,837	6,319	58,921
1.0	Office Assistant 2 403/030/7937	21,966	3,846	4,763	30,575
0	TOTAL CHANGE (ANNUALIZED)	66,731	11,683	11,082	89,496

6. CURRENT YEAR PERSONNEL DOLLAR CHANGES

(Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

Permanent Positions, Temporary, Overtime, or Premium	Explanation of Change	CURRENT FY			
		BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
ES Spec 2 start 11/1/96 Permanent		29,843	5,251	4,234	39,328
OA 2 start 12/1/96 Permanent		12,813	2,231	2,763	17,806
TOTAL CURRENT FISCAL YEAR CHANGES		42,656	7,481	6,996	57,134

BMDSS1.XLS

EXPENDITURE												
TRANSACTION EB GM []			TRANSACTION DATE			ACCOUNTING PERIOD			BUDGET FY			
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	(Decrease)	Subtotal	Description
		403	070	7937			5100	0	42,656	42,656		
		403	070	7937			5500	0	7,481	7,481		
		403	070	7937			5550	0	6,996	6,996		
		403	070	7937			6110	0	238,467	238,467		
		403	070	7937			8400	0	4,400	4,400		
		403	070	7934			6110		(300,000)	(300,000)		
								0				
		400	070	7522			6580			6,996		
								0				
								0				
								0				
								0				
								0				
								0				
								0				
TOTAL EXPENDITURE CHANGE										6,996	0	
REVENUE												
TRANSACTION RB GM []			TRANSACTION DATE			ACCOUNTING PERIOD			BUDGET FY			
Document				Organi-		Reporting		Current	Revised	Change		
Number	Action	Fund	Agency	zation	Activity	Category	Object	Amount	Amount	(Decrease)	Subtotal	Description
		400	070	7522			6606			6,996		
								0				
								0				
								0				
								0				
								0				
								0				
								0				
								0				
								0				
								0				
TOTAL REVENUE CHANGE										6,996	0	

COMPUTER TRAINING COORDINATOR

Position:

- Employee Services Specialist II
- New FTE, assigned to Training Section, Employee Services Division, Department of Support Services
- Supervisor: Shery Stump, Training Manager

Job Duties:

- Conduct needs assessment for computer software training.
- Monitor development and installation of skills assessment tool(s) to be used to put employees in appropriate classes and measure effectiveness of training.
- Complete vendor selection and monitor contracted training vendor(s) for computer training. Initially, training topics will include Microsoft Word, Access, Excel, electronic mail, and Windows 95. Other topics will be added later.
- Coordinate scheduling of class sessions and develop calendars or other publicity for advertising training sessions in conjunction with non-computer courses offered by the Training Section.
- Monitor attendance and evaluation of training; recommend revisions in the training as needed.
- Meet with County Information Technology Council and maintain collaboration between Information Services Division and Employee Services Division to ensure effective computer software training.
- Help develop, monitor, and improve skills tracking system to provide a record of employee skills in use of technology; coordinate with skills tracking for non-technology skills.
- Develop plan for meeting computer software training needs for 1997-98 and following years.
- Explore various training methodologies for computer software training and develop internal expertise in these areas.
- Develop and conduct training/learning opportunities as needed.
- Develop expertise and recommendations for using computer technology and intranet resources for providing training on other topics.
- Report to Training Manager; collaborate with others in Training Section, Employee Services, Department of Support Services and other departments to ensure that computer training supports and coordinates with quality improvement initiatives, diversity initiatives, and other training/organizational development efforts.

COMPUTER TRAINING ASSISTANT

Note: job duties listed below will be included as a separate item in the request for proposal. The ability of proposers to accomplish these tasks on behalf of the County will be assessed and a determination made as to whether these functions can be provided by the vendor. Accessibility of employee training records, possibility of on-line registration, and coordination with skills assessment process will be considered when determining whether record-keeping should be done in-house or by a vendor. The Training Section is beyond capacity now to handle logistics for non-computer classes; any demands for logistical support MUST be met outside of current staffing.

Position:

- Office Assistant II
- New FTE, assigned to Training Section, Employee Services Division, Department of Support Services

- Supervisor: Shery Stump, Training Manager

Job Duties

- Set up training registration system for computer software training and skills assessment records.
- Maintain and update system with employee training and skills information.
- Register employees for training and provide confirmations and reminders.
- Verify completion of required skills assessment and registration in appropriate training session.
- Track waiting lists and report need for increasing computer class sessions offered.
- Obtain class schedule information and assist with creation of training calendar for computer software training.
- Monitor and order supplies and materials needed in County-provided training locations.
- Maintain database for computer training rooms in use by County employees including disability adaptations and availability.
- Compile evaluations of computer software training and provide evaluation summaries to Training Coordinator.
- Assist with logistics and registration for non-computer courses as needed.



MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS

BEVERLY STEIN
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

BUDGET & QUALITY OFFICE

PORTLAND BUILDING
1120 S.W. FIFTH - ROOM 1400
P. O. BOX 14700
PORTLAND, OR 97214
PHONE (503)248-3883

TO: Board of County Commissioners
FROM: Shery Stump, Ben Berry and Keri Hardwick
DATE: September 19, 1996
SUBJECT: Budget Modification DSS 1

I. Recommendation / Action Requested:

Approve Budget Modification DSS #1

II. Background / Analysis

As part of the FY 1996-97 Adopted Budget, \$300,000 of General Fund was approved for computer training to facilitate the move to a PC-based environment, using a standard software package for office applications. The Information Technology Council (ITC) chartered a Subcommittee on Training to conduct a preliminary needs assessment, determine urgent training needs and study the feasibility and cost of alternative solutions. The Subcommittee's recommendation was the basis of ITC's decision to

- provide software training through the Countywide Training Section in Employee Services;
- hire a full-time Computer Training Coordinator to administer the program; and
- have training conducted by vendors at vendor-provided sites with the vendor(s) selected through an RFP process.

Preliminary needs assessment conducted in June (before most computer purchases) indicates the need for 12,251 participant seats in computer training with the greatest need in training on Windows 95 (1,405 seats), Microsoft Word (1,718 seats), E-mail (1,488 seats), and Schedule + (1,336 seats). Training in Internet use, Excel and LAN basics is also in demand. Since most vendor classrooms seat 12 participants, this need translates into 1,251 class sessions being requested immediately.

With ITC's support, Information Services and Employee Services have collaborated on developing the preliminary training plan as follows:

September 1996	Get budget approval Advertise for Computer Training Coordinator Develop RFP for computer training
October 1996	Hire Computer Training Coordinator

November 1996	Request proposals from vendors to provide computer training
	Select vendor(s) to provide computer training
	Vendor conducts needs assessment to customize courses to meet county needs
December 1996	Develop and distribute skills assessment for use by employees in selecting appropriate courses and course sections
	Advertise courses
	Conduct skills assessment and place employees in appropriate courses and course sections
January 1997	Hire Computer Training Assistant (may be handled by vendor)
	Conduct training
	Conduct immediate post-assessment to determine skill development
February- June 1997	Plan for 1997-98 computer training
	Continue training and skills assessment
	Continue to schedule employees in courses
May-June 1997	Reassess needs to determine appropriate courses for 1997-98
	Adjust contract(s) if needed
	Determine amount of Phase I Training completed and remaining

A Computer Training Coordinator (one FTE) and a means to provide clerical support (a possible second FTE) will be needed to provide County-wide computer training. The Training Manager has the experience and skill to administer this new program, but now has a total staff of one office assistant 2 to manage and develop all training to support the RESULTS initiative and other training efforts; the Training Section is not able to absorb any part of computer training without additional staff. The Computer Training Coordinator would do the following:

- conduct thorough needs assessment for computer training;
- monitor vendor selection and performance;
- work with vendor to coordinate class scheduling with other County training;
- evaluate training;
- conduct small-scale (1-2 hour) learning experiences if needed;
- develop recommendations for 1997-98 computer training; and
- develop skills in using technology to create more effective training and skill development approaches.

Significant logistical support is required for training including receiving registration, entering registration into computer system, wait list management, sending confirmations and reminders, tracking skills/needs to help employees plan what training to attend, tracking cancellations, rescheduling, and attendance at training, reporting progress to managers, supervisors, and employees, and summarizing evaluations. Since the computer training plan specifies all training this year to be provided by external vendors in their facilities, it is possible that vendors can provide this support. The RFP for computer training will be written to include a module for providing training/clerical support and if vendors are able to provide acceptable services for less cost than hiring a computer training assistant, only one FTE (the Computer Training Coordinator) will be added.

If no vendor is able or willing to provide the needed clerical support for a reasonable price, one FTE office assistant 2 will be hired to support computer training. This budget modification allows for the maximum additional staff but the office assistant 2 will be hired if and only if acceptable vendor-provided support services cannot be obtained.

III. Financial Impact

None in FY 1996-97. This budget modification creates two new positions which would need to be funded in the future if this computer training program was to continue.

IV. Legal Issues:

None.

V. Controversial Issues:

There are always many worthwhile programs competing for General Fund dollars, so some controversy is inherent in any General Fund allocation. There are no controversial issues beyond that for this budget modification. This proposal was developed in conjunction with the departments, via the Information Technology Council and the departments will be involved in creating the RFP for the training services. We hope to prevent development of intra-County controversy by keeping departments involved throughout the process.

VI. Link to Current County Policies:

The County has adopted Microsoft Office as a County standard on the PC desktop. In order to fully take advantage of this software, employees must be trained in its use. Furthermore, in the Strategic Plan for Information Technology, the Board adopted an objective which states:

"09. Create and implement a training program that provides the necessary information technology training for each employee in order to ensure optimum utilization of County information systems."

The program proposed here helps the County to achieve this objective.

In addition, the goals of the RESULTS initiative imply an increased need for inter-departmental and team communication, increased use of data, and an increased need for skill in data collection and analysis. A technically-competent workforce will be able to use the technology provided to them to increase efficiency and effectiveness by improving systems and processes.

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

N/A

MEETING DATE: OCT 1 1996
AGENDA #: R-6
ESTIMATED START TIME: 10:25

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Loan Approval for Energy Enhancements at the ISD / Kelly Building

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: September 26, 1996
AMOUNT OF TIME NEEDED: 10 minutes

DEPARTMENT: ES DIVISION: Facilities & Property Mg't
CONTACT: Amy Joslin TELEPHONE #: 248-3322 x4544
BLDG/ROOM #: 421 / 3rd floor

PERSON(S) MAKING PRESENTATION: Amy Joslin

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUGGESTED AGENDA TITLE:

Approval of Borrowing Resolution for Oregon Department of Energy SELP Loan for Energy Efficiency Improvements at the Multnomah County ISD / Kelly Building

10/1/96 copies to Amy Joslin

SIGNATURES REQUIRED:

ELECTED
OFFICIAL: _____
(OR)
DEPARTMENT
MANAGER: Larry F. Nicholas

BOARD OF
COUNTY COMMISSIONERS
96 SEP 25 PM 4:41
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
DIVISION OF FACILITIES AND
PROPERTY MANAGEMENT
2505 S.E. 11TH AVENUE
PORTLAND, OREGON 97202
(503) 248-3322

Staff Report Supplement

To: Board of County Commissioners

From: Amy Joslin, Energy Conservation Specialist
Facilities and Property Management Division

Date: 09/13/96

Subject: RESOLUTION: STATE ENERGY LOAN PROGRAM

I. Recommendation/Action Requested

Approve Resolution authorizing the County to borrow up to \$56,000 in State of Oregon Department of Energy Small Scale Energy Loans.

The appropriation for this project is included within the fiscal year 1996-97 adopted budget.

II. Background/Analysis

Energy efficiency improvements will be achieved by increasing the roof insulation, replacing the existing boiler with a high efficiency boiler, adding digital controls to the heating, ventilating and air conditioning systems, replacing the existing lighting, and adding lighting controls.

The costs of the energy efficiency improvements are within the Capital Improvement Fund. First year payment on the loan will be made out of utility cost savings.

III. Financial Impact

The Capital Improvement Fund will be spending a total of \$56,000 for the project.

The tenants of the ISD / Kelly building will be making the payments on the loan not to exceed \$8,200 annually over the 10 year life of the loan.

IV. Legal Issues

This package requires formal approval of the Resolution.

V. Controversial Issues

None.

VI. Link to Current County Policy

Current policy supports the replacement of outdated, inefficient equipment with newer equipment, particularly when the replacement generates energy savings to pay for a portion of the replacement costs.

VII Citizen Participation

None anticipated.

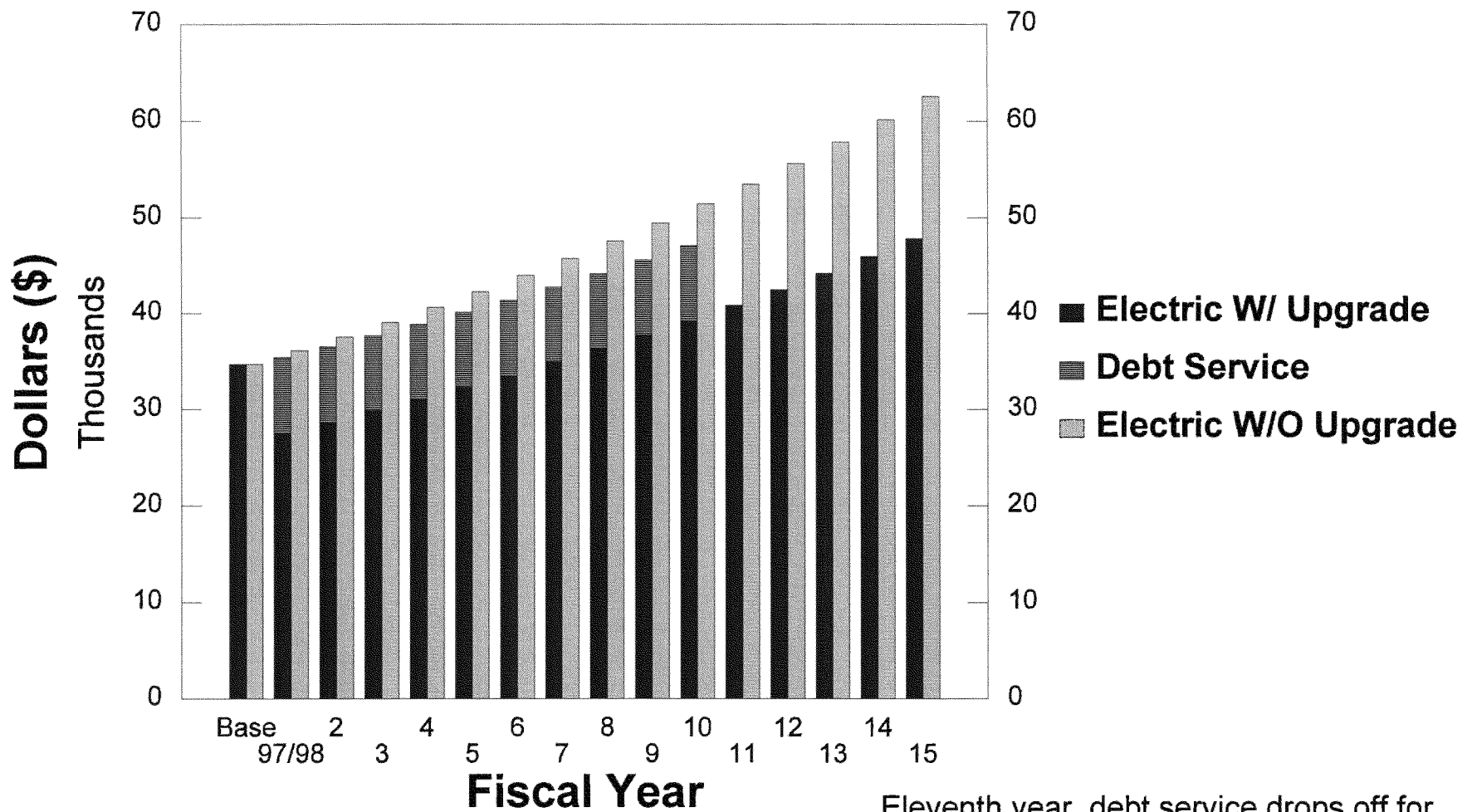
VIII Other Government Participation.

Partial costs of the project are covered by the State Energy Loan Program.

ISD / Kelly Energy Upgrades

- ◆ Energy Efficiency Measures:
 - Increased roof insulation levels
 - Installed digital controls on HVAC systems
 - Upgraded to a high efficiency boiler
 - Installed lighting controls
 - Provided new lighting
- ◆ Combined savings: \$8,200 annually
- ◆ Partial funding by SELP loan: \$56,000

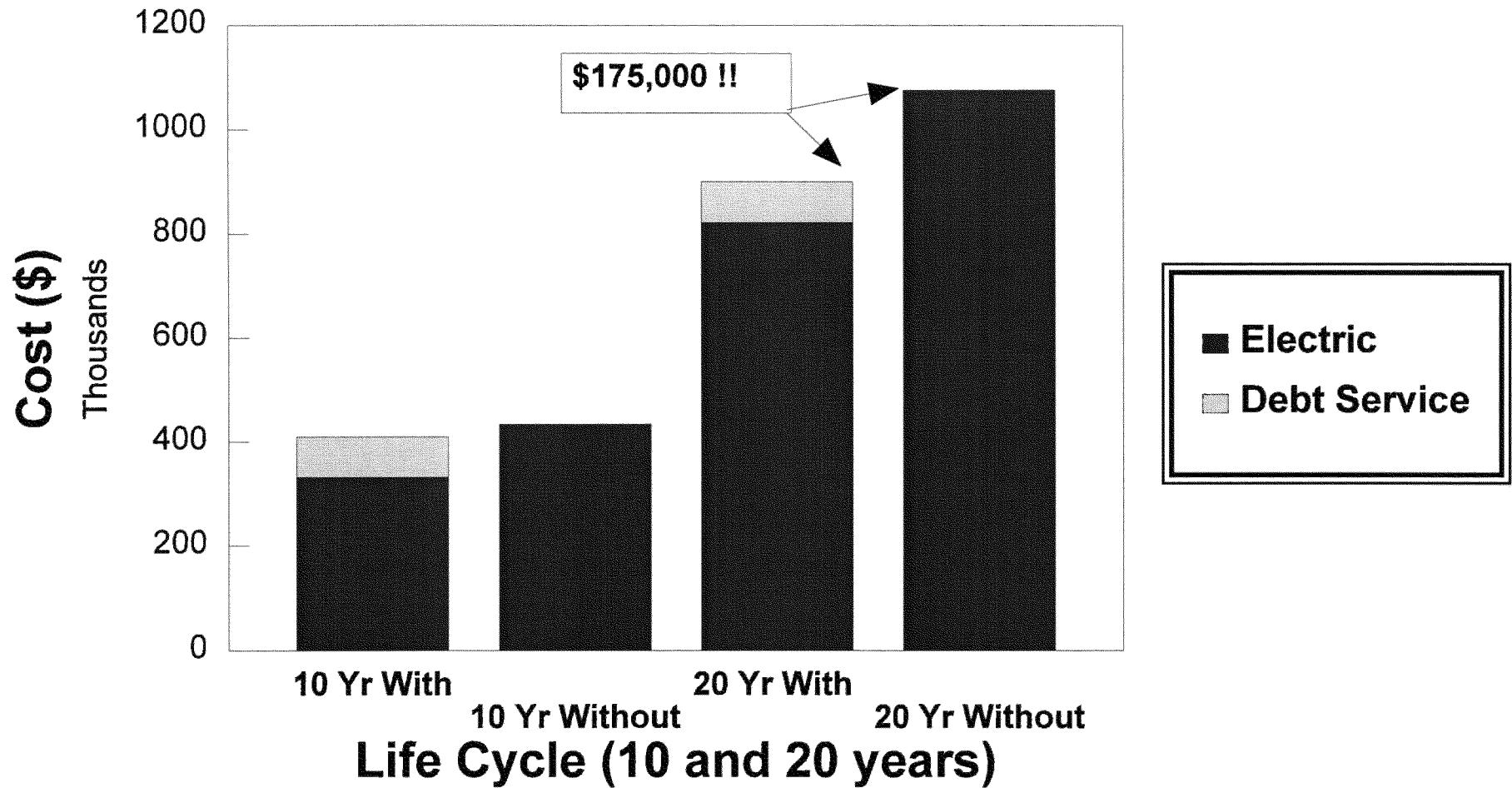
ISD / Kelly Energy Upgrades



Eleventh year, debt service drops off for
over \$12,000 savings!!

Utility Costs ~ Kelly

With vs. Without Upgrade



FOR MULTNOMAH COUNTY, OREGON

By Sandra N. Duffy
Sandra N. Duffy, Chief Assistant Counsel