ANNOTATED MINUTES

Tuesday, September 28, 1993 - 8:30 AM - 12:00 PM
Portland Metropolitan Chamber of Commerce
221 NW Second Avenue

SPECIAL MEETING

SM-1 *The Multnomah County Board of Commissioners and Other County Elected Officials and Department Managers Will Meet to Review the Portland Multnomah Progress Board Work in the Areas of Quality of Life, Education/Children and Families and Public Safety.*

FACILITATOR JOE HERTZBERG. PARTICIPANTS JEANNE GOODRICH, BEVERLY STEIN, DAN SALTZMAN, GARY HANSEN, BETSY WILLIAMS, TANYA COLLIER, STEVE TILLINGHAST, ROBERT SKIPPER, MICHAEL SCHRUNK, GARY BLACKMER, SHARRON KELLEY, BILLI ODEGAARD, SUSAN CLARK, MEGANNE STEELE, BILL THOMAS, PAUL SUNDERLAND AND TAMARA HOLDEN BEGAN PRELIMINARY PROCESS FOR IDENTIFYING 20 COUNTY BENCHMARKS FROM OREGON BENCHMARKS LIST AND ESTABLISHING CRITERIA PARAMETERS TO IDENTIFY AND DEVELOP FRAMEWORK FOR USE IN REFINING BENCHMARKS. MS. STEELE DIRECTED TO PREPARE AND SUBMIT A SURVEY TO PARTICIPANTS REQUESTING DATA ADDRESSING AREAS OF ADDITIONAL CONCERN, IDENTIFYING POTENTIAL PARTNERSHIPS, VALUES AND ASSUMPTIONS AND ADDITIONAL BENCHMARKS, FOR COMPILATION PRIOR TO NEXT MEETING. COMMISSIONERS TO SUBMIT LIST OF BENCHMARKS FOR CHAIR STEIN TO PRESENT TO PORTLAND-MULTNOMAH COUNTY PROGRESS BOARD ON OCTOBER 5, 1993. OCTOBER 12, 1993 MEETING TO BE RESCHEDULED AND RELOCATED.

Tuesday, September 28, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:34 p.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

P-1 *CS 7-93 Review the September 7, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, a Change in Zone Designation from GC, General Commercial, to GC, CS, Community Service Designation to Allow Installation of a Cellular Telephone Communications Monopole, with Associated Antennas, and to Erect an Electronics Equipment Building on the Subject Site, for Property Located at 16501 SE DIVISION STREET*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 CU 21-93 Review the September 15, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Commercial Activity in Conjunction with Farm Use, for Property Located at 24315 NW OAK ISLAND ROAD

DECISION READ. PLANNING DIRECTOR SCOTT PEMBLE REPORTED A NOTICE OF REVIEW APPEAL WAS FILED AND THAT STAFF RECOMMENDS AN APPEAL HEARING BE SCHEDULED FOR OCTOBER 26, 1993, ON THE RECORD, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT A HEARING ON CU 21-93 BE HELD ON OCTOBER 26, 1993, ON THE RECORD, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE.

P-3 CU 17-93/HV 9-93 PUBLIC HEARING, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF POLICY 37, TESTIMONY LIMITED TO 10 MINUTES PER SIDE, in the Matter of an Appeal of the August 13, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request and Lot Size Variance Request, for Property Located at 3130 NW FOREST LANE

STAFF PLANNER BOB HALL CITED STATUTORY PROCEDURES AND REQUIREMENTS CONCERNING HEARING PROCESS. HEARINGS OFFICER LARRY EPSTEIN PRESENTATION REGARDING APPLICATION, PROCEDURAL ASPECTS OF REVIEW, STRUCTURE OF WRITTEN DECISION, FACTS ABOUT SITE AND SURROUNDING AREA, REQUEST FOR VARIANCES AND CONDITIONAL USE PERMIT AND OTHER LEGAL ISSUES RAISED DURING AUGUST 13 PROCEEDINGS. COUNTY COUNSEL JOHN DuBAY REPORTED THAT ARNOLD ROCHLIN HAS WITHDRAWN HIS OBJECTION CONCERNING SCOPE OF REVIEW LIMITING ADDITIONAL EVIDENCE TO POLICY 37, AND THAT MR. ROCHLIN IS REQUESTING THAT TWO DOCUMENTS BE EXCLUDED FROM THE RECORD. MR. DuBAY RECOMMENDED THAT THE BOARD DENY MR. ROCHLIN'S REQUEST. MR. EPSTEIN EXPLAINED THAT WHILE THE DOCUMENTS WERE ADMITTED INTO THE RECORD AS EXHIBITS, THEY WERE NOT CITED AS SUPPORT FOR ANY FINDINGS THAT HE MADE.

APPLICANTS' ATTORNEY MICHAEL ROBINSON, ASSERTED THE BOARD RECEIVED A EX PARTE COMMUNICATION IN THE FORM OF A SEPTEMBER 21, 1993 LETTER FROM ARNOLD ROCHLIN TO THE BOARD AND REQUESTED THAT HE BE GIVEN A COPY OF THE LETTER AND HAVE AN OPPORTUNITY TO RESPOND TO ANY SUBSTANTIVE ISSUES. EACH BOARD MEMBER ACKNOWLEDGED RECEIPT OF THE LETTER AND STATED IT WOULD NOT IMPACT TODAY'S DECISION.

MR. ROBINSON PRESENTED TESTIMONY IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION, ADVISING HIS CLIENTS WERE NOT STATUTORILY NOTIFIED BY MAIL OF COUNTY ADOPTION OF A 1980

AGGREGATION ORDINANCE. MR. ROBINSON ASSERTED HIS CLIENTS HAVE AN UNBUILDABLE LOT WHICH CANNOT BE SOLD TO A THIRD PARTY WISHING TO OBTAIN A BUILDING PERMIT, THAT THE PROPERTY CANNOT BE LOGGED, AND THAT DENIAL OF THE REQUEST WOULD RESULT IN A TAKING. MR. ROBINSON INTRODUCED ADDITIONAL EVIDENCE IN THE FORM OF A REPORT THAT APPLICANTS CAN PROVIDE ADEQUATE SUB-SERVICE SEWAGE DISPOSAL AND ASSERTED THERE WOULD BE NO ADVERSE IMPACT ON THE SURROUNDING AREA OR FOREST PARK. MR. ROBINSON RESPONDED TO BOARD QUESTIONS.

ARNOLD ROCHLIN, REPRESENTING HIMSELF AND THE FOREST PARK NEIGHBORHOOD ASSOCIATION, EXPRESSED CONCERN THAT HIS SEPTEMBER LETTER WAS CONSIDERED EX PARTE CONTACT AND ADVISED THAT COPIES WERE SENT TO EACH COMMISSIONER, THE BOARD CLERK AND TO PLANNING STAFF FOR FILING IN THE CASE FILE, AVAILABLE FOR PUBLIC INSPECTION. MR. ROCHLIN ASSERTED THE BOARD DID NOT COMPLY WITH 11.15.8270(E) WHEN SETTING THE SCOPE OF REVIEW ON AUGUST 31 RELATIVE TO DETERMINING WHETHER THE ADDITIONAL EVIDENCE COULD NOT HAVE BEEN PRESENTED AT THE EARLIER HEARING. MR. ROCHLIN ADVISED THAT APPLICANTS' HOUSE IS ON A 4 ACRE PARCEL IN WHAT IS NOW AN 80 ACRE ZONE AND PRESENTED TESTIMONY IN SUPPORT OF THE DENIAL DECISION, EXPLAINING THAT THE FIRST SENTENCE OF 11.15.8505(A) STATES, "THE APPROVAL AUTHORITY MAY PERMIT AND AUTHORIZE A VARIANCE FROM THE REQUIREMENTS OF THIS CHAPTER ONLY WHEN THERE ARE PRACTICAL DIFFICULTIES IN THE APPLICATION OF THE CHAPTER", WHICH APPLICANT FAILED TO IDENTIFY. MR. ROCHLIN URGED THE BOARD TO DENY THE APPLICATION, ADOPT THE HEARINGS OFFICER'S FINDINGS AND CONCLUSIONS AND TO DESIGNATE THE WALKER AND WATSON LETTERS AS EXCLUDED FROM THE RECORD, THOUGH LEFT IN THE FILE. MR. ROCHLIN SUGGESTED THAT APPLICANT DOES NOT EXPECT TO WIN HERE AND REQUESTED A VARIANCE IN ORDER TO SHOW THAT ALL PLAUSIBLE LOCAL REMEDIES WERE TRIED IN ORDER TO RAISE THE MATTER BEFORE LUBA OR THE COURTS.

IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. DuBAY ADVISED THE BOARD MUST CONSIDER ANY APPLICABLE STATE LAW, ORDINANCES OR CONSTITUTIONAL ISSUES WHICH OVERRIDE THE COUNTY CODE.

IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MR. DuBAY ADVISED HE HAS NO OBJECTION TO THE BOARD EXCLUDING THE TWO LETTERS AND EXPLAINED THAT LUBA HAS AUTHORITY TO TAKE EVIDENCE ON CONSTITUTIONAL ISSUES WHICH DO NOT APPEAR IN THE RECORD.

IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR.

ROCHLIN ADVISED THE CODE REQUIRES THAT APPLICANT IDENTIFY AT LEAST ONE PRACTICAL DIFFICULTY APPLICABLE TO AT LEAST ONE CRITERIA.

IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, MR. PEMBLE ADVISED THE COUNTY HAS NEVER CONSIDERED PRACTICAL DIFFICULTY CRITERIA.

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY APPROVED THAT THE HEARINGS OFFICER DECISION BE AFFIRMED.

P-4 *CU 20-93 PUBLIC HEARING, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF THE LOT OF RECORD, GENERAL SUITABILITY OF THE PARCEL FOR FARMING AND OTHER APPROVAL CRITERIA AS INTERPRETED BY THE HEARINGS OFFICER, TESTIMONY LIMITED TO 10 MINUTES PER SIDE, in the Matter of an Appeal of the August 5, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Non-Resource Related Single Family Residence on EFU, Exclusive Farm Use, for Property Located at 31075 SE LUSTED ROAD*

PLANNER SANDY MATHEWSON GAVE THE STAFF REPORT, CRITERIA REQUIREMENTS AND LUBA APPEAL CAVEAT.

BOARD DISCUSSION AND RESPONSE TO CONCERNS OF ATTORNEY TIM RAMIS REGARDING IMPARTIALITY OF THE HEARINGS OFFICER.

HEARINGS OFFICER ROBERT LIBERTY EXPLAINED PROCESS HE USED IN ARRIVING AT HIS DECISION AND RESPONDED TO BOARD QUESTIONS.

Commissioner Kelley left at 3:05 p.m.

IN RESPONSE TO A QUESTION OF COMMISSIONER HANSEN, MR. DuBAY REPORTED THAT THE COUNTY ADOPTED A PARTITION ORDINANCE IN 1978, GOAL 3 WAS ADOPTED IN DECEMBER, 1974 AND THE COUNTY PLAN WAS ACKNOWLEDGED BY THE STATE ON OCTOBER 30, 1980.

MR. RAMIS PRESENTED TESTIMONY SUPPORTING LOT OF RECORD AND SUITABILITY OF PARCEL FOR FARMING, SUBMITTED AN EXHIBIT LIST AND CITED A 1980 LETTER FROM PLANNING STAFF LARRY EPSTEIN DETERMINING THAT THE LOT AT ISSUE IS A LOT OF RECORD, AND A LETTER FROM FARM BUREAU PRESIDENT LARRY BUSHUE ADVISING IT IS HIS OPINION THAT THE USE WOULD BE COMPATIBLE WITH FARM PRACTICES. MR. RAMIS RESPONDED TO BOARD QUESTIONS.

SPENCER VAIL PRESENTED AND EXPLAINED AN AERIAL PHOTO AND RESPONDED TO BOARD QUESTIONS.

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER

COLLIER SECONDED, TO REVERSE THE HEARINGS OFFICER DECISION AND GRANT THE CONDITIONAL USE. MR. DuBAY AND MS. MATHEWSON EXPLANATION IN RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS. MOTION APPROVED WITH COMMISSIONERS COLLIER, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER HANSEN VOTING NAY.

MR. DuBAY DIRECTED MR. RAMIS TO PREPARE AND SUBMIT A PROPOSED FINAL ORDER.

P-5 *C 5-93 First Reading and Public Hearing of a Proposed ORDINANCE Which Amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding Significant Environmental Concern (SEC) Provisions and Adopting a Map of Significant Streams and Riparian Areas Which are Designated "3-C" Resource Sites in Multnomah County Goal 5 Inventory*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. FOLLOWING BOARD DISCUSSION, IT WAS DETERMINED THAT PUBLIC TESTIMONY WOULD BE TAKEN TODAY, AND THE STAFF PRESENTATION AND COMMENTS FROM JIM SITZMAN WOULD BE CONTINUED TO OCTOBER 12, 1993. TESTIMONY IN OPPOSITION TO PROPOSED ORDINANCE FROM RICHARD SHEPARD, KLAUS HEYNE AND SUSAN FRY. TESTIMONY IN SUPPORT OF PROPOSED ORDINANCE FROM CHRIS WRENCH, JOHN SHERMAN, NANCY ROSENLUND, URSA FICKER, MICHAEL CARLSON, LYN MATTEI AND ARNOLD ROCHLIN.

Commissioner Saltzman left at 4:20 p.m.

FOLLOWING BOARD DISCUSSION AND STAFF COMMENTS, COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, CONTINUANCE OF THE FIRST READING TO TUESDAY, OCTOBER 26, 1993. CHAIR STEIN DIRECTED STAFF TO LOOK AT OPTIONS SUGGESTED BY MR. SHERMAN AND MR. ROCHLIN AND LOOK INTO USE OF VOLUNTEER ASSISTANCE IN IDENTIFYING EAST COUNTY STREAMS. COMMISSIONER COLLIER REQUESTED A BOARD BRIEFING ON FUTURE IMPACT ISSUES. MOTION UNANIMOUSLY APPROVED.

There being no further business, the meeting was adjourned at 4:40 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah L. Bogstad

Wednesday, September 29, 1993 - 8:00 AM - 9:00 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFING

B-1 *Briefing and Discussion on Multnomah County Community Corrections Plan. Presented by M. Tamara Holden and Susan Kaeser.*

TAMARA HOLDEN AND BILL WOOD PRESENTATION AND RESPONSE TO BOARD QUESTIONS. STAFF TO RESPOND TO SPECIFIC INFORMATION REQUESTS OF COMMISSIONERS COLLIER AND SALTZMAN. ADDITIONAL BRIEFING TO BE HELD PRIOR TO BOARD CONSIDERATION OF INTERGOVERNMENTAL AGREEMENT AND BUDGET MODIFICATION ON REGULAR AGENDA.

Thursday, September 30, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

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

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-9) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

C-1 *Ratification of Intergovernmental Agreement Contract 103644 Between the Oregon Department of Energy and Multnomah County, Providing Partial Reimbursement to the Community Action Program Office for Weatherizing Low Income Homes, for the Period July 1, 1993 through June 30, 1995*

DEPARTMENT OF ENVIRONMENTAL SERVICES

C-2 *ORDER in the Matter of the Execution of Deed D940919 Upon Complete Performance of a Contract to Jessica P. Sam*

ORDER 93-320.

C-3 *ORDER in the Matter of the Execution of Deed D940920 Upon Complete Performance of a Contract to Rodger Evenson*

ORDER 93-321.

C-4 *ORDER in the Matter of the Execution of Deed D940921 Upon Complete Performance of a Contract to Glen R. Smith and Doris L. Smith*

ORDER 93-322.

C-5 *ORDER in the Matter of the Execution of Deed D940922 Upon Complete Performance of a Contract to Horace Green*

ORDER 93-323.

C-6 *ORDER in the Matter of the Execution of Deed D940925 Upon Complete Performance of a Contract to James A. Nelson*

ORDER 93-324.

C-7 *ORDER in the Matter of the Execution of Deed D940926 Upon Complete Performance of a Contract to William C. Reed*

ORDER 93-325.

C-8 *ORDER in the Matter of the Execution of Deed D940927 Upon Complete Performance of a Contract to Noell Webb*

ORDER 93-326.

C-9 *ORDER in the Matter of the Execution of Deed D940928 Upon Complete Performance of a Contract to Bessie A. Burnette*

ORDER 93-327.

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 *Multnomah County Citizen Involvement Committee FY 1992-93 Annual Report. Presented by CIC Chair Derry Jackson and CIC Executive Director John Legry.*

DERRY JACKSON INTRODUCED ROBIN BLOOMGARDEN, JOHN LEGRY AND ANGEL OLSEN AND PRESENTED HIGHLIGHTS OF THE ANNUAL REPORT. BOARD COMMENTS.

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-2 *Ratification of Intergovernmental Agreement Contract 300704 Between the Oregon Department of Transportation and Multnomah County, Providing for the Maintenance of Portland Area ODOT Vehicles and Equipment by Multnomah County Fleet Services, for the Period Upon Execution through June 30, 1998*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. TOM GUINEY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

R-3 *ORDER in the Matter of the Establishment of S.E. Butler Road from S.E. Giese Road Southeasterly to Existing S.E. Butler Road, as a County Road to be Known as S.E. Butler Road, No. 5002*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. JOHN DORST EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 93-328 UNANIMOUSLY APPROVED.

R-4 *RESOLUTION in the Matter of Initiating Proceedings to Vacate a Portion of S.E. Butler Road, County Road Nos. 365*

and 588, from S.E. 190th Drive Easterly 298 Ft., More or Less, and Setting a Hearing Date [November 4, 1993 Requested]

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-4. JOHN DORST EXPLANATION. RESOLUTION 93-329 SETTING PUBLIC HEARING FOR THURSDAY, NOVEMBER 4, 1993 UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

R-5 *Housing and Community Services Division Request for Approval of a $33,333 Grant from the Oregon Children and Youth Services Commission, for a Parole Transition Coordinator to Work with African American Youth within the Juvenile Justice and Delinquency Prevention Disproportionate Minority Confinement Project, for the Period September 30, 1993 through December 31, 1993*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-5. REY ESPANA AND DWAYNE McNANNAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. GRANT UNANIMOUSLY APPROVED.

R-6 *Housing and Community Services Division Request for Approval of a Notice of Intent to Apply for a Two-Year Continuation to the Current Robert Wood Johnson Foundation Grant for the "No Place Like Home" Program, Providing Publicly Assisted Housing for Elderly Multnomah County Residents*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-6. CECILE PITTS EXPLANATION AND RESPONSE TO BOARD QUESTIONS. NOTICE OF INTENT UNANIMOUSLY APPROVED.

R-7 *Budget Modification DSS #5 Requesting Authorization to Transfer $20,000 in County General Fund from the Mental Health, Youth and Family Services Division, Alcohol and Drug Program Budget, to the Department of Community Corrections, Office of Women's Transition Services Budget*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-7. NORMA JAEGER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER COLLIER COMMENTS IN SUPPORT OF ADAPT PROGRAM. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

R-8 *Ratification of Intergovernmental Agreement Contract 103714 Between Washington County and Multnomah County, Allowing Washington County to Utilize the Multnomah County Juvenile Justice Complex, for the Period July 1, 1993 through June 30, 1994*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER

COLLIER SECONDED, APPROVAL OF R-8. HAL OGBURN, DAVE BOYER, CHIP LAZENBY AND DAVE WARREN EXPLANATION OF ITEMS R-8 THROUGH R-12 AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

R-9 Ratification of Intergovernmental Agreement Contract 103724 Between Clackamas County and Multnomah County, Allowing Clackamas County to Utilize the Multnomah County Juvenile Justice Complex, for the Period July 1, 1993 through June 30, 1994

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-9 WAS UNANIMOUSLY APPROVED.

R-10 Ratification of Intergovernmental Agreement Contract 500234 Between Multnomah County and Clackamas County, for the Lease of 10 Bed Spaces at the Multnomah County Juvenile Justice Complex, for the Period October 1, 1993 through June 30, 2013

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-10 WAS UNANIMOUSLY APPROVED.

R-11 Ratification of Intergovernmental Agreement Contract 500244 Between Multnomah County and Washington County, for the Lease of 10 Bed Spaces at the Multnomah County Juvenile Justice Complex, for the Period October 1, 1993 Until Mutually Terminated

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, R-11 WAS UNANIMOUSLY APPROVED.

R-12 RESOLUTION in the Matter of Depositing Lease-Purchase and Lease Payments Received from Washington and Clackamas Counties for Bed Space in the Juvenile Justice Complex to the Capital Improvement Fund

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-12. DAVE BOYER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 93-330 UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

R-13 RESOLUTION in the Matter of Setting out Procedures and Policies for the Board of Equalization and its Members

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-13. COMMISSIONER COLLIER ACKNOWLEDGED AND EXPRESSED APPRECIATION TO CITIZEN TASK FORCE, LAURELHURST NEIGHBORHOOD ASSOCIATION, COUNTY STAFF AND ELECTED OFFICIALS FOR THEIR ASSISTANCE IN PREPARATION OF PROCESS.

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, AN AMENDMENT TO ATTACHMENT A WAS UNANIMOUSLY APPROVED. SANDY DUFFY EXPLANATION IN RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, 6 AMENDMENTS TO ATTACHMENT B-1 WERE UNANIMOUSLY APPROVED. COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, AMENDMENT TO ATTACHMENT B-2. MS. DUFFY AND MARIA ROJO de STEFFEY RESPONSE TO BOARD QUESTIONS AND DISCUSSION. MOTION WITHDRAWN. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, AMENDMENT TO ATTACHMENT B-2 WAS UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, AMENDMENT TO ATTACHMENT C, PAGE 5 WAS UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, AMENDMENT TO ATTACHMENT C, PAGE 13 WAS UNANIMOUSLY APPROVED. COMMISSIONER HANSEN QUESTION UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, AMENDMENT TO ATTACHMENT E WAS UNANIMOUSLY APPROVED.

TESTIMONY IN SUPPORT OF PROPOSED RESOLUTION FROM TOM CROPPER, ROBIN HUNTINGTON, PAULINE GUSTAFSON AND MARK PARKER. BOARD COMMENTS. RESOLUTION 93-331 AS AMENDED, UNANIMOUSLY APPROVED.

PUBLIC COMMENT

R-14 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

There being no further business, the meeting was adjourned at 11:25 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah L Bogstad

0320C/1-10/db

MULTNOMAH COUNTY OREGON

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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

SEPTEMBER 27, 1993 - OCTOBER 1, 1993

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

Thursday, 10:00 PM, Channel 11 for East and West side subscribers
Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers
Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers
Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

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, September 28, 1993 - 8:30 AM - 12:00 PM

Portland Metropolitan Chamber of Commerce
221 NW Second Avenue

SPECIAL MEETING

SM-1 *The Multnomah County Board of Commissioners and Other County Elected Officials and Department Managers Will Meet to Review the Portland Multnomah Progress Board Work in the Areas of Quality of Life, Education/Children and Families and Public Safety.*

Tuesday, September 28, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

P-1 *CS 7-93 Review the September 7, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, a Change in Zone Designation from GC, General Commercial, to GC, CS, Community Service Designation to Allow Installation of a Cellular Telephone Communications Monopole, with Associated Antennas, and to Erect an Electronics Equipment Building on the Subject Site, for Property Located at 16501 SE DIVISION STREET*

P-2 *CU 21-93 Review the September 15, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Commercial Activity in Conjunction with Farm Use, for Property Located at 24315 NW OAK ISLAND ROAD*

P-3 *CU 17-93/HV 9-93 PUBLIC HEARING, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF POLICY 37, TESTIMONY LIMITED TO 10 MINUTES PER SIDE, in the Matter of an Appeal of the August 13, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request and Lot Size Variance Request, for Property Located at 3130 NW FOREST LANE [1:30 PM TIME CERTAIN REQUESTED]*

P-4 *CU 20-93 PUBLIC HEARING, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF THE LOT OF RECORD, GENERAL SUITABILITY OF THE PARCEL FOR FARMING AND OTHER APPROVAL CRITERIA AS INTERPRETED BY THE HEARINGS OFFICER, TESTIMONY LIMITED TO 10 MINUTES PER SIDE, in the Matter of an Appeal of the August 5, 1993 Planning and Zoning Hearings Officer Decision Denying a Conditional Use Request for a Non-Resource Related Single Family Residence on EFU, Exclusive Farm Use, for Property Located at 31075 SE LUSTED ROAD [2:15 PM TIME CERTAIN REQUESTED]*

P-5 *C 5-93 First Reading and Public Hearing of a Proposed ORDINANCE Which Amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding Significant Environmental Concern (SEC) Provisions and Adopting a Map of Significant Streams and*

Riparian Areas Which are Designated "3-C" Resource Sites in Multnomah County Goal 5 Inventory [1 HOUR REQUESTED]

Wednesday, September 29, 1993 - 8:00 AM - 9:00 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFING

B-1 *Briefing and Discussion on Multnomah County Community Corrections Plan. Presented by M. Tamara Holden and Susan Kaeser. 8:00 AM TIME CERTAIN, 1 HOUR REQUESTED.*

Thursday, September 30, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF SOCIAL SERVICES

C-1 *Ratification of Intergovernmental Agreement Contract 103644 Between the Oregon Department of Energy and Multnomah County, Providing Partial Reimbursement to the Community Action Program Office for Weatherizing Low Income Homes, for the Period July 1, 1993 through June 30, 1995*

DEPARTMENT OF ENVIRONMENTAL SERVICES

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C-9 *ORDER in the Matter of the Execution of Deed D940928 Upon Complete Performance of a Contract to Bessie A. Burnette*

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 *Multnomah County Citizen Involvement Committee FY 1992-93 Annual Report. Presented by CIC Chair Derry Jackson and CIC Executive Director John Legry. [9:30 AM TIME CERTAIN, 30 MINUTES REQUESTED]*

DEPARTMENT OF ENVIRONMENTAL SERVICES

R-2 *Ratification of Intergovernmental Agreement Contract 300704 Between the Oregon Department of Transportation and Multnomah County, Providing for the Maintenance of Portland Area ODOT Vehicles and Equipment by Multnomah County Fleet Services, for the Period Upon Execution through June 30, 1998*

R-3 *ORDER in the Matter of the Establishment of S.E. Butler Road from S.E. Giese Road Southeasterly to Existing S.E. Butler Road, as a County Road to be Known as S.E. Butler Road, No. 5002*

R-4 *RESOLUTION in the Matter of Initiating Proceedings to Vacate a Portion of S.E. Butler Road, County Road Nos. 365 and 588, from S.E. 190th Drive Easterly 298 Ft., More or Less, and Setting a Hearing Date [November 4, 1993 Requested]*

DEPARTMENT OF SOCIAL SERVICES

R-5 *Housing and Community Services Division Request for Approval of a $33,333 Grant from the Oregon Children and Youth Services Commission, for a Parole Transition Coordinator to Work with African American Youth within the Juvenile Justice and Delinquency Prevention Disproportionate Minority Confinement Project, for the Period September 30, 1993 through December 31, 1993*

R-6 *Housing and Community Services Division Request for Approval of a Notice of Intent to Apply for a Two-Year Continuation to the Current Robert Wood Johnson Foundation Grant for the "No Place Like Home" Program, Providing Publicly Assisted Housing for Elderly Multnomah County Residents*

R-7 *Budget Modification DSS #5 Requesting Authorization to Transfer $20,000 in County General Fund from the Mental Health, Youth and Family Services Division, Alcohol and Drug Program Budget, to the Department of Community Corrections, Office of Women's Transition Services Budget*

DEPARTMENT OF SOCIAL SERVICES

R-8 *Ratification of Intergovernmental Agreement Contract 103714 Between Washington County and Multnomah County, Allowing Washington County to Utilize the Multnomah County Juvenile Justice Complex, for the Period July 1, 1993 through June*

30, 1994

R-9 *Ratification of Intergovernmental Agreement Contract 103724 Between Clackamas County and Multnomah County, Allowing Clackamas County to Utilize the Multnomah County Juvenile Justice Complex, for the Period July 1, 1993 through June 30, 1994*

R-10 *Ratification of Intergovernmental Agreement Contract 500234 Between Multnomah County and Clackamas County, for the Lease of 10 Bed Spaces at the Multnomah County Juvenile Justice Complex, for the Period October 1, 1993 through June 30, 2013*

R-11 *Ratification of Intergovernmental Agreement Contract 500244 Between Multnomah County and Washington County, for the Lease of 10 Bed Spaces at the Multnomah County Juvenile Justice Complex, for the Period October 1, 1993 Until Mutually Terminated*

R-12 *RESOLUTION in the Matter of Depositing Lease-Purchase and Lease Payments Received from Washington and Clackamas Counties for Bed Space in the Juvenile Justice Complex to the Capital Improvement Fund*

NON-DEPARTMENTAL

R-13 *RESOLUTION in the Matter of Setting out Procedures and Policies for the Board of Equalization and its Members*

PUBLIC COMMENT

R-14 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

00266C/47-51/db

SHARRON KELLEY
Multnomah County Commissioner
District 4

Portland Building
1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
(503) 248-5213

MEMORANDUM

TO: Clerk of the Board
Board of County Commissioners

FROM: Sharron Kelley SK

RE: Late Arrival and Early Departure from Board Meetings

DATE: September 23, 1993

I shall be arriving late to the morning board meeting at the Portland Chamber on September 28th as I have a previous scheduled meeting. I will do my best to arrive as soon as possible.

In the afternoon, I will be participating in the Ribbon Cutting Ceremony at the Harold Oliver Elementary site for the East County Caring Community project at 3:00 p.m. Therefore, I shall be departing early from the 1:30 p.m. board planning session.

I apologize for any inconvenience that my schedule may cause, but both these commitments were previously scheduled.

MEETING DATE: September 28, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CS 7-93 Decision Review

BOARD BRIEFING **Date Requested:** _____

Amount of Time Needed: _____

REGULAR MEETING: **Date Requested:** September 28, 1993

Amount of Time Needed: 5 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: Sharon Cowley **TELEPHONE #:** 2610
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

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

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

CS 7-93 Review Hearings Officer Decision of September 7, 1993, approving, subject to conditions, change in zone designation from GC, general commercial, to GC, C-S, community service, to allow installation of a cellular telephone communicatins monopole, with associated antennas, and to erect an electronics equipment building, all for property located at 16501 SE Division Street

1993 SEP 20 PM 3:06
BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

MULTNOMAH COUNTY OREGON
DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C51-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review — No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☑ Decision — No. of Pages 21

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY

BOARD HEARING OF September 28, 1993

TIME 1:30pm

CASE NAME Telephone Monopole NUMBER CS 7–93

ACTION REQUESTED OF BOARD

- [x] Affirm Plan.Com./Hear.Of
- [ ] Hearing/Rehearing
  - [ ] Scope of Review
    - [ ] On the record
    - [ ] De Novo
    - [ ] New Information allowed

1. Applicant Name/Address

   Interstate Mobilephone Co. (dba Cellular One)
   1600 SW 4th Avenue
   Portland,Oregon 97201

2. Action Requested by applicant

   Approval to erect a 150-foot cellular telephone communications monopole, with associated antennae, and to construct an electronics equipment building on the site.

3. Planning Staff Recommendation

   Approval

4. Planning Commission or Hearings Officer Decision:

   Approval

5. If recommendation and decision are different, why?

ISSUES

(who raised them?)

a.

b.

Do any of these issues have policy implications? Explain.

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

Decision

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

September 7, 1993

CS 7-93, #504 **Community Service Request**
(Monopole with Antennae and a One-Story Electronics Equipment Shelter)

Applicant requests a change in the zoning district designation from GC, General Commercial District to GC, CS, Community Service District, in order to erect a 150-foot cellular telephone communications monopole, with associated antennae, and to construct an electronics equipment building on the site.

Location: 16501 SE Division Street

Legal: The 60' x 60' portion of the northwest corner of Tax Lot '550,' Section 6, T. 1 S., R. 3 E., WM., Feb.,1993 Assessor's Map
(Present Tax Lot number is different from that shown on the older Zoning Map.)

Site Size: 7.12 Acres

Size Requested: 60' x 60'

Property Owner: Moyer Theatres
1953 NW Kearney Street
Portland, Oregon 97209

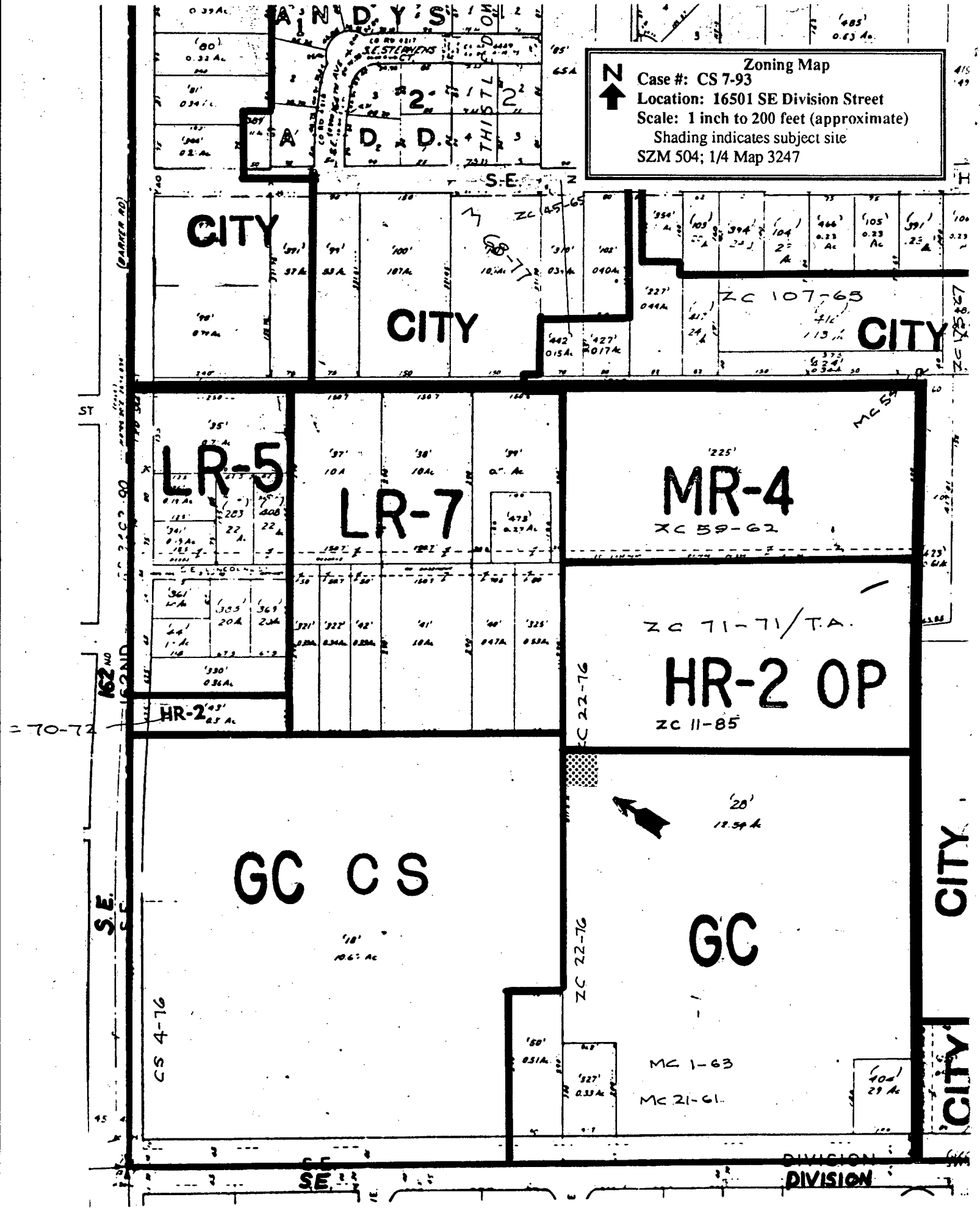
Applicant: Interstate Mobilephone Co. (dba Cellular One)
1600 SW 4th Avenue
Portland,Oregon 97201

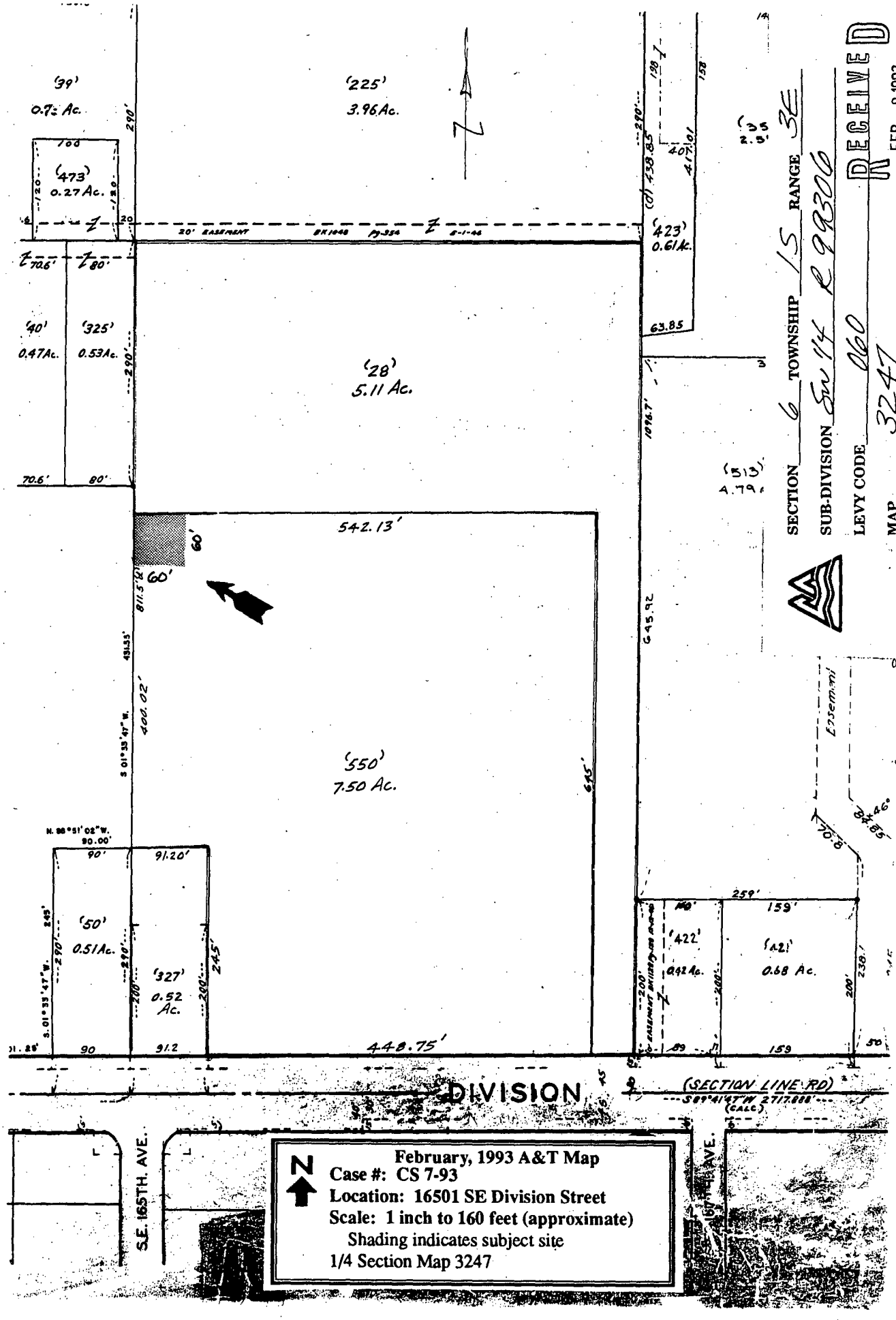
Comprehensive Plan: General Commercial

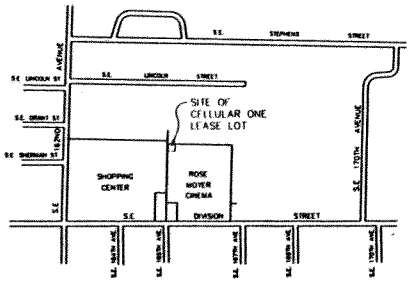
Present Zoning: GC, General Commercial

Sponsor's Proposal: GC, CS, Community Service

Hearings Officer Decision: **APPROVE, subject to conditions,** a change in zone designation from GC to GC, CS, Community Service designation to allow installation of a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject site, based on the following Findings and Conclusions.

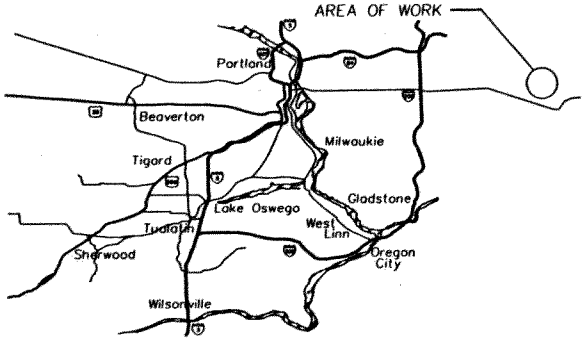

Zoning Map
Case #: CS 7-93
Location: 16501 SE Division Street
Scale: 1 inch to 200 feet (approximate)
Shading indicates subject site
SZM 504; 1/4 Map 3247
N
CITY
LR-5
LR-7
MR-4
ZC 59-62
ZC 71-71/T.A.
HR-2 OP
ZC 11-85
HR-2
GC CS
GC
CS 4-76
ZC 22-76
ZC 107-65
MC 1-63
MC 21-61
S.E. DIVISION
162ND
S.E.
CITY


'39'
0.7± Ac.
'225'
3.96 Ac.
'473'
0.27 Ac.
20' EASEMENT
'423'
0.61 Ac.
'40'
0.47 Ac.
'325'
0.53 Ac.
'28'
5.11 Ac.
542.13'
60'
'550'
7.50 Ac.
N. 88°51'02"W.
90.00'
'50'
0.51 Ac.
'327'
0.52 Ac.
448.75'
'422'
0.42 Ac.
'421'
0.68 Ac.
Easement
DIVISION
(SECTION LINE RD)
S89°41'47"W 2717.888'
(CALC)
S.E. 165TH. AVE.
SECTION 6 TOWNSHIP 1S RANGE 3E
SUB-DIVISION SW 1/4
LEVY CODE 060
MAP 3247
RECEIVED
FEB - 2 1993
February, 1993 A&T Map
Case #: CS 7-93
Location: 16501 SE Division Street
Scale: 1 inch to 160 feet (approximate)
Shading indicates subject site
1/4 Section Map 3247



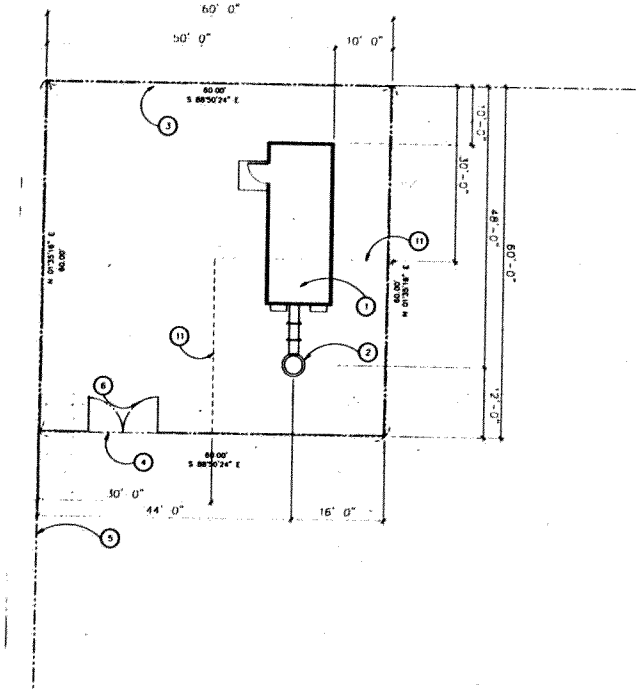
Area Plan

no scale



Vicinity Plan

no scale



Site Plan

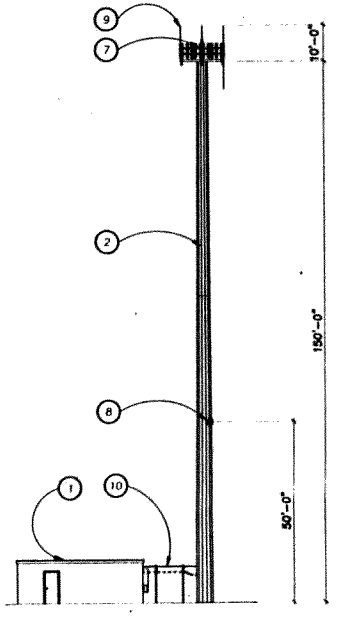
1"=10.0'

Keynotes

1. 12' x 28' EQUIPMENT SHELTER
2. 150' MONOPOLE
3. 6' CHAIN LINK FENCE WITH THREE STRAND BARBED WIRE
4. LEASED PROPERTY LINE
5. ROSE MOYER PROPERTY LINE
6. 12'-0" CHAIN LINK GATE
7. CELLULAR ANTENNAS, MODEL PD10188 ON SECTORIZED PLATFORM (3) PER SECTOR, (12) TOTAL
8. 2'-0" ø POINT TO POINT ANTENNAS
9. (3) OMNIDIRECTIONAL ANTENNAS
10. WAVEGUIDE BRIDGE
11. TOWER SETBACK LINE

Site Photograph looking North-Northwest

Site Photograph looking North



West Elevation

1/16"=1'-0"

MILDREN DESIGN GROUP, P.C.
ARCHITECTURE + SPACE PLANNING
11830 SW Kerr Parkway, Suite 325
Lake Oswego, Oregon 97035
(503) 244-0352

Owner:
Cellular One

1600 SW 4th Avenue
Portland, Oregon 97201

Project:
Division
Cell Site

165th & Division
Portland, Oregon

Sheet Title:
Site Plan
Area Plan
Vicinity Plan
Site Photogr

Revisions
1 6-11-93
Site relocation

Date	6 May, 1993
Drawn by:	Checked by:
WEM	WEM
Job Number:	93006
Sheet	of

Z1

EXHIBIT 1

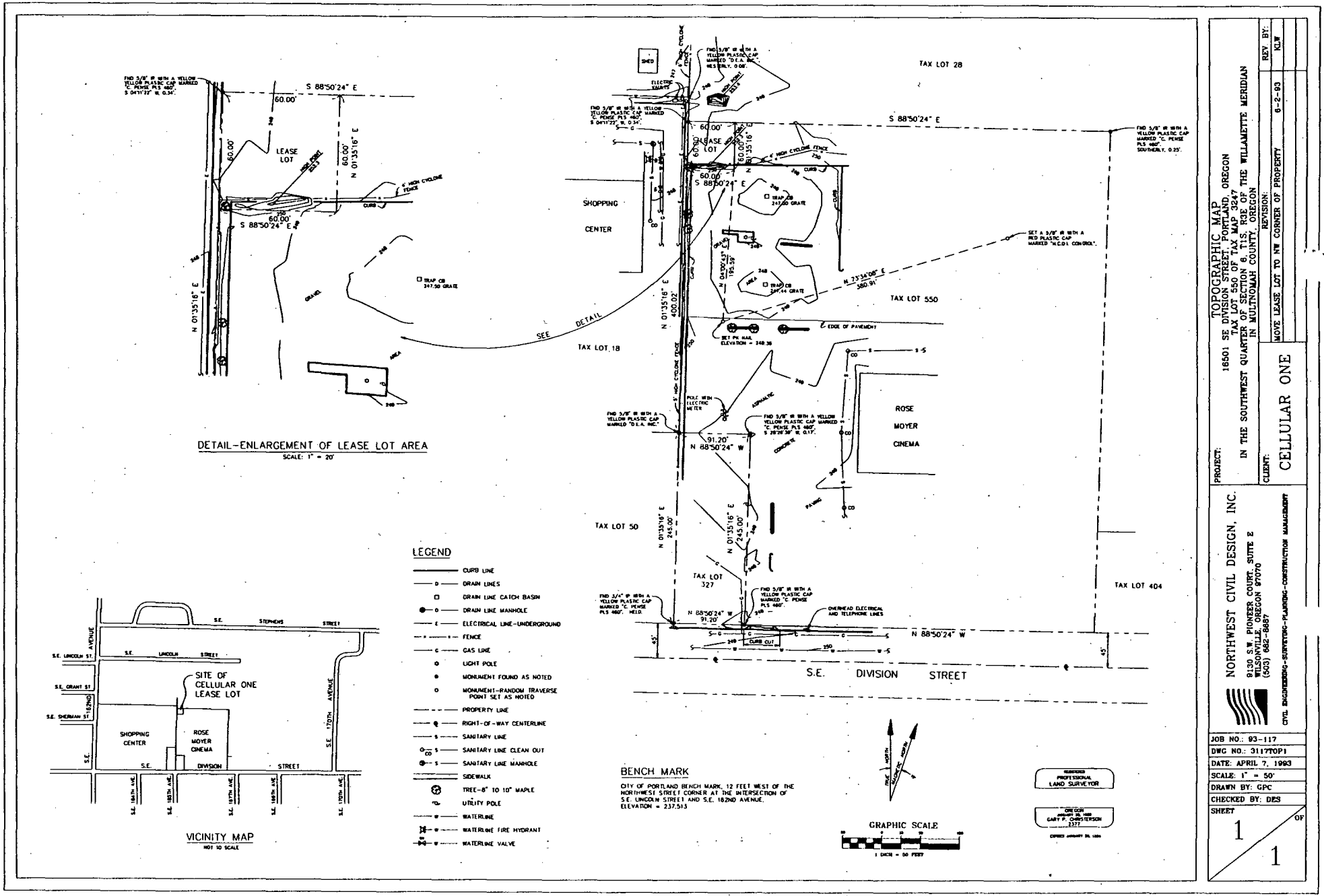


EXHIBIT 2

CS 7-93

I. INTRODUCTORY MATTERS

A. Parties To The Proceeding

1. Applicant

The applicant is Interstate Mobile Telephone Inc., doing business as Cellular One. The addresses of their representatives are Edwin E. Menteer, Real Estate Manager, 1600 SW Fourth Avenue, Portland, Oregon 97201 and Spencer Vail, Planning Consultant, 4505 NE 24th, Portland, Oregon 97211.

2. Other Persons Supporting The Application

No other persons appeared, through oral or written testimony, in support of the application.

3. Opponents

No one appeared in opposition to the application.

4. Notice Of This Decision

The applicant is the only party to this proceeding. MCC11.15.8225. Its representatives should receive a copy of this decision.

B. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any person concerning the merits of this application.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with the applicant or its representatives.

C. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

D. Alleged Procedural Errors

No procedural errors were identified by any participants prior to or after the hearing.

E. Jurisdiction

I have jurisdiction over this matter under MCC 11.15.8115(A).

II. DECISION

CONDITIONS OF APPROVAL:

1. The applicant shall provide detailed development plans to Design Review for review and approval as required by MCC 11.15.7010(F).

2. Except as provided for in MCC 11.15.7010(C), approval of this Community Service Use shall expire two years from the date of the Board Order or final resolution of any appeals.

FINDINGS OF FACT:

The applicant provides the following narrative which describes the proposal and compliance with applicable approval criteria. In some sections the applicant's narrative has been renumbered but otherwise remains a direct quote. ***Staff comments are included only as needed and are shown in italic type.***

1. Proposal:

The applicant seeks approval of a Conditional Use in order to install a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building on the subject property.

The monopole will be a self-supporting pole and is 150 feet tall. The antenna will be mounted to the pole and to a triangular platform mounted atop the pole and to the pole itself. Total height, including the antenna platform, is 160 feet.

There are two type of antenna associated with this facility. A description of each type follows:

1. Direction antenna. These will measure about 18" by 24" and are affixed to the triangular platform atop the monopole. This platform conforms to the Code limitations of 10 feet or less per side.

2. Point to Point. There will be one 2 foot diameter point to point antenna mounted at the 50 foot (approx.) level of the monopole.

The electronics equipment building measures 12' by 28' and is 10' in height. It has an exposed aggregated, earth toned finish.

All of the above improvements occur within a 60' by 60' area leased by the applicant. This parcel is in the northwest corner of TL 550 abutting both the north and west lot lines.

For a depiction of the above information see site plan, Exhibits 1 and 2, and photos of site with the monopole superimposed, Exhibits 3 and 4.

2. Description of the Proposal:

Cellular telephone communication is one of the most recent concepts in communication technology. The applicant, Cellular One, is one of the two licensees authorized by the FCC (Federal Communications Commission) to provide cellular telephone services in the Portland Metropolitan Area.

To provide this service, Cellular One's technicians have selected several sites in the metropolitan region for the placement of elevated antenna and related equipment. Each such location is called a CELL SITE.

Each of these cell sites is dependent on the other cell sites in the system with respect to height, terrain, distance from the other cell sites and a myriad of other highly technical factors.

The license the applicant has received from the FCC limits each of the cell sites to 100 Watts ERP (Effected Radiated Power) or less.

Cellular One's system operates on the 870 to 880 MHz (MegaHertz) band. The equipment used by the applicant will generate 100 Watts ERP or less and therefore is in compliance with the FCC license requirements. Actual anticipated ERP for this site is 50 Watts ERP.

As stated above, the area being leased by the applicant for the proposed cell site is a 60' by 60' space in the northwest corner of Tax Lot 550. It is northwest of the Rose Moyer Cinemas and parking lot complex and is just to the east of the Pay-Less store in the Division Crossings commercial shopping center. The part of the shopping center nearest the cell site is used primarily for the delivery and service activities of the various stores in the complex.

The electronics equipment building, which is a single story structure, will be placed in an north-south orientation. The monopole is placed to the south of this building.

Access to the cell site will be via existing theater driveways and parking lot area.

An off-street parking area has also been provided inside the cell site fence. This space will be for the use of the company vehicles providing periodic maintenance.

After the cell site is on line, this maintenance, based on a system wide average, will occur about twice a month. No one is at the site on a daily basis as the equipment is operated by remote control and is monitored from the applicant applicant's main offices in downtown Portland.

3. Site Description:

The subject site is a 60' by 60' parcel situated in the northwest corner a 17 plus acre site north of all existing development on the site.

The Rose Moyer Cinemas is the major occupant of the subject site. Parking for this facility surrounds the theater complex.

The area north of the paved parking area is unimproved commercially zoned land. North of that, and

in the same ownership as T.L. 550 is T.L. 28. This lot is also vacant but is zoned HR-2 OP. The zone was changed to provide additional parking for an expanded theater complex. See case file ZC 11-85.

Access to the site is via the existing driveways on S.E. Division.

Staff Comment: *The 60' by 60' subject area is leased. This application does not include a request for land division approval to create a separate tax lot.*

4. Surrounding Area:

To the south of the side and across S.E. Division is additional commercially zoned and developed property.

To the west is the Division Crossings retail shopping center. There is also a small office building and a self-service car wash.

To the east are additional small commercial uses fronting on SE Division. There is also an older mobile home park adjacent to the east line of the subject site and 200 feet north of Division.

To the north of the cell site is the additional undeveloped land with the OP overlay zone described above. North of that area are single family homes fronting on SE Lincoln and/or Stephens streets.

5. Zoning Code:

The current zoning on the site is GC, General Commercial. This is an urban commercial district providing for a wide variety of commercial uses as specified in Multnomah County Code (MCC) Section 11.15.4208 through .4210.

Section 11.15.4212 states Community Service Uses may be approved as provided for in MCC .7005 through .7041.

MCC Section 11.15.7020 lists those uses which may be allowed as Community Services in any district when approved at a public hearing through the Conditional Use process. MCC 11.15.7020 (15)(a) indicates that Radio and Television Transmission Towers are such allowable Community Services uses.

MCC 11.15.7035(C)(1-8) sets forth the criteria for the approval of new Radio and Transmission Towers in other than urban residential districts.

This is the appropriate set of criteria because the General Commercial zone is considered to be non-residential zone.

6. Compliance With Approval Criteria:

A. Following is a list of these 8 criteria and the applicant's responses thereto, [MCC .7035(C)(1-8)]:

(1). MCC .7035(C)(1): "The site is of a size and shape sufficient to provide the following setbacks:

MCC .7035(C)(1)(a): For a tower located on a lot abutting an urban residential district or a public property or street, except a building-mounted tower, the site standards of MCC.7035(B)(4) and (5) are met as to those portions of the property abutting the residential or public uses."

COMMENT: The proposed cell site area abuts an urban residential area to the north, the HR-2 OP zoned lot (TL 28).

Following is a listing of the standards of MCC.7035 (B)(4) and (5) together with the applicant's responses thereto:

(a). MCC .7035(B)(4)(a): "The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential district, public property or public street. Such setback shall be sufficient to:"

(i). MCC .7035(B)(4)(a)(i): "Provide for an adequate vegetative, topographic or other buffer, as provided for in MCC.7035 (B)(7) and (11),"

COMMENT: Subsection (7) discusses visual impact. For towers of the height proposed the code suggests a galvanized or silver paint unless there are substantial stands of trees in which case the tower shall be painted green from the base to the tree line.

The applicant is proposing a galvanized metal pole.

The FAA and Oregon Aeronautic Division are always contacted by the applicant when new tower sites are contemplated and are required to abide by any their lighting and color requirements. See additional discussion on pages 13 and 16.

Landscaping is discussed in Subsection (11). It requires landscaping at the perimeter of property which abut streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property.

The area to be leased by the applicant does not directly abut any of the above mentioned uses. It is over 600 feet north of SE Division.

This section also allows the approval jurisdiction to require landscaping. The applicant will work with the County during the design review phase of this development proposal to assure the installation of appropriate landscaping.

Staff Comment: *MCC .7035(B)(7) is given at Findings of Fact 6.A.(3), on page 13. MCC .7035(B)(11) is given at Findings of Fact 6.A.(2), on page 12. The additional discussion referred to is found at Findings of Fact 6.A.(3)(c) on page 13 and at 6.A.(7). on page 19.*

(ii). MCC .7035(B)(4)(a)(ii): "Preserve the privacy of adjoining residential property,"

COMMENT: These is no adjoining residentially developed property. In addition, the owner of the adjoining property indents to make use of the OP zone and develop the site with additional parking for the theater complex.

(iii). MCC .7035(B)(4)(a)(iii): "Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required by MCC.7035(D)(3)(d) and (e)."

COMMENT: The applicant's monopole is designed to withstand sustained winds of over 80 miles per hour as specified Section 2311, Wind Design, of the Uniform Building Code (1991).

In addition, the height of the monopole, with antennas, is 160 feet. This is less than the distance to any structure on any abutting property.

Engineering calculations have indicated that any ice accumulating on the monopole will fall within a 17 foot radius (11% of height). Any problems realized from this phenomenon can be rectified by wrapping the horizontal members of the support structure with heating tape.

(iv). MCC .7035(B)(4)(a)(iv): "Protect the public from NIER in excess of the standard of MCC.7035(F)(1)."

COMMENT: The applicant's proposal complies with this subsection. For a complete discussion and analysis, see pages 15-16.

Staff Comment: *See Findings of Fact 6.A.(6). on page 18.*

(b). MCC .7035(B)(4)(b): "A site is presumed to be of sufficient size when it:

(i). MCC .7035(B)(4)(b)(i): "Meets the requirements of (a)(iii) and (iv) above,"

COMMENT: The proposed facility complies the above referenced requirements as discussed on the preceding pages. This criteria is satisfied.

(ii). MCC .7035(B)(4)(b)(ii): "Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential district, public property, or public street,"

COMMENT: The proposed monopole is 160 feet in height. 20% of that height is 32' which, according to this section, is to be the required setback.

The site plan indicates that the proposed tower is setback 48 feet from the abutting urban residential district to the north.

It is also more than 600 feet to the nearest public street.

This criteria is satisfied.

(iii). MCC .7035(B)(4)(b)(iii): "Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential district nor a public property or a public street."

COMMENT: Adjoining property to the north is in a residential district so this subsection is not applicable in that location.

To the west is an GC zone parcel. No specific rear yard setbacks distances are listed.

(c). MCC .7035(B)(4)(c): "Placement of more than one tower on a lot shall be permitted, provided all setback, design and landscape requirements as met as to each tower. Structures may be located as close to each other as technically feasible, provided tower failure characteristics of the towers on the site described in MCC.7035 (D)(3)(d) will not lead to multiple failures in the event that one fails."

COMMENT: This subsection is not applicable to this request.

(d). MCC .7035(B)(4)(d): "Structures and uses associated with the transmission use other than the tower shall be located to meet the setback standards of MCC.7025."

COMMENT: MCC.7025(C) states that the minimum yards shall be those of the underlying district or, in this case, the yards required in a GC zone.

The dimensional requirements of the GC zone are found at .4214(B).

This section states that yards must be adequate to fulfill the landscaping requirements. In this particular case, since there is a residential district to the north, the setback needs to be equal to the building height, or 10 feet.

Note that the electronics equipment building is situated 10 feet from the north and west lot lines.

This criteria is satisfied.

Staff Comment: *The landscape buffer area requirement of the GC zone is found at MCC .4216. The applicable requirement is for a landscaped area equal to the building height adjacent to a residential district property line.*

The landscaping requirement between parking and a residential district lot line may be modified during Design Review because the adjacent HR-2 zoned lot is also zoned "OP," Off-Street Parking.

(e). MCC .7035(B)(5): "Guy setback: ..."

COMMENT: There are no guys associated with this proposal. The applicant's tower is a self-supporting monopole.

(e). MCC .7035(C)(1)(b): "For all other towers, the site shall be of sufficient size to provide the setback required in the underlying district between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines."

COMMENT: The remaining three sides of the proposed cell site abut GC, General Commercial zones. That zone has no minimum setbacks requirements.

This criteria has been satisfied.

(2). MCC .7035(C)(2): "The required setbacks shall be improved to meet the landscaping standards of MCC.7035(B)(11) to the extent possible within the area provided."

MCC .7035(B)(11): "Landscaping at the perimeter of the property which abuts streets, residences, public parks or areas with access to the general public other than the owner of such adjoining property shall be required, as follows:"

(a). MCC .7035(B)(11)(a): "For towers 200 feet tall or less, a buffer area no less than 25 feet wide shall commence at the property line. At least one row of evergreen shrubs shall be spaced not more than five feet apart. Materials should be of a variety which can be expected to grow to form a continuous hedge at least five feet in height within two years of planting. At least one row of evergreen trees or shrubs, not less than four feet in height at the time of planting, and spaced not more than 15 feet apart, also shall be provided. Trees and shrubs in the vicinity of guy wires shall be of a kind that would not exceed 20 feet in height or would not affect the stability of the guys, should they be uprooted, and shall not obscure visibility of the anchor from the transmission building or security facilities and staff."

COMMENT: The only code required setbacks pertain on the north side of the proposed cell site where is abuts HR-2 OP zone property.

Staff Comment: *The applicant is requesting that the plantings referred to in this subsection not be required and alternate buffers be approved as provided for in MCC .7035(B)(11)(c) and described below at (c).*

(b). MCC .7035(B)(11)(b): "For towers more than 200 feet tall...."

COMMENT: This section is not applicable to this request.

(c). MCC .7035(B)(11)(c): "In lieu of these standards, the approval authority may allow the use of an alternate detailed plan and specification for landscaping and screening, including plantings, fences, walls and other features designed to screen and buffer towers and accessory uses. The plan shall accomplish the same degree of screening achieved in (a) and (b) above, except as lesser requirements are desirable for adequate visibility for security purposes and for continued operation of existing bona fide agricultural or forest uses,

including but not limited to produce farms, nurseries, and tree farms."

COMMENT: The area to be leased by the applicant does not abut a public street nor does it abut residences, public parks or other areas with access to the general public. The proposed site is in an underdeveloped part of the site over 600' north of SE Division.

The commercial area to the west already has landscaping along the common lot line. When the property owner developments the remainder of the property, either into the proposed theater parking or some other use, landscaping of the cell site, if deemed necessary, can be implemented.

At this time the applicant is proposing no landscaping for the cell site area. The existing landscaping to the west and the natural state of the property as a whole provide adequate buffering and screening.

Staff Comment: *Although the base zoning on the abutting tax lot on the north is HR-2, the anticipated and approved future use on the site is expansion of the theater parking as shown by the overlay zoning designation "OP" for off-street parking. Therefore, staff agrees that the buffering features usually necessary to residential uses in the HR-2 district should be waived.*

(3). MCC .7035(C)(3): "The visual impact standard of MCC.7035 (B)(7) is met."

MCC .7035(B)(7): "Visual Impact – The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. The tower shall be painted and lighted as follows:"

(a). MCC .7035(B)(7)(a): "Towers 200 feet or less in height shall have a galvanized finish or be painted silver. If there is heavy vegetation in the immediate area, such towers shall be painted green from the base to treeline, with the remainder painted silver or given a galvanized finish."

COMMENT: As stated above, the monopole will have a galvanized finish.

(b). MCC .7035(B)(7)(b): "Towers more than 200 feet. ..."

COMMENT: This section is not applicable.

(c). MCC .7035(B)(7)(c): "Towers shall be illuminated as required by the Oregon State Aeronautics Division. However, no lighting shall be incorporated if not required by the Aeronautics Division or other responsible agency."

COMMENT: The State Aeronautics division has not yet responded to the applicant's proposal. That agency has received a copy of the applicants FAA submittal and a request for response in April of 1993.

Responses from the FAA indicate that no obstruction markings or lighting will be required.

(d). MCC .7035(B)(7)(d): "Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower."

COMMENT: The applicant's proposal is for a self-supporting monopole. It is at a height which is the minimum necessary to satisfy the technical aspects of the proposal.

Staff Comment: *The applicant indicates that "Each of these cell sites is dependent on the other cell sites in the system with respect to height, terrain, distance from the other cell sites and a myriad of other highly technical factors." Therefore, this tower is the minimum height necessary to provide parity with existing similar tower supported antenna. The tower is not proposed to be guyed and there have been no identified negative visual effects which would result from the tower.*

(4). MCC .7035(C)(4): "The parking requirement of MCC .7035 (B)(9) is met, provided additional parking may be required in accordance with MCC .6100 to .6148 if the site serves multiple purposes."

MCC .7035(B)(9): "Parking – A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel."

COMMENT: The applicant's site plan indicates that there is sufficient room inside the fence for the Code required two parking spaces inside the fenced area of the cell site. Since the facility is unmanned, no additional spaces are required. This criteria has, therefore, been satisfied.

(5). MCC .7035(C)(5): "The applicable policies of the Comprehensive Plan are met."

COMMENT: Policies No.13 (Air and Water Quality and Noise Level), No.14 (Development Limitations), No.16 (Natural Resources), No. 19 (Community Design), No. 31 (Community Facilities) are deemed to be applicable to this proposal. Following are the applicant's comments:

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

COMMENT: The proposed facility does nor emit noxious materials into the air, does not have any affect on water quality and is not a noise generator.

Staff Comment: There is no agency that regulates air, water or noise quality standards for transmission towers.

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

A. SLOPES EXCEEDING 20%;

B. SEVERE SOIL EROSION POTENTIAL;

C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;

D. A HIGH SEASONAL WATER TABLE WITHIN 0-24 INCHES OF THE SURFACE FOR 3 OR MORE WEEKS OF THE YEAR;

E. A FRAGIPAN LESS THAN 30 INCHES FROM THE SURFACE;

F. LAND SUBJECT TO SLUMPING, EARTH SLIDES OR MOVEMENT."

COMMENT: There are no known development limitations on this site. The applicant will have a site analysis done prior to placement of the monopole and building to assure that there no problems in developing the site.

This information will be submitted during the building permit process.

***Staff Comment:** None of the listed development limitations are evident on the site. Staff is not aware of any development problems encountered in the recent construction of the "Division Crossing" shopping center to the west of the subject site.*

County Slope Hazard maps indicate that the site does not have severe soil erosion potential or is subject to any form of slope movement. FEMA Flood Rate Maps indicate that the property is not within a 100 year floodplain. County topographic map #3247 indicates the proposed site is less than 5% slope.

(c). **POLICY NO. 16, NATURAL RESOURCES.**

COMMENT: There are no known natural resource areas on the subject property.

***Staff Comment:** Staff concurs. The county has not identified any Goal 5 sites within the surrounding area.*

(d). "**POLICY NO. 19, COMMUNITY DESIGN.** THE COUNTY'S POLICY IS TO MAINTAIN A COMMUNITY DESIGN PROCESS WHICH:

A. EVALUATES AND LOCATES DEVELOPMENT PROPOSALS IN TERMS OF SCALE AND RELATED COMMUNITY IMPACTS WITH THE OVERALL PURPOSE BEING A COMPLEMENTARY LAND USE PATTERN.

B. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENTS FROM A FUNCTIONAL DESIGN PERSPECTIVE, CONSIDERING SUCH FACTORS AS PRIVACY, NOISE, LIGHTS, SIGNING, ACCESS, CIRCULATION, PARKING, PROVISIONS FOR THE HANDICAPPED AND CRIME PREVENTION TECHNIQUES.

C. MAINTAINS A DESIGN REVIEW PROCESS AS AN ADMINISTRATIVE PROCEDURE WITH AN APPEAL PROCESS, AND BASED ON PUBLISHED CRITERIA AND GUIDELINES. CRITERIA AND GUIDELINES SHALL BE DEVELOPED SPECIFICALLY FOR COMMERCIAL, INDUSTRIAL AND RESIDENTIAL DEVELOPMENTS.

D. ESTABLISHES CRITERIA AND STANDARDS FOR PRE-EXISTING USES, COMMENSURATE WITH THE SCALE OF THE NEW DEVELOPMENT PROPOSED.

E. EVALUATES INDIVIDUAL PUBLIC AND PRIVATE DEVELOPMENT ACCORDING TO DESIGN GUIDELINES IN THE APPLICABLE ADOPTED COMMUNITY PLAN.

COMMENT: The applicant's proposal has been designed to have minimal impact. The height of the monopole is the minimum required for efficient operation of the cellular system. The galvanized metal finish will be similar to the typical lighting standards in the area. This will serve to minimize the visual impacts of the facility.

The applicant will also go through the Design Review process to ensure compliance with the this policy.

Staff Comment: *Design Review ensures that projects blend with the character of the surrounding area.*

(e). "**POLICY NO. 22, ENERGY CONSERVATION.** THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;

B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN

AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND 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 CLIMACTIC CONDITIONS TO ADVANTAGE.
E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES."

Staff Comment: *The location of this cell site is dependent on other the location of other such facilities considering pole heights, intervening terrain, and distance, all considered in regard to the most energy efficient system. The subject location is in a developed urban area with proximity to many potential users.*

(f). **POLICY NO. 31, COMMUNITY FACILITIES AND USES.**

COMMENT: This proposed facility does not require water or sewer service. All needed utilities are available that the site. No expenditure of public funds will be required.

Staff Comment: *This project is designated a Community Service Foundation. As such it must be located on a site with an average slope of 20% or less; not route truck traffic through local neighborhood streets; not cause traffic congestion or dangerous intersections; be of an adequate size and shape to accommodate the use; be evaluated by Design Review; and, provide siting and expansion in accord with other applicable policies of the Plan.*

The average slope of the site is less than 20%; no truck traffic will result from the proposal, only occasional service vans; Engineering Services has not identified any congestion problems or dangers associated with the proposal; the site is the minimum size necessary to accommodate the use; the project will require Design Review; and, the proposal complies with the applicable Comprehensive Framework Plan policies as identified in this section.

(g). **POLICY NO. 37, UTILITIES.** ... WATER AND DISPOSAL SYSTEM, ... DRAINAGE, ... ENERGY AND COMMUNICATIONS ... .

Staff Comment: *This proposal requires no water service or sewage disposal. Roof runoff will be required to be disposed of in dry wells as a part of building permit approval if gutters are provided. Drainage from the parking spaces for maintenance vehicles will be retained on-site. Electrical requirements are met with the service available to the site.*

(h). **POLICY NO. 38, FACILITIES.** ... SCHOOL, ... FIRE PROTECTION, ... POLICE PROTECTION ... .

Staff Comment: *The facility will not have any impact on local schools. Centennial*

School District has stated they have no objections to this request.

Don Patty with the Portland Fire Bureau has written that there is adequate water pressure and flow for fire fighting purposes from a hydrant that has 70-75 pounds of pressure and over 1500 gallons per minute volume.

Lt. Bill Goss with the Multnomah County Sheriffs Dept. has verified that the level of police protection to the site is adequate.

(i). "**POLICY NO. 40, DEVELOPMENT REQUIREMENTS.** THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS ... ."

Staff Comment: *This proposal will not interfere with any pedestrian and bicycle connections to parks, recreation areas, or community facilities. Benches and bicycle parking facilities for the public is not appropriate to this proposed development.*

(6). MCC .7035(C)(6): "The NIER standards of (F) are met."

Staff Comment: *MCC .7035(F) referred to above continues in the Zoning Code from page 72-15 through page 72-20 and is not reproduced in this report.*

COMMENT: Multnomah County adopted what is considered by many to be a model ordinance dealing with radio and television towers and antennas. The ordinance lists the emission levels for the various uses and lists levels of concern of known health hazards.

These emissions are calculated in milliwatts per centimeter squared (mW/cm2). Readings are taken at the lot line and at the closest residential use to determine compliance.

Exhibits 5a and 5b shows the calculations prepared by the applicant's engineers which establish the measurement at the nearest lot line, 50 feet to the west, to be 1.448 uW/cm2 (0.001448 mW/cm2) and is 0.021 uW/cm2 (0.000021 mW/cm2) at the closest dwelling, 400 feet to the northwest.

Note: A microwatt (uW) is equivalent a milliwatt divided by 1000.

These readings are well below any levels of health concern as determined by the tables in the ordinance. The maximum allowed by the County Code for the frequencies used by the applicant is 0.587 mW/cm2 or .00058 uW/cm2.

Tables comparing cellular telephones to other everyday products is attached as Exhibits 6a and 6b. These tables demonstrate that cellular emissions are very low.

Additionally. the type of equipment utilized in this facility and the frequencies involved are not know to cause interference with other house-hold electronic equipment.

Staff Comment: *Exhibit 5a and 5b indicate the NEIR standards will be met.*

(7). MCC .7035(C)(7): "The agency coordination standards of MCC.7035.(B)(14) are met."

MCC .7035(B)(14): "Agency Coordination – The applicant shall provide the following information in writing from the appropriate responsible official:"

(a). MCC .7035(B)(14)(a): "A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required."

COMMENT: The applicant has contacted the FAA and a copy of that agency's response is attached Exhibit 7. It states that obstruction marking and lighting are not required.

Staff Comment: *Staff concurs.*

(b). MCC .7035(B)(14)(b): "A statement from the Oregon State Aeronautics Division that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required."

COMMENT: The applicant has contacted that agency in April, 1993. As of the time of the submittal of this request, (June 25, 1993) no formal response has been received.

A copy of any response received by the applicant will be forwarded to the County for inclusion in the case file.

Staff Comment: *A letter from Teresa Penninger, Aviation Planner with ODOT was forwarded to the Hearings Officer during the continuance period indicating marking or lighting was not required.*

(c). MCC .7035(B)(14)(c): "A statement from the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary."

COMMENT: Attached as Exhibits 8a and 8b are copies of a portion of the applicant's FCC license which authorizes the applicant to provide cellular telephone services in the Portland-Vancouver area.

Staff Comment: *Staff concurs.*

(d). MCC .7035(B)(14)(d): "The statements in (a) through (c) may be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response is conveyed to the approval authority as soon as possible."

Staff Comment: *Staff concurs that a good faith effort for the requested documentation was made and there is a willingness to provide the same when available.*

(8). MCC .7035(C)(8): "Accessory uses – For a proposed tower in the EFU, MUF, CFU, MUA, and UF districts, the restrictions on accessory uses in MCC.7035(B)(12) shall be met."

COMMENT: The applicant's proposed site is zoned GC, General Commercial. This section, therefore, is not applicable.

B. Applicant's conclusions:

CONCLUSIONS: The applicant has satisfactorily complied with all applicable criteria of the Zoning Code and Comprehensive Plan.

There will be minimal traffic impacts resulting from the periodic maintenance checks. This unmanned facility will not overburden any services available to the area.

The application should be approved as submitted with a site plan review of final development plans.

CONCLUSIONS:

The applicant has demonstrated compliance with all applicable approval criteria of the Zoning Code for a Community Service designation to develop this site with a cellular telephone communications monopole, with associated antennas, and to erect an electronics equipment building. Conditions are necessary to ensure all development requirements are satisfied.

Robert Liberty, Hearings Officer

Signed by Hearings Officer:	September 7, 1993
Decision Mailed to Parties:	September 10, 1993
Decision Submitted to Clerk of the Board:	September 10, 1993
Last day to Appeal Decision to the Board:	September 20, 1993 by 4:30 p.m.
Decision Reported to Board of County Commissioners:	September 28, 1993 at 1:30 p.m.

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 to 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 (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.

MEETING DATE: September 28, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 21-93 Decision Review

BOARD BRIEFING **Date Requested:** _____

Amount of Time Needed: _____

REGULAR MEETING: **Date Requested:** September 28, 1993

Amount of Time Needed: 5 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: Sharon Cowley **TELEPHONE #:** 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [] APPROVAL (x) DENIAL [] OTHER

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

CU 21-93 Review Hearings Officer Decision of September 15, 1993, denying conditional use request for a commercial activity in conjunction with farm use, for property located at 24315 NW Oak Island Road.

10/26/93 HEARING

BOARD OF COUNTY COMMISSIONERS
1993 SEP 20 PM 3:07
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C 42-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review — No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☑ Decision — No. of Pages 16

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY

BOARD HEARING OF **September 28, 1993**

CASE NAME: **Northwest Brewers Grains**

Conditional Use Denial

TIME: **1:30 pm**

NUMBER: **CU 21-93**

ACTION REQUESTED OF BOARD

- [x] Affirm Hearings Offficer
- [ ] Hearing
  - [ ] Scope of Review
    - [ ] On the record
    - [ ] De Novo
    - [ ] New Information allowed

1. Applicant Name/Address:

   Northwest Brewers Grains
   c/o Anderson, Beail & Raines
   9706 Fourth Ave. NE Suite 305
   Seattle, WA 98115-2157

2. Action Requested by applicant:

   Approve a commercial activity in conjunction with farm use in the EFU zone, specifically a recycling and storage facility for spent brewery grain.

3. Staff Report Recommendation (August 2, 1993):

   Approve, subject to conditions

4. Hearings Officer Decision (September 15, 1993):

   Denied

5. If recommendation and decision are different, why?

   The Hearings Officer found that the proposed use does not fit the definition of a "commercial activity in conjunction with farm use" under state statute or county code.

ISSUES

The Hearings Officer concluded that the proposed activity is not a "commercial activity in conjunction with farm use" because 1) it does not involve a commodity produced on the farm itself; 2) it does not involve a commodity produced by farmers in the vicinity; 3) it does not involve sales of items or products accessory to the sale or storage of farm commodities; and 4) it does not qualify as a farm use in its own right.

In addition, the Hearings Officer relied on a previous decision by Multnomah County [Chauncey] that required that in order to be in conjunction with farm use, the product must be sold primarily to farms within the vicinity. That decision denied an application for a bark grinding and processing operation in association with a nursery because the evidence in the record did not demonstrate that the products were sold primarily to farms within a 10 mile radius. LUBA upheld this decision based on a Supreme Court decision [Craven v. Jackson County] that found that to be "in conjunction with farm use", the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The spent grain which would be stored at the subject property is delivered as feed to dairy farms in NW Oregon and SW Washington, most of which are more than 10 miles away.

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

HEARINGS OFFICER DECISION
CU 21-93

September 15, 1993

Conditional Use Request
(Commercial Use in Conjunction with Farm Use)

Applicant requests Conditional Use approval to construct storage facilities and a wastewater lagoon on property in the EFU zoning district to be used in an operation that stores spent brewery grain and delivers the product as livestock feed to farms.

Location: 24315 NW Oak Island Road

Legal: Tax Lots '3',, '9' and '10', Section 32, T3N, R1W, 1992 Assessor's Map

Site Size: 117 acres

Size Requested: Same

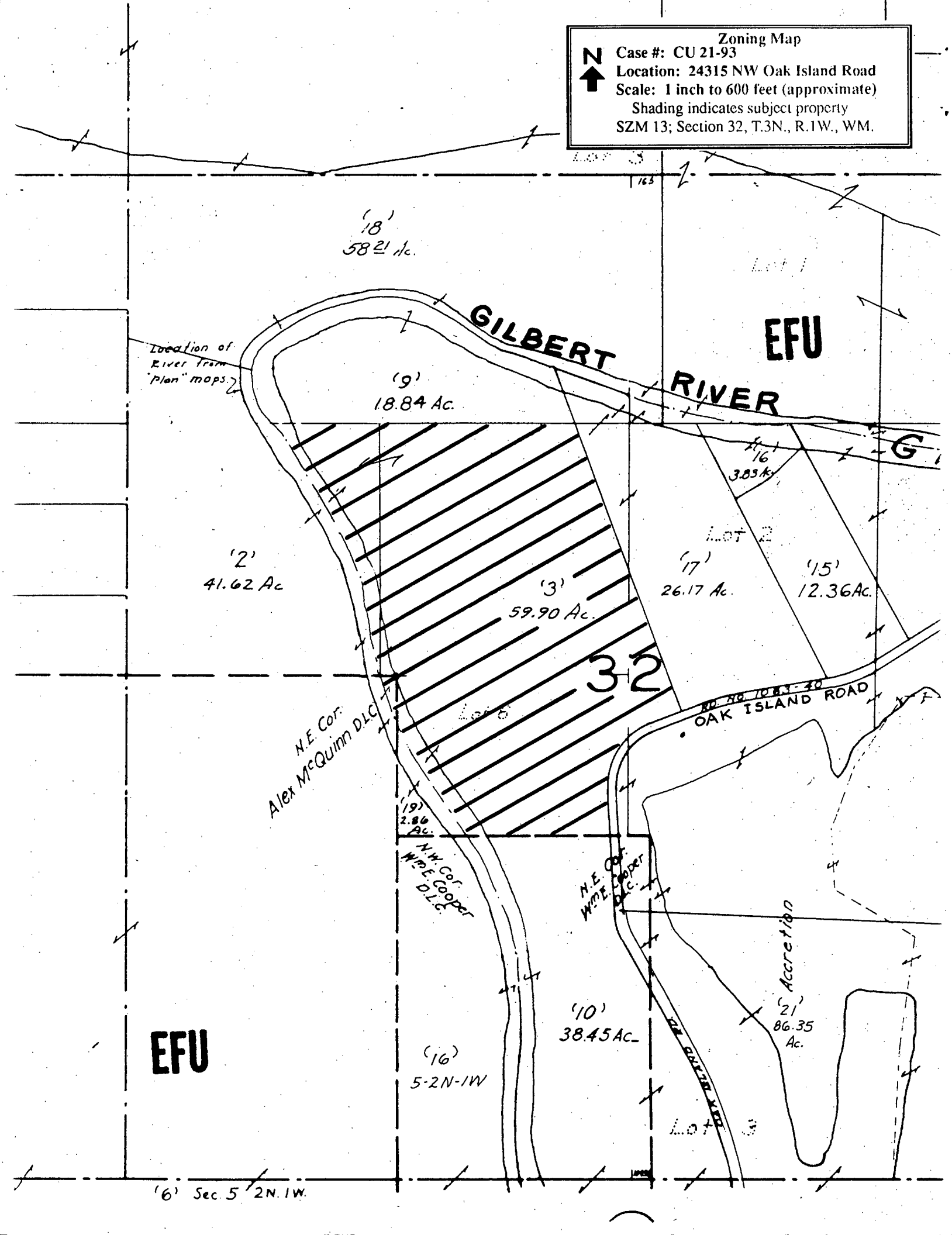
Property Owner: Northwest Brewers Grains of Oregon Inc.
c/o Anderson, Beail & Raines
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157

Applicant: Same

Comprehensive Plan: Agriculture

Present Zoning: EFU, Exclusive Farm Use District

Hearings Officer Decision: **DENY** this request for a commercial activity in conjunction with farm use, based on the following Findings and Conclusion.


Zoning Map
N
Case #: CU 21-93
Location: 24315 NW Oak Island Road
Scale: 1 inch to 600 feet (approximate)
Shading indicates subject property
SZM 13; Section 32, T.3N., R.1W., WM.
'18'
58.21 Ac.
GILBERT RIVER
EFU
Location of River from "Plan" maps.
'9'
18.84 Ac.
'16'
3.83 Ac.
Lot 2
'2'
41.62 Ac
'3'
59.90 Ac.
'17'
26.17 Ac.
'15'
12.36 Ac.
32
Lot 6
N.E. Cor. Alex McQuinn D.L.C.
OAK ISLAND ROAD
'19'
2.86 Ac.
N.W. Cor. Wm E. Cooper D.L.C.
N.E. Cor. Wm E. Cooper D.L.C.
Accretion
'21'
86.35 Ac.
'10'
38.45 Ac.
EFU
'16'
5-2N-1W
Lot 3
'6' Sec. 5 2N. 1W.

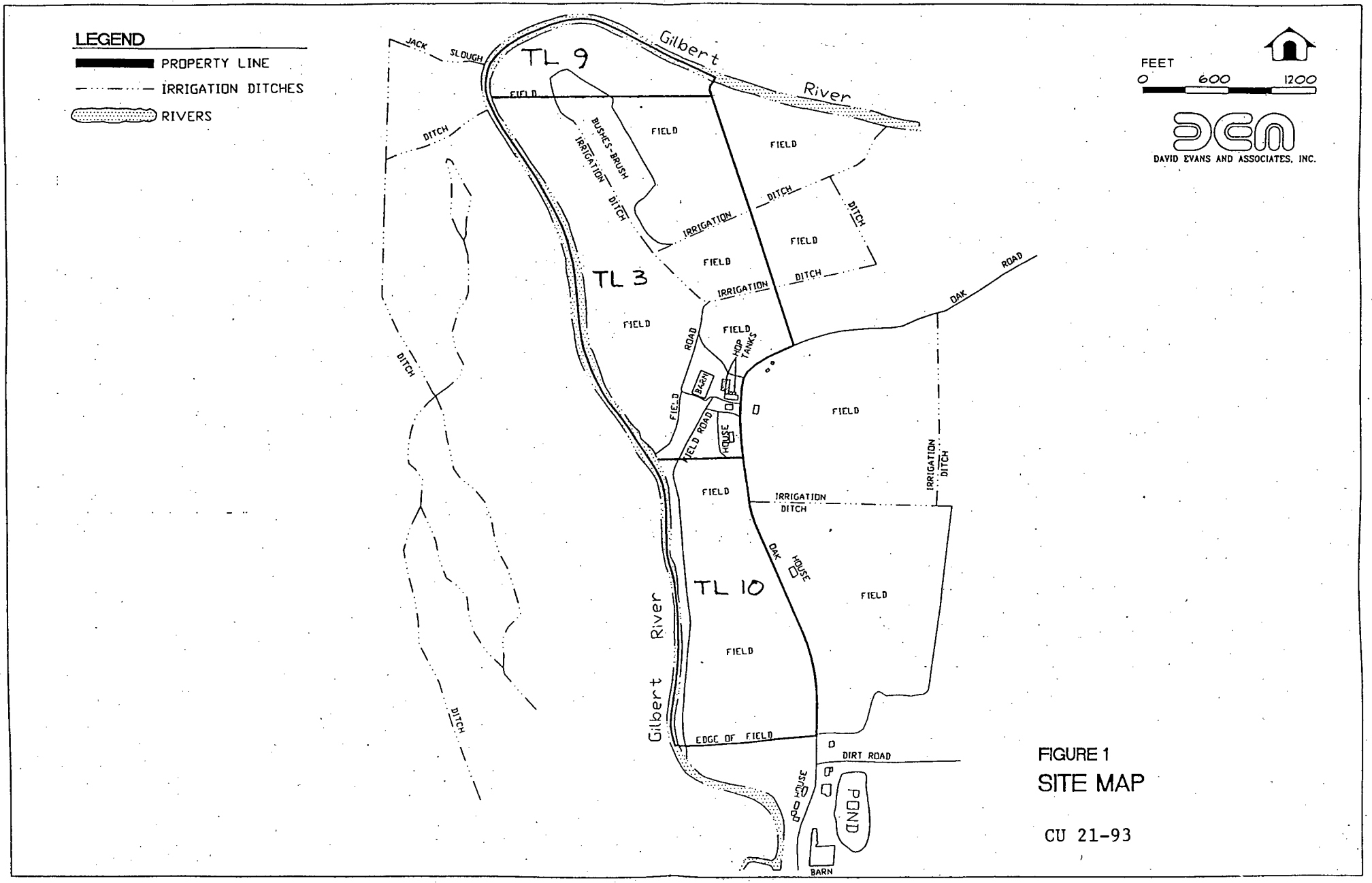


FIGURE 1

SITE MAP

CU 21-93

I. INTRODUCTORY MATTERS

A. The Permit Sought And Findings Of Fact Regarding The Proposed Use

The applicant seeks a Conditional Use Permit pursuant to MCC 11.15.7120(A) for "a brewery grain recycling facility." The applicant proposes the use as a "commercial activity in conjunction with farm use," a use authorized by MCC 11.15.2012(B)(1), in the County's Exclusive Farm Use (EFU) zone.

B. Parties To The Proceeding

1. Applicant

The applicant is:

Northwest Brewers Grains of Oregon Inc. c/o Anderson, Beail & Raines, 9706 Fourth Avenue Ave NE Suite 305, Seattle, Washington 98115-2157. At the hearing the applicant was represented by Robert Price (planner) and Ken Vigil (engineer) of David Evans & Associates, 2828 SW Corbett Avenue, Portland, Oregon 97201-4830. Documents submitted after the hearing were prepared by Gregory S. Hathaway, attorney, with Davis, Wright, Tremaine, 2300 First Interstate Tower, 1300 SW Fifth Avenue, Portland, Oregon 97201-5682.

2. Other Persons Supporting The Application

No other persons appeared, through oral or written testimony, in support of the application.

3. Opponents

The persons appearing, through oral or written testimony, in opposition to the application, are (in order of their appearance at or following the hearing):

Sauvie Island Drainage District[1], represented by David Hicks, Supervisor, 29264 NW

---

[1] In its testimony, the Drainage District described itself less as an opponent of the application than an advocate for certain conditions of approval, conditions to which the applicant has agreed. (See letter of 30 August 1993 from Greg Hathaway) However, because (1) there is no category of "neutral parties;" (2) the Drainage District has not endorsed the project; and (3) their interests might be prejudiced by classifying them as proponents, whereas there is no prejudice to them as opponents, I am classifying it as an opponent.

Sauvie Island Road, Portland, Oregon 97231. The District was also represented by their attorney Daniel Kearns of Preston, Thorgrimson, et al, 3200 US Bancorp Tower, 111 SW Fifth Avenue, Portland, Oregon 97204.

Vlad M. Voytilla, 300 West Mill Plain Blvd. Suite 600, Vancouver, WA 98660

Paul DeBonney, represented at the hearing by Vlad Voytilla.

Scott Hamersly, 8852 SE 91st, Portland, Oregon 97266.

Paul Gamroth, 23005 NW Oak Island, Portland, Oregon 97231

Vince Cooney, 7120 North Washburn, Portland, Oregon 97217

Dale Johnston, 91941 NW Reeder Road, Portland, Oregon 97231

Ginny Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

Mark Stern, 23434 NW Oak Island Road, Portland, Oregon 97231

4. Party Status And Notice Of This Decision

In the absence of any challenges to their standing, I find the preceding persons to be parties to the proceeding, as specified by MCC 11.15.8225. These persons or their representatives should receive a copy of this decision.

C. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties concerning the merits of these applications.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with any of the parties.

In the past year, I have been representing an organization opposing an application approved by Washington County. In the proceedings before the local government, the applicant was represented by David Evans & Associates (DEA). This information was presented at the commencement of the hearing, by Robert Price of DEA and confirmed by me. After a recess to discuss this issue with his client, Robert Price of DEA declined to ask for my recusal.

I find that my representation of a third party in an unrelated proceeding, in opposition to the interests of a different, unrelated client of DEA, does not affect my

impartiality as a decision maker in this proceeding.

D. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

E. Alleged Procedural Errors

No procedural errors were alleged before, during or after the hearing.

II. FINDINGS OF FACT REGARDING THE PROPOSED USE

According to the application:

> *The applicant recycles spent brewery grain for use as livestock feed. The grain is picked up from a local brewery and trucked either directly to dairy farms or to the subject site for short-term storage. The applicant prefers to take the grain directly from the brewery to dairy farms, and most of the grain (approximately 80 percent) is delivered directly. However, due to variations in production at the brewery and customer demand, a staging area is needed to temporarily store the grain. The Sauvie Island site serves as this staging area. Grain taken to the storage facility is usually stored for only a few days, but may be kept up to three months in ensilage, after which time it is loaded back onto trucks and delivered to farms for feed.*

Application page 1.[2]

The applicant characterized its activity as a "currently nonconforming use" in operation since 1984. It stated that it seeks a CUP for two reasons:

> *To be in compliance with the County Comprehensive Plan and Zoning Ordinance, and to construct a new grain storage area and wastewater treatment facility as required by the Oregon Department of Environmental Quality (DEQ) Stipulation and Final Order No. WQIW-NWR-93-055.*

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[2] During the course of testimony during the hearing, it was revealed that the applicant's property was also being used for the storage and distribution of used brewers yeast or yeast by-products. (See letter from Gregory Hathaway dated 30 August 1993.) Since this activity was not described in the original application it cannot be considered in this proceeding; its authorization would require an amended or new application.

Id.

The applicant owns 117.19 acres, of which about 9 acres would be used for the spent grain storage and processing. Application at 2. The remainder of the land will lie fallow this year but the applicant intends "to plant oat and timothy hay on all three parcels next year, and ton continue this practice." *Id.* The spent grain operation does not involve grain grown on the property.

The spent grain comes from a brewery located at NW 11th and Burnside in downtown Portland, about 13 miles from the applicant's property on Sauvie Island. Application at page 5. The spent grain would be used by dairy farmers "in Northwest Oregon and southwest Washington."[3] *Id.*

These statements were not contradicted by any other testimony and are consistent with the evidence in the record. I adopt them, as other statements in the application, as my own findings of fact for purposes of the subsequent analysis of the application.

III. ANALYSIS OF THE APPLICATION UNDER THE STANDARDS IN STATE LAW, AND THE COUNTY ZONING CODE

A. State Statute Authorizing And Limiting Use In EFU Zones

1. Introduction: EFU Statutes Apply Directly To This Application And The County Must Adhere To Appellate Interpretations Of Those Statutes.

ORS 215.283(2)(a) authorizes "commercial activities that are in conjunction with farm use," in exclusive farm use zones. The statute is virtually identical to, and is the source of, the authorization of "commercial activities that are in conjunction with farm uses" in Multnomah County's EFU zone. MCC 11.15.2012(B)(1).

Regardless of the acknowledgment of the County's comprehensive plan and zoning ordinances, the statute continues to apply directly to this decision. *Kenagy v. Benton County*, 115 Or App 131, 136, 838 P2d 1076 (1992). *See also Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992).

Although the Oregon Supreme Court has articulated a deferential standard of review for local government interpretations of their ordinances, *Clark v. Jackson County,* 313 Or 508, 515, 836 P2d 710 (1992), no such deference is due to local government interpretations of state statutes. *Smith v. Clackamas County,* 313 Or 519, 524-525, 836 P2d 7__ (1992),

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[3] I also adopt as my own findings of fact, those portions of page 5 of the application quoted in section III.A.3 of this decision.

Forster v. Polk County, supra, 115 Or App 478; *and see Ramsey v. City of Portland*, 115 Or App 20, 24 fn 2, 836 P2d 772 (1992).

In any event, given that LUBA has found and the County apparently agrees that the state and county definitions of the permitted use do not differ in substance, *Chauncey v. Multnomah County,* 23 Or LUBA 599, 604 (1992), the analysis under both definitions is identical.

2. Review Of Prior Decisions Interpreting "Commercial Activities In Conjunction With Farm Use"

The preliminary, and determinative question, is whether the proposed use fits within the definition of a "commercial activity in conjunction with farm use," under the state statute and county code.[4]

The most important precedents addressing this issue are: *Craven v. Jackson County*, 308 Or 281, 289, 779 P2d 1011 (1989); *Earle v. McCarthy*, 28 Or App 539, 560 P2d 665 (1977); and *Chauncey v. Multnomah County*, 23 Or LUBA 599, 604 (1992).

In each of these cases, the tribunal devoted some discussion to the closely related question of what the "farm use" is, with which the "commercial activity" is in conjunction. The reason for the joint discussion becomes evident when we note that the definition of "farm use" itself seems to contemplate storage and marketing of farm products in addition to the commercial element of the farming activity itself:

> *(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling corps or * * * livestock * * * . "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. * * *

ORS 215.203(2)(a).

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[4] During the course of the hearing I expressed my concern about whether the use was "in conjunction with farm use" under the terms of the statute and the County Code, and invited the parties to provide additional argument on this issue during the four weeks set aside for additional evidence and argument (2 weeks) and for rebuttal evidence and argument (2 weeks.) In his 16 August 1993 "Supplement To Conditional Use Application," Mr. Hathaway addressed this question on behalf of the applicant, and Mr. Voytilla, an opponent, provided a letter dated 13 August 1993 addressing this point.

In the *Earle* case, the applicant sought approval for a hop warehouse, to "store a large volume of crops from many hop growers" and incidentally to sell string and burlap used in hop production. *Earle v. McCarthy, supra*, 28 Or App 541. The facility was to be located on a 4-acre parcel south of Hopmere, in an exclusive farm use (EFU) zone in Marion County. *Id.* The plaintiffs argued that "storage of the product of land other than that on which the proposed warehouse would be located is no a permissible conditional use in an EFU zone." *Id.*

In reaching its conclusion about the permissibility of the use, the Court reviewed both the definitions of "farm use" in the zoning ordinance, based on ORS 215.213(2)(a), and §136.230(b), which reiterated the authorization in (then) ORS 215.213 of: "Commercial activities that are in conjunction with farm use." The Court held:

> *It is subsection (b) that plaintiffs erroneously contend is limited to on-site produce. To the contrary, since "Commercial activities that are in conjunction with farm use" is designated by the ordinance and the statute as "nonfarm use," then it must allow something more than what would be allowed as a "farm use." It is reasonable, therefore, to construe the term as including a warehouse for the commercial storage of agricultural products of lands other than that on which the warehouse is located. Accordingly, we hold that such a use is a permitted conditional use in an EFU zone.*

Earle v. McCarthy, supra, 28 Or App 542.

In *Craven*, the applicant received permission from the county for a "a winery and retail tasting room in conjunction with a vineyard being planted on his land." *Craven v. Jackson County*, 308 Or 281, 283, 779 P2d 1011 (1989).[5] The Supreme Court quoted portions of LUBA's findings including the observation that "The winery will process grapes grown on site and at other vineyards, but as the accompanying vineyard produces more grapes, the percentage of wine produced form those grapes will increase." *Craven, supra*, 308 Or 284.

In affirming the decisions made by the County, LUBA and Court of Appeals, the Supreme Court offered a lengthy, and somewhat confusing, discussion of the policy framework behind the EFU statutes' provisions for farm and nonfarm uses and buildings.[6]

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[5] The county decision on appeal predated the authorization by the 1989 Legislature of wineries and related facilities in EFU zones. *See* ORS 215.283(1)(s), 215.452 and *Craven, supra*, 308 Or 280 fn 3.

[6] The court's opinion cites and discusses ORS 215.203(2)(a) (the definition of "farm use",) 215.213(1)(f) (nonresidential buildings customarily provided in conjunction with farm

The Court cautioned against interpreting "farm use" in ORS 215.203(2)(a) so broadly as to authorize "a shopping mall or supermarket as a farm use so long as the wares sold are mostly the products of a farm someplace:" Such an interpretation would subvert the goal of preserving farm land. *Craven, supra*, 308 Or 288.

The Court then turned to the status of the winery as "a commercial activity in conjunction with farm use." The paragraph in the decision containing the Court's reasoning and conclusion states:

> *The phrase upon which the validity of the CUP turns is "in conjunction with farm use," which is not statutorily defined. We believe that, to be "in conjunction with farm use," the commercial activity must enhance the farming enterprises of the local agricultural community to which the EFU land hosting that commercial activity relates. The agricultural and commercial activities must occur together in the local community to satisfy the statute. Wine production will provide a local market outlet for grapes for other growers in the area, assisting their agricultural efforts. Hopefully, it will also make [the applicant's] efforts to transform a hayfield into a vineyard successful, thereby increasing both the intensity and value of agricultural products coming from the sam acres. Both results fit into the policy of preserving farm land for farm use.*

Craven, supra, 308 Or 288.

LUBA applied the *Craven* holding regarding ORS 215.283(2)(a) in *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992). In that case, LUBA upheld the County's interpretation of the same ordinance being applied here, MCC 11.15.2012(B)(1).

The County had denied an application for a bark grinding and processing operation in association with a nursery. On the same property there was pasture and trees "originally planted as Christmas trees." *Chauncey, supra*, 23 Or LUBA 600. The parties contested whether the evidence demonstrated that the operation would "enhance the farming enterprises of the local agricultural community to which the EFU land housing that commercial activity relates," an important phrase in the *Craven* holding. The applicant argued that the evidence showed the bark would be used by nurseries and Christmas tree farms within ten miles of the business.

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use") 215.213(2)(c) ("commercial activities in conjunction with farm use" in marginal lands counties) and 215.283(2)(a) ("commercial activities that are in conjunction with farm use," in counties not applying ORS 215.213.) The applicable statute in the case was ORS 215.283(1)(f), since Jackson County has not chosen to adopt marginal lands or the optional criteria under ORS 214.213. *See* ORS 215.288. However, the text of the two provisions permitting "commercial activities that are in conjunction with farm use" is identical.

LUBA's decision turn on its analysis of the evidence in the record:

> *There is no evidence in the record regarding what quantity of wood by-products will be distributed from the subject site, what portion of the "smaller customers" to be served from the subject site are farm uses or what quantity of the wood by-products to be delivered from the subject site will be sold to farm uses.[footnote about direct deliveries omitted.] Further, even if the bifurcation of petitioners' business between the subject and processing sites is overlooked, the evidence in the record does not establish the quantity of wood by-products delivered, or dollar amount of sales, by petitioners' business to farm sues within a ten mile radius. We agree with respondent that in the absence of such evidence, petitioners cannot demonstrate as a matter of law that their proposed use of the subject site is a commercial activity in conjunction with farm use.*

Chauncey v. Multnomah County, supra, 23 Or LUBA 606-607.

Other LUBA decisions determining whether proposed uses are "commercial uses" "in conjunction" with a farm or forest use, have turned on the particular provisions of a county code which differs from, or was not adopted to implement, ORS 215.283(2)(a).[7]

Because the appellate decisions have considered ORS 215.203(2)(a) as an alternate theory for approval of a commercial use related to farming, it may be useful to consider LUBA decisions on this subject for the indirect light they may shed on the interpretation of ORS 215.283(2)(a).

In *J & D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990), LUBA concluded that the petitioner's chicken manure storage and processing facility was not a "farm use" because "<u>none</u> of the products are produced on the land where the preparation or storage takes place * * * ." *J & D Fertilizers, supra*, 20 Or LUBA 49-50. In a footnote, LUBA reviewed the Supreme Court's decision in *Craven*, attempting to understand and separate the analysis of the winery under ORS 215.203(2)(a) from the Court's analysis under ORS 215.283(2)(a):

> *Thus, the most we can conclude from <u>Craven</u> is that a winery and tasting room <u>in conjunction with a vineyard onsite, i.e.</u> a preparation and storage operation which processes at least some agricultural products grown onsite, can*

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[7] *Burkey v. Clackamas County*, 17 Or LUBA 369, 374 (1989) (decision based on county code provision which was more specific than statute; *Lung v. Marion County*, 21 Or LUBA 302, 305-306 (1991) (decision based on more specific provision applicable in non-EFU zone); *Moody v. Deschutes County*, 22 Or LUBA 567, 572 (1992)(decision based on construction of other provisions in local ordinance.)

be farm use.

J & D Fertilizers, supra, 20 Or LUBA 50 fn 5.[8]

The fact that the source of the material to be disposed of was from outside the farming area was also listed as a factor in LUBA's determination that a diseased lamb disposal facility was not a "farm use." *Kunkel v. Washington County*, 16 Or LUBA 407, 417 (1988).

Because this application is subject to state statute, I am bound by these appellate precedents. In addition, I have made it a practice to treat the County's prior interpretations of its code as binding precedents, unless they are "clearly wrong." *See Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992); *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 843 P2d 992 (1992); *Cope v. Cannon Beach*, 115 Or App 11, 836 P2d 775 (1992).

3. Application Of The Law To The Facts

In the two appellate decisions, the commercial facility which had been properly approved, was used to process and market farm products produced on neighboring farms (*Earle* and *Craven*) and/or on the operator/applicant's own property (*Craven.*) The proposed commercial activity here is the distribution of a by-product from a non-agricultural industrial enterprise, the brewing of beer. According to the testimony of the applicant's representatives, the brewing is carried out in the industrial area of NW Portland.

To the extent the facts that (i) the items which were the subject of the commercial marketing were agricultural commodities and (ii) were produced on farms in the vicinity, was important to the appellate courts' decisions, it is absent here. The commodity being marketed is produced in the city and is the by-product of an urban manufacturing process, although the raw materials themselves include agricultural products.[9]

Furthermore, as the applicant notes, the "commercial activity" has no relationship to the past and prospective agricultural uses of the applicant's farm property, which will be used to grow hay not grain used in brewing. The applicant's "commercial activity" is brewing

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[8] Previously LUBA had interpreted *Craven* to mean that the court regarded the winery as incidental and accessory to the primary farm use. *Von Lubken v. Hood River County*, 18 Or LUBA 18, 40 (1989). LUBA did not reiterate this interpretation in *J & D Fertilizers*, perhaps in light of the facts in the *Craven* case which do not fit an "accessory use" analysis.

[9] Mike Gamroth, OSU Extension Dairy Specialist notes that while they are fed to cattle, "brewer's grains come from a more 'industrial' business". Application, Appendix C.

beer, not raising livestock or grain. An analogy for the proposed use would be the storage and distribution of recycled motor oils, for use as engine lubricants by farm machinery. The fact that the product is used on farms may not be sufficient to establish that it is a "commercial activity in conjunction with farm use."

If it were not for the *Chauncey* decision[10], I would conclude that the applicant's proposed use is not allowed under ORS 215.283(2)(a) and MCC 11.15.2012(B)(1) because the commercial activity does not involve (i) a commodity produced on the farm itself (*Craven*); or (ii) a commodity produced by farmers in the vicinity (*Earle*); or (iii) sales of items or products accessory to the sale or storage of farm commodities (*Craven*) or (iv) could not qualify as a "farm use" in its own right (*Craven, Earle, J & D Fertilizers, Kunkel.*)

However, *Chauncey* is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case. In response to the *Craven/Chauncey* test, the applicant states:

> *The local agricultural community to which the applicant's activity relates can be determined to be dairy farmers in Northwest Oregon and southwest Washington." Due to the nature of dairy farms, they are widely spaced, and not many would occur within a 10-mile radius of the applicant's operation. * * * It is not feasible for the applicant to deliver most of their product within a 10-mile radium because most potential customers are located much farther away. For example, according to the applicant, no major commercial dairy farms currently exist on Sauvie Island. The applicant's business could not survive if it were limited to serving customers within 10 miles."*

Application at 5 (emphasis in original.)

The applicant has not disguised its difficulty with satisfying the *Craven* test. Instead it has made a reasoned argument for expanding the area under which it can meet the enhancement test.

The applicant relies on a quasijudicial decision made by the Land Conservation and Development Commission (LCDC) during the period prior to the creation of LUBA, *Balin v. Klamath County*, 3 LCDC 8 (1979). In that case, LCDC approved, in part, a rezoning adopted by the County in order to cite a farm implement dealership. In the course of that

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[10] In *Chauncey*, this County found and LUBA implicitly agreed, that the enhancement test can be met by the consumption of a product by farms and not just the sale of commodities produced on farms, subject to a limitation on the area within which these products are used.

decision LCDC addressed the question of whether the proposed dealership was a "a commercial activity in conjunction with" the nearby farming operations it served. *Balin v. Klamath County, supra*, 3 LCDC 19. Northwest Brewer notes in its 16 August 1993 supplement, that *Balin* was cited by the Court of Appeals in its decision on *Craven*.

I conclude that LCDC's decision in *Balin*, is insufficient authority to approve this application for five reasons.

First, LCDC's decision[11] specified a narrower grounds for its approval of the implement dealership than has been described by the applicant in its supplementary argument:

> *Clearly the statute is not intended to allow the establishment of grocery stores and gas stations on agricultural lands solely because they are situated in a primarily agricultural area and serve primarily agricultural needs. However, it can and should be read to express a legislative judgment that commercial activities limited to providing products and services essential to the practice of agriculture directly to the surrounding agricultural businesses are sufficiently important to justify the resulting loss of agricultural land. The record shows that such an enterprise is proposed and is needed.*

Balin v. Klamath County, supra, 3 LCDC 19 (emphasis added.) The record in this proceeding does not demonstrate that the spent brewers grain is essential to the dairy farmers. In addition, providing feed to commercial dairy farms, none of which are on Sauvie Island and which are as far as 60 miles away from the site on Sauvie Island, cannot be described as a commercial activity serving "surrounding agricultural businesses."

Second, LCDC adopted an independent alternative basis for approving this use, an exception to Goal 3 (Agricultural Lands) under Goal 2, (Land Use Planning.) The text of LCDC's decision reveals that this exception was of the type now characterized as a "need" exception under ORS 197.763(1)(c) and OAR 660-04-020, 022 (1991). *Balin v. Klamath County, supra,* 3 LCDC 17-18. The outcome, approval of the implement dealership, depended on the Commission's overall acceptance of the proposed

Third, *Balin* was not cited or relied upon by the Supreme Court in its decision. Nor was it cited by the Court of Appeals in *Earle* or by LUBA in *Chauncey.*

Fourth, as a hearings officer for Multnomah County, I believe I am bound by the precedent in *Chauncey v. Multnomah County.*

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[11] LCDC adopted the hearings officer's recommendation. *Balin v. Klamath County, supra*, 3 LCDC 22.

Fifth, the statute should be interpreted in the light of the Court of Appeals' expressed view that:

> *there is an overriding statutory and regulatory policy to prevent agricultural land from being diverted to nonagricultural use.*

Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) *rev den* 304 Or 680 (1988); *accord Nelson v. Benton County*, 115 Or App 453, 459, 839 P2d ___ (1992). This policy has been used by the Court of Appeals as the basis for interpreting provisions in the EFU statute and local ordinances implementing the statute:

> *Section 137.020, like its statutory analog [ORS 215.213(1)(d)], defines non-farm uses which are permitted in farm zones. However, state and local provisions of that kind must be construed, to the extent possible, as being consistent with the overriding policy of preventing "agriculture land form being diverted to non-agricultural use." Hopper v. Clackamas County, 87 Or App 167, 172, 741 P2d 921 (1987) rev den 304 Or 680 (1988). Therefore, when possible, the non-agricultural uses which the provisions allow should be construed as ones that are "related to and [promote] the agricultural use of farm land. Hopper v. Clackamas County, supra, 87 Or App at 172. When no such direct supportive relationship can be discerned between agriculture and a use permitted by the provisions, the use should be understood as being as nondisruptive of farm use as the language defining it allows.*

McCaw Communications, Inc. v. Marion County, 96 Or App 552, 555, 773 P2d 779 (1989).[12]

B. Other State And County Standards

In the light of the prior determination and need for a timely decision, I do not address the degree to which the application satisfies the conditional use standards in MCC 11.15.7120(A) and any other applicable standards.

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[12] In addition, there is a state policy to encourage urban uses, including industrial uses, to be located inside urban growth boundaries and to discourage their development outside UGBs. Goal 14, "Urbanization" and see *e.g. 1000 Friends of Oregon v. LCDC (Curry Co.)*, 301 Or 447, 507 n 37, 511, 724 P2d 268 (1986); *1000 Friends of Oregon v. LCDC*, 292 Or 735, 745, 642 P2d 1158 (1982). To the extent this use can be considered an extension or overflow of the urban brewing facility, it may be inconsistent with that policy. These state policies are reflected in elements of the County's own urbanization policies. *Multnomah County Comprehensive Framework Plan, Volume 2: Policies*, at policies 5, 6, 9. See also MCC 11.15.7120(A)(7).

CONDITIONS OF APPROVAL:

1. Comply with all DEQ.requirements as outlined in the Stipulation and Final Order No. WQIW-NWR-93-055.

2. Obtain building permits for the new structures, if required by the Portland Building Bureau. Any structure shall meet the dimensional requirements of MCC .2016, and shall be located at least 100 feet from the Gilbert River as required by MCC .6404 (C)..

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Hearings Officer approval to allow operation of a brewery grain recycling facility. The operation involves picking up spent grain from a Portland brewery and delivering it to farms for use as feed for cattle and dairy cows. Due to variations in supply and demand, excess spent grain would be stored on the subject property. Some of the grain is only stored for a few days, while some is kept for up to three months in ensilage. The applicant proposes to construct a paved and covered loading and unloading area, a grain storage area, and a pump station and holding lagoon to handle runoff from the stored grain, as required by DEQ. Treated liquid from the lagoon will be mixed with irrigation water and applied to crops on the property.

2. Site and Vicinity Characteristics:

The property consists of three taxlots bounded by the Gilbert River on the north and west and by Oak Island Road on the east. The terrain is level, and is used to grow hay and grass. A barn, shop, vehicle storage building, house and trailer are located on the property.

The surrounding area is level and used for agriculture. There is a house directly across the street. The next closest house is approximately 1/4 mile to the south along Oak Island Road.

3. Ordinance Criteria:

Ordinance criteria are in **bold.** Staff response follows each criteria. Applicant's response to criteria may be found in their Conditional Use Application, reference file CU 21-93.

MCC 11.15.2012 (B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:

(1) Commercial activities that are in conjunction with farm uses.

Neither the Multnomah County Code or ORS 215 define "commercial activities in conjunction with

farm use". The spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, wastewater from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity.

MCC .7120 Conditional Use Approval Criteria

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

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

The surrounding area is typical of Sauvie Island, with large parcels devoted to agricultural use and widely scattered farm dwellings. The proposed activity involves a storage area for grain and ensilage, and a treatment lagoon for liquid runoff. These structures will be located on a small portion of the property near a cluster of agricultural buildings. The majority of the property will continue to be used for growing crops. Treated runoff from the lagoon will be utilized to fertilize and irrigate these crops. Storage facilities for feed and ensilage are typical of cattle and dairy farm operations. This will not be inconsistent with the agricultural character of the area.

(2) Will not adversely affect natural resources;

The Gilbert River is a significant wetland and may be a Class I stream. MCC .6422 requires that an SEC permit be obtained if the proposed activity would impact the wetland. MCC .6404 requires structures to be located at least 100 feet from Class I streams. The proposed location of the new structures is close to the existing buildings, far exceeding the 100 foot setback requirement. The new drainage and pumping system and treatment lagoon will serve to protect the River from adverse effects, so an SEC permit is not required.

The Sauvie Island Wildlife Area is a large sensitive waterfowl area located approximately 1/2 mile from the subject site. This is also a significant natural area as identified in the Comprehensive Plan. The proposed storage operation should have no adverse affect to this resource.

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

There are no forest uses in the area. Surrounding farm uses involve large scale crop production. The proposed new structures are limited to an area approximately one acre in size, plus treated runoff from the lagoon will be used for irrigation on other areas of the property. These are typical of many agricultural uses, and should cause no conflicts with other uses in the area. Adjoining property owners have indicated (reference Petition, Appendix F of applicant's submittal) that they have no objections to the proposed operation and that it does not conflict with farm uses in the area. In addition, the operation has been occurring (without permits) for the last nine years. No conflicts with area farm uses have come to the attention of the county in that time.

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

The applicant has water rights to use irrigation water that will be mixed with the wastewater runoff. The property is already served by electricity. Road standards are adequate for the amount of truck traffic generated (18 - 30 trips per week). Drinking water is supplied by an on-site well. A portable toilet is currently used by the truck drivers who pick-up and deliver the grain. The Sanitarian has indicated that this is adequate unless the proposed new storage area is connected to a water supply, which is not proposed at this time. No other public services will be required.

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

The Comprehensive Plan Wildlife Habitat Map shows no sensitive big game wintering areas near the subject property.

(6) Will not create hazardous conditions; and

The spent brewery grain is not a hazardous material. The proposed lagoon, which will capture and treat runoff from the stored grain, is a requirement of DEQ to prevent runoff into the Gilbert River. The treatment system will prevent further contamination of the river, so will prevent hazards, if any, that could occur from runoff reaching the river. Oak Island Road, Reeder Road, and Sauvie Island Road are all adequate to handle the 18 - 30 truck trips generated each week.

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

Comprehensive Plan policies are addressed in Section 4, below.

MCC .7122 Exclusive Farm Use Conditional Use Approval Criteria

(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2012 (B) must demonstrate that the use:

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

The grain stockpiling has been in operation for nine years at the subject property, and there has been no indication by adjacent property owners that it has affected their farming practices. The stockpiling, loading and unloading occur on a very small portion of the property, and has caused no significant changes in agricultural practices on the subject or surrounding lands.

(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The proposed operation should have no impacts beyond the small area where the structures will be located. This will not cause an increase in operating costs to surrounding farms.

(B) For the purposes of this subsection surrounding lands devoted to farm or forest use shall not include:

(1) Parcels with a single family residence approved under MCC .2012 (B) (3);

(2) Exception areas; or

(3) Lands within the Urban Growth Boundary.

There are no non-farm dwellings, exception areas, or a UGB in the surrounding area.

(C) Any conditions placed on a conditional use approved under this subsection shall be clear and objective.

Condition #1 requires the applicant to comply with DEQ requirements to prevent runoff into and contamination of the Gilbert River. Condition #2 requires that the dimensional requirements found in MCC .2016 be met in order to prevent new structures being located too close to the road and property lines. It also requires structures to be located at least 100 feet from the Gilbert River to protect the wetland and stream habitat, pursuant to MCC .6404 (C).

4. Comprehensive Plan Policies:

Policy 9 Agricultural Land: The county's policy is to designate and maintain as exclusive agricultural, land areas which are:

A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;

B. Of parcel sizes suitable for commercial agriculture;

C. In predominantly commercial agriculture use; and

D. Not impacted by urban service; or

E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.

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

The subject parcel is exclusive agricultural land. The proposed use is allowed by state law (OAR 660-33-120), and is compatible with and appropriate to be located on agricultural land.

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...

The use is not noise sensitive. DEQ has required that the lagoon be built in order to prevent water quality problems. Condition #1 requires that DEQ standards be met. The sanitarian has indicated that sewage disposal is adequate for the use at present. There should be no effect to air quality by the proposed use.

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 use is not suitable for location in an urban area due to odors produced by stored grain and ensilage and the need for fields to receive the wastewater. The Sauvie Island location is fairly energy efficient in that it is centrally located to both the Portland brewery where the grain is picked up and customers in western Oregon and Washington. No changes to transportation systems, street layouts or energy resources are proposed.

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

<u>Water and Disposal System</u>

(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.

A private well serves the site with drinking water. The applicant has water rights to supply the water that will be mixed with the wastewater runoff and used for irrigation. On-site sewage disposal is currently provided by a chemical toilet, which the sanitarian has indicated is adequate under present circumstances. The proposed lagoon and pumping system will provide storage for wastewater runoff on site, so that it will not adversely affect water quality in the Gilbert River. Electricity and telephone service are available to the site.

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 fire 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.

School District 19 had no comment on the application. The Multnomah County Sheriff and Sauvie Island Fire District 30 indicated that their service levels are adequate for the proposed use.

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.

Dedication for pedestrian and bicycle paths is not appropriate on Oak Island Road due to its limited use and lack of connection to other bicycle corridors.

CONCLUSIONS:

1. The proposed grain storage facility is a commercial activity related to farm uses.

2. The proposed wastewater lagoon is required by DEQ to prevent runoff and protect the water quality of the Gilbert River, which is a significant wetland.

3. The applicant has carried the burden necessary for the approval of a commercial use in conjunction with farm use in the EFU zoning District.

The Staff Report and recommendation on Conditional Use application CU 21-93 will be presented at a public hearing on August 2, 1993 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 ($800 maximum) 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, 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 a.m. in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

IV. CONCLUSION AND ORDER

The proposed use does not qualify as a permitted use in Multnomah County's EFU zone under MCC 11.15.2012(B)(1) or ORS 215.283(2)(a), as those provisions have been interpreted by the appellate courts, LUBA and the County.

The application is denied.

15 September 1993 _____
Robert Liberty, Hearings Officer

Signed by the Hearings Officer: September 15, 1993
[date]

Decision mailed to parties: September 16, 1993
[date]

Submitted to Clerk of the Board: September 16, 1993
[date]

Last day to Appeal to the Board: September 27, 1993
[date]

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.

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

NOTICE OF REVIEW

1. Name: Hathaway (*Last*), S. (*Middle*), Gregory (*First*)
2. Address: 1300 SW 5th, Suite 2300 (*Street or Box*), Portland (*City*), OR 97201 (*State and Zip Code*)
3. Telephone: (503) 241 - 2300

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

Northwest Brewers Grains of Oregon, Inc.
9706 Fourth Ave. NE, Suite 305
Seattle, WA 98115-2157

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

Denial of Conditional Use Request (Commercial Use in conjunction with Farm Use), CU 21-93

6. The decision was announced by the Planning Commission on Sept. 16, 19 93

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

Northwest Brewers Grain of Oregon, Inc. is the applicant for Conditional Use Request CU21-93 and has appeared before the Hearings Officer through its representative, Gregory S. Hathaway and David Evans and Associates.

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

See Exhibit A

9. Scope of Review *(Check One)*:

(a) [X] 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*.

Signed: Gregory S. Hathaway Date: 9-27-93

GREGORY S. HATHAWAY

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing 140 x $3.50/minute = $ 490.00

Total Fee = $ 790

Received by: M. Hess Date: 9/27/93 Case No. CU 21-93a

EXHIBIT A

BEFORE THE MULTNOMAH COUNTY

BOARD OF COUNTY COMMISSIONERS

NORTHWEST BREWERS' GRAINS OF OREGON, INC.,	)	**Case No. CU 21-93**
	)	
	)	**SPECIFIC GROUNDS FOR REVIEW**
Applicants,	)	**AND REQUEST FOR ARGUMENT**
	)	
Request for a Conditional Use Permit for a Commercial Activity in conjunction with Farm Use in an EFU Zoning District.	)	

I. GROUNDS FOR REVERSAL OF DECISION

A. Factual Background

The Applicant has submitted a conditional use application for a commercial activity in conjunction with farm use to continue operation of a brewery grain ensilage and storage facility located on Sauvie Island. Applicant seeks to modernize and enhance its existing facility which it has utilized for the past nine years.

Applicant engages in the business of supplying high quality, low cost dairy cattle feeds to local dairy operations. The Applicant's feed source is brewers' grains which Applicant procures from the Blitz-Weinhard Brewery located in downtown Portland. Brewers' grain (which is nothing more than grains such as wheat and barley that have been physically altered by the brewing process) has been determined by the Oregon State Extension Service to be one of the best dairy feeds available due to its nutritive value and lower cost.

A simple but effective system facilitates maximization of the grain resource and enables dairy operations to benefit from a product which would otherwise be dumped in a landfill. The components of the system, as described below, are interdependent and essential to the system's participants.

1. **Grain Production:** Farmers produce the grain which is used by the brewery in the production of beer.

2. **Blitz-Weinhard Brewery:** The brewery provides a key market for the sale of farmers' crops. The brewing process transforms the grain into a mash commonly called "brewers' grains." Grains must be removed from the brewery approximately every three hours.

3. **Northwest Brewers' Grains, Inc.:** Applicant removes the grain from the brewery and in most instances delivers the grain directly to the dairy farm community of Northwest Oregon and Southwest Washington. Consistency of feed rations is critical to dairy cattle milk production. Therefore, the Applicant must maintain storage facilities to account for those instances when either dairy demand exceeds supply or when brewery production exceeds demand. Leachate resulting from grain storage is used by the Applicant to fertilize hay and grains grown on site. These crops are mixed with the grain during the ensilaging process to add further nutritive value to the feed.

4. **The Local Dairy Community:** The local dairy farmers are the final participants and beneficiaries in the system. N.W. Brewers' Grains distributes and transports the cattle feed directly to the dairy farmer. The dairy farmer facilitates the grains' product cycle by feeding the grain to their dairy cattle. According to the Oregon State Extension Service, milk production is increased by the feeding of brewers' grains because the grains are more easily digested and the nutrients more readily absorbed.

Applicant's use of the Sauvie Island property as a storage and ensilage site is a key component in the facilitation of a cycle which both begins and ends on the farm. The unique characteristics of both the dairy industry and the brewery business

require that the Applicant maintain storage facilities for the grain at a location central to dairy operations, close to the brewery, and yet away from high density urban zones.

Cessation of the Sauvie Island operation will break the product cycle and adversely impact both the agricultural and non-agricultural communities. Failure to utilize the grain as feed will result in disposing of the grain as waste; requiring as many as eight truckloads per day of grain to be dumped at the local landfill. Requiring Applicant to relocate the storage facility to an industrial area will result in prohibitive cost increases, leachate disposal problems and legitimate concerns over odor produced by the ensilaging process.

The Multnomah County Planning Staff concluded in its Staff Report dated August 2, 1993, that the Applicant's operation of a brewery grain ensilage and storage facility qualified as a commercial activity in conjunction with farm use pursuant to MCC 11.15.2012 (B) (1). The Planning Staff also concluded that the Applicant had demonstrated compliance with all of the County's applicable legal criteria and recommended approval of the Applicant's request subject to conditions.

B. <u>Multnomah County's Prior Interpretation of "Commercial Activity In Conjunction With Farm Use": The Chauncy Case</u>

In 1991, the Board of County Commissioners (the "Board") reviewed a conditional use permit application in which the applicants, Bowlus and Lynne Chauncey, sought approval to operate a commercial wood products firm ("Beaver Bark") within an Exclusive

Farm Use (EFU) District. The Board denied the request and the matter was appealed to the Land Use Board of Appeals ("LUBA"). LUBA affirmed the Board's denial. Chauncey v. Multnomah County, 23 Or LUBA 599 (1992). The applicants asserted that the commercial activity was in conjunction with farm use pursuant to MCC 11.15.2012(B)(1).

In applying the test as articulated by the Oregon Supreme Court in Craven v. Jackson County, 779 P.2d 1101 (Or. 1989) for whether a commercial activity is in conjunction with farm use, the Board denied the request based on the following four factors:

1. **Nature of the Applicants' Product:** The applicants asserted that their product could be used by nurseries and other agricultural enterprises. However, the applicants failed to prove that their product was actually used for agricultural purposes.

2. **Nature of the Applicants' Customers:** The applicants argued that their bark products were sold to nurseries. However, as an illustration of the non-agricultural nature of the applicants' activity, the evidence indicated that only two out of thirty-six nurseries within a 10-mile radius used the product. Consequently, the applicants could not prove that their customers were agricultural enterprises.

3. **The Focus of Applicants' Marketing:** Advertising conducted by the applicants was aimed at procuring non-agricultural customers. The advertisements indicated the applicants were marketing to homeowners rather than agricultural enterprises.

4. **Nature of the On-site Activity:** The applicants' on-site activity consisted of storing, grinding and distributing a non-agricultural product. None of these activities were consistent with the area character in terms of its nature or its location.

In Chauncy, the Board acknowledged that the standard for "commercial activity in conjunction with farm use" is met by "the consumption of a product by farms and not just the sale of

commodities produced on farms." However, the Board declined to approve the Chauncey application because the evidence did not show that the applicants' product was used for agricultural purposes.

The Hearings Officer decision in the present case states that the Chauncy decision is a "controlling interpretive precedent" applicable to this request by Northwest Brewers' Grains.

C. **Specific Grounds For Appeal**

The basis for the Hearings Officer's denial of the Applicant's request is that the Applicant's operation of a brewery grain ensilage and storage facility for distribution of cattle feed to dairy farmers does not qualify as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2021 (B). The decision by the Hearings Officer is in error based on the following grounds:

1. **The Hearings Officer has improperly characterized the nature of the Applicant's commercial activity based upon the evidence in the record.**

In denying the Applicant's request, the Hearings Officer asserted the following factual findings to support his decision: (1) the brewers grain is a non-agricultural product; (2) the Applicant's "commercial activity is brewing beer"; (3) the Applicant's commercial activity has no relationship to the past and prospective agricultural uses of the Applicant's farm property; and (4) that the brewers grain is not essential to the dairy farmers. These findings by the Hearings Officer are not supported by the substantial evidence in the record and are incorrect.

The uncontroverted substantial evidence in the record indicates that: (1) the brewers grain is comprised of wheat and barley, clearly an agricultural product, which has been physically altered by the brewing process. It was improper for the Hearings Officer to mischaracterize this grain product by simply referring to it as a "by-product from a non-agricultural industrial enterprise". The Hearings Officer's mischaracterization ignores the evidence in the record that establishes the agricultural product cycle for brewers' grain; (2) the Applicant's commercial activity is not the brewing of beer, but rather, the storing and distribution of brewers grain for use as cattle feed for dairy farmers; (3) the Applicant's commercial activity does have a relationship with the agricultural activities occurring on the subject property because the brewers grain is mixed with crops grown on-site to create an additional dairy feed product, and the leachate from the storage of the grain will be used as fertilizer for the growing of crops on the property; and (4) the Oregon State Extension Service has stated that the brewers' grain is important to the dairy community since it is one of the best dairy feeds available due to its nutritive value and lower cost.

For the Board to properly determine whether the Applicant's use is a commercial activity in conjunction with farm uses, it is essential that the use be properly characterized based on the evidence in the record. For the reasons cited above, the Hearings Officer's findings are incorrect.

2. The Hearings Officer did not make a finding or a conclusion that the Applicant's commercial activity is not consistent with the Board's decision in Chauncy.

While the Hearings Officer cites the Chauncy decision as controlling in evaluating whether the Applicant's commercial activity qualifies as a commercial activity in conjunction with farm uses pursuant to MCC 11.15.2012 (B)(1), the Hearings Officer omitted any discussion of the factors the Board considered pertinent in Chauncy or the evidence in the record to determine whether Northwest Brewers'Grain met the Chauncy test. At page 13 of his decision, the Hearings Officer states, "[H]owever, Chauncy is a controlling interpretive precedent for a decision made by Multnomah County. I must review the record to determine whether or not the applicant meets the test articulated in that case". However, as stated above, the Hearings Officer did not review the substantial evidence in the record, including the three (3) letters from the Oregon State University Extension Service which demonstrate that the Applicant's commercial activity meets the Chauncy test.

3. The Hearings Officer's inference that the Applicant's commercial activity (which provides benefit to the dairy community) would violate the policy to prevent agricultural land from being diverted to non-agricultural use is incorrect and ignores the evidence in the record.

On page 15 of the Hearings Officer's decision, an inference is made that the Applicant's commercial activity is nothing more than an "extension or overflow of the urban brewing

facility". Consequently, the Hearings Officer cites the policy that agricultural land should be preserved for agricultural uses. This inference by the Hearings Officer completely ignores the substantial evidence in the record, including the aforementioned letters from the Oregon State University Extension Service, that describe the agricultural product cycle of brewers' grain and the benefits derived by the dairy community. As the Multnomah County Planning Staff concluded, "the spent grain that will be stored at the site is used exclusively as feed for cattle and dairy cows. This is clearly an agricultural use. In addition, waste water from the lagoon will be used for irrigating and fertilizing crops on the subject parcel, also an agricultural activity." The uncontradicted evidence in the record overwhelmingly demonstrates that the agricultural policy is uniquely satisfied in this case because of the facilitation of a cycle which both begins and ends on the farm.

4. The Hearings Officer mischaracterized public support for Applicant's use.

The Hearings Officer states that other than the Applicant, no other persons expressed support for the application. This statement is clearly erroneous as demonstrated by Appendix F to Applicant's conditional use application which evidences the express support of three of Applicant's neighbors. Furthermore, two Extension Dairy Specialists with Oregon State University and Extension Service have submitted testimony in support of Applicant's request.

The Hearings Officer similarly mischaracterized public opposition to Applicant's use of those parties listed as opponents. Some were merely concerned about the nature of conditions which might be imposed on Applicant's use. While the Hearings Officer states that these parties may be prejudiced if classified as proponents, the Applicant has clearly been prejudiced by classifying them as opponents.

The Hearings Officer's description of the Parties to the proceeding unfairly and prejudicially mischaracterizes the public support for Applicant's request.

II. REQUEST TO ARGUE BEFORE BOARD

The Applicant respectfully requests the Board allow Applicant and its representative the opportunity to argue this matter before the Board. Argument by the parties will assist the Board in making a decision in this matter due to the unique factual circumstances and complexity of the issues involved.

III. RELIEF REQUESTED

The Applicant requests that the Board reverse the decision of the Hearings Officer based on the above specific grounds and

approve the application as satisfying all applicable legal criteria as determined by your Planning Staff.

DATED this 29th day of September, 1993.

DAVIS WRIGHT TREMAINE

By: Gregory S. Hathaway

Gregory S. Hathaway
Of Attorneys for N.W. Brewers' Grains, Inc.

#1

PLEASE PRINT LEGIBLY!

MEETING DATE 9.28.93

NAME MICHAEL C. ROBINSON

ADDRESS 900 SW 5th, SUITE 2300
STREET

Portland, OR 97204
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-3

SUPPORT ✓ **OPPOSE** _____

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME Arnold Rochlin

ADDRESS P.O. Box 83645

STREET

Portland, OR 97283

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-3

SUPPORT The denial **OPPOSE** the application & appeal

SUBMIT TO BOARD CLERK

MEETING DATE: September 28, 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 17-93 Public Hearing

BOARD BRIEFING **Date Requested:** _____

Amount of Time Needed: _____

REGULAR MEETING: **Date Requested:** September 28, 1993

Amount of Time Needed: 1 hour

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: Sharon Cowley **TELEPHONE #:** 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

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

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

CU 17-93/HV 9-93 Public hearing for a conditional use request for a non-resource related residence plus variances for lot areas, for property in the MUF-19 zoning district, located at 3130 NW Forest Lane

11/2/93 copies to Sharon Cowley

1993 SEP 20 PM 3:10
MULTNOMAH COUNTY OREGON
BOARD OF COUNTY COMMISSIONERS

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____ 12/8/93 copy of minutes from 9/28/93 to Lane McAlister

OR

DEPARTMENT MANAGER: /C Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

September 21, 1993

Forest Park Neighborhood Association

Arnold Rochlin, Vice Pres.
P.O. Box 83645
Portland, OR 97283-0645
289-2657

Copy

Multnomah County
Board of Commissioners
1120 SW Fifth Ave., #1510
Portland, Or 97204

Re. Hearing 9/28/93 - CU 17-93 & HV 9-93 (Lot Size Variance) - Hackett, William D.

Dear Commissioner ,

The applicant makes a constitutional claim. But, by statute, you have to decide entirely on the basis of county regulations. If you deny the application for the good reasons given by the Hearings Officer and opponents, an appeal will be clearly futile and less likely.

SCOPE OF REVIEW

A decision to not hear testimony on scope of review is at your discretion. But you did hear what had to be a message from the applicant delivered by the Planning Director. Fairness required that you hear the opposition. The Director told you that the additional evidence request should be changed for clarity to "Policy 37A" You approved it exactly as the Director recommended. 37A is in the August 31st minutes, item P-4 (highlighted in attached copy). As the Director has no authority to amend the applicant's Notice of Review he had to be relaying a message.

The September 28th hearing notice wrongly says additional evidence is allowed on Comprehensive Plan Policy No. 37 (highlighted on attached copy). But you had approved evidence only on Policy 37A, which is concerned exclusively with "a public sewer and water system,". Policy 37 has sections A to I, which address a range of issues. MCC 11.15.8265 and .8270 specify and limit when and how scope of review is determined and limit this hearing to that scope. It is unlawful to admit new evidence on any subject but Policy 37A. If the Director didn't accurately relay the applicant's message, the applicant might be aggrieved. That would confirm their arrangement, but would not give authority to the Director or the Board to expand the scope. Legally, you must exclude from the record any new evidence that goes beyond Policy 37A.

County Counsel advised the Board on scope of review procedure. But his broad overview distracted from the core issue. Under MCC 11.15.8270(E), you can hear on the record with additional evidence only if the Board "is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing." The applicant's Notice of Review didn't address this standard (highlighted copy attached). The Director didn't discuss it. You didn't discuss it. I couldn't discuss it. The matter was never formulated, so you could not have been satisfied as required by the code. Commissioner Collier read four points that .8270(E) requires the Board to consider, but she and the Board did not relate them to any circumstance in the case. The applicant's Notice of Review asks to submit new evidence on "land feasibility", but the Director changed that to Policy 37A. Can the Board affirm that, in agreeing to hear new evidence, whether on "land feasibility" or Policy 37A, it was satisfied that the evidence could not reasonably have been presented earlier? The evidence was entirely in the applicant's control. Nothing could have prevented him from offering it earlier. Can the Board affirm that it considered prejudice to parties, earlier availability of evidence, surprise to parties and relevance, etc. of the material as .8270 requires? Realistically, the Board can't thoroughly study all appeal cases. You

usually see excerpts in the staff briefing packets; a fraction of the record. The Planning Director and staff, and the County Counsel also don't have time. These appeals are a small part of their work. On occaision their advice is dead wrong because of an overlooked point or missed implication. If you want to base decisions on the real issues and what the most particularly considered applicable law is, you have to hear from the people involved, the parties. Use staff and counsel to keep us honest and to resolve conflicts. You can't be right every time, but at least you wouldn't err because you weren't even informed of a party's essential point. Land use appeals burden your time. Under state law, you could quit hearing them. But, as long as you continue, county employee advice is not an acceptable short cut to justice.

EVIDENCE IMPROPERLY ADMITTED

ORS 215.416(8) requires you to base a land use decision only on the county regulations.[1] ORS 197.763(5)(b) requires that only evidence relevant to the criteria be admitted. I ask you to exclude from the record a letter and attachments of June 24, 1993 from John C. Watson Jr. to William D. Hackett and a letter and attachments of April 1, 1993 from Frank Walker & Associates to Mike Robinson. Both letters are not relevant to any approval criteria and were submitted to support a claim of unconstitutional taking of property. Under the statutes cited, they may not be admitted. The Hearings Officer ruled that though he cannot legally consider a constitutional claim, he would allow the evidence so the applicant could preserve a right to raise the issue at LUBA (decision, p. 6 & 17). His concern was proper, but he went overboard. The issue can be preserved by allowing the applicant to simply state his claim, which he has done elsewhere.[2] To allow purportedly factual support brings ORS 197.835 into unnecessary conflict with 215.416 and 197.763.

If you exclude the evidence now, the applicant can still introduce the documents before LUBA under ORS 197.830(13)(b). It's important that the evidence be admitted at LUBA first, because procedures there allow real cross examination. I have not challenged the content of the documents because I don't have to; you can't legally consider them. I will challenge them if they are introduced in a forum that allows me to impeach their authority. If you leave these documents in the record, even if you don't rely on them, you allow them to get before LUBA, unchallenged. That could twist the burden of proof. Defenders of the county decision may have to initiate an evidentiary hearing to prove that what the letters purport to prove is not true. By admitting these letters, the Hearings Officer put the county at unnecessary risk. You can easily correct the mistake by excluding them now. Because you can't consider the letters and because the applicant can present them to LUBA if he appeals, he would not be deprived of any right.

THE VARIANCE

The Hearings Officer explains how the applicant failed to comply with any of the criteria in 11.15.8505(A)(1 to 4). In the staff report Mr. Hall observed that the applicant seeks a variance from the definition of a *lot of record* and correctly concluded that while you can have a variance from a restriction, you can't change a definition. A *lot of record* is what the code says it is; always.

---

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

[2] ORS 197.835(2): "Issues [before LUBA] shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.763." (some exceptions not relevant here follow)

The criteria to justify a variance are, in summary: The circumstances of the property are different from those affecting other property in the zone, the code restricts the property more than other property in the zone, the variance will not be harmful to other property interests, and the variance would not subvert the intent of the zone or Comprehensive Plan. The first sentence of 11.15.8505(A) says:

> "The Approval Authority may permit and authorize a variance from the requirements of this Chapter only when there are cause [sic] practical difficulties in the application of the Chapter."

In deciding whether or not the 4 criteria are met, you can consider only "practical difficulties", that is, not just any circumstances that inconvenience the applicant. Not one bit of evidence has been offered of "practical difficulties". The applican't whole case is that he doesn't like the law.

CONDITIONAL USE

If there's no variance, the conditional use has to be denied because there's just one lawful site and it's occupied (11.15.2172(C)(1) & (2) and .2182(A) to (C). For this and other reasons given by staff and the Hearings Officer, you should deny the conditional use.

CONCLUSION

The applicant, having one house on 4 acres, wants to be exempt from the law that governs others. Nothing in the facts or the law justifies approval. The applicant has the burden of proof. He must prove compliance with all criteria, but fails on many. Failure to convince with substantial evidence on even one criterion requires denial.

To ease the burden of responding to an appeal, the technical points must be addressed:

- The Walker and Watson letters supporting a constitutional claim must be excluded.
- New evidence, except as authorized concerning Policy 37A, must be excluded.
- The findings should say that only "practical difficulties" are relevant to variance criteria.

That the application should be denied is apparent, but extra caution may prevent difficulties on appeal or, better, discourage appeal.

cc (differing in address):
County Commissioners
Planning Division
Clerk of the Board

ANNOTATED MINUTES

Tuesday, August 31, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:31 p.m., with Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

BOARD DISCUSSION IN RESPONSE TO COMMISSIONER COLLIER'S PROPOSAL THAT THE THURSDAY MEETING BE POSTPONED IN ORDER FOR THE BOARD TO ATTEND THE FUNERAL OF KEESTON LOWERY.

P-1 *CS 1-93/HV 1-93/WRG 1-93/CU 7-93 Review the July 30, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Change in Zone Designation from MUA-20, WRG, FH to C-S, Community Service, for Reconfiguration and Expansion of Marina Facilities, Boat Repair Facility, Variances for Gravel Parking and a WRG Permit, for Property Located at 23586 NW ST. HELENS ROAD (ROCKY POINT MARINA).*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 *ZC 1-93/LD 17-93/E 1-93 Review the August 4, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Requested Change in Zone from LR-7 to LR-5, a Three Lot Land Division and a Lot Width and Setback Exception, for Property Located at 5116 SE 115TH AVENUE.*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Vice-Chair Gary Hansen arrived at 1:40 p.m.

P-3 *CU 20-93 Review the August 5, 1993 Planning and Zoning Hearings Officer Decision Denying Conditional Use Request for Property Located at 31075 SE LUSTED ROAD. (APPLICANT HAS FILED NOTICE OF REVIEW APPEALING DECISION.)*

DECISION READ. PLANNING DIRECTOR SCOTT PEMBLE REPORTED A NOTICE OF REVIEW APPEAL WAS FILED AND THAT STAFF RECOMMENDS AN APPEAL HEARING BE SCHEDULED FOR SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE LOT OF RECORD, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE.

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, THAT A HEARING ON CU 20-93 BE HELD ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF THE LOT OF RECORD STATUS, TESTIMONY

LIMITED TO 10 MINUTES PER SIDE, AND THAT THE HEARINGS OFFICER BE AVAILABLE AT THAT TIME.

IN RESPONSE TO A REQUEST FROM APPELLANT'S ATTORNEY TIM RAMIS TO ADDRESS THE BOARD, COUNTY COUNSEL LAURENCE KRESSEL EXPLAINED THAT DESPITE APPLICANT'S CLAIM THAT THERE ARE NO OTHER PARTIES TO THIS CASE, PURSUANT TO COUNTY CODE, THE BOARD CANNOT HEAR TESTIMONY REGARDING THE SCOPE OF REVIEW UNLESS REQUIRED NOTICE OF A SCOPE OF REVIEW HEARING IS GIVEN TO ALL PARTIES ENTITLED TO SUCH NOTICE. MR. KRESSEL REFERRED THE BOARD TO APPELLANT'S NOTICE OF REVIEW RELATIVE TO THEIR REQUEST TO INTRODUCE NEW EVIDENCE, AND DISCUSSED ZONING ORDINANCE CRITERIA AS TO WHETHER APPELLANT MEETS THE TEST FOR EXPANDING THE RECORD.

IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, COMMISSIONER COLLIER ADVISED IT IS HER INTENT THAT THE BOARD SET THE SCOPE OF REVIEW TODAY, LIMITING NEW EVIDENCE TO THE LOT OF RECORD. BOARD, COUNTY COUNSEL AND PLANNING DIRECTOR COMMENTS AND DISCUSSION.

COMMISSIONER SALTZMAN WITHDREW HIS SECOND, EXPLAINING HE DOES NOT WISH TO LIMIT THE SCOPE OF REVIEW TO THE LOT OF RECORD. COMMISSIONER COLLIER EXPLAINED THAT ANY EVIDENCE BROUGHT BEFORE THE HEARINGS OFFICER COULD BE DISCUSSED AT THE APPEAL HEARING AND THAT ANY NEW EVIDENCE WOULD BE LIMITED TO THE LOT OF RECORD. IN RESPONSE TO COMMISSIONER SALTZMAN WITHDRAWING HIS SECOND, CHAIR STEIN SECONDED COMMISSIONER COLLIER'S MOTION. BOARD COMMENTS. MOTION FAILED WITH COMMISSIONERS COLLIER AND STEIN VOTING AYE AND COMMISSIONERS KELLEY, HANSEN AND SALTZMAN VOTING NO.

FOLLOWING CONSULTATION WITH MR. KRESSEL, COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER SALTZMAN, THAT A HEARING BE SET FOR SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO: 1) THE 1980 RULE THAT EACH OF APPLICANT'S LOTS WOULD BE TREATED AS A SEPARATE LOT OF RECORD 2) EVIDENCE RELATING TO PROPOSED HOMESITE AND ENTIRE PARCEL CONCERNING GENERAL SUITABILITY FOR FARMING AND 3) EVIDENCE RELATING TO THE OTHER APPROVAL CRITERIA AS INTERPRETED BY THE HEARINGS OFFICER, TESTIMONY LIMITED TO 10 MINUTES PER SIDE. COMMISSIONER COLLIER COMMENTED IN OPPOSITION TO MOTION AND REQUESTED A REVIEW OF THE BOARD'S ROLE IN THE LAND USE PROCESS TO DETERMINE WHETHER THE BOARD WANTS TO BECOME INVOLVED IN DECIDING TECHNICAL LAND USE ISSUES WITHOUT BENEFIT OF PLANNING COMMISSION, HEARINGS OFFICER AND/OR STAFF RECOMMENDATIONS.

CHAIR STEIN ADVISED SHE HAS DIRECTED COUNTY COUNSEL TO DRAFT PROPOSED CHANGES IN THE LAND USE PROCEDURES FOR THE BOARD'S REVIEW. MOTION PASSED WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE AND COMMISSIONER COLLIER VOTING NO.

P-4 *CU 17-93/HV 9-93 Review August 13, 1993 Planning and Zoning Hearings Officer Decision Denying Conditional Use Request and Lot Size Variance Request for Property Located at 3130 NW FOREST LANE. (APPLICANT HAS FILED NOTICE OF REVIEW APPEALING DECISION.)*

DECISION READ. MR. PEMBLE REPORTED A NOTICE OF REVIEW APPEAL WAS FILED AND THAT STAFF RECOMMENDS AN APPEAL HEARING BE SCHEDULED ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE TO ADDRESS POLICY 37A, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE.

MR. ARNOLD ROCHLIN SUBMITTED WRITTEN TESTIMONY AND REQUESTED PERMISSION TO SPEAK TO THE BOARD IN REGARD TO THE APPROPRIATENESS OF HOLDING A SCOPE OF REVIEW HEARING. IN RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN AND CHAIR STEIN, MR. KRESSEL EXPLAINED CODE REQUIREMENTS FOR NOTICE CRITERIA BEFORE THE BOARD CAN HEAR TESTIMONY CONCERNING THE SCOPE OF REVIEW OTHER THAN THAT CONTAINED IN APPELLANT'S NOTICE OF REVIEW. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. PEMBLE EXPLAINED THE CLOSING DATE FOR A NOTICE OF APPEAL IS SOMETIMES 4:30 p.m. THE MONDAY BEFORE A CASE IS REPORTED TO THE BOARD ON TUESDAY, SO OTHER PARTIES TO THE CASE MAY NOT RECEIVE NOTICE THAT IT HAS BEEN APPEALED.

COMMISSIONER SALTZMAN SUGGESTED HEARING HEARING MR. ROCHLIN'S TESTIMONY. COMMISSIONER COLLIER ADVISED SHE FEELS IT IS THE BOARD'S JOB TO REVIEW THE HEARINGS OFFICER DECISION AND APPELLANT'S STATEMENT TO DETERMINE THE SCOPE OF REVIEW BY APPLYING THE CRITERIA AS TO PREJUDICE TO THE PARTIES; CONVENIENCE OR AVAILABILITY OF EVIDENCE AT THE TIME OF THE INITIAL HEARING; SURPRISE TO THE OPPOSING PARTIES; AND COMPETENCY, RELEVANCY AND MATERIALITY OF THE PROPOSED TESTIMONY AND OTHER EVIDENCE. COMMISSIONER COLLIER SUGGESTED THAT THE BOARD SET THE SCOPE OF REVIEW TODAY IN ORDER TO AVOID MORE DELAY BY HAVING A SCOPE OF REVIEW HEARING.

IN RESPONSE TO CHAIR STEIN'S QUESTION, MR. KRESSEL EXPLAINED THAT EXCEPT FOR WRITTEN TESTIMONY CONTAINED IN APPELLANT'S NOTICE OF REVIEW, APPELLANT AND/OR SOMEONE OTHER THAN APPELLANT DOES NOT HAVE THE OPPORTUNITY TO SPEAK TO THE SCOPE OF REVIEW ISSUE UNLESS A

PROPERLY NOTICED SCOPE OF REVIEW HEARING IS HELD. COMMISSIONER COLLIER AND MR. KRESSEL EXPLAINED THAT AT THE APPEAL HEARING, ANY PARTY TO THE CASE CAN DEBATE AND DISCUSS ISSUES PREVIOUSLY INTRODUCED INTO THE RECORD IN ADDITION TO THE NEW EVIDENCE, WITHIN THE TIME FRAME ALLOTED. IN RESPONSE TO COMMISSIONER SALTZMAN ADVISING THAT MR. ROCHLIN'S LETTER ADDRESSES WHETHER OR NOT POLICY 37A SHOULD BE ALLOWED AS NEW EVIDENCE, COMMISSIONER COLLIER SUGGESTED THAT MR. ROCHLIN TESTIFY TO THAT ISSUE AT THE APPEAL HEARING.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT A HEARING ON CU 17-93/HV 9-93 BE HELD ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF POLICY 37A, TESTIMONY LIMITED TO 10 MINUTES PER SIDE. AT THE REQUEST OF COMMISSIONER COLLIER, CHAIR STEIN DIRECTED STAFF TO SEE THAT THE HEARINGS OFFICERS ARE AVAILABLE TO ATTEND BOTH APPEAL HEARINGS.

P-5 C 2-93 *RESOLUTION in the Matter of Accepting the West Hills Rural Area Plan Scoping Report and Directing the Planning Division of the Department of Environmental Services to Implement a Work Program to Prepare the West Hills Rural Area Plan*

The Board recessed at 2:25 p.m. and reconvened at 2:31 p.m.

SLIDE PRESENTATION, EXPLANATION AND RESPONSE TO BOARD QUESTIONS BY SCOTT PEMBLE, GORDON HOWARD AND ELAINE COGAN. TESTIMONY IN SUPPORT OF THE PLAN FROM ARNOLD ROCHLIN, JOHN SHERMAN, CHRIS WRENCH AND PHILIP THOMPSON. TESTIMONY REGARDING NEED FOR MORE EXTENSIVE CITIZEN NOTIFICATION OF FUTURE PUBLIC HEARINGS CONCERNING GOALS 4 AND 5 FROM DONIS McARDLE AND JOSEPH KABDEBO.

COMMISSIONER SALTZMAN REPORTED THAT NOTICE WILL BE MAILED TO ALL PROPERTY OWNERS, INCLUDING NON-RESIDENTS, OF THE WEST HILLS RURAL AREA PLAN WORKSHOP TO BE HELD ON SAUVIE ISLAND SEPTEMBER 22, 1993 AND EXPLAINED THAT IT WILL BE INCUMBENT UPON THOSE RECEIVING THAT NOTICE TO CONTACT THE PLANNING DIVISION TO GET ON THE WEST HILLS MAILING LIST FOR INFORMATION ON FUTURE MEETINGS. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. PEMBLE EXPLAINED THE PLAN DEVELOPMENT PHASE IS PUBLIC NOTIFICATION OF THE WORKSHOP TO EXPLAIN WHAT AND IS PLANNED AND HOW THE COUNTY INTENDS TO IMPLEMENT THE PLAN AND TO SOLICIT CITIZEN INPUT, FOLLOWED BY THE PLAN ADOPTION PHASE. MR. PEMBLE EXPLAINED THE DIVISION INTENDS DIRECT MAIL NOTIFICATION WHEN

THE PLAN IS SUBMITTED TO THE PLANNING COMMISSION AND WHEN IT IS SUBMITTED TO THE COUNTY BOARD. IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MR. PEMBLE EXPLAINED THERE ARE CURRENTLY 380 NAMES ON THE WEST HILLS MAILING LIST AND THAT MR. HOWARD AND A MEMBER OF COMMISSIONER SALTZMAN'S OFFICE ARE WORKING ON THE SAUVIE ISLAND WORKSHOP FLYER.

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, ADOPTION OF THE RESOLUTION ACCEPTING THE SCOPING REPORT AND PROPOSED WORK PROGRAM FOR THE WEST HILLS RURAL AREA PLAN. BOARD COMMENTS. VOTE ON RESOLUTION 93-290 UNANIMOUSLY APPROVED.

MR. PEMBLE REPORTED THAT PLANNING STAFF AND PLANNING COMMISSION HAD JUST COMPLETED THE WORK ON AMENDMENTS TO THE EFU ZONE AS MANDATED BY OREGON ADMINISTRATIVE RULES ADOPTED BY THE LAND CONSERVATION AND DEVELOPMENT COMMISSION IN JANUARY, 1992, HOWEVER DUE TO RECENT PASSAGE OF HB 3661B-ENGROSSED, THEY WILL NEED TO COME BEFORE THE BOARD TO DISCUSS HOW TO ADDRESS THE NEW REQUIREMENTS.

There being no further business, the meeting was adjourned at 3:15 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah C Bogstad

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

September 7, 1993

NOTICE OF PUBLIC HEARING

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

Case Files:	**CU 17–93, HV 9–93**
Scheduled Before:	**Board of County Commissioners**
Hearing Date, Time, & Place:	**SEPTEMBER 28, 1993; at 1:30 p.m.** **Multnomah County Courthouse, Room 602** **1021 SW 4th Avenue, Portland**

Scope of Review: On the Record plus additional testimony regarding Comprehensive Framework Plan Policy No. 37 – Disposal.

Time Allowed for Testimony: 10 minutes per side.

Proposed Actions and Uses:	**Conditional Use** (non-resource related residence) **Variance** (for lot areas)
Location of the Proposal:	3130 NW Forest Lane
Legal Description of Property:	Tax Lot '77', Sec. 25, T.1N., R.1W.(1992 Assessor's Map)
Plan Designation:	Multiple Use Forest
Zoning District:	MUF–19
Applicant:	William D. Hackett 3130 NW Forest Lane 97229
Property Owner	Same

APPEAL SUMMARY: Appellant appeals an August 13, 1993 Hearings Officer decision which denied applications CU 17–93 and HV 9–93 for a non-resource related residence and lot area variances of 17.17 and 16.67 acres. A *Notice of Review* (appeal) of CU 17–93 and HV 9–93 was filed on August 23, 1993. On August 31, 1993 the appeal was reported to the Board and the Board acted to hear the appeal on the record plus additional testimony regarding Comprehensive Framework Plan Policy No. 37 – Disposal. The Board will limit testimony to ten minutes per side.

Other Plan Policies applicable to the requests are: #12, #13, #22, #37, & 38 &40. Applicable zoning criteria in Multnomah County Code (MCC) 11.15.2172(C) and .8505 are detailed on pages attached to this notice.

PUBLIC PARTICIPATION AND HEARING PROCESS: Application materials and the grounds for appeal are available for inspection at no cost at least 20 days prior to the hearing. Copies may be purchased for 30-cents per page. For further information on this case, call Bob Hall at 248-3043 [M-F, 8:00-4:30].

To comment on the 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 applicable to the request, **but be limited to the *Scope of Review* listed on the front page of this notice.** The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* (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 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.

NON-RESOURCE RELATED RESIDENCE APPROVAL CRITERIA
[ref. MCC 11.15.2172(C)]

A. A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use where it is demonstrated that:

(1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).

(2) The land is incapable of sustaining a farm or forest use, based upon one of the following:

(a) A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the

area;

(b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or

(c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.

(3) A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.

(4) The dwelling will not require public services beyond those existing or programmed for the area.

(5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

(6) The residential use development standards of MCC .2194 will be met (section B below).

B. MCC 11.15.2194: A residential use located in the MUF district after August 14, 1980 shall comply with the following:

(1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:

(a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area;

(b) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas.

(2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;

(3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2058(B). The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;

(4) The dwelling shall be located on that portion of the lot having the lowest productivity

characteristics for the proposed primary use, subject to the limitations of subpart #3 above;

(5) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

(a) a setback of 30 feet or more may be provided for a public road, or

(b) the location of dwelling(s) of adjacent lots at a lesser distance which allows for clustering of dwellings or sharing of access;

(6) The dwelling shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes;

(7) The dwelling shall be attached to a foundation for which a building permit has been obtained;

(8) The dwelling shall have a minimum floor area of 600 square feet; and

(9) 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 will be acceptable.

C. Comprehensive Framework Plan Policies requiring a Finding prior to a quasi-judicial decision:

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

(2) POLICY NO. 22, ENERGY CONSERVATION. THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;

B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND 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 CLIMACTIC CONDITIONS TO ADVANTAGE.

E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

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

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR

B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR

C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

(4) POLICY NO. 38, FACILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR

TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

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

POLICE PROTECTION

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

(5) POLICY NO. 40, DEVELOPMENT REQUIREMENTS. THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.

B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.

C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

VARIANCE APPROVAL CRITERIA:

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

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

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

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

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

253-7628 8/23/93

500.
500.

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

NOTICE OF REVIEW

CU 17-93
HV 9-93
Last day to file Notice of Review Monday 8/23/93 4:30 P.M.

1. **Name:** Hackett (*Last*), D. (*Middle*), William (*First*)
2. **Address:** 3130 NW Forest Lane (*Street or Box*), Portland (*City*), OR 97229 (*State and Zip Code*)
3. **Telephone:** (503) 292 - 5508
4. **If serving as a representative of other persons, list their names and addresses:**

   The following individual represents Mr. Hackett:

   Michael C. Robinson, Esq.
   Stoel Rives Boley Jones & Grey
   900 SW Fifth Avenue, Suite 2300
   Portland, OR 97204-1268

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

   Hearings Officer's denial of a conditional use for a non-resource dwelling and a variance to the minimum lot size in the MUF-19 zone (CU 17-93 and HV 9-93).

6. **The decision was announced by the Planning Commission on** August 13, 1993

7. **On what grounds do you claim status as a party pursuant to MCC 11.15.8225?**

   Mr. Hackett is the applicant and entitled to notice under MCC Section 11.15.8220(C)(1).

RECEIVED
AUG 23 1993
Multnomah County
Zoning Division

Please return the original form

BEFORE THE MULTNOMAH COUNTY

BOARD OF COMMISSIONERS

IN THE MATTER OF AN APPEAL BY WILLIAM D. HACKETT OF THE HEARINGS OFFICER'S DENIAL OF A CONDITIONAL USE PERMIT FOR A NON-RESOURCE DWELLING AND A VARIANCE TO THE MINIMUM LOT SIZE IN THE MUF-19 ZONE (CU 17-93 AND HV 9-93)	))))))))	APPLICANT'S STATEMENT

1. **GROUNDS FOR REVERSAL OF DECISION.**

A. The Hearings Officer erred in failing to find that the applicant carried his burden of proof regarding the variance request.

B. The Hearings Officer erred in relying on a draft, unadopted version of the West Hills study and the City of Portland's Balch Creek study (Exhibits 46 and 47) for substantial evidence as to the impact of this application on Forest Park and forest lands.

C. The Hearings Officer erred in according any precedential value to the approval of the variance.

D. The Hearings Officer erred in failing to find that applicant carried his burden of proof regarding the conditional use request.

E. Denial of the applications will result in a taking of tax lot 78 under the Oregon and U.S. Constitutions.

F. ORS 92.017 prohibits the County from denying a use for tax lot 78.

G. The County's failure to provide individual notice to the applicant under ORS 215.508 violated the applicant's right to due process.

2. **GROUNDS FOR AN "ON THE RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE" SCOPE OF REVIEW.**

The Board may hear additional evidence under § 11.15.8270(E) if (1)-(4) are satisfied. The applicant wishes to submit a land feasibility study. The

comprehensive plan requires the submission of a land feasibility study prior to approval of a quasi-judicial decision. On appeal, the Board may consider the study.

The four factors for allowing the evidence are discussed below:

(1) Parties will not be prejudiced by the addition of a single, discrete piece of evidence.

(2) The applicant could not obtain the evidence at the time of the initial hearing.

(3) The applicant will provide the study to the staff and other parties in advance of the hearing.

(4) The land feasibility study is relevant and material to the application.

3. **MOTION TO STRIKE EXHIBIT 44**.

The Hearings Officer held that record open until July 26 to take additional written testimony from all parties. The Hearings Officer held the record open until August 2 for the applicant to respond to new written testimony.

Exhibit 44 is a letter from Arnold Rochlin to Larry Epstein dated August 2. Mr. Rochlin's letter is a rebuttal to evidence submitted by the applicant on July 26. The letter should not have been accepted because Mr. Rochlin submitted it after July 26.

Respectfully submitted,

Michael C. Robinson
Attorney for Applicant and Appellant,
William D. Hackett

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C417-93 / #09-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☑ Notice of Review — No. of Pages 4

*(Maybe distributed at Board Meeting)

☑ Previously Distributed _____

☑ Decision — No. of Pages 21

(Hearings Officer/Planning Commission)

☑ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C417-93 /#09-93

I. Materials Distributed to the Board

- ☑ Agenda Placement Sheet (1 Pages)
- ☑ Case Summary Sheet (1 Pages)
- ☐ Notice of Review Application (Pages)
- ☐ Decision (Pages)
  (Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☐ Minutes (Pages)
- ☑ Transcript (18 Pages)
- ☑ Applicant's Application and Submittals (58 Pages)
- ☑ Case Correspondence (6 Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
  (Maps)
- ☐ Other Materials ( )

(CL/2)

MULTNOMAH COUNTY

BOARD HEARING OF September 28, 1993

TIME 1:30pm

CASE NAME Hackett Lot of Record

NUMBER CU 17–93/HV 9–93

1. Applicant Name/Address

William Hackett

3130 NW Forest Lane

ACTION REQUESTED OF BOARD

- ☐ Affirm Plan.Com./Hear.Of
- ☑ Hearing/Rehearing
  - ☐ Scope of Review
    - ☑ On the record
    - ☐ De Novo
    - ☑ New Information allowed

2. Action Requested by applicant

Determination that a 4.06 acre parcel is two Lots of Record (1.83 & 2.23 acres) in the MUF–19 district and approval of a non-resource related residence on the proposed 2.23 acre lot.

3. Planning Staff Recommendation

Denial

4. Planning Commission or Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

ISSUES
(who raised them?)

a. That separately deeded contiguous, substandard parcels may be relieved from the aggregation requirements of the Lot of Record definition through approval of a variance (applicant)

b. Impact on Balch Creek watershed (opponents)

c. Increase number of non-resource related rural area dwelling units (opponents)

Do any of these issues have policy implications? Explain.

Approval of variances to recognize two separately developable lots would drastically increase the potential number of rural residences in resource zoning districts by setting a precedent that owners of other similarly aggregated parcels would utilize to gain additional building sites. That is contrary to the County's policy of retaining resource lands in parcels as large a possible to preserve the opportunity for resource uses.

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

September 7, 1993

NOTICE OF PUBLIC HEARING

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

Case Files:	**CU 17–93, HV 9–93**
Scheduled Before:	**Board of County Commissioners**
Hearing Date, Time, & Place:	**SEPTEMBER 28, 1993; at 1:30 p.m.** **Multnomah County Courthouse, Room 602** **1021 SW 4th Avenue, Portland**

Scope of Review: On the Record plus additional testimony regarding Comprehensive Framework Plan Policy No. 37 – Disposal.

Time Allowed for Testimony: 10 minutes per side.

Proposed Actions and Uses:	**Conditional Use** (non-resource related residence) **Variance** (for lot areas)
Location of the Proposal:	3130 NW Forest Lane
Legal Description of Property:	Tax Lot '77', Sec. 25, T.1N., R.1W.(1992 Assessor's Map)
Plan Designation:	Multiple Use Forest
Zoning District:	MUF–19
Applicant:	William D. Hackett 3130 NW Forest Lane 97229
Property Owner	Same

APPEAL SUMMARY: Appellant appeals an August 13, 1993 Hearings Officer decision which denied applications CU 17–93 and HV 9–93 for a non-resource related residence and lot area variances of 17.17 and 16.67 acres. A *Notice of Review* (appeal) of CU 17–93 and HV 9–93 was filed on August 23, 1993. On August 31, 1993 the appeal was reported to the Board and the Board acted to hear the appeal on the record plus additional testimony regarding Comprehensive Framework Plan Policy No. 37 – Disposal. The Board will limit testimony to ten minutes per side.

Other Plan Policies applicable to the requests are: #12, #13, #22, #37, & 38 &40. Applicable zoning criteria in Multnomah County Code (MCC) 11.15.2172(C) and .8505 are detailed on pages attached to this notice.

PUBLIC PARTICIPATION AND HEARING PROCESS: Application materials and the grounds for appeal are available for inspection at no cost at least 20 days prior to the hearing. Copies may be purchased for 30-cents per page. For further information on this case, call Bob Hall at 248-3043 [M-F, 8:00-4:30].

To comment on the 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 applicable to the request, **but be limited to the *Scope of Review* listed on the front page of this notice.** The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* (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 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.

NON-RESOURCE RELATED RESIDENCE APPROVAL CRITERIA
[ref. MCC 11.15.2172(C)]

A. A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use where it is demonstrated that:

(1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).

(2) The land is incapable of sustaining a farm or forest use, based upon one of the following:

(a) A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the

area;

(b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or

(c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.

(3) A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.

(4) The dwelling will not require public services beyond those existing or programmed for the area.

(5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

(6) The residential use development standards of MCC .2194 will be met (section B below).

B. MCC 11.15.2194: A residential use located in the MUF district after August 14, 1980 shall comply with the following:

(1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:

(a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area;

(b) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas.

(2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;

(3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2058(B). The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;

(4) The dwelling shall be located on that portion of the lot having the lowest productivity

characteristics for the proposed primary use, subject to the limitations of subpart #3 above;

(5) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

(a) a setback of 30 feet or more may be provided for a public road, or

(b) the location of dwelling(s) of adjacent lots at a lesser distance which allows for clustering of dwellings or sharing of access;

(6) The dwelling shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes;

(7) The dwelling shall be attached to a foundation for which a building permit has been obtained;

(8) The dwelling shall have a minimum floor area of 600 square feet; and

(9) 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 will be acceptable.

C. Comprehensive Framework Plan Policies requiring a Finding prior to a quasi-judicial decision:

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

(2) POLICY NO. 22, ENERGY CONSERVATION. THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. ... THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:

A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;

B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND 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 CLIMACTIC CONDITIONS TO ADVANTAGE.

E. FINALLY, THE COUNTY WILL ALLOW GREATER FLEXIBILITY IN THE DEVELOPMENT AND USE OF RENEWABLE ENERGY RESOURCES.

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

WATER AND DISPOSAL SYSTEM

A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR

B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR

C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM; OR

D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR

F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.

ENERGY AND COMMUNICATIONS

H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND

I. COMMUNICATIONS FACILITIES ARE AVAILABLE.

(4) POLICY NO. 38, FACILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR

TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

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

POLICE PROTECTION

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

(5) POLICY NO. 40, DEVELOPMENT REQUIREMENTS. THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.

B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.

C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.

VARIANCE APPROVAL CRITERIA:

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

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

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

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

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

SEP 28 1993

MEETING DATE: August 31, 1993

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision of August 13, 1993

BOARD BRIEFING *Date Requested:* _____

Amount of Time Needed: _____

REGULAR MEETING: *Date Requested:* August 31, 1993

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES *DIVISION:* Planning

CONTACT: Sharon Cowley *TELEPHONE #:* 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY *[ ] POLICY DIRECTION* *[ ] APPROVAL* (x) DENIAL *[ ] OTHER*

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

CU 17-93/HV 9-93 Review the Decision of the Hearings Officer of August 13, 1993, denying conditional use request and lot size variance request for property located at 3130 NW Forest Lane

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: BH Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

D-4 (CU 17-93/HV 9-93)

MOTIONS TO SET HEARINGS ON LAND USE APPEALS [These are made at the hearing where the staff reports the appealed decisions]

1. Motion for a hearing to determine scope of review (where appellant has asked for Denovo review or "on the record with additional evidence".

   I move that there be a hearing to determine the scope of review on Case #_____, to be held on (date) _____. Each side will be allowed 10 minutes.

2. Motion for a hearing on the record.

   I move that the hearing on (Case #) _____ be held on (date) _____ and that the hearing be on the record, allowing _____ minutes per side for argument.

(3.) Motion for hearing on the record with additional evidence.

   I move that the hearing on (Case #) CU 17-93/ HV 9-93 be held on (date) SEPT 28, 1993 and that the hearing be on the record, with additional evidence limited to the subject of: LAND FEASIBILITY STUDY _____. Each side will be allowed 10 minutes.

4. Motion for DeNovo hearing.

   I move that the hearing on (Case #) _____ be held on (date) _____ and that the hearing be de novo, allowing each side _____ minutes.

CRITERIA FOR ALLOWING EITHER DENOVO REVIEW OR REVIEW "ON THE RECORD WITH ADDITIONAL EVIDENCE."

MCC 11.15.8270(E)(2) "CONVENIENCE OR AVAILABILITY OF EVIDENCE"

MCC 11.15.8270(E)(4) "COMPETENCY, RELEVANCY & MATERIALITY"

August 31, 1993

Forest Park Neighborhood Association

Arnold Rochlin, Vice Pres.
P.O. Box 83645
Portland, OR 97283-0645
289-2657

Multnomah County
Board of Commissioners
1021 SW 4th Ave.
Portland, Or 97204

Re. CU 17-93 & HV 9-93 (Lot Size Variance) - Hackett, William D.

I'm testifying for myself and on behalf of the Forest Park Neighborhood Association.

I. Challenge of Record

I request that lawfully inadmissible evidence concerning a constitutional issue allowed by the Hearings Officer be deleted from the record. I request that you allow an additional 5 minutes for each side to argue this issue before the substantive part of the review hearing.[1]

II. Scope of Review

The Board's discretion to allow selected new evidence is limited. MCC 11.15.8270(E) requires that you reach a conclusion "that the additional testimony or other evidence could not reasonably have been presented at the prior hearing." You are required to consider four specific areas of concern:

(1) Prejudice to parties; (Would admission or refusal deprive a party, through no fault or omission of his own, of the opportunity for a fair hearing?)

(2) Convenience or availability of evidence at the time of the initial hearing; (Was the new evidence beyond the reach of a party making all reasonable effort to obtain it or did the county conceal it?)

(3) Surprise to opposing parties; (Is the new evidence needed to reply to testimony to the Hearings Officer that the applicant could not reasonably have expected?)

(4) The competency, relevancy and materiality of the proposed testimony or other evidence." (Does the new evidence address the approval criteria and is it of a substantial nature?)

I believe that a decision to allow new evidence must have findings showing that these four points were considered, that you are satisfied the evidence could not reasonably have been offered to the Hearings Officer and on what you base that conclusion.

Arnold Rochlin

[1] At this time I have in mind to request deletion of a letter of April 1, 1993 and any attachments from Frank Walker to Michael Robinson and a letter of June 24, 1993 and attachments from John C. Watson to William D. Hackett. I may identify others.

required transcript fee.
Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

(D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

11.15.8265 Board Order for Review

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

11.15.8270 Scope of Review

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

(1) On the record; or

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

(B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

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

(1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;

(2) All materials submitted by the Planning Director with respect to the proposal;

(3) The transcript of the hearing below;

(4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

(D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

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

(1) Prejudice to parties;

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

(3) Surprise to opposing parties;

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

(F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

(G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

(H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

11.15.8275. Notice of Board Hearing

(A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer

7628 11 500.
253-7628 8/23/93 500.

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

NOTICE OF REVIEW

CU 17-93
HV 9-93
Last day to file Notice of Review Monday 8/23/93 4:30 P.M.

1. **Name:** Hackett (*Last*), D. (*Middle*), William (*First*)
2. **Address:** 3130 NW Forest Lane (*Street or Box*), Portland (*City*), OR 97229 (*State and Zip Code*)
3. **Telephone:** (503) 292 - 5508
4. **If serving as a representative of other persons, list their names and addresses:**

   The following individual represents Mr. Hackett:

   Michael C. Robinson, Esq.
   Stoel Rives Boley Jones & Grey
   900 SW Fifth Avenue, Suite 2300
   Portland, OR 97204-1268

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

   Hearings Officer's denial of a conditional use for a non-resource dwelling and a variance to the minimum lot size in the MUF-19 zone (CU 17-93 and HV 9-93).

6. **The decision was announced by the Planning Commission on** August 13, 1993

7. **On what grounds do you claim status as a party pursuant to MCC 11.15.8225?**

   Mr. Hackett is the applicant and entitled to notice under MCC Section 11.15.8220(C)(1).

RECEIVED
AUG 23 1993
Multnomah County
Zoning Division

Please return this original form

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

See attached statement.

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [XX] 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 statement.

Signed: William A. Jackett Date: 19 Aug. 1993

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing 60 mins x $3.50/minute = $ 210.00

Total Fee = $ 510.00

Received by: _____ Date: 8/23/93 Case No. C417-93

BEFORE THE MULTNOMAH COUNTY

BOARD OF COMMISSIONERS

IN THE MATTER OF AN APPEAL BY WILLIAM D. HACKETT OF THE HEARINGS OFFICER'S DENIAL OF A CONDITIONAL USE PERMIT FOR A NON-RESOURCE DWELLING AND A VARIANCE TO THE MINIMUM LOT SIZE IN THE MUF-19 ZONE (CU 17-93 AND HV 9-93)	)	APPLICANT'S STATEMENT

1. GROUNDS FOR REVERSAL OF DECISION.

A. The Hearings Officer erred in failing to find that the applicant carried his burden of proof regarding the variance request.

B. The Hearings Officer erred in relying on a draft, unadopted version of the West Hills study and the City of Portland's Balch Creek study (Exhibits 46 and 47) for substantial evidence as to the impact of this application on Forest Park and forest lands.

C. The Hearings Officer erred in according any precedential value to the approval of the variance.

D. The Hearings Officer erred in failing to find that applicant carried his burden of proof regarding the conditional use request.

E. Denial of the applications will result in a taking of tax lot 78 under the Oregon and U.S. Constitutions.

F. ORS 92.017 prohibits the County from denying a use for tax lot 78.

G. The County's failure to provide individual notice to the applicant under ORS 215.508 violated the applicant's right to due process.

2. GROUNDS FOR AN "ON THE RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE" SCOPE OF REVIEW.

The Board may hear additional evidence under § 11.15.8270(E) if (1)-(4) are satisfied. The applicant wishes to submit a land feasibility study. The

comprehensive plan requires the submission of a land feasibility study prior to approval of a quasi-judicial decision. On appeal, the Board may consider the study.

The four factors for allowing the evidence are discussed below:

(1) Parties will not be prejudiced by the addition of a single, discrete piece of evidence.

(2) The applicant could not obtain the evidence at the time of the initial hearing.

(3) The applicant will provide the study to the staff and other parties in advance of the hearing.

(4) The land feasibility study is relevant and material to the application.

3. **MOTION TO STRIKE EXHIBIT 44**.

The Hearings Officer held that record open until July 26 to take additional written testimony from all parties. The Hearings Officer held the record open until August 2 for the applicant to respond to new written testimony.

Exhibit 44 is a letter from Arnold Rochlin to Larry Epstein dated August 2. Mr. Rochlin's letter is a rebuttal to evidence submitted by the applicant on July 26. The letter should not have been accepted because Mr. Rochlin submitted it after July 26.

Respectfully submitted,

Michael C. Robinson
Attorney for Applicant and Appellant,
William D. Hackett

MULTNOMAH COUNTY OREGON
DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CU 17-93/HV 9-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review — No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☑ Decision — No. of Pages 2/

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY

BOARD HEARING OF August 31, 1993

TIME 1:30pm

CASE NAME Hackett Lot of Record NUMBER CU 17–93/HV 9–93

1. Applicant Name/Address

William Hackett

3130 NW Forest Lane

ACTION REQUESTED OF BOARD

- ☑ Affirm Plan.Com./Hear.Of
- ☐ Hearing/Rehearing
  - ☐ Scope of Review
    - ☐ On the record
    - ☐ De Novo
    - ☐ New Information allowed

2. Action Requested by applicant

Determination that a 4.06 acre parcel is two Lots of Record (1.83 & 2.23 acres) in the MUF–19 district

3. Planning Staff Recommendation

Denial

4. Planning Commission or Hearings Officer Decision:

Denial

5. If recommendation and decision are different, why?

ISSUES

(who raised them?)

a. Impact on Balch Creek (opponents)

b. Increase in rural area dwelling unit density (opponents)

Do any of these issues have policy implications? Explain.

Approval would drastically increase the potential number of rural residences in resource zoning districts.

HO MEETING
July 19, 1993

CU17-93/HV9-93

HO - Larry Epstein

Staff: S. Cowley, Clifford

Robinson: Good morning. For the record my name is Mike Robinson. My mailing address is 900 SW 5th Avenue, Suite 2300, Portland, Oregon 97204-1268. I represent the applicant in this matter Bill Hackett. I should indicate that I have requested in writing I be granted twenty minutes for my presentation rater than ten. I hope it doesn't take twenty minutes, but I would like a few extra minutes if necessary. I should also indicate - I want to confirm that a couple of things are in the record. If not, I have them here but I submitted prior to the twenty day period.

One is a letter ...

Epstein: Before you begin here, can I ask you to pull the file, so we can check...

Robinson: The first is a letter from me dated June 29, 1993.

Epstein: Yes.

Robinson: Okay, behind that I think is a letter from John M. Watson dated June 24, 1993.

Epstein: Yes.

Robinson: Okay. And, the last two letters were submitted in February and April. The third letter is a letter from Mike Cluleay dated February 23, 1993. It is a one page letter.

Epstein: Yes.

Robinson: And, the last letter is one from Frank Walker dated April 1, 1993. It is a three page letter.

Epstein: No, I don't see that.

Robinson: Okay. I should also indicate that I reviewed the....staff file for these two requests. On approximately June 29th I found neither of the maps

that are portrayed on the wall in the file so after the close of the hearing before the close of the record I would like an opportunity to review those maps.

Robinson: As you noted this is a request for a conditional use for a non-resource dwelling in a multiple use forest 19 zone and a variance permit, two lots of record where the county believes there is only one site consist of two distinct parcels. Now the current tax i.d. map shows one tax map which is current, well, semi. For use of reference I am going to refer to the two previous tax i.d. numbers, tax lot 77 - required the applicant in 1967 is the southerly lot containing 1.83 acres. There is a house on that. Tax lot 78 was acquired by the applicant under contract in 1978. The deed was transferred to him in 1981. It contains 2.33 acres. It is currently vacant. Both parcels were lawfully created by deed. There was not partitioning or subdivision in effect when they were created. Both parcels met the Multnomah County Zoning Ordinance requirements when created in 1967. At that time I believe they were in the R-20 zone. No parcel, the lines have not been changed since 1967 and 1978 respectively. The county changed the zoning in 1977 ---- 20 with a 20 acre minimum and later in 1980 MUF 19 and 19 acre minimum. And, as staff noted that is where we got the aggregation requirement.

In terms of the surrounding area I think staff is essentially correct about the character of the area but let me emphasize again what is up there. To the east is Forest Park. It falls away very rapidly in terms of slope from the property. To the north is an undeveloped lot, north to that is a single family home. To the west are three lots - two of which contain single family homes and to the south two single family homes. More generally this MUF district is proposed largely of standard lots. About 36 out of 40 are less than the 19 acre minimum in effect when this application was submitted and there are 26 dwellings on those sub-standard lots, or roughly 66% of the lots. Six sub-standard surround the applicant's property and five have dwellings and the ---- likelihood according to the county. The County staff report also indicates that the area is composed, and I think they use the word "entirely" I may be mistaken about that of timber production. In fact, the county staff report indicates no lot devoted to

timber production and there is none as indicated in our application.

In terms of the applicable criteria, I am going to deviate slightly from the staff report. I will deal with the conditional use criteria first and then move on to the variance criteria.

Epstein: Let me interrupt you, I think that that the critical, at least one of the critical issues in your application is whether to allow the recognition of two to develop a whole lots of record. I think it is more important that ..... you address that issue.

Robinson: I would be happy to do it that way. Let me note initially though that the staff report refers to two studies - The Balch Creek Basin Study, which is a city of Portland study and The West Hills Forest Wildlife Habitat Study with a date of I think March 1992. The West Hills Study is not final. At the time this application was submitted I understand it was a draft study. That is not reflected in the staff report. It has not been adopted by the county. I understand that it went to the planning commission either last week or this week. I would ask that it be strickened from the record. It is not an adopted document, further it is not applicable criteria. It is not adopted by ordinance, it is not a zoning ordinance requirement.

Epstein: I will deny request and I will accept it into the record and view it for what it is worth.

Robinson: Okay.

Epstein: I have to acknowledge that it is not a law, is not an adoptive policy document, it is not binding. -- the extent that it may contain information that is relevant and is not disputed it may be helpful.

Robinson: I will make the same request for the Balch Creek Basin Study. It is not adopted by the county. It is a city of Portland document. It has no standing under county ordinance as consequently, it has no standing as an applicable criteria.

Epstein: I believe it is substantial evidence however and I'll accept it into the record. Again, I will deny your request and I'll accept into the record the same as I would the West Hills Study to stand for

whatever it does. It is not an approval criteria, I acknowledge that. It is not binding, but it may contain information that is relevant for the applicant.

Robinson: Lastly, the staff report on page sixteen notes the Balch Creek Basin/Forest Park are identified as Goal 5 resources. It doesn't identify them as Multnomah County Goal 5 resources. I don't believe they are and I want to make that point.

At your request, I will go on to the variance criteria. This is a major variance. There are four criteria that we have to meet. The first is whether a condition or circumstance is not generally applicable to this property, that is applicable to surrounding property. And, the essence for argument is compared to surrounding use the aggregation requirement doesn't generally apply to the other property in the same area. Most of the lots have homes on them. 66% of the substandard lots have homes on them. Staff map at 9, 13 shows the area, shows existing dwellings, potential dwellings with aggregations, potential dwellings without aggregation. It is not clear to me how staff arrived at that information. I would like an opportunity to take a look at the map on the wall. We don't know for example if the lots that could support structures, that don't currently have them were legal when they created or whether deeds were properly recorded. So, it is not clear to me that all of the extra homes that the county indicates could be built, could in fact be built. But, again the basis of our argument is that we are subject to a standard which is not generally applicable in that area and that it is...

Epstein: I don't understand why you say that though. There are, as the staff points out, twenty-five existing dwellings, nine of which are located and aggregated ownership. So, at least nine other property owners have been limited by this aggregation plan for one dwelling on an aggregated lot.

Robinson: But, that is not, in our opinion, a majority of the property in that area. It is not generally applicable to the majority of the area. The fact that most of the lots are sub-standard, most of them have homes on them, indicate that is not generally applicable. We are subject to a standard that is not generally applicable to the remainder of the area. And, you will recognize....

Epstein: I disagree with you...

Robinson: Well, given the claims we intend to make, we have no choice but to ask for variance. We had that discussion with staff and they understood the position.

Epstein: I do appreciate your circumstances but, you do not propose to amend the comprehensive plan to change this to an urban zone or rural residential zone.

Robinson: We explored two options prior to making this request for conditional use and a variance. One is an amendment of the urban growth boundary and annexation to the city of Portland. In a meeting with John Vaughn in January of 1992, Mr. Vaughn indicated that would be feudal. I took the time to go to a meeting with the city. I initially had an expectation that it might be more positive. It was not. In terms of plan amendment, there is a comp plan and a zone change amendment. There is no rural zone which would accommodate the dwelling on this size of lot and I think the staff acknowledges that. So, this seems to be our best opportunity. The second standard is to whether the zoning restricts the use of property to a greater degree than the others. What we have stated so far I think is covered by that and I think the staff report also responds to it. I would indicate that both the Forest Park Association and the staff seem to take the position, although it is not clear to me, that we have somehow abolished our lot lines. I don't think the status of a tax lot has anything to do with whether a discrete parcel and consequently lot lines continue to exist.

Epstein: I wish the state law were clearer on this, but I do believe that you have two deeded lots.

Robinson: I think we do.

Epstein: And, you could conceivably convey away one of those deeded lots.

Robinson: I was getting also to the point of whether combining it into one tax lot had any effect on that and I don't think it does.

Epstein: I don't think it does either.

Robinson: The third criteria is whether we will have an adverse impact on the area. Despite the zoning

this area is largely composed of single family homes and small lots. There is no commercial timber production in nearby areas. Certainly Forest Park is not in timber production. There is simply no solid evidence that single family dwellings are incompatible with the area. In fact the existence of all of those homes immediately adjacent to the basin and immediately adjacent to Forest Park indicate that they are compatible with those areas.

Epstein: I wouldn't draw that conclusion. The fact that they are there means that they are there but that doesn't mean that they are compatible.

Robinson: Well, if they....

Epstein: Without more information in the record really reviewing the impact of those existing homes on Forest Park, your conclusion isn't supportive.

Robinson: If Forest Park were not tenable because of the single family homes, I doubt that Forest Park would be in the condition that it is now. There is simply no evidence. It is the assertions of others that single family homes are somehow, would somehow materially adversely impact this area is simply not the case. It is just another single family home in the area. Let me turn quickly to the conditional use criteria. There are a number of criteria. I will try and summarize them. We would meet the lot of record requirement if the county grants the variance. There are three criteria, or three ways that you can show that this area. Second criteria is showing that the land is incapable of sustaining a farmer forest use and you can do that in three ways. One is the lot of record. That would be made if the variance is granted. The second way is to show through expert evidence whether the land is inadequate for farm and forest use. In a letter from Frank Walker dated April 1, 1993, we can't find is that expert evidence and it states with analysis for both why the property is not usable for farmer forest purposes. The third criteria is whether this request will interfere with resources or resource management or materially alter the stability of the overall land use pattern. The land use pattern is single family homes in small lots. It is not going to have a material impact on that. It simply won't interfere with resource management practices because there aren't any resource management areas adjacent to it. If the

city for example, is concerned about the impact of Forest Park, we could condition the approval of this conditional use request to limit the planting non-native species, to limit the spraying of trees so that somehow don't interfere with the park. And, the fourth criteria is whether we are going to require public services beyond those existing are programmed. My knowledge that there aren't any that are programmed. There is evidence in the record that the site has adequate, well...a single family home will not cause excessive traffic disruption. There is evidence in the record that there is adequate electric and telephone service. The fifth criteria is a recording of a statement acknowledging the ride of nearby property owners to conduct septic forest or farming practices. We will gladly submit that statement if approved. And, lastly we have to meet the standards and MCC.2194. Staff didn't respond to these. Generally we responded to each of them. I believe the criteria are met. Most importantly I note that there simply, this is just another single family home in this area on another substandard lot. It is difficult to imagine that this could have any materially detrimental impact on the area. Folks live up there well with one another. You drive up there, it seems to be a very pleasant area. There is no indication to me that single family homes have an adverse impact. And, lastly I want to address very quickly a couple of legal arguments, I think I have made these in our application but I will refer to them for your information. When the aggration occurred in 1980, it occurred without notice to the applicant. State law allows the county to not give individual notice where it would otherwise be required if the Department of Land Conservation Development says there aren't any funds for the notice. Now, the staff correctly pointed to that statute and said that there weren't any funds, but I suspect that there is in fact no evidence in the record which shows that there were funds or whether anyone even asked for funds before rezoning was accomplished for that individual notice. Therefore, the applicant was denied an adequate opportunity for hearing at that time. And, aggregation had a substantial impact. It is not just the zoning of the property, it was the aggregation that had occurred without an adequate opportunity for hearing and notice. Secondly, the county can't prove that the applicant from selling land there is a straight lawfully created parcel under probably Clackamas County, the county may

regulate us but the county can't prohibit the alienation of the land. If the applicant is entitled to sell the land, unfortunately there is not purchase report without a building permit. The letter dated June 24, 1993 from John Watson indicates the plan has no value for this use without a building permit or for any other conditional use or primary use listed in the zone. We have the letter from Mike Leelay dated February 23, 1993 indicating that he is a ready, able and willing buyer for a particular price if he can get a building permit. Without a building permit, he is not interested in buying the land.

That concludes my presentation. I would ask that the record be kept open a minimum of seven days so that I can respond to comments and that an additional seven days beyond that so that conditional evidence or argument comes in from those opposed to this, I would have an opportunity to respond to that also.

Epstein: Mr. Robinson, before you leave, let me ask you a question. I think its, though I will acknowledge that land, as I said before numerable times, land use decisions are not binding on the county.

Robinson: In other words there is no quassy....

Epstein: There is no binding presidential effect. But I believe there a presidential effect, although not binding. It would be difficult for the county to approve your client's request and not thereby invite and raise reasonable expectation by other owner of aggregated property in the county, that they could get more lots out of their land and they could effectively wipe out the aggregation requirement. I think that is the serious potential impact of granting your request. Although not binding on the county, it is going to be there and it is going to be possible for someone to say, well look what they did for him, you gotta do it for me. And, then it would substantially negate the protection that the aggregation provisions are intended to provide. That is a concern that I have and I want to give you an opportunity, having expressed that concern for response.

Robinson: Well, I would respond to that in three ways. First, that is no different than that. Than in the situation that the applicant finds himself in today. There are at least twenty four dwellings up

there on substandard lots and the applicant has to ask Why am I somehow prohibited from having a structure on this lot when in fact permits have been granted since the aggregation ordinance took effect. And there are a number of homes on single family lots. He finds himself in the same position that you think other folks would find themselves in if the county approves this application.

Secondly, what people's expectations are and what the hearings officer and the board can approve are two different things. As you note, it is not binding, and I think each applicant if they wanted to come in has to make their case under the applicable criteria. There is simply no requirement that if the county approves this conditional use and variance request that they somehow approve other requests. I think the subset to that response too is maybe not everyone wants to do that. Mr. Hackett wants to sell his lot. Mr. Hackett wants to see a single family home built up there but perhaps not everyone with an aggregated lot that under your theory might have an expectation of being able to build on it would wish to do so. So, this may not cause a flood of applicants. Further, it is difficult to imagine even if they all flooded in and even if they were all approved, how this area is going to be adversely impacted by additional single family homes when that in fact is the dominant land use characteristic in that area. It is composed of single family homes.

I recognize that it would be nice...probably the best way to deal with this would be a legislative change, but that is feudal, that is not going to happen so we are left with the available mechanisms that we have. And, that in fact was my third response to your answer. I just, I don't see that it is a binding effect. Each application has to be judged individually. Thank you.

Epstein: Is there anyone who would like to testify in favor of this conditional use request and variance?

Is there anyone who would like to testify in opposition?

Rochlin: Arnold Rochlin. I am here representing both myself and the Forest Park Neighborhood Association. PO Box 83645, Portland, Oregon 97283.

The applicant has asked for seven days to respond to any new evidence or argument in this hearing and I would ask that if that was granted, it be granted to all parties.

Three of the applicants issues or claims, whether fully stated or implied should be rejected as being beyond the jurisdiction of this proceeding. They are 1) denial would be ---- without just compensation, 2) denial would violate RS-92017, which is to preserve lawfully created lots and 3) a propertied failure of the county to give personal notice to the applicant of the zoning code change in 1980 somehow deprives the code change and application in this case.

The applicant, quoting ORS-2154168 which was sited in our April 28th testimony conceits that the hearings officer's decision must be based exclusively on the county zoning code and comprehensive plan. The constitutional statutory claims may not be considered. Regarding the third issue, a challenge to the validity of an ordinance must be ------- and must be filed within the time allowed by statute. That grievance is untimely and presented wrongly to this authority. ORS-1977635b requires that you inform this hearing that testimony and evidence must be directed to the relevant criteria in the plan and land use regulations. In several writings submitting for this proceeding the applicant included argument and propertied fact concerning these irrelevant issues. Most of it is on its face harmless to the interest of addressed parties. When I request that the hearings officer order letters of attachments of June 24, 1993 from John C. Watson and July 13th from Oregonians in Action, and April 23rd from Frank Walker from the record. That evidence is intended exclusively to support constitutional or statutory claims that may not be considered here.

Epstein: Mr. Rochlin, I think that the applicant does have to raise the issues. I agree with you that I don't have the ability to decide that case on constitutional grounds but, in reviewing the often troubled and exciting land use law here in Oregon I think the applicant has the right to make the argument and has the right to introduce the letters that you request to be excluded from the record. I will deny your request and I will receive them for they are worth. And, you have to trust in the hearings officer to determine that if they are

worthless then they won't be given value. But, I don't believe they are so irrelevant as to be not -- -- at all.

Rochlin: Skipping a few lines here...

Epstein: Sure.

Rochlin: The point is that if they are admitted to the record I think that we maybe printed this by having them in the record, we should not have to carry the burden of rebutting. Those kinds of documents, if those issues are properly raised where you can have proper cross examination.

Epstein: I mean the applicant could decline to raise those issues for the local government to try and raise the ------- on appeal. I don't think that is the better course. I think the better course is to go ahead and let them in and if they are not of significant appropriate value then basically will ignore it.

Rochlin: Most of the applicant's evidence submitted in his June 29th letter is smoke. The applicant has had ample time to examine the argument and evidence of staff that the general neighborhood consists of aggregations of lots that are larger than the applicant's property and I don't think he needs any...if he's failed to rebut it here it is because he has no rebutting evidence. In page three of his letter he complains is wrongly addressed comprehensive plan policy twelve and an LCDC directive because neither is addressed in the zoning notice of hearing. I agree with the applicant that the LCDC directive shouldn't be invoked unless it is an extreme resort to resolve some ambiguity. But, 850584 allows approval of the theory its ---- that it would adversely effect the realization of the comprehensive plan. It requires staff to address the criteria without aggressing the provisions of the comprehensive plan is senseless. ORS-1977634A by requiring the applicant's evidence to be on file when a notice of hearing is given, implies that identification of the criteria in the notice is for the benefit of other parties, not the applicant.

Epstein: I don't know if that is correct.

Rochlin: Well, I agree with you that, I think the more important of your paragraph there is that the comp

plan policies do apply and I think that is fair.

The applicant doesn't adequately address Policy 37, it claims that an existing well can serve two dwellings, he has given no information on ------ of the well and he has given no information on the means of the two dwellings. A water system would have to serve not only domestic needs but prior ---------. The policy is not complied. The claim at page five that because the planning division accepted and processed the variance request the county is foreclosed from arguing against it because no law or regulation has been sited that would have the effect of barring the county for the -------. In fact, if the applicant's argument was accepted, the planning director would have to support any applications scheduled for hearing and would have to reject any applications for hearing if they opposed it.

Staff's essential point on this variance request that the applicant objects to, is ordinary. There is nothing unusual about it at all. And, it is simply that a variance be grant relief from the way an ordinance applies to a property but can't change the ordinance, can't change the definitions. ----- the applicant's counsel wrongly characterizes the Neighborhood Association's position on injury to other property. It is not a major issue to us but we were careful to characterize our testimony to indicate that the harmful effect is incremental and may not even be immediately detectable. But, it is considerable because it is part of an accumulation that would occur if the applicant's position were -------.

The criteria for a variance. Both the staff and the applicant have identified four criteria. But, I count five. There is a primary one that has no arabic numeral before it - it is 8505A which says that the approval authority can authorize a variance only when there are practical difficulties in the application of the chapter and is overlooked by both and there are no practical difficulties identified by the applicant nor by staff and I don't think there are any. There is a typographical error in there but I don't think that changes the effects of the meaning. If the applicant's argument about compatibility of Forest Park and other residences were correct, that would be an argument for the zone change, but not for a variance. The applicant is asking not for relief

from a burden that weighs more heavily on him than it does on other property owners, but is just simply making a bear demand that he be excused from the regulation that should apply to him as it does to everyone else. Neither of the applications should be -------.

Epstein: Thank you Mr. Rochlin. Other witnesses that would like to testify in opposition or with questions or concerns.

Rosenlund: Nancy Rosenlund, 5830 NW Cornell Road, 97210. Representing Friends of Balch Creek. This is something that has not been mentioned or considered in the applicant's application. Balch Creek is within this water shed that he is talking about. Part of his property drains into the Balch Creek water shed. I think you should, if you are not familiar with this, I think you should get a hold of a copy of the Northwest Hills Study. It is quite prophetic and its claimed as what can and will happen were certain things not considered in the development of the basin and of the Northwest Hills area. Of course the Balch Creek Protection Plan has been in use for a few years now, and Multnomah County has been using decisions and their criteria as part of their decision because they realize that this is a two-way street.

Epstein: Multnomah County has not adopted the Balch Creek...

Rosenlund: They have not adopted it.

Epstein: Therefore it is not law.

Rosenlund: That is exactly right. I am not arguing that point at all. I am saying they are using as a subject to the criteria that they are using for development....

Epstein: So, they are using it as a kind of guideline.

Rosenlund: Right, within the Balch Creek Basin because they recognize the fact that the Balch Creek Protection Plan is half in the city of Portland and half in Multnomah County. I mean it is a real bag of worms and also the Bureau of Environmental Service also has a new Water Shed Protection which they are putting into place. They have a wetland down in the corner of Cornell and Thompson. This is just background.

I count on this little piece of paper here 35 homes in that one little tiny area listed. That is only one tiny portion of the Balch Creek area. The city of Portland has I figure, placed for about 75 to 100 more homes in the Balch Creek Water Shed. Now, anybody that knows anything about hydrology is going to recognize the fact that with every home every well is dug and this is all well country by the way - every well that is dug, every new home is going to change to a lessor degree the condition of Balch Creek. We are trying to save the stream and I know the people here know very well about that and the cut throat trout we have been trying to protect for years. If you don't you'll hear more about it coming up. The BES is working very hard and they intend to go the state one of these days to have a protection of the Balch Creek Water Shed under their auspices because they recognize it is a great need for this. The condition of the stream has changed radically in these last fifteen years. I live on the stream and I have been able to monitor this. What every development in every house the amount of water coming down the stream lessens. The mud and suet coming into the stream is this year worse than I have ever seen in my life on that stream. It is affecting the fish population to a great degree and ODF&W has been working hard trying to protect those fish. The wetlands going in the corner of Thompson and Cornell is made as not only a flood protection area for the, they are talking about the 100 year flood. But, they are really more concerned with the condition of the creek and the fish within it and because the suet collection is their main problem and their main emphasis on the wetland.

Epstein: That can be addressed. This property is at the far end of the basin. Only a portion of it is actually in the basin. Those impacts about what you complain, can be addressed through design conditions.

Rosenlund: Oh sure they can be addressed but nobody seems to want to address them. Everybody says, you know I live up on Skyline off of Ramsey Drive. Shute, Balch Creek is way down there, we don't have to worry about it. Except from Ramsey Drive the water goes down...

Epstein: I am not talking about everybody. I am talking about one property. We got to get back to it.

Rosenlund: One property, okay. He is talking about living aggregated ownership. Okay. I have aggregated ownership property. I have ten acres. I started with three, we bought seven, we now have ten. It is aggregated. My neighbor has aggregated ownership. She has seventy-three acres. She bought two pieces before she realized she was in a --- 38 zone. Okay, 38 and 38 makes 76. She cannot divide her property. So, this is okay. We will build a house. So they built a house on their space. They have not applied for division. They are living with them. There are many many people in that basin not on what you call, sure they on the substandard lots, but a lot of them are aggregated lots and they are willing to keep them.

Epstein: That is actually an argument in favor of the application.

Rosenlund: Well, it is. It is alright. But still we are aggregated, we are not....

Epstein: The point that your making is that the applicant's circumstances are not unique.

Rosenlund: They are not unique at all.

Epstein: The circumstances that apply, apply to other property.

Rosenlund: That is right. And, of course if you take it off of him, you can take it off of us. There are a lot of single family homes in the area. We don't have development. We don't have big Forest Heights development type thing in the area. We are working very hard to protect the basin. There was an article I just read in the Willamette Week about the only timber left in the city of Portland is in the basin which is right on his property.

Epstein: I got to get you back here.

Rosenlund: Okay, you got me back.

Epstein: ...to the point at hand.

Rosenlund: Okay, I really am offended and insulted that he would ask for a seventeen acre variance in a nineteen acre MUF19 zone.

Epstein: He is entitle to apply.

Rosenlund: He is entitled to anything he wants. So, that is it. And, I thank you for your time and I really am opposed to the opposition. Thank you.

Epstein: Anybody else want to testify against this application or with questions or concerns.

Okay, before returning to the applicant, Gary is there anything that you wanted to add from this?

Clifford: In the air photo as I said there is a 1986 in the northeast corner of that section you can see is forest land there. And I don't know that it is a good characterization of the area as a single family area in terms of the to be predominant land use is actually forested cover. And, in terms of that it was brought up that the court case of Fishpaugh. I do want to this the explicit in that that nothing in the text of ORS-92 or the legislative history suggest that all "lawfully created lots and parcels must be recognized by local government as being separately developable."

Epstein: I just got a case note on that case for the land use law, land use real estate law section, so I am familiar with the case. I think that is an accurate summary of it.

I have a question for you. Would it be possible to obtain or to include in the record some evidence that the county made a request the LCDC board funding for notice in 1980 and that request was denied.

Clifford: I don't know if that material would be in his files or not.

Epstein: If it is not in this case now. By the way neither was the West Hills study or the Balch Creek study so if you want me to consider those as being more than just title of the study you are going to actually have to include them in the record.

Mr. Albitson?: In terms of whether the hearings officer should address the constitutional claims. You are right. You don't have to address them. The state law allows you to if you I think if you want to. And, under laws of the Multnomah County order entry hearing I don't think we have any choice but to raise it.

Epstein: I don't think so. I think we have to raise the issue.

Albitson: I think it is a problem in the law right now. I mean we have got to raise the issues I can't deal with very well. (VERY HARD TO UNDERSTAND)

In terms of the well issue, neither the compliant criteria nor the conditional use criteria requires to demonstrate that a well is going to able to serve this lot now. You check all four and it says that it can be done in the later stage.

Epstein: Well, I guess I disagree with the policy 36, no 37. Even if it does we do have evidence that says we have 16 gallons per minute which is adequate. We can submit additional evidence if necessary.

I think it is interesting that folks object to single family home at the -------- and I am not convinced it is actually,...want to look at the original maps myself before I can see that even a portion of this lot is in the Balch Creek basin but it is interesting that the Autobahn Society was able to construct a building right on the creek and apparently that doesn't cause a problem. But, single family homes do cause a problem. As you noted, I think it is possible that if there is concerns about sedimentation and run off in this property, it is possible to deal with it with conditions we can handle with the onsite retention. And, I think that Mrs. Rosenlund's testimony actually goes to my argument that a lot of folks with aggregated lots might not even fear? to ask for some more requests even if this did have some binding effect. I don't have any other comments right now. If the staff does have evidence that the county asked for funds from LCDC in 1980 to give notice that those funds weren't available I would like to see that and have an opportunity to respond to it.

Epstein: With that I will close the public portion of the hearing. I will hold the record open for seven days to provide an opportunity for any party to introduce with additional written testimony and evidence regarding this application and I will hold the record for a subsequent seven days to provide an opportunity for the applicant to any new evidence offered in opposition while the record is now open. So we will close the record fourteen days from today. I will ---- make a final written

decision within ten working days after the close of the public record. I would ask the staff to go ahead and provide those things I briefly identified for you Gary, any evidence that you have on the request for funds, a copy of the West Hills Study and a copy of the Balch Creek Study for what they are worth. That concludes the hearing on this.

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500.00

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

NOTICE OF REVIEW

CU 17-93
HV 9-93
Last day to file notice of Review Monday 8/23/93 4:30 P.M.

1. Name: Hackett (Last), D. (Middle), William (First)
2. Address: 3130 NW Forest Lane (Street or Box), Portland (City), OR 97229 (State and Zip Code)
3. Telephone: (503) 292 - 5508
4. If serving as a representative of other persons, list their names and addresses:

   The following individual represents Mr. Hackett:

   Michael C. Robinson, Esq.
   Stoel Rives Boley Jones & Grey
   900 SW Fifth Avenue, Suite 2300
   Portland, OR 97204-1268

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

   Hearings Officer's denial of a conditional use for a non-resource dwelling and a variance to the minimum lot size in the MUF-19 zone (CU 17-93 and HV 9-93).

6. The decision was announced by the Planning Commission on August 13, 1993

7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

   Mr. Hackett is the applicant and entitled to notice under MCC Section 11.15.8220(C)(1).

RECEIVED
AUG 23 1993
Multnomah County
Zoning Division

1993 SEP 21 PM 03
MULTNOMAH COUNTY
OREGON
COUNTY COMMISSIONERS

Please return this original form

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

See attached statement.

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [XX] 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 statement.

Signed: William A. Jackett Date: 19 Aug. 1993

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing 60 min x $3.50/minute = $ 210.00

Total Fee = $ 500.00

Received by: _____ Date: 8/23/93 Case No. C417-93

BEFORE THE MULTNOMAH COUNTY

BOARD OF COMMISSIONERS

IN THE MATTER OF AN APPEAL BY WILLIAM D. HACKETT OF THE HEARINGS OFFICER'S DENIAL OF A CONDITIONAL USE PERMIT FOR A NON-RESOURCE DWELLING AND A VARIANCE TO THE MINIMUM LOT SIZE IN THE MUF-19 ZONE (CU 17-93 AND HV 9-93)	))))))))	APPLICANT'S STATEMENT

1. GROUNDS FOR REVERSAL OF DECISION.

A. The Hearings Officer erred in failing to find that the applicant carried his burden of proof regarding the variance request.

B. The Hearings Officer erred in relying on a draft, unadopted version of the West Hills study and the City of Portland's Balch Creek study (Exhibits 46 and 47) for substantial evidence as to the impact of this application on Forest Park and forest lands.

C. The Hearings Officer erred in according any precedential value to the approval of the variance.

D. The Hearings Officer erred in failing to find that applicant carried his burden of proof regarding the conditional use request.

E. Denial of the applications will result in a taking of tax lot 78 under the Oregon and U.S. Constitutions.

F. ORS 92.017 prohibits the County from denying a use for tax lot 78.

G. The County's failure to provide individual notice to the applicant under ORS 215.508 violated the applicant's right to due process.

2. GROUNDS FOR AN "ON THE RECORD PLUS ADDITIONAL TESTIMONY AND EVIDENCE" SCOPE OF REVIEW.

The Board may hear additional evidence under § 11.15.8270(E) if (1)-(4) are satisfied. The applicant wishes to submit a land feasibility study. The

comprehensive plan requires the submission of a land feasibility study prior to approval of a quasi-judicial decision. On appeal, the Board may consider the study.

The four factors for allowing the evidence are discussed below:

(1) Parties will not be prejudiced by the addition of a single, discrete piece of evidence.

(2) The applicant could not obtain the evidence at the time of the initial hearing.

(3) The applicant will provide the study to the staff and other parties in advance of the hearing.

(4) The land feasibility study is relevant and material to the application.

3. MOTION TO STRIKE EXHIBIT 44.

The Hearings Officer held that record open until July 26 to take additional written testimony from all parties. The Hearings Officer held the record open until August 2 for the applicant to respond to new written testimony.

Exhibit 44 is a letter from Arnold Rochlin to Larry Epstein dated August 2. Mr. Rochlin's letter is a rebuttal to evidence submitted by the applicant on July 26. The letter should not have been accepted because Mr. Rochlin submitted it after July 26.

Respectfully submitted,

Michael C. Robinson
Attorney for Applicant and Appellant,
William D. Hackett

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

DECISION
OF THE HEARINGS OFFICER

This decision consists of Findings and Conclusions
August 13, 1993

CU 17-93 HV 9-93	**Conditional Use Request** **Lot Size Variance**	Sectional Zoning Map # 11

I. SUMMARY

Location: 3130 NW Forest Lane

Legal: Tax lot '77', Section 25, T1N-R1W, WM, Multnomah County, 1992 Assessor's Map

Site size: 4.06 acres (variance); 2.23 acres (conditional use)

Owner/Applicant: William Hackett represented by Michael Robinson

Comp Plan Map: Multiple Use Forest (when the applications were filed)

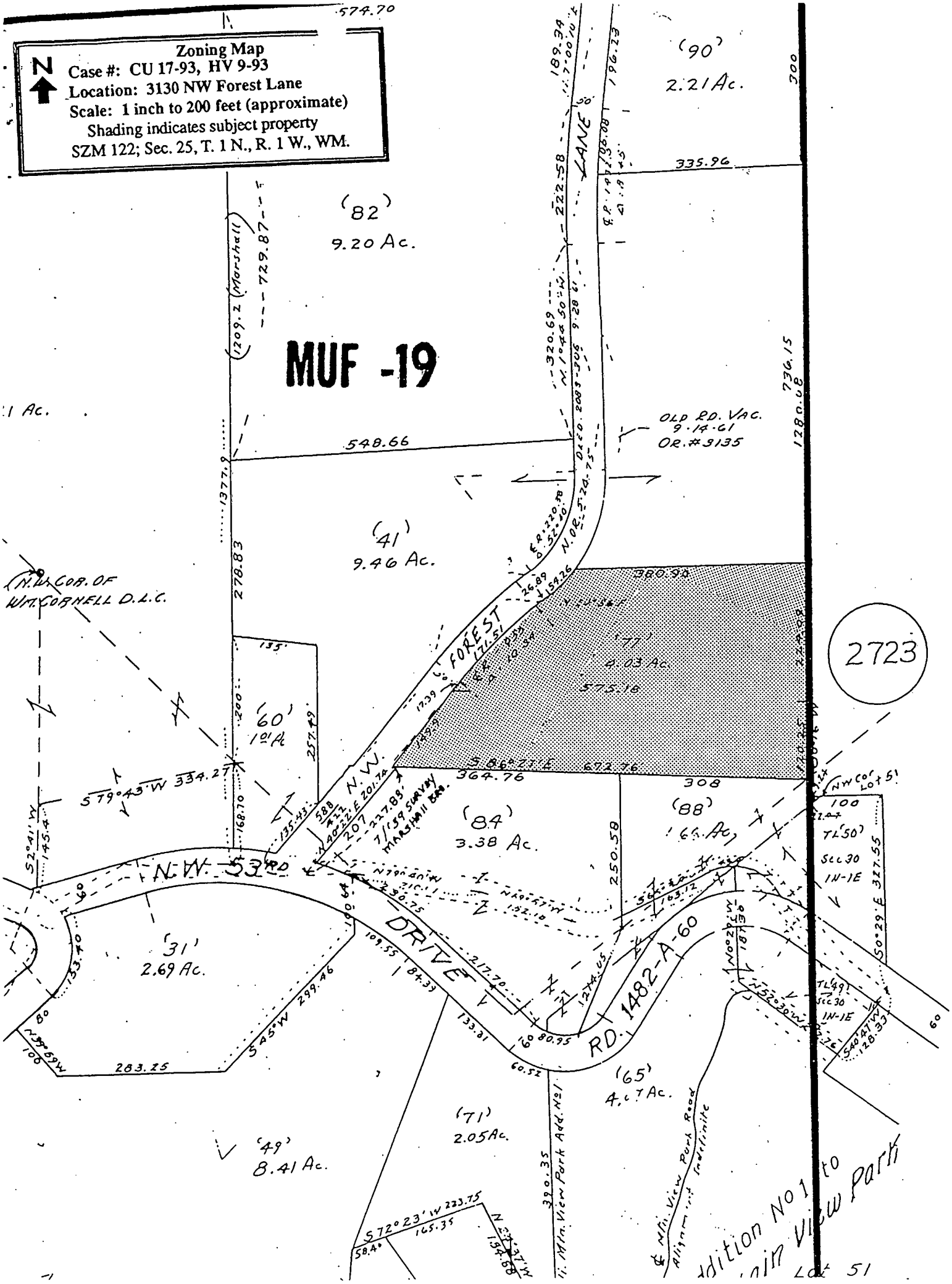
Zoning: MUF-19 (Multiple Use Forest) (when the applications were filed)

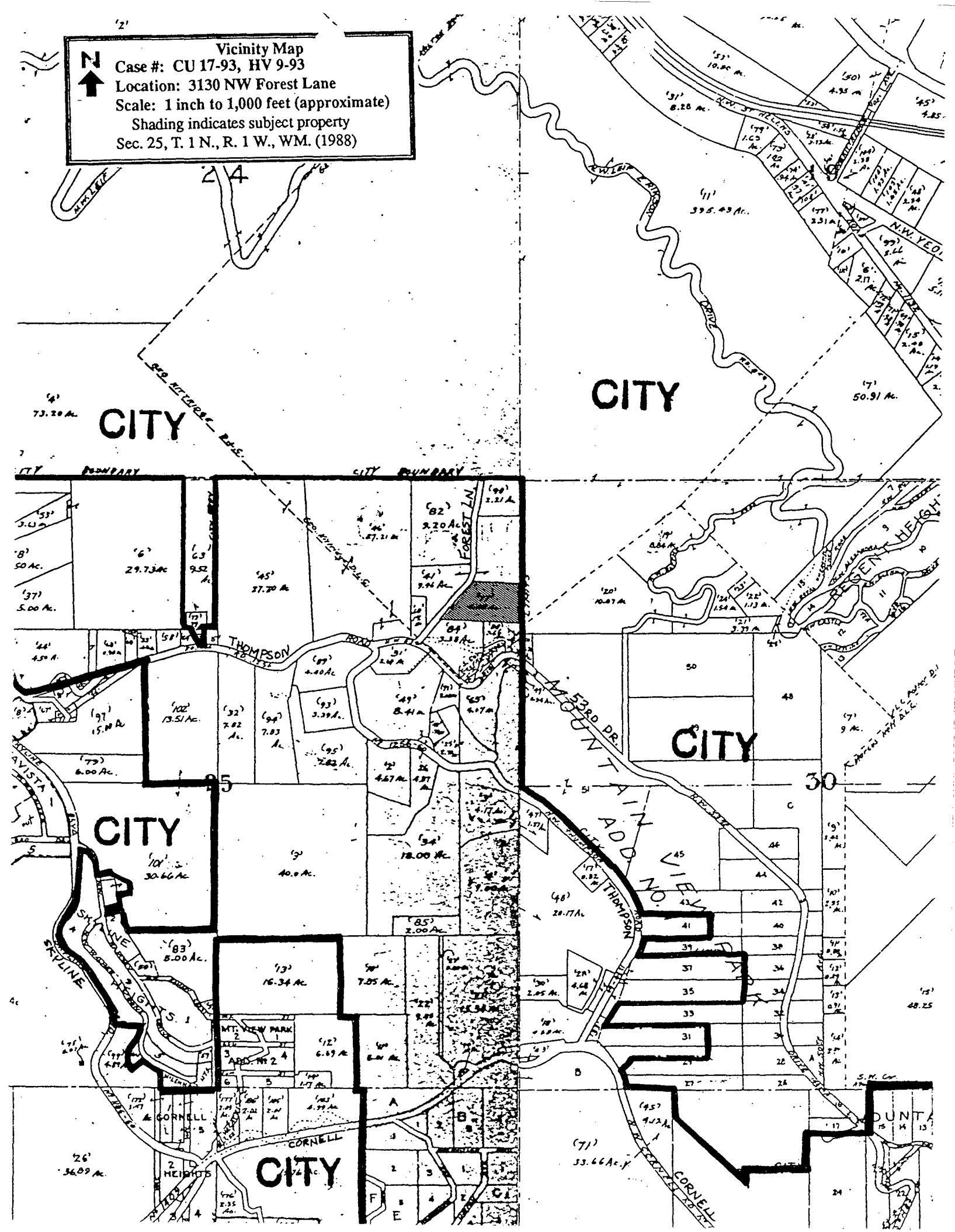
Decision: Denied

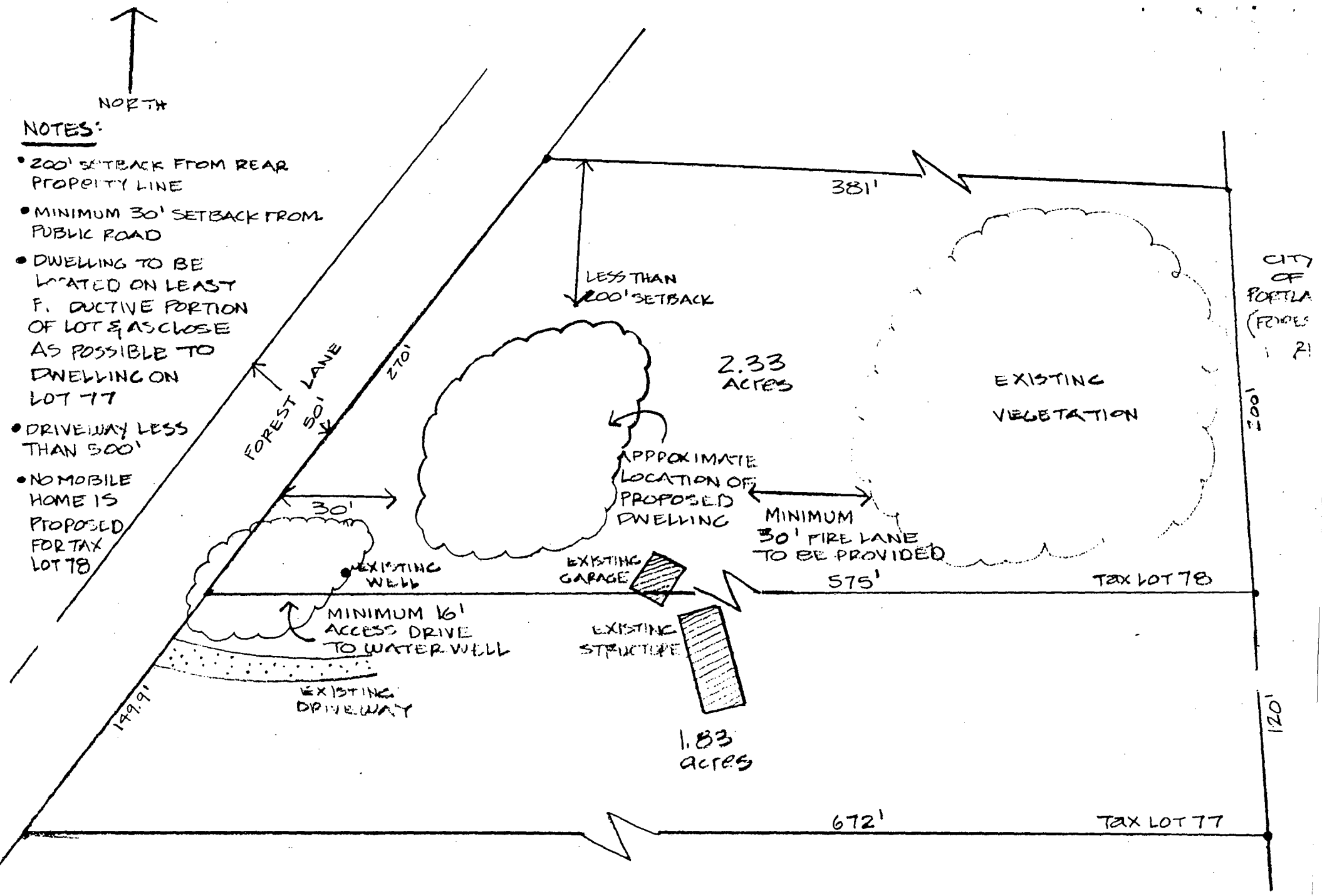
The applicant requests approval of two variances to the minimum lot size standard in the MUF-19 (Multiple Use Forest) zone. The minimum lot size in the zone is 19 acres. The applicant proposes lots that contain 1.83 and 2.23 acres. The two proposed lots were created by deed in 1967 and were acquired by the applicant in 1967 and 1978. They are aggregated into one Lot of Record for zoning purposes by Multnomah County Ordinance 236 (MCC 11.15.2182(C)). The effect of granting the variances would be to extinguish the aggregation and to recognize the two parcels as separate for zoning purposes.

There is a dwelling on the 1.83-acre lot. If the variances are granted, the applicant requests approval of a conditional use permit for a non-resource dwelling on the proposed 2.23-acre lot. The proposed dwelling would be less than 200 feet from NW Forest Lane and side lot lines. A minimum 30-foot fire lane would be cleared and maintained around the dwelling. A drive would extend to the dwelling from NW Forest Lane. An existing well will serve the existing and new homes. A subsurface sanitation system will serve the new home.

Regarding the variances, major issues include whether the applicant carried the burden of proving that (1) the property is subject to an unusual condition; (2) the subject property is more restricted by the lot size regulation than other properties; (3) the variances will not be materially detrimental to nor adversely affect adjoining properties; and (4) the variances will not adversely affect realization of the comprehensive plan.


Zoning Map
Case #: CU 17-93, HV 9-93
Location: 3130 NW Forest Lane
Scale: 1 inch to 200 feet (approximate)
Shading indicates subject property
SZM 122; Sec. 25, T. 1 N., R. 1 W., WM.
MUF -19
(82) 9.20 Ac.
(90) 2.21 Ac.
(41) 9.46 Ac.
(77) 4.03 Ac.
(60) 10 Ac.
(84) 3.38 Ac.
(88) 1.65 Ac.
(31) 2.69 Ac.
(49) 8.41 Ac.
(71) 2.05 Ac.
(65) 4.07 Ac.
2723
FOREST LANE
N.W. 53RD DRIVE
RD. 1482-A-60
OLD RD. VAC. 9-14-61 OR.#9135
N.W. COR. OF WM. CORNELL D.L.C.
N.W. Min. View Park Addition No 1 to
Min View Park
Lot 51


Vicinity Map
Case #: CU 17-93, HV 9-93
Location: 3130 NW Forest Lane
Scale: 1 inch to 1,000 feet (approximate)
Shading indicates subject property
Sec. 25, T. 1 N., R. 1 W., WM. (1988)
N
CITY
CITY
CITY
CITY
CITY
CITY BOUNDARY
CITY BOUNDARY
FOREST LN.
THOMPSON
ROAD
MOUNTAIN
VIEW
ADD'N NO. 2
SKYLINE
AVISTA
CORNELL
HEIGHTS
MT. VIEW PARK
ADD'N 2
N.W. ST. HELENS
N.W. YEON
N.W. LEIF ERICKSON DRIVE
5320 DR.
25
30
95
26



CU 17/93
HV 9-93

SITE PLAN FOR
ACTIVITY APPLICATION

Regarding the conditional use permit, major issues include whether the applicant carried the burden of proving that (1) the lot complies with lot size standards and (2) the dwelling would be compatible with primary uses on other nearby properties or would interfere with resources or resource management practices or materially alter the stability of the land use pattern of the area.

The applicant also raises the issues of (1) whether denial of the variances would result in a taking of all reasonable economic value of the property under state and federal constitutions; (2) whether the county gave adequate notice to the applicant of the 1980 zone change to MUF-19, and (3) whether aggregation violates state law.

Hearings Officer Larry Epstein held a public hearing to receive testimony and evidence regarding the applications on July 19, 1993 and held open the public record until August 2, 1993 to receive additional written testimony and evidence. The hearings officer finds that the variances do not comply with any of the applicable approval criteria, and the conditional use application fails to comply with all applicable approval criteria for a non-resource dwelling in the MUF-19 zone.

II. FINDINGS OF BASIC FACTS ABOUT THE SITE AND VICINITY

A. History and status of the site.

1. The applicant owns two contiguous parcels, hereinafter referred to collectively as "the Site".

a. The southerly parcel was created by deed dated November 30, 1967 and was identified as Tax Lot '77' until the two parcels were merged. The applicant acquired TL '77' in 1967. See attachment 4 of Exhibit 13 for the deed. The applicant built a single family home on it in 1978.

b. The northerly parcel was created by deed dated November 30, 1967 and was identified as Tax Lot '78' until the two parcels were merged. See attachment 2 of Exhibit 4 for the deed. The applicant contracted to acquire TL '78' in 1978 and acquired fee title to it in 1981. See attachment 5 of Exhibit 13 for the deed.

c. When these two parcels were created, the Site was zoned R-20 (Single Family Residential). The minimum lot size was 20,000 square feet. See attachment 3 of Exhibit 4 for the R-20 regulations. In 1977, the County rezoned the Site MUF-20. In 1980, the County rezoned the Site MUF-19. The MUF-19 regulations contained an aggregation requirement; that is, a requirement that contiguous, substandard-sized lots under common ownership be treated as one lot for purposes of zoning.

d. The applicant merged the two parcels for tax purposes on January 17, 1985. See the attachment to Exhibit 12 for the merger request. The two parcels are now identified as Tax Lot '77' on the Assessor's Map. However, the hearings officer will continue to refer to the two parcels as Tax Lots '77' and '78' when it is appropriate to distinguish between them. The hearings officer assumes the merger of tax lots does not affect the status of the Site for purposes of zoning or alienability.

B. Existing conditions and proposed use of the Site.

1. The Site is situated on the east side of NW Forest Lane about 200 feet north of its intersection with NW 53rd Drive. It has the following dimensional characteristics:

	TL '77'	*TL'78'*	*Total site*
Width	120 feet	200 feet	320 feet
Depth	575 to 672 feet	381 to 575 feet	381 to 672 feet
Area	1.83 acres	2.23 acres	4.06 acres

2. Based on the site plan, there is a single family detached dwelling situated on TL '77' about 240 feet east of NW Forest Lane, 60 feet from the south edge of the lot, and near the north edge of the lot. A detached accessory structure (garage) is situated northwest of the home straddling the line between TL '77' and '78'. There is a gravel drive from NW Forest Lane to the garage and home. There is a well situated near the southwest corner of TL '78' which serves the existing home. Based on the aerial photographs, most of the Site and surrounding area are forested. Based on Exhibit 20, TL '78' contains 25- to 35-year old maple and alder with few conifer trees. Most of the trees are of poor commercial quality. The Site contains slopes of up to 70 percent, with steepest slopes in the east half of the Site, limiting access to and potential value of timber. Based on Figure 3A of the county Geologic and Slope Hazard Map, the Site is not in an identified hazard area.

3. The applicant proposes to build a single family home on TL '78' at least 30 feet from NW Forest Lane. It would be about 120 feet east of the road, based on the site plan. The specific setbacks are not identified. The applicant states that the home will be as close as possible to the existing home on TL '77', but will be less than 200 feet from the north edge of the parcel. The applicant does not describe what will be done with the garage that straddles the line between the two parcels, but the hearings officer assumes it will be relocated or will be addressed by a lot line adjustment or easement if the applications are granted. The applicant proposes to provide water to the new dwelling from the existing well. A well log accompanying Exhibit 43 shows that the well produced about 16 gallons per minute (gpm) during a pump test. The applicant proposes to use a subsurface sanitation system to serve the new dwelling. The County Sanitarian notes that a Land Feasibility Study must be done to determine whether such a system can be accommodated. Such a study is not in the record. The applicant proposes to provide a 16-foot gravel drive to the new dwelling; it is not clear from the record whether the applicant will extend the drive serving the dwelling on TL '77' or will build a separate drive to NW Forest Lane.

4. Based on Exhibits 45 and 46, roughly the southwest half of the Site is situated in the Balch Creek basin. The county has not adopted regulations to protect that basin other than those that apply generally to development in the county.

a. The applicant did not provide specific measures to address erosion or storm water quality protection, treatment or disposal. The hearings officer assumes potential erosion can be prevented or mitigated and the storm water from the relatively small impervious area of the Site can be treated as necessary and discharged on the Site, provided appropriate plans are prepared and approved.

C. Existing and potential land uses in the vicinity of the Site.

1. Immediately north of the Site is a roughly 4-acre lot of record that is forested and not otherwise developed. Immediately east of the Site is Forest Park. Immediately south of the Site are two lots of record (1.66-acre and 3.38-acre), each of which is developed with a single family home. West of the Site across Forest Lane is a forested lot of record.

2. The vicinity of the Site is a roughly one-half square mile area to the north, west, and east. This is an appropriate area to consider, because it is the unincorporated portion of Section 25, T1N, R1W, WM that was zoned MUF-19 when the applications were filed. Therefore, this area is most like the subject Site for purposes of zoning and is most likely to be affected by the proposed development.

a. Within this vicinity are three lots containing more than 19 acres. There are 36 substandard-sized lots (those with less than 19 acres). Twenty of those lots are aggregated into eight lots of record listed below:

Tax lots aggregated in lot of record	*Area*
TL '77' & '78'	4.06 acres
TL '6' & '33'	30.39 acres
TL '89', '93' & '94'	15.62 acres
TL '2' & '26'	9.25 acres
TL '65' & '71'	6.12 acres
TL '3', '4', '34' & '85'	33.17 acres
TL '9', '10' & '11'	52.86 acres
TL '21' & '22'	15.57 acres

b. There are 25 dwellings in the vicinity. Eight of the dwellings (32%) are situated on lots of record that aggregate two or more substandard lots. There are only two undeveloped lots of record. If each parcel aggregated by MCC 11.15.2182(C) could be developed separately, at least seven dwellings could be sited in the vicinity in addition to the applicant's. See the map on page 13 of the county staff report (Exhibit 40). Dwellings also could be proposed on tax lots '21' and '33', bringing the total to 9 (a 36% increase in dwellings in the vicinity).

3. The vicinity of the Site also includes Forest Park, which occupies a large area to the east and north. The City of Portland has designated Forest Park as a significant natural resource under Statewide Planning Goal 5. The park is in forest, open space and recreational uses.

4. The vicinity of the Site also includes Balch Creek. The City of Portland has recognized the creek basin as a significant natural resource under Statewide Planning Goal 5 and has adopted the Balch Creek Watershed Protection Plan to manage the resource conflicts in the incorporated area of that basin. See Exhibit 46.

5. The vicinity of the Site also includes forested habitat for wildlife. That habitat was recently evaluated for the county. See Exhibit 47. That Exhibit includes the following statements:

Residential development poses some particular conflicts with forest wildlife. Domestic dogs and cats prey on small vertebrates including shrews and woodpeckers. Additionally when dogs form packs which chase black-tailed deer, elk and other large and medium-sized mammals.

Another concern is the establishment of non-native ornamental species of plants, gardens and lawns. Non-native ornamental plants can become the seed source for introduction of escaped exotic plant species into natural plant communities. Lawn carte and garden products such as pesticides and chemical fertilizers can adversely affect water quality. Some pesticides are toxic to wildlife and native plant species. Many garden crops will attract wildlife, and conflicts develop when crops are not sufficiently fenced or otherwise protected from wildlife depredation. This problem can increase in situations where natural habitats are declining in quality and quantity in the area, forcing displaced animals to overcome their reluctance to avoid humans in order to get enough food to survive. (p. 9)

A once contiguous forested habitat is rapidly being fragmented and nibbled away at the edges by timber extraction, road construction and residential development. The ecological integrity of Forest park is dependent upon the maintenance of forest habitat along the entire peninsula of which it is the southern portion...

Forest Park alone is not large enough to support self-sustaining populations of medium- and large-sized mammals, such as elk, bobcats, mountain lions and black bears, for which hundreds of square miles of habitat would be required (cit. omitted). *These species, as well as smaller and much less mobile species, will not be able to pass securely through the northern part of this peninsula if current trends of urbanization and clearcutting continue without regard to maintaining contiguous forested habitat throughout. The long-term survival of small less mobile species is dependent on the size of current populations within the undisturbed portion of Forest park. Many of these species may already have been lost, or are in the process of disappearing, from residential and clearcut areas. The success of future colonization or recolonization of this peninsula will depend on habitat conditions throughout the peninsula...* (p. 25)

III. HEARING AND RECORD

A. Hearing and record generally.

1. Hearings Officer Larry Epstein received testimony at the public hearing about these applications on July 19, 1993. The hearings officer held open the public record until August 2, 1993 to receive additional written evidence.

2. A record of that testimony and evidence is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services. The contents of Exhibit C are listed in an appendix to the decision.

B. Objections to introduction of evidence.

1. The applicant objected to the introduction of Exhibits 46 and 47 into the record, arguing they do not contain and are not relevant to applicable approval criteria and standards in the County Code. See pages 2 to 4 of Exhibit 43.

a. The hearings officer overruled the objection and admitted both documents into the record.

b. The hearings officer finds that both documents relate to the character of land uses in the vicinity, which makes them relevant under MCC 11.15.8505(A) through (C); they both relate to the compatibility of the proposed dwelling with uses in the vicinity and the land use pattern of the area, which makes them relevant under MCC 11.15.2172(C)(3); and they both relate to subject matter relevant to compliance with comprehensive plan policy 12 (Multiple Use Forest).

2. Mr. Rochlin objected to introduction of Exhibit 34 and applicant's arguments and evidence related to constitutional claims.

a. The hearings officer overruled the objection and admitted the exhibit, arguments and evidence related to constitutional claims.

b. The hearings officer finds that exhibits, argument and evidence have to be introduced by the applicant to preserve his rights to raise those issues on appeal. As noted in finding V below, the constitutional arguments are not within the hearings officer jurisdiction, and they are not relevant to an applicable approval standard or criterion in the County Code. But such exhibits, arguments and evidence should be accepted to give the applicant the opportunity to preserve those issues on appeal to the courts.

IV. APPLICABLE LAW AND RESPONSIVE FINDINGS

A. Compliance with MCC 11.15.8505 (Variances).

1. MCC 11.15.8515(A) defines a "Major Variance" as one that is "in excess of 25 percent of an applicable dimensional requirement." The applicant proposes variances of 88 and 90 percent. Therefore the applicant is requesting two Major Variances.

2. MCC 11.15.8505(A) contains four approval criteria for a variance. In addition it provides the following in an introductory paragraph:

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

a. Mr. Rochlin argued that the introductory paragraph cited above contains an additional approval criterion, i.e., that the variance is warranted by practical difficulties.

b. The hearings officer finds the term "practical difficulties" in the introductory paragraph is not intended to be an approval criterion for a variance, based on

the plain meaning of the second sentence in that paragraph. The second sentence subjects a Major Variance only to the criteria that *follow* the paragraph. The hearings officer construes the paragraph to reflect a legislative intent that practical difficulties warrant a variance. The nature of the practical difficulties is defined in the four criteria that follow the paragraph.

3. MCC 11.15.8505(A)(1) provides the following criterion:

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

a. The applicants arguments about this criterion are provided at page 12 of Exhibit 40. In summary, the applicant argues that the Site is subject to a circumstance or condition that does not apply to other property in the vicinity, because (1) other non-aggregated substandard-sized Lots of Record lots in the vicinity are developed with dwellings; (2) the applicant could have conveyed one of the tax lots to a third party before the effective date of the 1980 zone change to create two non-aggregated substandard-sized Lots of Record lots; and (3) it would be unfair to deny the applicant the same chance now.

b. The hearings officer finds that the Site is not subject to a circumstance or condition that does not apply generally to other property in the same vicinity or district.

(1) All substandard-sized properties in the MUF-19 zone in Multnomah County are subject to aggregation. It is not an unusual condition for substandard-sized lots in the MUF-19 zone to be aggregated; they are all aggregated.

(2) Based on finding II.C.2, twenty of the 36 lots in the vicinity are aggregated; therefore, it is not an unusual condition or circumstance for substandard-sized lots in the MUF-19 zone in the vicinity of the Site to be aggregated; they are all aggregated. The applicant's lot of record is the smallest of those made up of aggregated parcels; yet it can be developed to the same extent as the largest of the substandard lots of record.

(3) The intended use of TL '78' for a non-resource dwelling on a substandard-sized lot is not unusual. There are other non-resource dwellings on aggregated and non-aggregated parcels in the vicinity and district.

(4) The hearings officer finds that it is not an unusual condition or circumstance for land use laws to change and for rights created by older laws to be changed or eliminated by newer laws. The applicant could have conveyed his interest in TL '78' before the effective date of Ordinance 236, avoiding aggregation. His failure to do so at that time does not constitute an unusual condition or circumstance. Many other owners of substandard-sized properties in the MUF-19 zone failed to do so, too.

4. MCC 11.15.8505(A)(2) provides the following criterion:

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

a. The applicant's argument is reprinted at page 14 of Exhibit 40. In summary, the applicant argues the minimum lot size standard restricts the subject property to a greater degree than it restricts other properties in the vicinity. In particular, of the seven lots of record nearest the Site, five are substandard in size and have homes on them. Of the 36 substandard and three 19+acre lots in the vicinity, 22 contain dwellings. The implication is that, if these other lots can be developed with dwellings, then a requirement that prohibits the applicant from doing so on TL '78' is more restrictive. The applicant also argues that it is more restrictive to apply MCC 11.15.2182(A)(3) in a manner that permanently aggregates the two former tax lots. (See also finding V.D.2.)

b. The hearings officer finds that the zoning requirement does not restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

(1) Other property in the vicinity is subject to the lot size standard in exactly the same way the applicant's property is subject to it. The impact of the standard is the same for each contiguous ownership: a minimum lot size of 19 acres is required. If the lot is smaller than 19 acres, then it must be aggregated with other contiguous properties under the same ownership. Each Lot of Record can be developed consistent with the standards for a Lot of Record in the MUF-19 zone. Nothing makes the impact of the lot size standard on the Site more onerous than its impact on other properties in the vicinity.

(2) The Site is the smallest aggregated parcel in the vicinity; but that does not make the minimum lot size standard more onerous. For purposes of permitted uses, it could be argued that the regulations of the MUF-19 zone treat the applicant's Site better than other properties in the vicinity, because they allow the Site to be developed with a dwelling notwithstanding it is smaller than most other lots of record in the vicinity.

5. MCC 11.15.8505(A)(3) provides the following criterion:

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

a. The applicant's argument is reprinted at page 15 of Exhibit 40. In summary, the applicant argues another single family home in the area will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affect the appropriate development of adjoining properties, because there are single family homes in the vicinity and on five of seven adjoining parcels.

b. The hearings officer finds that the variances would be materially detrimental to the public welfare, because they would subvert the adopted policy of the County to prevent excessive non-resource use in resource areas by requiring minimum lot sizes commensurate with the nature of the area. The minimum lot size in the zone is 19 acres. The hearings officer finds the minimum lot size standard reflects a legislative intent that the Multiple Use Forest area be characterized by lots at least that large to preserve the opportunity for farm and forest uses by preserving land in large blocks. Preserving land in large blocks also reduces the potential for non-resource uses. The applicant proposes lots that are 88 and 90 percent smaller than the minimum lot size. Such significant deviations from the minimum lot size standard conflict with the adopted legislative policy.

c. The hearings officer also finds that the applicant failed to sustain the burden of proof that granting the variances would not adversely affect appropriate development of adjoining property.

(1) Although each application is judged on its own merits, if the requested variances (and conditional use permit) are granted, they would result in a substantial change in the economic value of the applicant's property. It is asserted by the applicant that TL '78' has no economic value if a building permit cannot be issued for it as a separate lot of record. See Exhibit 24. If the variances are granted, the value of TL '78' would be at least $60,000 to $100,000. See Exhibits 16 and 24. This difference in value would create a powerful economic incentive for owners of other aggregated properties to apply for variances and conditional use permits for non-resource dwellings throughout the MUF-19 zone generally and in the vicinity of the Site particularly. The appropriate development of adjoining property is for multiple use forest purposes on lots of 19 acres or more or on smaller lots of record. By creating a powerful economic incentive for the creation of more substandard-sized parcels, the proposed variances are contrary to the appropriate development of adjoining property.

(2) Based on Exhibit 47, the hearings officer finds that approval of the variances would be contrary to the appropriate development of adjoining property to the east, i.e., Forest Park. The granting of the variances would allow the granting of a conditional use permit for an additional non-resource dwelling on a parcel adjoining the Park. The impacts of residential development on the quality of wildlife habitat in the Park and the preservation of a continuous wildlife corridor are described in Exhibit 47. Although the incremental impact of the proposed variances is small per se, the cumulative impact of the variance in combination with other development that is or may be permitted in the vicinity, would be significantly adverse, particularly if the granting of these variances provides an incentive for other variances in the vicinity of the Park.

6. MCC 11.15.8505(A)(4) provides the following criterion:

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

a. The applicant's argument is reprinted at page 16 of Exhibit 40. In summary, the applicant argues the variances will not adversely affect realization of the comprehensive plan, because the zoning that implements the plan allows non-resource dwellings such as the one being proposed.

b. The hearings officer finds that MCC 11.15.8505(A)(4) is vague. It is not clear what is meant by the phrase "realization of the comprehensive plan." The hearings officer construes that phrase to require a variance to comply with applicable policies of the comprehensive plan, because only if the plan policies are implemented will the comprehensive plan be realized.

c. The hearings officer finds that granting of the variances will not be consistent with comprehensive plan policy 12 (Multiple Use Forest) and that denial of the variances is more consistent with the realization of the comprehensive plan. That policy provides as follows in relevant part:

The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:

a. Predominantly in forest site class I, II, III, for Douglas fir as classified by the U.S. Soil Conservation Service;

b. Suitable for forest use and small wood lot management, but not in predominantly commercial ownerships;

c. Provide (sic) with rural services sufficient to support the allowed uses, and are not impacted by urban-level services; or

d. Other areas which are:

(1) Necessary for watershed protection or are subject to landslide, erosion or slumping; or

(2) Potential reforestation areas, but not at the present used for commercial forestry; or

(3) Wildlife and fishery habitat areas, potential recreation areas, or of scenic significance.

The County's policy is to allow forest use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.

(1) The Site adjoins forest land, based on the aerial photo and Exhibits 46 and 47. Residential development is not compatible with forest lands for the reasons identified in Exhibits 46 and 47 and noted in finding II.C.5. Therefore, variances that allow residential development in a forested area are not consistent with the goal of policy 12 to manage MUF lands for forest uses and compatible non-forest uses. Although some potential adverse impacts could be mitigated, nothing obligates the county to find such mitigation is sufficient to prevent or reduce the potential for the incompatibilities, particularly where mitigation measures are difficult to monitor and enforce over time.

(2) The Site is just one instance where parcels are aggregated into a lot of record. Arguably, granting the proposed variances for this one Site would have a negligible effect per se on realization of the comprehensive plan as a whole. However, the variances could have a synergistic impact. The Site and related circumstances of this applicant are characteristic of many other aggregated substandard lots in the farm and forest resource zones and their owners. If the variances are granted for this Site, then there is a powerful economic incentive for owners of other similarly-situated properties to do the same. To the extent granting the proposed variances would spur similar applications by others, it would increase the potential that other variances would be granted, thereby decreasing the likelihood that the MUF area would remain a principally resource-oriented zone, in conflict with policy 12.

d. The hearings officer finds that granting of the variances will not be consistent with comprehensive plan Policy 22 (Energy Conservation) and that denial of the variances is more consistent with the realization of the comprehensive plan. That policy provides as follows in relevant part:

> ***The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:***
>
> ***a. The development of energy-efficient land uses and practices;***
>
> ***b. Increased density and intensity of development in urban areas...***

(1) The hearings officer finds that increasing density in a rural area does not result in an energy-efficient land use practice, because it consumes more energy to travel from the rural area to the urban area where jobs, schools and shopping are located.

(2) The hearings officer also finds that, to the extent housing in the rural area fulfills housing needs that would otherwise be provided in the urban area, granting the variances would be inconsistent with the policy of increasing urban densities.

B. Compliance with MCC 11.15.2162 - 11.15.2194 (MUF zone).

1. Because the variances are denied, the Site contains only one lot of record. A second dwelling is not permitted on a single lot of record. Therefore, the conditional use permit must be denied, too. However, the following findings are adopted in the interest of providing a complete decision.

2. MCC 11.15.2172(C) allows a residential use in the MUF-19 zone, not in conjunction with a primary use, subject to six criteria.

3. MCC 11.15.2172(C)(1) provides:

> ***The lot shall meet the standards of MCC .2178(A), .2180(A) to (C), or .2182(A) to (C).***

a. The hearings officer finds the lot in question (i.e., TL '78') does not comply with MCC .2178(A), because it does not contain 19 acres. It does not comply with MCC .2180(A), because the applicant did not apply for or receive approval of a lot of exception. It does not comply with MCC .2182(A) to (C), because it does not contain 19 acres, is aggregated with TL '77', and is not divided from TL'77' by a county-maintained road or zoning district boundary.

4. MCC 11.15.2172(C)(2) provides in relevant part:

> ***The land is incapable of sustaining a farm or forest use, based upon one of the following:***
>
> ***(c) The lot is a Lot of Record under MCC .2182 (A) through (C), and is ten acres or less in size.***

a. The hearings officer finds that TL '78' is not a lot of record under MCC .2182(A) through (C), because it is aggregated with TL '77'. The lots are contiguous, smaller than 19 acres and are owned by the same party.

5. MCC 11.15.2172(C)(3) provides:

A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.

a. The hearings officer finds that a dwelling on TL '78' would be compatible with other rural residential uses in the vicinity, but would be incompatible with one primary uses on nearby property, i.e., Forest Park, for the reasons listed in Exhibit 47 and cited above in findings II.C.5 and IV.A.5.c(2).

b. The hearings officer finds that a dwelling on TL '78' would materially alter the stability of the overall land use pattern of the area for the same reason the variances would be detrimental to the public welfare; i.e., allowing a second dwelling on this lot of record would effectively eliminate the aggregation requirement of the zone under circumstances that differ little if at all from the circumstances that apply to many other aggregated parcels, making it more likely that further non-resource development would be proposed. The incremental effect of such development would alter the land use pattern of the area which the MUF regulations seek to preserve.

6. MCC 11.15.2172(C)(4) provides:

The dwelling will not require public services beyond those existing or programmed for the area.

a. The hearings officer finds the dwelling will not require public services beyond those existing or programmed for the area, based on the response forms in the application, provided the applicant shows that private water and sanitation systems are approved before construction is authorized.

7. MCC 11.15.2172(C)(5) provides:

The owner shall record with the Division of records and Elections a statement that the owner and successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

a. The hearings officer finds the applicant can record such a statement before construction is authorized.

8. MCC 11.15.2172(C)(6) provides:

The residential use development standards of MCC 11.15.2194 will be met.

a. The hearings officer finds the applicant does or can comply with the residential use development standards, based on finding IV.B.9, except as noted therein.

9. The residential use development standards of MCC 11.15.2194 require the following:

> ***a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas," published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:***
>
> ***(1) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and***
>
> ***(2) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;***
>
> ***b. An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;***
>
> ***c. The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B);***
>
> ***d. The physical limitations of the Site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;***
>
> ***e. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitation of subpart #3 above;***
>
> ***f. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:***
>
> ***(1) A setback of 30 feet or more may be provided for a public road; or***
>
> ***(2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...***
>
> ***j. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.***

a. The hearings officer finds the applicant can comply with the fire safety measures. Fire lanes at least 30 feet wide are proposed and shown on the site plan.

b. The applicant proposes to maintain access to the well to provide water for fire fighting purposes. There is no other perennial water source on or adjoining the Site.

c. The dwelling will be located within about 120 feet of NW Forest Lane. It is not clear from the record whether a location closer to the road is possible. A driveway in excess of 500 feet is not required.

d. The hearings officer finds that the productivity potential of the Site is greatest where the Site is least sloped, because that is the area where access for commercial timber practices would be easiest. That also is the area where the dwelling is proposed. To that extent, the dwelling is not located on the portion of the site having the lowest productivity characteristics. The area of the site with the lowest productivity characteristics is the most steeply sloped land. However, this land is the most difficult to access for any purpose, and any development of that area would be closer to Forest Park and would be likely to have more significant effects due to the steep, forested slopes. In balance, the area of the Site proposed for the home is the area best suited for that purpose.

e. The hearings officer finds the proposed dwelling will not have a 200-foot setback from the north and south property lines. To the south, a lesser setback is warranted to cluster the new home with the existing home on TL '77'. To the north, a 200-foot setback is not possible, because TL '78' is only 200 feet wide (north-south).

f. The dwelling is outside a big game winter wildlife habitat area.

C. Compliance with applicable Comprehensive Plan Policies.

1. The applications do not comply with Policies 12 (Multiple Use Forest) or 22 (Energy Conservation) for the reasons given in finding IV.A.6.c and d.

2. Policy 13 (Air and Water Quality and Noise Levels) provides:

> ***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.***

a. The hearings officer finds the conditional use application does not comply with Policy 13 (Air and Water Quality and Noise), because the application does not include a statement from the applicable agency that all standards can be met with respect to subsurface sanitation. The statement on the response form from the Sanitarian indicates a land feasibility study is necessary. Until that study is done and it is determined that a sanitary waste system can be situated on the Site, there is no assurance sanitary wastes will be treated properly. Improper or inadequate treatment would adversely affect water quality.

b. There is no agency with authority to comment about water quality impacts in the Balch Creek basin generally. The basin is split by jurisdicitional boundaries. For the portion of the basin in unincorporated Multnomah County, the county is the agency with authority to review drainage plans. The applicant did not submit any plans. The county has not adopted specific drainage standards for the basin even if the applicant did submit those plans. Given the relatively small impervious area of the site and the relatively

large undeveloped area of the site, the hearings officer assumes storm water can be collected and discharged on-site without causing or significantly contributing to storm water quality problems, provided appropriate erosion control measures are used during development and until vegetation is re-established on the Site. Given the circumstances, the hearings officer finds the applicant complies with this policy with respect to storm water quality.

c. The proposed use will not generate significant noise or air quality impacts and is not a noise sensitive use. There is no likelihood the proposed use will violate state noise or air quality regulations. Therefore statements from ODEQ regarding noise and air quality are not required.

3. Policy 37 (Utilities) requires the county to find, prior to approval of a quasi-judicial action, that:

> ***A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity, or, to the extent such a system is not available, there is an adequate private water system and a private sanitation system approved by ODEQ;***
>
> ***B. There is adequate capacity in the storm water system to handle the run-off; or the run-off can be handled on the site or adequate provisions can be made;***
>
> ***C. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands;***
>
> ***D. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and***
>
> ***E. Communications facilities are available.***

a. The hearings officer finds that the conditional use application does not comply with this policy, because the application does not include a statement from the applicable agency that a subsurface sanitation system will be approved. The statement on the response form from the Sanitarian indicates a land feasibility study is necessary. Until that study is done and it is determined that a sanitary waste system can be situated on the Site, there is no assurance a private sanitation system will be approved by ODEQ.

b. The application includes information about a well on the Site. The applicant argues the well is adequate. Ms. Sauvageau and Mr. Rochlin argue the evidence is inconclusive. See Exhibits 30 and 44. The hearings officer concludes the well is an adequate private water system, based on the well log in the record, provided the applicant obtains whatever permits and approvals are necessary from the Water Resources Department before construction is authorized.

c. The applicant did not provide information about storm water drainage. However, the hearings officer finds that storm water run-off can be accommodated on the Site without adverse off-site effects for the reasons given in finding IV.C.2.b.

d. The application includes unrebutted statements that power and communications utilities are available to the site. The hearings officer accepts those statements.

4. Policy 38 (Facilities) requires the county to find, prior to approval of a quasi-judicial action, that:

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

a. The hearings officer finds the school district, fire district and sheriff had an opportunity to review and comment about the application, based on the response forms with the application. Based on the form from the sheriff, adequate local police protection can be provided to the Site.

b. Based on the form from the fire district, water pressure and flow are not adequate for fire fighting purposes, because there are no public water mains or pereenial surface water supplies in the area. However, the fire district can provide tanker trucks to provide adequate water flow and pressure in the event of fire. When combined with review of the proposed structures by the fire district, and imposition of conditions of approval to address fire safety in that review process, the hearings officer finds that tanker trucks provide adequate water flow and pressure for fire fighting purposes.

V. OTHER ALLEGATIONS AND RESPONSIVE FINDINGS

A. Relevance of ORS 92.017.

1. The applicant argued that ORS 92.017 requires the County to recognize TL '77' and '78' as discrete lots and to grant a building permit for a home on each lot. See particularly, Exhibits 3, 4, 11, 13 and 43.

2. ORS 92.017 provides:

> *A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law.*

3. The hearings officer does not have jurisdiction to determine whether a county ordinance complies with State law. The hearings officer is limited by ORS 215.416(8), which provides:

Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application with the zoning ordinance and comprehensive plan for the area in which the proposed sue of land would occur into the zoning ordinance and comprehensive plan for the county as a whole.

4. ORS 92.017 is not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. It cannot be the basis for a decision to approve or deny the applications. The hearings officer finds the issue of compliance with ORS 92.017 is not relevant to the applications. However, it is relevant to show a land division application is not necessary. See finding V.D below.

5. Although not necessarily dispositive, the hearings officer takes notice of the decision of the Land Use Board of Appeal in Kishpaugh v. Clackamas County, (LUBA No. 92-080, October 22, 1992) regarding aggregation language like that in MCC 11.15.2182(C) in a fact situation similar to that in this case. LUBA concluded, "[n]othing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local government as being separately developable." LUBA's decision was affirmed by the Oregon Court of Appeals.

B. Notice of the 1980 zone change.

1. The applicant alleged that the failure of the county to mail notice of the 1980 zone change (from MUF-20 to MUF-19) to the applicant denied the applicant due process. See p. 5 of Exhibit 35. ORS 215.508 requires the county to give individual notice of a legislative land use action unless funds are not available for such notice. The county staff report states funds were not available. The applicant argues there is not substantial evidence in the record to show funds were not available.

2. ORS 215.508 is not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. Failure to comply with that statute cannot be the basis for a decision to approve or deny the application. The hearings officer finds the issue of the lack of notice of the 1980 zone change is not relevant.

C. Economic value of the parcel.

1. The applicant alleges TL '78' has no economic value unless the variance and conditional use permit are granted, and submits Exhibits 20 and 34 in support of that allegation. The implication is that denial of the applications will result in a "taking" of property rights under state and federal constitutions.[1]

2. State and federal constitutional provisions regarding "taking" of property are not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. The hearings officer does not have jurisdiction to decide constitutional issues. Whether TL '78' has economic value if the applications are denied is not relevant to the applicable approval standards and criteria.

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[1] Article I, section 18 of the Oregon Constitution provides that "Private property shall not be taken for public use ... without just compensation." The 5th Amendment to the US Constitution provides, "[N]or shall private property be taken for public use, without just compensation."

3. Although not necessarily dispositive, the hearings officer takes notice of the decision of the Land Use Board of Appeal in Lardy v. Washington County, (LUBA No. 92-170, February 23, 1993). LUBA ruled that Article I, Section 18 of the Oregon Constitution does not guarantee a property owner the right to build a dwelling on the owner's property.

D. Nature of the application.

1. Mr. Rochlin argued the application must include a request for a land division, because the two former tax lots were aggregated by Ordinance 236. See Exhibit 26. However the hearings officer finds a request for a land division is not necessary, because no merger of the parcels occurred for purposes of Oregon and Multnomah County land division laws. Aggregation merges lots for zoning purposes. Combining tax accounts merges the lots for tax purposes. However neither of those actions voids the status of the two former tax lots as two separate parcels for purposes of the land division laws.

2. Mr. Robinson argued the hearings officer should decide, as part of the review of the applications in this case, whether MCC 11.15.2182(A)(2) would allow the applicant to convey TL '78' to a third party.[2] See p. 6 of Exhibit 43. However the hearings officer finds that MCC 11.15.2182(A)(2) is not relevant to the applications under review, because the Site is a Lot of Record under MCC 11.15.2182(A)(3). The applicant has not conveyed TL '78' to a third party. The issue is not ripe for review nor raised by the applications in this case.

a. Although the hearings officer necessarily construes the County Code in conducting hearings and ruling on an application, the hearings officer is not empowered to issue an advisory opinion interpreting the County Code based on a hypothetical fact situation not specifically raised by an application. Such an interpretation might be able to be made by the Planning Commission pursuant to MCC 11.15.9045. The applicant proposed an interpretation based on ORS 92.017, (see Exhibit 4), but the county refused to process an application for an interpretation based on that statute, because the Planning Commission cannot construe state law. See Exhibit 5. The applicant has not applied for an interpretation based on the County Code alone.

b. The record in this case includes MCC 11.15.2182(E), which, although not directly relevant to the applications in this case in their current posture, could be construed to prevent the applicant from conveying TL '78' separate from TL '77'.[3] However, the record also includes Exhibit 1, which reflects the county's intention not to object to such a conveyance, but to regulate the use of the two tax lots as a single Lot of Record regardless of such conveyance. In effect the county staff construes MCC 11.15.2182(A)(3) to create and preserve an aggregated Lot of Record for zoning purposes as such over time, notwithstanding division of ownership of parcels aggregated into the Lot of Record. That is, county staff believe a Lot of Record under MCC 11.15.2182(A)(3) cannot be converted into multiple Lots of Record under MCC 11.15.2182(A)(2).

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[2] MCC 11.15.2182(A)(2) contains a definition for "Lot of Record" that is like MCC 11.15.2182(A)(3), except that it applies where the owner of the lot in question does not own a contiguous lot.

[3] MCC 11.15.2182(E) provides in relevant part as follows:

> *[N]o sale or conveyance of any portion of a Lot of record, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.*

(1) The hearings officer recognizes that such a construction of the ordinance may be disputed, but the dispute is not squarely raised by the applications in this case in their current posture. Therefore the hearings officer declines to construe MCC 11.15.2182(A)(2) or MCC 11.15.2182(E).

VI. CONCLUSIONS AND DECISION

A. Conclusions.

1. The hearings officer concludes that the applicant failed to bear the burden of proving that the proposed variances comply with MCC 11.15.8505(A)(1)-(4), based on finding IV.A.

2. The hearings officer also concludes that the applicant failed to bear the burden of proving that the proposed conditional use permit complies with MCC 11.15.2172(C)(1)-(3), based on finding IV.B.

3. The hearings officer also concludes that the applicant failed to bear the burden of proving that the proposed applications comply with comprehensive plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise Level), 22 (Energy Conservation) and 37 (Utilities).

B. Decision.

In recognition of the findings and conclusions contained herein, and incorporating the public testimony and exhibits received in this matter, the hearings officer hereby denies HV 9-93 and CU 17-93.

Dated this 13th day of August, 1993.

Larry Epstein, AICP
Multnomah County Hearings Officer

CONTENTS OF EXHIBIT C
WRITTEN EVIDENCE IN THE RECORD
FOR CU 17-93/HV 9-93

Exhibit No.	*Description*
1	Letter dated April 17, 1992 from R. Scott Pemble to Michael Robinson
2	Letter dated April 20, 1992 from Michael Robinson to R. Scott Pemble
3	Letter dated May 28, 1992 from Michael Robinson to R. Scott Pemble w/ exhibits
4	Application for interpretation dated June 5, 1992 by Michael Robinson w/ exhibits
5	Letter dated July 9, 1992 from R. Scott Pemble to Michael Robinson
6	Letter dated July 17, 1992 from Michael Robinson to R. Scott Pemble
7	Letter dated July 23, 1992 from Michael Robinson to R. Scott Pemble
8	Letter dated August 17, 1992 from Sharon Cowley to Michael Robinson
9	Letter dated August 18, 1992 from Michael Robinson to Sharon Cowley
10	Letter dated August 18, 1992 from Michael Robinson to R. Scott Pemble
11	Application for conditional use permit and variance dated December 17, 1992 from Michael Robinson w/ exhibits
12	Letter dated January 7, 1993 from Robert Hall to Michael Robinson w/ exhibit
13	Revised narrative dated January 27, 1993 from Michael Robinson w/ exhibits
14	Letter dated February 11, 1993 from R. Scott Pemble to Michael Robinson
15	Letter dated February 19, 1993 from Michael Robinson to Sharon Cowley
16	Letter dated February 23, 1993 from Mike Louaillier to Robert Hall
17	Notice of hearing and certification of mailing dated March 15, 1993
18	Letter dated March 17, 1993 from Michael Robinson to Robert Hall
19	Notice of postponement and certificate of mailing dated March 22, 1993
20	Letter dated April 1, 1993 from Frank Walker to Michael Robinson
21	Notice of hearing and certification of mailing dated April 8, 1993
22	Copy of published notice
23	Letter dated April 14, 1993 from Michael Robinson to Robert Hall w/ Ex. no. 20
24	Affidavit of posting received April 28, 1993
25	Letter dated April 27, 1993 from Virginia Atkinson to Robert Liberty
26	Letter dated April 28, 1993 from Arnold Rochlin to Hearings Officer
27	Letter dated April 29, 1993 from Michael Robinson to Bob Hall w/ exhibit
28	Letter dated April 29, 1993 from Kathryn Murphy to Multnomah County Department of Environmental Services ("DES")

Exhibit No.	*Description*
29	Notice of postponement and certificate of mailing dated April 30, 1993
30	Letter received April 30, 1993 from Paula Sauvageau to DES w/ exhibit
31	DES Staff Report dated May 3, 1993
32	Letter dated May 17, 1993 from Jim Sjulin to Bob Hall
33	Letter dated June 22, 1993 from Lee Marshall to Bob Hall
33	Letter dated June 22, 1993 from J.E. Bartels to Bob Hall
34	Letter dated June 24, 1993 from John Watson to William Hackett
35	Letter dated June 29, 1993 from Michael Robinson to Gary Clifford
36	Notice of hearing and certification of mailing dated June 29, 1993
37	Letter dated July 13, 1993 from David Smith to Gary Clifford
38	Letter dated July 13, 1993 from William Hackett
39	Two memoranda dated July 19, 1993 by Sharon Cowley to the file
40	DES Staff Report dated July 19, 1993
41	Letter/testimony dated July 19, 1993 from Arnold Rochlin
42	Letter dated July 19, 1993 from Nancy Rosenlund to Larry Epstein
43	Letter dated July 26, 1993 from Michael Robinson to Larry Epstein
44	Letter dated August 2 from Arnold Rochlin to Larry Epstein
45	Two maps of Balch Creek basin (one with parcels & one with topography)
46	Balch Creek Watershed Protection Plan, by Portland Bureau of Planning dated December 19, 1990
47	"A Study of Forest Wildlife Habitat in the West Hills," by Esther Levy, Jerry Fugate and Lynn Sharp dated March, 1992
48	Two aerial photographs (oversized)
49	Land use survey (updated April, 1989)

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of CU 17–93 & HV 9–93,)
Review of a decision of the Hearings)
Officer, denying Variances and Non-) **FINAL ORDER**
Resource Related Residence for property) 93-359
at 3130 NW Forest Lane)

On September 28, 1993, the Board of County Commissioners conducted a public hearing on the record plus additional testimony in the above entitled matter. Based on the evidence and argument of the parties, it is ORDERED:

1) The Decision of the Hearings Officer is affirmed, and
2) The Findings and Conclusions in the Hearings Officer's decision are adopted and made a part of this order.

Dated this 2nd day of November, 1993.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By _____
Beverly Stein, Chair

REVIEWED
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By _____
John DuBay, Chief Deputy County Counsel

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

DECISION
OF THE HEARINGS OFFICER

This decision consists of Findings and Conclusions
August 13, 1993

CU 17-93 **HV 9-93**	**Conditional Use Request** **Lot Size Variance**	Sectional Zoning Map # 11

I. SUMMARY

Location: 3130 NW Forest Lane

Legal: Tax lot '77', Section 25, T1N-R1W, WM, Multnomah County, 1992 Assessor's Map

Site size: 4.06 acres (variance); 2.23 acres (conditional use)

Owner/Applicant: William Hackett represented by Michael Robinson

Comp Plan Map: Multiple Use Forest (when the applications were filed)

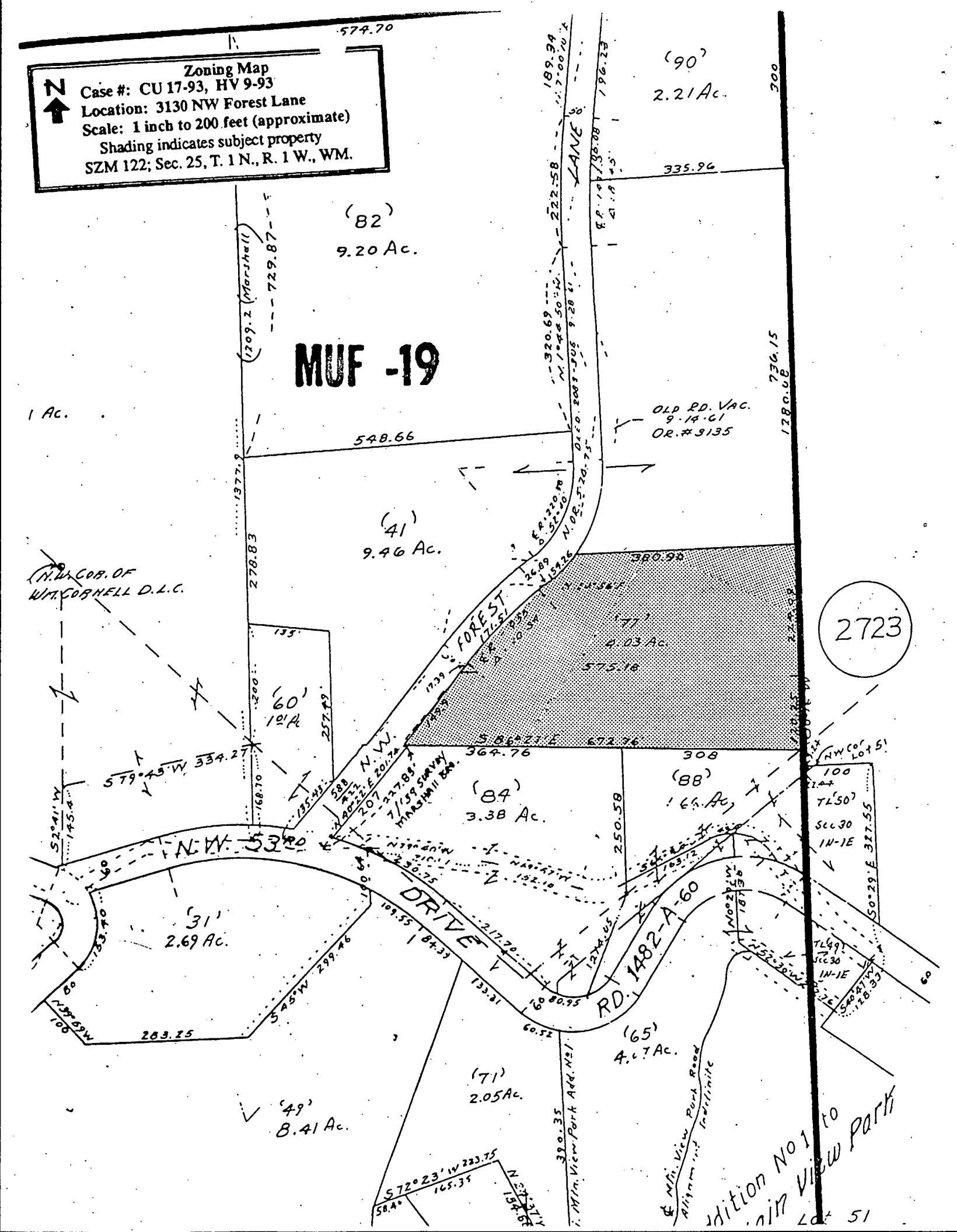
Zoning: MUF-19 (Multiple Use Forest) (when the applications were filed)

Decision: Denied

The applicant requests approval of two variances to the minimum lot size standard in the MUF-19 (Multiple Use Forest) zone. The minimum lot size in the zone is 19 acres. The applicant proposes lots that contain 1.83 and 2.23 acres. The two proposed lots were created by deed in 1967 and were acquired by the applicant in 1967 and 1978. They are aggregated into one Lot of Record for zoning purposes by Multnomah County Ordinance 236 (MCC 11.15.2182(C)). The effect of granting the variances would be to extinguish the aggregation and to recognize the two parcels as separate for zoning purposes.

There is a dwelling on the 1.83-acre lot. If the variances are granted, the applicant requests approval of a conditional use permit for a non-resource dwelling on the proposed 2.23-acre lot. The proposed dwelling would be less than 200 feet from NW Forest Lane and side lot lines. A minimum 30-foot fire lane would be cleared and maintained around the dwelling. A drive would extend to the dwelling from NW Forest Lane. An existing well will serve the existing and new homes. A subsurface sanitation system will serve the new home.

Regarding the variances, major issues include whether the applicant carried the burden of proving that (1) the property is subject to an unusual condition; (2) the subject property is more restricted by the lot size regulation than other properties; (3) the variances will not be materially detrimental to nor adversely affect adjoining properties; and (4) the variances will not adversely affect realization of the comprehensive plan.



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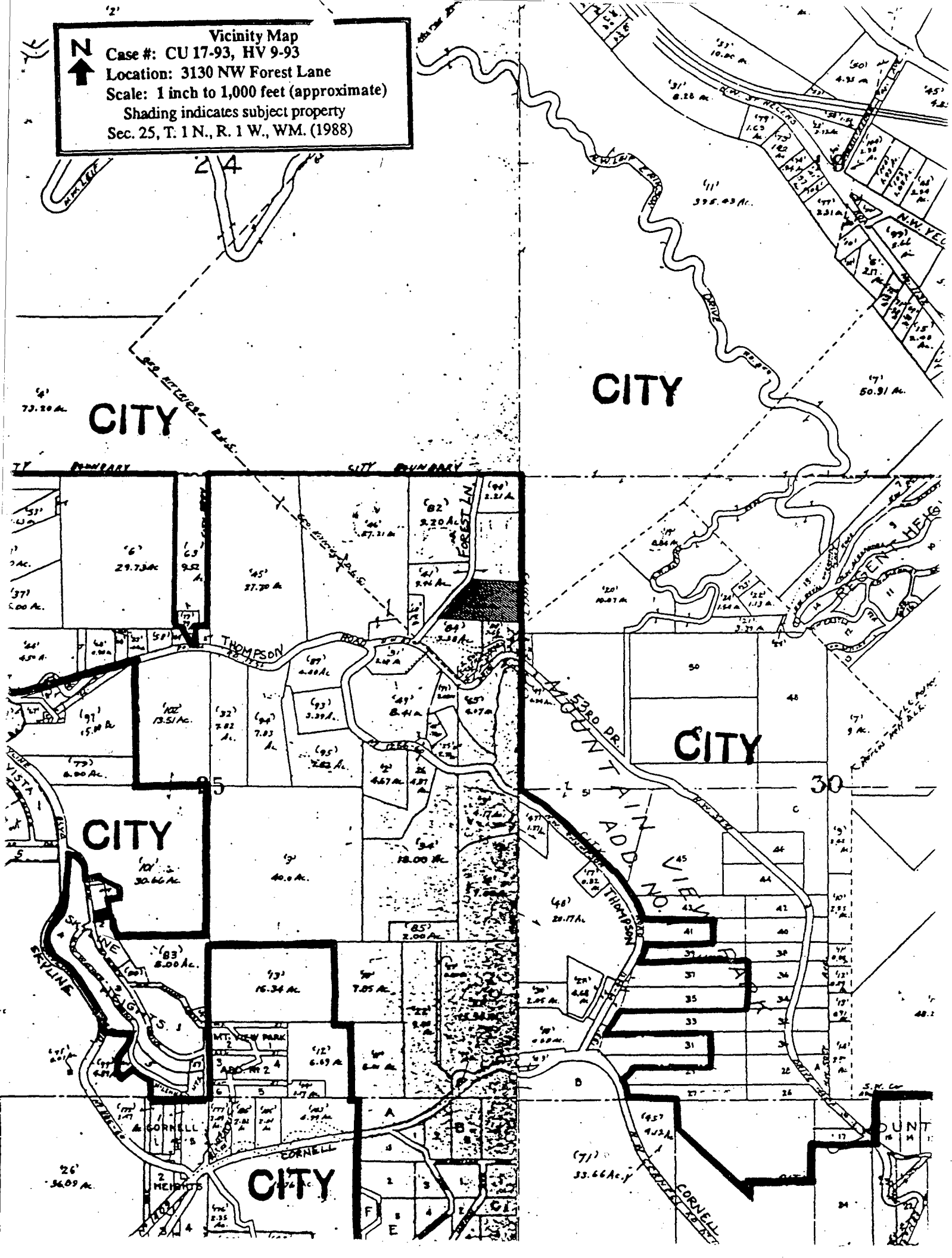
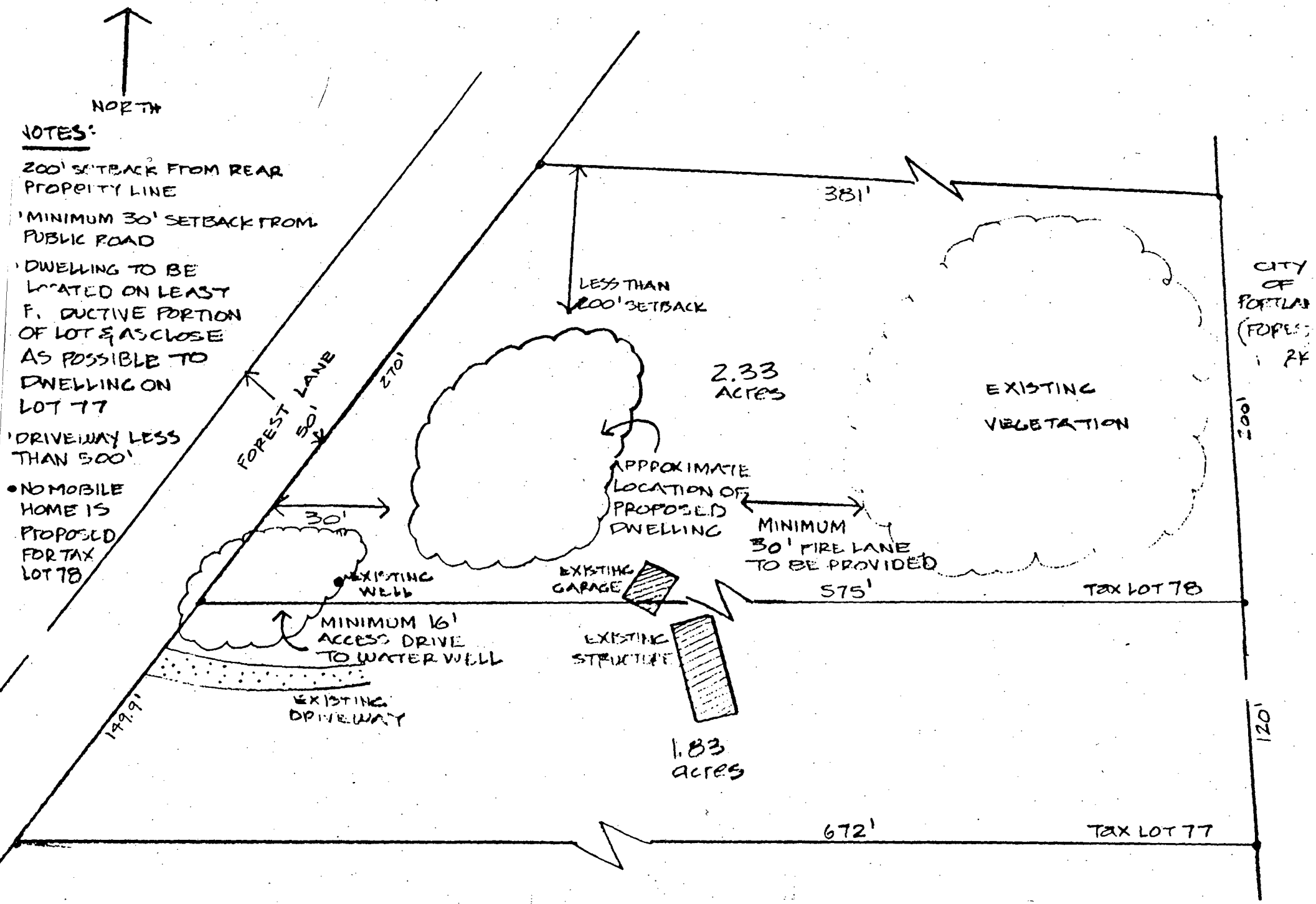
Lot 51


Vicinity Map
Case #: CU 17-93, HV 9-93
Location: 3130 NW Forest Lane
Scale: 1 inch to 1,000 feet (approximate)
Shading indicates subject property
Sec. 25, T. 1 N., R. 1 W., WM. (1988)
N
CITY
CITY
CITY
CITY
CITY
CITY
FOREST LN.
THOMPSON
MOUNTAIN VIEW ADD NO. 4
SKYLINE
CORNELL
N.W. YEON HTS.
25
30



CU 17/93
HV 9-93

SITE PLAN F-2

Regarding the conditional use permit, major issues include whether the applicant carried the burden of proving that (1) the lot complies with lot size standards and (2) the dwelling would be compatible with primary uses on other nearby properties or would interfere with resources or resource management practices or materially alter the stability of the land use pattern of the area.

The applicant also raises the issues of (1) whether denial of the variances would result in a taking of all reasonable economic value of the property under state and federal constitutions; (2) whether the county gave adequate notice to the applicant of the 1980 zone change to MUF-19, and (3) whether aggregation violates state law.

Hearings Officer Larry Epstein held a public hearing to receive testimony and evidence regarding the applications on July 19, 1993 and held open the public record until August 2, 1993 to receive additional written testimony and evidence. The hearings officer finds that the variances do not comply with any of the applicable approval criteria, and the conditional use application fails to comply with all applicable approval criteria for a non-resource dwelling in the MUF-19 zone.

II. FINDINGS OF BASIC FACTS ABOUT THE SITE AND VICINITY

A. History and status of the site.

1. The applicant owns two contiguous parcels, hereinafter referred to collectively as "the Site".

a. The southerly parcel was created by deed dated November 30, 1967 and was identified as Tax Lot '77' until the two parcels were merged. The applicant acquired TL '77' in 1967. See attachment 4 of Exhibit 13 for the deed. The applicant built a single family home on it in 1978.

b. The northerly parcel was created by deed dated November 30, 1967 and was identified as Tax Lot '78' until the two parcels were merged. See attachment 2 of Exhibit 4 for the deed. The applicant contracted to acquire TL '78' in 1978 and acquired fee title to it in 1981. See attachment 5 of Exhibit 13 for the deed.

c. When these two parcels were created, the Site was zoned R-20 (Single Family Residential). The minimum lot size was 20,000 square feet. See attachment 3 of Exhibit 4 for the R-20 regulations. In 1977, the County rezoned the Site MUF-20. In 1980, the County rezoned the Site MUF-19. The MUF-19 regulations contained an aggregation requirement; that is, a requirement that contiguous, substandard-sized lots under common ownership be treated as one lot for purposes of zoning.

d. The applicant merged the two parcels for tax purposes on January 17, 1985. See the attachment to Exhibit 12 for the merger request. The two parcels are now identified as Tax Lot '77' on the Assessor's Map. However, the hearings officer will continue to refer to the two parcels as Tax Lots '77' and '78' when it is appropriate to distinguish between them. The hearings officer assumes the merger of tax lots does not affect the status of the Site for purposes of zoning or alienability.

B. Existing conditions and proposed use of the Site.

1. The Site is situated on the east side of NW Forest Lane about 200 feet north of its intersection with NW 53rd Drive. It has the following dimensional characteristics:

	TL '77'	*TL'78'*	*Total site*
Width	120 feet	200 feet	320 feet
Depth	575 to 672 feet	381 to 575 feet	381 to 672 feet
Area	1.83 acres	2.23 acres	4.06 acres

2. Based on the site plan, there is a single family detached dwelling situated on TL '77' about 240 feet east of NW Forest Lane, 60 feet from the south edge of the lot, and near the north edge of the lot. A detached accessory structure (garage) is situated northwest of the home straddling the line between TL '77' and '78'. There is a gravel drive from NW Forest Lane to the garage and home. There is a well situated near the southwest corner of TL '78' which serves the existing home. Based on the aerial photographs, most of the Site and surrounding area are forested. Based on Exhibit 20, TL '78' contains 25- to 35-year old maple and alder with few conifer trees. Most of the trees are of poor commercial quality. The Site contains slopes of up to 70 percent, with steepest slopes in the east half of the Site, limiting access to and potential value of timber. Based on Figure 3A of the county Geologic and Slope Hazard Map, the Site is not in an identified hazard area.

3. The applicant proposes to build a single family home on TL '78' at least 30 feet from NW Forest Lane. It would be about 120 feet east of the road, based on the site plan. The specific setbacks are not identified. The applicant states that the home will be as close as possible to the existing home on TL '77', but will be less than 200 feet from the north edge of the parcel. The applicant does not describe what will be done with the garage that straddles the line between the two parcels, but the hearings officer assumes it will be relocated or will be addressed by a lot line adjustment or easement if the applications are granted. The applicant proposes to provide water to the new dwelling from the existing well. A well log accompanying Exhibit 43 shows that the well produced about 16 gallons per minute (gpm) during a pump test. The applicant proposes to use a subsurface sanitation system to serve the new dwelling. The County Sanitarian notes that a Land Feasibility Study must be done to determine whether such a system can be accommodated. Such a study is not in the record. The applicant proposes to provide a 16-foot gravel drive to the new dwelling; it is not clear from the record whether the applicant will extend the drive serving the dwelling on TL '77' or will build a separate drive to NW Forest Lane.

4. Based on Exhibits 45 and 46, roughly the southwest half of the Site is situated in the Balch Creek basin. The county has not adopted regulations to protect that basin other than those that apply generally to development in the county.

a. The applicant did not provide specific measures to address erosion or storm water quality protection, treatment or disposal. The hearings officer assumes potential erosion can be prevented or mitigated and the storm water from the relatively small impervious area of the Site can be treated as necessary and discharged on the Site, provided appropriate plans are prepared and approved.

C. Existing and potential land uses in the vicinity of the Site.

1. Immediately north of the Site is a roughly 4-acre lot of record that is forested and not otherwise developed. Immediately east of the Site is Forest Park. Immediately south of the Site are two lots of record (1.66-acre and 3.38-acre), each of which is developed with a single family home. West of the Site across Forest Lane is a forested lot of record.

2. The vicinity of the Site is a roughly one-half square mile area to the north, west, and east. This is an appropriate area to consider, because it is the unincorporated portion of Section 25, T1N, R1W, WM that was zoned MUF-19 when the applications were filed. Therefore, this area is most like the subject Site for purposes of zoning and is most likely to be affected by the proposed development.

a. Within this vicinity are three lots containing more than 19 acres. There are 36 substandard-sized lots (those with less than 19 acres). Twenty of those lots are aggregated into eight lots of record listed below:

Tax lots aggregated in lot of record	*Area*
TL '77' & '78'	4.06 acres
TL '6' & '33'	30.39 acres
TL '89', '93' & '94'	15.62 acres
TL '2' & '26'	9.25 acres
TL '65' & '71'	6.12 acres
TL '3', '4', '34' & '85'	33.17 acres
TL '9', '10' & '11'	52.86 acres
TL '21' & '22'	15.57 acres

b. There are 25 dwellings in the vicinity. Eight of the dwellings (32%) are situated on lots of record that aggregate two or more substandard lots. There are only two undeveloped lots of record. If each parcel aggregated by MCC 11.15.2182(C) could be developed separately, at least seven dwellings could be sited in the vicinity in addition to the applicant's. See the map on page 13 of the county staff report (Exhibit 40). Dwellings also could be proposed on tax lots '21' and '33', bringing the total to 9 (a 36% increase in dwellings in the vicinity).

3. The vicinity of the Site also includes Forest Park, which occupies a large area to the east and north. The City of Portland has designated Forest Park as a significant natural resource under Statewide Planning Goal 5. The park is in forest, open space and recreational uses.

4. The vicinity of the Site also includes Balch Creek. The City of Portland has recognized the creek basin as a significant natural resource under Statewide Planning Goal 5 and has adopted the Balch Creek Watershed Protection Plan to manage the resource conflicts in the incorporated area of that basin. See Exhibit 46.

5. The vicinity of the Site also includes forested habitat for wildlife. That habitat was recently evaluated for the county. See Exhibit 47. That Exhibit includes the following statements:

Residential development poses some particular conflicts with forest wildlife. Domestic dogs and cats prey on small vertebrates including shrews and woodpeckers. Additionally when dogs form packs which chase black-tailed deer, elk and other large and medium-sized mammals.

Another concern is the establishment of non-native ornamental species of plants, gardens and lawns. Non-native ornamental plants can become the seed source for introduction of escaped exotic plant species into natural plant communities. Lawn carte and garden products such as pesticides and chemical fertilizers can adversely affect water quality. Some pesticides are toxic to wildlife and native plant species. Many garden crops will attract wildlife, and conflicts develop when crops are not sufficiently fenced or otherwise protected from wildlife depredation. This problem can increase in situations where natural habitats are declining in quality and quantity in the area, forcing displaced animals to overcome their reluctance to avoid humans in order to get enough food to survive. (p. 9)

A once contiguous forested habitat is rapidly being fragmented and nibbled away at the edges by timber extraction, road construction and residential development. The ecological integrity of Forest park is dependent upon the maintenance of forest habitat along the entire peninsula of which it is the southern portion...

Forest Park alone is not large enough to support self-sustaining populations of medium- and large-sized mammals, such as elk, bobcats, mountain lions and black bears, for which hundreds of square miles of habitat would be required (cit. omitted). *These species, as well as smaller and much less mobile species, will not be able to pass securely through the northern part of this peninsula if current trends of urbanization and clearcutting continue without regard to maintaining contiguous forested habitat throughout. The long-term survival of small less mobile species is dependent on the size of current populations within the undisturbed portion of Forest park. Many of these species may already have been lost, or are in the process of disappearing, from residential and clearcut areas. The success of future colonization or recolonization of this peninsula will depend on habitat conditions throughout the peninsula...* (p. 25)

III. HEARING AND RECORD

A. Hearing and record generally.

1. Hearings Officer Larry Epstein received testimony at the public hearing about these applications on July 19, 1993. The hearings officer held open the public record until August 2, 1993 to receive additional written evidence.

2. A record of that testimony and evidence is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services. The contents of Exhibit C are listed in an appendix to the decision.

B. Objections to introduction of evidence.

1. The applicant objected to the introduction of Exhibits 46 and 47 into the record, arguing they do not contain and are not relevant to applicable approval criteria and standards in the County Code. See pages 2 to 4 of Exhibit 43.

a. The hearings officer overruled the objection and admitted both documents into the record.

b. The hearings officer finds that both documents relate to the character of land uses in the vicinity, which makes them relevant under MCC 11.15.8505(A) through (C); they both relate to the compatibility of the proposed dwelling with uses in the vicinity and the land use pattern of the area, which makes them relevant under MCC 11.15.2172(C)(3); and they both relate to subject matter relevant to compliance with comprehensive plan policy 12 (Multiple Use Forest).

2. Mr. Rochlin objected to introduction of Exhibit 34 and applicant's arguments and evidence related to constitutional claims.

a. The hearings officer overruled the objection and admitted the exhibit, arguments and evidence related to constitutional claims.

b. The hearings officer finds that exhibits, argument and evidence have to be introduced by the applicant to preserve his rights to raise those issues on appeal. As noted in finding V below, the constitutional arguments are not within the hearings officer jurisdiction, and they are not relevant to an applicable approval standard or criterion in the County Code. But such exhibits, arguments and evidence should be accepted to give the applicant the opportunity to preserve those issues on appeal to the courts.

IV. APPLICABLE LAW AND RESPONSIVE FINDINGS

A. Compliance with MCC 11.15.8505 (Variances).

1. MCC 11.15.8515(A) defines a "Major Variance" as one that is "in excess of 25 percent of an applicable dimensional requirement." The applicant proposes variances of 88 and 90 percent. Therefore the applicant is requesting two Major Variances.

2. MCC 11.15.8505(A) contains four approval criteria for a variance. In addition it provides the following in an introductory paragraph:

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

a. Mr. Rochlin argued that the introductory paragraph cited above contains an additional approval criterion, i.e., that the variance is warranted by practical difficulties.

b. The hearings officer finds the term "practical difficulties" in the introductory paragraph is not intended to be an approval criterion for a variance, based on

the plain meaning of the second sentence in that paragraph. The second sentence subjects a Major Variance only to the criteria that *follow* the paragraph. The hearings officer construes the paragraph to reflect a legislative intent that practical difficulties warrant a variance. The nature of the practical difficulties is defined in the four criteria that follow the paragraph.

3. MCC 11.15.8505(A)(1) provides the following criterion:

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

a. The applicants arguments about this criterion are provided at page 12 of Exhibit 40. In summary, the applicant argues that the Site is subject to a circumstance or condition that does not apply to other property in the vicinity, because (1) other non-aggregated substandard-sized Lots of Record lots in the vicinity are developed with dwellings; (2) the applicant could have conveyed one of the tax lots to a third party before the effective date of the 1980 zone change to create two non-aggregated substandard-sized Lots of Record lots; and (3) it would be unfair to deny the applicant the same chance now.

b. The hearings officer finds that the Site is not subject to a circumstance or condition that does not apply generally to other property in the same vicinity or district.

(1) All substandard-sized properties in the MUF-19 zone in Multnomah County are subject to aggregation. It is not an unusual condition for substandard-sized lots in the MUF-19 zone to be aggregated; they are all aggregated.

(2) Based on finding II.C.2, twenty of the 36 lots in the vicinity are aggregated; therefore, it is not an unusual condition or circumstance for substandard-sized lots in the MUF-19 zone in the vicinity of the Site to be aggregated; they are all aggregated. The applicant's lot of record is the smallest of those made up of aggregated parcels; yet it can be developed to the same extent as the largest of the substandard lots of record.

(3) The intended use of TL '78' for a non-resource dwelling on a substandard-sized lot is not unusual. There are other non-resource dwellings on aggregated and non-aggregated parcels in the vicinity and district.

(4) The hearings officer finds that it is not an unusual condition or circumstance for land use laws to change and for rights created by older laws to be changed or eliminated by newer laws. The applicant could have conveyed his interest in TL '78' before the effective date of Ordinance 236, avoiding aggregation. His failure to do so at that time does not constitute an unusual condition or circumstance. Many other owners of substandard-sized properties in the MUF-19 zone failed to do so, too.

4. MCC 11.15.8505(A)(2) provides the following criterion:

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

a. The applicant's argument is reprinted at page 14 of Exhibit 40. In summary, the applicant argues the minimum lot size standard restricts the subject property to a greater degree than it restricts other properties in the vicinity. In particular, of the seven lots of record nearest the Site, five are substandard in size and have homes on them. Of the 36 substandard and three 19+acre lots in the vicinity, 22 contain dwellings. The implication is that, if these other lots can be developed with dwellings, then a requirement that prohibits the applicant from doing so on TL '78' is more restrictive. The applicant also argues that it is more restrictive to apply MCC 11.15.2182(A)(3) in a manner that permanently aggregates the two former tax lots. (See also finding V.D.2.)

b. The hearings officer finds that the zoning requirement does not restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or district.

(1) Other property in the vicinity is subject to the lot size standard in exactly the same way the applicant's property is subject to it. The impact of the standard is the same for each contiguous ownership: a minimum lot size of 19 acres is required. If the lot is smaller than 19 acres, then it must be aggregated with other contiguous properties under the same ownership. Each Lot of Record can be developed consistent with the standards for a Lot of Record in the MUF-19 zone. Nothing makes the impact of the lot size standard on the Site more onerous than its impact on other properties in the vicinity.

(2) The Site is the smallest aggregated parcel in the vicinity; but that does not make the minimum lot size standard more onerous. For purposes of permitted uses, it could be argued that the regulations of the MUF-19 zone treat the applicant's Site better than other properties in the vicinity, because they allow the Site to be developed with a dwelling notwithstanding it is smaller than most other lots of record in the vicinity.

5. MCC 11.15.8505(A)(3) provides the following criterion:

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

a. The applicant's argument is reprinted at page 15 of Exhibit 40. In summary, the applicant argues another single family home in the area will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affect the appropriate development of adjoining properties, because there are single family homes in the vicinity and on five of seven adjoining parcels.

b. The hearings officer finds that the variances would be materially detrimental to the public welfare, because they would subvert the adopted policy of the County to prevent excessive non-resource use in resource areas by requiring minimum lot sizes commensurate with the nature of the area. The minimum lot size in the zone is 19 acres. The hearings officer finds the minimum lot size standard reflects a legislative intent that the Multiple Use Forest area be characterized by lots at least that large to preserve the opportunity for farm and forest uses by preserving land in large blocks. Preserving land in large blocks also reduces the potential for non-resource uses. The applicant proposes lots that are 88 and 90 percent smaller than the minimum lot size. Such significant deviations from the minimum lot size standard conflict with the adopted legislative policy.

c. The hearings officer also finds that the applicant failed to sustain the burden of proof that granting the variances would not adversely affect appropriate development of adjoining property.

(1) Although each application is judged on its own merits, if the requested variances (and conditional use permit) are granted, they would result in a substantial change in the economic value of the applicant's property. It is asserted by the applicant that TL '78' has no economic value if a building permit cannot be issued for it as a separate lot of record. See Exhibit 24. If the variances are granted, the value of TL '78' would be at least $60,000 to $100,000. See Exhibits 16 and 24. This difference in value would create a powerful economic incentive for owners of other aggregated properties to apply for variances and conditional use permits for non-resource dwellings throughout the MUF-19 zone generally and in the vicinity of the Site particularly. The appropriate development of adjoining property is for multiple use forest purposes on lots of 19 acres or more or on smaller lots of record. By creating a powerful economic incentive for the creation of more substandard-sized parcels, the proposed variances are contrary to the appropriate development of adjoining property.

(2) Based on Exhibit 47, the hearings officer finds that approval of the variances would be contrary to the appropriate development of adjoining property to the east, i.e., Forest Park. The granting of the variances would allow the granting of a conditional use permit for an additional non-resource dwelling on a parcel adjoining the Park. The impacts of residential development on the quality of wildlife habitat in the Park and the preservation of a continuous wildlife corridor are described in Exhibit 47. Although the incremental impact of the proposed variances is small per se, the cumulative impact of the variance in combination with other development that is or may be permitted in the vicinity, would be significantly adverse, particularly if the granting of these variances provides an incentive for other variances in the vicinity of the Park.

6. MCC 11.15.8505(A)(4) provides the following criterion:

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

a. The applicant's argument is reprinted at page 16 of Exhibit 40. In summary, the applicant argues the variances will not adversely affect realization of the comprehensive plan, because the zoning that implements the plan allows non-resource dwellings such as the one being proposed.

b. The hearings officer finds that MCC 11.15.8505(A)(4) is vague. It is not clear what is meant by the phrase "realization of the comprehensive plan." The hearings officer construes that phrase to require a variance to comply with applicable policies of the comprehensive plan, because only if the plan policies are implemented will the comprehensive plan be realized.

c. The hearings officer finds that granting of the variances will not be consistent with comprehensive plan policy 12 (Multiple Use Forest) and that denial of the variances is more consistent with the realization of the comprehensive plan. That policy provides as follows in relevant part:

The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:

a. Predominantly in forest site class I, II, III, for Douglas fir as classified by the U.S. Soil Conservation Service;

b. Suitable for forest use and small wood lot management, but not in predominantly commercial ownerships;

c. Provide (sic) with rural services sufficient to support the allowed uses, and are not impacted by urban-level services; or

d. Other areas which are:

(1) Necessary for watershed protection or are subject to landslide, erosion or slumping; or

(2) Potential reforestation areas, but not at the present used for commercial forestry; or

(3) Wildlife and fishery habitat areas, potential recreation areas, or of scenic significance.

The County's policy is to allow forest use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.

(1) The Site adjoins forest land, based on the aerial photo and Exhibits 46 and 47. Residential development is not compatible with forest lands for the reasons identified in Exhibits 46 and 47 and noted in finding II.C.5. Therefore, variances that allow residential development in a forested area are not consistent with the goal of policy 12 to manage MUF lands for forest uses and compatible non-forest uses. Although some potential adverse impacts could be mitigated, nothing obligates the county to find such mitigation is sufficient to prevent or reduce the potential for the incompatibilities, particularly where mitigation measures are difficult to monitor and enforce over time.

(2) The Site is just one instance where parcels are aggregated into a lot of record. Arguably, granting the proposed variances for this one Site would have a negligible effect per se on realization of the comprehensive plan as a whole. However, the variances could have a synergistic impact. The Site and related circumstances of this applicant are characteristic of many other aggregated substandard lots in the farm and forest resource zones and their owners. If the variances are granted for this Site, then there is a powerful economic incentive for owners of other similarly-situated properties to do the same. To the extent granting the proposed variances would spur similar applications by others, it would increase the potential that other variances would be granted, thereby decreasing the likelihood that the MUF area would remain a principally resource-oriented zone, in conflict with policy 12.

d. The hearings officer finds that granting of the variances will not be consistent with comprehensive plan Policy 22 (Energy Conservation) and that denial of the variances is more consistent with the realization of the comprehensive plan. That policy provides as follows in relevant part:

> ***The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:***
>
> ***a. The development of energy-efficient land uses and practices;***
>
> ***b. Increased density and intensity of development in urban areas...***

(1) The hearings officer finds that increasing density in a rural area does not result in an energy-efficient land use practice, because it consumes more energy to travel from the rural area to the urban area where jobs, schools and shopping are located.

(2) The hearings officer also finds that, to the extent housing in the rural area fulfills housing needs that would otherwise be provided in the urban area, granting the variances would be inconsistent with the policy of increasing urban densities.

B. Compliance with MCC 11.15.2162 - 11.15.2194 (MUF zone).

1. Because the variances are denied, the Site contains only one lot of record. A second dwelling is not permitted on a single lot of record. Therefore, the conditional use permit must be denied, too. However, the following findings are adopted in the interest of providing a complete decision.

2. MCC 11.15.2172(C) allows a residential use in the MUF-19 zone, not in conjunction with a primary use, subject to six criteria.

3. MCC 11.15.2172(C)(1) provides:

> ***The lot shall meet the standards of MCC .2178(A), .2180(A) to (C), or .2182(A) to (C).***

a. The hearings officer finds the lot in question (i.e., TL '78') does not comply with MCC .2178(A), because it does not contain 19 acres. It does not comply with MCC .2180(A), because the applicant did not apply for or receive approval of a lot of exception. It does not comply with MCC .2182(A) to (C), because it does not contain 19 acres, is aggregated with TL '77', and is not divided from TL'77' by a county-maintained road or zoning district boundary.

4. MCC 11.15.2172(C)(2) provides in relevant part:

> ***The land is incapable of sustaining a farm or forest use, based upon one of the following:***
>
> ***(c) The lot is a Lot of Record under MCC .2182 (A) through (C), and is ten acres or less in size.***

a. The hearings officer finds that TL '78' is not a lot of record under MCC .2182(A) through (C), because it is aggregated with TL '77'. The lots are contiguous, smaller than 19 acres and are owned by the same party.

5. MCC 11.15.2172(C)(3) provides:

A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.

a. The hearings officer finds that a dwelling on TL '78' would be compatible with other rural residential uses in the vicinity, but would be incompatible with one primary uses on nearby property, i.e., Forest Park, for the reasons listed in Exhibit 47 and cited above in findings II.C.5 and IV.A.5.c(2).

b. The hearings officer finds that a dwelling on TL '78' would materially alter the stability of the overall land use pattern of the area for the same reason the variances would be detrimental to the public welfare; i.e., allowing a second dwelling on this lot of record would effectively eliminate the aggregation requirement of the zone under circumstances that differ little if at all from the circumstances that apply to many other aggregated parcels, making it more likely that further non-resource development would be proposed. The incremental effect of such development would alter the land use pattern of the area which the MUF regulations seek to preserve.

6. MCC 11.15.2172(C)(4) provides:

The dwelling will not require public services beyond those existing or programmed for the area.

a. The hearings officer finds the dwelling will not require public services beyond those existing or programmed for the area, based on the response forms in the application, provided the applicant shows that private water and sanitation systems are approved before construction is authorized.

7. MCC 11.15.2172(C)(5) provides:

The owner shall record with the Division of records and Elections a statement that the owner and successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

a. The hearings officer finds the applicant can record such a statement before construction is authorized.

8. MCC 11.15.2172(C)(6) provides:

The residential use development standards of MCC 11.15.2194 will be met.

a. The hearings officer finds the applicant does or can comply with the residential use development standards, based on finding IV.B.9, except as noted therein.

9. The residential use development standards of MCC 11.15.2194 require the following:

> ***a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas," published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:***
>
> ***(1) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and***
>
> ***(2) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;***
>
> ***b. An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;***
>
> ***c. The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B);***
>
> ***d. The physical limitations of the Site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;***
>
> ***e. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitation of subpart #3 above;***
>
> ***f. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:***
>
> ***(1) A setback of 30 feet or more may be provided for a public road; or***
>
> ***(2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...***
>
> ***j. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.***

a. The hearings officer finds the applicant can comply with the fire safety measures. Fire lanes at least 30 feet wide are proposed and shown on the site plan.

b. The applicant proposes to maintain access to the well to provide water for fire fighting purposes. There is no other perennial water source on or adjoining the Site.

c. The dwelling will be located within about 120 feet of NW Forest Lane. It is not clear from the record whether a location closer to the road is possible. A driveway in excess of 500 feet is not required.

d. The hearings officer finds that the productivity potential of the Site is greatest where the Site is least sloped, because that is the area where access for commercial timber practices would be easiest. That also is the area where the dwelling is proposed. To that extent, the dwelling is not located on the portion of the site having the lowest productivity characteristics. The area of the site with the lowest productivity characteristics is the most steeply sloped land. However, this land is the most difficult to access for any purpose, and any development of that area would be closer to Forest Park and would be likely to have more significant effects due to the steep, forested slopes. In balance, the area of the Site proposed for the home is the area best suited for that purpose.

e. The hearings officer finds the proposed dwelling will not have a 200-foot setback from the north and south property lines. To the south, a lesser setback is warranted to cluster the new home with the existing home on TL '77'. To the north, a 200-foot setback is not possible, because TL '78' is only 200 feet wide (north-south).

f. The dwelling is outside a big game winter wildlife habitat area.

C. Compliance with applicable Comprehensive Plan Policies.

1. The applications do not comply with Policies 12 (Multiple Use Forest) or 22 (Energy Conservation) for the reasons given in finding IV.A.6.c and d.

2. Policy 13 (Air and Water Quality and Noise Levels) provides:

> ***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.***

a. The hearings officer finds the conditional use application does not comply with Policy 13 (Air and Water Quality and Noise), because the application does not include a statement from the applicable agency that all standards can be met with respect to subsurface sanitation. The statement on the response form from the Sanitarian indicates a land feasibility study is necessary. Until that study is done and it is determined that a sanitary waste system can be situated on the Site, there is no assurance sanitary wastes will be treated properly. Improper or inadequate treatment would adversely affect water quality.

b. There is no agency with authority to comment about water quality impacts in the Balch Creek basin generally. The basin is split by jurisdicitional boundaries. For the portion of the basin in unincorporated Multnomah County, the county is the agency with authority to review drainage plans. The applicant did not submit any plans. The county has not adopted specific drainage standards for the basin even if the applicant did submit those plans. Given the relatively small impervious area of the site and the relatively

large undeveloped area of the site, the hearings officer assumes storm water can be collected and discharged on-site without causing or significantly contributing to storm water quality problems, provided appropriate erosion control measures are used during development and until vegetation is re-established on the Site. Given the circumstances, the hearings officer finds the applicant complies with this policy with respect to storm water quality.

c. The proposed use will not generate significant noise or air quality impacts and is not a noise sensitive use. There is no likelihood the proposed use will violate state noise or air quality regulations. Therefore statements from ODEQ regarding noise and air quality are not required.

3. Policy 37 (Utilities) requires the county to find, prior to approval of a quasi-judicial action, that:

> ***A. The proposed use can be connected to a public sewer and water system, both of which have adequate capacity, or, to the extent such a system is not available, there is an adequate private water system and a private sanitation system approved by ODEQ;***
>
> ***B. There is adequate capacity in the storm water system to handle the run-off; or the run-off can be handled on the site or adequate provisions can be made;***
>
> ***C. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds or lakes or alter the drainage on adjoining lands;***
>
> ***D. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and***
>
> ***E. Communications facilities are available.***

a. The hearings officer finds that the conditional use application does not comply with this policy, because the application does not include a statement from the applicable agency that a subsurface sanitation system will be approved. The statement on the response form from the Sanitarian indicates a land feasibility study is necessary. Until that study is done and it is determined that a sanitary waste system can be situated on the Site, there is no assurance a private sanitation system will be approved by ODEQ.

b. The application includes information about a well on the Site. The applicant argues the well is adequate. Ms. Sauvageau and Mr. Rochlin argue the evidence is inconclusive. See Exhibits 30 and 44. The hearings officer concludes the well is an adequate private water system, based on the well log in the record, provided the applicant obtains whatever permits and approvals are necessary from the Water Resources Department before construction is authorized.

c. The applicant did not provide information about storm water drainage. However, the hearings officer finds that storm water run-off can be accommodated on the Site without adverse off-site effects for the reasons given in finding IV.C.2.b.

d. The application includes unrebutted statements that power and communications utilities are available to the site. The hearings officer accepts those statements.

4. Policy 38 (Facilities) requires the county to find, prior to approval of a quasi-judicial action, that:

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

a. The hearings officer finds the school district, fire district and sheriff had an opportunity to review and comment about the application, based on the response forms with the application. Based on the form from the sheriff, adequate local police protection can be provided to the Site.

b. Based on the form from the fire district, water pressure and flow are not adequate for fire fighting purposes, because there are no public water mains or pereenial surface water supplies in the area. However, the fire district can provide tanker trucks to provide adequate water flow and pressure in the event of fire. When combined with review of the proposed structures by the fire district, and imposition of conditions of approval to address fire safety in that review process, the hearings officer finds that tanker trucks provide adequate water flow and pressure for fire fighting purposes.

V. OTHER ALLEGATIONS AND RESPONSIVE FINDINGS

A. Relevance of ORS 92.017.

1. The applicant argued that ORS 92.017 requires the County to recognize TL '77' and '78' as discrete lots and to grant a building permit for a home on each lot. See particularly, Exhibits 3, 4, 11, 13 and 43.

2. ORS 92.017 provides:

> *A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law.*

3. The hearings officer does not have jurisdiction to determine whether a county ordinance complies with State law. The hearings officer is limited by ORS 215.416(8), which provides:

Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application with the zoning ordinance and comprehensive plan for the area in which the proposed sue of land would occur into the zoning ordinance and comprehensive plan for the county as a whole.

4. ORS 92.017 is not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. It cannot be the basis for a decision to approve or deny the applications. The hearings officer finds the issue of compliance with ORS 92.017 is not relevant to the applications. However, it is relevant to show a land division application is not necessary. See finding V.D below.

5. Although not necessarily dispositive, the hearings officer takes notice of the decision of the Land Use Board of Appeal in Kishpaugh v. Clackamas County, (LUBA No. 92-080, October 22, 1992) regarding aggregation language like that in MCC 11.15.2182(C) in a fact situation similar to that in this case. LUBA concluded, "[n]othing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local government as being separately developable." LUBA's decision was affirmed by the Oregon Court of Appeals.

B. Notice of the 1980 zone change.

1. The applicant alleged that the failure of the county to mail notice of the 1980 zone change (from MUF-20 to MUF-19) to the applicant denied the applicant due process. See p. 5 of Exhibit 35. ORS 215.508 requires the county to give individual notice of a legislative land use action unless funds are not available for such notice. The county staff report states funds were not available. The applicant argues there is not substantial evidence in the record to show funds were not available.

2. ORS 215.508 is not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. Failure to comply with that statute cannot be the basis for a decision to approve or deny the application. The hearings officer finds the issue of the lack of notice of the 1980 zone change is not relevant.

C. Economic value of the parcel.

1. The applicant alleges TL '78' has no economic value unless the variance and conditional use permit are granted, and submits Exhibits 20 and 34 in support of that allegation. The implication is that denial of the applications will result in a "taking" of property rights under state and federal constitutions.[1]

2. State and federal constitutional provisions regarding "taking" of property are not listed as an approval standard or criteria for a variance or conditional use permit in the zoning ordinance or comprehensive plan. The hearings officer does not have jurisdiction to decide constitutional issues. Whether TL '78' has economic value if the applications are denied is not relevant to the applicable approval standards and criteria.

---

[1] Article I, section 18 of the Oregon Constitution provides that "Private property shall not be taken for public use ... without just compensation." The 5th Amendment to the US Constitution provides, "[N]or shall private property be taken for public use, without just compensation."

3. Although not necessarily dispositive, the hearings officer takes notice of the decision of the Land Use Board of Appeal in Lardy v. Washington County, (LUBA No. 92-170, February 23, 1993). LUBA ruled that Article I, Section 18 of the Oregon Constitution does not guarantee a property owner the right to build a dwelling on the owner's property.

D. Nature of the application.

1. Mr. Rochlin argued the application must include a request for a land division, because the two former tax lots were aggregated by Ordinance 236. See Exhibit 26. However the hearings officer finds a request for a land division is not necessary, because no merger of the parcels occurred for purposes of Oregon and Multnomah County land division laws. Aggregation merges lots for zoning purposes. Combining tax accounts merges the lots for tax purposes. However neither of those actions voids the status of the two former tax lots as two separate parcels for purposes of the land division laws.

2. Mr. Robinson argued the hearings officer should decide, as part of the review of the applications in this case, whether MCC 11.15.2182(A)(2) would allow the applicant to convey TL '78' to a third party.[2] See p. 6 of Exhibit 43. However the hearings officer finds that MCC 11.15.2182(A)(2) is not relevant to the applications under review, because the Site is a Lot of Record under MCC 11.15.2182(A)(3). The applicant has not conveyed TL '78' to a third party. The issue is not ripe for review nor raised by the applications in this case.

a. Although the hearings officer necessarily construes the County Code in conducting hearings and ruling on an application, the hearings officer is not empowered to issue an advisory opinion interpreting the County Code based on a hypothetical fact situation not specifically raised by an application. Such an interpretation might be able to be made by the Planning Commission pursuant to MCC 11.15.9045. The applicant proposed an interpretation based on ORS 92.017, (see Exhibit 4), but the county refused to process an application for an interpretation based on that statute, because the Planning Commission cannot construe state law. See Exhibit 5. The applicant has not applied for an interpretation based on the County Code alone.

b. The record in this case includes MCC 11.15.2182(E), which, although not directly relevant to the applications in this case in their current posture, could be construed to prevent the applicant from conveying TL '78' separate from TL '77'.[3] However, the record also includes Exhibit 1, which reflects the county's intention not to object to such a conveyance, but to regulate the use of the two tax lots as a single Lot of Record regardless of such conveyance. In effect the county staff construes MCC 11.15.2182(A)(3) to create and preserve an aggregated Lot of Record for zoning purposes as such over time, notwithstanding division of ownership of parcels aggregated into the Lot of Record. That is, county staff believe a Lot of Record under MCC 11.15.2182(A)(3) cannot be converted into multiple Lots of Record under MCC 11.15.2182(A)(2).

---

[2] MCC 11.15.2182(A)(2) contains a definition for "Lot of Record" that is like MCC 11.15.2182(A)(3), except that it applies where the owner of the lot in question does not own a contiguous lot.

[3] MCC 11.15.2182(E) provides in relevant part as follows:

> *[N]o sale or conveyance of any portion of a Lot of record, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district,*

(1) The hearings officer recognizes that such a construction of the ordinance may be disputed, but the dispute is not squarely raised by the applications in this case in their current posture. Therefore the hearings officer declines to construe MCC 11.15.2182(A)(2) or MCC 11.15.2182(E).

VI. CONCLUSIONS AND DECISION

A. Conclusions.

1. The hearings officer concludes that the applicant failed to bear the burden of proving that the proposed variances comply with MCC 11.15.8505(A)(1)-(4), based on finding IV.A.

2. The hearings officer also concludes that the applicant failed to bear the burden of proving that the proposed conditional use permit complies with MCC 11.15.2172(C)(1)-(3), based on finding IV.B.

3. The hearings officer also concludes that the applicant failed to bear the burden of proving that the proposed applications comply with comprehensive plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise Level), 22 (Energy Conservation) and 37 (Utilities).

B. Decision.

In recognition of the findings and conclusions contained herein, and incorporating the public testimony and exhibits received in this matter, the hearings officer hereby denies HV 9-93 and CU 17-93.

Dated this 13th day of August, 1993.

Larry Epstein, AICP
Multnomah County Hearings Officer

CONTENTS OF EXHIBIT C
WRITTEN EVIDENCE IN THE RECORD
FOR CU 17-93/HV 9-93

Exhibit No.	*Description*
1	Letter dated April 17, 1992 from R. Scott Pemble to Michael Robinson
2	Letter dated April 20, 1992 from Michael Robinson to R. Scott Pemble
3	Letter dated May 28, 1992 from Michael Robinson to R. Scott Pemble w/ exhibits
4	Application for interpretation dated June 5, 1992 by Michael Robinson w/ exhibits
5	Letter dated July 9, 1992 from R. Scott Pemble to Michael Robinson
6	Letter dated July 17, 1992 from Michael Robinson to R. Scott Pemble
7	Letter dated July 23, 1992 from Michael Robinson to R. Scott Pemble
8	Letter dated August 17, 1992 from Sharon Cowley to Michael Robinson
9	Letter dated August 18, 1992 from Michael Robinson to Sharon Cowley
10	Letter dated August 18, 1992 from Michael Robinson to R. Scott Pemble
11	Application for conditional use permit and variance dated December 17, 1992 from Michael Robinson w/ exhibits
12	Letter dated January 7, 1993 from Robert Hall to Michael Robinson w/ exhibit
13	Revised narrative dated January 27, 1993 from Michael Robinson w/ exhibits
14	Letter dated February 11, 1993 from R. Scott Pemble to Michael Robinson
15	Letter dated February 19, 1993 from Michael Robinson to Sharon Cowley
16	Letter dated February 23, 1993 from Mike Louaillier to Robert Hall
17	Notice of hearing and certification of mailing dated March 15, 1993
18	Letter dated March 17, 1993 from Michael Robinson to Robert Hall
19	Notice of postponement and certificate of mailing dated March 22, 1993
20	Letter dated April 1, 1993 from Frank Walker to Michael Robinson
21	Notice of hearing and certification of mailing dated April 8, 1993
22	Copy of published notice
23	Letter dated April 14, 1993 from Michael Robinson to Robert Hall w/ Ex. no. 20
24	Affidavit of posting received April 28, 1993
25	Letter dated April 27, 1993 from Virginia Atkinson to Robert Liberty
26	Letter dated April 28, 1993 from Arnold Rochlin to Hearings Officer
27	Letter dated April 29, 1993 from Michael Robinson to Bob Hall w/ exhibit
28	Letter dated April 29, 1993 from Kathryn Murphy to Multnomah County Department of Environmental Services ("DES")

Exhibit No.	Description
29	Notice of postponement and certificate of mailing dated April 30, 1993
30	Letter received April 30, 1993 from Paula Sauvageau to DES w/ exhibit
31	DES Staff Report dated May 3, 1993
32	Letter dated May 17, 1993 from Jim Sjulin to Bob Hall
33	Letter dated June 22, 1993 from Lee Marshall to Bob Hall
33	Letter dated June 22, 1993 from J.E. Bartels to Bob Hall
34	Letter dated June 24, 1993 from John Watson to William Hackett
35	Letter dated June 29, 1993 from Michael Robinson to Gary Clifford
36	Notice of hearing and certification of mailing dated June 29, 1993
37	Letter dated July 13, 1993 from David Smith to Gary Clifford
38	Letter dated July 13, 1993 from William Hackett
39	Two memoranda dated July 19, 1993 by Sharon Cowley to the file
40	DES Staff Report dated July 19, 1993
41	Letter/testimony dated July 19, 1993 from Arnold Rochlin
42	Letter dated July 19, 1993 from Nancy Rosenlund to Larry Epstein
43	Letter dated July 26, 1993 from Michael Robinson to Larry Epstein
44	Letter dated August 2 from Arnold Rochlin to Larry Epstein
45	Two maps of Balch Creek basin (one with parcels & one with topography)
46	Balch Creek Watershed Protection Plan, by Portland Bureau of Planning dated December 19, 1990
47	"A Study of Forest Wildlife Habitat in the West Hills," by Esther Levy, Jerry Fugate and Lynn Sharp dated March, 1992
48	Two aerial photographs (oversized)
49	Land use survey (updated April, 1989)

MEETING DATE: September 28, 1993

AGENDA NO: P-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 20-93 Public Hearing

BOARD BRIEFING **Date Requested:** _____

Amount of Time Needed: _____

REGULAR MEETING: **Date Requested:** September 28, 1993

Amount of Time Needed: 30 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: Sharon Cowley **TELEPHONE #:** 2610
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Sandy Mathewson

ACTION REQUESTED:

(x) DENIAL

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

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

CU 20-93 Public hearing for a conditional use request for a non-resource related single family residence on EFU, exclusive farm use, for property located at 31705 SE Lusted Road

11/10/93 copies of 93-372 to Sharon Cowley, Sandy Mathewson & Bethlue Woodcock

BOARD OF COUNTY COMMISSIONERS
1993 SEP 20 PM 3:10
MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C4-20-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☑ Notice of Review — No. of Pages 7

*(Maybe distributed at Board Meeting)

☑ Previously Distributed _____

☑ Decision — No. of Pages 19

(Hearings Officer/Planning Commission)

☑ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY OREGON
DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C 1 20-93

I. Materials Distributed to the Board

- ☑ Agenda Placement Sheet (1 Pages)
- ☑ Case Summary Sheet (1 Pages)
- ☑ Notice of Review Application (7 Pages)
- ☑ Decision (19 Pages)
  (Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☑ Minutes (14 Pages)
- ☐ Transcript (Pages)
- ☑ Applicant's Application and Submittals (30 Pages)
- ☑ Case Correspondence (6 Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
  (Maps)
- ☐ Other Materials ( )

(CL/2)

MULTNOMAH COUNTY

BOARD HEARING OF **September 28, 1993**

CASE NAME: **Lundbom Appeal**

Conditional Use Denial

TIME **2:15 pm**

NUMBER **CU 20-93**

1. Applicant Name/Address: Betilue Lundbom
   31847 SE Lusted Rd.
   Gresham, OR 97080

ACTION REQUESTED OF BOARD

- ☐ Affirm Hearings Offficer
- ☒ Hearing
  - ☐ Scope of Review
    - ☐ On the record
    - ☐ De Novo
    - ☒ New Information allowed

2. Action Requested by applicant:

   Approve a non-farm related single family residence on 3 acres in the EFU zone.

3. Staff Report Recommendation (August 2, 1993):

   Approve, subject to conditions

4. Hearings Officer Decision (August 5, 1993):

   Denied

5. If recommendation and decision are different, why?

   The Hearings Officer found that the property was not a legal Lot of Record, and that the applicant had not shown that the proposed residence would be compatible with and not interfere with surrounding agricultural uses.

ISSUES

1. Lot of Record issue: The subject property was divided sometime prior to 1977 when the zoning was Suburban Residential (SR). The division met all SR criteria. However, the Hearings Office found that at the time of the division Statewide Planning Goal 3, "Agricultural Lands", was also applicable to all land use decisions affecting farm land. Due to a lack of evidence of compliance with Goal 3, he could not find that the property is a legal Lot of Record which satisfied all applicable laws when it was created.

2. Compatibility with farm uses and non-interference with farming practices; alteration of land use pattern: The Hearings Officer found there was insufficient information provided (about the kind of farm use occurring in the area or the management activities used on these farms) to determine that the dwelling would be compatible with farm uses and not interfere with farming practices. He also concluded that authorizing another non-resource dwelling in the area could create an argument for subsequent approvals, tipping the balance in favor of non-resource uses in the area.

3. General unsuitability of the parcel for farming: The applicant argued that the small size of the lot makes it unsuitable for farming. The Hearings Officer cited court cases that concluded that small parcel size alone is insufficient to demonstrate unsuitability. Whether or not the property can be farmed in conjunction with other lots must be considered. The subject property is currently being used to graze livestock in conjunction with adjacent lots.

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

September 7, 1993

NOTICE OF A PUBLIC HEARING

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

Case File: **CU 20-93**

Scheduled Before: **Board of County Commissioners**

Hearing Date, Time, & Place: **September 28, 1993; at 2:15 p.m.**
Multnomah County Courthouse, Room 602
1021 SW 4th Avenue, Portland

Scope of Review: On the record plus additional testimony and evidence, limited to evidence relating to the lot of record, general suitability of the parcel for farming, and other approval criteria as interpreted by the Hearings Officer.

Time Allowed for Testimony: 10 minutes per side

Proposed Action(s) and Use(s): **Conditional Use** for a non-resource related single family residence.

Location of the Proposal: 31075 SE Lusted Rd.

Legal Description of Property: Tax Lot '32'; Section 17, T1S, R4E, 1991 Assessor's Map

Plan Designation(s): Exclusive Farm Use

Zoning District(s): EFU, Exclusive Farm Use

Applicant(s): Betilue Lundbom
31847 SE Lusted Rd., Gresham, 97080

Property Owner(s) same

Proposal Summary: Appellants challenge the August 5, 1993 Hearings Officer decision which denied application CU 20-93 for a non-farm residence on the above property. A *Notice of Review* (appeal) was filed on August 23, 1993. The decision and *Notice of Review* were reported to the Board on August 31, 1993. The Board set a hearing date of September 28, 1993.

Public Participation and Hearing Process: Application materials and the grounds for appeal are available for inspection at least 20 days prior to the hearing, at no cost. Copies may be purchased for 30-cents per page. For further information on this case, call Sandy Mathewson at 248-3043 [M-F, 8:00-4:30].

To comment on the 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 applicable to the request but limited to the *Scope of Review* as stated on the first page of this notice. The hearing procedure will follow the Board of Commissioner's *Rules of Procedure* (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 11.15.2012 (B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:

(3) Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. The lot shall be a Lot of Record under MCC .2018 or have been created under the applicable provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:

(a) Is compatible with farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243;

(b) Does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use;

(c) Does not materially alter the stability of the overall land use pattern of the area;

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, loca-

tion and size of the tract;

(e) Complies with subparts (1), (2) and (3) of MCC .2010(A) if constructed off-site;

MCC .2010 (A):

(1) Located on a Lot of Record as described in MCC .2018, or

(2) Located on a lot created under MCC 11.45, Land Divisions, after August 14, 1980, with a lot size not less than 76 acres on Sauvie Island or 38 acres elsewhere in the EFU district, and

(3) If a mobile or modular home:

(a) Construction shall comply with the standards of the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes.

(b) The dwelling shall be attached to a foundation for which a building permit has been obtained.

(c) The dwelling shall have a minimum floor area of 600 square feet.

(f) Complies with such other conditions as the Hearings Officer considers necessary to satisfy the purposes of MCC .2002;

(g) Construction shall comply with the standards to the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes;

(h) The dwelling shall be attached to a foundation for which a building permit has been obtained, and

(i) The dwelling shall have a minimum floor area of 600 square feet.

(j) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of nearby property owners to conduct accepted farming and forestry practices.

(k) The applicant shall provide evidence that all additional taxes and penalties, if any, have been paid if the property has been receiving special assessment as described in ORS 215.236(2). In the alternative, the Approval Authority may attach conditions to any approval to insure compliance with this provision.

MCC .7122: Exclusive Farm Use Conditional Use Approval Criteria

(A) In addition to the criteria of MCC .7120, an applicant for a Conditional Use listed in MCC .2012 (B) must demonstrate that the use:

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(B) For the purposes of this subsection surrounding lands devoted to farm or forest use shall not include:

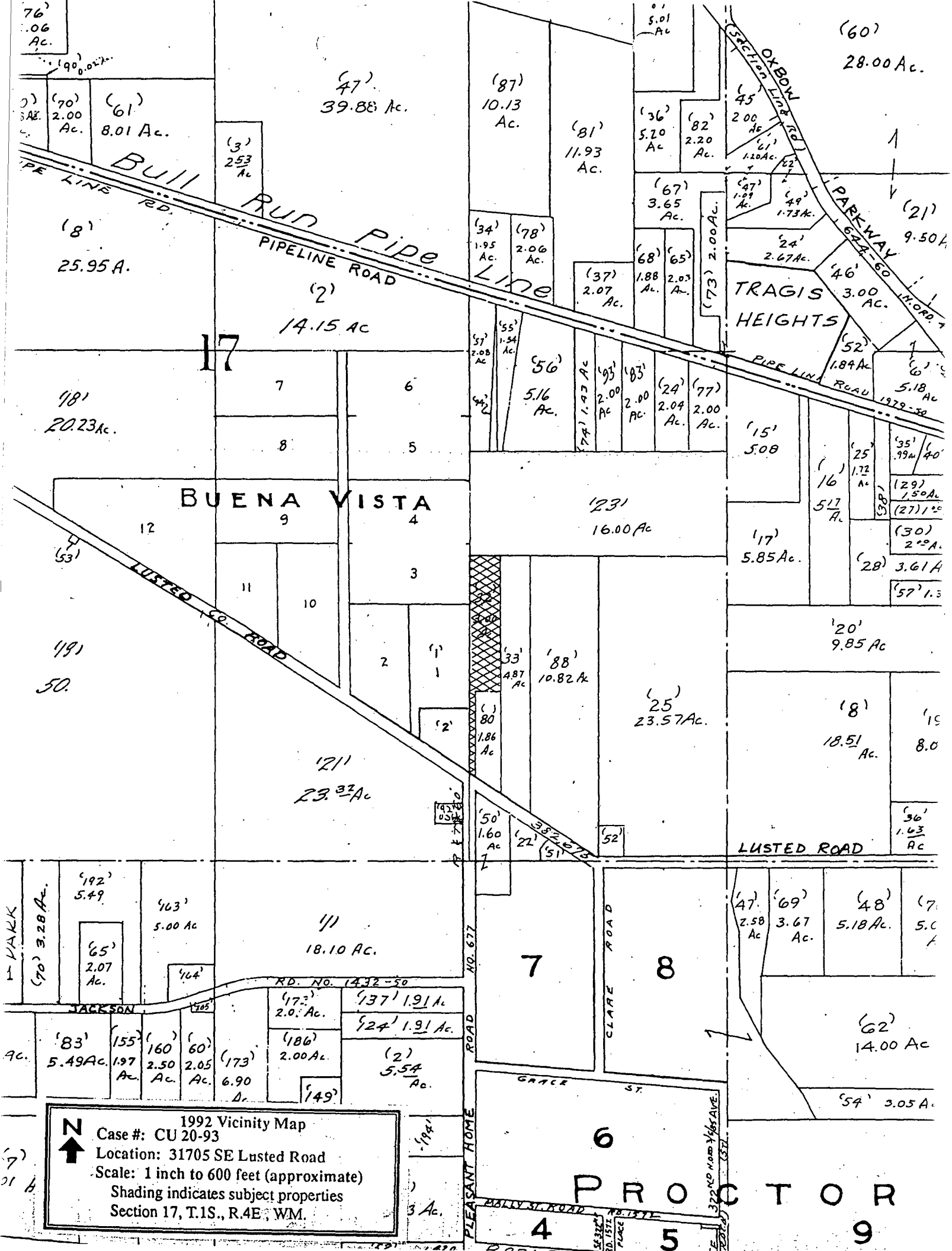
(1) Parcels with a single family residence approved under MCC .2012 (B) (3);

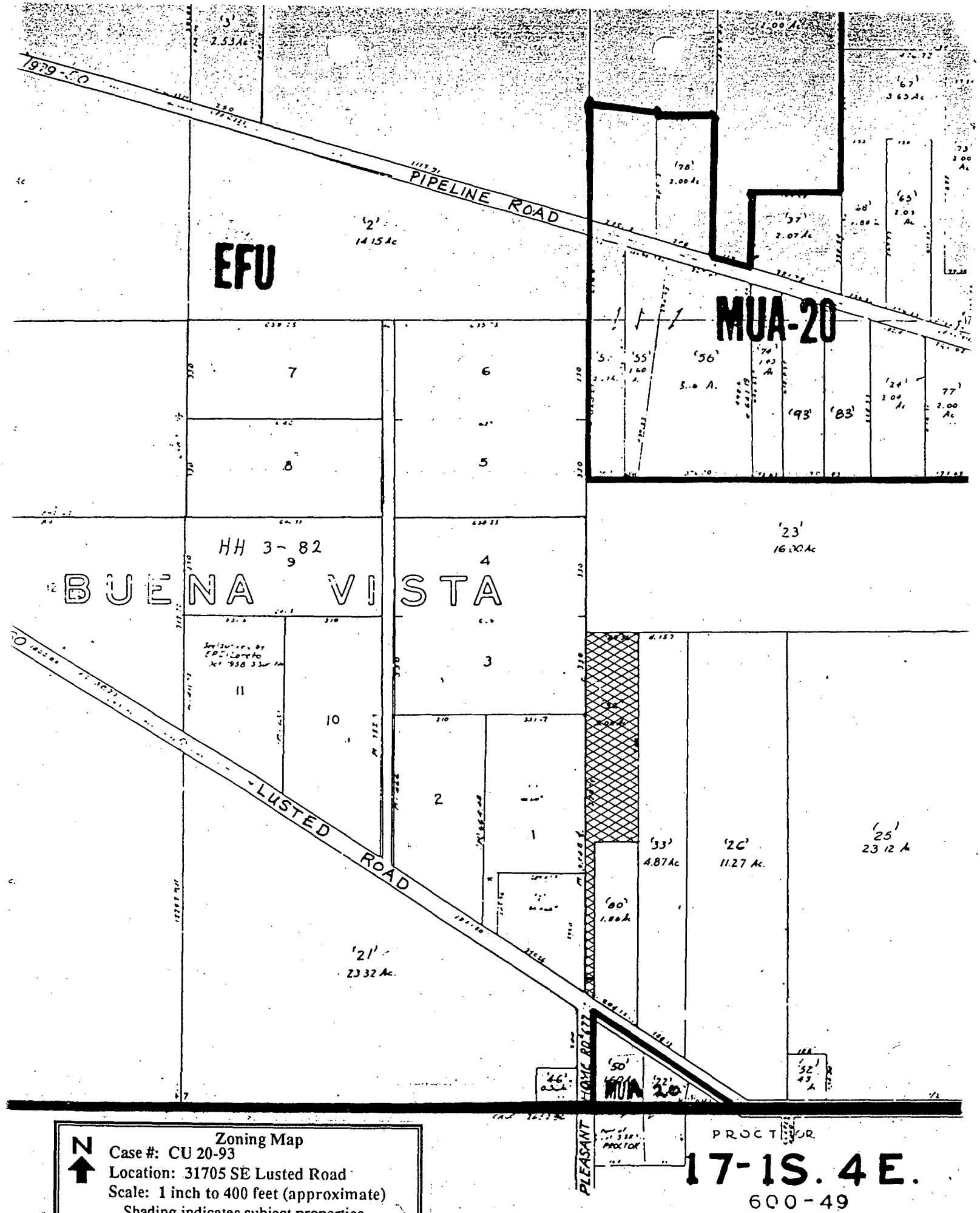
(2) Exception areas; or

(3) Lands within the Urban Growth Boundary.

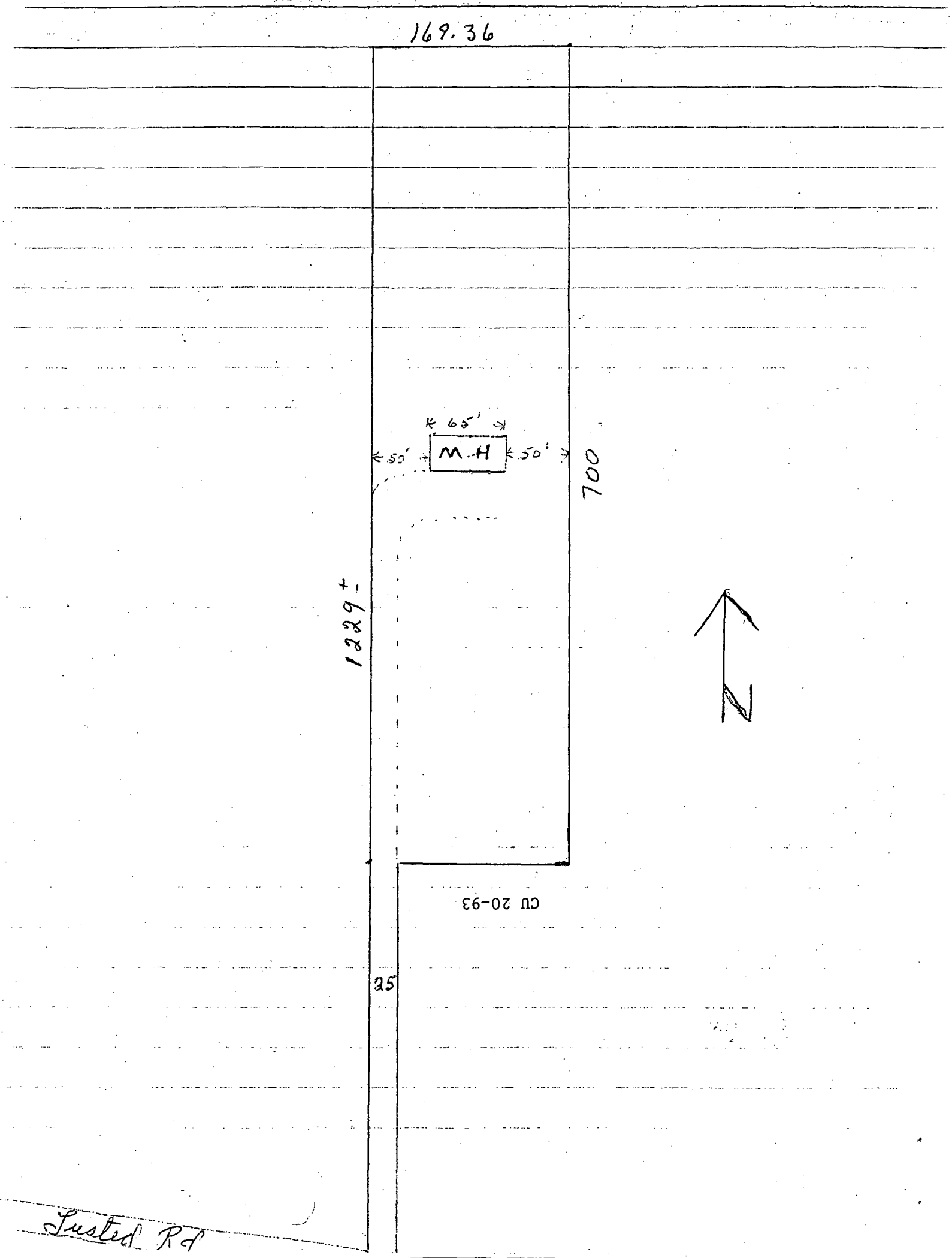
(C) Any conditions placed on a conditional use approved under this subsection shall be clear and objective.

Comprehensive Plan Policies applicable to this request are: #9, #13, #22, #31, #37, #38, & #40.


BULL RUN PIPE LINE
PIPELINE ROAD
PIPE LINE RD.
BUENA VISTA
TRAGIS HEIGHTS
LUSTED ROAD
LUSTED RD. ROAD
JACKSON RD. NO. 1432-50
PLEASANT HOME ROAD NO. 677
CLARE ROAD
GRACE ST.
MOLLY ST. ROAD
PROCTOR
OXBOW PARKWAY
17
7
8
6
4
5
9
(47) 39.88 Ac.
(87) 10.13 Ac.
(81) 11.93 Ac.
(60) 28.00 Ac.
(70) 2.00 Ac.
(61) 8.01 Ac.
(8) 25.95 A.
(2) 14.15 Ac
(181) 20.23 Ac.
(56) 5.16 Ac.
(23) 16.00 Ac
(88) 10.82 Ac
(25) 23.57 Ac.
(191) 50.
(121) 23.32 Ac
(111) 18.10 Ac.
(62) 14.00 Ac
(54) 3.05 A
1992 Vicinity Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 600 feet (approximate)
Shading indicates subject properties
Section 17, T.1S., R.4E., WM.



Zoning Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 400 feet (approximate)
Shading indicates subject properties
SZM 692-695; Section 17, T.1S., R.4E.


169.36
65'
M.H
50'
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700
1229 +-
CU 20-93
25
Lusted Rd

ANNOTATED MINUTES

Tuesday, August 31, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:31 p.m., with Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

BOARD DISCUSSION IN RESPONSE TO COMMISSIONER COLLIER'S PROPOSAL THAT THE THURSDAY MEETING BE POSTPONED IN ORDER FOR THE BOARD TO ATTEND THE FUNERAL OF KEESTON LOWERY.

P-1 *CS 1-93/HV 1-93/WRG 1-93/CU 7-93 Review the July 30, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Change in Zone Designation from MUA-20, WRG, FH to C-S, Community Service, for Reconfiguration and Expansion of Marina Facilities, Boat Repair Facility, Variances for Gravel Parking and a WRG Permit, for Property Located at 23586 NW ST. HELENS ROAD (ROCKY POINT MARINA).*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 *ZC 1-93/LD 17-93/E 1-93 Review the August 4, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, Requested Change in Zone from LR-7 to LR-5, a Three Lot Land Division and a Lot Width and Setback Exception, for Property Located at 5116 SE 115TH AVENUE.*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Vice-Chair Gary Hansen arrived at 1:40 p.m.

P-3 *CU 20-93 Review the August 5, 1993 Planning and Zoning Hearings Officer Decision Denying Conditional Use Request for Property Located at 31075 SE LUSTED ROAD. (APPLICANT HAS FILED NOTICE OF REVIEW APPEALING DECISION.)*

DECISION READ. PLANNING DIRECTOR SCOTT PEMBLE REPORTED A NOTICE OF REVIEW APPEAL WAS FILED AND THAT STAFF RECOMMENDS AN APPEAL HEARING BE SCHEDULED FOR SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE LOT OF RECORD, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE.

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, THAT A HEARING ON CU 20-93 BE HELD ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF THE LOT OF RECORD STATUS, TESTIMONY

LIMITED TO 10 MINUTES PER SIDE, AND THAT THE HEARINGS OFFICER BE AVAILABLE AT THAT TIME.

IN RESPONSE TO A REQUEST FROM APPELLANT'S ATTORNEY TIM RAMIS TO ADDRESS THE BOARD, COUNTY COUNSEL LAURENCE KRESSEL EXPLAINED THAT DESPITE APPLICANT'S CLAIM THAT THERE ARE NO OTHER PARTIES TO THIS CASE, PURSUANT TO COUNTY CODE, THE BOARD CANNOT HEAR TESTIMONY REGARDING THE SCOPE OF REVIEW UNLESS REQUIRED NOTICE OF A SCOPE OF REVIEW HEARING IS GIVEN TO ALL PARTIES ENTITLED TO SUCH NOTICE. MR. KRESSEL REFERRED THE BOARD TO APPELLANT'S NOTICE OF REVIEW RELATIVE TO THEIR REQUEST TO INTRODUCE NEW EVIDENCE, AND DISCUSSED ZONING ORDINANCE CRITERIA AS TO WHETHER APPELLANT MEETS THE TEST FOR EXPANDING THE RECORD.

IN RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN, COMMISSIONER COLLIER ADVISED IT IS HER INTENT THAT THE BOARD SET THE SCOPE OF REVIEW TODAY, LIMITING NEW EVIDENCE TO THE LOT OF RECORD. BOARD, COUNTY COUNSEL AND PLANNING DIRECTOR COMMENTS AND DISCUSSION.

COMMISSIONER SALTZMAN WITHDREW HIS SECOND, EXPLAINING HE DOES NOT WISH TO LIMIT THE SCOPE OF REVIEW TO THE LOT OF RECORD. COMMISSIONER COLLIER EXPLAINED THAT ANY EVIDENCE BROUGHT BEFORE THE HEARINGS OFFICER COULD BE DISCUSSED AT THE APPEAL HEARING AND THAT ANY NEW EVIDENCE WOULD BE LIMITED TO THE LOT OF RECORD. IN RESPONSE TO COMMISSIONER SALTZMAN WITHDRAWING HIS SECOND, CHAIR STEIN SECONDED COMMISSIONER COLLIER'S MOTION. BOARD COMMENTS. MOTION FAILED WITH COMMISSIONERS COLLIER AND STEIN VOTING AYE AND COMMISSIONERS KELLEY, HANSEN AND SALTZMAN VOTING NO.

FOLLOWING CONSULTATION WITH MR. KRESSEL, COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER SALTZMAN, THAT A HEARING BE SET FOR SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO: 1) THE 1980 RULE THAT EACH OF APPLICANT'S LOTS WOULD BE TREATED AS A SEPARATE LOT OF RECORD 2) EVIDENCE RELATING TO PROPOSED HOMESITE AND ENTIRE PARCEL CONCERNING GENERAL SUITABILITY FOR FARMING AND 3) EVIDENCE RELATING TO THE OTHER APPROVAL CRITERIA AS INTERPRETED BY THE HEARINGS OFFICER, TESTIMONY LIMITED TO 10 MINUTES PER SIDE. COMMISSIONER COLLIER COMMENTED IN OPPOSITION TO MOTION AND REQUESTED A REVIEW OF THE BOARD'S ROLE IN THE LAND USE PROCESS TO DETERMINE WHETHER THE BOARD WANTS TO BECOME INVOLVED IN DECIDING TECHNICAL LAND USE ISSUES WITHOUT BENEFIT OF PLANNING COMMISSION, HEARINGS OFFICER AND/OR STAFF RECOMMENDATIONS.

CHAIR STEIN ADVISED SHE HAS DIRECTED COUNTY COUNSEL TO DRAFT PROPOSED CHANGES IN THE LAND USE PROCEDURES FOR THE BOARD'S REVIEW. MOTION PASSED WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE AND COMMISSIONER COLLIER VOTING NO.

P-4 *CU 17-93/HV 9-93 Review August 13, 1993 Planning and Zoning Hearings Officer Decision Denying Conditional Use Request and Lot Size Variance Request for Property Located at 3130 NW FOREST LANE. (APPLICANT HAS FILED NOTICE OF REVIEW APPEALING DECISION.)*

DECISION READ. MR. PEMBLE REPORTED A NOTICE OF REVIEW APPEAL WAS FILED AND THAT STAFF RECOMMENDS AN APPEAL HEARING BE SCHEDULED ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE TO ADDRESS POLICY 37A, WITH TESTIMONY LIMITED TO 10 MINUTES PER SIDE.

MR. ARNOLD ROCHLIN SUBMITTED WRITTEN TESTIMONY AND REQUESTED PERMISSION TO SPEAK TO THE BOARD IN REGARD TO THE APPROPRIATENESS OF HOLDING A SCOPE OF REVIEW HEARING. IN RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN AND CHAIR STEIN, MR. KRESSEL EXPLAINED CODE REQUIREMENTS FOR NOTICE CRITERIA BEFORE THE BOARD CAN HEAR TESTIMONY CONCERNING THE SCOPE OF REVIEW OTHER THAN THAT CONTAINED IN APPELLANT'S NOTICE OF REVIEW. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. PEMBLE EXPLAINED THE CLOSING DATE FOR A NOTICE OF APPEAL IS SOMETIMES 4:30 p.m. THE MONDAY BEFORE A CASE IS REPORTED TO THE BOARD ON TUESDAY, SO OTHER PARTIES TO THE CASE MAY NOT RECEIVE NOTICE THAT IT HAS BEEN APPEALED.

COMMISSIONER SALTZMAN SUGGESTED HEARING HEARING MR. ROCHLIN'S TESTIMONY. COMMISSIONER COLLIER ADVISED SHE FEELS IT IS THE BOARD'S JOB TO REVIEW THE HEARINGS OFFICER DECISION AND APPELLANT'S STATEMENT TO DETERMINE THE SCOPE OF REVIEW BY APPLYING THE CRITERIA AS TO PREJUDICE TO THE PARTIES; CONVENIENCE OR AVAILABILITY OF EVIDENCE AT THE TIME OF THE INITIAL HEARING; SURPRISE TO THE OPPOSING PARTIES; AND COMPETENCY, RELEVANCY AND MATERIALITY OF THE PROPOSED TESTIMONY AND OTHER EVIDENCE. COMMISSIONER COLLIER SUGGESTED THAT THE BOARD SET THE SCOPE OF REVIEW TODAY IN ORDER TO AVOID MORE DELAY BY HAVING A SCOPE OF REVIEW HEARING.

IN RESPONSE TO CHAIR STEIN'S QUESTION, MR. KRESSEL EXPLAINED THAT EXCEPT FOR WRITTEN TESTIMONY CONTAINED IN APPELLANT'S NOTICE OF REVIEW, APPELLANT AND/OR SOMEONE OTHER THAN APPELLANT DOES NOT HAVE THE OPPORTUNITY TO SPEAK TO THE SCOPE OF REVIEW ISSUE UNLESS A

PROPERLY NOTICED SCOPE OF REVIEW HEARING IS HELD. COMMISSIONER COLLIER AND MR. KRESSEL EXPLAINED THAT AT THE APPEAL HEARING, ANY PARTY TO THE CASE CAN DEBATE AND DISCUSS ISSUES PREVIOUSLY INTRODUCED INTO THE RECORD IN ADDITION TO THE NEW EVIDENCE, WITHIN THE TIME FRAME ALLOTED. IN RESPONSE TO COMMISSIONER SALTZMAN ADVISING THAT MR. ROCHLIN'S LETTER ADDRESSES WHETHER OR NOT POLICY 37A SHOULD BE ALLOWED AS NEW EVIDENCE, COMMISSIONER COLLIER SUGGESTED THAT MR. ROCHLIN TESTIFY TO THAT ISSUE AT THE APPEAL HEARING.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT A HEARING ON CU 17-93/HV 9-93 BE HELD ON SEPTEMBER 28, 1993, ON THE RECORD, PLUS ADDITIONAL EVIDENCE LIMITED TO THE SUBJECT OF POLICY 37A, TESTIMONY LIMITED TO 10 MINUTES PER SIDE. AT THE REQUEST OF COMMISSIONER COLLIER, CHAIR STEIN DIRECTED STAFF TO SEE THAT THE HEARINGS OFFICERS ARE AVAILABLE TO ATTEND BOTH APPEAL HEARINGS.

P-5 C 2-93 *RESOLUTION in the Matter of Accepting the West Hills Rural Area Plan Scoping Report and Directing the Planning Division of the Department of Environmental Services to Implement a Work Program to Prepare the West Hills Rural Area Plan*

The Board recessed at 2:25 p.m. and reconvened at 2:31 p.m.

SLIDE PRESENTATION, EXPLANATION AND RESPONSE TO BOARD QUESTIONS BY SCOTT PEMBLE, GORDON HOWARD AND ELAINE COGAN. TESTIMONY IN SUPPORT OF THE PLAN FROM ARNOLD ROCHLIN, JOHN SHERMAN, CHRIS WRENCH AND PHILIP THOMPSON. TESTIMONY REGARDING NEED FOR MORE EXTENSIVE CITIZEN NOTIFICATION OF FUTURE PUBLIC HEARINGS CONCERNING GOALS 4 AND 5 FROM DONIS McARDLE AND JOSEPH KABDEBO.

COMMISSIONER SALTZMAN REPORTED THAT NOTICE WILL BE MAILED TO ALL PROPERTY OWNERS, INCLUDING NON-RESIDENTS, OF THE WEST HILLS RURAL AREA PLAN WORKSHOP TO BE HELD ON SAUVIE ISLAND SEPTEMBER 22, 1993 AND EXPLAINED THAT IT WILL BE INCUMBENT UPON THOSE RECEIVING THAT NOTICE TO CONTACT THE PLANNING DIVISION TO GET ON THE WEST HILLS MAILING LIST FOR INFORMATION ON FUTURE MEETINGS. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. PEMBLE EXPLAINED THE PLAN DEVELOPMENT PHASE IS PUBLIC NOTIFICATION OF THE WORKSHOP TO EXPLAIN WHAT AND IS PLANNED AND HOW THE COUNTY INTENDS TO IMPLEMENT THE PLAN AND TO SOLICIT CITIZEN INPUT, FOLLOWED BY THE PLAN ADOPTION PHASE. MR. PEMBLE EXPLAINED THE DIVISION INTENDS DIRECT MAIL NOTIFICATIONS WHEN

THE PLAN IS SUBMITTED TO PLANNING COMMISSION AND WHEN SUBMITTED TO COUNTY BOARD. IN RESPONSE TO A QUESTION OF COMMISSIONER COLLIER, MR. PEMBLE REPORTED THEY HAVE 380 NAMES ON WEST HILLS MAILING LIST AND THAT MR. HOWARD AND A MEMBER OF COMMISSIONER SALTZMAN'S STAFF ARE WORKING ON THE SAUVIE ISLAND WORKSHOP FLYER.

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, ADOPTION OF RESOLUTION ACCEPTING SCOPING REPORT AND PROPOSED WORK PROGRAM FOR WEST HILLS RURAL AREA PLAN. BOARD COMMENTS. VOTE ON RESOLUTION 93-290 UNANIMOUSLY APPROVED.

MR. PEMBLE REPORTED PLANNING STAFF AND COMMISSION JUST COMPLETED WORK ON AMENDMENTS TO EFU ZONE AS MANDATED BY OREGON ADMINISTRATIVE RULES ADOPTED BY THE LAND CONSERVATION AND DEVELOPMENT COMMISSION IN JANUARY, 1992, BUT DUE TO RECENT PASSAGE OF HB 3661 B-ENGROSSED, THEY WILL BE COMING TO THE BOARD TO DISCUSS HOW TO ADDRESS THE NEW REQUIREMENTS.

There being no further business, the meeting was adjourned at 3:15 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By DEBORAH L. BOGSTAD

0316C/1-5/db

CU 20-93
Fee
Fee - $461.00
Last day to file Notice of Review Monday 8/23/93 4:30 pm

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

NOTICE OF REVIEW

1. Name: Lundbom, _____, Betilue
   Last *Middle* *First*
2. Address: 31847 SE Lusted Rd., Gresham, OR 97080
   Street or Box *City* *State and Zip Code*
3. Telephone: (503) 663 - 3976
4. If serving as a representative of other persons, list their names and addresses:

5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?
   denial of a conditional use request for a non-resource related single family dwelling CU 20-93
6. The decision was announced by the ~~Planning Commission~~ Hearings Officer on Aug. 5, 1993
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
   I am the property owner and applicant.

1993 SEP 21 PM 2:02
MULTNOMAH COUNTY
OREGON
BOARD OF COUNTY COMMISSIONERS

Please file this original form, pc

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

Please see attached sheets.

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [X] 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*.

Please see attached sheet.

Signed: Kristen E. Lundstrom Date: August 20, 1993

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing 46 hrs. x $3.50/minute = $ 161.00

Total Fee = $ 461.00

Received by: [signature] Date: 8/23/93 Case No. CU 20-93

Grounds for Reversal of Hearings Officer Decision CU 20-93

1. **The Hearings Officer erred in concluding that the evidence is insufficient to show that the parcel satisfied all applicable laws when it was created, and is therefore not a lot of record under MCC 11.156.2018 (A)(2).**

The decision states that compliance with statewide planning Goal 3 was required when the parcel was created on January 18, 1980. However, because the parcel was zoned for Suburban Residential use, not Agriculture, at that time, Goal 3 was not an applicable law. Therefore, because the parcel also satisfied the other requirements of MCC 11.156.2018 (A)(2), the parcel is a legal lot of record.

2. **The Hearings Officer erred in concluding there is not sufficient evidence in the record to demonstrate compliance with MCC 11.15.2012(B)(3)(a),(b), & (c); MCC 11.15.7122(A)(1) & (2), and the parallel statutes ORS 215.283(3)(a), (b), (c) and 215.296.**

The record includes evidence that the subject property is an in area of mixed farm uses and numerous single family dwellings on small lots. There is sufficient evidence in the record that the proposed dwelling is compatible with the existing farm uses, will not "seriously" interfere with accepted farm practices, and will not materially alter the stability of the land use pattern. In addition, the record contains sufficient evidence that the proposed use will not force a "significant" change in accepted farm practices nor "significantly" increase the cost of accepted farming practices in the area.

3. The Hearings Officer erred in his interpretation of "generally unsuitable for farming" under MCC 11.15.2012 (B)(3)(d) and ORS 215.283(3)(d).

There is sufficient evidence in the record to find that the proposed home site is generally unsuitable for farming because of its size, location and the farming restrictions imposed by the soil.

The Hearings Officer misconstrued the code in holding that the entire parcel must be found generally unsuitable for farming.

4. The Hearings Officer erred in concluding that the applicant has not demonstrated compliance with Plan Policy 9.

Policy 9 does not apply to applications for dwellings. Policy 9 controls the designation of agricultural land. The applicant does not dispute that the subject property is zoned EFU under Policy 9.

Even if Policy 9 were applicable, contrary to the statement of the Hearings Officer, the applicant has demonstrated compliance with MCC 11.15.2012(3)(a) through (d) and ORS 215.283(3)(a) through (d). (See Appeal Point No. 2 above.) In addition, Policy 9 refers to "areas in predominantly commercial agricultural use." The record, including the decision itself, includes substantial evidence that the area is not in predominantly commercial agricultural use. For these reasons, the proposal would be in compliance with Policy 9 if it were applicable.

5. The Hearings Officer erred in concluding that the applicant has not demonstrated compliance with Plan Policy 16.

Policy 16 is not applicable in this case because there is no evidence in the record or in the decision that the property contains any of the 12 identified natural resources under Policy 16. The purpose of Policy 16 Natural Resources is "to implement statewide Planning Goal 5: 'Open Spaces, Scenic and Historic Areas, and Natural Resources.'" The property is not included in any of the County's Goal 5 inventories. The staff report does not address Policy 16.

Requested Scope of Review: On the Record plus Additional Testimony and Evidence

Grounds for the request to introduce new evidence.

The hearing on this matter was extremely short, and neither the Hearings Officer nor the staff apprised the applicant or the applicant's consultant of the interpretations he was going to make of the approval criteria. In order to address the interpretations of the Hearings Officer, it will be necessary to submit additional evidence and testimony. The applicant was not represented by legal counsel before the Hearings Officer. In the interest of fairness to the applicant, the Board should allow this new evidence.

This request is consistent with the Board's considerations required by MCC 11.15.8270(E), for the following reasons.

(1) There are no other parties involved who would be prejudiced by the new evidence. However, failing to allow new evidence would severely prejudice the applicant because the Hearings Officer's decision on Lot of Record directly contradicts a prior ruling of the County.

(2) It was not possible to submit the proposed new evidence at the initial hearing because the applicant did not know what the approval criteria under the Hearings Officer's interpretation.

(3) There will be no surprise to opposing parties because there are no opposing parties.

(4) The proposed new evidence will respond to the Hearings Officer's interpretations relating to the subject property. The applicant will submit the following new evidence and testimony:

a. Evidence that the county ruled in 1980 that each of the applicant's lots would be treated as a separate lot of record. A copy of the June 27, 1980 letter is attached.

b. Evidence relating to the proposed homesite and the entire parcel concerning general suitability for farming.

c. Evidence relating to the other approval criteria as interpreted by the Hearings Officer.

The above described evidence will be competent, relevant and material to approval criteria as interpreted by the Hearings Officer in this application.

In addition, pursuant to MCC 11.158270(B), the applicant requests a hearing before the Board to present argument on the Scope of Review prior to the Board's determination.

Respectfully Submitted,

Timothy V. Ramis of
Attorneys for the Applicant

c:\orcc\memo\gfh\appeal.lin/gws

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION

DONALD E. CLARK
COUNTY EXECUTIVE

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION
2115 S.E. MORRISON
PORTLAND, OREGON 97214
(503) 248-3043

June 27, 1980

Mr and Mrs Daryl Lundbom
Rt. 2, Box 667
Gresham, Oregon 97030

RE: PC 12-80D/1

Dear Mr and Mrs Lundbom:

I am writing in response to our recent telephone conversations about the status of lots owned and formerly owned by you if the amendments to Ordinance No. 100 proposed as PC 12-80D/1 are adopted.

Based on the facts as you have described them to me, and as I will repeat below, each lot you own individually will be treated as a separate lot of record. I must carefully limit my conclusions: if I have missed any details please point out the error as soon as you can.

As of January 28, 1980, the following transactions had occurred:

- Tax Lot '25' (comprised of 23 acres) was conveyed to Daryl by Betty Lundbom.
- Tax Lot '52' (comprised of .43 acre) was conveyed to Daughter No. 1.
- Tax Lot '26' (comprised of 10 acres) was conveyed to Betty Lundbom.
- Tax Lot '33' (comprised of 4.87 acres) was conveyed to Son.
- Tax Lot '32' remained in ownership of Betty Lundbom.
- Tax Lot '23' (comprised of 16 acres) was conveyed to Daughter No. 2.

Assuming that the conveyancing instrument (ei., deed or contract) was recorded or in recordable form by January 31, 1980, and further assuming Tax Lot '32' and Tax Lot '26' are not contiguous, each tax lot described above will constitute a legal lot of record. The fact that the legal description on one or more of the deeds had to be changed after January 31, 1980, to

Lot '32' and Tax Lot '26' are not contiguous, each tax lot described above will constitute a legal lot of record. The fact that the legal description on one or more of the lots had to be changed after January 31, 1980, to

I hope this letter eases your concerns. I must point out that the interpretation described above is dependent upon favorable action on the proposed amendments by the Board. I must also point out that all zoning regulations are subject to change at any time, although retroactive applicability is contrary to state statute and further ordinance revisions are unlikely to affect applicability of the lot of record provisions to your lots.

Very truly yours,

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT

Larry

Larry Epstein, Manager

LE:sec

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

HEARINGS OFFICER DECISION
CU 20-93

August 5, 1993

Conditional Use Request
(Non-Resource Related Single Family Dwelling)

Applicant requests Conditional Use approval for a non-resource related single family dwelling on a 3 acre Lot of Record in the EFU zoning district..

Location: 31705 SE Lusted Road

Legal: Tax Lot '32', Section 17, T1S, R4E, 1992 Assessor's Map

Site Size: 3 acres

Size Requested: Same

Property Owner: Betilue Lundbom
31847 SE Lusted Rd.
Gresham, OR 97080

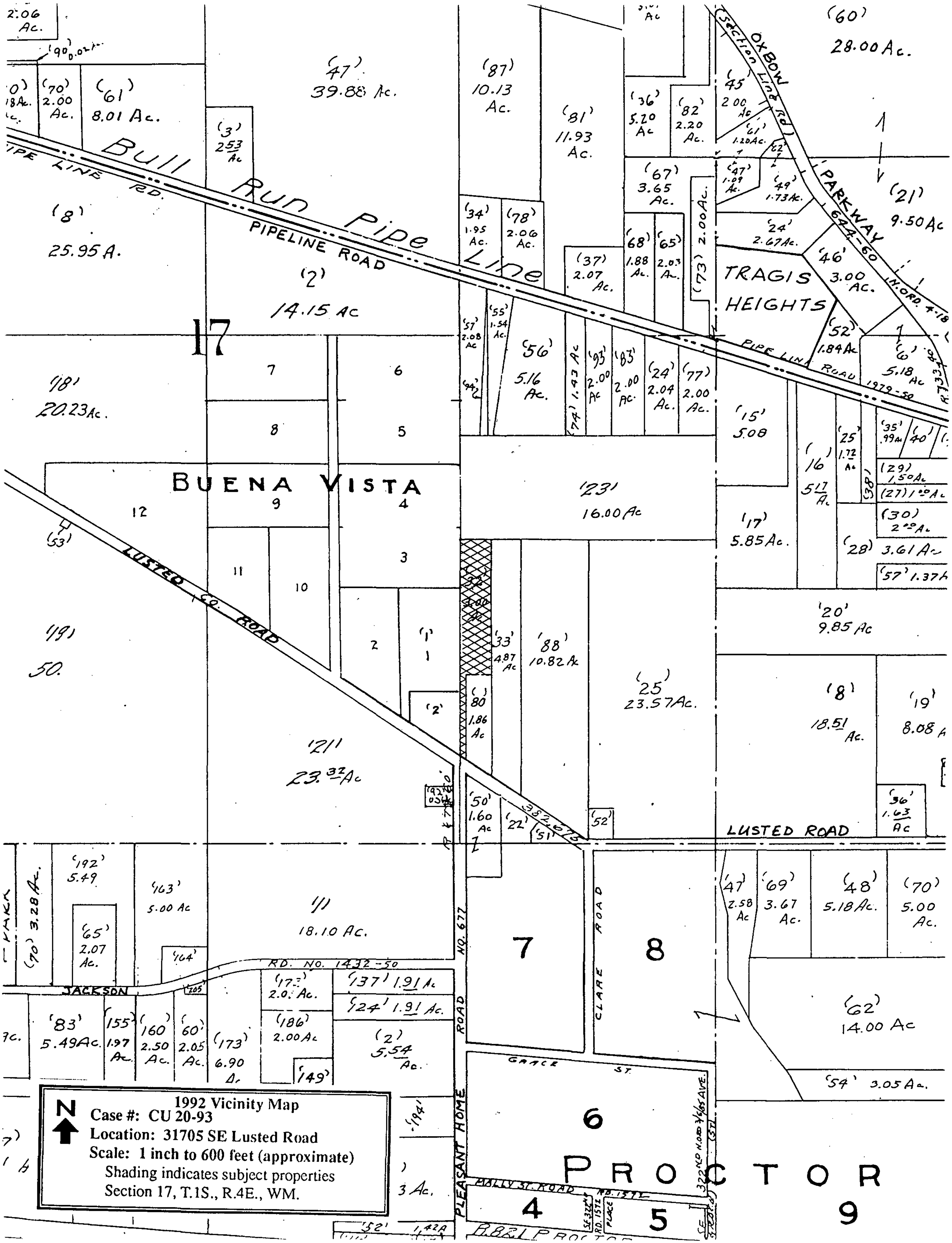
Applicant: Same

Comprehensive Plan: Agriculture

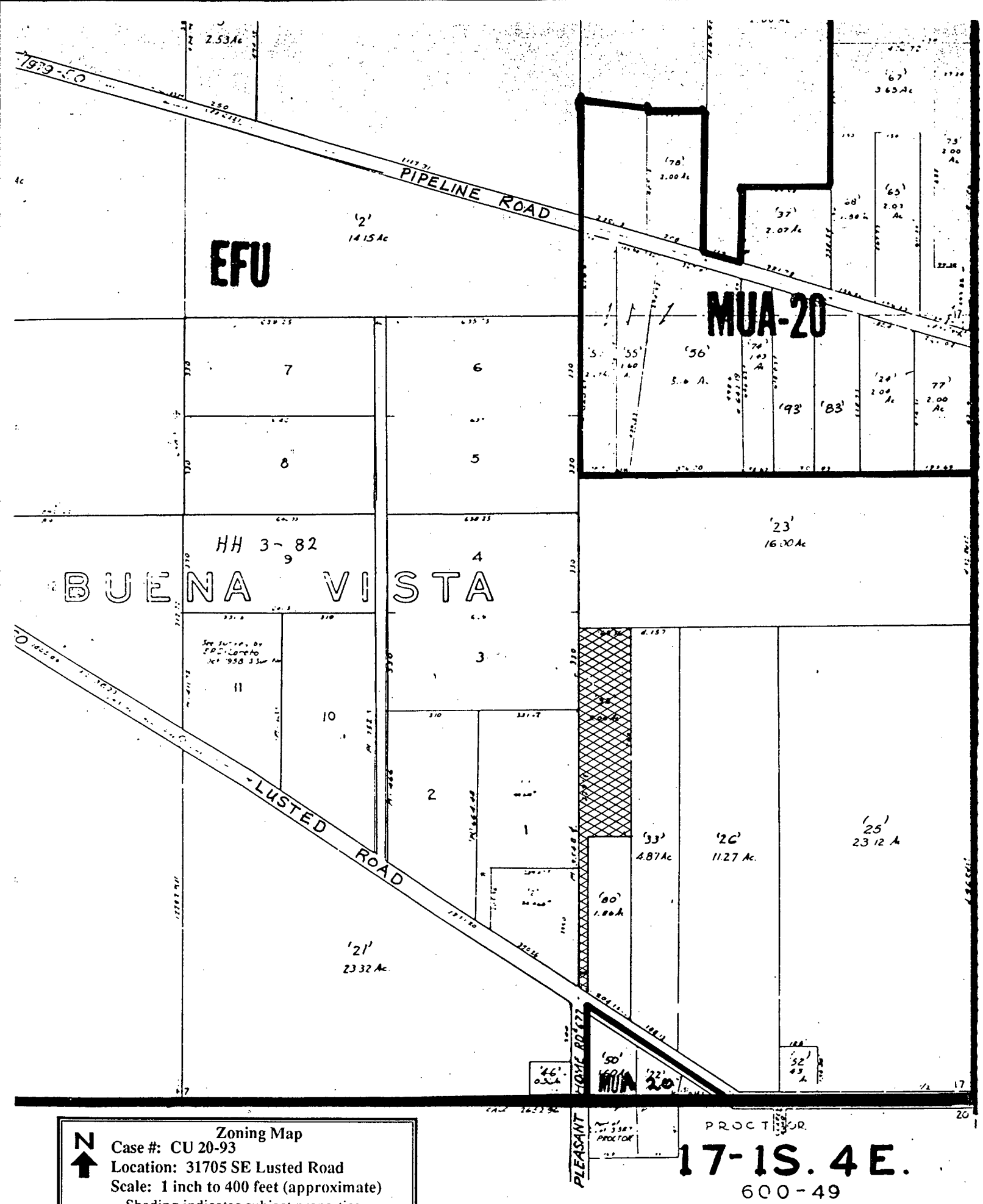
Present Zoning: EFU, Exclusive Farm Use District

Hearings Officer Decision

DENY this request for a non-resource related single family dwelling, based on the following Findings and Conclusion.



1992 Vicinity Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 600 feet (approximate)
Shading indicates subject properties
Section 17, T.1S., R.4E., WM.



Zoning Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 400 feet (approximate)
Shading indicates subject properties
SZM 692-695; Section 17, T.1S., R.4E.

CU 20-93

35

1229 +

700

M.H

50'

50'

65'

649.36

I. INTRODUCTORY MATTERS

A. Parties To The Proceeding

1. The Applicants

The applicants are Betilue E. Lundbom, 31847 SE Lusted Road, Gresham, Oregon 97030 and Harold D. Garnett, 64 NE Scott, Gresham 97030. The applicants' representative is Spencer Vail, Planning Consultant, 4505 NE 24th Avenue, Portland, Oregon 97211.

2. Other Persons Supporting The Application

The other persons appearing, through oral or written testimony, in support of the application, are:

Maria Meracle, 31734 SE Lusted Road, Gresham, Oregon 97080
Fred Morgan, 32801 SE Lusted Road, Gresham, Oregon 97030
Gary Obrist, 31619 SE Lusted Road, Gresham, Oregon 97080
Kathy Obrist, 31619 SE Lusted Road, Gresham, Oregon 97080
Carol A. Thompson, c/o 31847 SE Lusted Road, Gresham, Oregon 97080

3. Opponents

No one appeared in opposition to the application.

4. Party Status And Notice Of This Decision

In the absence of any challenges to their standing, I find the persons listed in subsections A.1. and A.2., are parties to the appeal, as specified by MCC 11.15.8225. These persons should receive a copy of this decision.

B. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties concerning the merits of these applications.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with any of the parties.

C. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

D. Alleged Procedural Errors

No procedural errors were alleged by any participants prior to, during, or after, the hearing.

E. Summary Of The Information In The Record

The application was initiated by Daryl Lundbom. After his death, Mr. Harold Garnett, Mrs. Lundbom's brother, proceeded on Mrs. Lundbom's behalf. Following a pre-application conference, Mr. Garnett, submitted a one-page document entitled "Staff suggested addressed items," dated May 28, 1993 (hereafter "Garnett Memo".) The Garnett Memo indicated his belief that the proposed house would satisfy the MCC 11.15.2012(B)(3), .7120 and .7122, but did not discuss individual criteria or refer to evidence. The Garnett Memo contained some information addressing the Plan Policies.

In response, Staff Planner Sandy Mathewson sent Mr. Garnett a letter dated, June 3, 1993, asking him to provide specific information on a variety of topics related to MCC .2012(3)(B). The applicants retained a consulting planner, who provided a narrative dated June 24, 1993, which was headed "Conditional Use Request; Betilue Lundbom; Lusted Road Site" (hereafter "Applicant's Narrative.") Attached to the narrative were maps and other documents referenced in the narrative.

The planning staff also provided substantial information for my consideration, including soils maps and soil interpretations from the Soil Conservation Service's Multnomah County Soil Map, old zoning maps and an annotated aerial photograph of the area containing the subject property. The photo is dated June 1986 and shows an area a square approximately 6,000 feet on a side. This photo was hand annotated by Ms. Mathewson and myself with information about crops and livestock, after our site visits. This document will be referred to as "Aerial Photograph."

Other information in the record includes copies of several real estate sales contracts dated January 18, 1980 and information from the Assessor used to determine the persons entitled to receive notice of this hearing.

II. FINDINGS OF FACT AND ANALYSIS OF THE APPLICATION UNDER THE STANDARDS IN STATE LAW, THE MULTNOMAH COUNTY COMPREHENSIVE PLAN AND ZONING ORDINANCE

A. Applicable Standards

1. Standards From The County Zoning Ordinance and Comprehensive Plan

I find the following provisions of the Zoning Ordinance and Comprehensive Plan apply to this application:

MCC 11.15.2012(B)(3)	Nonfarm dwelling standards (a) through (k)
MCC 11.15.2018	Qualification as a county defined "lot of record"
MCC 11.15.7122	Conditional use standards applicable to use in EFU zones
Comprehensive Plan	Policies 9; 13; 16; 37; 38

2. EFU Statutes Apply Directly To This Application and the County Must Adhere To Appellate Interpretations Of Those Statutes.

MCC 11.15.2012(B)(3) permits "Residential use not in conjunction with farm use, consisting of a single family dwelling * * * ." This provision was made a part of the Zoning Ordinance during the course of acknowledgment review. Its origin is undoubtedly ORS 215.283(3), which authorizes counties to permit "single-family residential dwellings, not provided in conjunction with farm" in their EFU zones.

But the fact that the County has replicated the statutory the language in this authorization does not mean the statute no longer applies. The Court of Appeals has left doubt that LCDC's acknowledgment of a county's EFU zone did not alter the direct applicability of the EFU statutes:

> *Consequently, we conclude that relevant state statutes remain applicable to local land use decisions after acknowledgment and that ORS 215.283(1)(e) applies here.*[3]

---

[3] *We reiterate that the county may, in at least some respects, enact legislation that is more restrictive of the use than the state statute is. However, with one exception, no issue is presented here that involves limitations under the ordinance that arguably go beyond those of the statute.*

We do not imply that the existence of relevant statutes means that the local legislation is inapplicable to post-acknowledgment decisions. Rather, the statutes are also applicable and the decisions must satisfy any statutory requirements that are not embodied in the local law.

Kenagy v. Benton County, 115 Or App 131, 136, __ P2d ___ (1992); *see also Forster v. Polk*

County, 115 Or App 475, 478, ___ P2d ____ (1992).

Even though the standards in MCC 11.15.2012(B)(3)(a) - (d) and ORS 215.283(2)(a) - (d) are virtually identical[1], there is a significant difference between the amount of discretion the County can exercise in interpreting them.

In *Clark v. Jackson County,* 313 Or 508, 515, 836 P2d 710 (1992), the Oregon Supreme Court articulated a new, deferential, standard of review for local governments' interpretations of their own ordinances. But in another case decided the same day as *Clark,* the Supreme Court reached a contrary interpretation of the language in ORS 215.283(3)(d) even though it was almost identical to the language in the County ordinance construed in *Clark. Smith v. Clackamas County,* 313 Or 519, 836 P2d 7__ (1992).

The difference identified by the Court was that the standard in the *Clark* case was adopted purely at local discretion, whereas the same standard in *Smith* was required by, and based on, state statute. *Smith v. Clackamas County, supra,* 313 Or at 524-525, 527.

The Court of Appeals has interpreted the Supreme Court's decision in *Smith* to mean that no deference is due to a local government's interpretation of a provision in its ordinances which is based on, and implements, a state statute. *DLCD v. Coos County*, 113 Or App 621, __ P2d ___, *as modified in* 115 Or App 145 (1992); *Forster v. Polk County,* 115 Or App 475, 478, ____ P2d ___ (1992); *and see Ramsey v. City of Portland*, 115 Or App 20, 24, ___ P2d ___ (1992). LUBA has followed this line of cases as well. *See e.g. DLCD v. Curry County,* ___ Or LUBA ___ (LUBA No. 92-134, slip opinion of 27 October 1992 at page 4.)

The County is free to interpret the provisions in its Code as it sees fit, subject to deferential review. But the County is obliged to apply the parallel provisions in the EFU statute as well. When it does so it must defer to appellate interpretations of those provisions.

During the course of the hearing, Ms. Mathewson stated she was not aware that the County had ever differentiated between the code provisions and the statutory provisions. For that reason, I treat the standards in MCC 11.15.2012(B)(3)(a), (b), (c) and (d) as identical to the standards in ORS 215.283(3)(a), (c), (c), (d).

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[1] The County requires satisfaction of several standards in addition to those in the statute, such as the requirement the parcel meet the definition of "lot of record" in MCC 11.15.2018 and a minimum floor area for the residence. MCC 11.15.2012(B)(3)(i). However, the text of the statutory criteria in ORS 215.283(3)((b), (c) and (d) is identical to the text in MCC 11.15.2102(B)(3)(c), (c) and (d). With respect to subsection (B)(3)(a), The County requires a compatibility of the proposed dwelling with the farm uses listed in ORS 215.203(2)(a), whereas the statute references only 215.203(2).

B. MCC 11.15.2012(B)(3)(a) to (d) and ORS 215.283(3)(a) to (d).

1. Qualification As A "Lot of Record" Under MCC 11.15.2018(A)

A portion of the preface of MCC 11.15.2012(B)(3) (which has no parallel in the statute) requires "the lot to be a Lot of Record under MCC .2018 or have been created under the applicable provisions of MCC 11.45., Land Divisions." MCC 11.15.2018(A) contains three different definitions of a "lot of record."

The first definition requires the parcel to meet the minimum lot size requirement of MCC 11.15.2016. MCC 11.15.2018(A)(1)(c). Because the subject parcel is smaller than the 38 acre minimum lot size, it cannot qualify under subsection MCC 11.15.2018(A)(1); it must qualify under either .2018(2) or (3).

Under these two potentially applicable lot-of-record definitions, the applicants must show that the "deed or other instrument creating the parcel was recorded with the Department of General Services" before February 20, 1990. MCC 11.15.2018(A)(2)(a), (3)(a). In addition, both subsections provide that the parcel must have "satisfied all applicable laws when the parcel was created." MCC 11.15.2018(A)(2)(b), (3)(b).

The maps from the Assessor's office provided by the staff and copies of real estate sales contracts show the creation of separate tax lots number 32 and 80, on January 18, 1980.[2] These sales preceded the adoption of EFU zoning by Multnomah County in August 1980. I find that the applicants parcels satisfy the 1990 creation deadline.

Before August 1980, the land was zoned "Suburban Residential" and these land divisions were permitted. But that does not establish that the parcel satisfied "all applicable laws" when it was created. Statewide Planning Goal 3, "Agricultural Lands" became effective January 1, 1975, and like all the Goals, it was applicable to all land use decisions affecting farm land during the pre-acknowledgment period. ORS 197.175()(), *Peterson v.*

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[2] The existence of a separate tax lot, created for the administrative convenience of the tax assessor, is an inappropriate basis for analyzing farming patterns. *1000 Friends of Oregon v. LCDC (Lane Co.)*, 83 Or App 278, 731 P2d 487 (1987) *aff'd* 305 Or 384, 752 P2d 271 (1988); *Thede v. Polk County*, 3 Or LUBA 336 (1981). A tax lot does not establish the existence of a separate parcel; many parcels are made up of more than one tax lot. This happens in several circumstances in Oregon, including: (1) The boundary of a taxing districts crosses the parcel; (2) A township or other mapping limit crosses the parcel; (3) When separate assessment formulae or programs apply to different parts of the same parcel, such as when the homesite value is calculated differently, ORS 308.378, or one part of the property receives preferential farm use assessment why the other portion is valued for forest use under WOFLAST or WOSTOT.

Only when all adjoining tax lots are in separate ownerships, is it possible to conclude that the tax lot is also a separate parcel.

Klamath Falls, 279 Or 249, 566 P2d 1193 (1977); *Alexanderson v. Polk County*, 289 Or 427, 616 P2d 459 (1980); *Jurgenson v. Union County*, 42 Or App 505, 600 P2d 1241 (1977); *1000 Friends of Oregon & Seehawer v. Douglas County et al*, 3 LCDC 230 (1979) (Goal 3 applied to a subdivision decision.)

The record contains no findings from 1980 demonstrating compliance with Goal 3 at the time of the partitioning. There is no evidence that the parcel would satisfy Goal 3, considering the decision in retrospect. (The minimum lot size adopted by the County for this property is 38 acres.)

In the absence of evidence on the parcel's compliance with Goal 3 (either contemporary or current) I cannot conclude that the parcel "satisfied all applicable laws" when it was created.

2. ORS 215.283(3)(a)/MCC 11.15.2012(B)(3)(a); Compatibility With Farm Use(s) and Consistency With Statutory Intent and Purposes

The first subsection in the Zoning Ordinance and the statute, contains two standards; The applicant must show that the proposed dwelling will be "compatible with farm uses described in ORS 215.203(2)(a)[3] and * * * consistent with the intent and purposes set forth in ORS 215.243."

(i) Compatibility

To satisfy the compatibility criterion, the applicant must identify the farm uses in the area and explain how the nonfarm dwelling would be compatible with the identified farm uses. *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1240-41 (1989) Sweeten, supra, slip op. at 7-9.

The applicants provided the following comments about the nature of the nearby farm operations:

> *The general area is developed with single family homes, intermixed with farm and/or agricultural uses, on lots of varying sizes, of which many are the same or smaller in size as the subject parcel.*

Applicants' Narrative at 2. Under the following criterion, the applicant notes:

> *The adjacent lots to the west have a single family homes [sic] the lot to the north is in timber and the lot to the east is used primarily as pasture land.*

Applicant's Narrative at 3.

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[3] As noted previously, the statute refers to ORS 215.203(2), while the County's zoning ordinance refers to ORS 215.203(2)(a).

This information is insufficient to allow for an analysis of compatibility. In the absence of information about what farming is being undertaken it isn't possible to determine the type of farming practices relied upon and whether or not the dwelling would be compatible with them. (Mrs. Lundbom's proposed dwelling would be situated in the middle of the property. See Applicant sketch map, page 4.)

The chief sources of evidence concerning farm operations in the area are the aerial photograph, my site and vicinity inspection and comments provided by Mrs. Lundbom, her daughter, Carol Thompson, during the tour. In addition to walking to the middle and eastern edge of the parcel I drove further east on Lusted Road, turned north onto Altman, turned west-northwest onto Pipeline Road until its intersection with 302nd Street. While I passed other farmland en route, the area which was visible during the visit was roughly a circle a mile in diameter centered on the intersection of SE Lusted and Pleasant Home Roads.

The site visit and tour of the area indicated that with minor changes, the pattern of intermixed farming and residential development shown in the photo, had not changed significantly since the aerial photo was taken. Representative of the small changes which had occurred, were the construction of another house or two in the exception area (zoned MUA-20) north of the property and the expansion of the area of cane berry production south of Pipeline Road, about 2,000 northwest of the subject property.

As the photo shows, the dominant type of farming is horticulture; the production of ornamental shrubs and trees such as Red Maple and other nursery products. The farm operations include large, obviously commercial, farms southwest across Lusted Road and east of Altman Road. Also evident in the area were Christmas trees (including a rather overgrown and untended stand of trees, mostly Douglas fir, on Tax Lot 80) and cane berries (blueberries and raspberries) being grown on Tax Lot 2, adjoining Pipeline Road.

Cattle were being grazed on the subject property and adjoining parcels owned by the applicant's son, Paul Lundbom (TL 33), and the lot east of her son's, which also is owned by Ms. Lundbom (TL 26.) Livestock, both horses and cattle, were also present on other properties, including the land immediately west of the subject parcel.

While the photograph and site visit revealed the kind of products being produced, the record contains little information about the management techniques used to grow those crops and raise the livestock.[4]

The applicant's representative states:

The proposed single family house will follow the development pattern in the area related to the mixture of single family residences with farm uses. It will, therefore,

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[4] During the course of the site visit the applicant noted that the property diagonally across Lusted Road (a commercial nursery) employed aerial spraying.

be compatible with the farm uses above described on the ORS cited above.

Applicants' Narrative at 3.

Whether or not a residence will "follow the development pattern in the area" does not address the question of compatibility. For example, there is no information in the record which would allow me to conclude that all or some of the existing houses are compatible. If they are not, then another incompatible house of the same type would only aggravate existing problems.

The applicants are also contending that compatibility is not an issue with respect to the small, noncommercial, farms which may or may not border the property. LUBA has questioned the idea that an applicant need not demonstrate compatibility with "small farming operations" as well as "large commercial farms." *Sweeten, supra,* 17 Or LUBA at 1241-42 and note 5. The definition of "farm use" in ORS 215.203(2) does not refer to "commercial farm uses."

Despite the implication in the *Sweeten* case, I believe the commercial status of nearby farming uses is relevant, for two reasons.

First, "compatibility" with noncommercial hobby farms is far more easily attained because these operations tend to concentrate on agricultural activities that do not diminish the enjoyment of the owner's residential use. Hobby farms are more likely to raise a few horses or cows or manage fruit or nut trees than to grow crops requiring intensive cultivation and the applications of chemicals. Residential uses are more likely to be compatible with these kinds of low-intensity recreational farming activities. And when conflicts do occur, they are of less concern to someone whose livelihood is not dependent on their farm production.

Second, the definition of "farm use" incorporates the phrase "for the primary purpose of obtaining a profit in money * * * " which I believe means the same thing as "commercial."[5] Hence, if the agricultural activity is not for the primary purpose of obtaining

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[5] In *Capsey v. Dept. of Rev.*, 294 Or 455, 657 P2d 680 (1983) the Oregon Supreme Court upheld the Department of Revenue's denial of preferential farm use assessment for land not within an EFU zone. Qualification for deferral depends on a demonstration that the property is in "farm use" as defined in ORS 215.203(2)(a). ORS 308.370(1), .308.370(2), .372(1). Dr. Capsey, a dentist, was merely leasing the pasture for a nonfarm use, grazing the horses of his daughter's friends who used the horses for recreational riding. *Capsey, supra,* 294 Or at 458-459. In its decision the Supreme Court quoted with approval two decisions by the Oregon Tax Court, including this paragraph in *Beddoe v. Dept. of Rev.*, 8 OTR 186 (1979):

> *The great boon of tax relief to the bona fide farmer through the special exemption for farm use is not to be extended to the professional man's fine*

a profit in money" then it is not a "farm use" and it is not necessary for the proposed residence to be compatible with it.

But even if the "commercial" status of the nearby farm uses is legally relevant, this record contains only suggestions and impressions (some of which I share with the applicants) about which of the nearby operations are commercial and which are hobby operations.

The applicants have not carried their burden of proving that the proposed residence will be compatible with nearby farming operations.

(ii) Statutory Purposes And Intent

The applicants discuss the "compatibility" criterion but do not addresses itself any of the purposes and intents of the exclusive farm use statute set out in ORS 215.243. (Applicants' Narrative at 2-3.) I find that the applicants have failed to carry their burden of proof on this criterion. Furthermore, the evidence which contravenes findings of compliance with the unsuitability and land use stability criteria, preclude a finding of compliance with the statutory intent and purpose.

3. ORS 215.283(3)(c)/MCC 11.15.2012(B)(3)(c); No Serious Interference With Accepted Farming Practices

The second criterion from the statute requires a demonstration the use will "not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use."

The applicants state:

The applicant will comply with all setback requirements of this zone. The placement of the proposed dwelling, which is more than 50 feet from any lot line, more than any of the Code listed dimensional standards.

Such setbacks were incorporated into the Code to assist in reducing or mitigating any direct impact resulting from adjacent farming uses.

The adjacent lots to the west have a single family homes [sic] the lot to the north is in timber and the lot to the east is used primarily as pasture land.

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residence in a filbert orchard, the city worker's five suburban acres and a cow, the retired person's 20 acres of marginal land on which a travel trailer constitutes the personal residence, unless the day-to-day activities on the subject land are principally and patently directed to achieving a profit in money through the farm use of the land.

Capsey, supra, 294 Or at 458.

Placement of a single family home as proposed in this request, will not seriously interfere with accepted farming practices.

No variances are inferred or implied in this request.

Applicants' Narrative at 3.

Whether or not a 50 foot setback is required depends on the nature of the farm uses and the conflicts they generate. It is erroneous to assume that a 50-foot setback is sufficient to mitigate such conflicts as dogs chasing livestock, blowing chemicals or dust, conflicts created by joint use of roads or noise and odors from livestock production.

While the land to the west of the property appears to be given over to low-density residential uses, the land to the north and east (owned by other members of the applicant's family) is not.

The applicants have not addressed potential conflict with lands close by which do not adjoin the subject parcel. In light of the pattern of small lots next to the parcel and larger lots in nursery use, the "adjacent" analysis needs to include more than adjoining land. *See Stefan v. Yamhill County*, 18 Or LUBA 820. 840 (1990).

The record contains a July 13, 1993, letter from Fred Morgan of "Glendale Farms, Inc." located at 32801 SE Lusted Road. Mr. Morgan writes: "We have no objections as to her plans to move in a manufactured home on the above 3 acres." This might imply that the use would not conflict with these nearby (but not adjacent) farm uses taking place on Glendale Farms. On the other hand, the stationery of the letter lists the company's products as "sawdust • shavings • hogfuel • barkdust." I cannot conclude from this list that Glendale Farms Inc., is engaged in a "farm use" as defined by ORS 215.203(2).

The evidence is insufficient to demonstrate compliance with ORS 215.283(3)(b)/MCC 11.15.2012(3)(b).

4. ORS 215.283(3)(c)/MCC 11.15.2012(B)(3)(c); No Material Alteration Of The Stability Of The Land Use Pattern

The applicant must demonstrate that the proposed dwelling will "not materially alter the stability of the overall land use pattern of the area."

On this question, the applicants state:

The overall land use pattern in the area consists of rural residential development. The proposed dwelling is compatible with this character.

There is a single family home on the 2 and 4 acre lots immediately to the west of the subject lot and a single family home on a 1.86 acre parcel to the east.

To the south and across SE Lusted Rd are single family homes on .36, 1.6 and 1.0 acre parcels.

See the attached maps showing lot various lot sizes [sic] *and houses as described above.*

Applicants' Narrative at 4.

The aerial photograph and inspection of the site and vicinity, described above, contradicts the assertion that the overall land use pattern is "rural residential." The area consists of a mixture of residences on small parcels and the much larger, presumably commercial, farming operations.

The statement also wrongly identifies tax lots with parcels and assumes that a house on a separate tax lot is the equivalent of a nonfarm parcel. This is a mistaken assumption given the difference between tax lots and parcels (discussed previously.) Even if the tax lots represent separate parcels, it is incorrect to assume that a house on a single parcel constitutes a residential use; many farm homes are located on separate parcels but are farm dwellings. In fact, Mrs. Lundbom's current residence (located about 600 feet from the entrance to the subject property) served as the farm dwelling for the family farm (Laurel Hill Farms) prior to the distribution of the land to various family members. It is located on a 10.82 acre parcel[6] (Tax Lot 88.)

While it is true that the applicant proposed only one more dwelling, it is appropriate for the reviewing authority to consider the cumulative impact and precedential effect of such a dwelling. *Blosser v. Yamhill County*, 18 Or LUBA 253, 263 (1989). Authorizing one more house on another one of the small parcels in this area creates both a precedent and an additional argument in favor of subsequent approvals. This is a serious matter for productive farm land just beyond the edge of the urban growth boundary, as this property is.

I conclude that the existing infiltration of apparently nonfarm dwellings on small parcels means that there is a serious risk that authorizing yet another house could help tip the balance of resource and non-resource uses in the area in favor of nonresource uses. *Grden v. Umatilla County*, 10 Or LUBA 37, 46-47 (1984).

5. ORS 215.283(3)(d)/MCC 11.15.2012(B)(3)(d); Generally Unsuitable Test

The parcel on which the proposed nonfarm dwelling would be situated, must be

[6] The map in the Staff Report shows Tax Lot 26 to be 11.27 acres in size but during the site visit Mrs. Lundbom stated that this is an error and that the property is actually 10.82 or 10.87 acres. This is the size of the lot as shown on the map appended to the public notice.

"generally unsuitable for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;." The entire parcel is to be analyzed. *See Smith v. Clackamas County,* 313 Or 519, 836 P2d 7__ (1992).

The applicant offers two argument about why the land is not generally suitable. The first reason is poor soils:

> *The soil type for the majority of the site is classified as Powell Silt Loam, 0-3% slopes (Type 34A). This classification is discussed in detail in the Soil Survey for Multnomah County.*
>
> *Generally this type soil can be described as being a poorly drained soil found on broad high terraces. It is suitable for farming, urban development or wildlife habitat type uses.*
>
> *The single family home being proposed is classified as urban development.*
>
> *It has a subclass of IIIw, Class "III" means soils have sever limitations that reduce the choice of plants, require special conservation practices, or both.*
>
> *The "w" shows that water in or on the soil interferes with plant growth or cultivation.*

Applicants' Narrative at 4-5. The applicant is entirely correct that the Soil is Type III and imposes certain constraints on farming. However the presence of limitations on farming does not mean the soil is "not generally suitable" for farming. In fact, the referenced Soil Survey, provides the following description of the Powell Silt Loam type 34A:

> *This soil is well suited to farming. If it is drained, most climatically adapted crops do well. The major crops are grain, berries, vegetables, nursery stock, hay, and pasture. Irrigation during summer is required for maximum production of most crops.*

Multnomah County Soil Survey at page 63. The site inspection and discussion with the owner, confirmed that the property is irrigated by a well on another parcel closer to Altman Road and thus can be used for "maximum production of most crops."

The soil survey map shows that the remainder of the property is Powell Silt Loam type 34B. The soil is identical to type 34B except that slopes range from 3 to 8% and it is classified as a IIIe (subject to erosion) rather than a IIIw (wet.) Multnomah County Soil Survey at pages 64-65. Comparison of the Soil Survey photomap with the tax lot maps and 1986 aerial photo, shows that the nursery across Lusted Road, as well as the large nursery which straddles Altman Road, contain high proportions of 34A and 34B soils (with much of the remainder on 34C soils, which are the same soil on 8 to 15% slopes.)

Furthermore, the property is currently being grazed in common with Tax Lots 33, 88 and possibly 25. Use of the land for pasturage demonstrates its suitability for this particular farm use, "feeding * * * and management of livestock." ORS 215.203(20(a), *Miles v. Clackamas County*, 48 Or App 951, 959-960, 618 P2d 986 (1980); *Stefansky v. Grant Co.*, 12 Or LUBA 91, 95 (1984).

The applicant also contends that the land is unsuitable because "This parcel is not of size for commercial agriculture." Garnett Memo.

Farms in Oregon are not made up of single parcels, typically they are made up of many parcels, often discontiguous. Farms are aggregated from different parcels, often in sometimes in the same ownership, sometimes leased and sometimes managed through other, more complex relationships. For that reason, one of the first precedents interpreting this section determined that small size of the parcel alone is insufficient to demonstrate unsuitability. *Rutherford v. Armstrong*, 31 Or App 1319, 1326-1327, 572 P2d 1331 (1977). LUBA has followed that precedent faithfully. *Walter v. Linn Co.*, 6 Or LUBA 135, 138 (1982); *Sweeten v. Clackamas County, supra,* 17 Or LUBA 1237; *Stefan v. Yamhill County, supra*, 18 Or LUBA 827; *Blosser v. Yamhill Co., supra*, 18 Or LUBA 256-258; *Nelson v. Benton County*, 23 Or LUBA 392, 397 (1992).

These cases are particularly pertinent when, as here, the applicant's property adjoin larger properties owned by a daughter (TL 23, 16.00 acres) and a son (TL 33, 4.87 acres) which in turn adjoin other property owned by the applicant, Mrs. Lundbom (TL 88, 10.82 acres, the site of her home) a family trust (TL 25, 23.57 acres) and this land in turn adjoins a small property (TL 52, 0.43 acre) owned by another daughter, Elizabeth Anne Jacoby.[7]

The evidence contradicts a finding that the parcel is "generally unsuitable" for the production of either crops or livestock.

C. MCC 11.15.2012(B)(3)(e) to (k)

1. MCC 11.15.2012(B)(3)(e), (g), (h), (i)

MCC 11.15.2012(B)(3)(e), (g), (h), (i) all contain or cross-reference standards for the design and construction of the home, which in this case is a manufactured home. The

[7] The "Zoning Commission Legal Listing" document, from which the addresses were taken in order to provide notice of this hearing, indicates that as of July 8, 1993, Mrs. Lundbom owned, alone or jointly with her deceased husband Daryl, Tax Lots 32, (3.0 acres) TL 23, (16.00 acres) TL 33 (4.87 acres) and TL 88 (10.82 acres). This is not entirely consistent with the information about ownership which was provided on an annotated assessor's map. It is also at odds with the four real estate sales contracts, dated January 28, 1980, transferring land from Daryl and Betilue Lundbom to their son Paul and daughters Carol Thompson and Elizabeth Jacoby. The difference may not be significant here, since these properties are all owned either by the applicant or her children.

applicant provides assurances that these design building code standards "will be complied with." I have no information in any form about the make or model of the proposed manufactured dwelling and thus cannot find that the dwelling complies. However, conditional uses are subject to subsequent design review. MCC 11.15.7820. Design review provides an opportunity to test compliance of this proposal with these design and construction standards, while still providing for notice and hearing on the County's decision, to the extent that decision required the exercise of discretion. *Rhyne v. Multnomah County*, 23 Or LUBA 442, 449 (1992).

2. MCC 11.15.2012(B)(3)(f), (j), (k)

Because I am denying the application, MCC 11.15.2012(B)(3)(f), (j), (k) there is no need to address these provisions.

D. Conditional Use Criteria; MCC 11.15.7120

The applicants are correct that MCC 11.15.7120 is inapplicable because the conditional use application is governed by "the approval criteria listed in the district under which the conditional use is allowed."

E. Exclusive Farm Use Conditional Use Approval Criteria; MCC 11.15.7122

MCC 11.15.7122(A) requires the applicants to demonstrate their use:

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.

Lands which are excluded from this compatibility analysis are specified in MCC 11.15.7122(B). The excluded areas are; parcels for which nonfarm dwellings were approved under MCC .2012(B)(3), exception areas (see ORS 197.732(1)(a) and (b)) and lands inside Urban Growth Boundaries.

The discussion of these issues in the applicant's narrative parallels its treatment of MCC 11.15.2012(a), (b) and ORS 215.283(3)(a), (b). Applicants' Narrative at 7-8. I find it inadequate for the same reasons.

F. Comprehensive Plan Policies

Comprehensive Plan Policies 13, 22, 37, 38 are either satisfied or inapplicable for the reasons given in the Staff Report. The draft findings prepared by the staff on these Plan Policies are incorporated by reference.

I find that Plan Policy 40 is inapplicable because the land on which the use is proposed is not a park or recreation area. It does not concern or require improvements to a street or road and the proposed use is not commercial, industrial or multiple family residential.

I find that Policy 9, if applicable, is not satisfied because the applicant has not demonstrated compliance with MCC 11.15.2012(3)(a) through (d) and ORS 215.283(3)(a) through (d).

Neither the staff nor the applicants addressed Plan Policy 16, which is generally applicable to quasijudicial land use decisions. In the absence of any information or analysis demonstrating the inapplicability or satisfaction of this policy I find the applicants have not carried her burden of proof.

III. CONCLUSIONS AND ORDER

For the foregoing reasons I reach the following conclusions of law:

1. The evidence is insufficient to show that the parcel "satisfied all applicable laws when it was created." For that reason, the applicants have not demonstrated the parcel qualifies as a "lot of record" under MCC 11.15.2018(2) or (3), as required by MCC 11.15.2012(B)(3).

2. There is not sufficient evidence to demonstrate compliance with MCC 11.15.2012(B)(3)(a), (b), (c), MCC 11.15.7122(A)(1) and (2) and the parallel provisions in ORS 215.283(3)(a), (b), (c) and 215.296. The applicant has failed to carry her burden of proof.

3. Unrebutted evidence in the evidence showing the property is suitable for the production of crops and livestock, precludes a finding of compliance with MCC 11.15.2012(B)(3)(d) and ORS 215.283(3)(d).

4. The applicant has demonstrated compliance with Plan Policies 13, 37, 38.

5. The applicant has not demonstrated compliance with Plan Policies 9 and 16.

6. Plan Policies 22 and 40 are inapplicable.

Based on these conclusions, I deny the application.

Robert L. Liberty

Robert L. Liberty, Hearings Officer

Date: 5 August 1993

MEETING DATE: ~~August 31, 1993~~ SEP 28 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Decision of the Hearings Officer of August 5, 1993

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: August 31, 1993

Amount of Time Needed: 2 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sharon Cowley TELEPHONE #: 2610
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

[ ] INFORMATIONAL ONLY [ ] POLICY DIRECTION [ ] APPROVAL (x) DENIAL [ ] OTHER

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

CU 20-93 Review the Decision of the Hearings Officer of August 5, 1993, denying conditonal use request for property located at 31075 SE Lusted Road.

1993 AUG 24 AM 10:

COUNTY CLERK'S OFFICE
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: BH Wellia

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

P-3 (CU 20-93)

MOTIONS TO SET HEARINGS ON LAND USE APPEALS [These are made at the hearing where the staff reports the appealed decisions]

1. Motion for a hearing to determine scope of review (where appellant has asked for Denovo review or "on the record with additional evidence".

   I move that there be a hearing to determine the scope of review on Case #_____, to be held on (date) _____. Each side will be allowed 10 minutes.

2. Motion for a hearing on the record.

   I move that the hearing on (Case #) _____ be held on (date) _____ and that the hearing be on the record, allowing _____ minutes per side for argument.

(3.) Motion for hearing on the record with additional evidence.

   I move that the hearing on (Case #) CU 20-93 be held on (date) SEPT 28, 1993 and that the hearing be on the record, with additional evidence limited to the subject of: LOT OF RECORD STATUS _____. Each side will be allowed 10 minutes.

4. Motion for DeNovo hearing.

   I move that the hearing on (Case #) _____ be held on (date) _____ and that the hearing be de novo, allowing each side _____ minutes.

CRITERIA FOR ALLOWING EITHER DENOVO REVIEW OR REVIEW "ON THE RECORD WITH ADDITIONAL EVIDENCE."

MCC 11.15.8270 (E)(3) - "Surprise to opposing Parties"

Lot of Record Status was raised at the Hearing.

CU 20-93
Fee
Fee -
#461.00
Last day to file
Notice of
Review
Monday
8/23/93
4:30 pm

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

NOTICE OF REVIEW

1. Name: Lundbom, _____, Betilue
   Last *Middle* *First*
2. Address: 31847 SE Lusted Rd., Gresham, OR 97080
   Street or Box *City* *State and Zip Code*
3. Telephone: (503) 663 - 3976
4. If serving as a representative of other persons, list their names and addresses:

5. What is the decision you wish reviewed (*e.g.*, denial of a zone change, approval of a subdivision, *etc.*)?
   denial of a conditional use request for a non-resource related single family dwelling CU 20-93
6. The decision was announced by the ~~Planning Commission~~ Hearings Officer on Aug. 5, 1993
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?

   I am the property owner and applicant.

1993 AUG 23 PM 3:20
MULTNOMAH COUNTY
OREGON

Please file this original form, pl

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

Please see attached sheets.

9. Scope of Review *(Check One)*:

(a) [ ] On the Record

(b) [X] 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*.

Please see attached sheet.

Signed: Pauline E Lundstrom Date: August 20, 1993

For Staff Use Only

Fee:

Notice of Review = $300.00
Transcription Fee:
Length of Hearing 46 hrs. x $3.50/minute = $ 161.00

Total Fee = $ 461.00

Received by: [signature] Date: 8/23/93 Case No. CL 20-93

Grounds for Reversal of Hearings Officer Decision CU 20-93

1. **The Hearings Officer erred in concluding that the evidence is insufficient to show that the parcel satisfied all applicable laws when it was created, and is therefore not a lot of record under MCC 11.156.2018 (A)(2).**

The decision states that compliance with statewide planning Goal 3 was required when the parcel was created on January 18, 1980. However, because the parcel was zoned for Suburban Residential use, not Agriculture, at that time, Goal 3 was not an applicable law. Therefore, because the parcel also satisfied the other requirements of MCC 11.156.2018 (A)(2), the parcel is a legal lot of record.

2. **The Hearings Officer erred in concluding there is not sufficient evidence in the record to demonstrate compliance with MCC 11.15.2012(B)(3)(a),(b), & (c); MCC 11.15.7122(A)(1) & (2), and the parallel statutes ORS 215.283(3)(a), (b), (c) and 215.296.**

The record includes evidence that the subject property is an in area of mixed farm uses and numerous single family dwellings on small lots. There is sufficient evidence in the record that the proposed dwelling is compatible with the existing farm uses, will not "seriously" interfere with accepted farm practices, and will not materially alter the stability of the land use pattern. In addition, the record contains sufficient evidence that the proposed use will not force a "significant" change in accepted farm practices nor "significantly" increase the cost of accepted farming practices in the area.

3. **The Hearings Officer erred in his interpretation of "generally unsuitable for farming" under MCC 11.15.2012 (B)(3)(d) and ORS 215.283(3)(d).**

There is sufficient evidence in the record to find that the proposed home site is generally unsuitable for farming because of its size, location and the farming restrictions imposed by the soil.

The Hearings Officer misconstrued the code in holding that the entire parcel must be found generally unsuitable for farming.

4. **The Hearings Officer erred in concluding that the applicant has not demonstrated compliance with Plan Policy 9.**

Policy 9 does not apply to applications for dwellings. Policy 9 controls the designation of agricultural land. The applicant does not dispute that the subject property is zoned EFU under Policy 9.

Even if Policy 9 were applicable, contrary to the statement of the Hearings Officer, the applicant has demonstrated compliance with MCC 11.15.2012(3)(a) through (d) and ORS 215.283(3)(a) through (d). (See Appeal Point No. 2 above.) In addition, Policy 9 refers to "areas in predominantly commercial agricultural use." The record, including the decision itself, includes substantial evidence that the area is not in predominantly commercial agricultural use. For these reasons, the proposal would be in compliance with Policy 9 if it were applicable.

5. The Hearings Officer erred in concluding that the applicant has not demonstrated compliance with Plan Policy 16.

Policy 16 is not applicable in this case because there is no evidence in the record or in the decision that the property contains any of the 12 identified natural resources under Policy 16. The purpose of Policy 16 Natural Resources is "to implement statewide Planning Goal 5: 'Open Spaces, Scenic and Historic Areas, and Natural Resources.'" The property is not included in any of the County's Goal 5 inventories. The staff report does not address Policy 16.

Requested Scope of Review: On the Record plus Additional Testimony and Evidence

Grounds for the request to introduce new evidence.

The hearing on this matter was extremely short, and neither the Hearings Officer nor the staff apprised the applicant or the applicant's consultant of the interpretations he was going to make of the approval criteria. In order to address the interpretations of the Hearings Officer, it will be necessary to submit additional evidence and testimony. The applicant was not represented by legal counsel before the Hearings Officer. In the interest of fairness to the applicant, the Board should allow this new evidence.

This request is consistent with the Board's considerations required by MCC 11.15.8270(E), for the following reasons.

(1) There are no other parties involved who would be prejudiced by the new evidence. However, failing to allow new evidence would severely prejudice the applicant because the Hearings Officer's decision on Lot of Record directly contradicts a prior ruling of the County.

(2) It was not possible to submit the proposed new evidence at the initial hearing because the applicant did not know what the approval criteria under the Hearings Officer's interpretation.

(3) There will be no surprise to opposing parties because there are no opposing parties.

(4) The proposed new evidence will respond to the Hearings Officer's interpretations relating to the subject property. The applicant will submit the following new evidence and testimony:

a. Evidence that the county ruled in 1980 that each of the applicant's lots would be treated as a separate lot of record. A copy of the June 27, 1980 letter is attached.

b. Evidence relating to the proposed homesite and the entire parcel concerning general suitability for farming.

c. Evidence relating to the other approval criteria as interpreted by the Hearings Officer.

The above described evidence will be competent, relevant and material to approval criteria as interpreted by the Hearings Officer in this application.

In addition, pursuant to MCC 11.158270(B), the applicant requests a hearing before the Board to present argument on the Scope of Review prior to the Board's determination.

Respectfully Submitted,

Timothy V. Ramis of
Attorneys for the Applicant

c:\orec\memo\gfh\appeal.lin/gws

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION

DONALD E. CLARK
COUNTY EXECUTIVE

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION
2115 S.E. MORRISON
PORTLAND, OREGON 97214
(503) 248-3043

June 27, 1980

Mr and Mrs Daryl Lundbom
Rt. 2, Box 667
Gresham, Oregon 97030

RE: PC 12-80D/1

Dear Mr and Mrs Lundbom:

I am writing in response to our recent telephone conversations about the status of lots owned and formerly owned by you if the amendments to Ordinance No. 100 proposed as PC 12-80D/1 are adopted.

Based on the facts as you have described them to me, and as I will repeat below, each lot you own individually will be treated as a separate lot of record. I must carefully limit my conclusions: if I have missed any details please point out the error as soon as you can.

As of January 28, 1980, the following transactions had occurred:

- Tax Lot '25' (comprised of 23 acres) was conveyed to Daryl by Betty Lundbom.
- Tax Lot '52' (comprised of .43 acre) was conveyed to Daughter No. 1.
- Tax Lot '26' (comprised of 10 acres) was conveyed to Betty Lundbom.
- Tax Lot '33' (comprised of 4.87 acres) was conveyed to Son.
- Tax Lot '32' remained in ownership of Betty Lundbom.
- Tax Lot '23' (comprised of 16 acres) was conveyed to Daughter No. 2.

Assuming that the conveyancing instrument (ei., deed or contract) was recorded or in recordable form by January 31, 1980, and further assuming Tax Lot '32' and Tax Lot '26' are not contiguous, each tax lot described above will constitute a legal lot of record. The fact that the legal description on one or more of the deeds had to be changed after January 31, 1980, to

Lot '32' and Tax Lot '26' are not contiguous, each tax lot described above will constitute a legal lot of record. The fact that the legal description on one or more of the deeds had to be changed after January 31, 1980, to

I hope this letter eases your concerns. I must point out that the interpretation described above is dependent upon favorable action on the proposed amendments by the Board. I must also point out that all zoning regulations are subject to change at any time, although retroactive applicability is contrary to state statute and further ordinance revisions are unlikely to affect applicability of the lot of record provisions to your lots.

Very truly yours,

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT

Larry

Larry Epstein, Manager

LE:sec

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT/2115 S.E. MORRISON/PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C4 20-93

☑ Agenda Placement Sheet — No. of Pages 1

☑ Case Summary Sheet — No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review — No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☑ Decision — No. of Pages 19

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

*Duplicate materials will be provided upon request.
Please call 2610.

(CL/1)

MULTNOMAH COUNTY

BOARD HEARING OF **August 31, 1993**

CASE NAME: **Lundbom**

Conditional Use Denial

TIME **1:30 pm**

NUMBER **CU 20-93**

ACTION REQUESTED OF BOARD
☒ Affirm Plan.Com./Hearings Offficer
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

1. Applicant Name/Address: Betilue Lundbom
   31847 SE Lusted Rd.
   Gresham, OR 97080

2. Action Requested by applicant:

   Approve a non-farm related single family residence on 3 acres in the EFU zone.

3. Staff Report Recommendation (August 2, 1993):

   Approve, subject to conditions

4. Hearings Officer Decision (August 5, 1993):

   Denied

5. If recommendation and decision are different, why?

   The Hearings Officer found that the property was not a legal Lot of Record, and that the applicant had not shown that the proposed residence would be compatible with and not interfere with surrounding agricultural uses.

ISSUES

(who raised them?)

None.

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

HEARINGS OFFICER DECISION
CU 20-93

August 5, 1993

Conditional Use Request
(Non-Resource Related Single Family Dwelling)

Applicant requests Conditional Use approval for a non-resource related single family dwelling on a 3 acre Lot of Record in the EFU zoning district..

Location: 31075 SE Lusted Road

Legal: Tax Lot '32', Section 17, T1S, R4E, 1992 Assessor's Map

Site Size: 3 acres

Size Requested: Same

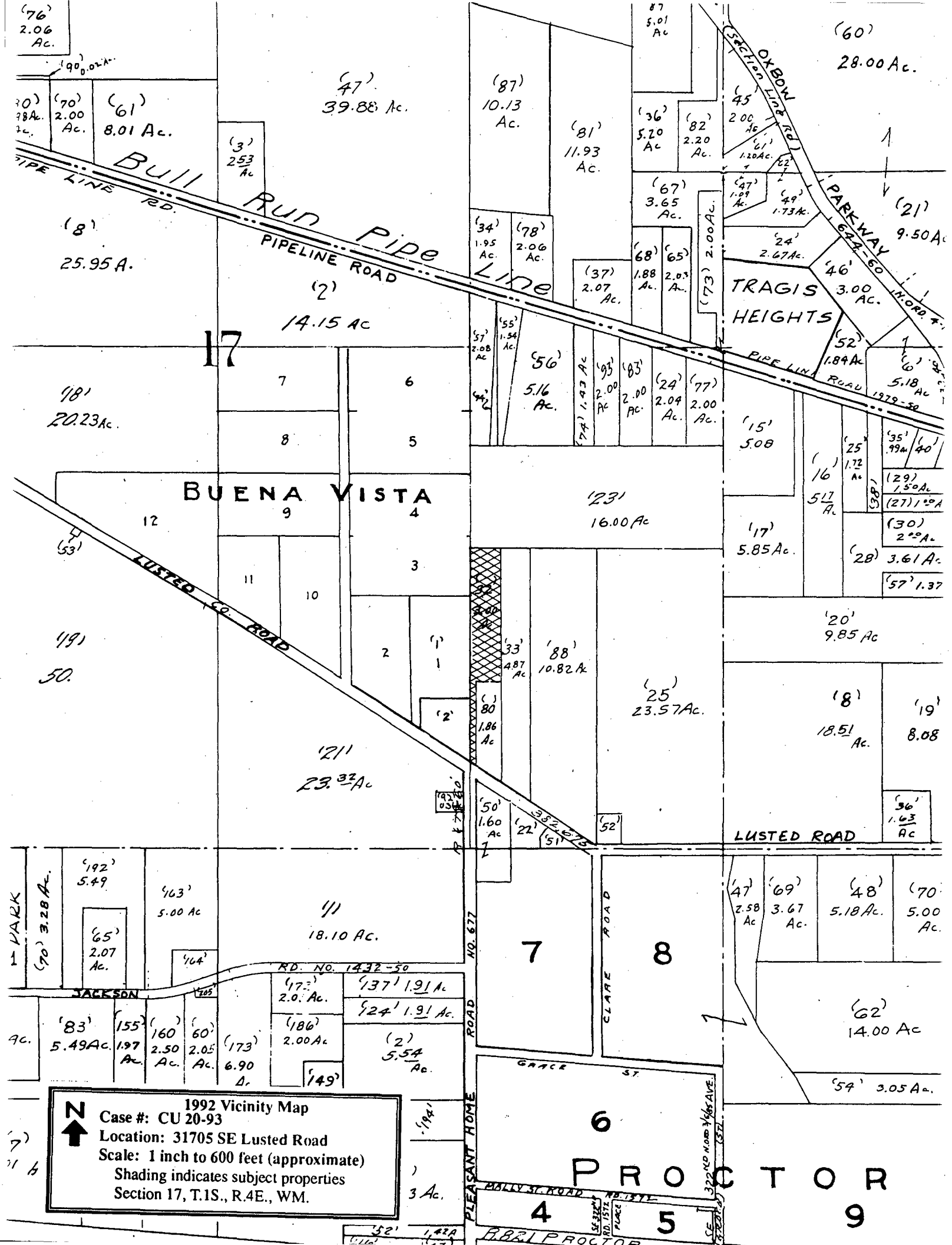
Property Owner: Betilue Lundbom
31847 SE Lusted Rd.
Gresham, OR 97080

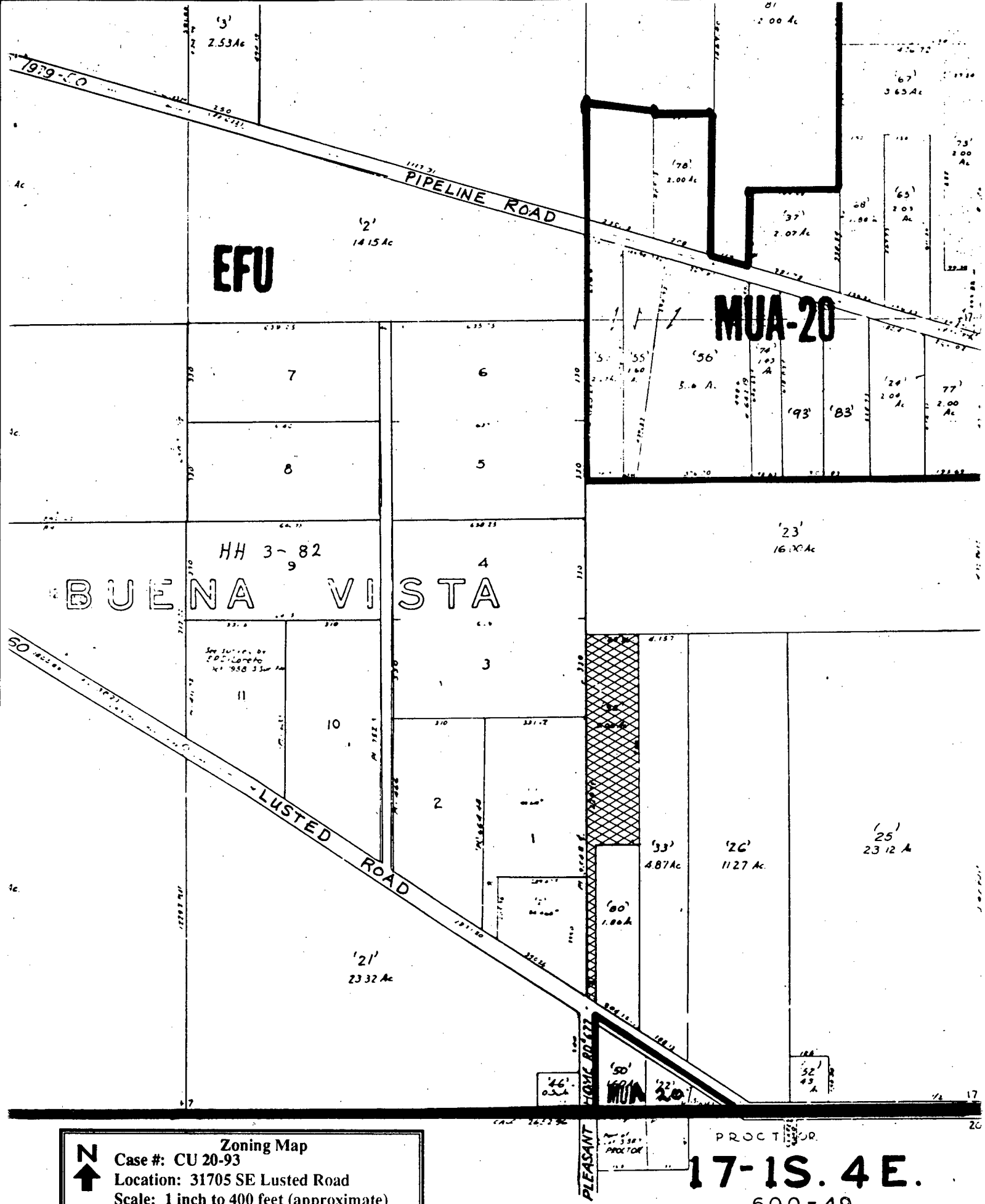
Applicant: Same

Comprehensive Plan: Agriculture

Present Zoning: EFU, Exclusive Farm Use District

Hearings Officer Decision **DENY** this request for a non-resource related single family dwelling, based on the following Findings and Conclusion.


BULL RUN PIPE LINE
PIPE LINE RD.
PIPELINE ROAD
OXBOW PARKWAY
Section Line Rd.
TRAGIS HEIGHTS
BUENA VISTA
LUSTED CO. ROAD
LUSTED ROAD
JACKSON
RD. NO. 1432-50
PLEASANT HOME ROAD NO. 677
CLARE ROAD
GRACE ST.
PROCTOR
17
7
6
8
5
4
9
12
11
10
3
2
1
(76) 2.06 Ac.
(70) 2.00 Ac.
(61) 8.01 Ac.
(47) 39.88 Ac.
(3) 2.53 Ac.
(8) 25.95 A.
(2) 14.15 Ac
(87) 10.13 Ac.
(81) 11.93 Ac.
(87) 5.01 Ac
(60) 28.00 Ac.
(45) 2.00 Ac.
(36) 5.20 Ac
(82) 2.20 Ac.
(67) 3.65 Ac.
(21) 9.50 Ac
(34) 1.95 Ac.
(78) 2.06 Ac.
(37) 2.07 Ac.
(68) 1.88 Ac.
(65) 2.03 Ac.
(73) 2.00 Ac.
(24) 2.67 Ac.
(46) 3.00 Ac.
(52) 1.84 Ac.
(6) 5.18 Ac
(57) 2.08 Ac
(55) 1.54 Ac.
(56) 5.16 Ac.
(74) 1.43 Ac
(93) 2.00 Ac
(83) 2.00 Ac.
(24) 2.04 Ac.
(77) 2.00 Ac.
(15) 5.08
(25) 1.72 Ac
(35) .99 Ac
(40)
(16) 5.17 Ac.
(29) 1.50 Ac
(38)
(27) 1.00 Ac
(30) 2.00 Ac
(28) 3.61 Ac.
(57) 1.37
(18) 20.23 Ac.
(53)
(91) 50.
(23) 16.00 Ac
(17) 5.85 Ac.
(20) 9.85 Ac
(32) 2.40 Ac
(33) 4.87 Ac
(88) 10.82 Ac
(80) 1.86 Ac
(25) 23.57 Ac.
(8) 18.51 Ac.
(19) 8.08
(211) 23.32 Ac
(50) 1.60 Ac
(22)
(51)
(52)
(36) 1.63 Ac
(192) 5.49
(70) 3.28 Ac.
(65) 2.07 Ac.
(163) 5.00 Ac
(164)
(111) 18.10 Ac.
(47) 2.58 Ac
(69) 3.67 Ac.
(48) 5.18 Ac.
(70) 5.00 Ac.
(62) 14.00 Ac
(54) 3.05 Ac.
(83) 5.49 Ac.
(155) 1.97 Ac.
(160) 2.50 Ac.
(60) 2.05 Ac.
(173) 6.90 Ac.
(186) 2.00 Ac
(137) 1.91 Ac
(124) 1.91 Ac.
(2) 5.54 Ac.
(149)
(194)
(52) 1.42 Ac
(146)
3 Ac.
322 KD NOBB AVE. (SE)
SE 322ND PLACE
RD. 157TH
1992 Vicinity Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 600 feet (approximate)
Shading indicates subject properties
Section 17, T.1S., R.4E., WM.
N



Zoning Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 400 feet (approximate)
Shading indicates subject properties
SZM 692-695; Section 17, T.1S., R.4E.

169.36
65'
50'
M.H
50'
700
1229+
CU 20-93
25

I. INTRODUCTORY MATTERS

A. Parties To The Proceeding

1. The Applicants

The applicants are Betilue E. Lundbom, 31847 SE Lusted Road, Gresham, Oregon 97030 and Harold D. Garnett, 64 NE Scott, Gresham 97030. The applicants' representative is Spencer Vail, Planning Consultant, 4505 NE 24th Avenue, Portland, Oregon 97211.

2. Other Persons Supporting The Application

The other persons appearing, through oral or written testimony, in support of the application, are:

Maria Meracle, 31734 SE Lusted Road, Gresham, Oregon 97080
Fred Morgan, 32801 SE Lusted Road, Gresham, Oregon 97030
Gary Obrist, 31619 SE Lusted Road, Gresham, Oregon 97080
Kathy Obrist, 31619 SE Lusted Road, Gresham, Oregon 97080
Carol A. Thompson, c/o 31847 SE Lusted Road, Gresham, Oregon 97080

3. Opponents

No one appeared in opposition to the application.

4. Party Status And Notice Of This Decision

In the absence of any challenges to their standing, I find the persons listed in subsections A.1. and A.2., are parties to the appeal, as specified by MCC 11.15.8225. These persons should receive a copy of this decision.

B. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties concerning the merits of these applications.

I have no financial interest in the outcome of this proceeding and have no family or business relationship with any of the parties.

C. Burden of Proof

The burden of proof is upon the applicant. MCC 11.15.8230(D).

D. Alleged Procedural Errors

No procedural errors were alleged by any participants prior to, during, or after, the hearing.

E. Summary Of The Information In The Record

The application was initiated by Daryl Lundbom. After his death, Mr. Harold Garnett, Mrs. Lundbom's brother, proceeded on Mrs. Lundbom's behalf. Following a pre-application conference, Mr. Garnett, submitted a one-page document entitled "Staff suggested addressed items," dated May 28, 1993 (hereafter "Garnett Memo".) The Garnett Memo indicated his belief that the proposed house would satisfy the MCC 11.15.2012(B)(3), .7120 and .7122, but did not discuss individual criteria or refer to evidence. The Garnett Memo contained some information addressing the Plan Policies.

In response, Staff Planner Sandy Mathewson sent Mr. Garnett a letter dated, June 3, 1993, asking him to provide specific information on a variety of topics related to MCC .2012(3)(B). The applicants retained a consulting planner, who provided a narrative dated June 24, 1993, which was headed "Conditional Use Request; Betilue Lundbom; Lusted Road Site" (hereafter "Applicant's Narrative.") Attached to the narrative were maps and other documents referenced in the narrative.

The planning staff also provided substantial information for my consideration, including soils maps and soil interpretations from the Soil Conservation Service's Multnomah County Soil Map, old zoning maps and an annotated aerial photograph of the area containing the subject property. The photo is dated June 1986 and shows an area a square approximately 6,000 feet on a side. This photo was hand annotated by Ms. Mathewson and myself with information about crops and livestock, after our site visits. This document will be referred to as "Aerial Photograph."

Other information in the record includes copies of several real estate sales contracts dated January 18, 1980 and information from the Assessor used to determine the persons entitled to receive notice of this hearing.

II. FINDINGS OF FACT AND ANALYSIS OF THE APPLICATION UNDER THE STANDARDS IN STATE LAW, THE MULTNOMAH COUNTY COMPREHENSIVE PLAN AND ZONING ORDINANCE

A. Applicable Standards

1. Standards From The County Zoning Ordinance and Comprehensive Plan

I find the following provisions of the Zoning Ordinance and Comprehensive Plan apply to this application:

MCC 11.15.2012(B)(3)	Nonfarm dwelling standards (a) through (k)
MCC 11.15.2018	Qualification as a county defined "lot of record"
MCC 11.15.7122	Conditional use standards applicable to use in EFU zones
Comprehensive Plan	Policies 9; 13; 16; 37; 38

2. EFU Statutes Apply Directly To This Application and the County Must Adhere To Appellate Interpretations Of Those Statutes.

MCC 11.15.2012(B)(3) permits "Residential use not in conjunction with farm use, consisting of a single family dwelling * * * ." This provision was made a part of the Zoning Ordinance during the course of acknowledgment review. Its origin is undoubtedly ORS 215.283(3), which authorizes counties to permit "single-family residential dwellings, not provided in conjunction with farm" in their EFU zones.

But the fact that the County has replicated the statutory the language in this authorization does not mean the statute no longer applies. The Court of Appeals has left doubt that LCDC's acknowledgment of a county's EFU zone did not alter the direct applicability of the EFU statutes:

> *Consequently, we conclude that relevant state statutes remain applicable to local land use decisions after acknowledgment and that ORS 215.283(1)(e) applies here.*[3]

---

[3] *We reiterate that the county may, in at least some respects, enact legislation that is more restrictive of the use than the state statute is. However, with one exception, no issue is presented here that involves limitations under the ordinance that arguably go beyond those of the statute.*

We do not imply that the existence of relevant statutes means that the local legislation is inapplicable to post-acknowledgment decisions. Rather, the statutes are also applicable and the decisions must satisfy any statutory requirements that are not embodied in the local law.

Kenagy v. Benton County, 115 Or App 131, 136, __ P2d ___ (1992); *see also Forster v. Polk*

County, 115 Or App 475, 478, ___ P2d ____ (1992).

Even though the standards in MCC 11.15.2012(B)(3)(a) - (d) and ORS 215.283(2)(a) - (d) are virtually identical[1], there is a significant difference between the amount of discretion the County can exercise in interpreting them.

In *Clark v. Jackson County,* 313 Or 508, 515, 836 P2d 710 (1992), the Oregon Supreme Court articulated a new, deferential, standard of review for local governments' interpretations of their own ordinances. But in another case decided the same day as *Clark*, the Supreme Court reached a contrary interpretation of the language in ORS 215.283(3)(d) even though it was almost identical to the language in the County ordinance construed in *Clark. Smith v. Clackamas County,* 313 Or 519, 836 P2d 7__ (1992).

The difference identified by the Court was that the standard in the *Clark* case was adopted purely at local discretion, whereas the same standard in *Smith* was required by, and based on, state statute. *Smith v. Clackamas County, supra,* 313 Or at 524-525, 527.

The Court of Appeals has interpreted the Supreme Court's decision in *Smith* to mean that no deference is due to a local government's interpretation of a provision in its ordinances which is based on, and implements, a state statute. *DLCD v. Coos County*, 113 Or App 621, __ P2d ___, *as modified in* 115 Or App 145 (1992); *Forster v. Polk County,* 115 Or App 475, 478, ____ P2d ___ (1992); *and see Ramsey v. City of Portland*, 115 Or App 20, 24, ___ P2d ___ (1992). LUBA has followed this line of cases as well. *See e.g. DLCD v. Curry County,* ___ Or LUBA ___ (LUBA No. 92-134, slip opinion of 27 October 1992 at page 4.)

The County is free to interpret the provisions in its Code as it sees fit, subject to deferential review. But the County is obliged to apply the parallel provisions in the EFU statute as well. When it does so it must defer to appellate interpretations of those provisions.

During the course of the hearing, Ms. Mathewson stated she was not aware that the County had ever differentiated between the code provisions and the statutory provisions. For that reason, I treat the standards in MCC 11.15.2012(B)(3)(a), (b), (c) and (d) as identical to the standards in ORS 215.283(3)(a), (c), (c), (d).

---

[1] The County requires satisfaction of several standards in addition to those in the statute, such as the requirement the parcel meet the definition of "lot of record" in MCC 11.15.2018 and a minimum floor area for the residence. MCC 11.15.2012(B)(3)(i). However, the text of the statutory criteria in ORS 215.283(3)((b), (c) and (d) is identical to the text in MCC 11.15.2102(B)(3)(c), (c) and (d). With respect to subsection (B)(3)(a), The County requires a compatibility of the proposed dwelling with the farm uses listed in ORS 215.203(2)(a), whereas the statute references only 215.203(2).

B. MCC 11.15.2012(B)(3)(a) to (d) and ORS 215.283(3)(a) to (d).

1. Qualification As A "Lot of Record" Under MCC 11.15.2018(A)

A portion of the preface of MCC 11.15.2012(B)(3) (which has no parallel in the statute) requires "the lot to be a Lot of Record under MCC .2018 or have been created under the applicable provisions of MCC 11.45., Land Divisions." MCC 11.15.2018(A) contains three different definitions of a "lot of record."

The first definition requires the parcel to meet the minimum lot size requirement of MCC 11.15.2016. MCC 11.15.2018(A)(1)(c). Because the subject parcel is smaller than the 38 acre minimum lot size, it cannot qualify under subsection MCC 11.15.2018(A)(1); it must qualify under either .2018(2) or (3).

Under these two potentially applicable lot-of-record definitions, the applicants must show that the "deed or other instrument creating the parcel was recorded with the Department of General Services" before February 20, 1990. MCC 11.15.2018(A)(2)(a), (3)(a). In addition, both subsections provide that the parcel must have "satisfied all applicable laws when the parcel was created." MCC 11.15.2018(A)(2)(b), (3)(b).

The maps from the Assessor's office provided by the staff and copies of real estate sales contracts show the creation of separate tax lots number 32 and 80, on January 18, 1980.[2] These sales preceded the adoption of EFU zoning by Multnomah County in August 1980. I find that the applicants parcels satisfy the 1990 creation deadline.

Before August 1980, the land was zoned "Suburban Residential" and these land divisions were permitted. But that does not establish that the parcel satisfied "all applicable laws" when it was created. Statewide Planning Goal 3, "Agricultural Lands" became effective January 1, 1975, and like all the Goals, it was applicable to all land use decisions affecting farm land during the pre-acknowledgment period. ORS 197.175()(), *Peterson v.*

---

[2] The existence of a separate tax lot, created for the administrative convenience of the tax assessor, is an inappropriate basis for analyzing farming patterns. *1000 Friends of Oregon v. LCDC (Lane Co.)*, 83 Or App 278, 731 P2d 487 (1987) *aff'd* 305 Or 384, 752 P2d 271 (1988); *Thede v. Polk County*, 3 Or LUBA 336 (1981). A tax lot does not establish the existence of a separate parcel; many parcels are made up of more than one tax lot. This happens in several circumstances in Oregon, including: (1) The boundary of a taxing districts crosses the parcel; (2) A township or other mapping limit crosses the parcel; (3) When separate assessment formulae or programs apply to different parts of the same parcel, such as when the homesite value is calculated differently, ORS 308.378, or one part of the property receives preferential farm use assessment why the other portion is valued for forest use under WOFLAST or WOSTOT.

Only when all adjoining tax lots are in separate ownerships, is it possible to conclude that the tax lot is also a separate parcel.

Klamath Falls, 279 Or 249, 566 P2d 1193 (1977); *Alexanderson v. Polk County*, 289 Or 427, 616 P2d 459 (1980); *Jurgenson v. Union County*, 42 Or App 505, 600 P2d 1241 (1977); *1000 Friends of Oregon & Seehawer v. Douglas County et al*, 3 LCDC 230 (1979) (Goal 3 applied to a subdivision decision.)

The record contains no findings from 1980 demonstrating compliance with Goal 3 at the time of the partitioning. There is no evidence that the parcel would satisfy Goal 3, considering the decision in retrospect. (The minimum lot size adopted by the County for this property is 38 acres.)

In the absence of evidence on the parcel's compliance with Goal 3 (either contemporary or current) I cannot conclude that the parcel "satisfied all applicable laws" when it was created.

2. ORS 215.283(3)(a)/MCC 11.15.2012(B)(3)(a); Compatibility With Farm Use(s) and Consistency With Statutory Intent and Purposes

The first subsection in the Zoning Ordinance and the statute, contains two standards; The applicant must show that the proposed dwelling will be "compatible with farm uses described in ORS 215.203(2)(a)[3] and * * * consistent with the intent and purposes set forth in ORS 215.243."

(i) Compatibility

To satisfy the compatibility criterion, the applicant must identify the farm uses in the area and explain how the nonfarm dwelling would be compatible with the identified farm uses. *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1240-41 (1989) Sweeten, supra, slip op. at 7-9.

The applicants provided the following comments about the nature of the nearby farm operations:

> *The general area is developed with single family homes, intermixed with farm and/or agricultural uses, on lots of varying sizes, of which many are the same or smaller in size as the subject parcel.*

Applicants' Narrative at 2. Under the following criterion, the applicant notes:

> *The adjacent lots to the west have a single family homes [sic] the lot to the north is in timber and the lot to the east is used primarily as pasture land.*

Applicant's Narrative at 3.

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[3] As noted previously, the statute refers to ORS 215.203(2), while the County's zoning ordinance refers to ORS 215.203(2)(a).

This information is insufficient to allow for an analysis of compatibility. In the absence of information about what farming is being undertaken it isn't possible to determine the type of farming practices relied upon and whether or not the dwelling would be compatible with them. (Mrs. Lundbom's proposed dwelling would be situated in the middle of the property. See Applicant sketch map, page 4.)

The chief sources of evidence concerning farm operations in the area are the aerial photograph, my site and vicinity inspection and comments provided by Mrs. Lundbom, her daughter, Carol Thompson, during the tour. In addition to walking to the middle and eastern edge of the parcel I drove further east on Lusted Road, turned north onto Altman, turned west-northwest onto Pipeline Road until its intersection with 302nd Street. While I passed other farmland en route, the area which was visible during the visit was roughly a circle a mile in diameter centered on the intersection of SE Lusted and Pleasant Home Roads.

The site visit and tour of the area indicated that with minor changes, the pattern of intermixed farming and residential development shown in the photo, had not changed significantly since the aerial photo was taken. Representative of the small changes which had occurred, were the construction of another house or two in the exception area (zoned MUA-20) north of the property and the expansion of the area of cane berry production south of Pipeline Road, about 2,000 northwest of the subject property.

As the photo shows, the dominant type of farming is horticulture; the production of ornamental shrubs and trees such as Red Maple and other nursery products. The farm operations include large, obviously commercial, farms southwest across Lusted Road and east of Altman Road. Also evident in the area were Christmas trees (including a rather overgrown and untended stand of trees, mostly Douglas fir, on Tax Lot 80) and cane berries (blueberries and raspberries) being grown on Tax Lot 2, adjoining Pipeline Road.

Cattle were being grazed on the subject property and adjoining parcels owned by the applicant's son, Paul Lundbom (TL 33), and the lot east of her son's, which also is owned by Ms. Lundbom (TL 26.) Livestock, both horses and cattle, were also present on other properties, including the land immediately west of the subject parcel.

While the photograph and site visit revealed the kind of products being produced, the record contains little information about the management techniques used to grow those crops and raise the livestock.[4]

The applicant's representative states:

The proposed single family house will follow the development pattern in the area related to the mixture of single family residences with farm uses. It will, therefore,

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[4] During the course of the site visit the applicant noted that the property diagonally across Lusted Road (a commercial nursery) employed aerial spraying.

be compatible with the farm uses above described on the ORS cited above.

Applicants' Narrative at 3.

Whether or not a residence will "follow the development pattern in the area" does not address the question of compatibility. For example, there is no information in the record which would allow me to conclude that all or some of the existing houses are compatible. If they are not, then another incompatible house of the same type would only aggravate existing problems.

The applicants are also contending that compatibility is not an issue with respect to the small, noncommercial, farms which may or may not border the property. LUBA has questioned the idea that an applicant need not demonstrate compatibility with "small farming operations" as well as "large commercial farms." *Sweeten, supra,* 17 Or LUBA at 1241-42 and note 5. The definition of "farm use" in ORS 215.203(2) does not refer to "commercial farm uses."

Despite the implication in the *Sweeten* case, I believe the commercial status of nearby farming uses is relevant, for two reasons.

First, "compatibility" with noncommercial hobby farms is far more easily attained because these operations tend to concentrate on agricultural activities that do not diminish the enjoyment of the owner's residential use. Hobby farms are more likely to raise a few horses or cows or manage fruit or nut trees than to grow crops requiring intensive cultivation and the applications of chemicals. Residential uses are more likely to be compatible with these kinds of low-intensity recreational farming activities. And when conflicts do occur, they are of less concern to someone whose livelihood is not dependent on their farm production.

Second, the definition of "farm use" incorporates the phrase "for the primary purpose of obtaining a profit in money * * * " which I believe means the same thing as "commercial."[5] Hence, if the agricultural activity is not for the primary purpose of obtaining

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[5] In *Capsey v. Dept. of Rev.*, 294 Or 455, 657 P2d 680 (1983) the Oregon Supreme Court upheld the Department of Revenue's denial of preferential farm use assessment for land not within an EFU zone. Qualification for deferral depends on a demonstration that the property is in "farm use" as defined in ORS 215.203(2)(a). ORS 308.370(1), .308.370(2), .372(1). Dr. Capsey, a dentist, was merely leasing the pasture for a nonfarm use, grazing the horses of his daughter's friends who used the horses for recreational riding. *Capsey, supra,* 294 Or at 458-459. In its decision the Supreme Court quoted with approval two decisions by the Oregon Tax Court, including this paragraph in *Beddoe v. Dept. of Rev.*, 8 OTR 186 (1979):

> *The great boon of tax relief to the bona fide farmer through the special exemption for farm use is not to be extended to the professional man's fine*

a profit in money" then it is not a "farm use" and it is not necessary for the proposed residence to be compatible with it.

But even if the "commercial" status of the nearby farm uses is legally relevant, this record contains only suggestions and impressions (some of which I share with the applicants) about which of the nearby operations are commercial and which are hobby operations.

The applicants have not carried their burden of proving that the proposed residence will be compatible with nearby farming operations.

(ii) Statutory Purposes And Intent

The applicants discuss the "compatibility" criterion but do not addresses itself any of the purposes and intents of the exclusive farm use statute set out in ORS 215.243. (Applicants' Narrative at 2-3.) I find that the applicants have failed to carry their burden of proof on this criterion. Furthermore, the evidence which contravenes findings of compliance with the unsuitability and land use stability criteria, preclude a finding of compliance with the statutory intent and purpose.

3. ORS 215.283(3)(c)/MCC 11.15.2012(B)(3)(c); No Serious Interference With Accepted Farming Practices

The second criterion from the statute requires a demonstration the use will "not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use."

The applicants state:

The applicant will comply with all setback requirements of this zone. The placement of the proposed dwelling, which is more than 50 feet from any lot line, more than any of the Code listed dimensional standards.

Such setbacks were incorporated into the Code to assist in reducing or mitigating any direct impact resulting from adjacent farming uses.

The adjacent lots to the west have a single family homes [sic] the lot to the north is in timber and the lot to the east is used primarily as pasture land.

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residence in a filbert orchard, the city worker's five suburban acres and a cow, the retired person's 20 acres of marginal land on which a travel trailer constitutes the personal residence, unless the day-to-day activities on the subject land are principally and patently directed to achieving a profit in money through the farm use of the land.

Capsey, supra, 294 Or at 458.

Placement of a single family home as proposed in this request, will not seriously interfere with accepted farming practices.

No variances are inferred or implied in this request.

Applicants' Narrative at 3.

Whether or not a 50 foot setback is required depends on the nature of the farm uses and the conflicts they generate. It is erroneous to assume that a 50-foot setback is sufficient to mitigate such conflicts as dogs chasing livestock, blowing chemicals or dust, conflicts created by joint use of roads or noise and odors from livestock production.

While the land to the west of the property appears to be given over to low-density residential uses, the land to the north and east (owned by other members of the applicant's family) is not.

The applicants have not addressed potential conflict with lands close by which do not adjoin the subject parcel. In light of the pattern of small lots next to the parcel and larger lots in nursery use, the "adjacent" analysis needs to include more than adjoining land. *See Stefan v. Yamhill County*, 18 Or LUBA 820. 840 (1990).

The record contains a July 13, 1993, letter from Fred Morgan of "Glendale Farms, Inc." located at 32801 SE Lusted Road. Mr. Morgan writes: "We have no objections as to her plans to move in a manufactured home on the above 3 acres." This might imply that the use would not conflict with these nearby (but not adjacent) farm uses taking place on Glendale Farms. On the other hand, the stationery of the letter lists the company's products as "sawdust • shavings • hogfuel • barkdust." I cannot conclude from this list that Glendale Farms Inc., is engaged in a "farm use" as defined by ORS 215.203(2).

The evidence is insufficient to demonstrate compliance with ORS 215.283(3)(b)/MCC 11.15.2012(3)(b).

4. ORS 215.283(3)(c)/MCC 11.15.2012(B)(3)(c); No Material Alteration Of The Stability Of The Land Use Pattern

The applicant must demonstrate that the proposed dwelling will "not materially alter the stability of the overall land use pattern of the area."

On this question, the applicants state:

The overall land use pattern in the area consists of rural residential development. The proposed dwelling is compatible with this character.

There is a single family home on the 2 and 4 acre lots immediately to the west of the subject lot and a single family home on a 1.86 acre parcel to the east.

To the south and across SE Lusted Rd are single family homes on .36, 1.6 and 1.0 acre parcels.

See the attached maps showing lot various lot sizes [sic] *and houses as described above.*

Applicants' Narrative at 4.

The aerial photograph and inspection of the site and vicinity, described above, contradicts the assertion that the overall land use pattern is "rural residential." The area consists of a mixture of residences on small parcels and the much larger, presumably commercial, farming operations.

The statement also wrongly identifies tax lots with parcels and assumes that a house on a separate tax lot is the equivalent of a nonfarm parcel. This is a mistaken assumption given the difference between tax lots and parcels (discussed previously.) Even if the tax lots represent separate parcels, it is incorrect to assume that a house on a single parcel constitutes a residential use; many farm homes are located on separate parcels but are farm dwellings. In fact, Mrs. Lundbom's current residence (located about 600 feet from the entrance to the subject property) served as the farm dwelling for the family farm (Laurel Hill Farms) prior to the distribution of the land to various family members. It is located on a 10.82 acre parcel[6] (Tax Lot 88.)

While it is true that the applicant proposed only one more dwelling, it is appropriate for the reviewing authority to consider the cumulative impact and precedential effect of such a dwelling. *Blosser v. Yamhill County*, 18 Or LUBA 253, 263 (1989). Authorizing one more house on another one of the small parcels in this area creates both a precedent and an additional argument in favor of subsequent approvals. This is a serious matter for productive farm land just beyond the edge of the urban growth boundary, as this property is.

I conclude that the existing infiltration of apparently nonfarm dwellings on small parcels means that there is a serious risk that authorizing yet another house could help tip the balance of resource and non-resource uses in the area in favor of nonresource uses. *Grden v. Umatilla County*, 10 Or LUBA 37, 46-47 (1984).

5. ORS 215.283(3)(d)/MCC 11.15.2012(B)(3)(d); Generally Unsuitable Test

The parcel on which the proposed nonfarm dwelling would be situated, must be

[6] The map in the Staff Report shows Tax Lot 26 to be 11.27 acres in size but during the site visit Mrs. Lundbom stated that this is an error and that the property is actually 10.82 or 10.87 acres. This is the size of the lot as shown on the map appended to the public notice.

"generally unsuitable for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract;." The entire parcel is to be analyzed. *See Smith v. Clackamas County,* 313 Or 519, 836 P2d 7__ (1992).

The applicant offers two argument about why the land is not generally suitable. The first reason is poor soils:

> *The soil type for the majority of the site is classified as Powell Silt Loam, 0-3% slopes (Type 34A). This classification is discussed in detail in the Soil Survey for Multnomah County.*
>
> *Generally this type soil can be described as being a poorly drained soil found on broad high terraces. It is suitable for farming, urban development or wildlife habitat type uses.*
>
> *The single family home being proposed is classified as urban development.*
>
> *It has a subclass of IIIw, Class "III" means soils have sever limitations that reduce the choice of plants, require special conservation practices, or both.*
>
> *The "w" shows that water in or on the soil interferes with plant growth or cultivation.*

Applicants' Narrative at 4-5. The applicant is entirely correct that the Soil is Type III and imposes certain constraints on farming. However the presence of limitations on farming does not mean the soil is "not generally suitable" for farming. In fact, the referenced Soil Survey, provides the following description of the Powell Silt Loam type 34A:

> *This soil is well suited to farming. If it is drained, most climatically adapted crops do well. The major crops are grain, berries, vegetables, nursery stock, hay, and pasture. Irrigation during summer is required for maximum production of most crops.*

Multnomah County Soil Survey at page 63. The site inspection and discussion with the owner, confirmed that the property is irrigated by a well on another parcel closer to Altman Road and thus can be used for "maximum production of most crops."

The soil survey map shows that the remainder of the property is Powell Silt Loam type 34B. The soil is identical to type 34B except that slopes range from 3 to 8% and it is classified as a IIIe (subject to erosion) rather than a IIIw (wet.) Multnomah County Soil Survey at pages 64-65. Comparison of the Soil Survey photomap with the tax lot maps and 1986 aerial photo, shows that the nursery across Lusted Road, as well as the large nursery which straddles Altman Road, contain high proportions of 34A and 34B soils (with much of the remainder on 34C soils, which are the same soil on 8 to 15% slopes.)

Furthermore, the property is currently being grazed in common with Tax Lots 33, 88 and possibly 25. Use of the land for pasturage demonstrates its suitability for this particular farm use, "feeding * * * and management of livestock." ORS 215.203(20(a), *Miles v. Clackamas County*, 48 Or App 951, 959-960, 618 P2d 986 (1980); *Stefansky v. Grant Co.*, 12 Or LUBA 91, 95 (1984).

The applicant also contends that the land is unsuitable because "This parcel is not of size for commercial agriculture." Garnett Memo.

Farms in Oregon are not made up of single parcels, typically they are made up of many parcels, often discontiguous. Farms are aggregated from different parcels, often in sometimes in the same ownership, sometimes leased and sometimes managed through other, more complex relationships. For that reason, one of the first precedents interpreting this section determined that small size of the parcel alone is insufficient to demonstrate unsuitability. *Rutherford v. Armstrong*, 31 Or App 1319, 1326-1327, 572 P2d 1331 (1977). LUBA has followed that precedent faithfully. *Walter v. Linn Co.*, 6 Or LUBA 135, 138 (1982); *Sweeten v. Clackamas County, supra,* 17 Or LUBA 1237; *Stefan v. Yamhill County, supra,* 18 Or LUBA 827; *Blosser v. Yamhill Co., supra,* 18 Or LUBA 256-258; *Nelson v. Benton County*, 23 Or LUBA 392, 397 (1992).

These cases are particularly pertinent when, as here, the applicant's property adjoin larger properties owned by a daughter (TL 23, 16.00 acres) and a son (TL 33, 4.87 acres) which in turn adjoin other property owned by the applicant, Mrs. Lundbom (TL 88, 10.82 acres, the site of her home) a family trust (TL 25, 23.57 acres) and this land in turn adjoins a small property (TL 52, 0.43 acre) owned by another daughter, Elizabeth Anne Jacoby.[7]

The evidence contradicts a finding that the parcel is "generally unsuitable" for the production of either crops or livestock.

C. MCC 11.15.2012(B)(3)(e) to (k)

1. MCC 11.15.2012(B)(3)(e), (g), (h), (i)

MCC 11.15.2012(B)(3)(e), (g), (h), (i) all contain or cross-reference standards for the design and construction of the home, which in this case is a manufactured home. The

[7] The "Zoning Commission Legal Listing" document, from which the addresses were taken in order to provide notice of this hearing, indicates that as of July 8, 1993, Mrs. Lundbom owned, alone or jointly with her deceased husband Daryl, Tax Lots 32, (3.0 acres) TL 23, (16.00 acres) TL 33 (4.87 acres) and TL 88 (10.82 acres). This is not entirely consistent with the information about ownership which was provided on an annotated assessor's map. It is also at odds with the four real estate sales contracts, dated January 28, 1980, transferring land from Daryl and Betilue Lundbom to their son Paul and daughters Carol Thompson and Elizabeth Jacoby. The difference may not be significant here, since these properties are all owned either by the applicant or her children.

applicant provides assurances that these design building code standards "will be complied with." I have no information in any form about the make or model of the proposed manufactured dwelling and thus cannot find that the dwelling complies. However, conditional uses are subject to subsequent design review. MCC 11.15.7820. Design review provides an opportunity to test compliance of this proposal with these design and construction standards, while still providing for notice and hearing on the County's decision, to the extent that decision required the exercise of discretion. *Rhyne v. Multnomah County*, 23 Or LUBA 442, 449 (1992).

2. MCC 11.15.2012(B)(3)(f), (j), (k)

Because I am denying the application, MCC 11.15.2012(B)(3)(f), (j), (k) there is no need to address these provisions.

D. Conditional Use Criteria; MCC 11.15.7120

The applicants are correct that MCC 11.15.7120 is inapplicable because the conditional use application is governed by "the approval criteria listed in the district under which the conditional use is allowed."

E. Exclusive Farm Use Conditional Use Approval Criteria; MCC 11.15.7122

MCC 11.15.7122(A) requires the applicants to demonstrate their use:

(1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.

Lands which are excluded from this compatibility analysis are specified in MCC 11.15.7122(B). The excluded areas are; parcels for which nonfarm dwellings were approved under MCC .2012(B)(3), exception areas (see ORS 197.732(1)(a) and (b)) and lands inside Urban Growth Boundaries.

The discussion of these issues in the applicant's narrative parallels its treatment of MCC 11.15.2012(a), (b) and ORS 215.283(3)(a), (b). Applicants' Narrative at 7-8. I find it inadequate for the same reasons.

F. Comprehensive Plan Policies

Comprehensive Plan Policies 13, 22, 37, 38 are either satisfied or inapplicable for the reasons given in the Staff Report. The draft findings prepared by the staff on these Plan Policies are incorporated by reference.

I find that Plan Policy 40 is inapplicable because the land on which the use is proposed is not a park or recreation area. It does not concern or require improvements to a street or road and the proposed use is not commercial, industrial or multiple family residential.

I find that Policy 9, if applicable, is not satisfied because the applicant has not demonstrated compliance with MCC 11.15.2012(3)(a) through (d) and ORS 215.283(3)(a) through (d).

Neither the staff nor the applicants addressed Plan Policy 16, which is generally applicable to quasijudicial land use decisions. In the absence of any information or analysis demonstrating the inapplicability or satisfaction of this policy I find the applicants have not carried her burden of proof.

III. CONCLUSIONS AND ORDER

For the foregoing reasons I reach the following conclusions of law:

1. The evidence is insufficient to show that the parcel "satisfied all applicable laws when it was created." For that reason, the applicants have not demonstrated the parcel qualifies as a "lot of record" under MCC 11.15.2018(2) or (3), as required by MCC 11.15.2012(B)(3).

2. There is not sufficient evidence to demonstrate compliance with MCC 11.15.2012(B)(3)(a), (b), (c), MCC 11.15.7122(A)(1) and (2) and the parallel provisions in ORS 215.283(3)(a), (b), (c) and 215.296. The applicant has failed to carry her burden of proof.

3. Unrebutted evidence in the evidence showing the property is suitable for the production of crops and livestock, precludes a finding of compliance with MCC 11.15.2012(B)(3)(d) and ORS 215.283(3)(d).

4. The applicant has demonstrated compliance with Plan Policies 13, 37, 38.

5. The applicant has not demonstrated compliance with Plan Policies 9 and 16.

6. Plan Policies 22 and 40 are inapplicable.

Based on these conclusions, I deny the application.

Robert L. Liberty

Robert L. Liberty, Hearings Officer

Date: 5 August 1993

Appeal of the Hearing Officer Decision in CU 20-93
Board of County Commissioners
Betilue Lundbom, Applicant
September 28, 1993

EXHIBIT LIST

(Exhibits 1 - 13 are in a packet distributed to commissioners.)

1. Letter from Larry Epstein, Multnomah County, 6/27/80
2. Map illustrating Epstein letter (Ex. 1).
3. Letter from Barry Bushue, Multnomah County Farm Bureau, 9/27/93
4. Letter from Fred Morgan, 9/27/93
5. Letter from Carol Thompson
6. Letter from Earl Smith
7. Letter from Maria Merade, 9/10/93
8. Letter from Gary and Kathy Obrist, 7/25/93
9. Letter from Penny Haight, 7/20/93
10. Letter from Maria Merade, 7/22/93
11. Letter from Fred Morgan, 7/13/93
12. Map locating property owned by letter writers supporting application.
13. Specifications of proposed Lundbom manufactured home.
14. Draft Ordinance PC 12-80D/1 (June 1980)
15. Adopted Ordinance PC 12-80D/1 (Ordinance 236), 7/15/80
16. Aerial photograph showing current conditions. (Oversized)
17. Aerial photograph showing 1977 conditions. (Oversized)

EXHIBIT

1

MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION
2115 S.E. MORRISON
PORTLAND, OREGON 97214
(503) 248-3043

DONALD E. CLARK
COUNTY EXECUTIVE

June 27, 1980

Mr and Mrs Daryl Lundbom
Rt. 2, Box 667
Gresham, Oregon 97030

RE: PC 12-80D/1

Dear Mr and Mrs Lundbom:

I am writing in response to our recent telephone conversations about the status of lots owned and formerly owned by you if the amendments to Ordinance No. 100 proposed as PC 12-80D/1 are adopted.

Based on the facts as you have described them to me, and as I will repeat below, each lot you own individually will be treated as a separate lot of record. I must carefully limit my conclusions: if I have missed any details please point out the error as soon as you can.

As of January 28, 1980, the following transactions had occurred:

- Tax Lot '25' (comprised of 23 acres) was conveyed to Daryl by Betty Lundbom.
- Tax Lot '52' (comprised of .43 acre) was conveyed to Daughter No. 1.
- Tax Lot '26' (comprised of 10 acres) was conveyed to Betty Lundbom.
- Tax Lot '33' (comprised of 4.87 acres) was conveyed to Son.
- Tax Lot '32' remained in ownership of Betty Lundbom.
- Tax Lot '23' (comprised of 16 acres) was conveyed to Daughter No. 2.

Assuming that the conveyancing instrument (ei., deed or contract) was recorded or in recordable form by January 31, 1980, and further assuming Tax Lot '32' and Tax Lot '26' are not contiguous, each tax lot described above will constitute a legal lot of record. The fact that the legal description on one or more of the deeds had to be changed after January 31, 1980, to

render them in legal form is not clearly addressed in the Zoning Ordinance. In the absence of an explicit provision to the contrary, I find that the intent of the Ordinance should be to honor substance over form, and therefore to hold that subsequent changes in the legal description of your lots does not affect their status as lots of record.

As a general rule, we intend to interpret the aggretation requirements of the proposed amendments very narrowly. Only where there is a perfect unity of ownership interests do we expect to invoke aggregation. Therefore if one lot is owned by a husband, a contiguous lot owned exclusively by the wife, or owned jointly by the wife and husband, or owned by a son, daughter, or other relative would not be aggregated with it.

I hope this letter eases your concerns. I must point out that the interpretation described above is dependent upon favorable action on the proposed amendments by the Board. I must also point out that all zoning regulations are subject to change at any time, although retroactive applicability is contrary to state statute and further ordinance revisions are unlikely to affect applicability of the lot of record provisions to your lots.

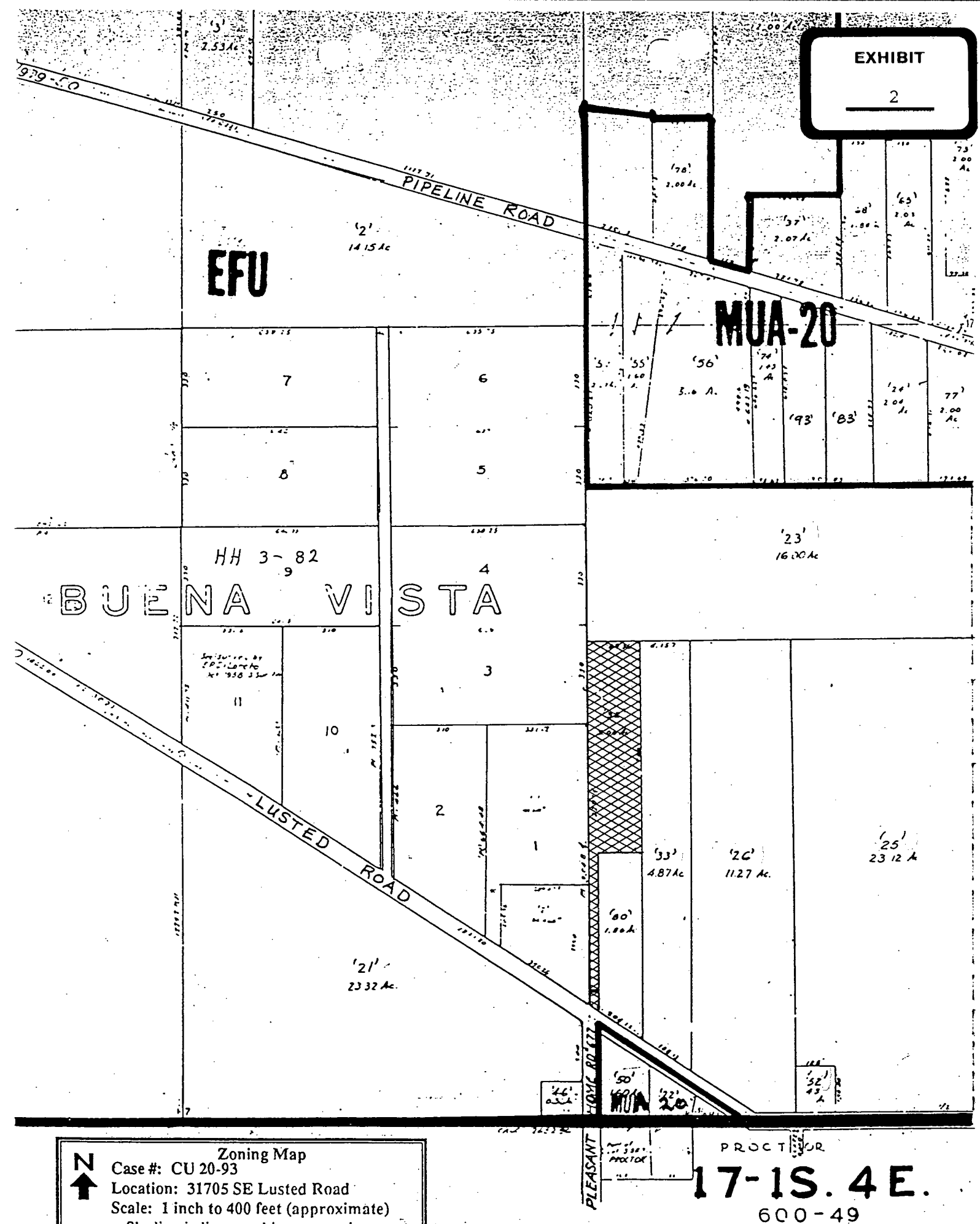
Very truly yours,

MULTNOMAH COUNTY DIVISION OF PLANNING AND DEVELOPMENT

Larry

Larry Epstein, Manager

LE:sec



Zoning Map
Case #: CU 20-93
Location: 31705 SE Lusted Road
Scale: 1 inch to 400 feet (approximate)
Shading indicates subject properties
SZM 692-695; Section 17, T.1S., R.4E.

EXHIBIT

3

MULTNOMAH COUNTY FARM BUREAU

1141 NE DIVISION GRESHAM OR 97030
MEMBER OREGON FARM BUREAU FEDERATION

September 27, 1993
Board of County Commissioners
Multnomah County Court House
1021 SW 4th
Portland OR 97204

RE: Appeal of CU 20-93

Dear Commissioners,

As President of the Multnomah County Farm Bureau, I want you to know that at our October, 1993 meeting we voted unanimously to support Mrs. Lundbom's request to construct a single family home on her lot located at 31705 SE Lusted Road, legally described as T.L. 32, Section 17. T1S R4E

I have reviewed her proposal and have also reviewed the decision of the Hearings Officer. I have lived and farmed in the vicinity of the proposed homesite, and it is my professional opinion, and that of the Multnomah County Farm Bureau Board of Directors, that a home would be compatible with the existing farming practices and would not cause them to be altered in any manner.

For instance, I raise nursery stock and raspberries. Our operation is typical of the type of use in this area. It involves the use of farm machinery and the associated noise and dust. Application of pesticides, irrigation of crops and intensive labor are among the many other necessary operations required for a successful farm in East County

areas. My neighbors and I live here also and do not find a conflict between the residential and farming uses.

I have reviewed all of the farm crops within a five (5) mile area and am familiar with the farming practices used for each. A house at the proposed location will not only be compatible but it will cause no serious change in farming practices in my opinion. As can be seen from the history of the area, houses on small acreages located in clusters close to the roads have been compatible and have not affected farm practices or the stability of the area. The location of the proposed house fits the historic pattern and will not affect farm activities.

The farming activities are primarily, Christmas trees, nursery stock , berries, pasture and some vegetables. None of the techniques used will be affected, including spraying. The homes in the immediate area of the proposed site have caused no interference within accepted farm practices.

This area has long been used for agricultural purposes and the fact that there are a few homes in the area has not resulted in a lessening of farm activities.

Without tremendous expenditures for tiling, drain fields and fumigation, the area and the parcel proposed for the house

is not well suited for the production of the the typical crops of the area. Pasture use is no longer economically viable since the dairy left the area, and grain in such small acerages is useless for anything other than cover crop.

I urge the Board of Commissioners to grant Mrs. Lundbom's appeal and allow her to build in the manner proposed in her application.

Very truly yours,

Barry Bushue

Barry Bushue

EXHIBIT

4

Glendale FARMS, INC.

32801 S.E. Lusted Rd. • Gresham, OR 97030
663-4221 Days • 663-4315/663-4300 Evenings

September 27,1993

Board of Commissioners
Multnomah County Court House

In response to Hearings Officer Mr. Liberty's questioning of our farming operation, as indicated on page 14 of his report, I would like to say that we have farmed on this property our entire life, as a dairy for 50 years until it became economically not feasible for us to operate any longer, but continue to farm it as a nursery. The name of our nursery is Cascade Slopes, a division of Glendale Farms, which is the name of the parent farm.

Also, Mr. Liberty stated that we did ariel spraying. We do no ariel spraying, but do have pellet fertilizer flown on by airplane.

Allowing Mrs. Lundbom to build on a 3 acre piece of her property would not have <u>any</u> adverse affect on our ability to farm our land. We have houses all around our property and it certainly hasn't kept us from farming.

Personally, we would like to see Mrs. Lundbom be able to build on her property. We have absolutely no objections.

Sincerely,

Fred Morgan

Fred Morgan
President

EXHIBIT

5

To whom it may concern:

I am writting this letter in regards to the zoning of tax lot #32 located in East Multnomah County.

I am the property owner of tax lot #23 which butts up against the Northside of tax lot #32, a proposed home site owned by Mrs B. Lundbom. In the past the property in tax lot #23 has been pasture land used for the graxing of cattle. A home placed on on tax lot #32 would in no way interfere or inhibit future farming on tax lot #23.

Therefore I feel rezoning tax lot #32 to allow the placement of a home should be permitted as it would have no ill effects on farming in the immediate area.

Sincerely

Carol A Thompson

Property owner tax lot #23.

EXHIBIT

6

EARL SMITH
6544 PLEASANT HOME RD
GRESHAM, ORE 97080

SPENCER VAIL

DEAR SIR.

PERSUANT, to the HEARINGS officers DECISION, ON the BETILVE LUNDBOM request, FOR CONDITIONAL USE, of her PROPERTY, AT 31075 S.E. LUSTED RD, I WOULD LIKE IT to BE KNOWN, THAT I oppose the decision, of the HEARINGS officer, and feel that BETILVE LUNDBOM should be given the PERMISSION, and permits to build the home she has been looking forward to ALL these years

YOURS truly
EARL SMITH

EXHIBIT

7

applicant - Bethlue Lundbom
31847 SE Lusted Rd
Gresham ore 97080

Case file - CU 20-93 ✓

Legal decription of property - TAX Lot '32'
Section 17, T1S, R4E
1991 Assessor's MAP

Location of the proposal - 31075 SE Lusted Rd

I maria m. merade of
31734 SE LUSTed Rd Gresham or
97080 Supports Bethlue LundBom
To use That Land for a mobil
home That complies with standards
of the Building code. I dont belive it
will have any effects on farms or forest
practices on surrounding Lands or will not
increase The cost of accepted farm or forest
practies on Surrounding Lands dauoted To
farm or forest use. 9-10-93 Maria merade

EXHIBIT
8

July 25, 1993

Department of Environmental Services
Division of Planning and Development
2115 SE Morrison Street
Portland, Oregon 97214

RE: Conditional Use Request
Tax Lot '32', Section 17, 1S-4E, 1992 Assessor's Map
Betilue E. Lundbom
31847 SE Lusted Road
Gresham, Oregon 97080

We are unable to attend the August 2, 1993 hearing for the conditional use request for Betilue Lundbom. We are 100% in favor of this request being granted. We have been neighbors of the Lundbom's for twenty years and look forward to continuing this relationship in the near future at the property under consideration.

The property in question is reached via an easement bordering our property. We see absolutely no reason why this property cannot have a single family dwelling on it. This property has already been divided into a three-acre site and a dwelling on this property would be an asset to our neighborhood. It is definitely consistent with the character of the area as there are many houses surrounding it. We have a nice neighborhood here mixed with land that is primarily used for growing nursery stock.

We respectfully ask that this request be granted immediately. Thank you for your consideration in this matter.

Sincerely,

Gary Obrist
Kathy Obrist

Gary and Kathy Obrist
31619 Lusted Road
Gresham, Oregon 97080

EXHIBIT
9

31718 S.E. Lusted Road
Gresham, Oregon 97080
July 20, 1993

Department of Environmental Services
Division of Planning and Developement
2115 S.E. Morrison Street
Portland, Oregon 97214

Dear Sirs:

This letter is in regard to Case # CU 20-93.

After reviewing the material sent to my home and visiting with Betilue Lundbom, I believe the following to be true:

1. The site selection puts the proposed home in a group of existing homes.

2. The site selection places the proposed home site back from the existing homes as to not impact them in an adverse way.

3. The site selection will not add significantly to the traffic congestion at the intersection of Pleasant Home Road and Lusted Road.

Thank you for considering the above points.

Sincerely,

Penny K. Haight

Penny K. Haight

EXHIBIT
10

I maria m. Meracle of
31734 S.E. Lusted RD Gresham
Ore 97080

Supports

Betilve E. Lundbom of 31847
S.E. Lusted RD Gresham or. 97080
For her Request to goahead with
her Plans on 3 acres - 31705 SE.
Lusted RD : Tax Lot "32" Section
17, 1S -4E

Maria M. Meracle
7-22-93

CU 20-93

EXHIBIT
11

Glendale FARMS, INC.

32801 S.E. Lusted Rd. • Gresham, OR 97030
663-4221 Days • 663-4315/663-4300 Evenings

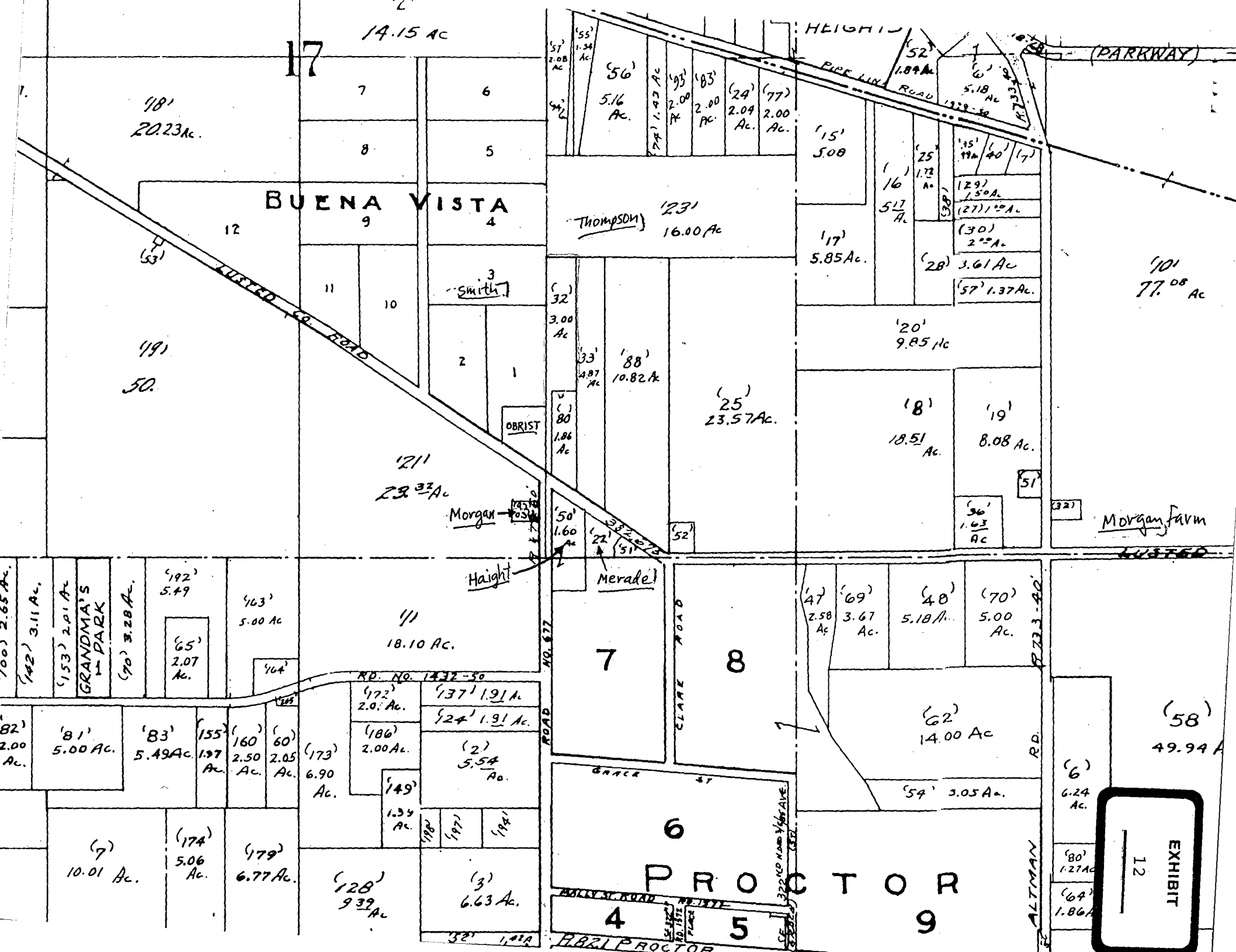
July 13, 1993

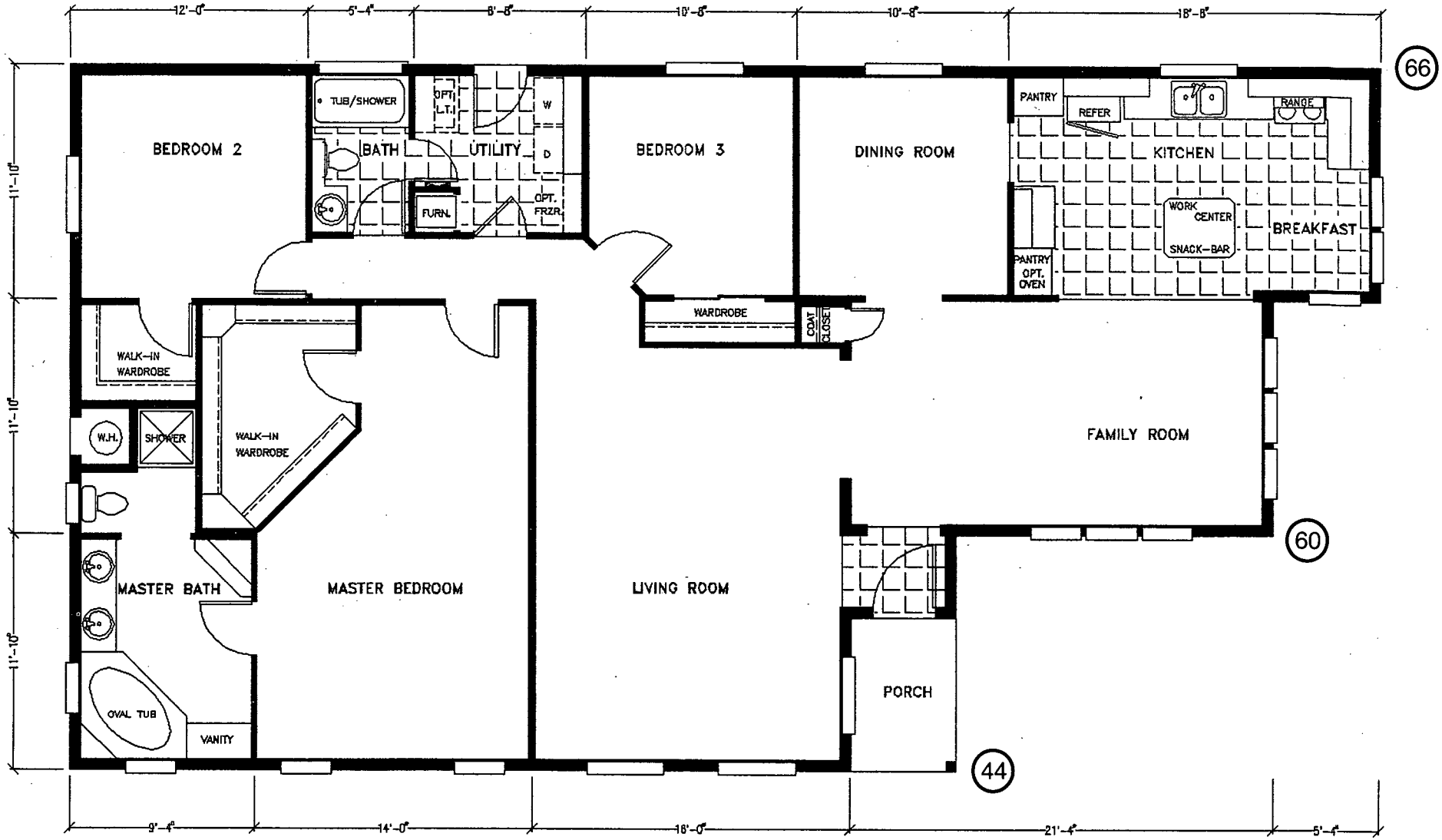
Re: Sly Lot '32', Section 17 CU 20-93
Bethlow E. Lundbon. Am Favor

We own property at 32801 S.E. Lusted and 6425 S.E. Pleasant Home. We have no objections as to her plans to move in a manufactured home on the above 3 acres -

Fred Morgan

RECEIVED
JUL 16 1993
Multnomah County
Zoning Division


17
14.15 Ac
HEIGHTS
PARKWAY
PIPE LINE ROAD
BUENA VISTA
Thompson
123
16.00 Ac
Smith
3
12
9
4
11
10
2
1
LUSTED CO. ROAD
OBRIST
118
20.23 Ac.
119
50.
121
29.32 Ac
Morgan
Haight
Merade
LUSTED
Morgan farm
88
10.82 Ac
25
23.57 Ac.
8
18.51 Ac.
19
8.08 Ac.
20
9.85 Ac
101
77.08 Ac
15
5.08
16
5.17 Ac.
17
5.85 Ac.
28
3.61 Ac
57
1.37 Ac.
56
5.16 Ac.
55
1.34 Ac.
54
2.08 Ac.
93
2.00 Ac.
83
2.00 Ac.
24
2.04 Ac.
77
2.00 Ac.
52
1.84 Ac.
6
5.18 Ac.
35
11 Ac.
40
7
29
1.50 Ac.
27
1.00 Ac.
30
2.00 Ac.
38
25
1.73 Ac.
32
3.00 Ac.
33
4.87 Ac.
80
1.86 Ac.
50
1.60 Ac.
22
51
52
96
1.63 Ac
32
47
2.58 Ac.
69
3.67 Ac.
48
5.18 Ac.
70
5.00 Ac.
62
14.00 Ac
54
3.05 Ac.
58
49.94 A
6
6.24 Ac.
80
1.27 Ac
64
1.86 A
7
8
6
4
5
9
PROCTOR
RD. NO. 1432-50
CLARE ROAD
GRACE ST
HOLLY SUGAR ROAD
ALTMAN RD.
GRANDMA'S PARK
192
5.49
163
5.00 Ac
65
2.07 Ac.
164
18.10 Ac.
172
2.0 Ac.
137
1.91 Ac.
124
1.91 Ac.
186
2.00 Ac.
149
1.34 Ac.
2
5.54 Ac.
173
6.90 Ac.
3
6.63 Ac.
128
9.39 Ac
174
5.06 Ac.
179
6.77 Ac.
7
10.01 Ac.
81
5.00 Ac.
83
5.49 Ac.
155
1.97 Ac.
160
2.50 Ac.
60
2.05 Ac.
153
2.01 Ac
142
3.11 Ac.
70
3.28 Ac.
EXHIBIT
12



CE 669D1 • 2056 SQ. FT.

EXHIBIT 13

Country Estate Standard Specifications

GENERAL CONSTRUCTION	
Structural I-Beam Chassis	Standard
Truss Rafter Roof Construction with 3/12 Pitch	Standard
Vaulted Ceilings Throughout	Standard
Exterior Walls are Nominal 2x6 on 16" Centers	Standard
Interior Walls are Nominal 2x3 or 2x4 on 16" Centers	Standard
Vinyl Framed Windows with Argon Gas	Standard
Super Good Cents/M.A.P. Energy Package with R-38 Ceilings, R-21 Walls, R-36 Floors	Standard
40 Gallon Water Heater Dbl. Element	Standard
Forced Air Electric Furnace	Standard
200 Amp Electrical Service	Standard
EXTERIOR	
Composition Shingled Roof with Front and Rear Overhang	Standard
Full Fixed Eaves with 2x8 Fascia — Nominal 12" Eave Entry Side Only	Standard
Distinctive Residential Exterior	Standard
1/2" Hardboard Siding w/Custom Selected Paints	Standard
36" Inswing Front Entry Door w/Deadbolt	Standard
32" Inswing Rear Entry Door w/Deadbolt	Standard
Porch Lights at all Exterior Entry Doors	Standard
GFI Exterior Receptacle	Standard
INTERIOR	
1/2" Textured Drywall Throughout with Kitchen and Bathroom Wallpaper Accent	Standard
Nominal 1/2" Door Jambs with Mortised Hinges and Wood Door Casing	Standard
Natural Raised Alder Cabinet Doors, Drawers, and Face Frames	Standard
Natural Wood Crown Moulding on Cabinet Overheads	Standard
Natural Wood Side Panels on All Cabinets	Standard
Fully White Lined Interior 3/4" Shelving and Finish on All Cabinets, Wardrobes and Closets	Standard
Adjustable Shelving in Most Kitchen Overhead Cabinets	Standard
Base Cabinets with Drawer Over Door Styling	Standard
Roller Hardware on Drawer Sides	Standard
30" Deluxe Free Standing JBS-16 Range	Standard
JVM 140 Spacemaker Micro/Range Hood Combo	Standard
14.6 Cu. Ft. Double Door Refrigerator	Standard
Single Lever Kitchen Faucet	Standard
Kitchen Lighting Features Custom Trac Lighting	Standard
Dining Room Chandelier	Standard
Upgrade Lever Locksets with Residential Four Panel White Passage Doors	Standard
Overhead Lights in 2nd and 3rd Bedrooms	Standard
Dryer Wiring and Washing Plumbing	Standard
Washer/Dryer Overhead Cabinets	Standard
60" Fiberglass Tub/Shower in Each Bathroom, Most Models (See prints for Master Bath)	Standard
Ceiling Exhaust Fan with Timer in Each Bath	Standard
Mirror w/Chrome Accent Medicine Cabinet in Guest Bath (Most Models)	Standard
Cultured Marble Bath Sinks with Single Lever Chrome Faucets	Standard
Water Shut-Off Valves Throughout	Standard
Formal Entry with Vinyl Floor Covering	Standard
Mini Blinds Throughout with Continental Valance and Side Panels in LR, DR, FR and Study Continental Valance Only in Bedrooms, M/Bath and Kitchen	Standard
Group II Carpeting with 1/2" Rebond Pad in Living Room, Dining Room, Family Room, Hall, Study, Master Bedroom, and 2nd and 3rd Bedrooms	Standard

Approximate square footage. Note that square footage is measured on the basis of exterior wall and is an approximate figure.
Artist rendering is stylized and not necessarily to scale or exact.
O Numbers inside circle indicate net length of home.
Because of continued product improvement, prices and specifications are subject to change without prior notice.

GOLDEN WEST HOMES

AUTHORIZED DEALER:

Albany Division: 2445 S. Pacific Blvd. • Albany, OR 97321
(503) 926-8631

MAY 1993

Draft Ordinance PC 12-80D/1
Revised

EXHIBIT
14

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

An Ordinance amending Ordinance No. 100, changing the minimum lot sizes and the standards for the location of new residences in the Exclusive Farm Use, Commercial Forest Use, and Multiple Use Forest districts; adding wildlife and fish habitat protection provisions in the Commercial Forest Use and Multiple Use Forest districts; amending certain administrative approval criteria to correct or remove provisions found to be vague or discretionary; amending farm use and timber-cutting provisions in the Willamette River Greenway district; amending lot sizes for rural planned developments in MUF; providing design review for building modifications and for delay of demolition permits for historical buildings and structures.

Multnomah County ordains as follows:

SECTION 1. FINDINGS.

A. The April 1, 1980 Continuance Order of the Land Conservation and Developmnt Commission declares that the Multnomah County Comprehensive Plan and implementing measures do not yet comply with Statewide Planning Goals 2, 3, 4, 5, 6, 11, 14, and 15, for the reasons set forth in the Department of Land Conservation and Development Commission report. The Commission granted a 120-day continuance of the County's acknowledgement request so that the County may complete the additional planning work described in the Order.

B. The Planning Commission has reviewed the Continuance Order and alternative proposals for plan revisions and ordinance amendments in work sessions and community workshops.

C. At a public hearing on June 9, 1980, the Planning Commission passed Resolution PC 12-80D/1 recommending to the Board adoption of draft ordinance PC 12-80D/1 revising the Zoning Ordinance, Ordinance No. 100 as one measure to comply with the Continuance Order and adopting findings in support of the recommendation.

D. The Board concurs in the Planning Commission's recommendation and findings.

E. Additional findings of the Board made as a result of testimony and evidence at public hearings, are contained in Attachment 1 and hereby made a part of this Ordinance.

SECTION 2. AMENDMENTS OF THE EXCLUSIVE FARM USE DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

The following subsections of Section 3.10 of Ordinance No. 100 are amended to read:

3.10 EXCLUSIVE FARM USE DISTRICT EFU-~~38~~-

3.102 AREA AFFECTED.

This subsection shall apply to those areas designated EFU-38- on the Multnomah County Zoning Map.

3.103.1 PRIMARY USES.

(Subparts a. and b. are unchanged, except to delete "[1977 Replacement Part]".)

c. Residential use in conjunction with farm use, consisting of a single family dwelling constructed on a lot of 76 acres or more on Sauvie Island or 38 acres or more elsewhere in the EFU district.

3.103.2 USES PERMITTED UNDER PRESCRIBED CONDITIONS.

a. Residential use in conjunction with farm use, consisting of a single family dwelling constructed off-site, including a mobile or modular home, subject to the following conditions:

(Subparts 1, 2, and 3 are unchanged.)

b. Residential use consisting of a single family dwelling for the housing of help required to carry out a farm use ~~primary use listed in subsection 3.103.1.a. or c.,~~ when the dwelling occupies the same lot as a residence permitted by subsections 3.103.1.c., or 3.103.2.a, subject to the following conditions:

(Subparts 1 and 2 are unchanged.)

c. A primary use listed in subsection 3.103.1 a. or c:

1. On a substandard lot of record or a lot created under MCC 11.45, Land Divisions, after the effective date of Ordinance No. _____:

2. Except for a substandard lot of record, with a lot size less than the minimum required under subsection 3.104.a., but not less than 38 acres on Sauvie Island or 19 acres elsewhere in this district;

3. Conducted according to a farm management plan containing the following elements:

(a) a written description of a five-year development and management plan which describes the proposed cropping or livestock pattern by type, location and area size and which may include forestry as an incidental use,

(b) soil tests or Soil Conservation Service OR-1 soils field sheet data which demonstrate the land suitability for each proposed crop or pasturage use,

(c) certification by the Oregon State University Extension Service, or by person or group having similar agricultural expertise, that the production acreage and the farm management plan are appropriate for the continuation of the existing commercial agricultural enterprise within the area. For the purposes of this Ordinance, "appropriate for the continuation of the existing commercial agricultural enterprise within the area" means:

(1) that the proposed farm use and production acreage are similar to the existing commercial farm uses and production acreages in the vicinity, or

(2) in the event the proposed farm use is different than the existing farm uses in the vicinity, that the production acreage and the farm management plan are reasonably designed to promote agricultural utilization of the land equal to or greater than that in the vicinity. "Agricultural utilization" means an intended profit-making commercial enterprise which will employ accepted farming practices to produce agricultural products for entry into the conventional agricultural markets."

(d) a description of the primary uses on nearby properties, including lot size, topography, soil types, management practices and supporting services, and a statement of the ways the proposal will be compatible with them.

(e) EXCEPTION. A written description of the farm management program on that parcel as a separate management unit for the preceding five years may be substituted for subparts (a), (b) and (c) above.

4. The Planning Director shall make findings and a tentative decision within ten business days of the application filing. Notice of the findings and decision, and information describing the appeals process shall be mailed by first class mail to the applicant and to the record owners of all property within 500 feet of the property proposed for the use.

5. The tentative decision shall be final at the close of business on the tenth calendar day after notice is mailed, unless the applicant or a person entitled to mailed notice or a person substantially affected by the application files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of subsections 12.38 and 12.39, except that subsection 12.38.2 shall apply only to a notice of appeal filed by the applicant. In the event of an appeal by the applicant, the persons entitled to notice under subpart 4 of this subsection shall be given the same notice of the appeal hearing as is given the applicant.

3.103.3 CONDITIONAL USES.

b.3. Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. ~~upon-a-finding-that-the-dwelling~~ The lot shall be a Lot of Record under subsection 3.104.2, or, if otherwise below the minimum lot size, be divided under the applicable provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:

(Subparts (a) through (e) are unchanged.)

(f) complies with such other conditions as the Officer considers necessary to satisfy the purposes of subsection 3.101;

(g) construction shall comply with the standards of the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes;

(h) the dwelling shall be attached to a foundation for which a building permit has been obtained; and

(i) the dwelling shall have a minimum floor area of 600 square feet.

b.11. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.103.1, located on a mortgage lot created after the effective date of Ordinance No. ____, subject to the following:

(a) The minimum lot size for the mortgage lot shall be two acres;

(b) Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the Deed Records pertaining to said lot.

(c) No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

b.12. Homestead Lot. The purpose of this provision is to encourage the retention of agricultural lands in large parcels, while providing the opportunity for residents who are no longer able or who no longer desire to farm the land to retain their homes and sell the balance of the property. The Hearings Officer may approve a lot division for a principal dwelling existing on the effective date of Ordinance No. , as a non-farm use, provided that all of the following are satisfied:

(a) the homestead lot shall not be greater than two acres unless conditions of soil, topography or other circumstances require a larger size; in no event shall a homestead lot be larger than five acres,

(b) the dwelling on the homestead lot shall have been the principal farm dwelling for at least ten years prior to the effective date of Ordinance No. ,

(c) the remainder of the parcel shall satisfy the lot size and other requirements of this district for farm use,

(d) not more than one homestead lot may be divided from a lot of record,

(e) the owner of the parcel from which the homestead lot was divided shall have the first right of refusal to purchase the homestead lot.

3.104 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections ~~3.104.1~~, 3.103.2.c., 3.103.3.b.3, 3.104.2 and 3.104.3, the minimum lot size shall be 76 acres on Sauvie Island and 38 acres elsewhere in the EFU district.

(Subpart b. is unchanged.)

3.104.1 LOTS OF EXCEPTION, through subpart 3.104.13, is deleted.

3.104.2.a.1: No. "148" is deleted and the number of this Ordinance inserted.

3.104.4 Except as otherwise provided by subsections ~~3.104.1 and~~ 3.104.2, no sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

3.108.1 and 3.108.2: No. "148" is deleted and the number of this Ordinance inserted.

The following subsection is added to Ordinance No. 100:

3.108.5 RIGHT TO COMPLETE SINGLE FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more, for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

SECTION 2A. AMENDMENT OF DEFINITIONS.

The following subsection is added to Ordinance No. 100:

1.428 MORTGAGE LOT means a lot having less than the minimum area required under the Zoning Ordinance, created out of a tract which itself conforms to lot area requirements, to enable the contract purchaser of the tract to finance construction of a single family residence thereon. A mortgage lot may be created only in the EFU, CFU and MUF districts.

SECTION 3. AMENDMENTS OF THE COMMERCIAL FOREST USE DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

The following subsections of Section 3.11 of Ordinance No. 100 are amended to read:

3.11 COMMERCIAL FOREST USE DISTRICT CFU-38

3.112 AREA AFFECTED. This subsection shall apply to those lands designated CFU-38 on the Multnomah County Zoning Map.

3.113.1 PRIMARY USES.

(Subparts a. through c. are unchanged.)

d. Public and private conservation areas and structures other than dwellings for the protection of water, soil, open-space, forest and wildlife resources; and

e. Residential use consisting of a single-family dwelling ~~constructed~~ on a lot of 80 acres or more, subject to the residential use development standards of subsection 3.119.

3.113.2 USES UNDER PRESCRIBED CONDITIONS.

a. Residential use, in conjunction with a primary use listed in subsection 3.113.1, consisting of a single family dwelling ~~constructed off-site~~ including a mobile or modular home, subject to the following ~~conditions~~:

~~1. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.~~

~~2. The dwelling shall be attached to a foundation for which a building permit has been obtained.~~

~~3. The dwelling shall have a minimum floor area of 600 square feet.~~

1. The lot size shall meet the standards of subsection 3.114.a., or subsection 3.114.1 a. and b., but shall not be less than ten acres;

2. A resource management program for at least 75% of the productive land of the lot, as described in subsection 3.113.3.c.2.(a), consisting of:

   (a) A forest management plan certified by the Oregon State Department of Forestry, the Oregon State University Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use,

   (b) a farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economically suited to the primary purpose of obtaining a profit in money, considering accepted farming practice,

   (c) a resource management plan for a primary use listed in subsection 3.113.1, based upon income, investment or similar records of the management of that resource on that property as a separate management unit for at least two of the preceding three years,

   (d) a fish, wildlife or other natural resource conservation management plan, certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses,

   (e) a small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service, or

(f) a cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland of the property. Productive timberland is that portion of the property capable of growing 50 cubic feet/acre/year.

3. The dwelling will not require public services beyond those existing or programmed for the area;

4. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

5. The residential use development standards of subsection 3.119; and

6. 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 will be acceptable.

b. Residential use consisting of a single-family dwelling, for the housing of help required to carry out a primary use listed in subsection 3.113.1.a. ~~or~~ c. or d., when the dwelling occupies the same lot as a residence permitted by subsections ~~3.113.1.c. or~~ 3.113.2.a., subject to the ~~following conditions: 1. In the event the dwelling is construed off-site, construction shall comply with~~ residential use development standards under ~~subparagraphs a.1. and 3. of this~~ subsection 3.119.

3.113.3 CONDITIONAL USES.

The following uses may be permitted ~~with~~ when found by the Hearings Officer to satisfy the applicable ordinance standards:

(Subparts a. and b. are unchanged.)

c. Residential use, not in conjunction with a primary use listed in subsection 3.113.1 consisting of a single family dwelling, including a mobile or modular home, subject to the following findings:

1. The minimum lot size shall be 80 acres or the size of the Lot of Record.

2. The land is incapable of sustaining a farm or forest use, based upon the following:

(a) a Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot

area and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area, or

(b) certification from an agency, person or group described in subparts 2(a) or (b) of subsection 3.113.2.a, that the land is inadequate for farm forest use and stating the basis for the conclusion, or

(c) for a lot greater than ten acres but less than 20 acres, a written description, filed by the owner, of the physical characteristics of the lot, including size, location, hazards, topography, drainage, soil types, prior use or other factors which will support the required finding of forest or farm use unsuitability, or

(d) the lot is a lot of record under subsection 3.114.1,a., and b., and is ten acres or less in size;

3. A dwelling as proposed is compatible with primary uses as listed in subsection 3.113.1 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area;

4. The dwelling will not require public services beyond those existing or programmed for the area;

5. The owner shall record with the Division of Records and Elections, a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

6. The residential use development standards of subsection 3.119 will be met; and

7. 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 are acceptable.

d. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.113.1, located on a mortgage lot created after the effective date of Ordinance No. , subject to the following:

1. The minimum lot size for the mortgage lot shall be two acres;

2. Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the deed records pertaining to said lot.

3. No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

3.114 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections 3.114.1 and 3.115, the minimum lot size shall be ~~38~~ 80 acres.

(The balance of subsection 3.114 is unchanged.)

3.115 LOT SIZES FOR CERTAIN CONDITIONAL USES.

The minimum lot size for a conditional use permitted pursuant to subsection 3.113.3 a. or b., shall be based upon:

(The balance of subsection 3.115 is unchanged.)

The following subsections are added to Ordinance No. 100:

3.118.5 RIGHT TO COMPLETE SINGLE FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

3.119 RESIDENTIAL USE DEVELOPMENT STANDARDS.

A residential use located in the CFU district after the effective date of Ordinance No. shall comply with the following:

a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Interagency Fire Prevention Group, including at least the following:

1. Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and

2. Maintenance of a water supply and of fire-fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;

b. Access for a fire truck to within 16 feet of any perennial water source on the lot;

c. The dwelling shall be located in as close proximity to a publicly-maintained street as possible, considering the requirements of subsection 3.114.b. The physical limitations of the site which require a driveway in excess of 500 feet in length shall be stated in writing as a part of the application for approval.

d. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart c., above;

e. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

1. a setback of 30 feet or more may be provided from a public road, or

2. the location of dwelling(s) on adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access;

f. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.

g. The dwelling shall be attached to a foundation for which a building permit has been obtained.

h. The dwelling shall have a minimum floor area of 600 square feet.

SECTION 4. AMENDMENTS OF THE MULTIPLE USE FOREST DISTRICT.

(Note: Material underlined is added; material crossed out is deleted.)

The following subsections of Section 3.14 of Ordinance No. 100 are amended to read:

3.141 MULTIPLE USE FOREST DISTRICT MUF-20

3.142 AREAS AFFECTED.

This subsection shall apply to those lands designated MUF-38 and MUF-19 on the Multnomah County Zoning Map.

3.143.1 PRIMARY USES.

(Subparts a. through c., are unchanged.)

d. Public and private conservation areas and structures other than dwellings for the protection of water, soil, open-space, forest and wildlife resources; and

e. Residential use consisting of a single-family dwelling, including a mobile or modular home, ~~constructed~~ on a lot of 38 acres or more, subject to the residential use development standards of subsection 3.149.

3.143.2 USES UNDER PRESCRIBED CONDITIONS.

a. Residential use, in conjunction with a primary use listed in subsection 3.143.1, consisting of a single-family dwelling ~~constructed off-site~~, including a mobile or modular home, subject to the following ~~conditions~~:

~~1. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.~~

~~2. The dwelling shall be attached to a foundation for which a building permit has been obtained.~~

~~3. The dwelling shall have a minimum floor area of 600 square feet.~~

1. The lot size shall meet the standards of subsection 3.144.a., or subsection 3.144.2.a. through c., but shall not be less than ten acres.

2. A resource management program for at least 75% of the productive land of the lot, as described in subsection 3.143.3.c.2(a), consisting of:

   (a) a forest management plan certified by the Oregon State Department of Forestry, the Oregon State University Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use,

   (b) a farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economically suited to the primary purpose of obtaining a profit in money, considering accepted farming practice,

   (c) a resource management plan for a primary use listed in subsection 3.143.1, based upon income, investment or similar records of the management of that resource on the property as a separate management unit for at least two of the preceding three years,

   (d) a fish, wildlife or other natural resource conservation management plan certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses,

   (e) a small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under

ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service, or

(f) a cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland of the property. Productive timberland is that portion of the property capable of growing 50 cubic feet/acre/year.

3. The dwelling will not require public services beyond those existing or programmed for the area;

4. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

5. The residential use development standards of subsection 3.149; and

6. 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 will be acceptable.

b. Residential use consisting of a single-family dwelling, for the housing of help required to carry out a primary use listed in subsection 3.143.1.a~~,~~ ~~or~~ c. or d., when the dwelling occupies the same lot as a residence permitted by subsections ~~3.113.1.c.~~ or 3.143.2.a., subject to the ~~following conditions:~~ ~~1. In the event the dwelling is construed off-site, construction shall comply with~~ residential use development standards under ~~subparagraphs q.1. and 3. of this~~ subsection 3.149.

3.143.3 CONDITIONAL USES.

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

(Subparts a., b., and c., are unchanged,)

d. Residential use, not in conjunction with a primary use listed in subsection 3.143.1, consisting of a single-family dwelling, including a mobile or modular home, subject to the following findings:

1. The lot size shall meet the standards of subsections 3.144.a., 3.144.1 through 3.144.12, or 3.144.2.a., through c.;

2. The land is incapable of sustaining a farm of forest use, based upon one of the following:

   (a) a Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area,

   (b) certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusion, or

   (c) the lot is a lot of record under subsection 3.144.2.a., through c., and is ten acres or less in size;

3. A dwelling, as proposed, is compatible with the primary uses as listed in subsection 3.143.1 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area; or

4. The dwelling will not require public services beyond those existing or programmed for the area;

5. The owner shall record with the Division of Records and Elections, a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

6. The residential use development standards of subsection 3.149 will be met; and

7. 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 are acceptable.

e. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.143.1, located on a mortgage lot created after the effective date of Ordinance No. , subject to the following:

1. The minimum lot size for the mortgage lot shall be two acres;

2. Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the Deed Records pertaining to said lot.

3. No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

3.144 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections 3.144.1, 3.144.2, 3.145 and ~~7.04.1~~ 7.044, the minimum lot size shall be ~~20-acres~~ according to the short-title zone district designation on the Zoning Map, as follows:

MUF-38 ..... 38 acres

MUF-19 ..... 19 acres

(The balance of subsection 3.144 is unchanged.)

3.144.1 LOTS OF EXCEPTION.

The Hearings Officer may grant an exception to permit the creation of a lot of less than ~~20-acres~~ the minimum specified in subsection 3.144.a., after the effective date of Ordinance No. 148- , when in compliance with the dimensional requirements of subsection 3.144.b. Any exception shall be based on findings that the proposal will:

(Subparts a. through f., are unchanged.)

3.144.2 LOT OF RECORD.

a. For the purposes of this district, a Lot of Record is a parcel of land:

1. for which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to the effective date of Ordinance No. 148- ; and

2. which, when established, satisfied all applicable laws.

b. A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

1. Parcels of land which are contiguous and in which greater than possessory interests are held by the same person, partnership or business entity shall be aggregated to comply as nearly as possible with a minimum lot size of ten acres, without creating any new lot line, and with the front lot line minimums of this district. The word "contiguous" shall refer to parcels of land which have any common boundary and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way, except as provided in subpart c., of this subsection. Nothing in this subsection shall be deemed to alter or amend the other provisions of this Ordinance.

c. Separate Lots of Record shall be deemed created when a ~~street~~ County-maintained road or zoning district boundary intersects a parcel of land.

3.144.3 Except as otherwise provided by subsections 3.144.1, 3.145, and ~~7.104.1~~ 7.044, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

3.145 LOT SIZES FOR CONDITIONAL USES.

The minimum lot size for a conditional use permitted pursuant to subsection 3.143.3, except subparagraph c.~~1~~, shall be based upon:

(The balance of subsection 3.145 is unchanged.)

The following subsections are added to Ordinance No. 100:

3.148.5 RIGHT TO COMPLETE SINGLE-FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more, for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

3.149 RESIDENTIAL USE DEVELOPMENT STANDARDS.

A residential use located in the MUF district after the effective date of Ordinance No. , shall comply with the following:

a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Interagency Fire Prevention Group, including at least the following:

1. Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and

2. Maintenance of a water supply and of fire-fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;

b. An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;

c. The dwelling shall be located in as close proximity to a publicly-maintained street as possible, considering the requirements of subsection 3.114.b. The reasons for providing any driveway access in excess of 500 feet shall be stated in writing as a part of the application for approval;

d. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart c., above;

e. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

1. a setback of 30 feet or more may be provided from a public road, or

2. the location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access;

f. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.

g. The dwelling shall be attached to a foundation for which a building permit has been obtained.

h. The dwelling shall have a minimum floor area of 600 square feet.

SECTION 5. AMENDMENTS OF CERTAIN PRESCRIBED CONDITIONS, APPROVAL CRITERIA AND ALTERNATIVE DIMENSIONAL REQUIREMENTS.

Ordinance No. 100 is amended as follows:

A. Subsections 3.364(F)(3) and 3.374(F)(3) are amended to read:

(3) Development will not increase the volume of traffic beyond the capacity of the public street serving the lot. The number of trips generated by the development shall be determined based on the average trip generation rate for the kind of development proposed as described in "Trip Generation" by the Institute of Traffic Engineers. The capacity of the street shall be determined based on the capacity described in the County Functional Classification System and Community Plan Policies No. 34 and No. 36.

B. Subsections 3.364(F)(4) and 3.374(F)(4) are amended to read:

(4) Design standards for privacy:

(a) Lights from vehicles on the site and from outdoor fixtures shall not be directed or reflected onto adjacent properties. This may be accomplished by the layout of the development or by the use of sight-obscuring landscaping or fences.

(b) Windows of the dwelling units shall face away from windows in existing adjacent dwelling structures.

(c) Balconies or outdoor private spaces shall be located so there are no direct views from them to windows or private spaces of dwellings on adjacent properties.

(d) Active recreational use structures, such as permanent basketball or volleyball standards shall be located outside of required side yards.

C. Subsections 3.364(F)(5) and 3.374(F)(5) are amended to read:

(5) The filing of a plan showing existing trees of six inch diameter measured five feet from the base of the tree and existing shrubs and hedges exceeding a height of five feet. The proposed development shall preserve these features unless they are:

(a) located in the buildable portion of the lot,

(b) located so as to eliminate useful solar access,

(c) located in the only route by which access can be had to the site using driveways ten feet wide with a minimum of five feet of buffer on either side,

(d) diseased, damaged beyond restoration, or otherwise a danger to the public, or

(e) replaced by an equal amount of landscaping, under a bond posted to ensure replacement.

D. Subsection 3.409(A)(2) is deleted, and subpart (3) is renumbered.

E. Subsections 3.567(A), (B) and (C) are deleted, and the following is inserted:

(A) Will be developed according to an approved preliminary design review plan under subsection 7.615. The plan shall demonstrate that the proposal:

(1) Does not require any dimensional exceptions or variances;

(2) Incorporates paved pedestrian ways connecting entries to parking, transit stops, surrounding sidewalks, neighboring general commercial or community facilities, and common areas on the site;

(3) Does not cause light from vehicles maneuvering to and from the site to be cast onto adjoining properties nor into windows of dwelling units on the site;

(4) Shows by an energy analysis that there will be a total net solar energy gain through all window surfaces between October 1st and March 31st;

(5) Incorporates street trees as recommended by the County Parks Division;

(6) Preserves or replaces all trees over six inches in diameter measured five feet above the ground, and all hedges and shrubs five feet or more in height; and

(7) Incorporates a common indoor or outdoor recreation area (exclusive of entries, halls, laundries or service areas) of not less than 50 square feet per unit;

(B) Is within one-quarter mile of an existing neighborhood or community activity center, as identified in the appropriate community plan;

(C) Is within one-quarter mile of a public transit stop;

(D) Has access to an arterial as designated and improved in accordance with Ordinance No. 162 and standards adopted thereunder;

(E) Incorporates dedications and improvements to the public right-of-way as required by Ordinance No. 162 and standards adopted thereunder;

(F) Utilizes a public sewer system for sanitary wastes. If such a system is not available, the development must receive approval of an alternative sanitation system from Oregon DEQ prior to approval, and include a written commitment to install "dry sewer lines" as directed by the County Engineer;

(G) Incorporates features specified in the Development Requirements policy of the appropriate community plan; and

(H) Is in an area designated for higher density development by the Community Plan.

F. Subsection 3.805(C) is amended to read:

(C) Residential uses permitted in the MR-3 district, as listed in subsection 3.463, and accessory structures as listed in subsection 3.464(A), when developed according to the access requirements of subsection 3.404, the off-street parking requirements of subsections 3.406 and 6.20, the signage limitations of subsection 3.407(A) - (D), the design review requirements of subsection 3.419 and Section 7.60, and the dimensional requirements of subsection 3.466 and their exceptions in subsection 3.405.

G. Subpart (2) of subsection 3.809(J) is amended to read:

(2) The Planning Director may authorize a height of 76 feet or six stories, whichever is less, provided:

(a) The proposal otherwise complies with subsection 4.009;

(b) Subsection "(1)" of this section does not apply; and

(c) The structure is set back from any residential district lot line by a distance equal to the height of the structure.

H. The introductory provision of subsection 4.008 is amended to read:

4.008 CONDITIONAL USE APPROVAL CRITERIA.

Unless otherwise specified in the provisions of an Urban Commercial District, in approving a conditional use, the approval authority shall find that the proposal:

(The balance of the subsection is unchanged.)

I. Section 4.00 is amended to add a new subsection to read:

4.009 USES UNDER PRESCRIBED CONDITIONS APPROVAL CRITERIA.

Unless otherwise specified in the provisions of an Urban Commercial District, in approving a use under prescribed conditions, the approval authority shall find that the proposal:

(A) Will have access in accord with the following, which shall be in addition to the standards of Ordinance No. 162:

(1) Access drives shall be no more than 25 feet wide measured at the property line;

(2) Access drives shall be 50 feet or more from the nearest curb return of a public street adjoining a corner lot;

(3) Access drives shall be 25 feet or more from any abutting residential district property line;

(4) Access drives shall be 50 feet or more from the area designated a public transit vehicle stop;

(5) In the event the applicant's lot has a streetside lot line less than 50 feet in width, and there is an access drive on an adjoining non-residential lot improved according to the street standards ordinance, whose nearest point is no more than ten feet from the common property line, then the applicant shall acquire an easement from the owner of the adjacent property for shared access or shall demonstrate that shared access is not possible. Shared access is not possible if the owner of the adjoining lot refuses, in writing, to grant a written request from the applicant for an easement for access purposes;

(6) In the event there is an access drive abutting a common property line on an adjoining parcel, then the access drive on the applicant's property, if any, shall be paired with the access drive on the adjoining parcel;

(7) Access drives on the same street frontage which serve the same lot shall be 170 feet or more apart; (Driveway Standard Policy 36); and

(8) Access drives shall be located on non-arterial street frontages, if any, unless the result would be that traffic from the proposed use would have to pass single family residential units or land designated for low density residential use;

(B) No exceptions to dimensional standards or landscaped buffers are required by the proposal;

(C) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property, where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas;

(D) Lighting related to the site shall be as follows:

(1) Lights from vehicles maneuvering to, from and on the property shall not be cast onto properties designated or zoned for residential use. The application shall specify the type and size of landscaping or screening necessary to achieve the effect described above, if applicable, and

(2) Exterior lighting shall not be cast onto adjoining properties designated or zoned for residential use;

(E) No outdoor sound amplification systems shall be operated on the property;

(F) Parking shall be as specified in Section 6.20, except that not more than 125% of the number of spaces required shall be provided;

(G) Signs associated with the proposal shall be subject to the sign limitations of Section 3.808;

(H) The proposal shall comply with Strategy 1.E. of Powellhurst Community Plan Policy No. 23, if the property is located abutting S.E. 82nd Avenue in that Community; and

(I) All utilities shall be placed underground.

J. Subsection 4.019 is amended to read:

4.019 RESIDENTIAL USE APPROVAL CRITERIA. In approving a residential use as a use under prescribed conditions as provided in this Section, the approval authority shall find that the proposal meets the following:

(A) Lights from nearby commercial or office uses, if any, shall be shielded from windows of the dwelling units;

(B) Sound levels measured at the proposed residential building line shall not exceed 65 decibels (A scale) or $L_{eq}67$, unless the proposed structure is designed to provide an interior noise level of $45L_{dn}$ or less;

(C) All utilities shall be placed underground;

(D) No exceptions to dimensional standards are proposed;

(E) The site is located on a public transit route;

(F) The residential dimensional and density standards shall be as follows:

(1) For a proposal in the LC district, Section 3.426 shall apply;

(2) For a proposal in the NC district, Section 3.466 shall apply; and

(3) For a proposal in the GC, EC or SC district, Section 3.526 shall apply;

(G) Subsection 3.404 shall apply to access, subsection 3.406 shall apply to off-street parking, and subsection 3.419 shall apply requiring design review; and

(H) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas.

K. Subsection 4.205(B) is amended to read:

(B) Residential uses permitted in the MR-4 district, when found to satisfy the approval criteria of subsection 4.019.

L. Subsection 4.305(B) is amended to read:

(B) Residential uses permitted in the MR-3 district when found to satisfy the approval criteria of subsection 4.019.

M. Subsections 4.405(B), 4.505(C), and 4,605(B) are amended to read:

Residential uses permitted in the HR-2 district, when found to satisfy the approval criteria of subsection 4.019.

N. Subsection 4.208 is amended to read:

4.208 BUSINESS OR PROFESSIONAL OFFICE OR CLINIC APPROVAL CRITERIA.

In approving a business or professional office as a use under subsection 4.205(A), the approval authority shall find that the proposal will satisfy the following:

(A) The total gross floor area of the proposed use and the uses listed in subsection 3.804, which are located within an LC district area uninterrupted by another zone district, shall not exceed 15,000 square feet;

(B) Access to the proposed use shall be provided in the manner described in subsection 4.009(A);

(C) There shall be no vacant parcel of sufficient size for the use designated BPO, NC, GC, EC, or SC, within one mile of the site, unless the application includes a written offer to purchase each vacant parcel at current assessed value, together with a refusal in writing signed by the parcel owner. The Planning Director shall assist in identifying the vacant parcels described;

(D) Lighting associated with the proposed use shall be as described in subsection 4.009(D);

(E) Parking shall be as specified in Section 6.20, except that not more than 125% of the spaces required shall be provided;

(F) Signs associated with the proposed use shall be subject to the provisions of Section 3.808;

(G) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property, where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas;

(H) The proposal shall comply with strategy 1E of Powellhurst Community Plan Policy No. 23, if the property abuts S.E. 82nd Avenue in that Community;

(I) All utilities shall be underground;

(J) The proposal shall comply with the dimensional requirements of subsection 3.809 and the exceptions of subsection 3.812; and

(K) The proposal shall be located:

(1) In a structure occupied by a permitted primary use, or

(2) In a structure the height of which does not exceed the height of any residential structure on an abutting property designated for low or medium density residential use, if any, for a distance of 35 feet from the property line; if there is no abutting property designated for low or medium density residential use, the maximum height shall be as specified in subsection 4.207(G).

O. Subsection 4.209 is deleted, and subsection 4.205(A) is revised to read:

(A) Office and other uses listed in subsection 3.804 and associated uses listed in subsection 3.805(B) when found to satisfy the approval criteria of subsection 4.208.

P. Subsection 5.008 is amended to read:

5.008 AIRPORT-RELATED AND OTHER COMMERCIAL USE APPROVAL CRITERIA.

In approving an airport-related commercial use under prescribed conditions, the approval authority shall find that the proposal will:

(A) Be located within two miles of a public airport;

(B) Be located within a five minute drive of the airport terminal assuming a trip can be made at an average of 75% of the posted speed limits applicable;

(C) Comply with subsection 3.808 regarding signs;

(D) Include a commitment to make improvements required by Ordinance No. 162, and rules adopted thereunder;

(E) Provide access in the manner described in subsection 4.009(A);

(F) Provide parking as specified in Section 6.20, except that not more than 125% of the required number of spaces shall be provided;

(G) Be within one-quarter mile of a public transit stop or other passenger pickup and delivery service to and from the airport;

(H) Comply with the dimensional standards of subsection 5.208(A); an exception as described in subsection 5.208(B) shall not be required;

(I) Provide that any outside storage of vehicles shall include:

(1) 25 square feet of landscaping within storage areas for every 20 vehicle spaces, or

(2) A sightobscuring screen, not to be less than a solid hedge capable of growth to six feet in height and three feet in width within two growing seasons, or a solid fence at least six feet high;

(J) Provide that outside storage of any other tangibles shall include a sight-obscuring screen as described in subpart (J)(2) above;

(K) Not incorporate blue colored lights or rows of lights resembling aircraft guidance lighting; and

(L) Provide that any noise-sensitive uses, such as a hotel, motel or office, shall be designed for an interior noise level not to exceed 45 L_{dn}.

Q. Subsection 5.009 is deleted; the reference in subsection 5.205(C) to subsection 5.008(C) through (G) is changed to subsection 5.008(C) through (F); and the reference in subsection 5.205(E) to subsection 5.009 is changed to subsection 5.008(C) through (F), and (I) through (K).

R. Subsections 3.425(C) and (D), 3.465(C) and (D), and 6.440(A)(1) are amended to delete reference to subpart (a) of subsection 12.25.3.

S. Subsections 3.366(F)(3), 3.377(H)(4), and 3.387(H)(4) are amended to read:

The maximum height for a single-family duplex, or milti-plex dwelling on a flag lot or a lot having sole access from an accessway, private drive or easement shall be 1-1/2 stories or 25 feet, whichever is less, except that the maximum height may be 2-1/2 stories or 35 feet, whichever is less, provided:

(a) the proposed dwelling otherwise complies with the applicable dimensional requirements,

(b) a residential structure on any abutting lot either is located 50 feet or more from the nearest point of the subject dwelling, or exceeds 1-1/2 stories or 25 feet in height, and

(c) windows 15 feet or more above grade shall not face dwelling unit windows or patios on any abutting lot unless the proposal includes a commitment to plant trees capable of mitigating direct views without loss of useful solar access to any dwelling unit, or that such trees exist and will be preserved.

SECTION 6. AMENDMENTS OF THE WILLAMETTE RIVER GREENWAY DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

Subsection 6.63.2 of Ordinance No. 100 is amended to read as follows:

6.63.2 EXCEPTIONS.

A Greenway Permit shall not be required for the following:

a. Farm use, as defined in ORS 215.203(2)(a) ~~(1977 Replacement Part), including buildings and structures accessory thereto;~~

~~b. A single family dwelling in conjunction with farm use, when located 150 feet or more from the ordinary low water line of the Willamette River;~~

~~c.~~ b. The propagation of timber or the cutting of timber for public safety or personal use ~~or the cutting of timber in accordance with the Forest Practices Act from a farm woodlot of less than 20 acres as described in the definition of "farm use" in ORS 215.203;~~

Subparts d. through l. are re-lettered c. through k., respectively.

SECTION 7. AMENDMENT OF RURAL PLANNED DEVELOPMENT SECTION.

Note: Material added is underlined; material crossed out is deleted.

Subsection 7.104 of Ordinance No. 100 is revised to read:

7.104 DENSITY.

The number of dwellings permitted on an RPD site shall be determined by dividing the gross site acreage by the following divisors:

DISTRICT	DIVISOR
MUA-20	10
MUF-19	10
MUF-38	20
RR	3
RC	0.5

(Subsections 7.104.1 and 7.104.2 are unchanged.)

SECTION 8. AMENDMENT ADDING PERMIT PROVISIONS FOR HISTORICAL STRUCTURES AND SITES.

Ordinance No. 100 is amended by adding the following subsection:

12.73.5 PERMITS FOR HISTORICAL STRUCTURES AND SITES.

The following requirements and procedures shall apply in addition to the provisions of the State Building Code, to a permit application under MCC 9.10.030, Building Code, concerning any historical building as defined in subsection 1.255 or any building structure or premises classified HP under subsection 6.803 or catalogued as a historic site or structure under the Historic Features Section of the Comprehensive Framework Plan.

(A) In addition to the other applicable provisions of this Ordinance, approval of a building permit to enlarge, alter, repair, improve or convert a building or structure described in subsection 12.73.5 or to erect, construct, locate or relocate a building or structure on any premises so described, shall also be subject to the applicable design review provisions of Section 7.60 through 7.621.

(B) In addition to the final design review criteria listed in subsection 7.618 and the standards and exceptions of subsections 7.619 and 7.620, approval of a final design review plan for a building or structure described in subsection 12.73.5 shall be based on the following criteria:

(1) The appearance as to the design, scale, proportion, mass, height, structural configuration, materials, architectural details, texture, color, location and similar factors shall relate harmoniously with the historical characteristics of the premises and of any existing building or structure, consistent with Building Code requirements.

(2) The factors listed in subpart (B)(1) which have previously been changed and which significantly depart from the original historical character of the premises, building or structure, shall be restored to the maximum practical degree, within limitations of the scope of the work proposed under the permit.

(C) An application for a permit to remove or demolish a building or structure described in subsection 12.73.5 shall be subject to the following:

(1) The permit shall not be issued for 120 days following the date of filing, unless otherwise authorized by the Board under subpart *7) of this subsection.

(2) The permit application shall be considered an action initiated by the record owner or the owner's agent, under subsection 12.21.2.

(3) Except as otherwise provided in this subsection, the application shall be subject to the provisions of Section 12.20 through subsection 12.29.3, and subsections 12.34 through 12.37.5 of this Ordinance.

(4) A hearing on the application shall be held by the Planning Commission.

(5) The decision of the Planning Commission shall be in the form of a recommendation to the Board:

(a) The Planning Commission may recommend measures to preserve the building or structure, with or without conditions, including by purchase, trade, relocation, or by approval of a change of use notwithstanding the use limitations of the district; or

(b) The Planning Commission may recommend removal or demolition of the building or structure based upon a finding that practical preservation measures are inadequate or unavailable.

(c) The Planning Commission recommendation shall be based upon findings in relation to the applicable policies of the Comprehensive Plan.

(6) The Planning Commission decision shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced.

(7) The Board shall conduct a de novo hearing on the application under the provisions of subsections 12.34 through 12.37.5.

(8) In the event the Board fails to act on the application within the 120 day period specified in subpart (C)(1) of this subsection, the Building Official may issue the permit.

(D) Notwithstanding the provisions of MCC 9.10.090 and subsections 4.010 through 4.017 of this Ordinance, action to abate an unsafe building nuisance or an abandoned drive-in business nuisance, by demolition or removal of a building or structure described in subsection 12.73.5, shall be subject to the provisions of subsection 12.73.5(C).

(1) EXCEPTION. Abatement of an unsafe building or structure may proceed under MCC 9.10.090, upon a finding by the Director of Environmental Services that the condition of the building or structure is beyond practical repair or restoration or is a continuous threat to the safety of life or property which cannot otherwise be eliminated.

ADOPTION.

This Ordinance being necessary for the health, safety and general welfare of the people of Multnomah County, shall take effect on _____, 1980, according to Section 5.50 of the Charter of Multnomah County.

ADOPTED this _____ day of _____, 1980, being the date of its _____ reading before the Board of County Commissioners of Multnomah County, Oregon.

FOR THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON

By_____
Presidieng Officer

Authenticated by the County

Executive on the _____ day of _____, 1980.

_____
DONALD E. CLARK, County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY
County Counsel for
Multnomah County, Oregon

By_____
Laurence Kressel
Deputy County Counsel

Ordinance PC 12-80D/1
Revised

EXHIBIT
15

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 236

An Ordinance amending Ordinance No. 100, changing the minimum lot sizes and the standards for the location of new residences in the Exclusive Farm Use, Commercial Forest Use, and Multiple Use Forest districts; adding wildlife and fish habitat protection provisions in the Commercial Forest Use and Multiple Use Forest districts; amending certain administrative approval criteria to correct or remove provisions found to be vague or discretionary; amending farm use and timber-cutting provisions in the Willamette River Greenway district; amending lot sizes for rural planned developments in MUF; providing design review for building modifications and for delay of demolition permits for historical buildings and structures.

Multnomah County ordains as follows:

SECTION 1. FINDINGS.

A. The April 1, 1980 Continuance Order of the Land Conservation and Developmnt Commission declares that the Multnomah County Comprehensive Plan and implementing measures do not yet comply with Statewide Planning Goals 2, 3, 4, 5, 6, 11, 14, and 15, for the reasons set forth in the Department of Land Conservation and Development Commission report. The Commission granted a 120-day continuance of the County's acknowledgement request so that the County may complete the additional planning work described in the Order.

B. The Planning Commission has reviewed the Continuance Order and alternative proposals for plan revisions and ordinance amendments in work sessions and community workshops.

C. At a public hearing on June 9, 1980, the Planning Commission passed Resolution PC 12-80D/1 recommending to the Board adoption of draft ordinance PC 12-80D/1 revising the Zoning Ordinance, Ordinance No. 100 as one measure to comply with the Continuance Order and adopting findings in support of the recommendation.

D. The Board concurs in the Planning Commission's recommendation and findings.

E. Additional findings of the Board made as a result of testimony and evidence at public hearings, are contained in Attachment 1 and hereby made a part of this Ordinance.

SECTION 2. AMENDMENTS OF THE EXCLUSIVE FARM USE DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

The following subsections of Section 3.10 of Ordinance No. 100 are amended to read:

3.10 EXCLUSIVE FARM USE DISTRICT EFU-~~38~~-

3.102 AREA AFFECTED.

This subsection shall apply to those areas designated EFU-~~38~~- on the Multnomah County Zoning Map.

3.103.1 PRIMARY USES.

(Subparts a. and b. are unchanged, except to delete "[1977 Replacement Part]".)

c. Residential use in conjunction with farm use, consisting of a single family dwelling constructed on a lot of 76 acres or more on Sauvie Island or 38 acres or more elsewhere in the EFU district.

3.103.2 USES PERMITTED UNDER PRESCRIBED CONDITIONS.

a. Residential use in conjunction with farm use, consisting of a single family dwelling constructed off-site, including a mobile or modular home, subject to the following conditions:

(Subparts 1, 2, and 3 are unchanged.)

b. Residential use consisting of a single family dwelling for the housing of help required to carry out a farm use ~~primary use listed in subsection 3.103.1.a. or e.,~~ when the dwelling occupies the same lot as a residence permitted by subsections 3.103.1.c., or 3.103.2.a, subject to the following conditions:

(Subparts 1 and 2 are unchanged.)

c. A primary use listed in subsection 3.103.1 a. or c:

1. On a substandard lot of record or a lot created under MCC 11.45, Land Divisions, after the effective date of Ordinance No. _____:

2. Except for a substandard lot of record, with a lot size less than the minimum required under subsection 3.104.a., but not less than 38 acres on Sauvie Island or 19 acres elsewhere in this district;

3. Conducted according to a farm management plan containing the following elements:

(a) a written description of a five-year development and management plan which describes the proposed cropping or livestock pattern by type, location and area size and which may include forestry as an incidental use,

(b) soil tests or Soil Conservation Service OR-1 soils field sheet data which demonstrate the land suitability for each proposed crop or pasturage use,

(c) certification by the Oregon State University Extension Service, or by person or group having similar agricultural expertise, that the production acreage and the farm management plan are appropriate for the continuation of the existing commercial agricultural enterprise within the area. For the purposes of this Ordinance, "appropriate for the continuation of the existing commercial agricultural enterprise within the area" means:

(1) that the proposed farm use and production acreage are similar to the existing commercial farm uses and production acreages in the vicinity, or

(2) in the event the proposed farm use is different than the existing farm uses in the vicinity, that the production acreage and the farm management plan are reasonably designed to promote agricultural utilization of the land equal to or greater than that in the vicinity. "Agricultural utilization" means an intended profit-making commercial enterprise which will employ accepted farming practices to produce agricultural products for entry into the conventional agricultural markets."

(d) a description of the primary uses on nearby properties, including lot size, topography, soil types, management practices and supporting services, and a statement of the ways the proposal will be compatible with them.

(e) EXCEPTION. A written description of the farm management program on that parcel as a separate management unit for the preceding five years may be substituted for subparts (a), (b) and (c) above.

4. The Planning Director shall make findings and a tentative decision within ten business days of the application filing. Notice of the findings and decision, and information describing the appeals process shall be mailed by first class mail to the applicant and to the record owners of all property within 500 feet of the property proposed for the use.

5. The tentative decision shall be final at the close of business on the tenth calendar day after notice is mailed, unless the applicant or a person entitled to mailed notice or a person substantially affected by the application files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of subsections 12.38 and 12.39, except that subsection 12.38.2 shall apply only to a notice of appeal filed by the applicant. In the event of an appeal by the applicant, the persons entitled to notice under subpart 4 of this subsection shall be given the same notice of the appeal hearing as is given the applicant.

3.103.3 CONDITIONAL USES.

b.3. Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. ~~upon a finding that the dwelling~~ The lot shall be a Lot of Record under subsection 3.104.2, or, if otherwise below the minimum lot size, be divided under the applicable provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:

(Subparts (a) through (e) are unchanged.)

(f) complies with such other conditions as the Officer considers necessary to satisfy the purposes of subsection 3.101;

(g) construction shall comply with the standards of the Building Code or as prescribed under ORS 446.002 through 446.200, relating to mobile homes;

(h) the dwelling shall be attached to a foundation for which a building permit has been obtained; and

(i) the dwelling shall have a minimum floor area of 600 square feet.

b.11. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.103.1, located on a mortgage lot created after the effective date of Ordinance No. _____, subject to the following:

(a) The minimum lot size for the mortgage lot shall be two acres;

(b) Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the Deed Records pertaining to said lot.

(c) No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

b.12. Homestead Lot.. The purpose of this provision is to encourage the retention of agricultural lands in large parcels, while providing the opportunity for residents who are no longer able or who no longer desire to farm the land to retain their homes and sell the balance of the property. The Hearings Officer may approve a lot division for a principal dwelling existing on the effective date of Ordinance No. _____, as a non-farm use, provided that all of the following are satisfied:

(a) the homestead lot shall not be greater than two acres unless conditions of soil, topography or other circumstances require a larger size; in no event shall a homestead lot be larger than five acres,

(b) the dwelling on the homestead lot shall have been the principal farm dwelling for at least ten years prior to the effective date of Ordinance No. _____,

(c) the remainder of the parcel shall satisfy the lot size and other requirements of this district for farm use,

(d) not more than one homestead lot may be divided from a lot of record,

(e) the owner of the parcel from which the homestead lot was divided shall have the first right of refusal to purchase the homestead lot.

3.104 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections ~~3.104.1~~, 3.103.2.c., 3.103.3.b.3, 3.104.2 and 3.104.3, the minimum lot size shall be 76 acres on Sauvie Island and 38 acres elsewhere in the EFU district.

(Subpart b. is unchanged.)

3.104.1 LOTS OF EXCEPTION, through subpart 3.104.13, is deleted.

3.104.2.a.1: No. "148" is deleted and the number of this Ordinance inserted.

3.104.4 Except as otherwise provided by subsections ~~3.104.1 and~~ 3.104.2, no sale or conveyance of any portion of a lot, for other than a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

3.108.1 and 3.108.2: No. "148" is deleted and the number of this Ordinance inserted.

The following subsection is added to Ordinance No. 100:

3.108.5 RIGHT TO COMPLETE SINGLE FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more, for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

SECTION 2A. AMENDMENT OF DEFINITIONS.

The following subsection is added to Ordinance No. 100:

1.428 MORTGAGE LOT means a lot having less than the minimum area required under the Zoning Ordinance, created out of a tract which itself conforms to lot area requirements, to enable the contract purchaser of the tract to finance construction of a single family residence thereon. A mortgage lot may be created only in the EFU, CFU and MUF districts.

SECTION 3. AMENDMENTS OF THE COMMERCIAL FOREST USE DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

The following subsections of Section 3.11 of Ordinance No. 100 are amended to read:

3.11 COMMERCIAL FOREST USE DISTRICT CFU-38

3.112 AREA AFFECTED. This subsection shall apply to those lands designated CFU-38 on the Multnomah County Zoning Map.

3.113.1 PRIMARY USES.

(Subparts a. through c. are unchanged.)

d. Public and private conservation areas and structures other than dwellings for the protection of water, soil, open-space, forest and wildlife resources; and

e. Residential use consisting of a single-family dwelling ~~constructed~~ on a lot of 80 acres or more, subject to the residential use development standards of subsection 3.119.

3.113.2 USES UNDER PRESCRIBED CONDITIONS.

a. Residential use, in conjunction with a primary use listed in subsection 3.113.1, consisting of a single family dwelling ~~constructed off site~~ including a mobile or modular home, subject to the following ~~conditions~~:

~~1. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.~~

~~2. The dwelling shall be attached to a foundation for which a building permit has been obtained.~~

~~3. The dwelling shall have a minimum floor area of 600 square feet.~~

1. The lot size shall meet the standards of subsection 3.114.a., or subsection 3.114.1 a. and b., but shall not be less than ten acres;

2. A resource management program for at least 75% of the productive land of the lot, as described in subsection 3.113.3.c.2.(a), consisting of:

   (a) A forest management plan certified by the Oregon State Department of Forestry, the Oregon State University Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use,

   (b) a farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economically suited to the primary purpose of obtaining a profit in money, considering accepted farming practice,

   (c) a resource management plan for a primary use listed in subsection 3.113.1, based upon income, investment or similar records of the management of that resource on that property as a separate management unit for at least two of the preceding three years,

   (d) a fish, wildlife or other natural resource conservation management plan, certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses,

   (e) a small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service, or

(f) a cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland of the property. Productive timberland is that portion of the property capable of growing 50 cubic feet/acre/year.

3. The dwelling will not require public services beyond those existing or programmed for the area;

4. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

5. The residential use development standards of subsection 3.119; and

6. 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 will be acceptable.

b. Residential use consisting of a single-family dwelling, for the housing of help required to carry out a primary use listed in subsection 3.113.1.a~~,-or~~ c. or d., when the dwelling occupies the same lot as a residence permitted by subsections ~~3.113.1.c.-or~~ 3.113.2.a., subject to the ~~following conditions: 1.--In the event the dwelling is construcied off-site, construction shall comply with~~ residential use development standards under ~~subparagraphs a.1.-and 3.-of this~~ subsection 3.119.

3.113.3 CONDITIONAL USES.

The following uses may be permitted ~~with~~ when found by the Hearings Officer to satisfy the applicable ordinance standards:

(Subparts a. and b. are unchanged.)

c. Residential use, not in conjunction with a primary use listed in subsection 3.113.1 consisting of a single family dwelling, including a mobile or modular home, subject to the following findings:

1. The minimum lot size shall be 80 acres or the size of the Lot of Record.

2. The land is incapable of sustaining a farm or forest use, based upon the following:

(a) a Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot

area and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area, or

(b) certification from an agency, person or group described in subparts 2(a) or (b) of subsection 3.113.2.a, that the land is inadequate for farm forest use and stating the basis for the conclusion, or

(c) for a lot greater than ten acres but less than 20 acres, a written description, filed by the owner, of the physical characteristics of the lot, including size, location, hazards, topography, drainage, soil types, prior use or other factors which will support the required finding of forest or farm use unsuitability, or

(d) the lot is a lot of record under subsection 3.114.1,a., and b., and is ten acres or less in size;

3. A dwelling as proposed is compatible with primary uses as listed in subsection 3.113.1 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area;

4. The dwelling will not require public services beyond those existing or programmed for the area;

5. The owner shall record with the Division of Records and Elections, a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

6. The residential use development standards of subsection 3.119 will be met; and

7. 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 are acceptable.

d. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.113.1, located on a mortgage lot created after the effective date of Ordinance No. , subject to the following:

1. The minimum lot size for the mortgage lot shall be two acres;

2. Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the deed records pertaining to said lot.

3. No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

3.114 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections 3.114.1 and 3.115, the minimum lot size shall be ~~38~~ 80 acres.

(The balance of subsection 3.114 is unchanged.)

3.115 LOT SIZES FOR CERTAIN CONDITIONAL USES.

The minimum lot size for a conditional use permitted pursuant to subsection 3.113.3 a. or b., shall be based upon:

(The balance of subsection 3.115 is unchanged.)

The following subsections are added to Ordinance No. 100:

3.118.5 RIGHT TO COMPLETE SINGLE FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

3.119 RESIDENTIAL USE DEVELOPMENT STANDARDS.

A residential use located in the CFU district after the effective date of Ordinance No. shall comply with the following:

a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Interagency Fire Prevention Group, including at least the following:

1. Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and

2. Maintenance of a water supply and of fire-fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;

b. Access for a fire truck to within 16 feet of any perennial water source on the lot;

c. The dwelling shall be located in as close proximity to a publicly-maintained street as possible, considering the requirements of subsection 3.114.b. The physical limitations of the site which require a driveway in excess of 500 feet in length shall be stated in writing as a part of the application for approval.

d. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart c., above;

e. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

1. a setback of 30 feet or more may be provided from a public road, or

2. the location of dwelling(s) on adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access;

f. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.

g. The dwelling shall be attached to a foundation for which a building permit has been obtained.

h. The dwelling shall have a minimum floor area of 600 square feet.

SECTION 4. AMENDMENTS OF THE MULTIPLE USE FOREST DISTRICT.

(Note: Material underlined is added; material crossed out is deleted.)

The following subsections of Section 3.14 of Ordinance No. 100 are amended to read:

3.141 MULTIPLE USE FOREST DISTRICT MUF-~~20~~

3.142 AREAS AFFECTED.

This subsection shall apply to those lands designated MUF-38 and MUF-19 on the Multnomah County Zoning Map.

3.143.1 PRIMARY USES.

(Subparts a. through c., are unchanged.)

d. Public and private conservation areas and structures other than dwellings for the protection of water, soil, open-space, forest and wildlife resources; and

e. Residential use consisting of a single-family dwelling, including a mobile or modular home, ~~constructed~~ on a lot of 38 acres or more, subject to the residential use development standards of subsection 3.149.

3.143.2 USES UNDER PRESCRIBED CONDITIONS.

a. Residential use, in conjunction with a primary use listed in subsection 3.143.1, consisting of a single-family dwelling ~~constructed off site~~, including a mobile or modular home, subject to the following ~~conditions~~:

~~1. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.~~

~~2. The dwelling shall be attached to a foundation for which a building permit has been obtained.~~

~~3. The dwelling shall have a minimum floor area of 600 square feet.~~

1. The lot size shall meet the standards of subsection 3.144.a., or subsection 3.144.2.a. through c., but shall not be less than ten acres.

2. A resource management program for at least 75% of the productive land of the lot, as described in subsection 3.143.3.c.2(a), consisting of:

   (a) a forest management plan certified by the Oregon State Department of Forestry, the Oregon State University Extension Service, or by a person or group having similar forestry expertise, that the lot and the plan are physically and economically suited to the primary forest or wood processing use,

   (b) a farm management plan certified by the Oregon State University Extension Service, or by a person or group having similar agricultural expertise, that the lot and the plan are physically and economically suited to the primary purpose of obtaining a profit in money, considering accepted farming practice,

   (c) a resource management plan for a primary use listed in subsection 3.143.1, based upon income, investment or similar records of the management of that resource on the property as a separate management unit for at least two of the preceding three years,

   (d) a fish, wildlife or other natural resource conservation management plan certified by the Oregon State Fish and Wildlife Department or by a person or group having similar resource conservation expertise, to be suited to the lot and to nearby uses,

   (e) a small tract timber option under ORS Chapter 321.705, a Western Oregon Forest Land designation under ORS Chapter 321.257, a Reforestation deferral under

ORS Chapter 321.257, or participation in a current forestry improvement program of the U.S. Agricultural Stabilization and Conservation Service, or

(f) a cooperative or lease agreement with a commercial timber company, or other person or group engaged in commercial timber operations, for the timber management of at least 75% of the productive timberland of the property. Productive timberland is that portion of the property capable of growing 50 cubic feet/acre/year.

3. The dwelling will not require public services beyond those existing or programmed for the area;

4. The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

5. The residential use development standards of subsection 3.149; and

6. 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 will be acceptable.

b. Residential use consisting of a single-family dwelling, for the housing of help required to carry out a primary use listed in subsection 3.143.1.a~~,~~ ~~or~~ c. or d., when the dwelling occupies the same lot as a residence permitted by subsections ~~3,113,1,e,~~ ~~or~~ 3.143.2.a., subject to the ~~following conditions: 1, In the event the dwelling is construeted off-site, construction shall comply with~~ residential use development standards under ~~subparagraphs q, 1, and 3, of this~~ subsection 3.149.

3.143.3 CONDITIONAL USES.

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

(Subparts a., b., and c., are unchanged.)

d. Residential use, not in conjunction with a primary use listed in subsection 3.143.1, consisting of a single-family dwelling, including a mobile or modular home, subject to the following findings:

1. The lot size shall meet the standards of subsections 3.144.a., 3.144.1 through 3.144.12, or 3.144.2.a., through c.;

2. The land is incapable of sustaining a farm of forest use, based upon one of the following:

   (a) a Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area,

   (b) certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusion, or

   (c) the lot is a lot of record under subsection 3.144.2.a., through c., and is ten acres or less in size;

3. A dwelling, as proposed, is compatible with the primary uses as listed in subsection 3.143.1 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area; or

4. The dwelling will not require public services beyond those existing or programmed for the area;

5. The owner shall record with the Division of Records and Elections, a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices;

6. The residential use development standards of subsection 3.149 will be met; and

7. 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 are acceptable.

e. Mortgage Lot. Residential use consisting of a single family dwelling in conjunction with a primary use listed in subsection 3.143.1, located on a mortgage lot created after the effective date of Ordinance No. , subject to the following:

1. The minimum lot size for the mortgage lot shall be two acres;

2. Except as may otherwise be provided by law, a mortgage lot shall not be conveyed as a zoning lot separate from the tract out of which it was created or such portion of the tract as conforms with the dimensional requirements of the zoning ordinance then in effect. The purchaser of a mortgage lot shall record a statement referring to this limitation in the Deed Records pertaining to said lot.

3. No permit shall be issued for improvement of a mortgage lot unless the contract seller of the tract out of which the mortgage lot is to be created and the mortgagee of said mortgage lot have agreed in writing to the creation of the mortgage lot.

3.144 DIMENSIONAL REQUIREMENTS.

a. Except as provided in subsections 3.144.1, 3.144.2, 3.145 and ~~7.04.1~~ 7.044, the minimum lot size shall be ~~20-acres~~ according to the short-title zone district designation on the Zoning Map, as follows:

MUF-38 ..... 38 acres

MUF-19 ..... 19 acres

(The balance of subsection 3.144 is unchanged.)

3.144.1 LOTS OF EXCEPTION.

The Hearings Officer may grant an exception to permit the creation of a lot of less than ~~20-acres~~ the minimum specified in subsection 3.144.a., after the effective date of Ordinance No. ~~148-~~ , when in compliance with the dimensional requirements of subsection 3.144.b. Any exception shall be based on findings that the proposal will:

(Subparts a. through f., are unchanged.)

3.144.2 LOT OF RECORD.

a. For the purposes of this district, a Lot of Record is a parcel of land:

1. for which a deed or other instrument dividing land was recorded with the Department of Administrative Services, or was in recordable form prior to the effective date of Ordinance No. ~~148-~~ ; and

2. which, when established, satisfied all applicable laws.

b. A Lot of Record which has less than the area or front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

1. Parcels of land which are contiguous and in which greater than possessory interests are held by the same person, partnership or business entity shall be aggregated to comply as nearly as possible with a minimum lot size of ten acres, without creating any new lot line, and with the front lot line minimums of this district. The word "contiguous" shall refer to parcels of land which have any common boundary and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way, except as provided in subpart c., of this subsection. Nothing in this subsection shall be deemed to alter or amend the other provisions of this Ordinance.

c. Separate Lots of Record shall be deemed created when a ~~street~~ County-maintained road or zoning district boundary intersects a parcel of land.

3.144.3 Except as otherwise provided by subsections 3.144.1, 3.145, and ~~7.104.1~~ 7.044, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than the minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

3.145 LOT SIZES FOR CONDITIONAL USES.

The minimum lot size for a conditional use permitted pursuant to subsection 3.143.3, except subparagraph c.~~1~~, shall be based upon:

(The balance of subsection 3.145 is unchanged.)

The following subsections are added to Ordinance No. 100:

3.148.5 RIGHT TO COMPLETE SINGLE-FAMILY DWELLING.

A single family dwelling, uncompleted prior to the effective date of Ordinance No. , but which meets the tests stated in this subsection, may be completed although not listed as a primary use in this district.

a. Actual construction shall have commenced prior to the effective date of Ordinance No. , under a sanitation, building or other development permit applicable to the lot. "Actual construction" means:

1. placement of construction materials in a permanent position;

2. site excavation or grading;

3. demolition or removal of an existing structure;

4. the value of purchased building materials; or

5. installation of water, sanitation or power systems.

b. Actual construction shall not include:

1. the cost of plan preparation; or

2. the value of the land.

c. The value of actual construction commenced prior to the effective date of Ordinance No. , shall be $1,000 or more, for each $20,000 of the total estimated value of the proposed improvements as calculated under the Uniform Building Code.

3.149 RESIDENTIAL USE-DEVELOPMENT STANDARDS.

A residential use located in the MUF district after the effective date of Ordinance No. , shall comply with the following:

a. The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Interagency Fire Prevention Group, including at least the following:

1. Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and

2. Maintenance of a water supply and of fire-fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;

b. An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;

c. The dwelling shall be located in as close proximity to a publicly-maintained street as possible, considering the requirements of subsection 3.114.b. The reasons for providing any driveway access in excess of 500 feet shall be stated in writing as a part of the application for approval;

d. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart c., above;

e. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:

1. a setback of 30 feet or more may be provided from a public road, or

2. the location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access;

f. Construction shall comply with the standards of the Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.

g. The dwelling shall be attached to a foundation for which a building permit has been obtained.

h. The dwelling shall have a minimum floor area of 600 square feet.

SECTION 5. AMENDMENTS OF CERTAIN PRESCRIBED CONDITIONS, APPROVAL CRITERIA AND ALTERNATIVE DIMENSIONAL REQUIREMENTS.

Ordinance No. 100 is amended as follows:

A. Subsections 3.364(F)(3) and 3.374(F)(3) are amended to read:

(3) Development will not increase the volume of traffic beyond the capacity of the public street serving the lot. The number of trips generated by the development shall be determined based on the average trip generation rate for the kind of development proposed as described in "Trip Generation" by the Institute of Traffic Engineers. The capacity of the street shall be determined based on the capacity described in the County Functional Classification System and Community Plan Policies No. 34 and No. 36.

B. Subsections 3.364(F)(4) and 3.374(F)(4) are amended to read:

(4) Design standards for privacy:

(a) Lights from vehicles on the site and from outdoor fixtures shall not be directed or reflected onto adjacent properties. This may be accomplished by the layout of the development or by the use of sight-obscuring landscaping or fences.

(b) Windows of the dwelling units shall face away from windows in existing adjacent dwelling structures.

(c) Balconies or outdoor private spaces shall be located so there are no direct views from them to windows or private spaces of dwellings on adjacent properties.

(d) Active recreational use structures, such as permanent basketball or volleyball standards shall be located outside of required side yards.

C. Subsections 3.364(F)(5) and 3.374(F)(5) are amended to read:

(5) The filing of a plan showing existing trees of six inch diameter measured five feet from the base of the tree and existing shrubs and hedges exceeding a height of five feet. The proposed development shall preserve these features unless they are:

(a) located in the buildable portion of the lot,

(b) located so as to eliminate useful solar access,

(c) located in the only route by which access can be had to the site using driveways ten feet wide with a minimum of five feet of buffer on either side,

(d) diseased, damaged beyond restoration, or otherwise a danger to the public, or

(e) replaced by an equal amount of landscaping, under a bond posted to ensure replacement.

D. Subsection 3.409(A)(2) is deleted, and subpart (3) is renumbered.

E. Subsections 3.567(A), (B) and (C) are deleted, and the following is inserted:

(A) Will be developed according to an approved preliminary design review plan under subsection 7.615. The plan shall demonstrate that the proposal:

(1) Does not require any dimensional exceptions or variances;

(2) Incorporates paved pedestrian ways connecting entries to parking, transit stops, surrounding sidewalks, neighboring general commercial or community facilities, and common areas on the site;

(3) Does not cause light from vehicles maneuvering to and from the site to be cast onto adjoining properties nor into windows of dwelling units on the site;

(4) Shows by an energy analysis that there will be a total net solar energy gain through all window surfaces between October 1st and March 31st;

(5) Incorporates street trees as recommended by the County Parks Division;

(6) Preserves or replaces all trees over six inches in diameter measured five feet above the ground, and all hedges and shrubs five feet or more in height; and

(7) Incorporates a common indoor or outdoor recreation area (exclusive of entries, halls, laundries or service areas) of not less than 50 square feet per unit;

(B) Is within one-quarter mile of an existing neighborhood or community activity center, as identified in the appropriate community plan;

(C) Is within one-quarter mile of a public transit stop;

(D) Has access to an arterial as designated and improved in accordance with Ordinance No. 162 and standards adopted thereunder;

(E) Incorporates dedications and improvements to the public right-of-way as required by Ordinance No. 162 and standards adopted thereunder;

(F) Utilizes a public sewer system for sanitary wastes. If such a system is not available, the development must receive approval of an alternative sanitation system from Oregon DEQ prior to approval, and include a written commitment to install "dry sewer lines" as directed by the County Engineer;

(G) Incorporates features specified in the Development Requirements policy of the appropriate community plan; and

(H) Is in an area designated for higher density development by the Community Plan.

F. Subsection 3.805(C) is amended to read:

(C) Residential uses permitted in the MR-3 district, as listed in subsection 3.463, and accessory structures as listed in subsection 3.464(A), when developed according to the access requirements of subsection 3.404, the off-street parking requirements of subsections 3.406 and 6.20, the signage limitations of subsection 3.407(A) - (D), the design review requirements of subsection 3.419 and Section 7.60, and the dimensional requirements of subsection 3.466 and their exceptions in subsection 3.405.

G. Subpart (2) of subsection 3.809(J) is amended to read:

(2) The Planning Director may authorize a height of 76 feet or six stories, whichever is less, provided:

(a) The proposal otherwise complies with subsection 4.009;

(b) Subsection "(1)" of this section does not apply; and

(c) The structure is set back from any residential district lot line by a distance equal to the height of the structure.

H. The introductory provision of subsection 4.008 is amended to read:

4.008 CONDITIONAL USE APPROVAL CRITERIA.

Unless otherwise specified in the provisions of an Urban Commercial District, in approving a conditional use, the approval authority shall find that the proposal:

(The balance of the subsection is unchanged.)

I. Section 4.00 is amended to add a new subsection to read:

4.009 USES UNDER PRESCRIBED CONDITIONS APPROVAL CRITERIA.

Unless otherwise specified in the provisions of an Urban Commercial District, in approving a use under prescribed conditions, the approval authority shall find that the proposal:

(A) Will have access in accord with the following, which shall be in addition to the standards of Ordinance No. 162:

(1) Access drives shall be no more than 25 feet wide measured at the property line;

(2) Access drives shall be 50 feet or more from the nearest curb return of a public street adjoining a corner lot;

(3) Access drives shall be 25 feet or more from any abutting residential district property line;

(4) Access drives shall be 50 feet or more from the area designated a public transit vehicle stop;

(5) In the event the applicant's lot has a streetside lot line less than 50 feet in width, and there is an access drive on an adjoining non-residential lot improved according to the street standards ordinance, whose nearest point is no more than ten feet from the common property line, then the applicant shall acquire an easement from the owner of the adjacent property for shared access or shall demonstrate that shared access is not possible. Shared access is not possible if the owner of the adjoining lot refuses, in writing, to grant a written request from the applicant for an easement for access purposes;

(6) In the event there is an access drive abutting a common property line on an adjoining parcel, then the access drive on the applicant's property, if any, shall be paired with the access drive on the adjoining parcel;

(7) Access drives on the same street frontage which serve the same lot shall be 170 feet or more apart; (Driveway Standard Policy 36); and

(8) Access drives shall be located on non-arterial street frontages, if any, unless the result would be that traffic from the proposed use would have to pass single family residential units or land designated for low density residential use;

(B) No exceptions to dimensional standards or landscaped buffers are required by the proposal;

(C) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property, where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas;

(D) Lighting related to the site shall be as follows:

(1) Lights from vehicles maneuvering to, from and on the property shall not be cast onto properties designated or zoned for residential use. The application shall specify the type and size of landscaping or screening necessary to achieve the effect described above, if applicable, and

(2) Exterior lighting shall not be cast onto adjoining properties designated or zoned for residential use;

(E) No outdoor sound amplification systems shall be operated on the property;

(F) Parking shall be as specified in Section 6.20, except that not more than 125% of the number of spaces required shall be provided;

(G) Signs associated with the proposal shall be subject to the sign limitations of Section 3.808;

(H) The proposal shall comply with Strategy 1.E. of Powellhurst Community Plan Policy No. 23, if the property is located abutting S.E. 82nd Avenue in that Community; and

(I) All utilities shall be placed underground.

J. Subsection 4.019 is amended to read:

4.019 RESIDENTIAL USE APPROVAL CRITERIA. In approving a residential use as a use under prescribed conditions as provided in this Section, the approval authority shall find that the proposal meets the following:

(A) Lights from nearby commercial or office uses, if any, shall be shielded from windows of the dwelling units;

(B) Sound levels measured at the proposed residential building line shall not exceed 65 decibels (A scale) or $L_{eq}67$, unless the proposed structure is designed to provide an interior noise level of $45L_{dn}$ or less;

(C) All utilities shall be placed underground;

(D) No exceptions to dimensional standards are proposed;

(E) The site is located on a public transit route;

(F) The residential dimensional and density standards shall be as follows:

(1) For a proposal in the LC district, Section 3.426 shall apply;

(2) For a proposal in the NC district, Section 3.466 shall apply; and

(3) For a proposal in the GC, EC or SC district, Section 3.526 shall apply;

(G) Subsection 3.404 shall apply to access, subsection 3.406 shall apply to off-street parking, and subsection 3.419 shall apply requiring design review; and

(H) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas.

K. Subsection 4.205(B) is amended to read:

(B) Residential uses permitted in the MR-4 district, when found to satisfy the approval criteria of subsection 4.019.

L. Subsection 4.305(B) is amended to read:

(B) Residential uses permitted in the MR-3 district when found to satisfy the approval criteria of subsection 4.019.

M. Subsections 4.405(B), 4.505(C), and 4,605(B) are amended to read:

Residential uses permitted in the HR-2 district, when found to satisfy the approval criteria of subsection 4.019.

N. Subsection 4.208 is amended to read:

4.208 BUSINESS OR PROFESSIONAL OFFICE OR CLINIC APPROVAL CRITERIA.

In approving a business or professional office as a use under subsection 4.205(A), the approval authority shall find that the proposal will satisfy the following:

(A) The total gross floor area of the proposed use and the uses listed in subsection 3.804, which are located within an LC district area uninterrupted by another zone district, shall not exceed 15,000 square feet;

(B) Access to the proposed use shall be provided in the manner described in subsection 4.009(A);

(C) There shall be no vacant parcel of sufficient size for the use designated BPO, NC, GC, EC, or SC, within one mile of the site, unless the application includes a written offer to purchase each vacant parcel at current assessed value, together with a refusal in writing signed by the parcel owner. The Planning Director shall assist in identifying the vacant parcels described;

(D) Lighting associated with the proposed use shall be as described in subsection 4.009(D);

(E) Parking shall be as specified in Section 6.20, except that not more than 125% of the spaces required shall be provided;

(F) Signs associated with the proposed use shall be subject to the provisions of Section 3.808;

(G) Paved pedestrian walks shall connect to the public sidewalk(s) abutting the property. A sidewalk shall be constructed along any street lot line of the property, where none exists, as a committed part of the development. Pedestrian walks shall also be provided from building entrances to parking areas;

(H) The proposal shall comply with strategy 1E of Powellhurst Community Plan Policy No. 23, if the property abuts S.E. 82nd Avenue in that Community;

(I) All utilities shall be underground;

(J) The proposal shall comply with the dimensional requirements of subsection 3.809 and the exceptions of subsection 3.812; and

(K) The proposal shall be located:

(1) In a structure occupied by a permitted primary use, or

(2) In a structure the height of which does not exceed the height of any residential structure on an abutting property designated for low or medium density residential use, if any, for a distance of 35 feet from the property line; if there is no abutting property designated for low or medium density residential use, the maximum height shall be as specified in subsection 4.207(G).

O. Subsection 4.209 is deleted, and subsection 4.205(A) is revised to read:

(A) Office and other uses listed in subsection 3.804 and associated uses listed in subsection 3.805(B) when found to satisfy the approval criteria of subsection 4.208.

P. Subsection 5.008 is amended to read:

5.008 AIRPORT-RELATED AND OTHER COMMERCIAL USE APPROVAL CRITERIA.

In approving an airport-related commercial use under prescribed conditions, the approval authority shall find that the proposal will:

(A) Be located within two miles of a public airport;

(B) Be located within a five minute drive of the airport terminal assuming a trip can be made at an average of 75% of the posted speed limits applicable;

(C) Comply with subsection 3.808 regarding signs;

(D) Include a commitment to make improvements required by Ordinance No. 162, and rules adopted thereunder;

(E) Provide access in the manner described in subsection 4.009(A);

(F) Provide parking as specified in Section 6.20, except that not more than 125% of the required number of spaces shall be provided;

(G) Be within one-quarter mile of a public transit stop or other passenger pickup and delivery service to and from the airport;

(H) Comply with the dimensional standards of subsection 5.208(A); an exception as described in subsection 5.208(B) shall not be required;

(I) Provide that any outside storage of vehicles shall include:

(1) 25 square feet of landscaping within storage areas for every 20 vehicle spaces, or

(2) A sightobscuring screen, not to be less than a solid hedge capable of growth to six feet in height and three feet in width within two growing seasons, or a solid fence at least six feet high;

(J) Provide that outside storage of any other tangibles shall include a sight-obscuring screen as described in subpart (J)(2) above;

(K) Not incorporate blue colored lights or rows of lights resembling aircraft guidance lighting; and

(L) Provide that any noise-sensitive uses, such as a hotel, motel or office, shall be designed for an interior noise level not to exceed 45 L_{dn}.

Q. Subsection 5.009 is deleted; the reference in subsection 5.205(C) to subsection 5.008(C) through (G) is changed to subsection 5.008(C) through (F); and the reference in subsection 5.205(E) to subsection 5.009 is changed to subsection 5.008(C) through (F), and (I) through (K).

R. Subsections 3.425(C) and (D), 3.465(C) and (D), and 6.440(A)(1) are amended to delete reference to subpart (a) of subsection 12.25.3.

S. Subsections 3.366(F)(3), 3.377(H)(4), and 3.387(H)(4) are amended to read:

The maximum height for a single-family duplex, or milti-plex dwelling on a flag lot or a lot having sole access from an accessway, private drive or easement shall be 1-1/2 stories or 25 feet, whichever is less, except that the maximum height may be 2-1/2 stories or 35 feet, whichever is less, provided:

(a) the proposed dwelling otherwise complies with the applicable dimensional requirements,

(b) a residential structure on any abutting lot either is located 50 feet or more from the nearest point of the subject dwelling, or exceeds 1-1/2 stories or 25 feet in height, and

(c) windows 15 feet or more above grade shall not face dwelling unit windows or patios on any abutting lot unless the proposal includes a commitment to plant trees capable of mitigating direct views without loss of useful solar access to any dwelling unit, or that such trees exist and will be preserved.

SECTION 6. AMENDMENTS OF THE WILLAMETTE RIVER GREENWAY DISTRICT.

Note: Material underlined is added; material crossed out is deleted.

Subsection 6.63.2 of Ordinance No. 100 is amended to read as follows:

6.63.2 EXCEPTIONS.

A Greenway Permit shall not be required for the following:

a. Farm use, as defined in ORS 215.203(2)(a) ~~(1977 Replacement Part), including buildings and structures accessory thereto;~~

~~b. A single family dwelling in conjunction with farm use, when located 150 feet or more from the ordinary low water line of the Willamette River;~~

~~c.~~b. The propagation of timber or the cutting of timber for public safety or personal use ~~or the cutting of timber in accordance with the Forest Practices Act from a farm woodlot of less than 20 acres as described in the definition of "farm use" in ORS 215.203;~~

Subparts d. through l. are re-lettered c. through k., respectively.

SECTION 7. AMENDMENT OF RURAL PLANNED DEVELOPMENT SECTION.

Note: Material added is underlined; material crossed out is deleted.

Subsection 7.104 of Ordinance No. 100 is revised to read:

7.104 DENSITY.

The number of dwellings permitted on an RPD site shall be determined by dividing the gross site acreage by the following divisors:

DISTRICT	DIVISOR
MUA-20	10
MUF-19	10
MUF-38	20
RR	3
RC	0.5

(Subsections 7.104.1 and 7.104.2 are unchanged.)

SECTION 8. AMENDMENT ADDING PERMIT PROVISIONS FOR HISTORICAL STRUCTURES AND SITES.

Ordinance No. 100 is amended by adding the following subsection:

12.73.5 PERMITS FOR HISTORICAL STRUCTURES AND SITES.

The following requirements and procedures shall apply in addition to the provisions of the State Building Code, to a permit application under MCC 9.10.030, Building Code, concerning any historical building as defined in subsection 1.255 or any building structure or premises classified HP under subsection 6.803 or catalogued as a historic site or structure under the Historic Features Section of the Comprehensive Framework Plan.

(A) In addition to the other applicable provisions of this Ordinance, approval of a building permit to enlarge, alter, repair, improve or convert a building or structure described in subsection 12.73.5 or to erect, construct, locate or relocate a building or structure on any premises so described, shall also be subject to the applicable design review provisions of Section 7.60 through 7.621.

(B) In addition to the final design review criteria listed in subsection 7.618 and the standards and exceptions of subsections 7.619 and 7.620, approval of a final design review plan for a building or structure described in subsection 12.73.5 shall be based on the following criteria:

(1) The appearance as to the design, scale, proportion, mass, height, structural configuration, materials, architectural details, texture, color, location and similar factors shall relate harmoniously with the historical characteristics of the premises and of any existing building or structure, consistent with Building Code requirements.

(2) The factors listed in subpart (B)(1) which have previously been changed and which significantly depart from the original historical character of the premises, building or structure, shall be restored to the maximum practical degree, within limitations of the scope of the work proposed under the permit.

(C) An application for a permit to remove or demolish a building or structure described in subsection 12.73.5 shall be subject to the following:

(1) The permit shall not be issued for 120 days following the date of filing, unless otherwise authorized by the Board under subpart *7) of this subsection.

(2) The permit application shall be considered an action initiated by the record owner or the owner's agent, under subsection 12.21.2.

(3) Except as otherwise provided in this subsection, the application shall be subject to the provisions of Section 12.20 through subsection 12.29.3, and subsections 12.34 through 12.37.5 of this Ordinance.

(4) A hearing on the application shall be held by the Planning Commission.

(5) The decision of the Planning Commission shall be in the form of a recommendation to the Board:

(a) The Planning Commission may recommend measures to preserve the building or structure, with or without conditions, including by purchase, trade, relocation, or by approval of a change of use notwithstanding the use limitations of the district; or

(b) The Planning Commission may recommend removal or demolition of the building or structure based upon a finding that practical preservation measures are inadequate or unavailable.

(c) The Planning Commission recommendation shall be based upon findings in relation to the applicable policies of the Comprehensive Plan.

(6) The Planning Commission decision shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced.

(7) The Board shall conduct a de novo hearing on the application under the provisions of subsections 12.34 through 12.37.5.

(8) In the event the Board fails to act on the application within the 120 day period specified in subpart (C)(1) of this subsection, the Building Official may issue the permit.

(D) Notwithstanding the provisions of MCC 9.10.090 and subsections 4.010 through 4.017 of this Ordinance, action to abate an unsafe building nuisance or an abandoned drive-in business nuisance, by demolition or removal of a building or structure described in subsection 12.73.5, shall be subject to the provisions of subsection 12.73.5(C).

(1) EXCEPTION. Abatement of an unsafe building or structure may proceed under MCC 9.10.090, upon a finding by the Director of Environmental Services that the condition of the building or structure is beyond practical repair or restoration or is a continuous threat to the safety of life or property which cannot otherwise be eliminated.

ADOPTION.

This Ordinance being necessary for the health, safety and general welfare of the people of Multnomah County, shall take effect on August 14, 1980, according to Section 5.50 of the Charter of Multnomah County.

ADOPTED this 15th day of July, 1980, being the date of its 2nd reading before the Board of County Commissioners of Multnomah County, Oregon.

FOR THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON

By _____
Presideng Officer

Authenticated by the County
Executive on the 15th day of July, 1980.

_____
DONALD E. CLARK, County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY
County Counsel for
Multnomah County, Oregon

By _____
Laurence Kressel
Deputy County Counsel

ATTACHMENT 1 OF

ORDINANCE NO. 236 (D/1)

Before the Board of County Commissioners

of Multnomah County, Oregon

July 15, 1980

FINDINGS IN RESPONSE TO CITIZEN TESTIMONY ON REVISIONS OF THE COMPREHENSIVE PLAN AND ZONING ORDINANCE

Certain objections have been raised in recent public hearings by citizens and public interest group representatives concerning the proposals for revision of the Comprehensive Plan and the zoning ordinance designed to comply with Statewide Planning Goals 3 and 4.

The Board makes the following findings in response to the points raised:

A. The Comprehensive Plan and zoning adopted for the rural areas in 1977 are adequate to meet Goals 3 and 4.

The Board finds:

1. The plan and ordinances were adopted by the Board with the view that they complied with the Goals.

2. In the Continuance Order of April 1, 1980 and in ruling on the Petition for Review No. 77-031, LCDC found that these goals were not met.

3. The Continuance Order states that the agricultural and forest zone lot sizes are too small and the siting standards for dwellings are too lenient to satisfy the Goals.

4. Additionally, only about 25 percent of the MUA-zoned land is eligible for exception from Goal 3, according to the Petition for Review ruling. The balance must be reclassified as exclusive farm use zoning (EFU).

B. There has not been sufficent opportunity for citizen involvement in the proposed revisions and no changes have been made as a result of testimony at the hearings.

The Board finds:

1. The Planning Commission held two public nearings in the rural areas, for which mailed, posted and published notice was given.

2. The staff held an additional public information meeting at Corbett with notice given by the local people.

3. The Planning Commission conducted two additional public hearings and the Board four hearings. Published notice was given for each of these.

4. At these meetings and hearings there were copies available of the continuance order summary, staff memos, guides to the draft ordinances, copies of the draft ordinances, resolutions and findings, an analysis of the data and technical information and of the alternatives considered, and a draft of the revised MUS Exceptions statement. Charts and maps of the proposals were displayed and explained. Data base maps and proposed zoning maps were also available for inspection. The process and the schedule of public meetings and hearings was described. Full opportunity was given at each hearing to ask questions and to give testimony and evidence. Written and taped records were made and summaries published. All of these materials were also available at the planning division office.

5. The minimum time allotted in the Continuance Order and the limited staff and Planning Commission resources were fully utilized in affording opportunities for citizen involement.

6. Citizen activity toward improvement of the plan and ordinances should continue after adoption of the revisions. Staff and the Planning Commission will offer assistance and technical information.

7. Changes made in the zoning ordinance drafts through the hearings process include:

   a. Modification in the aggregation requirements in EFU and MUF.

   b. Lot size revisions in EFU and MUF from 80 and 40 acres to 76, 38 and 19 acres.

   c. Farm dwelling approval proceedings in EFU for substandard lots of record of any size.

   d. Homestead lot provision in EFU.

   e. Mortgage lot provision in EFU, CFU, and MUF.

   f. Vested rights criteria in EFU, CFU, and MUF.

   g. Requirement for notice to all involved persons of an appeal hearing on a farm management plan proposal in EFU.

   h. Revised provisions describing the nature and content of the "farm management plan" in EFU.

C. The County should delay final action until September 1 to provide more time for citizen review.

The Board finds:

1. The LCDC 120-day Continuance Order expires on July 18. The County is not eligible for the 90-day extensions offered to jurisdictions filing plans for the first time.

2. The County agreed to the 120-day time period.

3. Failure to meet the July 18 closing date will result in forfeit of the $22,000 of grant assistance money from LCDC for last fiscal year, plus $11,000 for this year.

4. Delay would retain the interim development provisions of Ordinance No. 226, which are more stringent than the proposed regulations as well as being time-consuming for applicants and costly to administer.

5. The opportunity for citiznes to work for refinements and changes in the plan and ordinances does not end with adoption of the draft ordinances.

D. The County should reject the Continuance Order and resolve not to comply with the Statewide Goals.

The Board finds:

1. Compliance with the Goals is required by state law.

2. The alternatives to compliance, including the possible termination of all land developments in the unincorporated area are unacceptable.

3. The County's objectiwes are:

   a. To comply with the Goals,
   b. To make as few changes as are necessary to achieve compliance,
   c. To enact provisions which will result in the least amount of red-tape or uncertainty for owners or applicants,
   d. To hold administrative costs to the minimum.

E. Multnomah County is an urban county and should not have to carry the burden of agricultural lands preservation and forest lands conservation to the degree required of the other counties.

The Board finds:

1. Goals 3 and 4 apply equally to all those lands within the State which fall within the definitions of "agricultural lands" and "forest lands".

2. There are substantial acreages of agricultrual and forest lands in the County which are uncommited and unneeded for urban or suburban uses.

3. The factors of a healthy and diversified economy, of energy conservation and of environmental quality, among others, make it important to retain food and timber-producing lands and significant natural areas and resources in close proximity to the metropolitan community.

F. There are only a few full-time farms in Multnomah County and those are on Sauvie Island, for the most part. The Exclusive Farm Use zone should apply

only to full-time farms.

The Board finds:

1. Goal 3 applies to all Class 1-4 lands in Western Oregon which are uncommitted or unneeded for other than agricultural purposes.

2. EFU zoning is required to be applied to such lands, without distinction as to full-time or part-time.

3. The 1974 Census of Agriculture shows that 44 percent of Oregon farm operators work off the farm more than 100 days/year, and that 48 per cent of the operators earn the larger portion of their incomes away from the farm.

G. Aggregation of adjoining lots in one ownership to comply with minimum lot sizes is not required by the Goals and should not be a part of the County's zoning.

The Board finds:

1. The Goals do not expressly require aggregation.

2. Previous rulings by LCDC and the Courts have required aggregation in specific cases.

3. The Final Order in Petition for Review No. 77-031 did not exempt sub-standard lots in contiguous ownership from Goal 3 requirements.

4. The aggregation provisions is a part of the "mix" of zoning requirements for agricultural and forest land development to satisfy the Goals. If aggregation were deleted, other provisions would need to be strengthened or enlarged to meet the same objectives.

5. Aggregation has always been required in urban area residential zones and in EFU and CFU since 1977.

6. Aggregation helps to achieve the objective of retaining rural lands in large parcel sizes for farm and forest use where commitments to other uses have not been made.

7. Prior divisions of land without sales or improvements are not considered a commitment to use. Generally, such divisions have been held by the Courts not to constitute non-conforming uses.

8. Aggregation treats all owners equally in considering all continguous land in one ownership as one parcel.

9. Aggregation under the draft ordinances is required only to the extent necessary to meet minimum lot sizes under the "primary use" or "uses under prescribed conditions" standards. These standards do not preclude applications for approval of Lots of Exception, Rural Planned Developments, or non-farm or non-resource dwellings.

10. There are about 40 subdivisions with sub-standard lots in rural Multnomah County which pre-date the Goals. They were created some 50 to 80 years ago, are largely undeveloped and have little investment in support services. Most ownerships consist of multiple lots which are managed as one parcel for farm or forest uses. Aggregation requires that these properties be developed for uses in accord with Goals 3 and 4.

H. The revised EFU standards will promote the demise of family farms and increase corporate farm ownership. Alternatively, the revised EFU standards will promote hobby farming and the loss of commercial agriculture.

The Board finds:

1. The primary use lot size standards for farm uses under the revised EFU zone are generally consistent with current ownership sizes on Sauvie Island and in East County and are the minimum necessary to assure continued commercial agricultural use without further tests.

2. The revised provisions for farm management plans, to allow farm use lot sizes down to 38 acres on Sauvie Island and 19 acres elsewhere are designed to require demonstration that such sizes can continue the commercial agricultural use. Lots of Record below these sizes may be developed under the same test, or under the standards and procedures for a non-farm dwelling, at the option of the owner.

I. Owners of properties which are down-zoned should be compensated for the loss of value.

The Board finds: that the only compensation provisions currently available under Oregon law are in the revisions in assessed values occasioned by re-zoning and in the several tax deferral measures applicable to farm and forest lands.

J. Owners who have begun development of dwellings in accord with the provisions of the 1977 Ordinance, should not lose their rights to complete them.

The Board finds:

1. The revisions under subsections 3.108.5 (EFU), 3.118.5 (CFU) and 3.148.5 (MUF) are adequate and appropriate to the protection of sufficient vested rights in such cases.

2. The provisions of these sections do not create rights beyond those held under the prior ordinances.

K. There is a need for additional housing in the rural areas to accommodate anticipated population growth. Farm and forest lands should be available for this purpose.

The Board finds:

1. According to Metro, there is sufficient buildable land inside the Urban Growth Boundary to satisfy foreseable needs for housing.

2. Vacant buildable lands inside the UGB in unincorporated Multnomah County are adequate for the anticipated housing needs to 2000.

3. There remain 3,500 acres of MUA-zoned land outside the UGB which are not subject to the farm or forest tests for residential use on 20-acre minimums or on Lots of Record without aggregation. These lands are distributed throughout the West Hills, Orient and Corbett areas.

4. There are 1,500 acres of Rural Residential (RR)-zoned land outside the UGB not subject to the farm or forest tests for residential use on five-acre minimums or on substandard Lots of Record, unaggregated.

5. There are an additional 500 acres zoned RC-Rural Center, which permits one acre dwelling sites. There are seven such centers in rural Multnomah County.

6. In EFU and MUF substandard Lots of Record and lands unsuited to farm or forest use are eligible for consideration for non-farm or non-forest dwellings under the conditional use procedures.

7. In the MUA, MUF, RR and RC districts, rural residences may be located on non-farm and non-forest lands at twice the standard minimum densities, under an approved Rural Planned Development.

L. Farmers need to sell off development lots in times of economic hardship in order to sustain the agricultural use.

The Board Finds:

1. There is no easy solution to this problem.

2. The general sale of farm acreage in this manner tends to erode the commercial agricultural potential of the remaining land and to drive up its value for non-farm purposes.

3. The revised EFU zone permits the approval of smaller farm acreages under a farm managment plan designed to assure continued farm use.

4. The EFU revisions also allow for the approval of homestead lots and for non-farm dwellings under established standards. In the latter case, non-farm lots and dwellings may be approved where the continued commercial agricultural use of the area is not impaired.

M. The revised EFU standards do not assure that the existing commercial agricultural enterprises will be continued.

The Board finds:

1. Goal 3 also requires that "agricultural lands be preserved and maintained for farm use, consistent with existing and future needs for agricultural products ..." (emphasis supplied)

2. Data on agricultural use in Multnomah County already indicates a measurable shift toward food crops to meet the metropolitan area needs.

3. Factors of energy conservation, transportation, and other cost increases and the status of the economy will work to continue this trend.

4. The EFU revisions provide for the continued use of agricultural lands for commercial agriculture while accommodating needed changes in the range of agricultural enterprises and products.

N. The homestead lot provision is unnecessary and will only increase the supply of non-farm dwellings. A life-estate arrangement will achieve the needs of retiring farmers.

The Board finds:

1. The life-estate approach is generally unsuited to the needs of retiring farmers. It forces occupancy only by the seller, limits flexibility of retirement choice and does not create marketable value.

2. An existing farm house is consistent with agricultural uses in the area.

3. The draft provision offers some financial relief for owners who don't usually generate retirement resources other than the values of land and dwelling.

4. The number of potential homestead lots is limited and the adverse impacts on the agricultrual qualities of the area are minimal.

O. There is a need to preserve land for agricultrual produce in the near urban area. Agricultural lands must be protected from speculation in rural residential developments which drive up land costs and make investments in farm land improvements and in equipment risky. There are economics of scale which are important to successful farm enterprises.

The Board finds: that the revised EFU zone provisions are designed with protective measures and degrees of flexibility appropriate to the above objectives and factors.

P. The revision of the Comprehensive Plan concerning sanitary land fills represents County approval of the landfill proposed by Metro at the "Jeep Trail Site".

The Board finds:

1. The LCDC Continuance Order provides that to comply with Goal 11, Public Facilities and Services, the County must:

"Adopt solid waste facility siting criteria formed in Policy 13, consistent with Metro's regional criteria".

2. The Comprehensive Framework Plan revision in Section 9 of draft ordinance PC 12-80A satisfies the above requirement, but makes no commitment to the approval of any landfill site.

3. The siting of landfills is subject to State law provisions, the Statewide Planning Goals, Metro's regional siting criteria and, if in unincorporated Multnomah County, the policies of the Comprehensive Plan and the standards and procedures of the Zoning Ordinance .

4. The proposal for a landfill at the "Jeep Trail Site" has not been approved by Metro or presented to Multnomah County for action.

BEFORE THE MULTNOMAH COUNTY
PLANNING COMMISSION

In the Matter of recommending to the Board of County Commissioners the adoption of an Ordinance amending the Zoning Ordinance, Ordinance No. 100, in order to comply with the Continuance Order of the Land Conservation and Development Commission of April 1, 1980.	)	RESOLUTION PC 12-80 D/1

WHEREAS, the April 1, 1980 Continuance Order of the Land Conservation and Development Commission declares that the Multnomah County Comprehensive Plan and implementing measures do not yet comply with Statewide Planning Goals Nos. 2, 3, 4, 5, 6, 11, 14 and 15 for the reasons set forth in the Department of Land Conservation and Development report; and

WHEREAS, the Commission granted a 120-day continuance of the County's acknowledgement request so that the County may complete the additional planning work described in the Order; and

WHEREAS, the Planning Commission has reviewed the Continuance Order, alternative proposals for plan revisions, ordinance amendments and prospective findings and has considered public testimony thereon at work sessions and community workshops; and

WHEREAS, at a public hearing on June 9, 1980 the Planning Commission considered Draft Ordinance PC 12-80D/1 amending Ordinance No. 100, the Zoning Ordinance, prospective findings in support thereof, and public testimony thereon, and finding the ordinance to be necessary to comply with the LCDC Continuance Order; now therefore, be it

RESOLVED, that the Planning Commission adopts the findings in support of Draft Ordinance PC 12-80D/1, which are attached hereto; and be it further

RESOLVED, that the Planning Commission recommends adoption by the Board of County Commissioners of Draft Ordinance PC 12-80D/1.

Dated this _____ day of _____, 1980.

MULTNOMAH COUNTY PLANNING COMMISSION

By _____
Gregory Macpherson, Chairperson

APPROVED AS TO FORM

JOHN B. LEAHY, County Counsel
for Multnomah County

By _____
Laurence Kressel
Deputy County Counsel

PLANNING COMMISSION OF MULTNOMAH COUNTY, OREGON

FINDINGS IN SUPPORT OF DRAFT ORDINANCE PC-12-80 D/1 TO AMEND THE ZONING ORDINANCE, ORDINANCE NO. 100

June 9, 1980

1. The LCDC Continuance Order requires revisions of the Comprehensive Framework Plan and the Community Plans and amendments of the Zoning Ordinance. Since several documents are involved it is convenient to prepare a series of ordinance drafts which together encompass the needed changes. Draft Ordinance PC 12-80 D/1 would amend the Zoning Ordinance, Ordinance No. 100.

2. Planning Commission findings, staff recommendations and a discussion of alternatives concerning amendments of the agricultural use zone districts EFU-38 and MUA-20 are contained in attached Appendix A.

3. Planning Commission findings, staff recommendations and a discussion of alternatives concerning amendments of the forest use zone districts CFU-38 and MUF-20 are contained in attached Appendix B.

4. Several subparts of Ordinance No. 100, as amended by Ordinance No. 205, were challenged in Stout v. Multnomah County as containing uses under prescribed conditions approval criteria and other provisions too vague or discretionary to properly guide the associated administrative actions. The County agreed to the need for revisions of the subparts listed in a December 31, 1979 letter from County Counsel to the LCDC Hearings Officer. The Officer's concurrence with the agreement was accepted by LCDC on January 31, 1980.

5. Multnomah County's Willamette River Greenway District (Section 6.60 of the Zoning Ordinance) exempts farm dwellings and structures beyond 150 feet of ordinary low water (Sec. 6.63.2 a and b) and cutting of timber from a farm woodlot of less than 20 acres (Sec. 6.63.3.c) from the WRG permit process. The Greenway Goal (#15) requires that counties establish provisions by ordinance for the review of intensifications, changes of use, or developments to insure their compatibility with the Greenway. The LCDC Continuance Order findings state that the County must amend its' Willamette River Greenway overlay zone to provide for review of farm dwellings and structures and all timber cutting except that for public safety or personal use.

6. Implementation measures are required to assure the preservation of designated buildings, structures and sites of historical significance. These features are located on properties with a variety of zoning map classifications, including CS, WRG, SEC and HP. Provisions for review and action on proposed changes in the historical features, located in the permits and certificates section of the Zoning Ordinance would cover the range of zoning overlay map classifications. Such measures need to include:

   A. Design review criteria and processes for exterior remodeling, additions or renovations of existing structures and for new structures on designated sites to assure visual compatibility.

   B. A time period for public review and action on alternative means to preserve buildings or structures of historical significance which are proposed to be demolished or removed.

year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(L) Transmission towers over 200 feet in height.

(m) Dog kennels not described in paragraph (j) of subsection (1) of this section.

(n) Residential homes as defined in ORS 197.660, in existing dwellings.

(o) The propagation, cultivation, maintenance and harvesting of aquatic species.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

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

(s) A destination resort which is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(3) Subject to ORS 215.288, single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

(a) Is compatible with farm uses described in ORS 215.203 (2) and is consistent with the intent and purposes set forth in ORS 215.243;

(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203 (2)(c), on adjacent lands devoted to farm use;

(c) Does not materially alter the stability of the overall land use pattern of the area;

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

(e) Complies with such other conditions as the governing body or its designate considers necessary.

(4) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7; 1987 c.227 §2; 1987 c.729 §5a; 1987 c.886 §10; 1989 c.224 §27; 1989 c.525 §2; 1989 c.564 §9; 1989 c.648 §61; 1989 c.739 §2; 1989 c.837 §27; 1989 c.861 §2; 1989 c.964 §11; 1991 c.459 §348; 1991 c.950 §1]

215.285 [Formerly 215.200; repealed by 1971 c.13 §1]

215.288 Impact of using marginal lands designation or lot-of-record provisions in exclusive farm use zones. (1) If a county does not amend its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county may apply ORS 215.213 (1) to (3) or 215.283 to land zoned for exclusive farm use under ORS 215.203.

(2) If a county amends its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county shall apply ORS 215.213 (1) to (3) to land zoned for exclusive farm use under ORS 215.203. [1983 c.826 §16; 1985 c.565 §33; 1985 c.811 §8]

215.290 [Repealed by 1963 c.619 §16]

215.293 Dwelling in exclusive farm use zone; condition; declaration. A county governing body or its designate may require as a condition of approval of a single-family dwelling under ORS 215.213 or 215.283 that the landowner for the dwelling sign a statement declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use. [1983 c.826 §11]

Note: 215.293 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

In the Matter of CU 20–93, Review of a Decision of the Hearings Officers Denying a non-resource related single family residence, for property at 31705 SELusted Road	)))))	**FINAL ORDER** 93-372

On September 28, 1993, the Board of County Commissioners conducted a public hearing on the record plus additional testimony in the above entitled matter. Based on the evidence and argument of the parties, it is ORDERED:

1) The Decision of the Hearings Officer is reversed, and
2) The following Findings and Conclusions are adopted and made a part of this order.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

November 10th, 1993

By _____
Beverly Stein, Chair

REVIEWED
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By _____
John DuBay, Chief Deputy County Counsel

Decision of the Board of County Commissioners CU 20-93

September 28, 1993

Conditional Use Request
(Non-Resource Related Single Family Dwelling)

Applicant requests Conditional Use approval for a non-resource related single family dwelling on a 3acre Lot of Record in the EFU zoning district.

The Hearing Officer denied this request in a decision dated August 5, 1993. The applicant filed a Notice of Review and requested permission to submit new evidence in addition to the record before the Hearings Officer. The Board held a public hearing on the appeal on September 28, 1993.

Location:	31705 SE Lusted Road
Legal:	Tax Lot '32', Section 17, T1S, R4E, 1992 Assessor's Map
Site Size:	3 acres
Size Requested:	Same
Property Owner:	Betilue Lundbom 31847 SE Lusted Road Gresham, OR 97080
Applicant:	Same
Comprehensive Plan:	Agriculture
Present Zoning:	EFU, Exclusive Farm Use District

DECISION APPROVE, subject to conditions, this request for a non-resource related single family dwelling, based on the following Findings and Conclusions.

FINDINGS OF FACT:

1. Based on the new evidence and argument from the applicant's representatives at the September 28 hearing, the Board finds there is substantial evidence now in the record to overturn the Hearings Officer's denial on all points.

2. The Board adopts the August 2, 1993 Staff Report, except as noted below, and adds the findings presented below to reflect the new evidence presented by the applicant at the appeal hearing September 28.

3. MCC .2012(B)(3) EFU Approval Criteria.

MCC 11.15.2012(B): The following uses may be permitted when approved by the Hearings Officer pursuant to the provisions of MCC .7105 to .7140:

(3) Residential use not in conjunction with farm use, consisting of a single family dwelling, including a mobile or modular home. The lot shall be a Lot of Record under MCC .2018 or have been created under the provisions of MCC 11.45, Land Divisions. The Hearings Officer shall find that a dwelling on the lot as proposed:

MCC .2018(A)(2) Lot of Record

The Board finds that the subject property is a Lot of Record under this section, for the reasons stated in the Staff Report and because the applicant submitted new evidence that supports this conclusion, including a 1980 letter to the applicant from Larry Epstein of the County Land Development Section addressing the Lot of Record issue. The letter concludes that "each lot you own individually will be treated as a separate lot of record." The subject property, Lot 32, is listed as being in the ownership of "Betty Lundbom," the applicant here.

MCC.2012(B)(3) (a)-(d)

(a) **Is compatible with farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243.**

The Hearings Officer noted a lack of information to determine whether the proposed dwelling would be compatible with existing farm uses. The applicant has submitted a map describing the crops grown in the area. The applicant has also presented letters from an agriculture expert and from neighboring land owners concerning the existing farm use in the area. The letters state that neither existing dwellings nor the proposed dwelling pose compatibility problems for area farmers. The Board finds the letter from Barry Bushue of the Multnomah County Farm Bureau especially informative. The applicant also introduced a set of aerial photographs which show that the historic pattern of dwellings mixed with farm use has not been altered with the addition of five dwellings since 1977. As shown on the aerial photographs, the dwellings tend to cluster near the road system, while the farms continue to occupy the larger areas between the roads. The proposed dwelling would continue that pattern.

Based on this new information, and on the findings under this criterion in the Staff Report, the Board finds that the proposed use is compatible with the farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243, as required by MCC .2012(B)(3).

(b) **Does not seriously interfere with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use.**

The applicant has introduced expert testimony on this subject from the Farm Bureau's representative. He stated that he has lived and farmed in the vicinity of the proposed homesite, and 'it is my professional opinion, and that of the Multnomah County Farm Bureau Board of Directors, that a home would be compatible with the existing farming practices and would not cause them to be altered in any manner."

None of the landowners who submitted letters to the county objected to the proposed dwelling on the subject property. The letter from Glendale Farms stated that "[w]e have houses all around our property and it certainly hasn't kept us from farming."

The Farm Bureau's Bushue stated that he has reviewed the farm crops within a five mile area and is familiar with the farming practices used for each. He identified the farming activities as primarily Christmas trees, nursery stock, berries, pasture and some vegetables. Bushue concluded that "[a] house at the proposed location will not only be compatible but it will cause no serious change in farming practices in my opinion."

For these reasons, including the findings under this criterion in the Staff Report, the Board finds that the proposed dwelling does not seriously interfere with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use, in compliance with this section.

(c) **Does not materially alter the stability of the overall land use pattern of the area**

The two aerial photographs entered into the record illustrate the relationship between the farm use and the dwellings in the area of the subject property. The photographs show that despite the addition of five dwellings between 1977 and the present, the overall pattern of land use has not changed. The Board also adopts the Staff Report findings describing the land use pattern in the area.

The proposed dwelling will be continue the mixed use pattern in the area, with dwellings clustered near the roads, and the farms occupying the larger parcels away from the roads. The fact that the pattern has not changed since 1977 despite the addition of several dwellings indicates a solid stability that will not change with the addition of the proposed dwelling.

For these reasons, the Board finds that the addition of this dwelling will not materially alter the stability of the overall land use pattern of the area.

(d) **Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.**

The applicant has submitted convincing evidence showing that the subject property is

generally unsuitable for agriculture and livestock, considering adverse soil condition, drainage, location and size of the tract. The Board finds the testimony of the Multnomah County Farm Bureau persuasive. The letter from Bureau President Barry Bushue concludes:

"Without tremendous expenditures for tiling, drain fields and fumigation, the area and parcel proposed for the house is not well suited for production of the typical crops of the area. Pasture use is no longer economically viable since the dairy left the area, and grain in such small acreages is useless for anything other than a cover crop."

The owners of Glendale Farms testified in writing that they operated a dairy for 50 years in this area "until it became economically not feasible for us to operate any longer." The Board finds that the closing of the nearby dairy means less potential demand to use the subject property for pasture because of its location.

The evidence shows it is not economically feasible to farm such a small parcel in this location with these soil problems. The Board finds that the parcel is generally unsuitable land for the production of farm crops and livestock, in compliance with this section.

These findings replace the Staff Report findings for this subsection.

MCC.2012(B)(3) (e) -(k)

The Board adopts the findings contained in the Staff Report for subsections MCC .2012(B)(3)(e)-(k). Plans submitted by the applicant establish that the proposed manufactured house will contain 2056 square feet, thus satisfying MCC .210(A)(3)(c) and .2012(B)(3)(i).

MCC 11.15.2012(B)(3) Conclusion

For all of the above stated reasons, the Board finds that the proposal satisfies the requirements of MCC 11.15.2012(B)(3), and the proposed non-farm dwelling is permitted.

4. MCC .7122 EFU Conditional Use Approval Criteria

Except as noted below, the Board replaces the findings of the 8/2/93 Staff Report under this approval standard, and adds the following findings based on the new evidence submitted by the applicant at the hearing.

(A)(1) Will not force a significant change in accepted farm practices on surrounding lands devoted to farm or forest use.

None of the landowners who submitted letters to the county objected to the proposed dwelling on the subject property. The letter from Glendale Farms stated that "[w]e have houses all around our property and it certainly hasn't kept us from farming."

The Farm Bureau president identified the farming activities within five miles of the subject property as primarily Christmas trees, nursery stock, berries, pasture and some vegetables. He said that is familiar with the farming practices used for each. In conclusion he said that:

"[a] house at the proposed location will not only be compatible but it will cause no serious change in farming practices in my opinion."

For these reasons, the Board finds that addition of one single family dwelling on the subject property will not force a significant change in accepted farm practices on surrounding lands devoted to farm use.

(A)(2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

The applicant has introduced expert testimony from the Farm Bureau that a home would be compatible with the existing farming practices and would not cause them to be altered in any manner. The expert who gave us that opinion said that he has lived and farmed in the vicinity of the subject property.

Based on this testimony, the Board finds that the proposed dwelling will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm use.

MCC 11.15.7122 (B) & (C)

The Board adopts the findings contained in the Staff Report for subsections MCC .7122(B) 8(C).

MCC 11.15.7122 Conclusion

For these reasons, the Board finds that the proposal is in compliance with MCC .7122, and therefore grants the conditional use request.

THEREFORE, THE BOARD ORDERS THAT:

1. The subject property is a three-acre Lot of Record.

2. The applicant has submitted sufficient evidence to demonstrate compliance with the approval criteria in MCC 1 1.1 5.201 2(B) (3) and .71 Z(A) .

3. The applicant has carried the burden necessary for approval of a non-resource related single family dwelling in the EFU zoning district.

4. The Hearings Officer's decision, dated August 5, 1993, is reversed and modified as setforth herein.

5. Approval is subject to the following conditions:

   a. The owner shall record with the Division of Records and Elections a statement that the owner and successors in interest acknowledge the rights of nearby property owners to conduct accepted farming and forestry practices.

   b. Prior to application for building permits, submit evidence that all additional taxes and penalties have been paid if the property has been receiving special assessment. Contact the Tax Assessor regarding this matter.

   c. Apply for a Land Feasibility Study and determine that the site is suitable for an on-site septic system prior to issuance of building permits.

#1

PLEASE PRINT LEGIBLY!

MEETING DATE 28 Sept. 1993

NAME Dr. Richard B. Shepard

ADDRESS 2404 SW 22 St.
STREET

Troutdale, OR 97060-1247
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT _____ **OPPOSE** ✓

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME CHRIS WRENCH

ADDRESS 3103 NW Wilson

STREET Pdx. 97210

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5 C-5-93

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 9-28-93

NAME KLAUS HEYNE HEYNEY

ADDRESS 41101 SE Cougar Rd.

STREET Carnation, 98014

CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P5

SUPPORT _____ OPPOSE ✓

SUBMIT TO BOARD CLERK

#4

PLEASE PRINT LEGIBLY!

MEETING DATE 9-28-93

NAME Susan Fry

ADDRESS 123 N.E. Littlepage Rd
STREET

Corbett 97019
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # R 5

SUPPORT _____ **OPPOSE** X

SUBMIT TO BOARD CLERK

#5

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME JOHN SHERMAN

ADDRESS 1912 NW ASPEN
STREET

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

6

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME Nancy Rosenlund

ADDRESS 5300 NW Cornell Rd.
STREET

Portland OR 97210
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # C 593 P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

#7

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME Ursa Ficker

ADDRESS 4902 SW Slavin

STREET

Portland OR 97201

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

#8

PLEASE PRINT LEGIBLY!

MEETING DATE 9/08/93

NAME MICHAEL CARLSON

ADDRESS 5151 NW CORNELL

STREET

PORTLAND OR 97210

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # C-5-93

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

#9

PLEASE PRINT LEGIBLY!

MEETING DATE 9-28-93

NAME Lyn MATTEI - OR Natural Resources Council

ADDRESS 522 SW 5th, Suite 1050
STREET
PORTLAND 97204
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

☑ new pb! Extention needed

#10

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME Arnold Rochlin

ADDRESS P.O. Box 83645

STREET Portland, OR 97283

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

LEFT BEFORE CALLED

PLEASE PRINT LEGIBLY!

MEETING DATE 9/28/93

NAME Dan McKenzie

ADDRESS 6125 NW Thompson Rd
STREET
Portland OR 97210
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5
C 5-93

SUPPORT _____ **OPPOSE** X

SUBMIT TO BOARD CLERK

LEFT BEFORE CALLED

PLEASE PRINT LEGIBLY!

MEETING DATE 9-28-93

NAME Jean Ochsner "OWNER"

ADDRESS 1120 SW 5th, Rm 400
STREET

Portland, OR 97204
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

left before called

PLEASE PRINT LEGIBLY!

MEETING DATE 8-28-95

NAME NANCY Chase

ADDRESS 1620 SE 190

STREET Port OR 97233

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # C5-B

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

MEETING DATE: September 28, 1993

AGENDA NO: P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 5-93 - First Reading, Ordinance Amendment

BOARD BRIEFING *Date Requested:* _____

Amount of Time Needed: 1 Hour

REGULAR MEETING: *Date Requested:* September 28, 1993

Amount of Time Needed: 20 Minutes

DEPARTMENT: DES *DIVISION:* Planning

CONTACT: Sharon Cowley *TELEPHONE #:* 2610

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):

C 5-93 Public Hearing - First Reading

A recommended Ordinance which amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 regarding Significant Environmental Concern (SEC) provisions and adopting a map of Significant Streams and Riparian Areas. The proposal would change text in the plan and code in response to Remand Order 93-RA-876 from the State Land Conservation and Development Commission (LCDC). The proposed Ordinance also amends the County's Goal 5 inventory to include the streams map and add a list of the streams designated as "3-C" resources after ESEE Analysis were completed in 1990.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

MULTNOMAH COUNTY

BOARD HEARING OF September 28, 1993

TIME 01:30 p.m.

CASE NAME Significant Streams and Riparian Areas NUMBER C 5-93

ACTION REQUESTED OF BOARD
☑ Affirm Plan.Com./Hearings Officer
☐ Hearing/Rehearing
☐ Scope of Review
☐ On the record
☐ De Novo
☐ New Information allowed

1. Applicant Name/Address

Planning Division
2115 SE Morrison Street
Portland, Oregon 97214

2. Action Requested by applicant

Adopt Maps and Ordinance changes to designate the Significant Streams and Riparian Areas where SEC Permits are required.

3. Planning Staff Recommendation

ADOPTION

4. Planning Commission Action:

RECOMMEND ADOPTION OF PROPOSED ORDINANCE AND MAP

1993 SEP 21 PM 2:02
OREGON

5. If recommendation and decision are different, why?

The Planning Commission added certain streams to the list of 1–B (future study) resources

ISSUES

(who raised them?)

a. County stream protection measures and classifications should match adjoining jurisdictions (*Residents of the Balch canyon requested the County adopt the streams map and extend SEC protections to the streams in the entire watershed. Commission members also noted that several streams in east Multnomah County and the Rock Creek watershed should have the Goal 5 inventory and ESEE analysis work performed as soon as possible to protect the potentially significant resources in those watersheds. The Planning Commission added all streams draining into Burlington Bottoms to the list of 1-B sites for futhre inventory and significance analysis.* This change appears in the text fowarded to the Board*).

Do any of these issues have policy implications? Explain.

This ordinance will update and clarify streategies to implement Plan Policy 16: Natural Areas. The Remand Order from the State LCDC requires the change to the stream classification system used by the County.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. _____

An Ordinance Which Amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding Significant Environmental Concern (SEC) Provisions and Adopting a Map of Significant Streams and Riparian Areas Which Are Designated "3-C" Resource Sites in the Multnomah County Goal 5 Inventory.

Multnomah County Ordains as follows:

Section I. Findings.

(A). In 1988, the County conducted an inventory of significant wetland and riparian habitiat areas in certain rural sections of the County and completed the Economic, Social, Environmental, and Energy (ESEE) analysis required under Statewide Planning Goal 5 for the inventoried sites. The inventory and ESEE designations were adopted as part of the Local Review Order in 1990.

(B). On February 20, 1990, the County amended the *"Significant Environmental Concern"* (SEC) subsection of MCC 11.15. Ordinance Number 643 § 2 added MCC 11.15.6404(C) which requires an SEC Permit for 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. The regulation was intended to protect significant wetland and riparian areas identified in the County's Goal 5 inventory.

(C). Multnomah County's 1990 Local Review Order was reviewed by the Land Conservation and Development Commission (LCDC) on April 23, 1993. The LCDC determined that amendments to the County's comprehensive plan and zoning code are required to comply with Statewide Planning Goals as detailed in Remand Order 93-RA-876; item 8 orders the following:

> *"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."*

(D). On August 2, 1993 the Multnomah County Planning Commission held a public hearing and received oral and written testimony on proposed revisions to the Comprehensive Plan and Zoning Ordinance intended to comply with LCDC Remand Order 93-RA-876 (item 8.). The proposed ordinance would amend the County's Goal 5 inventory by adding a map of Significant Streams and Riparian Areas and a list of streams and riparian areas in the Northwest Hills which were designated "3-C" as a result of the ESEE analysis completed in 1990.

(E). Planning Commission Resolution C 5-93, signed August 20, 1993, recommends that the Board of Commissioners adopt proposed revisions to the Comprehensive Plan and Zoning Ordinance to comply with LCDC Remand Order 93-RA-876. Findings in support of the recommendation are detailed in Exhibit A, the Staff Report to the Board of Commissioners for Planning Case C 5-93.

Section II. Amendments.

Multnomah County Comprehensive Plan Policy 16, Strategy (C)16 is amended as follows; new text is **bolded and underlined** , text appearing in [~~brackets~~] is deleted.

POLICY 16

* * *

STRATEGIES

* * *

C. The following areas shall be designated as "Areas of Significant Environmental Concern":

* * *

16. All [~~Class 1 Streams (Oregon State Forestry Department designation) and the adjacen~~] area**s** within 100 feet of the normal high water line **of a stream or watercourse indentified on the Significant Streams and Riparian Areas map or listed in the Multnomah County Goal 5 Inventory of Significnat Wetlands**, except those within an ESEE designated "2A", "3A", or "3C" mineral and aggregate resource site, and such other areas as may be determined under established procedures to be suitable for this "area" designation.

* * *

The Multnomah County Comprehensive Plan Goal 5 Inventory of Significant Wetlands is amended to include the following:

Table II on page 3 of Exhibit A, which is the list of streams in the "Northwest Hills Wetlands/Riparian Areas" identified as "3-C" resource sites; and

The map depicting Significant Streams and Riparian Areas, a reduced copy of which is attached as page 5 of Exhibit A.

Multnomah County Code Chapter 11.15 is amended to read as follows; new text is **bolded and underlined**, text appearing in [~~brackets~~] is deleted.

11.15.6404 Uses – SEC Permit Required

* * *

(C) Any building, structure, or physical improvement **proposed** within 100 feet of the normal high water level of a [~~Class I stream, as defined by the State of Oregon Forest Practice Rules~~] **stream or watercourse indentified on the Significant Streams and Riparian Areas map or listed in the Multnomah County Goal 5 Inventory of Significant Wetlands,** shall require an SEC Permit under MCC .6412, regardless of the zoning designation of the site, **unless the activity is an exception under MCC .6406.**

11.15.6406 Exceptions

An SEC Permit shall not be required for the following:

* * *

(J) [~~Those Class I streams~~] **Proposed development or physical improvments** located:

(1) Within mineral and aggregate resource areas designated "2A", "3A", or "3C" by a Statewide Planning Goal 5 Economic, Social, Environmental, and Energy (ESEE) analysis, or

(2) Within the Willamette River Greenway.

Section III. Adoption.

This ordinance, being necessary to comply with with LCDC Remand Order 93-RA-876, an emergency is declared and the Ordinance shall take effect upon its execution by the County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

ADOPTED THIS _____ day of _____, 199_, being the date of its _____ reading before the Board of County Commissioners of Multnomah County.

(SEAL)

By _____
Beverly Stein, County Chair
MULTNOMAH COUNTY, OREGON

REVIEWED:

_____
John DuBay, Chief Assistant County Counsel
of Multnomah County, Oregon

BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY

In the Matter of Recommending Adoption of Ordinances Amending the Comprehensive Plan and MCC Chapter 11.15 Concerning Streams and Riparian Resources in the Goal 5 Inventory	))))	**RESOLUTION C 5-93**

WHEREAS, The Planning Commission is authorized by Multnomah County Code, Chapter 11.05 and by ORS 215.110, to recommend to the Board of County Commissioners the adoption of Ordinances to carry out and amend the Multnomah County Comprehensive Plan and its implementing ordinances; and

WHEREAS, Multnomah County's 1990 Periodic Review Order was reviewed by the Land Conservation and Development Commission (LCDC) on April 23, 1993; and,

WHEREAS, The LCDC Remand Order 93-RA-876 found that amendments to the county's comprehensive plan are required to comply with certain Statewide Planning Goals; and,

WHEREAS, Item 8 of the remand order requires the county to amend the comprehensive plan to map or identify the significant streams that are subject to the Significant Environmental Concern (SEC) provisions and amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the Forest Practices Act definition; and,

WHEREAS, In 1988 and 1989, the County completed inventory and analysis of Goal 5 Resources and identified the following watercourses and streams as Significant Wetlands in the Goal 5 inventory and designated as "3-C" (protect Goal 5) resources:

"Northwest Hills Wetlands/Riparian Areas",
"Dairy Creek, Gilbert River, and related drainageways"
"Ditches and Sloughs on Sauvie Islands" ; and

WHEREAS, The Significant Streams identified above were listed and mapped by the Planning Staff and presented at a public hearing on August 2, 1993 where all interested persons were given an opportunity to appear and be heard by the Planning Commission; and,

WHEREAS, The Multnomah County Planning Commission considered and adopted the significant streams list and map as detailed in the C 5-93 Staff Report and as presented at a public hearing on August 2, 1993;

NOW, THEREFORE BE IT RESOLVED that proposed Ordinances which amend the Multnomah County Comprehensive Plan and Zoning Code Chapter 11.15 by changing regulations applicable to development activities within 100-feet of certain watercourses designated on the Significant Streams and Riparian Areas Map and included in the Multnomah County Goal 5 Inventory are hereby recommended for adoption by the Board of County Commissioners.

Approved this 20th day of August, 1993

Leonard S. Yoon, Chair
Multnomah County Planning Commission

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

C 5-93
Exhibit A

Staff Report for the Board of County Commissioners
Hearing on September 28, 1993

I. SUMMARY:

This report accompanies a recommended Ordinance which would amend the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 regarding Significant Environmental Concern (SEC) provisions and adopt a map of Significant Streams and Riparian Areas which were designated "3-C" resource sites in the 1990 Multnomah County Goal 5 Inventory. Proposed revisions to the Comprehensive Plan and Zoning Code (Chapter 11.15) respond to item number 8 in Remand Order 93-RA-876 from the State Land Conservation and Development Commission (LCDC).

II. FINDINGS

Multnomah County's 1990 Periodic Review Order was reviewed by the LCDC on April 23, 1993. The LCDC found that amendments to the County's comprehensive plan are required to comply with certain Statewide Planning Goals (Remand Order 93-RA-876). Item 8 orders the following:

> *"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."*

The County's most recent inventory of important water and wetland areas was performed in 1988. The County Planning Division contracted with Ester Lev, a Wildlife Biologist, to conduct a Goal 5 inventory and significance analysis of wetland resources and associated wildlife habitats. The constraints of the contract limited the inventory and "Economic, Social, Environmental, and Energy" (ESEE) analysis to certain portions of rural Multnomah County. As a result of this work, several watercourses and streams were added to the County's Goal 5 inventory and designated "3-C" (protect Goal 5) resources. The "Significance" of a wetland was in part determined using a "Wildlife Habitat Assessment" (WHA) rating system. Wetland areas scoring about 45 points or more on the WHA and which were designated "2A", "3A", or "3C" resources after the Goal 5 ESEE evaluation, were identified for SEC or WRG overlay zone protections. Table I below lists each significant resource site according to its score on the wildlife habitat rating system (maximum possible score: 96 points):

TABLE I

SIGNIFICANT WETLANDS

Wetland	WHA Points	Zoning Designations*
1. Sandy River Gorge	84	MUF-19 & 38, SEC, CS, FH
2. Virginia Lakes	79 - 81	EFU, WRG, FF
3. Rafton/Burlington Bottoms	74	MUA-20, WRG, FF
4. Sturgeon Lake	71-73	MUA-20, SEC, FF
5. Multnomah Channel	65	EFU & MUA-20, WRG
6. Government Island	64	MUF-19, SEC, CS, FF, NI
7. Northwest Hills Wetlands and Stream Riparian Areas	63	CFU, MUF-19 & 38, RR
8. Dairy Creek, Gilbert River, and Misc. Drainages on Sauvie Island	56	EFU
9. McGuire Island	55	MUF-19, SEC, CS, FF, NI
10. Sand Lake	49	EFU
11. Howell Lake	47	EFU, WRG, CS
12. Small Unnamed Lake/ Slough west of Wagon Wheel Hole Lake	47	EFU
13. Agricultural Ditches and Sloughs on Sauvie Island	37-40	EFU
14. Wagon Wheel Hole Lake	37	EFU, FF

*Note: Zoning designations are from 1990; MUF zoned areas were changed to CFU in 1993.

Significant Wetland sites 1–6, 9–12, and 14 receive protection from the County through application of "Significant Environmental Concern" or "Willamette River Greenway" overlay regulations and are not an issue at this time.

Wetland resource sites 7 ("Northwest Hills Wetlands/Riparian Areas"), 8 ("Dairy Creek, Gilbert River, and related drainageways"), and 13 ("Ditches and Sloughs on Sauvie Islands") were proposed to be protected by amending the zoning code to require an SEC Permit for any new building, structure, or physical improvement within 100 feet of the normal high water level of a Class I stream (Forest Practice Rules definition). However, the exact stream locations where this provision applies were not indicated on any official maps adopted by the County. The County's experiences administering the Zoning Ordinance since 1990 have shown that reliance on the Class 1 Stream definition in the State Forest Practices Act does not in fact extend SEC protections to several stream sections within the three *Significant Wetland* areas cited above. Further, the SEC provision adopted in 1990 applies a resource protection program to streams which are not listed as *Significant Wetlands* and for which the requisite Goal 5 inventory work and ESEE analysis has not been completed.

The LCDC Remand Order directs the County to identify the specific streams and land areas that are subject to the SEC provisions, and include the map or descriptive text in the Comprehensive Plan. Table II below lists the specific stream sections in the "Northwest Hills Wetlands/Riparian Areas" (from north to south) which were identified as "3-C" (protect Goal 5) resource sites. These streams appear on the proposed map of Significant Streams and Riparian Areas included with this report. The streams listed and indicated on the map were identified by Staff after detailed examination of the maps, aerial photographs, field notes, and other materials in Planning Division files on the 1988-1990 Goal 5 inventory of wetlands. Staff confirmed the streams listed and mapped through interviews with Ester Lev, the County's consultant in 1988-1989, and Gary Clifford, the Staff Planner who coordinated Periodic Review and the consultant contract for Goal 5 work. Ester Lev also testified before the Planning Commission on August 2, 1993 in support of the proposed map and list of streams.

TABLE II

Northwest Hills Streams and Riparian Areas Identified as 'Significant Wetlands' in the 1990 Goal 5 Inventory

- Joy Creek
- Un-named creeks which flow together on Wildwood Golf Course site
- Un-named creek which flows into Rainbow Lake (south of Morgan Road)
- Un-named creeks south of Logie Trail Rd. (in sections 8, 13, 19, & 24)
- McCarthy Creek (and perennial tributaries)
- Un-named creeks south of Burlington (in sections 20, 28, 29, 30, 32 & 33)
- Miller Creek (sections outside Portland)
- Balch Creek (sections outside Portland; includes Thompson and Cornell forks)

III. RECOMMENDATIONS

On August 2, 1993 the Planning Commission held a public hearing and received oral and written testimony on proposed legislative revisions to the Comprehensive Plan and Zoning Code (Chapter 11.15) which respond to Remand Order 93-RA-876 from the State LCDC. The proposed plan revision would supplement the County's Goal 5 inventory with a map of *Significant Streams and Riparian Areas* and a list of Northwest Hills streams which were designated "3-C" after ESEE analysis were completed in 1990.

The Planning Commission adopted the following recommendations for Board consideration:

1. Adopt the proposed ordinance for C 5-93 which would supplement the County's Goal 5 inventory with a map of Significant Streams and Riparian Areas and include a list of Northwest Hills streams described in Table II above.

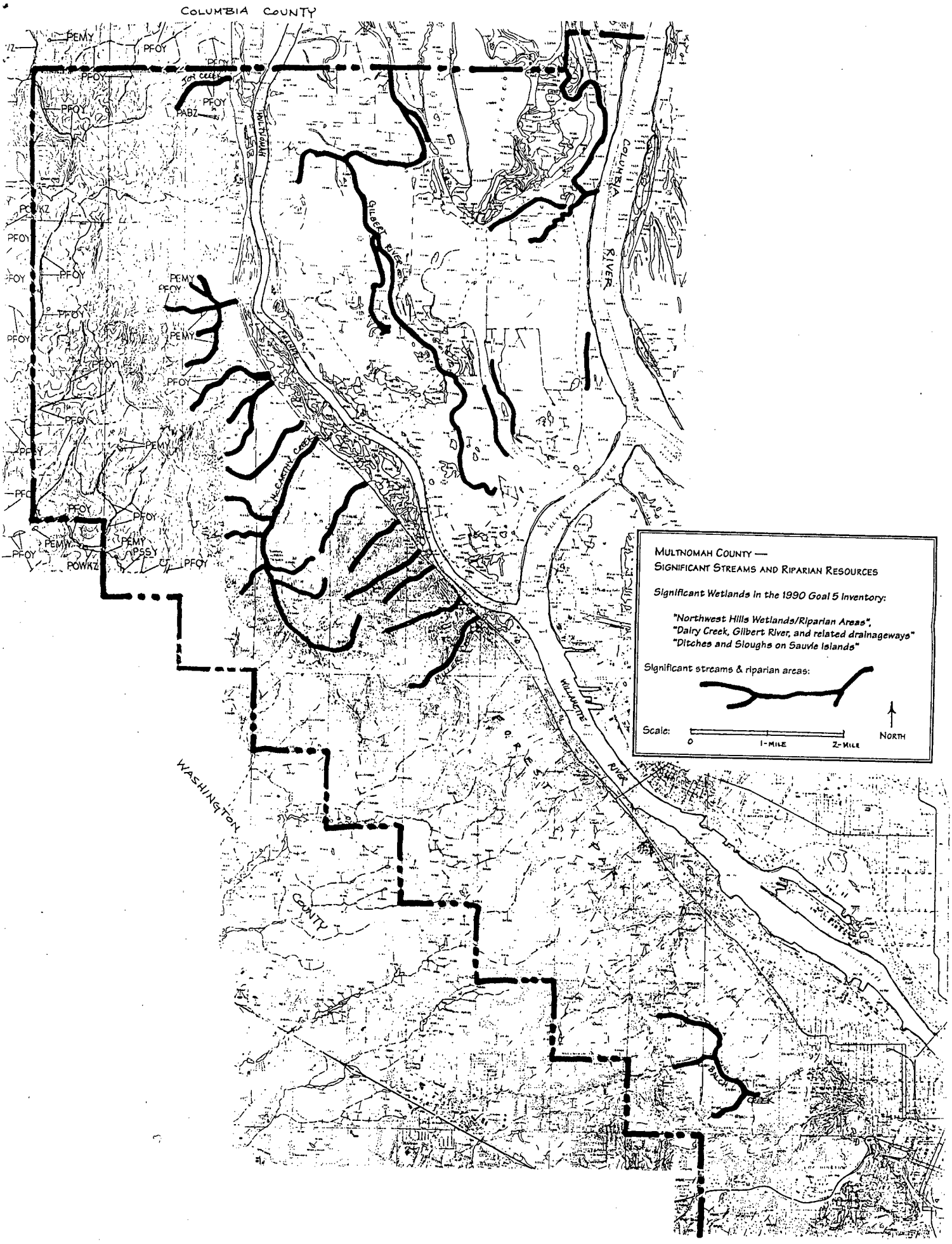
2. Adopt the proposed ordinance for C 5-93 which amends text in Policy 16, Strategy (C)16 to delete the reference to "Class I Streams (Oregon State Forestry Department designation)" and instead refer to the Significant Streams and Riparian Areas map and list of streams proposed to supplement the Goal 5 inventory.

3. Adopt the proposed ordinance for C 5-93 to amend text in MCC 11.15.6404(C) to delete the reference to "Class I stream as defined by the Oregon Forest Practices Rules" and instead require the SEC permit for development proposed within 100-feet of the normal high water level of Significant Streams to be listed and mapped in the Goal 5 wetlands inventory.

4. Adopt the Goal 5 list of 1-B designated streams for further inventory and ESEE analysis, and add all streams which drain into the Burlington Bottoms wetland. Direct the Planning Division to conduct further inventory and ESEE evaluations during the on-going Rural Area Planning Program on other streams and watersheds which do not appear on the above list or map. Add SEC or equivalent protections to significant resource sites if so prescribed after ESEE evaluations and procedures are completed. Potential streams designated 1-B for further inventory and ESEE evaluation include:

    a. Beaver Creek
    b. Buck Creek
    c. Big Creek
    d. Trout Creek
    e. Gordon Creek
    f. Howard Canyon Creek
    g. Pounder Creek
    h. Rock Creek
    i. Jones Creek
    j. Streams which drain into the Rafton Tract/Burlington Bottoms site (Site #3 on the Goal 5 Inventory of Significant Wetlands)

    Note: *The Planning Commission encourages the Board to initiate an inventory and ESEE processes as soon as possible on 1-B designated streams and watersheds.*


COLUMBIA COUNTY
PEMY
PFOY
PABZ
POWKZ
PSSY
MULTNOMAH
GILBERT RIVER
COLUMBIA RIVER
FAIRVIEW
WILLAMETTE RIVER
WASHINGTON COUNTY
MULTNOMAH COUNTY —
SIGNIFICANT STREAMS AND RIPARIAN RESOURCES
Significant Wetlands in the 1990 Goal 5 Inventory:
"Northwest Hills Wetlands/Riparian Areas",
"Dairy Creek, Gilbert River, and related drainageways"
"Ditches and Sloughs on Sauvie Islands"
Significant streams & riparian areas:
Scale:
0
1-MILE
2-MILE
NORTH

Speaker #6

September 28

Multnomah County Chair and
Multhomah County Commissioners

I very much approve of giving protection to Balch Creek.
Attached is a report on the Thompson Fork of Balch Creek by Seattle fish biologists Jean Caldwell and Alan Johnson. They did this evaluation for Portland's Bureau of Environmental Services, which is planning for stormwater control. On page 3 the report says, under DISCUSSION, Fish Passage - "Although the Thompson Road fork is a small stream with low flows and limited habitats, it maintains a small but viable fish population. If we are to maintain this population, it is important, whenever possible, to protect and enhance all available habitat and access for fish to that habitat. Because fish habitat seems limited upstream of the Thompson Road crossing, maintaining access to any existing spawning areas upstram of the project site is important. Successful spawning and egg incubation of fish this far upstream in the system may make an important contribution to seeding downstream areas with juvenile fish."

This study was done after seven years of drought. Thompson Fork became dry for intermittant stretches, with spring-fed pools harboring creek life, and water running between them under the gravel. The invertebrates that fish eat continue to live in the moist creek bottom, even though to the eye it appears dry. When the rains come the whole eco-system springs to life again. Forty-two fish in four stages of development were found by Oregon Department of Fish and Wildlife in the Thompson Fork last August.

Thank you for your attention,

Nancy Rosenlund

DRAFT

CALDWELL AND ASSOCIATES
920 South Rogers, Olympia, Washington 98502 (206) 943-4859

See page 3

April 15, 1992

TO: Jean Ochsner, BES
Tom Davis, Montgomery Watson

FROM: Jean Caldwell and Alan Johnson

RE: Fish Habitat Assessment of the Thompson Road Pilot Project Site.

This technical memorandum discusses our habitat inventory of the Thompson Road pilot project site and upstream areas. Opinions on the effects of the proposed alternatives on fish habitat should be considered preliminary as they are based on information and limited observations obtained from one site visit. We hope to refine these opinions through further field examination and discussions during the design process.

We reviewed two proposed alternatives for the project site. The concept plan for Alternative 1 was as described in your paper for the Watershed '93 conference. Alternative 2 is an off-channel wetland with infrequently used flood storage involving the entire site. We have reviewed only a general, conceptual drawing for Alternative 1; we have not reviewed plans for Alternative 2. While we assumed that improvement and restoration of fish passage in the culvert at the downstream end of the project site is included in both alternatives, we have not reviewed fish passage designs. We look forward to refining our comments as we participate in the design process.

CURRENT CONDITIONS:

The fish habitat in Thompson Road pilot project site was inventoried in March, 1993, as part of our overall habitat evaluation of Balch Creek. Approximately 300 feet (ft.) upstream of the Cornell Road culvert to the presumed property line was inventoried. In this reach, the channel is U-shaped, six ft. wide, and riprapped on both bank with pieces of concrete. The average wetted width was 5.5 ft. with stream depths of 0.2 - 0.5 ft. Flow at the culvert was estimated at 0.11 cubic ft. per second.

The existing fish habitat is very uniform riffle/glide with embedded small and large gravel substrate. Very little brush cover was present (mostly blackberry); canopy level cover was present on one side of the stream. Approximately 1.5 ft. of sediment with a 1.5 ft. deep pool (total drop: three ft.) was observed behind a small log debris jam at the upstream end of this reach.

Memo to Ochsner and Davis
April 15, 1993

The habitat in the next 1000 ft. upstream of the project site (the Medoff property) was not inventoried because access was restricted. We were able to view the stream from the road right-of-way. The inventory continued from the stream crossing under Thompson Road upstream to the headwaters. The inventory consisted of spot checks where access to the stream from Thompson Road was possible.

This fork flows approximately 4000 ft. from the watershed divide downstream to the Thompson Road crossing. Several small tributaries and culverts carrying road runoff enter the stream in this reach. The stream channel in this reach was U-shaped, six ft. wide with a four ft. wetted width and very shallow depths (0.25 ft. estimated average depth). The substrates range from fine sediments to cobble. The instream habitat is mostly run/riffle; the overall gradient was estimated to be four percent.

The stream channel in much of this reach appears to be adjusting to increases in flows, sediment or both. Eroding stream banks 1.5 to 2 ft. high are common in this reach; sediment accumulations behind debris were evident.

FISH OBSERVATIONS:

The Oregon Department of Fish and Wildlife electrofished the project site and upstream areas in October, 1992. Of the 44 fish captured, 11 fish were found in the project area downstream of the Medoff property, and 23 fish in the Medoff property upstream to the culvert on the Miller property. Because the majority of the fish captured were found upstream, we conclude that the quality of the habitat in this area is higher than that in the lower project area.

In March 1993, during our inventory, we observed two cutthroat trout (estimated six inches in length) in the project site. Two other fish of the same size were observed in the mainstem Balch Creek just below the confluence of the Cornell and Thompson Road tributaries.

CONCLUSIONS--EXISTING CONDITIONS:

1. In our opinion, the fish production in the lower project site is limited by the simple habitat (wide, shallow channel), limited cover, and by inputs of sediment from upstream areas. The large amount of silts and fine sediment in the gravels may presently limit spawning success in the project site. Continued sediment input will further reduce stream depths and limit spawning success.

2. A small but viable population of cutthroat trout exists in the reach between the Thompson Road crossing and the confluence with the Cornell Road fork. While fish were observed in and upstream of project area, the most important habitat in the project site appears to be on the Medoff property (upstream of the proposed sediment pond).

3. At present, upstream migration of fish is likely limited through the Cornell Road culvert. The shallow depths, fast water, and the near one foot drop at the culvert outlet likely exceed the swimming abilities of small trout. Migration is also potentially blocked by the small debris jam at the upstream portion of the project site. The three-ft. height, and the shallow pool depth from which fish can jump, likely block upstream fish migration.

4. Habitat upstream of the Thompson Road crossing is likely limited by the very shallow depths and active channel erosion. Much better habitat, in both quantity and quality, is present in the two miles of Balch Creek downstream of the confluence of the Thompson and Cornell Road forks. The stream, which is limited by its small size and flow regime, presently maintains a small population of fish.

DISCUSSION:

Fish Passage: We feel that it is important that fish passage be restored and maintained through the culvert and the pilot project. Although the Thompson Road fork is a small stream with low flows and limited habitats, it maintains a small but viable fish population. If we are to maintain this population, it is important, whenever possible, to protect and enhance all available habitat and access for fish to that habitat.

Because fish habitat seems limited upstream of the Thompson Road crossing, maintaining access to any existing spawning areas upstream of the project site is important. Successful spawning and egg incubation of fish this far upstream in the system may make an important contribution to seeding downstream areas with juvenile fish.

where creek goes under Thompson Road

Spawning gravel: While spawning gravels are present in the lower project reach, they contain a high percentage of fines. If the initial project unit (i.e., the sediment pond) is efficient, it is likely that future recruitment of gravels into the lower reach may be limited. It is likely that the pond will also be more efficient at capturing larger particles than fines.

Memo to Ochsner and Davis
April 15, 1993

If spawning gravels are going be placed in the lower project area, we recommend that they be placed in the narrow control sections where water velocities are likely to be sufficient to keep the gravels free of fine sediment. Maintenance of spawning gravels quality in the wider, low velocity areas is unlikely because slower water velocities will allow for the deposition of fine sediment.

While the addition of spawning gravels in the upstream portion of the project site is an enhancement possibility, we recommend proceeding cautiously. It has not been established that spawning gravel is limited. If the present quantity and quality of gravel is adequate, there is no reason to add additional gravel. Continued sediment input from upstream also poses a threat to the quality of any new spawning gravels in placed in the project area.

Riparian vegetation: In very small streams, shading to cool riparian air temperature can be provided both by brush-level plants and canopy-level trees. Because of the benefits provided by complex habitats, the shade provided by both is most preferable.

The most likely time for water temperature problems to appear in the pilot project will be before the proposed plantings become established. Some canopy-level shading of the low-flow channel may be provided by the trees that remain after project construction. This vegetation may mitigate some potential increases in water temperature early in the establishment of the project vegetation.

The effectiveness of shading in controlling water temperatures will depend on details of riparian planting plans. Because the planting plans have not been finalized, we are unable to determine if revegetation will successfully control riparian air temperatures. Until a riparian canopy that can shade the entire project develops, emphasis should focus on plantings that shade as much of the low-flow channel as possible with brush-level shading. The low-flow channel is particularly important in that brush-level vegetation both controls temperatures and provides overhead cover, food and litter input.

Pools: Because Balch Creek has such low summer flows, construction of pools will increase the amount of available rearing habitat. At low summer flows, pool habitat will be the majority of the available habitat. We recommend the addition of instream cover, mostly logs or logs with root wads, to the summer low-flow pools to create areas that fish can hide beneath. This cover will reduce harassment from humans and predation from kingfishers and other birds.

Sedimentation: As mentioned above, there is evidence that the channel of the Thompson Road fork may be actively eroding. Sources of increased erosion seem to be increased flows, potentially from changes in runoff patterns from roads and urbanization.

Control and/or capture of excess sediment is critical to maintaining downstream habitat and improving water quality. We feel that Alternative 1, with the construction of sediment pond, will provide more opportunity for sediment capture than Alternative 2. Placement of the sediment pond, however, may eliminate some trout habitat in the upper project site.

Dissolved Oxygen and Temperature: Levels of dissolved oxygen (DO) in project area are not anticipated to limit fish production unless a situation that creates very high biochemical oxygen demand (BOD) occurs. Because wetland situations can potentially create high BOD, this issue needs to addressed further in preparing final project designs. The DO content of flowing water, even at very warm temperatures, is within acceptable ranges for stream trout. At 25°C, for example, oxygen saturation in water is 8.1 parts per million; this is sufficient for fish survival. Water temperatures will be higher than lethal limits before DO becomes limiting. Lethal water temperature for cutthroat trout is approximately 26°C.

Water Levels During High Flows: Rapid and/or large fluctuations in water levels create an unstable environment for stream fish. Fluctuations in water level may also create a potential for stranding fish that move out of the channel during storm flows. It is important that these fish be able to return to the channel as high water recedes. We believe that much of the stranding potential can be mediated by correct design of the stream/pool complex, and in particular, the maintenance of an even grade in adjacent bank slopes. We recommend further discussions regarding the design of the wetlands boundary and the amount of flow fluctuations expected during project operations.

RECOMMENDATIONS:

1. Alternative 1, which includes creation of a stream/pond complex, will likely create more habitat than presently exists. The opportunity exists to create more diverse habitats, pools, and overhead and instream cover.

Memo to Ochsner and Davis
April 15, 1993

We believe that construction of a sedimentation pond would be beneficial in reducing sediment impacts downstream. It is critical that downstream habitat be protected, and as little damage as possible occurs to existing habitat in the upper project area. An analysis of existing habitat on the Medoff and Miller properties, and the potential for fish passage at the Miller culvert, would help in mitigation planning.

2. Alternative 2, which essentially maintains the existing channel configuration with off-channel flood storage and little sediment control, will provide less habitat than Alternative 1. While this design will reduce peak flows, it will not likely improve the quality of habitat present in the lower reach. Unless sediments are significantly reduced, this design will not improve the quality of habitat in the project area.

3. Restoration and maintenance of fish passage through the project to upstream areas is important. Access to upstream and downstream areas should be maintained to prevent isolating fish upstream of the Cornell Road culvert. All possible measures should be employed to help maintain and enhance the viability of the limited fish population present in Balch Creek.

4. Control of summer water temperatures with riparian vegetation, which is key to maintenance of summer rearing habitat, should be emphasized in the project design. Riparian vegetation, both brush level and canopy level shading, creates overhead cover, wildlife habitat, and contributes food and litter to the stream.

5. The benefits to downstream fisheries from increased high flow and sediment controls have not yet been formally evaluated. This evaluation will occur as part of our current scope of work for this project.

CITY OF PORTLAND
ENVIRONMENTAL SERVICES

1120 S.W. Fifth Ave., Room 400, Portland, Oregon 97204-1972
(503) 823-7740, FAX (503) 823-6995

September 28, 1993

Beverly Stein, Chair
Office of the Board Clerk
Suite 1510, Portland Bldg.
1120 S.W. Fifth Ave.
Portland, Oregon 97204

Dear Commissioner Stein:

The Bureau of Environmental Services, City of Portland would like to request that any action on C 5-93 be delayed until there has been time to ascertain the impact of this ordinance on Fanno Creek and the tributaries of Johnson Creek.

We appreciate your consideration of a delay and, in turn, will try to resolve this matter expeditiously.

Sincerely,

David D. Kliewer, P.E.
Principal Engineer

September 28, 1993

Office of the Board Clerk
Suite 1510, Portland Bldg.
1120 SW. Fifth Ave.
Portland, Oregon 97204

Dear Commissioners:

The Multnomah Park Services Division is in support of the NW Hills amendments to the Goal 5 inventory however we request that any action on C 5-93 be delayed until there has been time to ascertain the impact of this ordinance on other streams and tributaries in the county.

It is our hope that interim protection can be obtained for these resources. Of particular concern are the tributaries to the Sandy River, Buck, Gordon and Trout Creek, Beaver Creek as well as those tributaries termed as significant resources in the Multnomah County Natural Area Protection and Management Plan.

We appreciate your consideration of a continuance and, in turn, will try to resolve this matter expeditiously.

Sincerely,

Nancy Chase

Nancy Chase
Senior Planner
Multnomah County
Park Services Division