

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 ALLOTTED. 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

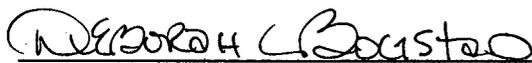
NON-RESIDENTS, OF THE WEST HILLS RURAL AREA PLAN WORKSHOP TO BE HELD ON SAUVIE ISLAND SEPTEMBER 22, 1993 AND EXPLAINED THAT IT WILL BE INCUMBENT UPON THOSE RECEIVING THAT NOTICE TO CONTACT THE PLANNING DIVISION TO GET ON THE WEST HILLS MAILING LIST FOR INFORMATION ON FUTURE MEETINGS. IN RESPONSE TO A 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**



Deborah L. Bogstad

Thursday, September 2, 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.

UNANIMOUS CONSENT ITEM

UC-1 *PROCLAMATION in the Matter of Recognizing the Contributions of Keeston Lowery*

CHAIR STEIN SUBMITTED AND READ A PROCLAMATION IN ACKNOWLEDGEMENT OF THE LATE KEESTON LOWERY. A MOMENT OF SILENCE WAS OBSERVED. UPON EXECUTION BY THE ENTIRE BOARD, PROCLAMATION 93-291 WAS UNANIMOUSLY APPROVED. CHAIR STEIN DIRECTED THE CLERK TO SEND THE PROCLAMATION TO MR. LOWERY'S FAMILY.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-15) WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- C-1 *Ratification of Intergovernmental Agreement Contract 200704 Between Oregon Health Sciences University and Multnomah County, Providing Community Health Nurse and Office Space for the University's Child Development and Rehabilitation Center's Community Based, Family Centered Care Coordination (CaCoon) Program for Children with Special Health Needs, for the Period Upon Execution through June 30, 1994*

- C-2 *Ratification of Intergovernmental Agreement Contract 103554 Between the City of Portland and Multnomah County, Assigning Responsibility for Funding and Administering the Area Agency on Aging and the Portland/Multnomah Commission on Aging, for the Period July 1, 1993 through June 30, 1994*

- C-3 *Ratification of Intergovernmental Agreement Contract 103504 Between Multnomah County and Parkrose School District No. 3, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994*

- C-4 *Ratification of Intergovernmental Agreement Contract 103514 Between Multnomah County and Gresham Grade School District No. 4, Dexter McCarty Middle School, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994*

- C-5 *Ratification of Intergovernmental Agreement Contract 103524 Between Multnomah County and Centennial School District No. 28J, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994*
- C-6 *Ratification of Intergovernmental Agreement Contract 103534 Between Multnomah County and Barlow-Gresham Union High School District No. U2-20 JT, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 *ORDER in the Matter of Declaring Various Tax Foreclosed Properties Abandoned and Subject to Waste and Ordering the Tax Collector to Issue a Deed*

ORDER 93-292.

- C-8 *ORDER in the Matter of the Execution of Correction Deed D930902 to Correct an Historical Error in Title Precipitated by Tax Foreclosure*

ORDER 93-293.

- C-9 *ORDER in the Matter of the Execution of Deed D940912 for Certain Tax Acquired Property to Walter L. Maxwell, Jr., Janet Lee Maxwell, Juanita Maxwell and Walter Allen Maxwell*

ORDER 93-294.

- C-10 *ORDER in the Matter of the Execution of Deed D940913 Upon Complete Performance of a Contract to Louis L. Sutton and Donna J. Sutton*

ORDER 93-295.

- C-11 *ORDER in the Matter of the Execution of Deed D940914 Upon Complete Performance of a Contract to Joseph T. Kalberer and Rosemary E. Kalberer*

ORDER 93-296.

- C-12 *ORDER in the Matter of the Execution of Deed D940915 Upon Complete Performance of a Contract to Dennis Williams and Ethyl Williams*

ORDER 93-297.

- C-13 *ORDER in the Matter of the Execution of Deed D940916 Upon Complete Performance of a Contract to Kenneth A. Paulsen and Cathleen L. Paulsen*

ORDER 93-298.

- C-14 *ORDER in the Matter of the Execution of Deed D940917 Upon Complete Performance of a Contract to Gordon E. Powelson, Trustee Teks Trust*

ORDER 93-299.

- C-15 *ORDER in the Matter of Contract 15720 for the Sale of Certain Real Property to Virginia Quimby, Multnomah County Deputy Public Guardian/Conservator for Melvin L. Cary*

ORDER 93-300.

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *CHAIR BEVERLY STEIN Will Introduce the Members of Her Staff and Identify Their Respective Duties*

CHAIR STEIN ANNOUNCED THAT BECAUSE MANY OF HER STAFF ARE ATTENDING THE KEESTON LOWERY MEMORIAL SERVICE THIS MORNING, R-1 IS CONTINUED TO THURSDAY, SEPTEMBER 9, 1993.

- R-2 *RESOLUTION in the Matter of Intergovernmental Cooperation to Develop Incentives to Increase Minority-Owned and Women-Owned Business (W/MBE) Participation in Public Contracts*

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-2. LILLIE WALKER RESPONDED TO BOARD QUESTIONS AND COMMENTS. RESOLUTION 93-301 UNANIMOUSLY APPROVED.

- R-3 *Ratification of Intergovernmental Agreement Contract 500144 Between Multnomah County and the City of Portland, for Participation in a Contractor's Opportunity Loan Program to Address the Financial and Technical Needs of Area Minority-Owned and Women-Owned Businesses*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-3. CHIP LAZENBY EXPLANATION IN RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN. BOARD COMMENTS. AGREEMENT UNANIMOUSLY APPROVED.

- R-4 *PROCLAMATION in the Matter of Proclaiming the Week of October 3 - October 9, 1993 as MINORITY ENTERPRISE DEVELOPMENT WEEK*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-4. MS. WALKER ADVISED THAT GRACE GALLEGOS OF U.S. DEPARTMENT OF COMMERCE COULD NOT BE HERE TODAY AND INTRODUCED DON MATSUDA FROM SMALL BUSINESS ADMINISTRATION. MR. MATSUDA EXPLAINED THIS IS THE TENTH YEAR AN AWARDS LUNCHEON HAS BEEN HOSTED TO RECOGNIZE

CONTRIBUTIONS AND ACCOMPLISHMENTS OF LOCAL MINORITY BUSINESSES. MR. MATSUDA INTRODUCED SPONSOR REPRESENTATIVES JERRY WALKER OF MULTNOMAH COUNTY, JULIUS EVANS AND LINA GARCIA SEABO OF TRI-MET, PEGGY ROSS OF OREGON ASSOCIATION OF MINORITY ENTREPRENEURS, FAYE BURCH, STATE OF OREGON MINORITY ADVOCATE, JIM WAKI OF METROPOLITAN EXPOSITION-RECREATION COMMISSION, HENRY GARCIA OF BONNEVILLE POWER, BOB MINESTRENA OF INTEL AND LEEANN EARLY OF SMALL BUSINESS ADMINISTRATION. PROCLAMATION 93-302 UNANIMOUSLY APPROVED. BRIEF RECESS FOR GROUP PHOTOS.

- R-5 *First Reading and Possible Adoption of an ORDINANCE Removing Certain Employees from the Freeze of Annual Base Pay Rates, and Amending Ordinance No. 764 and Ordinance No. 767, and Declaring an Emergency*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING AND ADOPTION. COMMISSIONER COLLIER PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BILLI ODEGAARD AND CURTIS SMITH RESPONSE TO BOARD QUESTIONS. COMMISSIONER COLLIER TO PRESENT REPORT ON SALARY COMMITTEE ASSESSMENT OF COMPENSATION POLICIES OF OTHER GOVERNMENTAL JURISDICTIONS. HEARING HELD, NO ONE WISHED TO TESTIFY. ORDINANCE 774 UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

- R-6 *Budget Modification MCSO #3, Requesting Authorization to Transfer \$36,000 from General Fund Contingency to the Sheriff's Office, Facility Security Division Budget, to Pay for Courthouse Security Equipment*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, TO TABLE R-6. COMMISSIONERS SALTZMAN AND KELLEY EXPLAINED THE COUNTY IS NO LONGER INTERESTED IN PURCHASING THE TROJAN NUCLEAR PLANT METAL DETECTORS, HOWEVER WORK CONTINUES ON COURTHOUSE SECURITY. MOTION UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- R-7 *Ratification of Intergovernmental Agreement Contract 200684 Between Portland Community College, Institute for Continuing Education of Health Care Professionals and Multnomah County, Providing a Custom Designed Course in Medical Assisting Basics for Health Department Staff, for the Period August 23, 1993 through September 3, 1993*

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-7. COMMISSIONER SALTZMAN ANNOUNCED HE WILL ABSTAIN FROM VOTING AS HE SITS ON THE PORTLAND COMMUNITY COLLEGE BOARD OF DIRECTORS. MS. ODEGAARD EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND STEIN VOTING AYE AND COMMISSIONER SALTZMAN ABSTAINING.

- R-8 *Request for Approval of a Notice of Intent to Apply to a Request for Proposal from Region X and the Federal Office of Population Affairs for Family Planning National Priority Project Funds*

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-8. MS. ODEGAARD ADVISED THE GRANT WOULD PROVIDE OUTREACH EDUCATION TARGETING THE HISPANIC POPULATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-9 *ORDER in the Matter of the Transfer of Tax Foreclosed Property to the City of Gresham, Oregon for Open Space Purposes*

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-9. BOB OBERST EXPLANATION AND RESPONSE TO QUESTIONS OF COMMISSIONER SALTZMAN. ORDER 93-303 UNANIMOUSLY APPROVED.

- R-10 *ORDER in the Matter of the Transfer of Tax Foreclosed Property to the Bureau of Water Works of the City of Portland, a Municipal Corporation of the State of Oregon for a Public Purpose*

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, ORDER 93-304 WAS UNANIMOUSLY APPROVED.

- R-11 *Request for Policy Direction in the Matter of an Appeal by Former Owner Barbara Alatorre of the Denial to Repurchase Tax Foreclosed Property Located at 5352 SE 89th Avenue*

COUNTY COUNSEL LAURENCE KRESSEL ADVISED THE BOARD IS THE APPELLATE BODY TO REVIEW THE DECISION OF THE TAX TITLE UNIT AND THE MATTER IS A REQUEST FOR POLICY DIRECTION ON THE APPEAL. COMMISSIONER COLLIER EXPLANATION AND HISTORY OF EVENTS LEADING TO COUNTY FORECLOSURE PROCESS AND REQUEST THAT BOARD ALLOW REPURCHASE. TESTIMONY IN SUPPORT OF

REPURCHASE FROM RICHARD MELLINI, BARBARA ALATORRE, KRISTEN CHAPIN, FERN ALEXANDER AND JOHN FISHER. BOARD COMMENTS AND DISCUSSION. COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF REPURCHASE. COMMISSIONER KELLEY REQUESTED THAT ANY ADDITIONAL INTERIM APPEALS BE HANDLED ADMINISTRATIVELY. CHAIR STEIN SUGGESTED THAT THE TAX TITLE TASK FORCE BE DIRECTED TO RECOMMEND A PROCESS TO HANDLE REPURCHASE DENIAL APPEALS PRIOR TO IMPLEMENTATION OF CODE AMENDMENTS. MOTION UNANIMOUSLY APPROVED.

DEPARTMENT OF LIBRARY SERVICES

R-12 *Ratification of Intergovernmental Agreement Contract 600034 Between Clackamas County, Multnomah County and Washington County, for the Exchange of Public Library Services*

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-12. GINNIE COOPER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY CORRECTIONS

R-13 *Ratification of Intergovernmental Agreement Contract 900344 Between the State Board of Parole and Post-Prison Supervision and Multnomah County, Providing Revenue to Conduct Parole and Post-Prison Supervision Violation Hearings and Local Sanctions Hearings, for the Period Upon Execution through June 30, 1995*

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-13. GRANT NELSON EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

R-14 *Ratification of Intergovernmental Agreement Contract 103394 Between Multnomah County and Clackamas County, Providing the Services of a Veterans Service Officer in Two Locations within Multnomah County, through June 30, 1994*

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-14. COMMISSIONER HANSEN AND MIKE DELMAN EXPLANATION, AGREEMENT UNANIMOUSLY APPROVED.

R-15 *Budget Modification DSS #3 Requesting Authorization to Reconcile the Adopted Juvenile Justice Division Budget to Reflect Changes to Revenue in State Gang Affected Probation, State Governor's Anti-Gang Program, State Youth Employment/Empowerment Project, Federal Office of Justice Programs and City*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-15. MARIE EIGHMEY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. STAFF DIRECTED TO SCHEDULE BOARD BRIEFING ON GANG COORDINATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-16 *Budget Modification DSS #4 Requesting Authorization to Reclassify a Program Development Technician to a Program Development Specialist within the Mental Health, Youth and Family Services Division, Developmental Disabilities Operations Budget*

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, R-16 WAS UNANIMOUSLY APPROVED.

- R-17 *Second Reading and Possible Adoption of an ORDINANCE Amending Multnomah County Code 8.90 Pertaining to the Licensing of Adult Care Homes*

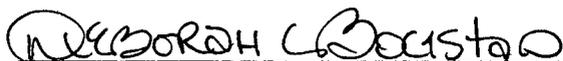
PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. OPPOSITION TESTIMONY FROM MICHAEL VERNON, PAT PIERCE, DOROTHY GUIMONT, PATTY RAMSBOTTOM, REBECCA TAYVIES, JEAN PROCTOR AND CLAIR CARLE. JIM McCONNELL EXPLANATION IN RESPONSE TO BOARD QUESTIONS. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, CONTINUANCE OF THE SECOND READING. JIM BALOG EXPLANATION IN RESPONSE TO BOARD QUESTIONS. BOARD DISCUSSION AND COMMENTS. LAURENCE KRESSEL AND MR. McCONNELL RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS. CONTINUANCE OF THE SECOND READING TO THURSDAY, SEPTEMBER 16, 1993, WAS APPROVED, WITH COMMISSIONERS KELLEY, HANSEN AND STEIN VOTING AYE AND COMMISSIONERS COLLIER AND SALTZMAN VOTING NO.

PUBLIC COMMENT

- R-18 *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 12:06 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON


Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

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

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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

AUGUST 30 - SEPTEMBER 3, 1993

Tuesday, August 31, 1993 - 1:30 PM - Planning Items. . . . Page 2

Thursday, September 2, 1993 - 9:30 AM - Regular Meeting. . . Page 2

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, August 31, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- 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).
- 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.
- 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.)
- 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.)
- 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

Thursday, September 2, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF HEALTH

- C-1 Ratification of Intergovernmental Agreement Contract 200704 Between Oregon Health Sciences University and Multnomah County, Providing Community Health Nurse and Office Space for the University's Child Development and Rehabilitation Center's Community Based, Family Centered Care Coordination (CaCoon) Program for Children with Special Health Needs, for the Period Upon Execution through June 30, 1994

DEPARTMENT OF SOCIAL SERVICES

- C-2 Ratification of Intergovernmental Agreement Contract 103554 Between the City of Portland and Multnomah County, Assigning Responsibility for Funding and Administering the Area Agency on Aging and the Portland/Multnomah Commission on Aging, for the Period July 1, 1993 through June 30, 1994
- C-3 Ratification of Intergovernmental Agreement Contract 103504 Between Multnomah County and Parkrose School District No. 3, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994
- C-4 Ratification of Intergovernmental Agreement Contract 103514 Between Multnomah County and Gresham Grade School District No. 4, Dexter McCarty Middle School, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994
- C-5 Ratification of Intergovernmental Agreement Contract 103524 Between Multnomah County and Centennial School District No. 28J, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994
- C-6 Ratification of Intergovernmental Agreement Contract 103534 Between Multnomah County and Barlow-Gresham Union High School District No. U2-20 JT, Providing School Mental Health Services to Students, for the Period September 1, 1993 through June 30, 1994

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-7 ORDER in the Matter of Declaring Various Tax Foreclosed Properties Abandoned and Subject to Waste and Ordering the Tax Collector to Issue a Deed
- C-8 ORDER in the Matter of the Execution of Correction Deed D930902 to Correct an Historical Error in Title Precipitated by Tax Foreclosure
- C-9 ORDER in the Matter of the Execution of Deed D940912 for Certain Tax Acquired Property to Walter L. Maxwell, Jr., Janet Lee Maxwell, Juanita Maxwell and Walter Allen Maxwell
- C-10 ORDER in the Matter of the Execution of Deed D940913 Upon Complete Performance of a Contract to Louis L. Sutton and Donna J. Sutton
- C-11 ORDER in the Matter of the Execution of Deed D940914 Upon Complete Performance of a Contract to Joseph T. Kalberer and Rosemary E. Kalberer
- C-12 ORDER in the Matter of the Execution of Deed D940915 Upon Complete Performance of a Contract to Dennis Williams and Ethyl Williams
- C-13 ORDER in the Matter of the Execution of Deed D940916 Upon Complete Performance of a Contract to Kenneth A. Paulsen and Cathleen L. Paulsen

- C-14 ORDER in the Matter of the Execution of Deed D940917 Upon Complete Performance of a Contract to Gordon E. Powelson, Trustee Teks Trust
- C-15 ORDER in the Matter of Contract 15720 for the Sale of Certain Real Property to Virginia Quimby, Multnomah County Deputy Public Guardian/Conservator for Melvin L. Cary

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 CHAIR BEVERLY STEIN Will Introduce the Members of Her Staff and Identify Their Respective Duties

MANAGEMENT SUPPORT

- R-2 RESOLUTION in the Matter of Intergovernmental Cooperation to Develop Incentives to Increase Minority-Owned and Women-Owned Business (W/MBE) Participation in Public Contracts
- R-3 Ratification of Intergovernmental Agreement Contract 500144 Between Multnomah County and the City of Portland, for Participation in a Contractor's Opportunity Loan Program to Address the Financial and Technical Needs of Area Minority-Owned and Women-Owned Businesses
- R-4 PROCLAMATION in the Matter of Proclaiming the Week of October 3 - October 9, 1993 as MINORITY ENTERPRISE DEVELOPMENT WEEK
- R-5 First Reading and Possible Adoption of an ORDINANCE Removing Certain Employees from the Freeze of Annual Base Pay Rates, and Amending Ordinance No. 764 and Ordinance No. 767, and Declaring an Emergency

SHERIFF'S OFFICE

- R-6 Budget Modification MCSO #3, Requesting Authorization to Transfer \$36,000 from General Fund Contingency to the Sheriff's Office, Facility Security Division Budget, to Pay for Courthouse Security Equipment

DEPARTMENT OF HEALTH

- R-7 Ratification of Intergovernmental Agreement Contract 200684 Between Portland Community College, Institute for Continuing Education of Health Care Professionals and Multnomah County, Providing a Custom Designed Course in Medical Assisting Basics for Health Department Staff, for the Period August 23, 1993 through September 3, 1993
- R-8 Request for Approval of a Notice of Intent to Apply to a Request for Proposal from Region X and the Federal Office of Population Affairs for Family Planning National Priority Project Funds

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-9 ORDER in the Matter of the Transfer of Tax Foreclosed Property to the City of Gresham, Oregon for Open Space Purposes
- R-10 ORDER in the Matter of the Transfer of Tax Foreclosed Property to the Bureau of Water Works of the City of Portland, a Municipal Corporation of the State of Oregon for a Public Purpose
- R-11 Request for Policy Direction in the Matter of an Appeal by Former Owner Barbara Alatorre of the Denial to Repurchase Tax Foreclosed Property Located at 5352 SE 89th Avenue

DEPARTMENT OF LIBRARY SERVICES

- R-12 Ratification of Intergovernmental Agreement Contract 600034 Between Clackamas County, Multnomah County and Washington County, for the Exchange of Public Library Services

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-13 Ratification of Intergovernmental Agreement Contract 900344 Between the State Board of Parole and Post-Prison Supervision and Multnomah County, Providing Revenue to Conduct Parole and Post-Prison Supervision Violation Hearings and Local Sanctions Hearings, for the Period Upon Execution through June 30, 1995

DEPARTMENT OF SOCIAL SERVICES

- R-14 Ratification of Intergovernmental Agreement Contract 103394 Between Multnomah County and Clackamas County, Providing the Services of a Veterans Service Officer in Two Locations within Multnomah County, through June 30, 1994
- R-15 Budget Modification DSS #3 Requesting Authorization to Reconcile the Adopted Juvenile Justice Division Budget to Reflect Changes to Revenue in State Gang Affected Probation, State Governor's Anti-Gang Program, State Youth Employment/Empowerment Project, Federal Office of Justice Programs and City Youth Grants
- R-16 Budget Modification DSS #4 Requesting Authorization to Reclassify a Program Development Technician to a Program Development Specialist within the Mental Health, Youth and Family Services Division, Developmental Disabilities Operations Budget
- R-17 Second Reading and Possible Adoption of an ORDINANCE Amending Multnomah County Code 8.90 Pertaining to the Licensing of Adult Care Homes

PUBLIC COMMENT

- R-18 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

0266C/30-34/db

MEETING DATE: August 31, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision of July 30, 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 OTHER

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

CS 1-93/HV 1-93/WRG 1-93/CU 7-93 Review the Decision of the Hearings Officer of July 30, 1993, 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, all for property located at 23586 NW St. Helens Road (Rocky Point Marina)

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *JC BH Willie*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



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/H01-93
WR#1-93/C47-93

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 29
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Rocky Pointe Marina Redesign and Expansion

NUMBER CS 1-93; WRG 1-93; HV 1-93; CU 7-93

1. Applicant Name/Address

Richard and Janis Tonneson
23586 NW St. Helens Road
Portland, Oregon 97231

ACTION REQUESTED OF BOARD	
<input type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

2. Action Requested by applicant

Community Service (CS) approval is requested to modify and expand "Rocky Pointe Marina" adding parking and boat repair on land, and houseboats, boat slips, and boathouses in Multnomah Channel.

Three Variances are requested to allow an expanded gravel parking area below the 100-year flood elevation and to reduce the number of spaces from that required for boat slips.

Conditional Use (CU) approvals are sought to expand the number of houseboats (floating homes) from 14 to 50; and add a Boat Repair yard and lift at the north end of the site.

Willamette River Greenway (WRG) permit approval is requested for the site design and proposed improvements.

3. Planning Staff Recommendation

APPROVAL, WITH CONDITIONS

4. Hearings Officer Decision:

APPROVE, WITH CONDITIONS AND MODIFICATIONS

5. If recommendation and decision are different, why?

The Hearings Officer decision reduces the number of houseboat spaces from 50 to 40 to insure that the expanded uses will not exceed the site's capacity to provide adequate parking, sewage disposal, and natural resource areas. Modifications to the plan also limit parking to reduce the filled area in wetlands and minimize adverse effects on forest/riparian areas along the riverbank.

ISSUES

(who raised them?)

What is the appropriate balance of Private versus Public Use of the river surface;
What is the extent of fill appropriate in wetland areas on the site; and
What scale of recreation, commercial, and residential (floating home) use is appropriate in a rural area which also has important natural resources and features?

[Opponents included: Sauvie Island Conservancy & Friend Of Retaining Channel Environment (FORCE)]

Do any of these issues have policy implications? Explain.

Yes. In the written decision, the Hearings Officer explains how existing Plan policies and Zoning Code criteria were applied to the information in the record and how this evaluation led to the APPROVAL with MODIFICATIONS to the requests. New policies were not established by the Hearings Officer. Rather, existing policy and code were applied to reach the conclusions, and decision.



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

Decision

This Decision consists of Conditions of Approval, Findings, and Conclusions

JULY 30, 1993

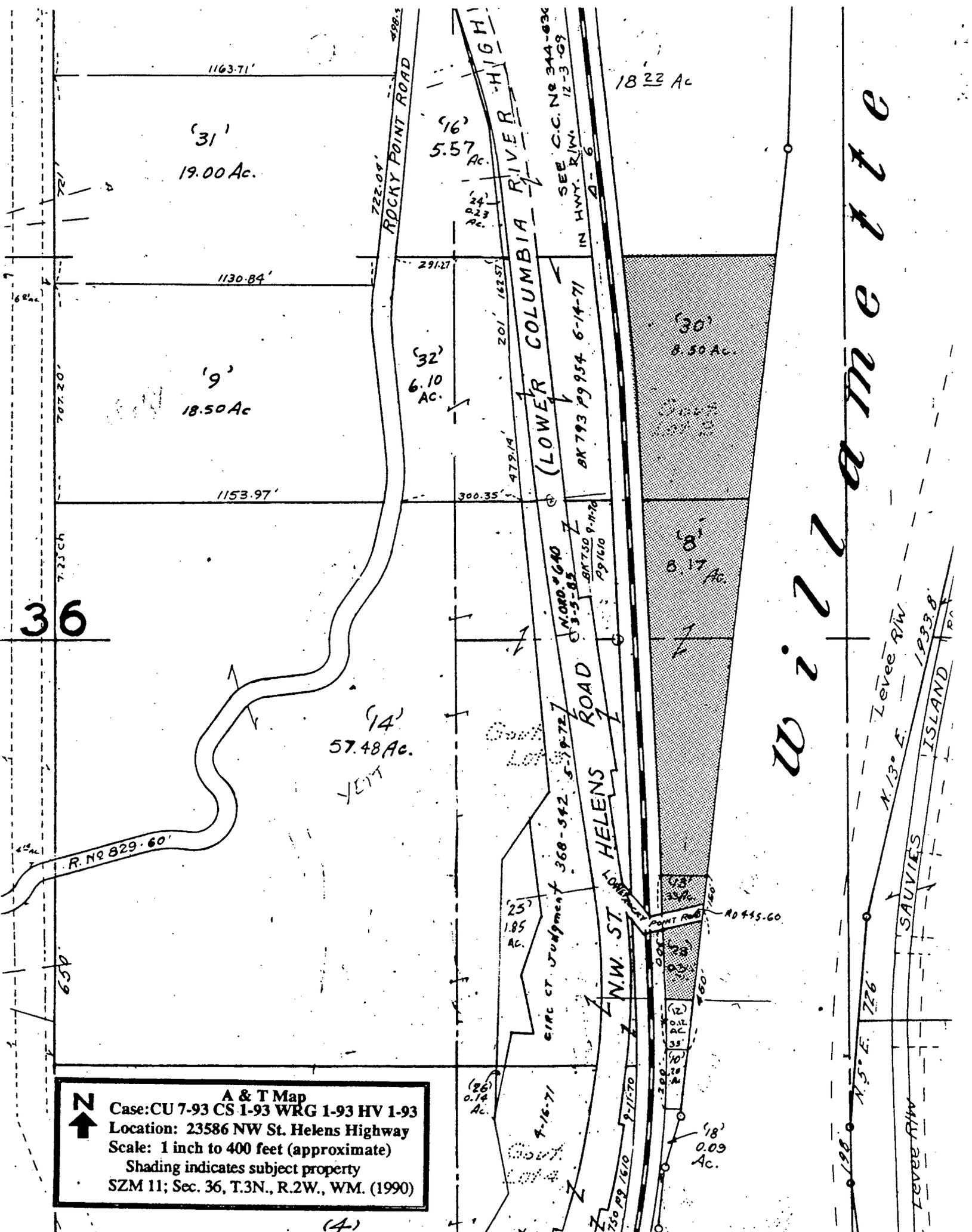
CS 1-93,	Community Service Use	(Alter and add to existing marina facilities)
HV 1-93,	Variance Requests	(allow gravel parking below 100-year flood level, <i>etc.</i>)
WRG 1-93,	Willamette River Greenway	(approve revised moorage and site designs, <i>etc.</i>)
CU 7-93,	Conditional Use Requests	(moorage of 50 houseboats; boat repair yard, <i>etc.</i>)

This Hearings Officer decision is regarding facilities and development proposed at "Rocky Pointe Marina" under the four application case files cited above.

Location:	23586 NW St. Helens Road (Rocky Pointe Marina)
Property Description:	Tax Lots '8', '13', '28' & '30'; Section 36, 3N-2W
Site Size:	17.1 Acres (CS designation is on south 9-aces) Size Requested: Same
Owner/Applicant:	Janis and Richard Tonneson 23586 NW St. Helens Road
Comprehensive Plan:	Multiple Use Agriculture
Zoning:	MUA-20, Multiple Use Agricultural District WRG, Willamette River Greenway FH, Flood Hazard CS, Community Service (except for tax lot '30')

**HEARINGS OFFICER
DECISIONS**

- #1. Approve, subject to conditions and modifications, the proposed Community Service Use to reconfigure and expand the marina facilities;**
- #2. Approve, subject to conditions and modifications, the proposed Conditional Use request for a boat repair facility on Tax Lot 30;**
- #3. Approve, subject to conditions and modifications, the proposed Conditional Use request to expand the houseboat moorage. However, the request to allow 50 houseboats is denied, and has been modified to approve only 40 houseboats.**
- #4. Approve, subject to conditions and modifications, the proposed variances to allow variations for graveled parking below the 100 year flood elevation. However, the variance to reduce the number of spaces required for the proposed boat slips is denied.**
- #5. Approve, subject to conditions, the requested WRG permit for new and altered uses in the Willamette River Greenway; all subject to the following conditions of approval:**



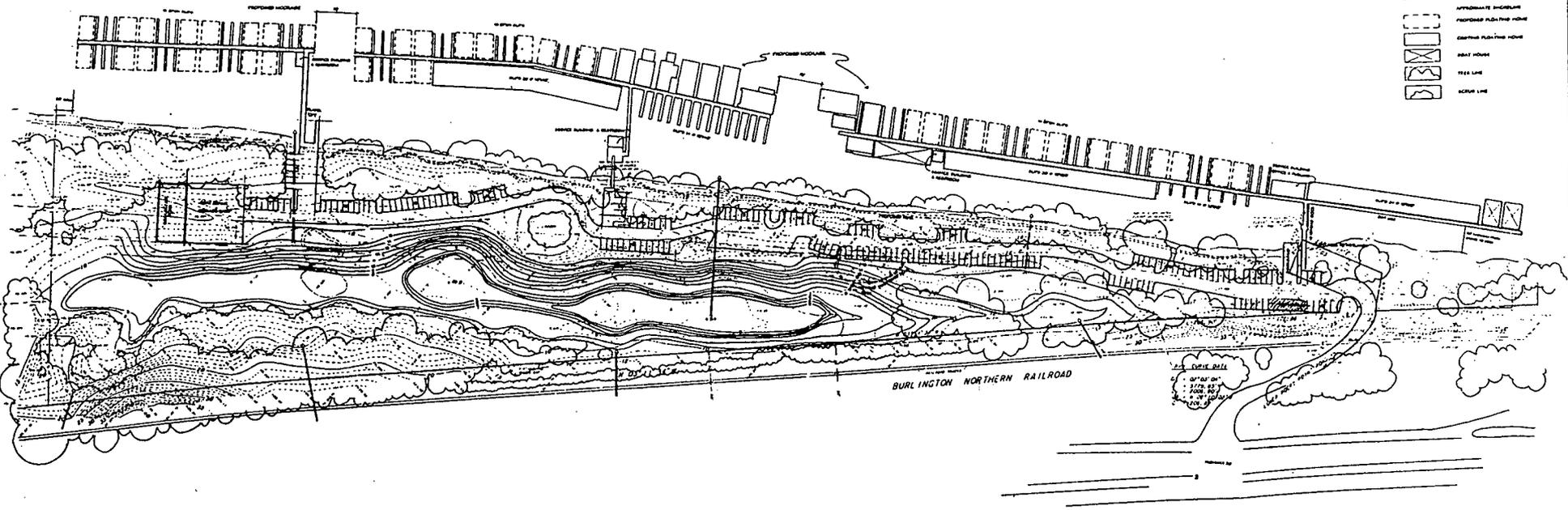
Williamette

A & T Map
 Case: CU 7-93 CS 1-93 WRG 1-93 HV 1-93
 Location: 23586 NW St. Helens Highway
 Scale: 1 inch to 400 feet (approximate)
 Shading indicates subject property
 SZM 11; Sec. 36, T.3N., R.2W., WM. (1990)

(4)

CS 1-93/HV 1-93/WRG 1-93/CU 7-93

MULTNOMAH CHANNEL



- LEGEND**
- PROPOSED CONTOUR
 - EXISTING STONE BLUFF CULVERT
 - PROPOSED FLOOR DRIVEWAY CULVERT
 - EXISTING BLUFF CULVERT
 - PROPOSED PIER
 - PROPERTY LINE
 - APPROPRIATE SHORELINE
 - PROPOSED PIER/TIE HOUSE
 - EXISTING PIER/TIE HOUSE
 - BOAT HOUSE
 - TIE LINE
 - ACCESS LINE

MM
 MERRILL MEYER & ASSOCIATES, INC.
 1000 N. W. 10th St., Suite 200
 Portland, Oregon 97227
 Phone: 503-228-1111
 Fax: 503-228-1112

ROCKY POINTE MARINA

CU-2

CONDITIONS OF APPROVAL

1. Obtain Final Design Review Plan approval pursuant to MCC .7805-.7865 for proposed site improvements including, but not limited to, grading, clearing, landscaping, fencing, building materials and exterior colors. Design Review shall include applications for a Grading and Erosion Control Permit [MCC. 6710], and a Floodplain Development Permit [MCC .6307]. Site work or construction of expanded marina facilities or grading or construction on Tax Lot '30' shall not proceed before required Design Review and associated Administrative approvals are obtained. Minor changes to the site design may be allowed; however the Final Design Review Plan(s) approved shall not permit an increase in the number of houseboats (40-maximum); boat slips (150-maximum), boathouse spaces (7-maximum), parking spaces (166 maximum).
2. The Community Service and Conditional Use approvals described herein shall expire five years from the effective date pursuant to MCC .8260(A) or .8280(D), unless the project is completed or substantial development has taken place within five years as specified in MCC .7010(C) and MCC .7110(C). Construction of proposed development and uses approved under the CU/CS/WRG and HV decisions may be divided into stages. However, each phase or stage shall require a separate Final Design Review Plan and other approvals as prescribed by conditions herein.
3. Obtain applicable approvals from the U.S.Army Corps of Engineers and the Division of State Lands before conducting site grading or fill work within identified wetlands on the site, and prior to installation of proposed pilings,docks, floating walkways, or structures in Multnomah Channel . The riverward encroachment of the marina and its associated floating structures and uses shall not extend beyond the distances illustrated on approved CU/CS plans.
4. Prior to site development or construction of the proposed facilities, obtain applicable permits or approvals from the Oregon Department of Environmental Quality for expanded sewage facilities, and from the State Department of Water Resources. Provide documentation that authorized facilities have adequate capacity and are authorized to serve the uses noted above in Condition #1.
5. Except as modified by conditions of approval, the land use permits shall be for the specific uses proposed and specified in the application. A maximum of 40-houseboats are authorized; only those houseboats that will be moored at this site may be constructed, and only in their respective slips. Houseboat or other water dependent manufacturing for export to other locations is not authorized. The proposed boat repair commercial use shall not employ more than 5 people total in the business, and facilities shall not exceed a 5,000 square foot building setback at least 150 feet from OLW per MCC .6372(O) and a 10,000 square foot yard area. The boat repair facility shall be designed and located consistent with the

applicant's "ALTERNATIVE PLAN" submitted on 6/14/93. This configuration of the boat repair facility better protects the wildlife that will tend to inhabit the adjacent wetland area.

6. Each new, relocated, or replaced boathouse or floating home shall be individually authorized by a WRG Permit [Planning Director approval per MCC §.6364]. Applications for new, relocated, or replacement structures shall be consistent with the reconfigured marina plan approved herein, except as amended by Condition #1.
7. Any subsequent decision(s) by the Director to implement conditions above and requiring the exercise of legal or factual judgment shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11).
8. The reduction in the number of requested parking spaces from 186 to 166 shall be accommodated by reducing the number of spaces located in the area south of the sewage lagoon and east of the wetland area. This reconfigured parking plan shall be reviewed and approved through design review in order to carry out the intent of this condition.

I. SUMMARY

The applicant requests approval to permit the expansion of the Rocky Pointe Marina. In essence, the applicant proposes to reconfigure the existing houseboat moorages and boat slips somewhat, and to expand the moorage to the north. In addition, the applicant is proposing a significant extension of the parking area and access road to the north, to serve the proposed moorage expansion. The northward expansion of the moorage and its related development on the shore, will impact existing wetlands on the site. At the northern terminus of the access road, the applicant is proposing a boat repair facility and boat lift.

The major issues in this case are: 1). the density and location of development, 2). the protection of ecologically fragile natural resources, 3). that no hazardous conditions will be created, and 4). whether the applicants have met their burden of proof by demonstrating there is substantial evidence in the whole record that all of the other applicable approval criteria can be met.

The Hearings Officer held public hearings to consider the request on June 7, June 22, and July 14, 1993. The Hearings Officer finds that if the number of proposed houseboats is reduced from 50 to 40, if the number of parking spaces is reduced from 186 to 166, if the proposed design of the boat repair facility is changed so that it presents less of a disruption to wildlife in the adjacent wetland, and if other conditions of approval are met, then the proposal will meet the applicable approval criteria and can be approved.

II. PROJECT HISTORY

The following excerpts from page 2 of the application provide a brief review of the

project's history. It should be noted that one of the opponents to this application, namely, F.O.R.C.E., have also summarized certain historical information concerning Rocky Pointe Marina. The Hearings Officer also takes note of the basic facts contained on page 2 of the document submitted by F.O.R.C.E. on April 1, 1993. In order to provide a reasonably concise history, only the following excerpts from the application are reprinted here:

*"In September, 1992, the present owners of Rocky Pointe Marina were informed by the County that the marina was not in compliance with approvals CS 6-60 and MC 9-67, issued in 1960 and 1967 respectively. These zoning approvals allow 14 houseboats, 75 boat houses, 600 boat moorage slips and a marine construction facility (with a maximum of 5 employees). * * * Previous owners had allowed the Marina to expand beyond * * * 14 houseboats to 29 houseboats, while the number of boat houses and covered boat moorage slips remained well below the approved amounts.*

"The present owners (and applicants) acquired Rocky Pointe Marina in October, 1991. They also acquired the adjoining vacant land (Sec. 36 3N2W, Tax lot 30) to the north of Rocky Pointe Marina.

"An application for Community Service (CS), Conditional Use (CU), Willamette River Greenway (WRG), and Variance (V) approval was submitted to the County for review in December, 1992 to obtain land use approval of the existing development as well as a proposed expansion of the facility. This application was reviewed by the County staff. A postponement of the hearing date for this application was requested so that additional information could be prepared which addressed issues raised by the Planning staff."

III. APPLICANT'S PROPOSAL

Janis and Richard Tonneson (applicants) request county approval to modify the Community Service (CS) use at "Rocky Pointe Marina" and to expand the CS designation to include an 8-acre property north of the existing marina. The requests include several components:

Conditional Use and Willamette River Greenway Permit approval to:

- a) Increase the number of allowable houseboats (floating homes) from 14 to 50; and
- b) Modify the existing marine construction zoning approval on Tax lot 8 to allow instead a boat repair facility on Tax lot 30.

Community Service Use approval and a Willamette River Greenway Permit to:

- a) Decrease the number of approved boat houses from 75 to 15;
- b) Decrease the number of approved boat moorage slips from 600 to 150;

Variance approval to:

- a) Continue to have a parking area below the 100 year flood elevation;
- b) Continue to use a gravel surface instead of pavement; and

- c) Provide parking spaces for the boat slips at a ratio of one parking space per three boat slips.

NOTE: During the course of the hearings held by the Hearing's Officer on this matter, the applicant submitted a variety of alternate designs for various aspects of the development. When these designs become relevant in the discussion below, they will be referred to specifically.

IV. SITE AND VICINITY

The 17.1-acre site is located on the west bank of Multnomah Channel and is bounded by the Burlington Northern rail-line (BN line) on the west, Multnomah Channel and Sauvie Island on the east, "Big Oak Marina" to the north, and "Happy Rock Marina" to the south. Highway 30 (St. Helens Road) is immediately west and up-slope of the BN line.

The south 9-acres contains the existing "Rocky Pointe Marina", including parking areas, a sewage treatment facility, and other structures associated with the boats and floating homes moored in the river. A marina was first established on the south end of the site in the 1940's. Additions approved by the County in the 1960's extended the marina north. Today, the moorage pilings, walkways and floating structures extend about 1700-feet along the riverbank. The riverward encroachment (*i.e.*, the distance from water edge to the outside edge of the structures secured in the river) varies from about 75-feet on the south (upstream) end, to about 210-feet on the north (downstream) [as scaled from Application: Exhibit C]. The balance of the property, including 8-acres on Tax Lot '30', is generally flat forested or brushy wetlands below the 100-year flood elevation (*i.e.*, 26-feet m.s.l.). Most of the river bank is defined by large cottonwood trees within a 50-foot wide riparian strip. The wooded strip is bordered by an open area of grasses and shrubs beneath power lines which parallel the river about 100-feet from the bank.

Nearby sites to the north and south (between the Channel and the highway) are generally flat with most portions below the 100-year flood elevation, and many wetland features. Most are developed with river-related recreation and residential (houseboat) development. Lands west of Highway-30 are generally steep forested hillsides, with scattered rural residences. The "Wildwood Golfcourse" is located about 1/2 mile to the southwest.

V. APPLICABLE LAW AND RESPONSIVE FINDINGS

A. COMPLIANCE WITH APPLICABLE COMPREHENSIVE PLAN POLICIES

The following Comprehensive Plan policies are applicable to the requests:

Policy 2 (Off-site Effects); Policy 10 (Multiple Use Agricultural Lands); Policy 13 (Air, Water and Noise Quality), Policy 14 (Development Limitations); Policy 15 (Willamette River Greenway); Policy 16 (Natural Resources); Policy 24, (Housing Location), Policy 26, (Houseboats), Policy 31 (Community Uses & Facilities); Policy 37 (Utilities); Policy 38 (Facilities); Policy 39 (Parks and Recreation Planning).

Policy #2 Off-site Effects.

The County's policy is to apply conditions to its approval of land use actions where it is necessary to protect the public from potentially deleterious effects of the proposed use, or the fulfill the need for public service demands created by the proposed use.

Findings: The Hearings Officer has approved and modified the applicant's proposal, subject to a number of conditions of approval which have been imposed, in part, to protect the public from potentially adverse impacts caused by development and to insure that adequate public services are provided to serve the proposed development. This policy has been met.

Policy #10 Multiple Use Agricultural Land

It is the County's policy, in recognition of the necessity to protect adjacent Exclusive Farm Use areas, to restrict Multiple Use Agricultural uses to those compatible with Exclusive Farm Use areas.

Findings: The Hearings Officer finds that the proposed use complies with this policy, based upon findings regarding MCC 11.15.7015(A)(3).

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.

Findings:

Air quality

Additional vehicular traffic will be attracted by the proposed redesign of the existing marina but the impact upon air quality should be negligible.

Water quality

As part of the proposed redesign, the existing sewage treatment facility located adjacent to Multnomah Channel will be upgraded to process effluent to meet Federal requirements (40 CFR, Section 133.102). This will prevent untreated sewage from entering Multnomah Channel, and will also improve air quality somewhat. The applicant indicates that water from the proposed boat repair facility will be totally recycled. If not, the DEQ letter of June 9, 1993 indicates

that a NPDES permit will be required. Overall, this criteria will be met.

Noise

Other than the construction process, evidence in the record indicates that the redesigned marina will not significantly increase ambient noise levels. The boat repair yard will be situated between the Burlington Northern railroad tracks and the river side dike. The dike has heavy vegetation and tall cottonwoods which provide screening and sound deadening of noise levels. The boat repair yard and building will be a minimum of 300 feet from any residences on adjoining properties and this use will be redesigned to further reduce the likelihood of any significant disturbances to wildlife in the area. The building and the storage yard will be oriented to minimize noise impacts on the residence to the north. Overall, this criteria will be met.

Policy #14 Development 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.

Findings:

Of the limitations noted in this policy, the 100 year flood plain and the wetland area with a high seasonal water table are relevant to this proposal.

The site lies within the 100 year flood plain, as designated by the Federal Emergency Management Agency (FEMA). There is evidence in the record of recent flooding. In particular, Appendix 2, Exhibit L submitted by FORCE, shows significant flooding in 1982 throughout the site. Some minor flooding also occurred in February of 1993. The record also shows flooding in 1977, when there was 18 feet of water in the south parking lot.

The proposed development is designed to be relatively unaffected by flooding and there is evidence in the record which indicates that the moorage will be adequately secured to prevent it from causing off-site effects due to flooding. The parking lot can be flooded without damage and vehicles can be moved from the site in the event of a flood. The houseboats and boat slips are designed to rise and fall with the water level and will not be affected by high water. Finally, the proposed boat repair building is designed to withstand flood water and a mezzanine level is incorporated into the design so that storage of materials will occur above the 100 year flood elevation. A letter from the applicant's engineer elaborates on the design of the building (see Appendix 5). In view of these facts, the threat of flooding will present no significant problem in the redesign or redevelopment of the marina.

A large portion of the property is within a wetland as defined by the State and Federal agencies. This wetland is delineated on the Existing Conditions site plan in Exhibit C. The applicant has submitted a wetland mitigation plan in order to mitigate any adverse effects to surrounding persons or property. In particular, a small portion of the boat repair facility is proposed to be located in a 1.57 acre area of reed Canary grass. Mitigation and enhancement has been proposed at a 3 to 1 ratio to offset this encroachment (See Exhibit D).

The Hearings Officer finds that the applicant has demonstrated that design and construction techniques can and will be used to mitigate any adverse public harm associated with this use. Furthermore, the Hearings Officer has included various modifications to the proposed project which will further mitigate any adverse effects. Conditions of approval will require verification of applicable approvals from the U.S. Army Corps of Engineers and D.S.L.. This policy will be met.

Policy #15 Willamette River Greenway

Protect, conserve enhance and maintain the natural, scenic, historic, agricultural, economic and recreational qualities of lands along the Willamette River; and

Protect identified Willamette Greenway areas by requiring special procedures for the review of certain types of development allowed in the base zone that will insure the minimum impact on values identified in the various areas...

Findings:

By applying for approval of a Willamette River Greenway permit, the applicant complies with the procedural portion of this policy. The natural qualities of the land will, on balance, be protected through the applicant's proposed wetland mitigation plan. This policy has been implemented through the county's Willamette Greenway permit criteria. Those criteria are specifically addressed below and the findings in that section apply here. The substantive portion of this policy can therefore be met.

Policy #16 Natural Resources

F. (Scenic Resources)

Findings:

This moorage is located between two other moorages which lie immediately to the north, (Big Oak Marina) and to the south (Happy Rock Marina). Therefore

expansion of this moorage was planned, will conserve scenic resources because the northward expansion will amount to a logical in-fill between already existing moorages.

G. (Water Resources and Wetlands)

Findings:

The wetlands that exist on this site do not constitute county identified wetlands. Therefore, Goal 5 protection under the county's acknowledged comprehensive plan and zoning ordinance was not contemplated for this site. State and federal regulatory agencies have regulatory authority regarding the wetlands impacted by this development. Nonetheless, the hearings officer finds that the applicant's proposed mitigation plan, and the water quality permits required by state and federal agencies will ensure that water resources and wetland values will be protected on this site.

Policy #21 Housing Choice

Allow for a variety of housing location, type and density...

Findings:

The proposed houseboat uses support this policy because there is a demand for this type of housing.

Policy #24 Housing Location

This policy articulates the County's locational standards for new residential development. The proposed marina expansion, with the addition of 36 houseboats, is classified as a "major residential project."

Findings:

The proposed expanded use of houseboats on the site is consistent with the criteria contained in this policy for the following reasons:

- a) There will be less than one houseboat per 50 feet of waterfront. The total frontage is 2,600 feet long, allowing 52 houseboats. 40 houseboats will be allowed - 10 less than the applicant proposed and 12 less than this comprehensive plan policy would allow.
- b) The site has direct access to Lower Rocky Point Road (County Road No. 445) which in turn intersects State Highway 30.
- c) No traffic safety problems will result from this development because the

street facilities are adequate. The driveway and access locations are established and have proven to be safe during the use of the marina. The additional traffic for boaters primarily will occur during the evening hours and weekend when traffic is the lightest.

- d) Public transit is not provided within 1/4 mile of the site because Tri-Met buses only travel as far north as the Sauvie Island Bridge which is approximately six miles south of the marina. This issue is discussed more thoroughly under Policy 31 below.
- e) The proposed marina redesign will provide user convenience by establishing a moorage with new utilities, walkways, parking, and boat slips. Clustering new houseboats, boats slips, and boat repair facilities in an area that is committed to this type of development is more energy efficient because related services and facilities will be combined into one mixed use development.
- f) The unique natural features on the site are the waterfront and the wetland area on the west side of the property. These features will be protected and enhanced by moving the existing water development away from the shore thereby avoiding potential impact to the shallow water habitat and the riparian vegetation.
- g) The grade on the property is considerable less than a 20%.
- h) The intensity of the use will be less than the current development permits issued by the County for this site would allow.. The predominant character of the property will continue to be residential use that will continue to be compatible with surrounding land uses.
- i) The need for boat slips is evidenced by the consistent rise in the number of private pleasure craft in the Portland metropolitan area. Boat slips are always in demand and many marinas have waiting lists of people wanting a slip.
- j) This marina redesign proposal includes the integration of uses (residences, boat slips, marine sanitation pump out station, and a small boat repair) for the convenience of residents in the Rocky Pointe Marina and nearby moorages.

Overall, the Hearings Officer finds that this policy has been met.

Policy #26: Houseboats

The county has designated certain areas as being suitable for houseboats.

Findings:

The Rocky Pointe moorage is specifically designated as an appropriate location for houseboats.

Policy #27 Commercial Location

Findings:

A boat repair yard is an allowable use under the MUA-20 zone. The majority of this Plan policy is intended to address conventional land-based commercial development. The one relevant portion of the policy states that it is '[t]he County's policy to: improve the availability and accessibility of consumer goods and services by supporting the location and scaling of commercial development to meet the needs of the community and to reinforce community identity'.

The proposed boat repair facility is consistent with this policy because it is intended to serve the boaters in the immediate vicinity and reduce the need to transport boats in the area to other repair locations which are inconvenient and located a considerable distance away. Because of its orientation toward minor repairs of small pleasure craft, the scale of the business will be compatible with surrounding land uses. This policy will be met so long as conditions of approval are met which strictly limit the manner in which this use is conducted on site and so long as the design of the building is modified to better protect the adjacent habitat.

Policy #31 Community Facilities and Uses

Rocky Pointe Marina is defined by Policy 31 as a "minor regional community facility". The applicable portions of Policy 31 stress the importance of meeting community needs, expansion at locations reinforcing orderly and timely development, direct access to a collector street, public transit within one fourth (1/4) mile, siting facilities where adverse traffic impacts will not occur, compatibility between land uses, and compliance with other Plan policies.

Findings:

Community needs: Community needs are met by providing needed moorage and repair facilities for the increasing number of recreational boaters using the Multnomah Channel.

Orderly and timely development: Orderly and timely development will be improved at the site because some of the necessary support facilities are not presently in place or are inadequate to accommodate the existing development. The expansion, if carried out in compliance with the currently applicable local, state and federal law will, in addition to providing more boat slips, houseboat sites, and a new boat repair facility, will also greatly upgrade the existing services and support facilities. These improved facilities will include more adequate parking, safe vehicular and pedestrian access, water service, sanitation, and other utility services.

Direct access to a collector street: Direct access is provided to Oregon Hwy 30 which is designated as a principle arterial in the Comprehensive Plan.

Public Transit: Public transit is not provided within one fourth (1/4) mile because

Tri-Met buses do not provide service to this section of Multnomah County. The closest bus service is at the Sauvie Island bridge which is approximately six (6) miles south of Rocky Pointe Marina.

Boat moorages typically attract people who arrive in groups by car during off-peak times such as evenings and weekends. This factor has apparently been considered in Policy 26 which identifies the Rocky Pointe location on the Multnomah Channel as an appropriate location for houseboats and related facilities.

Adverse traffic impacts: Adverse traffic patterns will not occur as a result of entering, leaving or traveling on the site because driveway and access road locations have been established, and over a period of time have proven to be reasonably adequate and well designed.

Compatibility between lands uses: Land use compatibility will be maintained because neighboring properties are also used as moorage facilities for houseboats, boat houses and boat slips. The proposed reduction of the number of proposed boat slips will reduce the potential water traffic generated by the marina. The Hearing's Officer recognizes that this particular moorage will have a significant number of boat slips. There is evidence in the record at page 11 of the binder submitted by FORCE, that indicates that the average number of boatslips along the Willamette and Columbia Rivers is 104. The source of this data was not indicated by FORCE. However, even assuming that FORCE'S data is correct, the Hearing's Officer finds that the proposed 150 boat slips will be compatible with the surrounding land uses because the surrounding land uses in this area are primarily marinas.

Other Plan policies: These policies are satisfied as discussed in the remainder of this application.

Policy #34: Traffic ways

Findings:

The proposed Marina redesign is consistent with applicable components of Policy 34 because no new driveway access will be created and the anticipated traffic generated by the enlarged facility will be appropriately accommodated by the existing driveways and access.

Policy #37: Utilities

This policy calls for the provision of adequate sewerage disposal, water, storm water, energy and communication facilities to accommodate the proposed redesign.

Findings:

Sewage disposal: Sewage disposal will be adequately provided for by an on-site sewage facility. All proposed modifications and enhancements to the existing sewage system will be designed and reviewed for compliance with DEQ and Federal standards and requirements. There is substantial information in the record indicating that the proposed system can be approved by the relevant regulatory authorities, and that the new system will be a significant improvement over the existing system that has aged poorly.

Water service: Water service will be provided by an existing deep well. Although there is conflicting information in the record concerning the availability of adequate water, the Hearing's Officer finds that the applicant will be required, as a condition of approval, to obtain all necessary permits under current law for expanding the water system. Based upon the information contained in applicant's exhibit 3, it is likely that adequate water service will be provided.

Storm water: Runoff will be increased slightly with the proposed redesign. However, this additional runoff will be used to supply water to the enhanced wetland proposed for the site. This system will be designed so that run off will not overburden or pollute the wetland.

Energy and communication: Facilities are presently available for energy and communication. Paragraph of Policy 37 is inapplicable to this proceeding.

Policy #38 Facilities

Findings:

Schools: The addition of 36 houseboats for a total of 50 houseboats is modest and will not significantly impact the school district. Currently, the marina supports 31 houseboats and vacation/weekenders. Only three school age children reside at the marina. The number of children is not expected to appreciably increase.

Fire and Police services: These services will remain unaffected by the proposed site redesign plan, except for the turning radius concerns at the end of the proposed access road. Comments from the Fire Marshall indicate that appropriate provisions for turning movements and other service considerations will be maintained.

Policy #39 Parks and Recreation Planning

The relevant portions of this policy include the provision of recreational opportunities by private entities and the implementation of the plan for the 40 mile loop system.

Findings:

Recreational opportunities: Recreational opportunities will be enhanced by the construction of new boat slips which will be available to the public. The benefit of the additional slips for boaters outweighs the loss of a small water area that is of minimal recreational value. In addition, a one half (1/2) mile pedestrian trail and public river access for fishing will be provided as well as a public boat launch.

40 mile loop system: Rocky Pointe Marina does not fall within the 40 mile loop system and is not affected by this portion of Policy 39.

B. APPLICABLE ZONING CODE STANDARDS AND CRITERIA

1. COMPLIANCE WITH MCC 11.15.2130 (MUA-20) ZONE

FINDINGS:

Boat Marina Changes and Expansion:

MCC 11.15.2132(A) — allows Community Service Uses as a conditional use in the Multiple Use Agriculture District pursuant to MCC .7005 – .7041.

MCC 11.15.7020(A)(1) — provides for a “...*Boat moorage, marina or boathouse moorage.*” Approval criteria are under 11.15.7015. All new or expanded uses proposed within Willamette River Greenway must meet approval criteria specified in MCC .6372

Boat Lift and Repair Facility:

MCC 11.15.2132(C)(2)(B) — allows “...*Limited rural service commercial uses such as ... repair services ...*” as a conditional use in the Multiple Use Agriculture District. Approval criteria are in MCC 11.15.7120. All new or expanded uses proposed within Willamette River Greenway must meet approval criteria specified in MCC .6372

Houseboat (floating home) Moorage Expansion:

MCC 11.15.2132(B)(9) — allows “...*Houseboats and Houseboat Moorages...*” as a conditional use in the Multiple Use Agriculture District. Approval criteria are in MCC 11.15.7505 – .7525. All new or expanded uses proposed within Willamette River Greenway must meet approval criteria specified in MCC .6372

Variance Requests

Three variances requests must each satisfy approval criteria in MCC 11.15.8505 in order to vary from parking facility design standards listed below:

MCC 11.15.7520(B) requires parking and access drives serving houseboats be constructed two feet above the 100-year flood elevation.

MCC 11.15.6132 requires parking lots to be paved; and

MCC 11.15.6142 requires one parking space for every two boat slips.

2. COMMUNITY SERVICE AND CONDITIONAL USE CRITERIA (MCC .7015 & .7120)

To approve the changes to the boat marina, or to allow the proposed boat lift and repair shop, it must be found that each:

A. Is consistent with the character of the area:

Findings:

The boat marina portion of this project is consistent with the existing marina use on the property and the adjoining marinas to the north and south. As noted earlier, this area is identified in the Multnomah County Comprehensive Framework as being appropriate for boat marinas and houseboat moorages.

The project includes a northerly extension and shifting of the moorage away from the bank to accommodate maneuvering in and out of the proposed boat slips, to reduce the potential impact of the facility on shallow water habitat and the riparian area near the water's edge, and to reduce erosion along the river's edge from wakes due to river traffic.

The boat repair facility, which will be a relatively small building with a limit of 5 employees, will be consistent with the character of the area because of its small scale, local service area, and the visual and noise buffering offered by the proposed location of the facility. The size of the building and limited storage area is similar in character to other resource activities (e.g. farming) that are permitted uses in the MUA zone.

Overall, the Hearings Officer finds that the proposed changes to the marina, with some modifications, will be consistent with the character of the area. In this case, the "area" is comprised of the west side of the Multnomah Channel, from the Happy Rock Marina, north to the Columbia County boundary. This definition is consistent with the area defined as suitable for houseboats in Policy 26 of the county's comprehensive plan. Marina uses are typically associated with houseboat moorages in this area. This criteria is met.

B. Will not adversely affect natural resources;

Findings:

The proposed marina and boat repair facility could have adverse effects on natural resources in the area. However, the Hearings Officer finds that the likely effects can be mitigated through the conditions of approval as specified in this decision. Specifically:

1. Adverse water quality effects could be caused if waste water is discharged from boats or from the boat repair facility. Boats that are moored at the facility will be required to release all waste water into the sewerage treatment facility located on site. The boat repair facility will be required to either obtain a Wash Water permit from DEQ or they must totally recycle all wash water from the repair facility.
2. Adverse effects on fish and wildlife habitat can be minimized by limiting the number of houseboats to 40, reducing the amount of parking in certain more sensitive resource areas, and by reorienting and modifying the design of

the boat repair facility so that it will have minimal effects on the resource area and the surrounding habitat. DSL, DEQ, ODFW and COE will also review aspects of this proposal and will be responsible for administering the environmental regulations under their authority. These reviews and other conditions of approval as set out above, will reasonably insure that natural resources will not be significantly affected by this modified proposal.

C. Will not conflict with farm or forest uses in the area;

Findings:

A railroad, a 5-lane highway, and steep slopes separate the subject site from nearby commercial forest lands. To the northeast, Multnomah Channel, a flood control dike, and Sauvie Island Road all separate the site from the nearest commercial farming operations on Sauvie Island. The channel is approximately 600-feet wide at this point. The Hearings Officer finds that the proposal's effects on farm or forest uses are insignificant — primarily due to physical barriers between the site and nearby farm or forest uses, and the non-farm/non-forest uses existing on immediately adjacent lands to the northwest and southeast.

D. Will not require public services other than those existing or programmed for the area;

Findings:

The hearings officer finds that the term "public services" is ambiguous. The hearings officer construes this term to include publicly financed services such as police and fire protection, public sewer and water services, public streets and schools. This proposed development will use private sewer and water systems and will therefore not require public water or sewer services. Police and fire protection will be adequate, based upon the historical experiences on this site. The Fire Marshall has provided comments regarding the ability of fire protection equipment to access the site. No difficulties are anticipated. As noted elsewhere, streets and schools have adequate capacity to handle the marginal increase in students and traffic that will be generated by this development. This criteria will be met.

E. 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:

Findings: The site is not identified as a big game winter habitat area in the Comprehensive Framework Plan or by the ODF&W. This criteria is met.

F. Will not create hazardous conditions:

Findings: The Hearings Officer finds that the existing moorage has fallen into

serious disrepair and as such, has created a number of hazardous conditions which have been detailed in the record. These conditions include serious water quality problems, general disrepair and zoning code violations. The applicant's proposed expansion will enable these hazardous conditions to be remedied. This criteria will be met.

The hearings officer wishes to pay special attention to the fact that this area is subject to flooding as detailed elsewhere in this report. The hearings officer expressed concern at the various hearings regarding the construction of the boat repair facility in the flood fringe area. After careful review of all the evidence in the record, the hearings officer is satisfied that the construction of the boat repair facility in the flood fringe will not create a hazardous condition because the building will be designed and used in a way so that flood waters will not be seriously impeded, nor will such waters seriously damage the building or its contents, according to the letter submitted by Alber Kenney, Consulting Engineer, dated Feb 11, 1993. Based upon this information, the hearings officer is reasonably comfortable that the boat repair facility can be designed to minimize any hazardous conditions in times of flooding.

G. Will satisfy the applicable policies of the Comprehensive Plan.

Findings: The hearings officer finds that there is substantial evidence in the whole record that the proposal, as conditioned, will be consistent with the relevant plan policies identified and discussed above. This criteria will be met.

H. Will satisfy such other applicable criteria as are stated in his section

Findings: There are no additional criteria specified in the CS section for the proposed use [MCC § .7020-.7072].

3. CONDITIONAL USE REQUEST TO ADD HOUSEBOAT SPACES (MCC 11.15.7505-.7525)

MCC.7505 lists a houseboat moorage as a conditional use and includes houseboat moorage location requirements and approval criteria. Houseboats are permitted only as designated by the Comprehensive Plan. The site is located within an area of Multnomah Channel designated for houseboats by Policy #26.

To approve a houseboat moorage, the Hearings Officer must find that:

A. The proposed development is in keeping with the overall land use pattern in the surrounding area;

Findings: The area is described above. Existing houseboat and boathouse moorages are located directly to the north and south of the site. The proposed moorage would be consistent with the surrounding development because it infills between existing moorages directly north and south of the site and marina has existed at the site for more than 30 years. There are no commercial farm or forest uses in the immediate vicinity. The railroad tracks and St.

Helens Highway will buffer the use from rural land uses west of the highway. The project, as conditioned, satisfies this criteria.

B. The development will not adversely impact, or be adversely affected by the normal fluvial processes;

Findings: The hearings officer agrees with the conclusions of the planning staff in that the development will not adversely impact, or be adversely affected by the normal fluvial processes. Since moorages already exist near the site, most of the potential adverse affects from such processes have already been experienced. The types of hazards associated with moorages are typically:

- (a) Damage to walkways and houseboats from drifting debris during the Spring rains or other high water times. The proposed moorage expansion benefits from the previous experience of the existing moorages, and piling and dolphin locations can be designed and placed to avoid such hazards. The bends in the Channel, and flow rates of the river at this point, are well established by the nearby moorage operators due to their long-term experience with these phenomenon.
- (b) Tilting of walkways due to unanticipated fluctuations in river tides, which may cause the jaws of the supporting rings to hang up on the associated piling due to lack of sufficient clearance to impending connections. This tilting can also result from sub-zero weather causing ice to support the walkway, suspending it above receding tide. This hazard is eliminated by proper design of the connections and supporting dolphins.

In addition, the hearings officer finds that the applicant has demonstrated his intention and ability to design a boat repair facility and upgraded sewerage lagoon that will not be adversely impacted and will not adversely impact the fluvial process. Overall, the hearings officer is satisfied that this criteria will be met, so long as the conditions of approval are implemented.

C. All other applicable governmental regulations have, or can be satisfied;

Findings: The sewerage treatment system has been reviewed by the relevant agency. Conditions of approval will require the applicant to document that the expanded system proposed is or can be approved by the Oregon Department of Environmental Quality.

The proposed pilings and floating structures in Multnomah Channel are regulated by the U.S. Army Corps of Engineers and the Division of State Lands. Applications are currently pending before both agencies. Conditions of approval address applicable regulations for grading and erosion control, floodplain development, and other agencies. The hearings officer concludes that application material submitted demonstrates the proposal, as conditioned

above, is consistent with this criteria.

D. The proposed development will not generate the untimely extension or expansion of public facilities and services including, but not limited to, schools, roads, police, fire, water and sewer.

Findings: The hearings officer has previously concluded that under Policy 37 and 38, the proposal, as conditioned, will be consistent with this criteria.

E. The maximum density of houseboats shall not exceed one for each 50 feet of waterfront frontage...

Findings: The entire site has about 2600-feet of waterfront frontage [as scaled on Exhibits D¹ and D²]. This corresponds to a maximum density of 52 houseboats (floating homes). The proposed development requests 50 floating homes, and would therefore satisfy the maximum density standard. The Hearings Officer has further conditioned approval on 40 floating homes. The Hearings Officer has authority to reduce the density of a moorage below the allowed maximum density upon a finding that "Development at the maximum density would endanger an ecologically fragile natural resource or scenic area". See MCC 11.15.7510.

With regard to the maximum density of proposed houseboats, the hearings officer notes that the applicant is requesting only two fewer houseboats than the maximum allowed under the code, even though the parking area that would serve these houseboats, (and other proposed uses), contains extensive wetland areas. The arguments made by FORCE are well taken in that the natural resource areas, including the wetlands and the associated riparian zones, should act as a constraint on development. The applicant in turn has prepared an extensive mitigation plan which show that it is possible to mitigate for the loss of wetlands and develop according to the proposed plan. The COE and DSL, who have primary regulatory authority in this this case concerning the wetlands, have indicated that they will not take action until the local land use permit decisions have been made.

MCC 11.15.7510 provides the hearings officer and the county with a considerable amount of discretion to limit the number of houseboats in a moorage, if development at or near the maximum density would endanger an ecologically fragile natural resource or scenic area. In this case, the hearings officer finds that the parking needs associated with 50 houseboats, along with the cumulative affects of the other proposed uses and its associated parking, will unnecessarily endanger portions of the wetland and riparian fringe. In short, the applicant is attempting to put too much development in too small of a place, and the resource area is being unnecessarily crowded by parking in order to achieve such density. The hearings officer notes that one way to alleviate

such over crowding is to grant a larger variance from the required parking standards. Although some variation could be warranted under the circumstances, a variance of the magnitude requested by the applicant is not appropriate as noted below. The better solution, in view of all the evidence in the record, is to reduce both the number of houseboats and the number of required parking spaces, in an effort to better protect the more fragile and important resource areas from intrusion by roads and parking.

5. VARIANCE REQUESTS FOR PARKING (MCC 11.15.7520)

Applicants request the following variances relating to three parking standards:

- 1) To allow a parking lot which is below the 100 year flood plain elevation;
- 2) To allow a gravel parking and driveway surface where pavement is required; and
- 3) To allow parking for boat slips at a ratio of 1 parking spaces per 3 boats slips rather than a ratio of 1 per 2 boat slips.

To approve each variance requested, the Hearings Officer shall find that the following criteria are met:

A. *Unusual circumstances or conditions apply to the property or to the intended use that do not apply generally to other property in the same vicinity or district*

Findings:

- 1) The existing and proposed parking lot is approximately 5 to 7 feet below the 100 year flood plain elevation. Placing 7 to 9 feet of fill to raise the parking area two feet above the flood elevation would have a negative affect on the aesthetic and habitat values of the site. Many of the existing cottonwood trees on the site would have to be cut. Other moorage developments on the Willamette and Columbia Rivers have the parking areas located on banks or levees that are above the flood elevation, but this opportunity is not realistically available to the subject property.
- 2) As discussed below, the nearby moorages share common circumstances and gravel surfacing is provided for all of them.
- 3) The unusual situation on this site is the considerable amount of sensitive land. The existing wetland area is 9.75 acres and the riparian (wetland) area identified by the County occupies an additional area adjacent to the shore. In order to minimize the amount of encroachment in these sensitive areas, DSL has encouraged the applicant to reduce the number of parking spaces to the extent feasible.
- 4) Overall, this criteria is met for all three requested variances.

B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, possessed by the owners of other properties in the same vicinity or district;

Findings:

- 1) The nearby moorages have similar property elevations below the 100 year flood elevation. The applicant is requesting to have parking located at grades similar to the adjoining moorages (Big Oak Marina and Happy Rock Moorage). The applicants request that, like the neighboring moorages, the parking area and access road be located at grade level because satisfying the elevation requirement would entail a substantial amount of filling and grading. The neighboring moorages have unpaved parking areas which compliment and enhance the natural rural setting of the area.
- 2) The nearby moorages also have gravel driveways and parking areas. However, there is no evidence in the record that other property owners in the same area have reduced their parking ratios to accommodate more boat slips or houseboats.
- 3) The property development potential is limited by the wetland protection requirements that apply. A more modest reduction in parking spaces, than that requested by the applicant is an appropriate adjustment to allow most of the development proposed, while minimizing the impact of the parking area on the wetland area.
- 4) The applicant is not entitled to 50 houseboat berths or 150 boat slips if the cumulative parking generated by these uses would significantly impact the adjacent natural resource area. The hearings officer finds that the code requires 186 parkings spaces for the proposed uses. This number of spaces and their proposed location will cause too much of an encroachment into the wetland area. The amount of development should therefore be reduced. The hearings officer further finds that a reduction in the number of spaces located south of the sewerage lagoon and adjacent to the wetland is necessary in order to more adequately protect this habitat area from further encroachment. This area will benefit from less intrusion and fill. The hearings officer finds that by reducing the number of permitted houseboats from 50 to 40, 20 less parking spaces will be required (2 spaces per houseboat are required). This reduction in development will have a similar effect in reducing the number of required parking spaces from 186 to 166, compared to the granting of a variance in the parking ratio for boat house slips from 1 space per 2 slips, to 1 space per 3 slips, which would reduce the amount of parking from 186 spaces to 161.
- 5) This criteria is not met with regard to the variance to reduce the parking ratio for boat slips from 1 to 2, to 1 to 3. The criteria is met for the two other variance requests

C. 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;

Findings:

- 1) The variance to locate parking below the flood level will not be detrimental to the public welfare or affect adjacent property, given that neighboring marina and moorage sites also have parking areas below the flood level, and there are available upland areas above the 100-year flood level on Lower Rocky Point Road where cars could be parked during a flood event.
- 2) The variance to allow gravel parking and driveway surfaces where pavement would be required will help reduce the amount of impervious surface in the area, and will therefore help reduce run off and erosion problems so long as all conditions of approval are complied with. Authorization of this variance will therefore not be materially detrimental to the public welfare or injurious to property located in the vicinity.
- 3) The variance to allow parking for boat slips at a ratio of 1 parking space per 3 boat slips rather than a ratio of 1 per 2 boat slips could have a materially detrimental affect on the public welfare and on property in the vicinity, because these boat slips will add to the overall supply of boat slips available in the area, and will attract more non resident boaters to this marina. Parking will be at a premium in this marina and the proposed development will only increase the need for adequate parking. Therefore, it is not appropriate to reduce parking ratios for various marina related uses. Rather, parking requirements and environmental constraints should work together to reasonably reduce the scale of development and thereby better accommodate the carrying capacity of the property.

D. The granting of the variance will not adversely affect the realization of the Comprehensive Plan.

Findings:

- 1) In this situation, raising the parking lot above the 100 year flood elevation would be contrary to relevant County policies, particularly those relating to the Willamette River Greenway and the protection of natural resources and habitat areas.

The location of parking below the 100 year flood elevation will be consistent with adjacent developments. Rural vistas and natural rural settings will be better retained than if the parking area were raised and fully paved. Placement of fill on this site will be detrimental to adjacent land owners and to the public because it would restrict natural rural views and could alter water drainage by the creation of impervious surfaces in the fill and grading process.
- 2) Paved parking lots are most appropriate in urban situations where high traffic volumes are expected. The gravel surface will provide adequate emergency access and any potential dust will not affect adjoining properties. This surfacing material is consistent with neighboring facilities as well as many of the roads on Sauvie Island to the East and the overall

rural character of the area.

- 3) Granting of the variances to allow parking below the 100 year flood plain and to allow such parking and roadway areas to be unpaved will not adversely affect the realization of the comprehensive plan, for the reasons noted above.
- 4) The applicant maintains that experience at the moorage has shown that a slight reduction in the number of parking spaces for the boat slips will still accommodate vehicles during the busiest times of the year. The hearings officer does not find this evidence persuasive because the applicant's conclusion is speculative. It can be just as easily concluded that once this marina is upgraded, as planned, the demand for parking will rise accordingly.

The Plan requires that adequate land area must exist to accommodate required parking. In this case, the scope of the applicant's development plan must be reduced in order to adequately realize Policy 26 (C) (4) of the comprehensive plan.

6. WILLAMETTE RIVER GREENWAY PERMIT

The County Zoning Ordinance requires a Greenway Permit for all new uses within the Greenway Boundary. When approving a Greenway Permit, the Hearings Officer must find the proposal consistent with the Greenway Design Plan [Ref. MCC 11.15.6372] as set out below. It should be noted that only a portion of the site is within the Greenway, namely that portion of the site that is within 150 feet of the mean low water mark.

- (A) *The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and the river.*

Findings: Much of the site is covered with large deciduous trees. The plan proposes parking areas and an access drive about 50 feet from the riverbank. The parked cars and trucks would be separated from the river by native shrubs and trees. The proposed site and landscape plans provide enhanced landscape and natural areas along the river which screen parking areas and uses near the river. Potential negative visual impacts to the Greenway will be further addressed through Design Review. Condition # 1 requires Design Review approval prior to initiating construction or site development. Overall, the hearings officer finds that the applicant's site plan, as modified by this decision, retains and enhances the maximum possible landscaped area between the land based uses and the river. This criteria will be met.

- (B) *Reasonable public access to and along the river shall be provided by appropriate legal means to the greatest possible degree and with emphasis on urban and urbanizable areas.*

Findings: A public moorage, boat launch ramp, public rest rooms, and fuel dock

are provided in the proposed redesign. In addition, public access for fishing will be provided. A PUC approved public crossing control over the rail line will be installed with some participation required by the applicants. This criteria will be met.

(C) Developments shall be directed away from the river to the greatest possible degree, provided, however, that lands in other than rural and natural resource districts may continue in urban uses.

Findings: The land based portions of this development have been directed away from the river to the greatest possible degree by maintaining and enhancing the trees and other plant material that separates the parking area from the river. The houseboats themselves are specifically contemplated in this area according to plan policy 26. This criteria is met.

(D) Agricultural lands shall be preserved and maintained for farm use.

Findings: The parcel size, location and wooded character of the site does not make it suitable for farming. This criteria is met.

(E) The harvesting of timber, beyond the vegetative fringes, shall be conducted in a manner which shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or will be restored within a brief period of time on those lands inside the Urban Growth Boundary.

Findings: There is no timber harvest associated with the requests. This criteria does not apply.

(F) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflicts with farm uses.

Findings: The hearings officer has previously applied carrying capacity analysis to the proposed development in the context of overall development density. In the context carrying capacity is used here, the applicant's request for a parking reduction to accommodate 150 recreational boat slips conflicts with criteria set out above. The county has legislatively decided that a boat slip needs one parking space for every two boat berths. Therefore, recreational boat berths have a land based carrying capacity that is equal to one parking space for every two boat berths. This policy is construed by the hearings officer to mean that in cases where trade offs such as this can be made, the carrying capacity of the land is controlling. Therefore this policy is met only if parking ratios are not reduced for recreational boating needs.

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

Findings: Multnomah Channel is generally regarded as a significant fish habitat.

In this case, most of the shallow shoreline area will be maintained in its natural state. The proposal actually moves water uses further away from the shallow water habitat that is most critical for fish and wildlife habitat within the Greenway. In addition, conditions of approval will require that the proposed development in the river be approved by the Corps of Engineers and the Division of State Lands. These agency reviews routinely include comments and address concerns from the federal and state departments of Fish and Wildlife. The request does not indicate dredging will be necessary to accommodate any of the proposed uses. The hearings officer concludes that so long as the conditions of approval are implemented and the Mitigation plan is fully implemented, this proposal should not create significant impacts to fish and wildlife habitat within the Greenway. This moorage is located between two other moorages and portions of this site have operated as a moorage for a number of years. To the extent that any moorage location will have relatively insignificant impacts on fish and wildlife habitat along the river, this moorage is likely to have the least impact on the river habitat because of its location and history of moorage related activity. It is reasonably likely that this criteria will be met.

(H) Significant natural and scenic areas and viewpoints and vistas shall be preserved.

Findings: The hearings officer finds that the visual character of this area has been established by the existing moorage and related development. This redesign will have a minimal visual impact because:

- Only one building for the boat repair will be added and it will be buffered by the existing trees and terrain;
- Much of the redesign is a reorganization of the existing moorage so that improved access is provided to the houseboats and boat slips;
- The moorage will provide breaks that will avoid the impact of a solid mass of structures extending along the entire frontage of the property;
- The moorage is not visible from State Highway 30; and
- Design details of the final design will be evaluated during the Design Review process.

(I) Maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Findings: The design of the proposed marina expansion will discourage vandalism and trespass by distributing residences throughout the development. Lighting will also be provided to minimize this problem. Specific design options to address this issue will be examined further during Design Review. This criteria will be met.

- (J) *The natural vegetation along the river, lakes, wetlands and streams shall be enhanced and protected to the maximum extent practicable to assure scenic quality, protection from erosion, screening of uses from the river, and continuous riparian corridors.***

Findings: As noted previously, the natural vegetation on the site will be maintained and enhanced with additional plantings as illustrated on the Landscape Plan. The hearings officer concludes that application text and plan materials submitted demonstrate the proposal, as conditioned above, will satisfy this criteria.

- (K) *Extraction of known aggregate deposits may be permitted, pursuant to the provisions of MCC .7105 through .7640, when economically feasible and when conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety, and to guarantee necessary reclamation.***

Findings: Aggregate extraction is not proposed in the requests. This criteria does not apply.

- (L) *Areas of annual flooding, flood plains, water areas and wetlands shall be preserved in their natural state to the maximum possible extent to protect the water retention, overflow and natural functions.***

Findings: The entire site is within the 100 year flood plain and a significant portion of the site is identified as wetland or riparian area. The boat repair facility is the only new building that will be constructed within the floodplain, and within the riparian area. This building will be designed to withstand flooding and materials will be stored in a mezzanine level that is above the 100 year flood elevation. It will also not significantly impede flood waters, according to the design engineer.

The hearings officer finds that the term "maximum possible extent" is ambiguous, because it does not indicate what "possible" means. On one hand the term can mean that no disruption in floodplains or wetlands can take place at all, because it is always "possible" to simply not build in these areas. On the other hand, the term "possible" can relate to whether or not it is "possible" to develop the property within the Greenway in a manner that avoids these protected areas as much as possible. Given a choice between these two plausible interpretations, the hearings officer chooses the later interpretation because it is the most reasonable interpretation given the context of the term, its relationship to the other criteria in this code section, and based upon the manner in which this provision has been applied in other cases.

Based upon the hearings officers interpretation of this provision, the hearings

officer finds that the applicant's proposal, as modified by the conditions of approval, preserves areas of annual flooding, flood plains, water areas and wetlands to the maximum possible extent (i.e. avoids these areas as much as possible) because:

- The parking area has been reduced and to the extent it impacts the wetland, the wetland values will be replaced and mitigated on site.
- The sewage lagoon will be upgraded and designed to withstand the threat of flood.
- The boat repair facility will be located outside the Greenway setback. As previously noted, it has been redesigned to accommodate flooding and will be oriented away from the mitigated wetland and associated riparian area. This redesign will help meet the intent of this criteria.

(M) Significant wetland areas shall be protected as provided in MCC .6376.

Findings: The revised marina proposal does not effect **significant** wetlands identified by the County Framework Plan. This criteria therefore does not apply.

(N) Areas of ecological, scientific, historical or archaeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.

Findings: The ecologically significant areas on the site are the wetland, riparian, and shallow water areas. As discussed above, these areas will be either protected and enhanced or mitigated. There are no known scientific, historic, or archaeological resources of significance on the site.

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

Findings: The site is not identified in the County Slope Hazards inventory. Condition #1 requires a Grading and Erosion Control Permit as part of Design Review of the proposed site improvements (including fill). The hearings officer concludes the proposal, as conditioned above, will satisfy this criteria.

(P) The quality of the air, water and land resources in and adjacent to the Greenway shall be preserved in development, change of use, or intensification of use of land designated WRG.

Findings: As noted above, the quality of air, water and land resources will be protected to the extent possible, and when full protection cannot occur, a mitigation plan has been developed and will be reviewed by the appropriate regulatory agencies for compliance with the applicable state and federal law. Furthermore, condition #1 requires that erosion control measures be applied as part of Design Review approval. Other conditions of

approval will also be used to implement this criteria. Overall, the hearings officer concludes that this criteria will be met.

(Q) A building setback line of 150 feet from the ordinary low waterline of the Willamette River shall be provided in all rural and natural resource districts, except for non-dwellings provided in conjunction with farm use and except for buildings and structures in conjunction with a water-related or a water dependent use.

Findings: All buildings will meet the 150 foot setback, as a condition of approval. This criteria will be met.

(R) Any development, change of use or intensification of use of land classified WRG, shall be subject to design review, pursuant to MCC .7805 through .7865, to the extent that such design review is consistent with the elements of the Greenway Design Plan.

Findings: Condition #1 requires Design Review prior to site development or construction. This criteria will be met.

(S) The applicable policies of the Comprehensive Plan are satisfied.

Findings: The applicable policies of the comprehensive plan have been reviewed above. This criteria will be met so long as the conditions of approval are complied with.

VI. CONCLUSIONS

1. The proposed boat repair facility, as shown on the revised site plan submitted on 6/14/93, (Alternative Plan), can satisfy the applicable Zoning Code approval criteria and will be consistent with the applicable Comprehensive Plan Policies, so long as the conditions of approval are complied with.
2. The proposed expansion and reconfiguration of the marina facilities can meet the applicable criteria, so long as the applicable conditions of approval are complied with.
3. The proposed request to expand the houseboat moorage to 50 floating homes is denied, because it does not meet all of the applicable approval criteria. The number of houseboat moorage spaces will be limited to 40 as a condition of approval, pursuant to MCC 11.15.7510 (B).
4. The variance requests to allow parking below the 100 year flood level and to allow that parking and associated roadway area to be unpaved, meets the relevant criteria, in MCC 11.15.8505, as conditioned.
5. The variance request to reduce the parking ratio for boatslips is denied because

it does not meet all the applicable approval criteria and because it conflicts with certain comprehensive plan policies. Total parking in the proposal will be reduced from 186 to 166, and the reduction of these spaces will take place at specific locations in order to maximize the protection of adjacent wetland and riparian habitats.

6. The requested Willamette Greenway Permit is approved, subject to the modifications of the proposed development as summarized above and as specifically noted within the conditions of approval attached.

Signed July 30, 1993



Phillip Grillo, Hearings Officer

Filed With the Clerk of the Board on August 13, 1993

Appeal to the Board of County Commissioners

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. Appeals must be filed 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 (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.

MONDAY, AUGUST 23, 1993 IS THE LAST DAY TO APPEAL the Hearings Officer decision; a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 pm. on that day. The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 1:30 p.m. on Tuesday, August 31, 1993 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

MEETING DATE: August 31, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Hearings Officer Decision of August 4, 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 [x] APPROVAL [] OTHER

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

ZC 1-93/LD 17-93/E 1-93 Review the Decision of the Hearings Officer of August 4, 1993, 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, all for property located at 5116 SE 115th Avenue

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: BH Willis

BOARD OF COUNTY COMMISSIONERS 1993 AUG 24 AM 10:11 MULTNOMAH COUNTY OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. 201-93/AD 17-93/E 1-93

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 20
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Zone Change, 3-Lot Land Division and Exception

NUMBER **ZC 1-93/LD 17-93/E 1-93**

1. Applicant Name/Address

Tradewinds Construction Corp.
12410 SE Madison Street
Portland, OR 972

2. Action Requested by applicant Zone Change to LR-5
3-Lot Land Division,
Lot Width, Setback Exception

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

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.
- c.
- d.

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.

August 4, 1993

**ZC 1-93, #419 LR-5, Urban Low Density Zoning District Line 1
LD 17-93, #419 Three-Lot Land Division
E 1-93, #419 Setback and Lot Width Exception**

Applicant requests amendment of Sectional Zoning Map #419, changing the described property from LR-7, low density residential (min.7,000 sq. ft.) to LR-5, low density residential district (min.5,000 sq. ft.) Applicant further requests a Land Division to divide the subject site into three lots including one flag lot, and two lots abutting SE 115th Avenue. Applicant further requests an Exception for Parcel 2 to have a width of 41.93 feet wide instead of 45 feet at the building line. Applicant also requests an Exception to allow the existing house on Parcel 1 to have a 3.75-foot side yard setback on the north property line instead of a 5-foot setback.

Location: 5116 SE 115th Avenue
Legal: West 175' of Lot 8, Blk. 3, Guisness Berry Farms
Site Size: Approximately 19,530 Square Feet
Size Requested: Same
Property Owner: Leon Huggett, 148 Baker Avenue, Oregon City, OR 97046
Applicant: Tradewinds Construction Corporation, 12410 SE Madison Street, 97236
Comprehensive Plan: Low Density Residential
Present Zoning: LR-7, Urban Low Density Residential District
 Minimum lot size of 7,000 square feet per dwelling unit
Sponsor's Proposal: LR-5, Urban Low Density Residential District
 Minimum lot size of 5,000 square feet per dwelling unit

Hearings Officer

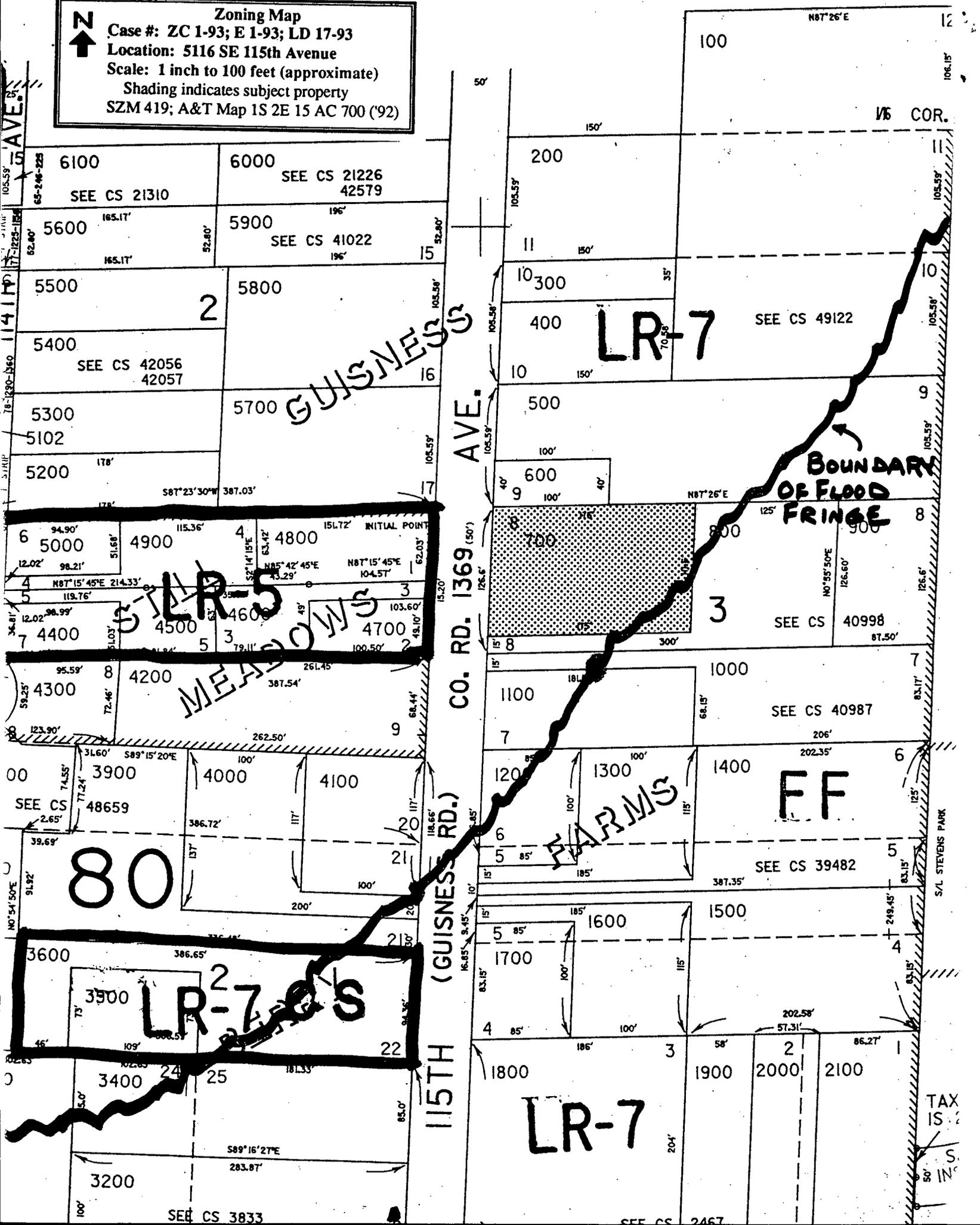
Decision #1: **Approve**, subject to conditions, amendment of Sectional Zoning Map
(ZC 1-93) #419,, changing the site from LR-7, to LR-5, low density residential
 ditrict based on the following Findings and Conclusions.

Decision #2: **Approve**, subject to conditions, the requested 3-lot land division,
(LD 17-93) all based on the following Findings and Conclusions.

Decision #3: **Approve**, subject to conditions, the requested lot width and setback
(E 1-93) Exceptions, all based on the following Findings and Conclusions.

ZC 1-93 / LD 17-93 / E 1-93

Zoning Map
 Case #: ZC 1-93; E 1-93; LD 17-93
 Location: 5116 SE 115th Avenue
 Scale: 1 inch to 100 feet (approximate)
 Shading indicates subject property
 SZM 419; A&T Map 1S 2E 15 AC 700 ('92)



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MEADOWS

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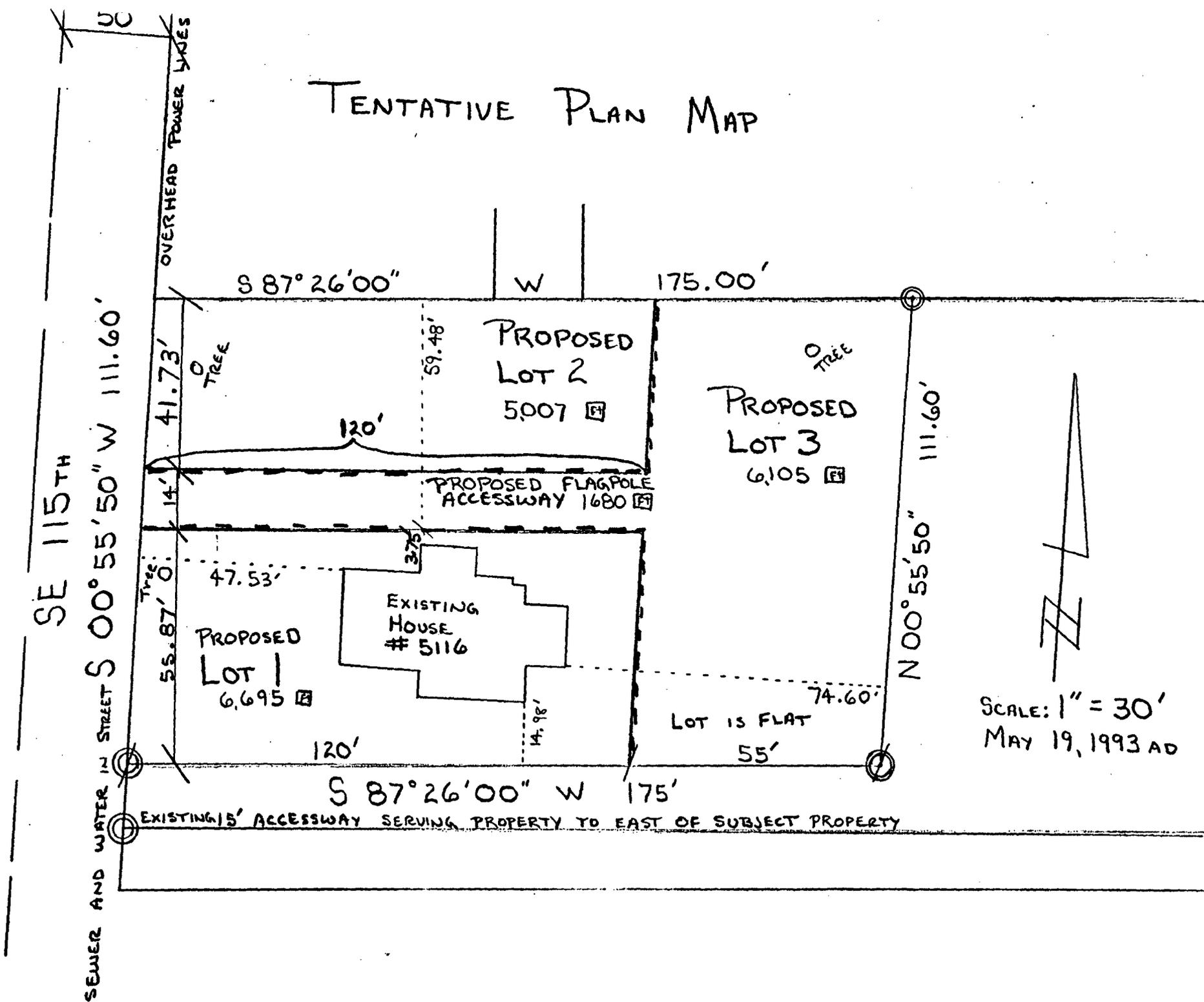
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TENTATIVE PLAN MAP



I. INTRODUCTION

A. Parties to the Proceeding

1. The Applicant

The applicant is Tradewinds Construction. The applicant's is Bruce Mock, 12410 SE Madison Street, 97236.

2. Other Persons Supporting the Application

No one else appeared in support of the application

3. Opponents

Mr. and Mrs. John Sheldon, 5040 SE 115th Avenue, 97266. Ronald and Constance McMahan, 5118 SE 115th Avenue, 97266.

4. Party Status and Notice of the 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 to *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).

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 the application.

I have no financial interest in the outcome of the 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 1.15.8230(D).

Conditions Of Approval

1. Approval of this Tentative Plan shall expire **one year** of the effective date of this decision unless either the partition plat and other required attachments are delivered to the Planning and Development Division of the Department of Environmental Services or an extension is obtained from the Planning Director pursuant to MCC 11.45.420. The partition plat shall comply with ORS Chapter 92 as amended. Please obtain applicant's and surveyor's *Instructions for Finishing a Type I Land Division*. Make the following revision to the partition plat:
 - A. On the partition plat, indicate the ground elevation at the northwest corner of Parcel 3, and place a note on the face of the partition plat that the site is within the 100-year floodplain of Johnson Creek, as required by MCC 11.45.710(D).
2. Before the Planning Director signs the partition plat, commit to participate in future improvements on SE 115th Avenue through deed restrictions. Contact Ike Azar at 248-5050 for additional information.
3. In conjunction with issuance of building permits, improve the 14-foot wide panhandle portion of the flag lot (Parcel 3) to the following standards:
 - A. **Paving:** Twelve (12) feet in width to provide a durable, all-weather surface, which can be either (a) a two-inch thickness of asphaltic concrete paving on a four to six inch base or (b) the equivalent to (a) above in Portland cement on a suitably prepared base.
 - B. The above improvements shall be installed between the front property line of Parcel 3 abutting SE 115th Avenue and the garage of the residence on Parcel 3.
 - C. The remaining width of the panhandle shall be landscaped and maintained.
 - D. The above improvements shall be installed in such a manner as to insure that the existing chestnut trees are not damaged (such as by having their roots cut) during construction of the improvements.
4. Prior to issuance of building permits for Parcel 3, obtain a Floodplain Development Permit under MCC 11.15.6307
5. Before the Planning Director signs the partition plat, amend the face of the plat to state that approval of this land division neither guarantees the ability to build dwellings on Parcels 2 and 3 nor constitutes approval to build a dwelling on Parcels 2 and 3. Compliance with all applicable zoning standards is required before a building permit is approved, including but not limited to standards relating to Hillside Development/Grading and Erosion Control, solar access, and flood hazard areas. The applicant understands and will communicate to purchasers of the parcels that protection of adjacent properties' solar access is of special importance to the neighbors.
6. On a **copy** of the partition plat, show the building envelopes for Parcels 2 and 3 after allowing for all required yard setbacks.

Findings Of Fact (ZC 1-93)

NOTE: Unless otherwise indicated, findings refer to both the Land Division and the Future Street Plan. Quoted material from the applicant's submittal appears in *Italic* type. Ordinance language appears in ***Bold Italic*** type.

1. **Applicant's Proposal:** The applicant proposes to divide a parcel containing 19,530 square feet into three parcels. Parcel 1 has a house on it and would contain 6,685 square feet. Parcel 2 is vacant and would contain 5,007 square feet. Parcel 3 is vacant and would be a flag lot containing 6,105 square feet, not counting the flagpole portion of the lot. In order to accomplish the proposed land division the applicant also requests a zone change from LR-7, Low Density Residential to LR-5, Low Density Residential. Finally, the applicant requests a lot width exception for Parcel 2 and a side yard setback exception for the house on Parcel 1.

2. **Site Conditions and Vicinity Information:** Site conditions as shown on the Tentative Plan Map are as follows:
 - A. The site is on the east side of SE 115th Avenue about 750 feet north of SE Harold Street.
 - B. **Slope:** The site is fairly flat, with an overall slope of less than two percent.
 - C. **Flood Plain:** It appears that at least a portion of the site is within the 100-year flood plain of Johnson Creek as shown on Flood Insurance Rate Map of the Federal Emergency Management Agency (Community Panel #410179-0381-B, Revised 3/18/86). Obtaining a Floodplain Development Permit prior to building permit issuance is a condition of approval.
 - D. **Street Improvements (SE 115th Avenue):** Southeast 115th Avenue adjacent to the site presently has no curbs, or sidewalks. The County Engineer has determined that in order to comply with the provisions of the Street Standards Ordinance (MCC 11.60) it will be necessary for the owner to provide curbs, sidewalks and additional paving abutting the site as a condition of partition plat approval.

3. **Zone Change Considerations [Powellhurst Community Plan/MCC 11.15).8230(D)]:**
 - A. The existing LR-7 zoning requires a minimum lot area of 7,000 square feet for a residence. Since the subject site contains 19,530 square feet, the LR-7 zoning limits the property to 2 single-family lots. The requested LR-5 zoning requires at least 5,000 square feet of lot area for a residence and would make possible the division of the site into 3 lots.
 - B. Under MCC 11.15.8230 (D) lists approval criteria for a zone change. The burden of proof is on the applicant to demonstrate that:
 - (1) ***Granting the request is in the public interest;*** [MCC 11.15.8230 (D)(1)]
 - (2) ***There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other property;*** [MCC 11.15.8230 (D)(2)]

(3) *The proposed action fully accords with the applicable elements of the Comprehensive Plan. [MCC 11.15.8230 (D)(1)]*

- C. The site is within the area covered by the Powellhurst Community Plan. The Powellhurst Community Plan is part of the Multnomah County Comprehensive Framework Plan and constitutes an official element of that plan. Powellhurst Community Plan Policy 6A addresses Growth Management and states that:

It is the policy of the County that the area from Boise Street to the Portland Traction Company Line and from S. E. 103rd to S. E. 142nd Avenue will be designated a growth management area in which the following standards will apply:

- A. *The adopted Community Plan map is the long term plan for the area.*
- B. *The zoning categories will not be changed at this time to implement the plan. Zone changes will be granted only after an individual application and hearing or as a result of a more detailed County study of the area's problems and the development of solutions to those problems .*
- C. *In granting zone changes the approval authority shall consider the following:*
1. *Whether a sanitation permit for sub-surface sewage disposal will be approved.*
 2. *The impact of the development on the flooding problem along Johnson Creek.*
 3. *The impact of the development on localized flooding and drainage problems.*

4. **Response to Zone Change Approval Criteria**

- A. **Applicant's Response:** NOTE: Following is the text of applicant's response to the zone change approval criteria.

"Because the subject property is within the growth management plan as described on page 143 of the Powellhurst Community Plan, three criteria are specified for a zone change. All three criteria are met by this request. They are:

1) A sanitation permit for subsurface disposal will not be required as the property will be connected to the sewer system, as attested to by the attached statement by the Mid County Sewer Project.

2) Since only a portion of the subject property is on the very fringe of the highest part of the flood fringe and no water ever sits or flows on the property and no substantial fill will occur, there will be negligible, if any, affect on the flooding problem along Johnson Creek, which, at it's nearest point, is approximately a mile and a half from the subject property.

3) *There is no localized flooding or drainage problems at the subject site and any residential construction will create no hills nor obstructions which would create such a condition, as there is no standing or running water on this nearly-flat lot at any time of the year.*"

B. Public Interest [MCC 11.15.8230 (D)(1)]

Staff Comment: Powellhurst Community Plan Policy No. 24 (Housing Location) indicates that it is in the public interest to allow LR-5 residential development in the subject area. The Plan refers to the area as a "Residential Development Area" or "Infill Area" because it is a partially developed area where new development will occur over time (Powellhurst Community Plan, page 212, Finding 8.A). Locational Criteria #5 of Policy 24 (page 215) states: *Detached dwellings will be allowed as an outright use in Residential Development Areas. The minimum required lot size per unit must be 5,000 square feet.* Approval of the proposed zone change would allow division of the site into three lots in a manner consistent with Locational Criteria #5. The zone change satisfies MCC 11.15.8230 (D)(1).

C. Public Need [MCC 11.15.8230 (D)(2)]

Staff Comment: The requested zone change would allow one more residential lot than the present LR-7 zoning. Policy No. 21, Housing Choice, of the Multnomah County Comprehensive Framework Plan directs the County to provide for ". . . *an adequate number of housing units at price ranges and rent levels commensurate with the financial capabilities of Oregon and the region's households, and to allow for flexibility in housing location, type and density.*" The County's report, "*Housing*", as well as recent housing market statistics indicate that there is a demand for affordable housing. The smaller lot size that the LR-5 zoning designation permits should help contribute to affordability by reducing land cost as a housing cost factor.

As opposed to other property, changing the zone on the site in question meets the public need "best" because the subject site is presently available for sale and development, and the requested change will facilitate further implementation of the County's adopted Comprehensive Plan. The proposed zone change satisfies MCC 11.15.8230 (D)(2)

D. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. To the extent that the proposal satisfies the applicable policies of the Comprehensive Plan, the proposal is also consistent with statewide goals and the regional plan.
- (2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposal.
 - (a) **No. 13 - Air and Water Quality and Noise Levels**

Applicant's Response: *"This plan helps infill the Powellhurst Neighborhood to the densities contemplated by the Powellhurst*

Community Plan and existing zoning, which is integral to the plan of maintaining the other non-urban zones and uses outside the area. Lesser density here would mean more demand to convert other land. This land has already been zoned and planned for residential, mixed-use areas.

Staff Comment: No significant impact on air pollution will result from the two additional houses allowed by the proposed land division. Public sewer is available to the site. For these reasons, the proposal satisfies Policy 13.

(b) **No. 14 - Development Limitations**

Applicant's Response:

"Development here supports the policy of directing development away from areas with development limitations.

1) *The slope of the subject property is nearly 0%, and far below the 20% slope which is of concern in item A of Policy #14 of the Comprehensive Plan for the county.*

2) *There is no serious soil erosion potential as there no slope and no water flow problems on the site.*

3) *There is no high, seasonal water table for any period of the year on the subject site.*

4) *There is no fragipan less than 30 inches from the surface.*

5) *There is no evidence on the site or within 400 feet of any land subject to slumping, as determined by visual inspection by the property owner, development consultant, and applicant."*

Staff Comment: Staff concurs with the applicant's statements regarding slope, erosion, water table, fragipan and land subject to slumping, etc. As stated previously, at least part of the site appears to be in the 100-year floodplain of Johnson Creek, according to available information. Compliance with the floodplain development permit standards in the County Zoning Ordinance will mitigate any adverse impact that might otherwise occur due to the the site's proximity to the floodplain. For these reasons, the proposal satisfies Policy 14.

(c) **No. 19 - Community Design:**

Applicant's Response: *"Policy 19 of community design is met through a combination of responses at the county level. Community design is met at the local level as individual and private developments are reviewed under building standards of the county and city, including written design review standards and procedures. The county, under finding 9 of Policy 24 of the Powellhurst Community Plan, has established countywide density standards. These are defined, in that location, and include the standards for*

single-family housing type lots, to have a maximum density of 6.5 per acre and a minimum site size of 5,000 square feet."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 19

(d) **No. 20 - Arrangement of Land Uses:**

Applicant's Response: *"Policy 20, which is that of arrangement of land uses, states that the county's policy is to support higher densities and mixed land uses within the framework of scale, location and design standards which assure a blend of uses reinforce community identity, create sense of neighborhood and belonging, and promote long term stability. These matters are addressed specifically in the housing section of the Powellhurst Community Plan where they have stated standards for size of single family houses, the need for low income housing, moderate income housing and the expansion of by more than 40,000 units the housing stock, in the county area. Specifically, the Powellhurst Plan calls for a mix of houses including single family houses where zoning and uses are appropriate, and calls for increased single family home densities in the area of the subject site."*

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 20.

(e) **No. 21 - Housing Choice:**

Applicant's Response: *"Policy 21, for housing choice, states that the county's policy is to support and assist in the provision of an adequate number of housing units at price ranges and rent levels affordable to the region's households and to allow for a variety of housing locations, types and densities. It says here that the county will, in the county's adopted comprehensive plan, encourage a provision of housing affordable to residents of all incomes which is made possible by the sizing of lots to the 5,000 square foot target level as stated on page 212 of the Powellhurst Community Plan.*

Policy 21C specifically states that the county will support the provision of housing in sizes and styles which suit the needs of smaller households, including single adults and couples without children. This is accomplished as well by a smaller lot size and access to public transportation which are both integral to this proposal.

Item G states that the county will take a direct roll in conserving the existing housing stock. This zone change and land division project make possible the retention of the existing large house which is awkwardly situated on the lot without having to tear down the house in order to get three lots with reasonable dimensions on the subject lot.

Item H speaks to accommodating innovative housing construction techniques which decrease development costs. Tradewinds

Construction Corporation, if it continues through the construction of the projects, has a unique style of housing which they have proposed to construct on the flag lot and possibly on the closer lot to the street, which includes living space created through highly engineered trusses which allow inexpensive creation of standard and well insulated living spaces beyond that which could be created with prevailing plans and practices. Mr. Mark Hess of the county planning staff can speak to the design innovation of our proposed construction and its beneficial contributions in this regard.

Item I says that the county will cooperate with the private sector to expand the supply of housing which is affordable to low and moderate income residents. We addressed this issue in the zone change request where we spoke of the increased cost per lot, if only two, or if three oddly-shaped lots, were constructed by division under the current zoning."

Staff Comment: Staff concurs with the applicant's statements. The proposal satisfied Policy 21.

(f) **No. 22 - Energy Conservation:** This policy requires a finding that the following factors have been considered:

(1) ***The development of energy-efficient land uses and practices;***

Applicant's Response: *"The subject property's use for single-family places residences within three blocks of mass transit and near streets and stores."*

Staff Comment: Staff concurs with the applicant's statements.

(2) ***Increased density and intensity of development in urban areas, especially in proximity to transit corridors and employment, commercial and recreational centers.***

Applicant's Response: *"The development of two new houses here will be more energy efficient than construction of two new houses in scattered locations."*

Staff Comment: Staff concurs with the applicant's statements. Public transit service is available on Harold Street less than three blocks south of the site.

(3) ***An energy-efficient transportation system linked with increased mass transit, pedestrian and bicycle facilities;***

Applicant's Response: *"Item B requests increased density and intensity of development in urban areas, near public transportation corridors, commercial and recreational centers. This proposal does just exactly that, as buses are*

nearby, regional and area parks are close, as is the Springwater corridor, Mall 205, Eastgate Plaza and 82nd Avenue for shopping. It's a perfect match"

Staff Comment: Staff concurs with the applicant's statements.

- (4) ***Street layouts, lotting patterns and designs that utilize natural environmental and climate conditions to advantage.***

Applicant's Response: *"Further, we intend to build extremely efficient homes on these sites. The construction of two new homes is, after all, the end purpose of this application and every home we build far exceeds the current high energy standards and generally exceed the energy requirements of Super Good Cents Standards. And any home built to code will increase the overall standard of energy efficiency, as the older homes do not reach the current standards."*

Staff Comment: Residential construction on the new parcels will be subject to the Solar Access standards in the County Zoning Ordinance (found in MCC 11.15.6800-.6890). Those provisions are intended to assure that houses on the new parcels are sited and designed so that they do not create shadows that block the solar access for adjacent land to the north of the site. For these reasons, the proposal complies with this portion of Policy 22.

- (5) ***Finally, the county will allow greater flexibility in the development and use of renewable energy resources.***

Staff Comment: Approval of the proposal would not appear to adversely affect the ability of owners of the lots to take advantage of this provision.

- (g) **Policy No. 35, Public Transportation**

Staff Comment: Tri-Met Line #10 provides east/west service along SE Harold Street. The proposal satisfies Policy 35.

- (h) **Policy No. 36, Transportation System Development Requirements:**

Staff Comment: The County Engineer has determined that certain improvements in SE 115th Avenue adjacent to the site are necessary in order for the proposal to comply with the provisions of the Street Standards Ordinance (MCC 11.60). The improvements include curbs, sidewalks, additional paving and storm drainage facilities.

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

Water And Disposal System

A. The proposed use can be connected to a public sewer and water system, both or which have adequate capacity; or

B. The proposed use can be connected to a public water system, and the Oregon Department of Environmental Quality (DEQ) will approve a subsurface sewage disposal system on the site; or

C. There is an adequate private water system, and the DEQ will approve a subsurface sewage disposal system on the site; or

D. There is an adequate private water system, and a public sewer with adequate capacity.

Drainage

E. There is adequate capacity in the storm water system to handle the run-off; or

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

G. The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

H. There is an adequate energy supply to handle the needs of the proposal and the development level projected by the plan; and

I. Communications facilities are available.

The proposal meets Policy 37 for the following reasons:

Water and Sanitation

Applicant's Response: "The Mid County Sewer Agency has signed-off, indicating that there is sewer available in the street for hookup to the potential lots. The Powell Valley Road Water District has signed-off, indicating that there is adequate water available in the street for hookup to the potential lots for all drinking and domestic uses."

Staff Comment: The Powell Valley Road Water District has confirmed that public water service is available to the site. The office of the Mid County Sewer Project has confirmed that public sewer is available to the site. The proposal complies with Item A of Policy 37.

Drainage

Staff Comment: The County Engineer will require construction of appropriate storm drainage facilities in conjunction with required street improvements. The proposal satisfies Item of Policy 37.

Energy and Communication: Portland General Electric provides electric power and US West provides telephone service. The proposal satisfies Items *H* and *I* above.

(j) **Policy 38 - Facilities**

Applicant's Response: *"This site is in the Portland School District. Fire flow water is provided by Valley View Water District who have a contract with Tualatin Valley Fire & Rescue for service to this area. Service provider comment letters indicate no problems with this development, and are included as Exhibit 4."*

Staff Comment: The property is located in the David Douglas School District, which does not anticipate any negative impacts due to student enrollment from new houses on Parcels 2 and 3. The City of Portland provides fire protection and has confirmed that there is adequate water pressure and flow for fire fighting purposes. The Multnomah County Sheriff's Office provides police protection and has stated that there is an adequate level of police service available for the area. The proposal satisfies Policy 38.

(k) **Policy 40 - Development Requirements:** This policy requires a finding that:

- A. *Pedestrian and bicycle path connections to parks open space areas and community facilities will be dedicated when 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.*

Staff Comment: The above provisions are not applicable.

E. Powellhurst Community Plan Policy 6A

Staff Comment: The subject site is within the growth management area identified in Powellhurst Plan Policy 6A.. The requested LR-5 zone change conforms with the Powellhurst Community Plan designation of Low Density Residential. The zone change request satisfies the applicable approval criteria as follows:

1. The property is served by public sewer by the Mid-County Sewer District. No subsurface sewage disposal is necessary.
2. It appears that a portion of the site is within the 100-year flood plain of Johnson Creek as shown on Flood Insurance Rate Map of the Federal Emergency Management Agency (Community Panel #410179-0381-B, Revised 3/18/86). That map indicates that the base flood elevation is about 211 feet in the vicinity of the site. According to County topographic information, the the ground elevation at the rear of the existing house on Parcel 1 is 210 feet. The Flood Hazard standards in the County Zoning Ordinance require the finished floor of a residence to be one foot above the base flood elevation [MCC 11.15.6315(B)]. Obtaining of a Floodplain Development Permit is required by MCC 11.15.6307. All runoff created by development of the property will be required to be disposed of on-site. Therefore, there will be no impact on either localized flooding, or flooding along Johnson Creek.
3. For the reasons stated by the applicant and for for the reasons stated in the preceding paragraph, all runoff created by development of the property can be and will required to be disposed of on-site. Therefore, there will be no impact on either localized flooding, or flooding along Johnson Creek.

Conclusions: (ZC 1-93)

1. Findings 4.B through 4.D demonstrate that the proposed zone change meets the general zone change Approval Criteria of the Zoning Ordinance as stated in MCC 11.15.8230 (D).
1. Findings 4.A and 4.D demonstrate that the proposed zone change meets the special Powellhurst Community Plan zone change approval criteria stated in Powellhurst Plan Policy 6.A.

Findings Of Fact (LD 17-93)

1. **Applicant's Proposal:** See Finding 1 for ZC 1-93.
2. **Site Conditions and Vicinity Information:** See Finding 2 for ZC 1-93.
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type I because it is "[A]. . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to change the zone of the subject site from LR-7 to LR-5. This staff report addresses the zone change application under Decision # 1 (ZC 1-93).

- B. MCC 11.45.150 requires that the Future street Plan *"show the proposed continuation of streets in the Type I Land Division in sufficient detail to demonstrate that future division of the adjacent area in compliance with the provisions of [the Land Division Ordinance] is reasonably possible."*
- C. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
- (1) *The Tentative Plan is in accordance with:*
 - a) *the applicable elements of the Comprehensive Plan;*
 - b) *the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*
 - c) *the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions; including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
 - (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
 - (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
 - (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*

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

(a) *The infiltration of floodwater into the system; and*

(b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. **Response to Type I Land Division Approval Criteria:** In this section, the applicant's responses to the approval criteria are in *italic type*. Staff discussion of applicant responses appear in paragraphs titled **Staff Comment**. A copy of the applicant's written responses to the land division approval criteria (along with other written information submitted by the applicant) is attached as Exhibit A.

A. **Applicable Elements of the Comprehensive Plan**

See Finding 4.D for ZC 1-93.

B. **Development of Property [MCC 11.45.230(B)]:**

Applicant's Response: *"The map demonstrates that the balance of the property, under the same ownership, is fully developed with this proposal, to the full extent allowed by zoning and Comprehensive Plan guidelines."*

Staff Comment: Approval of the land division will provide the opportunity for development of the site with two additional single-family houses in accordance with the Comprehensive Plan and the requested LR-5 zoning. Approval of the request will not affect the ability to develop or provide access to adjacent land. The adjacent lot north of Parcel 2 is fully developed with a single-family house. The adjacent parcel north of Parcel 3 has adequate access to 115th Avenue to support potential future division of that parcel. Adjacent land to the south and east consists of a single flag lot that has its own access to 115th Avenue. For these reasons and those stated by the applicant, the proposal satisfies MCC 11.45.230(B).

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

Applicant's Response: *"This proposal complies with the zoning and Comprehensive Plan requirements providing the appropriate development of residentially zoned property, and therefore supports the intentions of Chapter 11."*

Staff Comment: Staff offers the following comments:

(1) MCC 11.45.015 states that the Land Division Ordinance. . . *"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and*

uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County." The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:

- (a) Subject to Decision #3 (E 1-93) the size and shape of the proposed parcels meet the area and dimensional requirements of the requested LR-5 zoning designation. As designed, the lots are adequate to accommodate single-family residences that satisfy yard setback, height, lot coverage and solar access requirements in the LR-5 zone without the need for variances from those setback, height, lot coverage and solar access requirements. Under these circumstances, overcrowding will not occur.
 - (b) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal furthers the health, safety, and general welfare of the people of Multnomah County.
 - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
 - (d) The proposal meets the purpose of "*providing classifications and uniform standards for the division of land and the installation of related improvements*" because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . . "*minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities.*"
- (a) The proposal minimizes street congestion by requiring improvements to 115th Avenue adjacent to the subject site.
 - (b) The findings for Plan Policies 37, 14 and 13 address fire protection, flood and geologic hazards, and pollution, respectively. For the reasons stated in those findings, the proposal would secure safety from fire, flood, geologic hazard, and pollution.
 - (c) Subject to Decision #3 (E 1-93) the proposal meets the area and dimensional standards of the requested LR-5 zoning district as explained in Finding 4.D below. New residential development on Parcels 2 and 3 will be required to comply with applicable LR-5 setback, height, lot coverage and solar access requirements. In

meeting those requirements, new development will provide for adequate light and air and prevents the overcrowding of land.

- (d) The finding for Plan Policies 35 and 36 address streets and public transportation. The finding for Policies 37, 14 and 38 address water supply and sewage disposal, storm drainage, and education, fire protection and police service. For the reasons stated in those findings, the proposed land division facilitates adequate provision for public transportation, water supply, sewage disposal, drainage, education, and other public services and facilities.

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

Applicant's Response: *"All the lots of the proposed division meet the lot and dimension requirements of the Zoning Code for LR-5 Zoning with two exceptions, noted with Exception Requests which accompany this proposal. The two minor exceptions requested are a setback exception of 1.25 feet between one side of the flagpole and one corner of the northerly wall of the existing house and an 8% exception for the minimum width at the building line on lot 2 to slightly less than 42 feet."*

Staff Comment: Staff offers the following comments:

- (1) Subject to approval of ZC 1-93, the site will be zoned LR-5, Urban Low Density Residential District.
- (2) The following area and dimensional standards apply per MCC 11.15.2634:
 - (a) The minimum lot size for a single family dwelling shall be 5,000 square feet. As shown on the Tentative Plan Map, all three parcels meet or exceed this requirement.
 - (b) The minimum lot width at the building line shall be 45 feet. As shown on the Tentative Plan Map, Parcels 1 and 3 exceed this requirement. Subject to Decision #3 (E 1-93) Parcel 2 will be permitted to have a width of 41.73 feet instead of 45 feet.
 - (c) The minimum yard setbacks shall be 20 feet front, 5 feet side, and 15 feet rear. Single-family residential development on Parcels 2 and 3 will be required to meet all minimum yard setbacks. The Tentative Plan Map indicates that the existing house on Parcel 1 has a 47.53-foot front yard setback, a 19.6-foot rear yard setback and a 14.93-foot side yard setback to the south property line. Subject to Decision #3 (E 1-93), the side yard setback between the house and the proposed north property line of Parcel 1 will be allowed to be 3.75 feet instead of 5 feet.
 - (d) The maximum lot coverage shall be 50 percent. Single-family residential development on Parcels 2 and 3 will be required not to exceed the maximum allowed coverage. The lot coverage for existing house on Parcel 1 is less than 24 percent.
 - (e) The proposed land division satisfies the solar access provisions of the Zoning Ordinance even though two of the proposed parcels do

not have north-south dimensions of 90 feet and none of the proposed parcels do not have front lot lines that are within 30 degrees of a true east-west orientation as required by MCC 11.15.6815(A). Parcels 1, 2 and 3 do not meet the basic design standard of MCC 11.15.6815(A) because the existing road pattern for the area prevents the parcels from being oriented for solar access. Because SE 115th Avenue runs in a north-south orientation, there is no way that the proposed parcels could have front property lines that are within 30 degrees of a true east-west orientation. Therefore, pursuant to MCC 11.15.6815(A)(3), the percentage of lots that must comply with MCC 11.15.6815 is reduced from 80 percent to zero percent.

- E. **Subdivision Name [MCC 11.45.230(E)]:** The proposed land division is not a subdivision. Therefore, it will not have a name and MCC 11.45.230(E) is not applicable.
- F. **Street Layout [MCC 11.45.230(F)]:** The proposed land division does not include any new public streets or extensions of existing streets. Therefore, MCC 11.45.230(F) is not applicable.
- G. **Private Streets [MCC 11.45.230(G)]:** The proposed land division does not include any new private streets. The proposed new parcels will be served by driveways connecting to 115th Avenue. Therefore, MCC 11.45.230(F) is not applicable.
- H. **Flooding and Flood Hazards [MCC 11.45.230(H)]:**

Applicant's Response: "Approximately one-third of the subject property is on the very upper fringe of the 100 year flood fringe of the Johnson Creek Drainage. Normal building methods will elevate the subject properties well above 1-ft. above flood fringe area that is required to protect properties from flooding. There is no drainage across the property or standing water during any part of the year. The soil is rocky, and dozens of properties in the area have successfully disposed of roof drain-off in drywells. The sanitary sewer is designed to keep any discharge of matter into or out of the system except for the domestic use for which the system is contemplated and designed."

Staff Comment: Staff concurs with the applicant's statement. The proposed land division satisfies MCC 11.45.230(H)

Conclusions (LD 17-93)

1. The land division satisfies applicable elements of the Comprehensive Plan.
2. The proposed land division satisfies the approval criteria for Type I land divisions.
3. Subject to Decisions #1 and #3, the proposed land division complies with the zoning ordinance.

Findings of Fact (E 1-93)

1. **Applicant's Proposal:** In conjunction with the proposed land division and zone change, the applicant requests a lot width exception for Parcel 2 to allow a lot width at the

building line of 41.73 feet instead of the 45 feet required in the LR-5 zone under MCC 11.15.2634(F). The applicant further a side yard setback exception for the existing house on Parcel 1 to allow a 3.75-foot side yard setback between the existing house and the north line of Parcel 1 instead of the 5 feet required in the LR-5 zone under MCC 11.15.2634(H):

2. An "exception" not to exceed 25 percent of any other dimensional requirement may be granted for a land division which is found to result in a "more efficient use of the site" under MCC 11.15.2480(B).
3. Approval of these exceptions will allow the creation of two of the three parcels in the proposed land division. With approval of the lot width exception, Parcel 2 will accommodate a new single-family residence. With approval of the setback exception, Parcel 1 will accommodate the existing single-family residence on the subject site.
4. The lot widths requested for Parcel 2 is 7.26 percent less than the required 45 feet. The requested width is within the 25 percent approval limits of MCC 11.15.2480(B).
5. The side yard setback requested for Parcel 1 is 25 percent less than the required five feet and is thus at the approval limits of MCC 11.15.2480(B).

Conclusions (E 1-93)

1. The creation of three lots from the site is a more efficient use of land than would occur without approval of the requested exceptions.
2. Approval of the exception is in harmony with the County's Urban Infill policies.

Signed August 4, 1993



Robert Liberty, Hearings Officer

Filed With the Clerk of the Board on August 13, 1993

Appeal to the Board of County Commissioners

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the Record. Appeals must be filed 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.

Monday, August 23, 1993 is the last day to appeal the Hearings Officer decision; a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m. on that day. The Hearings Officer decision on this item is tentatively scheduled for the Board of County Commissioners review at 1:30 p.m. on Tuesday, August 31, 1993 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.

MEETING DATE: August 31, 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.

CLERK OF COUNTY CLERK'S OFFICE 1993 AUG 24 AM 10:10 MULTNOMAH COUNTY OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: BH Wallia

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

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.



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

*3/4/20/93
 Feeling
 fee -
 \$461.00
 back
 up to file
 notice of
 review
 Monday
 8/23/93
 4:30 pm*

NOTICE OF REVIEW

1. Name: Lundbom, Betilue

2. Address: 31847 SE Lusted Rd., Gresham, OR 97080

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 Hearings Officer Planning Commission 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 26 AM 10:20
 MULTNOMAH COUNTY
 OREGON

Please file this original form, etc

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) 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: William E. Lundstrom Date: August 20, 1993

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 46 min 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



MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING AND DEVELOPMENT
LAND DEVELOPMENT SECTION

DONALD E. CLARK
COUNTY EXECUTIVE

LAND DEVELOPMENT SECTION
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 (i.e., 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

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

AN EQUAL OPPORTUNITY EMPLOYER

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 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.



CASE NAME: Lundbom

TIME 1:30 pm

Conditional Use Denial

NUMBER CU 20-93

1. Applicant Name/Address: Betilue Lundbom
31847 SE Lusted Rd.
Gresham, OR 97080

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Plan.Com./Hearings Officer
<input type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	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
(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)**

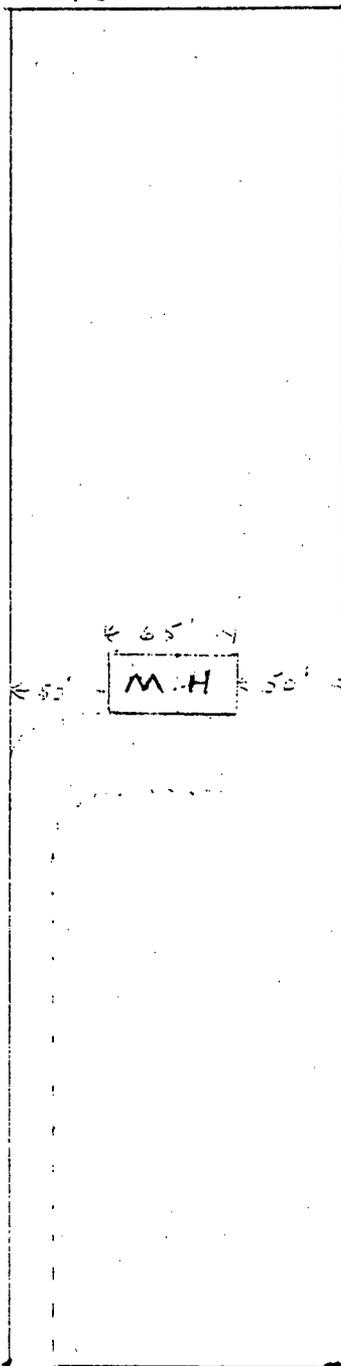
Applicant requests Conditional Use approval for a non-resource related single family dwelling on a 3 acre Lot of Record in the EFU zoning district..

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.

164.36



1229'

65'

M.H.

50'

50'

700

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 identical¹, 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.

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,

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

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 address 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.

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 parcel⁶ (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 discontinuous. 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).

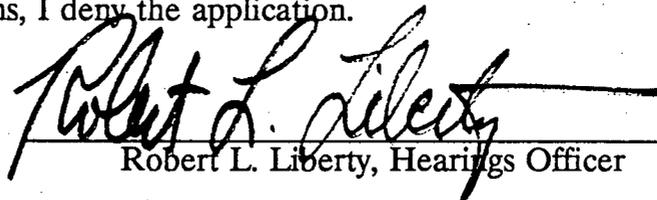
Neither the staff nor the applicants addressed Plan Policy 16, which is generally applicable to quasijudicial land use decisions. In the absence of any information or analysis demonstrating the inapplicability or satisfaction of this policy I find the applicants have not carried her burden of proof.

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, Hearings Officer

Date: 5 August 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 [] OTHER (x) DENIAL

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 Willie

CLERK OF BOARD OF COUNTY COMMISSIONERS
MULTI-COUNTY DISTRICT OF CLATSOP COUNTY, OREGON
SEP 21 1993

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

PLEASE PRINT LEGIBLY!

MEETING DATE 8/31/93

NAME Arnold Rochlin

ADDRESS P.O. Box 83645

STREET
Portland, OR 97283
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-4

SUPPORT **OPPOSE** X
SUBMIT TO BOARD CLERK

P-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.



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
253-7628 8/23/93

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

500.
500.

NOTICE OF REVIEW

1. Name: Hackett , D. , William
Last Middle First
 2. Address: 3130 NW Forest Lane , Portland , OR 97229
Street or Box City 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

RECEIVED
MCC
OREGON
MAY 11 1993

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

*U 17-93
1/19-93
last day to
file notice
1 Review
moving
1/23/93
4:30 P.M.*

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) 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. Jackson 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. 0417-93

BEFORE THE MULTNOMAH COUNTY
BOARD OF COMMISSIONERS

IN THE MATTER OF AN APPEAL)
BY WILLIAM D. HACKETT OF THE) APPLICANT'S STATEMENT
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))

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:

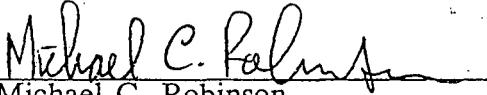
- (1) Parties will not be prejudiced by the addition of a single, discrete piece of evidence.
- (2) The applicant could not obtain the evidence at the time of the initial hearing.
- (3) The applicant will provide the study to the staff and other parties in advance of the hearing.
- (4) The land feasibility 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 21
 - (Hearings Officer/Planning Commission)
 - Previously Distributed _____

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



CASE NAME Hackett Lot of Record

NUMBER CU 17-93/HV 9-93

1. Applicant Name/Address

William Hackett
3130 NW Forest Lane

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?

ACTION REQUESTED OF BOARD	
<input checked="" type="checkbox"/>	Affirm Plan.Com./Hear.Of
<input type="checkbox"/>	Hearing/Rehearing
<input type="checkbox"/>	Scope of Review
<input type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input type="checkbox"/>	New Information allowed

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.



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

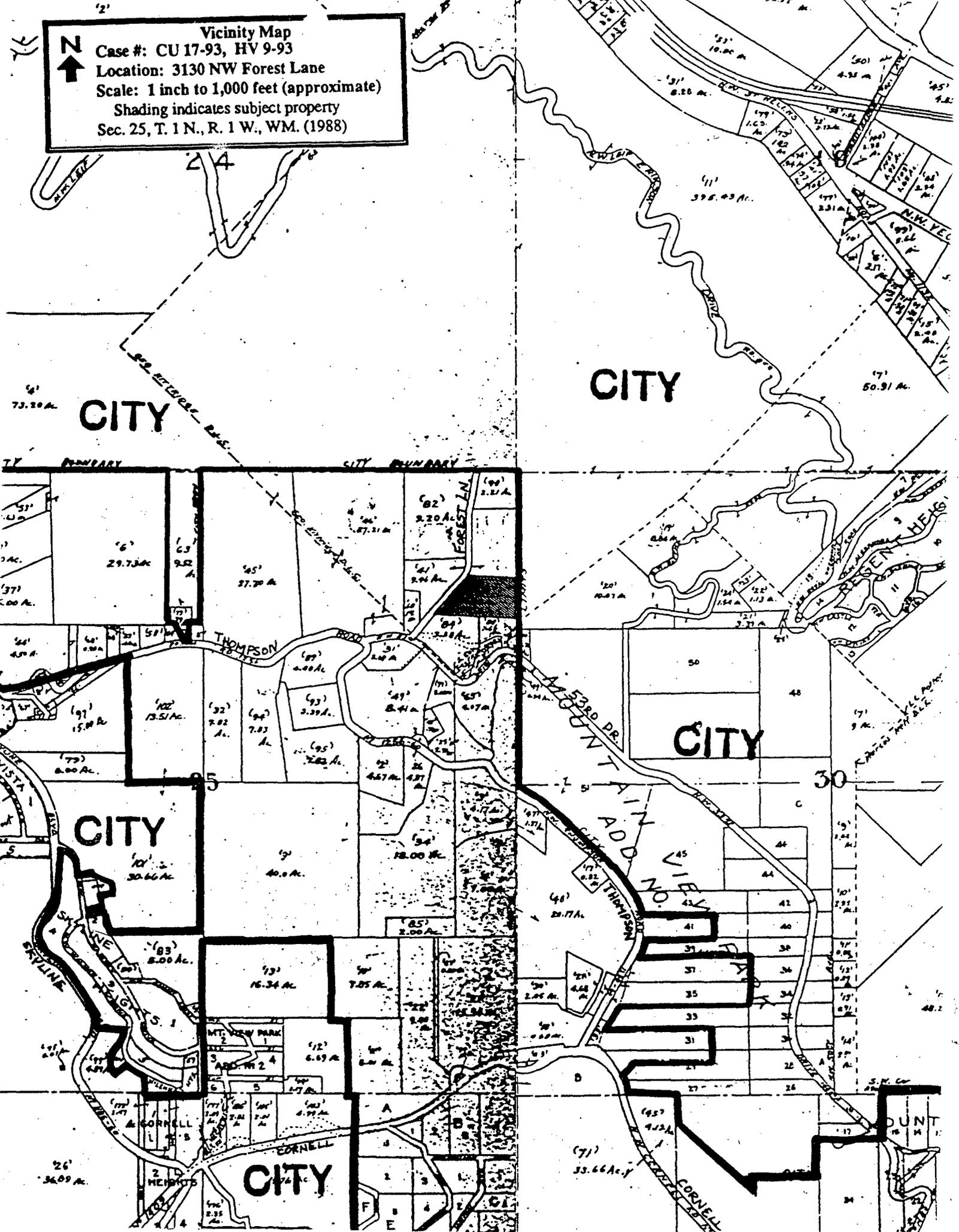
The applicant requests approval of two variances to the minimum lot size standard in the MUF-19 (Multiple Use Forest) zone. The minimum lot size in the zone is 19 acres. The applicant proposes lots that contain 1.83 and 2.23 acres. The two proposed lots were created by deed in 1967 and were acquired 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.



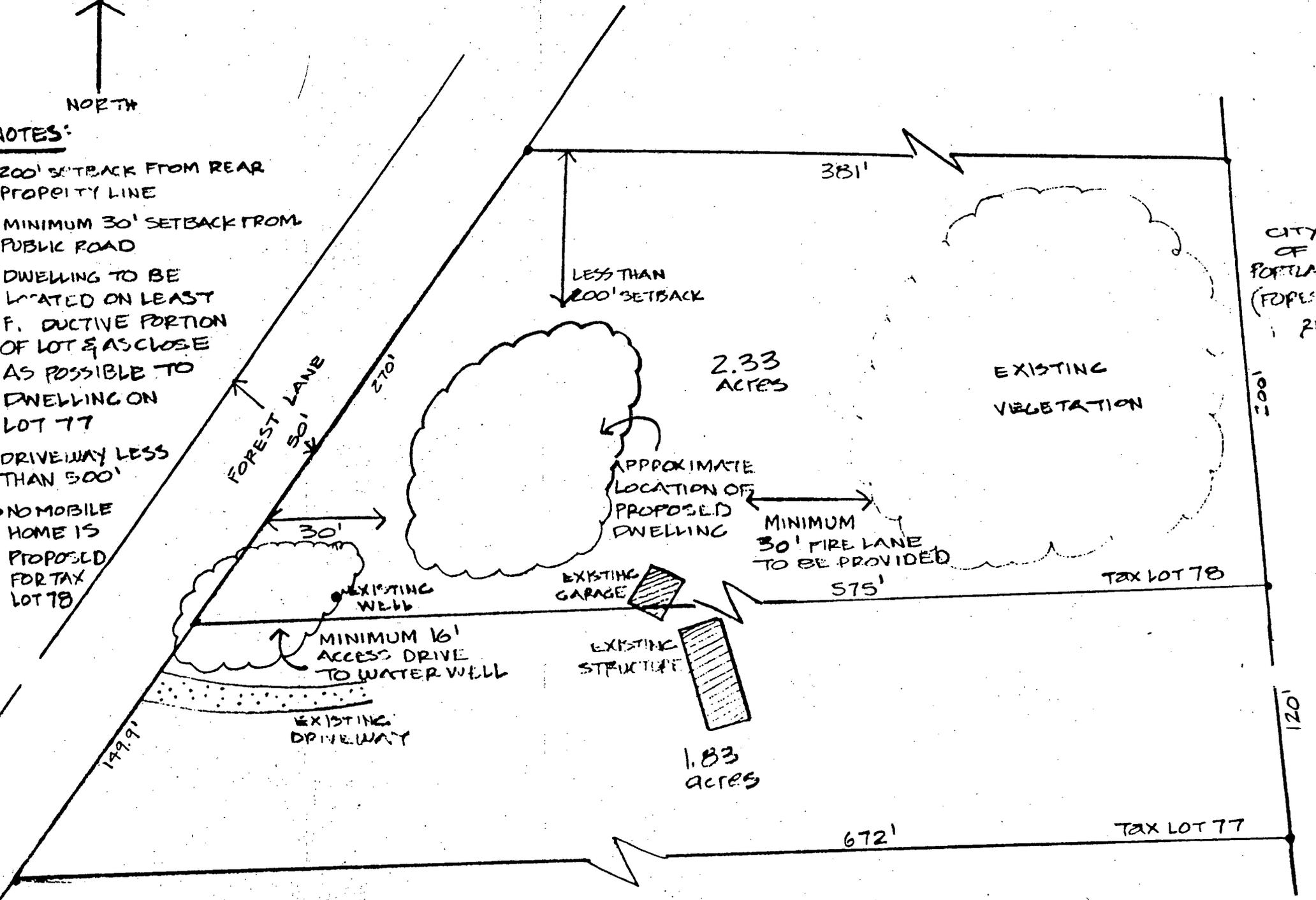
Vicinity Map
 Case #: CU 17-93, HV 9-93
 Location: 3130 NW Forest Lane
 Scale: 1 inch to 1,000 feet (approximate)
 Shading indicates subject property
 Sec. 25, T. 1 N., R. 1 W., WM. (1988)





NOTES:

- 200' SETBACK FROM REAR PROPERTY LINE
- MINIMUM 30' SETBACK FROM PUBLIC ROAD
- DWELLING TO BE LOCATED ON LEAST F. DUCTIVE PORTION OF LOT & AS CLOSE AS POSSIBLE TO DWELLING ON LOT 77
- DRIVEWAY LESS THAN 500'
- NO MOBILE HOME IS PROPOSED FOR TAX LOT 78



CITY OF PORTLAND (FOREST) 2K

CU 17/93
HV 9-93

SITE PLAN FOR

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:

	<i>TL '77'</i>	<i>TL'78'</i>	<i>Total site</i>
<i>Width</i>	120 feet	200 feet	320 feet
<i>Depth</i>	575 to 672 feet	381 to 575 feet	381 to 672 feet
<i>Area</i>	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:

<i>Tax lots aggregated in lot of record</i>	<i>Area</i>
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 care 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 jurisdictional 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 un rebutted 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 perennial 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 use 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**

<i>Exhibit No.</i>	<i>Description</i>
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")

<i>Exhibit</i>	<i>Description</i>
<i>No.</i>	
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 Sjulín 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)

#1

PLEASE PRINT LEGIBLY!

MEETING DATE 8/31/93

NAME Arnold Rocklin

ADDRESS P.O. Box 83645

STREET Portland, Or

CITY 97283

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE

8/31

NAME

~~_____~~
JIMMY SHERMAN

ADDRESS

STREET

1912 NW ASPEC

CITY

Portland OR 97210

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 8/31/93

NAME Chris Wrench

ADDRESS 3103 NW Wilson

STREET Bl. 97210

CITY _____ ZIP CODE _____

I WISH TO SPEAK ON AGENDA ITEM # P-52-93

SUPPORT X _____ OPPOSE _____

SUBMIT TO BOARD CLERK

#4

PLEASE PRINT LEGIBLY!

MEETING DATE Aug 31, 1993

NAME Philip Thompson

ADDRESS 25925 N.W. Gl. Riv. Hwy.
STREET

Scappoose, Ore 97056
CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT ✓ OPPOSE _____
SUBMIT TO BOARD CLERK

#5

PLEASE PRINT LEGIBLY!

MEETING DATE

7/31/93

NAME

DONIS McARDLE

ADDRESS

17405 NW Skyline

STREET

Portland

97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#6

Komtebo

KABDEBO

PLEASE PRINT LEGIBLY!

MEETING DATE

8/31/93

NAME

Joseph - B. Akel

ADDRESS

725 W Vi'amao F. D.

STREET

CITY

Port Moresby

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

MEETING DATE: August 31, 1993

AGENDA NO: P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: West Hills Rural Area Plan Scoping Report (C 2-93)

BOARD BRIEFING Date Requested:

Amount of Time Needed:

REGULAR MEETING: Date Requested: August 31, 1993

Amount of Time Needed: One hour

DEPARTMENT: Environmental Services DIVISION: Planning & Development

CONTACT: Gordon Howard TELEPHONE #: 248-3043 X2599 BLDG/ROOM #: 412/1st floor

PERSON(S) MAKING PRESENTATION: R. Scott Pemble, Gordon Howard

ACTION REQUESTED:

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

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

C 2-93 Accept Scoping Report. Direct staff to complete task enumerated within the staff report. This will conclude the first phase of the West Hills Rural Area Plan.

9/3/93 copies to Sharon Cowley, Gordon Howard & West Hills Citizen
1993 AUG 21 PM 2:03
MILLER COUNTY OREGON

SIGNATURES REQUIRED: 9/7/93 copy to Scott Pemble

ELECTED OFFICIAL:

OR

DEPARTMENT MANAGER: Betty H Williams

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON

In the matter of accepting the West Hills Rural Area)	RESOLUTION
Plan Scoping Report and directing the Planning)	93-290
Division of the Department of Environmental Services)	
to implement a work program to prepare the West Hills)	
Rural Area Plan)	

WHEREAS, On December 31, 1992, Multnomah County entered into a contract with Cogan Sharpe Cogan, a planning consultant firm, for preparation of a scoping report for the proposed West Hills Rural Area Plan, and

WHEREAS, the purpose of the scoping report was the identification of issues to be addressed in the West Hills Rural Area Plan, and

WHEREAS, Cogan Sharpe Cogan, in collaboration with staff of the Planning Division of the Department of Environmental Services, conducted the following activities in order to gain input on issues to be addressed in the West Hills Rural Area Plan:

- Interviews with four key stakeholders in the West Hills in January, 1993
- Mailed questionnaires and a follow-up meeting with other public agencies in January, 1993
- Discussions with two focus groups, one representing property interests, the other representing environmental interests, in March, 1993
- Two public forums conducted in May, 1993, attended by over 150 individuals, and

WHEREAS, in June 1993, Cogan Sharpe Cogan synthesized all information gathered and prepared a Scoping Report, identifying issues raised during the scoping process, and

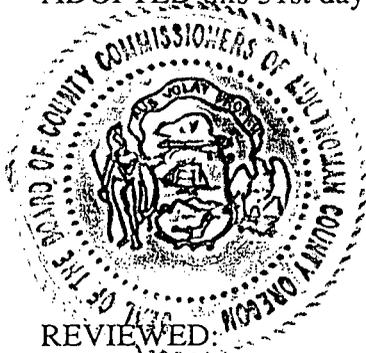
WHEREAS, on July 19, 1993, and August 2, 1993, the Planning Commission considered the Scoping Report and the accompanying staff report and proposed work program for the West Hills Rural Area Plan, and

WHEREAS, on August 2, 1993, by a vote of 5 for, 0 against, and 4 abstentions, the Planning Commission approved a motion accepting the Scoping Report, staff report, and proposed work program for the West Hills Rural Area Plan.

THEREFORE BE IT RESOLVED that the Multnomah County Board of Commissioners hereby accepts the Scoping Report, prepared by Cogan Sharpe Cogan, for the West Hills Rural Area Plan.

BE IT FURTHER RESOLVED that the Board of Commissioners accepts the proposed work program prepared by the Department of Environmental Services, Division of Planning, for the West Hills Rural Area Plan, and directs the Planning Division staff to implement this work program in preparing the Plan.

ADOPTED this 31st day of August, 1993.



By Beverly Stein
BEVERLY STEIN, CHAIR
MULTNOMAH COUNTY, OREGON

John L. DuBay
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**WEST HILLS RURAL AREA PLAN
SCOPING REPORT**

Multnomah County Division of Planning and Development

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INTRODUCTION/SCOPING PROCESS

Faced with ongoing development and resource management pressures in the rural unincorporated portions of Multnomah County and the need to address certain state or federal mandates, the Department of Planning and Development has initiated a program to update the comprehensive plans for the five rural areas of the County: West Hills, Sauvie Island, West of Sandy River, East of Sandy River, and the Columbia River Gorge National Scenic Area. The first effort concerns the West Hills Rural Area Plan.

As part of this plan update effort, these state rules and requirements must be addressed:

- ◆ Agricultural land, both high value and important farmland
- ◆ Small scale resource land
- ◆ Rural centers
- ◆ Urban reserves
- ◆ Surface and ground water quality
- ◆ Oregon Transportation Planning Rule
- ◆ State Land Use Planning Goal 5 resource update
- ◆ Secondary lands

This planning effort also must take into account existing County policies and regulations, those of neighboring jurisdictions that affect this area, and the concerns of the affected community. The recent state decision affecting application of the forest practices rule in this area will not be addressed, as the Board of County Commissioners recently adopted policies to implement the rule in Multnomah County.

In December, 1992, Cogan Sharpe Cogan, a Portland planning and communications consulting firm, was retained by the County to undertake a scoping effort to identify the issues to be addressed in the planning process. (The company name has since been changed to Cogan Owens Cogan.) The following activities were undertaken to obtain input from affected and interested individuals, groups, and public agencies. Summary reports are included in the appendices to this report.

- ◆ Telephone interviews with key stakeholders to identify important issues
- ◆ Scoping meeting and responses to a written questionnaire from city, county, regional, state and federal agencies
- ◆ Two focus groups: one with representatives of environmental interests and the other with representatives of development interests
- ◆ Newsletter mailed to all postal addresses in the area
- ◆ Written responses to a questionnaire included in a newsletter
- ◆ Two open houses for community groups and residents, one at Skyline Elementary School and the other at the Audubon Society
- ◆ Responses to written questionnaires by participants at the open houses

- ◆ Publicity in community newspapers, The Skyline Ridge Runner and The Sauvie Island Outlook.

SUMMARY OF MAJOR ISSUES

As indicated in the list in the next section of this report and the summaries of the different activities in the appendices, a wide variety of issues were identified during this scoping effort.

In the broadest sense, people appear to be concerned about the scenic and resource values that exist in the West Hills Rural Area; there is little interest in becoming urbanized or suburbanized. However, there is great concern about what is happening now and what may happen in the future.

As the planning process proceeds, concerns about the future stewardship and management of the land and resources in the area and how to balance public and private interests will need to be addressed. These issues can be summarized as follows:

- ◆ What is meant by "stewardship" or management of these resources? Limited or no development? Mitigation of impacts from development? Preservation and, thus, no further impacts?
- ◆ Who is best able to manage the land and these resources? What are appropriate roles for the public and private sectors? Are regulations achieving their purposes or are they counter-productive in terms of wise land and resource management? What incentives will encourage wise private and public management of the resources and the land?

Other primary issues related to the compatibility of resource values with continuing development. These may provide opportunities to address how to balance interests and can be restated thus:

- ◆ **Timber and gravel resources:** Given their availability in the area, can they be managed to be compatible with non-resource development?
- ◆ **Wildlife habitat:** What kind of development, if any, is appropriate? Does all development have a negative habitat impact?
- ◆ **Scenic, resource and habitat values:** Is compatible development of some kind and at some level acceptable? How can it be achieved? How can negative impacts be avoided or mitigated?

- ◆ **Subareas:** Taking into account differing resource and development characteristics, should there be approaches or strategies within subareas of the study area?

Finally, concerns were expressed about inconsistent policies and regulations in areas adjacent to the study area, specifically land and resources under the jurisdictions of Washington County and the City of Portland. People are aware that although the West Hills Rural Area is outside the Urban Growth Boundary, it is not immune from activities and pressures nearby and throughout the metropolitan region.

IDENTIFIED ISSUES

The following list summarizes all the issues mentioned during the various scoping efforts. For more details and related comments, please refer to the appendices.

Stewardship of the Land and Its Resources

- Urban reserves -- land needed in 20-50 year time-frame for urban growth
- Identification and protection of scenic resources
- Impacts of possible Westside Bypass roadway through Cornelius Pass area
- Maintenance of rural levels of development
- Identification and protection of sensitive resource areas (e.g. watersheds, wildlife)
- Maintenance of "greenspace" adjacent to the city of Portland
- Additional rural residential development potential
- Rural centers

Balancing Private Rights and Public Benefits

- Definition and designation of secondary or small-scale resource lands
- Eliminating or modifying burdensome land use regulations
- Appropriateness of "environmental overlays" which restrict use of private property
- Development allowance on lots of record
- "Grandfather" rights for existing lots and development re: new regulations
- Compensation to private property owners for loss of value
- Financial incentives to property owners for conservation

Compatibility of Development with Resource Activities

- Forest management/wildlife compatibility and conflict
- Forest management/residential development compatibility and conflict
- Agricultural use/wildlife compatibility and conflict
- Regulation of agricultural practices -- erosion, pesticide use
- Gravel extraction in the area -- conflict with other uses and wildlife habitat
- Maintenance of forest land productivity
- Protection of logged areas from residential incursion
- Development regulations in Commercial Forest-zoned areas -- potential changes
- Long-range future of commercial forestry in this area

Viability of farming in this area

Compatibility of Development with Habitat Protection

Wildlife habitat area connecting Forest Park with coast range
Connectivity of wildlife habitat areas/preventing fragmentation
Protection of wildlife habitat in the Tualatin basin area
Fisheries improvement and restoration
Buffers along creeks to protect riparian habitats
Design criteria for environmental protection re: residential development
Impact of domestic pets on wildlife habitat
Advantages/disadvantages to wildlife near city of Portland population
Appropriate lot sizes in wildlife habitat areas
Use of conservation easements

Avoiding and Mitigating the Impacts of Development

Service standards for new development (fire protection, water, etc.)
Increased storm run-off from development
Grading and drainage criteria and regulation
Area-wide water supply adequacy
Watershed management for intermittent streams
Groundwater quality protection
Surface water quality protection
Water quality educational programs
Fire hazard siting criteria
Reduction of fire hazard through building design standards
Regulations for areas not protected by fire districts
Water quality plans for new residential development
Traffic congestion at intersections
Hazards of Skyline Boulevard bike route
Maintenance of rural road standards
Highway 30 access restrictions
Limitations on new commercial development
Need for new or upgraded roads
Recreational trail routes
Review of regulations regarding earthquake hazards
Review of regulations regarding unstable slopes
Regulations for siting of telecommunications facilities
Noise impacts of airport
Noise impacts of truck traffic on Cornelius Pass Road
Need for new schools
Concentration of new development in areas with existing development
Clustering of development
Parks acquisition and development

Different Geographical Areas

Sensitivity of Old Germantown Road area to new development
Regulations for portion of study area within UBG
Balch Creek land use regulations
Status of area at northeast corner of plan (Highway 30 north of Rocky Point)
Land use regulations in Bonny Slope area
Balch Creek watershed protection for Thompson and Cornell Forks
Protection of Balch Creek wildlife habitat
Impact of stream and water flow into Burlington Bottoms/need for ESEE analysis
Impact on Miller Creek water quality

Consistency of Regulations

Consistency of watershed protection in Balch and Miller Creeks between city and county
Coordination of Portland West Hills Plan with County plans
Exception to Forest Practices Act for all or part of plan area
Protection of non-fishery streams not covered by Forest Practices Act
Consistency of land use regulations between Multnomah and Washington Counties
Consistency of regulations between Portland and County along Skyline Boulevard
Impacts of growth in Scappoose area
Goal 5 inconsistencies between Portland and County
Forest Practices inconsistencies between Portland and County in Balch Creek
Preparation of a regulations manual which is understandable

Miscellaneous

Identification of areas with hydroelectric potential

CONCLUSIONS/RECOMMENDATIONS

We believe the issues that have been identified by a broad cross-section of the interests in and around the West Hills Rural Area provide a significant, appropriate and valuable focus for the subsequent planning process.

While there are clearly very strong feelings supporting and opposing additional growth within the area, we found a continuum of values and concerns rather than insurmountable polarization. There seems to be general agreement that the area should not be allowed to become urbanized or "suburbanized" and that it is of critical importance to retain its livability and to provide stewardship of its assets. For many, this livability is related directly to the area's scenic and resource assets and the opportunity to experience a rural lifestyle close to an urban area. Most of the state-mandated rules and regulations can be addressed either through data collection/analysis or as part of the policy choices emerging from this study.

We recommend that the issues identified during this scoping process drive the planning effort. Questions that underlie all the others are summarized as follows:

- ◆ Based upon current zoning, how much growth is allowed now in the West Hills Rural Area? In other words, what population and land use patterns would result if all developable parcels were developed?
- ◆ What growth is likely, given present and future conditions? Can existing natural and man-made systems absorb/serve this growth? How much more growth can be accepted before the capacity is exceeded?
- ◆ What options/mitigation strategies can ameliorate some or all of these impacts, e.g. design/development standards, cluster development, focused higher densities, density transfers, transfer of development rights, clarification of tax benefits vis-à-vis development or resource values, etc.?

The key to a successful planning effort for the West Hills Rural Area will be to move to common ground on as many of the significant issues as possible by involving all those who will be affected by the results. To develop and nurture broad public understanding and input during the planning phase, a public involvement program using techniques similar to those utilized in this issues identification process should be considered.

APPENDIX 1
Stakeholder Interviews

RESULTS OF TELEPHONE INTERVIEWS, JANUARY, 1993

As one of the initial steps in ascertaining the concerns of key people or stakeholders involved in the West Hills Rural Area, the consultants interviewed these individuals by telephone: Frank "Skip" Anderson, President, Angell Brothers, an aggregate mining company on St. Helens Road; Dick Courter, member of the board, West Multnomah Soil and Water Conservation District, and also active in the Oregon Small Woodlands Association; Jean Oschsner, Environmental Specialist and Balch Creek Study Coordinator, City of Portland; Nora Riches, vice president, Skyline Ridge Neighborhood Association; and John Sherman, president, Friends of Forest Park. Their comments are summarized without attribution.

1. What are the major issues that the planning process should address?

- ◆ How to administer Goal 5 of the statewide land use goals so that equal balance is given to aggregate resources on forest lands as well as to wildlife, scenic views, and other values.
- ◆ Homesites and residential uses: are they being given "undue preference"?
- ◆ What entity has primary jurisdiction over these rural lands -- DLCDC or the County?
- ◆ Generally, preservation vs. development.
- ◆ How to prevent suburbanization.
- ◆ Preserving a wildlife corridor abutting Forest Park to the coast.
- ◆ Question: is there an actual "corridor" that can be identified?
- ◆ Management of the wildlife habitat.
- ◆ Scenic and open space protection.
- ◆ Multijurisdictional issues concerned with year-round protection of watersheds and native fish in Miller Creek and Balch Creek.
- ◆ County actions that help preserve resources.
- ◆ Siting houses and roads to have a minimum effect on habitat.

2. Are you aware of any opportunities that will help us address these issues?

- ◆ Restricting the size of lots on which to build homes is a "good start."
- ◆ Good time to clarify DLCDC/County jurisdictions.
- ◆ If we do not address the issues now, they soon will be moot.
- ◆ Goal 5 overlay will protect minimum lot sizes and help maintain a wildlife corridor.
- ◆ City/county National Pollution Discharge Elimination System Permits.
- ◆ City stormwater management planning for Balch Creek.

3. Are you aware of any constraints that will make it difficult to address these issues?

- ◆ Rural/residential zoning: a "weird" mixture, especially within the Balch Creek area.
- ◆ Conflicts between forest management and protection of wildlife.

- ◆ Dichotomy between state land use Goals 4 and 5.
- ◆ People whose small lots are taxed as rural/residential but who cannot develop them because of lack of sewers.
- ◆ DLCD's regulations re: forest practices.
- ◆ Proposed wildlife corridor from Forest Park to the coast.
- ◆ "Oregonians in Action type people" who have an emotional outlook toward people and government are a "real constraint" to good planning.
- ◆ Lack of money and resources in the county to do proper planning.

4. What are the best ways to make people aware of this scoping effort?

- ◆ Publicize in the Sauvie Island Outlook. Publisher, Jean Fears, 18143 Reeder Road, 621-3625.
- ◆ Involve the West Multnomah Soil and Water Conservation District.
- ◆ Provide speakers and info. for newsletter of Skyline Ridge Neighborhood Association.
- ◆ Make contact with Skyline Grange and Skyline American Legion. They hold monthly meetings at the Brooks Hill Free Methodist Church.

5. What individuals or organizations should we contact?

- ◆ Skyline Ridge Neighborhood Association.
- ◆ Skyline Grange.
- ◆ Skyline American Legion.
- ◆ Friends of Forest Park, Chris Foster, vice president, 621-3564.
- ◆ Forest Park Neighborhood Association, Arnie Rochlin, 289-2657.
- ◆ Laurie Hopkins, office manager, Soil and Water Conservation District, 231-2270; mailing list of about 400 people in three watersheds.
- ◆ Gail Curtis, Portland city planner who has been involved in planning for the West Hills within the city, 823-7826.

6. Any other comments or suggestions?

- ◆ Consider making presentation to board meeting of Soil and Water Conservation Dist.
- ◆ As one of the "major players", Angell Brothers wants to be involved in the study as much as possible.
- ◆ Friends of Forest Park concerned that after this scoping effort, the county will not do the appropriate planning.
- ◆ The City of Portland has done extensive planning for West Hills within the city; city and county work should be coordinated.
- ◆ The West Hills Wildlife Study of the Portland Planning Bureau should be reviewed; likewise, the Balch Creek plan by the Bureau of Environmental Services.
- ◆ People want more consistency and coordination between the city and the county.
- ◆ "The more public meetings, the better; people want to be involved."

APPENDIX 2
Agency Scoping Report

AGENCY SCOPING MEETING, JANUARY 29, 1993

Agency representatives in attendance:

- o Oregon Department of Forestry
- o Columbia County Planning
- o Scappoose Rural Fire District
- o Portland Parks
- o Multnomah County Parks
- o Multnomah County Planning
- o Multnomah County Transportation

Scoping questionnaires received:

- ◆ Soil Conservation Service
- ◆ Oregon Department of Environmental Quality
- ◆ Oregon Department of Agriculture, Natural Resources Division
- ◆ Oregon Department of Geology and Mineral Industries
- ◆ Oregon Department of Fish and Wildlife
- ◆ Burlington Water District
- ◆ Unified Sewerage Agency
- ◆ Portland Bureau of Planning
- ◆ Portland Bureau of Environmental Services
- ◆ Washington County Land Use and Transportation Planning

COMPOSITE ANSWERS

1. Issues to be addressed in planning for the West Hills rural area

- ◆ Protection of natural resources/maintenance of area's wildlife values.
Maintaining a diversity of habitats and wildlife species.
Protection of systems rather than isolated areas.
Effects of development actions on natural resources, e.g. erosion, water quality.
Opportunities to improve/restore fisheries.
Inconsistency between Portland and County regarding areas identified as Goal 5 resources.
Value of connectivity of Forest Park to other wildlife corridors/habitats.
Opportunities to maintain diversity of species. Avoid "island" scenario.
- ◆ Land use controls.
Increased residential lot sizes.
Incentives for good land stewardship -- buffers along creeks.
Perception that lands within UGB should have higher densities.

Uses permitted outright have no specific service (fire protection, water, etc.) requirements.

Compatibility of land uses in Multnomah County and City of Portland.

Lack of/inconsistent enforcement.

- ◆ Farm and forest operations
Lack of expertise at County to review farm and forest management plans.
Need to ensure that homes are necessary for farm or forest operations.
- ◆ Forest practices
Inconsistencies in forest practices within Balch Creek Basin - differing standards in incorporated vs. unincorporated areas.
Can county exceed state standards?
- ◆ Fire hazards
Pockets of land not protected by fire districts.
Increased dangers with increased densities/need for siting criteria.
- ◆ Transportation system
Access for emergency services
Need for new/upgraded roads. What will be the nature of the area's road system?
Highway 30 access restrictions.
Impacts of development on collector and arterial roads in Washington County.
- ◆ Infrastructure improvements/service capabilities
Culverts replaced/removed that block fish runs.
Water supply capacities to serve planned growth/use conflicts.
School capacities.
Wastewater treatment capacity/impact on Tualatin River and tributaries.
Managing increased stormwater runoff resulting from paving associated with additional development.
- ◆ Surface water and groundwater quality
Need to ensure that West Hills development meets water quality requirements imposed on Tualatin Basin.
Effects of development above Miller Creek from additional drainfields, pollutants, erosion.
- ◆ Growth in Scappoose/Warren area
Increased traffic on Highway 30.
- ◆ Impacts of nearby/adjacent industrial uses.
- ◆ Open space uses within UGB.

- ◆ Recreational uses/opportunities
Designation of recreational trail routes. Tie to Greenspaces Master Plan/Greenway to the Pacific planning.
- ◆ Land acquisition opportunities for public recreation uses.
- ◆ Annexation/urban reserves -- future of this area?
- ◆ Mineral aggregate resources
Conflicts between dwellings, aggregate minerals, and other resource uses.
Natural gas exploration.
- ◆ Natural hazards
Earthquake hazards.
Unstable slopes.
- ◆ Hydroelectric potential.
- ◆ Siting of telecommunication facilities.
Locations/health hazards.
- ◆ Opportunities for landfill siting

2. Mitigation

- ◆ Grading and drainage criteria.
- ◆ Water quality educational programs for existing and new residents.
- ◆ Siting criteria to avoid fire hazards.
- ◆ Enforcement of regulations on setbacks.
- ◆ Building materials/design standards to reduce fire hazards.
- ◆ Condition building permits on submittal of water quality plans for new residential development, including "hobby farms."
- ◆ Buffers along creeks to protect riparian habitats.
- ◆ Education on natural resource use and conservation.

3. Information sources/contacts

- ◆ Natural Area Protection Plan (Multnomah County)
- ◆ Natural Resources Management Plan for Forest Park (Portland)
- ◆ NW Hills Protection Plan (Portland)
- ◆ Balch Creek Protection Plan (Portland)
- ◆ Balch Creek Stormwater Management Plan (Portland)
- ◆ Greenway to the Pacific Program (Friends of Forest Park)
- ◆ Greenspaces Master Plan (Metro)
- ◆ Balch Creek Watershed Management Plan (Portland)

- ◆ Ester Luv's wildlife study for Angel Bros. Quarry
- ◆ DOGAMI publications on gas production in Columbia County and earthquake hazard work in the Portland area
- ◆ Department of Water Resources records on groundwater

- ◆ Skyline Elementary
- ◆ Portland Bureau of Buildings: Fred Deis
- ◆ West Multnomah Soil and Water Conservation District
- ◆ 1000 Friends of Oregon
- ◆ Development interests
- ◆ Oregonians in Action
- ◆ Oregon Concrete and Aggregate Producers Association
- ◆ Wetlands Conservancy
- ◆ FAUNA
- ◆ Friends of Forest Park
- ◆ Friends of Balch Creek
- ◆ Urban Streams Council
- ◆ State Highway Division
- ◆ Oregon Department of Water Resources
- ◆ Oregon State Health Division
- ◆ Metro Area Boundary Commission
- ◆ John Hampton, Agency Creek Management
- ◆ Neighborhood groups
 - Forest Park Neighborhood Association
 - Washington County CPO's #1, 7 and 8
 - McCay Creek Valley Association
 - West Hills and Islands Neighbors
 - Newberry Neighbors

4. Future involvement

- ◆ Review/comment on draft report
- ◆ Summary of scoping meeting to participants
- ◆ Involvement of development/real estate interests
- ◆ Meetings within neighborhood groups
- ◆ Mailings
- ◆ Inserts in water and sewer bills
- ◆ Notices to developers
- ◆ Public notices
- ◆ BES mailing list for Balch Creek Watershed
- ◆ Meet with interest groups
- ◆ Post announcements in hardware and convenience stores

APPENDIX 3
Focus Groups

FOCUS GROUPS MARCH 30, 1993

INTRODUCTION

Two focus groups were conducted at the consultant's office. The first group included three representatives of property interests: a major landowner (Larry Hurley, Tree Farm Manager for Longview Fiber); a realtor (Bob Baker, Skyline Realty); and a developer (Bob Hartford, Homer Williams Project Manager).

The second group represented environmental interests, some of whom live in the area and others interested in protection/preservation of the area. Participants in the second focus group were Nancy Rosenlund, Friends of Balch Creek/Friends of Forest Park/property owner (10 acres); Michael Carlson, Urban Conservationist with the Audubon Society; Mel Huie, Metro Greenspaces Project; Chris Foster, land use chair, Skyline Ridge Neighborhood Association and member, Metro RPAC/landowner (8 acres); John Sherman, past president, Friends of Forest Park/president, Oregon Natural Resources Defense Council/Friends of Forest Park/property owner; and Esther Lev, wildlife specialist/Urban Streams Council who conducted the West Hills Wildlife Habitat Area Study.

Prior to the focus group discussions, Scott Pemble, Multnomah County Planning Director, gave a brief presentation describing the area and explaining what the rural area plans are intended to accomplish, the purpose of the scoping effort, and that the West Hills RAP is the first of the five plans to be undertaken.

These five questions were framed for the two focus groups, though not all were posed due to time limitations or the discussion flow:

1. What issues should the planning process address? Do you agree, disagree, or want to modify these statements?
2. If you take off your (developer)(environmentalist) hat and put on the other hat, would the issues be different? How?
3. What constraints and helps are available that affect how these issues can be addressed?
4. How should the planning effort take place? Any suggestions about how to proceed?
5. How can we best inform people during the planning process?

The following is a summary of each focus group.

FOCUS GROUP 1: PROPERTY/DEVELOPMENT INTERESTS

1. What issues should the planning study address?

◆ What lands can be addressed by the RAP? (SS comment: same kind of question raised in the other focus group.) Doesn't CFU zone preclude development? How much land will be designated as secondary lands and how are these defined?

◆ "Stewardship" approaches needed

Definition: need to benefit the greatest # of people through stewardship and access. Stewardship must address the fact that land that is not being utilized is not cared for/maintained/developed to benefit the greatest number. Denying opportunities to develop land results in poor maintenance whereas allowing hobby farms on existing lots (5-20 acres) would result in better stewardship of the land. Health and safety issues should be only determinants of what buildings are allowed on the land. (SS comment: this sounds similar to John Sherman's idea of allowing ranchettes, though he suggests a 40-acre minimum.)

◆ Property rights/compensation

Loss of right to build, with an 80-acre minimum lot size; impossible to get a building permit, even though people bought with intent to build and they have been damaged and probably should be compensated.

◆ Public/private values

A lot of people see the area as a park, but want the property owners to take care of it for a public benefit. Does the greater public good outweigh those private rights? If county wants land as a park, it should buy it. Asking private owners to take care of it is the cheap way out. New property owners soon become NIMBYs.

◆ Timber production/compatibility issues

Not sure how compatible production is with houses and not sure you can grow timber productively on less than 20 acres.

There is no problem building houses, regardless of lot size, though added development results in more requests for strong regulations which limit timber production and increase costs. Limits on development should be based on health and safety factors; houses don't take up more than an acre and this leaves lots of open space/habitat; can mitigate against environmental impacts through siting and other regulations. (SS comment: this is similar to Esther Lev and Sherman's comments in the next focus group.)

Timber production and residential use don't have to be in conflict; Longview Fiber has not had problems (north of Cornelius Pass Road) from complaints about its cutting and aerial spraying.

◆ Minimum lot size/uses

Longview Fiber's 40-50 acre tracts are considered too small to log and have traded these off. These small tracts can be used for productive non-industrial growth of hardwoods (maple and alder) and are likely to be a major sources of these woods in the future. These tracts could have houses on them sited so they don't impede productivity. (SS comment: this is similar to John Sherman's notion of ranchettes/small tree farms and their productivity/return, plus habitat protection concerns in siting.)

2. Put on your environmental/community hat. What are the most important issues, do you think, to them?

◆ Community and environmental groups are not the same/NIMBY attitudes

The environmentalists/preservationists are a small but vocal minority; most residents work from 8-5 and don't have time for meetings and abuse; also, those outside the area want things left alone -- a park for their occasional use. New home owners don't want anyone else in the area, including the next phases of a new development.

◆ What is an environmentalist/preservationist?

Need to differentiate between environmentalists and preservationists. Environmental protection is compatible with development through careful siting and mitigation or through harvesting without environmental damage; it doesn't mean you leave things alone. Preservationists want nothing to happen, except trails; they should buy the land as they are not concerned with doing things in an environmentally sensitive way.

Development has occurred in areas that are environmentally sensitive; there can be no compromise with preservationists.

3. Can you identify helps and constraints?

◆ What can Multnomah County really do? (SS comment: this is similar to concerns expressed in the other focus group.)

Need to return control to county; take LCDC out of the picture. Revisit the issue of marginal lands; everything is not urban, agriculture, or urban.

◆ Development may be a help to some species

Development need not be an impediment to timber production or wildlife habitat. Deer and elk can coexist with houses and timber harvest.

◆ Subdivisions could be an impediment

All agreed that subdivisions are inappropriate in the area and are incompatible with industrial timber production; need to maintain character of the area and can do that through development on existing lots. (SS comment: a positive point for the environmental community.)

No one has a vested right to a subdivision; we're talking about rural residential housing. Existing parcels are not enough to make a big difference, and the issue is whether to allow more parcelization; the land is valuable the way it is, but uses should be allowed on it. If it is detrimental to develop a parcel, then it should be purchased.

◆ Regulating development

It's the wrong area to be totally pro or anti-development; we need simple regulations that are workable. People will skirt complicated regulations, e.g. forest plans are not workable and people don't follow through once they are approved.

◆ Impacts

Possible impacts described/discussed included traffic congestion at intersections, demand for water and sewer service, fences and dogs/cats on habitat.

◆ Cornelius Pass Road (CPR) as possible demarcation line

There are three areas: north of CPR - large holdings; between CPR and Germantown Rd. - existing parcels of varying sizes; and Balch Creek area. CPR already a major road w/10,000 vehicles at peak. Ultimately, CPR probably will be expanded, connecting Washington County to airport, an extension of the westside bypass.

◆ Habitat/corridor issues

Need to look at wildlife corridor from a scientific viewpoint; need to protect wildlife, but identify that certain habitat is not compatible with certain kinds of wildlife and that dogs and cats have more of a major impact on wildlife than people. (SS comment: this is another area of agreement - fences, dogs/cats impacts on wildlife.)

4/5. Planning process and involvement?

Interests of private property owners need representation; the land is not being protected. Best way to get their attention is through flyers at Helvetia and Rock Creek taverns, and Plainview Grocery.

People won't come out -- don't want to deal with the crusaders; if they are not personally threatened, they won't be concerned, but still, need to deal with issue of compensation for substantial restrictions on private land and also making regulations clear and certain.

FOCUS GROUP 2: ENVIRONMENTAL INTERESTS

1. What issues are important to the RAP planning effort?

◆ Watershed protection

The headwaters for the Balch Creek watershed lie within Multnomah County even though the area is in the city limits:

◆ Connectedness

Everything is connected; habitat areas, creeks to wetlands at lower level, watershed to wildlife habitat to wildlife; Balch to Miller Creeks to habitat.

It's critical to maintain opportunities for movement between the coast range and the area and within areas in the RAP study area -- housing produces fences, cats and dogs which reduce connections; erosion from construction affects streams and habitat; runoff from development changes stream flows, which become less consistent and more flashy, and thus affect habitat values.

The issue of contiguous habitat is important; therefore, the RAP should identify areas where fragmentation is occurring or might occur. For example, Lev's West Hills habitat study recommends a ½ to 1½ mile wide habitat corridor the length of the study area and within this area the number of house and roads would be limited; siting would be controlled so houses would be located near the periphery or clustered to provide for maximum habitat connections; fences that don't exclude wildlife would be used. The most irreconcilable problems are dogs and cats. (Also corroborated by previous focus group.)

◆ Design criteria and standards are needed

Can work with varying uses, but need standards to help implement a vision for the area. (SS comment: perhaps a common vision is possible; what about a process where selected parties representing the varied interests engage in a mediated process to arrive at a vision and the means to implement it. Clearly a dialogue is needed, as these focus groups show more commonalities than either side suspects about the other.)

Need to look at development standards on exception lands which are very similar in character right next to highly protected resources lands; lower development standards may be incompatible with respect to things such as fire protection, driveway standards, etc.

For example, larger lots, e.g. 40 acres, could be allowed, with more protected canopies, a limited number of houses, shorter or fewer roads or driveways, etc.

◆ Land outside UGB is regulated by state forest practices, not the county; this is inadequate because state agencies don't understand situations such as these.

County regulations do not protect streams now and state forest practices act (ODF&W) do not understand these urban streams; county can and should provide protection, even though area may not be within the UGB.

◆ Need to explore incentives as well as regulations to encourage habitat improvements. Incentive examples include conservation easements, density bonuses in exchange for easements, land trusts, watershed committees, tax credits, building code variances, etc.

◆ Water quality/water resources

Water supply may be insufficient to support new development; water draw downs also affect water quality and amount of water in the creeks so that there is less water in the aquifer.

◆ Area inside UGB but in the county is not within the RAP study area

City has decided not to annex this area and therefore it does not have much protection. (Scott - will include this in the RAP study area.) (SS comment: perhaps we need to identify the natural watershed area within or adjacent to the study area -- boundaries seem artificial from environmental perspective.)

◆ Water rights and water uses

Need to find out if there are any existing water rights in the area, used or unused. Examples of people tapping into the hillside springs of both Balch and Miller Creek watersheds were cited.

◆ County could exceed state minimum requirements

The county could exceed the minimum standards set by Goal 4 by prohibiting development in some areas; development does not have to be allowed everywhere. (SS comment: definition of development important, because development interests agree that subdividing the land in the area would be inappropriate, but rural residential on existing lots is OK with some conditions; these points of view do not seem too far apart.)

◆ RAP should identify scenic resources in the area

Need to clearly delineate scenic resources in expectation of reform of the forest practices act; the area will grow out eventually and should be protected as a future scenic resource.

Highway 30 has been designated as a scenic highway.

◆ Agricultural practices may be a problem

Should identify agricultural practices in the area -- erosion control, use of pesticides and herbicides. Standards needed to protect habitat values, including those for landscaping.

◆ Issues vary within the area

Issues in Balch Creek are a bit different than other areas. Best solution may be 40-acre home sites everywhere; keep forest deferrals, get a return on selective forestry production; protect habitat. In long run, this may be better than large companies owning huge tracts.

◆ Conversion of forest lands

Do not turn good forest land into mediocre agricultural land, e.g. horse pastures.

3. Helps and constraints?

◆ State Forest Practices Act (FPA)

This act is the biggest constraint to a solution because local control is limited and state agencies allow cutting without examining the area and its attributes.

The current county code links ODFW stream classifications to fisheries; many of these streams do not have fisheries and are thus not protected.

County doesn't have jurisdiction over clearing and grading practices in the area; owners can claim forest practices act applies and not building code. Also owners build "logging" roads under FPA and then turn them into driveways after the damage has been done. (SS comment: this group clearly wants the county to be more proactive outside the UGB.)

County could adopt a Goal 5 overlay zone as long as it does not conflict with the FPA, i.e. allows trees to be cut, but could set up standards for types of fences, etc.

(Scott - goal is to achieve a balance.) (SS comment: need to identify areas where balances are needed for the open houses/community workshops, e.g. development and habitat protection, timber production and development, etc.)

◆ Anti-government mood is a constraint

◆ Think of study area as a watershed -- this would help

Need to identify streams, including intermittent streams; water flows, and water quality that feed Burlington Bottoms. (Scott: will look at the RAP relationship to the area adjacent to the channel and will define wetlands.)

◆ Focus on habitat viability as basis for planning and then develop standards/conditions for direct development so that habitat values are protected.

Incentives as well as standards could help achieve habitat viability.

Other contacts

Greenway to the Pacific organization

APPENDIX 4
Mail-In Responses

SUMMARY OF 21 MAIL-IN RESPONSES

No. Issues

Limit Growth

- 6 Prevent Urban Sprawl; protect land from development(nothing more dense than 1 unit/5 acres; keep density low; growth is incompatible with livability
- 2 Don't ruin the habitat for animals and birds; protect the wildlife corridor
- 1 Font's let big developers ruin he character of the area
- 1 Don't lose too much valuable farmland
- 1 Maintain/preserve open space
- 1 Protect Balch Creek watershed
- 1 Establish waterway buffer zone, suggest 1000 meter "park" zone

Allow for Growth

- 3 Allow development on lots of record
- 3 Minimum of 1/5 acres limits ability of owners to partition and sell land
- 2 Owners should be compensated for conservation/protection zone on property resulting in loss of use or value; owners should not be responsible for providing natural resource areas for the general public
- 1 Go back to 19 acre minimum; 80 acres too large; there is need for rural living opportunities while protecting the character of the area, especially as this area is close to Portland
- 1 Plan should reflect heterogeneous nature of area; not just one kind of land use; allow for higher density development in certain

Codes/Regulations

- 3 Consider relationship with Wash. County and that county's new regulations coming on line in Aug. 1993
- 2 Need more effective land use and code enforcement and follow-up in area; lots of violations and codes ignored; conditional use permits a farce; better cooperation between planning and sheriff needed; illegal dumping, off-road vehicles, houses without water hookups, etc.
- 1 Keep red tape (permits) to a minimum
- 1 Focus on edge properties, w/interactions between preservation and development/transition properties are important
- 1 Why can developer cut trees and homeowners/individuals need a permit for just one tree?

Services/Impacts

- 4 Traffic should be addressed; too much on Skyline, a scenic roadway; look at impact of Cornelius Pass as Bypass extension; intersection of Barnes and Miller a problem

- 3 Add services: sewer plant below Burlington; 8" water line in Hwy 30; reasonable mass transit for south-bound commuters; schools for newcomers; open space for recreation
- 1 Water Quality
- 1 Provide bike path and jogging trails in area
- 1 Resolve and set UGB so we can know who is responsible for fire service in area

Other

- 1 Data describing study area is wrong
- 1 Need coordination/education to promote sustained yield logging and planning for conservation management plans
- 1 Land valuation should be based on resource management not on real estate speculation, especially for transition properties on edge of developing area

mcmal
6/1/93

APPENDIX 5
Open Houses/Workshops

OPEN HOUSE/WORKSHOP, MAY 25, 1993
Skyline Elementary School
Approximately 115 Attendees

Format: Members of the community were invited to view displays of the study area, comment on maps and charts, and participate in small group workshops. The following are the results of the workshops.

Group 1 Significant Issues (Numbers refer to group's priorities)

(1) STEWARDSHIP OF LAND AND OTHER RESOURCES

- ◆ Need to recognize uniqueness of each land parcel
- ◆ Government has shown poor stewardship
- ◆ Incentives to encourage private stewardship are needed. There has been too much reliance on regulations

(2) BALANCING PRIVATE RIGHTS AND PUBLIC BENEFITS

- ◆ If public is interested in control, should buy the land or compensate for losses
- ◆ Private owners have lost control of their land. Right to sell land (already divided) has been lost
- ◆ If development occurs, need to protect against pollution

(5) COMPATIBILITY -- DEVELOPMENT AND RESOURCE ACTIVITIES

(3) COMPATIBILITY -- DEVELOPMENT AND HABITAT PROTECTION

- ◆ Too close to Portland to worry about wild animals

DIFFERENT GEOGRAPHICAL AREAS

- ◆ Differences between areas not due to different regulation but because the courts have interpreted rules differently

(3) NATURAL SYSTEMS - IN AND CONNECTED TO AREA

CONSISTENCY OF REGULATIONS WITHIN AREA

- ◆ County is not consistent in the way it applies regulations -- rules get bent

COMPATIBILITY OF REGULATIONS WITHIN AND TO ADJACENT AREAS

(2) AGRICULTURAL LAND ADJACENT TO DEVELOPED AREAS

- ◆ Issues of annexation and access to county services -- Bull Run water available now
- ◆ Assure tax structure supports resource uses

- ◆ Criteria used to make decisions about existing lots of record -- inconsistent or unclear
- ◆ Secondary land designations
- (1) ◆ Large lot development not inconsistent with large animal (elk) habitat
- ◆ Selective logging is compatible with habitat

OBSTACLES

- ◆ Short-range profit -- not an issue for long-term landowners -- development doubles values/taxes and creates economic pressure, forces development
- ◆ Threat of regulation -- clearcutting is a result with impact on runoff/water table
- ◆ Problem of red tape/bureacracy
- ◆ Can't divide into 5/10 acre parcels
- ◆ Communication between neighbors
- ◆ County does not communicate with landowners -- jammed forest lands standards down out throats -- did not want to hear from landowners

SUPPORTS

Tax relief/incentives
 Property/land -- allows for septic systems
 Topography prohibits/limits subdivisions
 Built-in tax incentive for selective logging
 City water available -- won't need wells

Group 2 Significant Issues

- ◆ Urban Growth Boundary - whether to expand or retain
- ◆ Property rights - how to balance with resource protection
- ◆ Inclusion within urban area
- ◆ Results of preservation of area for urbanites at expense of people in area
 - Increased taxes
 - Loss of value
 - Loss of uses of land
- ◆ Need for stability
 - Land values
 - Zoning
 - Land available for sale at fair prices
 - Change in zoning without notice
- ◆ Zoning should be based on land uses/suitability (visually check)
 - NE (Rocky Pt.) corner -- zoned 80-acre forest but rural residential
 - Bonny Slope -- should be residential
- ◆ Scenic values -- legitimate uses perceived as scenic intrusions
- ◆ Wildlife and watershed impacts

- ◆ Need for tax breaks for preservation
 - Incentives vs. mandates
 - Incentives for forest management
- ◆ What's potential for modifications to CF zone?
- ◆ Need to pay for limitation of uses of private property
- ◆ No malls
- ◆ Need to wash gravel trucks before entering highways
- ◆ Not be Rock Creek -- no housing tracts
- ◆ Need to reduce taxes
- ◆ Possibility of annexation
- ◆ Two competing interests -- residents desiring to remain vs. those willing to sell
- ◆ Right to build/use land
- ◆ No major transportation improvements -- no beltway through area; limited to safety improvements to Cornelius Pass
 - Reduced speeds on Cornelius Pass -- need more enforcement
 - Reasonable turn-outs for slow-moving traffic
- ◆ Improvements to public transportation
- ◆ Diversity in population maintained -- concern re: yupification
- ◆ Noise, particularly big trucks on Cornelius Pass; airport (jet) noise
- ◆ Effects of aerial spraying for timber management
- ◆ Lack of noxious weed control
- ◆ In lieu of 5 acres, reduce to 2 and/or increase to 20+
- ◆ Need for regional high school
- ◆ Increased services with decreased taxes
- ◆ Maintain livability, flexibility -- e.g. rural PUD
- ◆ Wildlife corridors
- ◆ Ensuring affordability of living in area
- ◆ Need for compensation if uses are restricted
- ◆ Suitability should determine land uses
- ◆ Maintain wildlife habitat/open spaces vs. total development
- ◆ More evening meetings

Group 3 Significant Issues

STEWARDSHIP OF LAND AND OTHER RESOURCES

Responsibility

- Logging --> reforestation
- Water
- Surface
- Drinking
- Underground springs
- Wildlife
- Soil erosion

Enforcement

- Clear rules
- Land and landscape
- Whole rather than parts

(2) BALANCING PRIVATE RIGHTS AND PUBLIC BENEFITS

- What is a "private right"?
- Private <--> private
- Effects/costs
- Private rights affected by public actions
- Compatibility/resources -- "best use for best land" -- preserve land for various uses
- Capability/habitat

(2) AVOIDING/MITIGATING POSSIBLE IMPACTS

- Define process

DIFFERENT GEOGRAPHICAL AREAS

- Watersheds
- Upslope/forest
- Bottomland
- Flat/open to Wash. County line
- Different issues re: areas (wary of artificial boundaries)

(2) NATURAL SYSTEMS - IN AND CONNECTED TO AREA

- Air quality
- Water quality

MAN-MADE SYSTEMS

- Roads
- Access logging roads -- when logging completed limit access
- Burlington water system overloaded?
- Tradeoffs

(3) CONSISTENCY OF REGULATIONS WITHIN AREA

- Water -- who's in charge?
- Forest practices
- Enforceable reg's
- People to enforce laws
- Education
- Clarity/consistency
- County should assume "worst case"
- County should abide by own reg's

COMPATIBILITY OF REGULATIONS WITHIN AND TO ADJACENT AREAS

Environmental zones

Certainty

Parks (consider in this area)

MISCELLANEOUS

(4) Proactive -- a "vision" -- very important that County take the leadership

(1) Actively preserve scenic and natural values

Compensate for regulation

Compatibility with plans of other jurisdictions

(4) Identify environmentally sensitive areas

Define renewable/nonrenewable resources

OPEN HOUSE/WORKSHOP, MAY 26, 1993
Portland Audubon Society
Approximately 55 Attendees

Format: Members of the community were invited to view displays of the study area, comment on maps and charts, and participate in small group workshops. The following are the results of the workshops.

Group 1 Significant Issues (Numbers refer to group's priorities)

STEWARDSHIP OF LAND/OTHER RESOURCES

(1) BALANCING PRIVATE RIGHTS/PUBLIC BENEFITS

- ◆ Balance implies a solution has been agreed on in advance

COMPATIBILITY - DEVELOPMENT/RESOURCE

- ◆ Compatibility is indefinable -- poor choice of words

(4) COMPATIBILITY - DEVELOPMENT/HABITAT

- ◆ Can't balance or mix these!
- ◆ Can conservation easements be used?

AVOIDING/MITIGATING IMPACTS

DIFFERENT GEOGRAPHICAL AREAS

- ◆ Yes, there's varying topography; some property is closer to Forest Park, etc.

MAN-MADE SYSTEMS

- ◆ Can speed limits be reduced on some of the roads in the area?

CONSISTENCY OF REGULATIONS

ZONING has changed over time -- no protection for wildlife areas -- no certainty about what can be done

COMPATIBILITY

TAX LEVELS as they relate to protected lands -- who takes/who compensates/who pays for?

80-ACRE MINIMUM may not provide protection -- e.g. only good for forest use

HOW TO PROTECT the values that attract people to an area, e.g. cluster development

HOW TO KEEP rural density rural? What to do about existing lots of record?

DOES COUNTY know how many parcels/lots of record there are and what impact would be if developed?

(3) REGULATIONS should be clear and let people know what they can/cannot do

(2) HABITAT PROTECTION

Group 2 Significant Issues

- ◆ Protection of Skyline's scenic values
- ◆ Infrastructure limiting development
- ◆ Improved public services
- ◆ Cost of services
- ◆ Sewer services
 - Encourages growth
 - Leads development
 - Size to address existing needs
 - Zoning as factor in limiting
- ◆ Transportation system
 - Too much traffic now
 - Westside LRT may relieve some traffic
 - Need better speed enforcement
 - System adequate for locally generated traffic
 - Western Bypass -- NO
 - Improve mass transit
- ◆ Avoid Washington County-type sprawl
- ◆ Rural lots within proximity to city
- ◆ Area east of Forest Park made available for small lots -- results in more traffic
- ◆ Additional small-lot development is inefficient
- ◆ Create pockets of increased densities
- ◆ Maintain low-density, green area close to city
- ◆ Need to reduce traffic flow
- ◆ What is value of increased density?
- ◆ Use zoning to control orientation of commercial uses
- ◆ Forest Heights commercial center
- ◆ Limit commercial development to limited # of locations with neighborhood orientation
 - Avoid mall-type development
 - Need to promote small business
- ◆ No drastic changes in zoning -- grandfathering
- ◆ Land values -- issue of tax breaks

- ◆ Is commercial timber zoning appropriate for Multnomah County?
- ◆ Regulations -- flexible
- ◆ Land rushes associated with land use changes -- need orderly, smooth transitions
- ◆ Avoid sprawl, growth without adequate transportation
- ◆ No Westside Bypass
- ◆ Protection of natural resources -- greenway
- ◆ Identify what resources to protect; identify how to protect; address what's left over

- ◆ No change in UGB
- ◆ Maintain as rural area
- ◆ More effective use of currently developed areas
- ◆ Mass transportation vs. more roads

**OPEN HOUSES/WORKSHOPS
PUBLIC COMMENTS ON MAPS**

West Hills Rural Area Plan Natural Resources

- ◆ Bald Eagle nest is located incorrectly
- ◆ The Folkenburg area has an old rock quarry which is being started up again
- ◆ Elk move south from the identified "sensitive big game area" into the Cornelius Pass region often
- ◆ Elk have been seen in the area of Germantown Road/Kaiser Road intersection recently
- ◆ The riparian area near Germantown Road and Kaiser Road has deer, beaver, coyote, fox and raccoon
- ◆ There is a major deer crossing on Skyline Road between Newberry and Germantown Roads
- ◆ There is a major deer migration area west of Skyline Road between Germantown and Springville Roads

Existing Plan Designations and Zoning

- ◆ Develop in the city -- keep rural areas rural
- ◆ Leave the Urban Growth Boundary alone!
- ◆ A Commercial Forest Use area on the west side of Skyline Boulevard between Germantown and Springville Roads should be rural residential; three neighbors disagree with this in another note
- ◆ A parcel north of Bonny Slope and west of Skyline Boulevard may be annexing to Portland

APPENDIX 6
Responses to Written Questionnaire

**WEST HILLS RURAL AREA
INDIVIDUAL QUESTIONNAIRE**

Please complete this questionnaire before leaving the workshop.

1. The following issues have been suggested as subjects of Multnomah County's upcoming planning study of the West Hills Rural Area. Please rate your opinion of their importance to the study: 1, very important; 5, very unimportant.

	1 Very Important	2 Somewhat Important	4 Somewhat Unimportant	5 Very Unimportant	No Opinion
A. Stewardship of land and other resources.					
Comments:					
B. Balancing private rights and public benefits.					
Comments:					
C. Compatibility of development with resource activities such as timber production and gravel extraction.					
Comments:					

	1 Very Important	2 Somewhat Important	4 Somewhat Unimportant	5 Very Unimportant	No Opinion
D. Compatibility of development with habitat protection.					
Comments:					
E. Avoiding or mitigating possible future impacts.					
Comments:					
F. The different geographic areas within the study area and the issues within each area.					
Comments:					
G. The natural systems within and connected to the study area.					
Comments:					
H. The man-made systems within and connected to the study area.					
Comments:					

	1 Very Important	2 Somewhat Important	4 Somewhat Unimportant	5 Very Unimportant	No Opinion
I. Consistency of regulations within the area.					
Comments:					
J. Compatibility of regulations within the area with those in adjacent areas.					
Comments:					
K. Other issues (list)					
Comments:					

2. During the West Hills Rural Area planning process, what are the best ways to involve and get feedback from property and business owners and residents?

3. What are the best ways to inform property and business owners and residents about opportunities for involvement during the West Hills Rural Area planning process?

4. Other comments?

5. Tell us about yourself.

Male

Female

Under 25

26-35

36-45

46-55

55-older

Live in the West Hills Rural Area?

presently

1-5 years

6-10 years

11-20 years

over 21 years

Own a business in the West Hills Rural Area?

Yes No

Please put my name on your mailing list (optional)

Name _____

Address _____

Phone _____

WEST HILLS QUESTIONNAIRE RESULTS

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
STEWARDSHIP OF LAND AND OTHER RESOURCES	65	7	1	0	7

COMMENTS:

- There is little real stewardship. There seems to be an inexorable slide, instead, towards resource removal and then figuring out how to use what's left.
- But don't change zoning, and steal value.
- This encompasses all other issues.
- Set standards of how we want to save some habitat -- perhaps large acreage with homes -- 40 acres or large tracts of habitat with no growth -- keep resource protection separate from habitat protection
- Business should not be included in stewardship. The fox should not be left to guard the sheep.
- It is important that people's rights not be removed without giving them a smooth and fair means to compensation. Sudden zoning changes should give people a chance to grandfather their existing rights.
- Stewardship is non-commercial unless that enhances the natural beauty of the area.
- Stewardship is most important.
- Maintain forest land productivity. Require best forest practice -- includes, water, wildlife, forest protection, and scenic values.
- Look at goals or main priorities -- take a global look at the issues -- find a way to break down the boundaries.
- Landowners' rights are important.
- The role of deforestation and the lack of concern for the watershed are significant.
- Tax incentives could encourage cooperation vs. mandates (which cause the inverse).
- Stewardship brings accountability.
- Stewardship includes social responsibility.
- We bought 7 1/2 acres which the previous owners dumped garbage on for years. Also, abandoned vehicles are on the adjacent property, and people are living there in a trailer with no septic facilities -- which a spring is near.
- If we are going to be zoned Commercial Forest everyone should come up with a forest use plan. Part of their tax could cover enforcement to see they follow the plan.
- Preserve the livability with planned growth.
- Stewardship is a responsibility for everyone.
- West Hills are a unique "jewel" near a large city. The rural aspect and resource uses and wildlife will gradually disappear if not protected by zoning.
- Water quality -- with population growth it will be problem and should be addressed soon.
- Water quality must be preserved both for wildlife and for wells -- logging and building operations adversely affect water, soils, and wildlife. The wildlife in our area is very important to us: songbirds, deer, coyotes, beaver, and water birds.
- Stewardship is explained as respect for natural processes.
- Stewardship needs the help of agriculture and environment specialists/experts.
- These are mostly lands zoned for resource uses by Statewide Goals 3, 4, and 5. It is time the County Planning Department respected these goals. This is not a development zone.
- Don't break the area up into small lots.
- My property is my biggest investment. I receive a living from it and manage it to continue and increase its value.
- Owners become stewards.
- Private stewardship should be encouraged. Federal stewardship has proven to be corrupt. State is little better and County seems run by environmentalists.

□

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
BALANCING PRIVATE RIGHTS AND PUBLIC BENEFITS	43	14	8	4	10

COMMENTS:

- Public benefit is paramount -- the preservation of tracts of undeveloped land benefits the public in air quality and wildlife/resource protection. As these disappear, quality of life recedes.
- Look at the number of undersized lots and evaluate impact if they are developed. Possibly give landowners a "window of opportunity" to build a house if they've owned the property for a certain number of years.
- Must compensate owners.
- Right to build on one's land is what pays to get Tri-met service, parks, bike paths.
- Avoid over-development -- prevent high density housing that would create unsightly development and increased traffic. Avoid commercial development.
- Set up rules and stick to them for the good of habitat and humans. Humans will continue to multiply and in their greed will devour everything that is not protected.
- In some ways these things are incompatible
- Area changes should be given enough flexibility to allow good uses if they were not included for the whole area.
- If private benefits are just to make money then consider impact to the area.
- The resource comes first.
- "Balance" usually results in an extremely compromised protection for resources. We need to 1) determine resources that we will protect, and those we will not, and 2) plan accordingly.
- Maintain private ownership and commercial forest use but under guidelines based on best forest practices.
- Encourage a community building base. Promote the idea of a commons area.
- Only with tax benefits. State should not regulate.
- Feel forestry, agriculture, water quality, and wildlife needs are more important than individual human desires.
- Balance is the key.
- Pay for land taken for public benefits.
- It's too late to consider private rights (at least very much).
- Private rights have historically overwhelmed everything.
- There must be a balance or people will not compromise their private rights and will attempt to disrupt any systems. This can create real damage.
- Often overlooked.
- Private development rights are respected and will continue. Need to be limited/proscribed to protect private and public values of those already living there and those who enjoy visiting/recreating in area.
- Private rights may at times be totally incompatible with best use of land, but in such cases government regulation should include mechanisms for compensation in extreme cases.
- "Private rights" are not sacrosanct in that what one person does on his land affects other people, other lands, wildlife, etc. --
- People must be held accountable for their activities such as logging, land development and so forth which affect their neighborhood. Some development must not be allowed.
- Public benefits should supercede private rights.
- This is after all private land. Not all were happy about the city of Portland's annexation of parts of West County.
- The issue of private property rights and "takings" is not within the jurisdiction of local government.
- Environmental overlays are workable.
- We need financial incentives for private land stewards, i.e. purchases, payment for scenic overlays; otherwise clear-cutting will go on.
- The care I take of my property incidentally increases its value.
- Commercial Forest Use zone 80 acre minimum is too big. Need some 20 acre, 10 acre, and 5 acre minimum.
- Since we pay taxes we feel we should have the primary right to use our land as we wish providing we do not do lasting damage to the ecological systems.
- Are they really compatible?
- The public should have exclusive rights only on land it owns. Private owners should have all rights to their property as long as their actions do not adversely impact others.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
COMPATIBILITY OF DEVELOPMENT WITH RESOURCE ACTIVITIES SUCH AS TIMBER PRODUCTION AND GRAVEL EXTRACTION	30	14	14	5	17

COMMENTS

- I think that denser development should probably border these activities as they are mutually exclusive of the concepts of stewardship and preservation. Small parcel owners upset the balance far less than large owners (e.g. timber companies and developers). Small parcel owners tend to understand the intrinsic value of the land -- timber interests value the monetary opportunities provided.
- Both development and resource activities are the same: human activities. The real question is how much will the humans get and how much are they willing to leave to the other inhabitants of the earth.
- These are all arrayed against habitat.
- These issues should be individually considered in light of their effect on affected areas and affected individuals and sites, not decided with a blanket policy in conflict with individual considerations.
- Timber Yes -- Gravel No -- it is not a renewable resource.
- Gravel extraction destroys land forever, and should be phased out. Timber production, if used with care, can preserve undeveloped areas. Development is always permanent. Thus, timber production, if appropriate, should have priority where timber production is allowed, and development must not displace it. Likewise, if an area is developed in accordance with a good long range plan, timber production will not conflict.
- This should be dealt with using a global/local approach -- what is best for the area. Work with neighbors -- develop plans together. It is okay to log selectively, but look at the land beyond individual boundaries.
- We would like to have a discussion with the County officials on "our" problems before they decide on the future of "our" land.
- Tree farms are not forests.
- Charge high taxes to cover all necessary issues; provide significant rebates for voluntary compliance.
- Limit Angell Brothers.
- Protect resource activities.
- We were recently informed that an adjacent land owner was going to start a gravel pit (no permits on this project to date, as per Multnomah County).
- The key to compatibility is that the rules, once in place, be enforced. Whether through lack of interest or lack of resources, Multnomah County has not enforced its own zoning ordinances. Until enforcement is effective, planning is meaningless.
- Production allowed must be compatible with the nature left. For example, Angell Brothers expansion is not compatible.
- If the timber areas are logged what happens to the base, clear cut land? Zoning changes perhaps?
- Specific areas for each activity should be permitted. West Hills gravel extraction is less productive and more destructive than East County/Clark County development.
- Our area is completely unsuited for most extractive industries and very limited in its capacity to accept new housing development.
- Many of the logging cuts erode quickly due to soils and slope. We have enough gravel pits already. No new pits.
- Resource activities should take precedence in resource areas.
- Are the roads safe for these activities? Do these activities coincide/complement the character and existing uses of the neighborhood?
- Constant defense of wildlife resources is essential.
- Stop timber production, or at least clear cuts.
- No clear cutting -- we've had some logging in our area that has left devastation behind.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
COMPATIBILITY OF DEVELOPMENT WITH HABITAT PROTECTION	55	12	2	3	7

COMMENTS

- No development is completely compatible with habitat.
- We live near Forest Park and the Audobon Society. It would be better for wildlife in those areas if immediately surrounding areas were not densely populated.
- Very important to preserve this close-in unique ecosystem.
- Habitat protection comes first for those areas we have determined need preserving.
- The habitat first -- development second.
- Do we have the stringent rules to make this work? Do private land owners (home owners) want to give up rights to benefit wildlife?
- Separate areas for habitat protection. There is no compatibility between development and habitat protection.
- Where development occurs there should be strict regulation of any deforesting to help insure a larger green area.
- So much habitat has already been destroyed by development (small parcels and logging) under existing land use controls. I thought many areas that were decimated were supposed to be protected.
- No development in habitat areas.
- Preserve wildlife corridor at all costs.
- There will have to be a point or boundary made to stop development when it rolls over habitat to preserve an area. Definitions will have to be made of what development in the area is wanted.
- Any habitat must observe the primary uses as designated by the statewide planning program.
- Suitable site development can achieve compatibility if sufficient open space is maintained.
- Planning needs to be done to ensure development does not adversely impact the habitat to an unacceptable level.
- Wildlife habitat must be preserved around our metropolitan core -- urban sprawl must be avoided.
- It is the concern for habitat protection which causes me to be here. Don't screw up paradise.
- Habitat must be preserved.
- Development destroys wildlife habitat. There have been many logging operations where re-forestation has not taken place. Instead houses or blackberries (introduced, not native) have replaced the forest.
- Habitat protection is much more important in our sensitive area than providing for increased development (more housing, etc.).
- "Habitat" is not just Forest Park. The water is on the Tualatin Basin side in the summer (springs and creeks) and in the bottomlands there. Identify large enough connected areas.
- Development should be possible but controlled.
- Logging practices don't seem to be planned according to wildlife needs.
- A serious study of wildlife must be done now.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
AVOIDING OR MITIGATING POSSIBLE FUTURE IMPACTS	42	17	1	1	18

COMMENTS

- No subdivisions or mini-malls.
- Not sure what this means. Future impacts might be positive -- so mitigation would be unwanted. However, planning that uses mitigation as a large component is a concern -- mitigation rarely balances negative effects.
- Perhaps we should use selective cutting instead of clear-cuts for scenic value and sustained harvests.
- A lot of mitigation has occurred.
- Rules can allow every possible use to be judged as to whether it is compatible.
- With appropriate land management, most future impacts could be minimized.
- The county must be aware of its resources and regulations. Roadside spraying has occurred too close to streams because spray operators didn't know the streams were there. The county should know more about septic systems near springs, wells etc.
- Impacts of increased development must be very carefully considered. Old Germantown Road should not have any increased density of population -- our watershed is fragile and our forested areas should not be reduced.
- Strict density limits outside the Urban Growth Boundary. No "Western Bypass!"
- Protect the resources, but don't forget that human motivation can be a resource too.
- Don't create pools of population which are forced to travel regularly to other pools of activity, especially without mass transit.
- If you mean traffic, I think this is very important -- it is too dangerous already.
- The plan should be clear and durable, not subject to change under pressure of population and development.
- Road and sewer impacts.
- Traffic! Send high-use traffic to Highway 26 and light rail -- leave Skyline as a scenic drive.
- A good plan will take care of present impacts, and must be modified as necessary for future impacts.
- Make some rules and stick to them. People have the right to know what the future holds.
- Set an urban growth boundary and stick to it.
- I don't know how this can be done, but the area in which I live has been drastically impacted by the extent of cutting and mining.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
THE DIFFERENT GEOGRAPHIC AREAS WITHIN THE STUDY AREA AND THE ISSUES WITHIN EACH AREA	25	18	16	7	13

COMMENTS

- Skyline Road provides a physical and psychological boundary and should be developed to a minimum.
- No area can be looked at in and of itself because every activity affects a larger area (i.e. traffic, noise, pollution).
- Different geographic areas need micro considerations.
- Different issues certainly exist.
- We need very special treatment for specific areas.
- The real problem is too many people, not enough resources to go around. You're just handing out band-aids.
- Obviously there are different concerns in various locales of this large geographic area.
- Wetland owners should have public funds if the public will benefit from private ownership.
- Where to develop, where not? Perhaps close to prior developments.
- Would like a bio-regional approach.
- Definite conflicts exist.
- There are some issues like water resources, forest practices, patterns of runoff and erosion, etc. that are the same throughout the West Hills and should be planned for as a unit. Other issues may depend on topography or population density and should be handled in pockets.
- Yes, we should have the right to examine plot by plot for uses that are appropriate.
- There is little difference in the character and geology of the area. It can be considered as a unit.
- Again, the County is ignorant of habitat and geographic differences in the West Hills. We have stream, marsh, and field habitats as well as forests.
- Sensitive areas need greater protection: our watershed areas should be carefully protected.
- Relative uniformity of issues within entire study area, but planners should be aware of upland/lowland issues; farm/forest issues, etc.
- A sensible plan should be flexible ("in good faith") to apply.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
THE NATURAL SYSTEMS WITHIN AND CONNECTED TO THE STUDY AREA	53	11	1	0	14

COMMENTS

- Logging and the consequences of this should be studied soon.
- Wildlife corridor needs to be protected.
- Keep wildlife area alive and connected to Forest Park.
- This, like balancing public/private rights, is an umbrella issue, or factor, that effects all others.
- Geographic and natural systems should not be altered to accommodate development.
- "Study of Forest Wildlife Habitat in the West Hills" (Ester Lev et. al.) deals mainly with forest animals and plants and on a very abstract level in the report itself. No mention of wetland areas, their plants and birds.
- Wildlife (and forest habitat) should have a very high priority.--
- Recheck prior data on forest wildlife. There is a lot of wildlife, broadly distributed.
- Water, air, human, and property rights must all be considered.
- The most important issue.
- Need greater attention to watershed management on intermittent streams not covered by state regulations.
- The Tualatin watershed should be protected.
- Encourage building along existing roads, power, sewer.
- If we ignore this, we are failing in our responsibility to the earth. We might as well move to Los Angeles.
- Natural systems need protection. Fouling them is the work of a few months -- recouping what is lost takes years.

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
THE MAN-MADE SYSTEMS WITHIN AND CONNECTED TO THE STUDY AREA	27	27	7	1	17

COMMENTS

- Existing uses must be "grandfathered," but environmental overlays may be needed to protect adjacent resources.
- Traffic in this context is very important.
- Plan infrastructure to limit high density housing.
- This consideration is not one that should decide the major issues of how to divide the pie up.
- This will follow on your decisions, not guide them.
- Keep the man-made systems to a minimum and make the ones installed useful.
- Only important if they are resource-related.
- Fire protection along Highway 30 is questionable. We must protect well water -- Burlington's system is old.
- Important in that they have connected and are in existence -- roads, gravel pits, etc.
- Parks, bike trails, recreation areas.
- Protect man-made systems.
- The expensive and marginally-successful man-made systems should set an example for the cost of developing this area. It will be very expensive and is a cost which only those who directly benefit should shoulder.
- Skyline Blvd. is a very hazardous bike route (sharp curves, limited sight distance, no shoulders) as cars cannot safely pass.
- More housing will affect water quality due to septic leaching. Very few people with septic fields know to have them pumped regularly and they will cease to function. The sanitarian should be able to enforce maintenance of existing septic systems.
- Care should be taken with permitting driveways to protect watershed areas. Sometimes house siting can be important in protecting watersheds.
- We like small curvy roads. Don't give us lots of "improvements."

	VERY IMPORTANT	SOMEWHAT IMPORTANT	SOMEWHAT UNIMPORTANT	VERY UNIMPORTANT	NO OPINION
CONSISTENCY OF REGULATIONS WITHIN THE AREA	47	15	8	2	7

COMMENTS

- Consistency over time is most important. We spent three years seeking appropriate property outside of the urban growth boundary in Multnomah County. If the urban growth boundary changed and eventually we get water, sewer, streetlights, at our expense -- we will be furious.
- I would like to see the County develop and distribute a manual of regulations (including state regulations) with detailed maps so that we can be aware what the rules are, written in common language understandable to the layman.
- Some housing in our area has sand filter -- others are allowed conventional septic systems. But all our soils drain very poorly.
- A road was built practically on top of a stream with consequent erosion. That house site does not have room for an adequate septic field. Reforestation is not enforced.
- The diversity of any area demands individual considerations.
- You should look at projects on a case-by-case basis.
- Allowances should be considered on a fair basis.
- Just try to get a forester to enforce logging practices.
- Oversight and consistency is important for credibility to the process and future input.
- If they are not consistent, then they will not be enforceable.
- The way things are handled, only the wealthy can work the laws to develop properly.
- Want the right to build home on acreage.
- Consistency should be based on good agricultural, forestry, and wildlife -- scientifically sound information.
- Educate County employees.
- Consistency is unnecessary -- flexibility is more important.
- Maintain flexibility to adapt rules to special cases.
- Flexibility sounds nice, but
- I think this means something different from what you think. Consistency to me means that the County rules comply with state law and that each be enforced. I am less concerned about consistency between, for example, EFU and CFU designations.
- City and County should have equal zones along Skyline Blvd.
- If one accepts that this geographic area should be subdivided for planning purposes, the consistency should be whether the zoning makes sense.
- Each issue should be considered on its own merits.
- Consistency is not important -- each area will have different requirements.
- Obviously inconsistency is viewed as unfairness by those whom it impacts.'
- Also consistency in enforcement of regulations.
- Some areas in the plan may be more important to protect, others may be appropriate for development.
- I think the County needs to finalize plans and then not make changes for a long enough time that people have guarantees.
- Don't change zoning without compensating owners.

COMPATIBILITY OF REGULATIONS WITHIN THE AREA WITH THOSE IN ADJACENT AREAS	27	22	8	10	12
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COMMENTS

- Each area will have different purposes -- urban growth area, habitat protection, resource development. Perhaps compatible to adjacent areas.
- As a practical matter, Multnomah and Washington Counties (and probably Columbia County too) will never have complete compatibility of plans. Most important to have a strong Multnomah County plan.
- I would hate to see Skyline developed in such a way, for example, that the hilltop is bared -- this would adversely affect our area.
- Washington County has development practically to the Multnomah County line. They do not seem concerned with wildlife or preservation of natural values.
- Continue to move towards smooth transitional regulations as you move through areas.
- Compatibility within one square mile is important.
- There is so much overlap of multiple regulatory agencies contributing to confusion.
- Regulations need to be tailored to each area.

OTHER COMMENTS

- Preserve actively scenic and natural areas. We need parks! Identify areas like streams, marshes, and steep slopes that shouldn't be logged.
- Hire only planners who speak the language of the common man. People who only deal in generalities and who dodge specifics drive me nuts.
- Density affects water, soil, traffic, schools, wildlife. It needs to be limited to a level arrived at via public input and not presumed to increase indefinitely.
- This area has a responsibility to provide beauty or exercise to urban Portland, through tree farms, community gardens, nurseries, etc.
- Protect livability, wildlife issues, open space, scenic areas. Plan for growth so its done as responsibly as possible. What these questions ask is not very clear.
- Have some affordable housing available. Encourage diversity, cluster housing.
- Burlington Bottoms needs a new ESEE analysis now that the Angell Brothers quarry expansion threatens it. Balch Creek forks -- Thompson and Cornell -- need complete study to gain SEC protection.
- Being at the far end of Northwest Multnomah County, we feel as though we are often ignored by county officials when it comes to road and roadside maintenance.
- Be proactive and look at possible future "creature features," parks, bike trails, etc.
- We would like to see 5 or 10 acre parcels -- which would still be available to habitat. Also would keep the area from congestion.
- The northeast corner of the study area (north of Rocky Point Road to the County line) should have been zoned rural residential (It is developed that way). Now it is not 18 acre MUF, but 80 acre CFU. This is an error and should be corrected.
- Reserve scenic and natural values.
- Farming difficult on small acreages. Make 5 acre parcels OK. Make zoning flexible for optimum livability.
- Well water is an important resource.
- Quit hiding behind the state laws which require "us" to act and develop a plan. County regulations need to maintain the highest standard. Reality may be reaching 80% of the goal, via enforcement. So aim higher.
- What about parks, lakes, and bike trails? Protect wildlife habitat.
- Protection of the wildlife corridor and water quality are important.
- Property rights issues should be recognized and not regulated away. Balance the community's desire for resources with their willingness and ability to pay for preservation of natural and man-made resources.
- Protect natural resources and scenic value.
- Any further development in the study area needs to be accompanied by additional support systems such as schools and roads.
- Important to preserve natural and rural areas, waterways, wetlands, etc.
- First, study and protect the most sensitive resources such as Balch Creek, Burlington Bottoms, and others. Make the more general plans later.



MULTNOMAH COUNTY OREGON

COUNTY BEGINS TO "PLAN FOR A PLAN" COMMUNITY WORKSHOPS IN MAY

The public is invited to participate in workshops May 25 and 26, 1993 to discuss land use issues that should be covered in a new study of the West Hills rural area being undertaken by the Multnomah County Planning and Development Department.

The purpose of the workshops, 6:30 to 9 p.m. on May 25 at Skyline Elementary School, and the same time, May 26 at the Audubon Society, is to elicit public comment about the issues before the planning study begins.

As the Portland metropolitan area begins to feel the pressures of a predicted increase in population, cities and counties are studying ways they can accommodate that growth while preserving the qualities of livability that draw people to the region.

Multnomah County is concerned about direct and indirect impacts on areas outside the regional urban growth boundary and is beginning an ambitious planning study for the five rural areas of the county, beginning with the West Hills. The other non urban parts of the county that will be studied later are Sauvie Island/Multnomah Channel, west of the Sandy River, east of the Sandy River, and the Columbia River Gorge National Scenic Area.

The first part of the study is to develop the scope -- the range of issues the planning will cover. This phase, which is common in environmental impact studies, is a valuable way to ascertain community concerns before the actual factfinding gets underway.

INTERVIEWS INDICATE CONCERNS

Cogan Owens Cogan, the local consulting firm under contract to the county to conduct this scoping study, has interviewed representatives of public agencies and individuals representing a variety of interests in the West

Hills. The following is a sample of the responses to the question: what major issues should the planning process address?

- Balance among uses and activities
- Timber production and logging
- Minimum lot sizes
- Design/landscaping standards
- Protection/management of wildlife habitat
- Property rights
- Multijurisdictional issues, especially watershed protection and forest practices
- Water quality/water resources
- Agricultural practices such as spraying and erosion control
- Transportation and access

WEST HILLS DEFINED

For purposes of this study, the West Hills boundaries are west of Highway 30; south of the Columbia County line; east of the Washington County line; and north of the Portland city limits.

DEMOGRAPHICS TELL A STORY

Note: the census data for 1990 is not yet available in the detail discussed below. In 1987, of a total population in Multnomah County of 562,000, just 3% lived in the rural areas, with the West Hills accounting for .13% of the total. There were 1,229 households in the West Hills, with an average of 2.5 people in each. This was less than the county average of nearly 3 people per household. The median age of West Hills residents was slightly higher, 35.5, than the county as a whole, 32.5 years. Of the five rural areas, the West Hills had the lowest percentage of children and the highest of elderly.

The combined West Hills/Sauvie Island areas had the highest median household income,

\$35,700, compared to the median household income of \$21,700 for the county as a whole. Most of the minorities in the county lived in Portland, with the total rural area minority population about 2.8%, with no further breakdown for the West Hills. These consisted mainly of Asian/Pacific Islanders.

West Hills housing was the most expensive in the county, averaging a value in 1986 of \$111,000; the county average was \$74,000.

Agricultural employment on about 600 farms was the fifth largest employer in the rural areas, following service jobs, manufacturing, retail trade and self-employment, transportation/communications and public utilities. The rural area with the highest

percentage of manufacturing jobs was the West Hills/Sauvie Island.

NEW PLANNER ASSIGNED

Gordon Howard, a planner recently hired by Multnomah County, will have primary responsibility for the new rural area planning process. Howard will be on hand to meet people at the community workshops May 25 and 26.

NEED MORE INFORMATION?

Call consultants Sumner Sharpe or Elaine Cogan, 225-0192 or Gordon Howard at the Multnomah County Department of Planning and Development, 248-3043.

COMMUNITY MEETINGS -- A CHANCE TO BE HEARD

Tuesday, May 25, 6:30-9 p.m.
Skyline Elementary School
11536 SW Skyline Blvd.

Wednesday, May 26, 6:30-9 p.m.
Audubon Society Community Room
5151 NW Cornell Road

CAN'T ATTEND THE WORKSHOPS?

Complete this form and mail it to Cogan Owens Cogan, 10 NW Tenth Avenue, Portland OR 97209.



I recommend that Multnomah County consider the following issues when it studies land use in the rural areas of the West Hills.

Name (optional) _____ Phone: _____
Address _____

Other comments:



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

STAFF REPORT

For August 31 Board of Commissioners Hearing

C 2-93

West Hills Rural Area Plan Scoping Report

BACKGROUND

Based upon authorization from the Board of Commissioners, the Division of Planning and Development is updating the County's Comprehensive Framework Plans for five rural areas of the County. The first of these updates is occurring in the West Hills Rural Area, generally located north and west of the City of Portland, west of Highway 30, south of Columbia County, and east of Washington County. (see attached map)

The first step in the rural plan process is culminated by the attached Scoping Report, prepared by the consulting firm of Cogan, Sharpe, Cogan, which discusses major issues in the West Hills. In order to solicit comment for the scoping report, staff and the consultant met with numerous individuals, groups, and other public agencies. The culmination of these meetings were two public forums attended by approximately 200 participants (mostly West Hills residents). The specific steps taken to elicit comments are described in the attached scoping report prepared by the consultants.

On July 19, 1993 and August 2, 1993, the Planning Commission considered the Scoping Report and the staff analysis, and recommends that the Scoping Report be accepted and that staff be commended for preparing the outline of major issues to be addressed in the plan which follows in the Analysis section of this report (Vote 5-0, with 4 absent).

ANALYSIS

The report includes a number of issues which respondents to the scoping process have requested be addressed during the plan update. Using this list of issues plus a list of recently adopted planning mandates, staff prepared the following plan outline and summary which shows both the format and the contents of the West Hills Rural Area Plan. The plan will be liberally interspersed with maps and illustrations in order to make it "user friendly."

WEST HILLS RURAL AREA PLAN OUTLINE AND SUMMARY

VISION (another term? Vision appears to be an overused word)

This section will present a discussion of what the long-term future as envisioned by this plan will look like in the West Hills Rural Area.

INTRODUCTION

This section will present the purpose of this plan, its relationship to the County Framework Plan, its relationship to the State Planning Program, how this plan will be implemented, and how this plan may be amended.

RURAL AREA CHARACTER

This section will discuss rural and resource-based character of the area, the desire to maintain this character which is shared by most residents and other interested parties, and the forces which might impact the existing character.

Discussion of the character of the following smaller communities within the West Hills:

- Balch Creek
- Bonny Slope
- Burlington
- Cornelius Pass-Folkenburg
- Germantown Road
- Gilkison Road
- Harborton
- Holbrook

Discussion of existing and proposed uses in surrounding communities within the City of Portland, Washington County, and Columbia County. In particular this section will include discussion of the following issues:

- Impact of Washington County Urban Growth Boundary on the West Hills.
- Consistency of land use and environmental protection regulations in the Balch Creek basin between the City of Portland and Multnomah County
- Consistency of land use and environmental protection regulations along Skyline Blvd. between the City of Portland and Multnomah County
- Impact of growth in the Scappoose area upon the far northern portion of the West Hills Rural Area.

LAND USE (Goals 3, and 4)

General

- 1) Discussion of the existing uses and existing planned uses per the land use des-

ignations currently applied to the West Hills Rural Area. Potential buildout of the plan under existing land use designations.

- 2) Discussion of the impact of proposed changes to land use designations in the plan.
- 3) Goals and Policies regarding land use in the West Hills Rural Area.

Agriculture

- 1) Incorporate new Goal 3 state guidelines regarding agriculture and regulations of uses (HB 3661-B Engrossed).
- 2) Designate "high-value" farmlands pursuant to state guidelines.
- ~~3) Incorporate definition of "small scale resource lands" for agricultural areas and identify areas which qualify for such designation. Include policies on allowed land uses in such areas. Implementation of this task cannot occur until the County completes its designation of "high value" farmlands.*~~
- 4) Review potential for regulation of agricultural practices to control impacts to watersheds.

Forestry

- 1) Incorporate new Goal 4 state guidelines regarding forest lands and regulations of uses (HB 3661-B Engrossed).
- 2) Review County regulation of development in Commercial Forest Use areas, and propose changes as appropriate which would further protect forest practices and management, and require increased compatibility between proposed residential development and forest practices.
- ~~3) Incorporate definition of "small scale resource lands" for forest areas and identify areas which qualify for such designation. Include policies on allowed land uses in such areas. Implementation of this task cannot occur until the County completes its designation of "high value" farmlands.*~~
- 4) Discuss opportunities for regulation of forest practices in the Balch Creek watershed.
- 5) Discuss relationship of forest practices to wildlife habitat in the West Hills. Recommend revisions to regulation of forest practices within this area to the Oregon Department of Forestry if appropriate.

Rural Residential

- 1) Review of each rural residential area's current development, buildout capacity, and the impacts of development to buildout.
- 2) Consideration and potential inclusion of clustering policies for rural residential development.

** This item will be removed from the work program pursuant to HB 3661-B-Engrossed, which substitutes a "lot of record" provision for small-scale resource lands definition.*

- 3) Consideration of "transfer of development rights" concepts which would allow additional development in rural residential areas to be transferred from resource areas.

Rural Centers

- 1) Incorporate state rural center policy into the plan for Burlington.
- 2) Identify any other potential rural centers pursuant to state policy.
- 3) Discuss the appropriate level of commercial development in rural centers, and propose policies commensurate with this level.

Urban Residential

- 1) Review land use designations and buildout in Balch Creek urban areas in light of redefined City of Portland urban service policies, and re-designate these areas to appropriate densities.
- 2) Review appropriateness of current Urban Growth Boundary given decisions about ultimate residential densities in Balch Creek.

NATURAL RESOURCES (Goal 5)

Open Space

- 1) Discuss importance of the West Hills as a greenspace, greenbelt, open space, "breathing space" adjacent to the Portland and Washington County urban areas (also to be included in the Vision Statement).
- 2) Discuss mechanisms by which private property owners can be given incentives to preserve open space or compensated for restrictions on their property to maintain West Hills as a greenbelt open space area.

Mineral and Aggregate Resources

- 1) Incorporate existing information on significant mineral and aggregate resource areas within the West Hills.
- 2) Review ESEE analysis for Angell Brothers site in relation to other Goal 5 resources such as wildlife habitat and scenic views and sites.

Energy Sources

None

Fish and Wildlife Habitats

- 1) Incorporate existing identified Goal 5 fish and wildlife habitat resources (West

Hills big game habitat area and bald eagle roost) into this plan document.

- 2) Define West Hills Wildlife Habitat Area, determine its significance, do ESEE analysis for conflicting uses, define level of protection, and find measures which would implement appropriate preservation of wildlife habitat.
- 3) Discuss information regarding existing streams with fish habitat in the West Hills. Determine significance of these streams, do ESEE analysis of conflicting uses, define level of protection, and find measures which would implement appropriate preservation of streams with fish habitat.

Significant Natural Areas

None(see discussion under Fish & Wildlife Habitats and Water Resources)

Scenic Views and Sites

- 1) If found significant, conduct an ESEE analysis of use which conflict with the scenic view and sites of the east side of the Tualatin Mountains.
- 2) Review City of Portland's findings regarding their designation of Skyline Blvd., Germantown Rd., and Cornell Rd. as scenic resources, consider their significance and, if significant, conduct an ESEE analysis of uses which conflict with these scenic resources.
- 3) Identify any additional scenic views and sites in the West Hills, make a finding of significance, and conduct an ESEE analysis if appropriate.

Water Resources

- 1) Propose definition of significant streams within the West Hills area, and designate streams which meet this definition as significant Goal 5 water resources. Conduct an ESEE analysis of conflicting uses, define appropriate level of protection, and propose implementation measures which will assure appropriate levels of protection.

Wilderness Areas

None

Historic Resources

- 1) Incorporate existing information on significant historic resources in the West Hills Rural Area and apply appropriate regulations.

Cultural Areas

- 1) Incorporate existing information on significant cultural resources in the West Hills Rural Area.

Approved Oregon Recreational Trails

- 1) Review potential alignments for the Portland-to-the-Coast recreational trail through the West Hills and adopt the most appropriate alignment.

Scenic Waterways

None

ENVIRONMENTAL QUALITY (Goal 6)

- 1) Goals and Policies for the Protection of Air, Water, and Land Resources
- 2) Review existing standards for regulating storm runoff and dry-weather flows from new development and propose changes if necessary.
- 3) Review grading standards and propose changes if necessary.
- 4) Inventory existing groundwater resources and measures necessary to prevent pollution of groundwater.
- 5) Inventory existing surface water resources which may feed into domestic water supplies, and measures necessary to prevent pollution of surface waters.
- 6) Discuss Tualatin River watershed water quality protection issues, and their relevance to the West Hills.

HAZARDS (Goal 7)

- 1) Incorporate existing information from Framework Plan on hazards in the West Hills Rural Area.
- 2) Review standards for new development re: earthquake hazard and propose changes if necessary.
- 3) Review County policy regarding development on steep or unstable slopes and propose changes if necessary.
- 4) Review regulations regarding hazardous waste storage and transportation within the West Hills and propose changes if necessary.

RECREATION (Goal 8)

- 1) Goals and Policies for Recreation in the West Hills Rural Area.
- 2) Adopt a plan of recreational trail routes.
- 3) Identify appropriate areas for parks acquisition and development, and potential funding sources.

ECONOMIC DEVELOPMENT (Goal 9)

- 1) Incorporate existing information from Framework Plan.

HOUSING (Goal 10)

- 1) Incorporate existing information from Framework Plan.

PUBLIC FACILITIES AND SERVICES (Goal 11)

Public Safety

- 1) Review existing provisions for Police Protection and Fire Protection services in the West Hills Rural Area.
- 2) Review existing development review for siting criteria to reduce fire danger and assurance of adequate fire protection services and propose changes if necessary.
- 3) Locate areas within the West Hills which are not served by a fire protection district, review development regulations in such areas, and propose changes if appropriate.

Water and Sewage Services

- 1) Review existing sources of water supply and existing sewage disposal policies in the West Hills Rural Area.
- 2) Review existing development review for adequate water supply and adequate sewage disposal and propose changes if necessary.

Schools

- 1) Discuss current and future enrollment in area schools, and the impacts of such enrollment on existing school facilities.

Telecommunications Facilities

- 1) Review regulations in the West Hills regarding telecommunications facilities and propose changes if necessary.

TRANSPORTATION (Goal 12)

- 1) Review adequacy of existing road network to handle existing and proposed development. Prepare revisions to transportation plan as necessary.

- 2) Incorporate revised "Transportation Rule" guidelines from LCDC.
- 3) Analyze projected flows of regional traffic through the West Hills area, review the Regional Transportation Plan (RTP) as it affects this area, analyze impacts of regional traffic on the West Hills, and make recommendations regarding any amendments to the RTP to the Metropolitan Service Agency.
- 4) Discuss adopted bicycle routes in the West Hills, and propose revisions if necessary.
- 5) Review the safety and appropriateness of the Skyline Blvd. bike route, and propose improvements if necessary.

ENERGY CONSERVATION (Goal 13)

- 1) Incorporate existing information from Framework Plan.

URBANIZATION (Goal 14)

- 1) Discuss the current Urban Growth Boundary rationale and the process by which it was adopted by METRO.
- 2) Identify lands suitable for consideration as urban reserves -- needed for metropolitan growth in a 20-50 year time period pursuant to state guidelines and 2040 MSD Committee recommendations.
- 3) Identify areas which are not suitable for future urban development under any circumstances.

CONCLUSION

Staff recommends that the Scoping Report for the West Hills Rural Area Plan accepted by the Board of Commissioners, and that the Board of Commissioners direct staff to prepare the West Hills Rural Area Plan pursuant to the above plan outline.

WEST HILLS RURAL AREA PLAN BOUNDARIES

EXHIBIT 1

