

ANNOTATED MINUTES

Tuesday, February 14, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFINGS

- B-1 Report on Independent Operational Review of the Multnomah County Sheriff's Office Prepared by Consultants from the International Association of Chiefs of Police Issued on February 13, 1995. Presented by Gary Blackmer.

GARY BLACKMER, GERRY BRODSKY AND TOM SLYTER PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MC SO TO CONTINUE IMPLEMENTATION AND/OR ANALYSIS OF VARIOUS RECOMMENDATIONS. CHAIR TO INCORPORATE VARIOUS RECOMMENDATIONS IN EXECUTIVE BUDGET. AUDITOR TO MONITOR IMPLEMENTATION OF RECOMMENDATIONS. CHAIR TO COLLECT ADDITIONAL SUGGESTIONS SUCH AS PURSUIT OF ANY SPECIFIC CONSULTING CONTRACTS AND FORWARD FOR BOARD CONSIDERATION IF INDICATED. COPIES OF REPORT AVAILABLE THROUGH AUDITOR'S OFFICE.

- B-2 Auditor's Report on "Property Value Appeals: Room for Improvement" Issued in January, 1995. Presented by Gary Blackmer.

GARY BLACKMER AND JANICE DRUIAN PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MR. BLACKMER SENT AUDITOR'S REPORT AND RECOMMENDATION THAT DEPARTMENT OF REVENUE CLARIFY PAMPHLET LANGUAGE TO DOR DIRECTOR. OTHER RECOMMENDATIONS IMPLEMENTED WITH EXCEPTION OF REMOVING CLERICAL SUPPORT FOR BOARD OF EQUALIZATION FROM DIVISION OF ASSESSMENT AND TAXATION. VIDEOTAPE INSTRUCTION OF PROPERTY APPEAL PROCESS TO BE PREPARED. MS. DRUIAN UPDATE ON HOUSE BILL 2325 REGARDING CHANGES TO RESIDENTIAL AND COMMERCIAL PROPERTY APPEALS. BOARD CONSENSUS TO PARTICIPATE WITH ASSESSOR'S ASSOCIATION AGAINST PROPOSED LEGISLATION.

- B-3 Proposal to Implement Ballot Measure 11 for Juveniles. Presented by Bill Farver, Michael Schrunk, Douglas Bray, Harold Ogburn and Jim Anderson.

BEVERLY STEIN, BILL FARVER, MICHAEL SCHRUNK, JIM ANDERSON AND CHRIS TEBBEN PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING IMPLEMENTATION PLAN AND BUDGET DATA FOR CURRENT AND NEXT FISCAL YEAR. BOARD CONSENSUS THAT STAFF CONTINUE GATHERING INFORMATION FOR FURTHER BOARD DISCUSSION.

- B-4 Proposal to Open a Sex Offender Treatment Unit for Juvenile Offenders. Presented by Harold Ogburn and Orin Bolstad.

HAROLD OGBURN, MICAH FIERSTEIN AND ORIN BOLSTAD PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING PROPOSED SEX OFFENDER TREATMENT UNIT. MR. OGBURN ADVISED THAT REVENUE FOR REVIEW PANEL AND INDEPENDENT EVALUATION PROVIDED IN PROPOSED BUDGET. CHAIR STEIN AND COMMISSIONER HANSEN TO MEET WITH MULTNOMAH COUNTY LEGISLATORS WEDNESDAY, FEBRUARY 15, 1995 FOR BRIEFING ON IMPACT OF COMMUNITY CORRECTIONS AND SENATE BILL 1. GINA MATIODA SUBMITTED ATTORNEY GENERAL FINAL REPORT ON TASKFORCE ON JUVENILE JUSTICE, SENATE BILL 1 AND OTHER DOCUMENTATION. SENATE BILL 1 UPDATE SCHEDULED FOR TUESDAY, FEBRUARY 21, 1995.

Tuesday, February 14, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:30 p.m., with Vice-Chair Sharron Kelley and Commissioner Dan Saltzman present and Commissioner Tanya Collier excused.

- P-1 MC 2-94/
 LD 16-94 Review the January 5, 1995 Hearings Officer Decision, APPROVING, Subject to Conditions, a Two Parcel Land Division and

Establishment of a New Private Easement as the Means of Access to the Westerly Parcel, for Property Located at 22500 NW BECK ROAD, PORTLAND

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2 CU 8-94 Review the January 5, 1995 Hearings Officer Decision, APPROVING, Subject to Conditions, a Conditional Use for a Single Family Residence Not Related to Forest Management on an 18.89 Acre Property in the Commercial Forest Use District, for Property Located at 14625 NW SKYLINE BOULEVARD, PORTLAND

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-3 CU 9-94 Review the January 12, 1995 Hearings Officer Decision, APPROVING, with Modifications and Conditions, a Conditional Use to Develop a 16,400 Square Foot Structure for Light Industrial, Warehouse and Commercial Uses Within a Rural Center District, for Property Located at 28885 SE DODGE PARK BOULEVARD, GRESHAM

DECISION READ, NO APPEAL FILED, DECISION STANDS.

The Board recessed at 1:33 p.m. and reconvened when Commissioner Gary Hansen arrived at 1:34 p.m.

- P-4 MC 1-94/
LD 13-94 DE NOVO HEARING, WITH TESTIMONY LIMITED TO 30 MINUTES PER SIDE, INCLUDING REBUTTAL, in the Matter of an Appeal of the December 23, 1994 Hearings Officer Decision, APPROVING a Request for a Three Parcel Land Division Partition and the Use of an Easement for Access; and an Appeal of the Administrative APPROVAL of an Access Variance Attached as Exhibit A to the December 23, 1994 Hearings Officer Decision, for Property Located at 01400 SW MILITARY ROAD, PORTLAND

CHAIR STEIN OUTLINED THE PROCESS FOR THE QUASI-JUDICIAL PROCEDURE AND IN RESPONSE TO QUERIES, NO BIAS, CONFLICTS OF INTEREST, EX PARTE CONTACTS OR SITE VISITS WERE DECLARED BY THE BOARD; NO CHALLENGES WERE RAISED; AND NO PROCEDURAL OBJECTIONS WERE RAISED BY THE PARTIES. PLANNER GARY CLIFFORD NARRATED A SLIDE PRESENTATION OF THE SUBJECT PROPERTY.

HEARINGS OFFICER PHILLIP E. GRILLO PRESENTATION OF THE CRITERIA AND FINDINGS USED IN HIS DECEMBER 23, 1994 DETERMINATION APPROVING, SUBJECT TO CONDITIONS, REQUESTED PARTITION AND ACCESS VARIANCE. APPELLANT'S ATTORNEY EDWARD J. SULLIVAN PRESENTATION IN SUPPORT OF DENIAL OF PARTITION AND ACCESS VARIANCE, RAISING ISSUES REGARDING SUITABILITY OF SHARED ACCESS; APPROPRIATE USE OF APPLICABLE ROAD STANDARDS; THE DIVISION OF ONE PARCEL INTO TWO PARCELS RATHER THAN THREE; FUTURE DEVELOPMENT; DESIGN SUITABILITY; AND FIRE SAFETY. APPELLANT K. DON FELDMAN SUBMITTED PHOTOGRAPHS OF EXISTING ACCESS AND TESTIFIED IN SUPPORT OF DENIAL OF PARTITION AND ACCESS VARIANCE. ATTORNEY TIMOTHY V. RAMIS, REPRESENTING APPLICANT GRAN MARQUE, INC., SUBMITTED NOTEBOOKS CONTAINING EXCERPTS OF MAPS, CODE SECTIONS AND OTHER DOCUMENTATION FROM THE RECORD IN THIS MATTER IN RESPONSE TO CODE ISSUES RAISED AT HEARINGS OFFICER LEVEL. MR. RAMIS PRESENTED TESTIMONY IN RESPONSE TO ISSUES RAISED BY MR. SULLIVAN AND IN SUPPORT OF AFFIRMING THE HEARINGS OFFICER DECISION. MR. RAMIS REQUESTED THE REMOVAL OF CONDITION 7 REGARDING THE IMPOSITION OF A LOT LINE ADJUSTMENT, ON THE GROUNDS THERE WAS NO ACQUISITION IN 1973. MR. RAMIS RESPONDED TO THE FEBRUARY 14, 1995 LETTER FROM PLANNING CONSULTANT JOHN L. BROSY REPRESENTING ADJOINING PROPERTY OWNERS DR. AND MRS. ROGER HALLIN, ADVISING HIS CLIENTS HAVE NO PROBLEM WORKING WITH MR. BROSY TO RESOLVE THE HALLIN'S CONCERNS. TRANSPORTATION ENGINEER JENNIFER E. DANZIGER TESTIFIED IN SUPPORT OF AFFIRMING HEARINGS OFFICER DECISION AND ADDRESSED STREET WIDTH AND TRAFFIC ISSUES. PLANNING CONSULTANT ROBERT PRICE TESTIFIED IN SUPPORT OF AFFIRMING HEARINGS OFFICER DECISION AND ADDRESSED SITE SUITABILITY, HABITAT, ECOLOGICAL, ENGINEERING AND FIRE SAFETY ISSUES. MR. RAMIS REPORTED THE HEARINGS OFFICER REFERRED TO CASE LD 10-93

FOR THE PRECEDENT REGARDING SIDEWALK REQUIREMENT. MR. RAMIS REQUESTED THAT IN THE EVENT THE BOARD AFFIRM THE HEARINGS OFFICER DECISION, HE BE ALLOWED TIME TO PREPARE SUPPLEMENTAL FINDINGS IN THIS CASE. MR. SULLIVAN PRESENTED REBUTTAL TO TESTIMONY, ADVISING THE HEARINGS OFFICER INTERPRETATION IN CASE LD 10-93 IS NOT APPLICABLE TO THE BOARD'S DECISION IN THIS CASE; THE ROAD DOES NOT MEET COUNTY NEW STREET STANDARDS; MR. SULLIVAN REQUESTED THE BOARD DENY THE APPLICATION ON THE ISSUE OF ACCESS AND LACK OF SUITABLE EVIDENCE ON LOT THREE, AND REQUESTED THAT THE BOARD LOOK AT THE FULL DEVELOPMENT OF THE LAND UNDER R-30 OR LARGER DENSITY STANDARDS. IN RESPONSE TO QUESTIONS OF CHAIR STEIN, NO PARTIES WISHED A CONTINUANCE TO RESPOND TO NEW EVIDENCE AND NO OBJECTIONS WERE RAISED. CHAIR STEIN ADVISED THE PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION WHICH IS APPEALABLE TO LUBA AND CLOSED THE HEARING. MR. PRICE, MR. SULLIVAN AND MR. RAMIS RESPONSE TO BOARD QUESTIONS. FOLLOWING DISCUSSION WITH COUNTY COUNSEL GERRY ITKIN, COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, TO AFFIRM THE HEARINGS OFFICER DECISION AND THE ADMINISTRATIVE DECISION. MR. GRILLO AND MR. CLIFFORD RESPONSE TO BOARD QUESTIONS OF COMMISSIONER KELLEY REGARDING MR. RAMIS' REQUEST THAT CONDITION 7 BE REMOVED. FOLLOWING DISCUSSION WITH MR. CLIFFORD, MR. RAMIS AND MR. ITKIN, THE ISSUE OF OBTAINING APPROVAL OF A LOT LINE ADJUSTMENT OF A PORTION OF LAND IN PARCEL 3 FOR THE PURPOSE OF PREPARING A NEW LEGAL DESCRIPTION OF THE ENTIRE SITE WILL BE HANDLED ADMINISTRATIVELY. MOTION TO AFFIRM THE HEARINGS OFFICER DECISION AND THE ADMINISTRATIVE DECISION UNANIMOUSLY APPROVED, WITH CHAIR STEIN ADVISING SHE WAS PERSUADED BY APPLICANTS' EVIDENCE THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE HEARINGS OFFICER

DECISION. BOARD CONSENSUS THAT MR. RAMIS BE ALLOWED TO PREPARE SUPPLEMENTAL FINDINGS TO BE SUBMITTED TO STAFF FOR CONSIDERATION WITH THE BOARD'S FINAL ORDER.

P-5 Report to the Board the Department of Land Conservation and Development (DLCD) Director's Recommended Decision Pertaining to the Multnomah County Remand Order. Presented by Scott Pemble and John DuBay.

CHAIR STEIN REPORTED THE BOARD STAFF MEETING REGARDING THIS ITEM HAS BEEN RESCHEDULED FROM MONDAY, FEBRUARY 13, 1995 TO THURSDAY, FEBRUARY 16, 1995. SCOTT PEMBLE PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING VARIOUS COUNTY RESPONSE OPTIONS TO DLCD REPORT AND RECOMMENDATIONS. MR. PEMBLE ADVISED THE COUNTY HAS UNTIL 5:00 PM, FRIDAY, FEBRUARY 17, 1995 TO RESPOND. SHARON TIMKO AND MR. PEMBLE RESPONSE TO BOARD QUESTIONS, DISCUSSION AND SUGGESTIONS.

BOARD CONSENSUS THAT DE NOVO HEARING PROCESS BE CONTINUED.

There being no further business, the meeting was adjourned at 3:25 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad

Thursday, February 16, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:30 a.m., with Commissioners Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER COLLIER,
SECONDED BY COMMISSIONER SALTZMAN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-6)
WAS UNANIMOUSLY APPROVED.**

DEPARTMENT OF HEALTH

- C-1 Ratification of Intergovernmental Agreement Contract 201705 Between the State of Oregon Health Division and Multnomah County, Providing Required Research Services for Various HIV/AIDS Grants, for the Period October 1, 1994 through September 30, 1995

COMMUNITY AND FAMILY SERVICES DIVISION

- C-2 RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

RESOLUTION 95-35.

- C-3 Ratification of Intergovernmental Agreement Contract 104245 Between the Regional Drug Initiative and Multnomah County, Wherein Multnomah County Receives Office of Substance Abuse and Prevention Reimbursement of FY 94/95 Personnel and Motor Pool Expenses for Participation in Joint Alcohol and Drug Service Programs

MANAGEMENT SUPPORT SERVICES

- C-4 Ratification of Intergovernmental Agreement Contract 500385 Between the State of Oregon, Department of Administrative Services and Multnomah County, Providing County Participation in the Oregon Cooperative Purchasing Program, for the Period March 1, 1995 through February 29, 1996

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 ORDER in the Matter of the Execution of Deed D951160 for Certain Tax Acquired Property to Former Owner Delores K. Newell

ORDER 95-36.

- C-6 ORDER in the Matter of the Execution of Deed D951169 for Certain Tax Acquired Property to Former Owner James D. Smith

ORDER 95-37.

REGULAR AGENDA

Vice-Chair Sharron Kelley and Commissioner Gary Hansen arrived at 9:31 a.m.

PUBLIC COMMENT

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

NO ONE WISHED TO TESTIFY.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 PUBLIC HEARING and Consideration of a RESOLUTION in the Matter of Certifying an Estimate of Expenditures for the FY 1995-96 Property Tax Program in Accordance with HB 2338

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-2. JANICE DRUIAN EXPLANATION. NO ONE WISHED TO TESTIFY. RESOLUTION 95-38 UNANIMOUSLY APPROVED.

AGING SERVICES DIVISION

- R-3 Ratification of Intergovernmental Agreement Contract 103955 Between Clackamas County and Multnomah County, Providing Funds for Implementation of Federal Administration on Aging Grant for the "Beyond Bricks and Mortar" Demonstration Project, for the Period July 1, 1994 through June 30, 1996

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. KATHY GILLETTE EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-4 ORDER in the Matter of an Exemption to Exceed the 20% Change Order Limitation for the Justice Center Card Key System Installation

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. FRANNA HATHAWAY AND WALTER HEIL EXPLANATION AND RESPONSE TO BOARD

**QUESTIONS. ORDER 95-39 UNANIMOUSLY
APPROVED.**

R-5 ORDER in the Matter of Exempting from Public Bidding the Purchase of Digital Biometrics Grip Program

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. MS. HATHAWAY, BOB BARNHART AND ROY OBIE EXPLANATION OF ITEMS R-5 AND R-6 AND RESPONSE TO BOARD QUESTIONS. ORDER 95-40 UNANIMOUSLY APPROVED.


R-6 ORDER in the Matter of Exempting from Public Bidding the Purchase of Electronic Fingerprinting Machine

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, ORDER 95-41 WAS UNANIMOUSLY APPROVED.

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

There being no further business, the meeting was adjourned at 9:42 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

FEBRUARY 13, 1995 - FEBRUARY 17, 1995

Tuesday, February 14, 1995 - 9:30 AM - Board Briefings Page 2

Tuesday, February 14, 1995 - 1:30 PM - Planning Items Page 2

Thursday, February 16, 1995 - 9:30 AM - Regular Meeting Page 3

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

Thursday, 6:00 PM, Channel 30

Friday, 10:00 PM, Channel 30

Saturday, 12:30 PM, Channel 30

Sunday, 1:00 PM, Channel 30

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

Tuesday, February 14, 1995 - 9:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFINGS

- B-1 Report on Independent Operational Review of the Multnomah County Sheriff's Office Prepared by Consultants from the International Association of Chiefs of Police Issued on February 13, 1995. Presented by Gary Blackmer. 1 HOUR REQUESTED.*
- B-2 Auditor's Report on "Property Value Appeals: Room for Improvement" Issued in January, 1995. Presented by Gary Blackmer. 30 MINUTES REQUESTED.*
- B-3 Proposal to Implement Ballot Measure 11 for Juveniles. Presented by Bill Farver, Michael Schrunk, Douglas Bray, Harold Ogburn and Jim Anderson. 30 MINUTES REQUESTED.*
- B-4 Proposal to Open a Sex Offender Treatment Unit for Juvenile Offenders. Presented by Harold Ogburn and Orin Bolstad. 30 MINUTES REQUESTED.*
-

Tuesday, February 14, 1995 - 1:30 PM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

PLANNING ITEMS

- P-1 MC 2-94/
LD 16-94 Review the January 5, 1995 Hearings Officer Decision, APPROVING, Subject to Conditions, a Two Parcel Land Division and Establishment of a New Private Easement as the Means of Access to the Westerly Parcel, for Property Located at 22500 NW BECK ROAD, PORTLAND*
- P-2 CU 8-94 Review the January 5, 1995 Hearings Officer Decision, APPROVING, Subject to Conditions, a Conditional Use for a Single Family Residence Not Related to Forest Management on an 18.89 Acre Property in the Commercial Forest Use District, for Property Located at 14625 NW SKYLINE BOULEVARD, PORTLAND*
- P-3 CU 9-94 Review the January 12, 1995 Hearings Officer Decision, APPROVING, with Modifications and Conditions, a Conditional Use to Develop a 16,400 Square Foot Structure for Light Industrial, Warehouse and Commercial Uses Within a Rural Center District, for Property Located at 28885 SE DODGE PARK BOULEVARD, GRESHAM*

- P-4 MC 1-94/
LD 13-94 *DE NOVO HEARING, WITH TESTIMONY LIMITED TO 30 MINUTES PER SIDE, INCLUDING REBUTTAL, in the Matter of an Appeal of the December 23, 1994 Hearings Officer Decision, APPROVING a Request for a Three Parcel Land Division Partition and the Use of an Easement for Access; and an Appeal of the Administrative APPROVAL of an Access Variance Attached as Exhibit A to the December 23, 1994 Hearings Officer Decision, for Property Located at 01400 SW MILITARY ROAD, PORTLAND*
- P-5 *Report to the Board the Department of Land Conservation and Development (DLCD) Director's Recommended Decision Pertaining to the Multnomah County Remand Order. Presented by Scott Pemble and John DuBay. 30 MINUTES REQUESTED.*
-

Thursday, February 16, 1995 - 9:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF HEALTH

- C-1 *Ratification of Intergovernmental Agreement Contract 201705 Between the State of Oregon Health Division and Multnomah County, Providing Required Research Services for Various HIV/AIDS Grants, for the Period October 1, 1994 through September 30, 1995*

COMMUNITY AND FAMILY SERVICES DIVISION

- C-2 *RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody*
- C-3 *Ratification of Intergovernmental Agreement Contract 104245 Between the Regional Drug Initiative and Multnomah County, Wherein Multnomah County Receives Office of Substance Abuse and Prevention Reimbursement of FY 94/95 Personnel and Motor Pool Expenses for Participation in Joint Alcohol and Drug Service Programs*

MANAGEMENT SUPPORT SERVICES

- C-4 *Ratification of Intergovernmental Agreement Contract 500385 Between the State of Oregon, Department of Administrative Services and Multnomah County, Providing County Participation in the Oregon Cooperative Purchasing*

Program, for the Period March 1, 1995 through February 29, 1996

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 *ORDER in the Matter of the Execution of Deed D951160 for Certain Tax Acquired Property to Former Owner Delores K. Newell*
- C-6 *ORDER in the Matter of the Execution of Deed D951169 for Certain Tax Acquired Property to Former Owner James D. Smith*

REGULAR AGENDA

PUBLIC COMMENT

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

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 *PUBLIC HEARING and Consideration of a RESOLUTION in the Matter of Certifying an Estimate of Expenditures for the FY 1995-96 Property Tax Program in Accordance with HB 2338*

AGING SERVICES DIVISION

- R-3 *Ratification of Intergovernmental Agreement Contract 103955 Between Clackamas County and Multnomah County, Providing Funds for Implementation of Federal Administration on Aging Grant for the "Beyond Bricks and Mortar" Demonstration Project, for the Period July 1, 1994 through June 30, 1996*

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-4 *ORDER in the Matter of an Exemption to Exceed the 20% Change Order Limitation for the Justice Center Card Key System Installation*
- R-5 *ORDER in the Matter of Exempting from Public Bidding the Purchase of Digital Biometrics Grip Program*
- R-6 *ORDER in the Matter of Exempting from Public Bidding the Purchase of Electronic Fingerprinting Machine*

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

1995-1.AGE/23-26/dlb

TANYA COLLIER
Multnomah County Commissioner
District 3



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

M E M O R A N D U M

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

FROM: Commissioner Tanya Collier: SF

DATE: February 14, 1995

SUBJECT: Absence from Board Briefing

Please excuse me from the Board Briefing scheduled for today. I am snowed in and will not be able to come into the office today. Thanks

MEETING DATE: February 14, 1995

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearing Officer Decision

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 14, 1995

Amount of Time Needed: 5 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah A. Ewing

TELEPHONE #: 248-3043, ext. 2610
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ OTHER

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

Reporting of a Hearing Officer Decision on LD 16-94/MC 2-94.
Approved with Conditions.

1995 JAN 27 PM 3:04
MULTI-MEDIA
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: RSP



ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63



BOARD HEARING OF February 14, 1995

TIME: 1:30 p.m.

CASE NAME: 2 Parcel Land Division with Access by Easement

NUMBER: LD 16-94 / MC 2-94

1. Applicant Name/Address:

Lee Buckley
738 East Burnside
Portland, OR 97214

2. Property Owner Name/Address:

William Donker
22500 NW Beck Road
Portland, OR 97231

3. Action Requested by applicant:

Approval of a two parcel land division. The easterly proposed parcel does not abut a public road, requiring the establishment of a new private easement running over the westerly parcel from NW Beck Road.

4. Planning Staff Recommendation:

Approval with conditions.

5. Planning Commission or Hearings Officer Decision:

Approval with conditions.

6. If recommendation and decision are different, why?

The recommendation and the decision are the same.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com./Hearings Officer
- ☐ Hearing/Rehearing
 - ☐ Scope of Review
 - ☐ On the record
 - ☐ De Novo
 - ☐ New Information allowed

ISSUES

(who raised them?)

1. No issues raised.

Do any of these issues have policy implications? Explain.

1. Not applicable.

RECEIVED

JAN 06 1995

Multnomah County
Zoning Division

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

Regarding a request by Lee R. Buckley)	
for a two lot Land Division and the)	FINAL ORDER
use of an easement as a means of)	MC 2-94, #41
access to Parcel 2, in unincorporated)	LD 16-94, (#41)
Multnomah County, Oregon)	

I. HEARING AND RECORD

A public hearing concerning this application was held on December 21, 1994. Other than comments from the staff and the applicant, no other public testimony was received. All exhibits submitted and a tape of all testimony received in relation to this matter is on file with the Division of Planning and Development.

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings and conclusions contained in the December 16, 1994 Staff Report submitted to the Hearings Officer concerning this application, except to the extent supplemented or expressly modified herein.

III. CONCLUSIONS

Based upon the above mentioned Staff Report and the testimony received at the hearing, the Hearings Officer concludes that MC 2-94 and LD 16-94 should be approved because these applications do or can comply with the applicable approval criteria.

IV. DECISION

The applicant's request to partition the site into two parcels and to obtain access through a private easement running through parcel 1 from N.W. Beck Road to parcel 2 is hereby approved subject to the following conditions:

CONDITIONS OF APPROVAL

1. Approval of this Tentative Plan shall expire one year of the effective date of this decision unless either the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's Instructions for Finishing a Type I Land Division. Make the following revision to the partition plat:

2. Before the Planning Director signs the partition plat, furnish the Planning and Development Division and the Transportation Division with plans for improvement of the easement road running from N.W. Beck Road across parcel 1 to parcel 2. The plans shall be stamped by an engineer licensed by the State of Oregon. The plans shall be signed or stamped by the Fire Chief for Multnomah County Rural Fire Protection District No. 20, and shall meet the following standards unless otherwise approved by the Fire Marshall:

- a. Roadway width: minimum 12-foot all-weather travel lane.
- b. Easement width: minimum 20 feet, maintained clear of debris and obstructions four (4) feet on each side of the travel lane.
- c. The travel lane must sustain a minimum wheel load of 12,500 pounds per wheel and a gross vehicle load of 50,000 pounds.
- d. Turnouts 20 feet wide and 40 feet long may be required on any road exceeding 400 feet in length.
- e. Maintain unobstructed width for at least 20 feet.
- f. Vertical clearance to be maintained for at least 13 feet, 6 inches.
- g. Roads over 150 feet long shall have a turnaround area at or near the end, improved to the above standards and of a design approved by the local fire service.
- h. Proper drainage must be provided.

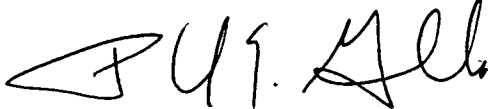
- i. Bridges and culverts shall be capable of supporting a minimum of 50,000 pounds.
 - j. Road grade shall not exceed an average of 8 percent, with a maximum of 12 percent on short pitches.
 - k. Maximum curve centerline shall be not less than 45 feet radius.
 - l. A Multnomah County Encroachment Permit is required for any new access road connecting to a Multnomah County road.
 - m. The Transportation Division will review the plans submitted by the applicant to verify compliance with the above standards. The Transportation Division will charge a fee of \$50.00 to \$100.00 for the review.
 - n. The standards set forth above may be varied only with written authorization from the Fire Chief for Multnomah County Rural Fire Protection District No. 20.
3. Before the Planning Director signs the partition plat, the applicant shall comply with MCC 11.45.680 by submitting to the County Planning Division a deed restriction which outlines the schedule for the completion of required road improvements described in Condition 2 above and which details the future maintenance responsibilities of Parcel 1 and Parcel 2 for that road.
4. Before any construction, site clearing, road building, or grading, obtain a Hillside Development or Grading and Erosion Control Permit pursuant to MCC 11.15.6700-.6730 as applicable. Compliance with the hillside development/grading and erosion control requirements shall be determined by the Planning Director. The decision by the Director shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). Contact the Planning Division at 248-3043 for information.
5. Before the Planning Director grants zoning approval for a building permit on Parcel 2, provide the Planning Director and the County Engineer an engineer's report certifying that the private access road that will serve Parcel 2 was constructed to the specifications shown in the plans prepared for said road.
6. Before the Planning Director grants zoning approval for a building permit on Parcel 2, drill a well for domestic water supply for Parcel 2. Adequacy of the well shall be determined by the Planning Director. The decision by the Director on the adequacy of the will shall include notice and opportunity for a hearing before the

Hearings Officer as provided in ORS 215.416(11). This condition shall be recorded with the deeds for Parcel 2.

7. In conjunction with issuance of building permits for Parcel 2 construct on-site water retention and/or control facilities adequate to insure that surface runoff volume after development is no greater than that before the development per MCC 11.45.600.

8. This land division approval shall be null and void unless both parcels contain at least 5 acres as shown on the partition plat.

It is so ordered this 5th day of January, 1995.



Phillip E. Grillo
Hearings Officer
Multnomah County

In the matter of MC 2-94, #41/LD 16-94 ...

Appeal to the Board of County Commissioners:

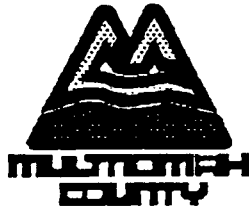
The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the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

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

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

Signed by the Hearings Officer
Decision mailed to Parties
Decision submitted to Board Clerk
Last day to appeal decision
Reported to Board of County Commissioners:

January 5, 1995
January 18, 1995
January 18, 1995
4:30 pm, January 27, 1995
1:30 pm, February 14, 1995



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

Staff Report

This Staff Report consists of Conditions of Approval, Findings of Fact and Conclusions.

December 16, 1994

MC 2-94, #41
LD 16-94, #41,

Access By Easement
Two-Lot Land Division

Line 2

Applicant seeks to partition the site into two parcels. The proposed new parcel (Parcel 2) does not abut a public road but instead is proposed to have access through a private easement running over Parcel 1 from NW Beck Road.

Location: 22500 NW Beck Road
Legal Description: Sec. 23 T 2N, R 2W, Tax Lot '15'
(1990 Assessor's Map)
Site Size: .26 Acre
Owner: William Donker
22500 NW Beck Road
Portland OR 97231

Applicant: Lee R. Buckley
738 East Burnside
Portland OR 97214

Comprehensive Plan: Rural Residential
Present Zoning: RR, Rural Residential District

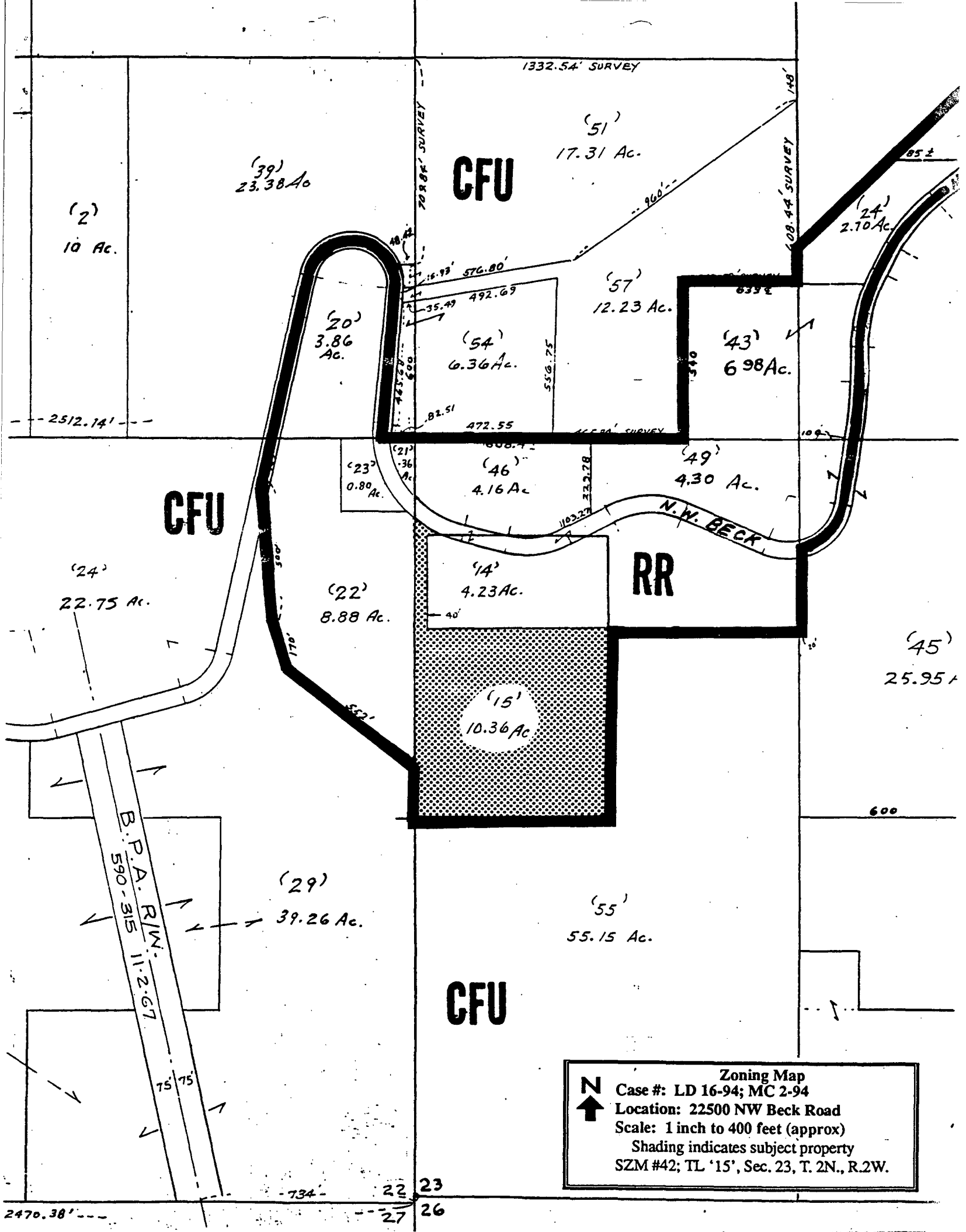
**Recommended
Hearings Officer
Decision #1:**

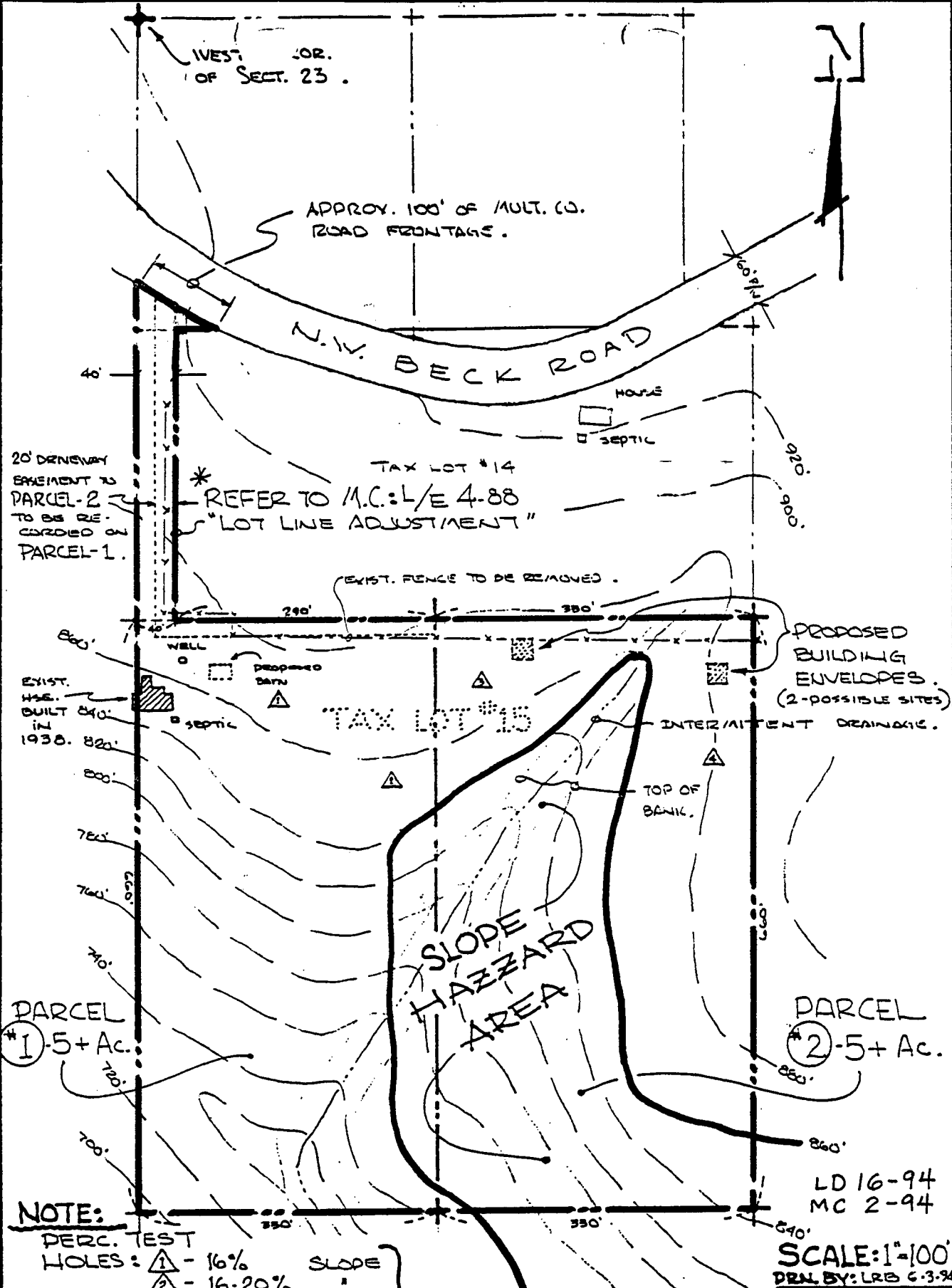
Approve, subject to conditions, the requested 2-lot land division in accordance with the provisions of MCC 11.45.080(D), based on the following Findings and Conclusions.

Decision #2:

Approve, subject to conditions, the request to use an easement as the means of access to Parcel 2, based on the following Findings and Conclusions.

Staff: Dave Prescott





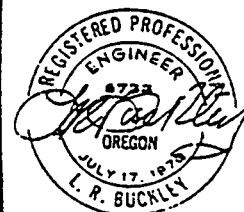
TENTATIVE PLAN MAP

FOR DIVIDING THE

William DONKER PROPERTY OF 10.36 ACRES @

22500 N.W. BECK ROAD

PORTLAND, ORE. 97231-1801



Conditions of Approval

1. Approval of this Tentative Plan shall expire **one year** of the effective date of this decision unless either the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's ***Instructions for Finishing a Type I Land Division***. Make the following revision to the partition plat:
2. ***Before the Planning Director signs the partition plat***, furnish the Planning and Development Division and the Transportation Division with plans for improvement of the easement road running from NW Beck Road across Parcel 1 to Parcel 2. The plans shall be stamped by an engineer licensed by the State of Oregon. The plans shall be signed or stamped by the Fire Chief for Multnomah County Rural Fire Protection District No. 20, and shall meet the following standards unless otherwise approved by the Fire Marshal:
 - **Roadway width:** minimum 12-foot all-weather travel lane.
 - **Easement width:** minimum 20 feet, maintained clear of debris and obstructions four (4) ft. on each side of the travel lane.
 - **Travel lane** must sustain a minimum wheel load of 12,500 pounds per wheel and a gross vehicle load of 50,000 pounds .
 - **Turnouts** 20 feet wide and 40 feet long may be required on any road exceeding 400 ft. in length.
 - **Maintain unobstructed width** for at least 20 feet.
 - **Vertical clearance** to be maintained for at least 13 feet, 6 inches..
 - **Roads over 150 feet long** shall have a turnaround area at or near the end, improved to the above standards and of a design approved by the local fire service.
 - **Proper drainage** must be provided
 - **Bridges and culverts** shall be capable of supporting a minimum of 50,000 pounds.
 - **Road grade** shall not exceed an average of 8 percent, with a maximum of 12 percent on short pitches.
 - **Maximum curve** centerline shall be not less than 45 feet radius.
 - **A Multnomah County Encroachment Permit** is required for any new access road connecting to a Multnomah County road.
 - The Transportation Division will review the plans submitted by the applicant to verify compliance with the above standards. The Transportation Division will charge a fee of \$50.00 to \$100.00 for the review

- The standards set forth above may be varied only with written authorization from the Fire Chief for Multnomah County Rural Fire Protection District No. 20.
- 3. ***Before the Planning Director signs the partition plat***, the applicant shall comply with MCC 11.45.680 by submitting to the County Planning Division a deed restriction which outlines the schedule for the completion of required road improvements described in Condition 2 above and which details the future maintenance responsibilities of Parcel 1 and Parcel 2 for that road.
- 4. ***Before any construction, site clearing, road building, or grading***, obtain a Hillside Development or Grading and Erosion Control Permit pursuant to MCC 11.15.6700-.6730 as applicable. Compliance with the hillside development/grading and erosion control requirements shall be determined by the Planning Director. The decision by the Director shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). Contact the Planning Division at 248-3043 for information.
- 5. ***Before the Planning Director grants zoning approval for a building permit on Parcel 2***, provide the Planning Director and the County Engineer an engineer's report certifying that the private access road that will serve Parcel 2 was constructed to the specifications shown in the plans prepared for said road.
- 6. ***Before the Planning Director grants zoning approval for a building permit on Parcel 2***, drill a well for domestic water supply for Parcel 2. Adequacy of the well shall be determined by the Planning Director. The decision by the Director on the adequacy of the well shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). This condition shall be recorded with the deeds for Parcel 2.
- 7. ***In conjunction with issuance of building permits for Parcel 2*** construct on-site water retention and/or control facilities adequate to insure that surface runoff volume after development is no greater than that before development per MCC 11.45.600.
- 8. This land division approval shall be null and void unless both parcels contain at least five (5) acres as shown on the partition plat.

Staff Report Format

This staff report addresses two requested actions: first, a request for Land Division approval to divide a tract of land into two parcels. The second request is for approval of the use of an easement as a means of access to one of the proposed parcels. Following are the Findings of Fact for the Land Division. The Conclusions for the Land Division are on Page 15. The Findings of Fact for the Access by Easement request begin on Page 16. The Conclusions for the Access by Easement request begin on Page 16.

Findings Of Fact (LD 16-94)

1. Applicant's Proposal:

The Land Division Request: Applicant proposes to divide a tract of land containing 10.36 acres into two parcels. Parcel 1 has a single-family dwelling and would contain 5 acres. Parcel 2 is vacant and would contain about 5.36 acres.

The Access by Easement Request: As shown on the Tentative Plan Map, Parcel 1 of the subject site abuts NW Beck Road. However, Parcel 2 does not abut a public road. The existing house on Parcel 1 has direct access to Beck Road. The owner proposes to provide

access to Parcel 2 by granting a 20-foot easement over Parcel 1. The easement would run south from Beck Road along the "flagpole" portion of Parcel 1, then would run east to connect with the northwesterly corner of Parcel 2 as shown on the Tentative Plan Map.

Previous Action: The subject site obtained its present configuration as a result of a property line adjustment approved in 1988 as Case Number LE 4-88. Under that approval, the subject site gained its frontage on Beck Road through a corresponding reduction in size of Tax Lot 14, located directly north of the subject site.

2. **Site Conditions and Vicinity Information:** Site conditions as shown on the Tentative Plan Map are as follows:

- A. The site is on the south side of NW Beck Road about 3/4 mile southwesterly of NW Skyline Boulevard. Adjacent properties to the north, west and south range in size from under nine acres to over 55 acres.
- B. **Slope:** Portions of Parcels 1 and 2 contain slopes exceeding 20 percent. A substantial portion of Parcel 2 and a small portion of Parcel 1 are in a Slope Hazard Area according to the County's Slope Hazard Map. However, there are areas of Parcel 2 with slopes under 20 percent where a residence could be located. Pursuant to MCC 11.15.6700, a Hillside Development Permit will be required before any house or road construction or other land-disturbing activity is allowed on land that has slopes over 25 percent or that is located in a Slope Hazard Area. A Grading and Erosion Control Permit will be required on land outside of a Slope Hazard Area and with slopes less than 25 percent.

3. **Land Division Ordinance Considerations (MCC 11.45)**

- A. The proposed land division is classified as a Type I because it is "[A]. . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to use an easement as a means of access to a proposed lot that will not have any frontage on a dedicated public road. This staff report addresses the application for access by easement under Decision # 2 (MC 2-94).
- B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
 - (1) *The Tentative Plan is in accordance with the applicable elements of the Comprehensive Plan; [MCC 11.45.230(A)]*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*

- (5) *If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
- (6) *The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance are and are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon. [MCC 11.45.230(G)]*
- (8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*
 - (a) *The infiltration of floodwater into the system; and*
 - (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type I Land Division Approval Criteria**

A. **Applicable Elements of the Comprehensive Plan:** The following Comprehensive Plan Policies are applicable to the proposed land division.:

(1) **Policy No. 8, Rural Residential Land:**

Applicant's Response: *"It is Multnomah County policy to designate certain limited areas for rural residential development. Such areas are established based upon the following:*

A. Immediate areas surrounding site on NW Beck Road and over to Skyline Blvd. have significant amount of 5-acre or less parcels separately owned and already built upon.

B. Area is not a significant commercial farming area or forest resource area. Area is populated mostly by owner-occupied single family homes on small parcels of land.

C. Dividing this 10.36 acre site into two (2) 5+ acre building sites is compatible with the immediate surrounding farm or forest uses and would not cause any substantial conflict with these natural resources as shown on the attached Tentative Plan Map.

D. The size is definitely forest or forest-agriculture in nature, discounting Mr. Donker's residence that was built in 1938, rather than agricultural in character.

E. There is a slope hazard area which is shown on the tentative plan map. However, there are two (2) suitable building envelope locations that would be in the northeast and northwest corners of Parcel 2, such that said hazard area would not be involved.

F. Adequate services are available to this site. Refer to the attached service letters."

Staff Comment: The fact that the site and land adjacent to it have been designated Rural Residential on the Comprehensive Plan Map, and has been zoned RR, Rural Residential since October, 1977 is evidence that the County determined the characteristics of the site as being consistent with Policy 8. For this reasons and those stated by the applicant, the proposal satisfies Policy 8.

(2) **Policy No. 13, Air, Water, and Noise Quality:**

Applicant's Response: *"The applicant, Lee R. Buckley, P.E., and owner, Bill Donker, are absolutely supportive of all policies regarding environmental quality issues and would be supportive of programs such as a waste reduction program tied to Metro's aggressive recycling plan or waste water systems as indicated in Metro's Waste Treatment Management Plan. We would be prepared to prohibit any and all activities that significantly affect environmental quality through rules, regulations, or restrictions on this property.*

All design and construction criteria will include maintaining a quiet and healthful environment for residents of N. W. Beck Road. As a result, no adverse impacts such as noise are anticipated and the residential development, i.e. one more home, that will occur on Parcel 2, 5 acres, will require maintaining the existing significant landscaping on-site and in buffer areas between adjacent properties."

Staff Comment: No significant impact on air pollution will result from the one additional dwelling allowed by the proposed land division. The County Sanitarian has approved Land Feasibility Study 91-94 confirming the ability to use on-site sanitation systems on Parcel 2. For these reasons and those stated by the applicant, the proposal satisfies Policy 13.

(3) **Policy No. 14, Development Limitations:**

Applicant's Response: *"Development Limitations areas are those which have any of the following characteristics:*

A. Slopes Exceeding 20%.

Refer to Tentative Plan Map. Two (2) possible building sites on Parcel 1 have existing slopes that vary from 16% to 22% (Ref. note lower left hand corner of map). It should be noted in the Conditions of Approval of this Application that any building permit taken out on Parcel 2 shall be in an area where the ground slope is between 16% and 20% maximum.

B. Severe Soil Erosion Potential.

Standard provisions for erosion control will be executed at the time a building permit will be issued on this new Parcel 2. Needless to say, there will never be a permit issued for construction in the Slope Hazard Area. Said provision(s) would be reviewed by the City of Portland's Geo-Tech Department.

C. Land within the 100-Year Flood Plain.

Not applicable.

D. A high seasonal water table within 0-24" of the surface for 3 or more weeks of the year.

Not applicable.

E. A fragipan less than 30" from the surface.

Not applicable.

F. Land subject to slumping, earth slides or movement.

Not applicable."

Staff Comment: Part of the site is in a hazard area as identified on the County's Slope Hazard Map, and the site is in the Tualatin Drainage Basin. Development on the site will be subject to compliance with the Hillside Development and Grading and Erosion Control requirements in MCC 11.15.6700. For these reasons and those stated by the applicant, the proposal satisfies Policy 14.

(4) Policy No. 16, Natural Resources:

Applicant's Response: *"The County's policy is to protect natural resources, conserve open space, and to protect scenic and historic areas and sites.*

Policy 16-A: Open Space:

Slope hazard area as shown on the Tentative Plan Map is to be left in its original undisturbed natural setting.

Policy 16-B through 16-D:--Non-applicable.

Policy 16-E: Natural Areas--Same as 16-A

Policy 16F [Scenic Views and Sites] through 16L:--Non applicable."

Staff Comment: For the reasons stated by the applicant, the proposal satisfies the applicable portions of Policy 16.

- (5) **Policy No. 22, Energy Conservation:** This policy requires a finding that the following factors have been considered:
- (a) *The development of energy-efficient land uses and practices;*
 - (b) *Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers.*
 - (c) *An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;*
 - (d) *Street layouts, lotting patterns and designs that utilize natural environmental and climate conditions to advantage.*
 - (e) *Finally, the county will allow greater flexibility in the development and use of renewable energy resources.*

Applicant's Response: *"The County's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. We believe that this application is not inconsistent with said policy. We support this policy and will require design standards consistent with the policy and SOLAR ACCESS standards as well."*

Staff Comment: The proposal satisfies sub-part *a* of this policy because residential construction on Parcel 2 will meet current energy conservation standards of the Uniform Building Code. Sub-parts *b*, *c* and *d* of this policy are not applicable because the site is not in an urban area. Approval of the proposed land division will not adversely impact the ability of owners of the lots to take advantage of Sub-part *e*. The proposal satisfies Policy 22.

- (6) **Policy No. 37, Utilities:** This policy requires a finding that water, sanitation, drainage and communication facilities are available:

Water And Disposal System

A. *The proposed use can be connected to a public sewer and water system, both or 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 DEQ will approve a subsurface sewage disposal system on the site; 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.

The proposal satisfies Policy 37 for the following reasons:

Water and Sanitation:

Staff Comment: Parcel 1 already has a well on it. A condition of approval allows drilling of a well on Parcel 2 to be postponed until a building permit is requested for Parcel 2. As a result of postponing the drilling of the well, however, adequacy of the well for Parcel 2 will need to be determined by the Planning Director at such time as a building permit is sought for Parcel 2. The decision by the Director on the adequacy of the well will include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). The applicant must record a deed restriction containing the text of this condition with the deeds for Parcel 2. The existing house on Parcel 1 has an approved subsurface sewage disposal system. Pursuant to Land Feasibility Study 91-94, the County Sanitarian has confirmed the ability to install an appropriate subsurface sewage disposal system on Parcel 2. For these reasons and subject to the condition regarding a wells for Parcel 2, the proposal complies with Item *D* above.

Drainage:

Applicant's Response: "All storm runoff created by new construction, during and after completion, to be retained on-site through the use of soakage trenches."

Staff Comment: As a condition of approval, the applicant will be responsible for constructing storm water retention facilities that will maintain pre-development flows for off site runoff. The applicant will perform a limited hydrology study to consider how the retention system will affect peak runoff for the immediate watershed. The applicant plans to

provide storm water quality by the installing sump style storm water inlets and manholes to allow for settling of suspended material. Subject to that condition, the proposal is consistent with Items *E* through *G* above.

Energy and Communication:

Staff Comment: Portland General Electric provides electric power, Northwest Natural Gas Co. provides gas service and US West Communications provides telephone service. The proposal satisfies Items *H* and *I* above.

- (7) **Policy No. 38, Facilities:** The property is located in the Riverdale School District. Comments by the district do not indicate any inability to accommodate student enrollment from houses located on the subject property. Multnomah County Fire District #20 provides fire protection and has stated that there is adequate water pressure and flow for fire fighting purposes. The department has provided written comments setting forth its requirements for the design of the easement road serving Parcel 2. The Multnomah County Sheriff's Office provides police protection and has stated that the level of police service for the area is adequate.

- (8) **Policy No. 40, Development Requirements:**

Staff Comment:

Policy 40.A requires a finding pedestrian and bicycle path connections will be dedicated where appropriate and where designated in the county program and map. The site is not located on a designated bikeway, and there is no existing pedestrian and bicycle pathway connecting to recreation areas or community facilities. The provision is not applicable.

Policy 40.B requires a finding that landscaped areas with benches will be provided in commercial, industrial and multiple family developments. This provision is not applicable because the site is in a residential zone.

Policy 40.C requires a finding that areas for bicycle parking be required in development proposals, where appropriate. The proposal will lead to the construction of one new single family dwellings. Policy 40C does not apply.

B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response:

"1. Subject property is 10.36 acres in size. therefore this application for division is appropriate and required in order to obtain two (s) suitable building lots which comply with the Comprehensive Plan and zoning.

2. Approval of this request does not affect the adjacent properties due to the fact if and when those property owners wish to develop or further partition their land. they will be subject to different land use criteria."

Staff Comment: Approval of the current proposal will not affect access to or development of adjacent properties. Adjacent properties to the east and west have access to NW Beck Road, and approval of the current land division will not affect

access to those properties. Land adjacent to the site has been divided to the extent possible under current zoning. For these reasons, the proposal satisfies MCC 11.45.230(B).

C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)] The following provisions of the Land Division Ordinance are applicable to the current proposal.

- (1) **Land Suitability:** MCC 11.45.460 states that *"a land division shall not be approved on land found to be both unsuitable and incapable of being made suitable for the intended use because of any of the following characteristics:*
 - (A) *slopes exceeding 20%;*
 - (B) *Severe soil erosion potential;*
 - (C) *Within the 100-year flood plain;*
 - (D) *A high seasonal water table;*
 - (E) *A fragipan or other impervious layer less than 30 inches from the surface; or*
 - (F) *Subject to slumping, earth slides or movement.*

Staff Comment: For the reasons stated in Finding 4.A(3) regarding Comprehensive Plan Policy No. 14, the proposed land division complies with MCC 11.45.460.

(2) **Lots and Parcels (MCC 11.45.470)**

Applicant's Response: *"1. Refer to our Tentative Plan Map. Our proposed lot configuration allows the potential home builder maximum utilization to accommodate a suitable footprint in terms of access and existing site constraints such as topography.*

2. Parcel 2 allows two (2) potential building sites such that, regardless which is chosen by a potential buyer, The layout (or footprint) won't affect the adjacent properties.

3. The proposed footprint(s) for Parcel 2 (the owner, Mr. Donker, lives on Parcel 1) have been placed on fairly level areas for the maximum preservation of existing slopes, vegetation and natural drainage."

Staff Comment: For the reasons stated by the applicant, the proposed land division complies with MCC 11.45.470.

(3) **Sewage Disposal (MCC 11.45.590)**

Applicant's Response: *"1. Parcel 1 has an existing well for domestic water.*

2. Parcel 2, when sold, will install its own well for domestic water."

Staff Comment: For the reasons stated by the applicant, the proposed land division complies with MCC 11.45.590.

(4) Surface Drainage (MCC 11.45.600)

Applicant's Response: *"Surface drainage and on-site storm water system(s) for both parcels to be designed to insure that surface runoff volume will be no greater than that before development."*

Staff Comment: For the reasons stated in the discussion of drainage in Finding 4.A(6) regarding Comprehensive Plan Policy No. 37, the proposed land division complies with MCC 11.45.600.

For the reasons stated in subsections (1) through (5) above, the proposed land division satisfies MCC 11.45.230(C).

D. Zoning Compliance [MCC 11.45.390(D)]:

Area and Dimensional Standards

Applicant's Response: *"Each lot will be 5.0 (plus) acres in size which meets the minimum lot size of the underlying zone. Future building on these lots can and will comply with all setback requirements. Access to Parcel 2 will be acquired through approval of a 20' wide drive easement from N.W. Beck Road across Parcel 1."*

Staff Comment:

- (1) The site is zoned RR, Rural Residential District.
- (2) The following minimum area and dimensional standards apply per MCC 11.15.2218:
 - (a) The minimum lot size for a single-family dwelling shall be 5 acres including one-half of the road right-of-way adjacent to the parcel being created. As shown on the Tentative Plan Map, both parcels meet this requirement. Compliance with this requirement is a condition of approval of the final partition plat.
 - (b) The minimum yard setbacks shall be 30 feet front, 10 feet side, and 30 feet rear. Compliance with these requirements for will be checked during the zoning review process before building permit issuance on Parcel 2. The house on Parcel 1 does not meet the side yard setback requirement, but is a legal non-conforming use because County records indicated that the house was built in 1938 before the establishment of County zoning regulations.
 - (c) Access (MCC 11.15.2228): See Findings for MC 2-94 below.

E. **Subdivision Name [MCC 11.45.230(E)]:** The proposed land division is not a subdivision because it does not result in four lots. Therefore, it will not have a name and MCC 11.45.230(E) is not applicable.

F. **Street Layout [MCC 11.45.230(F)]:** No new streets are necessary or proposed. Therefore, MCC 11.45.230(F) is not applicable.

G. **Private Streets [MCC 11.45.230(G)]**

Applicant's Response: *"Private driveway easement meets the design criteria of Multnomah County R.F.P.D. No. 20. Approved by Mr. Marty Wheller, Fire Chief.*

Al Young has reviewed the frontage requirements for this easement on N.W. Beck Road and has made the determination that this request complies with Multnomah County's design criteria for that requirement as well as others."

Staff Comment: For the reasons stated in the findings for Decision #3 (MC 2-94) staff finds that MCC 11.45.230(G) is satisfied.

H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:** The criterion is not applicable because the site is not in a flood plain.

Conclusions (LD 16-94)

1. The land division satisfies applicable elements of the Comprehensive Plan.
2. The proposed land division satisfies the approval criteria for Type I land divisions.
3. Subject to Decision #2, the proposed land division complies with the Zoning Ordinance.

Findings of Fact (MC 2-94)

1. **Applicant's Proposal:** See Finding 1 for LD 16-94. A detailed description of the existing and proposed easements for the site appears below in finding 4.
2. **Site and Vicinity Information:** See Finding 2 for LD 16-94.
3. **Zoning Ordinance Considerations (MCC 11.15):** MCC 11.15.2228 states that all lots in the RR, Rural Residential District *"shall abut a street, or shall have such other access determined by the Hearings Officer to be safe and convenient for pedestrians and passenger and emergency vehicles"*
4. **Response To Approval Criteria**

Applicant's Response: *"Access to Parcel 1 is located on fairly flat ground and travels north to N.W. Beck Road on a 40' "Flag Pole!" utilizing only 20' of the "Pole." thereby allowing the remaining 20' for Parcel 1's use. Also, access is designed such that when it is in use a minimal amount of disturbance occurs to the owner of Parcel 1 (refer to our Tentative Plan Map')."*

Staff Comment: In reviewing the request for access to Parcel 2 by easement, staff has considered the applicant's Tentative Plan Map, narrative response, and a communication dated August 25, 1994 from Martin Wheller, Fire Chief for the Skyline Fire Department, which provides fire protection to the subject site. The communication consists of the Chief's response to a form titled *"Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads."* The complete form is attached to this report as Exhibit A. In his response, the Chief stated that he had inspected the plot plan for the proposed road improvements, and that the roadway could be built as proposed. The Chief stated that he will require a reinspection of the road before occupancy.

Conditions of approval require that the engineered plans for the easement road be submitted for County approval, and that an engineer verify that the road is constructed according to the approved plans.

Condition #2 details the design standards for the access road with respect to such items as width, vertical clearance, grade, location and number of turnouts, and load-bearing capacity. The standards spelled out in Condition #2 match those in the above-mentioned *Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads.*

The maximum number of houses served by the access road will be two; the existing house on Parcel 1 plus the future house on Parcel 2. If the road is built to the standards contained in Condition #2, staff concludes that the road will satisfy the requirements of MCC 11.15.2228.

Conclusions (MC 2-94)

1. The use of easements as the means of access to the proposed new parcels satisfies MCC 11.15.2228. subject to the stated approval conditions.
2. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the cost of creating a public road is not warranted when the road would serve only one additions residence.

IN THE MATTER OF: MC 2-94/LD 16-94

This Staff Report and recommendation on Land Division and Access by Easement application MC 2-94/LD 16-94 will be presented at a public hearing on December 21, 1994 before the Hearings Officer.

The Hearings Officer MAY announce a decision on the item:

- at the close of the hearing; or,
- upon continuance to a time certain; or,
- after the close of the record following the hearing

A written Decision is usually mailed to all parties within ten days following the Decision of the Hearings Officer.

Decisions of the Hearings Officer 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 to the Record. A "Notice of Appeal" form and fee must be submitted to the County Planning Director within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per minute charge for a transcript of the initial hearing(s) (ref. MCC 11.15.9020[B]). "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, Portland.

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.

Hearings Officer decisions are typically reported to the Board for review on the first Tuesday following the ten-day appeal period. The Board meets at 1:30 p.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

MEETING DATE: February 14, 1995

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearing Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: February 14, 1995

Amount of Time Needed: 5 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah A. Ewing

TELEPHONE #: 248-3043, ext 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ OTHER

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

Reporting of Hearing Officer Decision on CU 8-94.
Approved with Conditions.

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1995 JAN 27 PM 3:04

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: rsd 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

CASE NAME: Single Family Residence in Commercial Forest Use ZoneNUMBER: CU 8-94

1. Applicant Name/Address:

Michael and Marilyn Oliver
9665 SW Ventura Court
Tigard, OR 97223

2. Action Requested by applicant:

Conditional use approval of single family residence that is not related to forest management in the forest zoning district.

3. Planning Staff Recommendation:

Approval with conditions.

4. Hearings Officer Decision:

Approval with conditions.

5. If recommendation and decision are different, why?

The recommendation and the decision are the same.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com./Hearings Officer
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

ISSUES

(who raised them?)

1. A neighbor submitted a letter which stated that prior owners of the property have not reforested the part of the land that was logged within the required 5 years in accordance with Department of Forestry (DOF) rules. As a condition of approval of this type of dwelling, the most recent Oregon Administrative Rules (OAR's) adopted by LCDC require the submission of a copy of a DOF tree stocking report to the county prior to the issuance of a building permit. This condition has been placed on this land use approval.
2. The same letter stated that there had been erosion control problems associated with past logging activities. State statute prevents the county from regulating forestry practices. However, the Hearings Officer has conditioned approval on the issuance of an erosion control permit for the house and driveway construction.
3. The letter went on to say that a house would disrupt the movement of elk across the 19 acre property. The Hearings Officer found that this should not be a problem because the property is not in a designated Big Game Winter Habitat area, the house is located near Skyline Road, and reforestation should enhance the habitat that is on the site.
4. The Hearings Officer had to make an interpretation regarding one unclear OAR standard for the approval of dwellings. In using the "template test", (which counts the number of existing dwellings there are in the vicinity of site), the OAR states that only dwellings that existed on January 1, 1993 can be counted. One of the dwellings needed in this count was only under construction on that date. The issue was: did it "exist" on that date?

Do any of these issues have policy implications? Explain.

1. For issue 4, the Hearings Officer used the concept of "substantial investment in the actual construction" as a finding that the dwelling did "exist". A foundation, posts and beam inspection by a building inspector had taken place prior to 1/1/93.

RECEIVED

JAN 06 1995

Multnomah County
Zoning Division

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

Regarding a request by Michael and)
Marilyn Oliver for conditional use)
approval for a single family residence) **FINAL ORDER**
not related to forest management on) **CU 8-94**
an 18.89 acre site located in the)
CFU zoning district in unincorporated)
Multnomah County, Oregon)

I. HEARING AND RECORD

A public hearing concerning this application was held on December 21, 1994. Gary Clifford testified on behalf of the county. Marilyn Oliver testified on her own behalf. No other public testimony was received. However, the Hearings Officer did receive a letter from Jay Kravitz who lives adjacent to the site at 14323 N.W. Skyline Blvd. Mr. Kravitz expressed concern about prior logging operations and reforestation efforts on the site. He indicated that a herd of elk moves through the west end of the property during the winter months. Mr. Kravitz expressed opposition to development of the property for these reasons. All exhibits submitted and a tape of all testimony received in relation to this matter is on file with the Division of Planning and Development.

II. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings and conclusions contained in the Staff Report submitted to the Hearings Officer dated December 21, 1994, except to the extent supplemented or expressly modified herein.

At the conclusion of the Hearing on December 21, the Hearings Officer questioned whether the issuance of a building permit for the fifth house on tax lot 29 constitutes the "existence" of such a dwelling, pursuant to MCC 11.15.2052. Within that section of the code, the

applicant is required to demonstrate that five dwellings existed within a 160 acre square surrounding subject lot on January 1, 1993. Accordingly, the Hearings Officer requested the applicant and the staff to provide additional evidence and argument supporting their interpretation of the term "exist" as it is used in MCC 11.15.2052. The written record was left open until December 28th for that purpose.

On December 21, the applicant submitted a memorandum with attachments for the purpose of showing that a "substantial investment" was made in the dwelling located on tax lot 29, prior to January 1, 1993. The Hearings Officer has reviewed the applicants evidence and finds as follows:

The term "exist" as it is used in MCC 11.15.2052 is ambiguous. This term is ambiguous because it is not clear from the face of the ordinance what level of completion is required to constitute the "existence" of such a dwelling. One obvious interpretation is the issuance of an "occupancy permit". Staff has suggested that the issuance of a "building permit" is sufficient evidence to demonstrate that a dwelling "exists" on the site. The Hearings Officer finds that the mere issuance of a building permit, without more, does not constitute "existence" because the issuance of a building permit does not insure that a dwelling will actually be constructed. A building permit is merely permission for a dwelling to come into existence, it is not evidence of existence per se. In fact, the issuance of a building permit is required before construction of a dwelling commences. Therefore, the date the building permit is issued cannot be used as an effective indicator of the existence of a dwelling for purposes of MCC 11.15.2052 because it cannot be assumed that the residence will be constructed thereafter.

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

In this case the evidence shows that prior to January 1, 1993, the foundation, foundation drains, posts and beam work were completed on the house located on tax lot 29. The Hearings Officer finds that this level of development constitutes a substantial investment in the dwelling. Therefore, for purposes of MCC 11.15.2052, the fifth dwelling existed prior to January 1, 1993, because a substantial investment in the actual construction of that dwelling had occurred prior to that date. This finding is consistent with other evidence in the record which shows that the dwelling was in fact approved for occupancy on January 11, 1993. Therefore, the Hearings Officer finds that the applicant has complied with the relevant provisions of MCC 11.15.2052.

With regard to the concerns raised by J. Kravitz, in his December 15th letter, the Hearings Officer notes that as a condition of approval, the applicant will be required to demonstrate that a tree stocking survey report has been submitted to the county assessor in accordance with the applicable Oregon Administrative Rules. This report must be submitted and approved prior to the issuance of building permits. Furthermore, the applicant will be required to undertake the necessary erosion control measures indicated in the conditions of approval. Finally, although there is unrefuted evidence in the record that elk frequent the property in the winter months, according to the Comprehensive Plan Wildlife Habitat Map, the dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife. Therefore, the relevant criteria with regard to big game habitat has been met because the Oregon Department of Fish and Wildlife has not identified this site as being located within a big game winter habitat area. The proper reforestation of this site, according to the requirements of the Forest Practices Act will facilitate big game habitat to the extent it exists on the site, even though such habitat area is not identified by the Oregon Department of Fish and Wildlife as a formally recognized habitat area.

III. CONCLUSIONS

Based upon the above mentioned findings, the Staff Report and the testimony received at the hearing, the Hearings Officer concludes that CU 8-94 to be approved because it does or can comply with the applicable criteria.


IV. DECISION

The applicant's request for conditional use approval for a single family residence not related to forest management on an 18.89 acre site located in CFU zoning district is approved, subject to the following conditions:

1. Prior to approval of building permits, provide evidence that a stocking survey report has been submitted to the county tax assessor in accordance with OR 660-06-029(5)(c).
2. Provides evidence that the deed conditions and restrictions acknowledging the rights of near by properties to conduct farm and forest practices have been recorded.
3. Maintain a primary fire safety zone around all structures of 50 feet east of the structures and 100 feet west, or downslope of the structures, and a secondary fire safety zone of 100 feet beyond the primary fire safety zone, in accordance with MCC.2074(A)(5)(b). Exposed soil from the removal of brush and trees shall be seeded or planted by October 1 of the same year that development begins, in order to prevent erosion and run-off problems. Applicant shall also demonstrate compliance with any applicable State erosion control requirements.

4. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arrestors.

It is so ordered this 5th day of January, 1995.

A handwritten signature in black ink, appearing to read "P. E. Grillo". The signature is stylized with a large, looped initial "P" and a cursive "Grillo".

Phillip E. Grillo
Hearings Officer
Multnomah County

In the matter of CU 8-94 ...

Appeal to the Board of County Commissioners:

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

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

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

Signed by the Hearings Officer
Decision mailed to Parties
Decision submitted to Board Clerk
Last day to appeal decision
Reported to Board of County Commissioners:

January 5, 1995
January 18, 1995
January 18, 1995
4:30 pm, January 27, 1995
1:30 pm, February 14, 1995



Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

STAFF REPORT

For the December 21, 1994 public hearing

This Staff Report consists of Conditions, Findings of Fact and Conclusions

CU 8-94

Conditional Use Request

Line 1.

Applicant requests Conditional Use approval for a single family residence not related to forest management on an 18.89 acre property in the CFU zoning district.

Location: 14625 NW Skyline Blvd.

Legal: Tax Lot '10', Section 25, T2N, R2W, 1991 Assessor's Map

Site Size: 18.89 acres

Property Owner: Michael and Marilyn Oliver
9665 SW Ventura Ct.
Tigard, OR 97223-9168

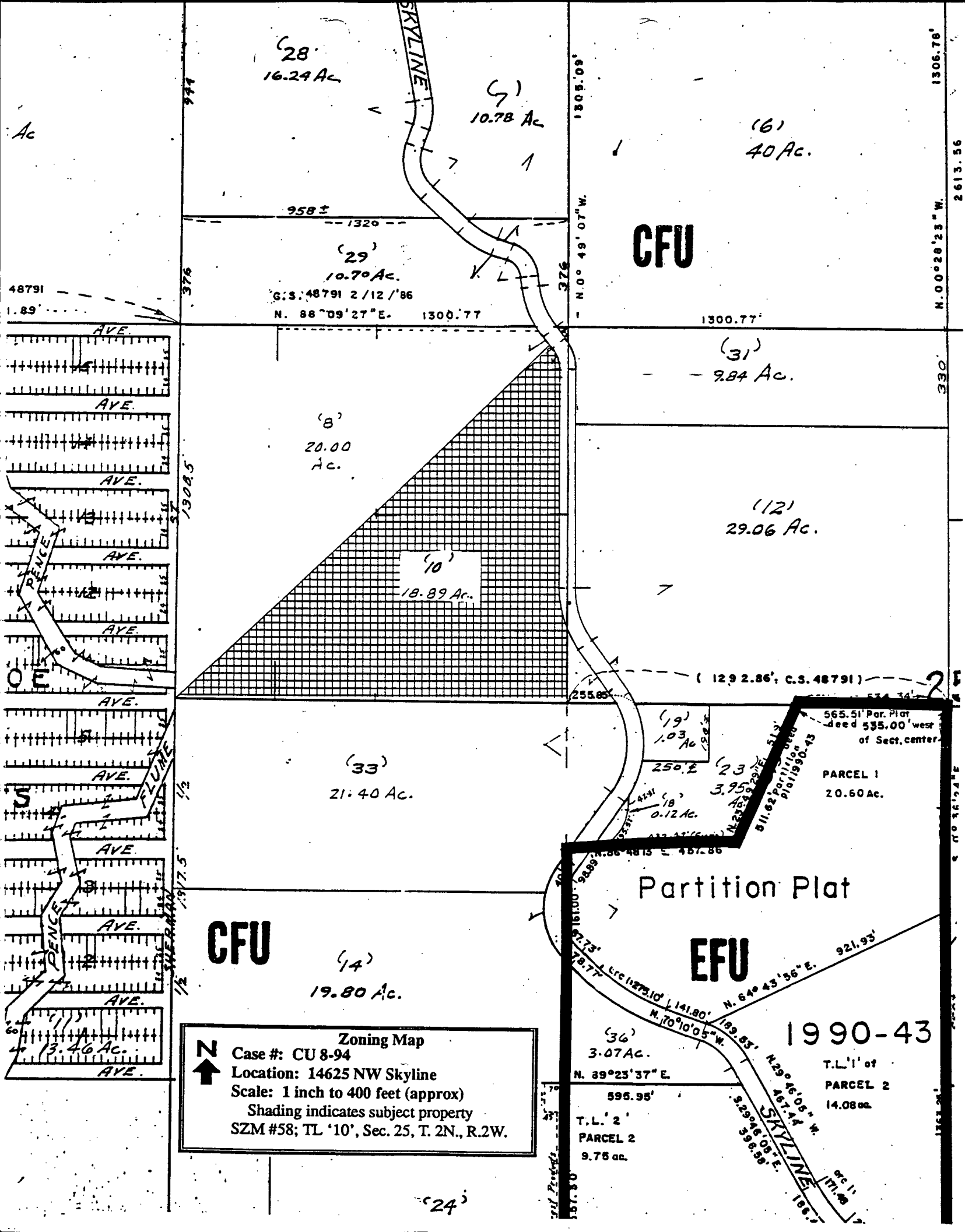
Applicant: same

Comprehensive Plan: Commercial Forest Use

Present Zoning: CFU, Commercial Forest Use

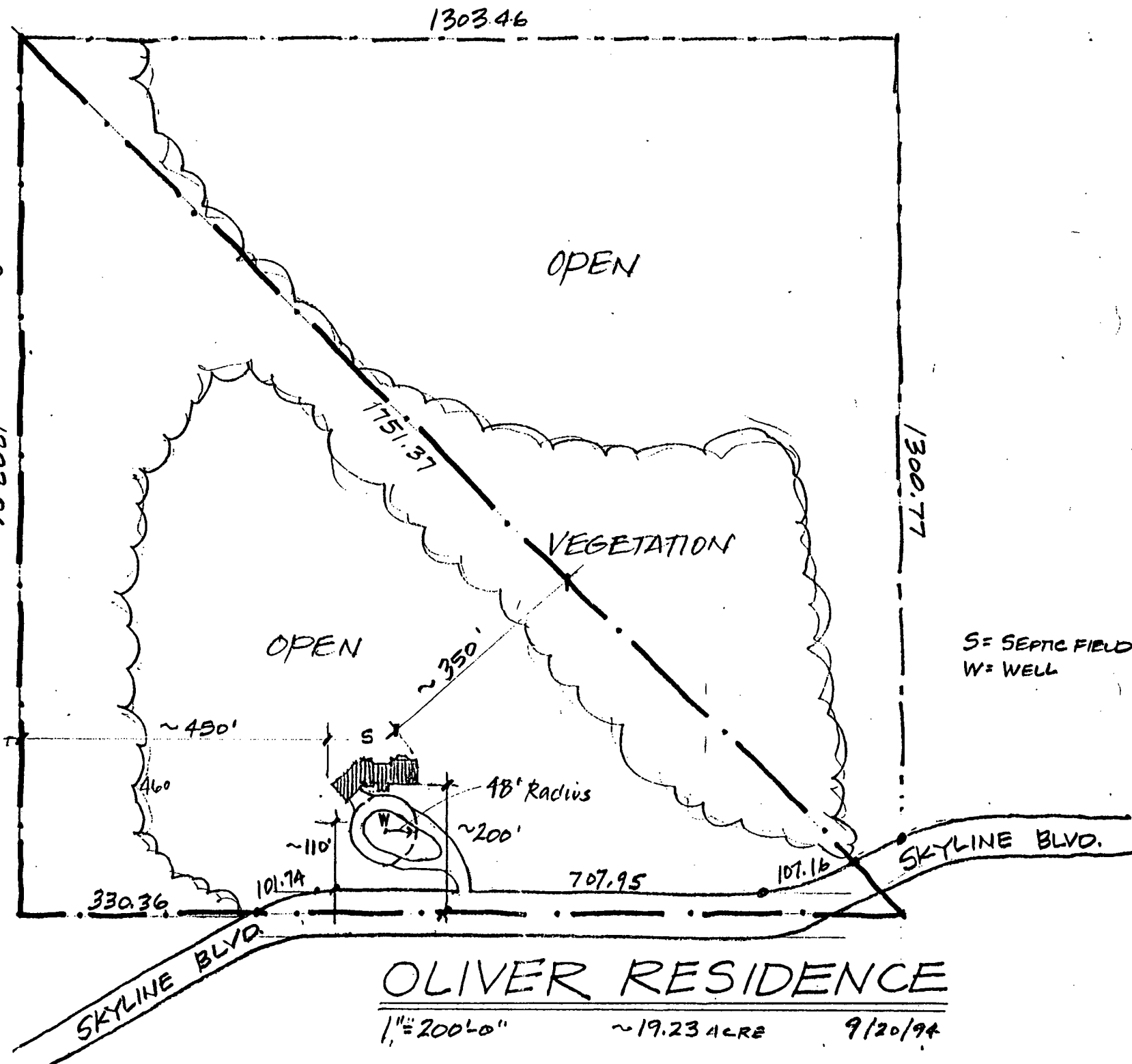
**Recommended:
Hearings Officer
Decision**

Approve, subject to conditions, this request for a single family residence not related to forest management, based on the following Findings and Conclusion.



MULTNOMAH CO.
CITY PDX
SHERIFF:
MULTNOMAH CO.

Site Plan
Case #: CU 8-94
Location: 14625 NW Skyline
Scale: 1 inch to 200 feet (approx)
Tax Lot '10', Sec. 25, T. 2N., R. 2W., WML



CONDITIONS OF APPROVAL:

1. Prior to approval of building permits, provide evidence that a stocking survey report has been submitted to the county tax assessor in accordance with OAR 660-06-029(5)(c).
2. Provide evidence that the deed conditions and restrictions acknowledging the rights of nearby properties to conduct farm and forest practices have been recorded.
3. Maintain a primary fire safety zone around all structures of 50 feet east of the structures and 100 feet west, or downslope of the structures, and a secondary fire safety zone of 100 feet beyond the primary fire safety zone, in accordance with MCC .2074 (A) (5) (b). Exposed soil from the removal of brush or trees shall be seeded or planted by October first the same year the development begins, in order to prevent erosion and runoff problems.
4. The dwelling shall have a fire retardant roof and all chimneys shall be equipped with spark arrestors.

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Hearings Officer approval to develop the above described 18.89 acre lot with a non-resource related single family dwelling.

2. Site and Vicinity Characteristics:

The subject parcel is triangular-shaped, located on the west side and abutting Skyline Blvd. The property is fairly level near the road but slopes increase in steepness with distance from the road, sloping down from east to west. A ravine running northeast to southwest forms the northern property line. The property contains a cleared area near the road and center of the property, while the remainder of the area is forested. The surrounding area is primarily forested interspersed with cleared areas in agricultural use.

3. Ordinance and OAR Criteria:

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 and bracketed]**.

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) or (B) and have been lawfully created prior to January 25, 1990;**

Since the lot does not meet the 80 acre minimum lot size of the CFU zone and there are no contiguous lots under the same ownership, the applicable lot of record criteria are found in MCC .2018 (A)

- (2). The applicant has provided a copy of tax assessor records showing that the property was created in 1987. Records show that the lot was reconfigured through an Exempt Minor Partition (lot line adjustment), approved by the county in 1987.**

- (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;**

Staff Comment: The site plan submitted by the applicant shows that setback standards can be met at the proposed location for the dwelling. Other siting standards of MCC .2074 are discussed later in this report.

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

- (c) The lot shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**
 - (i) The lot and at least all or part of 11 other lots [that existed on January 1, 1993] exist within a 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines; and**
 - (ii) Five dwellings [that existed on January 1, 1993] exist within the 160-acre square.**
- (d) Lots and dwellings within urban growth boundaries shall not be counted to satisfy (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.**

The applicant has submitted a map showing that all or part of 14 lots and 6 houses exist within a 160 acre square template centered on the subject lot. Tax assessor and building permit records show that 4 houses existed within the template prior to January 1, 1993, and a building permit for a 5th house (on tax lot 29) was approved by the planning division on 10/16/92. While this house may not have been completed by January 1, 1993, staff chooses to use the date of building permit approval as the date of existence. Tax assessor records have been submitted showing that the required 11 lots were in existence prior to 1993. None of the lots or dwellings is within the urban growth boundary.

Soils on the property are Cascade silt loam, which has a site index of 150-165, with a potential yield in cubic feet per acre of 140-164. Since the lot contains 18.89 acres, the potential yield is just over

3000 cubic feet per year.

- (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;**

The applicant's written response to this criteria indicates that the dwelling will not be affected by or affect spraying, harvesting timber, or other agricultural practices on surrounding parcels since it will be sited more than the required 200 feet from all property lines. Each surrounding parcel has direct driveway access from Skyline Boulevard and does not depend on access through the subject property. The driveway has been located such to provide a minimum sight distance of 350 feet from the curve on Skyline Boulevard. The drive, therefore, will not impede travel or reduce safety for logging trucks or farming equipment using Skyline Boulevard.

- (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.**

The applicant submitted a copy of the Comprehensive Plan Wildlife Habitat map, which shows that Section 25 does not contain any significant wildlife or big game winter habitat.

- (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;**

The property is within Multnomah County RFPD #20.

- (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;**

Not applicable since public road access is available on Skyline Boulevard.

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

[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 reasonable 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 requirement, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.]

The OAR supercedes the county requirement. Current Tax Assessor records indicate that the property has been receiving a tax deferral, however it appears that part of the deferred acreage is not on forest deferral since much of the property is not planted in trees. The county Tax Assessor will be notified should this request be approved.

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

MCC .2074 Development Standards for Dwellings and Structures

Except as provided for the replacement or restoration of dwellings under MCC .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;]

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

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

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

[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.]

The proposed dwelling site is approximately centered from north to south on the property, which will cause the least impact on surrounding lands used for farming and forestry, and will not curtail or impede those activities. Setback requirements can be met.

The dwelling is proposed to be sited in an open area, where no trees will need to be removed for the buildings, septic drainfield or fire safety areas. However, the amount of land used for the access drive, service corridors and buildings is not minimized, since the building site is approximately 150 feet from Skyline Boulevard - location closer to the road would remove less land from potential forest production. The proposed driveway is approximately 125' in length, which is less than 500 feet but is not the minimum necessary - no evidence has been provided as to why the house could not be located closer to the road.

There are no perennial water sources on the property that could be used for fire fighting purposes. The site plan submitted by the applicant shows a large cleared area around the proposed dwelling, of sufficient size to comply with fire safety zone requirements. Slopes at the proposed building site are less than 40 percent. Information on roof materials and chimneys has not been submitted, but compliance with OAR requirements can be verified at the time of application for building permits.

(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.**

The 600 square foot minimum dwelling size will be verified at the time of application for building permits. Other building code requirements are the jurisdiction of the Portland Building Bureau.

(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.

The applicant has provided a copy of the well log showing a well on the property with a 10 gallon per minute yield.

(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.**

Information provided on a form signed by the Fire Chief of Multnomah County RFPD #20 and the site plan submitted indicate that the driveway requirements can be met. In addition, the applicant has indicated in writing that the driveway is less than 500 feet in length, has a slope of approximate-

ly 4%, will have a 48 foot radius turn around, and will be maintained with a 12 foot minimum width, and 13 foot 6 inch vertical clearance.

- (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.**

No evidence of recordation of the required deed restrictions has been provided. Usual county policy is to make recordation of the deed restrictions a condition of approval.

4. Comprehensive Plan Policies:

Policy 13 Air, Water and Noise Quality: It is the county's policy to require, prior to approval of a legislative or quasi-judicial action, a statement from the appropriate agency that all standards can be met with respect to air quality, water quality, and noise levels. If the proposal is a noise sensitive use and is located in a noise impacted area, or if the proposed use is a noise generator, the following shall be incorporated into the site plan:

- (1) Building placement on the site in an area having minimal noise level disruptions.**
- (2) Landscaping or other techniques to lessen noise generation to levels compatible with surrounding land uses.**
- (3) Insulation or other construction techniques to lower interior noise levels in noise-impacted areas.**

The proposed residence is not a noise generator and is not in a noise impacted area. Water quality standards can be met as evidenced by the approved Land Feasibility Study for on-site sewage disposal.

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

- A. Slopes exceeding 20%;**
- B. Severe soil erosion potential;**
- C. 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.

The proposed building site is on the area of the property with slopes of 8 to 15 percent, according to soil survey information. Although there are several much steeper areas on the property, they are not proposed for development. The property is not in a slope hazard area as shown on county Geologic and Slope Hazard Maps, indicating low erosion potential. The property is not in a flood hazard area. According to the Multnomah County Soil Survey, the soils composing the property are Cascade silt loams, symbol 7C at the building site. This type soil characteristically has a fragipan at a depth of 20 to 30 inches and a resultant perched water table at a depth of 18 to 30 inches from December through April. The soil survey does not indicate that slumping is a problem. The primary potential for public harm or adverse affects to surrounding properties would be caused by runoff and septic tank absorption problems during rainy periods. The Sanitarian has primary responsibility for septic system design and requirements to prevent problems, and the applicant has indicated that a trench design system has been approved based on the moisture content of the soils. The size of the property and distance of the proposed building site to property lines should allow for on-site drainage.

Policy 22 Energy Conservation: The county's policy is to promote the conservation of energy and to use energy resources in a more efficient manner. In addition, it is the policy of Multnomah County to reduce dependency on non-renewable energy resources and to support greater utilization of renewable energy resources. The county shall require a finding prior to the approval of legislative or quasi-judicial action that the following factors have been considered:

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

The proposed residence is in a rural area. Urban energy, transportation and lotting pattern issues do not apply.

Policy 37 Utilities: The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

Water and Disposal System

- (1) The proposed use can be connected to a public sewer and water system, both of which have adequate capacity; or
- (2) 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
- (3) There is an adequate private water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system; or
- (4) There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

- (1) There is adequate capacity in the storm water system to handle the run-off; or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) 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

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

Information submitted by the applicant shows that the dwelling can be served by an on-site septic tank and drainfield (LFS 85-88); there is a private well on the property with a yield of 10 gallons per minute; provisions can be made to handle runoff on site, and there are no streams or water bodies in the vicinity that could be affected by runoff; and the site is served by PGE and US West

Policy 38 Facilities: The county's policy is to require a finding prior to approval of a legislative or quasi-judicial action that:

School

- (1) The appropriate school district has had an opportunity to review and comment on the proposal.

Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and

- (2) The appropriate local district has had an opportunity to review and comment on the proposal.

Police Protection

- (1) The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

Service forms signed by the Multnomah County Sheriff's Office, Portland Public Schools District 1J, and Multnomah County RFPD #20 indicate that adequate service levels can be provided to the dwelling.

Policy 40 Development Requirements: The county's policy is to encourage a connected park and recreation system and to provide for small private recreation areas by requiring a finding prior to approval of legislative or quasi-judicial action that:

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

The subject property is not identified as being a necessary connection between recreation areas or bicycle corridors. Bicycle parking is not required for single family residences.

CONCLUSIONS:

1. The proposal complies with the template test requirement of 11 lots and 5 houses, that existed on January 1, 1993, being located within a 160 acre square centered on the center of the subject property.
2. The proposed dwelling will not have an adverse effect on farm or forest operations on the property or in the surrounding area.
3. The proposed dwelling location and fire safety area minimize risks associated with wildfire.
4. No existing forested land will be removed from production, although the amount of potential reforested area taken out of production by the driveway, structures and fire safety perimeter could be minimized somewhat if the dwelling were located closer to Skyline Boulevard.
5. The applicant has provided adequate evidence to show that the requirements for a dwelling not related to forest management in the CFU district can be met.

6. Conditions are necessary to assure compliance with all code requirements.

The Staff Report and recommendation on Conditional Use application CU 8-94 will be presented at a public hearing on December 21, 1994 before the Hearings Officer.

The Hearings Officer MAY announce a decision on the item:
at the close of the hearing; or,
upon continuance to a time certain; or,
after the close of the record following the hearing.

A written decision is usually mailed to all parties within ten days following the Decision of the Hearings Officer.

Decisions of the Hearings Officer 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 to the record. A "Notice of Appeal" form and fee must be submitted to the County Planning Director, within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [REF. MCC 11.15.8260(A)(1)]. The appeal fee is **\$300.00 plus a \$3.50-per-minute** charge for a transcript of the initial hearing(s) [REF. MCC 11.15.9020(B)]. "Notice of Appeal" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street (in Portland)..

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

Hearings Officer decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 1:30 p.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

Meeting Date: FEB 14 1995

Agenda No: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING Date Requested: February 14, 1995

Amount of Time Needed: 5 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah Ewing

TELEPHONE: 248-3043
BLDG/ROOM: 412/109

PERSON(S) MAKING PRESENTATION: Mark Hess

ACTION REQUESTED

☐ Informational Only ☐ Policy Direction ☐ Approval ☒ Other

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

Reporting the Hearings Officer decision in the matter of CU 9-94 for property located at 28885 SE Dodge Park Boulevard. Applicant sought a conditional use approval to develop a 16,400 square foot structure for light industrial, commercial and warehouse use withing a Rural Center District. Approved with conditions.

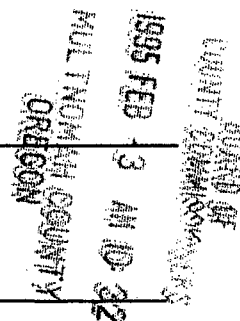
SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: _____

Betsy Willis





BOARD HEARING OF February 14, 1995

TIME 01:30 p.m.

CASE NAME Hammons/Turner Rural Center Project

NUMBER CU9-94

1. Applicant Name/Address

Mike Hammons
20320 SE Highway 212
Clackamas, Oregon 97015

2. Action Requested by applicant

CONDITIONAL USE REQUEST — Applicant seeks a Conditional Use (CU) approval to develop a 16,400 square foot structure for light industrial, warehouse, and commercial uses within a Rural Center District. The proposed building is on 1.4 acre site in the Orient. It would have twelve (12) commercial/industrial tenant spaces and 21 off street parking spaces with access to Dodge Park Boulevard. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, small engine repair, etc.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com./Hearings Officer
- ☐ Hearing/Rehearing
- ☐ Scope of Review
 - ☐ On the record
 - ☐ De Novo
 - ☐ New Information allowed

3. Planning Staff Recommendation

APPROVAL, WITH CONDITIONS

4. Hearings Officer Decision:

APPROVE, WITH MODIFICATIONS AND CONDITIONS

5. If recommendation and decision are different, why?

The Hearings Officer decision expanded on issues raised at the hearing and added more specific conditions than those presented in the Planning Staff report.

ISSUES

(who raised them?)

**What is the appropriate balance of residential and commercial or industrial uses in rural center;
What is the extent of commercial traffic appropriate in a rural center?**

[Opposition testimony received by the Hearings Officer; written comments from: neighboring property owners.]

Do any of these issues have policy implications? Explain.

Yes. The Hearings Officer decision explains how existing policy and code were applied to reach the conclusions and decision to APPROVE with CONDITIONS. New policies were not established by the Hearings Officer. The scope of the subsequent Design Review process was discussed during the hearing. Design Review Staff was directed to evaluate whether the proposal provides safe access and maneuvering area(s) for trucks and other vehicles on and adjacent to the site.

RECEIVED

JAN 17 1995

Multnomah County
Zoning Division

BEFORE THE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by Mike Hammons on behalf of)
Robert Turner for a conditional use permit to)
construct a 16,400 square foot structure for light)
industrial, warehouse and commercial uses in the)
Rural Center (RC) District located at 28855 S.E.)
Dodge Park Boulevard, in unincorporated)
Multnomah County, Oregon)

FINAL ORDER
CU 9-94

I. HEARING AND RECORD

This case was heard at a public hearing on December 21, 1994. The written record remained open until December 30, 1994. Planning staff submitted a corrected version of an earlier staff recommended condition, dated January 3, 1994, which was received as part of the record on January 4, 1994. A record of all exhibits and testimony received with regard to this application is on file with the Division of Planning and Development.

II. BACKGROUND

In 1992, a different conditional use application on the same site was denied by the Hearings Officer based upon a conflict with Plan Policy 30(g), which requires isolated industrial sites to have direct access to a collector street. Subsequently, the Board of Commissioners designated Dodge Park Boulevard, which abuts the southern boundary of the site, as a rural collector. Therefore, the site can now obtain access to Dodge Park Boulevard as a rural collector, without violating Policy 30(g).

III. FINDING

The Hearings Officer adopts as his own and incorporates by reference the findings and conclusions contained within the Staff Report submitted to the Hearings Officer dated December 21, 1994, except to the extent expressly modified or supplemented below.

A. Consistency With The Character Of The Area

The Staff Report at page 6 concerning MCC 11.15.7120(A) is amended as follows:

The "area" involved in this application contains properties located within a one mile radius of the site. The one mile area radius was suggested by staff in the Staff Report and is consistent with the Hearings Officer's previous decision in a 1992 conditional use case.

The Staff Report correctly describes this area as a mixed use rural center with predominant land uses being rural residential and farm uses. However, some commercial uses exist such as a gas station, a food store, a tractor equipment sales outlet, and a number of nursery related storage and sales uses. Furthermore, an old auto wrecking yard is located directly west of the site.

The applicant has only generally described the uses he seeks permission for. The neighbors have been understandably concerned about the general nature of the uses described by the applicant. At the hearing, the applicant indicated that it is willing to limit its proposed uses to those listed in the Urban Light Manufacturing Zone (LM) pursuant to § 11.15.2252(B)(3) which require such uses to have a daily employment of 20 or fewer persons. Such LM uses are permitted as conditional uses in the RC zone. Specifically, the applicant has suggested uses such as car detailing, small machine shop, product packaging and small engine repair.

The Hearings Officer finds that a car detail shop, a small engine repair shop, a small machine shop and similar uses are consistent with the overall character of the area, because the amount of automobile and truck traffic generated by these uses would be relatively low and the nature of the services provided would be reasonably consistent with the uses provided in the surrounding area. However, larger scale manufacturing, processing and distribution of goods may or may not be consistent with the overall character of the area, depending on various factors such as traffic, noise, hours of operation, materials stored on the site and other similar factors. This interpretation of the uses permitted conditionally in the zone is consistent with the Comprehensive Plan, which indicates that the "intensities" of uses located within Rural Centers must be appropriate to the character of the rural area. Therefore, there is a need to place certain limitations on the intensities and types of such uses to the extent they may be allowed through this conditional use permit process.

With regard to these issues, the Hearings Officer has elected to impose the following conditions on this permit, in order to limit and mitigate any impacts from proposed range of uses that are permitted in the Light Manufacturing District and thereby conditionally allowed in the RC zone:

(1) Hazardous Materials

No storage or transport of hazardous materials shall be permitted unless the applicant, owner or tenant of the site applies for and receives appropriate DEQ and/or EPA permits as required.

(2) Hours of Operation

The hours of operation for all uses on this site are limited from 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 5:00 p.m. Saturday and Sunday.

(3) Noise

All uses on the site shall comply with applicable state and county noise regulations.

(4) Design Review/Access

Prior to issuance of permits for the building, complete applicable requirements of the County Transportation Division regarding abutting rights of way. Direct access for autos or trucks from the subject site to Powell Valley Road shall not be allowed. However, as part of the design review process, the applicant with County Planning and Transportation staff shall explore opportunities to provide pedestrian and/or bicycle access to and along Powell Valley Road from the site.

The specific configuration of parking, maneuvering and access on the site shall be reviewed and approved through design review (MCC 11.15.7845). The design review application shall include plan details or other submittals to illustrate the anticipated travel pass of semi-trailer trucks entering and exiting the site, and the maximum length of trailer/trucks and the design that would accommodate such lengths. The plan shall demonstrate compliance with MCC 11.15.6126(B) which stipulates:

"All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires vehicles to back into the right-of-way of a public street."

B. Hazardous Conditions

With regard to MCC 11.15.7120(F) on page 7 of the Staff Report an additional paragraph should be added as follows:

With regard to potentially hazardous traffic conditions, the above mentioned design review/access condition of approval will insure that the applicant's individual uses and the overall functioning of the site will accommodate and limit truck traffic in the site and the movement of truck traffic to and from the site.

With regard to hazardous conditions that may exist due to potential use or transport of hazardous materials, the Hearings Officer takes judicial notice that many common household materials are "hazardous" and that the zoning code does not specifically restrict uses that employ hazardous materials. Nonetheless, both DEQ and EPA independently regulate such materials and the applicant will be required to insure that any and all uses that come to be located on the site must obtain required DEQ and EPA permits prior to conducting business on the site if those businesses use or transport hazardous materials. So long as these requirements are met, the Hearings Officer finds that the proposed uses will not create hazardous conditions because the relevant state and federal agencies will be responsible for regulating the safe storage and transport of said materials.

C. Provisions of 11.15.5140

The following findings are new, and are intended to supplement the staff report:

The December 28 letter from Eddie and Debra Day and Del Karlen assert the provisions of 11.15.5140(A)(1) require a 50 foot landscape buffer along the eastern boundary of the site adjacent to Parcel 184 and along the northern portion of the property adjacent to Parcels 112 and 47 across Powell Valley Road.

The Hearings Officer finds that MCC 11.15.5140 does not apply. The provisions in this section apply to LM uses only where the neighboring uses are designated as residential uses on the Comprehensive Plan. Parcels 112 and 47, although currently used as residential uses, are designated as Agricultural uses on the Comprehensive Plan. Similarly, Parcel 184, although currently in residential use, is designated RC on the Comprehensive Plan. The RC designation is a mixed use designation, and it specifically contemplates limited commercial and limited industrial activities, as proposed. Therefore, the buffering provisions contained in MCC 11.15.5140 do not apply because the uses adjacent to the site are not designated as residential uses in the County's Comprehensive Plan.

Nonetheless, it should be noted that as part of design review, the applicant will be required to provide privacy and screening for nearby residences. This buffering and screening will not be as wide as required by 11.15.5140, but it will be appropriate for the uses that are proposed.

D. Policy 14 (Development Limitations)

The findings contained on page 8 of the Staff Report regarding Policy 14 are replaced completely with the following findings:

Findings. There are no slopes exceeding 20% on the site and the site is not within the 100 year flood plain. However, evidence in the record confirms that soils in this area have a high seasonal water table of between 18 and 24 inches and a fragipan that is less than 30 inches from the surface. Therefore, the application must be denied unless mitigating actions can be taken to limit the impacts of developing this site, given the above mentioned development limitations.

The only impacts identified in the record from the above mentioned development limitations are potential impacts on the septic and drainage systems of the site and those in the surrounding area. The applicant's engineer, Mike Hammons, testified that the cap and fill septic system as designed, is intended to compensate for the poor soils and high fragipan. Enough fill will be imported to lower the depth of the water table to 24 inches and to lower the fragipan to 30 inches. The Hearings Officer finds that Mr. Hammons' testimony in this regard is credible. Furthermore, the Hearings Officer finds that Mr. Hammons' technical solution involving the cap and fill system is feasible and appropriate given the development limitations of the site.

However, Mr. Hammons' testimony did not adequately address potential off-site problems that might be created if added fill is imported onto the site to create this cap and fill system. Therefore, the applicant will be required to submit a septic and drainage plan that insures that post-development run-off from the site will not exceed pre-development run-off, either in volume or rate and that the cap and fill system will not impact off-site development or septic systems. The applicant's plans in this regard shall be reviewed and approved by the County Engineer prior to site plan approval. A condition of approval in this regard has been added to the decision.

IV. CONCLUSIONS

Based upon the above mentioned findings, the evidence contained within the record, and the findings and conclusions contained within the Staff Report, the Hearings Officer finds that CU 9-94 (Hammons) should be approved because it does or can comply with the applicable criteria.

V. DECISION

The applicant's request for a conditional use permit is approved, subject to the following conditions:

1. Obtain Design Review approval of proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing and exterior building design. Site work shall not proceed until required Design Review approvals are obtained. Specific site improvements represented in the application may be developed in separate phases. Exterior materials and colors on the visible parts of the structure(s) -- including the roof and trim -- shall be non-reflective, and compatible with landscape features and buildings in the Orient Rural Center.
2. The Conditional Use approval described herein shall expire two years from the effective date pursuant to MCC.8260(A) or .8280(D), unless the project is completed or substantial development has taken place within two years as specified in MCC.7110(C). Construction of proposed development and uses approved under the CU decision may be divided into stages. However, each phase or stage shall require a separate Final Design Review Plan and other approvals as prescribed by conditions herein.
3. Prior to issuance of permits for the building, complete applicable requirements of the County Transportation Division regarding abutting Right-of-Ways. Direct access for autos or trucks from the subject site to Powell Valley Road shall not be allowed. However, as part of the Design Review process, the applicant and County Planning and Transportation Staff should explore opportunities to provide pedestrian and/or bicycle access to and along Powell Valley Road.

The specific configuration of parking, maneuvering, and access on the site shall be reviewed and approved through design review [MCC 11.15.7845]. The Design Review application shall include plan details or other submittals to illustrate the anticipated travel paths of semi-trailer trucks entering and exiting the site, and the maximum length of truck/trailer the design would accommodate. The plan shall demonstrate compliance with MCC 11.15.6126(B) which stipulates:

". . . All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or

loading space so that use of the space requires a vehicles to back into the right-of-way of a public street."

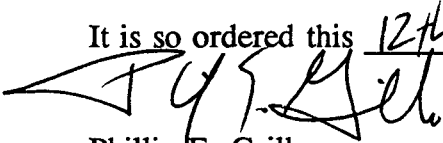
Furthermore, the Design Review process shall review the locational criteria for various Light Industrial uses, as set forth in the Comprehensive Plan, to insure that the actual uses proposed comply with the policies and purposes of the RC zone.

4. This land use approval only authorizes the specific uses set forth in the Light Manufacturing Zone, provided that each of these uses employs no more than 20 persons, and provided further, that each use, either individually or jointly, be subject to Design Review approval. The County may, as part of Design Review, limit or reject any use listed in the LM Zone, if the applicant is unable to satisfy the requirements of Design Review as supplemented by the conditions imposed here.
5. Plan and maintain trees and landscaping on the site (as approved under Conditions #1 and #2 above) to screen, define and separate parking and maneuvering areas, and business related storage from public views and Right-of-Ways, and provide privacy and screening for nearby residences.
6. Any subsequent decision(s) by the Director to implement conditions above and requiring the exercise of legal or factual judgment shall include public notice and opportunity for public hearing(s) pursuant to ORS 197.763; ORS 215.416(11).
7. Hazardous Materials. No storage or transportation of hazardous materials shall be permitted in conjunction with the proposed use unless permits from DEQ and/or EPA are obtained, if required by state and federal law.
8. Hours of Operation. All uses on the site are subject to the following hours of operation:

Monday-Friday	7:00 a.m. to 7:00 p.m.
Saturday-Sunday	9:00 a.m. to 5:00 p.m.
9. Noise. All uses on the site shall comply with applicable county and state noise regulations.
10. Prior to Site Plan Review, the applicant shall submit a final septic and drainage plan to the County Engineer for review and approval. Those plans

shall demonstrate that post development run-off from the site will not exceed pre-development run-off, either in rate or volume, and shall also demonstrate that the cap and fill system will not impact off-site development or septic systems nearby. Also, the cap and fill system must be designed so as to comply with the requirement of Multnomah County Comprehensive Plan Policy 14. Specifically, enough fill must be used to lower the water table to 24 inches and the fragipan to 30 inches.

It is so ordered this 12th day of January, 1995.



Phillip E. Grillo
Hearings Officer
Multnomah County



**DEPARTMENT OF ENVIRONMENTAL SERVICES
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043**

S T A F F R E P O R T

For a Public Hearing on December 21, 1994

This Report consists of Recommended Decisions, Conditions, Findings of Fact, and Conclusions

Application File: CU 9-94
Agenda Item: No. 2; 9:45 A.M.

Proposed Action(s) & Use(s): **CONDITIONAL USE REQUEST** — Applicant seeks a Conditional Use (CU) approval to develop a 16,400 square foot structure for light industrial, warehouse, and commercial uses within a Rural Center District. The proposed building is on 1.4 acre site in the Orient. It would have twelve (12) commercial/industrial tenant spaces and 21 off street parking spaces with access to Dodge Park Boulevard. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, small engine repair, *etc.*

Location of Proposal: 28885 SE Dodge Park Boulevard

Legal Description: Tax Lot '64'; Section 19, 1S-4E

Plan Designation: Rural Center

Zoning District: RC (Rural Center District)

Owner: Robert Turner
29147 SE Stone Road
Gresham, Oregon 97080

Applicant: Mike Hammons
20320 SE Highway 212
Clackamas, Oregon 97015

RECOMMENDED

HEARINGS OFFICER DECISION: APPROVE, SUBJECT TO CONDITIONS, the requested conditional use permit for a 16,400 square foot structure for light industrial, warehouse, and commercial uses, based on the following findings and conclusions.

This Building is Wheel-Chair Accessible. Multnomah County TDD Line - (503) 248-5040



Zoning Map

Case #: CU 9-94

Location: 28885 SE Dodge Park Blvd.

Scale: 1 inch to 400 feet (approx)

Shading indicates subject property

SZM #703; Sec. 19, T. 1S., R. 4E.

CITY

EFU

POWELL VALLEY

MC 1-62

2.03 Ac

ZC 45-65

CU 11-80

DODGE PARK

RC

ORIENT

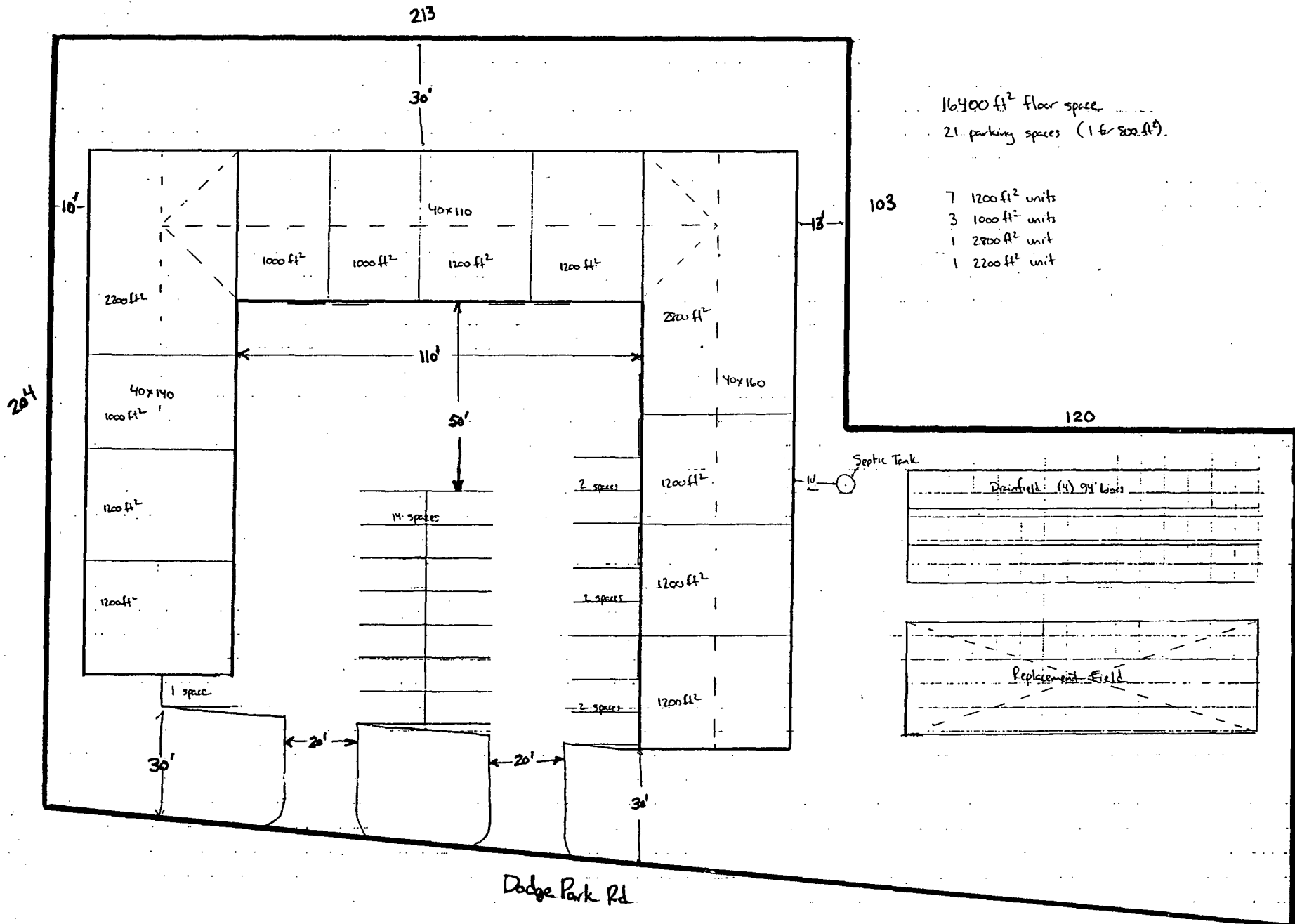
ESTATES

MIL

DAR-

EFU

MUA-20



**RECOMMENDED
CONDITIONS OF APPROVAL**

1. Obtain Design Review approval of proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing and exterior building design. Site work shall not proceed until required Design Review approvals are obtained. Specific site improvements represented in the application may be developed in separate phases. Exterior materials and colors on the visible parts of the structure(s) – including the roof and trim – shall be non-reflective, and compatible with landscape features and buildings in the Orient Rural Center.
2. The Conditional Use approval described herein shall expire two years from the effective date pursuant to MCC .8260(A) or .8280(D), unless the project is completed or substantial development has taken place within two years as specified in MCC .7110(C). Construction of proposed development and uses approved under the CU decision may be divided into stages. However, each phase or stage shall require a separate Final Design Review Plan and other approvals as prescribed by conditions herein.
3. Prior to issuance of permits for the building, complete applicable requirements of the County Transportation Division regarding abutting Right-of-Ways. Direct access for autos or trucks from the subject site to Powell Valley Boulevard shall not be allowed.
4. The land use approval shall be for the specific uses and scale(s) specified herein.
5. Plant and maintain trees and landscaping on the site(as approved under Conditions #1 and #2 above) to screen, define, and separate parking and maneuvering areas, and business related storage from public views and Right-of-Ways, and provide privacy and screening for nearby residences.
6. Any subsequent decision(s) by the Director to implement conditions above and requiring the exercise of legal or factual judgment shall include public notice and opportunity for public hearing(s) pursuant to ORS 197.763; ORS 215.416(11).

Findings of Fact:

1. **Applicant's Proposal:** The applicant proposes a 16,400 square foot structure for light industrial, warehouse, and commercial uses. The proposed building is on 1.4 acre site in the Orient Rural Center. It would have twelve (12) commercial/industrial tenant spaces and 21 off street parking spaces with access to Dodge Park Boulevard. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, engine repair, etc.

The text and information contained in the CU 9-94 "*General Application Form*" and '*Comprehensive Conditional Use Summary*' received by the Planning Division 10/24/94, together with the proposed site plan, are incorporated into this report by reference. However, all findings and conclusions in the application have not been incorporated by this reference. Modifications to some findings and conclusions are identified in comment sections.

2. **Site Conditions and Vicinity Information:**

- A. The site is located between SE Dodge Park Boulevard and SE Powell Valley Road about 300 feet from the Gresham city limits. The site is currently vacant and contains 1.4 acres. The Comprehensive Framework Plan designates the site as Rural Center, and the zoning designation is RC, Rural Center District.
- B. **Future Street Improvements (SE Dodge Park Boulevard and Powell Valley Road):** Southeast Dodge Park Boulevard and Powell Valley Road are not fully improved to county standards at this time. The Transportation Division has not yet determined specific requirements needed to comply with the provisions of the Street Standards Ordinance (MCC 11.60). The Design Review process will insure this issue is addressed through recommended conditions of approval..

3. **Ordinance Considerations (MCC 11.15):**

- A. The Zoning Ordinance states that in the RC, Rural Center district, the allowed conditional uses include "*The [LM]Light Manufacturing uses of MCC .5120 which require the daily employment of twenty or fewer persons*" [MCC 11.15.2252(B)(3)]. "Warehouse" and "distribution plant" are listed in the LM zoning regulations [MCC .5120(L)] and are therefore conditional uses in the RC zone. The development would have twelve (12) commercial/industrial tenant spaces and applicant expects tenants would have a maximum of 16 employees at the site and therefore the project qualifies under MCC 11.15.2252(B)(3).
- B. The proposal must satisfies the general Conditional Use Approval Criteria in MCC 11.15.7120. For the proposal to satisfy those criteria, the approval authority must find that the use:
 - (1) *Is consistent with the character of the area;*
 - (2) *Will not adversely affect natural resources;*
 - (3) *Will not conflict with farm or forest uses in the area;*
 - (4) *Will not require public services other than those existing or programmed for the area;*
 - (5) *Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;*
 - (6) *Will not create hazardous conditions; and*
 - (7) *Will satisfy the applicable policies of the Comprehensive Plan.*

4. Response to Conditional Use Approval Criteria

A. General Conditional Use Criteria (MCC 11.15.7120)

(1) *Consistent with the character of the area;* [MCC 11.15.7120(A)]

Findings: The "area" in question has not been specifically defined. As suggested by the zoning designation for the property, the evidence suggests that the area functions as a rural center with some commercial uses such as a gas station and food store, a tractor equipment sales outlet and a number of nursery related storage and sales areas. An old auto wrecking yard is directly west of the site.

The predominant use of land within the one-mile radius of the site is rural residential and various farm uses. In the immediate vicinity, a number of residential uses exist. On the whole, the area is best described as a mixed use rural center.

Overall, the proposed use is or can be designed to be consistent with the character of the area. The operation itself will accomplish its sorting and loading functions inside the proposed building. The number of truck trips can be limited and truck traffic can be limited to SE Dodge Park Blvd, in order to reduce or eliminate potential transportation conflicts on SE Powell Valley Road. With proper conditions of approval, this criteria can be satisfied.

(2) *Will not adversely affect natural resources;* [MCC 11.15.7120(B)]

Finding: The proposed use of this property would have no adverse affects on the natural resources of the area. No wetlands, waterways, scenic views, fish and wildlife habitats, energy sources, or natural areas have been identified on the site. This criterion is satisfied.

(3) *Will not conflict with farm or forest uses in the area;* [MCC 11.15.7120(C)]

Finding: Staff concurs that the proposal's effects on farm or forest uses are insignificant — primarily due to physical barriers between the site and nearby commercial farm or forest uses, and the non-farm/non-forest uses existing on immediately adjacent lands to the west, east, and south. The nearest farm uses are north of Powell Valley Road. Considering the existing non-farm uses already in the vicinity, the proposed facility would not appear to pose a threat to nearby farm uses. The site plan indicates that placement and orientation of the structure and access would direct the proposed activities towards the Orient Rural Center south and west of the site. This criterion is satisfied.

- (4) *Will not require public services other than those existing or programmed for the area* [MCC 11.15.7120(D)]

Finding

Public water is available to the site from the Lusted Water District. The County Sanitarian has approved a Land Feasibility Study confirming the ability to use on-site sanitation. Electric, natural gas and telephone service are available to the site. This criterion is satisfied.

- (5) *Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable* [MCC 11.15.7120(E)].

Finding: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife. This criterion is satisfied.

- (6) *Will not create hazardous conditions;* [MCC 11.15.7120(F)]

Finding: The applicant indicates that the operation would have twelve (12) commercial/industrial tenant spaces and 21 off street parking spaces with access to Dodge Park Boulevard. Applicant expects tenant uses would be car detailing, small machine shop, product packaging, engine repair, and similar activities.

Recommended conditions of approval require Design Review of the site design, parking areas, and associated grading and structures. These additional permits and reviews will further address potential hazards associated with the proposed uses and site design. The design review process can, in conjunction with review by the Transportation Division, assure that ingress and egress points are located so as to maximize traffic and pedestrian safety. Under these circumstances, this criteria can be met.

- (7) *Will satisfy the applicable policies of the Comprehensive Plan.* [MCC 11.15.7120(G): The following Comprehensive Plan Policies are applicable to the proposed conditional use. The proposal satisfies those policies for the following reasons:

- (a) **Policy No. 13 - Air and Water Quality and Noise Levels** This policy seeks to maintain and improve air and water quality and reduce noise pollution in the county

Finding: No significant impact on air pollution will result from the businesses allowed by approval of the proposed conditional use. As stated by the applicant, the County Sanitarian has approved a Land

Feasibility Study confirming the ability to use on-site sanitation . For these reasons the proposal satisfies Policy 13.

- (b) **Policy No. 14 - Development Limitations** This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earth slides or movement

Finding: There are no slopes exceeding 20 percent on the site and it is not in the 100-year flood plain. There is no evidence of a fragipan, high seasonal water table, erosion potential or earth movement. For this reason, the proposal satisfies Policy 14.

- (c) **Policy No. 27 - Commercial Location**

Finding: Activities proposed on this site are classified as a "warehouse" and "distribution plant" and is regarded as an industrial rather than a commercial use. Therefore, Policy 30 rather than Policy 27 applies.

- (d) **Policy No. 30 - Industrial Location**

Finding: One of the opponents in the similar 1992 case, Ms. Susan Chase, indicated that Policy 30(g) requires "isolated light industrial" uses to have "direct access to a collector street without sending traffic through neighborhood streets". Ms. Chase pointed out that according to the County's functional classification of trafficways, adopted as part of the Comprehensive Plan, neither SE Powell Valley Road nor SE Dodge Park Blvd., are designated as collector streets in this area. However, in 1993, the County designated the latter roadway (SE Dodge Park Boulevard) as a rural collector [reference Planning File C 1-93].

Policy 30(g) determines what the vehicular access requirements are for particular types of industrial development, based upon their scale. This use is unquestionably an isolated light industrial use. Under the provisions of Policy 30(g), isolated light industrial uses are "required" to have direct access to a collector street. This proposed development would have direct access to Dodge Park Boulevard, a *rural collector trafficway*, and it therefore satisfies Policy 30(g).

(e) **Policy No. 36 - Transportation System Development**

Finding: Conditions of approval require the owner to commit to the future improvement of the abutting public roads through deed restrictions. Those future improvements would include sidewalks, curbs and additional paving in the right-of-way adjacent to the subject property. Subject to those conditions, the proposal satisfies Policy 36.

(f) **Policy 37 - Utilities** This policy requires adequate utilities to serve the site.

FINDING: Public water is available to the property from the Lusted Water District. The County Sanitarian has approved a Land Feasibility Study confirming the ability to use on-site sanitation. For these reasons, the proposal satisfies Policy 37.

(g) **Policy 38 - Facilities:** This policy requires that public facilities be available to serve the use.

Finding: The property is located in the Orient School District, which will not have to accommodate any additional student enrollment as a result of approval of this request. Multnomah County Fire District No. 10 provides fire protection, and the Multnomah County Sheriff's Office provides police protection. For these reasons the proposal satisfies Policy 38.

Conclusions:

This proposed development generally satisfies relevant approval criteria. Conditional Use Criteria #7 requires the applicant to provide substantial evidence that all of the relevant comprehensive plan policies are satisfied.

In 1992, a similar CU application was denied based upon a conflict with Plan Policy 30(g). Policy 30(g), among other things, requires that proposed isolated light industrial sites have direct access to a collector street. Dodge Park Boulevard, which forms the south boundary of the subject site, was classified a *Rural Collector* in 1993 [refer to C 1-93]. The proposed light industrial use at this site is therefore consistent with the access requirements of Plan Policy 30(g). It should be noted that testimony in opposition to a similar proposal in 1992 involved traffic safety concerns. Testimony received regarding application CU 8-92 indicated that SE Powell Valley Road in this area is used extensively by bicyclists and pedestrians and that additional heavy truck traffic might conflict with the neighborhood transportation patterns. This is precisely the type of conflict Policy 30(g), by its terms, is attempting to prevent.

The other remaining concerns raised by the neighbors in 1992 could be mitigated with appropriate conditions of approval. The vehicular access to the proposed industrial use is exclusively to Dodge Park Boulevard (a Rural Collector). If conditions prohibit direct access to Powell Valley Boulevard for autos or trucks, Staff concludes the other approval criteria are or can be met.

This Staff Report and recommendation was available on December 14, 1994, seven days before the December 21, 1994 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 Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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

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

GENERAL APPLICATION FORM

DEPT. OF ENVIRONMENTAL SERVICES
DIVISION OF PLANNING AND DEVELOPMENT
(503) 248-3043

2115 SE MORRISON ST.
PORTLAND, OR 97214



11#
ZONING TOTAL 50.00
0600-001 9/28/94
1134 SHARON 11:09PM

Property Address 28885 SE Dodge Park Blvd
Tax Roll Description Tax lot 64, section 19 T1S, R4E WM
1991 Assessor's Map Site Size 1.40 Acres
County Assessment & Taxation Account No. 994190640
State Identification No. _____ Levy Code _____

Applicant Michael Hammons
Address 20320 SE Hwy 212 Clackamas Phone 658-8001
City Clackamas State Or. Zip Code 97015

Property Owner/Deed Holder Robert M. Turner
Address 29147 SE Stone Rd Phone 663-4151
City Gresham State Or. Zip Code 97080

Contract Purchaser _____
Address _____ Phone _____
City _____ State _____ Zip Code _____

At Applicant's Request, Other Parties To Receive Notice And Decision,
(e.g., Surveyor, Planning Consultant, Attorney):

Name Robert Hoover
Address 9280 SE Orient Drive
City Boring State Or. Zip Code 97009

Name _____
Address _____
City _____ State _____ Zip Code _____

GENERAL DESCRIPTION OF APPLICATION: (To be filled in by the applicant and reviewed by staff. This is to be only a brief description. Responses to the approval criteria must be attached to this application.)

We are proposing to build a small
industrial warehouse type complex for
lease by individuals in the area.
expected uses might be small machine
shop, car detailing, product packaging,
small engine repair ect, ect.

FOR STAFF USE

CASE NUMBER

C09-94

Associated Cases

Past Case

C08-92

DESCRIPTION

Comp. Plan Desig.

RC

Community

Zoning District

RC

Zoning Map No.

703

A&T Map

1915 4E

PRE-APPLICATION

Pre-App. Accepted

9-23-94

Pre-App. Number

PA 39-94

Date and Time

10-13-94 10 AM

SUBMITTAL

Application Received

10-24-94

30 Days After Rec.

Staff Reviewer

M. Ham

Notified Missing Info.

Info. Submitted

Date Complete

Received
10/24/94

COMPREHENSIVE CONDITIONAL USE SUMMARY

Robert L. Hoover is proposing to build a small Industrial Park, warehouse complex, and use one unit himself to receive and ship styrofoam building products, and lease the remaining units to individuals in the area for assorted uses, such as machine shop, light manufacturing, car detail, product packaging ect.

11.15.2252 Multnomah County Rural Center zoning allows for conditional use for light manufacturing. Uses of MCC. 5120 which requires the daily employment of twenty or fewer persons and full capacity of our proposed development is projected at 16 workers.

11.15.5105 Of the urban Light Manufacturing allows for the purpose of locating light manufacturing in a close proximity to residential and commercial areas. The lot proposed for development is between an existing Auto Wrecking yard and an existing single family dwelling.

The proposed use of this property would have no adverse affects on the natural resources of the area. There are no wetlands, waterways, scenic views, fish and wildlife habitat, energy sources, or natural area involved with this parcel.

The size of the parcel would keep it from affecting any farm or forest use in the area. The farm (Nurseries) are of a much larger size and there are no forest uses in the area.

Policy #37 allows for our use to be connected to the Dodge Park Water District and as noted in our application they have adequate supply for our use, and also in our application is a copy of approval for an on sight sewage disposal system. Drainage will be addressed by existing drainage ways in the form of ditches on the lower elevation of the property. No public services other than the ones provided are needed.

The parcel in question is not a location that large or small game animals use for habitat.

It is well known that hazardous conditions, pollution of air, water, and noise can adversely affect the area. It is our contention that because of the nature of the proposed use we would not adversely affect any of these.

Applicable policies of the comprehensive plan 11.15.5120. The applicant is proposing to build a series of 1200 square foot units for lease to individuals in the area. Some of the expected uses as described in 11.15.5120 are

(To replace narrative in DA 39-94)

CU 9-94

Received
10/24/94

- (B) the manufacture, compounding, assembling... of articles or or merchandise from previously prepared materials...
- (C) The manufacture, assembly, packaging, repair, storage or wholesale distribution of articles such as electrical appliances...
- (D) The manufacture...Cabinets...
- (G) Building....Landscaping....Contractors....Office...
- (J) Automobile...repair as maintenance...
- (K) Metal or sheet metal shop...
- (O) Any use not listed in MCC.5125 or .5130, determined by the Planning Commission to be consistent with the purposes listed in MCC .5105.

11.15.6110 The plot plan shows an adequate number of parking spaces required for customers, occupants, and employee vehicles. In addition to required parking there is ample area to park trucks and equipment in areas that are of the street, so will not impede traffic flow thru the area.

11.15.6128 The plot plan shows that the driveway has a width of at least 20' the required minimum.

11.15.6130 The plot plan shows all parking spaces to be over the minimum size required.

Multnomah County Comprehensive Plan summary policy #7 addresses Rural Center zoning which is to maintain centers primarily for commercial and community service. The parcel in this proposal is currently zoned RC, and with the conditional use permit allows for the use of this parcel for the proposed warehouse development.

Also in the area is a Quick Mart (combined gas station food store), a tractor and equipment sales outlet, and numerous nursery related storage and sales areas.

Policy #27 Addressing commercial location encourages land use development patterns which support the use of existing commercial districts and modes of activity. The proposed conditional uses work very well for the area.

Policy #30 Industrial Location. The proposed conditional use fits partially under the warehouse characteristics in that it will entail no air or water pollution and only some noise generated from truck circulation and no industrial waste, has very low employee density and truck transportation is required. It also fits partially under the distribution

Received
10/24/94

characteristics in that: it has a large area paved for parking and truck maneuvering.

Policy #33 Addresses the transportation system. Our proposed development uses the existing safe, functional and convenient system already in place and will cause no new traffic through any residential areas, with our traffic flow from Dodge Park Blvd. to Orient Dr.

MEETING DATE: February 14, 1995

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearing on MC 1-94/LD 13-94

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: February 14, 1995

Amount of Time Needed: 90 minutes

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sarah A. Ewing

TELEPHONE #: 248-3042, ext. 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ OTHER

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

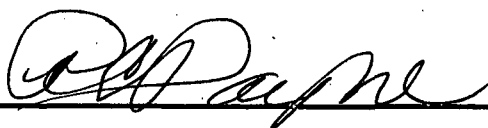
Hearing on MC 1-94/LD 13-94 per Notice of Review received January 9, 1995 requesting a review of the Hearings Officer final order approving a request for a partition and the use of an easement for access. A second Notice of Review was received January 9, 1995 requesting a review of the Administrative approval of an access variance attached as Exhibit A to Final Order to MC 1-94/LD 13-94.

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: RSP



RECEIVED BY
JULIA J. JONES
1995 JAN 27 AM 8:12
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



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

January 19, 1995

NOTICE OF A PUBLIC HEARING

This notice concerns a public hearing scheduled to consider the land use case cited and described below:

Case File: MC 1-94 / LD 13-94

Scheduled Before: Board of County Commissioners

Date, Time, & Place: Tuesday, February 14, 1995 at 1:30 p.m.
Multnomah County Courthouse, Room 602
1021 SW 4th, Portland, Oregon 97204

Scope of Review: De Novo

Time Allowed for Testimony: 30 minutes per side including rebuttal

Proposed Action(s) and Use(s): Access by Easement and Land Division

Location of the Proposal: 01400 SW Military Rd.

Legal Description of Property: Sec. 34 T 1S, R 1E, Tax Lot '14' (see attached map)

Plan Designation(s): Residential

Zoning District(s): R-30 Single-Family Residential

Applicant: Gran Marque, Inc.
560 1st Street, Lake Oswego OR 97034

Owners: Shaun & Michele Tumpane
01400 SW Military Rd., Portland OR 9719

Appellant: K. Don Feldman
01402 SW Military Road, Portland, OR 97219

Proposal Summary: Appellant challenges the December 21, 1994 Hearings Officer decision which approved with conditions MC 1-94/LD 13-94, a request for a partition and the use of an easement for access. A *Notice of Review* (appeal) was filed on January 9, 1995. A second *Notice of Review* (appeal) was filed on January 9, 1995 requesting a review of the Administrative approval of an access variance granted by the Department of Transportation

This Building is Wheel-Chair Accessible. Multnomah County TDD Line - 248-5040

and referred to as Exhibit A in the Hearing Officer final order on MC 1-94/LD 13-94.

Public Participation and Hearing Process: Application materials and the grounds for appeal are available for inspection at least 20 days prior to the hearing. Copies may be purchased for 30-cents per page.

To comment on this proposal, you may write to or call the Planning Division or attend and speak at the hearing. All interested parties may appear and testify or submit written comment to the Board of Commissioners. All comments should address the approval criteria. The hearing procedure will follow the Board of Commissioner's *Rules of Procedures* (enclosed) and will be explained at the hearing.

The Board's decision on the item may be announced at the close of the hearing, or upon continuance to a time certain. A written decision will be mailed to the participants and filed with the Clerk of the Board of County Commissioners usually within ten days of the announcement. The decision of the Board of County Commissioners may be appealed to the State Land Use Board of Appeals (LUBA) by either the applicant or other hearing participants.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board of County Commissioners an opportunity to respond to the issue precludes subsequent appeal to LUBA on that issue.

Approval Criteria:

MCC 11.15.2844(G) (R-30 Zoning Standard for Access):

- (G) All lots in this district shall abut a street, or shall have such other access held suitable by the Hearings Officer.

MCC 11.15.45.230 (Type 1 Land Division Approval Criteria):

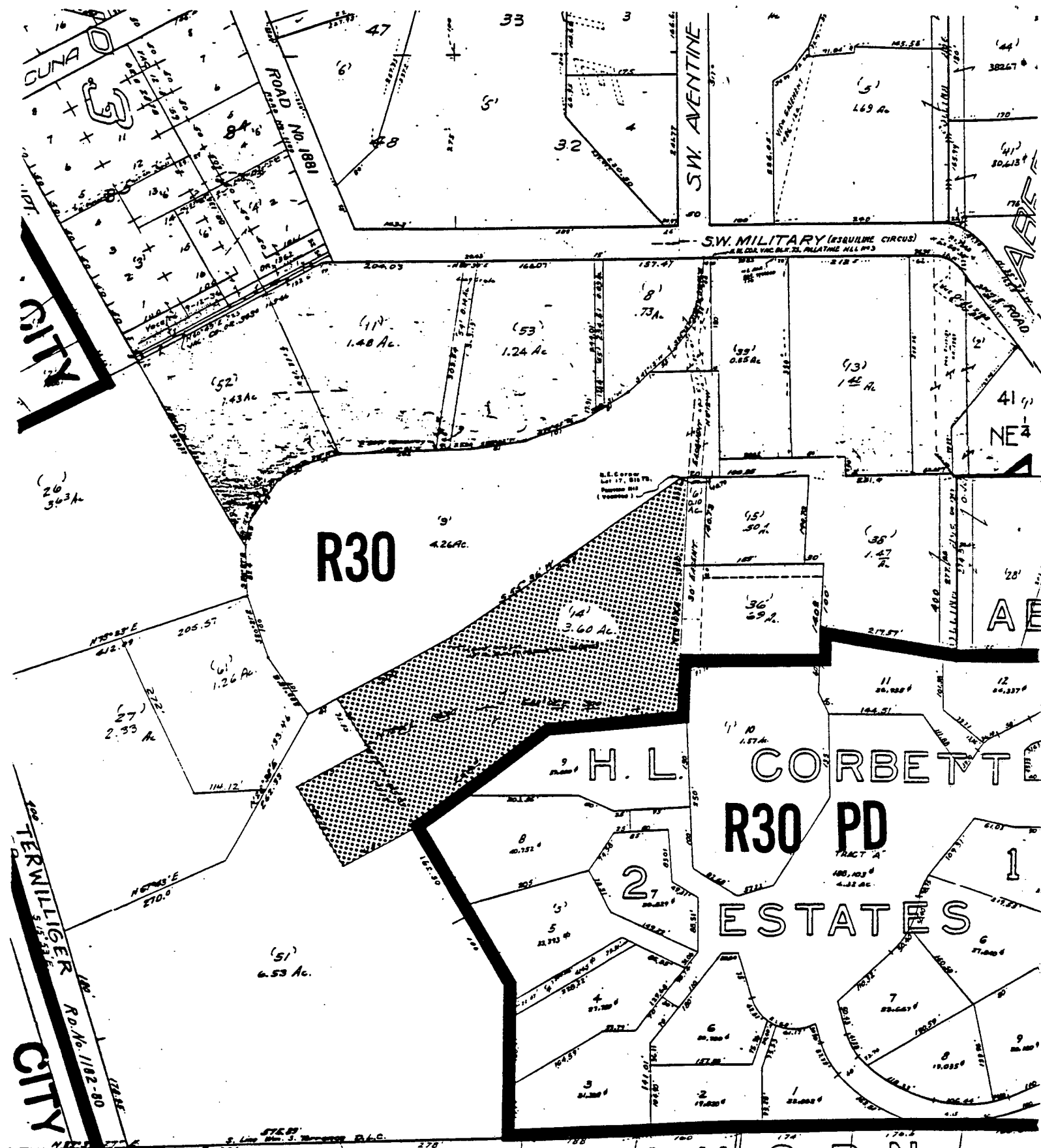
In granting approval of a Type 1 tentative plan or future street plan, the approval authority shall find that:

- (A) The tentative plan or future street plan is in accordance with the applicable elements of the Comprehensive Plan;
- (B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;
- (C) The tentative plan or future street plan complies with the applicable provisions, including the purposes and intent of this Chapter.
- (D) The tentative plan or future street plan complies with the Zoning Ordinance or a proposed change thereto associated with the tentative plan proposal;
- (E) If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words *town*, *city*,

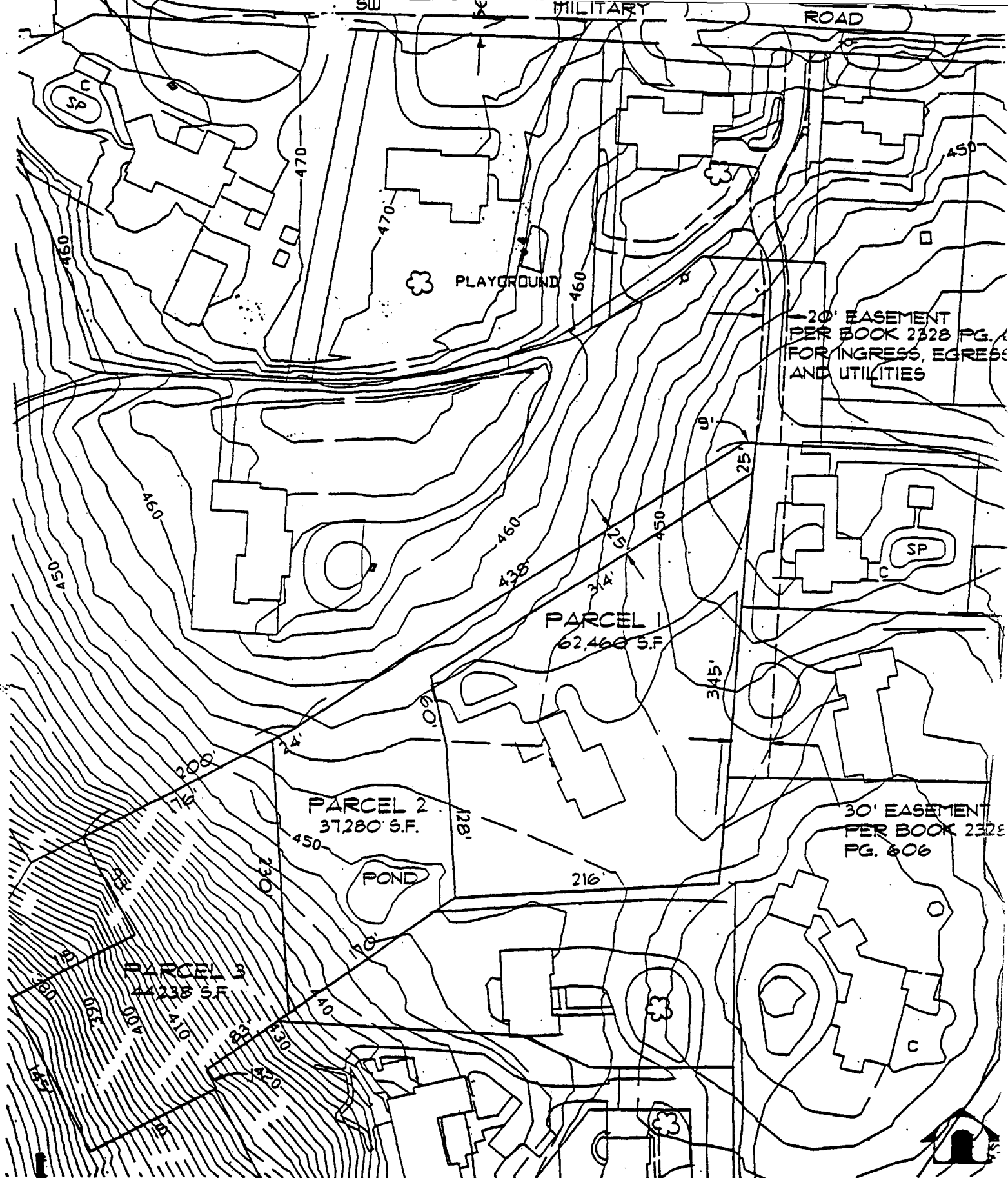
place, court, addition or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name or unless the applicant files and records the consent of the party that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.

- (F) The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; and
- (G) Streets held for private use are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance and are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets including ownership, are set forth thereon.
- (H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:
 - (1) The infiltration of flood waters into the system; and
 - (2) The discharge of matter from the system into flood waters.

Comprehensive Plan Policies that apply to this request are policies #13 Air, Water and Noise Quality; #14 Developmental Limitations; #16, Natural Resources; #22, Energy Conservation; #35, Public Transportation; #37 Utilities; #38 Facilities; and #40 Development Requirements.



1991 Vicinity Map with Zoning Districts
 Case #: LD 13-94, MC 1-94
 Location: 01400 SW Military Road
 Scale: 1 inch to 200 feet (approx)
 Shading indicates subject property
 SZM 193; A&T Map 4230; Sec 34, 1S, 1E



DEA

DAVID EVANS AND ASSOCIATES, INC.
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4802
(503) 253-6883

PROJECT

TENTATIVE MAP PLAN

TITLE

01400 SW MILITARY ROAD

TL 14, SE 1/4, SEC. 34, T1S, R1E

FILE

GMBD0001

DRAWN BY

LMT

DESIGN BY

1021-94/SD13-94

SCALE

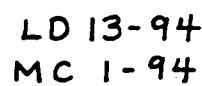
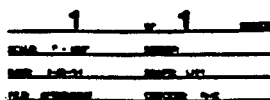
1" = 100'

DATE

6-9-94

SHEET

1



**TENTATIVE PLAN MAP
01400 S.W. MILITARY ROAD
TL14, SE 1/4 SEC 34, T1S, R1E
PORTLAND, OREGON**

MEETING DATE: January 12, 1995

AGENDA NO: L-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: January 12, 1995

Amount of Time Needed: 10-15 minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sarah Ewing TELEPHONE #: 248-3043 ext. 2610
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Gary Clifford

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ OTHER

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

Report of Hearings Officer Decision on MC 1-94/LD 13-94. Approved with conditions.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams / [Signature] 12/30/94

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

CASE NAME: 3 Parcel Land Division with Access by EasementNUMBER: LD 13-94 / MC 1-94

1. Applicant Name/Address:

Gran Marque, Inc.
560 1st Street
Lake Oswego, OR 97034

2. Action Requested by applicant:

Approval of a three parcel land division. The site does not abut a public road and obtains access through a private easement that connects to SW Military Road. Approval would result in two additional single family residences using the private easement.

3. Planning Staff Recommendation:

Approval with conditions.

4. Planning Commission or Hearings Officer Decision:

Approval with conditions.

5. If recommendation and decision are different, why?

The recommendation and the decision are the same.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com./Hearings Officer
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

ISSUES

(who raised them?)

- A. A neighboring property owner located on the existing easement questioned whether the private easement will "provide safe and convenient access." All surrounding lots have been developed off a private easement with no direct frontage on a public street. There is no way to provide public street frontage to the subject lot. The Hearings Officer found that the relatively low traffic volumes on the local street system, plus the traffic from this additional development (two homes) will not jeopardize the safety or convenience of the roadways in this area.
- B. The Hearings Officer determined that the private easement is a "private road" and is subject to the same construction standards as those for local public roads as given in the County Street Standards Code. This has not been past practice and would require, for example, a fifty foot wide right-of-way, 28 foot width pavement, curbs, and sidewalks instead of the 20 foot wide roadway with no curbs or sidewalks of the proposed easement. The proposed 20 foot wide improvements were deemed adequate by the fire service provider (Lake Oswego Fire Department). The Hearings Officer determined that the greater requirements of the local street standards in the County Street Standards Code could be varied for this proposal only by the granting of a variance by the County Transportation Division. A variance has been administratively approved. The Hearings Officer's approval is conditioned upon final approval of that variance. This has policy implications in that it would be extremely burdensome to require public street improvement standards for most access by easement situations which typically serve only one to three homes.
- C. The neighboring property owner questioned whether Parcels 2 and 3 were suitable for development due to slope hazards, erosion and drainage problems, and impact on an on-site spring. The applicant responded with expert testimony from a registered geologist and engineer, and with testimony from a planner. After weighing the evidence, the Hearings Officer determined that the applicant's information and plans adequately established that the site is not unsuitable or incapable of being made suitable for the intended residential uses.

1994 DEC 23 PM 2:46

BEFORE THE LAND USE HEARINGS OFFICER

FOR MULTNOMAH COUNTY, OREGON

Regarding an application by Gran)
Marque, Inc. for a 3 lot partition)
and use of a private easement for)
access to the partition, located at)
01400 S.W. Military Road, in)
unincorporated Multnomah)
County, Oregon)

FINAL ORDER

MC 1-94/LD 13-94

I. SUMMARY OF THE REQUEST

A. LAND DIVISION

The applicant seeks to partition the site into three parcels. The existing site contains approximately 3.60 acres. Proposed Parcel 1 has an existing single family dwelling and will contain approximately 62,460 square feet. Parcels 2 and 3 are currently vacant and contain approximately 37,280 and 44,238 square feet, respectively.

B. ACCESS BY EASEMENT

The site does not currently abut a public road. The existing house on Parcel 1 has access to S.W. Military Road via a set of existing private easements. Access to Parcels 2 and 3 is proposed via an easement along the northern edge of the site that would connect to the existing private easements previously mentioned.

II. HEARING AND RECORD

The initial public hearing on these applications was held on July 20, 1994. At that hearing, testimony was presented by the applicant and by neighboring property owners concerning the application. At the close of the hearing, the Hearings Officer kept the record open until August 24, 1994, to allow the applicant to respond to testimony from the opponents and to allow for written rebuttal testimony. Subsequently, the applicant requested a continuance in order to initiate a variance from certain provisions of the County Street Standards Code. The Hearings Officer issued an Intermediate Ruling granting the applicant's request. The Intermediate Ruling also re-opened the hearing to allow for further public testimony concerning the relevance of the variance request, and to allow the Hearings Officer

to pose questions to the parties based upon the additional information that had been submitted since the last hearing in July.

A hearing was held on November 17, 1994 where the parties presented additional testimony concerning the relevance of the variance, and responded to questions raised by the Hearings Officer. The written record was left open until November 30, 1994 in order for the parties to submit final rebuttal memorandums.

III. FINDINGS

The Hearings Officer adopts and incorporates by reference the findings of fact as contained in the November 17, 1994 staff report, beginning on page 8 of that report and concluding on page 19 of that report (attached as Exhibit 1), except to the extent expressly modified or supplemented below.

IV. DISCUSSION

A. LAND DIVISION

1. Conformance With Comprehensive Plan Policies

Policy 24 (Housing Location) § 2(A)(2) requires that minor residential projects have "direct access from the project to a public street." The proposed lots have direct access to Military Road, a public street, by way of a set of private easements which burden three underlying tax lots. From these existing easements, the applicants are proposing the extension of an additional easement to serve parcels 2 and 3. Therefore, the Hearings Officer finds that the project has direct access to a public street (Military Road) via the private easements described.

2. Conformance With MCC 11.45.490 (Street Layout)

This section requires the arrangement of streets in a land division to be designed as follows:

"1. To conform to the arrangement established or approved in adjoining land divisions."

Findings. The Hearings Officer finds that the parent parcel, and other adjoining parcels in the area, were laid out in such a manner so as to be served by the private easements which currently serve these parcels. The existing private easements are the only viable access to the parent parcel and to the other parcels they currently serve. The

applicant's proposal to create additional parcels that would be served off the existing easements reasonably conforms to the arrangement established by adjoining land divisions. Therefore, this criteria is met.

"2. To continue streets to the boundary of any adjoining undivided tract where such is necessary to the proper development of the adjoining land."

Findings. The Hearings Officer finds that in this case, it is not necessary to continue the easement (private street) to the boundary of adjoining land, because additional development to the west is not contemplated. Therefore, there is no need to extend the private street easement beyond where it is proposed to be located.

"3. To assure the maximum possible preservation of existing slopes, vegetation and natural drainage."

Findings. The Hearings Officer finds that the path of the new easement can be built so as to maintain reasonable distances from significant slopes, vegetation or natural drainage patterns. The Hearings Officer agrees with the conclusions set forth in the May 17, 1994 letter from the applicant's arborist which indicated that the large trees and row of Poplars along the northern portion of the property can be avoided by meandering the easement. Therefore, the proposed access and site layout can assure the maximum possible preservation of existing vegetation.

Proposed Parcel 2 contains a small pond and some slopes and Parcel 3 contains more significant slopes. A report from geologist David Rankin adequately addresses the suitability of Parcels 2 and 3 for residential construction and discusses how erosion and drainage issues can be dealt with in the future development of these parcels. Additional review by the County will be required prior to development to consider specific proposals for erosion control for any hillside development. Therefore, the Hearings Officer concludes that this criteria can and will be met subject to further review by the County, as required in the conditions of approval.

"4. To limit unnecessary through traffic in residential areas."

Findings. The Hearings Officer finds that the additional traffic that will be attracted and generated by the proposed development will not be "through traffic", because the local roadway system (i.e. the private easements) do not create an opportunity for through traffic. Therefore, this criteria is met, to the extent it applies.

"5. To permit surveillance of street areas by residents and users for maximum safety."

Findings. The Hearings Officer finds that the lay of the land and the nature of surrounding development permits adequate surveillance of the street area by residents and users. Therefore, this criteria is met.

"6. To assure building sites with appropriate solar orientation and protection from winter wind and rain."

Findings. The proposed land division satisfies the solar access provisions of the zoning ordinance as detailed in the staff report. The size of the building sites and the relatively protected nature of the area provide reasonable assurances that the site will be protected from winter wind and rain.

"7. To assure stormwater drainage to an approved means of disposal."

Findings. The Hearings Officer finds that there is substantial evidence in the record that it is technically feasible to provide hardline drainage as called for in the geotechnical report prepared by Applied Geotechnical, Inc. The August 23, 1994 letter from David Bick of DEA confirms this technical feasibility and suggests additional temporary erosion control measures that may be required. Therefore, this criteria is met, because the evidence in the record demonstrates that it is technically feasible to assure adequate stormwater drainage to an approved means of disposal. The off-site disposal location of the stormwater will be reviewed and approved by the County Engineer.

"8. To provide safe and convenient access."

Findings. The issue of safe and convenient access has been the subject of considerable testimony in this case. The Hearings Officer finds that the relatively low traffic volumes on the local street system, plus the traffic from this additional development (approximately 20 vehicle trips per day) will not jeopardize the safety or convenience of the roadways in this area. Furthermore, the evidence indicates that the narrowness of the street effectively slows vehicle speeds. Evidence in the record indicates that vehicle speeds of 30 miles per hour can be expected. The Hearings Officer also finds that there is adequate sight distance along these easements so long as vehicle speeds do not exceed 30 miles per hour.

Given the above mentioned conditions (low volumes, low speeds and adequate sight distances), the Hearings Officer finds that pedestrian and vehicular access will be safe and convenient. Therefore, MCC 11.45.490(8) can be met.

3. MCC 11.45.540(B) (Sidewalks, Pedestrian Paths and Bikeways)

This section of the code requires that sidewalks shall be required in urban area public streets in accordance with provisions of the Street Standards ordinance. Subsection (B) requires that:

"A sidewalk shall be required along any private street serving more than six dwelling units."

The Hearings Officer finds that the proposed access will only serve six dwellings, namely one dwelling each on Tax Lots 36, 15, 38, and the three proposed dwellings on Lot 14. The opponent has argued that access to Lot 9 is also provided by this set of easements. As the applicant points out, Lot 9 is served by a different branch of the easements as authorized in LD 10-93. MCC 11.45.540(B) was not triggered by the four dwellings on the south branch of the easement even though MCC 11.45.540(B) was in effect at that time. Sidewalks were not required in that case. The Hearings Officer finds that the main branch of the easement serving Lot 14 will serve only six dwellings and therefore that the sidewalk requirement contained in MCC 11.45.540(B), does not apply. However, as noted below, the Street Standards Code applies in this case and it requires sidewalks, unless a variance from those Standards are granted. Therefore, sidewalks would be required, unless or until a variance is obtained.

4. Site Suitability (MCC 11.45.460, MCC 11.45.470 and MCCP Policy 14)

The applicant has responded to these criteria with expert testimony from a registered geologist and engineer, and with testimony from a planner. The Hearings Officer has reviewed this evidence and has considered all contrary evidence and testimony submitted by the opponent. The Hearings Officer finds that the conclusions reached by the applicant's engineer as supplemented by the planner's analysis adequately establish that the site is not unsuitable nor incapable of being made suitable for the intended residential uses due to any of the characteristics set forth in the various provisions of the ordinance. Geologist David Rankin specifically addressed the suitability of Parcels 2 and 3. Mr. Rankin detailed how the erosion and drainage issues can be dealt with in developing these parcels. The report concludes that Parcels 2 and 3 are suitable for residential structures. Mr. Rankin's August 3rd letter further details his site suitability review and specifically responds to Mr. Redfern's report which was previously submitted by the opponent. With regard to the specific criteria in § 11.45.460 and § 11.45.470, the Hearings Officer incorporates and adopts by reference the statements of Robert W. Price as contained in his 3-19-94 rebuttal memorandum (attached as Exhibit 2).

B. ACCESS BY EASEMENT

There has been considerable evidence and testimony submitted concerning the applicability of various standards and requirements in the Street Standards Code (SSC) and how those requirements apply to the subject application. As Mr. Nelson correctly notes in

his November 23 memorandum, the standards and requirements in the Street Standards Code apply to this application. The Hearings Officer agrees with Mr. Nelson's conclusion that the requested private access must be considered to be a "private street" for purposes of this subdivision application, pursuant to the SSC. This private access does not qualify as "private driveway" because it provides access to more than one lot or parcel. (See MCC 11.45.010(Z).) Furthermore, the private access does not qualify as a "accessway" as defined in MCC 11.45.010(A) because it is part of a lot or parcel and it provides access to more than one lot or parcel. Rather, the proposed private access meets the definition of a "private street" in § 11.45.010(AA). That section defines "private street" to mean "a street which is either a private driveway or an accessway which is under private ownership and which passes through or along side the full length or width of a separate lot or parcel either existing or proposed." Since the proposed easement and the existing easement pass along side the sides of the relevant lots, the easement is a "private street" for purposes of § 11.45.

This private street as proposed by the applicant also meets the definition of a "local street," as set forth in the Street Standards Code. The definition of "local street" as set forth in § 3.100(a) indicates that local streets "provide access to abutting property and do not serve to move through traffic. They may be further classified by adjacent land use such as residential, commercial and industrial, and widths will reflect the needs of the adjacent uses." In this case, Table 5.1 (from the Street Standards Code and MCC Chapter 11.60) indicates that local residential streets require a right of way width of 50 feet, a pavement width of between 28 and 32 feet and requires curbs and sidewalks. Therefore, the Hearings Officer concludes that the Street Standards Code will require this private local street to comply with the County's right of way width, pavement width and other requirements, unless a variance from those standards is lawfully granted.

The applicant has requested a variance from the County Street Standards requirements. As part of the County's decision on the variance (attached as Exhibit A to the November 17, 1994 staff report and attached as Exhibit 3 for reference here), Mr. John Dorst, with the County's Transportation Department, concluded that based upon his interpretation of the code, the applicant is not required to comply with street standards that were written only to control "typical local street(s)." The Hearings Officer disagrees with staff's analysis in this regard. As noted by Mr. Nelson, the Board of Commissioners has recently amended the Land Division Ordinance to make the Street Standards Ordinance applicable to private streets. Also, § 11.60.030 of the SSC indicates that the Street Standards Code is applicable not only to all public roads, but also to "all easements or accessways which may be required by (sic) Multnomah County Code. Finally, the proposed access by easement clearly falls within the definition of a "private street" found in § 11.45.010(AA). Therefore, in order to subdivide and develop the site, the applicant's proposed private easement and the existing private easements that will be used to access the site, will be required to meet the requirements of the County Street Standards Code as set forth in Table 5.1, unless or until the applicant obtains a variance from those provisions.

C. EFFECT OF THE COUNTY'S VARIANCE DECISION

The merits of the variance decision issued by Mr. John Dorst are not before the Hearings Officer. One of the primary purposes for reopening the hearing in this case was to discuss the relevance of the County's variance decision. As noted by Mr. Dorst on page 3 of his decision, Table 5.1 of the Street Standards Code calls for a 50 foot right of way width, 28 to 32 foot pavement width, parking on both sides, curbs and sidewalks for local residential streets. Since the applicant is not proposing any of these improvements, the applicant must seek and receive a variance from all of these standards, in order for his proposed access to be acceptable. Mr. Dorst's decision, at page 10, concluded that the criteria for granting a variance were met. Mr. Dorst therefore granted the applicant a variance, by reducing the amount of right of way width from 50 to 20 feet, deleting the requirement for curbs, sidewalks and parking, and adjusting the required pavement width to 20 feet, as approved by the Fire Marshall.

The Hearings Officer concludes that to the extent this variance decision becomes final, it would allow the applicant to develop the property using the access he is currently proposing. Therefore, the Hearings Officer concludes that since the applicant has sought the required variance and has received tentative approval for the variance, it is reasonable to condition approval of these actions on obtaining a final decision granting that variance. In the alternative, the SSC requirements will apply.

If the SSC requirements apply, development of the site may not be possible. In any event, the applicant has not demonstrated whether it is able to meet the requirements of the SSC, and if so, whether it will still be able to meet the other approval criteria.

For instance, if the easement required by the SSC is to be 50 feet wide, and the required improved is 28 feet wide, plus curbs and sidewalks, these improvements may well impact the applicant's ability to meet various portion approval criteria.

Therefore, unless the applicant receives a final decision approving the requested variance, the partition and request for alternative access must be denied. However, since applicant has received administrative approval of the necessary variance, the decision can be conditioned upon final approval of that variance. If the variance is ultimately denied, the applicant will not be able to proceed to final plat approval, because the condition requiring final variance approval would not be met.

D. PROCEDURAL ISSUES

In Mr. Nelson's November 23 memorandum, he alleges that his client was entitled to a continuance of the November 17 hearing because he did not receive the supplemental staff report and the accompanying variance decision until November 15, 1994, two days prior to the hearing. Mr. Nelson cites the Hearings Officer to ORS 197.763(4) for the proposition

that the failure of his client to receive the staff report in a timely way entitled his client to a continuance of the hearing. The Hearings Officer denied Mr. Nelson's request for continuance, but allowed him to submit additional written rebuttal, by November 30.

The Hearings Officer finds that by its terms, ORS 197.763(4)(b) requires the staff report used at the hearing to "be made available at least 7 days prior to the hearing." The fact that Mr. Nelson did not receive the staff report until November 15, 1994 is irrelevant. The statute only requires that the staff report "be made available at least 7 days prior to the hearing."

Even if a procedural violation of ORS 197.763 occurred, the opponent has not alleged any substantial prejudice as a result of the Hearings Officer's alleged failure to grant a continuance. The opponent was provided with an opportunity to submit additional written testimony concerning issues that the Hearings Officer determined to be relevant to the proceeding. Therefore, since the opponent was afforded an opportunity to review the staff report for at least 7 days, and was given an opportunity to submit written rebuttal, no prejudice has occurred.

Finally, at the November 17 hearing, the opponent reraised an issue concerning the validity of the applicant's right to use the easement on Tax Lot 9 for the benefit of all three proposed parcels. The Hearings Officer determined that this issue was beyond the scope of the hearing. As noted in the Hearings Officer's Intermediate Ruling of September 19, 1994, the hearing was re-opened solely for the purpose of receiving evidence concerning the variance requested by the applicant. In addition, the Hearings Officer indicated that he intended to ask questions regarding other information contained within the record. The Hearings Officer indicated at the hearing that the legality of the easement was not within the Hearings Officer's jurisdiction to decide, and that this issue could be argued in an appropriate forum if it was in dispute. Therefore, the Hearings Officer declined the opponent's request to offer rebuttal testimony or evidence on that issue, because it had been determined that the issue was beyond the scope of the hearing.

IV. CONCLUSIONS

The Hearings Officer finds that LD 13-94 and MC 1-94 should be approved because the requests can do or comply with the applicable approval criteria, provided that the conditions of approval set out below are complied with.

V. DECISION

MC 1-94 and LD 13-94 are approved, subject to the following conditions:

1. Approval of this Tentative Plan shall expire one year of the effective date of this decision unless either the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's *Instructions for Finishing a Type I Land Division*. Make the following revision to the partition plat:

2. The applicant shall obtain a final decision from the County granting a variance from the street standards set forth in table 5.1 of the SSC. So long as the variance is granted, the following street standards shall apply, unless otherwise amended or supplemented by the County's variance decision:

A. Existing Street Running South from Military Road

Provide improvement of the private local street south of Military Road to a minimum of 20 foot wide unobstructed paved surface. The extent of the improvement shall include the street to the beginning of driveway turnaround at 01404 S.W. Military Road.

B. Proposed Street Serving Parcels 2 and 3

The proposed street shall have a 20-foot wide unobstructed paved surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the proposed street. The street shall be reduced to a width of 12 feet with the furthest wall of the furthest structure is less than 150 feet from the street.

C. Turnarounds

A turnaround shall be provided for the access road/driveway to Parcels #2 and #3. Turnaround requirements shall comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:

Outside front wheel radius of fifty (50) feet; inside rear wheel radius of twenty-five (25) feet.

D. Grades

Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.

E. Curvature

Approach turns to the street serving Parcels 2 and 3 from the existing street shall be designed to accommodate standard fire apparatus.

F. Parking

Where parking of vehicles would diminish the minimum 20 foot wide fire access, no parking signs shall be required or additional widening of the street shall be required to accommodate the parking.

G. Fire Lane Declaration

The portion of the proposed street from the existing street that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents.

H. Hydrants

Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000 feet from any of the lots, nor more than 300 feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

I. Water Lines

An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would be approximately 250 feet.

J. Addressing

Addressing will comply with the Uniform Building Code.

K. Final Note

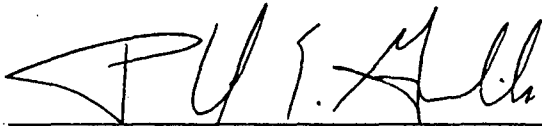
When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and the Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

3. Before the Planning Director signs the partition plat, the applicant shall comply with MCC 11.45.680 by executing and filing with the County Engineer an agreement with the County, which shall include:
 - A. A schedule for the completion of required road improvements described in Condition 2 or 3 above, as the case may be;
 - B. Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and workmanship in the improvements required by this Chapter against defects for a period of 12 months following the acceptance by the County Engineer of the engineer's report described in Condition 6 below; and
 - C. A surety bond, executed by a surety company authorized to transact business in the State of Oregon, or a certified check or other assurance approved by the County Counsel, guaranteeing complete performance. Such assurance shall be for a sum equal to 110% of the actual costs of the improvements as estimated by the County Engineer.
4. Before any construction, site clearing, road building, or grading, obtain a Hillside Development or Grading and Erosion Control Permit pursuant to MCC 11.15.6700-.6730 if applicable. Compliance with the hillside development/grading and erosion control requirements shall be determined by the Planning Director. The decision by the Director shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11). Contact the Planning Division at 248-3043 for information.
5. Before the issuance of occupancy permits for dwellings on either Parcel 2 or Parcel 3, provide the Planning Director and the County Engineer with an engineer's report certifying that the private access road that will serve Parcels 2 and 3 has been constructed to the specifications shown in the plans prepared for said road.

6. In conjunction with issuance of building permits for either parcel construct on-site water retention and/or control facilities adequate to insure that surface runoff volume after development is no greater than that before development per MCC 11.45.600. Plans for the retention and/or control facilities shall be subject to approval by the County Engineer with respect to potential surface runoff on the adjoining public right-of-way.
7. Before submitting the partition plat, demonstrate approval of a Property Line Adjustment to recognize the 1973 acquisition of the westerly .38 acre of Parcel 3 by the former owner of the subject site.
8. Before the Planning Director signs the final partition plat, provide a copy of the final plat that shows the location of the existing buildings on Parcel 1. Show the surveyed distance from the north and west lines of Parcel 1 to the closest building. To avoid delays, submit this item when you submit the partition plat.
9. Before the Planning Director signs the partition plat, provide a copy of the partition plat that shows the building setback lines (building envelopes) for each new vacant lot. The correct setbacks are 30 feet front, 10 feet side and 30 feet rear. To avoid delays, submit this item when you submit the partition plat. NOTE: The building envelope can be drawn on the same copy of the plat as the setback information required in Condition #7.

It is so Ordered this 23rd day of December, 1994.



Phillip E. Grillo
Hearings Officer

Findings Of Fact (LD 13-94)

1. Applicant's Proposal:

The Land Division Request: Applicant proposes to divide a land containing 3.60 acres into three parcels. Parcel 1 has an existing single-family dwelling and would contain 62,460 Square feet. Parcels 2 and 3 are vacant and would contain 37,280 and 44,238 square feet, respectively,

The Access by Easement Request: The site does not abut a public road. The existing house on Parcel 1 has access to SW Military Road over an existing easement that serves nine other parcels in addition to the subject site. Access to Parcels 2 and 3 is proposed by way of an easement that the applicant would provide along the north edge of the site as shown on the Tentative Plan Map.

Previous Hearing: The first public hearing for the subject application was held on July 20, 1994. At that hearing, testimony was presented by the applicant and by neighboring propriety owners. At the close of the hearing, the Hearings Officer kept the record open to August 24, 1994 to allow for the applicant to respond to testimony from opponents, and to allow for opponents to rebuts that testimony. Subsequently, the applicant applied to the Transportation Division for a variance from the provisions of the County Street Standards Ordinance (MCC 11.60) with respect to right-of-way width, pavement width and provision of curbs and sidewalks for the easement road. The Hearings Officer advised that the public hearing should be re-opened to allow for public testimony concerning the Transportation Division decision on the variance request. The decision of the Transportation Division staff is attached to this Staff Report as Exhibit A and incorporated by reference hereto.

2. Site Conditions and Vicinity Information: Site conditions as shown on the Tentative Plan Map are as follows:

- A. The site is on the south side of SW Military Road and east of SW Terwilliger Boulevard. The northeast corner of the site is about 300 feet south of Military Road. The west edge of the site is about 400 feet east of Terwilliger Boulevard. Land to the west and south consists of a 6.5-acre parcel that fronts on Terwilliger. The 5-lot Tryon Vista subdivision adjoins the site on the north. The H. L. Corbett Estates subdivision adjoins the site to the south. To the east are two parcels containing .5 and .69 acre respectively. In addition to the subject site, the easement road immediately east of the site provides access from Military Road to nine lots and parcels. The easement road intersects Military Road generally opposite the point where SW Aventine Circus intersects Military Road
- B. **Future Street Plan:** The subject site is within an area for which a Future Street Plan was adopted in 1993 as part of the approval of the Tryon Vista subdivision (Land Division case LD 10-93).
- C. **Slope:** Portions of Parcel 3 contain slopes exceeding 40 percent. However, there are areas of Parcel 3 with slopes under 20 percent where a residence could be located. A letter from Engineer David K. Rankin dated March 25, 1994 outlines a preliminary geotechnical reconnaissance of the site and concludes that Parcels 2 and 3 are "suitable for residential structures" but cautions that development "must be sensitive to the delicate state of the slope equilibrium that apparently exists." A condition of approval requires that a Hillside Development and Grading and Erosion Control Permit be obtained before building permit issuance pursuant to MCC 11.15.6700..

EXHIBIT ## 1

3. Land Division Ordinance Considerations (MCC 11.45)

- A. The proposed land division is classified as a Type I because it is "[A] . . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to use an easement as a means of access to a proposed lot that will not have any frontage on a dedicated public road. This staff report addresses the application for access by easement under Decision # 2 (MC 1-94).
- B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
- (1) *The Tentative Plan is in accordance with the applicable elements of the Comprehensive Plan; [MCC 11.45.230(A)]*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
 - (5) *If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
 - (6) *The streets are laid out and designed so as to conform, within the limits of MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
 - (7) *Streets held for private use are laid out and designed so as to conform with MCC 11.45.490 and 11.45.500 and the Street Standards Ordinance are and are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon. [MCC 11.45.230(G)]*

- (8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*

- (a) *The infiltration of floodwater into the system; and*
- (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. Response to Type I Land Division Approval Criteria

- A. Applicable Elements of the Comprehensive Plan: The following Comprehensive Plan Policies are applicable to the proposed land division.:

(1) Policy No. 13, Air, Water, and Noise Quality:

Applicant's Response: "It is expected that the three parcels will support three single-family dwellings. There is currently one single-family dwelling on the property. The three parcels are large, vegetated, and capable of handling stormwater run-off through surface percolation or dry well construction. Sanitary sewer laterals are present in the easements +accessing the site from S.W. Military Road. Water will be provided by the Palatine Hills Water District, and the partition will pose no threat to water quality. Air and noise quality will be unaffected by the addition of two dwellings to this residential area."

Staff Comment: No significant impact on air pollution will result from the two additional dwellings allowed by the proposed land division. The County Sanitarian has verified that public sewer is available to the site. For these reasons and those stated by the applicant, the proposal satisfies Policy 13.

(2) Policy No. 14, Development Limitations: This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year, a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement.

Applicant's Response: "The site is characterized by slight to severe slopes, ranging from five to over 40 per cent. The steepest portion of the site is on Parcel 3, where the grounds slopes steeply to the west. However, there is an adequate building site on much flatter ground in the in northeast corner of Parcel 3. The remaining parcels are relatively flat in comparison and will not pose any geologic threat. The site is not located in the 100-year flood zone and is not in an earth movement area. Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."

Staff Comment: Surface run-off will be handled by on-site water retention and/or control facilities to be approved by the County Engineer. Part of the site is in a hazard area as identified on the County's Slope Hazard Map. Development on the site will be subject to compliance with the

Hillside Development and Grading and Erosion Control requirements in MCC 11.15.6700. For these reasons and those stated by the applicant, the proposal satisfies Policy 14.

(3) Policy No. 16, Natural Resources:

Applicant's Response: "The applicant's response to this policy is found in the attached letter from Lawrence Devroy, Natural Resources Manager for David Evans & Associates. Devroy concludes that 'policy 16 of Multnomah County does not apply to this parcel since there are no significant natural resources found upon it.'"

Staff Comment: Mr. Devroy's letter is part of the case file and is incorporated in this staff report by reference. Staff concurs with Mr. Devroy's statement and concludes that Policy 16 is not applicable.

(4) Policy No. 22, Energy Conservation: This policy requires a finding that the following factors have been considered:

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

Applicant's Response: "Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 22.

(5) Policy No. 35, Public Transportation:

Applicant's Response: "The applicant has reviewed this policy and has found that it is primarily not applicable to this application."

Staff Comment: While staff agrees with the applicant's statement the Policy 35 is not "primarily" applicable to the proposed land division, Tri-Met Line #39 does provide service between Lewis & Clark College and downtown Portland on SW Palatine Hill Road about .5 mile north of the

site. Line #35 provides service between Oregon City, Lake Oswego and downtown Portland on SW Macadam Avenue about .75 mile east of the site.

- (6) **Policy No. 37, Utilities:** This policy requires a finding that water, sanitation, drainage and communication facilities are available:

Water And Disposal System

A. *The proposed use can be connected to a public sewer and water system, both or 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 DEQ will approve a subsurface sewage disposal system on the site; 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.*

The proposal satisfies Policy 37 for the following reasons:

Water and Sanitation:

Applicant's Response: *"The Palatine Hill Water District has verified that water service is available to the property from a six-inch line in the 30-foot right-of-way serving the current residence. The County Sanitarian has identified sanitary sewer laterals in the 30-foot easement serving the parcels from S.W. Military Road. According to Rod Dildhouse of Multnomah County, the lateral can adequately serve the parcel without creating capacity*

problems. The existing residence has been connected to the sanitary lateral since 1969."

Staff Comment: For the reasons stated by the applicant, the proposal complies with Item A of Policy #37.

Drainage:

Applicant's Response: *"Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."*

As a condition of approval, the applicant will be responsible for constructing storm water retention facilities that will maintain pre-development flows for off site runoff. The applicant will perform a limited hydrology study to consider how the retention system will affect peak runoff for the immediate watershed. The applicant plans to provide storm water quality by the installing sump style storm water inlets and manholes to allow for settling of suspended material. Subject to that condition, the proposal is consistent with Items E through G above

Energy and Communication:

Staff Comment: Portland General Electric provides electric power, Northwest Natural Gas Co. provides gas service and US West Communications provides telephone service. The proposal satisfies Items H and I above.

- (7) **Policy No. 38, Facilities:** The property is located in the Riverdale School District. Comments by the district do not indicate any inability to accommodate student enrollment from houses located on the subject property. Multnomah County Fire District #11 provides fire protection through a contract with the Lake Oswego Department of Fire Services. At the July 20, 1994 hearing, the applicant provided the Hearings Officer with written comment from the Department of Fire Services confirming that there is adequate water pressure and flow for fire-fighting purposes. The department has provided comments setting forth its requirements for the design of the easement road serving the site. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area

- (8) **Policy No. 40, Development Requirements:**

Applicant's Response: *"Policy 40.A requires a finding pedestrian and bicycle path connections will be dedicated where appropriate and where designated in the county program and map. The site is not located in an area which is so designated, and there is no existing pedestrian and bicycle pathway connecting to recreation areas or community facilities. The dedication should not be required in this case."*

Policy 40.B requires a finding that landscaped areas with benches will be provided in commercial, industrial and multiple family developments. This is a single family development, and the landscaped areas should not be required."

Policy 40.C requires a finding that areas for bicycle parking be required in development proposals, where appropriate. The proposal will lead to the construction of two new single family dwellings. It is not necessary or appropriate to require bicycle parking facilities in such development."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 40.

B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response: *"Approval of this partition will not restrict access to or development of adjoining property. Access to the proposed parcels is via private easements in accordance with MCC 11.15.2844(G). The proposed partition is in compliance with the future street plan approved in LD 10-93. For these reasons, the proposal complies with this approval standard."*

Staff Comment: Staff concurs with the applicant's statement. Approval of the current proposal will not affect access to or development of adjacent properties. Adjacent land to the west has access to SW Terwilliger Boulevard and can be developed in accordance with the Future Street Plan adopted in 1993 as part of the approval of the Tryon Vista subdivision (LD 10-93). Other adjacent land has been divided to the extent possible under current zoning. For these reasons, the proposal satisfies MCC 11.45.230(B).

C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]

Applicant's Response: *"The purpose of Chapter 11.45 is to protect property values and further the public health, safety and welfare of county residents. The intent of the chapter is to minimize street congestion, secure safety from fire and geologic hazards, provide for adequate air and light, prevent overcrowding of land and to facilitate the provision of adequate public services. This proposal will enhance property values by creating infill opportunity on large residential parcels. The addition of two single-family dwellings will have little impact on the use or value of neighboring properties in the Dunthorpe area. The development would secure the large parcel low density and minimize the impact on crowding on streets or land."*

The applicant's property has been approved by the County Sanitarian as having available sanitary sewer service. The water provider has indicated that service is readily available. Slopes on Parcel 3 are severe, but pose no geologic threat, as the preferred building site is in the northeast corner of Parcel 3 on flatter ground. Steeper slopes will remain undisturbed. (See statement of applicant's engineer.) Two additional homes on large parcels will have little impact on existing services and facilities to this low-density residential area. The new parcels can be served without utility extensions or creation of new streets or overloading current facilities. The availability of light and air will not be significantly changed by the addition of two single family residences. Much of the property will remain wooded.

For these reasons, the proposed partition complies with the intent and purpose of the Land Division Ordinance. For reasons stated throughout this application, the proposal complies with other applicable provisions of Chapter 45."

Staff Comment:

- (1) The size and shape of the proposed parcels meet the area and dimensional requirements of the R-30 zoning designation. The lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the R-30 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.
- (2) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
- (3) The proposal minimizes street congestion by requiring improvements for the existing private easement road that runs from the subject site north to Military Road.
- (4) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.
- (5) The proposal meets the area and dimensional standards of the requested R-30 zoning district as explained in Finding 4.D below. Residential development on newly created lots will be required to comply with applicable R-30 setback, height, lot coverage and solar access requirements. In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.
- (6) The finding for Decision #2 (MC 1-94) and for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities. The proposal satisfies MCC 11.45.230(C)

D. Zoning Compliance [MCC 11.45.390(D)]:

Area and Dimensional Standards

Applicant's Response: "The proposal is the division of one 3.36 acre lot into three parcels in the R-30 zoning district. The proposed use of the land for single family dwellings is a permitted use in the R-30 district (MCC § 11.15.2842(A)) As shown on the tentative plan map, all three parcels will comply with the minimum lot area and dimension requirements of the R-30 zoning (§ 11.15.2844(A))."

Staff Comment: Staff concurs with the applicants statement. The proposed land division meets applicable area and dimensional standards.

Solar Access Standards

Applicant's Response: *"The application complies with the solar access provisions of 11.15.6815 -.6822, for the following reasons. Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."*

Staff Comment: The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though Parcels 1 and 2 do not have a front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). Parcels 1 and 2 do not meet the basic design standard of MCC 11.15.6815(A) because the existing road pattern for the area prevents the parcels from being oriented for solar access. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 33 percent.

Property Line Adjustment to Correct Old Zoning Violation

Staff Comment: In 1973, a former owner of the subject site acquired land containing .38 acre from the owner of Tax Lot 51 to the west. The acquisition resulted in the creation of a separate cube-shaped parcel containing 16,553 square feet. Creation of the parcel constituted a zoning violation because the parcel contained less than the minimum 30,000 square feet required under the R-30 zoning standards. Although the the "cube" is now part of the subject site, completion of a property line adjustment is the appropriate method of correcting the original zoning violation.

Access by Easement See Findings for MC 1-94.

- E. Subdivision Name [MCC 11.45.230(E)]: The proposed land division is not a subdivision because it does not result in four lots. Therefore, it will not have a name and MCC 11.45.230(E) is not applicable.
- F. Street Layout [MCC 11.45.230(F)]: No new streets are necessary or proposed. Therefore, MCC 11.45.230(F) is not applicable.
- G. Private Streets [MCC 11.45.230(G)]

Applicant's Response: *"The proposed access for the two new single family residences are restricted by the access easement [requested for approval] by the Hearings Officer. The access is clearly indicated on the tentative plan map."*

The two additional parcels will use the same driveway currently in use by the existing residence. As shown on the tentative plan map, Parcel 2 will have a "flag strip" driveway extending west from the existing driveway. Access to Parcel 3 will be provided by an access easement across Parcel 2, guaranteed as part of the deed creating the two parcels. Maintenance responsibilities for the new driveway/easement will be shared by Parcels 2 and 3, and will be set out in the deeds."

Staff Comment: Access to the site is by way of an existing private driveway in a private easement running from SW Military Road to the site. At the July 20, 1994 hearing, opponents of the proposed land division argued that the driveway should comply with the Street Standards Ordinance with respect to right-of-way width, pavement width and provision of curbs and sidewalks. Following the July 20 hearing, the applicant applied to the County Transportation Division for a variance from the provisions of the Street Standards Ordinance with respect to the private driveway. In a document titled "Decision on Requested Variance," attached to this Staff Report as Exhibit A and incorporated by reference hereto, the Transportation Division staff concludes that no variance is necessary because (1) the Street Standards Ordinance does not apply to access gained by private easement and (2) the design of the proposed access can satisfy all structural requirements, and its width is not regulated by the Transportation Division. In the alternative, the Transportation Division staff concludes that if the Hearings Officer finds that a variance is in fact appropriate, the proposed access meets the Transportation Division criteria for such a variance. Staff concurs with the Transportation Division's findings and concludes that MCC 11.45.230(G) is satisfied.

- H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:** The criterion is not applicable because the site is not in a flood plain.

Conclusions (LD 13-94)

1. The land division satisfies applicable elements of the Comprehensive Plan.
2. The proposed land division satisfies the approval criteria for Type I land divisions.
3. Subject to Decision #2, the proposed land division complies with the Zoning Ordinance.

Findings of Fact (MC 1-94)

1. **Applicant's Proposal:** See Finding 1 for LD 13-94. A detailed description of the existing and proposed easements for the site appears below in finding 4.
2. **Site and Vicinity Information:** See Finding 2 for LD 13-94.
3. **Zoning Ordinance Considerations (MCC 11.15):** MCC 11.15.2844(G) states that all lots in the R-30, Single-Family Residential District *"shall abut a street or shall have such other access held suitable by the Hearings Officer."*
4. **Response To Approval Criteria**

Applicant's Response: *"The applicant is requesting permission from the Hearings Officer for access by easement to Parcels 2 and 3, pursuant to § 11.15.2844(G). The existing dwelling on Parcel 1 will continue to use the existing driveway. Access will be accommodated through the 30-foot and 20-foot wide easements serving the existing home on Tax Lot 14, and by creation of a flag lot and driveway easement on Parcel 2, to allow for extension of a private drive across Parcels 1 and 2 to reach Parcel 3. The applicant has secured agreements with the landowners of the land over which the easements are required. The first 20-foot wide easement extends from S.W. Military Road across the property owned by Gretchen Corbett Trommald. The subject partition has the right to that easement by agreement dated 1/18/94. The second 20-foot wide easement continues south from the end of the Trommald easement, across the property owned by John and Helen Mather. The*

subject partition has the right to that easement by agreement dated 9/12/91. The third easement is appurtenant to the subject property by deed, an easement "for road purposes." The easement is included in the legal description of "Parcel I" in Exhibit "A" of both the Tumpane deed (Book 2328, Page 605, Multnomah County Records) and in the Lease and Option to Buy granted to Gran Marqu , dated July 27, 1990. Parcel I will be divided among all three of the proposed parcels; thus, all three parcels will benefit from the easement. In other words, the easement runs with the property described as Parcel I in the deed. Access to the new Parcels 2 and 3 will require the use of only the northernmost few feet of this easement."

Staff Comment: In reviewing the request for access by easement, staff has considered a letter dated June 6, 1994 from Tom Carman, Acting Fire Marshal for the Lake Oswego Department of Fire Services, which provides fire protection to the subject site. Below are portions of the letter that detail the department's requirements for improvement of *both* the existing easement road from Military Road to the subject site *and* the new road serving Parcels 2 and 3:

"Access: Provide improvement of Aventine Circus south of Military Road to a minimum of 20 foot wide unobstructed all weather surface. Extent of fire lane improvement to include road to where property line of 0140() S.W. Military Road intersects Aventine Circus. Further extension desirable to beginning of driveway turnaround at ()1404 S.W. Military Road.

Access Road/Driveway to parcels #2 and #3 shall be 20 foot wide unobstructed all weather surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the access road/driveway. Access road/driveways within 15() feet of the furthest wall of the furthest structure shall be a minimum 12 foot wide all weather surface.

Turnarounds: A turnaround shall be provided for the access road/driveway to parcels #2 and #3. Turnaround requirements will comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:

Outside front wheel radius of fifty (5()) feet; inside rear wheel radius of twenty-five (25) feet.

Grades: Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.

Curvature: Approach turns to access road/driveway from Aventine Circus shall be such to accommodate standard fire apparatus.

Parking: Where parking of vehicles would diminish the minimum 20 foot wide fire lane access, "No Parking Signs" will be required, or additional widening of the road/driveway will be required to accommodate the parking.

Fire Lane Declaration: The extent of the access road/driveway from Aventine Circus that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents."

Hydrants: Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000

feet from any of the lots, nor more than 30() feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

Water Lines: An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would be approximately 250 feet.

Fire Flow: [please see Finding 4.A(7)]

Addressing: Addressing will comply with the Uniform Building Code.

Final Note :When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and The Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

Staff generally concurs with the comments of the Lake Oswego Department of Fire Services and recommends that roads serving the subject site and proposed parcels be improved in accordance with June 6, 1994 letter, as modified by Condition #3.

Conclusions (MC 1-94)

1. The use of easements as the means of access to the proposed new parcels satisfies MCC 11.15.2844(G) subject to the stated approval conditions.
2. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the landlocked nature of the subject site makes creation of a lots fronting on a public road impossible.

O'DONNELL RAMIS CREW
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FAX: (503) 243-2944

DATE: August 3, 1994
TO: Philip E. Grillo, Multnomah County Hearings Officer
FROM: Robert W. Price, Planner/Project Manager
Mitchell Nelson Welborn Reimann Partnership
RE: Rebuttal on MCC §§ 11.45.460 and 11.45.470

11.45.460

- A. The site does contain slopes of more than 20%, but only on the westerly portion of Parcel 3, including the "cube" area. Neither Mr. Rankin in his letter reports, nor Mr. Redfern in his letter, suggest the parcels to be created are not buildable. Only the issues of concerns for managing drainage and runoff are discussed. The steeper slopes on Parcel 3, located on the westerly portion, leave enough buildable area to permit development of a single family dwelling without adverse impact on slopes.
- B. Soil erosion can be minimized through proper management of drainage and runoff, as recommended by Mr. Rankin. Even Mr. Redfern's letter agrees with comments by Mr. Rankin and raises no new issues or concerns. Taking the input by both Mr. Rankin and Mr. Redfern relative to soil erosion issues, the site can be suitably developed.
- C. The site is not within any identified 100 year flood-plain, and no comments to the contrary were made by any interested party.
- D. No evidence has been provided to indicate a problem with a seasonally high water table.
- E. No evidence has been provided to indicate a problem with a fragipan or other impervious layer on the site.
- F. The issue of movement on the site was raised by Mr. Redfern, but only on a small area of the westerly portion of the site where slopes exceed 20% and which does not include a possible building envelope. Mr. Redfern notes in his letter that it may be important to retain vegetation in an undisturbed manner

Memo re: Rebuttal on MCC §§ 11.45.460 and 11.45.470
August 3, 1994
Page 2

on the westerly portion of the site to retain as much slope stability as possible. This would address the issue of slope stability and management of the previous movement on Parcel 3.

11.45.470

- A. 1. Only single family development is proposed for the two new parcels to be created through this partition. One dwelling will be developed on each new parcel. Each parcel will significantly exceed the minimum standards for the R-30 zoning district for size, shape, width and orientation. Access will be provided through approval easements which will meet all five safety access requirements as set forth by the Fire Marshall.
2. The vicinity contains large lots with most exceeding the county's minimum development standards for size, shape and width. Adjacent tracts are either developed or available for development without adverse impact resulting from the proposed partitioning and single family development. Access, views and retention of vegetation on the subject parcel will not impact, or be impacted by, proposed development.
3. Only Parcel 3 contains slopes or vegetation which would be impacted by proposed development. Yet the parcel contains suitable building area to permit retention of slopes and vegetation as recommended by both Mr. Rankin and Mr. Redfern. Drainage and runoff can also be managed in accordance with recommendation of Mr. Rankin and Mr. Redfern. It is feasible on this site to handle runoff by the means described by Mr. Rankin without adverse effects on slopes, vegetation or natural drainage.
4. The size of the parcels and the retention of existing vegetation including many of the existing trees on Parcels 1 and 2 will provide suitable distances, barriers or screens to preserve privacy and individuality. The character of the Dunthorpe area is such that privacy and individuality are important considerations for new development. The proposed partition and development of two new single family dwellings will be consistent with the existing character of the area.

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5. The new parcels are oriented to the greatest extent possible to solar requirements, given the orientation of the parent parcel and nature of other parcels in the immediate vicinity and their existing or future development. The proposed new dwellings will be no more nor less subject to winter wind and rain than other existing dwellings in the vicinity.

41018/jllv/GRILLO.LT2

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AUG - 3 1994

Multnomah County
Zoning Division

DECISION ON REQUESTED VARIANCE
MC 1-94/LD 13-94Summary of Decision:

The applicant has requested that the Division of Transportation initiate a variance to certain street standards for the proposed access road in this project. This is a difficult request, because as I interpret the language of the code and the plan, this Division has no jurisdiction to regulate the access by private easement proposed in this case. Under this interpretation, there is no applicable requirement or restriction in the Street Standards Ordinance or Street Standards Rules from which the application needs a variance.

There is a contrary contention, however, that the Code, as recently amended, makes private easements subject to the 50 foot wide right-of-way requirement found in Table 5.1 of the Street Standards Rules.

I, therefore, enter a decision on two alternative grounds. First, I find no need for a variance. Second, in the event that a 50 foot standard is applicable, I find that the criteria for a variance are met and grant a variance.

Facts:

The subject of this decision is the access to a proposed three lot partition in the Dunthorpe area. One dwelling is currently located on the site. The access would serve two additional homes off the existing access easement. The proposed private access is over a 20 foot wide easement extending South from SW Military Road. The Lake Oswego Fire Marshall has approved the access paved to a 20 foot width. The proposed access shares the entry/exit point at Military Road with the private access approved for the Tryon Vista subdivision (County File No. LD-10-93). There are no sidewalks or on-street parking in this area of Military Road.

Findings and Conclusions:

1. NO VARIANCE REQUIRED

I find that no variance is required for these reasons.

First, the Streets Standards Code and Rules do not apply to access gained by private easement. The definition of "local street" in Section 03.100 of the rules relates to public rights-of-way, not private easements such as this one. The county provisions are intended to implement ORS Chapter 368. In ORS 368.001, there is a definition of "local access road", which is "a public road that is not a county road, state highway or federal road". Based on that definition, we interpret "local street" to mean a public right-of-way.

Moreover, there are no definitions of "easement" or "privately maintained road" in the code, and there are no standards for either one in the code or the rules. The Transportation Division has never previously regulated private easements and we see no evidence of an intent to change this practice in any county code provisions. The Planning Division and Transportation Division have relied on fire district officials to approve the design of such private roads to assure a safe access prior to the issuance of building permits. For years we have simply used a handout sheet titled Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads, which contains only basic construction standards and a sign off by the authorized fire official.

I, therefore, interpret the code not to require compliance in this case with the standards that were written to control the typical local street.

Second, the only language in the code that might impose the Street Standards Rules on a private easement is not intended to dictate right-of-way width, but is instead intended to limit application of those rules to the drainage and structural design of the road bed.

MCC 11.45.500(B) requires that the width, design and configuration of private streets comply with the Street Standards Ordinance. In this case, I interpret the intent of that requirement to be that the basic drainage and structural design of the road bed must meet the requirements of the Multnomah County Design and Construction Manual, referenced at MCC 11.60.390 and 11.60.400.

The design of the proposed access can satisfy all structural requirements and its width is not regulated by this office.

Third, the applicable standard is whether the access is found "suitable" by the Hearings Officer under MCC 11.15.2844(G). It would not make logical sense, and it would not be internally consistent to interpret the code to require both a finding of "suitable" by the Hearings Officer and compliance with the Street Standards Rules. This would require two separate processes with different decision procedures and appeal provisions.

2. ALTERNATIVE DECISION:
VARIANCE GRANTED IF JURISDICTION EXISTS WITH THIS OFFICE

In order to expedite the decision making process, I enter an alternative ruling in the event that the initial decision finding no applicable standard is held to be incorrect by the Hearings Officer or the Board of Commissioners. By entering this ruling, I do not concede the jurisdictional issue, but simply recognize that it would be terribly inefficient for the county, the applicant and others to re-visit this matter if jurisdiction is found.

a. Proposed Variance

The application recounts the facts of the current partition application and the assertion by an opponent that the private access easement is subject to the Urban Area Standards shown in Table 5.1 of the Street Standards Rules. The table calls for a 50 foot right-of-way width, 28-32 foot pavement width, parking on both sides and curbs and sidewalks.

The applicant requests a variance from these requirements.¹ I am authorized to consider such requests under MCC 11.60.080 and Rule 04 of the Street Standards Rules.

b. Variance Criteria

Rule 04 requires submission of certain documentary information, all of which has been submitted by the applicant. The criteria require that two standards are met:

- 1) that the variance is in keeping with the intent and purpose of the code and the rules; and
- 2) that the variance will not adversely affect the fire access and/or the function of the street or related facility.

In interpreting the intent and purpose requirement, I am guided by certain key considerations. First, MCC 11.60.020 states that the intent of the Street Standards Code is to "implement and enforce the (Multnomah County Comprehensive) Plan, and it shall be liberally construed to effectuate that purpose". The rules were adopted under the provisions of MCC 11.60. Directly applicable plan policies include Policy 20, Arrangement of Land uses; Policy 22.B, Energy Conservation; Policy 24, Minor Residential Project Locational Criteria; Policy 33a, Transportation System and Policy 34, Trafficways.

Second, it is clear that the standards for a local street in the urban area are designed to provide adequate facilities for the typical urban situated with normal residential densities, an extensive sidewalk network and the need to park cars along the street.

¹ The applicant proposes another alternative, which is to consider this easement an "accessway" and grant relief from the 200 foot limit on accessway length. My understanding is that the central dispute is over the 50 foot width requirement for a local street, and therefore, I confine my decision to that issue.

These considerations will be applied in determining whether the variance satisfies the intent and purpose criteria.

c. Analysis of Criteria

- (1) The variance is in keeping with the intent and purpose of the Code and Rules.

The applicant proposes to serve two additional homes off the existing access easement. The area is not a typical urban setting. In fact, it is a unique area of the county developed with homes located on very large lots, often exceeding an acre in size. The proposed partition of a lot with an existing house will result in three houses on 3.60 acres. Other lots in the area range from .50 acres to 4.26 acres. This is much closer to a rural setting than to a typical urban setting.

It is clear the area was developed as a rural area with large lots and narrow access roads. The proposed partition under the R-30 zoning will not alter that rural character with 30,000 square foot lots. The existing road is less than 20 feet wide on a 20 foot easement, with no curbs and no sidewalks. There are no curbs or sidewalks on S.E. Military Road. The proposed road would widen and pave 20 feet of the existing roadway to county standards. Other than width, the road can be constructed according to the structural roadbed requirements of the Multnomah County Design and Construction Manual.

The existing access is consistent with other accesses in this area and is consistent with a recent decision by the Hearings Officer. In LD 10-93, the Hearings Officer held that access over a 20 foot private easement is suitable to serve a subdivision. In a letter in that file, dated December 28, 1993, the state fire marshall approved a paved width of 19 feet when necessary to protect trees, providing "No Parking-Fire Lane Signs" are provided. The fire marshall added, "In no case will a road of less than 17 feet be approved".

The current access is adequate for the area. There is no sidewalk network, but the density is low and, therefore, pedestrian/auto conflicts are minimal. Residences have ample parking and, therefore, no on-street parking is needed.

I find that the intent and purpose of the Code and Rules is satisfied by the proposed access for several reasons.

First, the applicable Comprehensive Plan policies are satisfied. The applicant has submitted evidence that the proposed partition and access road comply with the following plan policies:

Policy 20 Arrangement of Land Uses

"The county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:

- A. assure a complementary blend of uses;
- B. reinforce community identity;
- C. create a sense of pride and belonging; and
- D. maintain or create neighborhood long term stability."

Finding:

The proposed partition will complement the existing dwelling in the area by improving their access road. It will reinforce community identity by maintaining the large size and expensive scale of homes in this area. The subject area is zoned for single family dwellings on large lots. The proposed partition could create a sense of pride and belonging when the owners of Parcels Two and Three build new dwellings. The proposed partition will maintain long term stability in the neighborhood because the new owners will construct new dwellings designed for large lots and commit the property to long term residential use. For these reasons, the proposed partition and access comply with Policy 20.

Policy 22.B Energy Conservation

- "B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers."

Finding:

This policy calls for increased density in urban areas. The proposed partition will add two additional dwellings in an urban area. Without the requested access, the partition could not be approved, and the density on this parcel would not increase, contrary to this policy.

Policy 24 Housing Location

"The county's policy is to accommodate the location of a broad range of housing types in accordance with:

- A. the applicable policies in this Plan;
- B. the locational criteria applicable to the project scale and standards.

* * *

2. Minor Residential Project Locational Criteria

A. Access

- (1) Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and projected traffic counts, speed limits and number of turning movements.

- (2) There is direct access from the project to a public street."

Finding:

As shown discussed elsewhere in this decision, the proposed housing complies with applicable policies in the Plan. The proposed access complies with (A)(1) above, as described in the evidence submitted by the applicant's traffic engineer. The 20 foot width of the roadway is not a significant factor in analyzing this roadway because the housing density is very low, and there is little traffic.

The proposed access road provides direct access from the subject property to Military Road over easements. The access by easement required approval by the Hearings Officer (MC 1-94).

Policy 33a Trans tation System

"The county's policy is to implement a balanced, safe and efficient transportation system. In evaluating parts of the system, the county will support proposals which:

- A. implement the Comprehensive Plan;
- B. best achieve the objectives of the specific project;
- * * *
- F. provide a safe, functional and convenient system....."

Finding:

Although a private road, the proposed access is part of the transportation system in the county. As discussed by the applicant's traffic engineer, the widened driveway will provide improved safety and convenience to the existing dwellings now served by a substandard driveway. The objective of the proposed partition and access road is to improve access to all of the dwellings in this neighborhood. As described earlier in this decision, the proposed partition and access implement portions of the Comprehensive Plan.

Policy 34 Trafficways

"The county's policy is to develop a safe and efficient trafficway system using the existing road network, and by:

- * * *
- B. improving streets to the standards established by the classification system, where necessary, and/or appropriate to identified transportation problem;
- * * *
- H. implementing the Street Standards Chapter 11.60 and Ordinance 162.... and establishing a procedure for allowing variances from that ordinance."

Finding:

The proposed partition access road uses the existing access road, and improves it into a safe and efficient access. As discussed elsewhere in this decision, this is a unique low density residential area with no need for the extensive street width and improvement required in a typical urban neighborhood. Allowing the proposed access is in compliance with Policy B, because it is not necessary or appropriate to apply the full width standards of a local street to this private access. This variance request follows the intent of Policy H to allow variance to the street standards. This variance request under the authority of rules established under Chapter 11.60 is in compliance with Policy 34.H.

In addition to compliance with the plan, I find there is no need in this unique area for the extensive width and improvements needed in a typical urban neighborhood. A sidewalk on this street would connect to nothing and serve no purpose. There are no sidewalks in the immediate area and the main access through the neighborhood, S.W. Military Road, lacks sidewalks. Moreover, the recent decision approving the Tryon Vista subdivision (LD 10-93), which adjoins this area, the Hearings Officer did not require sidewalks. The low density and low traffic counts in the area also establish the adequacy of the current easement, as documented by the reports and testimony of the applicant's traffic engineer.

Likewise, an additional width for on-street parking is not needed in this area where on-street parking is virtually non-existent.

In short, the requirement for a 50 foot right-of-way with full improvements is not needed to satisfy the intent of the Code, Plan and Rules, due to the unique character of the area.

- (2) The variance will not adversely affect the fire access and/or the function of the street or related facility.

The applicant has presented letters from the city of Lake Oswego Department of Fire Services and the applicant's traffic engineer at David Evans and Associates. The width of the access road was not a safety issue for either of these experts.

The fire marshall requires improvement with a 20 foot wide all-weather surface from the northern boundary of the subject property to Military Road. A turn-around is required for the new driveway crossing the subject property. Parking may be restricted and fire hydrants may be required.

The traffic engineer, Jennifer Danziger, states that even with the two new dwellings made possible, the proposed partition "traffic volumes on this roadway would still be very low", and the accessway maintains a sight distance of approximately 250 feet. Danziger concluded:

"The access roadway can accommodate the additional traffic....without substantial inconvenience or risk to other residents served by it."

d. Conclusion Regarding the Variance

The criteria for granting a variance are met in this case and, therefore, a variance is granted as noted from the following requirements for a residential local street (Table 5.1, Street Standards Rules), to the extent they are otherwise found to be applicable:

- 50 foot right-of-way width, adjusted to 20 feet;
- curbs, not required;
- sidewalks, not required;
- parking, not required; and
- pavement width 24-32 feet, adjusted to 20 feet as approved by the fire marshall.

0636E

Appeal to the Board of County Commissioners:

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

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

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

Signed by the Hearings Officer
Decision mailed to Parties
Decision submitted to Board Clerk
Last day to appeal decision
Reported to Board of County Commissioners:

December 23, 1994
December 30, 1994
December 30, 1994
January 9, 1995
January 10, 1995



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

NOTICE OF REVIEW

1. Name: Nelson, H.; John
 Last *Middle*
 2. Address: 111 SW Fifth Avenue, #3200 Portland OR 97204
 Street or Box *City* *State and Zip Code*
 3. Telephone: (503) 228 - 3200

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

K. Don Feldman, 01402 SW Military Road, Portland, OR 97219

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

Hearings officer final order approving a request for a partition and the use of an easement for access (File No. MC 1-94/LD 13-94).

- SIGNED _____ Hearings Officer
6. The decision was ~~announced~~ announced by the ~~Planning Commission~~ Planning Commission on 12/23, 19 94
The decision was mailed to the party and submitted to the Board Clerk on 12/30/94.
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

Mr. Feldman received notice in the above-identified matters and appeared before the Hearings Officer in the hearings conducted for these matters. Mr. Feldman was represented throughout the proceedings by Mr. Nelson.

RECEIVED

~~JAN 09 1995~~

Multnomah County
Zoning Division

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

See attached letter.

9. Scope of Review (Check One):

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

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

See attached letter.

Signed: John H. HillDate: 1/9/95

For Staff Use Only	
Fee:	
Notice of Review = \$300.00	
Transcription Fee:	
Length of Hearing	x \$3.50/minute = \$
Total Fee = \$	
Received by:	Date: Case No.



PRESTON GATES & ELLIS
ATTORNEYS

JOHN H. NELSON

January 9, 1995

RECEIVED
JAN 09 1995

Multnomah County
Department of Environmental Services
and Development
2115 SE Morrison Street
Portland, Oregon 97214

Multnomah County
Zoning Division

Re: *Notice of Review of Hearings Officer Approval in MC 1-94/LD 13-94 and
Administrative Approval of Access Variance*

The individual listed below hereby appeals the Final Order of the Hearings Officer in the above-identified matter (MC 1-94/LD 13-94) and the undated Administrative Approval of an Access Variance. The final order is enclosed and the administratively approved access variance is attached to the final order as "Exhibit A." The appellant requests a *de novo* hearing before the Multnomah County Board of Commissioners.

The name, address and telephone number of the person filing this Notice of Review is John H. Nelson, address and telephone listed above, on behalf of the following person:

K. Don Feldman
01402 SW Military Road
Portland, Oregon 97219

The Hearings Officers decision was signed on December 23, 1994, and mailed to the parties and filed with the Board Clerk on December 30, 1994. The administratively approved variance decision is not signed or dated but was attached to the Hearings Officer's decision as Exhibit A.

The Hearings Officer's decision approved a partition and the use of an easement for access. This decision is appealable to the Board pursuant to MCC 11.15.8260.

During the course of the proceedings in MC 1-94/LD 13-94, the applicant also requested a variance from the standards imposed by Multnomah County's Street Standards Code (MCC 11.60) and the accompanying rules. Pursuant to Section 04 of the Street Standards Rules, the variance request was granted administratively and attached as an exhibit to the Hearings Officer's decision. According to the Street Standards Rule, this type of administrative decision is reviewable by the Multnomah County Board of Commissioners according to MCC 11.15.8260 to .8280. *See* Street Standards Rule § 04.100(d).

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ANCHORAGE • COEUR D'ALENE • LOS ANGELES • SEATTLE • SPOKANE • TACOMA • WASHINGTON, D.C.

3200 U.S. BANCORP TOWER 111 S.W. FIFTH AVE. PORTLAND OREGON 97204-3688 PHONE: (503) 228-3200 FACSIMILE: (503) 249-0095

January 9, 1995

Page 2

Mr. Feldman has party status to appeal the administrative decision because he is an adjoining property owner and has interests which will be adversely affected should the administrative decision become a final decision of the county.

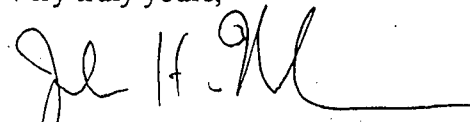
With respect to the partition and access by easement request (MC 1-94/LD 13-94), the appellant raises the following grounds for review: (1) failure to comply with Multnomah County Code ("MCC") 11.45.230; (2) failure to comply with MCC 11.45.460; (3) failure to comply with MCC 11.45.470; (4) failure to comply with MCC 11.45.490; (5) failure to comply with MCC 11.45.500; (6) failure to comply with MCC 11.45.540; (7) failure to comply with MCC 11.45.630; (8) failure to comply with Multnomah County Comprehensive Plan ("MCCP") Policy 14; (9) failure to comply with MCCP Policy 24; and (10) failure to comply with MCCP Policy 33a.

With respect to the administratively approved variance decision, the appellant raises the following grounds for review: (1) failure to comply with Street Standards Rules Section 04.100; (2) failure to comply with the intent and purpose of the Street Standards Code and Rules; (3) failure to comply with MCCP Policy 24; and (4) failure to comply with MCCP Policy 34.

Finally, the appellant understands the Board of Commissioners will hear these appeals on a *de novo* basis (January 9, 1995, telephone conversation between Sarah Ewing, Multnomah County Planning Department, and John H. Nelson).

Please inform the undersigned as to the date, time, and place of the hearing on this matter.

Very truly yours,



John H. Nelson

N/A:jhn

Enclosure

cc: Client

J:\JHN\33186-00.001\8MLOVQ.DOC



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

NOTICE OF REVIEW

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4. If serving as a representative of other persons, list their names and addresses:
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Administrative approval of an access variance (attached as Exhibit A
to Final Order, MC 1-94/LD I3-93)
6. The decision was announced by the Planning Commission on _____, 19____
See attached letter.
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
See attached letter.

RECEIVED

JAN 09 1995

**Multnomah County
Zoning Division**



PRESTON GATES & ELLIS
ATTORNEYS

JOHN H. NELSON

January 9, 1995

RECEIVED
JAN 09 1995

Multnomah County
Department of Environmental Services
and Development
2115 SE Morrison Street
Portland, Oregon 97214

Multnomah County
Zoning Division

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Portland, Oregon 97219

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January 9, 1995

Page 2

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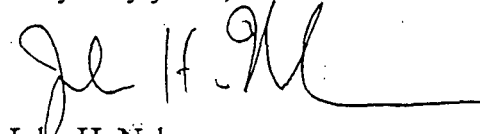
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Please inform the undersigned as to the date, time, and place of the hearing on this matter.

Very truly yours,



John H. Nelson

N/A:jhn

Enclosure

cc: Client

J:\JHM33186-00.001\8ML0VQ.DOC

JOHN L. BROSY

Land Planning and Development Services

2124 S.W. Caldew Street

Portland, OR 97219

(503) 245-0534

FAX (503) 244-2099

February 14, 1995

2/14/95 HEARING SUBMITTAL

MC 1-94/LD 13-94

Board of County Commissioners
1021 SW Fourth Ave.
Portland, OR 97204

Re: February 14, 1995 Land Use Case Hearing
County File # MC 1-94/LD 13-94 - Tumpane

Members of the Board:

I am a planning consultant representing Dr. and Mrs. Roger Hallin, who own a 6.5 acre parcel and home adjacent to and southwest of the Tumpane property. The Hallin land is tax lot 51, Section 34, T1S, R1E. We take no position in favor or in opposition to the appeal of the the Hearings Officer decision before you, but present the following concerns as adjacent property owners:

1. Water service for the Hallin residence crosses the Tumpane property from a main in Military Road. There is an easement on record for that water line, which also allows the route to be used for a public main. Any development of the Tumpane property must recognize the need to maintain water service to the Hallin property, most likely within the private street access strip proposed in the Tumpane land division.

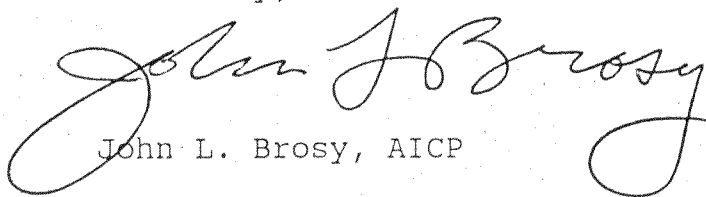
2. We are concerned about surface water runoff, since the Tumpane site is uphill from the Hallins, and since a number of small springs occur in the wooded, sloping land on the steeping sloping land between Tumpane and Hallin. We are interested in coordinating with the County officials and the developers to effectively protect the downhill property if this project proceeds to construction.

3. County staff have indicated that a lot line adjustment between Tumpane and Hallin should be executed, to "even out" the unusual boundary line between the two properties (see westerly line of proposed "parcel 3"). If this land division is approved, we want to work with the applicants and adjust the common boundary so that springs are recognized and so that an equal amount of land remains in both ownerships after the adjustment.

February 14, 1995
Board of County Commissioners
page 2

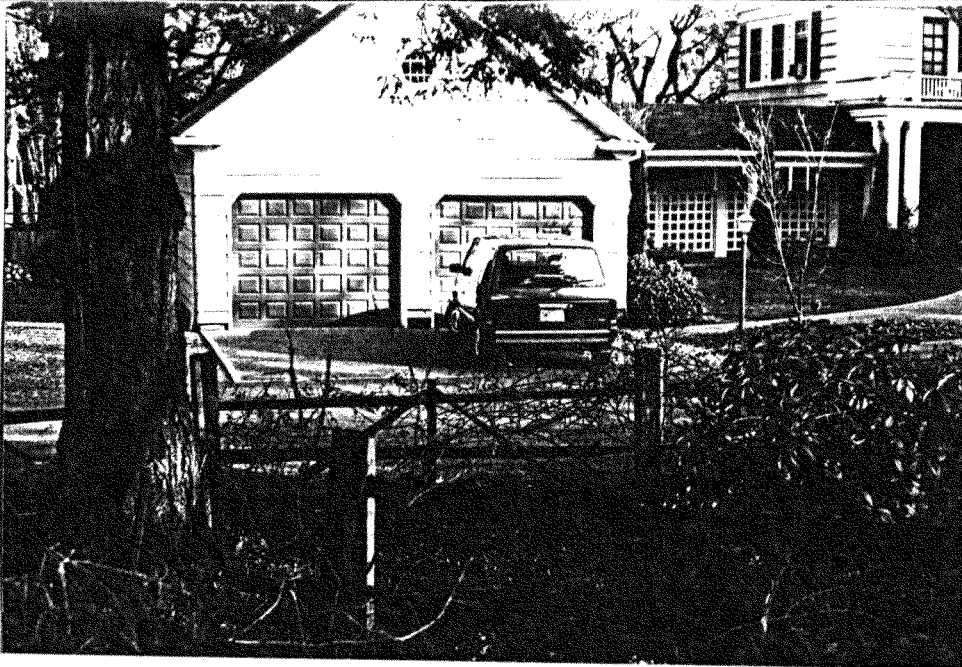
Thank you for your consideration.

Sincerely,

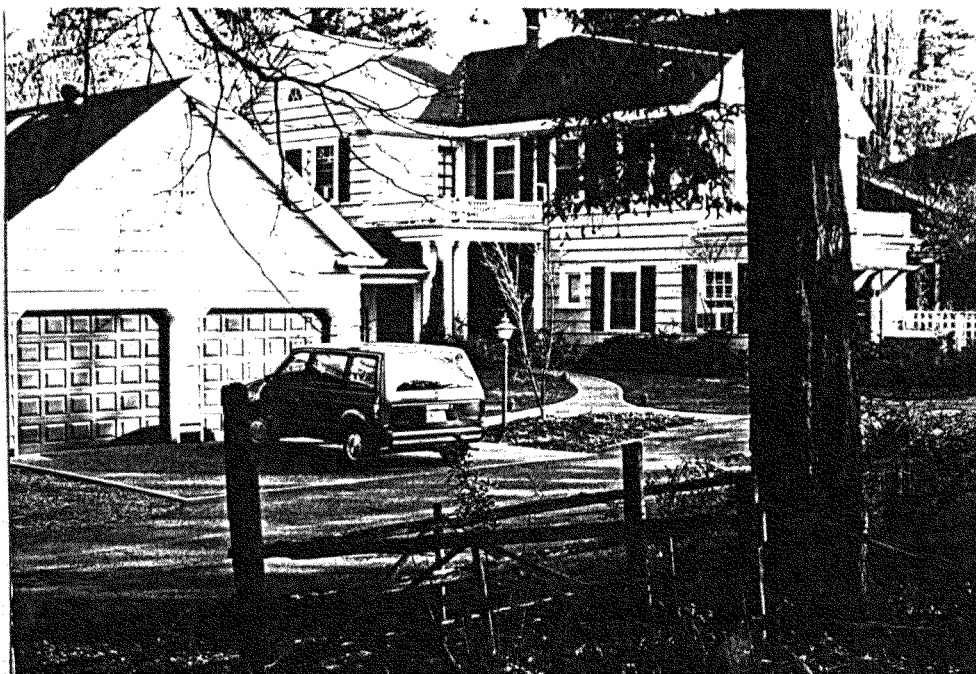
A handwritten signature in cursive script, reading "John L. Brosy". The signature is fluid and stylized, with a large loop at the end of the last name.

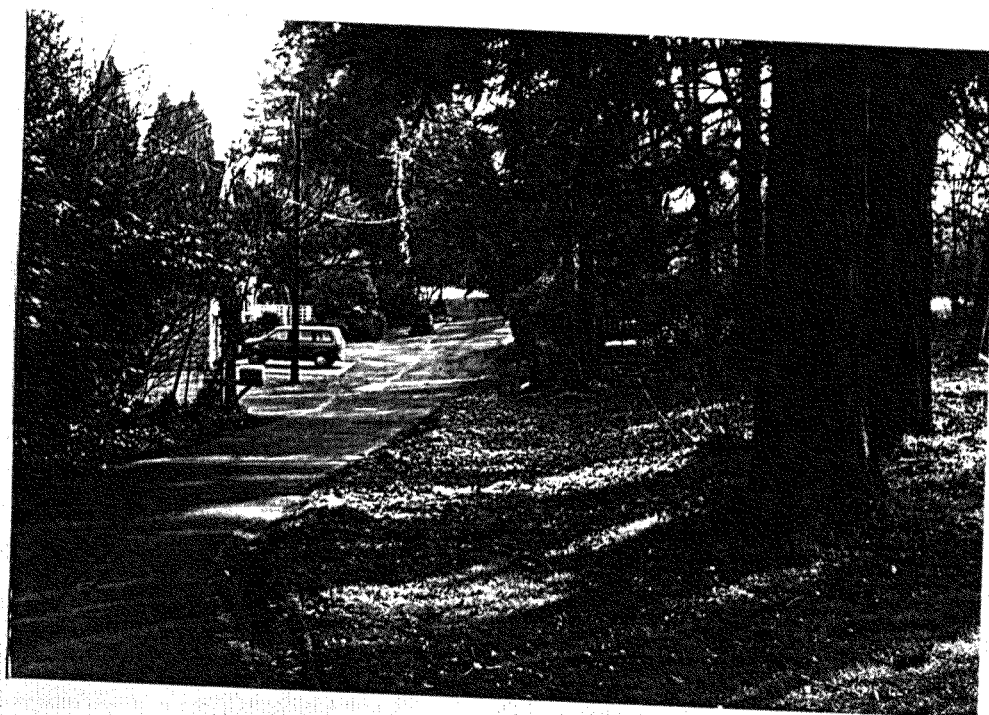
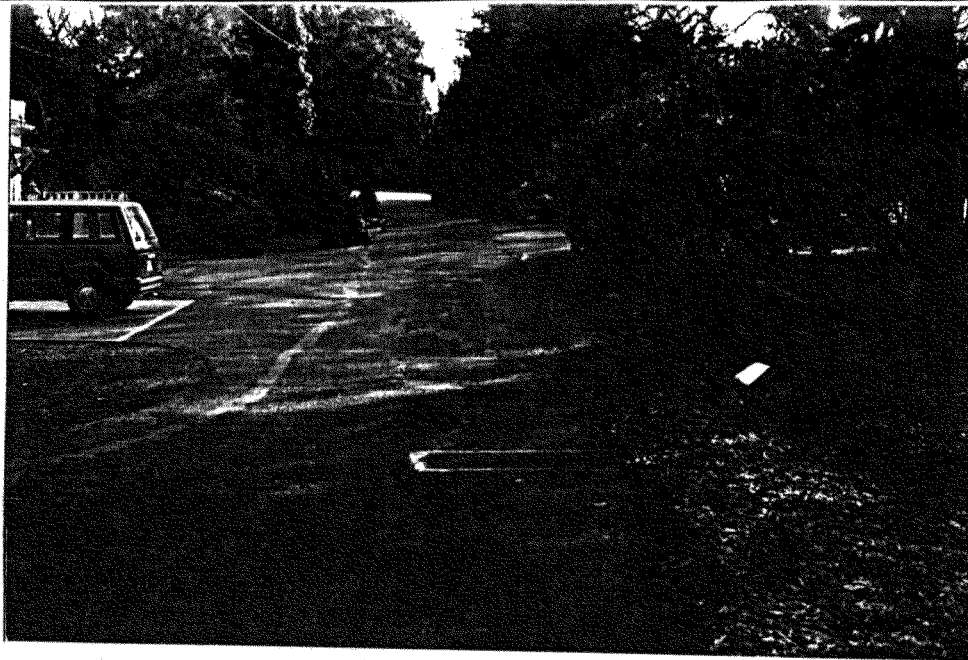
John L. Brosy, AICP

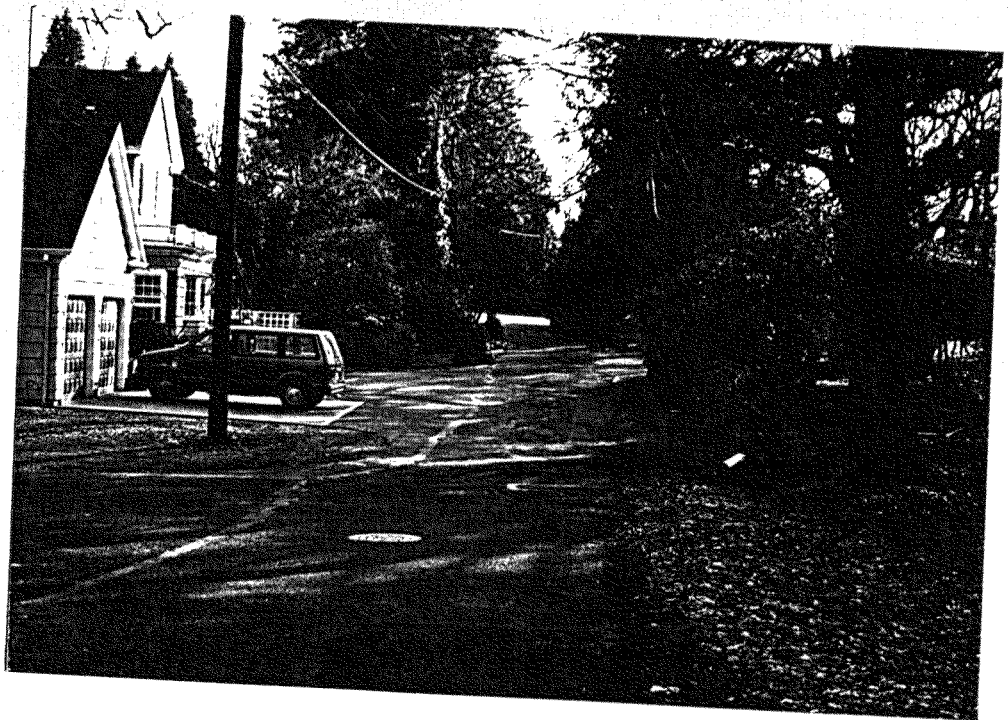
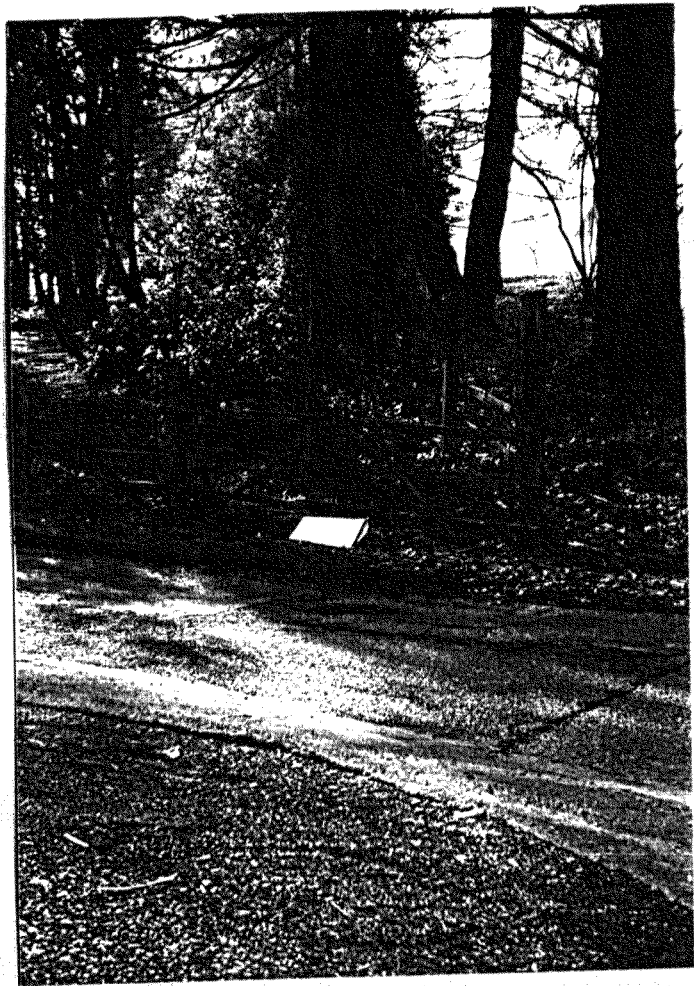
c: County staff
Shaun & Michele Tumpane



2/14/95 SUBMITTAL
K. DON FELDMAN
MC 1-94/LD 13-94







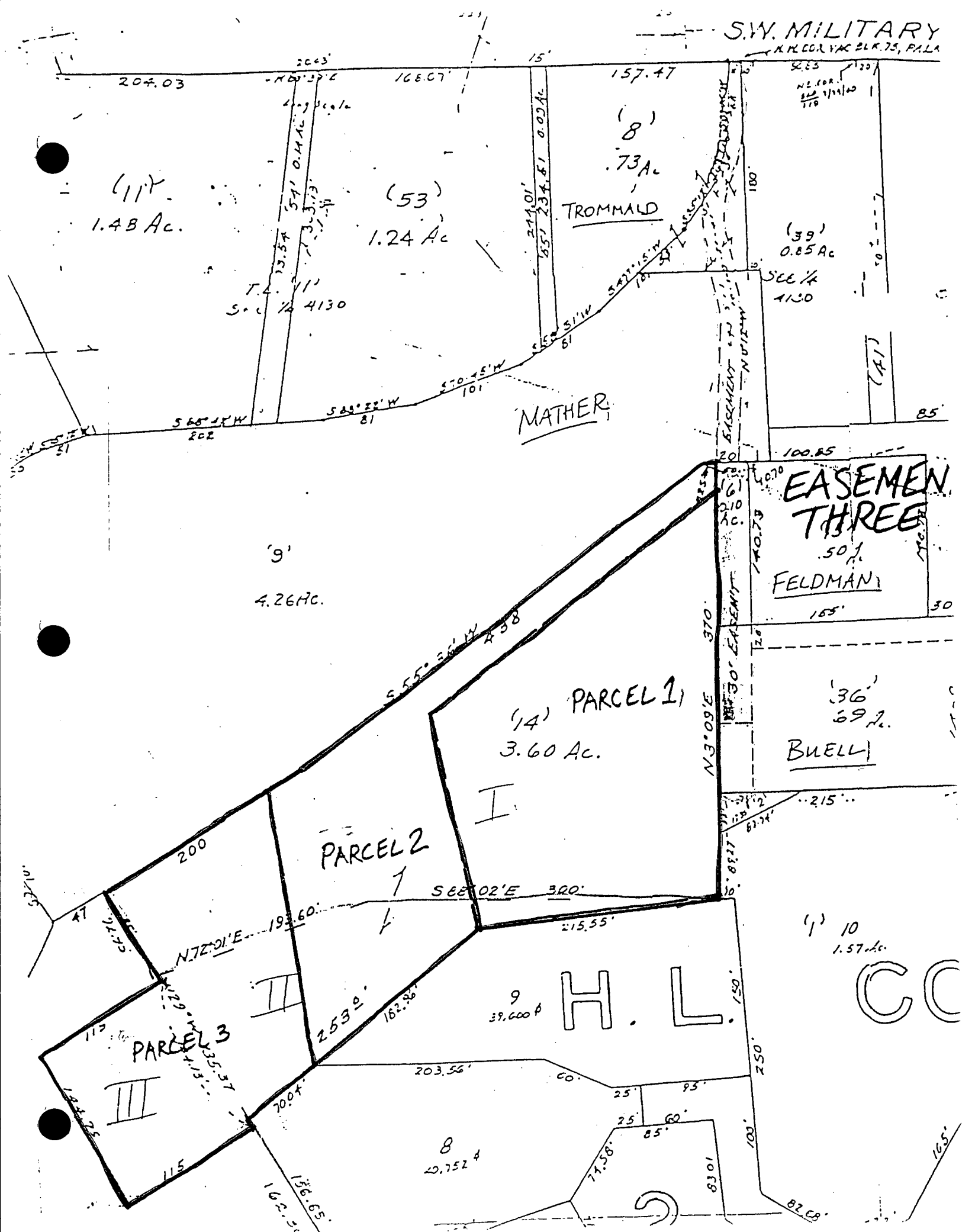
2/14/95 SUBMITTAL

TIMOTHY V. RAMIS

MC 1-94/LD 13-94

MAPS

AKKOR VAK 26.75, FALA



S.W. MILITARY

N.M. CO. 1st REG. INF. 75, P.A.L.

(11)
1.48 Ac.

(53)
1.24 Ac.

(8)
.73 Ac.

(39)
0.85 Ac.

(9)
4.26 Ac.

(15)
.50 Ac.

(36)
.69 Ac.

(1)
1.57 Ac.

PARCELS
REFERENCED
IN DEEDS

PARCEL I

(14)
3.60 Ac.

PARCEL II

H.L.

CO

EXHIBIT

2

S.W. MILITARY

N.M. CO. 100. 21. 75, FALLA

204.03

168.07

157.47

120

N.L. 100. 21. 75, FALLA

(11)

1.48 Ac.

(53)

1.24 Ac.

(8)

.73 Ac.

(39)

0.85 Ac.

SEE 1/4

4130

5.0 1/4 4130

5.0 1/4 4130

5.0 1/4 4130

5.0 1/4 4130

(9)

4.26 Ac.

GRAN MARQUE
PROPOSED
PARCELS

PARCEL
1

(14)

3.60 Ac.

PARCEL
2

PARCEL
3

(15)

50

(36)

69

(1) 10

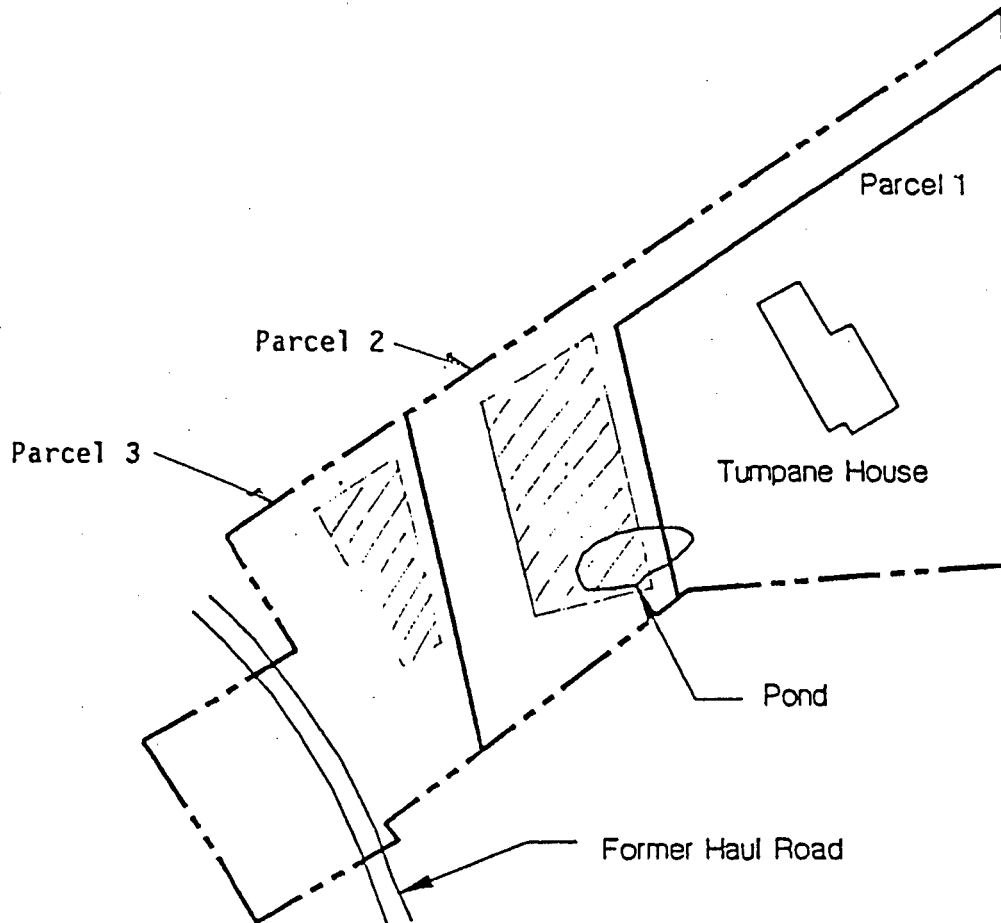
1.57 Ac.

CO

EXHIBIT

3

FILE



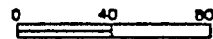
LEGEND



POSSIBLE BUILDING AREA **

Locations Approximate

** subject to review by the project
design team (for discussion purposes only)



Scale in Feet (Approximate)



Applied Geotechnology Inc.
Geotechnical Engineering
Geology & Hydrogeology

POTENTIAL BUILDING LOCATIONS
Geotechnical Review
Tax Lot 14, 01400 S.W. Military Road
Portland, Oregon

FIGURE

1

JOB NUMBER
30.146.011

DRAWN
BBP

APPROVED

DATE
03/25/94

REVISED

DATE

TRAFFIC

AUG 03 1994

August 3, 1994

ODONNELL RAMIS CREW
CORRIGAN
01310001

Mr. Timothy V. Ramis
O'Donnell, Ramis, Crew and Corrigan
Attorneys at Law
1727 N.W. Hoyt Street
Portland, Oregon 97209

FILE

SUBJECT: GRAN MARQUE TRANSPORTATION REVIEW

Dear Mr. Ramis:

This letter addresses some of the issues raised in the hearing memorandum from John H. Nelson, Attorney for Don Feldman.

Street Width

The opponent's memorandum states that "the private street system proposed to serve the partition is a local street ... as such, the private street is required to have a 50-foot right of way, at least a 28-foot pavement width, and curbs and sidewalks." This statement is incorrect. Private streets do not necessarily qualify as local streets, and are, therefore, not subject to local street standards. Several different street design configurations are possible for private streets, all of which meet the fire marshall's 20-foot width requirement.

Furthermore, the 20-foot width requirement for this roadway is not unusual. Studies in the City of Portland found that there were many benefits to narrower residential streets or "skinny streets". These benefits include:

- maintaining neighborhood character.
- lowering construction costs
- saving vegetation and trees
- reducing runoff
- encouraging traffic safety
- encouraging slower travel speeds
- encouraging better land use

These standards allow residential streets to be 20 feet wide and, in some cases, 18 feet wide. Because of concern about access for emergency vehicles, the Fire Bureau participated in exercises in older neighborhoods with narrow streets. The Bureau found that streets within these guidelines do provide adequate emergency vehicle access.

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4830
(503) 233-6663 FAX (503) 233-2701

Mr. Timothy V. Ramis
August 3, 1994
Page 2

The approval of a 20-foot wide roadway is not unprecedented in this neighborhood either. An application (LD 10-93) to divide the property at 11641 SW Military Road into five lots was approved was recently approved. The access to the undeveloped lots would be along the same private road at issue for this project. The conditions for approval for the access road include "the minimum paved width shall be 20 feet unless the Fire Marshall approves a lesser width" and "the applicant shall designate the private road as a fire lane and shall post the road with no parking signs."

Lastly, in a letter date December 28, 1993 from John McCauley, City of Lake Oswego Fire Marshall to Alan Young in the Multnomah County Planning Department, Mr. McCauley summarizes a conversation with the State Fire Marshall's Code Specialist. In that conversation he found that "the State Fire Marshall has no objections to the 19 foot paved road in a twenty foot right of way providing 'No Parking Fire Lane Signs' are provided."

In summary, a private street does not have to conform to local street standards; a paved width of 18 to 20 feet provides adequate access for emergency vehicle access.

Sidewalks

The opponent's memorandum states that sidewalks would be required along the access road; however, this statement is not supported. The standards specify that a "sidewalk shall be required along any private street serving more than six dwelling units." The segment of roadway to be improved would serve exactly six units; therefore, a sidewalk would not be required.

Furthermore, the conditions for approval (LD 10-93) for the division of the property at 11641 SW Military Road did not require sidewalks as part of the roadway improvement. The section of the private roadway immediately adjacent to SW Military Road would serve as many as thirteen properties, and it would not have sidewalks. And, SW Military Road does not have sidewalks, so there would be nothing to connect to.

Lastly, traffic volumes on the private road will be very low, less than 130 vehicles per day, and less than 13 vehicles during the busiest hour. With the good sight distance along the private road and low traffic volumes, pedestrians would not be at substantial risk.

Bikeways

The opponent's memorandum states that no one "can travel safely by bicycle without bike paths." This statement is incorrect because most street standards do not require separate bike paths; on street travel is often best for bicyclists because is most direct. For local and private streets, bikes

Mr. Timothy V. Ramis
August 3, 1994
Page 3

actually share the roadway with automobiles because volumes are so low. Only on collector and arterial streets are bike lanes required.

Travel Speed

The opponent's memorandum states that widening the street would eliminate the benefits of slower speeds on narrow streets. While speeds on a 20-foot roadway may be slightly higher than an 11-foot roadway, they would still remain very slow. As mentioned previously in this letter, slow speeds are one of the many benefits of "skinny streets." Therefore, widening the roadway is not going to result in a condition that is less safe than the current condition.

If you have any questions about this addendum, please call me.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.



Jennifer E. Danziger, P.E.
Transportation Engineer

Transcript of Jennifer Danziger Testimony
July 20, 1994 (Tape 3 of 4, Side 1)
MC 1-94/LD 13-94

DANZIGER:

"I'd like to address basically two points of the safety issue. The first is the sight distance. It is a private road that runs through there. The children are playing in the street. I did go out and look at the sight distance there, and there are at least 200 feet of clear visibility for vehicles coming into that, ah, along that private road to be seen, to the point where the driveway begins, more than adequate distance for a vehicle traveling 30 miles per hour to stop if they should see children -- be aware or alert for pedestrians not just children -- in that section of the roadway. The narrow streets -- it's currently 11 feet, but even at 20 feet -- tend to make people drive slower. I wouldn't expect the traffic would be traveling even as fast as 30 miles per hour. My recommendation for the new access road serving the two parcels, between the two parcels also would be to also make certain there is at least 200 feet of sight distance so that they would be able to see coming out of those parcels any activity that is immediately in front of where that enters in.

"The second issue is the number of vehicles that are coming out there. Obviously, we need to use average rates for this because we don't, can't measure it specifically for those houses. Typically, a single family residential home like this generates about 10 trips per day. A trip meaning a one-way trip from the house to some place else and from someplace else to the house. Or essentially five round trips.

During the busiest hour, which is generally at night, when people come home from work, when they might be going out to do errands or doing other things, you see about one way trip generated. So for each house, during the busiest hour, you're seeing one trip, or with the six houses, that could be coming and accessing that point -- the end of the second easement where the new road would come in -- you'd have about six trips occurring in an hour. That's about one every ten minutes. Right now, it's about one trip for every fifteen minutes for four houses. So it's not a substantial increase, and there's not going to be an incredible increase in traffic, even in the busiest time frame for traffic in that area. So, with its long sight distance and relatively low traffic volumes - it is a private street -- I think that safety is not substantially impaired."

HEARINGS OFFICER GRILLO:

"Let me ask you about the existing driveway.... Does that serve more than just this house (pointing to a map)?

DANZIGER:

"No, it just serves that house right now. And so the two additional trips would be coming down at this point. Or the additional trips to this parcel would be coming out of the second location. For the combined houses, at this point you'd have approximately six houses and approximately six trips during the busiest hour passing that point of highest activity. Beyond that you'd have even fewer, and beyond this driveway, again, as the trips went off. Your busiest point would be at Military Road, where you have the combined for everything, and that we were talking about between 10 and 12 trips during the busiest hour."

July 6, 1994

GMBD0001

RECEIVED

JUL 11 1994

Mr. William Monahan
O'Donnell, Ramis, Crew and Corrigan
Attorneys at Law
1727 N.W. Hoyt Street
Portland, Oregon 97209

ODONNELL RAMIS CREW
CORRIGAN

SUBJECT: GRAN MARQUE TRANSPORTATION REVIEW

Dear Mr. Monahan:

I have evaluated the traffic issues associated with dividing the Gran Marque property based on a site visit on May 17, 1994 and discussions with staff at Multnomah County.

Before discussing those issues, I would like to introduce myself. I am a transportation engineer at David Evans and Associates, Inc. in the Portland Office. I have more than seven years of experience in traffic analysis and transportation planning. In addition to the numerous traffic impact analyses that I have prepared, I have also worked on Environmental Impact Statements, citywide transportation plans, and toll road feasibility studies. I am a graduate of Cornell University with a Bachelor of Science in Civil Engineering.

Existing Conditions

The access to the Gran Marque property is along three existing easements which connect to S.W. Military Road (see Sketch A). The first two easements south of S.W. Military Road are 20 feet wide, and they extend to the northeast corner of the Gran Marque property. The third easement is 30 feet wide, and extends along the eastern boundary of the Gran Marque property. It appears that seven properties are currently served by these easements, including the home on the Gran Marque property.

The access road along these easements varies in width. From the intersection with S.W. Military Road, the access road tapers to an average width of 16 feet for the first 160 feet. This width is sufficient to allow two vehicles traveling in opposite directions to pass each other. One property has a driveway onto this portion of the roadway.

At the point approximately 160 feet south of S.W. Military road, a second driveway forks off to the southwest and the access road narrows to 11 feet in width. It remains at this width for approximately 210 feet to the northeast border of the Gran Marque property. This width is insufficient for two vehicles traveling in opposite directions to pass each other. A third driveway connects with this portion of the access road.

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Mr. William A. Monahan
July 6, 1994
Page 2

The remaining portion of the access road varies in width to allow for some parking. Four driveways connect with this portion of the access road, including the home on the Gran Marque property.

The seven properties which are currently served by the access road typically generate a total of 70 one-way vehicle trips on a weekday and 7 one-way vehicle trips during the busiest hour. A one-way vehicle trip is a journey, made by automobile, which either begins at one of the houses along the access road and travels somewhere else, or begins somewhere else and ends at one of the houses along the access road. These trip rates are based on the Institute of Transportation Engineers *Trip Generation Report, Fifth Edition*.

Traffic volumes on each of the three easements themselves would vary. On Easement 1, as labeled on Sketch A, all 70 daily trips would be present. On Easement 2, only 50 daily trips would be present. On Easement 3, only 40 daily trips would be present.

Nearby Activity

From my discussions with Multnomah County staff, I learned that another nearby property is in the process of subdividing as well. The property would add three or four new homes which would use the existing access road, primarily along Easement 1. As a condition of this subdivision, the first 160 feet of roadway, which is currently 16 feet wide, will be widened. This widening was requested by the Fire Marshall.

If four new homes are added, approximately 40 more daily trips and 4 more trips during the busiest hour would be generated. Combined with the existing properties, a total of 100 to 110 daily trips would be generated on a weekday. During the busiest hour, about 10 or 11 trips would be generated, averaging about 1 every 6 minutes.

The daily breakdown of trips along the easements would be about 110 on Easement 1, about 50 on Easement 2, and about 40 on Easement 3. Therefore, the traffic on both Easements 2 and 3 would remain unchanged from the existing condition.

Gran Marque Property

Access to the two new parcels on the Gran Marque property would be through an easement along the northwest border of the property. This new easement would begin at the northeast corner of the property where the current 30-foot easement begins.

Mr. William A. Monahan
July 6, 1994
Page 3

The subdivision of the Gran Marque property is estimated to increase weekday traffic by about 20 vehicles daily and 2 vehicles during the busiest hour. This traffic would travel on both Easements 1 and 2, but would only cross the northernmost corner of Easement 3.

Combined with the existing properties and the other proposed subdivision, a total of 120 to 130 daily trips would be generated on a weekday. During the busiest hour, about 12 or 13 trips would be generated, averaging about 1 every 5 minutes. The daily breakdown of trips along the easements would be about 130 on Easement 1, about 70 on Easement 2, and about 40 on Easement 3.

Access Roadway Widening

Although the access road can easily accommodate the additional traffic from a capacity standpoint, to meet requirements for emergency vehicle access, the existing roadway will need to be widened from its present width to a 20-foot width. In a letter, dated June 6, 1994, Tom Carman, the Acting Fire Marshall for the City of Lake Oswego, requested the following improvement to the access road:

Provide improvement of Aventine Circus south of Military Road to a minimum of 20 foot wide unobstructed all weather surface. Extent of fire lane improvement to include road to where property line of 01400 S.W. Military Road intersects Aventine Circus. Further extension desirable to beginning of driveway turnaround at 01404 S.W. Military Road.

The existing access road averages about 16 feet in width for approximately 160 feet before tapering down to 10 to 11 feet for approximately 210 feet to the northeast corner of the Gran Marque property. Both of these roadway sections have a 20-foot easement.

From my discussions with Multnomah County staff, I learned that another nearby subdivision project is conditioned with widening the 16-foot section to meet the 20-foot standard required by the Fire Marshall.

The Gran Marque site development would probably be conditioned with widening the narrower section to 20 feet. Review of the landscaping on either side of the existing paved section indicates that the roadway can probably be widened without any major tree or shrubbery impacts. On the east side of the roadway, most of the landscaping is smaller trees and shrubs, three to four feet from the pavement. The west side of the roadway has several large trees. The closest of those trees is a 36-inch Douglas Fir noted in the arborist's report and identified on Sketch B. This tree is about 15 feet from the paved surface. To remain at

least 6 feet from the trunk of this tree, as recommended by the arborist, the paved surface could be widened 8 to 9 feet on the west side. This would provide a paved surface varying between 18 and 20 feet wide. To achieve a full 20-foot width everywhere, the roadway could be widened by about 1 foot on the east side.

Safety Concerns

One of the major safety concerns about the access road is the increase in traffic using it. It is a private road with low traffic volumes, and children in the neighborhood sometimes play in the street. Some of the neighbors are concerned that the increased traffic may endanger the children or other pedestrians on the roadway.

Traffic volumes on this roadway would still be very low, even with the additional development. On the busiest section of the access road, which is located at the intersection with S.W. Military Road, traffic during the hour of highest activity would still only average about 1 vehicle every 5 minutes. Along Easement 3, where children are most likely to be playing, traffic would be even lower during the busiest hour, averaging only 1 vehicle every 10 to 15 minutes.

In addition to traffic volume, two major factors which also affect safety are speed and sight distance. One of the major benefits of narrow streets is that drivers tend to drive more slowly on them. This is true for the recommended 20-foot wide roadway. Slower speeds allow drivers to stop more quickly; therefore, they require a shorter stopping sight distance.

On the present access road, there is adequate sight distance for a vehicle traveling at speeds up to 30 miles per hour to spot children in the roadway and stop. However, most vehicles will be traveling at a much slower speed.

Sketch C shows the area where visibility is relatively unobstructed. Point A is the location when Point B first becomes visible. The distance between these points is approximately 250 feet. A vehicle traveling at 30 miles per hour requires about 200 feet of stopping sight distance (per Institute of Transportation Engineers *Transportation and Traffic Engineering Handbook*). The required distance is less than the available sight distance. For a vehicle traveling at 20 miles per hour, only 120 feet of stopping sight distance is required.

When the access road to the Gran Marque property is constructed, it will be 20 feet wide and should also provide at least a 200-foot of unobstructed visual corridor to the main access road. Although this is not a Multnomah County standard, it would ensure that children and

Mr. William A. Monahan
July 6, 1994
Page 5

other pedestrians are safe. Achieving this sight distance should be easy if the alignment remains relatively straight as shown in Attachment A.

Conclusions

The access roadway can accommodate the additional traffic generated by subdividing the Gran Marque property to provide two additional parcels without substantial inconvenience or risk to other residents served by it.

Sight distance on the access road, as measured out in the field, is adequate to allow a vehicle traveling at a speed of 30 miles per hour to stop if there are children playing near the entrance to the Gran Marque property. However, most vehicles will be traveling considerably slower than that. When the access road to the Gran Marque property is constructed, it will be 20 feet wide and should also provide at least a 200-foot of unobstructed visual corridor to the main access road to provide equal visibility.

The existing access roadway appears as though it can be widened, as requested by the Lake Oswego Fire Marshall, without impacting the adjacent landscaping. It will require widening the roadway about 8 to 9 feet on the west side, and potentially widening about 1 foot on the east side.

If you have any questions about this addendum, please call me.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.



Jennifer E. Danziger, P.E.
Transportation Engineer



S.W. MILITARY RD.

EASEMENT 1
20 FEET WIDE
14 FEET PAVED

EASEMENT 2
20 FEET WIDE
10-11 FEET PAVED

EASEMENT 3
30 FEET

NEW ACCESS & EASEMENT

SKETCH A



S.W. MILITARY RD.

+ 14 & 16 INCH
BIG LEAF
MAPLE

36 INCH +
DOUGLAS
FIR

10 INCH
BIG LEAF +
MAPLE

NEW ACCESS & EASEMENT

SKETCH B.



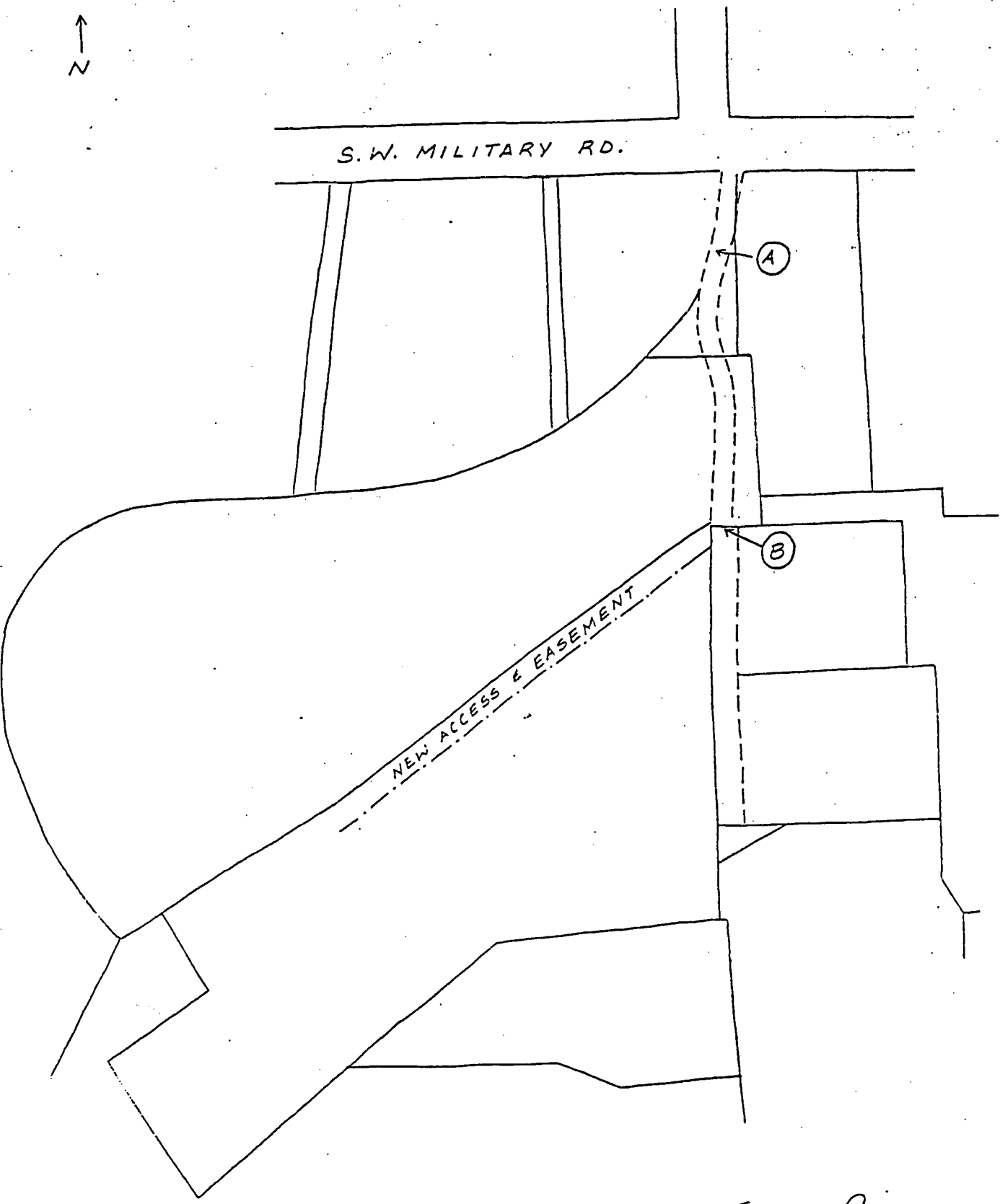
S.W. MILITARY RD.

(A)

(B)

NEW ACCESS & EASEMENT

SKETCH C



August 3, 1994

30,146.011—Final

Mr. Bob Price
MNWR Inc.
233 SW Front
Portland, Oregon 97204

SUPPLEMENT TO AGI MARCH 25, 1994 REPORT

RESPONSE TO:

JULY 20, 1994 LETTER REPORT FROM ROGER REDFERN CONSULTING GEOLOGIST
GEOTECHNICAL REVIEW: SITE SUITABILITY FOR RESIDENTIAL CONSTRUCTION
TAX LOT 14; 01400 SW MILITARY ROAD
PORTLAND, OREGON

Dear Bob:

AGI Technologies (formerly Applied Geotechnology Inc.) is pleased to supplement our March 25 report by presenting this formal response to the issues presented in Roger Redfern's report (dated July 20, 1994) titled:

"Multnomah County MC 1-94 #193 and LD 13-94 #193 - Access by Easement and 3-Parcel Land Division - 01400 SW Military Road - TL 14, Sec. 34, T1S, R1E"

Additional work required to prepare this response letter was verbally authorized by you July 28. All work related to this project was conducted in accordance with general conditions presented in our March 23, 1994 confirming letter to David Evans & Associates Inc.

RESPONSE

AGI has developed specific responses to the sections (noted in *italics below*) of Mr. Redfern's report.

Thickness and Characteristics of Surficial Silt and Weathered Basalt

pg 1, para 4: The estimated thickness of both subsurface units was based on available geologic/soils mapping, site features, and experience and professional judgment. It is implicit in our report that actual thicknesses can be extremely variable. Other descriptions of the subsurface units by Mr. Redfern are an elaboration of and in agreement with information/interpretations presented in our March 25 report.

Mapped Landslides in Area

pg 2, para 3, sentence 2: AGI was not aware of the mapped landslides "on or very near the western portion of Parcel 3". Although AGI has not seen the Shannon & Wilson publication, this information does not change the content or intent of our March 25 report partly because we do not recommend development on the west side of Parcel 3 and implementation of our March 25 report recommendations will minimize the risk that site development will destabilize these mapped areas of potential instability.

Vegetation Removal

pg 2, para 5: A potentially costly site-specific vegetation management plan is not needed because we understand that there are no plans to remove the "trees and large shrubs adjacent to the cut and fill of the skid/haul road on Parcel 3" referenced in Mr. Redfern's letter.

Control of Surface and Groundwater

pg 2, para 7, sentence 1: Comments on runoff and subsurface drainage control in our March 25 report include water that enters the property from upslope locations.

pg 2, para 7, sentence 2: AGI does not propose to dispose of water through surface percolation or dry wells. AGI recommended, in our March 25 report, connecting "all storm and foundation drains to a tightline system connected to nearest storm system or approved drainage swale.... do not discharge onto existing slopes". For the property, such a system will adequately remove collected water.

AGI agrees with Mr. Redfern that a deeper dry well appears to be of questionable feasibility because of the relatively high cost of a site-specific study.

AGI also recommended our "review [of] any proposed discharge points other than to a storm system". Off-site discharge points include the storm sewer east of the Tumpane House (up-slope of the property), drainage swale down-slope of the property, and, if it exists, storm sewer downslope of the property. Although all discharge options are technically feasible, one or more may not be cost effective. Based on information you have obtained, one or more of these discharge options may also require approval by the County and/or local drainage/sewer district.

Further Study: Collected Surface and Groundwater Disposal

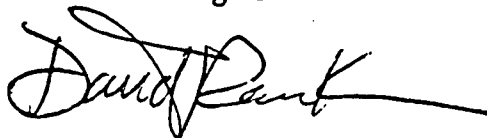
pg 3, para 2: Given that AGI never considered on-site disposal of collected water to be an option, AGI questions the need for "further investigation", as recommended by Mr. Redfern. AGI proposes a system that collects and removes drainage from the property.

CLOSING

We appreciate the opportunity to assist you with this phase of the project and to continue to work with you. If there are any questions, please call either of us at 232-1800.

Sincerely,

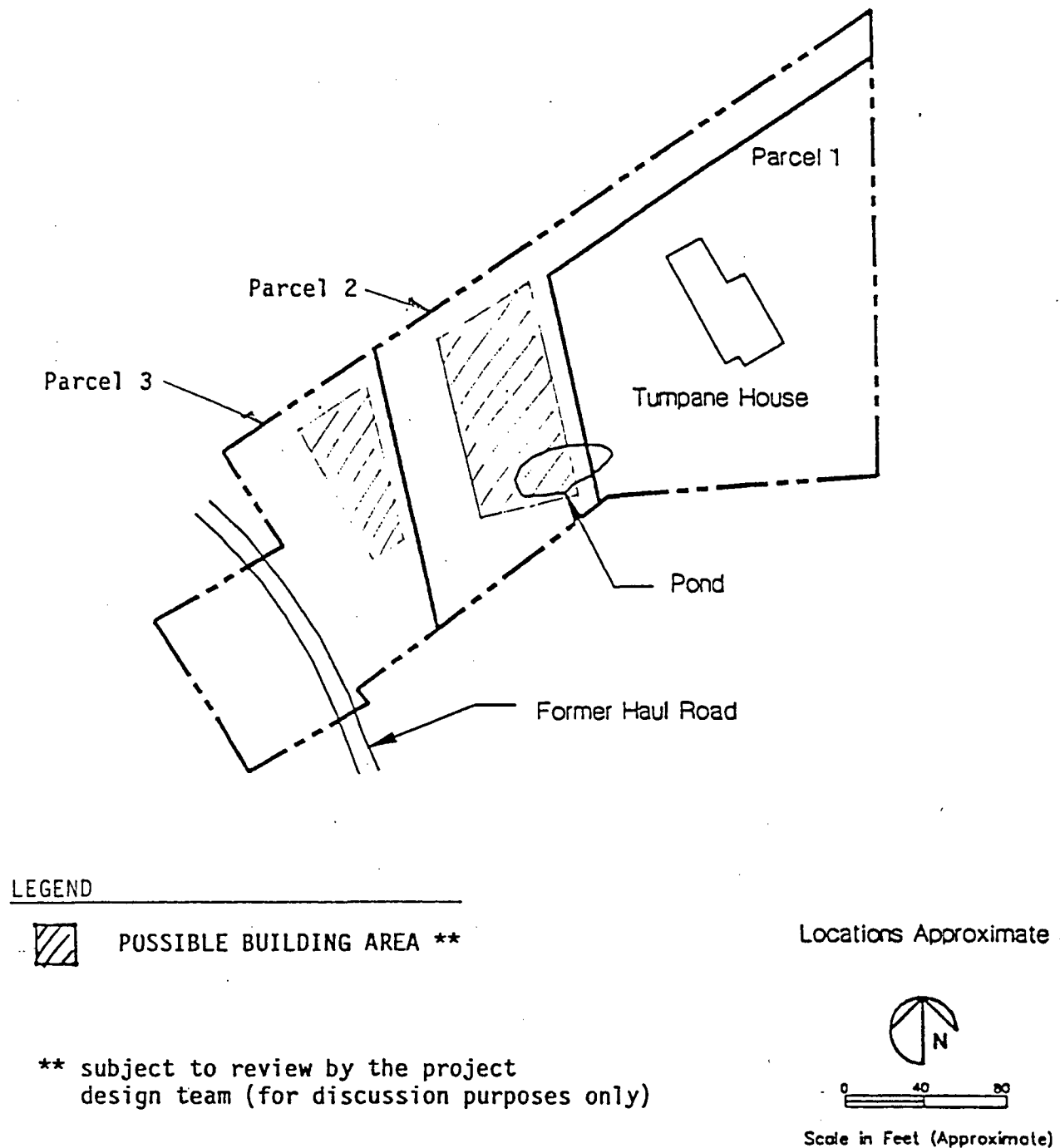
AGI Technologies

A handwritten signature in black ink, appearing to read "David Rankin", with a long horizontal flourish extending to the right.

David K. Rankin, P.G.
Associate Geologist

DKR/mal

FILE



Applied Geotechnology Inc.
Geotechnical Engineering
Geology & Hydrogeology

POTENTIAL BUILDING LOCATIONS
Geotechnical Review
Tax Lot 14, 01400 S.W. Military Road
Portland, Oregon

FIGURE

1

JOB NUMBER
30,146.011

DRAWN
BBP

APPROVED

DATE
03/25/94

REVISED

DATE



March 25, 1994

30,146.011
revised

Mr. Ron Cook
David Evans and Associates Inc.
2828 SW Corbett Ave.
Portland, Oregon 97201

SUMMARY REPORT
GEOTECHNICAL REVIEW: SITE SUITABILITY FOR RESIDENTIAL CONSTRUCTION
TAX LOT 14; 01400 SW MILITARY ROAD
PORTLAND, OREGON

Dear Ron:

Applied Geotechnology Inc (AGI) is pleased to present this report of our a geotechnical review and assessment of the site's suitability for residential construction. All work was conducted in accordance with the scope of services outlined in our March 23, 1994 confirming letter to you.

BACKGROUND INFORMATION

Site Description. Tax Lot 14 is rectangular in shape and 3.60 acres in size. Overall plan dimensions are about 750 feet (north-south dimension) by 200 to 300 feet. The lot is bounded on all sides by residential property. Surface elevations range from about +470 feet in the east, dropping to about +370 feet in the west. For discussion purposes, the lot can be divided into two distinct areas, the developed eastern two-thirds and the undeveloped western third.

The eastern two-thirds of Tax Lot 14 contains the Tumpane house, smaller detached structures, and landscaping, principally manicured grass surrounding small planting beds and mature trees. A shallow pond (approximately located on Figure 1), apparently lined with asphalt, exists about 150 feet west of the house. The majority of the eastern half of the lot is relatively flat with a slight slope down to the west. Slope gradients increase from east to west, ranging between about 1 to 5% in the east to about 20 % in the west.

The western third of Tax Lot 14 is principally covered with brush and mature deciduous trees. A remnant of what appears to be a former logging skid/haul road cuts the western third of the lot, as approximately located on Figure 1. With the exception of the cut/fill created by the logging skid/haul road, surface topography is relatively smooth and steep (slope gradients generally range from about 30 to 75%).

David Evans and Associates Inc.
March 25, 1994
Page 2

Steeper gradients (i.e., approaching 100% and steeper) exist in the skid/haul road cuts which range from 15 to 20 feet high.

Proposed Lot Subdivision. We understand that conceptual plans include dividing Tax Lot 14 into nearly equal thirds, as approximately shown on Figure 1, and constructing single-family dwellings on Parcels 2 and 3. Details on location of the residences, cuts, fills, driveways, and other lot improvements have not been developed.

Scope of Work. Our geotechnical review included a review of published geologic/soils maps and topographic maps of the site. A review of historic aerial photos, a scope item presented in our confirming letter, was not considered necessary given our observations during the site reconnaissance.

David Rankin, P.G. (State-registered geologist) from our office conducted a site reconnaissance on March 23 to check the lot for gross surface indicators of slope instability, springs, erodible or soft soil horizons, and other potential geotechnical concerns, especially in the vicinity of the steeper western third of Lot 14. Several shallow hand auger probes were also drilled; no representative samples were retained.

RESULTS OF SITE RECONNAISSANCE

Our experience in the vicinity, examination of available geologic maps and our recent site reconnaissance indicate that soil and geologic conditions consist of surficial silt deposits overlying basalt bedrock.

- o Silt deposits on the site generally consist of fine sand to fine sandy silt with some clay. Surface topography, hand auger probe results, and exposures in the former skid/haul road cut on the site suggest that the silt on the site may range from 20 to 30 feet thick, thinning to the west and likely less than 15 feet thick within 50 to 100 feet of the western property line. Probing suggests that the silt deposits are medium stiff to stiff in consistency. Our probing and review of exposures also indicate that the surface topsoil ranges from 1.0 to 1.5 feet thick.
- o Basalt bedrock, in a fresh state, consists of dark gray, fine-grained volcanic rock. Weathered bedrock fragments observed downslope of the lot suggest that the bedrock is heavily fractured and likely is moderately to extremely weathered in the upper 5 to 15 feet.

No gross indicators of springs or seeps (e.g., persistent wet ground, typical water-loving plants, etc.) were observed on the property. However, we anticipate that wet zones may exist within 5 feet of the ground surface during wet winter months.

David Evans and Associates Inc.
March 25, 1994
Page 3

Spring activity was observed 10 to 20 feet downslope of the western property line. An adjacent property owner has developed the spring as a water source; during the site reconnaissance, flow was estimated at 10 to 20 gallons per minute.

No gross surface indicators of large-scale slope movement were observed. In addition, the former skid/haul road cut and fill slopes apparently have performed well over the years with only minor sloughing in isolated areas.

COMMENTS AND RECOMMENDATIONS

The existing silt soil and underlying weathered bedrock layer that blankets the lot is relatively weak. Situated on steep topography, these soils are considered marginally stable on the steep slopes, even though gross indicators of instability are absent. The surficial silts are also considered erodible if exposed to the weather on steep slopes.

The proposed Parcels 2 and 3 are considered suitable for residential structures, however, development in the steeper areas of Parcels 2 and 3 must be sensitive to the delicate state of the slope equilibrium that apparently exists. Increased runoff, loss of stabilizing vegetation and topographic revisions are the principal negative factors to stability which development necessarily introduces. These factors should be minimized or mitigated in the final design and construction.

We recommend that you incorporate the following criteria into your design and construction.

- 1) To avoid potentially unstable conditions, the footprint of the structures on Parcels 2 and 3 should be located as close to the east line as possible, avoiding steeper slopes to the west.
- 2) Some mature vegetation will be removed to provide a better view. Minimized removal of trees and removal of root systems and immediately revegetate disturbed slopes.
- 3) Remove all excavated material and dispose of off-site. Sidecasting excess soil in areas around the proposed structures is not recommended and could destabilize the existing native soils.
- 4) Limit site grading to minimize cuts and fills. Avoid fills greater than about 2 feet deep. Compact all fills. Maintain cut slopes at 2.5:1 or flatter. Retain cut or fill slopes which exceed 5 feet in height. Consider Keystone/Tensar wall systems. This wall type can be installed without heavy machinery. Your materials supplier can provide installation instructions. The base of the wall and backfill must be founded on firm, undisturbed native soils.
- 5) Hydroseed all newly graded areas as soon as possible after grading. Establish vegetative growth before wet season.

David Evans and Associates Inc.
March 25, 1994
Page 4

- 6) Conventional spread footings are considered suitable. Footings must be placed on undisturbed native soil below any existing fill, buried topsoil, or vegetative layer that may underlie the fill. Allowable foundation bearing pressures on the order of 1,500 psf are recommended.
- 7) Design all foundation systems which require excavation to replace the lateral support lost by excavation. Assume a lateral equivalent fluid pressure of 45 psf and a sliding coefficient of 0.3.
- 8) If foundation piles or piers are required by steep topography, additional site-specific exploratory borings should be made and the individual foundation requirements reviewed.
- 9) Driveway and parking areas should be paved and provided with curbs, gutters and storm drainage. Slope all driveway and other paved surfaces to drain away from natural slopes to the uphill ditch or collect runoff via catch basins. Discharge storm drainage to a suitable discharge point.
- 10) Collect all roof drainage via gutters and downspouts and provide tight line discharge conduits.
- 11) Provide well-constructed foundation drainage systems behind all basement walls and perimeter stem walls per sketch on Figure 2. Connect to tightline conduits at a sufficiently low grade to avoid water backup to drain system.
- 12) Connect all storm and foundation drains to a tightline system connected to nearest storm system or approved drainage swale. Do not discharge onto existing slopes. We suggest that we review any proposed discharge points other than to a storm system.

These preliminary, reconnaissance-level geotechnical comments have been prepared for the exclusive use of David Evans & Associates Inc. and others directly involved in the project. Permission for others to use this report must be obtained in writing from AGI.

The opinions and recommendations in this report were developed through a limited review of available geologic/soils publications, a brief walking site reconnaissance, experience with similar geologic conditions and our professional judgement. Our work is intended to be used for planning purposes only. Applied Geotechnology Inc. is not responsible for the interpretations by others of the data contained in this report.

Our work has been performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the area. No other warranty, expressed or implied, is made.

David Evans and Associates Inc.
March 25, 1994
Page 5

CLOSING

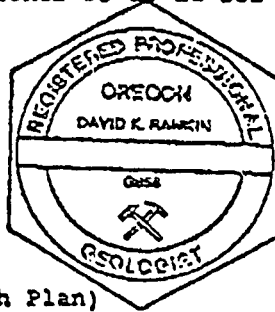
We appreciate the opportunity to assist you with this phase of the project and to continue to work with David Evans & Associates. If there are any questions, please do not hesitate to call either of us at 232-1800.

Very truly yours,

APPLIED GEOTECHNOLOGY INC.

David K. Rankin RJS

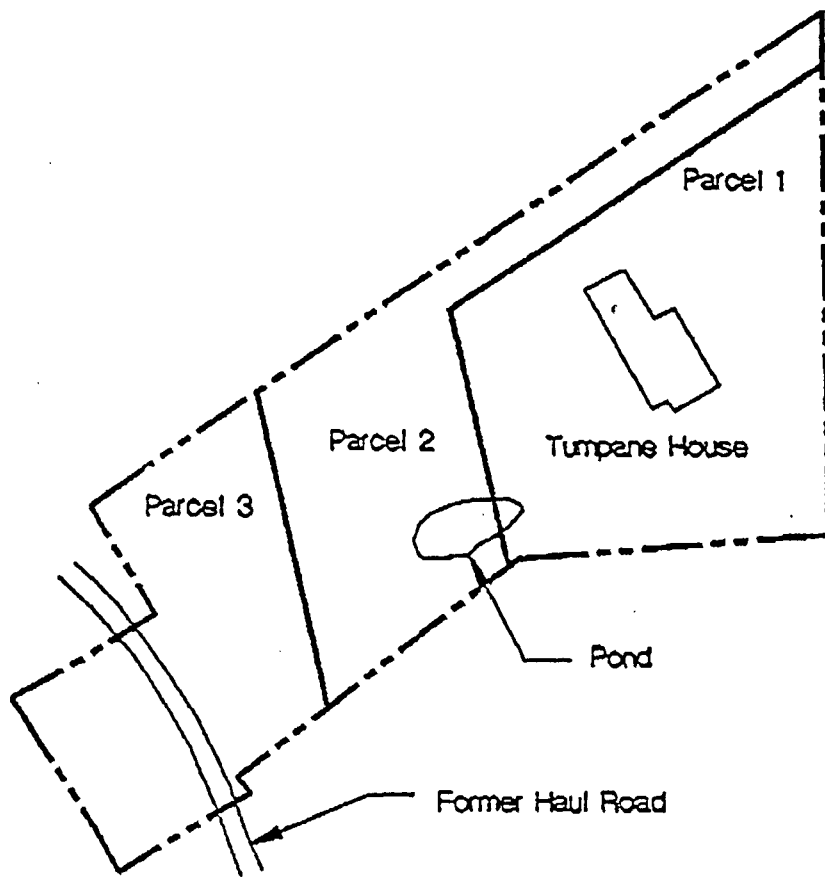
David K. Rankin, P.G.
Associate Geologist



Robert J. Strazer
Robert J. Strazer, P.E.
Vice President

Attachment: Figure 1 (Site Sketch Plan)
Figure 2 Drain Detail





Locations Approximate



Scale in Feet (Approximate)



Applied Geotechnology Inc.
Geotechnical Engineering
Geology & Hydrogeology

Site Sketch Plan

Geotechnical Review
Tax Lot 14, 01400 S.W. Military Road
Portland, Oregon

FIGURE

1

JOB NUMBER
30,146.011

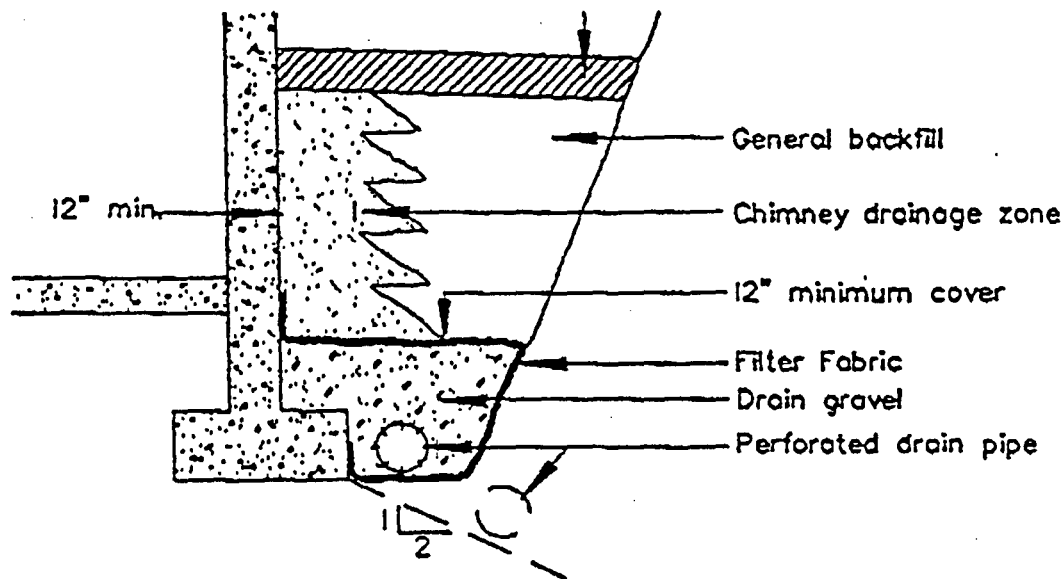
DRAWN
BBP

APPROVED

DATE
03/25/94

REVISED

DATE



SCHEMATIC - NOT TO SCALE

NOTES:

1. Filter Fabric is non-woven geotextile (AMOCO 4545, Mirafi 140N, or equivalent).
2. Lay perforated drain pipe on minimum 0.5% gradient, widening excavation as required. Maintain pipe above 2:1 slope, as shown.
3. All granular backfill is recommended for support of slabs, pavements, etc. (See text for structural fill).
4. Drain Gravel to be clean washed gravel, 3/4" to 1-1/2".
5. General backfill to be compacted on-site soil or free-draining sands.
6. Chimney drainage zone to be 12" minimum of clean, washed medium to coarse sand or drain gravel if protected with filter fabric.



Applied Geotechnology Inc.
Geotechnical Engineering
Geology & Hydrogeology

Retaining Wall Detail

Geotechnical Review

Tax Lot 14, 01400 S.W. Military Road
Portland, Oregon

FIGURE

2

JOB NUMBER
30.46.01

DRAWN
BBP

APPROVED

DATE
3/25/94

REVISED

DATE

TREES



RECEIVED

MAY 25 1994

O'DONNELL, RAMIS,
A. C. N

May 17, 1994

FILE

Mr. William A. Monahan
O'Donnell, Ramis, Crew & Corrigan
Attorneys at Law
1727 NW Hoyt Street
Portland, OR 97209

Re: Gran Marque Multnomah County Application

Dear Mr. Monahan:

At the request of Bob Price of David Evans and Associates, on May 17, 1994, I conducted a reconnaissance of the Gran Marque property for the purpose of addressing concerns related to trees. The areas inspected included the northwestern property boundary and the access drive leading from SW Military Road.

My background in arboriculture spans over 17 years. I have a Masters of Science in Forestry and experience in preserving trees on developing sites. A detailed qualifications statement is attached.

The property's landscape is mature and well kept. Most of the plantings were purposely planted. Exceptions to this include several large Douglas-fir, an Oregon white oak, a 5 to 15 foot strip of naturalized vegetation along the Northern property boundary and naturalized vegetation in the southwestern portion of the property. The woody naturalized vegetation includes: bigleaf maple, Douglas-fir, cherry, Oregon white ash, Washington hawthorn, western red cedar, and willow. Few of these trees are larger than 12" in diameter at 4.5 feet from the ground. See Attachment A.

Mr. Feldman and Mr. Buell raised concerns over cutting trees, particularly "ancient firs" and a row of poplars.¹ I specifically looked at the area surrounding these trees, the existing easements leading to the property and the proposed access road for parcels 2 and 3.

¹ From page 3. Gran Marque/Multnomah County Pre-application conference notes



If the easement is widened, several trees on both sides of the road may be affected. However, such widening is not likely to require the removal of the older and most valuable trees or to cause the death of any trees. To minimize the effect of road widening on the adjacent trees several actions should be considered:

- Minimize the width of the access road, under ideal circumstances the construction area should be kept at least 6 feet from the trunk of the tree;
- If passing space is needed consider the use of turnouts rather than widening the entire road;
- Maintain the existing grade; and
- Use construction methods and materials that allow water and air movement into the rooting zone of the trees, for example interlocking paving blocks on an uncompacted sand base.

In addition to the above, to minimize damage to the existing trees along the northwestern boundary of the property the following actions should be considered:

- Move small landscape plants and trees under 8" caliper; and
- Meander the access driveway to maintain a six foot distance from the trunks of existing trees.

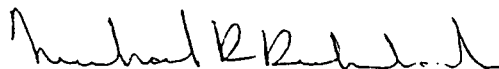
When entering the property the driveway should be constructed to avoid damage to the 28" Douglas-fir tree in the northern corner of parcel one. In the area of the poplars the access driveway should be located to the Southeast of the line of trees. Attachment A shows tree locations and a possible road alignment that will minimize damage to the trees. Attachment B, page 1 and 2 show photographs of the "ancient" Douglas-fir and poplar.

With careful planning and construction, damage to the existing trees should be minimal and the removal of the older Douglas-fir and poplars avoided. I recommend that all construction plans be reviewed by a Certified Arborist and that on site inspections be made during construction.

The trees on this site were not assessed for their hazard potential, however one poplar is declining and most of its major limbs are dead. This tree should be removed.

If you have questions, please call me at 503/656-7835.

Sincerely,



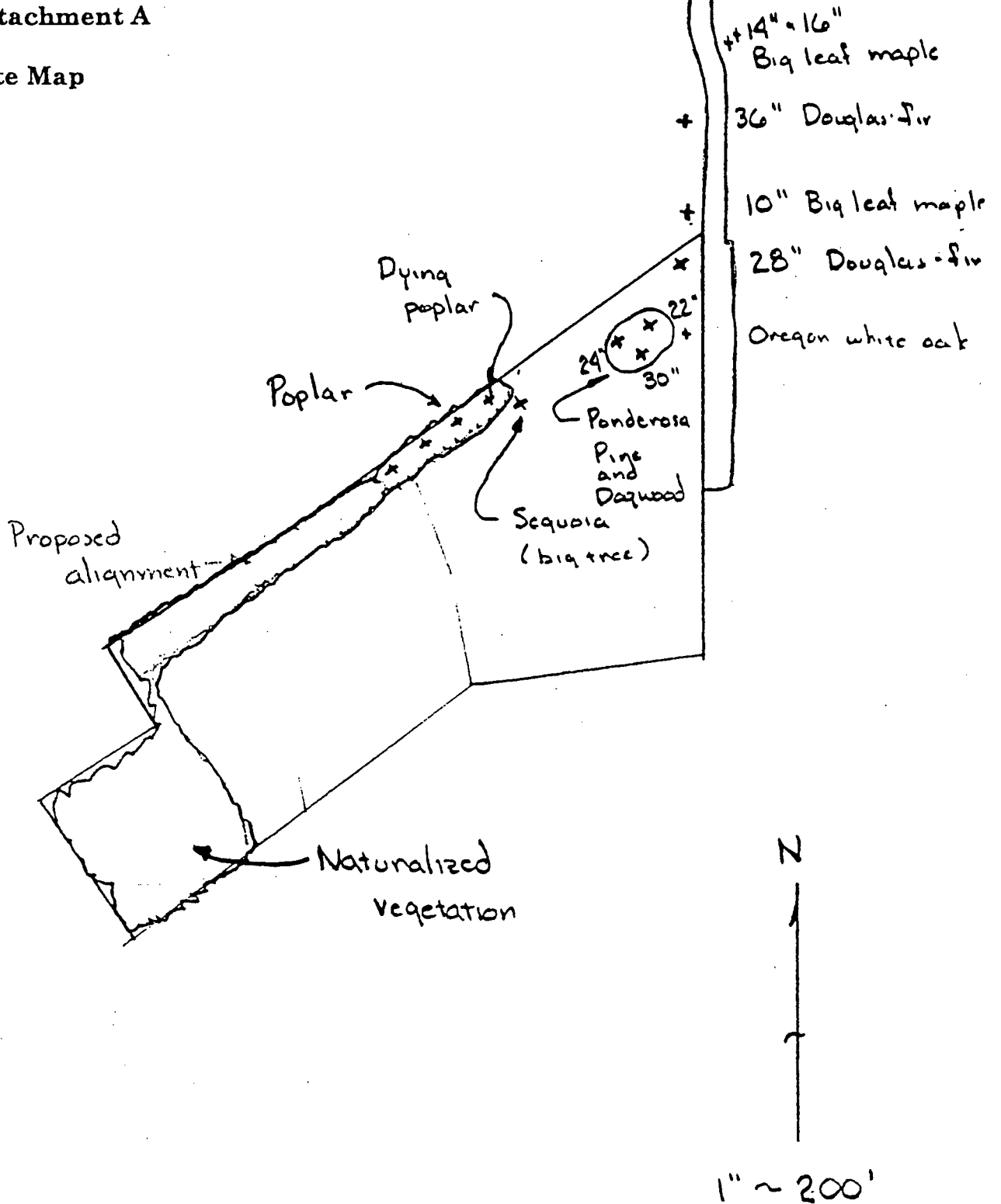
Michael R. Reichenbach
Certified Arborist #IL0117

c Bob Price

SW Military Rd

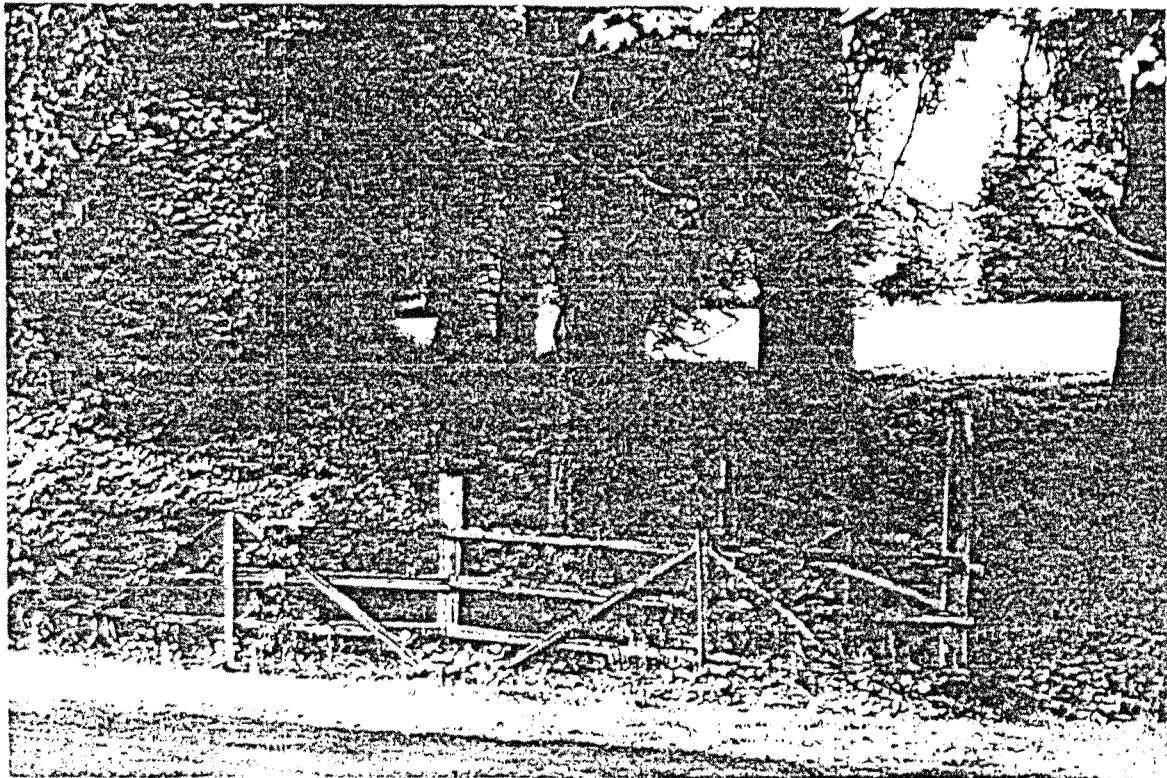
Attachment A

Site Map

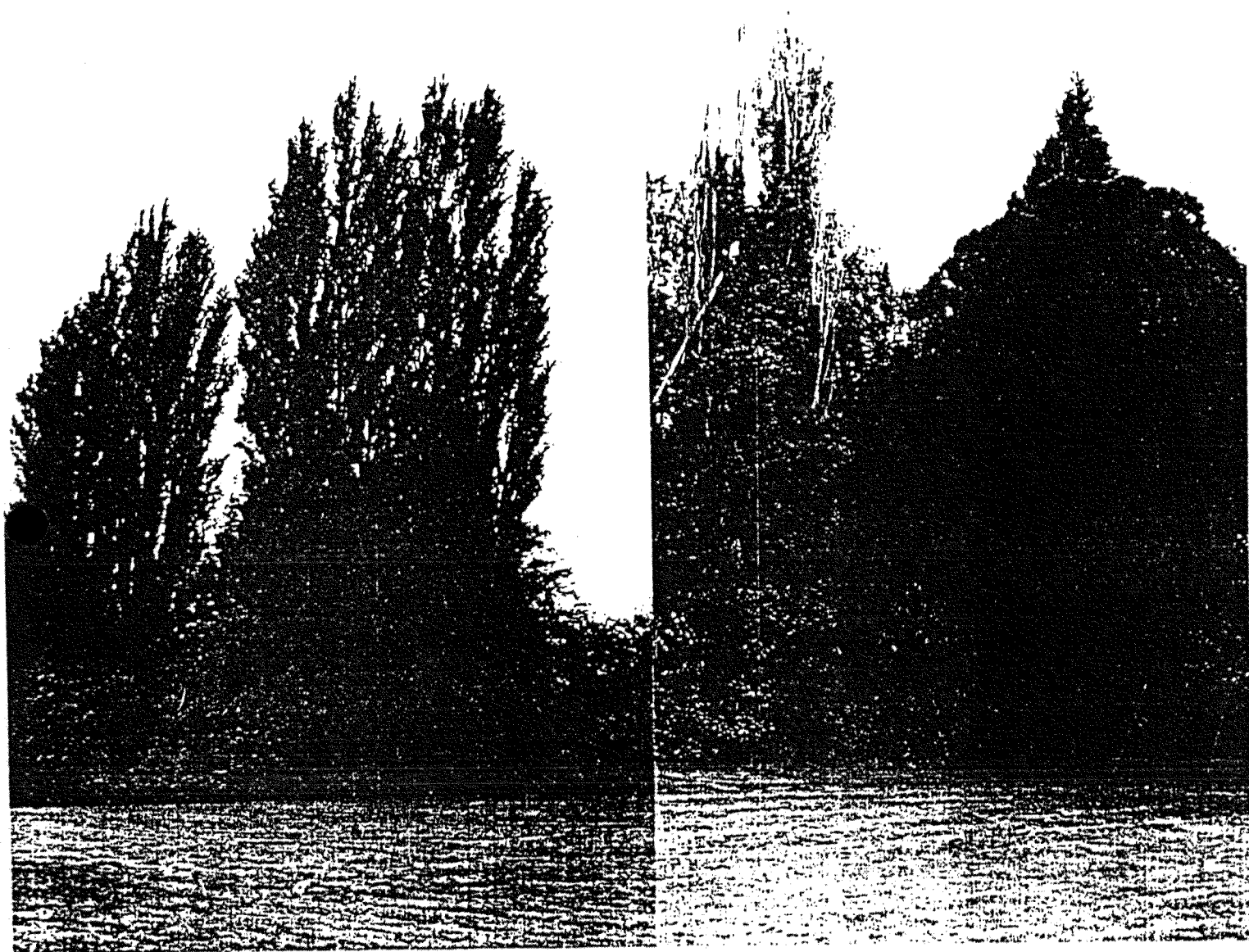


Attachment B, Page 1

Northern corner of property and adjacent property
showing "ancient" Douglas-fir trees.



Poplar trees and *Sequoia giganteum* (big tree)



DRAINAGE

0

1

0

August 23, 1994

GMBD0001

Mr. Tim Ramis
O'Donnell, Ramis, Crew and Corrigan
1727 N.W. Hoyt Street
Portland, Oregon 97209

**SUBJECT: GRAN MARQUE, INC. DEVELOPMENT AT 1400 S.W. MILITARY
ROAD - FEASIBILITY OF CONSTRUCTING STORM DRAINAGE**

Dear Mr. Ramis:



David Evans and Associates, Inc. (DEA) has, at your request, examined the technical feasibility of providing storm drainage from the westerly portion of Tax Lot 14 in the Southeast Quarter of Section 34, Township One South, Range One East of the Willamette Meridian. It is proposed to develop the 3.6 acre site into three residential parcels.

DEA has reviewed a geotechnical report prepared by Applied Geotechnology, Inc. (AGI) dated March 25, 1994, which recommends criteria for the development to prevent possible instability of steep slopes occurring at the westerly side of the site. These criteria include collecting runoff from foundation drains, roof drains, and driveways and discharging it, via a hardline storm sewer system, to suitable areas in established drainages or into existing storm drainage systems. A site visit was conducted on August 19, 1994, to examine field conditions and identify possible drainage discharge points.

Our evaluation indicates that it is technically feasible to provide the recommended hardline drainage called for in the geotechnical report by carrying a storm sewer system from the site across the neighboring property to the southwest and discharging the storm water either into the existing drainage downstream from the spring identified in the AGI report or, farther southwest, into the drain ditch adjacent to S.W. Terwilliger Boulevard. Construction of the storm drain pipeline will have to include provisions to protect the trench from erosion, including care in the selection of backfill material, the construction of concrete cutoff walls in the trench and revegetation of the surface of the trench. Depending on the season, additional temporary erosion protection measures may be required.

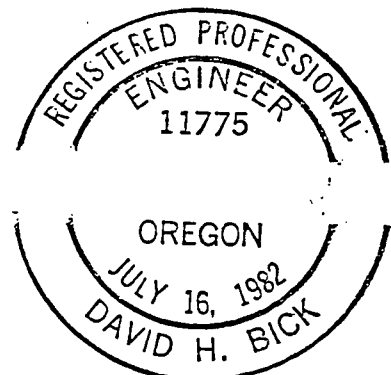
Please call me if you have any questions concerning this report.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.

David H. Bick, P.E.

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4830
(503) 223-6663 FAX (503) 223-2701



EXPIRES: 12/31/95

FIRE MARSHALL

40



DEPARTMENT OF FIRE SERVICES

June 6, 1994

Mr. Will Selzer
O'Donnell, Ramis, Crew & Corrigan
Attorneys at Law
Ballow & Wright Building
1727 N.W. Hoyt Street
Portland, OR 97209

Subject: Proposed development at 01400 S.W. Military Road, Tax Roll Description T1S, R1E, Section 34, Tax Lot 14 (Map 4230).

Dear Mr. Selzer:

Access:

Provide improvement of Aventine Circus south of Military Road to a minimum of 20 foot wide unobstructed all weather surface. Extent of fire lane improvement to include road to where property line of 01400 S.W. Military Road intersects Aventine Circus. Further extension desirable to beginning of driveway turnaround at 01404 S.W. Military Road.

Access Road/Driveway to parcels #2 and #3 shall be 20 foot wide unobstructed all weather surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the access road/driveway. Access road/driveways within 150 feet of the furthest wall of the furthest structure shall be a minimum 12 foot wide all weather surface.

Turnarounds:

A turnaround shall be provided for the access road/driveway to parcels #2 and #3. Turnaround requirements will comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:

Outside front wheel radius of fifty (50) feet; inside rear wheel radius of twenty-five (25) feet.

Grades:

Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.

Curvature:

Approach turns to access road/driveway from Aventine Circus shall be such to accommodate standard fire apparatus.

Parking:

Where parking of vehicles would diminish the minimum 20 foot wide fire lane access, "No Parking Signs" will be required, or additional widening of the road/driveway will be required to accommodate the parking.

Fire Lane Declaration:

The extent of the access road/driveway from Aventine Circus that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents.

Hydrants:

Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000 feet from any of the lots, nor more than 300 feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

Fire Flows:

Shall be completed the week of June 6-10, 1994.

Water Lines:

An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would be approximately 250 feet.

Addressing:

Addressing will comply with the Uniform Building Code.

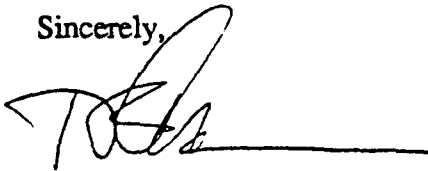
Final Notes:

When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and The Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

If you have any questions or need additional information please contact my office at 697-7404.

Sincerely,

A handwritten signature in black ink, appearing to be 'Tom Carman', followed by a horizontal line.

Tom Carman
Acting Fire Marshal

TC:jm
cc: City Attorney
cc: Portland Fire Bureau - Office of Fire Marshal
cc: File

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

FILE

DATE: August 3, 1994
TO: Phillip E. Grillo
FROM: Timothy V. Ramis
RE: Use of Easement Three (MC 1-94, LD 13-94)

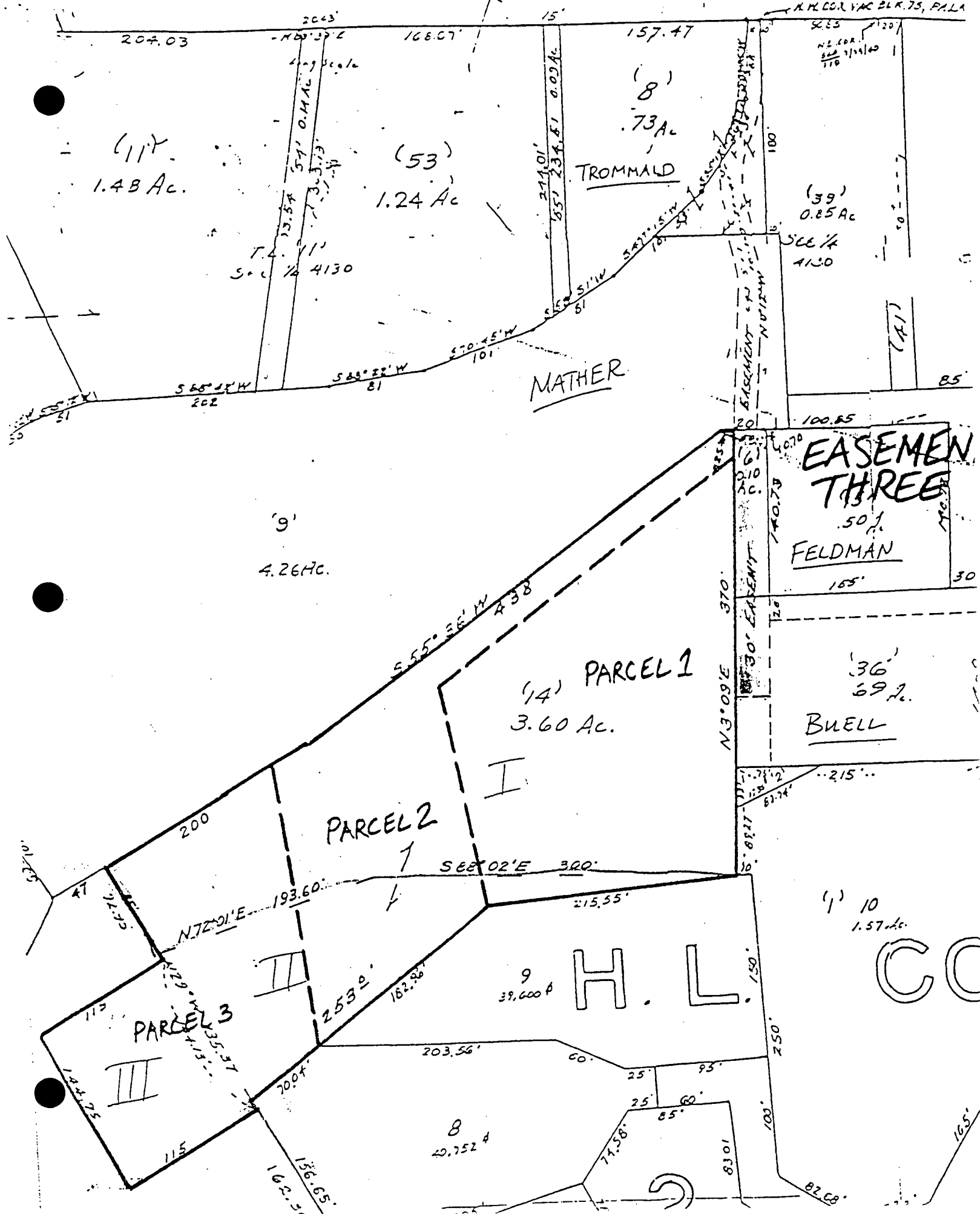
Our opponent stated in his July 20 hearing memorandum that "the record does not contain any evidence demonstrating that the applicant received the right to use the 30-foot easement for all three proposed parcels." Included with this memorandum is the evidence necessary to show that the applicant has the legal right to use the easement (Easement Three).

The enclosures include:

1. A copy of the deed containing the easement and a map highlighting the easement parcel.
2. A copy of the county foreclosure deed and a quit claim deed, establishing county ownership of the northern 140 feet of Easement Three (the portion abutting the Feldman property). The fee ownership underlying the easement is Multnomah County, not Mr. Feldman.
3. A legal memorandum analyzing Gran Marque's right to use the easement.

Please include this evidence in the record as rebuttal to the opponent's hearing memorandum.

ARM COR VAC 26 K.75, FALA



(2)



BOOK 2328 PAGE 605

STATUTORY WARRANTY DEED

GRAN MARQUE, INC., AN OREGON CORPORATION

conveys and warrants to SHAUN M. TUMPAKE AND MICHELE A. TUMPAKE ALSO KNOWN AS MITCHELL M. TUMPAKE, HUSBAND AND WIFE Grantor,
the following described real property free of liens and encumbrances, except as specifically set forth herein: Grantee,
SEE EXHIBIT "A" ATTACHED

This property is free of liens and encumbrances, EXCEPT: COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD, BUT OMITTING RESTRICTIONS, IF ANY, BASED ON RACE, COLOR, RELIGION OR NATIONAL ORIGIN; EASEMENTS OF RECORD.

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.

The true consideration for this conveyance is \$ 500,000.00 (If true comply with the requirements of ORS 91.320)

Dated this 27th day of July, 19 90

GRAN MARQUE, INC.

Paul Mueller
PAUL MUELLER, PRESIDENT

STATE OF OREGON
County of Clatsop) ss.

On this 27th day of July, 19 90, before me appeared PAUL MUELLER
and both to me personally
known, who being duly sworn, did say that he, the said PAUL MUELLER
is the PRESIDENT President, and he, the said PAUL MUELLER
is the Secretary Secretary of GRAN MARQUE, INC.
the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and
that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and
PAUL MUELLER and PAUL MUELLER acknowledge
said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Thomas E. Smith
My Commission expires 8/3/91 Notary Public for Oregon.

Title Order No. 555332
Escrow No. 92000000

After recording return to:
SHAUN M. AND MICHELE A. TUMPAKE
01400 SW MILITARY ROAD
PORTLAND OR 97219
Name, Address, Zip

Until a change is requested all tax statements shall be sent
to the following address:
SHAUN M. AND MICHELE A. TUMPAKE
01400 SW MILITARY ROAD
PORTLAND OR 97219
Name, Address, Zip

THIS SPACE RESERVED FOR RECORDER'S USE

2328
605

Order No. 596332

EXHIBIT "A"

PARCEL 1:

All the following described real property situated in Section 34, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, to-wit:

Beginning at an iron pipe set at the Northeast corner of Lot 17, Block 70, of PALATINE HILL NO. 3, (now vacated); running thence South 55°36' West 438.00 feet to an iron pipe set at the most Northerly corner of Lot 12, Block 81 of PALATINE HILL NO. 3 (now vacated); thence South 60°54'30" West 200 feet to an iron pipe set at the most Westerly corner of Lot 5, Block 81 of PALATINE HILL NO. 3 (now vacated); thence South 29°00' East along the Westerly line of said Block 81 of PALATINE HILL NO. 3 (now vacated) 85.00 feet to an iron pipe; thence North 72°01' East 193.60 feet to an iron pipe; thence South 88°02' East 360 feet to an iron pipe; thence North 3°09' East 370 feet to an iron pipe; thence South 82°41-1/2' West 9.25 feet, more or less, to the point of beginning.

TOGETHER WITH a right of way and easement for road purposes and the placing of public utility services and water mains thereover and thereunder across the following described tract of land:

Beginning at an iron pipe which is North 89°41-1/2' East 9.25 feet from an iron pipe set at the Northeast corner of Lot 17, Block 78 of PALATINE HILL NO. 3 (now vacated); thence North 89°41-1/2' East 30 feet; thence South 3°09' West 225 feet; thence South 89°41-1/2' West 30 feet; thence North 3°09' East 225 feet, more or less, to the place of beginning, which last described tract of land consists of a 30 foot strip lying adjacent to and immediately Easterly of the tract of land herein above described and conveyed.

ALSO the following described right of way 20 feet wide for road purposes, public utilities and water mains being 10 feet on each side of the following described center line:

Beginning at an iron bolt set for the Northwest corner of Block 75, PALATINE HILL NO. 3, in Section 34, Township 1 South, Range 1 East of the Willamette Meridian, as said Block existed before the vacation thereof; running thence South 9°52' West 70.72 feet; thence South 27°33' East on a curve to the right having a radius of 100.00 feet and being tangent to last described course; thence South 10°93' East on a curve to the left, having a radius of 90.00 feet; thence South 13°09' East 47.22 feet; thence South 33.16 feet on a curve to the right having a radius of 100.00 feet and being tangent to last described course; thence South 5°51' West 116.43 feet, more or less, to a point in a Westerly extension of the North line of vacated Lot 1, Block 75, PALATINE HILL NO. 3, 25.75 feet West of the Northwest corner of said vacated Lot 1.

EASEMENT
THREE

PARCEL II:

A tract of land in Section 34, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at an iron pipe located in the Westerly line of Block 81 of PALATINE HILL NO. 3 (now vacated), South 29°00' East 85 feet from the most Westerly corner of Lot 5, said Block 81, thence North 72°01' East 193.60 feet to an iron pipe; thence South 88°02' East 300 feet to an iron pipe; thence South 85°19' West 215.55 feet to an iron pipe; thence South 53°35' West 253.00 feet to an iron pipe in the Westerly line of said Block 81 of PALATINE HILL NO. 3 (now vacated); thence along the Westerly line of said Block 81, North 29°00' West 135.37 feet, more or less, to the place of beginning.

PARCEL III:

A tract of land situated in the Southeast quarter of Section 34, Township 1 South, Range 1 East of the Willamette Meridian, in vacated plat of PALATINE HILL NO. 3, in the City of Portland, County of Multnomah and State of Oregon, being described as follows:

Beginning at a 5/8" iron rod in the Southwesterly line of Block 81, PALATINE HILL NO. 3 (vacated), which iron rod bears South 29°00' East along said Southwesterly block line, 92.85 feet from the most Westerly corner of Lot 5, said Block 81, from said place of beginning; thence continuing South 29°00' East along said Southwesterly block line, 144.75 feet to a 5/8" iron rod; thence leaving said Southwesterly block line, 144.75 feet to a 5/8" iron rod; thence leaving said Southwesterly block line, South 61°00' West 115.00 feet to a 5/8" iron rod; thence North 29°00' West 144.75 feet to a 5/8" iron rod; thence North 61°00' East 115.00 feet to the place of beginning.

TOGETHER WITH an easement over the hereafter described private road being 20 feet in width and the center line thereof being described as follows:

Beginning at an iron pipe at the Northwest corner of Block 75 (now vacated) in PALATINE HILL NO. 3 at the intersection of the East line of SW Aventine Circus with the South line of SW Military Road (formerly Esquiline Circus); thence South 89°39' West 10 feet to the center line of said 20 foot road and the true point of beginning of said center line; thence along said center line as follows: South 3°45' West 68 feet; South 15°06' West, 36 feet; South 35°12' West, 51 feet; South 47°15' West, 101 feet; South 58°31' West, 81 feet; South 70°45' West, 101 feet; South 82°22' West, 81 feet; South 83°42' West, 202 feet; South 75°12' West, 51 feet; South 50°02' West, 50 feet; South 34°46' West, 80 feet; South 11°03'35" West, 44.9 feet to an iron pipe at an

Page 3
 Order No. 596332
 Exhibit "A" continued

intersection with the West line of Block 85 in PALATINE HILL NO. 3 extending Southerly; thence continuing South $1^{\circ}56'27''$ East 82.4 feet; South $20^{\circ}21'$ East, 100 feet; South $31^{\circ}18'$ East, 107 feet to an iron pipe.

ALSO TOGETHER WITH the following described easement:

A 20 foot easement being 10 feet on each side of a center line described as follows:

Beginning at a point which bears South $61^{\circ}00'$ West 47 feet from an iron pipe located in the most Westerly corner of Lot 5, Block 81, PALATINE HILL NO. 3 (vacated); and running thence South $42^{\circ}19'$ East 95.52 feet to a point in the Northeasterly line of said tract herein described.

068618

STATE OF OREGON
 Multnomah County

I, a Clerk for the Recorder of Clatsop County, do hereby certify that the within instrument of conveyance was duly recorded in the office of the Recorder of Clatsop County on the 31st day of July, 1990.

90 JUL 31 AM 11:23

RECORDING SECTION
 MULTNOMAH CO. OREGON

In Book

BOOK 2328 PAGE 605

On Page

between my hand and seal of office is attested.

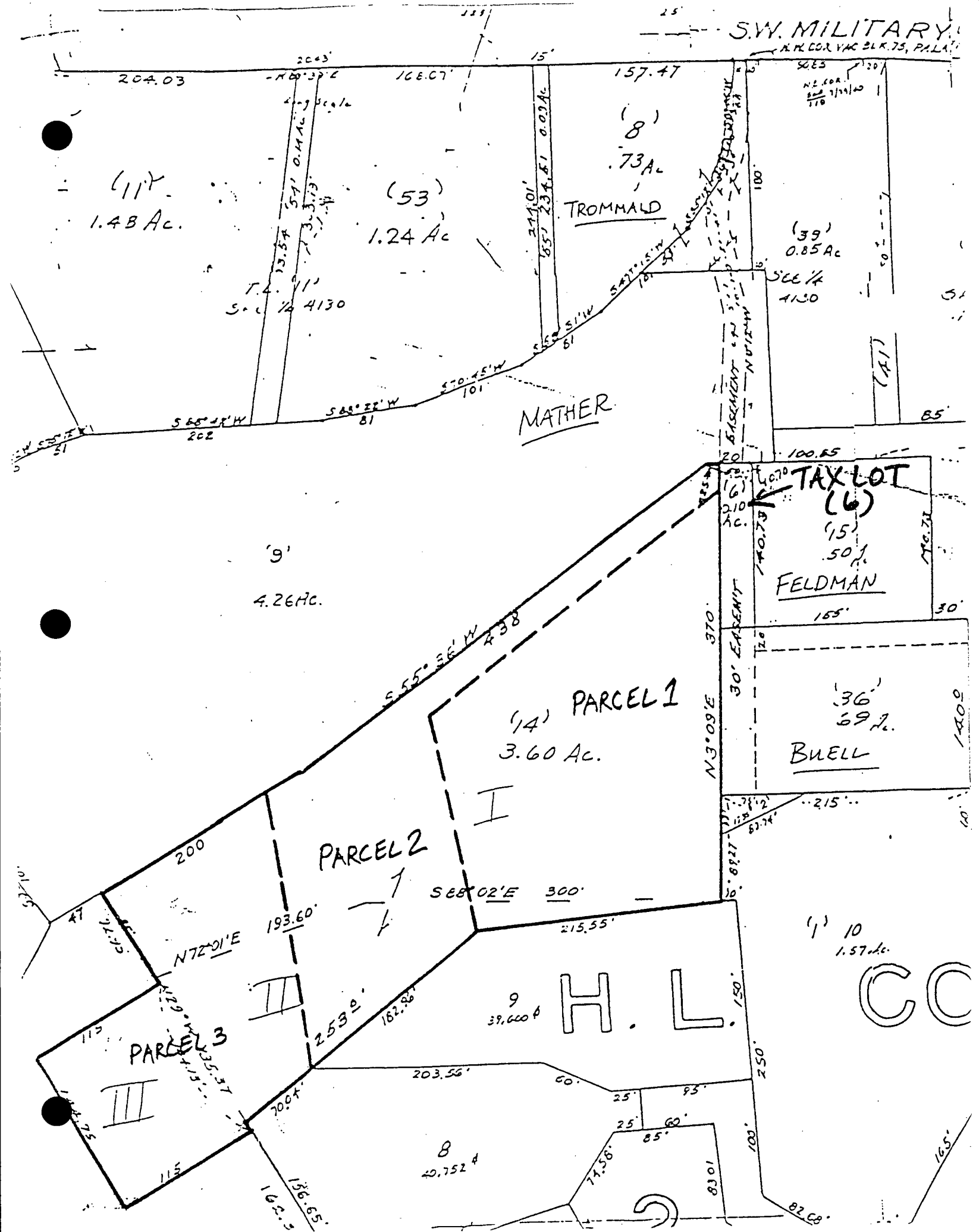
At the time of Recording

m. Budna

Clerk

2-6
 3
 2-0

AMCOR VAC BLK. 75, PALA.



BOOK 1793 PAGE 1486

STATE OF OREGON)
) ss.
County of Multnomah)

November 9, 1984

Personally appeared the above named George F. Patten and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Donna R. Bowman
DONNA R. BOWMAN
NOTARY PUBLIC OREGON
My Commission Expires 11/20/87

Notary Public for Oregon
My Commission Expires _____

86973

STATE OF OREGON }
Multnomah County

I, a Deputy for the Secretary of the County of Multnomah, do hereby certify that the foregoing instrument is a true and correct copy of the original as the same is on file in the office of the Secretary of the County of Multnomah.

1984 DEC 14 AM 10:17

RECORDING SECTION
MULTNOMAH CO. OREGON

In Book 1793 On Page 1485
I have examined the foregoing instrument and find it to be a true and correct copy of the original as the same is on file in the office of the Secretary of the County of Multnomah.

P. J. Jannett
Deputy

DEED

THIS INDENTURE, made this 3rd day of November, 1986, between C. R. SHEFFIELD, as Assessor & Tax Collector of the Division of Assessment & Taxation, Department of General Services, for Multnomah County, State of Oregon, Party of the First Part, and MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Party of the Second Part,

WITNESSETH:

That by virtue of a Judgment and Decree duly and regularly made and entered by the Circuit Court of the State of Oregon, for the County of Multnomah, on the 23rd day of October, 1985, in a suit wherein the party of the second part was plaintiff, and which suit was for the foreclosure of liens for delinquent taxes as shown by the 1984 Multnomah County Foreclosure list, it was ORDERED, ADJUDGED AND DECREED that the real property described in said Decree, certified by the Clerk, should be delivered to said County as a Certificate of Sale of said properties, which copy of said decree, duly certified, was delivered to the Assessor & Tax Collector of the Division of Assessment and Taxation of said County; and

WHEREAS, pursuant to the provisions of the statute in such cases made and provided, the Assessor & Tax Collector of the Division of Assessment & Taxation for Multnomah County, not more than thirty (30) days nor less than ten (10) days prior to the expiration of the period of redemption of such properties ordered sold to the County under such Judgment and Decree, which said notice contained the date of the said Judgment and Decree, the date of the expiration of such period of Redemption, and a warning to the effect that all properties ordered sold under said Judgment and Decree, unless redeemed, would be deeded to the County on the expiration of the period of redemption allowed by law, and that the right or interest of any person in such properties would be forever forfeited to the County, which notice was published in two weekly issues of the Daily Journal of Commerce, a newspaper of general circulation in the County, the date of the first publication thereof being the 25th day of September, 1986, proof of which is annexed hereto; and

WHEREAS, the real properties hereinafter described have not been redeemed or otherwise removed from such Decree of Foreclosure and from the sale to the County thereunder; and the period of redemption allowed by law has expired;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that I, C. R. SHEFFIELD, Assessor & Tax Collector of the Division of Assessment & Taxation for said County, by virtue of said Judgment and Decree, and pursuant to the

convey and confirm unto said MULTNOMAH COUNTY, and to its successors and assigns forever, all right, title and interest in and to all those certain lots, pieces and parcels of land lying and being in said County of Multnomah, State of Oregon, and more particularly described hereinafter, in which description parcels described as lots and block in addition are described as shown by duly recorded map and plat of said addition on file in the Records Management Section of the Division of Assessment & Taxation, of said County, and where said parcels are described as tax lots, said tax lots are shown by the Multnomah County Assessment & Taxation Division map for the year 1986, all of which lots, pieces or parcels of land are described as follows, to wit:

ADDITION NAME	LEGAL	LOT	BLOCK
ALBINA	E 13' OF W 19' OF	11 12	7 7
ALBINA	W 5' OF N 30' OF E 90' OF	15	23
ALBINA HMSTD	W 1/2 OF	1	12
ALBINA HMSTD	W 29' OF E 70' OF W 29' OF E 70' OF N 10' OF	1 2	14 14
ALBINA HMSTD	N 19.6' OF S 10.6' OF	15 16	27 27
ALDER SPR	INC PT VAC ST ACCR INC PT VAC ST ACCR EXC PT IN HWY	5 667	4 4
ANDERSON TR	E 25' OF	54	
BLACKBERRY BLUFF		1	1
BLACKBERRY BLUFF		2	1
BLACKBERRY BLUFF		3	1
BLACKBERRY BLUFF		4	1
BLACKBERRY BLUFF	EXC PT IN ST	5	1
BLACKBERRY BLUFF		6	1
BLACKBERRY BLUFF		9	1
BLACKBERRY BLUFF		10	1
BLYTHSWOOD	TL# 1 OF	50	
BOARDWALK		A	
BOARDWALK		B	

ADDITION NAME	LEGAL	LOT	BLOCK
BONADAIR		5	8
BONITA PK	W 45' OF	11	1
BONITA PK		12	1
BRENTWOOD & SUB	N 24' OF	11	29
	S 50' OF	12	29
CAPLES ADD	TL 6 OF	1-5	4
CARLSBERRY PLACE		A	
CARLSBERRY PLACE		B	
CARLSBERRY PLACE		C	
CARLSBERRY PLACE		D	
CARLSBERRY PLACE		E	
CARUTHERS ADD	EXC PT IN BRIDGE APPROACH	1	116
CENTRAL ALBINA ADD		5	16
CENTRAL ALBINA ADD		6	18
CENTRAL PK E P	E 1/2 OF	1	2
CLIFFORD ADD	W 50' OF N 15' OF	3	15
	W 50' OF	4	15
CLOCKS ADD	S 20' OF	7	1
CLOCKS ADD		8	1
COLLEGE PL		32&33	7
COUNCIL CREST PK	TL 6 OF	31	32
CROSIERS ADD		8	3

ADDITION NAME	LEGAL	LOT	BLOCK
DAVIS HIGHLAND		11&12	3
DOSCHDALE	TL# 21 OF	71	
DUNNS ADD	W 35' OF N 1/2 OF	9	7
EDGECLIFF	TL# 1 OF	25	
EDGECLIFF	TL# 3 OF	33	
EL TOVAR		28&29	7
ERROL HTS		32	21
FAIRMOUNT ADD		8	7
FAIRVIEW	TL# 6 OF		30
FARRELLS ADD		14	1
FIRST ELECTRIC ADD		9&10	6
FRASERS ADD	S 95' OF	10	9
FRASERS ADD	S 95' OF	11	9
GALEBURN PL	TL# 10 OF	3	
GLENDOVEER AC	EXC S 150'-W 10' OF	4	D
GOLDSMITHS ADD	EXC E 15'	13	17
GRIMES ADD	TL# 3 OF		5
HIGHLAND		7&8	6
HIGHLAND	W 1/2 OF	1&2	16
HIGHLAND	N 5' OF	10	21
		11&12	21

ADDITION NAME	LEGAL	LOT	BLOCK
HOLLADAY PK 2ND ADD	EXC W 28'	11	14
INA PK		7	1
INA PK		15	1
INA PK		14	7
IRVINGTON	N 2' OF W 50'	7	35
ISABELLE A CARPENTERS	INC STRIP 5' WIDE N OF & ADJ	5	2
KILLINGSWORTH GARDENS	EXC S 70'-E 1/2 OF	1	13
LAMARGENT PK PLAT 2	TL# 3 OF	29	
LAURELWOOD		17	6
LEXINGTON HTS		4	10
LINCOLN PK ANX		4	5
LINCOLN PK ANX		4	8
LOMA AC	EXC S 62' EXC N 70' OF E 147'	7	
M PATTONS & SUB	EXC S 37' & EXC N 53'	1	E 1/2 L
	EXC S 37' & EXC N 53' W 17' OF	2	E 1/2 L
MAEGLY HIGHLAND		5	1
MERLOW & EXT D		10	5
MIDDLESEX	EXC N 50'-W 40' OF E 118' OF N 100' OF	1	
MOUNTAIN PARK		9	59
MULTNOMAH		3	11
	15% NONTAXABLE		

ADDITION NAME	LEGAL	LOT	BLOCK
MULTNOMAH	UNPAID TAXES ONLY		
MYRTLE		19	3
NORTH IRVINGTON	UNPAID TAXES ONLY NONTAXABLE		
NORTH IRVINGTON	TL 2 OF	8	21
NORTH IRVINGTON		5	25
NORTH IRVINGTON		12	25
OAKHURST	S 3' OF N 45' OF	7	2
OAKHURST		1&2	3
PARKHILL & RPLT	TL 16 OF	50	
PARKROSE & RPLT	EXC N 70' & EXC S 100'	E	54
PASADENA		5-8	12
PIEDMONT		9	3
PORTLAND	UNPAID TAXES ONLY		
PORTLAND	UNPAID TAXES ONLY		
PORTLAND CITY HMSTD		1-8	77
RAILROAD SHOPS ADD	TL 16 OF	1&2	3
ROCKWOOD PK	E 53' OF N 22' OF S 155' OF W 134' OF	2	1
ROSELAWN		11	7
ROSEWAY & PLAT 2	E 11.5' OF	1	22
SERENE PK		7&8	1

ADDITION NAME	LEGAL	LOT	BLOCK
72ND ST ADD & PLAT 2	E 60' OF	12&13	1
SEWICKLY ADD		18	9
SHOEMAKERS ADD	N 1' OF S 125' OF	49	
SLAVINS ADD & PLAT 2	TL 8 OF	4	A
SLAVINS ADD & PLAT 2	TL# 5 OF	19	A
SMOKE RISE	DELINQUENT TAXES ONLY		
SOUTHPORT		1-3	6
SOUTHPORT		4&5	6
SOUTHPORT	EXC PT IN HWY	20-22	6
STANFORD HTS		21-24	11
STEPHENS ADD	W 50' OF	5	97
SUBURBAN HMS CLUB TR	EXC S 125' N 250' OF E 37' OF	14	F
SUNNYSIDE ADD		5	9
SWEENEYS ADD	TL# 2 OF		3
SWEENEYS ADD	TL# 1 OF		3
SWEENEYS ADD		1-4	4
	EXC PT IN HWY	5-7	4
		8&9	4
SWEENEYS ADD		11-15	5
SWEENEYS ADD		2-8	6
SWEENEYS ADD		9	6

ADDITION NAME	LEGAL	LOT	BLOCK
TERESI TR	UNPAID TAXES ONLY		
TIBBETTS ADD	S 16 2/3' OF E 70' OF	7	22
	N 16 2/3' OF E 70' OF	8	22
TOY PARK		A	
TOY PARK		B	
VERNON		12	42
VERNON		3	46
VERNON		4&5	46
WALNUT PK		7	23
WEST PORTLAND PK		21-23	27
WHITEHEADS ADD		2&3	5
WIBERG HTS		15	6
WOODLAWN		10	9
WOODLAWN TERRACE	CONDOMINIUM	15	
WOODLAWN TERRACE	CONDOMINIUM	16	
WOODLAWN TERRACE	CONDOMINIUM	19	
WOODLAWN TERRACE	CONDOMINIUM	20	
WOODLAWN TERRACE	CONDOMINIUM	22	
WOODLAWN TERRACE	CONDOMINIUM	23	
WOODSTOCK	S 50' OF	2	54
SECTION 12 1 N 1 E	TL 35 3.86 ACRES		

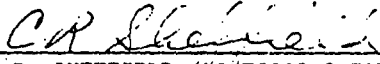
ADDITION NAME	LEGAL	LOT	BLOCK
SECTION 25 1 N 3 E	IMPS ONLY TL# 81		
SECTION 25 1 N 3 E	TL 129 0.11 ACRES		
SECTION 26 1 N 3 E	TL 108 0.30 ACRES		
SECTION 12 2 N 2 W	TL 12 0.23 ACRES		
SECTION 21 1 S 1 E	TL 232 0.60 ACRES		
SECTION 22 1S 1E	UNPAID TAXES ONLY		
SECTION 22 1S 1E	UNPAID TAXES ONLY		
SECTION 34 1 S 1 E	TL 6 0.10 ACRES NONTAXABLE		
SECTION 34 1 S 1 E	DELINQUENT TAXES ONLY		
SECTION 34 1 S 1 E	DELINQUENT TAXES ONLY		
SECTION 1 1S 2E	TL 168 0.01 ACRES		
SECTION 18 1 S 2 E	TL# 55 0.10 ACRE		
SECTION 18 1 S 2 E	TL# 78 0.11 ACRES		
SECTION 13 1 S 3 E	TL 277 0.16 ACRES		
SECTION 17 1 S 3 E	TL# 50 22.16 ACRES		
SECTION 20 1 S 3 E	TL 20 13.36 ACRES		
SECTION 04 1 S 4 E	TL# 46 0.09 ACRES		

TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

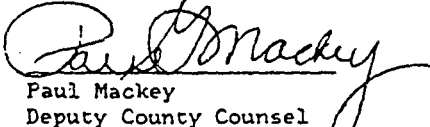
TO HAVE AND TO HOLD these same premises, with the appurtenances, unto the said Party of the Second Part, its successors and assigns, forever, free from every right or interest of any person in such premises.

The true and actual consideration paid for this transfer is \$0.

IN WITNESS WHEREOF, I, the said Assessor & Tax Collector of the Division of Assessment & Taxation, have hereunto set my hand and seal this 3rd day of November, 1986.


C.R. SHEFFIELD, ASSESSOR & TAX COLLECTOR
Division of Assessment & Taxation
Department of General Services
For Multnomah County, Oregon

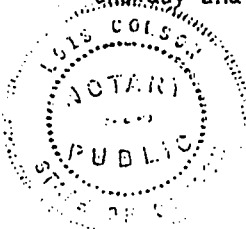
APPROVED AS TO FORM:


Paul Mackey
Deputy County Counsel
Multnomah County, Oregon

STATE OF OREGON)
) ss.
County of Multnomah)

On this 3rd day of November, 1986, before me, a Notary Public in and for said County and State, personally came the within named C.R. SHEFFIELD, Assessor & Tax Collector of the Division of Assessment & Taxation, Department of General Services, for Multnomah County, State of Oregon, known to me to be the identical party described in, and who, as such Assessor & Tax Collector, executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year in this my certificate first above written.



Lois Colson
Notary Public for Oregon
My Commission expires: 8-26-88

Return to:

Paul G. Mackey
Assistant County Counsel
Room 1400, 106 Building
1120 SW Fifth Avenue
Portland, Oregon 97204

090854

STATE OF OREGON }
Multnomah County } ss.

I, a Deputy for the Recorder of Conveyances, in and for said County, do hereby certify that the within instrument of writing was received for record and recorded in the record of said County

1986 NOV -4 PM 3:51
RECORDING SECTION
MULTNOMAH CO. OREGON

In Book On Page
BOOK 1952 PAGE 1705
witness my hand and seal of office affixed
Recorder of Conveyances
m. Budner
Deputy

1716

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

DATE: July 6, 1994
TO: William A. Monahan
FROM: Henry Tilghman
RE: Gran Marque/Partition -- Use of Easement Three

Our client, Gran Marque, Inc., has an option to purchase a tract of land in Dunthorpe near S.W. Military Road. The land requires the use of three easements for access from the public street. Easement One crosses the Trommald property, Easement Two crosses the adjoining Mather property, and Easement Three is located between the Gran Marque property and the Feldman property.

The subject property requires the use of three easements for access from the public street, S.W. Military Road. Easement One crosses the Trommald property, Easement Two crosses the adjoining Mather property, and Easement Three is located between the Gran Marque property and the Feldman property.¹

¹ This memo refers to three easements, three parcels referred to in real estate descriptions and three parcels created out of the proposed partition. In an attempt to reduce the confusion created by these similarities; the numbers corresponding to the easements have been written out (Easements One, Two and Three are identified on Exhibit 1); the numbers corresponding to the old real estate parcels have been expressed as Roman numerals (Parcels I, II and III are identified on Exhibit 2); the numbers corresponding to the new parcels created by the proposed partition have been expressed in Arabic numerals (Parcels 1, 2 and 3 are identified on Exhibit 3).

Memo re: Use of Easement Three
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Adjoining property owners, Buell and Feldman, have questioned whether our client needs their permission to use Easement Three. The deed descriptions of Gran Marque's Parcel I and the Buell and Feldman properties indicate that each of the properties is entitled to the benefit of Easement Three. Multnomah County owns the property which Easement Three crosses.

QUESTIONS PRESENTED

- A. Is Gran Marque entitled to use Easement Three for the benefit of Parcels 2 and 3?
- B. Does Gran Marque need the permission of adjoining property owners to use Easement Three?

BRIEF ANSWERS

- A. Gran Marque is entitled to use Easement Three for the benefit of parcels 2 and 3 because each of Gran Marque's proposed building sites is within a portion of old Parcel I. According to the deed description, Parcel I is entitled to use Easement Three. Parcel I may be subdivided and additional residences built upon it provided that the additional use is not unreasonable.
- B. Gran Marque does not need permission from Feldman and Buell to use the easement. Multnomah County owns the property burdened by Easement Three. Buell, Feldman and Gran Marque

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have each been granted easements across the property. An owner of an easement has the right to unlimited reasonable use, as long as the use does not unreasonably interfere with the rights of other easement owners.

HISTORY OF CONVEYANCES

- A. Parcel I. On July 30, 1941, Henry L. and Gretchen H. Corbett conveyed Parcel I by deed to Barbara E. and David L. Davies. The deed was recorded August 4, 1941, at Book 628, Page 250, Multnomah County Records and then re-recorded twice in October of 1941.

Elinor L. and Lewis H. Mills conveyed an access easement to Davies, dated July 31, 1941, and recorded October 20, 1941, at Book 643, Page 529, Multnomah County Records. The easement does not define a benefitted property; rather, it is conveyed to Davies, "their heirs and assigns."

The deed conveying this parcel from the Davies Estate to David C. Davies includes the description of Easement Three. The deed is dated June 10, 1986, and recorded July 14, 1986, at Book 1920, Page 25, Multnomah County Records. The same easement language is included in the legal description of Parcel I in the deed transferring the parcel to Gran Marque.

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- B. Parcel II. Henry L. and Gretchen H. Corbett conveyed Parcel II to Barbara E. and David L. Davies by deed dated February 24, 1947, and recorded February 28, 1947, at Book 1149, Page 367, Multnomah County Records. The deed does not convey or otherwise mention any access easement. The Davies Estate conveyed Parcel II to David C. Davies by deed dated June 10, 1986, and recorded July 14, 1986, at Book 1920, Page 25, Multnomah County Records.
- C. Parcel III. The parcel was created by deed dated June 28, 1973, and recorded July 10, 1973, at Book 937, Page 226. David L. and Barbara E. Davies sold adjoining land to the west, but reserved Parcel III unto themselves. The Davies Estate conveyed Parcel III to David C. Davies, along with Parcels I and II by deed dated June 10, 1986, and recorded July 14, 1986, at Book 1920, Page 25, Multnomah County Records. The parcel includes access easements to the north, but does not include access by Easement Three.
- D. Buell Property. The Buells own the property west of Gran Marque and south of Feldman. Henry L. and Gretchen H. Corbett conveyed this property to the Buells by warranty deed in 1956, recorded at Book 1776, Page 384, Multnomah County Records.

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The same deed conveys to the Buells a right-of-way and easement over Easement Three.

- E. Feldman Property. Nancy Heyser, who took title as Nancy Sandvik, conveyed the property to the east of Easement Three to K. Don and Eva E. Feldman by deed dated May 17, 1993, and recorded May 19, 1993, at Book 2693, Page 907, Multnomah County Records. That deed also conveyed a right-of-way and easement for road purposes across Easement Three to the west.
- F. Easement Three. By tax foreclosure deed dated November 3, 1986, and recorded November 4, 1986, at Book 1952, Page 1705, Multnomah County took title to a 30-foot by 140-foot parcel of land that is burdened by Easement Three. In 1984 the prior owners of the land, the Corbett Estate, had recorded a quit claim deed for that parcel in favor of the county, at Book 1793, Page 1485. The entire Easement Three runs some 225 feet. The portion owned by the county is the northern 140 feet, which runs the length of the Feldman parcel.
- G. The Gran Marque partition will convert old Parcels I-III to new Parcels 1-3. (See Exhibits.)
- H. While the lot lines of the parcels have been reconfigured, the building pad on each of the reconfigured parcels is located within the original

Memo re: Use of Easement Three
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boundary lines of the original Parcel I. Therefore, Easement Three can be used to provide access to all of the reconfigured parcels.

APPLICABLE LAW

A. RIGHT TO USE EASEMENT

Section 488 of the Restatement of the Law on Property states that:

"Except as limited by the terms of its transfer, or by the manner or terms of the creation of the easement appurtenant, those who succeed to the possession of each of the parts into which a dominant tenement may be subdivided thereby succeed to the privileges of use of the servient tenement authorized by the easement."

To put it in simpler terms, an easement granted to a large tract of land may be used by the owners of smaller lots into which the large tract is subdivided, unless the easement specifically prohibits such expanded use. The Restatement states the rationale for the rule as follows:

"The burden upon a servient tenement frequently will not be greatly increased by permitting an easement appurtenant to attach to each of the parts into which the dominant tenement may be subdivided. Though some increase in burden may result from the fact that the number of users is increased by the subdivision, the extent of the use is still measured by the needs of the land which constituted the original dominant tenement. Moreover, dominant tenements are ordinarily divisible and their division is so common that it is assumed that the possibility of their division is contemplated in their creation. Hence, unless forbidden by the manner or terms of its creation, the benefit of an easement appurtenant accrues upon a subdivision of a dominant tenement to the benefit of each of the parts into which

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it is subdivided." Restatement of the Law on Property
§488(b).

The Courts in Oregon have followed the Restatement rule, as have a majority of other states. See 10 ALR 3rd 960. An Oregon case on point is Long v. Sendelbach, 56 Or App 158, 641 P2d 1136 (1982). In that case, the court paraphrased the majority rule as follows:

"The majority rule is that an easement granted or reserved by a written instrument in general terms, without any limitations as to its use, is one of unlimited reasonable use. It is not restricted to use merely for such purposes of the dominant estate as are reasonably required at the time of the grant or the reservation, but the right may be exercised by the dominant owner for any reasonable purpose to which that estate may subsequently be used. Therefore, there may be an increase in the volume and kind of use of such an easement during the course of its enjoyment." 641 P2d at 1138.

In Long, the court permitted the dominant estate owner to continue using an easement for access to a new dwelling, when the dominant estate had originally been used as agricultural land when the easement was granted.

Under Oregon law, the dwellings proposed to be constructed within the area that was once old Parcel I are entitled to use Easement Three for access.²

² Although Parcel III (the cube) has been used in conjunction with the larger tract comprised of Parcels I and II and the single dwelling on Parcel I, the holding in a recent Oregon case will make it very difficult to expand the easement's benefit to Parcel III. In Verzeano v. Carpenter, 108 Or App 258 (1991), the court held that a general reservation of easement in favor of "lands belonging

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B. PERMISSION TO USE EASEMENT NOT REQUIRED

Multnomah County owns the property burdened by Easement Three. At different times, Buell, Feldman and Gran Marque were each granted easements across the property.

The owner of the servient estate has the right to use an easement on his property so long as his use does not unreasonably interfere with the use of the dominant estate. Van Natta v. Nys and Erickson, 203 Or. 204, 231, 278 P2d 163 (1955), overruled on other grounds, 255 Or 413, 467 P2d 960 (1970). Therefore, the owner of a servient estate may grant successive easements so long as the use by one easement holder does not unreasonably interfere with the use made by the other easement owners.

" . . . [N]o person having an easement for travel over [a] road or way in common with others can be heard to object to any use or change of use in the character of such way or road by the other users or by the owner of the servient estate so long as the rights of the one

to grantor" did not extend to noncontiguous lots owned by the grantor. In our case, Parcel III is noncontiguous to Parcel I, and the Verzeano ruling would not permit extension of the easement to Parcel III. The legal description of Parcel III also contains the separate access easements extending along the northerly and westerly boundaries of the Mather property. This further evidences an intent not to grant access to Parcel III via the original easement to Parcel I.

Gran Marque, however, plans no development on Parcel III. As long as the new residences are built within the area of the old Parcel I or II, the dwellings are be entitled to the use of the easement, even though part of the new lots will encompass old Parcel III.

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complaining are not thereby interfered with in an undue or unreasonable manner."

Sanders v. Roselawn Memorial Gardens, 159 SE2d 784, 797 (W Va 1958). In other words, each owner of an easement has the right to unlimited reasonable use, so long as his use does not unreasonably interfere with the rights of other easement owners. Id.

In Van Natta, plaintiff held an easement by implication across property owned by defendants. The property of both defendants and plaintiff was used primarily for timber and grazing. Plaintiff brought an action to enjoin defendants' use of the easement right of way to remove logs from defendants' property. The court refused to issue an injunction because, in view of all the attendant circumstances, the use to which the defendants proposed to subject the road was a reasonable one, would not destroy the road and would not deprive the plaintiff of the degree of use to which he was entitled.

In Sanders, plaintiff and defendant purchased adjacent tracts of land from substantially the same grantor. As part of both transactions, plaintiff and defendant were also each granted a right of way across a 30 foot wide easement containing a gravel roadway. After several years of only limited use of the easement by both parties, defendant began construction to improve the road along the easement to provide better access between separate

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Page 10

sections of defendant's cemetery. Defendant moved a fence (with the consent of the owner of the dominant tenement) and planned to construct a wider hard-surface road with a concrete gutter. The court held that defendant's plans to improve the right of way did not unduly interfere with the plaintiff's easement rights.

The increased use of Easement Three resulting from the addition of two residences on Gran Marque's property will not interfere with the use of the easement by the other easement holders. The very low number of trips generated by two additional dwellings will not unreasonably interfere with the current users ability to access their houses via the easement. Because the use is not unreasonable and does not interfere with the rights of the other easement owners to use the easement, the owners of the easement cannot object to use of the easement by Gran Marque and the purchasers of the residences.

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CONCLUSIONS

- (1) Gran Marque's parcel may be partitioned into additional lots, and dwellings built on those lots would enjoy the beneficial use of the easement. The increase in volume of use for two additional dwellings would not unduly burden the servient estate. The development is also consistent with that of other parcels benefitted by the same easement.
- (2) Gran Marque plans to build two additional residences. As long as the increased use of or improvements to the easement do not unreasonably interfere with the use of the easement by Buell or Feldman, Gran Marque is not legally obligated to secure the permission of Buell or Feldman to use the easement for the new residences.

AMCOR VAC. BLK. 75, FALA.

(39)
0.85 A_c

EASEMENT
TWO

EASEMENT
THREE

FELDMAN

136
69.2.
BUELL

(1) 10
1.57 Ac.

EXHIBIT

1

MATHER

TROMMALI

(14) PARCEL 1
3.60 Ac.

PARCEL 2

PARCEL 3

H. L.

CC

ARMY COR. VAC. BLK. 75, PALM

(53)

1.24 Å

(8)
73A.

(39)
0.85 A_c

'9'

4.26H.C.

PARCELS REFERENCED IN DEEDS

(14)
3.60 Ac.

PARCEL I

PARCEL
II

PARCEL
III

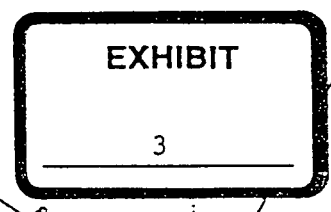
H. L.

CO

EXHIBIT

2

MM COR VAC. ELK. 75, FALL,



A. Applicable Elements of the Comprehensive Plan: The following Comprehensive Plan Policies are applicable to the proposed land division.:

(1) Policy No. 13, Air, Water, and Noise Quality:

Applicant's Response: *"It is expected that the three parcels will support three single-family dwellings. There is currently one single-family dwelling on the property. The three parcels are large, vegetated, and capable of handling stormwater run-off through surface percolation or dry well construction. Sanitary sewer laterals are present in the easements + accessing the site from S.W. Military Road. Water will be provided by the Palatine Hills Water District, and the partition will pose no threat to water quality. Air and noise quality will be unaffected by the addition of two dwellings to this residential area."*

Staff Comment: No significant impact on air pollution will result from the two additional dwellings allowed by the proposed land division. The County Sanitarian has verified that public sewer is available to the site. For these reasons and those stated by the applicant, the proposal satisfies Policy 13.

(2) Policy No. 14, Development Limitations: This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement.

Applicant's Response: *"The site is characterized by slight to severe slopes, ranging from five to over 40 per cent. The steepest portion of the site is on Parcel 3, where the grounds slopes steeply to the west. However, there is an adequate building site on much flatter ground in the in northeast corner of Parcel 3. The remaining parcels are relatively flat in comparison and will not pose any geologic threat. The site is not located in the 100-year flood zone and is not in an earth movement area. Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."*

Staff Comment: Surface run-off will be handled by on-site water retention and/or control facilities to be approved by the County Engineer. Part of the site is in a hazard area as identified on the County's Slope Hazard Map. Development on the site will be subject to compliance with the

Hillside Development and Grading and Erosion Control requirements in MCC 11.15.6700. For these reasons and those stated by the applicant, the proposal satisfies Policy 14.

(3) Policy No. 16, Natural Resources:

Applicant's Response: "The applicant's response to this policy is found in the attached letter from Lawrence Devroy, Natural Resources Manager for David Evans & Associates. Devroy concludes that 'policy 16 of Multnomah County does not apply to this parcel since there are no significant natural resources found upon it.'"

Staff Comment: Mr. Devroy's letter is part of the case file and is incorporated in this staff report by reference. Staff concurs with Mr. Devroy's statement and concludes that Policy 16 is not applicable.

(4) Policy No. 22, Energy Conservation: This policy requires a finding that the following factors have been considered:

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

Applicant's Response: "Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 22.

(5) Policy No. 35, Public Transportation:

Applicant's Response: "The applicant has reviewed this policy and has found that it is primarily not applicable to this application."

Staff Comment: While staff agrees with the applicant's statement the Policy 35 is not "primarily" applicable to the proposed land division, Tri-Met Line #39 does provide service between Lewis & Clark College and downtown Portland on SW Palatine Hill Road about .5 mile north of the

site. Line #35 provides service between Oregon City, Lake Oswego and downtown Portland on SW Macadam Avenue about .75 mile east of the site.

- (6) Policy No. 37, Utilities: This policy requires a finding that water, sanitation, drainage and communication facilities are available:

Water And Disposal System

A. *The proposed use can be connected to a public sewer and water system, both or 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 DEQ will approve a subsurface sewage disposal system on the site; 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.*

The proposal satisfies Policy 37 for the following reasons:

Water and Sanitation:

Applicant's Response: "The Palatine Hill Water District has verified that water service is available to the property from a six-inch line in the 30-foot right-of-way serving the current residence. The County Sanitarian has identified sanitary sewer laterals in the 30-foot easement serving the parcels from S.W. Military Road. According to Rod Dildhouse of Multnomah County, the lateral can adequately serve the parcel without creating capacity

problems. The existing residence has been connected to the sanitary lateral since 1969."

Staff Comment: For the reasons stated by the applicant, the proposal complies with Item A of Policy #37.

Drainage:

Applicant's Response: *"Surface run-off can be handled by dry wells unless otherwise indicated by the County Engineer."*

As a condition of approval, the applicant will be responsible for constructing storm water retention facilities that will maintain pre-development flows for off site runoff. The applicant will perform a limited hydrology study to consider how the retention system will affect peak runoff for the immediate watershed. The applicant plans to provide storm water quality by the installing sump style storm water inlets and manholes to allow for settling of suspended material. Subject to that condition, the proposal is consistent with Items E through G above

Energy and Communication:

Staff Comment: Portland General Electric provides electric power, Northwest Natural Gas Co. provides gas service and US West Communications provides telephone service. The proposal satisfies Items H and I above.

- (7) **Policy No. 38, Facilities:** The property is located in the Riverdale School District. Comments by the district do not indicate any inability to accommodate student enrollment from houses located on the subject property. Multnomah County Fire District #11 provides fire protection through a contract with the Lake Oswego Department of Fire Services. At the July 20, 1994 hearing, the applicant provided the Hearings Officer with written comment from the Department of Fire Services confirming that there is adequate water pressure and flow for fire-fighting purposes. The department has provided comments setting forth its requirements for the design of the easement road serving the site. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area

- (8) **Policy No. 40, Development Requirements:**

Applicant's Response: *"Policy 40.A requires a finding pedestrian and bicycle path connections will be dedicated where appropriate and where designated in the county program and map. The site is not located in an area which is so designated, and there is no existing pedestrian and bicycle pathway connecting to recreation areas or community facilities. The dedication should not be required in this case."*

Policy 40.B requires a finding that landscaped areas with benches will be provided in commercial, industrial and multiple family developments. This is a single family development, and the landscaped areas should not be required."

Policy 40.C requires a finding that areas for bicycle parking be required in development proposals, where appropriate. The proposal will lead to the construction of two new single family dwellings. It is not necessary or appropriate to require bicycle parking facilities in such development."

Staff Comment: Staff concurs with the applicant's statement. The proposal satisfies Policy 40.

MCC 11.45.230(B)

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B. Development of Site or Adjoining Land [MCC 11.45.230(B)]:

Applicant's Response: "Approval of this partition will not restrict access to or development of adjoining property. Access to the proposed parcels is via private easements in accordance with MCC 11.15.2844(G). The proposed partition is in compliance with the future street plan approved in LD 10-93. For these reasons, the proposal complies with this approval standard."

Staff Comment: Staff concurs with the applicant's statement. Approval of the current proposal will not affect access to or development of adjacent properties. Adjacent land to the west has access to SW Terwilliger Boulevard and can be developed in accordance with the Future Street Plan adopted in 1993 as part of the approval of the Tryon Vista subdivision (LD 10-93). Other adjacent land has been divided to the extent possible under current zoning. For these reasons, the proposal satisfies MCC 11.45.230(B).

MCC 11.45.230(C)

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C. Applicable Provisions of Land Division Ordinance [MCC 11.45.230(C)]

Applicant's Response: "The purpose of Chapter 11.45 is to protect property values and further the public health, safety and welfare of county residents. The intent of the chapter is to minimize street congestion, secure safety from fire and geologic hazards, provide for adequate air and light, prevent overcrowding of land and to facilitate the provision of adequate public services. This proposal will enhance property values by creating infill opportunity on large residential parcels. The addition of two single-family dwellings will have little impact on the use or value of neighboring properties in the Dunthorpe area. The development would secure the large parcel low density and minimize the impact on crowding on streets or land.

The applicant's property has been approved by the County Sanitarian as having available sanitary sewer service. The water provider has indicated that service is readily available. Slopes on Parcel 3 are severe, but pose no geologic threat, as the preferred building site is in the northeast corner of Parcel 3 on flatter ground. Steeper slopes will remain undisturbed. (See statement of applicant's engineer.) Two additional homes on large parcels will have little impact on existing services and facilities to this low-density residential area. The new parcels can be served without utility extensions or creation of new streets or overloading current facilities. The availability of light and air will not be significantly changed by the addition of two single family residences. Much of the property will remain wooded.

For these reasons, the proposed partition complies with the intent and purpose of the Land Division Ordinance. For reasons stated throughout this application, the proposal complies with other applicable provisions of Chapter 45."

Staff Comment:

- (1) The size and shape of the proposed parcels meet the area and dimensional requirements of the R-30 zoning designation. The lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the R-30 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.
- (2) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
- (3) The proposal minimizes street congestion by requiring improvements for the existing private easement road that runs from the subject site north to Military Road.
- (4) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.
- (5) The proposal meets the area and dimensional standards of the requested R-30 zoning district as explained in Finding 4.D below. Residential development on newly created lots will be required to comply with applicable R-30 setback, height, lot coverage and solar access requirements. In meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.
- (6) The finding for Decision #2 (MC 1-94) and for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities. The proposal satisfies MCC 11.45.230(C)

MCC 11.45.230(D)

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D. Zoning Compliance [MCC 11.45.390(D)]:

Area and Dimensional Standards

Applicant's Response: "The proposal is the division of one 3.36 acre lot into three parcels in the R-30 zoning district. The proposed use of the land for single family dwellings is a permitted use in the R-30 district (MCC § 11.15.2842(A)). As shown on the tentative plan map, all three parcels will comply with the minimum lot area and dimension requirements of the R-30 zoning (§ 11.15.2844(A))."

Staff Comment: Staff concurs with the applicants statement. The proposed land division meets applicable area and dimensional standards.

Solar Access Standards

Applicant's Response: "The application complies with the solar access provisions of 11.15.6815 -.6822, for the following reasons. Structures erected on the created parcels will be oriented, to the extent feasible, to take full advantage of solar radiation. The terrain and the shape of the parcels will limit somewhat the placement and orientation of the buildings. The partition will lead to construction of two new dwellings; the third parcel already supports a dwelling."

Staff Comment: The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though Parcels 1 and 2 do not have a front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). Parcels 1 and 2 do not meet the basic design standard of MCC 11.15.6815(A) because the existing road pattern for the area prevents the parcels from being oriented for solar access. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to 33 percent.

Property Line Adjustment to Correct Old Zoning Violation

Staff Comment: In 1973, a former owner of the subject site acquired land containing .38 acre from the owner of Tax Lot 51 to the west. The acquisition resulted in the creation of a separate cube-shaped parcel containing 16,553 square feet. Creation of the parcel constituted a zoning violation because the parcel contained less than the minimum 30,000 square feet required under the R-30 zoning standards. Although the the "cube" is now part of the subject site, completion of a property line adjustment is the appropriate method of correcting the original zoning violation.

Access by Easement See Findings for MC 1-94.

MCC 11.45.230(E)

- E. Subdivision Name [MCC 11.45.230(E)]: The proposed land division is not a subdivision because it does not result in four lots. Therefore, it will not have a name and MCC 11.45.230(E) is not applicable.

MCC 11.45.230(F)

- F. Street Layout [MCC 11.45.230(F)]: No new streets are necessary or proposed. Therefore, MCC 11.45.230(F) is not applicable.

G. Private Streets [MCC 11.45.230(G)]

Applicant's Response: *"The proposed access for the two new single family residences are restricted by the access easement [requested for approval] by the Hearings Officer. The access is clearly indicated on the tentative plan map.*

The two additional parcels will use the same driveway currently in use by the existing residence. As shown on the tentative plan map, Parcel 2 will have a "flag strip" driveway extending west from the existing driveway. Access to Parcel 3 will be provided by an access easement across Parcel 2, guaranteed as part of the deed creating the two parcels. Maintenance responsibilities for the new driveway/easement will be shared by Parcels 2 and 3, and will be set out in the deeds."

Staff Comment: Access to the site is by way of an existing private driveway in a private easement running from SW Military Road to the site. At the July 20, 1994 hearing, opponents of the proposed land division argued that the driveway should comply with the Street Standards Ordinance with respect to right-of-way width, pavement width and provision of curbs and sidewalks. Following the July 20 hearing, the applicant applied to the County Transportation Division for a variance from the provisions of the Street Standards Ordinance with respect to the private driveway. In a document titled "Decision on Requested Variance," attached to this Staff Report as Exhibit A and incorporated by reference hereto, the Transportation Division staff concludes that no variance is necessary because (1) the Street Standards Ordinance does not apply to access gained by private easement and (2) the design of the proposed access can satisfy all structural requirements, and its width is not regulated by the Transportation Division. In the alternative, the Transportation Division staff concludes that if the Hearings Officer finds that a variance is in fact appropriate, the proposed access meets the Transportation Division criteria for such a variance. Staff concurs with the Transportation Division's findings and concludes that MCC 11.45.230(G) is satisfied.

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MCC 11.45.230 (H)

- H. Flooding and Flood Hazards [MCC 11.45.230(H)]: The criterion is not applicable because the site is not in a flood plain.

MCC 11.45.460/70

4. Site Suitability (MCC 11.45.460, MCC 11.45.470 and MCCP Policy 14)

The applicant has responded to these criteria with expert testimony from a registered geologist and engineer, and with testimony from a planner. The Hearings Officer has reviewed this evidence and has considered all contrary evidence and testimony submitted by the opponent. The Hearings Officer finds that the conclusions reached by the applicant's engineer as supplemented by the planner's analysis adequately establish that the site is not unsuitable nor incapable of being made suitable for the intended residential uses due to any of the characteristics set forth in the various provisions of the ordinance. Geologist David Rankin specifically addressed the suitability of Parcels 2 and 3. Mr. Rankin detailed how the erosion and drainage issues can be dealt with in developing these parcels. The report concludes that Parcels 2 and 3 are suitable for residential structures. Mr. Rankin's August 3rd letter further details his site suitability review and specifically responds to Mr. Redfern's report which was previously submitted by the opponent. With regard to the specific criteria in § 11.45.460 and § 11.45.470, the Hearings Officer incorporates and adopts by reference the statements of Robert W. Price as contained in his 3-19-94 rebuttal memorandum (attached as Exhibit 2).

O'DONNELL RAMIS CREW
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ATTORNEYS AT LAW
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Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

DATE: August 3, 1994
TO: Philip E. Grillo, Multnomah County Hearings Officer
FROM: Robert W. Price, Planner/Project Manager
Mitchell Nelson Welborn Reimann Partnership
RE: Rebuttal on MCC §§ 11.45.460 and 11.45.470

11.45.460

- A. The site does contain slopes of more than 20%, but only on the westerly portion of Parcel 3, including the "cube" area. Neither Mr. Rankin in his letter reports, nor Mr. Redfern in his letter, suggest the parcels to be created are not buildable. Only the issues of concerns for managing drainage and runoff are discussed. The steeper slopes on Parcel 3, located on the westerly portion, leave enough buildable area to permit development of a single family dwelling without adverse impact on slopes.
- B. Soil erosion can be minimized through proper management of drainage and runoff, as recommended by Mr. Rankin. Even Mr. Redfern's letter agrees with comments by Mr. Rankin and raises no new issues or concerns. Taking the input by both Mr. Rankin and Mr. Redfern relative to soil erosion issues, the site can be suitably developed.
- C. The site is not within any identified 100 year flood-plain, and no comments to the contrary were made by any interested party.
- D. No evidence has been provided to indicate a problem with a seasonally high water table.
- E. No evidence has been provided to indicate a problem with a fragipan or other impervious layer on the site.
- F. The issue of movement on the site was raised by Mr. Redfern, but only on a small area of the westerly portion of the site where slopes exceed 20% and which does not include a possible building envelope. Mr. Redfern notes in his letter that it may be important to retain vegetation in an undisturbed manner

EXHIBIT #2

Memo re: Rebuttal on MCC §§ 11.45.460 and 11.45.470
August 3, 1994
Page 2

on the westerly portion of the site to retain as much slope stability as possible. This would address the issue of slope stability and management of the previous movement on Parcel 3.

11.45.470

- A. 1. Only single family development is proposed for the two new parcels to be created through this partition. One dwelling will be developed on each new parcel. Each parcel will significantly exceed the minimum standards for the R-30 zoning district for size, shape, width and orientation. Access will be provided through approval easements which will meet all five safety access requirements as set forth by the Fire Marshall.
2. The vicinity contains large lots with most exceeding the county's minimum development standards for size, shape and width. Adjacent tracts are either developed or available for development without adverse impact resulting from the proposed partitioning and single family development. Access, views and retention of vegetation on the subject parcel will not impact, or be impacted by, proposed development.
3. Only Parcel 3 contains slopes or vegetation which would be impacted by proposed development. Yet the parcel contains suitable building area to permit retention of slopes and vegetation as recommended by both Mr. Rankin and Mr. Redfern. Drainage and runoff can also be managed in accordance with recommendation of Mr. Rankin and Mr. Redfern. It is feasible on this site to handle runoff by the means described by Mr. Rankin without adverse effects on slopes, vegetation or natural drainage.
4. The size of the parcels and the retention of existing vegetation including many of the existing trees on Parcels 1 and 2 will provide suitable distances, barriers or screens to preserve privacy and individuality. The character of the Dunthorpe area is such that privacy and individuality are important considerations for new development. The proposed partition and development of two new single family dwellings will be consistent with the existing character of the area.

Memo re: Rebuttal on MCC §§ 11.45.460 and 11.45.470
August 3, 1994
Page 3

5. The new parcels are oriented to the greatest extent possible to solar requirements, given the orientation of the parent parcel and nature of other parcels in the immediate vicinity and their existing or future development. The proposed new dwellings will be no more nor less subject to winter wind and rain than other existing dwellings in the vicinity.

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Multnomah County
Zoning Division

MCC 11.45.490

2. Conformance With MCC 11.45.490 (Street Layout)

This section requires the arrangement of streets in a land division to be designed as follows:

- "1. To conform to the arrangement established or approved in adjoining land divisions."

Findings. The Hearings Officer finds that the parent parcel, and other adjoining parcels in the area, were laid out in such a manner so as to be served by the private easements which currently serve these parcels. The existing private easements are the only viable access to the parent parcel and to the other parcels they currently serve. The applicant's proposal to create additional parcels that would be served off the existing easements reasonably conforms to the arrangement established by adjoining land divisions. Therefore, this criteria is met.

- "2. To continue streets to the boundary of any adjoining undivided tract where such is necessary to the proper development of the adjoining land."

Findings. The Hearings Officer finds that in this case, it is not necessary to continue the easement (private street) to the boundary of adjoining land, because additional development to the west is not contemplated. Therefore, there is no need to extend the private street easement beyond where it is proposed to be located.

- "3. To assure the maximum possible preservation of existing slopes, vegetation and natural drainage."

Findings. The Hearings Officer finds that the path of the new easement can be built so as to maintain reasonable distances from significant slopes, vegetation or natural drainage patterns. The Hearings Officer agrees with the conclusions set forth in the May 17, 1994 letter from the applicant's arborist which indicated that the large trees and row of Poplars along the northern portion of the property can be avoided by meandering the easement. Therefore, the proposed access and site layout can assure the maximum possible preservation of existing vegetation.

Proposed Parcel 2 contains a small pond and some slopes and Parcel 3 contains more significant slopes. A report from geologist David Rankin adequately addresses the suitability of Parcels 2 and 3 for residential construction and discusses how erosion and drainage issues can be dealt with in the future development of these parcels. Additional review by the County will be required prior to development to consider specific proposals for erosion control for any hillside development. Therefore, the Hearings Officer concludes that this criteria can and will be met subject to further review by the County, as required in the conditions of approval.

"4. To limit unnecessary through traffic in residential areas."

Findings. The Hearings Officer finds that the additional traffic that will be attracted and generated by the proposed development will not be "through traffic", because the local roadway system (i.e. the private easements) do not create an opportunity for through traffic. Therefore, this criteria is met, to the extent it applies.

"5. To permit surveillance of street areas by residents and users for maximum safety."

Findings. The Hearings Officer finds that the lay of the land and the nature of surrounding development permits adequate surveillance of the street area by residents and users. Therefore, this criteria is met.

"6. To assure building sites with appropriate solar orientation and protection from winter wind and rain."

Findings. The proposed land division satisfies the solar access provisions of the zoning ordinance as detailed in the staff report. The size of the building sites and the relatively protected nature of the area provide reasonable assurances that the site will be protected from winter wind and rain.

"7. To assure stormwater drainage to an approved means of disposal."

Findings. The Hearings Officer finds that there is substantial evidence in the record that it is technically feasible to provide hardline drainage as called for in the geotechnical report prepared by Applied Geotechnical, Inc. The August 23, 1994 letter from David Bick of DEA confirms this technical feasibility and suggests additional temporary erosion control measures that may be required. Therefore, this criteria is met, because the evidence in the record demonstrates that it is technically feasible to assure adequate stormwater drainage to an approved means of disposal. The off-site disposal location of the stormwater will be reviewed and approved by the County Engineer.

"8. To provide safe and convenient access."

Findings. The issue of safe and convenient access has been the subject of considerable testimony in this case. The Hearings Officer finds that the relatively low traffic volumes on the local street system, plus the traffic from this additional development (approximately 20 vehicle trips per day) will not jeopardize the safety or convenience of the roadways in this area. Furthermore, the evidence indicates that the narrowness of the street effectively slows vehicle speeds. Evidence in the record indicates that vehicle speeds of 30 miles per hour can be expected. The Hearings Officer also finds that there is adequate sight distance along these easements so long as vehicle speeds do not exceed 30 miles per hour.

Given the above mentioned conditions (low volumes, low speeds and adequate sight distances), the Hearings Officer finds that pedestrian and vehicular access will be safe and convenient. Therefore, MCC 11.45.490(8) can be met.

MCC 11.45.500

MCC 11.45.500

11.45.500 Street Design

20

21 The width, design and configuration of all streets in or abutting the land division shall comply with
22 applicable ordinance standards as follows:

23

24 (A) For a public street — in accordance with the Street Standards Ordinance; and

25

26 (B) For a private street — in accordance with the [~~Site Development~~] Street Standards Ordinance.

Exhibit A

DECISION ON REQUESTED VARIANCE MC 1-94/LD 13-94

Summary of Decision:

The applicant has requested that the Division of Transportation initiate a variance to certain street standards for the proposed access road in this project. This is a difficult request, because as I interpret the language of the code and the plan, this Division has no jurisdiction to regulate the access by private easement proposed in this case. Under this interpretation, there is no applicable requirement or restriction in the Street Standards Ordinance or Street Standards Rules from which the application needs a variance.

There is a contrary contention, however, that the Code, as recently amended, makes private easements subject to the 50 foot wide right-of-way requirement found in Table 5.1 of the Street Standards Rules.

I, therefore, enter a decision on two alternative grounds. First, I find no need for a variance. Second, in the event that a 50 foot standard is applicable, I find that the criteria for a variance are met and grant a variance.

C. EFFECT OF THE COUNTY'S VARIANCE DECISION

The merits of the variance decision issued by Mr. John Dorst are not before the Hearings Officer. One of the primary purposes for reopening the hearing in this case was to discuss the relevance of the County's variance decision. As noted by Mr. Dorst on page 3 of his decision, Table 5.1 of the Street Standards Code calls for a 50 foot right of way width, 28 to 32 foot pavement width, parking on both sides, curbs and sidewalks for local residential streets. Since the applicant is not proposing any of these improvements, the applicant must seek and receive a variance from all of these standards, in order for his proposed access to be acceptable. Mr. Dorst's decision, at page 10, concluded that the criteria for granting a variance were met. Mr. Dorst therefore granted the applicant a variance, by reducing the amount of right of way width from 50 to 20 feet, deleting the requirement for curbs, sidewalks and parking, and adjusting the required pavement width to 20 feet, as approved by the Fire Marshall.

The Hearings Officer concludes that to the extent this variance decision becomes final, it would allow the applicant to develop the property using the access he is currently proposing. Therefore, the Hearings Officer concludes that since the applicant has sought the required variance and has received tentative approval for the variance, it is reasonable to condition approval of these actions on obtaining a final decision granting that variance. In the alternative, the SSC requirements will apply.

If the SSC requirements apply, development of the site may not be possible. In any event, the applicant has not demonstrated whether it is able to meet the requirements of the SSC, and if so, whether it will still be able to meet the other approval criteria.

For instance, if the easement required by the SSC is to be 50 feet wide, and the required improved is 28 feet wide, plus curbs and sidewalks, these improvements may well impact the applicant's ability to meet various partition approval criteria.

Therefore, unless the applicant receives a final decision approving the requested variance, the partition and request for alternative access must be denied. However, since applicant has received administrative approval of the necessary variance, the decision can be conditioned upon final approval of that variance. If the variance is ultimately denied, the applicant will not be able to proceed to final plat approval, because the condition requiring final variance approval would not be met.

MCC 11.45.540

3. MCC 11.45.540(B) (Sidewalks, Pedestrian Paths and Bikeways)

This section of the code requires that sidewalks shall be required in urban area public streets in accordance with provisions of the Street Standards ordinance. Subsection (B) requires that:

"A sidewalk shall be required along any private street serving more than six dwelling units."

The Hearings Officer finds that the proposed access will only serve six dwellings, namely one dwelling each on Tax Lots 36, 15, 38, and the three proposed dwellings on Lot 14. The opponent has argued that access to Lot 9 is also provided by this set of easements. As the applicant points out, Lot 9 is served by a different branch of the easements as authorized in LD 10-93. MCC 11.45.540(B) was not triggered by the four dwellings on the south branch of the easement even though MCC 11.45.540(B) was in effect at that time. Sidewalks were not required in that case. The Hearings Officer finds that the main branch of the easement serving Lot 14 will serve only six dwellings and therefore that the sidewalk requirement contained in MCC 11.45.540(B), does not apply. However, as noted below, the Street Standards Code applies in this case and it requires sidewalks, unless a variance from those Standards are granted. Therefore, sidewalks would be required, unless or until a variance is obtained.

MCC 11.45.630

18 11.45.630 Streets, Sidewalks, Pedestrian Paths and Bikeways

19

20 Any street, pedestrian path or bikeway shall be improved as follows:

21

22 (A) In a public street — in accordance with this Chapter and the Street Standards Ordinance; and

23

24 (B) In a private street — in accordance with the [~~Site Development~~] Street Standards Ordinance.

Exhibit A

DECISION ON REQUESTED VARIANCE MC 1-94/LD 13-94

Summary of Decision:

The applicant has requested that the Division of Transportation initiate a variance to certain street standards for the proposed access road in this project. This is a difficult request, because as I interpret the language of the code and the plan, this Division has no jurisdiction to regulate the access by private easement proposed in this case. Under this interpretation, there is no applicable requirement or restriction in the Street Standards Ordinance or Street Standards Rules from which the application needs a variance.

There is a contrary contention, however, that the Code, as recently amended, makes private easements subject to the 50 foot wide right-of-way requirement found in Table 5.1 of the Street Standards Rules.

I, therefore, enter a decision on two alternative grounds. First, I find no need for a variance. Second, in the event that a 50 foot standard is applicable, I find that the criteria for a variance are met and grant a variance.

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The Hearings Officer concludes that to the extent this variance decision becomes final, it would allow the applicant to develop the property using the access he is currently proposing. Therefore, the Hearings Officer concludes that since the applicant has sought the required variance and has received tentative approval for the variance, it is reasonable to condition approval of these actions on obtaining a final decision granting that variance. In the alternative, the SSC requirements will apply.

If the SSC requirements apply, development of the site may not be possible. In any event, the applicant has not demonstrated whether it is able to meet the requirements of the SSC, and if so, whether it will still be able to meet the other approval criteria.

For instance, if the easement required by the SSC is to be 50 feet wide, and the required improved is 28 feet wide, plus curbs and sidewalks, these improvements may well impact the applicant's ability to meet various partition approval criteria.

Therefore, unless the applicant receives a final decision approving the requested variance, the partition and request for alternative access must be denied. However, since applicant has received administrative approval of the necessary variance, the decision can be conditioned upon final approval of that variance. If the variance is ultimately denied, the applicant will not be able to proceed to final plat approval, because the condition requiring final variance approval would not be met.

SECRET
MOC 11.15.2844(G)

(G) All lots in this district shall abut a street, or shall have such other access held suitable by the Hearings Officer.

Staff Report Pages 17 - 19

4. Response To Approval Criteria

Applicant's Response: "The applicant is requesting permission from the Hearings Officer for access by easement to Parcels 2 and 3, pursuant to § 11.15.2844(G). The existing dwelling on Parcel 1 will continue to use the existing driveway. Access will be accommodated through the 30-foot and 20-foot wide easements serving the existing home on Tax Lot 14, and by creation of a flag lot and driveway easement on Parcel 2, to allow for extension of a private drive across Parcels 1 and 2 to reach Parcel 3. The applicant has secured agreements with the landowners of the land over which the easements are required. The first 20-foot wide easement extends from S.W. Military Road across the property owned by Gretchen Corbett Trommald. The subject partition has the right to that easement by agreement dated 1/18/94. The second 20-foot wide easement continues south from the end of the Trommald easement, across the property owned by John and Helen Mather. The

subject partition has the right to that easement by agreement dated 9/12/91. The third easement is appurtenant to the subject property by deed, an easement "for road purposes." The easement is included in the legal description of "Parcel I" in Exhibit "A" of both the Tumpane deed (Book 2328, Page 605, Multnomah County Records) and in the Lease and Option to Buy granted to Gran Marque, dated July 27, 1990. Parcel I will be divided among all three of the proposed parcels; thus, all three parcels will benefit from the easement. In other words, the easement runs with the property described as Parcel I in the deed. Access to the new Parcels 2 and 3 will require the use of only the northernmost few feet of this easement."

Staff Comment: In reviewing the request for access by easement, staff has considered a letter dated June 6, 1994 from Tom Carman, Acting Fire Marshal for the Lake Oswego Department of Fire Services, which provides fire protection to the subject site. Below are portions of the letter that detail the department's requirements for improvement of both the existing easement road from Military Road to the subject site and the new road serving Parcels 2 and 3:

"Access: Provide improvement of Aventine Circus south of Military Road to a minimum of 20 foot wide unobstructed all weather surface. Extent of fire lane improvement to include road to where property line of 0140() S.W. Military Road intersects Aventine Circus. Further extension desirable to beginning of driveway turnaround at ()1404 S.W. Military Road.

Access Road/Driveway to parcels #2 and #3 shall be 20 foot wide unobstructed all weather surface to a point where the furthest wall of the furthest structure on the property is not more than 150 feet to the access road/driveway. Access road/driveways within 15() feet of the furthest wall of the furthest structure shall be a minimum 12 foot wide all weather surface.

Turnarounds: A turnaround shall be provided for the access road/driveway to parcels #2 and #3. Turnaround requirements will comply with items #5 and #6 of the Multnomah County minimum design standards. Where cul-de-sacs with unpaved areas or islands are used, the following minimum turning radii shall be provided:

Outside front wheel radius of fifty (5()) feet; inside rear wheel radius of twenty-five (25) feet.

Grades: Maximum grade shall not exceed 15 percent and maximum cross slope not to exceed 8 percent.

Curvature: Approach turns to access road/driveway from Aventine Circus shall be such to accommodate standard fire apparatus.

Parking: Where parking of vehicles would diminish the minimum 20 foot wide fire lane access, "No Parking Signs" will be required, or additional widening of the road/driveway will be required to accommodate the parking.

Fire Lane Declaration: The extent of the access road/driveway from Aventine Circus that is required to be a fire lane should be so noted as a legal declaration of "Fire Lane" on the plat or other recorded documents."

Hydrants: Hydrants shall be located at intersections and at intervals of no more than 500 feet from intersections in major development. For major or minor partitions which create a new lot or lots, a hydrant shall be no further than 1,000

feet from any of the lots, nor more than 30() feet to the face of the structure. A new hydrant is recommended on the proposed access road/driveway approximately 250 feet from the intersection at Aventine Circus.

Water Lines: An 8 inch water line is recommended to serve the proposed new hydrant near the intersection of Aventine Circus on the proposed new access road/driveway. Extent of new 8 inch water line would be approximately 250 feet.

Fire Flow: [please see Finding 4.A(7)]

Addressing: Addressing will comply with the Uniform Building Code.

Final Note :When completed, hydrant flows will determine the number, spacing of fire hydrants required for this project.

Requirements involving Multnomah County Design Standards, the Uniform Fire Code, and The Uniform Building Code (i.e. addressing) are mandatory. All other requirements listed in this document are highly recommended to provide optimum safety in access and fire fighting/rescue/emergency medical capability for responding fire, medical units.

Staff generally concurs with the comments of the Lake Oswego Department of Fire Services and recommends that roads serving the subject site and proposed parcels be improved in accordance with June 6, 1994 letter, as modified by Condition #3.

Conclusions (MC 1-94)

1. The use of easements as the means of access to the proposed new parcels satisfies MCC 11.15.2844(G) subject to the stated approval conditions.
2. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the landlocked nature of the subject site makes creation of a lots fronting on a public road impossible.

4. Site Suitability (MCC 11.45.460, MCC 11.45.470 and MCCP Policy 14)

The applicant has responded to these criteria with expert testimony from a registered geologist and engineer, and with testimony from a planner. The Hearings Officer has reviewed this evidence and has considered all contrary evidence and testimony submitted by the opponent. The Hearings Officer finds that the conclusions reached by the applicant's engineer as supplemented by the planner's analysis adequately establish that the site is not unsuitable nor incapable of being made suitable for the intended residential uses due to any of the characteristics set forth in the various provisions of the ordinance. Geologist David Rankin specifically addressed the suitability of Parcels 2 and 3. Mr. Rankin detailed how the erosion and drainage issues can be dealt with in developing these parcels. The report concludes that Parcels 2 and 3 are suitable for residential structures. Mr. Rankin's August 3rd letter further details his site suitability review and specifically responds to Mr. Redfern's report which was previously submitted by the opponent. With regard to the specific criteria in § 11.45.460 and § 11.45.470, the Hearings Officer incorporates and adopts by reference the statements of Robert W. Price as contained in his 3-19-94 rebuttal memorandum (attached as Exhibit 2).

1. Conformance With Comprehensive Plan Policies

Policy 24 (Housing Location) § 2(A)(2) requires that minor residential projects have "direct access from the project to a public street." The proposed lots have direct access to Military Road, a public street, by way of a set of private easements which burden three underlying tax lots. From these existing easements, the applicants are proposing the extension of an additional easement to serve parcels 2 and 3. Therefore, the Hearings Officer finds that the project has direct access to a public street (Military Road) via the private easements described.

MCCP Policy 33a

60

Policy 33a Transportation System

"The county's policy is to implement a balanced, safe and efficient transportation system. In evaluating parts of the system, the county will support proposals which:

- A. implement the Comprehensive Plan;
- B. best achieve the objectives of the specific project;
- * * *
- F. provide a safe, functional and convenient system....."

Finding:

Although a private road, the proposed access is part of the transportation system in the county. As discussed by the applicant's traffic engineer, the widened driveway will provide improved safety and convenience to the existing dwellings now served by a substandard driveway. The objective of the proposed partition and access road is to improve access to all of the dwellings in this neighborhood. As described earlier in this decision, the proposed partition and access implement portions of the Comprehensive Plan.

DECISION ON REQUESTED VARIANCE
MC 1-94/LD 13-94Summary of Decision:

The applicant has requested that the Division of Transportation initiate a variance to certain street standards for the proposed access road in this project. This is a difficult request, because as I interpret the language of the code and the plan, this Division has no jurisdiction to regulate the access by private easement proposed in this case. Under this interpretation, there is no applicable requirement or restriction in the Street Standards Ordinance or Street Standards Rules from which the application needs a variance.

There is a contrary contention, however, that the Code, as recently amended, makes private easements subject to the 50 foot wide right-of-way requirement found in Table 5.1 of the Street Standards Rules.

I, therefore, enter a decision on two alternative grounds. First, I find no need for a variance. Second, in the event that a 50 foot standard is applicable, I find that the criteria for a variance are met and grant a variance.

Facts:

The subject of this decision is the access to a proposed three lot partition in the Dunthorpe area. One dwelling is currently located on the site. The access would serve two additional homes off the existing access easement. The proposed private access is over a 20 foot wide easement extending South from SW Military Road. The Lake Oswego Fire Marshall has approved the access paved to a 20 foot width. The proposed access shares the entry/exit point at Military Road with the private access approved for the Tryon Vista subdivision (County File No. LD-10-93). There are no sidewalks or on-street parking in this area of Military Road.

Findings and Conclusions:

1. NO VARIANCE REQUIRED

I find that no variance is required for these reasons.

First, the Streets Standards Code and Rules do not apply to access gained by private easement. The definition of "local street" in Section 03.100 of the rules relates to public rights-of-way, not private easements such as this one. The county provisions are intended to implement ORS Chapter 368. In ORS 368.001, there is a definition of "local access road", which is "a public road that is not a county road, state highway or federal road". Based on that definition, we interpret "local street" to mean a public right-of-way.

Moreover, there are no definitions of "easement" or "privately maintained road" in the code, and there are no standards for either one in the code or the rules. The Transportation Division has never previously regulated private easements and we see no evidence of an intent to change this practice in any county code provisions. The Planning Division and Transportation Division have relied on fire district officials to approve the design of such private roads to assure a safe access prior to the issuance of building permits. For years we have simply used a handout sheet titled Multnomah County Minimum Design Standards for Residential Driveways and Privately Maintained Roads, which contains only basic construction standards and a sign off by the authorized fire official.

I, therefore, interpret the code not to require compliance in this case with the standards that were written to control the typical local street.

Second, the only language in the code that might impose the Street Standards Rules on a private easement is not intended to dictate right-of-way width, but is instead intended to limit application of those rules to the drainage and structural design of the road bed.

MCC 11.45.500(B) requires that the width, design and configuration of private streets comply with the Street Standards Ordinance. In this case, I interpret the intent of that requirement to be that the basic drainage and structural design of the road bed must meet the requirements of the Multnomah County Design and Construction Manual, referenced at MCC 11.60.390 and 11.60.400.

The design of the proposed access can satisfy all structural requirements and its width is not regulated by this office.

Third, the applicable standard is whether the access is found "suitable" by the Hearings Officer under MCC 11.15.2844(G). It would not make logical sense, and it would not be internally consistent to interpret the code to require both a finding of "suitable" by the Hearings Officer and compliance with the Street Standards Rules. This would require two separate processes with different decision procedures and appeal provisions.

2. ALTERNATIVE DECISION:

VARIANCE GRANTED IF JURISDICTION EXISTS WITH THIS OFFICE

In order to expedite the decision making process, I enter an alternative ruling in the event that the initial decision finding no applicable standard is held to be incorrect by the Hearings Officer or the Board of Commissioners. By entering this ruling, I do not concede the jurisdictional issue, but simply recognize that it would be terribly inefficient for the county, the applicant and others to re-visit this matter if jurisdiction is found.

a. Proposed Variance

The application recounts the facts of the current partition application and the assertion by an opponent that the private access easement is subject to the Urban Area Standards shown in Table 5.1 of the Street Standards Rules. The table calls for a 50 foot right-of-way width, 28-32 foot pavement width, parking on both sides and curbs and sidewalks.

The applicant requests a variance from these requirements.¹ I am authorized to consider such requests under MCC 11.60.080 and Rule 04 of the Street Standards Rules.

b. Variance Criteria

Rule 04 requires submission of certain documentary information, all of which has been submitted by the applicant. The criteria require that two standards are met:

- 1) that the variance is in keeping with the intent and purpose of the code and the rules; and
- 2) that the variance will not adversely affect the fire access and/or the function of the street or related facility.

In interpreting the intent and purpose requirement, I am guided by certain key considerations. First, MCC 11.60.020 states that the intent of the Street Standards Code is to "implement and enforce the (Multnomah County Comprehensive) Plan, and it shall be liberally construed to effectuate that purpose". The rules were adopted under the provisions of MCC 11.60. Directly applicable plan policies include Policy 20, Arrangement of Land uses; Policy 22.B, Energy Conservation; Policy 24, Minor Residential Project Locational Criteria; Policy 33a, Transportation System and Policy 34, Trafficways.

Second, it is clear that the standards for a local street in the urban area are designed to provide adequate facilities for the typical urban situated with normal residential densities, an extensive sidewalk network and the need to park cars along the street.

¹ The applicant proposes another alternative, which is to consider this easement an "accessway" and grant relief from the 200 foot limit on accessway length. My understanding is that the central dispute is over the 50 foot width requirement for a local street, and therefore, I confine my decision to that issue.

These considerations will be applied in determining whether the variance satisfies the intent and purpose criteria.

c. Analysis of Criteria

- (1) The variance is in keeping with the intent and purpose of the Code and Rules.

The applicant proposes to serve two additional homes off the existing access easement. The area is not a typical urban setting. In fact, it is a unique area of the county developed with homes located on very large lots, often exceeding an acre in size. The proposed partition of a lot with an existing house will result in three houses on 3.60 acres. Other lots in the area range from .50 acres to 4.26 acres. This is much closer to a rural setting than to a typical urban setting.

It is clear the area was developed as a rural area with large lots and narrow access roads. The proposed partition under the R-30 zoning will not alter that rural character with 30,000 square foot lots. The existing road is less than 20 feet wide on a 20 foot easement, with no curbs and no sidewalks. There are no curbs or sidewalks on S.E. Military Road. The proposed road would widen and pave 20 feet of the existing roadway to county standards. Other than width, the road can be constructed according to the structural roadbed requirements of the Multnomah County Design and Construction Manual.

The existing access is consistent with other accesses in this area and is consistent with a recent decision by the Hearings Officer. In LD 10-93, the Hearings Officer held that access over a 20 foot private easement is suitable to serve a subdivision. In a letter in that file, dated December 28, 1993, the state fire marshall approved a paved width of 19 feet when necessary to protect trees, providing "No Parking-Fire Lane Signs" are provided. The fire marshall added, "In no case will a road of less than 17 feet be approved".

The current access is adequate for the area. There is no sidewalk network, but the density is low and, therefore, pedestrian/auto conflicts are minimal. Residences have ample parking and, therefore, no on-street parking is needed.

I find that the intent and purpose of the Code and Rules is satisfied by the proposed access for several reasons.

First, the applicable Comprehensive Plan policies are satisfied. The applicant has submitted evidence that the proposed partition and access road comply with the following plan policies:

Policy 20 Arrangement of Land Uses

"The county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which:

- A. assure a complementary blend of uses;
- B. reinforce community identity;
- C. create a sense of pride and belonging; and
- D. maintain or create neighborhood long term stability."

Finding:

The proposed partition will complement the existing dwelling in the area by improving their access road. It will reinforce community identity by maintaining the large size and expensive scale of homes in this area. The subject area is zoned for single family dwellings on large lots. The proposed partition could create a sense of pride and belonging when the owners of Parcels Two and Three build new dwellings. The proposed partition will maintain long term stability in the neighborhood because the new owners will construct new dwellings designed for large lots and commit the property to long term residential use. For these reasons, the proposed partition and access comply with Policy 20.

Policy 22.B Energy Conservation

- "B. Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers."

Finding:

This policy calls for increased density in urban areas. The proposed partition will add two additional dwellings in an urban area. Without the requested access, the partition could not be approved, and the density on this parcel would not increase, contrary to this policy.

- Policy 24 Housing Location

"The county's policy is to accommodate the location of a broad range of housing types in accordance with:

- A. the applicable policies in this Plan;
- B. the locational criteria applicable to the project scale and standards.

* * *

2. Minor Residential Project Locational Criteria

A. Access

- (1) Site access will not cause dangerous intersections or traffic congestion, considering the roadway capacity, existing and projected traffic counts, speed limits and number of turning movements.

- (2) There is direct access from the project to a public street."

Finding:

As shown discussed elsewhere in this decision, the proposed housing complies with applicable policies in the Plan. The proposed access complies with (A)(1) above, as described in the evidence submitted by the applicant's traffic engineer. The 20 foot width of the roadway is not a significant factor in analyzing this roadway because the housing density is very low, and there is little traffic.

The proposed access road provides direct access from the subject property to Military Road over easements. The access by easement required approval by the Hearings Officer (MC 1-94).

Policy 33a Transportation System

"The county's policy is to implement a balanced, safe and efficient transportation system. In evaluating parts of the system, the county will support proposals which:

- A. implement the Comprehensive Plan;
- B. best achieve the objectives of the specific project;
- * * *
- F. provide a safe, functional and convenient system....."

- Finding:

Although a private road, the proposed access is part of the transportation system in the county. As discussed by the applicant's traffic engineer, the widened driveway will provide improved safety and convenience to the existing dwellings now served by a substandard driveway. The objective of the proposed partition and access road is to improve access to all of the dwellings in this neighborhood. As described earlier in this decision, the proposed partition and access implement portions of the Comprehensive Plan.

Policy 34 Trafficways

"The county's policy is to develop a safe and efficient trafficway system using the existing road network, and by:

- * * *
- B. improving streets to the standards established by the classification system, where necessary, and/or appropriate to identified transportation problem;
- * * *
- H. implementing the Street Standards Chapter 11.60 and Ordinance 162.... and establishing a procedure for allowing variances from that ordinance."

Finding:

The proposed partition access road uses the existing access road, and improves it into a safe and efficient access. As discussed elsewhere in this decision, this is a unique low density residential area with no need for the extensive street width and improvement required in a typical urban neighborhood. Allowing the proposed access is in compliance with Policy B, because it is not necessary or appropriate to apply the full width standards of a local street to this private access. This variance request follows the intent of Policy H to allow variance to the street standards. This variance request under the authority of rules established under Chapter 11.60 is in compliance with Policy 34.H.

In addition to compliance with the plan, I find there is no need in this unique area for the extensive width and improvements needed in a typical urban neighborhood. A sidewalk on this street would connect to nothing and serve no purpose. There are no sidewalks in the immediate area and the main access through the neighborhood, S.W. Military Road, lacks sidewalks. Moreover, the recent decision approving the Tryon Vista subdivision (LD 10-93), which adjoins this area, the Hearings Officer did not require sidewalks. The low density and low traffic counts in the area also establish the adequacy of the current easement, as documented by the reports and testimony of the applicant's traffic engineer.

Likewise, an additional width for on-street parking is not needed in this area where on-street parking is virtually non-existent.

In short, the requirement for a 50 foot right-of-way with full improvements is not needed to satisfy the intent of the Code, Plan and Rules, due to the unique character of the area.

- (2) The variance will not adversely affect the fire access and/or the function of the street or related facility.

The applicant has presented letters from the city of Lake Oswego Department of Fire Services and the applicant's traffic engineer at David Evans and Associates. The width of the access road was not a safety issue for either of these experts.

The fire marshall requires improvement with a 20 foot wide all-weather surface from the northern boundary of the subject property to Military Road. A turn-around is required for the new driveway crossing the subject property. Parking may be restricted and fire hydrants may be required.

The traffic engineer, Jennifer Danziger, states that even with the two new dwellings made possible, the proposed partition "traffic volumes on this roadway would still be very low", and the accessway maintains a sight distance of approximately 250 feet. Danziger concluded:

"The access roadway can accommodate the additional traffic....without substantial inconvenience or risk to other residents served by it."

d. Conclusion Regarding the Variance

The criteria for granting a variance are met in this case and, therefore, a variance is granted as noted from the following requirements for a residential local street (Table 5.1, Street Standards Rules), to the extent they are otherwise found to be applicable:

- 50 foot right-of-way width, adjusted to 20 feet;
- curbs, not required;
- sidewalks, not required;
- parking, not required; and
- pavement width 24-32 feet, adjusted to 20 feet as approved by the fire marshall.

0636E

SS Code and Rules Intent

MCCP Policy 34

c. Analysis of Criteria

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The applicant proposes to serve two additional homes off the existing access easement. The area is not a typical urban setting. In fact, it is a unique area of the county developed with homes located on very large lots, often exceeding an acre in size. The proposed partition of a lot with an existing house will result in three houses on 3.60 acres. Other lots in the area range from .50 acres to 4.26 acres. This is much closer to a rural setting than to a typical urban setting.

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The current access is adequate for the area. There is no sidewalk network, but the density is low and, therefore, pedestrian/auto conflicts are minimal. Residences have ample parking and, therefore, no on-street parking is needed.

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- parking, not required; and
- pavement width 24-32 feet, adjusted to 20 feet as approved by the fire marshall.

0636E

PLEASE PRINT LEGIBLY!

MEETING DATE

2/14/95

NAME

Dan McKenzie

ADDRESS

6125 NW Thompson Rd

STREET

Portland OR 97210

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

Meeting Date: FEB 14 1995

Agenda No: P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: DLCD Remand Order

BOARD BRIEFING Date Requested: February 14, 1995

Amount of Time Needed: 30 minutes

REGULAR MEETING Date Requested: _____

Amount of Time Needed: _____

DEPARTMENT: DES

DIVISION: Planning

CONTACT: R. Scott Pemble

TELEPHONE: 248-3182

BLDG/ROOM: 412/103

PERSON(S) MAKING PRESENTATION: R. Scott Pemble and John Dubay

ACTION REQUESTED

☒ Informational Only ☐ Policy Direction ☐ Approval ☐ Other

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

Reporting to the Board the Department of Land Conservation and Development (DLCD) Director's recommended decision pertaining to the Multnomah County Remand Order.

SIGNATURES REQUIRED:

Elected Official: _____

OR

Department Manager: RSP Betsy Willis

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1995 FEB - 7 AM 8:21



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
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GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

February 10, 1995

TO: Board of County Commissioners
FROM: R. Scott Pemble, Director of Planning
SUBJECT: OREGON DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT
DIRECTOR'S REPORT

We have received the attached Director's report from Richard Benner, Director of the Oregon Department of Land Conservation and Development (DLCD) responding to our submittal of materials regarding Goal 5 resources in the West Hills and Howard Canyon areas of Multnomah County. It consists of the staff recommendation and an appendix with all comments received by the DLCD to date.

In summary, the Director's report concludes that Multnomah County adequately determined the significance of the Goal 5 resources analyzed, but that our ESEE analysis does not justify the conclusions we reached regarding relative protection of the Angell Brothers aggregate resource vs. scenic views, wildlife habitat, and significant streams in the West Hills. Additionally, the report concludes that our protection program for the Howard Canyon site and for significant resources in the West Hills includes elements that are not "clear and objective."

In order to be considered timely, Multnomah County must submit a response to the Director's report by Friday, February 17, 1995. Our comments will be considered by the DLCD, and may result in amendments or revisions to the Director's report. We anticipate a hearing before the Land Conservation and Development Commission, which will consider the matter, in the 2nd or 3rd week of March. Staff from the Planning Division, County Counsel, and Board Offices will be meeting on Monday, February 13 in order to craft a response to the Director's report, and I will report on the outcome of this meeting to you at a briefing on Tuesday, February 14.

February 7, 1995

The Honorable Beverly Stein
Multnomah County Chair
1120 SW Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

Dear Chair Stein:

The department has finished its review of Multnomah County's periodic review submittal. Our report to the Land Conservation and Development Commission (LCDC) is attached. LCDC will consider this report at its March 9-10, 1995 meeting.

Regrettably, the department must recommend to LCDC that the county does not comply with Goal 5. We believe the county's program for wildlife habitat protection does not reflect the magnitude of conflicts identified in the reconciliation report analysis. We also disagree with the county's decision to protect no additional aggregate resources.

This has been a difficult review for the department. The county and all participants deserve an end to the process. We find no merit in simply remanding the work to the county with instructions to comply with Goal 5. Therefore, I am recommending to LCDC that this periodic review conclude either through facilitated dispute resolution or appointment of a hearings officer to resolve the matter.

If Multnomah County files a written exception to our report, I ask that you specifically respond to the department's recommended remedy. The deadline for filing exceptions is February 17, 1995. The department will address your response in preparation for LCDC's March meeting.

Sincerely,



Richard P. Benner
Director

enclosure


c: R. Scott Pemble
Paula Burgess, Governor's Office
Senator Ron Cease
Senator Dick Springer
Periodic Review files



1175 Court Street NE
Salem, OR 97310-0590
(503) 373-0050
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February 7, 1995

TO: Interested Persons

FROM: Richard P. Benner 
Director

SUBJECT: Multnomah County Periodic Review

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

The department has reviewed Multnomah County's periodic review work task submittal. This submittal concerns the county's analysis of Goal 5 resources in the West Hills area and the Howard Canyon area.

According to OAR 660-25-150 and 660-25-160, the department is referring its report and recommendation to the Land Conservation and Development Commission (LCDC). The department finds that Multnomah County does not comply with Goal 5. It recommends that LCDC direct the county to correct the deficiencies.

The department recommends that parties to this periodic review enter a process of facilitated dispute resolution. If deficiencies in the county's comprehensive plan and land use regulations are not corrected either by additional county work or agreement among the principal parties, the department recommends that LCDC appoint an independent hearings officer to prepare specific amendments to Multnomah County's comprehensive plan and land use regulations.

Persons who filed valid objections with the department before December 5, 1994 about the county's submittal may file written exceptions to this report. The parties who may appear before LCDC are: Multnomah County, Dan McKenzie, Paul Hribernick representing Raymond Smith, and Frank Parisi representing Angell Bros. and OCAPA.

The department must receive written exceptions by 5:00 p.m., February 17, 1995.

Copies of the county's submittal are available for review at the Multnomah County Division of Planning and Development and the department's Salem office.

Direct questions about the department's report on the West Hills area or other matters to Steve Oulman at 378-5144. Direct questions about the department's report on the Howard Canyon area to Ann Pytynia at 373-0886.



Director's Report
to the
Land Conservation and Development Commission



Multnomah County Periodic Review
Work Task Submittal

Department of Land Conservation and Development
February 7, 1995

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I. Summary Recommendation

The department recommends the commission find that Multnomah County's periodic review task submittal does not comply with Goal 5. The department further recommends that the commission enter an order remanding the work to Multnomah County and directing parties to this proceeding to enter facilitated dispute resolution or accept the director's appointment of a hearings officer to resolve the matter.

II. Background

Multnomah County began periodic review in August 1987. In April 1993, the commission reviewed the county's final periodic review order and directed the county to amend its comprehensive plan to comply with Statewide Planning Goal 5.¹

In March 1994, the commission approved a work program specifying the steps the county must undertake to comply with Goal 5 and finish periodic review.² The director approved one work program extension. The county submitted its work products to the department in October and November 1994.

III. Multnomah County's Submittal

The county's submittal comprises five adopted ordinances.³ Each ordinance addresses a different part of the work program. The department reviewed the county's submittal in three parts⁴: work related to the West Hills area, work related to the Howard Canyon area, and work related to comprehensive plan and land use regulation amendments.

¹ The commission found that the county's decisions about two aggregate sites (Angell Brothers and Howard Canyon) did not comply with Goal 5. The commission also found that the county's treatment of scenic, stream, and wildlife resources did not comply with the goal. It directed the county to revise its Goal 5 analyses by September 1993.

Friends of Forest Park appealed the commission's action to the Court of Appeals. In July 1994, the Court affirmed the commission's order, concluding that LCDC acted within its authority and consistently with relevant law saying that the county had not adequately completed the Goal 5 process. *Friends of Forest Park v. LCDC*, 129 Or App 28 (1994).

² In approving the county's work program under the new periodic review process, the commission repealed and replaced its 1993 orders (93-PR/POST-875 and 93-RA-876) adopted under the old periodic review process.

³ Ordinance 784--stream and wetland policies (1/11/94), Ord. 797--West Hills reconciliation report (9/22/94), Ord. 798--Howard Canyon reconciliation report (9/22/94), Ord. 801--plan policies and land use regulations for scenic views, streams and wildlife (10/18/94), Ord. 804--plan policies and land use regulations for aggregate (11/3/94).

⁴ The commission's previous orders also directed the county to clarify the decisions for two small aggregate sites, and to postpone further planning related to the Supreme Court's decision in *1000 Friends v. LCDC (Curry County)*. After further analysis, the county declared these aggregate sites 1-B resources. Since the department has no concerns with the county's

To organize its Goal 5 analyses, the county prepared two "reconciliation reports." A reconciliation report contains Multnomah County's findings about each step of the Goal 5 planning process, and an additional step where the county attempted to resolve conflicts between Goal 5 resources. The county used this approach to reconcile requirements to protect aggregate resources with mining's effects on nearby land uses and resource values.

In the West Hills, the county decided to limit conflicts with scenic, stream and wildlife resources, but allow conflicts fully to the aggregate resource. In the Howard Canyon area, the county decided to limit conflicts with stream and aggregate resources.

IV. Review Criteria

The periodic review rules (OAR 660, Division 25) direct the department's and the commission's action on a local government periodic review.

OAR 660-25-150 requires the director to approve, reject the work task, or refer the work task to the commission for review.

OAR 660-25-160 governs conduct of commission hearings. OAR 660-25-160(6) directs the commission to issue an order doing one or more of the following: approve the work task, remand the work, or require specific comprehensive plan or land use regulation amendments.

This report discusses the requirements of Goal 5 and the Goal 5 planning process (OAR 660, Division 16) beginning with its analysis on page three.

V. Parties

Three parties filed objections to the Multnomah County's work task submittal. Parties who filed valid objections may respond to the director's report and appear before the commission at a referral or appeal hearing. The commission may accept testimony from the county, Dan McKenzie, Frank Parisi, and Paul Hribernick.

VI. State Agency Participation

Because of the complexity of issues related to this review, the department sought advice from the Department of Fish and Wildlife (ODFW) and the Department of Geology and Mineral Industries (DOGAMI). Information shared by these agencies contributed to this report. Copies of agency correspondence are attached.

VII. Department Analysis

LCDC must decide whether Multnomah County complies with Goal 5. While the county completed all steps of the Goal 5 planning process, goal compliance also depends on whether the county did each step adequately and justified its decisions about resource protection.

This section examines each step of the Goal 5 planning process for resources considered by the county. These steps are: 1) inventory and significance determination, 2) identification of impact area and conflicting uses, 3) analysis of economic, social, environmental and energy (ESEE) consequences, 4) the program decision (conflict "reconciliation") and 5) program implementation.

The department first analyzes steps 1 through 4 for the West Hills area and for the Howard Canyon area. It then turns to step 5, the county's implementation program, the comprehensive plan and land use regulation amendments. This report discusses objections to the county's submittal beginning on page twenty-six.

WEST HILLS AREA

The West Hills area comprises about 22,000 acres of western Multnomah County, excluding Sauvie Island.

A. INVENTORY AND SIGNIFICANCE DETERMINATION

1. What Goal 5 Requires

OAR 660-16-000 directs local governments to inventory resources using the best available information. Based on its analysis, a local government decides which resources are significant. A comprehensive plan must identify each resource's location, quality and quantity.

Local government inventories are adequate for Goal 5 compliance

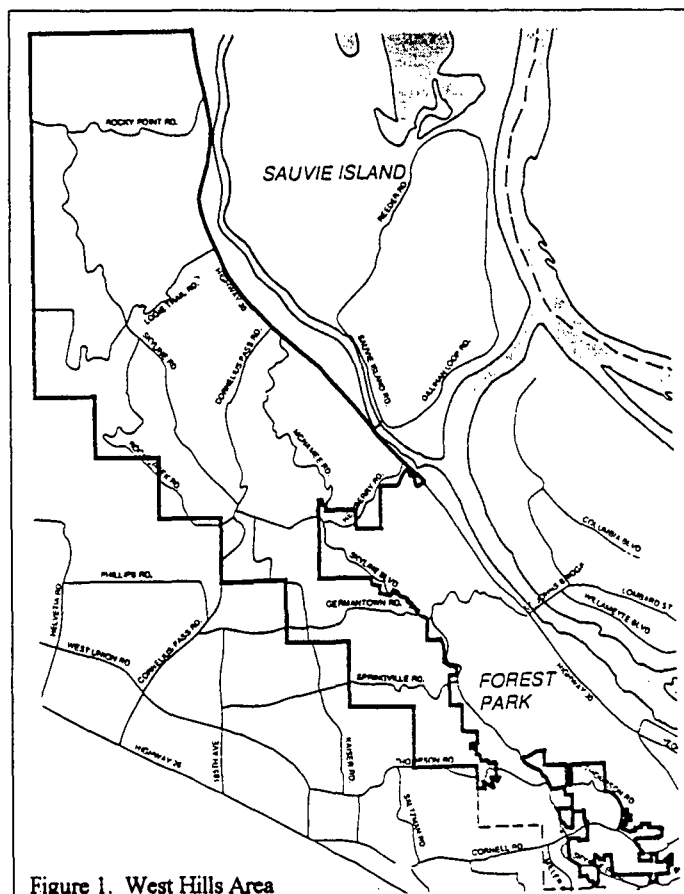


Figure 1. West Hills Area

unless shown to rely on inaccurate data or to inadequately address a resource's location, quality and quantity.

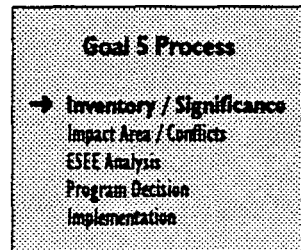
2. Multnomah County's Response

The county identified four Goal 5 resources in the West Hills: scenic views, streams, aggregate and wildlife habitat. The county designated much of the West Hills a significant scenic resource.⁵ It identified twenty-six significant streams.⁶ Production at the Angell Brothers quarry exceeds the county's significance threshold,⁷ making the site a significant aggregate resource. The county declared most of the West Hills area a significant forested wildlife habitat area.⁸

3. The Department's Findings

Given available information, the county adequately described the location, quality and quantity of resources in the West Hills. Despite concerns about specific county conclusions, the department finds that the county supported its significance determinations for scenic, streams, aggregate and wildlife resources.

Scenic: The county should have more clearly described its reasons for concluding that the West Hills is a scenic resource. It said that major landscape modifications may not destroy a scenic view if the modifications fit into the context of the view. Given this, large clearcuts do not adversely affect the significance of the area, while views of a quarry did adversely affect the views' significance.



⁵ The county's analysis evaluated landform variety, intactness, unity/coherence, and viewing area importance. The county found that the scenic resource's proximity to Portland made it important, and that the abundance of high quality scenery elsewhere in the county should not be a penalizing factor in determining the significance of scenic views of the West Hills.

⁶ The county used previously-adopted criteria to judge the significance of individual streams. The criteria are: economic value, recreation value, educational value, public safety, and natural area value. A stream need only meet one criterion to be significant. Three streams did not meet any of the criteria and were not declared significant.

⁷ The county's comprehensive plan says a site should be included on the plan inventory if the site can yield more than 25,000 cubic yards of material in less than five years. The county also concluded that the best available information about the resource's location and quality shows the Angell Brothers site is significant.

⁸ The county used this definition to determine the significance of habitat in the West Hills. "Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory wildlife species population for at least some part of their annual life cycle. Such an area is significant if it is large enough to sustain a viable population; or sustains the presence of unique, sensitive, threatened, or endangered species; or provides a critical component to a species's life requirements during some time during the year (i.e. nesting or roosting sites, big game winter range); or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning

Streams: The county's stream assessment methodology is adequate. However, the department is concerned about how the county applied the significance criteria to some streams. For example, the county found the North Angell Brothers creek significant based on three criteria: the stream contributes to downstream recreational values, existing vegetation maintains water quality, and the stream corridor is important wildlife habitat. It made this conclusion although ODFW said the stream wasn't important for wildlife habitat.⁹ The county also concluded the stream's significance without finding how the stream contributes to downstream recreational values of the Burlington Bottoms wetland.

However, even if the department disagrees with the county's conclusions about recreational and wildlife habitat value, the county's methodology directs a determination of significance if one criterion is satisfied. The county concluded North Angell Brothers creek is important for water quality maintenance.

Wildlife: The county should have more clearly described the resource it found significant. For example, the county is unclear about the nature of the resource, reporting that Forest Park cannot support larger mammals (bear, elk, cougar), but managing the West Hills area for these species will assure habitat for other smaller mammal and bird species (note, p. V-17). This relationship appears to allow the county to find that the last factor of its definition of wildlife habitat (connectivity, see note 8) is satisfied. The county may not have shown how other parts of its definition (for example, habitat for threatened or endangered species, high diversity of native plant or animal species, etc.) apply to the area, but it was not obligated to do so. The available information about location, quality and quantity of the resource lead it to the conclusion that wildlife habitat throughout the West Hills area is significant.

Although the county's decisions about the significance of resources contain deficiencies, the county adequately completed this step of the Goal 5 planning process. The Goal 5 rule provides that a local government's decision is adequate unless shown otherwise.¹⁰ Shortcomings in the county's approach or findings do not, individually or cumulatively, invalidate its overall conclusions about significance.

Having identified significant resources, however, does not mean that the county complies with Goal 5. The department finds deficiencies with other parts of the county's analysis.

⁹ Following a May 1994 site visit, ODFW advised the county that the stream did not meaningfully contribute water to the Burlington Bottoms, nor was the corridor important for any connection between habitat areas.

¹⁰ OAR 660-16-000(4) gives the commission final authority about a Goal 5 resource's significance (see *Yamhill County v. ODFW*, 115 Or App 460 (1993)).

B. IDENTIFICATION OF IMPACT AREA AND CONFLICTING USES

1. What Goal 5 Requires

For each identified significant resource, local governments must identify an impact area, if different from the resource itself. In that impact area, local governments must identify conflicts with the resource. A conflicting use is one, which if allowed, could adversely affect a Goal 5 resource site.

2. Multnomah County's Response

Two of the county's Goal 5 resources (scenic views and wildlife habitat) are not site-specific, and have no distinct impact areas. For streams, the county determined a stream's riparian zone is the appropriate impact area. It established the impact area for the Angell Brothers quarry primarily because of noise conflicts with nearby residents.

Table 1 shows conflicts the county identified for each of the four significant resources.

For each resource site, the county assessed uses allowed by the underlying zoning districts that could conflict with protection of the resource. Most of the county's analysis focused on conflicts arising from forest practices, farming, dwellings, and aggregate mining.¹¹

The county also examined other conflicts such as conflicts between protecting different resources and conflicts due to activities not regulated by county zoning. Conflicts between protecting both a Goal 5 aggregate site and scenic view or housepets' effects on wildlife are examples of conflicts not addressed by the county's zoning code.

	Scenic	Streams	Aggregate	Wildlife
Forestry	✓	✓	✓	✓
Dwellings	✓	✓	✓	✓
Farming		✓		✓
Transportation		✓		
Mining	✓	✓		✓
Other	✓	✓		
Soil, air, water conservation			✓	
Scenic			✓	
Streams			✓	
Wildlife			✓	

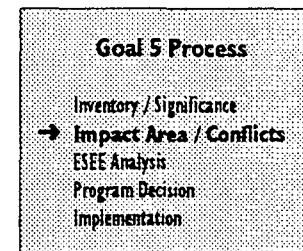
Table 1. Conflicts with Scenic, Streams, Aggregate & Wildlife resources

¹¹ Forestry zoning makes up about 76% of the West Hills area. Agricultural zoning comprises about 11% of the area, rural

3. The Department's Findings

The department has concerns with the county's identification of impact areas and conflicting uses for streams.

The county misapplied adopted comprehensive plan policies when it described the impact area for some streams. While stream significance depended on application of previously-adopted criteria, the county modified the criteria in order to designate an impact area.¹² The department believes this is wrong. The county cannot tailor its Goal 5 impact area analysis to achieve results different from that directed by a comprehensive plan policy.



For example, the county should not associate the Burlington Bottoms wetland with the impact area of nearby streams. The adopted plan policy associates a stream's significance with its contribution to downstream recreational values. As noted above, the county made no findings about the contribution of streams to recreational values in the Burlington Bottoms wetland. Since it did not show that the stream contributes to recreation, it cannot say that the impact area includes areas where recreation might take place.

Apart from this discrepancy, the county adequately identified impact areas and conflicts for significant Goal 5 resources.

C. ANALYSIS OF ESEE CONSEQUENCES

1. What Goal 5 Requires

After identifying significant resources and the associated conflicting uses, a local government must determine the ESEE consequences of the identified conflicts. When analyzing these ESEE consequences, local governments must examine the effects on the resource and on the conflicting use. Where appropriate, local governments must consider the requirements of other statewide planning goals. A local government's determination of ESEE consequences is adequate if it gives reasons for the final decision and program to achieve the goal for a specific site--OAR 660-16-005(2).

¹² County stream policy B.2. says a stream is significant if "the water resource contributes water to a water resource within the boundary of a public park, publicly accessible recreational facility, or private recreational facility available for public or group use, and the diversion or degradation of the contributing waters would significantly diminish the recreational value of the water resource." The reconciliation report recasts the policy to say that "for streams that flow through or contribute to public parks, publicly-owned natural areas, or to recreation areas used by the public, the impact area includes the downstream park.

2. Multnomah County's Response

For each of the four significant resources, the county conducted a separate analysis of ESEE consequences. It concluded the following for each resource:

Scenic: The benefits of protecting scenic views are primarily social and environmental. Economic and social consequences of prohibiting conflicting uses are more severe than limiting the uses. Therefore, except aggregate mining, the county decided to restrict, but not prohibit, conflicting uses to the scenic resource.

Streams: The benefits of protecting streams are primarily environmental in nature. Consequences of prohibiting or limiting conflicting uses are economic, social and energy related. The county found that adverse effects to the resource and negative consequences to the conflicting use occurred in nearly all cases. It concluded that except aggregate mining, the county would limit, but not prohibit, conflicting uses.

Aggregate: Conflicting uses to the aggregate resource allowed by the county's zoning primarily are existing and potential dwellings. The county reached no conclusion about whether the aggregate resource or the dwellings were more affected by this conflict. The county's analysis focused on the consequences of conflicts between additional aggregate mining and protecting other significant resource values.¹³ The county found that surface mining would have adverse effects on scenic views, streams, and wildlife.

The county concluded that no one had proved that reclamation could maintain or restore desired scenic views. Additional mining might degrade water quality in Burlington Bottoms. It concluded that current mining and reclamation methods won't ensure compliance with state water quality standards. It also concluded that because mine reclamation could not quickly regrow forest habitat, any mine expansion would sever the wildlife habitat connection between Forest Park and the Coast Range. Therefore, in the county's view, balancing consequences was not possible.

Wildlife: The county concluded that the adverse consequences of allowing conflicting uses in the wildlife habitat involved mostly environmental effects. Effects of protecting the habitat on the conflicting uses are mostly economic.

The county found that rural residential development poses the single greatest threat to maintaining forested wildlife habitat. The county concluded that the consequences of

¹³ Angell Brothers aggregate currently operates under a county conditional use permit for mining about 114 acres of its 397 acre property. The county's Goal 5 analysis concerns how much, if any, resource protection and mining may occur on the

forest practices are significant, but beyond their direct control since the county cannot regulate forest practices.¹⁴ Assuming mitigated expansion of the quarry site, the county concluded the wildlife habitat would lose its value as a connector to Forest Park.

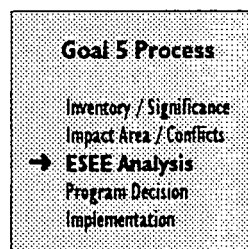
The county summarized: "In balancing wildlife vs. conflicting uses, it is clear that the adverse environmental consequences upon wildlife habitat would greatly outweigh the economic benefits of allowing conflicting uses without restriction. Likewise, the adverse economic consequences upon conflicting uses would greatly outweigh the environmental benefits of prohibiting conflicting uses in order to protect wildlife habitat. Therefore, a balanced approach, which limits, but does not prohibit, conflicting uses in order to protect wildlife habitat, is appropriate" (Wildlife Habitat Reconciliation Report, p. V-49).

3. The Department's Findings

The county's analysis of ESEE consequences is extensive. Several consultants contributed studies the county used to justify protection of streams and wildlife habitat over protection of additional aggregate reserves. The analyses, however, suffer from inconsistencies, inadequately supported conclusions, and the county's failure to consider a scenario that would allow protection of all resources.

Such inconsistencies consistently emphasize conflicts between surface mining and other resources, understate the effects of other land uses on resource protection, and reinforce the county's decision to prohibit more surface mining under any conditions.

For example, the county's reconciliation report for streams says "expansion of aggregate mining into this watershed threatens water quality . . . Depending on the design and monitoring of the mining operation, DEQ [Department of Environmental Quality] and DOGAMI requirements can be satisfied and the quality of water discharged to the Burlington Bottoms area can be maintained" (p. III-28). Yet, the report shortly thereafter declares that DEQ cannot guarantee compliance with water quality standards,¹⁵ and therefore, mining represents an unacceptable conflict.



¹⁴ The county assumed that it could not prohibit forest practices, and did not consider this option during its analysis. The county's assumption was incorrect. ORS 527.724(4) allows counties to prohibit forest practices on land where it takes an exception to Goals 3 and 4.

¹⁵ DOGAMI and DEQ found during an October 1994 inspection that the quarry operator has significantly improved storm water management on the site. "It was raining hard during the inspection, and due to storm water improvements on site, at this time there is no off-site discharge of any storm water on the Angell Brothers property." DOGAMI Inspection Report

Another example. The county's analysis of rural residential development concluded that if it allows residential buildout provided by current zoning, "it is probable that the forested habitat connection between Forest Park and the Coast range will be interrupted by impacts from existing and potential development" (p. V-36). The county's report repeatedly notes that residential development, roads associated with development, and other human disturbances have significant adverse effects on wildlife.¹⁶ Nevertheless, it concluded that the economic and social consequences weighed in favor of allowing construction of the additional dwellings.¹⁷

A third example. The county repeatedly concluded that protecting and using additional aggregate reserves would adversely affect protection of other resources. The county did not substantiate its conclusions that reclamation won't work.¹⁸ It didn't document or adequately explain why it rejected mining and reclamation plans, such as those encompassed in permit applications to DOGAMI.¹⁹

The county based its belief that reclamation is not possible on little information about mitigating the effects of surface mining. Two factors dictate a more thorough consideration of reclamation and mitigation than the county undertook.

First, the county's work program required state agency coordination. Citing OAR 660-16-020's direction to involve land owners and public agencies in the Goal 5 planning process, the department insisted that the county's work program include meaningful coordination with state agencies.²⁰ The department recommended this

¹⁶ "Rural residential development. . . poses the greatest single threat to the objective of maintaining a continuous band of forested wildlife habitat" Wildlife Habitat Reconciliation Report page V-25. "Cornelius Pass Road, roughly parallel railroad tracks, and associated rural residential development are a major barrier to north-south movement across the West Hills Forested Habitat Area" p. V-30. "Human intrusion is one of the most detrimental impacts on wildlife. It is most often associated with residential development and along roads" p. V-33.

¹⁷ Reaching this conclusion, the county reasoned that besides the severe economic consequences of prohibiting further dwellings to protect wildlife, "there would be little environmental reasons to do so. Since the majority of the vacant lots are in the 'impacted' portions of the West Hills Wildlife Forested Habitat Area, most lots do not interfere substantially with West Hills forested habitat values" Wildlife Habitat Reconciliation Report, p. V-54. This statement contradicts the report's finding that "undeveloped, forested land zoned for rural residential uses is considered secondary wildlife habitat" p. V-15. It also contradicts county findings that dwellings are a major threat to wildlife, see note 16.

¹⁸ "While reclamation is required, many people have questioned the ability of reclaimed land to support forest growth and the ability of the reclaimed landform to blend in with the surrounding topography" Scenic Resources Reconciliation Report, p. II-11. "Reclamation would allow for its [the site] future utilization for forestry. The Board has indicated that they are not convinced that attempts to reclaim the site would succeed in enabling the forest habitat to function again" Angell Brothers Aggregate Resource Reconciliation Report, p. IV-23.

¹⁹ Angell Bros. filed an application for an operation permit and approval of a reclamation plan with DOGAMI in October 1993. The application sought reclamation approval for land outside the existing 114 acre permit area. DOGAMI has reviewed the application and prepared proposed conditions for the plan. It has not approved the reclamation plan or operating permit.

²⁰ When negotiating this work program, the county and other participants objected to inclusion of the state agency coordination

action to facilitate resolution of reclamation and water quality issues remaining from the commission's 1993 review and required amendments order.

Second, OAR 660-16-030 requires that local governments address the requirements of the Mined Land Reclamation Act and coordinate with DOGAMI.²¹ The commission adopted this rule in 1992 in response to legislation directing local governments and DOGAMI work together to resolve mining and reclamation issues.

The department interprets this rule to require that local governments show consideration of the Mined Land Reclamation Act and coordination with DOGAMI in its Goal 5 analyses. A local government does not comply with this rule if it fails to identify and discuss the role reclamation and the requirements administered by DOGAMI can play in mitigating effects of mining a Goal 5 aggregate resource. Multnomah County's analysis does not show how it considered reclamation as required by this rule.

In response to department questions, DOGAMI said that they felt the county misunderstood its role and the role of other agencies in mining and reclamation (Attachment 1.2). Multnomah County's analysis also does not explain why it dismissed ODFW's advice that reclamation presented options for protecting wildlife in the West Hills.²² As far as the department knows, the county's effort at coordinating with affected state agencies consisted of hearing testimony at one public hearing. Neither Goal 5 nor its administrative rule compels local governments to engage in meaningful dialogue with agencies to resolve land management controversies. However, the commission's rule says that doing so "will likely avoid problems or disagreements later in the process and improve the local decision making process in the development of the plan and implementing measures" OAR 660-16-020(1).

D. PROGRAM DECISION

This report separates discussion of the county's decisions about resources from the specifics of the county's implementation program. Here, the department discusses the county's Reconciliation Report for the West Hills. Later, this report discusses the details of the county's comprehensive plan policies and land use regulations.

²¹ OAR 660-16-030(1): When planning for and regulating the development of aggregate resources, local governments shall address ORS 517.750 to 517.590 and OAR Chapter 632, Divisions 1 and 30. OAR 660-16-030(2): Local governments shall coordinate with the State Department of Geology and Mineral Industries to ensure that requirements for the reclamation of surface mines are incorporated into programs to achieve the Goal developed in accordance with OAR 60-16-010.

²² "If the County's objective is to achieve a one-half mile area of continuous forest habitat, with 200-foot wide forested canopy areas running through the half-mile width, there are other options which should be considered. We believe that long-term benefits to wildlife could be gained through conscientious reclamation of the quarry site and subsequent establishment of

1. What Goal 5 Requires

Assuming adequate information exists about the location, quality and quantity of resources and the nature of conflicting uses and ESEE consequences, local governments must resolve conflicts with specific sites in one of three ways--OAR 660-16-010. One way of resolving conflicts directs protection of the resource by prohibiting all conflicting uses. A second way allows local government to allow conflicting uses fully, notwithstanding the possible adverse effects on the resource site. The third way directs balancing of ESEE consequences to allow conflicting uses, but in a way to protect the resource to a desired extent. Local comprehensive plans must include the reasons supporting decision for the program and individual sites.

Goal compliance depends on the local plan's ability to protect and conserve each resource. The commission has the ultimate authority about the adequacy of a jurisdiction's program or of the decisions made for individual sites.

2. Multnomah County's Response

The county first summarized its findings and conclusions about the conflicting uses described in the analysis of ESEE consequences. It reconciled the effects of the following conflicting uses.

Forestry: The county found the effects of logging are temporary--"once trees begin to grow the scenic appearance of the site and its usefulness as wildlife habitat and riparian value are regenerated" (p. VI-6). The county concluded that it cannot regulate or prohibit forest practices on forest land; the cost of regulating tree cutting on other land is too high to justify a county-run program. In the end, the county concluded it would urge the Oregon Department of Forestry (ODF) to enforce the Forest Practices Act (FPA) to protect fish and wildlife habitat. If necessary, it will work with ODF to craft new forest practices rules to protect scenic views, streams and wildlife habitat.

Agriculture: Significant wildlife habitat in the West Hills does not include agricultural land. Agricultural practices do not affect scenic views. Specific conflicts with only a few streams exist. The county concluded that it should not regulate agricultural practices to protect Goal 5 resources. Instead, the county recommends promotion of voluntary agricultural practices to protect streams and wildlife habitat.

Conditional Uses: In the West Hills, the county treats community service and commercial activities as conditional uses. The location of these uses (in Burlington, along Highway 30) did not pose significant threats to scenic, stream, aggregate or wildlife resources.

Uses to Conserve Soil, Air and Water Quality: These uses conflict only with the protection and mining of aggregate resources. The county concluded that any mining must meet DEQ and DOGAMI standards to ensure soil, air and water quality. The county concluded that the benefits of environmental protection outweighed the burden of additional regulations on a mine operator. Therefore, the county chose to fully allow these activities without limitation at the aggregate site.

Residential Uses: The analysis showed that residential uses greatly affect wildlife habitat. While more dwellings create the likelihood of more conflicts to wildlife from household pets and human disturbance, the county discounts the use of zoning and encourages public education. The county concluded that a balanced approach that protects scenic, stream and wildlife resources while allowing additional dwellings is the optimal conflict resolution.

Transportation: Roads can adversely affect stream resources. However, because the county proposes no new roads it concluded that new adverse consequences are minimal. Therefore, it chose a balanced approach to allow the road development and reduce adverse effects on stream resources.

Mining: Effects of surface mining last a long time. The county rejected the notion that reclamation could successfully mitigate adverse effects of mining on scenic resources. The county also concluded that because the North Angell Brothers creek could carry sediment to the Burlington Bottoms wetland, it would not allow additional mining. Finally, the county concluded that because expansion of the Angell Brothers quarry would encroach on habitat areas, the minimum connectivity requirements for maintaining viable habitat throughout the West Hills would be lost. As a result, the county concluded that a balance among competing resource values is not possible.

The county translated these conclusions into the following Goal 5 decisions.²³

Scenic: 3-C. Fully allow agriculture, forestry, and uses unseen from key viewing areas. Do not regulate development in the rural community of Burlington along Highway 30. Apply an overlay zone to the West Hills requiring development to be visually subordinate.²⁴

²³ The abbreviations are commonly-used shorthand local governments' program options. "3-A" is a decision to prohibit conflicting uses fully--OAR 660-16-010(1). "3-B" is a decision to allow conflicting uses fully regardless of effects to the resource--OAR 660-16-010(2). "3-C" is a decision to limit conflicting uses, but in a way to protect the resource to some desired extent--OAR 660-16-010(3).

²⁴ According to the county code, visually subordinate means "development does not noticeably contrast with the surrounding landscape. as viewed from an identified viewing area. Development that is visually subordinate may be visible, but is not

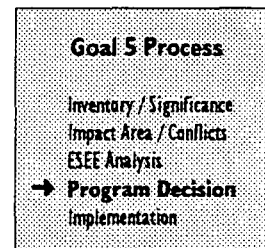
Streams: 3-C. Fully allow agriculture and forest practices. Prohibit any aggregate mine expansion into the watershed of the North Angell Brothers stream. Apply an overlay zone to the riparian area of streams to reduce direct loss of streamside habitat and runoff into significant streams. Monitor ODF's enforcement of the FPA. Work with other entities to encourage farmers to change agricultural practices.

Aggregate: 3-C for the existing 114-acre permit area, 3-B for remainder (about 283 additional acres) of the resource site. Fully allow most uses in the commercial forest (CFU) zone. Allow new dwellings in the impact area of the existing mine site subject to limitations.

Wildlife: 3-C. Fully allow agricultural and forest practices. Limit other conflicting uses such as dwellings. Prohibit expansion of the Angell Brothers aggregate site. Apply an overlay zone to most of the West Hills to reduce or mitigate the effects of development on habitat.²⁵

3. The Department's Findings

Decisions about which resources to protect and the degree of protection a local government gives the resources must follow from the analysis of ESEE consequences. OAR 660-16-005(2) says that the analysis is adequate if it gives reasons to support the ultimate decisions about resource protection. Here, Multnomah County says its analysis gives the reasons why it will protect scenic, stream and wildlife resources from conflicts, but will not protect the aggregate resource.



The department disagrees for two reasons. First, the county's choice to limit conflicts to scenic views, streams, and wildlife does not correspond with its conclusion to prohibit protection and use of additional aggregate reserves.

Little disagreement exists about the county's identification of conflicting uses. Most development activities in the West Hills conflict with protection of natural resources. If some development will occur (as the county assumes), resolving conflicts for resource protection then must focus on the choices and tradeoffs identified in the analysis of ESEE consequences.

Under Goal 5, local government may not simply choose among conflicting uses it likes and conflicting uses that it doesn't like. *An adequate program to achieve the*

²⁵ The overlay zone regulates location of development and fencing or requires preparation of a conservation plan and limits

goal demands that program decisions reflect a proportional and reasonable relationship to the identified conflicting uses and their consequences. A local government must treat similar conflicts similarly as the consequences dictate. Different conflicts with different consequences require proportionally different treatment. The county's analysis and decision about wildlife habitat illustrate a lack of proportional treatment.

Many uses conflict with protection of forested wildlife habitat. Forest practices, surface mining and residential development are the main conflicts. Forest practices occur throughout the area. Residential development is more limited. Surface mining is site specific. The county consistently reports that residential development poses a significant threat to wildlife throughout the habitat area (see notes 16 and 17). Yet, despite adverse effects of residential development, the county finds ways to minimize the conflict. Therefore, the county's response does not correspond to the degree and extent of the stated consequences of residential development on the habitat resource.

Given the county's statements about the adverse effect of housing development on wildlife, its conclusion to impose minimal restrictions on new dwellings is inadequate in view of the severity and magnitude of the conflicts. The decision also places a disproportionate burden on one conflicting use (e.g., mining) to protect habitat. Heavy reliance on simply prohibiting mining isn't acceptable because the county didn't adequately exhaust mitigation opportunities for mining in the same way it did in deciding to limit residential development to protect habitat.

The department's second concern about the county's program decisions is the county's failure to fully examine ways of balancing mining's conflict with other resources to protect all identified resources. In 1991, LCDC acknowledged Deschutes County's Goal 5 element for aggregate resources. In that acknowledgment, the commission found:

As compliance with Goal 5 is also based on the plan's overall ability to protect and conserve each Goal 5 resource, a jurisdiction must consider mitigation as a means of balancing conflicting uses and as an alternative to a 3-B decision. Information on mitigation should be collected from landowners, state agencies, and other available sources of data. Consideration of mitigation must be based on evidence available in the record. LCDC Order 91-ACK-751, Exhibit G, Director's Report, p. 12. (emphasis added)

This principle means that a local government must first evaluate, and reject, mitigation opportunities as part of its program to achieve the goal before allowing conflicting uses fully. Goal 5's direction to protect resources requires a local government to show

why it cannot protect a resource fully (3-A) or limit conflicting uses (3-C) before it concludes to allow conflicts fully (3-B). When conflicts exist between Goal 5 resources, local governments must show it is not possible to resolve conflicts in favor of protecting all significant resources.

Multnomah County did not meet this obligation. It correctly noted in its reconciliation report that it must look for a balance among scenic, stream, aggregate and wildlife values. It did not, however, adequately justify why no balance existed for the aggregate resource.

The county assumed ODF will correctly administer the FPA. Reliance on correct environmental protection provisions of the Forest Practices Act allowed the county to reach a 3-C conclusion for scenic, stream and wildlife resources. The county assumed that its imposition of zoning restrictions would protect forested wildlife habitat. Its reliance on the efficacy local zoning techniques allowed the county to reach a 3-C conclusion for scenic, stream and wildlife resources.

The county did not assume that DOGAMI would adequately administer the mined land reclamation act, or that the regulations themselves would assure protection of scenic views, streams or wildlife habitat. Rejecting mitigation and reclamation opportunities allowed the county to reach a 3-B conclusion for aggregate.

Where conflicts exist between aggregate resources and other Goal 5 resources, a local government must explore more choices than simply allowing or prohibiting mining. Goal 5 program decisions lie on a spectrum, with a decision considering some degree of mitigation lying somewhere in the middle. To show compliance with the goal to conserve and protect each resource, local government must examine reasonable options that lie along this spectrum.

3-A	3-C	3-B
Protect the Resource Allow Mining	Limit Conflicts: Protect Resource to Desired Extent Allow Some Mining	Allow Conflicts Fully Prohibit Mining

Had Multnomah County considered mitigation opportunities in the same way it did for other conflicting uses, it may have found opportunities to protect additional aggregate reserves and allow some expansion of the Angell Brothers site. The county needs to undertake this alternatives analysis. While it need not examine all possible operation and reclamation possibilities at the Angell Brothers site, the county must examine at least the operation and reclamation plan proposed by the operator and under review by DOGAMI.

E. CONCLUSION - WEST HILLS AREA

Multnomah County followed each step of the Goal 5 planning process. Despite various discrepancies, it justified the significance of resources and identified conflicts to these significant resources. It assessed the consequences of conflicting uses and made program decisions based on its reconciliation of the conflicts.

The county does not comply with Goal 5, however. Its ESEE analyses are flawed by inconsistencies, contradictions and inadequately supported conclusions. These deficiencies translate into program decisions that do not truly reflect the identified conflicts, or the consequences of those conflicts. By only selectively considering opportunities to mitigate conflicts, the county concluded that additional surface mining in the West Hills is not possible. The department finds that the county's analyses are inadequate and recommends that the commission direct the county to correct the deficiencies. See Section IX, below.

HOWARD CANYON AREA

The Howard Canyon area comprises a small area of eastern, unincorporated Multnomah County southeast of Corbett. The county evaluated Goal 5 resources in this area because the commission ordered the county to reevaluate its decision for the Howard Canyon aggregate resource site. In this area, the county examined two Goal 5 resources: streams and aggregate.

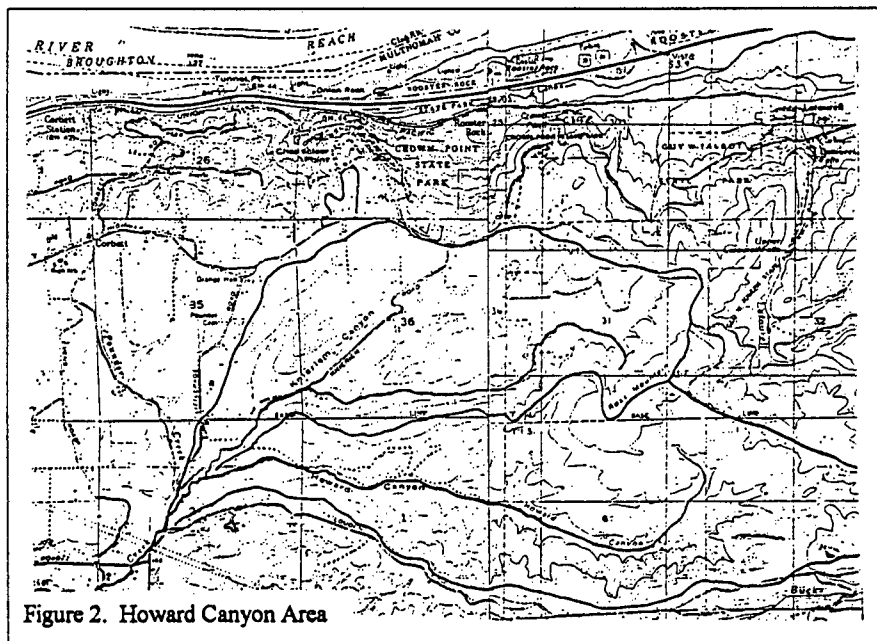


Figure 2. Howard Canyon Area

A. INVENTORY AND SIGNIFICANCE DETERMINATION

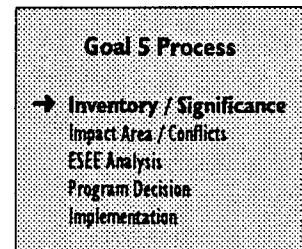
1. What Goal 5 Requires

OAR 660-16-000 directs local governments to inventory resources using the best available information. Based on its analysis, a local government decides which resources are significant. A comprehensive plan inventory must identify each resource's location, quality and quantity.

Inventories developed by local government are adequate for Goal 5 compliance unless shown to rely on inaccurate data or don't adequately address a resource's location, quality and quantity.

2. Multnomah County's Response

The county identified three streams it felt may be affected by the Howard Canyon aggregate site. It did so in the same way it identified streams in the West Hills area: it applied previously adopted criteria²⁶ and compared the streams with other streams in the county. The county also affirmed that the Howard Canyon aggregate site is significant as the only high quality source of aggregate in unincorporated east Multnomah County.



3. The Department's Analysis

The department concludes that the county complies with this step of the Goal 5 planning process. Given available information, the county adequately described the location, quality and quantity of the resources it considered.

B. IDENTIFICATION OF IMPACT AREA AND CONFLICTING USES

1. What Goal 5 Requires

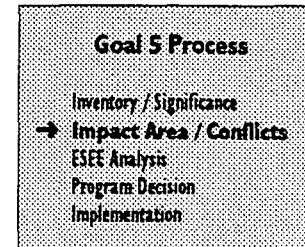
For each identified significant resource, local governments must identify an impact area, if different from the resource itself. In that impact area, local governments must identify conflicts with the resource. A conflicting use is one, which if allowed, could adversely affect a Goal 5 resource site.

²⁶ The three streams are significant because they are the source of water rights permits, contribute water to the wild and scenic Sandy River, provide flood storage capacity, and are valuable aquatic and riparian habitat.

2. Multnomah County's Response

For streams, the impact area is the riparian area, field checked where possible. For the aggregate resource, the county found that a 1,200 foot impact area from the boundary of the resource would encompass the primary conflict of noise.

Conflicting uses for the three streams are agricultural practices, forest practices, mining, and rural residential development. Conflicting uses for the aggregate resource are rural residential uses and protection of the three significant streams.



3. The Department's Findings

The department concludes that the county complies with this step of the Goal 5 planning process. The county adequately identified impact areas and conflicting uses for the significant stream and aggregate resources it considered.

C. ANALYSIS OF ESEE CONSEQUENCES

1. What Goal 5 Requires

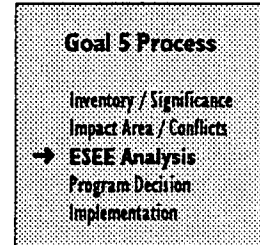
After identifying significant resources and the associated conflicting uses, a local government must determine the ESEE consequences of the identified conflicts. When analyzing these ESEE consequences, local governments must evaluate the effects on the resource and on the conflicting use. Where appropriate, local governments must consider the requirements of other statewide planning goals. A local government's determination of ESEE consequences is adequate if it gives reasons for the final decision and program to achieve the goal for a specific site--OAR 660-16-005(2).

2. Multnomah County's Response

For streams, the county assessed the consequences of allowing conflicting uses fully versus prohibiting conflicting uses fully. It concluded that the consequences of not protecting the streams were mainly environmental. The consequences of prohibiting or limiting conflicting uses to preserve the streams were mainly economic and social.

Consequences of protecting and using the Howard Canyon aggregate resource focused on the availability of rock sources in this part of the county and potential adverse effects a quarry operation could have on nearby neighbors. The county concluded from its analysis of mitigation that the quarry's operation would not adversely affect neighbors or nearby streams since the quarry could satisfy DEQ environmental standards.

Relying on the Goal 5 rule's direction to consider the applicability and requirements of other statewide planning goals (OAR 660-16-005(2)), the county assessed the possible effects quarrying could have on the local road system. The county conducted this analysis to satisfy Goal 1 requirements to address citizen concerns, and to satisfy Goal 12's direction to provide a safe transportation system. The county determined that aggregate truck traffic could have serious consequences for three area bridges, neighbors' safety until bike lanes are added, and the structural integrity of the roads themselves.



3. The Department's Findings

The department finds that the county adequately analyzed the ESEE consequences of identified conflicting uses.

D. PROGRAM DECISION

1. What Goal 5 Requires

Assuming adequate information exists about the location, quality and quantity of resources and the nature of conflicting uses and ESEE consequences, local governments must resolve conflicts with specific sites in one of three ways-- OAR 660-16-010. One way of resolving conflicts directs protection of the resource by prohibiting all conflicting uses. A second way allows local government to allow conflicting uses fully, notwithstanding the possible adverse effects on the resource site. The third way directs balancing of ESEE consequences to allow conflicting uses, but in a way to protect the resource to a desired extent. Local comprehensive plans must include the reasons supporting the decision.

Goal compliance depends on the local plan's ability to protect and conserve each resource. The commission has the ultimate authority about the adequacy of a jurisdiction's program or of the decisions made for individual sites.

2. Multnomah County's Response

Similar to its reconciliation for resource conflicts in the West Hills, the county considered the consequences of the conflicting uses to the resources.

Forestry: The county concluded that the FPA could provide some protection of stream resources. It would allow these forest uses fully, urge ODF to enforce the FPA, and work with ODF to amend the forest practices rules, if necessary.

Residential: Residential uses pose a significant conflict with stream resources. Residential conflicts and consequences for aggregate are less. The county concluded that a balanced approach to allow residential uses and reduce adverse effects on the stream and aggregate resources was appropriate. It applied an overlay zone to limit conflicts to streams and the aggregate resources.

Agriculture: The county found that consequences of agricultural practices on streams are such that the county should not regulate agricultural practices. Instead, the county opted to work with other entities to promote changes in agricultural practices to protect streams.

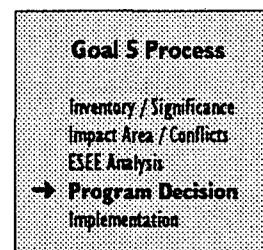
Mining: While mining could have adverse effects on surrounding residential uses, the county also found that prohibiting use of this site could have adverse effects on supplying aggregate material in unincorporated east Multnomah County. Based on its conclusion that mining could operate within environmental standards administered primarily through DOGAMI, the county opted for a balanced approach to reduce conflicts with the resource.

The county's program for the Howard Canyon aggregate site included specific operational conditions. The county reduced the resource area open to mining, required ongoing noise and water quality studies, imposed a production cap, and mandated transportation analyses before any quarrying can take place.

3. The Department's Findings

The department agrees with the county's decision to balance conflicts, limit conflicting uses and protect significant resources to some extent. In doing so, however, the county imposed conditions on future aggregate extraction that are unrelated to the conclusions of its analysis of ESEE consequences.

The county prohibited mining from part of the resource site because doing so would additionally buffer nearby dwellings from noise and dust. However, the county's ESEE analysis never considered the need for this additional buffer nor the consequences of imposing it. The county did find that DEQ noise and air quality standards were appropriate to minimize conflicts with surrounding land uses. The county found that proposed mining operations would not exceed noise standards. The county also found that the existing operator holds required air quality permits, and found that paved roads could mitigate most other effects of dust.



The county also requires the operator to conduct periodic water quality and noise studies. However, it hasn't said how it will use this information. Its analysis of ESEE consequences concluded that the existing operation complied with environmental protection standards and no credible information showed that continued compliance was an issue. The county provided no explanation why it set up a permit monitoring system parallel to DEQ's for water quality. It gave no explanation why it requires noise studies when the county imposes no regulations on noise.

Finally, to address potential effects on the local, rural road system, the county conditioned any additional mining on completion of traffic impact analyses. The department does not disagree with the county's requirement. It has consistently told local governments not to use transportation conflicts to withhold protection of a significant aggregate resource. The department has advised local governments that they may enact reasonable restrictions on the surface mining use to mitigate demonstrated effects of truck traffic.

Here the county found deficiencies with the local road system that could be exacerbated by heavy truck traffic. It imposed a set of operating conditions to mitigate the effects of truck traffic. However, the discretionary requirements imposed on use of this protected resource are not clear and objective as required by OAR 660-16-010(3).

While the county references many local, state and national standards for roadway construction it does not identify the level an applicant must perform at to secure a permit. An applicant cannot anticipate whether an activity is permissible since a decision about acceptable traffic mitigation lies with the discretion of the County Engineer. The county must make its review standards clear and objective so potential applicants know, in advance, what is required of them.

E. CONCLUSION - HOWARD CANYON AREA

On whole, the county's Goal 5 analysis for the Howard Canyon area is adequate. However, it must revise its program decision concerning future aggregate extraction to ensure that requirements match the analysis of ESEE consequences and impose only clear and objective requirements on permit applicants.

COMPREHENSIVE PLAN & LAND USE REGULATIONS

The package of plan text and policy amendments, and new and amended land use regulations, makes up the third part of the county's submittal. These provisions form the county's resource protection program and carry out decisions for individual Goal 5 resource sites.

These plan provisions and land use regulations only carry out the county's program to limit conflicting uses while protecting the resources to a desired extent, 3-C decisions. The county made no 3-A decisions (protect the resource fully); therefore, it is not required to develop comprehensive plan and zoning tools to carry out these decisions. Decisions to not protect a significant resource (3-B) require no further action.

1. What Goal 5 Requires.

To carry out a 3-C decision, a local government must designate with certainty the allowed, prohibited and conditional uses. It also must adopt specific standards or limitations necessary to protect the resource to the desired extent from the conflicting permitted and conditional uses. Any implementation tools must be clear and objective.

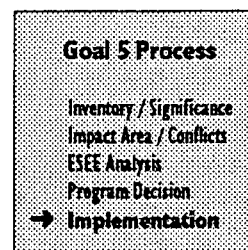
2. Multnomah County's Response

Multnomah County's program to protect Goal 5 resources primarily uses a zoning overlay. The Significant Environmental Concern (SEC) overlay provides standards that augment any requirements imposed based on the county's analysis of ESEE consequences. Additionally, the county uses a Protected Aggregate & Mineral Sites (PAM) overlay to protect aggregate sites from conflicting uses.

The SEC overlay consists of four parts, one each for regulating conflicts to wetlands, scenic views, wildlife habitat and streams. The county made changes to the provisions for scenic views, wildlife and streams. It also revised its PAM overlay.

3. The Department's Findings

Some provisions are ambiguous or do not clearly relate to the county's analysis of ESEE consequences. The county needs to fix the following sections.



MCC 11.15.6424(B)(5) *Siting in a manner so that grading, cuts or fills are minimized and accomplished in a manner so that the topography after completion of the development will blend with the surrounding landscape.*

The county needs to define a standard for determining if grading, cuts or fills are minimized. It needs to define what "blend with the surrounding landscape" means.

MCC 11.15.6424(D) *The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC.6418 in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse impacts of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.*

The county needs to define how it will determine the proportionality of conditions with the potential adverse impacts on scenic views.

MCC 11.15.6426(A)(2) [Applications shall show:] *Location of primary, secondary and impacted wildlife habitat areas as per the adopted reference map within the Multnomah County Comprehensive Plan;*

The county either needs to delete reference to this map as part of its implementing program or fix the map. The department found mapping errors. For example, the county mapped some developed residential areas as primary habitat when according to the county's analysis, these areas are impacted habitat.

MCC 11.15.6426(A)(2) [Applications shall show:] *Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;*

The county needs to clarify what it means by "forested areas." It needs to specify the approval authority of forest management plans. It needs to define "non-forested 'cleared' areas."

MCC 11.15.6426(B)(2) *The proposed development shall be located so as to maintain existing forested areas which are broadly contiguous with forested areas or areas being reforested on adjacent properties.*

This approval standard is not clear and objective. Once it defines forested areas, the county needs to specify its standard for maintaining existing forested areas. The county needs to define the term "broadly contiguous."

MCC 11.15.6426(3)(a)(v)(C) *Solid fencing which acts as a visual barrier to wildlife is not permitted.*

The county needs to specify how it will decide what is a visual barrier to wildlife.

MCC 11.15.6426(3)(b) *Wildlife Conservation Plan*

The applicant shall prepare a wildlife conservation plan for the proposed development which shall demonstrate that the proposed development has either:

- (i) fully mitigated any adverse impacts to wildlife habitat on the site, or*
- (ii) Provided for wildlife enhancement measures which compensate for the loss of any wildlife habitat values on the site.*

The county needs to specify who can prepare the management plan, who reviews the plan, and against what standards. It needs to set a standard for full mitigation of any adverse impact. Furthermore, the county must specify the enhancement measures it finds acceptable. The county must specify the wildlife habitat values it seeks to protect, and identify how it determines appropriate compensation for habitat losses.

MCC 11.15.6428 *Stream Conservation Area - An area extending 300' upslope from and perpendicular to the centerline of a protected stream. Any development proposed within a Stream Conservation Area shall be required to demonstrate that the development satisfies the standards of MCC 11.15.6428(A) through (D).*

The county's regulation of uses within 300 feet of streams is inconsistent with the impact areas it identified for individual streams. The widest identified impact area (riparian corridor) was 200 feet on either side of a stream. Most corridors averaged less than 200 feet in total width. The county has given no basis for regulating activities outside the impact area identified in its Goal 5 analysis.

MCC 11.15.6428(C) *The applicant shall demonstrate that the proposal:*

- (1) Has no practical alternative*
- (2) Will have not impacts on the stream conservation areas functional characteristics*
- (3) Will not cause measurable degradation*
- (4) Will provide offsetting replacement. ... and will significantly enhance the functional characteristics of the stream.*

The county needs to specify what it means by a stream's functional characteristics. It needs to define how it measures water quality degradation. It needs to specify the

standard used to find if offsetting replacement significantly enhances a stream's functional characteristics.

VIII. Objections

The department received three objections. Dan McKenzie filed an objection for himself. Frank Parisi filed an objection for Angell Brothers, Inc. and the Oregon Concrete and Aggregate Producers Association (OCAPA). Paul Hribnick filed an objection for Raymond Smith. The department determined that these objections were valid according to OAR 660-25-140(2).

This section only responds to issues raised by objectors that the department did not address in its analysis, or those objections that the department disagrees with.

Dan McKenzie

Objection 1: The county did not provide proper notice regarding SEC (Significant Environmental Concern) zones. The county failed to provide for adequate citizen involvement.

Response: The department does not agree with these objections. The objector does not make specific allegations that the county's actions denied any individuals the opportunity to participate in the county's process.

Objection 2: The county did not present sufficient information to justify the significance of the Thompson Branch of Balch creek, or to regulate conflicting uses through the SEC overlay.

Response: This objection appears to have merit.

In January 1994, the county included Balch Creek below the confluence of Thompson and Cornell forks on a list of previously identified significant resources. A separate list identified the upper reach as a newly designated significant stream for which the ESEE analysis was pending.

In the completed reconciliation reports, the county appears to include the Thompson branch as part of the main stem (previously designated significant). However, the county's report also says "access to the headwaters and upper reaches of Balch Creek was denied" (p. III-129). Therefore, the county has not shown how the Thompson branch meets the county's significance criteria for streams. When some information exists

suggesting the possible existence of a resource, but that information doesn't identify with particularity the site's location, quality and quantity, the local government should include the site on a "1-B" inventory. OAR 660-16-000(5)(b). The county needs to clarify its findings about the Thompson branch of Balch Creek.

Objection 3 : The SEC zone is a taking.

Response: The department cannot decide Mr. McKenzie's constitutional challenge to the county's comprehensive plan or land use regulations.

Frank Parisi (for Angell Brothers and OCAPA)

Objection (1): Citing a variety of arguments and sources, Mr. Parisi maintains that the county has not proven the existence of a significant wildlife habitat in the West Hills.

Response: The department disagrees with this objection.

As noted in its discussion of inventory and significance, the department has concerns with the county's conclusions. Notwithstanding these concerns, the department finds that the county met the requirements of OAR 660-16-000 by adequately describing the location, quality and quantity of the wildlife resource using the best available information.

The department does not view the Goal 5 planning process as a zero sum game where one resource must prevail at the expense of another. Where Multnomah County identifies a significant resource, it must analyze conflicts and develop a program to achieve the goal of resource protection. Where protection of Goal 5 resources conflict, it must seek to resolve conflicts in favor of protecting all resources.

At the commission's direction in 1993, the county undertook an extensive evaluation of resources in the West Hills. The department believes that the county may rely on the evaluation to identify significant resources. However, having identified significant resources, the county must resolve conflicts in favor of protecting all resources.

In the end, the county did not resolve conflicts in favor of protecting all resources. While it adequately identified significant resources, it failed to adequately complete other steps of the Goal 5 planning process. Therefore, the county does not comply with Goal 5.

Objection (2): The county has not used a single ordinance for the protection of all Goal 5 resources.

Response: The department does not agree with this objection. There is no Goal requirement mandating the use of only one ordinance for all significant resources.

Objection (3): The county replaces its former standard for determining the significance of an aggregate resource (capable of producing 25,000 cubic yards) with a case by case determination. Mr. Parisi maintains this approach is unacceptably subjective.

Response: The department does not agree with the objection. OAR 660-16-000(3) directs local governments to compare the relative, not absolute, abundance of resources based on available information. The county's choice to make individualized determinations of a resource's quantity follows both the intent and purpose of this rule.

Paul Hribernick (For Raymond Smith)

Objection (1): ORS 215.416 requires counties to establish a single consolidated procedure to obtain permits for a development. The county's program for mining the aggregate resource requires additional conditional use hearings.

Response: The department disagrees, in part, with this objection.

The county's stated purpose of the Protected Aggregate and Mineral Resources (PAM) overlay is "to allow surface mining subject to uniform operating standards" MCC 11.15.6750. The department finds that uniform operating standards in a proceeding like a conditional use hearing is consistent with the requirement for consolidated permit requirements.

However, as the department noted, the county's program lacks clear and objective standards regulating issues like noise, dust, and truck traffic. The county must correct these deficiencies.

IX. Overall Conclusion and Recommendation

Multnomah County has been occupied in periodic review for over seven years. While the county has done much to improve its comprehensive plan and land use regulations, compliance with Goal 5 remains unresolved.

The commission first reviewed the county's periodic review work to comply with Goal 5 in April 1993. In that action, the commission found that the county did not comply with Goal 5 for two aggregate sites. The commission also found that the county's plan did not comply with Goal 5 for scenic, stream and wildlife resources.

The commission directed the county to correct its plan deficiencies by October, 1993. The director approved one extension to December 31, 1993. The county did not meet this deadline.

In March, 1994, the commission approved a work program for the county under the new periodic review process. The county submitted its work task to DLCD in October and November 1994, after receiving one extension from the director.

Multnomah County's effort to comply with Goal 5 has been a difficult, sometimes contentious process. It has strained relations with the department. It has been a source of delay, uncertainty and expense for the county, aggregate operators, and affected land owners.

Regrettably, the department must recommend to the commission that the county still does not comply with Goal 5.

The department's recommendations are designed to produce plan and land use regulation revisions which will comply with Goal 5 and bring this lengthy planning process to a close. The department recommends that the commission remand Multnomah County's periodic review work task and require that the county amend its comprehensive plan and land use regulations to comply with Statewide Planning Goal 5 and OAR 660, Division 16, consistent with the findings in this report, and the requirements below.

SUBSTANTIVE REQUIREMENTS

West Hills

1. Resolve all inconsistencies between plan policies and the reconciliation report for impact areas of significant streams as illustrated by the example of North Angell Brothers Creek on page 5 of this report.
2. Resolve all inconsistencies and unsupported conclusions in the ESEE analysis concerning conflicts between surface mining and identified scenic, stream and wildlife habitat resources.

Specifically:

- a. In coordination with DEQ, correct the inconsistency concerning the effects of aggregate mining on water quality to the Burlington Bottoms area and the reliance on DEQ regulations to ensure compliance with state water quality standards, as explained on page 9 of this report.

- b. In coordination with DOGAMI, amend the ESEE analysis to address OAR 660-16-030 and the role state mined land reclamation regulations can serve in mitigating the effects of aggregate mining to resolve conflicting uses and to protect Goal 5 resources, as explained on page 11 of this report.
 - c. In coordination with ODFW, resolve the inconsistency regarding the effects of aggregate mining versus continued residential development on the wildlife habitat area, as explained on pages 14 and 15 of this report.
- 3. Based upon the results of 1 and 2 above, review and, as necessary, revise, the 3-B (allow conflicting uses fully) program decision for the 283 acres of the Angell Brothers aggregate site outside of the existing permit area. In completing this requirement, the county must fully consider and evaluate the mitigation and conflict resolution opportunities provided by state mined land reclamation regulations administered by DOGAMI and clearly demonstrate that a 3-C decision for the Angell Brothers site cannot be justified under Goal 5 before concluding to not protect the resource, as explained on pages 15 and 16 of this report.
 - 4. Resolve or clarify the comprehensive plan provisions about the Thompson Branch of Balch Creek in response to the department's response to objector Dan McKenzie explained on page 26 and 27 of this report.

Howard Canyon

- 5. Resolve the inconsistencies between the ESEE analysis and the 3-C decision for the Howard Canyon aggregate site by completing the following:
 - a. Amend the analysis to explain the decision to prohibit mining from part of the resource site to provide an additional buffer for nearby dwellings from noise and dust, or eliminate this requirement. (See page 21 of this report.)
 - b. Amend the analysis to justify the decision to require periodic noise and water quality studies even though the ESEE analysis concludes that state agency permits are appropriate to minimize adverse environmental effects of mining, or eliminate this requirement. If the requirement is retained, amend county land use regulations to ensure that the procedures for these studies are clear and objective in accordance with OAR 660-16-010(3), as explained on page 22 of this report.
 - c. Amend county land use regulations to ensure that requirements for traffic impact studies imposed on the aggregate operator are clear and objective in accordance with OAR 660-16-010(3), as explained on page 22 of this report.

Comprehensive Plan and Land Use Regulations

6. Amend the county's land use regulations to resolve deficiencies identified on pages 24 and 25 of this report.

PROCEDURAL REQUIREMENTS

7. In view of the complex issues raised in the department's review of the county's submittal, the director shall offer the parties the services of a dispute resolution professional. This person, selected by the director, shall assist the parties and the department with facilitated negotiations aimed at reaching agreement on changes to Multnomah County's comprehensive plan and land use regulations needed to satisfy requirements 1 through 6, above.
 - a. The parties must notify the director in writing of their agreement to participate in dispute resolution by April 3, 1995.
 - b. Facilitated negotiations must conclude by June 30, 1995, unless the director finds that satisfactory progress is being made and that additional time beyond June 30 is warranted.
8. If by June 30, 1995, the facilitated negotiations succeeds by all parties agreeing with a settlement, and the director believes that the proposed revisions will comply with Goal 5, consistent with requirements 1 through 5, the department will inform the county to proceed to adopt the plan and land use regulation amendments and submit them for review and approval in accordance with OAR 660, Division 25. The director shall determine the date for adoption and submittal of the county's revisions.
9. If by April 3, 1995, one or more of the parties do not agree to participate in facilitated negotiations, or if negotiations have commenced and the director determines no satisfactory outcome will be reached by June 30, 1995, the director shall appoint, not later than August 1, 1995, a hearings officer pursuant to ORS 183.460, 183.464(1), 197.328(3), 197.319 to 197.335, and 197.628 to 197.650.
10. The hearings officer appointed under requirement 9 shall have the following duties:
 - a. The hearings officer shall review the record before the department and commission as of the date of commission review.

- b. The hearings officer may hear oral argument at his or her discretion.
 - c. The hearings officer may not hear or accept any new evidence or information, except upon the director's recommendation. The director's recommendation shall consider agreement or objections of the parties. The hearings officer shall provide opportunity for all parties and the director to review and respond to any new evidence or information.
 - d. The hearings officer shall draft and provide to the parties and the director a proposed order requiring specific plan and land use regulation amendments pursuant to OAR 660-25-160(6)(c). Such required amendments shall comply with Goal 5 and include determinations, where appropriate, of:
 - i) Significance of Goal 5 resources
 - ii) Identification of conflicting uses
 - iii) Analysis of ESEE consequences of conflicting uses
 - iv) Program decisions under OAR 660-16-010(1), (2) or (3)
 - v) Comprehensive plan and land use regulations to carry out the program decisions.
 - e. The hearings officer shall complete the proposed order and provide copies to the parties and the director by September 15, 1995, unless a different date is established by the director.
 - f. The hearings officer shall accept exceptions to the proposed order for 21 days after the date the proposed order is provided to the parties and the director.
- 11. If no exceptions are filed within the time prescribed, then the proposed order shall become the final order of the commission after the 30th day following issuance according to ORS 183.464(2).
 - 12. If exceptions are filed, the commission will review the record, the proposed order and exceptions to the proposed order. For the purposes of commission review, exceptions to the proposed order will be regarded as argument according to ORS 183.460. The commission will deliberate and make a final decision on the proposed order at a date to be determined. No oral argument will be accepted.
 - 13. If Multnomah County does not act according to a final order issued under requirement 11 or 12, the commission shall initiate enforcement action pursuant to ORS 197.319 to 197.350 to compel the county's adoption of comprehensive plan and land use regulation amendments needed to comply with the Statewide Planning Goals.

X. Attachments

1. Agency Correspondence

- 1.1 December 1, 1994 memo from Dick Benner, DLCD
- 1.2 January 9, 1995 letter from Frank Schnitzer, DOGAMI
- 1.3 January 11, 1995 letter from Dick Benner, DLCD
- 1.4 January 30, 1995 letter from Jill Zarnowitz, ODFW

2. Objections

- 2.1 Dan McKenzie
- 2.2 Frank Parisi (for Angell Bros. and OCAPA)
- 2.3 Paul Hribernick (for Raymond Smith)

Attachment I.I

December 1, 1994 memo from
Dick Benner, DLCD

December 1, 1994

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

TO: Don Hull
Rudy Rosen

FROM: Dick Benner

SUBJECT: MULTNOMAH COUNTY PERIODIC REVIEW

Multnomah County has submitted a package of comprehensive plan and land use regulation changes to DLCD for review. It has done so in response to Land Conservation and Development Commission (LCDC) orders to comply with Statewide Planning Goal 5. The county has decided not to allow expansion of the Angell Bros. quarry near Sauvie Island in order to protect wildlife habitat, streams and scenic resources. I expect that we soon will receive many objections to the county's work. It's probable that LCDC will have to resolve this controversy.

We need help from your staffs to analyze the county's findings and decisions. DLCD must review the county's analysis and protection programs for significant stream, wildlife and aggregate resources. Much of the analysis is technical. We are unable to determine whether the county's analysis is sound from a biological or a reclamation point of view.

Here are some questions we have. Is unincorporated, northern Multnomah County a significant wildlife habitat? Does one or more "wildlife corridors" exist that connect Forest Park to outlying areas? To what extent might surface mining adversely affect either wildlife or stream resources? Can conflicts be mitigated?

We have given Frank Schnitzer and Gail McEwen copies of the county's submittal in preparation for an upcoming meeting. Please let me know whether your agency can help DLCD staff or our commission understand the details of the issues before us.

c: Frank Schnitzer, DOGAMI
Gail McEwen, ODFWI

j:\pr\county\mult\dirmemo.so



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Salem, OR 97310-0590
(503) 373-0050
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Attachment I.2

January 9, 1995 letter from
Frank Schnitzer, DOGAMI

January 9, 1995

JAN 10 1995

Oregon

DEPARTMENT OF
GEOLOGY AND
MINERAL
INDUSTRIES

MINED LAND
RECLAMATION

Dick Benner, Director
DLCD
1175 Court Street, NE
Salem, OR 97310

RE: ID No. 26-0019 - Angell Bros. Quarry
26-0065 - Raymond Smith

Dear Dick,

I have recently read the West Hills Reconciliation Report (WHRR) and the Howard Canyon Reconciliation Report (HCRR) submitted to your agency for review. The December 1, 1994, memo from you to Don Hull posed several questions of our agency.

Throughout the WHRR there appears to be a lack of understanding of DOGAMI's role and responsibility in mine development, environmental compliance, and the capability of reclaimed lands to re-create habitat. Landforms at quarries typically can't be restored to approximate original contours, but habitat typically can be restored. DOGAMI is repeatedly cited as the agency who issues Operating Permits and requires reclamation after mining and DEQ is the agency responsible for environmental controls. This is not accurate.

DEQ and DOGAMI particularly in the last several years, have worked closely at the staff level to tailor the requirements at mine sites so that compliance is maintained and reclamation enhanced. In addition, particularly in NW Oregon, DOGAMI has attempted to work with counties to ensure that they understand what can be accomplished through reclamation and what program responsibilities include.

For example, DOGAMI attended the June 13, 1994, Remand Hearing on the West Hills Reconciliation Report. At that time, DOGAMI explained 1) the permit process, including consultation with other agencies prior to permit action, 2) authority to direct mine development, including establishment of stream-side buffers, visual screens, property line setbacks, highwall stability, and stable storage of soils and overburden, and 3) revegetation and habitat reconstruction at other mine sites and visual mitigation during and after mining.

RB
SC
AP
JRK
JRK



At the June 13 hearing, DOGAMI also pointed out in testimony a misunderstanding in the WHRR where DEQ was incorrectly cited (page II-17) as being responsible for mine regulation including establishment of screens, buffers, and environmental standards. This citation remains uncorrected in the September 1994 WHRR and can be found on page II-16.

In both the West Hills Reconciliation Report and Howard Canyon Reconciliation Report, any change or potential effect is considered to be an impact. The probability of occurrence of a perceived impact is not discussed nor is the degree or severity of the impact described or substantiated with actual data or field information. For example, the HCRR, on page II-14, stated that mining has impacted both Knierem and Howard Canyon Creeks. And (on page II-17) allowing mining would result in temporary adverse stream impacts including rerouting and stream channel destruction.

The area proposed for mining does not encompass any of the creeks. Consequently, the rerouting or diversion of the streams should not be listed as a potential impact.

Topographical constraints prevent discharge of any surface flow into Knierem Creek. This one-acre sized operation is, however, located upslope from Howard Canyon Creek at a distance greater than 1,000 to 1,500 feet. The water bars on the access road and the vegetated terrain between the quarry and the creek suggest that there has never been a discharge from this small quarry into the creek.

In regards to the WHRR, the Angell Bros. quarry is a potential conflict with stream resources, scenic resources, and possibly wildlife. It is DOGAMI's determination that the potential conflicts with streams can be avoided and scenic values can be mitigated. The question of mitigation of potential impacts to wildlife is deferred to ODFW.

This determination that conflicts can be mitigated is based on information provided in the WHRR, the Angell Bros. reclamation plan, the Angell Bros. Operating Permit and proposed permit conditions issued by DOGAMI and DEQ, testimony offered by DOGAMI at the June 13 hearing, a recent conversation with DEQ, and departmental experience with large aggregate mines.

The ESEE analysis in the WHRR fails to take into consideration detailed site-specific information. Some of the impacts listed are ones that may occur at a site, or could occur at the Angell Bros. site if there were no environmental controls placed on the operation by state agencies. Some of the conclusions in the ESEE analysis appear to be based on literature reviews and/or testimony of individuals who may or may not be qualified or may not entirely understand the degree of impact or the proposal.

For example:

- In the WHRR, page III-28, a Portland area hydrologist is quoted as saying that the proposed expansion would increase "stream flow, erosion, and downstream sedimentation into Burlington Bottoms and that these increases would probably be extremely significant." In the following paragraph, the WHRR goes on to say that significant amounts of erosive runoff may flow into the high quality Burlington Bottoms wetlands before the operator and DEQ can resolve the problem. A quote from a DEQ representative is also found in this paragraph with the statement that while DEQ works with quarry operators, they apparently cannot guarantee compliance with DEQ water quality standards within a short period of time. The DEQ representative was responding to a time frame inquiry regarding clean up or water quality compliance with Middle Creek which runs through the center of the quarry. The DEQ representative was not discussing water quality protection for North Creek. DOGAMI testified at the June 13, 1994, hearing that potential impacts to the North Creek could be avoided by specific conditions on the DOGAMI permit. Specifically, DOGAMI requires a 100-foot undisturbed buffer between the creek and the operation. A prohibition on sidestepping any material and a requirement to use large excavators to pull material in off the outslope as the quarry floor is lowered will provide water quality protection. Providing the DOGAMI permit requirements are followed, these mitigation techniques will prevent any measurable impacts to Burlington Bottoms.
- In the WHRR, II-11, scenic impacts from the Angell Bros. quarry are presented. The discussion of impact focuses on the development of benches and cliffs and the visual intrusions it would create on a forested hillside. The discussion also questions the ability of the reclaimed land to support forest growth and the ability of the reclaimed landform to blend in with the surrounding topography. The county standards for resource protection for the West Hills can be found on page VI-18. These standards require that mining be staged so that mining remains visually subordinate and the resulting landform and vegetation does not contrast with surrounding landscape as seen from key viewing areas. These standards do not require that the site be completely screened.

The two issues are visual accessibility during mining and blending in with post-mining landforms and adjacent vegetation. DOGAMI testified at the June 13 hearing that best management practices and available technology is available to lessen the visual impact. The reclamation plan also describes how the visual impacts will be mitigated through reclamation. Active mine faces can be artificially weathered to look like naturally weathered rock. Concurrent reclamation of the most visible (highest) benches could be required first. The linear shapes of the benches will be removed during reclamation by creating scree slopes, rock chutes, backfilling with overburden, and planting of native species.

No discussion of mitigating visual impacts during or after mining could be found in the WHRR nor a discussion of visual subordination/dominance and how that is determined. On page IV-24 it is stated that mining will result in a permanent scar of the scenic backdrop to Sauvie Island. It will unless mitigation occurs.

- The WHRR describes impacts of roads and fences as barriers to wildlife on pages V-29 through V-31. Roadways are listed as being commonly associated with residential, agricultural, forestry, and quarry conflicting uses while fences are listed as being commonly associated with residential, agricultural, and quarry conflicting uses. Roads and fences create barriers for animal movement and can result in road kill.

However, equating roads used for vehicle traffic for public travel with roads developed on a mine site when describing impacts may not be appropriate. No public travel is allowed on the latter. Specifically, in the case of Angell Brothers, the roads are only occasionally traveled except for the access road onto Highway 30. The only fence on the quarry property is for protection of the public and is located along Highway 30 near the access point. The rock is transported by conveyors rather than trucks. Vehicle speeds on these mine roads suggest that these roads would probably not result in fatalities when wildlife is encountered. The mine roads and associated disturbance may prevent a barrier to certain species, but the degree of impact is likely much different than a public highway.

Certain species of terrestrial wildlife, such as deer, appear to be the least impacted by the mine operation, based on personal observations by DOGAMI. Deer have been seen using the upper benches and ramps. Even if deer are not observed, their tracks can generally be found on the upper benches. These observations contradict statements made regarding the quarry headwall significantly prohibiting movement of terrestrial species (page V-37).

- Also in the ESEE for wildlife habitat (page V-34) is a description of how the increase of impervious surface areas affects wildlife because of increased runoff and removal of vegetation. Groundwater recharge and groundwater quality are also listed as potential impacts.

The sediment-laden water from mine disturbance which percolates into the fractures within the basalt will filter out or prevent movement of soil particles in the percolating groundwater within a relatively short distance and will not impact water quality. Multnomah County Ordinance 801 provides standards for developments within the West Hills for areas within the SEC-S areas (Significant Environmental Concerns - Streams). The design specifications 11.15.6428(F)(2) specifies that all storm water be collected and placed in dry wells or by other best management practices which emphasizes groundwater recharge and reduce peak flows.

DOGAMI suggests that Angell Brothers site has complied with this development standard by establishing dry wells and subdrains on the quarry floor, isolating storm water runoff from Middle Creek and ponding stormwater on the upper quarry floor (June 13 DOGAMI and DEQ testimony at Remand Hearing).

Perhaps the most disconcerting issue in the WHRR is the repeated reference questioning DOGAMI's ability to establish vegetation and re-create habitat by enforcing the state reclamation requirements.

The Board's opinion (IV-23) is that reclamation will not allow forest habitat to function again. The ESEE analysis (V-38) declares that there is no convincing evidence that the site can be reclaimed. It is also stated in this ESEE analysis that it is impossible to reestablish native vegetation without topsoil (V-33). This is an error since some species of native vegetation can thrive without any topsoil.

It is true, that without a soil cover species diversity and in turn wildlife diversity will be limited. However, soil replacement is a DOGAMI requirement for all sites which have pre-existing soil resources. Within each mine phase soil materials will be salvaged, stockpiled and stabilized with vegetation until it is needed for reclamation of the benches.

DOGAMI testified at the June 13 hearing that vegetation test plots are a DOGAMI requirement to establish a planting scheme for final reclamation using native species capable of surviving at the site which would enhance wildlife habitat. Because the scale of this project is much larger than most projects, DOGAMI has conditioned approval on the development and analysis of vegetation test plots.

This negative determination for the Angell Bros. site on reclaimability and habitat re-creation is a stark contrast to the county's finding in the HCRR. DOGAMI does not understand why the Howard Canyon site can be reclaimed to forest management standards (d. Program to Achieve the Goal (XV)) but the Angell Brothers cannot even though the climate, precipitation, soils, and geology are similar.

It is also confusing why, in the HCRR conflict resolution (Chapter B) the conclusion of a discussion regarding conflicts between streams and mining results in relying on DEQ and DOGAMI standards to protect the stream from mine impacts ending with a statement that if standards are not met mining does not take place (V-12 and V-13).

This is correct, if an operator can't maintain compliance, then they can no longer operate (e.g. DOGAMI ID No. '03-0065, American Sand and Gravel). The confusing part is why Multnomah County chose not to acknowledge DOGAMI's and DEQ's authority or abilities to provide environmental protection at the Angell Bros. site.

The time frame for public and agency comments on the WHRR and HCRR has passed.

In the past, DOGAMI has relied on the counties to contact us and get our involvement in the planning process if it is needed. If you have any suggestions on how to avoid this situation in the future and help clarify our role with the counties, it would be appreciated.

Sincerely,



E. Frank Schnitzer
Reclamationist
Mined Land Reclamation

EFS:dm

c: Don Hull, State Geologist - DOGAMI
Dennis Olmstead - DOGAMI
Gary W. Lynch - DOGAMI
Angell Bros.
Raymond Smith
Gail McEwen - ODFW
Paul Keiran - DEQ
Frank Parisi, Attorney-at-Law
Lidstone and Anderson

Attachment I.3

January 11, 1995 letter from
Dick Benner, DLCD

January 11, 1995

Jill Zarnowitz, Chief
Habitat Conservation Division
Oregon Department of Fish and Wildlife
2501 SW First Ave.
P.O. Box 59
Portland, OR 97207

DEPARTMENT OF
LAND
CONSERVATION
AND
DEVELOPMENT

Dear Jill:

The purpose of this letter is to seek ODFW's technical assistance to help our department complete its review of Multnomah County's Goal 5 periodic review submittal. The Land Conservation and Development Commission will hear the department's report at its March 9-10, 1995 meeting.

We met with Gail McEwen on December 20 and 21, 1994, to discuss the county's submittal. Gail agreed that ODFW could address our questions about the county's analysis of wildlife habitat in the West Hills and their Goal 5 resource protection program.

Listed below are questions we wish your department to address. Unless otherwise noted, the page numbers refer to the county's document entitled West Hills Reconciliation Report (September, 1994). We would appreciate your response by January 13, 1995. This will allow us to complete our staff report by our January 30 deadline.

A. Wildlife Habitat in the West Hills

Background

Page V-9, paragraph two refers to a study conducted by Esther Lev et. al. (A Study of Forest Wildlife Habitat in the West Hills). Here, the Lev report recommends a continuous 1.5 mile peninsula of forested habitat extending from Forest Park to the Coastal Range. However, on page iv of this report, Lev states as her main recommendation that "... the area lying between Newberry and Cornelius Pass Roads and extending eastward from the ridgeline to Highway 30, be managed in the future to always provide a band of contiguous forest at least 0.5 mi wide, in order to provide suitable habitat and a secure travel lane for forest wildlife species." Similarly, page 26 of the Lev report states that the "first and most important recommendation of this study" is that future logging in this same area be planned "... so that at all times a band of contiguous forest habitat a minimum of 0.5 mi wide is maintained."

Page V-17, footnote five uses the terms "forest habitat" and "forest cover". Similarly, page V-27, paragraph four references a "forested peninsula," and page V-28 lines eight



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Jill Zarnowitz

January 11, 1995

and nine discuss "forest cover." We are confused about the county's interchangeable use of these terms.

Questions

- 1) We are not clear if the county's report distinguishes between forest habitat and forest cover. How does ODFW distinguish between these two terms? If forest cover is eliminated by clear cut, a quarry or rural residential development, how large of a habitat area for large mammals (elk, bear, etc.) must be maintained to continue to provide a connection between Forest Park and the Coastal Range? Is there comparable information for small mammals?

B. Effects of Land Uses on Wildlife Habitat

Background

Pages IV-14 and IV-15 contain a discussion of primary, secondary and "impacted" wildlife habitat. Recently logged areas are classified as primary habitat because of eventual reforestation. Undeveloped rural residential land is classified as secondary habitat because regulations can be implemented that can minimize the impact of residential uses. "Impacted" habitat provides minimal support to wildlife and includes those areas "... that do not have and are unlikely to have, forests in the short-to-medium future (1-10 years)." Mining is included in this category, and the report acknowledges that mining sites may be reclaimed over time. The report also says that there are some developed rural residential lands located in "impacted" habitat, and that these areas may be reclaimed through various techniques.

Questions

- 1) How would ODFW compare the impact of infill rural residential development (one dwelling per 5 acres), a quarry, and a logging operation on habitat for large mammals (elk, bear, etc.)? Is there any comparable information for smaller mammals?
- 2) The county concluded that the Angell Bros. quarry is impacted habitat without much regard for reclamation requirements. What types of reclamation techniques would ODFW recommend for the reestablishment of wildlife habitat after quarrying?

C. Program for the Mitigation of Conflicting Uses

Background

In your June 20, 1994 letter to Scott Pemble of Multnomah County, you state that "We believe that long-term benefits to wildlife could be gained through conscientious reclamation of

Jill Zarnowitz

January 11, 1995

the [Angell Bros.] quarry site and subsequent establishment of conservation easements in areas adjacent to McNamee Road." You also state that expansion of the mining operation could be phased such that forest cover is allowed to be reestablished in the half-mile area located between the existing quarry on the northeast and secondary cleared habitat along McNamee Road.

The first full paragraph on page V-38 references this information. The county acknowledges that ODFW has stated that the quarry could be reclaimed to provide for habitat after quarry operations are completed. The county states, however, that "...there has been no convincing evidence presented that such reclamation is indeed feasible..."

Page V-25, paragraph 4 states that "The critical question which must be answered in the County's program to achieve the conflicting purposes of Goal 5 in this instance is which is ultimately of greater public value -- long term retention of a continuous half-mile of forested habitat, or expansion of the quarry operation." However, page V-28, line 3 states that "...the connection between Forest Park and the Coast Range is in jeopardy due to the combination of the above-mentioned conflicting uses" (my emphasis).

The last paragraph on page VI-4 discusses the Goal 5 process. The county states here that "The conflict resolution process should also take into consideration whether adverse impacts can be mitigated."

Chapter VI of the county's report is devoted to a discussion of the county's program for the reconciliation of conflicting uses. Forestry, agriculture, residential uses and aggregate extraction have been determined to be in conflict with wildlife habitat. The county states that forestry activities cannot be regulated, that it elects not to institute separate county agricultural regulations (but will work with the programs of the U.S. Soil Conservation Service and the West Multnomah Soil and Water Conservation District), that specific wildlife habitat protection measures will be enacted for rural residential development, and that it has determined that a balanced approach is not possible for any expansion of the Angell Brothers mining operation.

Questions

1) Will the program described above accomplish the retention of the half-mile of forested habitat referred to on page V-25?

Jill Zarnowitz

January 11, 1995

Your timely reply to this request for technical assistance would be greatly appreciated. Please do not hesitate to call me with any questions at 373-0050.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard P. Benner". The signature is fluid and cursive, with the first name "Richard" being more prominent than the last name "Benner".

Richard P. Benner
Director

cc: Rudolph Rosen, Director, ODFW
Gail McEwen, Land Use Coordinator, ODFW
Donald Hull, State Geologist, DOGAMI
Frank Schnitzer, Reclamationist, DOGAMI
Scott Pemble, Multnomah County
Frank Parisi
DLCD staff

Attachment I.4

January 30, 1995 letter from
Jill Zarnowitz, ODFW

Oregon



DEPARTMENT OF
FISH AND
WILDLIFE

January 30, 1995

Dick Benner, Director
Department of Land Conservation and Development
1175 Court St.
Salem, OR 97310-6705

Dear Dick:

This letter is in response to your request for technical assistance on DLCD's review of Multnomah County's Goal 5 periodic review submittal.

The Department's response to your questions is attached. Please note that most of the information we have provided is general technical information, and is not based on an on-site analysis conducted by the Department in the West Hills.

If you need additional information or assistance, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jill Zarnowitz".

Jill Zarnowitz
Assistant Director
Habitat Conservation Division

cc. Rudolph Rosen, ODFW
Gail McEwen, ODFW
Donald Hull, DOGAMI
Frank Schnitzer, DOGAMI
Scott Pemble, Multnomah County
Frank Parisi



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OREGON DEPARTMENT OF FISH AND WILDLIFE
Technical Assistance
Review of Multnomah County
Goal 5 Periodic Review

A. Wildlife Habitat in the West Hills

- 1. We are not clear if the county's report distinguishes between forest habitat and forest cover. Does ODFW distinguish between these two terms?**

Forest habitat in managed forests in Western Oregon can be described as a landscape of plant communities in various stages of succession (grass-forb, shrub, and tree stands of various heights and canopy closure).

In a general sense, "cover" can be defined as vegetation used by wildlife for protection from predators, or to ameliorate conditions of weather, or in which to reproduce (Thomas 1979). Cover is one of the basic components of habitat. Each species has specific requirements for cover.

The term "forest cover" can best be described in terms of canopy, which can be defined as "the more or less continuous cover of branches and foliage formed collectively by the crowns of adjacent trees and other woody growth" (Ford-Robertson 1971).

- 2. If forest cover is eliminated by clear cut, a quarry or rural residential development, how large of a habitat area for large mammals (elk, bear, etc.) must be maintained to continue to provide a connection between Forest Park and the Coast Range? Is there comparable information for small mammals?**

The need for connectivity in order to maintain viable populations of many species is recognized. However, the dynamics of population response to different amounts of habitat loss and fragmentation are not known well enough to provide a quantitative answer to this question for either large or small mammals.

Summaries of research on factors which affect the ability of a population to persist in the face of habitat loss or isolation can be found in Lehmkuhl and Ruggiero (1991). These factors include:

- Population density or abundance (the higher the population density the less the risk of local extinction)

- Rate of reproduction
 - Body size (Large bodied species have larger home ranges and greater energy needs than small bodied species. For this reason, total available habitat and patch size are more important.)
 - Dispersal capability (Risk of extinction is higher for species with poor dispersal capabilities)
 - Susceptibility to deleterious edge effects (See discussion on edge effects on Pages V-28 and V-29 of the Reconciliation Report)
3. The county concluded that the Angell Bros. quarry is impacting habitat without much regard for reclamation requirements. What types of reclamation techniques would ODFW recommend for the re-establishment of wildlife habitat after quarrying?

Diversity is a basic principle in developing wildlife habitat. Reclamation techniques to reestablish variety and diversity in vegetation and topographic features of the mine site should be employed to reestablish wildlife habitat after quarrying.

The revegetation plan should provide for variety and diversity in types and arrangements of native vegetation.

Food and cover are two of the essential components of wildlife habitat. Wildlife habitat should provide a variety of vegetation suitable as food throughout the year and within range of protective cover, as well as a variety of plant cover for shelter, reproduction and escape from predators.

Examples of methods for increasing habitat diversity for a variety of wildlife species as part of a revegetation plan include:

- Provide clearings of various sizes and locations within reforested areas
- Provide single or double tiers of shrub borders around the edge of tree stands
- Plant trees and shrubs in rows, strips, clumps or blocks in and around open areas seeded to herbs

- Selectively place brush piles, rock piles, deadfall, or windrowed slash within reclaimed areas to improve wildlife cover. Wildlife species which will benefit from this practice include small mammals and songbirds

Reclamation actions should also be taken to eliminate impediments to wildlife movement and restore diversity of topographic features within the mined area. Actions should be taken to blend the final contours of the reclaimed areas into the surrounding landscape. For example, rock benches could be reclaimed by methods such as backfilling with overburden or creating rock chutes or scree slopes. A determination of appropriate methods for reclamation of rock benches will depend on site-specific geotechnical and engineering data which is subject to review and approval by DOGAMI.

In addition to the reclamation techniques described above, the following actions could be taken to minimize the impacts of mining on wildlife habitat:

- Phase the expansion of the mining operation so that mining does not begin until forest cover has been reestablished in the clearcuts adjacent to and northwest of the quarry
- Provide for sequential reclamation of mined areas in order to minimize the amount of vegetation removed at one time and the amount of time before vegetation is established
- Obtain conservation easements to ensure that reclaimed areas are set aside in perpetuity as wildlife habitat
- Maintain undisturbed vegetated buffers adjacent to stream corridors
- Maintain undisturbed vegetated buffers to provide wildlife access between habitat areas to the east and west of the quarry

B. Effect of Land Use on Wildlife Habitat

1. How would ODFW compare the impact of infill rural residential development (one dwelling per 5 acres), a quarry and a logging operation on habitat for large mammals (elk, bear, etc.)? Is there any comparable information for smaller mammals?

Timber Harvest

There is a general relationship between habitat diversity and species diversity. The greater the habitat diversity, the greater the number of species which can coexist.

Managed forests have less structural diversity than unmanaged forests. Structural diversity has been defined by Noss (1994) as "Diversity in a community that results from having many horizontal or vertical physical elements" (e.g., layers or tiers of canopy). Managed forests have less standing and down dead wood in various size classes and fewer layers or tiers of canopy than unmanaged forests. Edge effects are also more pronounced in managed forests.

The impacts of timber harvest on wildlife habitat varies widely. Timber harvest creates a change in successional stage of vegetation communities. Different successional stages are inhabited by different species of wildlife. Therefore, modifying the successional stage will enhance habitat characteristics for some species and degrade habitat characteristics for other species.

Deer and elk have specific requirements for forage, cover and interspersed forage and cover. Timber harvest removes cover that is used as thermal, hiding, and optimal cover for deer and elk. However, timber harvest also creates new foraging areas for deer and elk.

Witmer et. al. (1985) identified three major factors which affect elk use of managed forests: (1) The interspersed forage and cover areas in time and space; (2) The relative quality of forage and cover areas; and (3) The effects of human disturbance from roads.

The seasonal home range for elk ranges from 1,000 to 6,000 acres; the seasonal home range for deer ranges from 320 to 640 acres (Witmer et. al., 1985). In many cases, the impact of logging will move deer and elk into other more suitable habitat areas.

Black bear are rare in this area. Black bear prefer forests interspersed with numerous openings and small clearings that provide vegetative diversity (Herrero 1979, Hughie 1979). Timber harvest can help maintain diversity and abundance of food plants for black bear. In Washington, Lindzey and Meslow (1977) found higher productivity and abundance of berry producing shrubs in logged areas. However, as with deer and elk, the interspersed food and cover is important. Despite food abundance, black bears may avoid the centers of logged areas due to the absence of forest cover for escape and shade (Jonkel and Cowan 1971).

Timber harvest adversely affects habitat for small mammals by removing structure and when down and dead material (which is used as cover by small mammals) is removed. In general, small mammals are less mobile than deer and elk and have smaller home ranges. Consequently, they are less able to move out of disturbed areas into more suitable habitat in adjacent areas.

Quarry Operations

In contrast to logging operations, which modify the successional stage of vegetation communities, quarry operations completely remove vegetation used by wildlife for food and cover. Areas where vegetation has been completely removed are generally avoided by wildlife, although wildlife will travel through disturbed areas to reach suitable habitat. Quarry operations also modify site topography. Topography influences microclimate and microhabitat. Reduction of topographic variability on a site reduces habitat diversity.

At a logging operation, disturbance to wildlife as a result of noise and equipment operation may last only a few weeks. In contrast, disturbance from a quarry operation lasts throughout the life of the quarry.

The impact of a quarry operation on wildlife habitat varies greatly, depending upon the characteristics of the mine site and the nature of the mining operation. Some of the factors which relate to the degree of impact on wildlife habitat are:

1. The extent of vegetation removal
2. The extent of topographic alteration, which depends upon factors such as: (a) The location of the deposits which are being mined; (b) The amount of overburden produced; (c) The locations where overburden is placed; and (d) The staging of the mining operation
3. The duration of the impacts; (i.e., amount of time before vegetation is reestablished and topographic variability is restored)
4. The type of reclamation actions which are taken, and the timing of these reclamation actions

The impacts on wildlife habitat may be reduced through means such as proper site reclamation, sequential reclamation, buffers, etc. Staging of mining operations, in combination with sequential reclamation, can reduce both the size and

duration of impacts due to vegetation removal and topographic alteration.

In general, the impacts of a quarry operation on habitat for small mammals would be greater than the impacts on habitat for large mammals. Quarry operations remove soil, vegetation and small structure at or below ground level where small mammals spend most of their time. Small mammals have smaller home ranges and are generally less able to move out of disturbed areas into suitable habitat in adjacent areas.

Rural Residential Development

In our opinion, rural residential development at densities of one dwelling per five acres affects large mammals to a greater extent than either logging or quarry operations.

There are two key reasons for this. First, the habitat alterations resulting from rural residential development are relatively permanent, as opposed to logged areas or quarry sites, which will be reforested or reclaimed over time. Second, human-associated disturbance is much greater with rural residential development. Encounters with humans, harassment by dogs and mortality from automobiles increases as residential densities increase.

Increased residential densities also increase the potential for wildlife damage or wildlife/human interaction problems. Management options for solving these types of problems are limited in densely developed residential areas. For example, the most effective method to control agricultural crop or landscape damage is by means of a special hunt (where the number of hunters and hunt area is strictly controlled). By concentrating hunters in the area of the problem, the animals that are not harvested are harassed from the site. However, increased housing densities create safety concerns in the application of special hunts, as well as access problems onto private lands for the permitted hunters. When this type of situation prevents the administration of a special hunt, ODFW becomes involved in expensive and labor intensive trap and transplant programs.

The effect of rural residential development on habitat for small mammals is mixed. Vegetation removal for house construction and lawn installation reduces habitat diversity for small mammals. However, planting gardens and landscaping may increase habitat diversity for some small mammals. Domestic animals prey upon or harass small mammals. Residential development also increases the potential for wildlife damage or wildlife/human interaction problems (e.g., damage to lawns by gophers or moles, conflicts with raccoons, skunks, bats, etc.)

C. Program for the Mitigation of Conflicting Uses

1. Will the program described above accomplish the retention of the half-mile of forested habitat referred to on page V-25?

The Department believes that the County's program, taken as a whole, will not meet this objective because of the lack of limitation on increased density of rural residential development, particularly in the Folkenberg and McNamee-Harborton subareas.

The Department agrees with the following statement on page V-25 of the Reconciliation Report: "Rural residential development, because it is associated with roads, brings in people and traffic, and usually leads to long-term clearing of land, poses the greatest single threat to the objective of maintaining a continuous band of forested wildlife habitat."

According to Page V-21 of the Reconciliation Report, the Rural Residential (RR) designation applies to 2,500 acres (11%) of the land within the West Hills Rural area. Page V-22 of the report indicates that there are 446 existing dwelling units on RR land in the West Hills Rural area, with a potential for an additional 286 dwellings.

The County's program to regulate residential uses (Page VI-24 and V-25) contains siting standards, fencing regulations, limitations on size of lawns and gardens and prohibits use of introduced vegetation. These provisions will reduce the impact of residential development on wildlife. However, it is the overall density of development (1 dwelling per 5 acres) that poses the most severe conflict, particularly with respect to large mammals. (See response to Question B1 above).

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Attachment 2.I

Dan McKenzie
Objection

Steve Oulman
Department of Land Conservation and Development
1175 Court St. NE
Salem OR 97310

12/2/94

Subject: LCDRC Remand Order 93-RA-876
Multnomah County Proposed Ordinance C 10-94
OAR 660-16 Goal 5
Balch Creek, Thompson Fork

Mr. Oulman:

Multnomah County has amended their comprehensive plan and their local ordinances in an attempt to comply with the LCDRC remand order 93-RA-876. This letter is to inform you that I oppose the action taken by Multnomah County. I am concerned that the county has acted beyond their boundaries, did not follow the directions of LCDRC, did not provide opportunities for citizen involvement, and did not give proper notice to affected landowners. I am also sending you copies of letters that I submitted to the county during its proceedings.

My primary area of concern is the action taken by the county to apply "SEC zones" protection to areas of land that were not previously in an SEC zone. At the very least, the county should have notified the affected landowners that a portion of their property was being considered for "SEC zone" status, and offered those affected landowners the opportunity to appear before the governing body before a decision has been made.

Instead, what the county has done is to railroad through a change in zoning designation before 99% of the affected landowners know what has happened. Most of the affected landowners do not even know what an SEC zone is.

I happen to know since I was involved in a previous SEC permit application. In that previous instance, the county mistakenly advised me to apply for SEC approval for a stream crossing. The SEC application was denied prior to the county discovering that an SEC zone in fact did not apply to the subject property. As a result of the county error, I have been involved in a three year legal nightmare which has cost me many thousands of dollars.

There are certain individuals who would like the SEC zone designation to cover as much land as possible. That way they can appeal any decision that approves any development which they are not in favor of allowing. With a minor amount of appeal fees, those individuals can tie up the application in numerous appeals that can last two years easily. If the county makes any procedural error along the way, the application can be denied through no fault of the applicant. Furthermore, the SEC criteria are very strict, and the difficulty in obtaining SEC approval may prohibit the use or access to a lot. Prohibiting the use or access to a lot has the same effect as "taking" land from the landowner without

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compensation. In some cases, the SEC criteria may be too prohibitive to apply to such a broad subject such as "significant" streams, particularly since the qualifications for "significant" are so loose and all inclusive.

With this in mind, the county should be very thorough in considering new land for SEC designation. At the very least, when considering new land for SEC designation, the county should inform the affected landowners: (1) that a portion of their property is being considered for SEC zone status, (2) what an SEC zone is, and (3) what criteria must be met for physical improvements on SEC zoned land. The county should allow the affected landowners the opportunity to make an informed decision on whether to agree with or oppose the change in zoning designation on their land.

If a change in zoning designation is being considered, and if public hearings are scheduled, the affected landowners should be given written notice of when the hearings are to take place so that they can appear before the decision makers. Simply putting notice in a newspaper that a hearing will review "significant streams" or "goal 5" or "LCDC remand order" does not give any indication to the landowners that the zoning designation of their property is under review by the county.

LCDC remand order 93-RA-876, Finding #8 states:

"The county shall amend the comprehensive plan to map or identify the significant streams that are subject to the Significant Environmental Concern (SEC) provisions. Amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the FPA definition."

At the time of the remand order, MCC 11.15.6404(C) read as follows:

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

The Oregon Forest Practice Rules define Class I streams in OAR 629-24-101(8)(A) in relevant parts as:

"[A]ny portion of streams, lakes or other waters of the state which are significant for:

*** * ***

(B) Angling;

*** * ***

(D) Spawning, rearing or migration of anadromous or game fish."

My reading of Finding #8 of the remand order is that the county was to map or identify in their comprehensive plan the streams that are subject to SEC provisions, and to change

MCC 11.15.6404(C) to refer this plan rather than refer to the FPA definition. The Oregon Department of Forestry currently maps all Class I streams in the state (OAR 629-24-116). The county could use the Oregon Department of Forestry data to identify and map all Class I streams. I don't believe the county has been given authority to adopt a stream as "significant" without doing a proper ESEE study.

I am specifically concerned with the rezoning of the Thompson Fork of Balch Creek to apply an SEC zone status. On 1/11/94, Multnomah County adopted Ordinance 784. In this ordinance, the county acknowledges which streams were protected by SEC regulations (Ordinance 784, Appendix A of Exhibit A). The Thompson branch of Balch creek does not appear on this list of protected streams. Only the lower portion of Balch creek appears on this list (below Cornell and Thompson forks).

Appendix B of Exhibit A of Ordinance 784 shows a list of streams which are not subject to SEC regulations, and for which an ESEE analysis is pending. The Thompson branch of Balch creek appears in Appendix B. Appendix B indicates that the streams in this list are designated 1C and that ESEE evaluations were pending.

Upon further research, I have discovered that the Thompson branch of Balch creek was not originally on the list of 1C resources, and that it was not originally designated as "significant". The county has attempted to include the Thompson Branch as a 1C resource in a "1993 update" of Goal 5 inventory, however they have not followed the proper procedures in doing so. No study data is available for the Thompson branch, as the West Hills reconciliation report indicates that access was denied to the upper portions of the Balch Creek (Thompson branch). It does not appear that a Wildlife Habitat Assessment was conducted in order to qualify the WHA rating. Without a WHA rating, the Thompson branch cannot be considered 1C or "significant".

Furthermore, Appendix B also indicates that an ESEE analysis was pending for the Thompson branch prior to the adoption of SEC regulations. Instead, what the county has appeared to do is to rename the Thompson branch of Balch creek as the "main stem", and thereby attempting to forgo an ESEE study. The city of Portland conducted a study of the Balch Creek watershed, and had named the Cornell fork of Balch creek as the main branch rather than the Thompson fork. It is well acknowledged that the lower portions of Balch creek was a Class 1 stream (below the Thompson and Cornell forks), and that the lower portion was protected by SEC regulations. However by naming the Thompson branch of Balch creek as "the main stem", the county tries to co-opt the protections of the lower portion of Balch creek onto the upper portions of the Thompson branch, all without conducting a proper ESEE study.

I attended a hearing before the Multnomah County Commissioners on 10/18/94. At this hearing, I objected to the lack of notice provided by the county. In response, the Planning Director verbally acknowledged that notices of public hearings for Proposed Ordinance C 10-94 were not distributed to affected landowners, in an effort to save costs (see last five minutes of the tape of the hearing). I do not believe that the effort to save mailing

costs is a sufficient reason to disregard the due process of allowing the affected landowners the right to be informed of the hearings, and the right to appear before the local government.

OBJECTIONS

1. I object to Multnomah County's attempts, in Proposed Ordinance C 10-94, to apply SEC zone status to the Thompson branch of Balch creek.
2. I don't believe the county has done a sufficient ESEE study on the Thompson branch of Balch creek to be able to subject it to SEC regulations.
3. I don't believe the county has done a sufficient study to include the Thompson branch as a 1C "significant" resource.
4. I don't believe the county is following the intent of the remand order by applying SEC zones to new streams that were not already subject to SEC regulations.
5. The county did not involve the affected landowners in its process.
6. The county did not give sufficient notice to the affected landowners to inform them of what the county was doing, nor to appear at the public hearings.
7. 660-16-000 (1). The county has not collected sufficient information on the location quality and quantity of each resource site to properly complete the goal 5 process.
8. 660-16-000 (2). The county has not identified the "impact area to be affected, if different". Many of the streams identified as "significant" are already "Class 1" streams, and already were protected with SEC provisions. However the county data in C 10-94 does not identify specifically which portions of the resource sites were not previously "Class 1" streams, and which specific locations were not previously protected with SEC provisions.
9. 660-16-000 (3). The county has not properly considered the "relative value" or "abundance of the resource" in order to make an adequate determination of "quality" or "quantity".
10. 660-16-005. The protection of identified resource sites impacts existing uses. These impacts were not sufficiently considered in analyzing the economic, social, environmental and energy (ESEE) consequences.
11. 660-16-000 (4). The inventory identified by the county does not adequately address location, quality, or quantity of the resource.
12. 660-16-005 (2). The ESEE consequences were not sufficiently evaluated for the proposed resource sites.
13. 660-16-010 (3). The protection of certain resource sites by applying SEC zones has the effect of restricting certain existing uses, and making some existing uses economically unfeasible. The result is the same as taking away private land which is prohibited by the constitution. Some SEC provisions make it unclear to the landowner what activities are allowed, not allowed or conditionally allowed.
14. 660-16-020 (1). The county has not provide proper notification to affected landowners. Many landowners who own property within proposed resource sites are not even aware that part of their property is proposed to be adopted as a Goal 5 resource. Most of the affected landowners are not aware of the proposed change in zoning designation for the proposed resource sites under this ordinance. Most of the affected landowners are not aware of what restrictions apply in SEC zones, or even

that SEC provisions will be applied to portions of their property under this proposed ordinance. The county has not involved many of the landowners in making determinations of quality, quantity or location of the resource. The county has involved few of the landowners in the ESEE analysis, or in evaluation of conflicting uses.

15. 660-16-020 (2). As the Goal 5 process has progressed, and as more specificity about the nature of the resources were identified, notice and involvement of affected landowners was not sought by the county. It appears that the county has attempted to give as little notice as possible to affected landowners with the hope of limiting opposition to the proposed ordinance.

REMEDIAL ACTION

1. Remove the Thompson branch of Balch creek from the list of streams that will be subject to SEC regulations. Re designate the Thompson branch of Balch creek as 1B until a sufficient study is conducted.
2. Identify all impact areas to be effected by the proposed ordinance. For areas that are subject to a zoning change, provide notice to all affected landowners who have land in the areas that are being considered for adoption of SEC regulations. Advise the landowners how the new regulations could affect them, and allow an opportunity for the landowners to give testimony and appear before the local government.
3. Encourage participation from the landowners in developing the appropriate criteria for protection of valuable resources, rather than allow this process to be manipulated by a few persons with special interests.
4. Evaluate SEC criteria, and determine whether these very strict criteria should apply to all "significant" streams. In some cases, SEC criteria may be appropriate for some "significant" streams, however it may be too strict for all "significant" streams.
5. Consider the relative value and abundance of resource when determining quality and quantity of the resources.

If you have any further questions or comments please contact me.

Dan McKenzie

Dan McKenzie
6125 NW Thompson Rd.
Portland OR 97210
(503) 292-6970

Attachments

1. Ordinance 784, Appendix A of Exhibit A
2. Ordinance 784, Appendix B of Exhibit A
3. September 18, 1994 letter to the Planning Director.
4. October 18, 1994 letter to Chair of the Board, Multnomah County Commissioners.

Table 1

PROTECTED WATER RESOURCE AND WETLAND SITES
MULTNOMAH COUNTY COMPREHENSIVE FRAMEWORK PLAN: POLICY 16-G

[sites designated 2A, 3A, or 3C in the Goal 5 Inventory: 1993 Update]

Rural Westside Sites *(listed alphabetically):*

- 1 Agricultural Ditches and Sloughs on Sauvie Island
- 2 'Audubon House' tributary of Balch Creek (in sub-basin #5; 1993 BES report)
- 3 Balch Creek (Class I reach outside Portland; below confluence of Thompson and Cornell forks)
- 4 Burlington Bottoms Wetlands
- 5 Dairy Creek
- 6 Gilbert River & tributary drainageways/wetlands
 (in R1W sections 5, 8, 9, 16, 21, 22, 28, 29, 31, 32 & 33)
- 7 Howell Lake
- 8 McCarthy Creek (Class I reach; R1W sections 18, 19, 30 & 31)
- 9 Miller Creek (sections outside Portland)
- 10 Multnomah Channel (reach outside Portland)
- 11 'Newberry' (or 'Ennis') Creek (reach in R1W sections 28 & 33)
- 12 Sand Lake
- 13 'Sheltered Nook' tributary of McCarthy Creek (in R2W sections 19 & 24)
- 14 Small Unnamed Lake/Slough west of Wagon Wheel Hole Lake
- 15 Surgeon Lake
- 16 Un-named creek which flows into Rainbow Lake (reaches in R2W sections 12 & 13)
- 17 Un-named creeks with confluence south of Logie Trail Rd.
 (Class I reaches; in R2W sections 13 & 24 and R1W section 18)
- 18 Un-named creek between Logie Trail and Cornelius Pass Roads
 (in R2W section 24 and R1W sections 18 & 19)
- 19 Virginia Lakes
- 20 Wagon Wheel Hole Lake

Rural Eastside Sites: *[Does not include sites within the Columbia Gorge NSA]*

- 1 Government Island wetlands
- 2 McGuire Island wetlands
- 3 Sandy River Gorge

NOTE: Sites listed above are protected by SEC or WRG zoning provisions, based on completed ESEE evaluations and designations: 2A, 3A, or 3C under Statewide Goal 5. Table 2 lists Significant Water Resources and Wetland sites designated 1C [Goal 5 ESEE processes pending]

Table 2

SIGNIFICANT WATER RESOURCE AND WETLAND SITES

MULTNOMAH COUNTY COMPREHENSIVE FRAMEWORK PLAN: POLICY 16-G

[sites designated 1C in the Goal 5 Inventory (1993 Update); ESEE evaluations pending]

Rural Westside Sites *(listed alphabetically):*

- 1 Balch Creek Forks: Thompson, Cornell, and 'South-Audubon' (outside Portland)
- 2 'German town Road' tributaries of Rock Creek (Class I reaches in R 1W sections 8, 9, & 16)
- 3 Jackson Creek (Class I reach in R 2W section 10)
- 4 Jones Creek (Class I reach in R 2W section 25)
- 5 Joy Creek (Class I reach in R 2W section 25)
- 6 McKay Creek, East Fork (Class I reach in R 2W section 10)
- 7 Rock Creek (Class I reaches in R 2W sections 22, 23, 26, & 36; includes East Fork)
- 8 Three Un-named creeks with confluence on Wildwood Golf Course
(Class I reaches in R 2W sections 1, 2, 11, & 12)

Rural Eastside Sites *[Does not include sites within the Columbia Gorge NSA]:*

- 1 Beaver Creek (Class I reaches in R3E sections 1 & 12; and R4E sections 7, 8, 16, & 17)
- 2 Big Creek
- 3 Bridal Veil Creek (Class I reach outside Gorge NSA; R5E section 24 & 25)
- 4 Buck Creek (Class I reaches)
- 5 Camp Creek (tributary to Bull Run River, in Mt. Hood National Forest)
- 6 Car Creek (includes North Fork in sections 16 & 17)
- 7 Donahue Creek (Class I reach outside Gorge NSA; R5E section 25 & 36)
- 8 Gordon Creek (includes South, Middle, & North forks in Mt. Hood Nat. Forest)
- 9 Howard Canyon Creek (Class I reaches in R 4E sections 1 & 2; and R5E sections 5 & 6)
- 10 Johnson Creek (Class I reaches southeast of Gresham, including North Fork)
- 11 Kelly Creek (tributary of Johnson Creek)
- 12 Knieriem (or 'Ross') Creek (Class I reaches in R 4E sections 2, 35, & 36; and R5E section 31)
- 13 Lanourelle Creek (reaches outside Gorge NSA; R5E sections 32 & 33; includes South Fork)
- 14 Mitchell Creek (tributary of Kelly Creek; in R 3E section 19)
- 15 Pounder Creek (Class I reach outside Gorge NSA; in R4E sections 2 & 35)
- 16 Smith Creek (Class I reaches in R 4E sections 3, 4, 5, & 36)
- 17 Thompson Creek (tributary of Gordon Creek)
- 18 Trout Creek (Class I reaches in R4E sections 13, 14 & 24; and R 5E sections 17, 18, & 19)
- 19 Two Un-named creeks west of Springdale (Class I reaches in R4E sections 5, 6, 32 & 33)
- 20 Un-named tributary of Bull Run River (Class I reach in R5E section 22)
- 21 Walker Creek (Class I reach in R5E section 22)
- 22 Young Creek (Class I reach in R5E section 35 & outside Gorge NSA)

September 18, 1994

Scott Pemble
Planning Director
Multnomah County
Planning Department
2115 SE Morrison St.
Portland OR 97214

Subject: West Hills Reconciliation Report

Scott:

I would like to register my opposition to the adoption of the West Hills Reconciliation Report. In general I feel there has been insufficient notification of affected landowners on the consequences of the adoption of this report. Also, many of the affected landowners have not been made aware of the dates and times of the public hearings when this report is being discussed.

I believe there has been an error in renaming the main stem of Balch Creek as including the Thompson Fork. The Balch Creek study conducted by the city of Portland identified the main stem of Balch Creek as following up Cornell Road towards Skyline Blvd. The Reconciliation Report identifies the main stem as following up Thompson Road. By naming the Thompson Fork as the main stem, the Reconciliation Report has taken a short cut, by allowing the Thompson Fork to be identified as a "significant stream" without conducting a sufficient study on the upper portion of this tributary.

Furthermore there is evidence in the public files of SEC 6-91a that the fish population in Thompson Fork has been manipulated, and that fish have been planted in the Thompson Fork.

The Oregon Department of Forestry (ODF) is responsible for classifying state waterways. Streams identified as "significant" for fish population and habitat are classified as "Class 1" streams. The official ODF maps indicate that the Thompson Fork is not a "Class 1" stream.

The Oregon Department of Fish and Wildlife (ODFW) assists ODF in classifying streams. ODFW has conducted at least three surveys of Thompson Fork. The most recent survey was conducted in October of 1992. After that survey, ODFW indicated that they would recommend that only the first 800 feet or so of the Thompson Fork (up to the Miller property)

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should be "Class 1", and that the remainder of Thompson Fork should remain "Class 2". (Memo from CDFW attached).

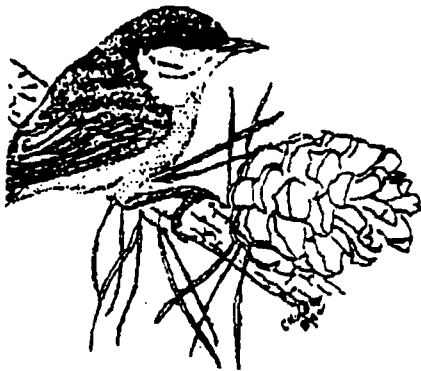
The rating system identified in the West Hills Reconciliation report appears arbitrary and insufficient for identifying the "significance" of the streams. I have been unable to find an "ESEE" study on the impact of adopting the Thompson Fork and other streams as "significant". The consequences of requiring SEC permits for the riparian area of the "significant" streams is substantial, and the affected property owners will be impacted greatly.

I am in favor of protecting the streams, however I am aware of the difficulty of obtaining an SEC permit, and I believe that streams that are borderline "significant" should not be subject to such strict criteria.

Regards,

Dan McKenzie

Dan McKenzie
6125 NW Thompson Rd
Portland OR 97210



OREGON DEPT. OF FISH AND WILDLIFE
17330 S.E. EVELYN ST.
CLACKAMAS, OR 97015
FAX NO. 657-2050 TELEPHONE NO. 657-2000

DATE: 12-8-92 PAGES TO FOLLOW: 2

TO: Al Burns FROM: Jay Massey

SUBJECT: Balch Creek - Fish Sampling

COMMENTS: We transferred the data to the sheet you are familiar with.

I will be making a recommendation to state Forestry regarding stream class for the Thompson Fork of Balch Creek in the near future.

I will be recommending that the Thompson Fork be changed to a Class I stream from the mouth (confluence with Balch Creek) upstream to the culvert on Miller's property. Also, I will recommend that the Thompson Fork above the culvert on Miller's property, including the stream section on McKenzie's property, remain a Class II stream.

Chair of the Board
Multnomah County
Board of Commissioners

Subject: C 10-94 Proposed Ordinance

Chair of the Board:

I would like to register my opposition to the adoption of the proposed ordinance identified as C 10-94. By presenting this letter, I am hereby making my "appearance of record", for the purposes of being a party to this decision. I request that this letter become part of the public record of the proposed ordinance C 10-94. I am also hereby requesting notification of the decision.

I am objecting to the ordinance in totality, and specifically in regards to the additional protection applied to "significant streams", including the upper portion of the Thompson tributary of Balch Creek.

660-16-000 (1). The county has not collected sufficient information on the location quality and quantity of each resource site to properly complete the goal 5 process.

660-16-000 (2). The county has not identified the "impact area to be affected, if different". Many of the streams identified as "significant" are already "Class 1" streams, and already were protected with SEC provisions. However the county data does not identify specifically which portions of the resource sites were not previously "Class 1" streams, and which specific locations were not previously protected with SEC provisions.

660-16-000 (3). The county has not properly considered the "relative value" or "abundance of the resource" in order to make an adequate determination of "quality" or "quantity".

660-16-000 (4). The inventory identified by the county does not adequately address location, quality, or quantity of the resource. Some of the information is based on inaccurate data.

660-16-000 (5)(a), (b), and (c). The county has included certain resources based on inadequate data, whereas the determination on that resource should been delayed to more accurately identify the "location, quality and quantity of the resource site".

#4.
660-16-005. The protection of identified resource sites impacts existing uses. These impacts were not sufficiently considered in analyzing the economic, social, environmental and energy (ESEE) consequences.

660-16-005 (2). The ESEE consequences were not sufficiently evaluated for the proposed resource sites.

660-16-010 (3). The protection of certain resource sites by applying SEC zones has the effect of restricting certain existing uses, and making some existing uses economically unfeasible. The result is the same as taking away private land which is prohibited by the constitution. Some SEC provisions make it unclear to the landowner what activities are allowed, not allowed or conditionally allowed.

660-16-020 (1). The county has not provide proper notification to affected landowners. Many landowners who own property within proposed resource sites are not even aware that part of their property is proposed to be adopted as a Goal 5 resource. Most of the affected landowners are not aware of the proposed change in zoning designation for the proposed resource sites under this ordinance. Most of the affected landowners are not aware of what restrictions apply in SEC zones, or even that SEC provisions will be applied to portions of their property under this proposed ordinance. The county has not involved many of the landowners in making determinations of quality, quantity or location of the resource. The county has involved few of the landowners in the ESEE analysis, or in evaluation of conflicting uses.

660-16-020 (2). As the Goal 5 process has progressed, and as more specificity about the nature of the resources were identified, notice and involvement of affected landowners was not sought by the county. It appears that the county has attempted to give as little notice as possible to affected landowners with the hope of limiting opposition to the proposed ordinance.

The county did not follow the procedures outlined in ORS 197.610 and 197.615. The county made a decision not based on substantial evidence in the whole record. The local government failed to follow the requirements of ORS 197.763.

Dan McKenzie
Dan McKenzie
6125 NW Thompson Rd.
Portland OR 97210

Submitted 10/18/94.

Attachment 2.2

Frank Parisi
Objection

Comments and Objections of

***Angell Bros.
and
Oregon Concrete & Aggregate Producers Association***

to

***Remand Order Materials submitted by
Multnomah County to the
Department of Land Conservation and Development***

December 5, 1994

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LANE
POWELL
SPEARS
LUBERSKY

DEPT OF
DEC 05 1994
LAND CONSERVATION
AND DEVELOPMENT

Frank M. Parisi
(503) 778-2116

December 5, 1994

Via Hand Delivery

Law Offices

520 S.W.
Yamhill Street
Suite 800
Portland, OR
97204-1383

(503) 226-0151

Facsimile:
(503) 224-0388

*A Partnership
Including
Professional
Corporations*

Steve Oulman
Department of Land Conservation
and Development
1175 Court St., NE
Salem, OR 97310-0590

Re: Angell Bros. Rock
Our File No. 701062-1

Dear Steve:

This firm represents Angell Bros. and the Oregon Concrete & Aggregate Producers Association (OCAPA). The attached memorandum and exhibits, together with two memoranda on wildlife habitat and stream resources from Dr. Richard Shepard, contains the comments of these parties on the Remand Order materials submitted by Multnomah County to the Department of Land Conservation and Development.

Participation of Angell Bros. and OCAPA

Angell Bros. has participated in the County's periodic review process since 1989. In the recent period, Angell Bros. submitted comments in writing on the following dates: July 19, 1993; July 26, 1993; February 4, 1994; March 17, 1994; April 15, 1994; April 24, 1994; April 26, 1994; May 9, 1994; June 10, 1994; July 8, 1994; July 18, 1994; September 12, 1994; and October 27, 1994 (Exhibit 1 to the attached memorandum). Angell Bros. has participated orally in virtually every hearing. OCAPA has also participated in settlement discussions, mediations, conferences and every other form of dialogue from the beginning of periodic review. All of this has been to no avail, since the County has decided not to permit any expansion of the Angell Bros. site.

Anchorage, AK
Los Angeles, CA
Mount Vernon, WA
Olympia, WA
Portland, OR
San Francisco, CA
Seattle, WA
London, England

Steve Oulman
December 5, 1994
Page 2

If you have any questions, please call me.

Very truly yours,

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

Frank M. Parisi

Enclosures

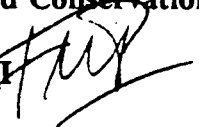
cc (w/enc): Skip Anderson
Richard L. Angstrom
Scott Pemble

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MEMORANDUM

December 5, 1994

TO: **STEVE OULMAN**
Department of Land Conservation and Development

FROM: **FRANK M. PARISI** 

RE: **Comments and Objections of Angell Bros. and the Oregon Concrete & Aggregate Producers Association**

FILE: 701062—1

As a preliminary matter, I should explain that the comments and objections in this memorandum could consume hundreds of pages if they were designed to criticize every single defect in the County's Remand Order materials. However, since the Remand Order materials in our view cannot survive any critical analysis, we will attempt to make general criticisms that are specific enough for you to identify the area in question, but that usually apply to a number of instances of the same defect. The errors in the County's Remand Order materials are based upon the following types of defects:

- Insupportable conclusions;
- Incorrect assumptions about a resource or incorrect methodology in examining a resource;
- Internal inconsistencies;
- Errors of fact, or lack of facts;
- Errors of law;
- Violations of Goal 5 involving incorrect definitions, lack of data on location, quality and quantity, or lack of clear and objective standards;
- Failure to consider mitigation as a method of resolving perceived conflicts; and
- Confusing "conservation" under Goal 5 with "restoration ecology".

The remainder of this memorandum will evaluate each of the County materials with the above framework in mind.

1. *Insupportable Conclusions -- All Goal 5 Resources*

The conclusion that views of the West Hills from Sauvie Island and Multnomah Channel are "outstanding scenic views" is insupportable.

The conclusion that the expansion of the Angell Bros. mine would have a significant impact on those views is insupportable.

The conclusion that North Angell Bros. stream is a significant Goal 5 resource is insupportable.

The designation of the West Hills area as a significant Goal 5 wildlife habitat is insupportable.

The conclusions that the expansion of the Angell Bros. mine would have any measurable impact on significant wildlife habitat, or significant stream resources are insupportable.

The conclusion that the perceived conflicts between the three significant Goal 5 resources cannot be substantially mitigated to the point that all resources could not be protected is insupportable.

2. *Scenic Views*

2.1 Inconsistent Assumptions - Scenic Views

In the Scenic Views analysis, inconsistent assumptions are made about whether or not particular uses that may impair those views will be controllable by virtue of various agency permits. In the case of forestry, an assumption is made that the Forest Practices Act will be followed to the letter, with the conclusion that clearcutting, which totally destroys the "green, velvety" appearance of the West Hills, is considered only a minor disruption. An assumption is also made that residential construction will be conducted in compliance with new and untested code provisions that were apparently designed to minimize disruption of the visual resource. In the case of mining, on the other hand, an assumption is made that reclamation will not succeed and that the landform will be changed "to a series of benches with intervening cliffs and exposed rock bases", and that mining in general will be a permanent visual disaster.

The County has no justification for assuming that forestry and housing will abide by restrictions and conditions that are intended to promote scenic values and that mining will fail to achieve any of them.

2.2. Errors of Fact - Scenic Views

The County states that " * * * many people have questioned the ability of reclaimed land to support forest growth and the ability of the reclaimed landform to blend in with the surrounding topography." In fact, there was abundant testimony to the contrary. Frank Schnitzer, the DOGAMI reclamantionist, and Angell Bros.' consultant-forester, William C. Gilmore of Metro Forestry, Inc., testified that reforestation on the Angell Bros. site was not a difficult matter. Skip Anderson stated that he planned to reforest some benches with two feet of topsoil and others with 40 feet of topsoil and overburden (Exhibit 2). Mr. Gilmore (Exhibit 3) estimated survival rates for his seedlings of 90%, since he had achieved this rate on other projects, even with trees planted in areas with marginal precipitation and supplied topsoil as little as six inches. The Rivergate site, at the St. Johns Bridge, was cited by Angell Bros. as an example of a site that was reforested by mother nature after the City of Portland abandoned the site with no reclamation.

Mr. Schnitzer testified that rectilinear shapes were not required by DOGAMI regulations (although they must be used initially to demonstrate stability and production volumes), and that the ultimate landform of the reclaimed site could be modeled to harmonize with existing landforms. Artificially weathered rock faces could be created, if bare rock faces were used at all. Mr. Schnitzer referred the County to pilot programs, conducted by the Department of Natural Resources in the state of Washington, which was experimenting with this approach.

There was public opinion to the effect that an aesthetically pleasing form was not being guaranteed by Angell Bros., but there was not a single expert witness who testified that a harmonious view could not be achieved, nor did anyone introduce a single example of a site that had been reclaimed under the authority of the Oregon Mined Land Reclamation Act (which took effect in 1972) where the reclamation had failed and was not ultimately cured. Also, the DOGAMI requirement for a bond to cover 100% of the cost of reclamation does, in fact, guarantee the success of reclamation.

The Scenic Views analysis admits that there are no developed public viewpoints from which the West Hills can be viewed, and that there is no reliable information as to the actual number of visitors to any of the points of view that are presumed to be valuable. The importance of this is simply to clarify that most of the observations in the Scenic Views section are observations and inferences that are more or less open to question, especially because there is no attempt to compare the quality of the view of the Tualatin Ridge with the obviously outstanding views of, for example, Mt. Hood and the lower Columbia Gorge from the West Hills.

2.3. The Most Important Error of Fact--Scenic Views

The most important geographical fact about the Angell Bros. expansion area was misunderstood by the County. This concerns how much of the expansion site would actually be visible from Sauvie Island and Multnomah Channel above and beyond the portion of the site

that is already visible. As Angell Bros. demonstrated with a series of photographs taken from the viewing sites sought to be protected, and laid out on a map of the surrounding area (this exhibit is too large to reproduce here), a portion of the existing mining site is currently visible from the store parking lot on Sauvie Island and from the northeast end of Sauvie Island. But this is an existing condition, which will continue whether or not an expansion occurs. The only additional portion of the site that will be visible if an expansion of the entire site is allowed are the portions of the hills that are higher than the peaks of the hills in the existing conditional use area.

Skip Anderson demonstrated with photographs that the peaks of these hills, if mined on an accelerated basis, would probably be visible from Sauvie Island for a period not greater than five years. In other words, as the site was mined from the top down, it would be reforested during sequential reclamation, and after five years the reforestation would have reproduced the "green, velvety" background that is the visual resource sought to be protected. By missing this important feature, the Scenic Views analysis assumes that the entire expansion site would be mined in the manner of a gigantic open pit mine with no reclamation. This assumption seriously exaggerates the presumed damage to the visual resource.

2.4. Inconsistent Assumptions and Failure to Consider Mitigation - Scenic Views

As stated above, the Scenic Views analysis section assumes that residential uses and logging uses will mitigate their presumed negative impact on the scenic resource, while assuming that mining will not mitigate any presumed negative impacts. There is no justification for these inconsistent assumptions, but even if there were, Skip Anderson volunteered in numerous public hearings and letters to engage in a number of mitigating efforts, such as leaving approximately 40 acres of wildlife habitat area along the southern end of the site, and to refrain from logging or mining a visual buffer area of approximately 90 acres next to Highway 30 so that the majority of the site would continue to be hidden from Highway 30 and from Sauvie Island. Skip Anderson also suggested an accelerated schedule for mining the peaks of the southern-most hills to reduce the time that they were visible from Sauvie Island. Even if the County didn't believe these suggestions would voluntarily be carried out, there is no justification for not considering them as explicit conditions, enforceable with County permit sanctions. None of these measures are discussed by the County as potentially mitigating factors.

This omission suggests that one Goal 5 resource must be sacrificed in favor of another. This violates Goal 5.

3. *Stream Resources*

See accompanying letter from Dr. Richard Shepard (Exhibit 1-F).

4. *Angell Bros.' Aggregate Resource*

4.1. Factual Errors - Angell Bros. Site

In the discussion of quantity on page IV-5, the County states that the Schlicher report is the only available information regarding resource quantity. This is not accurate. Well logs were submitted to show that the Columbia River basalt resource on the site is a homogeneous deposit and exists to a depth of at least 600 feet. Dr. Marvin Beeson, a geologist at Portland State University, discounted the definitive value of the well log data, but this misses the point: the well logs were not intended to be definitive. They were only intended to corroborate Mr. Schlicher's opinion, and they were specifically requested by a member of the Planning Commission. Dr. Beeson also stated that he thought more than two exploratory borings should have been done. But Dr. Beeson was speaking from an academic perspective. He has never been on the Angell Bros. premises. He did not know that in 1989, when the two test drillings were made, the area had not been logged and there were no roads. Dr. Beeson did not state why, taken together, the two test borings, the seismic results corroborating the test borings, the well logs corroborating the test borings, and the fact that the Angell Bros. site regularly produces somewhere in the neighborhood of 810,000 tons of construction material per year, is not probative of the quality and quantity of the aggregate resource.

The County's statement on quality also fails to mention that Angell Bros. submitted test results showing that the Angell Bros. site qualifies under all three of the Oregon Department of Transportation specification tests. These tests are accepted by the state of Oregon Department of Transportation for all highway construction contracts, and by every county in the state as indicative of the highest quality of construction material. The fact that the County was unable itself to find test results for other resource sites in Multnomah County is irrelevant. The Angell Bros. site obviously qualifies as a high quality aggregate site.

On page IV-19, the County states that the aggregate resource on the Angell Bros. site has a value of \$42 million, and that mine production has a payroll of \$500,000. Both figures are too low. Using the estimated reserves of 200,000,000 cubic yards, the actual value of the site is closer to \$100 million. The \$42 million figure was based upon a 1993 proposal in which Angell Bros. voluntarily decided not to mine approximately 142 acres, which is nearly half of the proposed 283-acre expansion area. Also, the payroll figure of approximately \$500,000 was direct payroll. An additional \$500,000 payroll per year must be added for the truck drivers, loaders, and other employees that do not work directly for Angell Bros., but are hired by Angell Bros.' customers to load and haul the construction materials. This means that the per-year payroll value is closer to \$1 million.

The County states the construction material prices might rise if the Angell Bros.' site is not allowed to expand. In fact, Angell Bros. explained that according to a 1994 DOGAMI study, aggregate demand in the Portland Metropolitan Area appears to be about 16,000,000 tons per year, with 2,500,000 to 3,000,000 tons presently being imported to the metro area because of the lack of sites within the metro area. Prices in the metro area are already above the national average and rising. Angell Bros. introduced a price list from Granite

Rock in Central California where there is only one major supplier. Prices were nearly double those in the metro area. Instead of the abundance of resources presumed by the County, the actual situation with the suppliers that the County claimed are available to fill the demand unmet by Angell Bros. is reflected in the following table:

<i>Supplier Mentioned by County</i>	<i>Supplier's Comments related to Angell Bros.</i>
Portland Sand & Gravel 10717 SE Division Street Portland, Oregon 252-3497	Dale Griffin, Vice President: Don't have any reserves. They are using the site for landfill and recycling.
Troutdale Sand & Gravel Troutdale, Oregon 665-4180	Ron Jacobsen, Office Manager: They have Ready-mix only. They do not produce any aggregate.
Porter Yett 5949 NE Cully Blvd. Portland, Oregon 282-3251	Rich Miller, Controller: They have not been producing since last summer. Their source is depleted. They crush a small amount of recycled concrete.
Gresham Sand & Gravel 1339 NW Eastwood Ave. Gresham, Oregon 666-5377	Roger Ekstrom, President: Confine sales to Gresham area where they can be competitive. If they hauled to Blazer Arena, the price would be \$11.50-12.00/ cubic yard.
Estacada Rock Products 39400 River Mill Rd. Estacada, Oregon 630-5553	George Layng, Manager: Confine sales to local area where they can be competitive. They are too far out to compete in the Metro area. Their cost to haul to Blazer Arena is \$13/cubic yard
Lone Star Northwest Portland	No information
Ross Island Sand & Gravel Southeast Portland	No information. But it is obvious that the Island is almost mined out, and the dams are preventing any new gravel from reaching the island.
Multnomah County	No information. County quarry does not make commercial sales.

Oregon Asphaltic Paving Portland, Oregon 252-1497	Roger Metcalf: They use their aggregate for asphalt only and do not sell commercially because of limited reserve
Rogers Construction Portland, Oregon	Same company as Oregon Asphaltic Paving
Portland Sand & Gravel 10717 SE Division St. Portland, Oregon 252-3497	They don't have any reserve. They are using the site for landfill and recycling
Porter Yett 5949 NE Cully Blvd. Portland, Oregon 282-3251	Rich Miller, Controller: Have not been producing since last summer as their source is depleted. They crush a small amount of recycled concrete

4.2 Incorrect Assumptions and Failure to Consider Mitigation - Angell Bros. Site

The County states on page IV-23 that North Angell Bros. Stream "has been found to have wildlife but not shown to be significant habitat in the upper portions of the watershed. Total preservation of that habitat would prevent mining adjacent to those streams; thereby, limiting the extent of mining expansion." This statement hides the ball. Where is the "upper portion of the watershed" with respect to the Angell Bros. site? Does Angell Bros. plan to mine that area? Has mitigation been pursued as an alternative? The County ignores all of these possibilities in favor of presuming the worst.

Perhaps the best example of the County's assuming the worst can be found in the analysis of the environmental effects on conflicting uses if development of the mining resource is allowed. With respect to forest operations, the County states:

"It has previously been found that allowing mining would have a devastating environmental consequence on the site's forest habitat (Final Order PR 7-92 § 24). Use of the site solely for mining purposes would prevent its immediate use for forestry purposes. Reclamation would allow for its future utilization for forestry. The Board has indicated that they are not convinced that attempts to reclaim the site would succeed in enabling the forest habitat to function again (Final Order PR 7-92 § 24). An inability to reclaim the site as a functioning forest habitat would be an adverse environmental effect on the forest resource of the site.

"West Hills Scenic Area, Wildlife Habitat Area, and Water Resource and Wetland Sites

"There would be a direct loss of wildlife habitat in West Hills. Loss of prime wildlife habitat in the West Hills means obstruction of a vital connecting link between Forest Park and the thousands of acres of wildlife in the Coast Range.

"There could be significant degradation to Burlington Bottoms, a mitigation project for wildlife habitat already lost to dam construction. It is one of the state's largest remaining wapato wetlands and the 3rd highest ranking wildlife habitat of all Goal 5 wetlands in Multnomah County.

"Mining would result in permanent changes to the landform, scarring the scenic backdrop to Sauvie Island, resulting in a loss of significant aesthetic qualities.

"Runoff from mining would cause a significant reduction in water resources and water quality."

None of the statements quoted above are supported by fact, and each of them assumes total and permanent failure of Angell Bros.' engineering controls. Worse yet, some are refuted by the Oregon Department of Environmental Quality and the Oregon Department of Fish & Wildlife.

Another example of the County assuming the worst occurs with respect to the Goal 6 analysis. The County states: "The existing operation is not in full compliance with all applicable state and federal regulations. Measures are being taken to achieve compliance, however, the Board is [sic] not been convinced that current technology will achieve compliance." This statement is not supported by fact. What permit is Angell Bros. supposedly in violation of? What evidence in the record is there that current technology will not achieve compliance? Angell Bros. believes it is in full compliance with all permits.

4.3. Incorrect Use of the Goal 5 Definition of "Impact Area" - Angell Bros. Site

In the County's discussion of the "impact area" and "conflicting uses", the County states, correctly, that a conflicting use is one which, if allowed, could adversely affect a Goal 5 resource site. But when it lists conflicting uses, it looks at conflicts both according to this definition and according to a definition which looks at the effect the mining site has on other uses. It then uses these so-called "conflicts" to expand the definition of impact area. This is incorrect. Under the Goal 5 rule, the impact area is the area which includes "conflicting uses" and conflicting uses are those uses which "if allowed, could negatively impact a Goal 5 resource site". The significance of the County's approach is that the presumed level of disruption caused by a mining operation is exaggerated, which in turn makes mitigation seem more difficult.

4.4. Inconsistent Assumptions - Angell Bros. Site

Perhaps the biggest defect in the analysis of the Angell Bros. site is that the County uses wildly different assumptions about the operation of the site. As explained above in comments on the Scenic Views analysis, the County assumes in some sections that the mining operation will be conducted in strict compliance with environmental permits. It assumes in other sections that the mining operation will violate all environmental permits. It assumes, in still other sections, that violations will occur, but they will be minimal, or that they could be mitigated. And in still other sections it assumes that mining operations may not be violations, but just might be unpopular, and cannot or will not be mitigated.

In some sections, the County assumes that the phased plan of mining operation submitted by Angell Bros. to DOGAMI will be followed (for instance, in the discussion of the compliance with DEQ noise regulations as studied by Daly-Standlee & Associates). But in other sections the County assumes that the entire site will be mined as an open pit strip mine with no reclamation and no plan of operations at all.

The County states that the scenic value of the West Hills area consists of a combination of "hillside and ridge bisected by numerous canyons". But when evaluating the potential effect of mining on scenic views, the County states that any change in the landform -- including, presumably, the alteration of a hillside and the widening of a drainage or a canyon -- is a negative effect, and that any exposed rock face would be a "highly visible intrusion." The County states that "many people" have "expressed concerns about the ability of reclaimed to land to support forest growth and whether the reclaimed landform will blend in with the surrounding topography * * *". In other words, once again, the County assumes reclamation and reforestation will fail.

The County states that the Rafton Burlington Bottoms and the east bank of Multnomah Channel are potentially conflicting uses because they could be affected by the mine. Aside from the incorrect use of the concept of "conflicting uses", it is unclear why this supposed problem should continue to be so difficult to resolve. Skip Anderson suggested a means of mitigation, namely, not mining in the drainage of the North Angell Bros. Stream. The County ignored this suggested mitigation measure, which then compelled the County's Goal 5 analysis to prohibit mining.

4.6. Repeated Factual Errors - Angell Bros. Site

The County repeats errors from other sections of the resource analysis. For instance, the County states, with no justification, that full protection of scenic resources would prevent mining expansion. As explained elsewhere, this is a serious exaggeration, since only the southern-most peaks of the hills in the expansion area would be visible and then only for approximately five years. The County also states that "full protection of identified wildlife resources would prevent mining expansion." This statement is totally unjustified. The Oregon Department of Fish & Wildlife has formally disagreed with this assertion in its June 20, 1994 comment letter. The County has not attempted to explain this difference.

The County states that the loss of wildlife habitat, the loss of scenic resources, and the loss of streams and wetlands will directly affect the "quality of life" of people in the region. This statement boils down to a belief that a mine expansion upon which there would probably be no more than 40 acres open at any one time (which is only slightly more than is open now, without any expansion), would measurably degrade the quality of life of the millions of people in the metro region. If this were true, how could these same people withstand the "degradation to our quality of life" from the construction of the west side light rail line, the Blazer Arena, or I-205? Or take another comparison: The next door neighbors to Angell Bros., the Adamses, built a luxury house next to the quarry. They support expansion in their September 21, 1992 letter (Exhibit 4). How could they stand the degradation to their quality of life of being permanently located next to a mine?

On page IV-22, the County states that the West Hills have a "psychological value to people" and that if the scenic backdrop is lost, psychological value will be lost and a negative social public impact will be felt "if the educational and recreational opportunities are eroded." These kinds of statements, that pile assumption upon assumption, are essentially meaningless.

5. *Wildlife Habitat Resource*

The Wildlife Habitat section is the most seriously flawed of all of the sections of the County's resource analysis. It is so fundamentally misconceived and so badly executed that it is difficult to know where to start a critique of it. It is plain, however, that the reason wildlife habitat is so important to the County is that habitat was intended to be a pretext to oppose expansion of the Angell Bros. site. No scientifically valid case can be made under Goal 5 for protection of any wildlife habitat in the West Hills on the evidence assembled by the County. Nevertheless, the County has proceeded to pretend that the entire West Hills area contains significant wildlife habitat -- but no specific resource sites --, that the habitat value of the West Hills approximates that of a tropical rain forest, that mining is the only significant impact on wildlife habitat, that housing and urbanization have no impact on wildlife habitat, that the County understands the travel patterns and behavior of numerous species that occupy the West Hills, even though none of the species are ever named or observed, and that no mitigation of any kind can reduce the supposedly devastating impact that a mine expansion will have on wildlife habitat.

The wildlife habitat section is disingenuous and unscientific. It is essentially useless for any Goal 5 analysis. The tragedy is that this was foreseeable, given that the County's own wildlife consultants explained the necessity for a substantial sum of money to evaluate habitat in a scientifically defensible method, and that both of the wildlife consultants hired by Angell Bros. expressed their opinions in July 1993 as to the proper scope and probable cost of a study that would adequately investigate and document the status of wildlife habitat in the West Hills, and the means of creating better habitat in reclamation than exists now. The County chose to avoid spending any additional funds on this task, with the result that the County has produced a Goal 5 analysis that cannot even demonstrate the most basic fact of all: location of the habitat. Specific objections follow.

5.1. Lack of Facts; Lack of Data - Wildlife Habitat

The "significance" determination for wildlife habitat is flawed for a number of reasons. First, the resource itself is not defined. There is no data about which species of wildlife is thought to reside in the West Hills area, or for what portion of the species' life cycle. The County pretends that calling the area an "ecosystem" and using a "ecosystem approach" means that no specific data needs to be found. This is nonsense. A very broad definition of habitat was suggested by the Oregon Department of Fish & Wildlife, as a means to assist in the gathering of evidence. But if no evidence is gathered, as here, no actual resource is ever studied.

5.2. Lack of Data on Location, Quality and Quantity - Wildlife Habitat

No location is specified. The County states that "wildlife habitat areas, by definition, are not site specific." This is nonsense. Roosting and nesting sites are routinely described with particularity by wildlife biologists. Big game travel corridors are routinely observed by everyone who has ever gone hunting or walked in the woods. The County was advised both by the authors of the Esther Lev Study and by professional wildlife biologists retained by Angell Bros. that radio tracking studies and genetic studies must be undertaken before any legitimate analysis of a supposed wildlife corridor or wildlife habitat area could be done. The County was also advised in a similar manner by ODF&W. The County chose otherwise.

There is no data on quantity. The County pretends that the geographical size alone can be a useful indicator that the West Hills is a significant wildlife habitat area. This is not true. Knowing the size of an area, without site specific evaluation of the species of animals that use the area, of the food sources, predators and of the possible benefits that other areas, such as nearby farm and forest areas may contribute, does not permit any conclusions about habitat value to be drawn.

There is no data on wildlife quality. The Marcie Houle study is primarily a literature review without any specific review of literature concerning the West Hills. The Esther Lev Study concluded that it could not even supply meaningful baseline data on the animals studied and that a much more expensive radio tracking and genetic study were essential, even to accomplish this objective.

In sum, the basic approach of the County is that since the West Hills area is a large area, and since a variety of species have been sited there, it could be a valuable habitat area. But Goal 5 is not concerned with what might be; it is concerned with conservation of existing significant natural resources.

Dr. Larry W. Brewer explained all of these problems in detail to the County during reviews of earlier drafts of the wildlife study. Dr. Brewer's letter (Exhibit 1-J) states:

"I am a professional wildlife biologist currently employed as Senior Wildlife Scientist for WBA, Inc., a wildlife consulting firm. I have been employed as a wildlife scientist for 21 years, including 14 years with the Washington Department of Wildlife, 3 years with Western Washington University, and 3 years with Clemson University, Clemson, SC. I currently reside in Sisters, Oregon. I have incorporated my resume into this correspondence, as Appendix A, for your perusal and to establish my credentials as a wildlife professional in your records.

"I have previously reviewed the Ester Lev Study referred to in the above referenced Staff Report. I have reviewed aerial photographs of the West Hills Rural Area referred to in the Staff Report and toured portions of the area to get a general understanding of the wildlife habitat in the area. Based on my experience as a wildlife professional and information contained in the Lev Study and other literature, I believe the staff report has several weaknesses in its Analysis and Conclusions Sections. My concerns are:

- "1. Insufficient wildlife data is presented in the Lev Study and the Staff report to determine whether the area is 'significant wildlife habitat'. While the Lev Study accomplished all that could be expected with the limited funds available, even the authors acknowledge that it provides minimal data. In fact, the data are not sufficient to provide a valid baseline for assessment of future trends or current comparisons to other areas. The Study does provide a data base on which to build for future evaluations of the area.
- "2. The significance of wildlife habitat should be based on habitat characteristics, not on the size of an area. In commercial forest areas, stand conditions and stand age play a major roll in wildlife use of the area. Habitat quality is determined by a complex combination of characteristics for which an assessment criteria (habitat suitability index) has been established by the U.S. Fish and Wildlife Service. Such an assessment should be applied prior to locating the boundaries of the travel corridor, and before designating 'significant' habitat. The designation of significant habitat in the staff report is based on inadequate parameters, and is premature.
- "3. Significant habitat, relative to Goal 5 definitions, involves specifically located habitat for specific species of animals.

Defining significant habitat in the broad terms presented in the Staff Report based on the size of the area and the species diversity will not meet the objectives of Goal 5 legislation, and will not withstand future legal challenges. The County could solve this problem by establishing a list of 6 to 10 indicator species for which it is establishing a habitat corridor between the park and the Coast Range.

- "4. The maintenance of wildlife travel corridors between larger habitat areas is a valid practice according to current wildlife management theory. However, as stated in the Lev Study and by the Advisory Board associated with that study, various species would require different habitat characteristics within the travel corridor. The degree to which various developments (roads, buildings, farms, etc.) influence the wildlife use of the corridor is not well understood at this time. By no means has it been established that the current habitat situation provides a travel corridor for wildlife between the Coastal Range and Forest Park. In reality, many important species may already be excluded from the area due to irreversible developments in the area. Additional wildlife survey and monitoring work must be completed to determine what species are resident in the 'corridor' and which species, if any, are actually migrating or dispersing through it. At that point, the County may determine which species it wishes to provide a 'travel corridor' for, and then the habitat needs (including corridor width) of those animals can be assessed. The assumption at this time that there is a functional corridor may be faulty, at least for several species.
- "5. Habitat corridors may be used by wildlife for regular migration, juvenile dispersal, immigration, emigration and seasonal or permanent residency. However, the 'connectivity' concept is the focus of the Lev Report and the Staff Report. If big game animals are moving through the Western Hills Area, the primary species is black-tailed deer. I believe the deer are most likely to move along the ridge that Skyline Blvd. generally follows [see Exhibit 7]. This route appears to be no more developed than the area to the east sloping toward and along the river. [i.e., near the Angell Bros. expansion site] This area is more likely to be avoided by big migrating game simply because they have to cross valleys and ridges to get there.

"It would probably be more advantageous to concentrate County efforts to establish a narrow (0.5 mi.) corridor along the ridge, and if possible include the edge along the Western Agricultural area. Many species of wildlife thrive along the edge between forest and agriculture. It is not in the best interest of wildlife to exclude the agricultural area simply because it is a convenient zoning or political boundary. Oregon Department of Fish and Wildlife biologists should be able to advise the County as to the route most likely used by big game.

- "6. The areas recommended in the Staff Report for designation as significant wildlife habitat are primarily cut-over, fragmented forest areas. This type of habitat is extensive throughout lowland western Oregon and Washington. It is usually only fair to marginal wildlife habitat. The numbers of bird and mammal species reported in the Lev Study for the various areas do not appear to me to be unusually high for this type of habitat. Given these conditions, it may be very difficult to defend the designations as significant habitat. A more precisely defined habitat corridor established for a list of specific indicator species would provide objectives for which land management criteria could be established and the designation as significant habitat would be more defensible from a legal perspective. A more concise proposal would benefit wildlife, land owners, and the County in the long term.
- "7. Clear-cut logging and reforestation practices essentially remove land as wildlife habitat for 30 - 40 years once the young coniferous trees grow large enough to close the canopy. The development of homes essentially impact wildlife habitat values permanently. Dogs and cats associated with residential development dramatically increase wildlife fatality rates. It seems unrealistic at this time that the County will control either of these land uses in the area of concern. Until the County can define how they will control these types of land uses, the maintenance of a wildlife travel corridor is unrealistic. Certain mitigation measures can increase wildlife habitat quality around many land use activities. In some instances the result may be long-term improvement of habitat. For example, habitat specific reclamation following removal of rock (Angell Rock Quarry) can produce long term habitat conditions of much higher quality than currently exists.

The County should consider implementing habitat mitigation requirements on a case-by-case basis. This approach could maximize the wildlife use of the area. Again, a well defined corridor, managed for specified indicator species would make the mitigation process more realistic with definable objectives.

- "8. There is a Sensitive Waterfowl Area in the northern portion of Sauvie Island. Many of the waterfowl using this area feed in the agricultural areas adjacent to the sensitive area. In fact the agricultural areas are critical to some waterfowl species. The agricultural area of Sauvie Island should be designated as significant wildlife habitat. Again, agricultural areas seem to be excluded more as a function of zoning boundaries rather than actual wildlife habitat needs. July 24, 1993 Letter to Scott Pemble, Multnomah County, from Larry W. Brewer, Senior Wildlife Scientist, pp 1-4.

The Department of Fish and Wildlife agreed with Dr. Brewer. On July 26, 1993, Jill Zarnowitz, the Assistant Director, Habitat Conservation Division, explained in a letter (Exhibit 5) to the County as follows:

"It is clear that portions of the West Hills Rural area contain significant wildlife habitat. For example, all areas except for Bonny Slope are identified in the County comprehensive plan as big game winter range. Other significant wildlife habitat (e.g., a bald eagle winter roost site and nest site and riparian habitat) is also located within the West Hills Rural area.

"In addition to the above areas, the county proposes to designate as significant wildlife habitat a larger geographic area which is utilized by a broad spectrum of big-game, small-game and non-game wildlife species. However, the county has not identified the habitat values within this broader geographic area with sufficient specificity to enable the county to identify potential conflicting uses and develop a program to meet Goal 5. Area size is not the sole criteria for determining the significance of an area as a wildlife habitat corridor. Additional information (such as radio collar studies or equivalent census methods) would be needed to determine significance. Other factors such as area topography and vegetative cover would also need to be considered.

* * * * *

"* * * The habitat characteristics which would make an area 'significant' must be clearly identified so that the county can accurately identify potential conflicting uses and choose appropriate protection measures." July 26, 1993 Letter to Scott Pemble, Multnomah County, from Jill Zarnowitz, Oregon Department of Fish & Wildlife, pp 1-2.

Dr. Richard Shepard, an ecosystem and watershed ecologist retained by Angell Bros., pointed out numerous technical errors in the wildlife resources section:

"While you have been advocating for support of increased black bears, cougars, and other large mammals in the southern portions of the West Hills, you appear unaware of the potential danger to humans * * * which could result from increased populations of these animals. You also seem to believe that farmers would welcome more herbivores (such as deer and elk) in their fields and orchards, and that homeowners would gratefully welcome more coyotes and bobcats around their children and pets.

* * * * *

"Myth 1 is the major myth which pervades all these reports: the West Hills is a "wildlife corridor" between Portland's Forest Park and the Coast Range. The 'truth' of this myth is attributed by two reports purchased by the County in 1990 and 1992. The first is *Wild About the City* by Marcie Cottrell Houle and released April 4, 1990; the second is *A Study of Forest Wildlife Habitat in the West Hills, Final Report* by Esther Lev, Jerry Fugate, and Lynn Sharp which was released in March 1992.

"The Houle reports says (on page 2) that 'one major factor * * * is that a natural corridor * * * connects the park's northwest boundary * * * to the Coast Range', but [the Houle report] does not actually verify or prove this with any data about the movement of mammals and birds found in the park. There are no data which demonstrate convincingly that any animals populations found in Forest Park need the West Hills for their survival. The balance of this report is a review of selected scientific literature without any pretense that any of these studies apply to the West Hills. Knowing what happens in other parts of the world does not mean that the same thing is happening here.

"The superficial nature of the Houle report is reflected by the Lev *et al.* report. For example, on page 1, the authors say that 'Houle (1988) suggests that the wide variety of wildlife found in this peninsula may be in part attributable to the opportunity for species interaction with the Coast Range ecosystem.' Notice the use of the qualifiers 'suggests' and 'may in part'. The authors had to say this because no evidence exists that the West Hills is a corridor for any animal species. The report continues with, 'Clearcutting, residential development, and road construction on the northern part of this peninsula north of Forest Park is fragmenting the forest habitat. This fragmentation is either temporary, in the case of logging, or probably permanent, in the case of residential and agricultural development'. Please note two important things. First, the County's contractors acknowledge the myth of a 'wildlife corridor' * * *. Second, the County's contractors attribute the majority of any habitat damage to residential development and agricultural, not quarrying rock.

"Lev and her co-authors reaffirm the mythical nature of a West Hills wildlife corridor in their 1992 report. The top paragraph of page two reads,

"'The WHWHA is often referred to as a 'wildlife corridor'. Wildlife corridors are defined as linear two-dimensional landscape community elements connecting two or more patches of wildlife (animal) habitat known to have been connected in historic time; it is meant to function as a conduit for animals (Soule 1991). Corridors often refer to habitat along specific routes taken by species which regularly migrate, such as movements of deer, elk, caribou, or migratory birds between summer and winter ranges. The WHWHA functions more as a contiguous large area of habitat for many of the region's wildlife and plant species than it does as a conduit or passage between destinations. For this reason we define and treat it as a peninsula of habitat surrounded by a variety of predominantly human-influenced activities, or connected forested habitat area rather than as a travel lane.'

"It is particularly perplexing that the revised significance report and ESEE analysis keeps referring to the 'critical nature of the West Hills wildlife corridor' * * *

"This myth of the existence of a wildlife corridor shows up in the revised wildlife habitat significance report, the revised

stream significance report, and the ESEE reports on aggregate, streams, and wildlife habitat.

* * * * *

"Myth 2 is the desirability of enticing animals such as black bears, bobcats, and mountain lions to Portland's Forest Park and the northern portions of rapidly-growing west Multnomah County. This naive objective ignores the danger to humans and domesticated pets from encounters with these animals and the danger to the animals themselves from vehicles and humans. These animals are dangerous and do not belong in heavily populated areas.

"To illustrate why this is irresponsible, consider what happened to Kari Swanson, a member of the U.S. Biathlon Team. In the spring of 1986 she was on a training run outside Jackson, Wyoming when she inadvertently passed between a black bear sow and her cub. The mother bear chased Kari, pulled her down from about 20 feet up in a tree where she had tried to escape, and killed her. This incident was widely reported in the region's newspapers¹.

"Other bears become dependent upon human garbage or food found around houses. Too often the bears are shot by wildlife officials because they have become too used to staying around developed areas and are both a nuisance and a threat. Similar problems have been reported throughout the western United States with bobcats, mountain lions, and coyotes.

"The problems with deer and elk in urbanized and agricultural areas is the damage they do to food crops and landscape vegetation and the significant mutual damage which occurs when a large animal (like an elk) is hit by a car.

* * * * *

"Myth 3 is that there is a bottleneck to animal movement in the Folkenberg, McNamee, Harborton, and Skyline areas and that issuance of a * * * Permit for expansion of the Angell Brothers quarry would eliminate this area. This story cannot be substantiated by any data collected by the County's contractors because the nearest transect in their 1992 study is more than 1 mile

¹ See, also newspaper stories in Exhibits 10 and 11.

away (see the locations of T4 and T5 on their Figure 3). (emphasis added) However, let us be reasonable and pretend that this myth is true; what could have caused this bottleneck? Since 1989 the Angell Brothers quarry has not expanded anywhere near to these areas but about 12 new residential developments have been allowed by the County in the vicinity of the quarry and dozens more throughout the West Hills. Now, would this not suggest to you that increased development in Rural Residential zoned areas have had a much greater impact on creating any bottleneck which might exist than would the quarry? However, quarry expansion causing a wildlife bottleneck *is* just a myth because the County's 'comprehensive' wildlife study never collected any data in these areas. * * *

* * * * *

"Myth 4 is that expansion of the Angell Brothers quarry would cause permanent environmental harm to either wildlife or surface flows in the drainages of the property while logging causes only temporary disruptions. This myth is disproved by the County's 1992 report, Oregon's mined land reclamation laws, and evidence at the abandoned Rivergate quarry along Highway 30.

"In Lev *et al.*'s 1992 report, virtually no mention of the quarry as an impact on wildlife or their habitat is to be found. The problems their study found were caused by other land uses, particularly residential development allowed by the county in the recent past. For example, near the top of page 26 of their report, the paragraph begins, 'If existing trends in residential development and logging continue without regard to maintaining contiguous forested habitat throughout, isolation of Forest Park and the entire peninsula will result'. On page 25 they say, '[a] once large contiguous forested habitat is rapidly being fragmented and nibbled away at the edges by timber extraction, road construction, and residential development.' Finally, please refer to pages 28 and 29 of their report. Notice that the quarry has a one-sentence recommendation while all other land uses have from three to five recommendations. Obviously, the authors could not document any detrimental results of the present quarry or its expansion to wildlife or habitat.

"A little more than 20 years ago, Oregon adopted laws requiring that mined-out sites be reclaimed and that DOGAMI must approve the conceptual reclamation program prior to issuance of a mining permit. Under these laws, DOGAMI must also collect

an annual reclamation bond from mine operators to ensure that an abandoned site will be reclaimed under the approved plan. Not only are pits and quarries successfully reclaimed, but the average person cannot even tell that a site is a reclaimed mine unless he or she saw the site in earlier times. A good example is the shopping center and K-Mart store on East Burnside in Gresham. While it may be several decades before a quarry is completely worked out and reclaimed, clearcut timber land replanted as a Douglas fir monoculture will take even longer to grow back to the tree height and girth as those which were cut. The time scale is approximately the same for both activities. On the other hand, very few residential developments, commercial centers, and roads have been returned to wildlife habitat after decades of existence.

"If you would like to see evidence of the past with which a quarry can be reclaimed in the West Hills, visit the old Rivergate Quarry on Highway 30 just south of the St. Johns bridge. From the highway, look at the benches along the southwest end, near the front. You will see grasses, shrubs, and trees growing on them. This landscape was by serendipitous vegetative recruitment (that is, natural reclamation) because this quarry was not * * * reclaimed * * *. As a planner, you can certainly envision how much better habitat can be created by deliberate reclamation.

"Myth 5 is that the ecological concept of edges between different land uses or vegetation types is detrimental to wildlife, specifically the wildlife Lev *et al.* reported finding during their 1992 study in the West Hills. This concept is called the edge effect, or the forest edge effect. According to Lev's revised wildlife habitat significance report, these edge communities are detrimental to the animal populations in the West Hills and should be replaced with a uniform land use or land cover. This is a myth because it generalizes from isolated situations which are never shown to be true of the situation in the West Hills. It is absolutely not applicable to many of the activities in the area.

"Edge effects between, for example, forested areas and clearcuts or between forested areas and the quarry will show an increase in the number of animals using this edge. This is especially true of birds. On the other hand, edges created by roads and rural residential developments with forested areas would be undesirable because there is not live native fauna which inhabits roads or most lawns. Agricultural areas abutting forested areas will fall somewhere between the two extremes above. Therefore, the blanket statement that all edges between different areas are to

be avoided is just a myth which does not belong in the County's decision-making process." Letter from Dr. Richard Shepard, Applied Ecosystem Services to R. Scott Pemble, Planning Director, Multnomah County Department of Environmental Services, dated April 25, 1994 (Exhibit 1-F).

The volume of comments submitted on the issue of wildlife habitat is staggering. Additional point-by-point objections from Angell Bros. at this point would be kicking a dead horse. Perhaps a few additional comments of a general nature will suffice to explain Angell Bros.' objections.

The County created classifications called "primary wildlife habitat area" and "secondary wildlife habitat area", in addition to giving names to various subareas of the West Hills Study Area, such as "McNamee/Harborton", etc. The classifications and the subarea names are not functional differences, but calling them different names suggests they are sui generis and cannot be compared to each other. There is no empirical data to support any of the classifications beyond the untested assumption that habitat could be better suited to some areas as opposed to others. Without animal counts, or for that matter any recorded observations differentiating the primary wildlife habitat area from the secondary wildlife habitat area, or one subarea from another, the distinctions are simply labels, which are convenient but not empirical. Looking just at the "primary" and "secondary" labels, there are at least two residences in the "secondary habitat" depicted on the "Angell Bros. site" map, yet there are 12 residences in the "primary habitat" area. (Compare with housing sites depicted in the aerial photograph, Exhibit 7). Accordingly, any conclusion about the differential value of any portion of the West Hills Study Area as wildlife habitat area would have to admit that the "primary habitat" area was more greatly damaged than the "secondary" habitat area. And if that is the case, shouldn't the labels be reversed?

5.3 Confusing "Conservation" Under Goal 5 With "Restoration Ecology - Wildlife Habitat

The County's analysis of the "impact area" presumes that there is some greater value to the habitat value of the West Hills because of a supposed "connectivity" that exists between Forest Park and the Tualatin Ridge and the Coast Range. This hypothesis has never been tested. Accordingly, it cannot be relied upon as a proven fact in an ESEE Analysis. There are, however, other facts which are indisputable. The City of Portland is undoubtedly a barrier to wildlife passage. Highway 30 and Multnomah Channel are also undoubtedly barriers to most mammals. There are no barriers to birds. The pressure of urban uses on the West Hills Study Area is increasing at a rapid rate. During the period of time that Angell Bros. has been a participant in periodic review, Multnomah County has permitted nearly 100 houses in the West Hills Study Area (see Exhibit 6). Accordingly, the actual context in which wildlife has to be studied is of an area of unknown habitat value located adjacent to an urban area that is growing rapidly and is likely to impinge severely on habitat values. Accordingly, the real issue for the County is how to restore habitat value to the area, not how to conserve it.

The County's analysis of the regulatory context is flawed insofar as it fails to recognize that the entire West Hills area is zoned for commercial forest use. Under the Forest Practices Act, these areas can be clearcut and forestry activities cannot be regulated by the County. This means that the "ecosystem approach" presumed by the County to be a valid Goal 5 approach may be ignored by landowners at the conclusion of each harvest cycle. Accordingly, any conclusion that the existing habitat value of the West Hills can be sustained indefinitely is faulty.

The same is true of the farm uses that occur in the West Hills area. The County does not have the ability to control farming practices in this area, regardless of their impact on wildlife habitat values because accepted farming practices are protected by statute.

The rural residential uses permitted in the West Hills area have had a major -- and thus far unrecognized -- impact on the habitat value in the West Hills area. Hundreds of homes have been permitted in the area since 1989, the County itself permitting nearly 100. The presence of people, together with cats, dogs, and other domestic pets, the use of fertilizers, the presence of weapons by home owners, the presence of automobiles and additional traffic, the introduction of non-native vegetation, and all the other ills that accompany urbanization will undoubtedly have an impact on the habitat value of the West Hills.

The County's analysis of conflicting uses assumes a baseline situation of pristine habitat, which can only deteriorate by the introduction of conflicting uses. In fact, the baseline situation is of a highly fragmented habitat area that is under extraordinary pressure by urbanization. Angell Bros. and OCAPA contend that all of the conflicting uses identified by the County as potentially affecting wildlife habitat have in fact already occurred to one degree or another, and therefore should be part of the baseline. Thus, for instance, much of the West Hills area has already been clearcut. It is thus in a transition period so far as the clearcut areas are available to certain species of wildlife. The County cannot effect the pace or size or performance of logging operators.

The same has occurred with respect to residential development. The hundreds of new houses have all been permitted in the last five years. These uses are therefore not conflicting uses that can be prevented any longer. All of the supposedly negative environmental consequences of urbanization have already arrived in the area. Thus, for instance, the fact that Cornelius Pass, McNamee Road, Newberry Road, and Skyline Boulevard all act as a barrier to most mammals has been further exacerbated by the tremendous increase of traffic in the area. This is not something that can now be prevented. By the same token, the removal of native vegetation, the application of herbicides, and the like have already occurred. There is nothing that can now be done by way of zoning measures to turn the clock back to a time where there were few urban uses and high habitat values, except to the extent of voluntary compliance measures agreed to by individual property owners.

With respect to mining of the area designated by Angell Bros., the County makes similar unfounded assumptions about the "obvious and long-term impacts on the * * * habitat of the area." But what is the baseline situation of habitat in the area? The area

is not a tropical rain forest. There have been no actual studies of wildlife on the Angell Bros. site, except one transect studied by Esther Lev, which found the site to be typical of the West Hills area. An assumption is made that the Angell Bros. expansion site is "critical" because it is near to McNamee Road, Newberry Road, and Skyline Boulevard. But this assumption has never been tested, and no one really knows whether or not wildlife is more abundant here than elsewhere and whether wildlife passage occurs through this area or not. As Dr. Brewer suggests, an examination of aerial photographs indicates that this is very unlikely to be the case for large mammals. If there is a corridor, it is much more likely to be found along Skyline Blvd., which is still heavily forested and has not been clearcut (see Exhibit 7). The assumed direction of travel through the supposed "Angell Bros. Corridor" would require mammals to travel up steep cliffs and down into deep ravines in order to follow the direction of the presumed corridor, when in fact mammals typically follow routes just below the ridge tops. Accordingly, the assumption about the "critical value" of an "Angell Bros. corridor" for large mammals is very likely mistaken.

The County also assumes, as it does elsewhere, that mining will have a long-term, irreversible effect on wildlife habitat by the further assumption that reclamation will fail because non-native species will be introduced and because other undisclosed activities will occur on the site. There is no justification for assuming that the Department of Geology & Mineral Industries will completely fail in its mission to supervise reclamation.

6. Conflict Resolution and Protection

The basic problem with the Conflict Resolution section report is that there is no attempt at mitigation and therefore no hope of resolving any conflicts. One Goal 5 resource -- namely, aggregate -- is simply sacrificed in favor of another, with no explanation. This violates Goal 5. The Goal 5 rule requires Goal 5 resources to be protected, and it also requires a statement of reasons to be made by the local government explaining how the local government's protection program achieves the Goal. Where there are competing Goal 5 resources, a local government cannot just flip a coin to decide which resource to protect and which resource to sacrifice. Rather, the local government must engage in some rational process of considering whether the Goal 5 resources are simply competing Goal 5 resources, or whether they are conflicting resources, and if so, the degree to which they can each be protected while each accommodates the other Goal 5 resource. Unless and until the local government can demonstrate that no mitigation is possible, it is a violation of Goal 5 to arbitrarily sacrifice one Goal 5 resource for another.

The reasoning process that the County should have undertaken is demonstrated in the Department of Fish & Wildlife's June 20, 1994 letter (Exhibit 8). This shows both how the process ought to work and the solution for this set of Goal 5 resources in particular. Jill Zarnowitz states in the June 20 letter to Scott Pemble:

" * * * Maintenance of a one-half mile area of continuous forest habitat (not cover) in this area is considered essential.

Forested habitat includes areas of varying levels of forest canopy, ranging from cleared brushy areas to old-growth forest. A Study of Forest Wildlife Habitation the West Hills (Lev et.al., 1992) recommends maintenance of minimum 200-foot wide forested canopy areas running throughout the half-mile width in order to provide cover for those animals which require it in order to survive, range and feed."

"The County's program for management of the WHWHA proposes to regulate rather than prohibit additional residential development. The Reconciliation Report (Page VI-25) contains siting standards, fencing regulations, limitations on size of lawns and gardens, and prohibition of introduced vegetation. These measures would not be adequate to ensure the maintenance of a one-half mile area of continuous forest cover, or eliminate the deleterious effects of residential development on wildlife. However, they could be used to achieve the objective of a one-half mile area of continuous forest habitat, with 200 foot-wide forested canopy areas running throughout the half-mile width.

"Similarly, the County could meet their stated objective with respect to mining without prohibiting expansion of the Angell Brothers quarry within a one-half mile wide primary forest habitat area located between the existing quarry on the northeast, and secondary cleared habitat areas along McNamee Road to the southwest (Reconciliation Report, Page VI-21). If the County's objective is to achieve a one-half mile area of continuous forest habitat, with 200-foot wide forested canopy areas running through the half-mile width, there are other options which should be considered.

"We believe that long-term benefits to wildlife could be gained through conscientious reclamation of the quarry site and subsequent establishment of conservation easements in areas adjacent to McNamee Road. Mining could be allowed for an interim period within portions of this half-mile area. Expansion of the mining operation into this half-mile area could be phased so that mining does not begin until forest cover has been reestablished in the clearcuts adjacent to and northwest of the quarry. Topsoil could be stockpiled for use during reclamation. Expansion of the mining operation could be conditioned to require that areas nearest to McNamee Road be mined first, and that the mining be phased to provide for sequential reclamation so as to minimize non-vegetated areas and provide a maximum of regenerating wildlife habitat. The County, in conjunction with DOGAMI, could require

a demonstration that reclaimed areas are capable of supporting forest vegetation. Conservation easements could be obtained to ensure that reclaimed areas are set aside in perpetuity as wildlife habitat." June 20, 1994 Letter to Scott Pemble, Multnomah County, from Jill Zarnowitz, Chief, Habitat Conservation Division, Oregon Department of Fish & Wildlife, pp 1-2 (Exhibit 8).

7. Mineral and Aggregate Protection Program (Ordinance 804)

To the extent that Ordinance 804 follows upon the Model Ordinance supplied by DLCD, the Ordinance is unobjectionable. Angell Bros.' and OCAPA's objections concern areas where the County has pursued its own agenda. Before proceeding to particular items, one general comment must be made, namely, that the approach of enacting an ordinance protecting significant Goal 5 resources should have been followed by the County with respect to all Goal 5 resources. Because it was not, and because Goal 5 resources are treated in two separate classes, one of which has an absolute value (wildlife habitat), and one of which is a nuisance (aggregate), the protection program for all Goal 5 resources makes no sense.

The Findings Section D on page 1 of Ordinance 804 states that the Ordinance will protect mining operations only "from future conflicts * * *". There is no justification for failing to provide protection from existing actual or potential conflicting uses.

There is no justification for the County's rejection of the former standard of 25,000 cubic yards as a threshold quantity for significance and replacing this clear and objective standard with no standard at all, and stating that "The County will judge the significance of mineral and aggregate resources on a case-by-case basis * * *". (Emphasis added). It may be true that DLCD's Model Ordinance left a blank in this section and allows the County to determine a threshold quantity, but the intent of the Model Ordinance was for the County to make a decision, not to hide the ball by stating that it will decide at some undisclosed future date what a threshold quantity is. Also, the 25,000 cubic yard amount was an item that was relied upon both by Angell Bros. and by the County itself in the Reconciliation Report as establishing a threshold quantity.

The County states that it "recognizes the jurisdiction of the Department of Geology & Mineral Industries". But, in fact, it does not do so in other sections of the Ordinance. On the one hand, the County states in its Mineral and Aggregate Policy 16 B(O) that DOGAMI will ordinarily "delay its final decision on approval of a reclamation plan * * * until the County decides all comprehensive plan amendments or conditional use approvals." On the other hand, the County proposes in Sections 11.15.7325(C)(9)(d) and (e) that the County will decide whether or not a geologic hazard or negative effects on groundwater and surface water will occur. The County cannot have it both ways. Decisions on geologic hazards and groundwater and surface water are assigned to the jurisdiction of DOGAMI, and DOGAMI cannot make them until the County decides which property has been zoned for mining. The same error occurs in Section 11.15.7325(A), where the County states that one of

the criteria of approval is that there must be a "proposed reclamation plan", but it is unclear whether this is a plan to be approved by the County or a plan to be approved by DOGAMI. By statute, only DOGAMI has jurisdiction over reclamation. Section 11.15.7325(C)(8) talks about County requirements for reclaiming topography as if the County has competing reclamation authority that is somehow shared with DOGAMI. The same ambiguity about who has reclamation authority occurs in Section 11.15.7325(C)(11).

There is also an ambiguity with respect to County required setbacks in Section 11.15.7325(C)(7), which provides that one of the setbacks shall be 400 feet to a noise- or dust-sensitive land use "approved on the date of application". The trouble with this Section is that one cannot tell whether the date of approval refers to the conflicting use or to the mineral and aggregate use. If the use referred to is the conflicting use, the provision is inequitable as applied to Angell Bros. Angell Bros. has been involved for five years in the County's land use process, during which time numerous rural residential houses were allowed to be sited in and around Angell Bros. with no requirement to abide by Goal 5 "impact area" standards.

8. *Streams and Wildlife Habitat Protection Program (SEC Zone Provisions; Ordinance No. 801*

Unlike the mineral and aggregate protection program, the SEC Zone provisions depart completely from the Goal 5 model. These resources are treated as items of "special concern" and are assigned an absolute value, regardless of the reasons that specific resources were declared significant, regardless of the amount of information available with respect to each resource site, and regardless of the ESEE analysis. Thus, the "special concern resources" are not to be disturbed in any manner without demonstrations on "appropriateness" or determinations of "compatibility". Such standards are in the eye of the beholder. This approach violates Goal 5, which requires "clear and objective standards". This approach is such a fundamental flaw that virtually the entire text of the proposed Amendments will have to be rewritten. The affected sections include:

Comprehensive Plan Amendments

1. Policy 16, Strategies B, C, and C1.
2. Policy 16-F, Scenic Views and Sites, A and F

Code Amendments

1. Section 11.15.6400, Purposes
2. Section 11.15.6404(A) and (B), Uses -- SEC Permit Required
3. Section 11.15.6408(C)(2)(d) and (e), Application for SEC Permit,
4. Section 11.15.6409(A),(B),(C), Applicable Standards

5. Section 11.15.6410, SEC Permit -- Required Findings
6. Section 11.15.6412(B), Decision by Planning Director
7. Section 11.15.6414(A), Decision by a Hearings Officer
8. Section 11.15.6420, Criteria for Approval of SEC-n Permit - Natural Areas
9. Section 11.15.6420(A)(3), (B)(1),(2),(3), and (C), Criteria for Approval of SEC-w Permit - Significant Wetlands
10. Section 11.15.6424 definitions, (A)(2), (C)(1),(2) (D)(4),(8), and (E), Criteria for Approval of SEC-v Permit - Significant Scenic Views
11. Section 11.15.6426(B)(1), (2)(a),(b),(c),(f), and (3)(a),(c), Criteria For Approval of SEC-h Permit - Wildlife Habitat

Another major problem with the amendments is that, for a variety of reasons, they make it virtually impossible to mine significant Goal 5 mineral and aggregate resources. The way this is accomplished is that the amendments either require, at the outset of the conditional use process, more information than can possibly be known, or they require compliance with a sliding scale standard that depends upon a finding of "compatibility" or compliance "as nearly as possible" with certain "protection standards", or by requiring compliance "to the greatest extent practicable * * *" with certain statements of value and ideology. These requirements are not clear and objective.

Another defect in the amendments is that they adopt a different standard for the protection of scenic views than Goal 5 permits. Goal 5 protects only "outstanding scenic views". The County's Policy 16F and proposed Code amendment for Scenic Views tries to protect all scenic views with no evaluation of whether a scenic view is or is not "outstanding". Thus, virtually every view of non-industrial, non-urban activity is protected. The effect of this is to use Goal 5 as a tool to control development, rather than as a tool to protect significant natural resources.

How Deficiencies Can be Corrected

Obviously, the deficiencies mentioned above are overwhelming in quantity and variety. A point-by-point revision of the County's work is unnecessary, given our conclusion that most of it cannot be sustained under Goal 5. However, in general, the deficiencies could be corrected by adopting the type of ESEE Analysis proposed by Multnomah County Planning Department Staff (Exhibit 9).

That ESEE Analysis treats the views of the Tualatin Ridge as having value, but it does not find that they are a significant Goal 5 resource and it does not exaggerate the impact

of mining on scenic views. Rather, it treats the impact of mining as having the same order of magnitude as many construction projects. With respect to wildlife resources, this ESEE Analysis admits that there is no empirical baseline data on location, quality, and quantity, and therefore no opportunity to make the qualitative comparison required by Goal 5, but the ESEE analysis finds that a reasonable accommodation by way of setback can be reached (and was reached in 1993, for a few weeks) based upon voluntary agreements between Angell Bros. and wildlife interests. It further admits that since no comparable restrictions on other conflicting uses are applied, involuntary restrictions on mining cannot be supported. It also admits that the West Hills Study Area is undergoing tremendous pressure from nearby urbanization and that the only tool for restoring wildlife habitat will have to come from somewhere other than Goal 5. With respect to stream resources, the ESEE Analysis does not pretend that there are quantitative standards to evaluate the Goal 5 significance of streams or that all streams in the West Hills are significant Goal 5 resources. It admits that North Angell Bros. Stream is not significant for any purpose, whether it be for Goal 5 classification purposes or for supplying water to Burlington Bottoms wetlands, but that, like the perception of wildlife habitat, the perception that North Angell Bros. stream has natural resource value can be effectuated by voluntary agreements between Angell Bros. and stream protection interests so that the drainage is not mined out.

The mineral and aggregate protection program could be corrected by clarifying that DOGAMI has exclusive jurisdiction over reclamation. The SEC Zone provisions cannot survive in their present form, but must be based upon the type of model ordinance that DLCD has used for the mineral and aggregate protection program.

Enclosures

cc (w/enc): Skip Anderson
Richard L. Angstrom
Scott Pemble

Attachment 2.3

Paul Hribernick
Objection

LIST OF EXHIBITS

1. Angell Bros.' written comments
2. June 10, 1994 Letter from Skip Anderson, Angell Bros., to Scott Pemble, Multnomah County, regarding reforestation
3. September 21, 1992 Letter to Skip Anderson from William C. Gilmore, Metro Forestry, Inc.
4. September 21, 1992 letters supporting expansion
5. July 26, 1993 Letter from Jill Zarnowitz, Chief, Habitat Conservation Division, ODF&W, to Scott Pemble, Multnomah County
6. Summary of Maps and Multnomah County Land Use Decisions
7. Aerial photograph of West Hills area depicting Angell Bros.' site, housing sites, and Skyline Ridge forested area
8. July 20, 1994 Letter from Jill Zarnowitz, ODF&W, to Scott Pemble, Multnomah County
9. September 8, 1992 Multnomah County Planning Department Staff ESEE Analysis
10. May 23, 1994 Newspaper Article
11. May, 1994 Newspaper Article

EXHIBIT 1

TAB

DESCRIPTION

- A October 27, 1994 letter to Scott Pemble, Planning Director, Multnomah County and Multnomah County Board of County Commissioners from Frank M. Parisi containing comments of Angell Bros. and Oregon Concrete and Aggregate Producers Association ("OCAPA") on the proposed amendments to the Comprehensive Plan and Zoning Ordinance regarding mineral and aggregate resources, natural resources, the SEC District, wildlife and stream resources, and scenic views.
- B September 12, 1994 letter to S. Pemble and Multnomah County Planning Commission from Frank M. Parisi containing comments on the proposed amendments to the Comprehensive Plan and Zoning Ordinance.
- C July 18, 1994 letter to S. Pemble from Richard B. Shepard, Ph.D., Principal of Applied Ecosystem Services regarding the appeal of Planning Commission's Decisions on West Hills and Howard Canyon area reconciliation reports.
- D June 10, 1994 letter to S. Pemble from R. Shepard containing his comments and concerns in regards to the West Hills Reconciliation Report dated May 23, 1994.
- E May 9, 1994 letter to S. Pemble from R. Shepard regarding the deficiencies of the Multnomah County West Hills Area Significant Streams and Resource Analysis Report.
- F April 25, 1994 letter to S. Pemble from R. Shepard containing comments on the revised stream significance report, the revised wildlife habitat significance report, the Economic, Social, Environmental, and Energy (ESEE) analyses for West Hills scenic, Angell Brothers aggregate, six of the West Hills streams, and West Hills wildlife habitat resources.
- G March 17, 1994 letter to S. Pemble from R. Shepard regarding Multnomah County Periodic Review Revised Work Program - Significance Reports on West Hills wildlife and scenic resources.
- H February 4, 1994 letter to Richard Benner, Director, Land Conservation and Development Commission from F. Parisi regarding and attaching Angell Bros.' objection to the Multnomah County's Work Program.

TAB

DESCRIPTION

- I** February 3, 1994 letter to R. Benner from R. Shepard regarding Multnomah County's request for an extended work program for Remand Order 93-RA-876.
- J** February 2, 1994 letter to F. Parisi from Larry W. Brewer, Senior Wildlife Scientist of Wildlife & Biosystems Associates, Inc. regarding his review of the Request for Proposals and conclusion that "satisfactory fulfillment of the requirements of the proposed contract can not be attained for the funding levels indicated".
- K** August 1, 1993 letter to S. Pemble from R. Shepard regarding and enclosing his Technical Evaluation of C 5-93 Staff Report: Inventory of Streams and Riparian Resources determined significant in rural Multnomah County.
- L** July 26, 1993 letter to S. Pemble and Members of the Planning Commission from F. Parisi regarding deficiencies in the July 26, 1993 Staff Report on the West Hills Wildlife Habitat Area and Angell Bros. cooperation in preserving habitat values.

Attachment 2.3

Paul Hribernick
Objection

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*ALSO ADMITTED IN WASHINGTON
*ADMITTED IN WASHINGTON ONLY

December 5, 1994

OUR FILE NUMBER

S152

HAND-DELIVERED

Mr. Richard P. Benner
Director
Department of Land Conservation
and Development
1175 Court Street, N.E.
Salem, OR 97310-0590

Reference: Multnomah County Goal 5 Periodic Review

Dear Mr. Benner:

With this letter, Mr. Ray Smith files his objection to the Amendments to the Multnomah County Comprehensive Framework Plan that have been proposed in response to the periodic review work program established by the LCDC for Goal 5 resources in the county.

Mr. Smith Participated At The Local Level

Mr. Smith is the owner of the Howard Canyon quarry in east Multnomah County. He has been involved in the periodic review process since the county's initial workshop meeting in Corbett, Oregon on December 7, 1988. Mr. Smith has appeared both orally and in writing in every step of the proceeding since that day. This has included testimony before the LCDC prior to the remand under which the county has promulgated its most recent effort. Since the remand from the LCDC, Mr. Smith has appeared and testified, both orally and in writing, at workshops, public hearings, and informal community gatherings. In addition, the Multnomah County Board of Planning Commissioners participated in a site visit to the Howard Canyon quarry in 1994.

Deficiencies In Multnomah County's Work/Proposed Resolutions

In its September 1994 Reconciliation Report ("Report"), Multnomah County evidences a 180 degree change in the type of

Mr. Richard P. Benner
December 5, 1994 - Page 2

protection granted to the Howard Canyon quarry. Before the remand, the county concluded that the Howard Canyon quarry was a "3B" site and would not be protected. In its latest Report, the county concluded that most of the Howard Canyon site is a "3C" site and, therefore, is deserving protection under Goal 5. We agree with the county's decision as far as it goes, but have the following specific objections to the county's work. We have also included suggested specific revisions.

1. Reduction in Size of the Quarry. The county's "Program To Achieve The Goal" (see Report, p. IV-21) reduces the size of the quarry by approximately one-fifth by deleting Goal 5 protection for Tax Lot 25 (T1N, R4E) and Tax Lot 16 (T1S, R4E). This is done without discussion or analysis. The county makes no change in the impact area and provides no analysis why it reduces the size of the lots other than to say it would provide an "additional buffer area." In effect, the county imposes the "zero tolerance" standard which the LCDC has previously rejected. The county's impact analysis and conflict discussion recognize that adverse effects of mining the western two tax lots of the quarry are manageable and will not adversely affect residences in the area. The LCDC should require the county to abandon its selective use of the "zero tolerance" standard, as previously ordered. This objection may be resolved by protecting the entire Goal 5 mineral and aggregate resource at the quarry.

2. Noise Studies. The county's "Program To Achieve The Goal" requires periodic noise studies (see Report, p. IV-22). The county also places complete control in the cost and scope of the continuing studies in the hands of the county with the bill to be paid by the quarry operator. The record demonstrates that once a sufficient area inside the quarry is established for crushing and processing operations, there will be no adverse noise on any residence in the area. The factual record directly contradicts the county's requirements for costly and continuing noise studies. This objection may be resolved by the county by requiring one noise study once the crusher has been located inside the quarry area. Because the record shows the operation to presently be in compliance with noise standards, the cost of the study should be borne by the county.

3. Water Quality Studies. The "Program To Achieve The Goal" requires periodic water quality studies. Again, the nature of the studies, their cost and their timing are discretionary acts in the hands of the county. The continuing and ongoing requirements are not consistent with the evidence from both the

Mr. Richard P. Benner
December 5, 1994 - Page 3

Department of Geology and Mineral Industries and the Department of Environmental Quality. Both these agencies indicated that there are no significant water quality concerns at the site and there are ample measures that can be taken to eliminate any risks of water quality problems. The ESEE analysis provides no valid reason for the county to continue to hire consultants and charge back the consultants' time to the operator for regulatory compliance that rests with other state agencies. This objection may be resolved by the county by relinquishing the county's control over a function which is more properly administered by DEQ and DOGAMI.

4. Transportation Issues. The "Program To Achieve The Goal" includes a lengthy discussion of transportation issues (see Report, pp. IV-22 to 27). The county appears to argue that it was told by the LCDC in the Remand Order that the county could not consider transportation issues as part of Goal 5. In the Remand Order, LCDC merely said that the county could not use extraneous transportation considerations as a basis for denying protection for Goal 5 resources.

In any event, the county rejects its own interpretation of the Remand Order and provides extensive consideration of transportation "conflicts" (see Report, pp. III-14 to 17; III-38 to 39). Briefly put, the county reserves to itself a complete and total ability to vitiate any protection for the Howard Canyon Goal 5 resource by denying the quarry owner ordinary use of the county road system. An examination of the county's requirement for a traffic management plan (see Report, pp. IV-24 to 27) reveals extraordinarily complex requirements for a traffic plan that are totally within the discretion of the county engineer. This is directly contrary to the clear and objective criterion required by the Goal 5 rule, OAR 660-16-010(3). At several public hearings, Mr. Smith stated that the traffic study provisions, in and of themselves, could cost in excess of \$250,000. This figure did not consider any potential discretionary road improvements that the county would later impose. The county responded only that the transportation studies would be "expensive" but that they would not be that expensive.

Unless and until the county provides clear and objective standards under which the operator can determine what is required in order to actually use the Goal 5 mineral and aggregate resource, the resource is not protected. It is not sufficient for the county to "protect" a resource in a manner

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Mr. Richard P. Benner
December 5, 1994 - Page 4

that ultimately prohibits its actual use for extraction (see, *Eckis v. Linn County*, 22 OR Luba 27, 40 (1991)). The county appears to take the position that it is sufficient to "protect" the Goal 5 resource in name only (e.g., a "3C" resource) notwithstanding a regulatory web of such enormous complexity and expense, that the Howard Canyon resource could never be actually used under any circumstances.

Goal 5 requires that the mechanisms the local government uses to limit conflicting resources must be specific enough so that the affected property owners are able to determine what uses and activities are allowed. Multnomah County has skipped over clear and objective standards, and has reserved to itself complete and standardless discretion over the road issue. In doing so, the county fails to provide Mr. Smith with any sort of idea on what type of uses will be allowed.

The county's findings are inadequate because the county ignores the facts in the record that existing demand for gravel trucks in the east county area is currently met by gravel trucks coming from the state of Washington and the city of Gresham. These deliveries currently use the road system in east Multnomah County on a daily basis. These out-of-area deliveries will continue notwithstanding the county's findings that roads are inadequate "under present traffic loading conditions." (see Report, pp. III-15 to 17). Essentially what the county is doing is using the Goal 5 process to shift systemic transportation problems to a single mineral and aggregate Goal 5 use. While there is some language in the "Program To Achieve The Goal" which implicates proportionality, this is clearly not a mandated outcome, given the discretion that the county reserves to itself. The threat of an open ended \$250,000 road study, in and of itself, may be sufficient to strip the quarry of any realistic protection.

The county continues to consider the Howard Canyon operation to be a full-blown, large scale mineral and aggregate operation. Mr. Smith has continually stated that he wishes a production cap of 50,000 yards so that the quarry will remain small and be able to serve the east Multnomah County area long into the future. Notwithstanding that Mr. Smith has expressed the desire for a production cap on many occasions, the county continues to push the traffic restriction "cart" before the production cap "horse." We believe that the production levels suggested by Mr. Smith will require few road improvements. However, the county's approach during the Goal 5 process is to

Mr. Richard P. Benner
December 5, 1994 - Page 5

make this determination impossible because it insists on having the last discretionary decision about quarry operations (e.g., road issues) rest solely with the county engineer. We can foresee a situation whereby the cost of the road improvements imposed by the county would be such that Mr. Smith would be forced to increase production beyond the amount he wishes, in order to pay for road improvements. This, of course, would only trigger further demands from the county for additional road improvements. What should be painfully obvious to the Commission is that a two to three million yard mineral and aggregate resource, while significant, simply cannot be the economic engine which makes systemic repairs to the road system in east Multnomah County.

That Multnomah County has extensive road repairs in mind is clearly shown by the Report. Despite the fact that Mr. Smith has indicated that material would not travel across the Stark Street bridges (because it is not the owner's desire to serve the Gresham market on the west side of the Sandy River), these bridges are identified as weak links in the transportation area which must be addressed through the traffic study controlled by the county engineer. If the county wishes these conflicts to be part of its Goal 5 process, it must do more than simply identify them. The county must resolve the conflicts and develop clear and objective standards to achieve the Goal. Goal 5 does not allow a jurisdiction to reserve a pretext for the denial of meaningful protection for the Goal 5 resource.

We believe that the benefits of allowing the Howard Canyon quarry to proceed on a limited basis would greatly decrease the total wear and tear on the county's road system because from existing sources of supply, the state of Washington would not have to traverse great distances of county road and potentially the load impaired bridges in order to reach the east county area.

That Mr. Smith intends to have a small scale operation is clearly demonstrated by the fact that he does not object to the restrictive hours established by the county for the operation. If the operation were going to be a large commercial facility, it could not survive with operating hours that begin at 8:30 a.m. for a large portion of the year. Mr. Smith has agreed to these hours because it does not wish to have a huge commercial operation on the site. The county has failed to consider the specific circumstances that are offered by this Goal 5 resource. Specific circumstances of the Howard Canyon quarry are that a

Mr. Richard P. Benner
December 5, 1994 - Page 6

small, locally oriented operation will be developed. In its findings, the county has assumed that this would be a full scale commercial operation and has refused all attempts to treat the operation in a much more modest fashion that has been proposed.

This objection may be resolved in a manner that is suggested in the county's Report and suggested by Mr. Smith on many occasions. The property owner has approached the county with a limited operation plan. The county should evaluate that plan, and determine whether any road improvements are necessary based on the proposed use, not the county's perception of a major commercial quarry that would deplete the Howard Canyon resource in four or five years. The county can resolve the problem by sitting down and dealing with the applicant in a straightforward fashion to establish a production cap in conjunction with the traffic management plan, rather than require a massive traffic management plan that will be the basis for a production cap. Mr. Smith has continually offered to mediate disputes throughout the Goal 5 process using the resources of DLCD. The mediation process has not been fostered by the county.

5. One Permit. The county's proposed handling of the Howard Canyon quarry will require additional conditional use proceedings before the county. This is contrary to ORS 215.460 which requires a governing body to establish a single, consolidated procedure to obtain all permits for a development project. For example, the program to achieve the goal for protected stream resources in the Howard Canyon area does not require any additional applications to the county. This objection can be resolved as part of the up front planning process suggested as a resolution to objection 4 above.

Thank you for this opportunity to raise additional objections to the county's Report. We ask to be placed on the mailing list and receive copies of any notifications that are sent out in this proceeding.

Very truly yours,


Paul R. Hribernick

PRH:vc
S152\PRH44

cc: Mr. Ray Smith
Mr. R. Scott Pemble, Multnomah County Planning Director

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December 7, 1994

OUR FILE NUMBER
S152

Mr. Richard Benner
Director
Department of Land Conservation
and Development
1175 Court Street, N.E.
Salem, OR 97310-0590

Reference: Ray Smith's Objection to Multnomah County
Goal 5 Response

Dear Dick:

Upon review of the objection filed by Mr. Smith and received by the Department on December 5, 1994, I noticed a typographic error. In objection 5, page 6 of my letter, the statutory citation should be to ORS 215.416 instead of ORS 215.460. Please call if you have any questions.

Very truly yours,

Paul R. Hribernick

PRH:vc
S152\PRH45

cc: Mr. Ray Smith
Mr. R. Scott Pemble