

# **ANNOTATED MINUTES**

Thursday, October 21, 1999 - 9:30 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **REGULAR MEETING**

*Chair Beverly Stein convened the meeting at 9:32 a.m., with Vice-Chair Diane Linn, Commissioners Sharron Kelley, Lisa Naito and Serena Cruz present.*

### **CONSENT CALENDAR**

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

### **SHERIFF'S OFFICE**

- C-1 Amendment 2 to Intergovernmental Revenue Agreement 800429 with the Housing Authority of Portland, Providing Supervised Inmate Work Crew to Perform General Labor (Grounds Maintenance, Yard and Nursery Work, Light Carpentry, Painting, and Debris Removal) at Sites Owned, Operated or Managed by the Housing Authority of Portland

### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

- C-2 RESOLUTION Authorizing Execution of Deed D001667 Upon Complete Performance of a Contract with Alice E. Jackson

***RESOLUTION 99-205.***

- C-3 RESOLUTION Authorizing Execution of Deed D001668 Upon Complete Performance of a Contract with Landsmand Corp.

***RESOLUTION 99-206.***

- C-4 RESOLUTION Authorizing Execution of Deed D001669 for Repurchase of Tax Foreclosed Property to Former Owner Patrick Poston

***RESOLUTION 99-207.***

- C-5 RESOLUTION Authorizing Execution of Deed D001670 Upon Complete Performance of a Contract with Bryon C. Walters

***RESOLUTION 99-208.***

**DEPARTMENT OF SUPPORT SERVICES**

- C-6 RESOLUTION Adopting the Current Version of Multnomah County's Public Contract Review Board Rules and Stating that the State of Oregon Attorney General's Model Rules Do Not Apply to Multnomah County

***RESOLUTION 99-209.***

- C-7 Budget Modification DSS 03 Correcting Service Reimbursements, Reducing Appropriations in the Data Processing Fund by \$21,275, and Increasing Appropriations in the Capital Acquisition Fund by \$29,600

**DEPARTMENT OF HEALTH**

- C-8 Budget Modification HD 4 Approving Increases and Decreases in Various Job Classes for an Overall Increase of .1 FTE, and a Decrease in On Call Funding in the Westside Primary Care Clinic Budget, all Funded within the Current Budget
- C-9 Budget Modification HD 5 Approving an Increase of \$56,181 and .5 FTE in the Primary Care Clinic Budget Funded with an Increase in the Health Care for the Homeless Grant from the Federal Department of Health and Human Resources

**REGULAR AGENDA**

**PUBLIC COMMENT**

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

***ROGER TROEN COMMENTS IN OPPOSITION TO EUTHANASIA OF UNWANTED DOGS AND CATS, THE NEED FOR PUBLIC EDUCATION ON THE ISSUE, AND SUBMISSION OF AN ARTICLE BY ROXANNE HAWN, PUBLICATIONS MANAGER OF***

***THE AMERICAN HUMANE ASSOCIATION'S  
ANIMAL PROTECTION DIVISION.***

**NON-DEPARTMENTAL**

- R-2 RESOLUTION Directing the Multnomah County Transportation Division to Study the Feasibility of Placing the Hawthorne, Broadway and Burnside Bridges on the National Register of Historic Places

***COMMISSIONER NAITO MOVED AND  
COMMISSIONER LINN SECONDED, APPROVAL  
OF R-2. CHRISTINE CURRIN TESTIMONY IN  
SUPPORT AND RESPONSE TO BOARD  
QUESTIONS. COMMISSIONER NAITO, STEVE  
MARCH AND HAROLD LASLEY EXPLANATION  
OF APPLICATION PROCESS AND RESPONSE TO  
BOARD QUESTIONS. BOARD COMMENTS IN  
SUPPORT. RESOLUTION 99-210 UNANIMOUSLY  
APPROVED.***

**DEPARTMENT OF SUPPORT SERVICES**

- R-3 Presentation of Service Awards for Thirty-nine Employees with 5 to 30 Years of Service to Multnomah County

***WITH THE ASSISTANCE OF FERNANDO CONIL  
AND GAIL FOSTER, THE BOARD GREETED,  
ACKNOWLEDGED AND PRESENTED 5 YEAR  
AWARDS TO: SHARON GROVE OF DA; CHERI  
GALLISON, TERESA MANDZIJ, KAREN MARKINS,  
AND GAIL WILSON OF DCFS; MAURA  
GOODMAN, NOREEN SWAN AND DANE WARNKE  
OF DJACJ; SAMUEL KONADU, JR., LINDA  
SOUTH, CAROL SUMMER AND LINDA TRUONG  
OF DES; AND RHYS SCHOLES AND BEVERLY  
STEIN OF NOND; 10 YEAR AWARDS TO: LAURE  
LYNNE KRIBS OF ADS; MURRAY SWANSON AND  
ROBIN WIGGIN OF DCFS; NICOLE FINLEY,  
MARILYN NAKONIECZNY AND DARRYL  
WINCHESTER OF DJACJ; PATRICK HINDS,  
PATRICIA THOMPSON, CORA TIMO AND  
DWIGHT WALLIS OF DES; LAURA WEISHAAR OF  
DSS; AND OF NORM MONROE NOND; 15 YEAR***

**AWARDS TO: KAREN MAYFIELD AND WILLIAM THOMAS OF DCFS; ROWENA BATES OF DJACJ; KATHLEEN TUNEBOG OF DES; ELAINE MORGAN OF DLS; AND JEANETTE HANKINS OF NOND; 20 YEAR AWARDS TO: DOLORES RAMZY OF ADS; CAROL HOVDEY OF DJACJ; J. MARIE BRYSON OF DLS; AND STEPHEN POULSEN OF DSS; 25 YEAR AWARD TO: MARYANN STEWART OF DCFS; AND 30 YEAR AWARDS TO: DOUGLAS FISCHER AND NEWCOMB WANG OF DSS.**

**COMMISSIONER COMMENT/LEGISLATIVE ISSUES**

R-4 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.

***TABLED TO IMMEDIATELY FOLLOWING LAND USE PLANNING MEETING.***

*The regular meeting was adjourned and the land use planning meeting convened at 10:00 a.m.*

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Thursday, October 21, 1999 - 10:00 AM  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

**LAND USE PLANNING MEETING**

*Chair Beverly Stein convened the meeting at 10:00 a.m., with Vice-Chair Diane Linn, Commissioners Sharron Kelley, Lisa Naito and Serena Cruz present.*

P-1 De Novo Hearing Regarding Hearings Officer Decision Denying CU 9-98 Requesting a Conditional Use for a Template Dwelling (Single Family Residence) in the Commercial Forest Use (CFU-4) Zoning District for Property Located at 40200 SE TROUT CREEK ROAD. TESTIMONY LIMITED TO 20 MINUTES PER SIDE.

***CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR***

CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED. PLANNER TRICIA SEARS PRESENTED STAFF REPORT AND DEMONSTRATED THE PIN-TEST METHOD STAFF USED FOR DETERMINING THE CENTER OF THE PROPERTY. HEARINGS OFFICER DENIECE WON ADVISED SHE CONCLUDED PIN-TEST METHOD PLANNING STAFF USED WAS BETTER THAN APPLICANT'S METHOD IN HER DETERMINATION TO DENY THE APPLICATION. APPLICANT'S ATTORNEY MIKE ROBINSON SUBMITTED COPIES OF HIS JULY 28, 1999, AUGUST 4, 1999 AND AUGUST 11, 1999 CASE SUBMITTALS TO DENIECE WON FOR THE RECORD, A COPY OF A PORTION OF COUNTY CODE 215.750, AND A COPY OF AN OCTOBER 18, 1999 E-MAIL FROM LINCOLN HERMAN REGARDING HIS OBSERVATION OF THE COUNTY PIN-TEST METHOD CONDUCTED BY MS. SEARS ON OCTOBER 15, 1999. MR. ROBINSON TESTIFIED IN OPPOSITION TO STAFF'S METHOD AND IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION. MR. ROBINSON REQUESTED THAT THE RECORD BE KEPT OPEN FOR SEVEN DAYS. MR. ROBINSON EXPLANATION IN RESPONSE TO BOARD QUESTIONS CONCERNING THE METHOD APPLICANT USED IN DETERMINING THE CENTER OF THE PROPERTY. IN RESPONSE TO A QUESTION OF COMMISSIONER NAITO, COUNTY COUNSEL JEFF LITWAK ADVISED THE BURDEN OF PROOF IS ON APPLICANT. IN RESPONSE TO CHAIR STEIN'S REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING, NONE WERE OFFERED. HEARING CLOSED. COMMISSIONER NAITO MOVED, SECONDED BY COMMISSIONER CRUZ, TO AFFIRM THE HEARINGS OFFICER DECISION. BOARD COMMENTS IN SUPPORT. MOTION UNANIMOUSLY APPROVED. (FINAL ORDER 99-211). CHAIR STEIN ADVISED ALL PARTIES WILL RECEIVE A COPY OF THE BOARD'S WRITTEN DECISION, WHICH MAY BE APPEALED TO LUBA.

*The land use planning meeting was adjourned and the regular meeting was reconvened at 10:27 a.m.*

### **COMMISSIONER COMMENT/LEGISLATIVE ISSUES**

- R-4 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.

**COMMISSIONER NAITO UPDATE ON OPTIONS AND RECOMMENDATIONS REGARDING IMPACT. COMMISSIONER LINN UPDATE ON AFFORDABLE HOUSING COMMITTEE. COMMISSIONERS CRUZ AND KELLEY UPDATE ON JPACT AND METRO REGIONAL TRANSPORTATION PLAN BOARD BRIEFING SCHEDULED FOR MONDAY, NOVEMBER 29, 1999.**

*The meeting was recessed at 10:35 a.m. and the briefing was convened at 10:44 a.m.*

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Thursday, October 21, 1999 - 11:00 AM  
Multnomah County Courthouse, Boardroom 602  
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### **BOARD BRIEFING**

- B-1 Community Residential Siting Proposals. Presented by Commissioners Diane Linn and Lisa Naito and Invited Others.

**LISA NAITO, DIANE LINN, DAN SALTZMAN, DAVID LANE, FRANK DIXON, BETSY AMES AND RAMSAY WEIT PRESENTATION AND RESPONSE TO BOARD QUESTIONS, COMMENTS AND DISCUSSION, INCLUDING PROPOSED NEIGHBORHOOD INFORMATION ON SITING AND REFERRAL PROGRAM ACTION PLANS, STAFFING, BUDGET IMPLICATIONS, NONDISCRIMINATION VALUES AND GOOD NEIGHBOR AGREEMENTS. STAFF DIRECTION**

**TO: CONTINUE ADDRESSING FUNDING ISSUES;  
INCLUDE EAST COUNTY REPRESENTATION ON  
ADVISORY COMMITTEE; CONSULT WITH  
NEIGHBORHOOD MEDIATION CENTER,  
METROPOLITAN HUMAN RIGHTS CENTER,  
MULTNOMAH COUNTY PUBLIC AFFAIRS  
OFFICE AND MULTNOMAH COUNTY CITIZEN  
INVOLVEMENT COMMITTEE; AND CIRCULATE  
DRAFT RESOLUTION TO BOARD PRIOR TO THE  
END OF THE YEAR.**

*There being no further business, the meeting was adjourned at 12:07 p.m.*

OFFICE OF THE BOARD CLERK  
FOR MULTNOMAH COUNTY, OREGON

*Deborah L. Bogstad*

Deborah L. Bogstad



**Multnomah County Oregon**

## **Board of Commissioners & Agenda**

*connecting citizens with information and services*

### **BOARD OF COMMISSIONERS**

#### **Beverly Stein, Chair**

1120 SW Fifth Avenue, Suite 1515

Portland, Or 97204-1914

Phone: (503) 248-3308 FAX (503) 248-3093

Email: [mult.chair@co.multnomah.or.us](mailto:mult.chair@co.multnomah.or.us)

#### **Diane Linn, Commission Dist. 1**

1120 SW Fifth Avenue, Suite 1500

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#### **Serena Cruz, Commission Dist. 2**

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#### **Lisa Naito, Commission Dist. 3**

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Email: [lisa.h.naito@co.multnomah.or.us](mailto:lisa.h.naito@co.multnomah.or.us)

#### **Sharron Kelley, Commission Dist. 4**

1120 SW Fifth Avenue, Suite 1500

Portland, Or 97204-1914

Phone: (503) 248-5213 FAX (503) 248-5262

Email: [sharron.e.kelley@co.multnomah.or.us](mailto:sharron.e.kelley@co.multnomah.or.us)

**ANY QUESTIONS? CALL BOARD  
CLERK DEB BOGSTAD @ 248-3277**

Email: [deborah.l.bogstad@co.multnomah.or.us](mailto:deborah.l.bogstad@co.multnomah.or.us)

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

**OCTOBER 21 1999**

### **BOARD MEETING**

#### **FASTLOOK AGENDA ITEMS OF INTEREST**

Pg. 2	9:30 a.m. Thursday Opportunity for Public Comment on Non-Agenda Matters
Pg. 3	9:30 a.m. Thursday Resolution to Study Placing 3 Bridges on National Register
Pg. 3	9:40 a.m. Presentation of Service Awards for County Employees
Pg. 4	10:00 a.m. Thursday CU 9-98 Land Use Planning De Novo Hearing
Pg. 4	11:00 a.m. Thursday Community Residential Siting Proposals Briefing
Pg. 5	<b>Board Meeting Cancellation Notice</b>
*	<b>Check the County Web Site:</b> <a href="http://www.co.multnomah.or.us/">http://www.co.multnomah.or.us/</a>

Thursday meetings of the Multnomah County Board of Commissioners are cable-cast live and taped and may be seen by Cable subscribers in Multnomah County at the following times:

Thursday, 9:30 AM, (LIVE) Channel 30

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community  
Television

Thursday, October 21, 1999 - 9:30 AM  
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## **REGULAR MEETING**

### **CONSENT CALENDAR - 9:30 AM**

#### **SHERIFF'S OFFICE**

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#### **DEPARTMENT OF ENVIRONMENTAL SERVICES**

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- C-3 RESOLUTION Authorizing Execution of Deed D001668 Upon Complete Performance of a Contract with Landsmand Corp.
- C-4 RESOLUTION Authorizing Execution of Deed D001669 for Repurchase of Tax Foreclosed Property to Former Owner Patrick Poston
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- C-6 RESOLUTION Adopting the Current Version of Multnomah County's Public Contract Review Board Rules and Stating that the State of Oregon Attorney General's Model Rules Do Not Apply to Multnomah County
- C-7 Budget Modification DSS 03 Correcting Service Reimbursements, Reducing Appropriations in the Data Processing Fund by \$21,275, and Increasing Appropriations in the Capital Acquisition Fund by \$29,600

## **DEPARTMENT OF HEALTH**

- C-8 Budget Modification HD 4 Approving Increases and Decreases in Various Job Classes for an Overall Increase of .1 FTE, and a Decrease in On Call Funding in the Westside Primary Care Clinic Budget, all Funded within the Current Budget
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## **NON-DEPARTMENTAL - 9:30 AM**

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## **DEPARTMENT OF SUPPORT SERVICES - 9:40 AM**

- R-3 Presentation of Service Awards for Thirty-six Employees with 5 to 30 Years of Service to Multnomah County

## **COMMISSIONER COMMENT/LEGISLATIVE ISSUES - 10:00 AM**

- R-4 Opportunity (as Time Allows) for Commissioners to Comment on Non-Agenda Items or to Discuss Legislative Issues.

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**(OR IMMEDIATELY FOLLOWING REGULAR MEETING)**  
Multnomah County Courthouse, Boardroom 602  
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## **LAND USE PLANNING MEETING**

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- 

Thursday, October 21, 1999 - 11:00 AM  
**(OR IMMEDIATELY FOLLOWING PLANNING MEETING)**  
Multnomah County Courthouse, Boardroom 602  
1021 SW Fourth Avenue, Portland

## **BOARD BRIEFING**

- B-1 Community Residential Siting Proposals. Presented by Commissioners Diane Linn and Lisa Naito and Invited Others. 40 MINUTES REQUESTED.



## **MULTNOMAH COUNTY COMMISSIONERS** **BOARD MEETING CANCELLATION NOTICE**

Thursday, November 11, 1999

Veterans Day - Offices Closed

Thursday, November 18, 1999

AOC Conference - No Board Meeting

Thursday, November 25, 1999

Thanksgiving - Offices Closed

Tuesday, December 21, 1999

Briefing Meeting Cancelled

Thursday, December 23, 1999

Regular Meeting Cancelled

Tuesday, December 28, 1999

No Meeting Scheduled

Thursday, December 30, 1999

Regular Meeting Cancelled

Any Questions, please call Deb Bogstad @ (503) 248-3277

MEETING DATE: OCT 21 1999  
AGENDA NO: C-1  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

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AGENDA PLACEMENT FORM

SUBJECT: Intergovernmental Agreement with Housing Authority of Portland

BOARD BRIEFING:                      DATE REQUESTED: \_\_\_\_\_  
   REQUESTED BY: \_\_\_\_\_  
   AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING:                      DATE REQUESTED: Next available  
   AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: SHERIFF'S OFFICE                      DIVISION: Law Enforcement

CONTACT: Dan Oldham                      TELEPHONE #: 251-2519  
   BLDG/ROOM #: 313/112

PERSON(S) MAKING PRESENTATION: Consent Calendar

ACTION REQUESTED:

☐ INFORMATIONAL ONLY    ☐ POLICY DIRECTION    ☒ APPROVAL    ☐ OTHER

SUGGESTED AGENDA TITLE:

Intergovernmental Agreement with Housing Authority of Portland for Inmate Work Crews

10/29/99 ORIGINALS TO LARRY AAB

SIGNATURES REQUIRED:

MCSO EXECUTIVE ASSISTANT: Dan Oldham

ELECTED OFFICIAL: [Signature]

(OR)

DEPARTMENT MANAGER: [Signature]

CLERK OF  
COUNTY COMMISSIONERS  
99 OCT 27 PM 12:53  
MULTNOMAH COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

# MULTNOMAH COUNTY CONTRACT APPROVAL FORM

Pre-approved Contract Boilerplate (with County Counsel signature) ☐ Attached ☐ Not Attached Contract #: 800429  
Amendment #: 2

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services not to exceed \$50,000 (and not awarded by RFP or Exemption) <input type="checkbox"/> Revenue not to exceed \$50,000 (and not awarded by RFP or Exemption) <input type="checkbox"/> Intergovernmental Agreement (IGA) not to exceed \$50,000 <input type="checkbox"/> Expenditure <input type="checkbox"/> Revenue <input type="checkbox"/> Architectural & Engineering not to exceed \$10,000 (for tracking purposes only)	<input type="checkbox"/> Professional Services that exceed \$50,000 or awarded by RFP or Exemption (regardless of amount) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue that exceeds \$50,000 or awarded by RFP or Exemption (regardless of amount)	<input checked="" type="checkbox"/> Intergovernmental Agreement (IGA) that exceeds \$50,000 <input type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Revenue <div style="text-align: center; font-weight: bold;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</div> <div style="text-align: center;">AGENDA # C-1 DATE 10/21/99 DEB BOGSTAD BOARD CLERK</div>

Department: Sheriff's Office Division: FAC Date: 9/25/98  
 Originator: Sgt. Ristvet Phone: 248-5060 Bldg/Rm: 314/  
 Contact: Larry Aab Phone: 251-2489 Bldg/Rm: 313/228

Description of Contract: Provide Supervised Inmate Work Crew to perform general labor (grounds maintenance, light carpentry, painting, etc.)

RENEWAL: ☒ PREVIOUS CONTRACT #(S): 800067, 800308, etc.

RFP/BID: RFP/BID DATE:

EXEMPTION #/DATE: EXEMPTION EXPIRATION DATE: ORS/AR #:

CONTRACTOR IS: ☐ MBE ☐ WBE ☐ ESB ☐ QRF ☒ N/A ☐ NONE (Check all boxes that apply)

Contractor Housing Authority of Portland Address 8910 N. Woolsey Ave. Portland, OR 97203 Attn: Chris Connell/Jeff Baer Phone 335-6806 Employer ID# or SS# Effective Date July 1, 1999 Termination Date June 30, 2001 Original Contract Amount \$ Total Amt of Previous Amendments \$ Amount of Amendment \$ Total Amount of Agreement \$ 146,880	Remittance address (If different) Payment Schedule / Terms <input type="checkbox"/> Lump Sum \$ <input type="checkbox"/> Due on Receipt <input type="checkbox"/> Monthly \$ <input checked="" type="checkbox"/> Net 30 <input checked="" type="checkbox"/> Other \$ 300/day <input type="checkbox"/> Other <input checked="" type="checkbox"/> Requirements Not to Exceed \$ 73,440.00 Encumber <input type="checkbox"/> Yes <input type="checkbox"/> No
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## REQUIRED SIGNATURES

Department Manager

DATE 9-15-99

Purchasing Manager

DATE

(Class II Contracts Only)

County Counsel

DATE 9/27/99

County Chair

DATE 10/21/99

Sheriff

DATE 9/23/99

Contract Administration

(Class I, Class II Contracts only)

DATE

LGFS VENDOR CODE						DEPT REFERENCE					
LINE #	FUND	AGENCY	ORG	SUB ORG	ACTIVITY	OBJ/ REV	SUB OBJ	REP CAT	LGFS DESCRIPTION	AMOUNT	INC DEC
01	169	025	3961			2030					
02											
03											
Exhibit A, Rev. 3/25/98 DIST: Originator, Accts Payable, Contract Admin - Original If additional space is needed, attach separate page. Write contract # on top of page.											

Exhibit A, Rev. 3/25/98 DIST: Originator, Accts Payable, Contract Admin - Original If additional space is needed, attach separate page. Write contract # on top of page.

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into pursuant to the authority found in ORS 190.010 et seq. and ORS 206.345 between the Multnomah County Sheriff's Office ("MCSO"), jointly with and on behalf of Multnomah County ("COUNTY"), and the Housing Authority of Portland ("HAP").

### RECITALS

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

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

WHEREAS, pursuant to the provisions of ORS chapter 456, the Housing Authority of Portland is a public body corporate and politic, and is authorized to make and execute contracts necessary or convenient to the exercise of its powers; and

WHEREAS, HAP desires to contract with MCSO for services provided by inmate work crews; and

WHEREAS, MCSO is able and prepared to provide the services required by HAP under those terms and conditions set forth; therefore,

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

### **INMATE WORK CREWS**

1. MCSO agrees to provide, at HAP's request, a supervised inmate work crew to perform general labor, including but not limited to grounds maintenance, yard and nursery work, light carpentry, painting, and debris removal, at sites owned, operated or managed by HAP. One crew will be provided on Tuesday and Wednesday. Two crews will be provided on Thursday and Friday. No crew will be provided, however, in the event of a vacancy of the deputy scheduled for that day.

2. MCSO agrees that each inmate work crew provided under this agreement will be supervised by one or more corrections deputies trained and experienced in managing inmate work crews.
3. MCSO agrees that each inmate work crew provided under this agreement will be comprised of sentenced, local inmates eligible for outside public works and who pose a minimal threat to the public;
4. MCSO agrees that each work crew vehicle will be radio-equipped, self-contained, and furnished with hand and power tools appropriate for each job. The parties further agree that if the work crew does not have in its own inventory the tools or equipment required to perform the job requested by HAP, then MCSO may lease the equipment required and include the costs of such equipment rental in its bill to HAP.
5. HAP agrees to provide all materials, including but not limited to, paint, edger blades, nursery stock, lumber and similar building materials, required for the work performed or services provided under this agreement.

#### **HAZARDOUS MATERIALS EXCEPTION**

6. The parties agree that:
  - (a) Clean-up of dump sites containing known or suspected hazardous materials is beyond the scope, skill, training and experience of an inmate work crew;
  - (b) No inmate work crew provided under this agreement shall be required to clean-up any dump site where known or suspected hazardous materials are present; and
  - (c) In the event the inmate work crew discovers known or suspected hazardous materials at a dump site, the work crew supervisor shall immediately cease the clean-up activity until such time as the site is inspected and declared or made safe by the appropriate hazardous materials authority.

#### **COMPENSATION**

7. HAP agrees to pay to MCSO for services rendered under this agreement at the rate of \$300.00 per crew, per day. The parties agree that the total compensation paid under this agreement shall not exceed \$73,440.00 per year.

8. MCSO agrees to bill HAP on the last working day of each calendar month. HAP agrees to pay MCSO within 30 days of receipt of MCSO's monthly invoice.

#### **PERSONNEL MATTERS**

9. The parties agree that the corrections deputies provided hereunder by MCSO (hereinafter, "ASSIGNED PERSONNEL") shall be and remain employees of the County. All assigned personnel shall be supervised by MCSO and shall perform their duties in accordance with the administrative and operational procedures of MCSO.
10. The parties agree that HAP does not assume any liability for the direct payment of any wages, salaries or other compensation to assigned personnel performing services pursuant to the terms of this agreement or for any other liability not provided for in this agreement.
11. The County agrees to maintain workers' compensation insurance coverage for its assigned personnel, either as a carrier insured employer or a self-insured employer as provided in ORS chapter 656.
12. The parties agree that matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment regarding assigned personnel under this agreement shall be governed by the provisions of existing collective bargaining agreements between the assigned personnel's bargaining unit and their public employer.
13. The parties agree that all labor disputes arising out of this agreement shall be governed by the provisions of applicable collective bargaining agreements in effect during this agreement, and the personnel rules of the County.

#### **INDEMNIFICATION AND LIABILITY**

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

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

#### **CONTRACT ADMINISTRATION**

16. MCSO designates Sergeant Jeff Ristvet, Work Crew Manager, to represent MCSO in all matters pertaining to administration of this agreement.
17. HAP designates Jeff Baer, Purchasing Agent, to represent HAP in all matters pertaining to administration of this agreement.
18. Any notice or notices provided for by this agreement or by law to be given or served upon either party shall be given or served by certified letter, deposited in the U.S. mail, postage prepaid, and addressed to:

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

Jeff Baer  
Housing Authority of Portland  
8910 N. Woolsey Ave.  
Portland, OR 97203

#### **CONTRACT MODIFICATION AND TERMINATION**

19. This Agreement shall be effective July 1, 1999 and shall run through June 30, 2001.
20. The parties agree that in the event the parties to this agreement desire to renew this contract after the expiration thereof, they shall notify the other parties within 90 days prior to its expiration.
21. The parties agree that any party to this agreement may terminate said Agreement by giving the other party(s) not less than 90 days written notice.
22. The parties agree that this agreement may be modified or amended by mutual agreement of the parties. Any modification to this agreement shall be effective only when incorporated herein by written amendments and signed by both HAP and the Multnomah County Sheriff, and approved by the Multnomah County Board of Commissioners.

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

MULTNOMAH COUNTY  
SHERIFF'S OFFICE

By:   
Dan Noelle, Sheriff


Date: 9/23/99

HOUSING AUTHORITY OF PORTLAND

By: \_\_\_\_\_  
Denny L. West, Director

Date: \_\_\_\_\_

Reviewed  
Thomas Sponsler, County Counsel  
for Multnomah County, Oregon

By:   
Assistant Counsel

Date: 9/27/99

MULTNOMAH COUNTY

By:   
Beverly Stein, Chair

Date: October 21, 1999

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # C-1 DATE 10/21/99  
DEB BOGSTAD  
BOARD CLERK

MEETING DATE: OCT 21 1999  
AGENDA NO: C-2  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's use only)

### AGENDA PLACEMENT FORM

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

BOARD BRIEFING:

Date Requested: \_\_\_\_\_  
Requested by: \_\_\_\_\_  
Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING:

Date Requested: Consent Calendar  
Amount of Time Needed: \_\_\_\_\_

DEPARTMENT: Environmental Services

DIVISION: Assessment & Taxation

CONTACT: Gary Thomas

TELEPHONE #: 248-3380 x22591  
BLDG/ROOM #: 166/300/Tax Title

PERSON(s) MAKING PRESENTATION: Consent Calendar

### ACTION REQUESTED:

{ } INFORMATION ONLY    { } POLICY DIRECTION    {X} APPROVAL    { } OTHER

Request approval of deed to contract purchaser, ALICE E JACKSON, for completion of Contract No. 15614 (Property repurchased by former owner).

Resolution and Deed D001667 attached.

*10/29/99 original deed & copies of all  
to tax title*

### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: \_\_\_\_\_

*ht L. E. L. Nicholas*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

99 OCT 12 PM 5:11  
MULTI-COUNTY  
OREGON  
CLERK OF COUNTY CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-205

Authorizing the Execution of Deed D001667 Upon Complete Performance of a Contract with ALICE E JACKSON

The Multnomah County Board of Commissioners Finds:

- a) On 9/30/91, Multnomah County entered into a county contract 15614 recorded in county deed records at Book 2464 Page 2671 with ALICE E JACKSON for the sale of the real property hereinafter described
- b) The above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser; now therefore

The Multnomah County Board of Commissioners Resolves:

1. That the Chair of the Multnomah County Board of County Commissioners is authorized to execute a deed in a form substantially complying with the attached deed conveying to the contract purchaser the following described real property:  
  
LOTS 27-30, BLOCK 131, UNIVERSITY PARK, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.
2. The County's Division of Assessment and Taxation is authorized to forward the signed deed to the appropriate Escrow Officer under letter of instruction which shall provide: (a) that the deed is to be processed only upon the receipt by the County of all funds the County is due in consideration for the above described property, and (b) that if the escrow is closed without the proper payment to the County the deed and any copies there of shall be returned immediately to the County.

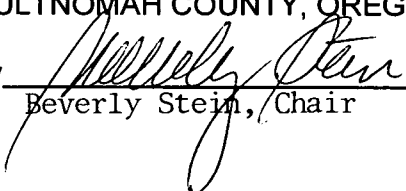
Approved this 21st day of October

1999.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By

  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By

  
Matthew O. Ryan, Assistant County Counsel

Deed D001667

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to ALICE E JACKSON, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

LOTS 27-30, BLOCK 131, UNIVERSITY PARK, a recorded subdivision in the County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in the terms of dollars is \$13,878.66.

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

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

ALICE E JACKSON  
8622 N DANA  
PORTLAND OR 97203

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners the 21st day of October, 1999, by authority of a Resolution of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON


By

  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By

  
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathleen A. Tuneberg, Director  
Tax Collections/Records Management

By

  
Kathleen A. Tuneberg, Director

After recording, return to 166/300/Multnomah County Tax Title

STATE OF OREGON

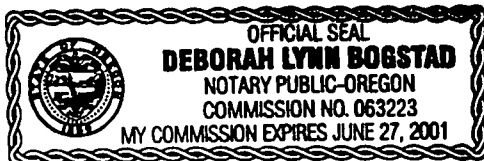
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 21st day of October, 1999, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/01

MEETING DATE: OCT 21 1999  
AGENDA NO: C-3  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's use only)

### AGENDA PLACEMENT FORM

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

BOARD BRIEFING:

Date Requested: \_\_\_\_\_  
Requested by: \_\_\_\_\_  
Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING:

Date Requested: Consent Calendar  
Amount of Time Needed: \_\_\_\_\_

DEPARTMENT: Environmental Services

DIVISION: Assessment & Taxation

CONTACT: Gary Thomas

TELEPHONE #: 248-3380 x22591

BLDG/ROOM #: 166/300/Tax Title

PERSON(s) MAKING PRESENTATION: Consent Calendar

### ACTION REQUESTED:

{ } INFORMATION ONLY    { } POLICY DIRECTION    {X} APPROVAL    { } OTHER

Request approval of deed to contract purchaser, LANDSMAND CORP , for completion of Contract No. 15489 (Property purchased at auction).

Resolution and Deed D001668 attached.

10/29/99 ORIGINAL Deed & copies of all  
to tax title

### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: ht [Signature]

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

CLERK OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
99 OCT 12 PM 5:10

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-206

Authorizing the Execution of Deed D001668 Upon Complete Performance of a Contract with  
LANDSMAND CORP

The Multnomah County Board of Commissioners Finds:

- a) On 3/16/90, Multnomah County entered into a county contract 15489 recorded in county deed records at Book 2286 Page 206 with LANDSMAND CORP, for the sale of the real property hereinafter described
- b) The above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser; now therefore

The Multnomah County Board of Commissioners Resolves:

1. That the Chair of the Multnomah County Board of County Commissioners is authorized to execute a deed in a form substantially complying with the attached deed conveying to the contract purchaser the following described real property:

LOT 7, GILBERTS RIDGE, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

2. The County's Division of Assessment and Taxation is authorized to forward the signed deed to the appropriate Escrow Officer under letter of instruction which shall provide: (a) that the deed is to be processed only upon the receipt by the County of all funds the County is due in consideration for the above described property, and (b) that if the escrow is closed without the proper payment to the County the deed and any copies there of shall be returned immediately to the County.

Approved this 21st day of October,

1999.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By Beverly Stein  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By Matthew O. Ryan  
Matthew O. Ryan, Assistant County Counsel

Deed D001668

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

LOT 7, GILBERTS RIDGE, a recorded subdivision in the County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in the terms of dollars is \$13,000.

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

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

LANDSMAND CORP  
PO Box 91373  
PORTLAND OR 97291

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners the 21st day of October, 1999, by authority of a Resolution of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By *Beverly Stein*  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By *Matthew O. Ryan*  
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathleen A. Tuneberg, Director  
Tax Collections/Records Management

By *K. A. Tuneberg*  
Kathleen A. Tuneberg, Director

After recording, return to 166/300/Multnomah County Tax Title

STATE OF OREGON

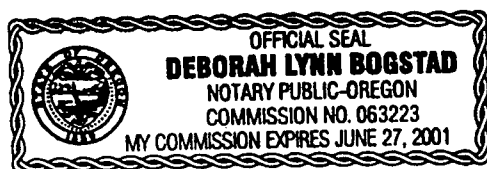
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 21st day of October, 1999, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/01

MEETING DATE: \_\_\_\_\_

OCT 21 1999

AGENDA NO: \_\_\_\_\_

C-4

ESTIMATED START TIME: \_\_\_\_\_

9:30

(Above Space for Board Clerk's use only)

### AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Repurchase Deed to Former Owner

BOARD BRIEFING:

Date Requested: \_\_\_\_\_

Requested by: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING:

Date Requested: Consent Calendar

Amount of Time Needed: \_\_\_\_\_

DEPARTMENT: Environmental Services

DIVISION: Assessment & Taxation

CONTACT: Gary Thomas

TELEPHONE #: 248-3380 x22591

BLDG/ROOM #: 166/300/Tax Title

PERSON(s) MAKING PRESENTATION: Consent Calendar

### ACTION REQUESTED:

{ } INFORMATION ONLY    { } POLICY DIRECTION    {X} APPROVAL    { } OTHER

Request approval of Repurchase Deed of Former Owner, PATRICK POSTON.

Resolution and Deed D001669 attached.

10/29/99 original deed & copies of  
all to tax title

### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: \_\_\_\_\_

*ht Larry E. Nicholas*

BOARD OF  
COUNTY COMMISSIONERS  
99 OCT 12 PM 5:10  
MULTI-COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**RESOLUTION NO. 99-207**

Authorizing Execution of Deed D001669 for Repurchase of Tax Foreclosed Property to Former Owner  
PATRICK POSTON

The Multnomah County Board of Commissioners Finds:

- a) Multnomah County acquired the real property hereinafter described through foreclosure of liens for delinquent taxes, and that PATRICK POSTON is the former record owner
- b) PATRICK POSTON has applied to the County to repurchase the property for the amount of \$213, which amount is not less than that required by ORS 275.180; and it is in the best interest of the County that the property be sold to the former owner.
- c) The County's Tax Title Division has received \$213 from the former owner.

The Multnomah County Board of Commissioners Resolves:

- 1. That the Chair of the Multnomah County Board of County Commissioners is authorized to Execute a deed in a form substantially complying with the attached deed conveying to the contract purchaser the following described real property:

LOTS 9-16, BLOCK 4, NATIONAL ADD, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

Approved this 21st day of October, 1999.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

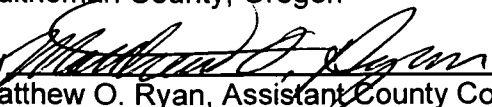
By

  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By

  
Matthew O. Ryan, Assistant County Counsel

Deed D001669

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

LOTS 9-16, BLOCK 4, NATIONAL ADD, a recorded subdivision in the County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in the terms of dollars is \$213.

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

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

PATRICK POSTON  
8508 N DELAWARE ST  
PORTLAND OR 97217

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners the 21st day of October, 1999, by authority of a Resolution of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By

*Beverly Stein*  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By

*Matthew O. Ryan*  
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathleen A. Tuneberg, Director  
Tax Collections/Records Management

By

*K. A. Tuneberg*  
Kathleen A. Tuneberg, Director

After recording, return to 166/300/Multnomah County Tax Title

STATE OF OREGON

)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 21st day of October, 1999, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/01

MEETING DATE: OCT 21 1999  
AGENDA NO: C-5  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's use only)

### AGENDA PLACEMENT FORM

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

BOARD BRIEFING:

Date Requested: \_\_\_\_\_  
Requested by: \_\_\_\_\_  
Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING:

Date Requested: Consent Calendar  
Amount of Time Needed: \_\_\_\_\_

DEPARTMENT: Environmental Services

DIVISION: Assessment & Taxation

CONTACT: Gary Thomas

TELEPHONE #: 248-3380 x22591  
BLDG/ROOM #: 166/300/Tax Title

PERSON(s) MAKING PRESENTATION: Consent Calendar

### ACTION REQUESTED:

☐ INFORMATION ONLY    ☐ POLICY DIRECTION    ☒ APPROVAL    ☐ OTHER

Request approval of deed to contract purchaser, BYRON C WALTERS, for completion of Contract No. 15432R2 (Property repurchased by former).

Resolution and Deed D001670 attached.

10/29/99 original Deed & Copies of all to  
tax title

### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_

OR

DEPARTMENT MANAGER: ht L. Nicholas

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

CLERK OF  
JUDICIAL COMMISSIONERS  
99 OCT 12 PM 5:10  
MULTI-COUNTY  
OREGON

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 99-208

Authorizing the Execution of Deed D001670 Upon Complete Performance of a Contract with BYRON C WALTERS

The Multnomah County Board of Commissioners Finds:

- a) On 9/24/91, Multnomah County entered into a county contract 15432R2 recorded in county deed records at Book 2470 Page 252 with BYRON C WALTERS for the sale of the real property hereinafter described
- b) The above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser; now therefore

The Multnomah County Board of Commissioners Resolves:

1. That the Chair of the Multnomah County Board of County Commissioners is authorized to execute a deed in a form substantially complying with the attached deed conveying to the contract purchaser the following described real property:

LOTS 22 & 23, BLOCK 7, EL TOVAR, a recorded subdivision in the City of Portland, County of Multnomah and State of Oregon.

2. The County's Division of Assessment and Taxation is authorized to forward the signed deed to the appropriate Escrow Officer under letter of instruction which shall provide: (a) that the deed is to be processed only upon the receipt by the County of all funds the County is due in consideration for the above described property, and (b) that if the escrow is closed without the proper payment to the County the deed and any copies there of shall be returned immediately to the County.

Approved this 21st day of October,

1999.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By

  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By

  
Matthew O. Ryan, Assistant County Counsel

Deed D001670

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to BYRON C WALTERS, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

LOTS 22 & 23, BLOCK 7, EL TOVAR, a recorded subdivision in the County of Multnomah and State of Oregon.

The true and actual consideration paid for this transfer, stated in the terms of dollars is \$5,261.2.

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

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

BYRON C WALTERS  
PO BOX 4973  
PORTLAND OR 97208

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of Commissioners the 21st day of October, 1999, by authority of a Resolution of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY, OREGON

By *Beverly Stein*  
Beverly Stein, Chair

REVIEWED:

Thomas Sponsler, County Counsel  
Multnomah County, Oregon

By *Matthew O. Ryan*  
Matthew O. Ryan, Assistant County Counsel

DEED APPROVED:

Kathleen A. Tuneberg, Director  
Tax Collections/Records Management

By *K.A. Tuneberg*  
Kathleen A. Tuneberg, Director

After recording, return to 166/300/Multnomah County Tax Title

STATE OF OREGON

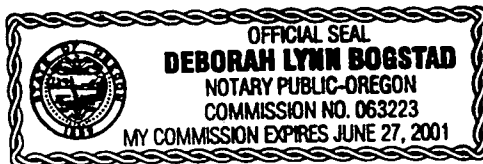
)

) ss

COUNTY OF MULTNOMAH

)

The foregoing instrument was acknowledged before me this 21st day of October, 1999, by Beverly Stein, to me personally known, as Chair of the Multnomah County Board of Commissioners, on behalf of the County by authority of the Multnomah County Board of Commissioners.



Deborah Lynn Bogstad

Notary Public for Oregon

My Commission expires: 6/27/01

MEETING DATE: OCT 21 1999  
AGENDA NO: C-6  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

SUBJECT: Resolution to affirm Multnomah County's Public Contract Review Board Rules

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: October 21, 1999  
AMOUNT OF TIME NEEDED: N/A

DEPARTMENT: DSS DIVISION: Finance/Purchasing

CONTACT: Franna Hathaway TELEPHONE #: 248-5111 X22651  
BLDG/ROOM #: 421/1<sup>st</sup> floor

PERSON(S) MAKING PRESENTATION: Consent Calendar

#### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

#### SUGGESTED AGENDA TITLE:

RESOLUTION TO AFFIRM MULTNOMAH COUNTY'S PUBLIC CONTRACT REVIEW BOARD RULES

10/29/99 copies to Franna Hathaway & John Thomas

#### SIGNATURES REQUIRED:

ELECTED OFFICIAL: \_\_\_\_\_  
(OR)  
DEPARTMENT  
MANAGER: Dave Boyer / JT

99 OCT 13 AM 1:47  
MULTNOMAH COUNTY  
OREGON  
COUNTY COMMISSIONER

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM BRIEFING  
STAFF REPORT SUPPLEMENT**

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Franna Hathaway, Administrator  
Purchasing Section

TODAY'S DATE: October 13, 1999

REQUESTED PLACEMENT DATE: October 21, 1999

RE: Resolution to Affirm Multnomah County's Public Contract Review Board Rules

I. Recommendation/Action Requested:

The Purchasing Section recommends that the Board of County Commissioners affirm Multnomah County's current Public Contract Review Board Rules in lieu of the model rules adopted by the Attorney General under HB 2024.

II. Background/Analysis:

The 1999 Oregon State Legislature approved HB 2024 (copy attached). This bill has been signed by the Governor and will become effective October 23, 1999. Under existing law the Attorney General's office is responsible for preparing and maintaining model contracting rules. These rules are amended from time to time. Prior to the enactment of HB 2024, local governmental bodies were able to adopt some or all of these rules. Multnomah County's current rules incorporate many of the Attorney General model rules.

The primary reason this new law was adopted is that some local governmental bodies have failed to either adopt their own rules or update their rules. This new law provides that the Attorney General's Office will update the rules as necessary following every legislative session; that any public contracting agency that has not adopted its own rules for the public contracting process will be, by default, subject to the model rules adopted by the Attorney General; that any public agency may choose to adopt its own rules in lieu of the Attorney General's model rules.

In addition, a public agency which has decided to adopt its own rules must examine those rules each time the Attorney General's Office updates its own rules to determine whether the local body's rules should be updated.

The Attorney General's Office has not yet completed its updating of the model rules even though the effective date by which local agencies must adopt or update their model rules is October 23, 1999. Purchasing and County Counsel

are in the process of reviewing the County's rules and will update the County PCRB rules following the completion of the Attorney General's update. This resolution will keep the current rules in place until the Attorney General has completed his Model Rules update at which time recommendations for changes to the County's rules will be made to the board.

III. Financial Impact:

N/A

IV. Legal Issues:

According to this law the County must adopt/affirm the County's PCRB rules and state that the Attorney General's Rules do not apply not later than October 23, 1999 or, by default, the County will be subject to the Attorney General's model rules.

V. Controversial Issues:

N/A

VI. Link to Current County Policies:

N/A

VII. Citizen Participation:

N/A

VIII. Other Government Participation:

N/A

## 70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

Enrolled

House Bill 2024

Ordered printed by the Speaker pursuant to House Rule 12.00A (5).  
 Presession filed (at the request of House Interim Committee on  
 Agency Streamlining)

CHAPTER .....

AN ACT

Relating to public contracting model rules of procedure; amending  
 ORS 279.049.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 279.049 is amended to read:

279.049. (1) The Attorney General shall prepare and maintain model rules of procedure appropriate for use by all public contracting agencies governing bid procedures, advertisements, the awarding of bids, retainage, claims, liens, bid security, payment and performance bonds and other matters involving public contracts, and may devise and publish forms for use therewith.

{ + The model rules prepared by the Attorney General under this section must be adopted by the Attorney General in the manner provided by ORS 183.310 to 183.550. + } Before adopting or amending any such rule, the Attorney General shall consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons.

(2) The Attorney General shall add to the model rules described in subsection (1) of this section a provision for procedures for the screening and selection of persons to perform architectural and engineering personal service contracts. In developing such procedures, the Attorney General shall use the least restrictive processes allowed under ORS 183.341.

{ + (3) After each legislative session, the Attorney General shall review all laws passed by the Legislative Assembly that affect public contracting to determine if the model rules prepared under this section should be modified by the adoption of a new rule or by the amendment or repeal of an existing rule. If the Attorney General determines that a modification to the model rules is necessary, the Attorney General shall prepare the modification within such time as to allow the modification to take effect no later than 120 days after the effective date of the legislation that caused the rule to be modified. However, the Attorney General may prepare a modification to take effect 121 days or more after the effective date of the legislation if the Attorney General provides notice designating the time period within which the modification will take effect to the state agencies and persons listed in subsection (1) of this section.

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(4) All public contracting agencies that have not established their own rules of procedure under subsection (5) of this section are subject to the model rules adopted by the Attorney General under this section, including all modifications to the model rules that the Attorney General may adopt.

(5) (a) A public contracting agency may elect to establish its own rules of procedure for public contracts that:

(A) Specifically state that the model rules adopted by the Attorney General under this section do not apply to the agency; and

(B) Prescribe the rules of procedure that the agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General.

(b) A public contracting agency that has adopted its own rules under paragraph (a) of this subsection shall review those rules each time the Attorney General adopts a modification to the model rules under subsection (3) of this section to determine whether any modifications need to be adopted by the agency to ensure compliance with statutory changes. + }

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Passed by House January 28, 1999

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Chief Clerk of House

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Speaker of House

Passed by Senate March 31, 1999

.....  
President of Senate

Received by Governor:

.....M.,....., 1999

Approved:

.....M.,....., 1999

.....  
Governor

Filed in Office of Secretary of State:

.....M.,....., 1999

.....  
Secretary of State

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BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 99-209**

Adopting the Current Version of Multnomah County's Public Contract Review Board Rules and stating that the State of Oregon Attorney General's model rules do not apply to Multnomah County.

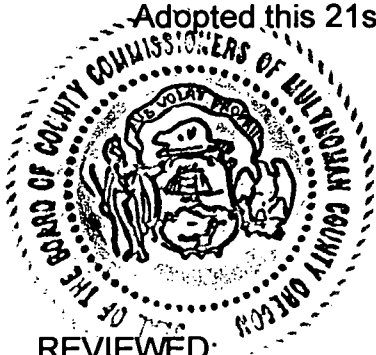
The Multnomah County Board of Commissioners Finds:

- a) House Bill 2024, which is effective October 23, 1999 requires that a public agency in the State of Oregon either adopt it's own contracting rules or be subject to the Attorney General's model rules. The bill further requires that if the public agency adopts its own rules, it must specifically state that the Attorney General's model rules do not apply to the agency.
- b) Multnomah County has previously adopted it's own Public Contract Review Board (PCRB) Rules. It is in the best interests of Multnomah County to continue to operate under its own rules rather than adopting the Attorney General's model rules.

The Multnomah County Board of Commissioners Resolves:

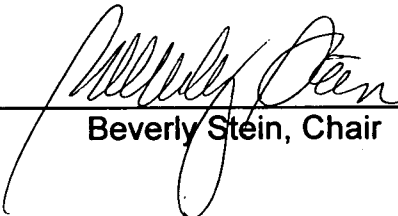
1. The Board affirms and adopts the current Public Contract Review Board Rules attached hereto and dated October 21, 1999. The Attorney General's model rules do not apply to Multnomah County.

Adopted this 21st day of October, 1999.



REVIEWED:

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

By   
John Thomas, Assistant County Counsel

**MULTNOMAH COUNTY  
PUBLIC CONTRACT REVIEW BOARD**

**INTRODUCTION**

ORS 279.055 authorizes the creation of a County Public Contract Review Board.

The County Code, Section 3.100 provides that The Multnomah County Board of County Commissioners shall act as the Public Contract Review authority for County. Section 3.100 of the County Code also provides that the Board may adopt rules by Board resolution.

**Effective Date: October 21, 1999**

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**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 10**

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**10.000 Definitions**

- (1) "Administrative Rule" or "AR" means Public Contract Review Board Administrative Rules
- (2) "Agency" means any unit of Multnomah County with the authority to initiate/request purchases.
- (3) "Architect, Engineer, or Related Services" professional services related to the planning, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to architects, landscape architects, engineers, space planners, surveyors, cost estimators, appraisers, material testers, mechanical system balances, and project managers.
- (4) "Bid" means a competitive offer in which price, delivery (or project completion) and conformance to specification and requirements of the Invitation to bid will be the predominant award criteria.
- (5) "Bidder" means a person or company offering to supply goods or services to the County in response to an invitation to bid or other competitive bidding method where price or cost, delivery and/or project completion will be the predominant award criteria.
- (6) "Board" means the Multnomah County Public Contract Review Board (PCRB).
- (7) "Compensation Requirements" a general indication of the cost of architectural, engineering, or related services based on factors which may include, but are not necessarily limited to, each consultant's: (i) costing procedures and/or pricing structure; (ii) hourly rates and fee schedules; (iii) overhead costs; and (iv) fee range, as a percentage of direct construction costs, on previous similar projects. Compensation requirements provide only a general indication of the cost of professional services and, particularly during a formal selection process, should not be used to calculate firm, fixed prices for each consultant, or as the sole basis for selecting a consultant.
- (8) "Competitive Bidding" means the solicitation by Multnomah County of competitive offers which follow the formal process for advertising, bid and bid opening required by ORS Chapter 279.025 - .027, rules of the Multnomah County Public Contract Review Board and applicable sections of Multnomah County Code.
- (9) "Competitive Quotes" or "Informal Quotation" means the solicitation of offers by Multnomah County from competing vendors. The solicitation may be by advertisement or by Multnomah County initiating a request to vendors to make an offer. The solicitation and offer may be in writing or oral.
- (10) "Construction Manager/General Contractor" means a method of public improvement contracting that uses a Construction Manager to perform value engineering, act as General Contractor, coordinate and manage the building process, provide general contractor expertise, establish a guaranteed maximum price for construction and be a member of the construction team with the agency, architect/engineers and other consultants as the agency and/or project may require.
- (11) "Contract" means the written agreement between the County and the contractor describing the work to be done and the obligations between parties.
- (12) "Contract Amendment" means any amendment which changes the scope of work or is for additional work including change orders, extra work, field orders, or other changes in the original specifications and contract price.
- (13) "Cost" includes not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation, and training.
- (14) "The County" or, "County" means Multnomah County, Oregon.

- (15) "Department Manager" means the Director of an Administrative Department as defined in the Multnomah County Charter.
- (16) "Department" means the Administrative Department under and pursuant to Chapter 1 of the Multnomah County Charter.
- (17) "Direct Labor" includes all work required for preparation, production, processing, and packing, but does not include supervision, administration, inspection, and shipping.
- (18) "Disabled Individual" means a severely handicapped individual who, because of the nature of the disabilities, is not able to participate in competitive employment, and for whom specialized employment opportunities must be provided.
- (19) "Equal Employment Opportunity" or "EEO" means non-discrimination in hiring and employment on the basis or race, religion, color, national origin, sex, age, or handicap.
- (20) "Emerging Small Business" or "ESB" means a business concern described in ORS 200.005(3) and 200.005(4) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (21) "Exemption" is a formal process, which allows a public contract to be entered into through use of an alternative procurement method instead of through competitive bidding. An "exemption" may be for a specific contract or solicitation, or it may be for a class or category of contracts.
- (22) "Good Faith Effort": The objectively demonstrated effort that a bidder has exerted positive efforts to maximize the use of Minority, Women-owned and Emerging Small Businesses through sub-contracting opportunities on the project being bid.
- (23) "Guaranteed Maximum Price" means the price provided to the agency by the contractor that includes all costs of the work, as defined in the Contract documents, excepting material changes in the scope of work. This pricing mechanism is most often used in Construction Manager/General Contractor or Design/Build contracts where the guaranteed maximum price is provided early in the design to assist the agency in determining whether or not the project scope is within the agency's budget, allowing for design changes to be made at the preliminary design phase rather than after significant design work has been completed.
- (24) "Invitation to Bid" means the solicitation of competitive offers in which specifications, price or delivery (or completion time) will be the predominant award criteria.
- (25) "Life Cycle Costing" means determining the cost of a product for its estimated useful life, including its disposal.
- (26) "Minority Business Enterprise" or "MBE" means a minority business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.
- (27) "Minority Individual" means a person described in ORS 200.005(7).
- "Post-consumer waste" means a finished material, which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.
- (28) "Price Agreement" means the same as Requirements Contracts defined below (#43).
- (29) "Professional Services Contracts" means a contract for services performed as an independent contractor in a professional capacity as defined in AR 10.092.
- (30) "Proposal" means a competitive written offer submitted in response to a Request for Proposals.
- (32) "Public Contract" means any purchase, lease or sale by the County of personal property, public improvements or services other than agreements, which are for Professional Services.
- (33) "Public Contract Review Board" or "PCRB:" By ordinance the Multnomah County Board of Commissioners acts as the local PCRB. The PCRB is responsible for adopting and administering rules governing public

contracting, considering requests for exemptions from public contracting requirements, and hearing appeals from bidder disqualification decisions.

(34) "Public Improvement" means a project for construction, reconstruction or major renovation of real property by or for the County. "Public Improvement" does not include emergency work, minor alteration, ordinary repairs or maintenance necessary in order to preserve a public improvement.

(35) "Public Works" include but are not limited to roads, highways, buildings, structures and improvements of all types, the constructions, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(36) "Purchasing Manager" means the Manager of the Purchasing Section, Finance Division for Multnomah County or his/her designee.

(37) "Qualified Rehabilitation Facility" (QRF) means a non-profit sheltered workshop or non-profit work activity center whose purpose is to assist and encourage handicapped individuals and is:

(a) In the manufacture of products and in the provision of services, whether or not the products or services are procured under this rule, and during the fiscal year employs handicapped individuals for not less than 75 percent of the direct labor required for the manufacture or provision of the products or services.

(b) A QRF must be either a Sheltered Workshop or a Work Activity Center certified through the State of Oregon, Department of Administrative Services.

(38) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(39) "Recycled Paper" means a paper product with not less than:

(a) Twenty five percent of its total weight consisting of post-consumer waste.

(40) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste, with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled product" also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

"Request for Proposals" (RFP) means a written document soliciting competitive written proposals and setting forth the criteria and method to be used to select the best proposal. The document: (i) provides a general description of a proposed project or projects, including a proposed statement of work; (ii) indicates the type of services needed; and (iii) requests prospective contractors to submit written proposals that address the proposed statement of work.

(41) "Request for Qualifications" (RFQ) means a written document which: (i) provides a general description of a proposed project; (ii) indicates the type of services needed, including, if deemed necessary or appropriate, a description of particular services needed for part or all of a proposed project or projects; and (iii) requests each prospective contractor to provide a written response setting forth the contractor's specific experience and qualifications for performing the type of services required.

(43) "Requirements Contracts" means an agreement in which the vendor agrees to supply all the purchaser's requirements for goods or services for an anticipated need at a predetermined price.

(44) "Statement of Work" means a written statement that describes the: (i) phases of work, major tasks, or area of responsibility to be performed by the contractor; (ii) for an individual or series of projects, or within a particular locale during a stated period of time. Such statement may be altered or modified during contract negotiations, but only as reasonably necessary to accurately describe the project approach and exact scope of services agreed to by the County and the contractor.

(45)"Secondary Waste Materials" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post consumer waste, but does not include excess virgin resources of the manufacturing process. For paper "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(46)"Service Contract" means a trade related contract that calls primarily for a contractor's time and effort rather than for an end product.

(47)"Women Business Enterprise" or "WBE" means a woman business concern described in ORS 200.005(6) and certified as such with the State of Oregon pursuant to ORS 200.055.

#### **10.010 Contracts Exempt From Competitive Bidding**

(1) All public contracts shall be based upon competitive bidding except the following:

- (a) Contracts made with other public agencies or the federal government.
- (b) Contracts made with Qualified Rehabilitation Facilities providing employment opportunities disabled individuals.
- (c) Contracts specifically exempt under the provisions of these rules.
- (d) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:
  - (1) The original contract met the requirements of Multnomah County Public Contract Review Board Rules
  - (2) The contract allows other public agency usage of the contract; and
  - (3) The originating contracting public agency concurs.
- (e) No written agreement under ORS 190, which grants authority to local governments to make intergovernmental agreements, is necessary under (d) above if the arrangement is between or among units of local government.

#### **10.020 Contracts For Price Regulated Items**

(1) The County may, without competitive bidding, contract for the purchase of goods or services other than professional services (AR10.092), where the rate or price for the goods or services being purchased is established by federal, State or local regulatory authority.

#### **10.025 Library Circulation Material**

(1) The County may, without competitive bidding, purchase circulation materials such as books, videos, tapes and CD's for Multnomah County Libraries.

#### **10.030 Copyrighted Materials**

(1) If the contract is for the purchase of copyrighted materials and there is only one supplier available, the County may contract for the purchase of the goods without competitive bidding.

#### **10.031 Periodicals**

(1) The County may purchase subscriptions for periodicals, including journals, magazines and similar publications without competitive bidding.

#### **10.035 Institutional Commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds**

(1) Institutional and residential commissaries and Sheriff's Inmate and Juvenile Detainee Welfare Funds may without competitive bidding, make purchase from these funds subject to each office or department written policies and procedures.

**10.040 Advertising Contracts**

- (1) The County may purchase advertising, regardless of dollar amount, without competitive bidding.

**10.045 Equipment Maintenance, Repair and Overhaul**

- (1) Contracts for equipment maintenance, repair, or overhaul may be let without competitive bidding, subject to the following conditions:

- (a) The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
- (b) The services and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

- (2) Written documentation supporting (a) or (b) above must be provided with the purchase request.

**10.047 Sales, Liquidation Sales and Disposal of Personal Property**

- (1) The County may sell personal property, including recyclable or reclaimed materials, without formal competitive bidding if the Purchasing Section has determined that a negotiated sale will result in increased net revenue and the following conditions are complied with:

- (a) When the current market value per item is deemed to be equal to or less than \$1,000, the Purchasing Section may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms;
- (b) When the current value per item is deemed to exceed \$1,000, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025 or be offered for sale at public auction in accordance with this rule. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsive bidder, all bids may be rejected and the County may negotiate a sale subject to the following conditions:

- (1) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or
- (2) The sale amount exceeds the highest bid received through the bidding or auction process.

- (2) The County may sell personal property through a commercially recognized third party liquidator if the Purchasing Director has determined that a liquidation sale will result in increased net revenue and the following is complied with:

- (a) The selection of the liquidator was made in accordance with these PCRB Rules.

- (3) The County may dispose of personal property without a competitive process if it is deemed by the Program Manager to be any one of the following:

- (a) Property whose net value is under \$250
- (b) Hazardous
- (c) Property is inoperable and not reasonably repairable.
- (d) Recyclable material

- (4) This section does not apply to the Titlewave Book Store operations.

**10.048 Donations of Personal Property**

- (1) The County may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following agencies:

- (a) Another public agency; or

- (b) Any sheltered workshop, work activity center, or group care home which operates under contract or agreement with, or grant from, any State agency and which is certified to receive federal surplus property; or
  - (c) Any recognized non-profit organization, which is eligible to receive surplus property.
- (2) The County may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service agencies, subject to the following conditions:
  - (a) A determination has been made that the property is not needed for other public purposes;
  - (b) If the property has a current market value of \$1,000 or more, the donation or sale shall:
    - (1) Be approved by the County Chair/Sheriff as appropriate;
    - (2) Be documented by the County to be clearly in the public interest and the most efficient/cost effective method of disposing of the property.
- (3) The County shall maintain a record of all transfers, donations, or sales authorized by subsection (1) or (2) of this rule.

**10.050 (Hist: PCRB Eff. 4-8-76, Repealed by PCRB 1994.)**

**10.052 (Hist: PCRB Eff. 5-1-81, Repealed by PCRB 1989.)**

**10.055 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt**

- (1) The County is exempt from formal competitive bidding for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalt subject to the following conditions:
  - (a) The County seeks competitive quotes from at least three (3) vendors in the area; and
  - (b) Makes its purchases from the least expensive source; and
  - (c) Retains written justification for the purchase made.

**10.060 Requirements Contract**

- (1) The County may enter into requirements contracts whereby it has agreed to purchase goods or services for an anticipated need at a predetermined price provided the following conditions are complied with:
  - (a) Contracts greater than \$50,000 for a twelve-month period must be let by competitive procurement pursuant to the requirements of ORS 279.005 to 279.111 and these rules.
  - (b) Requirements contracts, equal to or less than \$50,000 for a twelve month period, may be let through informal quotation providing that written quotation requests are mailed (by Purchasing) to a broad base of vendors, including MBE, WBE, and ESB firms as available. The quotation request must include all contract renewal language.
  - (c) The term of the Requirements Contract including renewals does not exceed three (3) years.
- (2) The County may request specific exemptions from the foregoing conditions in accordance with AR 10.140.

**10.070 Investment Contracts**

- (1) The County may, without competitive bidding, contract for the purchase of the investment of public funds or the borrowing of funds by the County when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

**10.071 Rating Agency Contracts**

- (1) The County may purchase and direct pay for the services of Moody's Investors Service, Standard and Poor's or similar rating agencies without competitive bidding.

**10.072 (Hist: PCRB Eff. 12-15-94, Moved to AP CON-1 by PCRB 2-27-97)**

**10.079 Employee Benefit Insurance**

- (1) The County may purchase employee benefit insurance, regardless of dollar amount, without competitive bidding.

**10.080 Hist: PCRB Eff. 4-8-76 and Repealed by PCRB 1994**

**10.081 Ballots, Ballot Pages and Ballot Cards**

- (1) The County is exempt, regardless of dollar amount, from competitive bidding requirements for the printing of ballots, including ballot pages, labeling and mailing of ballot cards.

**10.083 Hist: PCRB Eff. 5-1-82, repealed 1994.**

**10.085 Request for Proposals**

- (1) The County may request an exemption to use the Request for Proposal process as an alternative procurement method subject to the following conditions:
  - (a) The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and
  - (b) Contractual requirements are stated clearly in the solicitation document; and
  - (c) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the County's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential; and
  - (d) The solicitation document clearly states all complaint processes and remedies available.
  - (e) The solicitation document states the provisions made for proposers to comment on any specifications that they feel limit competition.
- (2) The exemption request must show that the selection process shall not inhibit competition or encourage favoritism and will result in cost savings to the County.
- (3) The Request for Proposal procedure detailed in Administrative Procedure PUR-1 shall be followed.

**10.086 Construction Manager/General Contractor**

- (1) County agencies may request an exemption from the Public Contract Review Board to use the Request for Proposal process in accordance with the requirements of the Public Contract Review Board Administrative rule 10.085, for the selection of Construction Manager/General Contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:
  - (a) Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place.
  - (b) Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the

solicitation document. Criteria used to identify the CM/GC firm which best meets the County's needs must include but are not limited to cost, quality, experience relevant to the improvement to be constructed, time required to commence and complete the improvement, and experience in promoting MBE, WBE, and ESB participation on projects.

- (c) The County shall prepare written findings to support the use of this rule and submit them to the PCRB for approval. The findings must show compliance with paragraphs (a) and (b) of ORS 279.015 (2). The County shall retain the findings and make them available upon request. These findings shall address as many of the following items as are applicable:
  - (1) The agency has competitively bid a public improvement project and failed to receive a responsive, responsible bid within the cost estimate established by the agency or its consultant. There are de facto cost savings from not redesigning and/or rebidding the project;
  - (2) There are expected substantial savings on direct construction costs;
  - (3) The owner needs to have use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;
  - (4) The technical complexity or unique character of the project requires the coordination of multiple disciplines;
  - (5) The use of value engineering through cooperation among the architect/engineer, contractor and owner is important to the project's delivery on time and within budget;
  - (6) There are other factors that demonstrably affect cost.

#### **10.089 Office Copier Purchase**

- (1) The County may enter into multiple requirements contracts for the purchase, rental, or lease of office copying equipment subject to the following conditions:
  - (a) The contract must be let in accordance with AR 10.060.
  - (b) The term of the agreements including renewals do not exceed three (3) years.
- (2) In exercising this exemption, the County shall fully consider the operating capabilities, limitations and cost of each brand or model and select that brand or model which will produce the best combination of performance and cost per copy for each application.

#### **10.090 Data and Word Processing Contracts**

- (1) Contracts for acquisition of data and word processing hardware and systems software may be let without competitive bidding using the Request for Proposal process subject to the following conditions:
  - (a) If the contract amount is more than \$2,500, but equal to or less than \$50,000, the County shall solicit competitive quotes. Prior to selection of a vendor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.
  - (b) If the contract amount exceeds \$50,000, the County shall determine and use the best procurement method and solicit written proposals. The County shall publish an advertisement in a publication of general circulation in the state and shall document the evaluation and award process, which will be part of the public record justifying the award.

#### **10.091 Telecommunication Systems Contracts**

- (1) Contracts for acquiring telecommunications system hardware and software may be made by the

County subject to the following conditions:

- (a) If the contract is more than \$2,500, but equal to or less than \$50,000, the County shall as a minimum obtain competitive quotes. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the County.
  - (b) If the contract amount exceeds \$50,000, the County shall determine and use the best procurement method, pursuant to ORS 279.005 through ORS 279.111 and shall solicit written proposals in accordance with the requirements of Public Contract Review Board Administrative Rule 10.085.
- (2) The telecommunications solicitation authorized in subsection (1)(b) of this rule shall:
- (a) State the contractual requirements in the solicitations document:
  - (b) State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the County's needs may include, but are not limited to, cost, quality, service and support, and compatibility and interconnectivity with the County's existing telecommunications systems, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential:
  - (c) State the provisions made for bidders or proposers to comment on any specifications that they feel limit competition: and
  - (d) Be advertised in accordance with ORS 279.025.

#### **10.092 Professional Services Contracts**

- (1) A contract for "professional services" calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a professional services Contractor, with the price being secondary. "Architect, Engineer, and Related Services" are a special class of professional services contracts, which are defined by AR 75.000.
- (2) The screening and selection procedures for the award of professional services contracts are governed by Administrative Procedure PUR-1.
- (3) This rule describes a method for distinguishing "professional services" contracts from "public contracts" (particularly service contracts; e.g., janitorial, maintenance, data entry, and similar services customarily provided by any competent laborer, and trade-related services; e.g., contracts for trade-related activities, including labor and/or material to accomplish repair or maintenance of all types of equipment and structures).
- (4) An agency may enter into a "professional services" contract with an independent contractor when:
  - (a) the work to be performed requires specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or exercise of professional, artistic, or management discretion or judgment;
  - (b) an agency will not control the means or manner of the Contractor's performance, but must rely on the contractor's specialized skills, knowledge and expertise to accomplish the work. (Note: An agency's reservation of the right to determine and modify the delivery schedule, evaluate the quality of completed performance, and accept or reject the completed performance does not mean that the agency will control the means and manner of the performance.); and
  - (c) selecting a contractor primarily on the basis of qualifications, rather than price, in

accordance with the provisions of PUR-1, would most likely meet an agency's needs and result in obtaining satisfactory contract performance and optimal value for the County.

- (5) "Professional services" contracts may include, but are not limited to, the following:
- (a) contracts for services performed as an independent contractor in a professional capacity including, but not limited to, the services of an accountant; attorney; land use planner; physician or dentist; commercial pilot; aerial photographer; data processing consultant or broadcaster;
  - (b) contracts for services as an artist in the performing or fine arts including, but not limited to, any person identified as a photographer, filmmaker, painter, weaver, or sculptor;
  - (c) contracts for services that are specialized, creative, and research-oriented;
  - (d) contracts for services as a consultant; and
  - (e) contracts for educational services.
- (6) Professional services contracts do not include:
- (a) contracts, even though in a professional capacity, if primarily for a product; e.g., a contract with a data processing consultant to develop a new computer system design is for professional services, but a contract to design a computer system and supply all the hardware is primarily for a tangible product;
  - (b) contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any competent worker, e.g., data entry, key punch, janitorial, security guard, crop spraying, laundry, and landscape maintenance services contracts;
  - (c) contracts with a management contractor that primarily supplies labor that can generally be done by any competent or skilled worker including, but not limited to, the following services: most conference planning, collection, crowd management, first aid training, courier, and data collection surveys;
  - (d) contracts for trade-related activities considered to be labor and material contracts; and
  - (e) contracts for services of a trade-related activity to accomplish routine, continuing and necessary functions, even though a specific license is required to engage in the activity. Examples include, but are not limited to, repair and/or maintenance of all types of equipment or structures.

#### **10.100 Single Seller of Product Required**

- (1) Subject to all requirements of AR 20.030, the County may purchase without competitive bidding if there is only one seller of a product of the quality required or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

#### **10.110 Emergency Contracts**

- (1) The County may, at its discretion, let public contracts exceeding \$50,000 without formal competitive bidding, if an emergency exists and the emergency consists of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.
- (2) Documentation supporting the need for emergency contracting, must be prepared, signed by the Department Director, and submitted to the Purchasing Manager. Purchasing will forward this documentation along with recommendations to the County Chair.

- (3) The Board of County Commissioners delegates to the Chair of the Board the authority to, by official action, declare the existence of the emergency stating with specificity in its declaration, the emergency condition necessitating the prompt execution of the contract. Written findings describing the emergency conditions necessitating prompt execution of the contract must be prepared and sent to the Board.
- (4) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279.015(4).

**10.120 Exemption of Contracts Under Certain Dollar Amounts**

- (1) The County may let public contracts equal to or less than \$50,000 for the purchase of goods, materials, supplies, and services without formal competitive bidding when the following conditions are complied with:
  - (a) The contract is for a single project and is not a component of or related to any other project in any one fiscal year and is a non-repetitive acquisition that will not be repeated within the next six months; and
  - (b) When the amount of the contract is equal to or less than \$2,500, the County should, where feasible, obtain competitive quotes.
  - (c) When the amount of the contract is more than \$2,500 but equal to or less than \$50,000, the County must obtain a minimum of three competitive quotes. A written record of the source and amount of the quotes received must be kept. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.
  - (d) One of every three quotes must be from a MBE, WBE or ESB contractor if available.
- (2) PUBLIC WORKS CONTRACTS: The County may let public contracts equal to or less than \$50,000 for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without formal competitive bidding when the following are complied with:
  - (a) The contract is for a single project and is not a component of or related to any other project in any one fiscal year and is a non-repetitive acquisition that will not be repeated within the next six months; and
  - (b) When the amount of the contract is equal to or less than \$2,500, the County should, where feasible, obtain competitive quotes.
  - (c) When the amount of the contract is more than \$2,500 but equal to or less than \$50,000, the County must obtain a minimum of three competitive quotes. A written record of the source and amount of the quotes received must be kept. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.
- (3) Of the three quotes provided for in subsection (2)(c) above, one must be obtained from an MBE, one from a WBE, and one from an ESB.
  - (a) If a quote is not available in a particular category from an MBE, WBE, or ESB contractor certified by the State of Oregon for the type of work required, an additional quote shall be obtained from one of the other categories. If three quotes are not available from all of the categories combined, the remaining quote(s) may be obtained from any other contractor.
  - (b) A quote shall be "not available" in a specific category (MBE, WBE, or ESB) if all contractors certified by the State in that category and located within 75 miles from the place where the contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to make a quote, and have failed or declined to provide a quote within the time specified.

- (4) When a public contract for "public improvements" as defined in ORS 279.011 (7) and/or for "public works" as defined in ORS 279.348(3) and the contract price exceeds \$25,000 but is less than or equal to \$50,000, the County shall comply with:
- (a) The prevailing Wage Rate provisions in ORS 279.348 to 279.365, when applicable; and
  - (b) The performance bond requirements of ORS 279.029; and
  - (c) The contractor registration requirements of ORS 701; and
  - (d) Any other law applicable to such a contract.
- (5) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis that provides an evaluation of the procedures for obtaining quotes in this Section. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

**10.125 Life Cycle Cost Analysis**

- (1) The County may, as a part of its competitive bidding requirements, use life cycle cost evaluation subject to the following requirements:
- (a) The bid specifications must include an explanation of the factors and evaluation formula to be used and;
  - (b) The bidder whose bid results in the lowest ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest responsible bidder.

**10.130 Contract Amendments (Including Change Orders and Extra Work)**

- (1) An amendment which changes the scope of work or is for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders or other changes in the original specifications, that increases the original contract price, may be made with the contractor without competitive bidding subject to the following conditions:
- (a) The original contract was let by competitive bidding or alternative procurement process, unit prices or bid alternatives were provided that established the cost basis for additional work or product, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
  - (b) The original contract was let pursuant to a declaration of emergency; or
  - (c) The additional work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original contract and such regulations or ordinances, as provided in ORS 279.318, either were not cited in the original contract or were enacted or amended after submission of the successful bid or proposal; or
  - (d) The original contract was for the renovation or remodeling of a building; or
  - (e) Except for amendments entered into pursuant to subsections (a) to (d) of this rule, the aggregate increase resulting from all amendments to a contract shall not exceed 20 percent of the initial contract price. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33 percent to the initial contract price. Provided however, that amendments made pursuant to subsection (a) of this rule are not to be applied against either the 20 percent or the 33 percent aggregate limit on contract amendments. Provided further, that contracts amended pursuant to subsections (b) or (c) of this rule are not subject to either the 20 percent or the 33 percent aggregate limit on contract amendments.

**10.135 Hist: PCRB Eff. 4-8-76 and Repealed by PCRB 1994**

**10.136 Preference to Recycled Materials**

- (1) It is the policy of Multnomah County to purchase materials and product that are environmentally sound in their manufacture, use and disposal. The County shall give preference to the purchase of materials and supplies manufactured from recycled materials if:
  - (a) The recycled product is available;
  - (b) The recycled product meets applicable standards;
  - (c) The recycled product can be substituted for a comparable non-recycled product; and
  - (d) The cost of the recycled product does not exceed the cost of the non-recycled product by more than five percent; or
  - (e) The cost of recycled paper does not exceed the cost of non-recycled paper by more than 15 percent.
- (2) Departments shall review and work with Purchasing to develop procurement specifications that encourage the use of recycled products whenever quality of a recycled product is functionally equal to the same product manufactured from virgin resources. Except for specifications that have been established to preserve the public health and safety, all procurement and purchasing specifications shall be established in a manner that encourages procurement and purchase of recycled products.
- (3) At its discretion, the County may give preference to the purchase of materials and supplies manufactured from recycled materials, even if the cost differential exceeds the five percent preference set forth in subsection (1) (a) of this rule, or the fifteen percent preference set forth in subsection (1) (e) or this rule.
- (4) Any invitation to bid or request for proposal under ORS 279 shall include the following language: "Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document."
- (5) In any bid that the County has reserved the right to make multiple awards, the recycled product or recycled paper preference shall be applied to the extent possible to maximize the dollar participation of firms offering recycled products or recycled paper in the contract award.
- (6) The County shall require the bidder to specify the minimum, if not the exact, percentage of recycled paper in the paper products or recycled product in products offered, and both the post-consumer and secondary waste content regardless of whether the product meets the percentage of recycled material specified for recycled paper or recycled products in ORS 279. 545. For paper products, the County also shall require that the bidder specify the fiber type. The contractor may certify a zero percent recycled paper or product. All contract provisions impeding the consideration of products with recycled paper or recycled products shall be deleted in favor of performance standards.
- (7) The County shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil products contain the greater percentage of recycled oil, unless a specific oil product containing recycled oil is:
  - (a) Not available within a reasonable period of time or in the quantities necessary to meet an agency's needs;
  - (b) Not able to meet the performance requirements or standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; or

- (c) Available only at a cost of the comparable virgin oil products or other percent preference established by the County under ORS 279.739(3).

**10.140 Specific Exemptions**

- (1) The Purchasing Section may apply to the Board for a ruling under AR 30.010 through 30.040 exempting a particular contract or contracts from competitive bidding requirements of ORS 279.015 that are not otherwise exempted under these rules. The application shall contain the following information:
  - (a) The nature of the project;
  - (b) Estimated cost of the project;
  - (c) A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;
  - (d) Proposed alternative contracting and purchasing practices to be employed; and
  - (e) The estimated date by which it would be necessary to let the contract.
- (2) The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from competitive bidding.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 15**

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**15.000 Authority and Duties of the Purchasing Manager**

(1) The authority and duties of the Purchasing Manager are as follows:

- (a) Purchase or contract for supplies, materials, equipment and services when authorized by ordinance or administrative rule.
- (b) Ensure compliance with all applicable federal and state laws, Multnomah County ordinances, rules, policies and procedures governing public and professional services contracts.
- (c) Establish and enforce specifications to procure supplies, materials equipment and services.
- (d) Execute County contracts on behalf of the County Chair when authorized by the Chair, using the signature of the County Chair and the initials or the name of the Purchasing Manager.
- (e) Recommend to the Board of Commissioners and the County Chair new ordinances and amendments to the Public Contract Review Board Rules and County Administrative Procedures, as well as adopt new internal procedures to comply with applicable statutes, ordinances and administrative procedures.
- (f) Review and recommend action to be taken on exemption requests.
- (g) Manage and Monitor printing services required by County agencies for greater efficiency and economy.

**15.003 Authority and Duties of the Materiel Manager**

(1) The authority and duties of the Materiel's Manager are as follows:

- (a) Operate a Central Stores warehouse of supplies commonly used by County agencies and approved outside agencies.
- (b) Receive and distribute surplus County property to County agencies or provide for the sale or disposal of property no longer needed or obsolete.

**15.006 Authority and Duties of the Contracts Administrator**

(1) The authority and duties of the Contracts Administrator are as follows:

- (a) Maintain a central file of all original executed copies of contracts.
- (b) Maintain a Countywide contracts information system.
- (c) Manage the County contract approval process.

**15.010 Definitions as used in this section**

- (1) "Actual conflict of interest", means any action, decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated.
- (2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for

economic gain.

- (3) "Business with which the person is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has stock worth \$1,000 or more at any time in the preceding calendar year.
- (4) "Potential conflict of interest" means any action or decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
  - (a) An interest of membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
    - (1) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative is associated, is a member or is engaged. The Board of Commissioners may by resolution limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.
    - (2) Membership in a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.
- (5) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving Multnomah County as an elected official, officer, employee, or appointee on any commission, committee or similar advisory body, irrespective of whether the person is compensated for such services.
- (6) "Relative" means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.
- (7) "Contract official" means any public official responsible for processing, awarding, funding or monitoring a county contract.
- (8) "Appointing authority" means the elected official having administrative authority over the affected public official, or such elected official's designee.

#### **15.015 Actual and Potential Conflicts of Interest**

- (1) Prior to taking any action in connection with a County contract, every contract official shall in writing notify the contract official's appointing authority, the County Auditor and Purchasing Manager of any potential or actual conflicts of interest of such contract official with respect to such proposed contract.
- (2) Upon receiving any information that a proposed contract involves a potential or actual conflict of interest of any contract official, the County Auditor or designated representative shall review the contract award procedures for compliance with applicable laws and regulations.
- (3) No contract shall be awarded or executed on behalf of the County without review and approval by the County Auditor if any contract official has a potential or actual conflict of interest in connection with the contract.

#### **15.020 Competitive bidding and RFP restrictions**

- (1) Contracts based upon formal competitive bidding or Requests for Proposals, if not awarded to the

lowest responsive bidder or the responsive proposer with highest evaluation, shall not take effect until approved by at least three members of the board of commissioners.

**15.025 Semi-Annual Reports**

- (1) The Contracts Administrator shall file a semi-annual report of contract activity by September 30 for the six-month period ending June 30 and March 31 for the six-month period ending December 31 with the Multnomah County Chair and Board of Commissioners. The report shall contain the following:
  - (a) An index of contracts, contract price and contractors.
  - (b) Information regarding contracts with minority, women-owned, and emerging small business enterprises as well as Qualified Rehabilitation Facilities.
  - (c) A summary of contract totals by department or function for the prior and current year.
  - (d) A summary of contract processing costs for the prior and current year; and
  - (e) A summary of contracting procedure changes implemented during the year.
  - (f) Listing of contracts awarded through the competitive bid process to a contractor(s) who did not score the highest evaluation or have the lowest responsive bid.
  - (g) Listing of contracts exceeding \$50,000, for which only one bid or proposal was received.

**15.030 Unauthorized Purchases**

- (1) Unauthorized Purchases shall mean any County contract or agreement other than Professional Service contracts equal to or less than \$50,000, that is not binding solely because the County representative who made it lacked the authority to enter into the agreement on behalf of the County without compliance with all applicable public contracting requirements.
- (2) Claims for payment arising from unauthorized purchases or commitments shall require approval by the Board of County Commissioners upon recommendation of the Purchasing Manager.
- (3) Prior to processing requests for approval of unauthorized purchases or commitments, the Purchasing Manager shall require the following information:
  - (a) Description of the property or services furnished as a result of the unauthorized contract or commitment;
  - (b) A detailed statement of facts relating to the unauthorized commitment, including the name and position of the person who made the unauthorized purchase and an explanation of the reason normal purchasing procedures were not used;
  - (c) Documentation that the amount claimed by the supplier or contractor is fair and reasonable;
  - (d) Copies of all invoices and other documents pertinent to the transaction;
  - (e) Verification that the property or services have been received and accepted by the County;
  - (f) The fund, organization and object codes for the purchase;
  - (g) A statement of the steps taken or planned to prevent recurrence of such unauthorized purchases.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 20**

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**20.000 BRAND NAMES OR MARKS**

**20.010 Specification of Particular Brand Names or Products**

- (1) Specifications for public contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized under AR 20.020 (Copyrighted Materials), 20.030 (Single Manufacturer or Compatible Products), 20.040 (Product Prequalifications) or 20.050 (Brand Name or Mark Exemption Applications).
- (2) If there is no other practical method of specification, the County may designate a particular brand name, make or product, supplied by, "or equal", or "approved equal", or "equivalent", or similar language, but this practice should be avoided whenever possible.

**20.020 Copyrighted Materials**

- (1) The County may specify a copyrighted product. This exemption does not include patented or trade mark goods.

**20.030 Single Manufacturer or Compatible Products**

- (1) If there is only one manufacturer or seller of a product of the quality required or if the efficient utilization of the existing equipment or supplies requires compatible product of a particular manufacturer, the County may specify such particular product subject to the following conditions:
  - (a) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product cost, but also other items of expense such as costs related to quality or conversion.
  - (b) Prior to awarding the contract, the County has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$50,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$50,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.
- (2) If the amount of the purchase exceeds \$50,000 and is not also pursuant to the data and word processing exemption AR 10.090, the Purchasing Section shall document its actions in the bid file. Such documentation shall include:
  - (a) A brief description of the proposed contract or contracts.
  - (b) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the Purchasing Section to notify and invite proposals from competing vendors.
- (3) If the County intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed three (3) years, it may so state in the documentation required by section (2) and subsection (2)(b) and such documentation shall be sufficient notice as to subsequent purchases.

**20.040 Product Prequalification**

- (1) When it is impractical to create specific design or performance specifications for a type of product to be purchased, the County may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product pre-qualification procedure:
  - (a) The Purchasing Section has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall include advertisement in a trade journal of statewide distribution when possible.
  - (b) The County permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.
- (2) If an application for inclusion in a list of pre-qualified products is denied or an existing pre-qualification revoked, the Purchasing Manager shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in AR 40.090.

**20.050 Brand Name or Mark Exemption Applications**

- (1) The Purchasing Section may apply for and receive a brand name or mark exemption ruling from the Board for current and contemplated future purchases. Applications shall contain the following information:
  - (a) A brief description of the solicitation(s) to be covered. The description should include contemplated future purchases.
  - (b) The brand name, mark, or product to be specified.
  - (c) The reasons the agency is seeking the exemption which shall include any of the following findings:
    - (1) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the contracts or substantially diminish competition; or
    - (2) Specification of the brand name, mark or product would result in substantial cost savings to the agency; or
    - (3) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
  - (d) The County shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals; or shall document the procurement file with findings of current market research to support the determination that the product is available from only one seller.

**20.060 Conditions of Exemptions**

- (1) The Board may grant exemptions if any of the following conditions are met:
  - (a) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and result in cost savings; or
  - (b) There is only one manufacturer or seller of the product of the quality required, efficient utilization of existing equipment, or supplies requires acquisition of compatible equipment or supplies; or
  - (c) The exemption is requested for the purchase of a particular product to be used in an experimental project.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 30**

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**30.000 SPECIFIC EXEMPTION PROCEDURE**

**30.010 Notice of Application**

- (1) Upon receipt of an application for an exemption ruling under these rules, the County Chair shall cause a notice of intention to adopt an order to be posted in full public view in the Multnomah County Courthouse and may set the matter for public hearing to receive data, views, and arguments.

**30.020 Board Hearing**

- (1) The application will be placed on the Board's agenda for the next Board meeting, and, in the exercise of discretion, the County Chair may also set additional public meetings to receive data, views, and arguments.

**30.030 Temporary Rules Exemptions**

- (1) In appropriate cases, the County Chair may grant a temporary exemption from public bidding pending formal consideration of a specific exemption.

**30.040 Unanimous Consent Calendar**

- (1) The County Chair may, in the exercise of discretion, notify the members of the Board that an application for exemption has been made and that if no objections are received to the exemption from members of the Board within seven days of the County Chair's notice, the exemption will be considered granted by unanimous consent and the County Chair may, in the exercise of discretion, deem the exemption adopted as a temporary rule. Exemptions so adopted will be placed on the Board's agenda as a unanimous consent calendar for ratification or adoption as a permanent rule by the Board at the next meeting of the Board.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 40**

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**40.000 COMPETITIVE BIDDING PROCEDURE**

**40.010 Statutory Requirements**

- (1) The County is required to award contracts to the lowest responsible, responsive bidder except in the following circumstances:
  - (a) The bidder has failed to substantially comply with either the specifications or any statutory requirement relating to public contracting;
  - (b) The bidder is disqualified by the County pursuant to the applicable statutes and Rule 40.020.
  - (c) If in the judgment of the department head and the Purchasing Manager it is in the public interest to reject all bids pursuant to ORS 279.035.

**40.015 Receipt and Opening of Bids**

- (1) In any contract that is subject to competitive bidding as defined in Rule AR 10.000, the advertisement must state the time and date when bids will be publicly opened. The bids should be sealed and shall not be examined or opened by anyone until the time of the public opening as specified in the advertisement. Such bids are not public records under ORS 192.500 et seq. until the public opening.

**40.020 Bidder Disqualification**

- (1) Bidders may be disqualified on any of the following grounds:
  - (a) Lack of financial ability. If a performance bond is required to insure performance of a contract, proof that the bidder can acquire a surety bond in the amount required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting agency may require such information as it deems necessary to determine the bidders financial ability. In determining whether a surety company is to be considered "good and sufficient", the public contracting agency may utilize the list maintained by the U.S. Department of Treasury of surety companies acceptable on federal bonds; Best's Rating, published by A.M. Best Company; or information maintained by the Oregon State Department of Transportation.
  - (b) The bidder lacks the available equipment or key personnel with sufficient experience to perform the contract.
  - (c) The bidder has repeatedly breached contractual obligations.

**40.030 Prequalification**

- (1) Prequalification of contractors for public improvements in excess of \$50,000 may be required. All persons desiring to bid for such contracts shall submit a completed pre-qualification statement. Such statements must be prepared during the period of one year prior to the bid date and must be actually received or postmarked to Multnomah County by no later than 10 days prior to bid opening. Prequalification granted pursuant to this rule shall be effective for a period of one year. Prequalification granted pursuant to this rule shall be for only those contracts not exceeding a certain monetary limit based upon the financial ability of the particular contractor. Such limits will be designated by Multnomah County.

**40.040 Prequalification Application**

- (1) Prequalification statements required by AR 40.030 adopted pursuant to ORS 279.039 and Prequalification requests submitted pursuant to ORS 279.041 shall be in the form of the State of

Oregon Public Contract Review Board "Contractors" Prequalification Application, "Equipment and Experience Questionnaire."

**40.045 Prequalification Prior To The Effective Date**

- (1) In case of a Prequalification that has been granted prior to the effective date of these rules, the County may, in its discretion, deem that Prequalification to continue for its remaining term.

**40.050 Qualification Statement**

- (1) Upon establishment of Prequalification, the County shall issue a qualification statement in substantially the following form:

"This is to certify that

Name of Contractor

is qualified to perform the classes of work as requested in its Prequalification application dated \_\_\_\_\_, or contracts not to exceed \$ \_\_\_\_\_."

**40.060 Proof Of Presumed Qualification**

- (1) A copy of the qualification statement provided by AR 40.050 accompanied by a copy of the contractor's application for Prequalification will constitute proof of Prequalification for purposes of the presumption established by ORS 279.047.

**40.070 Notice of Denial of Qualification**

- (1) If the County does not qualify the applicant, it shall notify the applicant in the following form:

"Multnomah County Qualification Denial"

Name of Contract

Date

You are hereby notified that your application for Prequalification has been denied or your bid has not been qualified for the following reasons:

\_\_\_\_ Contractor does not have sufficient financial ability to perform the contract.

\_\_\_\_ Contractor does not have equipment available to perform the contract.

\_\_\_\_ Contractor does not have key personnel with sufficient experience to perform the contract.

\_\_\_\_ Contractor has repeatedly breached contractual obligations.

\_\_\_\_ Contractor has failed to supply promptly information requested by Multnomah County.

\_\_\_\_ Other (Agency must specify).

If you desire to appeal this disqualification or refusal of bid to the Multnomah County Public Contract Review Board, you must notify the Multnomah County Purchasing Manager in writing within three business day after receipt of this notice. The Purchasing Manager shall notify the Multnomah County Contract review Board of your appeal and they shall notify you of the time and place of the hearing.

Signature

**40.080 Notice of Revocation Or Revision Of Prequalification**

- (1) Upon discovery that a person prequalified is no longer qualified, the County shall send a notification of proposed revocation or revision of qualification in the following form:

**"Multnomah County Qualification Revocation or Revision"**

Name of Contract

Date

You are hereby notified that your notice of Prequalification issued on \_\_\_\_\_ shall be revoked or revised for the following reasons:

- \_\_\_\_\_ Contractor does not have sufficient financial ability to perform the contract.
- \_\_\_\_\_ Contractor does not have equipment available to perform the contract.
- \_\_\_\_\_ Contractor does not have key personnel with sufficient experience to perform the contract.
- \_\_\_\_\_ Contractor has repeatedly breached contractual obligations.
- \_\_\_\_\_ Contractor has failed to supply promptly information requested by Multnomah County.
- \_\_\_\_\_ Other (State Reasons for Revocation or Revision)

This revocation or revision shall be effective ten days from the date of this notice unless you provide the Multnomah County Purchasing Manager with evidence that the deficiency has been corrected or you file with the Multnomah County Director of Purchasing notice of appeal to the Multnomah County Public contract Review Board pursuant to AR 40.090. Failure to file a notice of appeal within ten days bars any appeal to the Board.

Signature

**40.090 Appeals of Prequalification Status**

- (1) A contractor or bidder may appeal to the Board any of the following:
  - (a) Notice of denial of qualification.
  - (b) Notice of conditions varying from application for prequalification.
  - (c) Notice of revocation of prequalification.
  - (d) Notice of product disqualification under Rule AR 20.040. Notice of appeal pursuant to (a) through (d), above need not be in any particular form so long as they are in writing addressed to the Multnomah County Purchasing Manager and received within 10 days after the bidder or contractor has received notice of subsection (a) through (d).
- (2) Upon receipt of the notice of appeal, the Purchasing Manager shall forward to the Board the contractor's prequalification application, the notice of refusal of bid or prequalification or revocation and the record of investigation by the Purchasing Manager upon which the agency based its refusal or revocation together with the notice of appeal. The burden of sustaining the refusal, disqualification or revocation is upon the County.
- (3) For purposes of appeals, three members of the Board shall constitute a quorum. Meetings for appeal purposes shall be held following the Multnomah County Board of Commissioners' meetings.
- (4) At any time prior to the meeting of the Board, the County may reconsider its revocation, revision or disqualification.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 50**

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**50.000 WAIVER OF SECURITY BID AND PERFORMANCE BOND**

**50.010 Bid Security Requirements**

- (1) The County may, in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements. At the discretion of the Purchasing Manager, the County may accept blanket bid bonds.

**50.020 Contracts Equal to or Less Than \$50,000**

- (1) The County may, at its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.029 if the amount of the contract for the public improvement is equal to or less than \$50,000.

**50.030 Deposits in Lieu of Retainage on Public Contracts**

- (1) When a contractor elects to deposit securities with a bank or trust company in lieu of Retainage on public contracts, the securities will be held by the custodian in fully transferable form and under the control of the County.
- (2) Nonnegotiable securities so deposited shall have proper instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.
- (3) The custodian bank or trust company will issue a safekeeping receipt for the securities to the County. The receipt will describe the securities, the par value, the name of the contractor, and project number or other project identification.
- (4) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.
- (5) Securities deposited in the manner described above will be released by the bank or trust company only upon the written instructions and authorization of the County.
- (6) In lieu of the above, an escrow agreement mutually acceptable to the contractor and the County and the bank or trust company may be used.

**50.040 Approved Securities Acceptable in Lieu of Retainage Fees**

- (1) Bills, certificates, notes or bonds of the United States.
- (2) Other obligations of the United States or its agencies.
- (3) Obligations of any corporation wholly owned by the federal government.
- (4) Indebtedness of the Federal National Mortgage Association.
- (5) General Obligation Bonds of the State of Oregon or any political subdivision thereof.
- (6) Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association, or mutual savings bank, duly authorized to do business in Oregon.
- (7) Corporate bonds rated "A" or better by a recognized rating service.
- (8) General obligation improvement warrants issued pursuant to ORS 287.502.
- (9) Irrevocable letters of credit from a bank doing banking business in Oregon.

**50.050 Retainage Deposited in Interest -Bearing Account**

- (1) When a contractor elects to have an interest-bearing account established for deposit of Retainage in a bank, savings bank, trust company, or savings association, the account will be established by the County for the benefit of and under the control of the County with interest accruing to the contractor.
- (2) When the account is established, proper instruments shall be furnished to the bank, savings bank, trust company, or savings association to prohibit withdrawal or transfer of the funds in the account except upon written instructions and authorization of the County and to enable the County to close the account if in the judgment of the County the contractor has not fulfilled the contract obligations.
- (3) The bank, savings bank, trust company, or savings association will issue to the County a receipt acknowledging the deposit and, on the initial receipt, describing the account, the provision for interest, the name of the contractor, and the full name under which the account is established.
- (4) The amount deposited and accrued interest will be released by the bank, savings bank, trust company, or savings association only upon the written instructions by the county.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 60**

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**60.000 AFFIRMATIVE ACTION IN PUBLIC CONTRACTS**

**60.010 Purpose**

- (1) The purpose of this Chapter is to establish procedures to assure that Multnomah County contractors and vendors provide adequate opportunities for minority individuals, women, and MBE, WBE and ESB contractors and subcontractors to participate and compete for business and employment opportunities provided through contracts with Multnomah County, State of Oregon.

**60.015 Affirmative Action Contracts**

- (1) Public contracts may be awarded pursuant to a specific Affirmative Action plan. This rule sets forth the Multnomah County Affirmative Action Plan.

**60.030 Policy**

- (1) It is the intent of Multnomah County to provide opportunities for all segments of the business population to participate in the Multnomah County Purchasing Program. In order to assure opportunity, every County contract and/or subcontract for construction, maintenance or services shall include provisions barring discrimination against or differential treatment of MBE's, WBE's and ESB's.
- (2) Multnomah County has a compelling governmental interest in prohibiting discrimination in programs, activities, services, benefits and employment whether carried out by the County itself or through a contractor with whom the County arranges to carry out its programs and activities. Every County contract shall contain a provision prohibiting discrimination by the contractor based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits and employment.
- (2) For all contracts designated by the Purchasing Manager, bid specifications shall require compliance with a "good faith effort" program.

**60.031 Good Faith Effort Program**

- (1) The activities described in ORS 200.045 are standards for good faith efforts to provide equitable opportunities for MBE's, WBE's, and ESB's to participate in subcontract opportunities created through Multnomah County contracts.
- (2) The Purchasing Manager shall implement a good faith effort program utilizing the standards

described in ORS 200.045 that are determined to be effective to achieve the purpose of this section together with such other standards as are appropriate to such a program. Bid or proposal specifications for contracts requiring good faith effort shall state the requirements necessary to show that a good faith effort has been made and shall require documentation of such effort. The Purchasing Manager shall cooperate with other municipal and state agencies to design, to the maximum extent possible, a program that is uniform between agencies.

**60.032 Evaluation of Good Faith Effort**

- (1) The Purchasing Manager or his/her designee shall determine if the bid complies with bid specifications for good faith effort.
- (2) Failure of bidder to submit good faith effort documentation required by the bid specifications shall be determined "non-responsive" to the bid specifications. Non-responsive bids will be rejected by the Multnomah County Purchasing Manager.

**60.040 Requirement for Certification as Equal Employment Opportunity Employer**

- (1) No vendor shall furnish goods or services to the County in any year, whether by single contract or multiple contracts, for an amount in excess of the limit set for formal bids in AR 10.010 unless such vendor is certified as an Equal Employment Opportunity Employer. No County agency shall enter into a contract by which a vendor shall exceed such limitation unless the vendor is, at the time of such contract, certified by the Purchasing Manager as an EEO Employer.

**60.041 Certification Procedure/Appeal**

- (1) Vendors furnishing goods and services to the County in excess of the limits set forth in AR 60.040 shall apply for and obtain EEO certification from the City of Portland as an EEO employer. The Purchasing Manager shall maintain a list of certified vendors based upon City of Portland certification. A vendor may appeal from a decision to deny certification or revoke certification in accordance with the procedure prescribed in AR 40.090 for denial or revocation of prequalification.

**60.050 Workforce Requirements in Construction Contracts**

- (1) For all contracts designated by the Purchasing Manager as being appropriate for such a program, the Purchasing Manager shall establish specifications to be included in the bid specifications which require for such contracts that contractors make reasonable efforts to increase apprenticeship training and work opportunities for women and minority individuals, and, to ensure that their workforce reflects the diversity of Multnomah County and is reasonably consistent with the availability of qualified women and minority individuals. The specifications shall state the requirements necessary to show that a reasonable effort has been made, shall require documentation of such effort, and shall provide for remedies to the County for failure to comply with any of the specified requirements.

**60.060 Sheltered Market Program**

- (1) There is hereby established a Sheltered Market Program for MBE, WBE and ESB contractors performing public works contracts for Multnomah County. The purpose of the program is to provide prime contracting experience for small contractors in order to increase the number of contractors available to bid on Multnomah County public works projects, and to increase participation of MBE, WBE, and ESB contractors acting as prime contractors on county public works projects to ensure uniform access to public contracting dollars and to improve opportunities for minorities and women acting as business owners in the regional construction industry.
- (2) Contractors shall be selected for participation in the Sheltered Market Program based on an application developed by the Purchasing Manager. Criteria for selection shall include the following:
  - (a) Contractor shall be a state certified MBE, WBE or ESB.
  - (b) Contractor shall have prior experience performing construction work and shall be currently in business doing construction work.

- (c) Contractor shall have gross receipts for the calendar year prior to the application of less than \$1,000,000 or if gross receipts for that year are greater than \$1,000,000, then the average gross receipts for the three calendar years prior to the application shall be less than \$1,000,000. The Purchasing Manager shall have the discretion to waive this requirement if waiver will advance the purposes of the program and if all other criteria are met.
- (d) Contractor shall have reported that contractor has experienced barriers in the conduct of contractor's business based on race, gender or size of the business.

The Purchasing Manager may develop additional criteria for selection of contractors for participation in the program which further the purpose of the program.

- (3) A contractor may appeal from a decision to deny participation in the program to the Public Contract Review Board in accordance with the procedure prescribed in AR 40.090.
- (4) Contracts to be included in the Sheltered Market Program shall be selected by the Purchasing Manager from projects estimated at the time of bidding to result in a contract in excess of \$50,000 and less than \$200,000. The Purchasing Manager may include in the program additional contracts up to \$250,000 if inclusion will further the purposes of the program. In the selection of contracts to be included in the program, the Purchasing Manager shall consider the number of contractors in the program which have the qualifications and the capacity to perform the work. If necessary to assure that all Sheltered Market contractors have an opportunity to participate, contracts may be offered for bid to only selected contractors within the Sheltered Market Program.
- (5) Contracts selected for inclusion in the Sheltered Market Program shall be offered for bid only to contractors admitted to the Sheltered Market Program. Except as provided in subsection (6) below, the contract shall be awarded to the lowest responsive responsible bidder among those bidding.
- (6) For each project selected for the Sheltered Market Program, the project manager for the program shall forward to the Purchasing Manager a cost estimate for the project. If the lowest responsive responsible bid is more than the cost estimate, the Purchasing Manager shall have the option to award the contract, re-bid the project within the Sheltered Market Program, or open the bidding on the project to all bidders. If bidding is opened to all bidders, the contract shall then be awarded to the lowest responsive responsible bid from among all bids received.
- (7) The Purchasing Manager shall promulgate rules setting forth conditions for continued participation in the program and for graduation from the program. Participation in the Program shall be limited to three years absent extraordinary circumstances.
- (8) The Purchasing Manager shall prepare a report to the Board of County Commissioners on an annual basis which provides an evaluation of the program, including information on the subjects set forth in Section 4 of HB 2910. The annual report shall include a recommendation whether the program should be continued. If the Purchasing Manager recommends that the Program be continued, the recommendation shall include any proposed improvements to the Program.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 70**

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**70.000 PURCHASE OF GOODS AND SERVICES FROM QUALIFIED REHABILITATION FACILITIES**

**70.010 PURPOSE**

- (1) The purpose of this Chapter is to establish policies and procedures governing the acquisition of goods and services produced by Qualified Rehabilitation Facilities and to insure that Qualified Rehabilitation Facilities are provided opportunities to enter into contractual relationships with Multnomah County, State of Oregon.

**70.030 Policy**

- (1) It is the policy of Multnomah County to encourage employment of the handicapped. An essential element of this policy is to support sheltered employment by contracting for needed goods and services available from QRF's. The County shall identify contracting opportunities within the organization and encourage awarding of contracts to QRF's. This policy shall be equally applicable to all County organizations and shall be administered by the Director of Purchasing.

**70.040 Certification**

- (1) It shall be the policy of Multnomah County to use the QRF Certification established by the State of Oregon, Department of General Services, when applicable.
- (2) All entities wishing to qualify for QRF status with the County must furnish proof of certification with the State of Oregon, Department of General Services.

**70.050 Set Aside Program for QRF Firms**

- (1) The designation of contracts to the set aside program will be made by the joint determination of the department manager and the Purchasing Manager or agents appointed by them. The procedure for bidding and awarding of contracts shall be consistent with AR 40.000, except for the restriction limiting competition to QRF firms. In situations where a set aside has been established, and there is only one certified QRF available on the State Certificate list, the County shall negotiate a contract with the QRF provided the product or service is in accordance with the price established by the Purchasing Section and it meets all minimum specifications, and is available within the period required by the Purchasing Section.
- (2) The Purchasing Section will review on a regular basis the procurement list established and published by the State of Oregon, Department of General Services to determine sources and potential sources of products and services produced by QRF's. This procurement list will be distributed annually to all County departments.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 75**

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**75.000 Alternate Selection Procedures: Architects, Engineers and Related Professional Consultants**

**75.005 Purpose**

- (1) The purpose of these rules is to specify the policy and procedures of the County regarding selection of professional consultants to perform architectural, engineering, and related services required by the County for construction, improvement, planning and related activities. It is the policy of the County to select as expeditiously as possible the most qualified consultant based on the consultant's demonstrated competence and qualifications to perform the professional services required at a fair and reasonable price.

**75.015 Solicitation**

- (1) Responses shall be solicited through public advertisement, which shall be made for each project, or at other designated times to develop a list of consultants interested in providing services to the County by the following procedure:
- (a) All advertisements shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located, and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. The advertisement(s) shall be published no fewer than fourteen (14) calendar days before close of the solicitation. The advertisement(s) shall briefly describe: (i) the project (ii) the professional services sought; (iii) where copies of the solicitation may be obtained; and (iv) the deadline for submitting a response.
  - (b) At other designated times, the County may announce that it will accept from architectural, engineering, and other related professional consultant firms, a statement of qualifications, credentials, and other data expressing interest in providing services.
    - (1) The County may provide a standard form for this purpose. Materials received will be retained by the County for use in: (i) direct notice to consultants providing services similar to those required for the project; (ii) the Informal Selection Procedure; (iii) and, where possible, in the Direct Appointment Procedure.
    - (2) Materials on file with the County may be purged periodically, unless the County is notified otherwise by firms desiring to continue expressing interest in performing services.
  - (c) The County may at any time during the solicitation or negotiation process reject all consultant proposals and cancel the solicitation without liability therefor, after making a written finding that there is good cause for rejecting all proposals and that it would be in the public interest to cancel the solicitation.
  - (d) Unless consultant compensation is expressly provided for in the solicitation document, under no circumstances shall the County be responsible for any consultant costs and expenses incurred in submitting responses to the solicitation under any part of this rule. All prospective consultants who respond to solicitations do so solely at the consultant's cost and expense.
  - (e) All solicitation documents shall include the following language: "Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this documents".

**75.020 Formal Selection Procedure**

- (1) The formal selection procedure shall be used whenever the estimated cost of architectural, engineering, or related services exceeds \$50,000, or a lesser sum at the discretion of the County.

Responses shall be solicited through public advertisement, and may then include a Request for Qualifications (RFQ) to establish a short list, followed by an RFP. However, if a limited number of responses are anticipated, or if it is determined to be in the County's best interest, solicitation may proceed directly to an RFP process with or without an interview.

- (2) The Request for Qualifications shall, at a minimum, contain: (i) the solicitation; (ii) a statement of the particular consultant qualifications required for the project; (iii) the evaluation criteria (including the weights or points applicable to each criterion); and (iv) the screening or evaluation method to be used. The RFP may require any or all of the following:
  - (a) The consultant's particular capability to perform the architectural, engineering, or related services required for the project, and the consultant's recent, current, and projected workloads;
  - (b) The number of the consultant's experienced staff available to perform the professional services required by the project, including such personnel's specific qualifications and experience;
  - (c) A list of similar projects completed by the consultant with references concerning past performance;
  - (d) Experience in promoting MBE, WBE and ESB participation on projects; and
  - (e) Any other information which is deemed reasonably necessary to evaluate consultant qualifications.
- (3) A pre-submission meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.
- (4) A consultant screening and evaluation committee of no fewer than three, and recommended no more than five, individuals shall be established to review, score and rank the consultants according to the solicitation criteria. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering construction, and public contracting. Members may be appointed from qualified professional employees of the County or other agencies, and may include private practitioners of architecture, engineering, or related professions, and representatives of user groups. One member of the committee from the County shall be designated as the chairperson.
- (5) Following screening and evaluation, a short list of at least three qualified professional consultants shall be established. Unless the RFQ is canceled, every consultant placed on a short list shall receive a copy the RFP and have an opportunity to submit a proposal.
- (6) The Request for Proposals shall describe or contain the following information:
  - (a) General background information, including a description of the project and the specific consultant services sought, and may include the estimated construction cost and the time period in which the project is to be completed;
  - (b) The evaluation process and the criteria which will be used to select the consultant; including the weight or points applicable to each criterion;
  - (c) The closing date and time of the solicitation and the delivery locations for consultant proposals;
  - (d) The date and time for interviews, if planned;
  - (e) Reservation of the right to seek clarifications of each consultant's proposal, and the right to negotiate a final contract which is in the best interests of the County, considering cost effectiveness and the level of consultant time and effort required for the project;

- (f) Reservation of the right to reject based on written findings, any or all proposals if there is good cause, and to cancel the solicitation, if doing so would be in the public interest;
  - (g) A sample of the contract the consultant will be expected to execute; and
  - (h) Any other information that is reasonably necessary to evaluate, rank and select consultants.
- (7) A pre-qualification or pre-proposal meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.
- (8) An RFP consultant selection committee of no fewer than three, and recommended no more than seven, individuals shall be established to review, score and rank the consultant's responses to the RFP. The committee may be composed of members who, collectively, have experience in areas such as architecture, engineering, construction and public contracting. Members may be appointed from professional employees of the County or other agencies, and include practitioners of architecture, engineering, or related professions, and user groups. One member of the committee from the County shall be designated as the chairperson.
- (9) The RFP consultant selection committee shall review, score and rank all responsive proposals according to criteria which may include, but are not limited to, the following:
- (a) Availability and capability to perform the work;
  - (b) Experience of key staff on comparable project(s);
  - (c) Demonstrated ability to successfully complete similar projects on time within budget;
  - (d) References and recommendations from past clients, public and private;
  - (e) Consultant's performance history in (i) meeting deadlines; (ii) submitting accurate estimates; (iii) producing quality work; and (iv) meeting financial obligations;
  - (f) Status and quality of any required licensing or certification;
  - (g) Consultant's knowledge and understanding of the project as shown through the consultant's: (i) proposed approach to the project's staffing and scheduling needs and (ii) suggested alternatives to any perceived design and constructability problems;
  - (h) Consultant's compensation requirements as defined under AR 75.010(2), unless prohibited by Federal requirements, such as this in 40 USC \*\*541-544 (Public Law 92-583, Brooks Architect-Engineers Act);
  - (i) Results from oral interviews, if conducted;
  - (j) Design philosophy and project approach;
  - (k) Availability of any special required resources or equipment;
  - (l) Identity of proposed subcontractors; and
  - (m) Experience in promoting MBE, WBE and ESB participation on projects; and
  - (n) Any other criteria that are deemed to be relevant to the project, including where the nature and budget of the proposed project so warrant a design competition between competing professional consultants
- (10) Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:

- (a) The consultant's tasks, staffing, and a performance schedule; and
  - (b) A maximum, not-to-exceed contract price which is consistent with the consultant's proposal and fair and reasonable to the County, taking into account the estimated value, scope, complexity, and nature of the professional services.
- (11) Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under AR 75.030.
- (12) If a project for which a consultant has been selected and awarded a contract becomes inactive, or is materially altered or terminated, whether due to project phasing, insufficient appropriations, or other reasons, the County may, if the project is reactivated or continued after material alteration, retain the same consultant to complete the project if the County makes written findings that retaining the consultant will: (i) not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts or substantially diminish competition for such contracts; and (ii) will result in substantial cost savings to the County.
- (13) Contracts entered into under the formal selection procedure set forth in AR 75.020 may be amended, provided the services to be provided under the amendment are included within, or directly related to, the scope of services that were described in the original solicitation document. Provided, further, that each such amendment must be in writing, signed by an authorized representative of the consultant and the County, and receive all necessary approvals before it becomes binding on Multnomah County.

#### **75.025 Informal Selection Procedure**

- (1) The informal selection procedure may be used to obtain architectural, engineering, or related services if the consultant's estimated fee is equal to or less than \$50,000.
- (a) A written solicitation inviting written proposals shall be sent to a minimum of three prospective consultants.
  - (b) Of the three proposals sought, one must be obtained from an MBE, one from a WBE, and one from an ESB.
    - (1) If a proposal is not available in a particular category from an MBE, WBE, or ESB consultant certified by the State of Oregon for the type of work required, an additional proposal shall be obtained from one of the other categories. If three proposals are not available from all of the categories combined, the remaining proposal(s) may be obtained from any other contractor.
    - (2) A proposal shall be "not available" in a specific category (MBE, WBE, or ESB) if all consultants certified by the State in that category and located within 75 miles from the place where the contract is to be performed, have been advised of the contracting opportunity, have been given a reasonable period of time under the circumstances to submit a proposal, and have failed or declined to provide a proposal within the time specified.
  - (c) All proposals shall be reviewed and the three most qualified consultants selected and ranked.
  - (d) The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking may be based on criteria which include, but are not limited to each consultant's:
    - (1) Particular capability to perform the architectural, engineering, or related services

for the project being considered;

- (2) Number of experienced staff available to perform the services required by the project, including each consultant's recent, current, and projected workloads;
  - (3) Performance history on past projects for public or private clients,
  - (4) Project approach and design philosophy;
  - (5) Consultant's compensation requirements as defined under AR 75.010(2), unless prohibited by Federal requirements.
  - (6) Geographic proximity to the project. The County may also consider the volume of work, if any, previously awarded to each consultant, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most highly qualified consultant.
- (d) Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement on:
- (1) The consultant's tasks, staffing, and a performance schedule; and
  - (2) A maximum, not-to-exceed contract price which is consistent with the consultant's proposal and fair and reasonable to the County, taking into account the estimated value, scope, complexity, and nature of the professional services.
- (e) Negotiations may be formally terminated if they fail to result in a contract within a reasonable amount of time. Negotiations will then ensue with the second ranked consultant, and if necessary, the third ranked consultant. If the second or third round of negotiations fails to result in a contract within a reasonable amount of time, the solicitation may be formally terminated. Services of a qualified consultant may then be obtained through the direct appointment procedure under AR 75.030.
- (f) If the scope of a project is revised during negotiations so that the estimated cost of the consultant's services exceeds \$50,000, then the informal process shall be terminated and the services of a qualified consultant solicited using the formal selection procedure set forth in AR 75.020. Provided however, that negotiations with the informally selected consultant may continue if the County makes written findings that contracting with the consultant will: (i) not encourage favoritism in the awarding of architectural, engineering, or related personal service contracts; and (ii) will result in substantial cost savings to the County.

#### **75.030 Direct Appointment Procedure**

- (1) A qualified consultant may be appointed directly from: (i) the County's current list of consultants; (ii) another public jurisdiction's current list of consultants, pursuant to an interagency or intergovernmental agreement entered into in accordance with ORS chapter 190; or (iii) among all consultants offering the necessary services that the agency reasonably can locate, which may include public advertisement.
- (a) The direct appointment procedure may be used when:
- (1) Circumstances which could not reasonably have been foreseen create a substantial risk of loss, damage, interruption of services or threat to the public health or safety and require the prompt performance of architectural, engineering, or related services to remedy the situation; or
  - (2) The consultant's estimated fee does not exceed \$10,000; or
  - (3) The project: (i) consists of work which has been substantially described, planned

or otherwise previously studied or rendered in an earlier contract, as in continuation of a project; (ii) the consultant's estimated fee for such project does not exceed \$50,000; and (iii) the selection procedure used for the original project was the formal selection procedure set forth in AR 75.020 (or a substantially equivalent procedure if the consultant services for the original project were procured prior to adoption of these rules); or

- (4) The consultant will be assisting legal counsel, through expert analysis, testing, testimony or otherwise, on a project which is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.
- (b) A direct appointment pursuant to (1)(a) or (b), above, shall be competitive to the extent practicable and may be based on criteria which include but are not limited to: (i) the consultant's availability, capabilities, staffing, experience, and compensation requirements and (ii) the project's location.
- (c) If the consultants estimated fee does not exceed \$10,000 as stated in (1) (a) (2) above:
  - (1) The direct appointment shall be made to an MBE, WBE or ESB consultant certified by the State of Oregon for the type or work required unless such consultant is not available.
  - (2) A consultant shall be considered "not available" in a particular category if all consultants certified by the State in that category and located within 75 miles from the place where the contract is to be performed, have been advised of the opportunity, have been given a reasonable period of time under the circumstances to respond and have failed or declined to respond. A direct appointment then may be made to any other qualified consultant.

#### **75.035 Contract Provisions**

- (1) Except as otherwise required by law, no consultant contract for architectural, engineering, or related services shall be awarded which contains fee provisions or fee schedules that are based on or limited to: (i) cost-plus-a-percentage-of-cost; or (ii) a percentage of construction or project costs.
- (2) Except in cases of emergency as defined in ORS 279.011(4), no building materials, supplies or equipment for any building, structure or facility constructed by or for the County shall be sold by or purchased from any person or firm employed as a consultant by the County to provide architectural, engineering, or related services for such building, structure or facility, unless the consultant is providing: (i) construction manager/general contractor services, or (ii) design-build services, or where that portion of the contract relating to the acquisition of building materials, supplies or equipment was awarded pursuant to applicable law governing the award of such contracts.

#### **75.040 Protest Procedures**

- (1) All protests of solicitation or selection processes are limited to the following issues and filing times:
  - (a) Solicitation protest: Unless a different deadline is specified in the solicitation document, prospective consultants must submit a written protest, or request for change, or particular solicitation provisions, specifications or contract terms and conditions to Purchasing no later than five (5) working days prior to the close of the solicitation. Such protest or request for change shall include the reasons for the protest or request, and any proposed changes to the solicitation provisions, specifications, or contract terms and conditions. No protest against selection of a consultant or award of a consultant contract, because of the content of solicitation provisions, specifications, or contract terms and conditions, shall be considered after the deadline established for submitting such protest.
  - (b) Selection protest: Every consultant who submits a proposal in response to an RFP shall

be mailed a copy of the selection notice sent to the highest ranked consultant. Unless a different deadline is specified in the RFP, a consultant who has submitted a proposal and claims to have been adversely affected or aggrieved by the selection of a competing consultant, shall have five (5) working days after receiving the notice of selection to submit a written protest of the selection to Purchasing. To be adversely affected or aggrieved, a protester must claim that the protester was the highest ranked consultant eligible for selection, i.e., the protester must claim that all higher ranked consultants were ineligible for selection because their proposals were non-responsive or the consultants non-responsive. The County shall not consider a selection protest submitted after the time period established in this section (2), unless a different deadline is provided in the RFP.

- (c) The procedure and authority to settle or resolve a written protest submitted in accordance with sections (1) or (2) or this rule shall be in accordance with Multnomah County Administrative Procedure PUR-1.

**MULTNOMAH COUNTY PUBLIC CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES**

**DIVISION 90**

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**90.000 NOTICES AND AGENDA**

**90.010 Notices**

- (1) Notices of amendment, adoption or repeal of rules, including contract exemption rulings and of meetings of the Public Contract Review Board and the agenda of the meetings shall be sent to the following at least seven (7) days prior to the meeting:
  - (a) Press: The Oregonian, The Gresham Outlook, and The Daily Journal of Commerce.
  - (b) Management and Labor: Association of Oregon Industries; Associated General Contractors; Oregon Construction Industry Council; Oregon AFL-CIO, and Oregon State Building Trades Council.
  - (c) Any persons requesting notice in writing who show themselves in a position to be affected by the Board's determination.

**90.020 Agenda**

- (1) The agenda of the meetings of the Board shall include the following:
  - (a) Unanimous consent calendar pursuant to AR 30.040 including a brief description of the contract exempted and the amount of the contract.
  - (b) Consideration without hearing of pending applications for exemption. The agenda will list all proposed pending exemptions with a brief description of proposed exemptions including the amount of the contract.
  - (c) Consideration with hearing of pending applications for exemption rulings.
  - (d) Contested case hearings of appeals of disqualification or revocation of pre-qualification, including the name of the contractor and the grounds of the proposed disqualification or revocation of pre-qualification.

BUDGET MODIFICATION NO.

00 DSS 03

(For Clerk's Use) Meeting Date

OCT 21 1999

Agenda No.

C-7

## 1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

(Date)

DEPARTMENT

Support Services

DIVISION ISD

CONTACT

Carrie White

TELEPHONE x27038

\* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

SUGGESTEDAGENDA TITLE

(to assist in preparing a description for the printed agenda)

Requests correction of service reimbursements, reduces appropriations in the Data Processing Fund by \$21,275, and increases appropriations in the Capital Acquisition Fund by \$29,600.

(Estimated Time Needed on the Agenda)

## 2. DESCRIPTION OF MODIFICATION (Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

Personnel changes are shown in detail on the attached sheet

The Adopted 99-00 Budget included two service reimbursements to the Data Processing Fund, (one in the Health Department and the other in Nondepartmental) that are clearly described as payment of the PC Flat Fee. These service reimbursements should be accounted for in the Capital Acquisition Fund. This budget modification corrects the service reimbursements and changes both the Capital Acquisition Fund and the Data Processing Fund.

99 OCT 19 11:10:03  
CLERK OF SUPERIOR COURT  
CLERK OF SUPERIOR COURT  
CLERK OF SUPERIOR COURT

## 3. REVENUE IMPACT (Explain revenues being changed and reason for the change)

Reduces Data Processing service reimbursement revenue \$29,600, increases Flat Fee service reimbursement revenue \$29,000 also increases service reimbursement from the Capital Acquisition Fund to the Data Processing Fund (for software and administrative support) by 8,325.

## 4. CONTINGENCY STATUS (to be completed by Budget &amp; Quality)

Data Processing Fund

Fund Contingency before this modification

09/01/99

\$ 340,221

Date

After this modification

\$ 318,946

Originated By

Janet Thompson

Date

Department Director

Vickie Gale

Date

10/13/99

Plan/Budget Analyst

Date

J. Mark Campbell

10.12.99

Employee Services

Date

Board Approval

Date

NORBERT BOGASTO

10/21/99

DSS 03

(Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

FTE Increase (Decrease)	POSITION TITLE	BASE PAY Increase (Decrease)	ANNUALIZED		TOTAL Increase (Decrease)
			Increase/(Decrease)		
			Fringe	Ins.	
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
0	TOTAL CHANGE (ANNUALIZED)	0	0	0	0

(Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

		C U R R E N T F Y			
Permanent Positions, Temporary, Overtime, or Premium	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
			Fringe	Ins.	
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
					0
TOTAL CURRENT FISCAL YEAR CHANGES		0	0	0	0

		00 DSS 03																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DIANE LINN  
GARY HANSEN  
LISA NAITO  
SHARRON KELLEY

BUDGET AND QUALITY  
PORTLAND BUILDING  
1120 S.W. FIFTH - ROOM 1400  
P. O. BOX 14700  
PORTLAND, OR 97214  
PHONE (503) 248-3883

## SUPPLEMENTAL STAFF REPORT

TO: Board of County Commissioners

FROM: Carrie White, Information Services Division

DATE:

RE: Budget Modification DSS 03

1. Recommendation/Action Requested:

Approve the Budget Modification correcting service reimbursements.

2. Background/Analysis:

In the Health Department and in Nondepartmental service reimbursements for PC flat fee were erroneously included in the Data Processing object code. This modification corrects the object code and changes the revenues in the Data Processing Fund and the Equipment Lease Purchase Fund.

3. Financial Impact:

The total budget for Health and Nondepartmental is unaffected by the switch between line items. Net revenue to the Data Processing Fund is decreased by \$21,275. Net revenue to the Equipment Lease Purchase Fund is increased by \$29,600. In the Equipment Lease Purchase Fund, \$21,275 is appropriated to purchase replacement computers and \$8,325 is reimbursed to the Data Processing Fund for software licenses and administration.

4. Legal Issues:

None

5. Controversial Issues:

None

6. Link to Current County Policies:

Correctly accounts for the PC Flat Fee program approved by the Board in 1996.

7. Citizen Participation:

NA

8. Other Government Participation:

NA

BUDGET MODIFICATION NO.

HD 4

(For Clerk's Use) Meeting Date

OCT 21 1999

Agenda No.

C-8

## 1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

(Date)

DEPARTMENT

Health

DIVISION Primary care

CONTACT

Kathy Innes

TELEPHONE 248-3056 x27027

\* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

Sharon Armstrong

## SUGGESTED

## AGENDA TITLE

(to assist in preparing a description for the printed agenda)

Approve increases and decreases in various job classes for an overall increase of .1 FTE, and a decrease in on call funding in the Westside Primary Care Clinic budget. All changes are funded within the current budget.

(Estimated Time Needed on the Agenda)

## 2. DESCRIPTION OF MODIFICATION

(Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

X

Personnel changes are shown in detail on the attached sheet

This action adds .50 FTE of Community Health Nurse, adds 1.10 FTE of Nurse Practitioner, cuts .5 FTE of Health Assistant, and cuts 1 FTE of Licensed Community Health Nurse.

## 3. REVENUE IMPACT

(Explain revenues being changed and reason for the change)

NA

CLERK OF  
COUNTY COMMISSIONERS  
99 OCT 13 AM 11:13  
MULTNOMAH COUNTY  
OREGON

## 4. CONTINGENCY STATUS (to be completed by Budget &amp; Quality)

Fund Contingency before this modification

Date

After this modification

Originated By

Date

Department Director

Date

Plan/Budget Analyst

Date

Employee Services

Date

Board Approval

Date

Sharon Armstrong 10-12-99  
Christy Hays 10-13-99  
Catherine C. Boggs 10/21/99  
Lillian Shirley 10-11-99  
Melina Bailey, HR 10/7/99

# PERSONNEL DETAIL FOR BUDGET MODIFICATION NO.

HD 4

5. ANNUALIZED PERSONNEL CHANGES HD 4 (Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

				ANNUALIZED			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
					Fringe	Ins.	
-0.70	6315	0716	Community Health Nurs	(32641)	(8069)	(2141)	(42851)
-0.50	6294	0716	Health Assistant	(17266)	(4352)	(3732)	(25350)
0.30	6314	0716	Nurse Prac	16536	4169	-- 2173	22878
0.60	6314	0716	Nurse Prac	31232	7873	2667	41772
0.50	6315	0716	Community Health Nurs	22312	5625	2933	30870
-0.20	6315	0715	Community Health Nurs	(9127)	(3333)	(614)	(13074)
-0.10	6314	0715	Nurse Prac	(6331)	(1743)	(757)	(8831)
-0.20	6314	0715	Nurse Prac	(12729)	(3485)	(987)	(17201)
0.70	6314	0715	Nurse Prac	33842	8532	3695	46068
-1.00	6303	0715	LCPN	(32996)	(8446)	(4672)	(46114)
0.90	6315	0715	Community Health Nurs	32996	8446	4672	46114
0.30	TOTAL CHANGE (ANNUALIZED)			\$25,828	\$5,217	\$3,237	\$34,281

6. YEAR PERSONNEL DOLLAR CHANGES 0 (Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	CURRENT FY		TOTAL Increase (Decrease)
					Increase/(Decrease)		
					Fringe	Ins.	
-0.70	6315	0716	Community Health Nurs	(32641)	(8069)	(2141)	(42851)
-0.40	6294	0716	Health Assistant	(14389)	(3627)	(3732)	(21748)
0.30	6314	0716	Nurse Prac	16536	4169	2173	22878
0.60	6314	0716	Nurse Prac	31232	7873	2667	41772
0.40	6315	0716	Community Health Nurs	18594	4687	2933	26214
-0.20	6315	0715	Community Health Nurs	(9127)	(3333)	(614)	(13074)
-0.10	6314	0715	Nurse Prac	(6331)	(1743)	(757)	(8831)
-0.20	6314	0715	Nurse Prac	(12729)	(3485)	(987)	(17201)
-1.00	6303	0715	LCPN	(32996)	(8446)	(4672)	(46114)
0.50	6314	0715	Nurse Prac	24173	6094	2639	32906
0.90	6315	0715	Community Health Nurs	32996	8446	4672	46114
0.10	TOTAL CURRENT FISCAL YEAR CHANGE			\$15,318	\$2,566	\$2,181	\$20,065

EXPENDITURE		HD 4											
TRANSACTION EB GM [ ]		TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY			
Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description	
		156	015	0716			5100			19,332			
		156	015	0716			5200			(16,409)			
		156	015	0716			5400			(2,016)			
		156	015	0716			5500			3,393			
		156	015	0716			5550			1,900	6,200		
							7100			850	7,050	Grant indirect	
		156	015	0715			5100			(4,014)			
		156	015	0715			5500			(2,467)			
		156	015	0715			5550			281	(6,200)		
		156	015	0715			7100			(850)			
TOTAL EXPENDITURE CHANGE										0	7,050		

REVENUE		HD 4											
TRANSACTION RB GM [ ]		TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY			
Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description	
TOTAL REVENUE CHANGE										0	0		



# MULTNOMAH COUNTY, OREGON

---

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DIANE LINN  
SERENA CRUZ  
LISA NAITO  
SHARRON KELLEY

HEALTH DEPARTMENT  
BUSINESS SERVICES  
426 SW STARK  
PORTLAND, OR 97204  
PHONE (503) 248-3056

---

TO: Board of County Commissioners

FROM: Lillian Shirley

TODAY'S DATE: Oct. 12, 1999

REQUESTED PLACEMENT DATE: Oct. 21, 1999

SUBJECT: Health Budget Modification Number 4

---

## **I. Recommendation / Action Requested:**

Approve increases and decreases in various job classes for an overall increase of .1 FTE, and a decrease in on call funds in the Westside Primary Care Clinic budget. All changes are funded within the current budget.

## **II. Background / Analysis:**

This action adds .50 FTE of Community Health Nurse, adds 1.10 FTE of Nurse Practitioner, cuts .5 FTE of Health Assistant, and cuts 1 FTE of Licensed Community Health Nurse. The action also moves funds from on call to permanent. These staff changes will increase productivity and permit better response to increased demand for services. Reducing use of on call will bring improvements in credentialing and evaluation processes. These changes are funded within current budget levels.

## **III. Financial Impact:**

These transactions are necessary to bring the current budget into alignment with the operational needs of the clinic.

## **IV. Legal Issues:** NA

## **V. Controversial Issues:** NA

## **VI. Link to Current County Policies:** NA

## **VII. Citizen Participation:** NA

## **VIII. Other Government Participation:** NA

BUDGET MODIFICATION NO.

HD 5

OCT 21 1999

(For Clerk's Use) Meeting Date

Agenda No.

C-9

## 1. REQUEST FOR PLACEMENT ON THE AGENDA FOR

(Date)

DEPARTMENT

Health

DIVISION Primary Care

CONTACT

Kathy Innes

TELEPHONE 248-3056 x27027

\* NAME(S) OF PERSON MAKING PRESENTATION TO BOARD

Sharon Armstrong

## SUGGESTED

## AGENDA TITLE

(to assist in preparing a description for the printed agenda)

Approve an increase of \$56,181 and .5 FTE in the Primary care Clinic budget funded with an increase in the Health Care for the Homeless Grant from the Federal Department of Health and Human resources.

(Estimated Time Needed on the Agenda)

## 2. DESCRIPTION OF MODIFICATION

(Explain the changes this Bud Mod makes. What budget does it increase? What do changes accomplish? Where does the money come from? What budget is reduced? Attach additional information if you need more space.)

Personnel changes are shown in detail on the attached sheet

Adds .5 FTE of Community health Nurse.

BOARD OF  
COUNTY COMMISSIONERS  
99 OCT 13 AM 11:13  
MULTNOMAH COUNTY  
OREGON

## 3. REVENUE IMPACT

(Explain revenues being changed and reason for the change)

Adds \$56,181 of Federal Grant funds to the Federal state Fund

Adds \$1,277 in indirect to the General Fund

## 4. CONTINGENCY STATUS (to be completed by Budget &amp; Quality)

Fund Contingency before this modification

Date

After this modification

Originated By

Date

Sharon Armstrong

10-12-99

Plan/Budget Analyst

Date

Christy

10-13-99

Board Approval

Date

Dorothy C. Boaster

10/21/99

Department Director

Date

Lillian Shuf

10-11-99

Employee Services

Date

Melvin Dallen

10/11/99

**PERSONNEL DETAIL FOR BUDGET MODIFICATION NO.**
**HD 5**

5. **ANNUALIZED PERSONNEL CHANGES HD 5** (Compute on a full-year basis even though this action affects only a part of the fiscal year (FY).)

part of the fiscal year 1997				ANNUALIZED			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
					Fringe	Ins.	
0.70	6315	0715	Community Health Nurs	28140	7094	4089	39323
							0
0.70	TOTAL CHANGE (ANNUALIZED)			\$28,140	\$7,094	\$4,089	\$39,323

6. **YEAR PERSONNEL DOLLAR CHANGES** 0 (Calculate costs/savings that will take place this FY; these should explain the actual dollar amounts changed by this BudMod.)

				CURRENT FY			
Permanent Positions, Temporary, Overtime, or Premium	JCN	Org	Explanation of Change	BASE PAY Increase (Decrease)	Increase/(Decrease)		TOTAL Increase (Decrease)
					Fringe	Ins.	
0.50	6315	0715	Community Health Nurs	20100	5067	3089	28256 0
0.50							
TOTAL CURRENT FISCAL YEAR CHANGES				\$20,100	\$5,067	\$3,089	\$28,256

EXPENDITURE								HD 5					
TRANSACTION EB GM [ ]				TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description	
		156	015	0715			5100			20,100			
		156	015	0715			5200			7,021			
		156	015	0715			5500			5,706			
		156	015	0715			5550			3,089			
		156	015	0715			6060			8,932			
		156	015	0715			6310			1,166	46,014		
		156	015	0715			7100			5,107	51,121		
		156	015	0715			7100			733	51,854		
		156	015	0760			8400			5,060	42,142		
		100	075	9120			7700			1,277			
		100	015	0905			6110			3,830			
		100	015	7608			0905			733			
TOTAL EXPENDITURE CHANGE										62,754			

REVENUE								HD 5					
TRANSACTION RB GM [ ]				TRANSACTION DATE				ACCOUNTING PERIOD				BUDGET FY	
Document Number	Action	Fund	Agency	Organization	Activity	Reporting Category	Object	Current Amount	Revised Amount	Change Increase (Decrease)	Subtotal	Description	
		156	015	0715			2062			51,121	56,181		
		156	015	0715			7601			733	51,854		
		156	015	0760			2105			5,060			
		100	075	7410			6602			5,840			
TOTAL REVENUE CHANGE										62,754			



# MULTNOMAH COUNTY, OREGON

BOARD OF COUNTY COMMISSIONERS  
BEVERLY STEIN  
DIANE LINN  
SERENA CRUZ  
LISA NAITO  
SHARRON KELLEY

HEALTH DEPARTMENT  
BUSINESS SERVICES  
426 SW STARK  
PORTLAND, OR 97204  
PHONE (503) 248-3056

TO: Board of County Commissioners

FROM: Lillian Shirley

TODAY'S DATE: Oct. 11, 1999

REQUESTED PLACEMENT DATE: Oct. 21, 1999

SUBJECT: Health Budget Modification Number 5

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## **I. Recommendation / Action Requested:**

Approve an increase of \$51,121 and .5 FTE in the Westside Health Center budget, and an increase of \$5,060 in the Eastside Health Center budget. Changes are funded with an increase in the Health Care for the Homeless Grant from the Federal Department of Health and Human resources.

## **II. Background / Analysis:**

This action adds .50 FTE of Community Health Nurse with increased Health Care for the Homeless grant funds. The funds are for a new Health Care for the Homeless access point. The Federal Department of Health and Human resources also granted \$15,162 of reinvestment dollars for additional staff hours, additional alcohol and drug contracted services, and computer capacity for Homeless Kids.

## **III. Financial Impact:**

Adds \$56,181 of federal Grant funds to the Federal State Fund. The budget modification also adds \$1,277 of indirect to the General Fund.

## **IV. Legal Issues:** NA

## **V. Controversial Issues:** NA

## **VI. Link to Current County Policies:** NA

## **VII. Citizen Participation:** NA

## **VIII. Other Government Participation:** NA

**SPEAKER SIGN UP CARDS**

DATE 10-21-99

NAME ROGER TROEN

ADDRESS 4226 N. MONT. AV.

97217

PHONE 287-7894

SPEAKING ON AGENDA ITEM NUMBER OR  
TOPIC DEATH ROW DOGS + CATS

GIVE TO BOARD CLERK, R-1

# America's Unwanted Pets: Researchers

By Roxanne Hawn

*Every day in communities across the US a bond is broken. It's the bond between people and their pets, resulting in millions of pets being surrendered to shelters each year. For the vast majority, their fate is not good. To begin solving this complicated problem, researchers are studying pet population trends, the reasons pets are given up, and what we can do about it.*

If millions of animals were dying from a specific disease each year, scientists would study the causes and work on solutions. Being unwanted is like being terminally ill if you are a pet—at least the result is the same. Abandoned and unwanted, these pets are dying each year simply because they have no homes.

Since 1992 the American Humane Association has been a member of the National Council on Pet Population Study and Policy (NCPSP)—a coalition of 11 of America's foremost animal organizations concerned with the issue of unwanted pets in the United States. The NCPSP has been studying the pet population problem as if it were a disease through the methods of epidemiology. This study of epidemics within a population of ani-

mals first attempts to quantify the problem and then tests possible interventions.

Every decision on possible solutions is based on actual research data, not anecdotal evidence or gut feelings. By focusing on data, NCPSP experts can look objectively at this tragedy. When such animal suffering is at stake, strong emotional responses often dictate what people do, say, and think. These feelings are understandable and often are the impetus for change. They, however, do not serve the cause well in the long-term.

"The council has undertaken several important studies to better understand the issue of unwanted companion animals," says Pam Burney, 1998–99 NCPSP president. "This problem cannot be solved unless we truly understand it. Without this data, individuals and organizations can not have a clear idea of how to approach these issues most effectively."

## What the Numbers Say

The number of animals euthanized nationwide is estimated anywhere from 2 million to 20 million. The reality is probably somewhere in the middle, but researchers warn that no one knows for sure. "Because no



**Researchers are trying to understand the tragedy of unwanted pets.**

one really knows how many shelters there are in the US, there is no way to extrapolate our data to get a true 'national' number," says Dr. Mo Salman, chairperson of the NCPSP Scientific Advisory Committee.

What the NCPSP can show is that, of the shelters who responded to the survey, the following data was collected. For example, data for 1996 shows 2.1 million dogs and 1.7 million cats entered the 1,000 reporting shelters. Of those, 9.9% were returned to owners, 24% were adopted, and 63.7% were euthanized.

## Why Pets Are Given Up

Another regional NCPSP study looked at the reasons that people surrender their pets. Specially trained researchers completed confidential individual interviews with people who were relinquishing their dogs or cats to 12 animal shelters in six states. Pet owners were allowed to give up to five reasons for relinquishment. Interviewers did not, however, prioritize the responses. They simply recorded them in the order stated.

The top ten reasons pets are given up showed similarities for both dogs and cats. "These commonalities suggest that there may be similar ways to address relinquishment in dogs and cats," says Burney. "For people who work in a



**Unlike this dog and cat, millions of animals are unwanted or homeless.**

# Unravel What's Behind the Tragedy

shelter all day, there isn't always time to look at these issues. We have impressions of what's happening, but now we have objective data that will help us develop specific programs to address the issues that have been identified."

In addition to the reasons for relinquishment, the study collected data on the pets being relinquished:

- The majority of the surrendered dogs (47.7%) and cats (40.3%) were between five months and three years of age.
- The majority of dogs (37.1%) and cats (30.2%) had been owned from seven months to one year.
- Approximately half of the pets (42.8% of dogs and 50.8% of cats) surrendered were not neutered.
- Many of the pets relinquished (33% of dogs and 46.9% of cats) had not been to a veterinarian.
- Animals acquired from friends were relinquished in higher numbers (31.4% of dogs and 33.2% of cats) than from any other source.
- For both dogs and cats, close to equal numbers of males and females were surrendered.
- Most dogs (96%) had not received any obedience training.

Council researchers also collected data on the pet owners. "Owners represented a broad range of age, ethnicity, education, and income level, indicating continued efforts will need to reach wide and far into communities across the country," says Salman.

## What Happens Next

In-depth data analysis is ongoing. NCPPSP researchers continue to look at the details and nuances of both the annual shelter data and the regional relinquishment data. They are also completing the initial analysis of another national household survey that is intended to serve as a comparative study to the other two.

A special retreat is planned for August 1999. At this four-day forum, representatives from each of the 11 coalition organizations as well as several other outside experts will meet to take a final look at all the data that has been collected and to begin brainstorming and designing interventions that will be tested and analyzed for effectiveness. It will be similar to the event held in 1992 that set the course for the research the NCPPSP needed to begin its

## National Council on Pet Population Study and Policy (NCPSP)

The NCPPSP is a coalition of 11 of America's foremost animal organizations. It was established to gather and analyze reliable data that further characterize the number, origin, and disposition of companion animals (dogs and cats) in the United States; to promote responsible stewardship of these companion animals; and to then recommend programs to reduce the number of surplus/unwanted pets in the United States.

The NCPPSP is composed of members from the following organizations:

- American Animal Hospital Association
- American Humane Association
- American Kennel Club
- American Society for the Prevention of Cruelty to Animals
- American Veterinary Medical Association
- Association of Teachers of Veterinary Public Health and Preventive Medicine
- Cat Fanciers' Association
- The Humane Society of the United States
- Massachusetts Society for the Prevention of Cruelty to Animals
- National Animal Control Association
- Society of Animal Welfare Administrators

## Top Ten Reasons for Relinquishment

### Dogs and Cats

1. Moving
2. Landlord not allowing pet
3. Too many animals in the household
4. Cost of pet maintenance
5. Owner having personal problems
6. Inadequate facilities
7. No homes available for littermates

### Dogs

8. Having no time for pet
9. Pet illness(es)
10. Biting

### Cats

8. Allergies in the family
9. House soiling
10. Incompatibility with other pets

quest to solve the complex problem of unwanted pets in the US.

## AHA's Role

AHA has been a member of the NCPPSP since its inception. AHA staff members have attended numerous meetings, served on several committees, served as NCPPSP president, and provided expert input on a variety of issues. In addition to the payment of voluntary annual dues, AHA has contributed additional money to support the costs of research.

When you support AHA through donations, you ensure that we can continue to take such an active role in this important and groundbreaking coalition.

*Ms. Hawn is the publications manager of AHA's Animal Protection Division and one of AHA's two representatives to the National Council on Pet Population Study and Policy.*

MEETING DATE: OCT 21 1999  
AGENDA NO: R-2  
ESTIMATED START TIME: 9:30

(Above Space for Board Clerk's Use ONLY)

### AGENDA PLACEMENT FORM

SUBJECT: Resolution Directing Transportation to Study Placing the Hawthorne, Broadway and Burnside Bridges on the National Register of Historic Places

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: Oct. 21, 1999  
AMOUNT OF TIME NEEDED: 10 min.

DEPARTMENT: Non-Dept. DIVISION: District 3  
CONTACT: Steve March TELEPHONE #: 248-5126  
BLDG/ROOM #: 106/1500

PERSON(S) MAKING PRESENTATION: Steve March, Harold Lasley

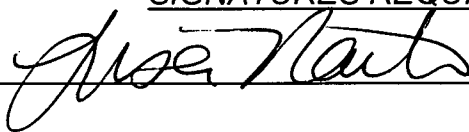
#### ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

#### SUGGESTED AGENDA TITLE:

Resolution Directing the Transportation Division to Study Placing the Hawthorne, Broadway and Burnside Bridges on the National Register of Historic Places

10/21/99 copies to Steve March, Lisa Naito &  
Harold Lasley

SIGNATURES REQUIRED:  
ELECTED OFFICIAL:   
(OR)  
DEPARTMENT  
MANAGER: \_\_\_\_\_

CLERK OF  
COUNTY COMMISSIONERS  
99 OCT 13 PM 12:17  
MULTI-COUNTY  
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277



LISA H. NAITO  
Multnomah County Commissioner, District 3  
1120 SW Fifth Avenue, Suite 1500  
Portland, Oregon 97204-1914  
Phone (503) 248-5217 Fax (503) 248-5262

## MULTNOMAH COUNTY OREGON

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# SUPPLEMENTAL STAFF REPORT

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TO: Board of County Commissioners

FROM: Commissioner Lisa Naito

DATE: October 13, 1999

RE: Resolution Directing the Multnomah County Transportation Division to Study the Feasibility of Placing the Hawthorne, Broadway and Burnside Bridges on the National Register of Historic Places.

---

1. Recommendation/Action Requested:

Approval of Resolution.

2. Background/Analysis:

Multnomah County's Transportation Division, through its Bridge Engineering and Bridge Operations and Maintenance Sections, is responsible for the Willamette River Bridges. These bridges carry a combined daily traffic total of over 180,000 vehicles, plus thousands of bicycles and pedestrians. Three of the bridges, the recently restored Hawthorne, the Broadway and the Burnside were all constructed prior to 1930. These, and other local bridges, represent not only essential travel and commerce links, but are also important historical, social and community assets that deserve recognition and celebration.

3. Financial Impact:

If the Transportation Division decides it is feasible to pursue the listing, there may be some associated expense, which will be reported to the BCC. There is also the possibility of future federal funding for historical properties.

4. Legal Issues:

None known.

5. Controversial Issues:

None known. Work on the bridges already is required to comply with all the provisions protecting historical properties.

6. Link to Current County Policies:

This resolution is linked to Multnomah County's policy to *Increase County Government Accountability & Responsiveness*. The initial request for listing the bridges came from a constituent. In addition, by preserving our important capital assets such as the Willamette Bridges, we can work to keep the cost of government down.

7. Citizen Participation:

The Transportation Division, if listing is pursued, may call upon interested and knowledgeable citizens to join in the application process or contribute to the successful listing.

8. Other Government Participation:

Representatives from the State of Oregon Department of Transportation will be contacted to potentially participate in the listing process.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

**RESOLUTION NO. 99-210**

Directing the Multnomah County Transportation Division to Study the Feasibility of Placing the Hawthorne, Broadway and Burnside Bridges on the National Register of Historic Places.

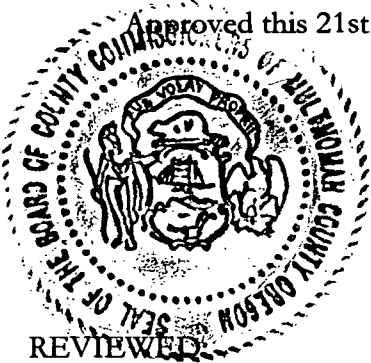
The Multnomah County Board of Commissioners Finds:

- a. Bridges owned and operated by Multnomah County, the State of Oregon and the Union Pacific and Southern Pacific Railroads provide vital and essential links for city, county, state and interstate travel and commerce crossing the Willamette and Columbia Rivers; and,
- b. Multnomah County Transportation Division, through its Bridge Operations and Maintenance and Bridge Engineering Sections, is responsible for the Broadway, Burnside, Hawthorne, Morrison, Sauvie Island and Sellwood Bridges, which have a combined daily traffic total of over 180,000 vehicles, plus thousands of bicycles and pedestrians; and,
- c. The recently restored Hawthorne Bridge was constructed in 1910, the Broadway in 1913 and the Burnside in 1926; and,
- d. These and the other local bridges represent not only important travel and commerce connections, but also important historical, social and community assets that deserve recognition and celebration.

The Multnomah County Board of Commissioners Resolves:

1. The Multnomah County Transportation Division shall study the feasibility of listing the Willamette River Bridges on the National Register of Historic Places under a "Multiple Property Nomination"; and,
2. The Transportation Division will confer with the State of Oregon and the Union Pacific and Southern Pacific Railroads to assess their interest in joining with Multnomah County in this project.

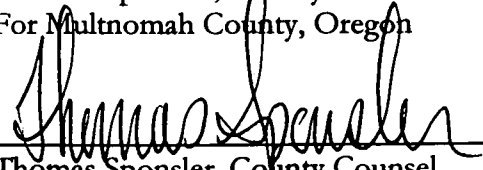
Approved this 21st day of October, 1999.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

Thomas Sponsler, County Counsel  
For Multnomah County, Oregon

  
Thomas Sponsler, County Counsel

MEETING DATE: OCT 21 1999  
AGENDA NO: R-3  
ESTIMATED START TIME: 9:40

(Above Space for Board Clerk's Use ONLY)

## AGENDA PLACEMENT FORM

SUBJECT: THIRD & FOURTH QUARTER 1998 SERVICE AWARDS

BOARD BRIEFING: DATE REQUESTED: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
AMOUNT OF TIME NEEDED: \_\_\_\_\_

REGULAR MEETING: DATE REQUESTED: Oct. 21, 1999  
AMOUNT OF TIME NEEDED: 20 Minutes

DEPARTMENT: Support Services DIVISION: Employee Services

CONTACT: Shery Stump or Gail Foster TELEPHONE #: x22203 or 22538  
BLDG/ROOM #: 106/1430

PERSON(S) MAKING PRESENTATION: Fernando Conill

### ACTION REQUESTED:

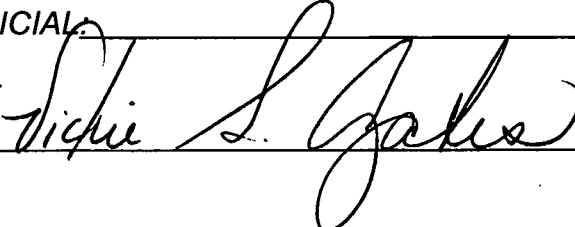
☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

### SUGGESTED AGENDA TITLE:

The presentation of Service awards for 5 to 30 years of service. Thirty-six employees have indicated they will be able to attend in person to receive the awards.

FILED AT  
CLERK OF COUNTY COMMISSIONERS  
99 OCT 13 PM 2:37  
MULTNOMAH COUNTY  
OREGON

### SIGNATURES REQUIRED:

ELECTED OFFICIAL:  
(OR)  
DEPARTMENT  
MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Board Clerk @ 248-3277

## **SERVICE AWARDS - 1998 – Third & Fourth Quarters (Jul-Dec)**

Board Presentation 10/21/99, 9:30

Attendees: 36

### **ADS – Five Year**

Lynda Martin

### **DA - Five Year**

Sharon Grove

### **DCFS – Five Year**

Cheri Gallison  
Teresa Mandzij  
Karen Markins  
Gail Wilson

### **DCJ – Five Year**

Maura Goodman  
Noreen Swan  
Dane Warnke

### **DES - Five Year**

Samuel Konadu Jr.  
Linda South  
Linda Truong

### **NON-D - Five Year**

C. Rhys Scholes  
Beverly Stein

---

### **ADS - Ten Year**

Laure Lynne Kribs

### **DCFS – Ten Year**

Murray Swanson  
Robin Wiggin

### **DCJ - Ten Year**

Nicole Finley  
Marilyn Nakonieczny

### **DES - Ten Year**

Patrick Hinds  
Patricia Thompson  
Cora Timo  
Dwight Wallis

### **DSS – Ten Year**

Laura Weishaar

### **NON-D – Ten Year**

Norm Monroe

### **DCFS - Fifteen Year**

Rowena Bates  
Karen Mayfield

### **DES - Fifteen Year**

Kathleen Tuneberg

### **LIB - Fifteen Year**

Elaine Morgan

### **NON-D – Fifteen Year**

Jeanette Hankins

---

### **ADS – Twenty Year**

Dolores Ramzy

### **DCJ – Twenty Year**

Carol Murray

### **LIB - Twenty Year**

J. Marie Bryson

### **DSS – Twenty Year**

Stephen Poulsen

---

### **CFS – Twenty-Five Year**

Mary Ann Stewart

---

### **DSS – Thirty Year**

Douglas Fischer

## **SERVICE AWARDS - 1998 – Third & Fourth Quarters (Jul-Dec)**

Board Presentation 10/21/99, 9:30

Attendees: 40

### **Five Years**

ADS - Lynda Martin

DA - Sharon Grove

DCFS -Cheri Gallison  
Teresa Mandzij  
Karen Markins  
Gail Wilson

DCJ - Maura Goodman  
Noreen Swan  
Dane Warnke

DES - Samuel Konadu Jr.  
Linda South  
Carol Summer  
Linda Truong

NON-D Rhys Scholes  
Beverly Stein

### **Ten Years**

ADS - Laure Lynne Kribs

DCFS - Murray Swanson  
Robin Wiggin

DCJ - Nicole Finley  
Marilyn Nakonieczny  
Darryl Winchester

DES - Patrick Hinds  
Patricia Thompson  
Cora Timo  
Dwight Wallis

DSS- Laura Weishaar

NON-D Norm Monroe

### **Fifteen Years**

DCFS -Karen Mayfield  
William Thomas

DCJ Rowena Bates

DES - Kathleen Tuneberg

LIB - Elaine Morgan

NON-D Jeanette Hankins

### **Twenty Years**

ADS -Dolores Ramzy

DCJ - Carol Hovdey

LIB - J. Marie Bryson

DSS- Stephen Poulsen

### **Twenty-Five Years**

CFS- Mary Ann Stewart

### **Thirty Years**

DSS- Douglas Fischer  
Newcomb Wang

Meeting Date: OCT 21 1999  
Agenda No: P-1  
Est. Start Time: 10:00

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** A **DeNovo Hearing** before the Board of County Commissioners regarding the Hearings Officer's decision of a Denial on CU 9-98 .

**BOARD BRIEFING**      Date Requested:  
                                 Amt. of Time Needed:  
                                 Requested By:

**REGULAR MEETING**      Date Requested:      October 21, 1999  
                                 Amt. of Time Needed:      1 hour

**DEPARTMENT:**      DES      **DIVISION:** Land Use Planning  
**CONTACT:**      Tricia Sears      **TELEPHONE:** 248-3043  
                                 **BLDG/ROOM:** 455 / 116

**PERSON(S) MAKING PRESENTATION:** Stuart Farmer

**ACTION REQUESTED**

☐ Informational Only      ☐ Policy Direction      ☐ Approval      ☒ Other

**SUGGESTED AGENDA TITLE**

A **DeNovo Hearing** before the Board of County Commissioners regarding the Hearings Officer's decision of a **DENIAL** of the request for a Conditional Use for a Template Dwelling in the CFU-4 .

11/1/99 copies of order 99-211 to Tricia  
SEARS

**SIGNATURES REQUIRED**

**Elected Official:** \_\_\_\_\_

or

**Department Manager:** K. B. [Signature]

BOARD OF  
COUNTY COMMISSIONERS  
MULTI-COUNTY  
OREGON  
99 OCT 13 AM 11:13



## BOARD HEARING OF October 21, 1999

TIME 10:00am

**CASE NAME:** Request for a single-family dwelling under the Template Dwelling criteria of the CFU-4 zone.  
**NUMBER:** CU 9-98.

### 1. Applicant & Property Owner Name/ Address:

Carson Linker  
746 NE Sumner Street  
Portland, OR 97211

Assisted By:  
Greg Rosen, Pacific Pioneer  
38965 Pioneer Blvd.  
Sandy, OR 97055

#### Action Requested of Board

- ☐ Affirm Hearings Officer Decision
- ☒ Hearing/Rehearing
- Scope of Review
  - ☐ On The Record
  - ☒ De Novo
  - New information allowed

### 2. Appellant Name/ Address:

Michael Robinson  
Stoel Rives LLP  
Standard Insurance Center  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268

### 3. Action Requested by Applicant:

Request for approval of a Conditional Use, CU 9-98, for a Template Dwelling (single-family residence) in the Commercial Forest Use (CFU-4) zone. The applicant request is to build a single-family residence on the existing, vacant 39.73-acre parcel. A Pre-Application Meeting, PA 16-98, was held on May 27, 1998 for the proposed Conditional Use.

### 3. Planning Staff Recommendation

Denial of the request for the Conditional Use for the Template Dwelling. The administrative recommendation and Staff Report were issued April 14, 1999. The applicant's proposal does not meet the standards of the Template Dwelling test found in MCC 11.15.2050 (B), MCC 11.15.2052(A)(3)(c)(ii), and MCC 11.15.2074. The public hearing for the Conditional Use application, CU 9-98, was continued from April 21, 1999 to July 21, 1999 and the written record closed August 4, 1999. The Hearings Officer decision, a denial of the applicant's request, was issued August 18, 1999 and Michael Robinson of Stoel Rives LLP appealed the decision on August 27, 1999.

#### **4. Hearings Officer Decision**

Denial of the request for a Conditional Use for a Template Dwelling in the CFU-4 zone. The Hearings Officer decision was issued on August 18, 1999. Michael Robinson appealed the Hearings Officer's decision on August 27, 1999. Robinson is the representative for the applicant/ property owner of the subject parcel, Carson Linker.

#### **5. If recommendation and decision are different, why?**

The Hearings Officer agreed with the Staff findings that the applicant's proposal does not meet the Template Dwelling criteria. The 160-acre square for the subject parcel's Template Dwelling test does not contain five legally established dwellings as required by MCC 11.15.2050 and MCC 11.15.2052 (A)(3)(c)(ii). The applicant's proposed center of the subject property is substantially different than the Staff's center of the subject property (calculated by Land Use Planning and Survey). See also #6 Issues.

#### **6. Issues:**

The main issue raised by the appellant is in regards to what is the center of the property. The appellant disagrees with the Staff calculation of the center of the subject property. Staff reviewed the applicant's submitted site plan and found incongruities in the measurements on the plan. Staff used the "pin test" or center of gravity test for the subject parcel and also used a calculation of the center of the property by Scott Okell, Multnomah County Surveyor. In addition, Staff noted the previous cases of CU 7-97 and HV 17-95 (approved by the Board of County Commissioners on October 1, 1996) which affirmed methods of calculating the center of a property. A copy of the July 28, 1999 memo from Staff to the Hearings Officer is enclosed with this Summary document.

#### **7. Do any of these issues have policy implications? Explain.**

Staff is required to make finding under MCC 11.15.2050 and MCC 11.15.2052(A)(3)(c)(ii) that the applicant's proposal contains five legally established dwellings within the 160-acre Template Dwelling square. Staff found the applicant's proposal did not contain five legally established dwellings as required by the Multnomah County Code. The issues cited above may have policy implications. If Staff cannot make the finding of five legally established dwellings for a subject parcel under review for a Conditional Use for a Template Dwelling (single-family residence), then Staff cannot make a finding of compliance with the required criteria. Hence, Staff would find the criteria have not been met. Staff, the Hearings Officer, the Planning Commission, or the Board of County Commissioners may deny the application when the applicant has not met the criteria of an application.



DEPARTMENT OF ENVIRONMENTAL SERVICES  
LAND USE PLANNING DIVISION

1600 SE 190<sup>TH</sup> Avenue  
Portland, OR 97233  
(503) 248-3043 FAX: (503) 248-3389

## Memorandum

To: Deniece Won, Hearings Officer

From: Tricia R. Sears, Land Use Planner *TRS*

Date: July 28, 1999

RE: Case File CU 9-98

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This memorandum and the enclosures with this memorandum are provided to the Hearings Officer as follow up information on case file CU 9-98, pursuant to the public hearing held on July 21, 1999.

Staff has included an explanation for each of the two methods used to verify the Staff calculation of the center of the subject parcel, R#99518-0140. Staff, as established in the Staff Report issued April 14, 1999, set out to verify the applicant's submitted application information for CU 9-98. Staff is required to make findings of compliance with the applicable criteria of the Conditional Use request for a template dwelling. This requirement, therefore, instills a need for accurate information. In the Pre-Application Meeting held May 27, 1998, Staff found the applicant site plan contained errors on the calculation of the 160-acre template dwelling test; that site plan illustrated non-compliance with the template dwelling test criteria. Staff provided the applicant with specific comments regarding a future submittal of a site plan for a Conditional Use, should the applicant wish to pursue the template dwelling request subsequent to the Pre-Application Meeting.

During the public hearing on July 21, 1999, Staff referenced a prior case at Multnomah County that involved a question regarding the determination of the center of a subject parcel. Case files CU 7-95/ HV 17-95 involved a request for a template dwelling as a Conditional Use in the Commercial Forest Use (CFU) zone. Staff has included the statement of findings from the Hearings Officer on the cases because the cases were denied by the Board of County Commissioners (BCC). The Board Order supported the Staff and Hearings Officer recommendation and findings that the subject parcel did not meet the template dwelling test criteria. Our Staff has followed the precedent setting case for policy regarding the "pin test" or center of gravity test for a subject parcel.

The Board of County Commissioners Final Order 96-177 for the land use planning cases CU 7-95 and HV 17-95 was signed June 28, 1996 by the Hearings Officer and affirmed by the BCC on October 1, 1996. The issue of relevance to this case, CU 9-98, was "The interpretation of the Term 'Centered on the Center of the Subject Tract' for purposes of Applying the Template Test in OAR 660-06-027. The Hearings Officer finds that although the so called 'center of gravity' test was used by the County as a method for determining the center of the template for purposes of the County ordinance, the Hearings

Officer finds that the same method is also a reasonable interpretation of the 'center of the center' test for purposes of OAR 660-06-027."

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

Staff has attached the document from Matthew A. Rochlin referenced above in the Board Order. Please find the document, "Procedure for Finding the Center of Gravity of an Irregular Area Composed of Rectangles," attached.

Staff has included the Memorandum from Scott Okell of the Multnomah County Surveyor's Office. Okell explains his determination of the center of the subject parcel.

Staff has attached the narrative from Tryg Falkenberg of Stoel Rives regarding the method Stoel Rives used to calculate the center of the subject property.

In addition, Staff has performed the "pin test" on the subject parcel. Okell plotted the subject parcel, to scale, and printed the parcel. The subject parcel was cut to size and then balanced on center to determine the centerpoint of the property. The property's centerpoint is marked on the cutout parcel piece and matches the plotted survey provided by Okell and marked as Exhibit H1 at the public hearing. A photocopy of the cutout parcel is attached and illustrates the mark of the center of gravity. The parcel cutout piece and balance pin can be forwarded to the Hearings Officer at her request.

I have listed below the enclosures I am providing to the Hearings Officer in response to the issues raised at the public hearing on July 21, 1999.

Enclosures:

- 1) Memorandum from Scott Okell, July 27, 1999.
- 2) Business card from Scott Okell.
- 3) Note from Tryg Falkenberg of Stoel Rives, July 27, 1999.
- 4) Procedure for Finding the Center of Gravity of an Irregular Area Composed of Rectangles from Matthew A. Rochlin, from case files CU 7-95/ HV 17-95.
- 5) Copy of the cutout parcel used for the "pin test".
- 6) Copy of soil type description from the Soil Survey of Multnomah County, OR for the subject parcel.
- 7) Soils type map, 1S 5E Section 18, showing the soil types of the subject parcel.
- 8) Hearings Officer Rules sheet.
- 9) Board Final Order 96-177 (case files CU 7-95/ HV 17-95).

cc: Michael Robinson, Stoel Rives LLP Attorneys, 900 SW Fifth Avenue, Suite 2600, Portland,  
OR 97204-1268.

# Memorandum

To: Tricia Sears, Planner  
From: Scott Okell, PLS No. 2407, Survey Specialist  
Date: July 27, 1999  
Re: Case File CU 9-98

---

Tricia,

This is in response to the request from the Hearings Officer regarding the determination of the position of the 160-acre template in the above case file.

The center of the subject property was determined by the following method:

The bulk of said property consists of a "box" approximately 1307 feet east-west by approximately 1316 feet north-south. The small amount of area cut off of the northeast corner was not taken into consideration. A line was drawn from the midpoint of the north boundary to the midpoint of the south boundary. Another line was drawn from the midpoint of the west boundary to the midpoint of the east boundary. Where these two lines intersect is the center of the "box". This method is also outlined in the Bureau of Land Management's "Manual of Surveying Instructions" as proper procedure to establish the legal center of section.

The subject property also has an access strip 24 feet wide by approximately 540 feet long connecting the northwest corner of the "box" to Trout Creek Road. This "stem" contains approximately 13,000 square feet, which does contribute to the overall area of the property. Since the "stem" is geographically located north of the "box" the center of said "box" was adjusted approximately 10 feet to the (due) north to compensate for the area of this strip. The center was not adjusted in an east-west position since the overriding question is the north-south position. Dividing 13,000 square feet by the east-west width of the property (approximately 1307 feet) arrived at the 10 foot dimension



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

11#  
ZONING 530.00  
TOTAL 530.00  
0000-011 8/31/99  
0661 STUART 2:38PM

## NOTICE OF REVIEW

1. Name: LINKER, CARSON
2. Address: 746 NE SUMNER ST. PORTLAND, OR 97211  
Last Middle First  
Street or Box City State and Zip Code
3. Telephone: (        ) NOT AVAILABLE
4. If serving as a representative of other persons, list their names and addresses:  
MICHAEL C. ROBINSON, ATTORNEY FOR CARSON LINKER  
STOEL RIVES LLP  
900 SW 5th, SUITE 2600  
PORTLAND, OR 97204-1268  
Telephone: 294.9194
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
DENIAL OF FOREST TEMPLATE  
DWELLING (U 9-98)
6. The decision was announced by the Hearing Officer on AUGUST 19, 19 99
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
MR. LINKER IS THE APPLICANT AND  
IS ADVERSELY AFFECTED AND AGGRIEVED  
BY THE HEARING OFFICER'S DECISION

MULTNOMAH COUNTY  
PLANNING SECTION

99 AUG 31 PM 3:27

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

SEE ATTACHED NOTICE OF REVIEW

## 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*.

Signed: Michael C. Palm Date: 8.25.99  
ATTORNEY FOR APPELLANT

## For Staff Use Only

Fee:

Notice of Review = \$530.00

Received by: \_\_\_\_\_ Date: \_\_\_\_\_ Case No. \_\_\_\_\_

1                   **BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR**  
2                   **MULTNOMAH COUNTY, OREGON**

BOARD OF  
COUNTY COMMISSIONERS  
99 AUG 27 PM 3:20  
MULTNOMAH COUNTY  
OREGON

3  
4                   )  
5                   )       Multnomah County Case-  
6   Regarding a request for a Conditional Use       )       file CU 9-98  
7   permit by Carson Linker for a single-family       )  
8   forest template dwelling                         )       Appeal of Hearings Officer's  
9   )       Decision

10  
11                   \_\_\_\_\_  
12                   **NOTICE OF REVIEW**  
13                   \_\_\_\_\_

14           1.       This Notice of Review is timely filed pursuant to Multnomah County Code  
15   ("MCC") 11.15.8260(A)(1) within ten (10) days after the decision has been submitted to the  
16   Clerk of the Board. The decision was submitted to the Clerk of the Board on  
17   August 19, 1999. This Notice of Review is filed on August 27, 1999. The Notice of Review  
18   is required to be filed by August 30, 1999.

19           2.       The Notice of Review contains the following information:

20               (a)     The decision sought to be reviewed is the Multnomah County Hearings  
21   Officer decision in Multnomah County Casefile CU 9-98, denial of a request for a conditional  
22   use permit by Carson Linker for a single-family forest template dwelling. The date of the  
23   decision is August 18, 1999. MCC 11.15.8260(B)(1).

24               (b)     Carlson Linker is the person giving the Notice of Review and is the  
25   applicant. MCC 11.15.8260(B)(2).

26               (c)     The specific grounds relied upon for review are as follows:

                  (1)     The Hearings Officer erred in concluding that MCC  
11.ES.2052(3)(ii) is not met by the application because her decision is contrary to the plain

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99 AUG 31 PM 3:27  
MULTNOMAH COUNTY  
PLANNING SECTION

1 language of the MCC and OAR 660-06-027(1)(f)(A)(I) and (ii) requiring that a certain number  
2 of lots or parcels and dwellings exist within a 160 acre square "centered on the subject tract."

3 The Multnomah County Code provision that is the subject of this appeal, while  
4 requiring more dwellings then required by state law, uses the same language as state law (i.e.,  
5 "centered on the center of the subject tract"). The Hearings Officer's interpretation of the  
6 "center of the subject tract" is not entitled to deference.

7 The Hearings Officer's decision is unreasonable and incorrect because it relies on a  
8 method inconsistent with the plain language of state law to determine the center of the tract  
9 based on the entire tract because the "pin test" and Mr. Okell's method for determining the  
10 center of the tract give undue weight to the bulk of the subject tract and partially ignore the  
11 stem which is part of the subject tract. The Hearings Officer erred in finding that the  
12 applicant's determination of the center of the subject tract considered other parcels. The  
13 Hearings Officer erred in finding that the earlier Multnomah County Board of Commissioner's  
14 decision in CU 7-95/HV 17-95 is precedent because no weight is to be accorded the Board's  
15 interpretation of a provision of state law.

16 The pin test has not been performed in a public hearing and therefore has not been  
17 reviewed by the Hearings Officer. The pin test is inherently flawed because it can be  
18 influenced by the size of the pin, the type of material used for the cut-out of the property and  
19 can vary from time to time depending on who applies it. The pin test is inherently unreliable.

20 (2) The Hearings Officer erred in finding that MCC 11.ES.2074(C)(2) is not  
21 satisfied. This finding is at page 24 of the decision. However, this finding appears to be a  
22 typographical error since the preceding portion of the finding states that a condition of  
23 approval can satisfy the criterion but a note at the bottom of the page states "the application  
24 does not meet the criterion." Further, the Hearings Officer's conclusion at part (iv) of her  
25 decision on page 37 finds only one criterion not satisfied.

26

1 (3) The list of exhibits in the Hearings Officer's decision fails to include the  
2 applicant's July 28, 1999, August 4, 1999 and August 11, 1999 letters which were submitted  
3 to the Hearings Officer prior to the close of the record.

4 3. An "on the record" review is requested. MCC 11.15.8260(B)(4).

5 4. The Notice of Review is accompanied by the required fee and deposit of  
6 \$530.00. MCC 11.15.8260(C).

7 5. Pursuant to MCC 11.15.8280(A), the applicant requests that the Board of  
8 County Commissioners reverse the Hearings Officer and find that the applicant satisfied  
9 MCC 11.ES.2052(A)(3)(I) and (ii).

10  
11 STOEL RIVES LLP

12  
13 By: Michael C. Robinson

14 Michael C. Robinson, OSB No. 91090

15 Of Attorneys for Applicant  
16  
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18  
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26

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

Regarding a request for a Conditional )  
Use Permit by Carson Linker for a single )  
family template dwelling )  
)

**FINAL ORDER**  
**CU 9-98**  
**(Linker )**

**WHAT:** The applicant is applying for a Conditional Use Permit to establish a Template Dwelling on the existing vacant parcel. The Trout Creek North Branch stream runs through the subject parcel; the stream is designated as a significant stream under the East of Sandy River Rural Area Plan.

**WHERE:** 40200 SE Trout Creek Road.  
Tax Lot 14, Section 18, T1S, R5E, W.M. (R#99518-0140).

**APPLICANT/  
PROPERTY OWNER:** Carson Linker  
746 NE Sumner Street  
Portland, OR 97211

**PLAN DESIGNATION:** Community Forestry Use

**ZONING** Community Forestry Use (CFU-4)

**SIZE:** 39.73 acres

**HEARINGS OFFICER  
DECISION** Deny the request for conditional use to establish a template dwelling on the parcel because the parcel does not meet the template dwelling requirement that five dwellings exist within a 160-acre square centered on the center of the parcel.

## **I. HEARINGS AND RECORD**

1. A public hearing concerning this application was held on April 21, 1999. That hearing was continued to May 19, 1999. Before the May 19, 1999 hearing, the applicant requested a continuance. On May 19, 1999, the Hearings Officer in a telephonic hearing, continued the hearing to July 21, 1999. After the July 21, 1999 hearing the record was left open for 21 days. The written record was closed on August 4, 1999.
2. The exhibits listed in the staff report and submitted during the hearing process were reviewed by the Hearings Officer and received in reference to this application. A list of the exhibits is included at the end of this decision.
3. At the hearings, Tricia Sears, Multnomah County Planner, testified for the county, summarized the history of the application and her staff report. Ms. Sears entered Exhibits H1 through H6 into evidence. The primary issue in this application is whether there are five dwellings within the 160-acre square template centered on the property. According to the survey prepared by the County's staff by a registered surveyor the fifth dwelling is located forty feet outside the 160-acre square template. Ms. Sears noted that the County staff's survey included the stem or pole of the flag lot in determining the center of the center of the parcel.
4. Michael Robinson, attorney representing the applicant, entered exhibits H7 through H10 into evidence. He noted that the applicant had provided a written agreement to extend the 150-day period within which the County must make a decision to January 1, 2000. Exhibit H5. Mr. Robinson summarized the points in his letter to Tricia Sears, dated July 21, 1999. Exhibit H7.
5. Phil Bourquin, County Planner, provided a copy of Evans v. Mult. Co. Which he said represented a precedential decision by the Board of County Commissioners concerning how to interpret "center of the center of the subject tract" for purposes of template dwelling applications.
6. At the conclusion of the Hearing the Hearings Officer left the record open for receipt of additional information concerning the differences in the applicant's and the staff's location of the center of the center of the tract. The continuance was for a seven-day period for all parties, including a response from the surveyors, followed by seven days for all parties to respond and concluding with seven days for the applicant to rebut testimony or argument.

## II. BACKGROUND

The former owner of the parcel, SHT, Inc. represented by Ed Hanning, had a pre application conference with the County staff to discuss an application for a proposed template dwelling on May 27, 1998 (PA 16-98). The current owner, Carson Linker, used Mr. Hanning's Pre-Application Meeting narrative when he filed this application on September 23, 1998. Mr. Linker submitted an "Amendment to Application" letter on January 11, 1999 in response to a letter of incompleteness from Staff dated October 20, 1998.

The applicant parcel is located outside the Urban Growth Boundary of the City of Portland, on Trout Creek Road. The site has historically been used for timber production. The parcel has recently been reforested. Exhibit A1 is a site plan of the applicant parcel, denoting all property lines with dimensions, locations of buildings, abutting right-of-way, location and width of the proposed driveway, topography, and drainage. The parcel is not on the County "Slope Hazard Map."

Exhibit A7 is a vicinity map, showing approximate locations of surrounding buildings. The vicinity of the proposed dwelling is characterized by dwellings on parcels ranging in size from 3.00 acres to 80.00 acres. Activities on the parcels include forestry, farming, and general residential use.

The subject parcel is 39.73 acres in size and zoned Commercial Forest Use (CFU-4). The applicant proposes to establish a single-family dwelling on the existing, vacant parcel. The subject parcel is located outside of the Urban Growth Boundary (UGB) and is located on the south side of Trout Creek Road. The subject parcel is a flag lot, fronting on Trout Creek Road for 26.01 feet according to the Record of Survey dated May 12, 1988. The distance from Trout Creek Road to the main body of the parcel is 511.02 feet according to the Record of Survey dated May 12, 1988 for the subject parcel.

## I. CRITERIA AND FINDINGS

### A. SUMMARY OF APPLICABLE CRITERIA

#### Zoning Ordinance Requirements:

MCC 11.ES.2042 - Community Forest Use (CFU-4)

#### Comprehensive Plan Policies:

- 11 Commercial Forest Land
- 13 Air, Water and Noise Quality
- 14 Developmental Limitations

- 22 Energy Conservation
- 37 Utilities
- 38 Facilities
- 40 Development Requirements

East of Sandy River Rural Area Plan, Policy 21, 150-foot buffers from a significant stream to a proposed development

## **B. APPLICABLE MULTNOMAH COUNTY CODE PROVISIONS**

### **Commercial Forest Use (CFU-4)**

#### **11.ES.2042 Purposes**

The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

#### **11.ES.2050 Conditional Uses**

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

\* \* \*

- (B) A Template Dwelling pursuant to the provisions of MCC .2052 (A), .2053 (B) and .2074.

\* \* \*

Findings and Conclusion. This application is based on the Template Dwelling provisions. The required sections of MCC .2052 and .2074 are addressed below. The appropriate application process to establish a single-family residence in the CFU zone is through the Conditional Use application for a Template Dwelling. The applicant has made the correct application. However, as discussed below, the application does not meet the Template Dwelling test criterion

in 11.ES.2052(A)(3)(c)(ii) that at least five dwellings exist within a 160-acre square template centered on the center of the subject tract.

#### **11.ES.2052 Template and Heritage Tract Dwellings**

(A) A template dwelling may be sited on a tract, subject to the following:

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

Findings and Conclusions. Section MCC 11.ES.2062 is discussed below where the Hearings Officer concludes that the parcel meets the lot of record requirements. The subject parcel, in its current size and configuration, was created prior to January 25, 1990 according to Multnomah County Sectional Zoning Maps and Exempt Minor Partition case file EMP 5-19-88. The application meets the criterion.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075, as applicable;

Findings and Conclusion. The site map provided by the applicant (Exhibit A1) shows the location of the proposed single-family residence on the subject parcel. The proposed location of the house meets the required front, rear, and side yard setback requirements of the CFU-4 zone. The application meets the criterion.

- (3) The tract shall meet the following standards:

\* \* \*

- (c) The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and

Findings and Conclusions. The applicant provided a copy of the soil map from the Multnomah County Soil Survey. The soil types on the site are 9B, 9C, 9D, and 9E. Type 9B, 9C, 9D, 9E are Cazadero silty clay loam, with a Douglas Fir site index of 165. Based on the site index of the soils on the parcel, the parcel is capable of producing 11,775 cubic feet of Douglas Fir.

- (i) **The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**
- (ii) **At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.**

Findings and Conclusions. At issue is the appropriate method for determining the "center of the center of the subject tract." The County staff used two methodologies, the 'center of gravity' method and the 'pin point' (or 'balance point') method. In the center of gravity method the shapes of an irregular parcel are divided, the center of each piece is found, and then the average of those centers is found, weighted by the average of each piece. Here, the center of gravity of the flag of the flag lot and the center of gravity of the pole of the flag lot were determined and then the center of the parcel was adjusted considering the two areas. In the pin point (or balance point) method the subject parcel was plotted, printed on paper, cut to size and then balanced on a point to determine the center point of the property. Each of these methods resulted in locating the center of the center of the property at the same point. The result of the County's calculations are shown on Exhibit H1.

The applicant's methodology involved locating the center by drawing two intersecting diagonal lines from the extreme corners of the parcel, including the stem or pole of the flag lot and adjusting the point of intersection of the two lines so that the halves of each line are equidistant. The result of the applicant's calculations is shown on Exhibit H9.

The method used by the applicant locates the center of the parcel significantly more to the northwest than the method used by the County staff. The result of shifting the center of the center of the property to the north under the applicant's methodology is that a fifth existing dwelling falls within the applicant's template that does not fall within the Staff's template.

During the public hearing on July 21, 1999, Staff referred to a prior case at Multnomah County that involved a question regarding the determination of the center of the center of a parcel. Case files CU 7-95/HV 17-95, for a template dwelling in the Commercial Forest Use (CFU) zone. Staff submitted the Hearings Officer's findings on those cases and the Board of County Commissioners' Final Order 96-177 as Exhibit 12. The Hearings Officer's findings on those cases were supported by the Board Order on appeal, including findings that the subject parcel did not meet the template dwelling test criteria. Multnomah County staff has followed these cases as precedent regarding the applicability of the "pin test" or the "center of gravity test" for determining the center of the center of a parcel.

An issue in that case, as here, was the interpretation of the term "centered on the center of the subject tract" for purposes of applying the template test in OAR 660-06-027 and MCC 11.ES.2052(A)(3)(i). The Hearings Officer found that the so called "center of gravity" test, used by the County as a method for determining the center of the template, was a reasonable interpretation of the "center of the center" test for purposes of the County Ordinance and OAR 660-06-027. The Hearings Officer stated:

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

The analysis of Mr. Matthew A. Rochlin is included in the record as enclosure 4 to Exhibit H14.

According to a memorandum from Scott Okell, PLS, dated July 27, 1999, the County Staff determined the center of the subject property consistent with the precedent established in CU 7-95/HV 17-95, by the following method:

"The bulk of said property consists of a "box" approximately 1307 feet east-west by approximately 1316 feet north-south. The small amount of area cut off of the northeast corner was not taken into consideration. A line was drawn from the midpoint of the north boundary to the midpoint of the south boundary. Another line was drawn from the midpoint of the west boundary to the midpoint of the east boundary. Where these two lines intersect is the center of the "box". This method is also outlined in the Bureau of Land Management's "manual of Surveying Instructions" as property procedure to establish the legal center of section.

"The subject property also has an access strip 24 feet wide by approximately 540 feet long connecting the northwest corner of the "box" to Trout Creek Road. This "stem" contains approximately 13,000 square feet, which does contribute to the overall area of the property. Since the "stem" is geographically located north of the "box" the center of said "box" was adjusted approximately 10 feet to the (due) north to compensate for the are of this strip. The center was not adjusted in an east-west position since the overriding question is the north-south position. Dividing 13,000 square feet by the east-west width of the property (approximately 1307 feet) arrived at the 10 foot dimension."

In addition, the staff performed the "pin test" on the subject parcel. In the pin test Scott Okell, PLS, plotted the subject parcel to scale and printed the parcel. The subject parcel was cut to size

and then balanced on a pin to determine the center point of the property. The property's center point is marked on the cutout parcel piece and matches the plotted survey provided by Okell and marked as Exhibit H1 at the public hearing.

The applicant's registered land surveyor, Dale Hult of All County Surveying, revised the applicant's template map. Exhibit H9, oversized mounted map. Mr. Hult determined that the center of the line is established by locating the point of intersection of two lines drawn from the northwest to the south east extreme property lines and from the northeast to the southwest property lines, including the pole or stem of the flag lot. In support of this method the applicant submitted a copy of dictionary definitions of "center" which states:

"1. The point equidistant or at the average distance from the exterior points of a circle, sphere, or other geometric figure . . . "

The applicant also submitted a letter from Dale L. Hult, dated May 14, 1999 in which Mr. Hult stated:

"I have calculated the center point of the Tax Lot #14, also known as 40200 SE Trout Creek Road. This is determined by an equal distant from extreme property corners. Previously the center point was inaccurately identified because the odd area associated with the deeded access off Trout Creek Rd. was not taken into consideration. The property lines have been identified and marked for your edification. I have drawn on the template, which is perpendicular and parallel to the section lines per the template test requirements."

The applicant's surveyor calculated the center for this lot by including the lot stem connecting the main body of the lot to Trout Creek Road. The applicant notes that the MCC does not include a definition of "center" and argues that his surveyor's definition of the center is not contrary to any express language contained in the MCC. The applicant's attorney, Michael Robinson, argued in a letter to the Hearings Officer dated August 11, 1999 that the applicant's method is more reasonable than the staff's method for two reasons. "First, it does not require a complicated mathematical formula nor does it require a test that not all parties can be privy to. Moreover, it is clear that the applicant relied on the entire tract of land. It is also clear that the County's surveyor did not include the entire tract." In addition, Mr. Robinson argued that no precedent was created by the Board's Order in case file No. CU 7-95 (Board Order 96-177).

The Hearings Officer has not been cited to any reported opinion which addresses how the "center of the center of the subject tract" should be determined under state law. In her own research the Hearings Officer has found none. As the Hearings Officer has already stated, both the applicant's and the staff's methods take the pole of the flag lot into account. The Hearings Officer concludes that the staff's method is more reasonable for determining the center of the center of the property than is the applicant's. The staff's method considers only the subject

parcel to find the center whereas the applicant's method considers other parcels between the extreme property line of the subject parcel and its inner property lines. The fact that another Hearings Officer and the Board have previously considered this issue and found the staff's method to be reasonable adds further weight to the Hearings Officer's conclusion.

The applicant is required by subsection (i) to establish that "all or part of 11 lawfully created lots existed on January 1, 1993 within 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines." Under both the staff's and the applicant's methodologies, the Tax Assessor's Map (Exhibit H10) shows the following other parcels fall within the 160-acre square:

<u>Parcel</u>	<u>Section, Township, Range</u>
Tax Lot 18	18 1S5E
Tax Lot 19	18 1S5E
Tax Lot 20	18 1S 5E
Tax Lot 21	18 1S 5E
Tax Lot 22	18 1S 5E
Tax Lot 41	18 1S 5E
Tax Lot 50	18 1S 5E
Tax Lot 14 of Government Lot 4	19 1S5E
Tax Lot 19	19 1S5E
Tax Lot 21	19 1S5E
Tax Lot 13	13 1S4E
Tax Lot 2	13 1S4E

Although the record lacks documentary evidence concerning whether any of these 12 parcels were lawfully created before January 1, 1993, the staff report states that "there are at least all or part of 11 lawfully created lots that existed on January 1, 1993 within 160-acre square." The staff's statement of fact is not disputed. Consequently, the Hearings Officer concludes that the applicant meets this requirement.

The applicant is required by subsection (ii) to show "at least five dwellings lawfully existed on January 1, 1993 within the 160-acre square." The applicant provided a map of the 160-acre area (Exhibit A7 and revised map Exhibit H9). This map is composed of an aerial photograph overlaid with an Assessment and Taxation (A & T) map of the same area prepared by a State of Oregon surveyor, Dale Hult. Exhibit A6 illustrates the year-built date of each of the dwellings identified for inclusion in the Template Dwelling test. The applicant identified the following dwellings for the Template Dwelling test:

<u>House # on Map</u>	<u>Tax Lot #</u>	<u>Year Built</u>
1	41	1979
2	22	1978
3	20	1974
4	18	1975
5	19	1975
6	21	1986

The applicant originally included a second dwelling on Tax Lot 21 Section 18 1S5E. Multnomah County records (assessment and Taxation, land use cards, building permits, and land use maps) do not show a second dwelling on Tax Lot 21. Section .2052 establishes that a structure must lawfully exist to count for the template dwelling test. If a second dwelling exists on Tax Lot 21, the County finds that the dwelling does not lawfully exist. Based on the applicant's revised map (Exhibit H9), the house on Tax Lot 18 is directly on the north boundary line of the 160-acre area of the Template Dwelling test. Without deciding whether that dwelling qualifies to be counted for the Template Dwelling test, under the applicant's method of calculating the center of the center of the parcel, there are at least five dwellings within the 160-acre square.

Under the County staff's method, two of these six dwellings are located outside of the 160-acre square: the dwellings on Tax Lots 18 and 19. The difference in the County Staff's evidence and the applicant's evidence on whether there are five dwellings within the template rests on the method for determining the center of this flag lot. The Hearings Officer has concluded the staff's method is more reasonable. Based on the staff's method the Hearings Officer concludes that there are only four, not the required five, dwellings within the 160-acre square. Consequently, this criterion is not satisfied.

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

Findings and Conclusion. The parcels the applicant used to try to meet the Template Dwelling test are outside of the Urban Growth Boundary (UGB). This criterion is met.

- (e) **There is no other dwelling on the tract,**

Findings and Conclusion. The subject parcel is vacant land. No dwellings exist on the parcel. This criterion is met.

- (f) **No other dwellings are allowed on other lots (or parcels) that make up the tract;**

Findings and Conclusion. The subject parcel is not part of a tract. The subject parcel is vacant, the applicant proposes to construct one single-family dwelling for the subject parcel. The applicant meets this criterion.

- (g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and

Findings and Conclusion. This application is not for a replacement dwelling. The applicant's parcel is not part of a tract. The applicant meets this criterion.

- (h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;

Finding and Conclusion. The subject parcel is not part of a tract. The applicant meets this criterion.

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

Finding and Conclusion. The subject parcel is not located on the Multnomah County Big Game Winter Habitat Map. The criterion is not applicable.

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

Finding and Conclusion. The subject parcel accesses Trout Creek Road. The criterion is not applicable.

- (6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:

- (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;
- (c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

Finding and Conclusion. The applicant submitted a letter from Jeff Hepler, Forest Practices Forester, of the Oregon Department of Forestry. The letter from Mr. Hepler, dated April 8, 1998, states the parcel owned by the "SHT Group...has been planted with appropriate seedling[s] to meet the requirements of the Forest Practices Act."

Carson Linker submitted the following narrative statement on January 11, 1999 in response to Comprehensive Plan Policy #11:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the lands back to its healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The Code provision in (6) states that a "condition of approval" on a decision document will be written to ensure that the applicant provides documentation to the County that the subject parcel will meet the Department of Forestry requirements. This criterion can be satisfied by the

imposition of a condition. These criteria could be met by compliance with a condition of approval.

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

Finding and Conclusion. See Findings and Conclusions under Section .2074 below. The development standards of Section .2074 are either satisfied or could be satisfied by conditions of approval.

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

Finding and Conclusion. The applicant stated that he was willing to record with the Multnomah County Division of Records the required statement that acknowledges the rights of owners of nearby property to conduct their forest operations consistent with the Oregon Forest Practices Act and administrative rules and to conduct accepted farming practices. It is feasible to satisfy this criterion by a condition of approval.

- (9) **Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

- (a) **The covenants, conditions and restrictions shall specify that:**

(i) **All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

(ii) **No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

- (b) **The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**

- (c) **Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December 1995).**

**Finding and Conclusion.** The subject tax lot is a Lot of Record. It is not part of a tract. No covenant or restriction as described above is required to be submitted by the applicant to Multnomah County.

#### **11.ES.2058 Dimensional Requirements**

- (A) **Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.**

**Finding and Conclusion.** The subject parcel is 39.73 acres in size and does not meet the 80-acre minimum lot size requirement for the CFU zone. Section .2062 is addressed below. The applicant meets an exception to this criterion.

- (B) **That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

- (C) **Minimum Yard Dimensions - Feet:**
- | <b>Frontage on<br/>County Main-<br/>tained Road</b> | <b>Other</b> | <b>Side</b> | <b>Rear</b> |
|---|--------------|-------------|-------------|
|---|--------------|-------------|-------------|

<b>60 from centerline</b>	<b>130</b>	<b>130</b>	<b>130</b>
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**Maximum Structure Height - 35 feet**

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

**Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.ES.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.ES.2074 (A)(5)(c)(ii).**

**Finding and Conclusion.** The applicant's site plan, Exhibit A1, shows the proposed location of the dwelling on the parcel. The site of the proposed dwelling on the subject parcel meets the front, rear, and side yard setback requirements of the CFU zone. The proposed dwelling is more than 60 feet from the centerline of the county-maintained road, the side yards are more than 200 feet, and the rear yard is more than 200 feet. The front lot line length is more than 50 feet. The

applicant has submitted elevation drawings of the proposed structure that show the dwelling does not exceed the 35-foot height limit of the CFU-4 zone. No variances are requested. The applicant meets the required setback dimensions.

- (E) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by this ordinance.**

Finding and Conclusion. There is not evidence that Trout Creek Road lacks sufficient right-of-way width. This criterion does not apply.

- (F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.**

Finding and Conclusion. The applicant's proposed development on the subject parcel is for a single-family residence. No barns, silos, windmills, or other structures are proposed with this application. However, if they were, this section of MCC .2058 allows the listed structures to exceed the height requirements.

- (G) Yards for the alteration, replacement or restoration of dwellings under MCC .2048 (D), .2048 (E) and .2049 (B) need not satisfy the development standards of MCC .2074 if originally legally established to a lesser standard than that required by MCC .2074, but in no case shall they be less than those originally established.**

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

- (H) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC .2048 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .22074 (A)(5)(c)(ii).**

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

#### **11.ES.2062 Lot of Record**

- (A) For the purposes of this district, a Lot of Record is**

\* \* \*

**(2) A parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**
- (b) Which satisfied all applicable laws when the parcel was created;**
- (c) Does not meet the minimum lot size requirements of MCC .2058; and**
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or**

**Finding and Conclusion.** A tract is defined in MCC 11.15.2045 as one or more contiguous Lots of Record, pursuant to MCC .2062, in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract. The record shows this parcel contains 39.73 acres and was deeded and recorded in book 1922, page 2097 in 1986. The subject parcel obtained its current size and configuration as a result of an Exempt Minor Partition dated July 1986. Therefore, the parcel met applicable laws when created. The applicant has submitted a deed that corresponds to the size and configuration of the lot as created in 1986.

The applicant parcel is 39.73 acres; therefore, the minimum lot size requirements of MCC .2058 are not met. There are currently no contiguous tracts under identical ownership; therefore, this parcel is not part of a tract. Consequently, this parcel meets the requirements of this subsection. The applicant's parcel is a lot of record, as it was lawfully created before January 25, 1990. As a lot of record, this parcel qualifies pursuant to MCC .2062 as an exception to the requirements of MCC .2058. Since the lot size is less than 80 acres, the applicant is required to apply for a conditional use permit for a template dwelling.

**(B) For the purposes of this subsection:**

- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;**

- (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
  - (3) Same Ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.
- (C) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

**Finding and Conclusion.** The subject parcel is not contiguous to any other parcel in the same ownership. The parcel is a substandard parcel because it contains less than the minimum 80 acres required in this zone. The parcel is a Lot of Record. The parcel has less than the minimum front lot line frontage to a public road. Under this Code provision, a template dwelling may be allowed so long as other applicable requirements have been met or will be complied with through conditions of approval.

#### **11.ES.2074 Development Standards for Dwellings and Structures**

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

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

**Finding and Conclusion.** Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will occur.

The proposed dwelling is at least two hundred (200) feet from all property lines. In correspondence dated February 28, 1990, ODF suggests that a 200-foot setback is typically effective in preventing serious conflicts between residential and forest uses. The proposed building site takes advantage of the site on the parcel that meets the required setbacks of at least sixty (60) feet from the road and 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while meeting the required setbacks. Section .2058 is addressed above. The site plan and narrative materials submitted by

the applicant show the setback requirements of Section .2058 (C) though (G) have been met. The applicant for CU 9-98, Carson Linker writes, "The rehabilitation of the land is of the utmost importance and shall take the highest priority...The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. The applicant's proposed structure would have minimum impact to nearby forest or agricultural lands. The application meets the criterion.

**(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Finding and Conclusion. The applicant's site plan shows the proposed dwelling to be located in the northwest corner of the property, very near (while still meeting setback requirements) where the long flag entrance portion of the parcel meets the main portion of the parcel. Only normal residential activities will be associated with the dwelling. The adverse impacts on the forest operations are minimized by siting the dwelling in a corner of the parcel nearest its access. The amount of forest land used to site access roads, service corridors, the dwelling, and structure is minimized.

The parcel was recent replanted with Douglas Fir trees. The subject parcel has a Forest Management Plan. Accepted forestry practices will not be curtailed nor impeded by the dwelling.

The application meets the criterion to minimize adverse impacts to the forest and farming practices on the site by establishing the appropriate setbacks for the site and by describing the compatibility of the proposed use with the surrounding area.

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

Finding and Conclusion. The required setbacks are met by the location of the proposed dwelling but not significantly exceeded. The access road is the "pole" of the flag lot plus approximately 150 feet to reach the dwelling site. The amount of land for the access is minimal, considering the shape of the parcel and the setback requirements. The application meets the criterion.

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

**Finding and Conclusion.** The site plan illustrates the driveway distance would be more than 500 feet from Trout Creek Road to the subject parcel. The applicant did not indicate the location of the driveway on the site plan. The driveway would follow the flag portion of the lot which extends, according to the Record of Survey dated May 12, 1988, 511 feet to Trout Creek Road and then extends an additional 150 feet to the proposed dwelling. The proposed development is subject to setback requirements of 130 feet from the property line. The applicant's site plan shows the location of the proposed dwelling is set away from the property line slightly more than the required setback. The flag portion of the lot is not an adequate site to meet the required property setbacks for the CFU-4 zone. The application meets the criterion.

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

- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

**Finding and Conclusion.** The proposed dwelling is located within the Corbett RFPD #14. The applicant has provided a completed Fire District Review form (from PA 16-98) that says that the source of water for fire suppression will be provided by tankers and that the volume of water depends on the fire suppression needs. The fire District's Aims Fire Station is within five miles of the property. The station has two pieces of equipment with a total of 4,000 gallons of water capacity: a tanker that carries 3,000 gallons and a pumper that carries 1,000 gallons. The pumper can be used to withdraw water from Trout Creek North Branch which is located approximately 260 feet south of the proposed dwelling site. In addition, the Fire District has mutual response agreements with surrounding fire districts. The application meets the criterion.

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

**Finding and Conclusion.** This criterion requires access for a pumping fire truck to within 15 feet of any perennial water source on the lot. This criterion also requires that the access to the perennial water source meet the driveway standards of MCC .2074(D). The north branch of Trout Creek crosses east west through the center of the parcel. The record does not contain evidence concerning whether this is a perennial stream. The Hearings Officer assumes that it is.

The applicant has provided a letter from Eugene Smith, a Registered Professional Engineer, of All County Surveyors and Planners, Inc., dated August 4, 1998, to try to illustrate compliance for the driveway standards applicable to the access to a perennial stream. Smith states that the

driveway "will need approximately 12" of base rock to make it suitable for 52,000 lb. GVW loads."

If the stream is a perennial water source, it is feasible to construct a driveway to the stream meeting the driveway standards of MCC 11.15.2074(D). Compliance with this criterion can be assured by the imposition of a condition of approval.

**(c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**

- (i) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
- (ii) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

<b>Percent Slope In Feet</b>	<b><u>Distance</u></b>
<b>Less than 10</b>	<b>Not required</b>
<b>Less than 20</b>	<b>50</b>
<b>Less than 25</b>	<b>75</b>
<b>Less than 40</b>	<b>100</b>

**Finding and Conclusion.** This criterion requires that the applicant maintain primary and secondary fire safety zones on the tract. The primary fire safety zone is to be a minimum of 30 feet in all directions. The applicant can satisfy a condition of approval requiring those trees within the safety zones be spaced with more than 15 feet between the crowns, that they be pruned to remove low branches within eight feet of the ground at the maturity of the tree and accepted silvicultural practices may allow and that all other vegetation be kept less than two feet in height.

If the slope around the dwelling is 20% or less, the primary zone increases to 50 feet and if the slope is less than 40%, a primary zone of 100 feet is required. The applicant does not provide slope information in sufficient detail to determine the slopes at the building site. The topographic information submitted as Exhibit 3, an attachment to Exhibit H7, only shows

topographic lines at 40 foot intervals. According to the soils survey map, the soils around the proposed dwelling are soil types 9B and 9C. 9B soils have 0 to 6 percent slopes and 9C soils have 8 to 15 percent slopes. This suggests that a primary fire zone of 50 feet may be required. Nonetheless, even if the maximum 100 feet were required for the primary fire zone, the maximum primary plus a secondary fire zone that may be required is 200 total feet and the dwelling is proposed to be set back from the north property line 200 feet and from the west property line 300 feet. Therefore, it is possible to comply with both the primary and secondary fire safety zone requirements. Compliance with the criterion could be assured by imposing a condition of approval.

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.ES.2058 (D) and .2075.**

**Finding and Conclusion.** The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowing would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1, 1991 and published by the Oregon Department of Forestry, the required secondary fire zone could be satisfied by compliance with a condition of approval.

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

- (v) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**

Finding and Conclusion. The subject parcel is under a Forest Management Plan. The subject parcel is identified on the Multnomah County Assessment and Taxation records as a deferral account. The subject parcel is large enough, and the proposed dwelling is located on the site plan such that the primary and secondary fire safety zones could be accommodated on the subject parcel. The application could meet the criterion.

- (d) **The building site must have a slope less than 40 percent.**

Finding and Conclusion. This criterion requires that the building site have a slope of less than 40 percent. The applicant has not specifically provided documentation to verify that this criterion is satisfied. As already noted, the soil types around the proposed dwelling indicate the dwelling site has slopes less than 15 percent. This criterion has been met.

**(B) The dwelling shall:**

- (1) **Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

Finding and Conclusion. The applicant's proposed dwelling shall comply with this criterion. The items in (1) through (5) would be verified at the time of building permit review,

- (2) **If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

Finding and Conclusion. According to the materials submitted by the applicant the proposed dwelling will be greater than 600 square feet in size and attached to a foundation. Building permits cannot be obtained until land use approval is received for the proposed development.

- (3) **[sic]**
- (4) **Have a fire retardant roof; and**
- (5) **Have a spark arrestor on each chimney.**

Finding and Conclusion. The applicant has stated that the dwelling will have a fire-retardant roof and a spark arrestor on each chimney. It is feasible to do so because the fire-retardant roof simply requires appropriate roofing materials and the installation of a spark arrestor. Typically

these requirements are verified at the time of submittal of the building permits. Compliance with these criteria can be assured by imposition of a condition of approval.

**(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

**(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

Finding and Conclusion. These criteria require that the applicant provide evidence that the domestic water supply is from a groundwater or surface water source and not from a Class II stream, and that a water use permit is not required for the proposed dwelling. According to the applicant, a well for this property will be drilled on the subject property after the land use approval, at the building permit stage.

According to the Certification of Water Service form required by Comprehensive Plan Policy 37, "If you propose to use a private water system, a determination that the system is adequate must be made to satisfy Comprehensive Plan Policy 37. There are two different times a determination can be made: 1) In the initial review of your proposal if the on-site well or other form of private system is existing at the same time of the initial land use application, OR 2) After the initial review but before the issuance of a building permit when documentation is provided to the Planning Director that a water system is in place. At that time public notification will again be given which may result in a new public hearing. If the request for the Template Dwelling were approved, the application would be subject to a review, as a separate notification process, of the water source for the site." Thus, the staff report found that evidence of domestic water supply can be satisfied pursuant to Multnomah County Comprehensive Plan Policy 37 by either the existence of a private water system or after the discretionary land use review for the issuance of a building permit.

A condition of approval can insure satisfaction of the criterion if there is substantial evidence demonstrating that it is feasible to do so. Rhyne v. Multnomah County, 23 Or LUBA 442 (1992). The applicant submitted a letter from Brant Well Drilling, dated May 7, 1999. (Exhibit 4 to Exhibit H7. The letter states that this company has more than 50 years of well drilling experience in Oregon and has drilled a number of wells in the Trout Creek Road area. The letter further states:

"Drilled water wells are a very viable source of domestic water. I foresee no reason why potable water cannot be produced by a drilled well. However, depths may range between fifty and five hundred feet.

"There is not a permit requirement from the Water Resources Department for a domestic water well . . . "

The letter is substantial evidence demonstrating that it is feasible to provide a private water system serving the proposed dwelling on this lot.

Finally, ORS 537.545(1)(d) exempts single or group domestic wells up to 15,000 gallons per day from the water permit requirements. This criterion can be satisfied.

**(2) Evidence of a domestic water supply means:**

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Finding and Conclusion. According to the applicant, he will provide the well constructor's report upon completion of the well before he applies for a building permit. Subsection (a) is not applicable because the water source would be a private well. A water use permit is not required for domestic wells producing less than 15,000 gallons per day. But an average residential water consumption is only 450 gallons per day. Because the proposed well would be exempt from water permit requirements, the applicant can satisfy this criterion by submitting the well constructor's report. Compliance with this criterion could be assured by imposition of a condition of approval.

The application does not meet the criterion.

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**

Finding and Conclusion. The access to the dwelling is a driveway accessing a single dwelling. This criterion requires the driveway to be designed, built and maintained to support a gross vehicle weight of 52,000 pounds. If the driveway involves bridges or culverts, compliance with the gross vehicle weight standard is required to be verified by an Oregon Professional Engineer. The driveway to this proposed dwelling does not involve a bridge or a culvert. Therefore, verification of compliance of the bearing capacity of the driveway by an Oregon Professional Engineer is not required by the Code. Nonetheless, the staff requested written verification from an Oregon Professional Engineer of the compliance with the above noted criteria.

The applicant submitted a letter from Eugene L. Smith, PE, dated August 4, 1998, stating:

"I have made an on-site inspection of the driveway shown on the attached map, located in the SE 1/4 of section 13 and the SW 1/4 of section 18, off Trout Road. The driveway proceeds south from Trout Creek Road approximately 511' thence easterly into the parcel. The 511' is a "shot rock" base apparently used for logging purposes. It has no culverts or bridges and appears to be adequate for 52,000 GVW loads. The approximately 200' of driveway which proceeds easterly into the property is dirt with no rock. It will need approximately 12" base rock to make it suitable for 52,000 lb. of GVW loads.

"No culverts or bridges are presently installed in either portion of the driveway. No bridges are needed; if culverts are installed, they will need to be inspected by an Oregon Professional Engineer to verify at least 1' of cover exists over the installed culvert to meet the 52,000 GVW load requirement."

The driveway location is illustrated on the applicant's revised site plan. The applicant can improve the driveway to support a minimum gross vehicle weight of 52,000 pounds. Because there are no bridges or culverts, MCC 11.15.2074(D)(1) does not require written verification from an Oregon professional engineer. Compliance with this criterion could be assured by compliance with a condition of approval.

- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**

**Finding and Conclusion.** According to the applicant, the driveway will be 12 feet wide. The applicant illustrated the location of the driveway on the revised site plan. A Staff site visit on April 7, 1999 found the existing, gravel driveway extends from Trout Creek Road to the proposed building site, is less than 12 feet in length and is composed of gravel. In a letter from Michael Robinson, Attorney representing the applicant, dated July 21, 1999, the applicant agreed to widen the driveway so that it at least 12 feet wide its entire length and meets the other requirements of MCC 11.15.2074(D). The applicant demonstrated that it is feasible to make these improvements by the August 4, 1998 letter from Eugene L. Smith, P.E. The Hearings Officer can impose a condition of approval requiring that the driveway be improved before the County issues a building permit to assure compliance with this criterion

**(3) Provide minimum curve radii of 48 feet or greater;**

**Finding and Conclusion.** The applicant does not illustrate the above requirement on the site plan. The site plan shows the driveway will be straight down the "pole" of the flag lot and then veer southeast to the proposed dwelling. A condition of approval could assure satisfaction of the minimum cure radius requirement.

**(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

**Finding and Conclusion.** The applicant states the requirement will be met. The driveway location is not illustrated on the site plan submitted by the applicant. This criterion can be satisfied by a condition of approval.

**(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**

- (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
- (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

**Finding and Conclusion.** The applicant states the grade of the driveway is less than 8 percent. A Staff site visit on April 7, 1999 indicates the slope is likely to be less than 8 percent but no documentation to support that has been submitted by the applicant. The driveway crosses areas composed of class 9B and 9C soils according to the Multnomah County Soils Survey. Class 9B soils have 0 to 6 percent slopes and class 9C soils have 9 to 15 percent slopes. From the evidence in the record, it appears feasible to construct a driveway that complies with this criterion. Compliance can be assured by a condition of approval.

- (6) **Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;**

Finding and Conclusion. The applicant stated that the proposed driveway is less than 150 feet in length. The applicant's driveway is the entire length of the access from Trout Creek Road to the dwelling, approximately 661 feet, based on the evidence in the record. Consequently, the applicant is required to comply with this criterion. It appears feasible to comply with the turnaround requirement. Compliance can be assured by a condition of approval.

- (7) **Provide for the safe and convenient passage of vehicles by the placement of:**

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

Finding and Conclusion. According to the applicant, the proposed driveway is less than 200 feet in length. Based on the distance along the flag portion of the subject parcel (511.02 feet according to the Record of Survey dated May 12, 1988) and the required property setback, the driveway length exceeds 200 feet. The applicant is required to comply with this provision. The "pole" of the flag lot is 33 wide. It would be feasible to provide a 20-foot wide turnaround and turnout along the driveway. Compliance with these criteria could be assured by a condition of approval.

**C. APPLICABLE COMPREHENSIVE PLAN POLICIES**

**POLICY 11: COMMERCIAL FOREST LAND**

**THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:**

- D. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, AND III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;**
- E. SUITABLE FOR COMMERCIAL FOREST USE AND SMALL WOODLOT MANAGEMENT;**

- F. **POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY;**
- G. **NOT IMPACTED BY URBAN SERVICES; AND**
- H. **COHESIVE FOREST AREAS; OR**
- I. **OTHER AREAS WHICH ARE:**
  - 1. **NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR**
  - 2. **WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.**

**THE COUNTY'S POLICY IS TO ALLOW FOREST MANAGEMENT WITH RELATED AND COMPATIBLE USES, BUT TO RESTRICT INCOMPATIBLE USES FROM THE COMMERCIAL FOREST LAND AREA, RECOGNIZING THAT THE INTENT IS TO PRESERVE FOREST LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.**

**Finding and Conclusion.** According to the applicant:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

This comprehensive plan policy provides direction to the County in zoning properties and adopting implementing regulations. It is not a policy applicable to land use applications.

### **POLICY 13: AIR, WATER AND NOISE QUALITY**

**MULTNOMAH COUNTY ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. THEREFORE, IT IS MULTNOMAH COUNTY'S POLICY TO:**

**\* \* \***

- D. DISCOURAGE THE DEVELOPMENT OF NOISE-SENSITIVE USES IN AREAS OF HIGH NOISE IMPACT.**

**FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS. IF THE PROPOSAL IS A NOISE SENSITIVE USE AND IS LOCATED IN A NOISE IMPACTED AREA, OR IF THE PROPOSED USE IS A NOISE GENERATOR, THE FOLLOWING SHALL BE INCORPORATED INTO THE SITE PLAN:**

- 1. BUILDING PLACEMENT ON THE SITE IN AN AREA HAVING MINIMAL NOISE LEVEL DISRUPTIONS,**
- 2. LANDSCAPING OR OTHER TECHNIQUES TO LESSEN NOISE GENERATION TO LEVELS COMPATIBLE WITH SURROUNDING LAND USES.**
- 3. INSULATION OR OTHER CONSTRUCTION TECHNIQUES TO LOWER INTERIOR NOISE LEVELS IN NOISE-IMPACTED AREAS.**

**Finding and Conclusion.** The applicant's proposed development is for a single-family residence. The construction of a structure may briefly involve some noise but otherwise no noises other than those typically associated with single-family residential use is anticipated. There will be no unusual activities associated with the proposed dwelling. The DEQ air quality, water quality and noise standards must be met. The parcel is not in a noise impacted area, the proposed use is not a noise generator, nor is the use a noise sensitive use.

#### **POLICY 14: DEVELOPMENTAL LIMITATIONS**

**THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT**

**LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:**

**A. SLOPES EXCEEDING 20%;**

Finding and Conclusion. According to the applicant, the slopes of the proposed dwelling site do not exceed 20%. The subject parcel is not identified on the Multnomah County Slope Hazard Map. The subject parcel soil types, 9B, 9C, 9D, and 9E, do not indicate slopes greater than 20% according to the Soil Survey of Multnomah County, Oregon. The applicant meets this criterion.

**B. SEVERE SOIL EROSION POTENTIAL;**

Finding and Conclusion. The soils of this parcel are 9B, 9C, 9D, and 9E. The Soil Survey of Multnomah County rates the hazard of erosion for these soils as follows.

<u>Soil Type</u>	<u>Hazard of Erosion</u>
9B	Slight
9C	Moderate
9D	High
9E	High

None of the soils on this parcel has severe erosion potential. The proposed dwelling site is on soil type 9B, which has slight potential of erosion. The driveway is proposed to be located on soils identified on the Multnomah County Soil Survey Map as "9B" and "C." These two soil types have, respectively, slight and moderate erosion potential, respectively. (Exhibit 5.) Because the soils do not have severe soil erosion potential, the applicant is not required to identify methods necessary to mitigate public or private harm.

**C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;**

Finding and Conclusion. The subject parcel is not within the 100-year flood plain according to Federal Emergency Map Agency (FEMA) maps on file at Multnomah County.

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

**Finding and Conclusion.** The Soil Survey of Multnomah County Soil and Water Features Table shows the following water table for soils on the parcel:

<u>Soil Type</u>	<u>Water Table</u>
9B	18" to 30"
9C	18" to 30"
9D	18" to 30"
9E	18" to 30"

According to the applicant, all the soils on the applicant parcel have a seasonal water table of 18-30 inches for December to April, the water table is not 0-24 inches on any of the soils of the subject parcel. Therefore, this requirement is met.

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

**Finding and Conclusion.** The Soil Survey of Multnomah County states the fragipan is to a depth of 60 inches or more for all the soil types on the applicant parcel. Therefore, this requirement is met.

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

**Finding and Conclusion.** The soil types of the subject parcel, according to the Soil Survey of Multnomah County, are not subject to slumping, earth slides, or movement.

**POLICY 22: ENERGY CONSERVATION**

**THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES AND TO SUPPORT GREATER UTILIZATION OF RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:**

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;**
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT**

**CORRIDORS AND EMPLOYMENT, COMMERCIAL AND  
RECREATIONAL CENTERS;**

- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM  
LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN  
AND BICYCLE FACILITIES;**
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT  
UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC  
CONDITIONS TO ADVANTAGE.**
- E. FINALLY, THE COUNTY WILL ALLOW GREATER  
FLEXIBILITY IN THE DEVELOPMENT AND USE OF  
RENEWABLE ENERGY RESOURCES.**

**Finding and Conclusion.** The application is for a dwelling on a Lot of Record. The density of dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the County. The dwelling is not in an urban area, therefore, sections A, B, C, and D above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions, in that the proposed dwelling is located close to the existing street (Trout Creek Road), while observing district setbacks, and is sited on the portion of the parcel that best maintains the competing goals identified in Development Limitations and the district requirements. The applicant meets these criteria.

**POLICY 37: UTILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO  
APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION  
THAT:**

**WATER AND DISPOSAL SYSTEM**

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

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

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

Finding and Conclusion. There is no public water or sewer system available to serve this property. A private well will be drilled prior to obtaining a building permit. A Land Feasibility Study (LFS) was conducted by Phillip Crawford, Environmental Soils Inspector, City of Portland Bureau of Buildings, to evaluate the site for use of a subsurface sewage disposal septic tank/drainfield system. The City of Portland Bureau of Buildings, an agent of DEQ, provides the services of county sanitarian on contract for Multnomah County. Based on the on-site study, LFS 5-98, Philip Crawford concluded that the site is suitable for the use of a standard septic tank/drainfield system in compliance with the standards set forth in On-Site Sewage Disposal Rules adopted on April 3, 1995. The LFS is not a permit to install a subsurface sewage system, however, it assures the property owner will receive a permit to construct a system provided the property owner meets the procedures and conditions for permit issuance in the On-Site Disposal Rules. The applicant has submitted documentation from DEQ that the water system and private sewage disposal systems are adequate. The applicant meets these criteria.

#### **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.**

Findings and Conclusion. No storm water facilities serve this area. The applicant stated that existing vegetation will continue to handle on-site water runoff, that a dry well on the parcel will be used to collect the runoff from the proposed structure, and that the driveway will have a permeable gravel surface. According to the applicant, water runoff will be handled on the site in accordance with the standards set forth by the City of Portland Environmental Soils Section. Thus the applicant argues that runoff from the site will not adversely affect the water quality in

Trout Creek North Branch. The application can meet the requirement of Comprehensive Plan Policy 37.

#### **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.**

**FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.**

Findings and Conclusion. The service providers are Portland General Electric and General Telephone. The applicant meets these criteria.

#### **POLICY 38: FACILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

##### **SCHOOL**

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

Findings and Conclusions. The applicant has provided the school service provider form. The applicant meets the criterion.

##### **FIRE PROTECTION**

**B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND**

**C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS ON THE PROPOSAL.**

Findings and Conclusions. This criterion requires a showing that "there is adequate water pressure and flow for firefighting purposes." The applicant submitted a letter from the fire service provider. (Exhibit 6.) The service provider has indicated there is no water system serving this area. Consequently, the fire district will have to use water tank trucks, or an on-site water source for fire fighting on the applicant parcel. The applicant submitted Exhibit 6 to Exhibit H7 which was a letter from Philip J. Dearixon, Assistant Fire Chief of Multnomah County Fire District #14, dated May 18, 1999, stating:

"In regard to the property owned by Carson Linker located at 40200 S.E. Trout Creek Road. Said property is within the boundaries of Multnomah County Fire District 14. Also, said property is within approximately five miles of the Aims Fire Station. There is no municipal water system in the area for fire suppression purposes. However, housed at the Aims station is a class A pumper carrying 1,000 gallons of water as well as a water tender with a capacity of 3,000 gallons. In the event of a reported fire in the area, two pumpers and a water tender with the same capacities would also respond from Corbett and Springdale. If the water carried on the initial apparatus is deemed insufficient a water relay would be used to shuttle water from Trout Creek to maintain an adequate supply of water for extinguishment."

The staff's report at page 30 states: "The lack of water alternatives for firefighting purposes is a concern to staff. The applicant has not provided specific details on how this problem can be addressed." This criterion does not require the applicant to demonstrate alternative water sources for firefighting purposes. The applicant has provided substantial evidence satisfying the criterion because the fire district's letter shows there is adequate water pressure and flow for fire fighting purposes. The fire district's Aims Fire Station is within five miles of this property. The station has two pieces of equipment with 4000 gallons of water capacity. In addition, the applicant is required to provide access for fire equipment to Trout Creek North Branch which crosses the parcel. This is substantial evidence demonstrating that the Plan policy is satisfied.

## **POLICE PROTECTION**

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

Findings and Conclusions. The Multnomah County Sheriff's Department has signed the form indicating that police service is adequate. This criterion is met.

## **POLICY 40: DEVELOPMENT REQUIREMENTS**

**THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.**
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.**
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.**

Findings and Conclusion. The applicant has addressed some of these issues under Comprehensive Plan Policy #22 Energy Conservation. The criteria are not applicable to the proposed development.

**D. EAST OF SANDY RIVER AREA PLAN**

The site contains a stream, Trout Creek North Branch, designated as a significant stream in the East of Sandy River Rural Area Plan. As a protected stream, new residential development is prohibited within "150 feet of a stream centerline" and "new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area" are limited. The revised site plan (Exhibit H9) shows the location of the significant stream, the dwelling location, the location of the driveway from Trout creek Road to the dwelling site and the setback from the significant stream. Note that "All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year." The inventory and analysis of wildlife habitat and streams in the East of Sandy River Rural Area can be found in the East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, completed in June 1995.

#### IV. CONCLUSION

Based on the findings and conclusions and the substantial evidence cited or referenced herein, I conclude that the application for conditional use approval does not satisfy MCC 11.ES.2052(A)(3)(c)(ii). Accordingly, Conditional Use Permit CU 9-98 is hereby denied.

IT IS SO ORDERED, this 18<sup>th</sup> day of August 1999.



DENIECE B. WON, Hearings Officer

#### V. LIST OF EXHIBITS:

##### List A: Staff/ Applicant Exhibits:

- A1. Applicant site plan showing dwelling location on the subject parcel.
- A2. Applicant site plan showing primary and secondary fire safety zone buffers.
- A3. Forest Practices Act and Rules statement form, to be recorded by the applicant at the County Recorder's office.
- A4. Stormwater Calculations sheet (3 pages).
- A5. 1987 Base County Land Use map.
- A6. Metro parcel map of the area adjacent to the subject parcel showing tax lots and year built of existing dwellings used in the Template Dwelling test.
- A7. Portion of the 160-acre square map submitted by the applicant for the Template Dwelling test (aerial photo with superimposed tax assessor's map)
- A8. Portion of the map and Policy 21 from the East of Sandy River Rural Area Plan. The map shows that Trout Creek North Branch runs through the subject parcel.
- A9. Elevation drawings of the proposed single-family residence.
- A10. 1998 Assessment and Taxation map for Section 18, 1S, 5E.

##### List B: Notification Information:

- B1. "Complete application" Letter, 3 pages.
- B2. Notice of Hearing, 4 pages.

##### List C: Multnomah County Documents

- C1. Staff Report - April 14, 1999

##### List D: Documents Submitted at April 21, 1999 Public Hearing:

- H1 Revised site plan map

- H2 Affidavit of Posting
- H3 Kay Finny Letter Dated April 15, 1999
- H4 E-Mail from John Christensen
- H5. May 20, 1999 Letter from Michael Robinson extending the 150-day period until September 1, 1999
- H6. Intended Use and Zoning Approval - Land feasibility study
- H7 Michael Robinson letter, dated July 21, 1999 responding to approval criteria
- H8 Multnomah County Soils Survey excerpt re 9B, 9C and 9D
- H9 Exhibit 1
- H10 Copy of Mult. Co. AT&T map 1S 5E Sec 18 11.15.8135(I)
- H11 Copy of recorded statement that the owner and his successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;
- H12 Mult. Co. Board Final Order on Evans CU 7-95, HV 17-95
- H13 Evans v. Multnomah Co., 34 Or LUBA \_\_\_\_\_ (10/07/97)
- H14 Memorandum from Tricia Sears to Deniece Won, dated 7/28/99

edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment. [1993 c.792 §5; 1995 c.812 §6; 1997 c.293 §1]

#### (Other Forestland Dwellings)

**215.740 Large tract forestland dwelling; criteria.** (1) If a dwelling is not allowed under ORS 215.720 (1), a dwelling may be allowed on land zoned for forest use under a goal protecting forestland if it complies with other provisions of law and is sited on a tract:

(a) In eastern Oregon of at least 240 contiguous acres except as provided in subsection (3) of this section; or

(b) In western Oregon of at least 160 contiguous acres except as provided in subsection (3) of this section.

(2) For purposes of subsection (1) of this section, a tract shall not be considered to consist of less than 240 acres or 160 acres because it is crossed by a public road or a waterway.

(3)(a) An owner of tracts that are not contiguous but are in the same county or adjacent counties and zoned for forest use may add together the acreage of two or more tracts to total 320 acres or more in eastern Oregon or 200 acres or more in western Oregon to qualify for a dwelling under subsection (1) of this section.

(b) If an owner totals 320 or 200 acres, as appropriate, under paragraph (a) of this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records for the tracts in the 320 or 200 acres, as appropriate. The deed restrictions shall preclude all future rights to construct a dwelling on the tracts or to use the tracts to total acreage for future siting of dwellings for present and any future owners unless the tract is no longer subject to protection under goals for agricultural lands or forestlands.

(c) The Land Conservation and Development Commission shall adopt rules that prescribe the language of the deed restriction, the procedures for recording, the procedures under which counties shall keep records of lots or parcels used to create the total, the mechanisms for providing notice to subsequent purchasers of the limitations under paragraph (b) of this subsection and other rules to implement this section. [1993 c.792 §4(2),(3),(5)]

**215.750 Alternative forestland dwellings; criteria.** (1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a

forest zone if the lot or parcel is predominantly composed of soils that are:

(a) Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

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

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

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

(a) Capable of producing 0 to 20 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels;

(b) Capable of producing 21 to 50 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels; or

(c) Capable of producing more than 50 cubic feet per acre per year of wood fiber if:

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

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

**From:** Lincoln Herman  
**To:** Robinson, Michael  
**Date:** Mon, Oct 18, 1999 10:46 AM  
**Subject:** Pin-Test for center of property

You requested that I go to Multnomah County and review the materials that Tricia Sears (Multnomah County Planner) used to calculate the center of the property for matter CU 9-98. I met with Ms. Sears at the Multnomah County Planning office in Gresham on Friday October 15, 1999. Ms. Sears showed me the different parts that were used in the pin-test method for determining the center of the property. Among these parts were a star shaped paperclip which had one end bent so that it was perpendicular from a surface on which it might be situated. The other part was a cardboard cut out of the property consisting of a piece of cardboard approximately 1/16" thick. Ms. Sears stated that she would hold the paperclip with one hand to brace it from the weight of the cardboard. She would then, with her free hand, place the cardboard cut out on the end of the perpendicular portion of the paperclip and adjust the cardboard until she found the point at which the cardboard would balance on the end of the perpendicular portion of the paperclip. Ms. Sears did not actually demonstrate the procedure to me but instead verbally explained it to me.

I then proceeded to take notes on what the pin-test materials were made of and how the procedure was executed. I attempted to implement the pin-test utilizing the same tools and methodology which Ms. Sears had explained to me. I was unable to balance the cardboard cut out on the end of the paperclip at the same point at which Ms. Sears had marked the center after 30 to 40 minutes of repeated attempts. I did find that I could balance the cardboard cut out on the end of the paperclip at a slight angle. In other words, the cardboard cut out was resting on the small flat surface which comprises the end of the paperclip. The cardboard was not perfectly parallel to the flat surface on which I was carrying out the pin-test.

I asked another planner who was in the office for a brief moment what he usually used as the "pin" when he executed the pin-test. He stated that he usually used an actual pin with a sewing needle type point so that when he found point of balance for a particular cardboard cut out he could push down on the cardboard and have the center marked without risking lateral movement.

Ms. Sears had marked the center of the cardboard cut out that she used with a pencil using a "+" mark. The intersection of the + seemed to indicate the point at which she felt the center of the property was located. I do not know if she marked the center while the cardboard was on the pin which she used or if she pressed the cardboard on the pin she used and then marked the indentation once she had removed the cardboard from the end of the pin and placed it back on the flat surface.

It is also important to note that the cardboard cut out which Ms. Sears used to carry out the pin-test was smaller than the pattern which she used to create the cardboard cut out. The differences were noticeable when I attempted to hold the cardboard cut out and the pattern together and make all of the edges line up. Two of the corners, opposite each other on the cardboard cut out, were clearly cut inside of the pattern. This would apparently give the cardboard cut out less surface area than the pattern. I do not know whether the cardboard cut out or the pattern accurately represents the property in question in matter CU 9-98.

Please let me know if I can be of further assistance.

# STOEL RIVES LLP

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August 11, 1999

MICHAEL C. ROBINSON  
*Direct Dial*  
(503) 294-9194  
email [mrobinson@stoel.com](mailto:mrobinson@stoel.com)

## VIA FACSIMILE

Ms. Deniece Won  
Multnomah County Department of Environmental  
Services, Land Use Planning Division  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

**Re: Multnomah County Case File No. CU 9-98**

Dear Ms. Won:

This office represents the applicant. This letter constitutes the applicant's final written argument.

1. While the choice of substantial evidence is up to the decision maker, there is no basis for deferring to staff over the applicant.

The choice of which substantial evidence to believe is up to the decision maker. Nevertheless, there is no requirement or basis for accepting evidence produced by staff over that produced by an applicant. The test should be which is the most logical and credible evidence.

In this case, the Hearings Officer has before her evidence produced by two Oregon registered land surveyors. The Hearings Officer can find that the applicant's method of determining the center of the lot is the most reasonable method for two reasons. First, it does not require a complicated mathematical formula nor does it require a test that not all parties

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Ms. Deniece Won, Planner  
August 11, 1999  
Page 2

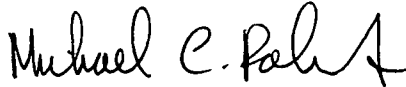
can be privy to. Moreover, it is clear that the applicant relied on the entire tract of land. It is also clear that the county's surveyor did not include the entire tract.

2. No precedent is created by the Board of County Commissioner's decision in Multnomah County Case File CU 7-95 (Board Order 96-177).

The Board's past interpretation involves a matter of state law and no deference is given to a local government's interpretation of state law. Moreover, as a general matter, there is no precedent created in local government land use proceedings. While interpretations of ambiguous provisions should be consistent, an interpretive issue is not present in this case since the county is entitled to no deference in interpreting a matter of state law.

For these reasons, the applicant requests that the Hearings Officer approve the application.

Very truly yours,



Michael C. Robinson

MCR:klb

cc: Mr. William B. Trimble (via facsimile)

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August 4, 1999

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## VIA FACSIMILE

Ms. Deniece Won  
Multnomah County Land Use Hearings Officer  
Multnomah County Department of Environmental  
Services, Land Use Planning Division  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

**Re: Multnomah County Case File No. CU 9-98**

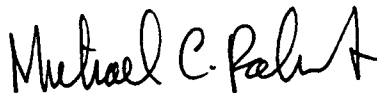
Dear Ms. Won:

This office represents the applicant. This letter constitutes the applicant's submittal during the second open record period ending on August 4, 1999 at 4:30 p.m.

The applicant will not submit additional evidence and argument with this letter. The applicant will provide final written argument in the final open record period concluding on August 11, 1999 at 4:30 p.m.

Finally, the applicant requested that it be given the opportunity to cross-examine Mr. Okel pursuant to the Hearings Officer's rules of procedure. Based on the information received from the Land Use Planning Division staff, the applicant withdraws the request for cross-examination.

Very truly yours,



Michael C. Robinson

MCR:klb

cc: Mr. William B. Trimble (via facsimile)

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July 28, 1999

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## VIA FACSIMILE

Ms. Deniece Won  
Multnomah County Land Use Hearings Officer  
Multnomah County Department of Environmental  
Services, Land Use Planning Division  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

**Re: Multnomah County Case File No. CU9-98**

Dear Ms. Won:

This office represents the applicant. This letter constitutes the applicant's submittal during the first open record period ending on July 28, 1999 at 4:30 p.m. Please place this letter in the official Planning Department file for this matter.

### **I. Status of Application.**

The applicant submitted this application on September 23, 1998. Multnomah County ("County") notified the applicant on October 20, 1998 that the application was incomplete. The applicant submitted the information necessary to make the application complete on April 5, 1999.<sup>1</sup>

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<sup>1</sup> At the hearing, the Hearings Officer, applicant's representative and planner discussed the applicable approval criteria. The April 14, 1999 staff report refers to MCC 11.ES as the appropriate citation for the applicable approval criteria. The Commercial Forest Use ("CFU") zoning district amendments were adopted by the Multnomah County Board of Commissioners in 1998 Ordinance 916. The ordinance became effective on August 9, 1998. Therefore, since

Ms. Deniece Won, Planner  
July 28, 1999  
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The County opened this hearing on April 21, 1999. At the request of the applicant, the County continued the hearing until July 21, 1999 without taking argument and evidence. The applicant extended the 150-day period in ORS 215.428(1) until September 1, 1999 in a letter dated May 20, 1999.

The Hearings Officer opened and closed the public hearing on July 21, 1999. The Hearings Officer held the record open at the request of the applicant as follows:

- Until July 28, 1999 at 4:30 p.m. for all parties to submit argument and evidence.
- Until August 4, 1999 at 4:30 p.m. for all parties to rebut argument and evidence submitted during the first open record period.
- Until August 11, 1999 at 4:30 p.m. for the applicant to submit final written argument only. The applicant orally extended the 150-day clock until January 1, 2000.

## **II. Procedural Issue.**

The Multnomah County Code ("MCC") previously provided for the right of cross-examination of witnesses by the applicant. The applicant agrees that the MCC has since been amended to delete this provision. Nevertheless, MCC 11.15.8125 requires the Hearings Officer to conduct hearings in accord with rules of procedure. Exhibit 1 is entitled "Rules for the Conduct of Hearings by the Hearings Officer Acting on Quasi-Judicial and Legislative Action Proceeding Through Multnomah County, Oregon."

The Land Use Planning Division staff relied on an analysis of the center of the subject tract prepared by Scott Okell of the Multnomah County Surveyor's office. Mr. Okell was not present at the July 21, 1999 hearing nor was there any written information explaining his basis for determining the center of the subject tract. The applicant requested the opportunity to cross-examine Mr. Okell if that right existed or, in the alternative, that Mr. Okell submit a letter explaining the basis for his determination of the center of the subject tract. The Hearings Officer asked staff to have Mr. Okell prepare a letter explaining the basis for his determination

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the application became complete on April 5, 1999, the standards contained in CFU-3, "East of Sandy River", are the applicable approval criteria.

Ms. Deniece Won, Planner  
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to the center of the subject tract. The applicant told the Hearings Officer that if relevant rules did not provide for cross-examination, the applicant would withdraw his request.

Section 6 of the rules is entitled "Order of Procedure" and applies to the conduct of hearings. Section 6(L) allows parties favoring the application to cross-examine witnesses who presented testimony or evidence in opposition to the application. This section refers to subsection (J) section 5, above. This citation contains a typographical error as section 5 contains no subsection (J) but section 6 does contain subsection (J) which does refer to cross-examination. Additionally, section 6(M) allows an opportunity for a representative of the division of Planning and Development to add or clarify factual information presented subject to cross-examination.

The staff and Mr. Okell are witnesses, not parties, under the rules. The applicant requests an opportunity to cross-examine Mr. Okell regarding his testimony or evidence submitted directly by him (including but not limited to any written documents appearing in the record, his template map and any electronic mail messages to a member of the Multnomah County Land Use Planning Division) or his information or evidence submitted through a member of the Multnomah County Land Use Planning Division.<sup>2</sup>

### III. Substantive Issues.

#### 1. The applicant satisfies the template test in MCC 11.ES.2052(A)(3)(c)(I).

This MCC provision requires that the tract upon which the dwelling is proposed to be sited include all or parts of eleven (11) lawfully created lots "within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines and five (5) dwellings." The issue in this case is the location of the center of the subject tract.

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<sup>2</sup> Section 10(A) of the rules allow the Hearings Officer to "amend, suspend or repeal" at any hearing as appropriate any provision any of the rule not required by law, ordinance or the charter of Multnomah County. The applicant is aware of no requirement that cross-examination be allowed. Nevertheless, because of the importance of Mr. Okell's testimony and the fact that he was not present at the hearing where he could explain his opinion himself and be questioned by the Hearings Officer and other parties to the case, the applicant believes that it is appropriate to allow cross-examination in this instance.

Ms. Deniece Won, Planner  
 July 28, 1999  
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The operative language contained in this MCC provision is found in ORS 215.750(1)(c)(A) ("within a 160-acre square centered on the center of the subject tract") and OAR 660-006-0027(1)(f)(C)(I) ("within a 160-acre square centered on the center of the subject tract.")

The Multnomah County Board of Commissioners has interpreted the administrative rule provision in Multnomah County File Nos. CU7-95 and HV17-95. (Exhibit 2.) The Board has interpreted the center test as follows: "Staff's use of a "balance point" or "center of gravity" seems to be a reasonable method of uniformly determining the "center" of a tract of property, regardless of its shape," (Exhibit 2, page 3.)

The center of tract provision has been adopted by Multnomah County based on state law and administrative rule provisions. The "center of the subject tract" language is not an enactment of Multnomah County but is instead a state law provision implemented by Multnomah County. Accordingly, the deferential standard of review for an interpretation in ORS 197.829(1) is inapplicable because this is a state law enactment rather than a local government enactment. Stroupe v. Clackamas County, 28 Or LUBA 107 (1994). The standard of review is whether the interpretation is "reasonable and correct". McCoy v Linn County, 98 Or App 271, 752 P2d 323 (1998). LUBA does not defer to the County's interpretation of an agency rule. Spencer Creek Neighbors v. Lane County, 32 Or LUBA \_\_\_\_ (LUBA No. 96-079, January 31, 1997).

The applicant submitted a template map showing the center of the subject tract prepared by the applicant's Oregon Registered Profession Land Surveyor, Dale Hult. (Exhibit H(9)). The applicant's July 21, 1999 letter at page 1 describes how Mr. Hult determined the center of the tract.<sup>3</sup> In this case, the tract consists of a single unit of land. Mr. Hult explained (as shown in Exhibit 1 to the July 21, 1999 letter) that he determined the center of the tract, including the entire area of the unit of land by finding a point equally distant from the extreme property corners. His May 14, 1999 letter further states that he prepared the template so that it was perpendicular and parallel to the section lines. Based on the applicant's template map, at least five (5) houses were within template thus satisfying the applicable approval criteria.<sup>4</sup>

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<sup>3</sup> Tract is defined in ORS 215.010(2) as "one or more contiguous lots or parcels under the same ownership."

<sup>4</sup> There is no dispute that the template, regardless of which center location the Hearings Officer chooses to believe, includes all or part of eleven (11) other lawfully created

Ms. Deniece Won, Planner  
 July 28, 1999  
 Page 5

Mr. Okell was not at the July 21, 1999 meeting, but Ms. Sears testified that she had spoken with him and that he did include the "stem" in his calculations. She further testified that the center of the property was calculated in part based on recorded surveys and "state ORS."

Exhibit 3 is a memorandum from Mr. Okell to Ms. Sears dated July 27, 1999.<sup>5</sup> Mr. Okell's memorandum explains that the "bulk of said property" consists of a "box". Mr. Okell is referring to the rectangular portion of the lot (the subject tract) exclusive of the steam connecting the property to Trout Creek Road. The final paragraph of Mr. Okell's memorandum shows that he did not include the entire stem. The stem contains about 13,000 square feet which Mr. Okell acknowledges "does contribute to the overall area of the property." Nevertheless, he adjusted the center of the "box" only ten (10) feet to the north to compensate for the area of the strip notwithstanding that it is 540 feet long. His memorandum states "the center was not adjusted in an east-west position since the overriding question is the north-south position."

Mr. Okell's memorandum raises several questions. First, while he explains the basis for his location of the center of the "box", he does not include the Bureau of Land Management's "Manual of Surveying Instructions" for the applicant and staff to review. Secondly, the manual surveying instructions according to Mr. Okell is "proper procedure to establish the legal center of section." This says nothing about establishing the legal center of the subject tract.

Additionally, Mr. Okell's description of how to include the stem is not referenced to any procedure such as that for establishing the center of the "box". Further, Mr. Okell's analysis does not explain why he adjusted the "box" only ten (10) feet to the north to compensate of the area of the strip when the strip is about 13,000 square feet. Finally, even if

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lots. (See staff report at page 7.)

<sup>5</sup> I spoke with Mr. Okell by telephone on July 27, 1999 and asked him whether he had sent any materials to Ms. Sears concerning the center of the subject tract. He said that he did and that Ms. Sears sent him an email message with certain comments. I asked him if the memorandum that he sent was his final version and he said that is was. The memorandum shown as Exhibit 3 may have been changed depending on Mr. Okell's incorporation of comments from Ms. Sears.

Ms. Deniece Won, Planner  
 July 28, 1999  
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Multnomah County's interpretation of this provision is reasonable and correct, Mr. Okell's memorandum does not follow the methodology described in the Board's decision in Exhibit 2.

The reasonable and correct interpretation of the center of the subject property is one that includes the entire tract area. The definition of tract includes all of the lots or parcels, and does not exclude any of the area. A lot is defined in ORS 92.010(3) as a "single unit of land". A reasonable and correct interpretation of the plain language of the law is that the location of the center must include the entire subject tract and may not exclude all or some of the tract.<sup>6</sup> The Board's "center of gravity" or Mr. Okell's "box" analysis is unreasonable and incorrect if it excludes any part of the subject tract. The plain language of the law is that the 160-acre square must be centered on the center of the subject tract, and, therefore, the center of the subject tract must include the entire tract without any exclusions.

The Hearings Officer can find that MCC 11.ES.2052(A)(3)(c) is satisfied since at least five (5) dwellings lawfully existed on January 1, 1993 within the square. The staff report at page 7 concludes that the dwellings on Tax Lot 21, Tax Lot 22 and Tax Lot 20 are within either of the template maps. The applicant's template map shows that the dwellings on Tax Lots 18 and 21 are partially or wholly within the 160-acre square. Exhibit A(6) to the staff report contains dates on each of the tax lots with the notation that these are the year in which structures were built according to Multnomah County Assessor Records. All of the five dwellings were built prior to January 1, 1993. (See also page 8 of staff report.)

For these reasons, the Hearings Officer can find that the criteria requiring that the 160-acre square include eleven (11) lots and five (5) dwellings are satisfied.

**2. The Applicant has Satisfied MCC 11.ES.2052(A)(8).**

This criterion requires the recording of a statement with the Multnomah County Division of Records regarding acknowledgment of forest operations on adjacent properties. The required statement has been recorded in the Multnomah County Public Records and is part of the record is Exhibit H(11).

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<sup>6</sup> Even if the Board's interpretation of this provision is reasonable and correct, the lot before the Board in CU7-95 and HV17-95 was described as a "irregular shape" in fact, the lot looks like a stealth bomber. (Exhibit 4.) The tract in this application is not irregularly shaped and its center is easily determined including the steam by following the methodology described by Mr. Hult.

Ms. Deniece Won, Planner  
 July 28, 1999  
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**3. MCC 11.15.2052(A)(6) is Satisfied.**

The staff report did not find this criterion satisfied nor did it recommend a condition of approval. The record contains an April 8, 1998 letter from Jeff Hepler or the Oregon Department of Forestry. Mr. Hepler's letter states that the parcel has been reforested meet the requirements of the Oregon Forest Practices Act. The Hearings Officer can find that this criterion is satisfied or alternatively, determined that it is feasible to satisfy the requirement.

**4. MCC 11.ES.2058(C) is Satisfied.**

This criterion requires certain fire safety setbacks based upon slopes of the property. Mr. Rosen testified at the hearing that the area on which the dwelling is to be located is "flat". Mr. Rosen said that he was familiar with the property and had viewed the dwelling site.

The Hearings Officer requested a better topographical map than Exhibit 3 to the applicant's July 21, 1999 letter. Exhibit 3 is a topographical map of the tract prepared by Metro. The map shows contours at twenty (20) foot intervals. The applicant has sought a contour map with more frequent intervals but has been unable to locate it. The applicant believes that the topographical map in the record is substantial evidence showing that the site proposed for building is relatively flat since it has a twenty (20) foot run (from the 840 foot elevation to the 860 foot elevation from roughly the south third of the site to the northeast corner.) However, if the Hearings Officer wants additional topographic evidence, the applicant request that the record remain open for this limited purpose for a reasonable amount of time to allow the applicant to prepare a survey. It was impossible for the applicant to obtain a survey within the first seven (7) day period.

**5. The Hearings Officer can find that MCC 11.ES.2074(A)(5)(b) is Satisfied.**

This application requires that access for a fire truck be within fifteen (15) feet of any perennial water source on the lot and that the access meet the driveway standards of MCC .2074(D). Mr. Rosen testified on July 21, 1999 that it was feasible to reach Trout Creek (assuming that Trout Creek is perennial water source) and that a driveway meeting these standards to be constructed because of the flatness of the lot. The Hearings Officer can find that this is substantial evidence demonstrating that this condition can be satisfied and can impose a condition of approval requiring that it be demonstrated to the County satisfaction

Ms. Deniece Won, Planner

July 28, 1999

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prior to the issuance of building permits.<sup>7</sup> The May 18, 1999 letter from the assistant Fire Chief for Multnomah County Fire District 14 is substantial evidence that the fire district can reach Trout Creek for an additional water supply. This is additional evidence demonstrating to the Hearings Officer that it is feasible to satisfy this criterion through a condition of approval.

**6. MCC 11.ES.2074(5)(c)(I), (II) and (III) can be Satisfied.**

These criteria establish the primary and secondary fire safety zones. Exhibit H(9) shows the dwelling location with a primary fire zone extending thirty (30) feet in all directions around the dwelling. Mr. Rosen testified on July 21, 1999 that the applicant could comply with the requirements for thinning of trees and removal of other vegetation.

The primary fire zone is to be extended down the slope from a dwelling or a structure based on the percentage of slope. Based on Mr. Rosen's testimony, the Hearings Officer can find that at most, the area in which the dwelling is to be located is on ten (10) percent or less slope meaning that no additional primary fire safety zone is required. However, assuming that the site is between 10 and 20 percent slope, the thirty (30) foot fire safety zone is increased to fifty (50) feet. The Hearings Officer can find based on Mr. Rosen's testimony and the topographic map that it is feasible to comply with a fifty (50) foot primary fire safety zone.

Further, the Hearings Officer can find based on page 25 of the staff report that the Multnomah County Slope Hazard map does not show slopes greater than 20 percent on this tract. This is substantial evidence that the criteria for primary and secondary fire safety zones and dwelling location is satisfied.

Additionally, a secondary fire safety zone of 100 feet is required in all directions around the primary safety zone. Mr. Rosen also testified that it is feasible to satisfy this criterion.

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<sup>7</sup> A "perennial stream" is not defined in the MCC or state law. However, the Hearings Officer can find that a perennial stream is one that flows year round. According to Bernie Boxler of the Oregon Department of Forestry Molalla office, Trout Creek in section 18 is classified by that agency as a "medium fish bearing stream". Mr. Boxler stated in a telephone call to the applicant's attorney that because of this medium fish bearing classification, the stream probably flows year round.

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**7. MCC 11.ES.2074(5)(a) is Satisfied.**

This criterion requires that the proposed dwelling be located within a fire protection district. Staff found this criterion not satisfied.

Exhibit 6 to the July 21, 1999 letter by the applicant is a letter from the Assistance Fire Chief of Multnomah County Fire District 14 testifying that this tract is within that district and the Multnomah County "Fire District Review Form" from the fire district stating "there is adequate stating yes to the requirement that there be adequate water pressure and flow for firefighting purposes. The Hearings Officer can find that this criterion is satisfied.

**8. MCC 11.ES.2074(A)(5)(d) is Satisfied.**

This criterion requires that the building site have a slope of less than 40 percent. The Hearings Officer can find, based both on the topographical map and Mr. Rosen's testimony, that the dwelling site is less than a 40 percent slope and can find that this criterion is satisfied.

**9. MCC 11.ES.2074(C)(2)(c) is Satisfied.**

This criterion applies to this application for provision of domestic water supply because the proposed water supply is from a well that is exempt from permitting requirements under ORS 537.545. The criterion requires "the applicant shall submit the well constructor's report to the county upon completion of the well."

The applicant testified to the Hearings Officer that a well would provide the domestic water supply and that it is exempt from permitting requirements under applicable state law. The applicant submitted a letter from a well driller familiar with the area demonstrating that it is feasible to construct a well on this property. The criterion plainly requires that the well constructor's report be submitted to the County upon completion of the well and impose as no other requirements on the applicant. The Hearings Officer can find that this criterion is satisfied.

**10. MCC 11.ES.2074(B)(1)-(6) can be Satisfied.**

These criteria establish the requirements for a driveway to the dwelling site. The applicant testified that it is feasible to construct the driveway meeting this standard based on evidence already on the record and Mr. Rosen's testimony. The Hearings Officer stated that

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she would impose a condition of approval requiring an Oregon Professional Engineer stamp on the driveway plans. While the criteria does not require such a stamp, the applicant has no objection to this condition of approval which is appropriate to demonstrate satisfaction of these criteria.

**11. Multnomah County Comprehensive Plan Policy 14, "Developmental Limitations."**

The staff found this criterion not satisfied because "the applicant has not indicated on the site plan the location and type of erosion control measures for the subject parcel." Policy 14B is entitled "Severe Soil Erosion Potential." Page 25 of the staff report notes that the two soil types that constitute the predominant soil types of the tract, 9B and 9C, have "slight" and "moderate" hazardous of erosion. This criterion applies only to severe soil erosion potential. The Hearings Officer can find that soils with slight and moderate hazardous of erosion are not soils with severe soil erosion potential. The two soil types that do have high levels of potential erosion, 9D and 9E are located on the south side of Trout Creek which the applicant will not cross for purposes of road construction or dwelling construction. (Exhibit 5 to July 21, 1999 letter.) Therefore, the Hearings Officer can find that this policy is satisfied. Alternatively, the Hearings Officer can impose a condition of approval, as offered by the applicant, that erosion control measures be specified prior to construction of any roads or dwellings and approved by the County.

Additionally, Multnomah County Comprehensive of Plan Policy 14(F) applies to lands subject to slumping, earth slides or movement. The staff report at page 26 agreed that this site does not contain such soils. Nevertheless, the staff stated "the applicant has not provided a site plan indicating the location and type of erosion control measures to be installed in the subject parcel." If the site is not subject to slumping, earth slides or movement, additional erosion control measures to mitigate these kinds of soil conditions are not required.

**12. Multnomah County Comprehensive Plan Policy 37, Utilities.**

Staff found that the application did not satisfy this policy because the applicant had provided an incomplete copy of the certification of private on-site sewage disposal form. Multnomah County Comprehensive Plan Policy 37(C) requires that the Oregon Department of Environmental Quality will approve a subsurface sewage disposal system. Exhibit 5 is a January 28, 1998 site evaluation report from Philip Crawford, RS, of the City of Portland Bureau of Buildings stating that the tract is suitable for use of the standard septic tank/drain

Ms. Deniece Won, Planner  
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field disposal system. The City of Portland Bureau of Buildings implements the rules established by the Oregon Department of Environmental Quality. Additionally, the staff found that Multnomah County Comprehensive Plan Policy 37(E)(G), "Drainage" is not satisfied. These criteria collectively require that either water run-off be handled on the site or determine that run-off from the site will not adversely effect water quality in adjacent streams.

The applicant has agreed to provide an erosion control plan for construction of the driveway and dwelling. Such erosion control plan is feasible to demonstrate that on-site drainage will not adversely effect adjacent streams or alter the drainage on adjoining lands. The Hearings Officer can impose a condition of approval requiring appropriate erosion control measures to control drainage.

**IV. Conclusion.**

For the reasons contained above, the Hearings Officer can find that substantial evidence demonstrates that the applicable criteria are either satisfied or it is feasible to satisfy them through a condition of approval.

Very truly yours,



Michael C. Robinson

MCR:klb

Enclosures

cc: Ms. Tricia R. Sears (via facsimile) (w/encls.)  
Mr. William B. Trimble (via facsimile) (w/encls.)

## **EXHIBITS**

- EXHIBIT 1**            Hearings Officer's rules of procedure.
- EXHIBIT 2**            Portion of Multnomah Board of Commissioner's decision interpreting  
OAR 660-06-027.
- EXHIBIT 3**            July 27, 1999 memorandum from Scott Okell to Tricia Sears.
- EXHIBIT 4**            Map showing shape of lot at issue in CU 7-95 and HV 17-95.
- EXHIBIT 5**            Land Feasibility study for Tax Lot 14.

RULES FOR THE CONDUCT OF HEARINGS BY THE HEARINGS OFFICER ACTING  
ON QUASI-JUDICIAL AND LEGISLATIVE ACTION PROCEEDINGS OF  
MULTNOMAH COUNTY, OREGON

Multnomah County Ordinances provide that a Hearings Officer will consider and decide applications for all quasi-judicial land use actions, including applications under MCC 11.15 (Zoning Code) and MCC 11.45 (Land Divisions), affecting land within unincorporated Multnomah County. Rules regarding the conduct of hearings at which these applications are considered are to be prescribed by order of the Hearings Officer and to be filed with the Clerk of the Board of County Commissioners. The following Rules are adopted by Order of the Hearings Officer.

SECTION 1. NATURE AND CONDUCT OF HEARINGS

A. The Hearings Officer, in conducting a hearing which will result in a determination of an action, acts in a quasi-judicial capacity. Parties are entitled to an opportunity to appear, in person or by a representative or Counsel, to present and rebut testimony and evidence to the Hearings Officer, to have the proceedings recorded and to receive a written decision which includes Findings of Fact and Conclusions based on the record made at the hearing.

B. The following persons are parties and shall be entitled, either themselves or through their representatives or Counsel, to make an appearance of record before the Hearings Officer:

1. The applicant;
2. All persons entitled to individual mailed notice under the applicable Ordinance; and
3. Other persons who demonstrate to the Hearings Officer that the action affects a substantial right of those persons.

C. The Hearings Officer may call as a witness a person with technical or specialized knowledge regarding an issue in an action.

D. No person shall testify without:

1. Receiving recognition from the Hearings Officer;
2. Stating his or her full name and residence address; and
3. If requested, stating the basis on which he or she is entitled to status as a party, pursuant to these Rules or as a witness on behalf of a party pursuant to these Rules.
  - (a) A challenge to the party or witness status of a person, and a ruling thereon by the Hearings Officer, shall be made at the time the person requests recognition to testify.
  - (b) A challenge to the party or witness status of a person may be made only by a party.

E. There shall be no audience demonstration, such as applause, cheering, display of signs, or other conduct disruptive of the hearing. Disruptive conduct may be cause for expulsion of a person from the hearing, termination of continuance of the hearing, or other appropriate action determined by the Hearings Officer.

F. The term person includes an individual, partnership, corporation, association, governmental unit or public or private organization.

SECTION 2. CONFLICT OF INTEREST: BIAS, EX PARTE CONTACT

A. A Hearings Officer shall not participate in any proceeding in which any of the following has a direct or substantial financial interest: The hearings officer, the Hearings Officer's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner in any business of which he or she is then a member or has been a member within the previous two years or in any business with which he or she is negotiating or has an arrangement or understanding concerning prospective partnership or employment.

B. Any actual or potential financial or other interest which would lead to bias or partiality shall be disclosed according to MCC 11.15.8125(B) at the hearing where the action is considered.

C. Any party to an action may, in relation to an action, challenge the impartiality of the Hearings Officer before or during the hearing on that action. A challenge must include the facts relied on by the challenging party, relating to the Hearings Officer's alleged bias, prejudice, or personal interest, or other facts from which the party has concluded that the Hearings Officer cannot participate in a decision in an impartial manner.

1. In the event of a challenge for bias, the Hearings Officer shall respond in a statement of capacity to hearing, which shall be part of the record. The statement shall refer to the challenge and include the reasons why the Hearings Officer has elected to participate or be disqualified.

(a) The statement of capacity to hear shall not be subject to cross examination but shall be subject to rebuttal by the challenging party.

(b) In the event the challenging party offers rebuttal to a statement of capacity to

hear, the Hearings Officer shall be given opportunity to respond and shall state the reasons why the Hearings Officer elects to participate, making specific reference to the facts alleged in rebuttal, or shall disqualify himself or herself and state the reasons therefor.

2. In the event the Hearings Officer has pre-hearing ex parte contact with a party, the Hearings Officer shall disclose the occurrence and the substance of such contact and the persons involved in a statement of capacity to hear. The statement shall also indicate any interest or independent knowledge of the Hearings Officer. The term independent knowledge refers to facts which are not capable of judicial or official notice, are not in the record of the action and are not a matter of general knowledge received by other than public means. The statement shall be made at the beginning of the hearing on the action or at such time during the course of the hearing that the Hearings Officer becomes aware of the existence of an ex parte contact or independent knowledge.

(a) The statement regarding ex parte contact shall be subject to the same Rules as for a Statement of Bias.

3. In the event a Hearings Officer is disqualified, another Hearings Officer shall hear the application. In the event of no quorum, the application will be rescheduled to a future meeting.

SECTION 3. HEARINGS OFFICER ROLE

A. In addition to the responsibilities described above and in County Ordinances, the Hearings Officer shall:

1. Regulate the course and decorum of a hearing;
2. Rule on procedural matters
3. Rule on jurisdictional challenges, pursuant to Section 4 of these Rules;
4. Rule on the relevance of evidence and testimony;
5. Rule on a challenge to the party or witness status of a person seeking recognition to testify or present evidence;
6. Rule on the capacity to participate in a hearing, pursuant to Section 2 of these Rules;
7. Where appropriate, question a party, witness or representative of the Division of Planning and Development;
8. Seek the opinion of Counsel on legal questions pertaining to any matter before the Hearings Officer;
9. Take other action necessary to lawfully conduct a hearing.

SECTION 4. JURISDICTION

The Hearings Officer may take an action only when jurisdiction for such action is granted to the Hearings Officer by County Ordinance or Resolution. If at any time prior to the close of a public hearing on an application objection is made to the jurisdiction of the Hearings Officer, then the Hearings Officer shall conduct an inquiry and resolve the question of jurisdiction or continue the action to a date certain in order to obtain additional information.

A. The Hearings Officer shall order termination of a hearing if it is found that the Hearings Officer lacks jurisdiction to hear the action.

B. An order terminating a hearing pursuant to this Subsection, and the Findings on which the order is based, shall be entered in the record.

SECTION 5. RULES OF EVIDENCE

A. Evidence received at a hearing shall be of the quality that reasonable persons rely on in the conduct of everyday affairs.

B. Irrelevant, immaterial or repetitious testimony or evidence shall not be admitted.

C. If a record is reopened for new evidence or testimony, any party to that record may raise new evidence, testimony or criteria which apply to the matter at issue.

SECTION 6. ORDER OF PROCEDURE

The Hearings Officer shall conduct a hearing in the following order of procedure:

A. Call the session to order

B. Call for the Staff Report relating to actions previously decided, if appropriate

C. Summarize the nature and conduct of the hearing as described in these Rules and explain where the public can obtain copies of the Rules of Procedure and the Agenda

D. Explain the sequence of events to be followed at the hearings as described in Subsections (F) through (O) of this Section;

E. Instruct the audience that only testimony or evidence directed to the approval criteria

will be accepted and that failure to raise an issue with sufficient specificity to afford the Hearings Officer and the parties an opportunity to respond to the issue precludes appeal to LUBA on that issue.

F. Call the first Agenda item and describe the application as follows:

1. The case number(s) of the application(s) to be heard
2. The names of the property owner and applicant
3. The address of the property in question, or, if there is no address, the specific location of the property
4. List the applicable substantive criteria.

G. Present a statement of capacity to hear the action, pursuant to Section 2. of these Rules, as appropriate:

H. Request a representative of the Division of Planning and Development to describe the nature of the proposal, explain any graphic or pictorial displays which are to be part of the record and summarize the Staff Report and Recommendation.

I. Call for the presentation of testimony and evidence by the applicant or applicant's representative.

1. Those testifying in support of an application have ten minutes for all such testimony by the group of proponents/applicants, exclusive of time used by the Hearings Officer for questions. A request for additional time shall be made in writing and shall include a description of the evidence/testimony to be introduced that warrants the additional time. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.
2. Before or at the hearing on an action, the applicant or the applicant's representative or counsel may waive the right to present testimony and evidence, in which case the written application shall be deemed to be the record of the applicant's case, together with material presented pursuant to Subsection (B) of this Section.
3. If there has been no waiver pursuant to this Subsection, and if the applicant fails to appear personally or by representative or counsel, on testimony by the Planning Director or staff that the applicant was duly notified of the hearing, the applicant shall be deemed to have waived his or her privilege of testifying.

J. Allow parties opposing the application to cross-examine parties or witnesses who presented testimony or evidence in favor of the application. A question in cross examination of a party shall be directed in writing to the Hearings Officer, who shall rule on the relevance of the question and, if appropriate, provide an opportunity for the questioned party to respond.

K. Call for the presentation of testimony and evidence by any party in opposition to the application.

1. Those testifying in opposition to an application have ten minutes for all such testimony by the group of proponents/applicants, exclusive of time used by the Hearings Officer for questions. A request for additional time shall be made in writing and shall include a description of the evidence/testimony to be introduced that warrants the additional time. Additional time shall only be granted if the evidence/testimony is not repetitious, irrelevant, or immaterial.
2. Opponents shall be heard in the following order:
  - (a) Persons entitled to receive notice of the hearing pursuant to MCC 11.15.8220(c)
  - (b) Neighborhood association, organizations formed for the purpose of opposition or other groups represented by counsel or other persons
  - (c) Persons not entitled to receive notice of the hearing but who demonstrate to the Hearings Officer that the action may affect a substantial right of those persons.

L. Allow parties favoring the application to cross-examine parties or witnesses who presented testimony or evidence in opposition to the application as provided in Subsection (J) of Section 5. above.

M. Provide opportunity for a representative of the Division of Planning and Development to add to or clarify the factual information presented, subject to cross-examination, as provided in Subsection (J) of Section 5. above.

N. Allow any party favoring the application to rebut testimony and evidence offered by the opposition and provide opportunity for the opposition to respond.

1. The scope and extent of rebuttal shall be determined by the Hearings Officer.

O. Close the public portion of the hearing and announce either the decision, a continuance, or that the matter will be taken under advisement. The Hearings Officer may ask questions of the staff after the public portion of the hearing has been closed.

P. Conduct a hearing on each additional application on the Agenda pursuant to the procedures described in Subsection (E) through (O) of this Section.

## SECTION 7. DECISIONS

A. Except as otherwise provided in this Section, the Hearings Officer shall deliberate and render a decision on an application at the conclusion of the presentation of evidence and testimony on each application.

1. A decision on an application may be made within ten days of the date of the hearing on that application in the event the matter is taken under advisement, provided a decision is filed with the Clerk of the Board of County Commissioners by the close of business not more than ten days after the hearing, as provided in MCC 11.15.8240(C), in which case the Hearings Officer shall so state at the conclusion of the hearing on each application so decided.

B. Any hearing before the Hearings Officer may be continued to a date certain, whereupon a decision on that application shall be rendered or the hearing further continued to a date certain.

1. Any party shall be entitled to a continuance if evidence or documents supporting the application in addition to that contained in the application or Staff Report is provided at the hearing.
2. Unless there is a continuance, a participant at the initial evidentiary hearing on an item may request, and the Hearings Officer shall allow, that the record remain open for at least seven days after that initial hearing.

C. A decision shall include Findings of Fact and Conclusions, based on the record, and procedural or jurisdictional rulings, as necessary. The Hearings Officer may adopt, or modify and adopt, Findings and Conclusions proposed by the Division of Planning and Development or the prevailing party in an action or may direct the staff of the Division of Planning and Development or the prevailing party to prepare other Findings based on the record.

D. Except as otherwise provided in this Section, deliberations and decisions shall be in accordance with Roberts Rules of Order Revised (1971).

## SECTION 8. RECORD OF PROCEEDINGS

A. The proceedings of the Hearings Officer shall be electronically or stenographically recorded.

B. The Hearings Officer shall cause to be received all physical and documentary evidence presented. The evidence shall be marked to show the identity of the offering party and whether presented on behalf of a proponent or opponent of the application.

C. Evidence shall be retained by the Division of Planning and Development on behalf of the Hearings Officer until the action and any appeals are terminated, at which time notice shall be mailed to the person identified thereon that the evidence may be claimed.

1. In the manner provided by ORS 192.105-192.170, the Division of Planning and Development may dispose of physical and documentary evidence not claimed by the person identified thereon sixty days after notice that the evidence may be claimed has been mailed to such person.

## SECTION 9. PUBLICATION OF RULES

These Rules shall be placed on record with the Division of Planning and Development and the Clerk of the Board of County Commissioners and copies shall be available to the public at all hearings of the Hearings Officer.

## SECTION 10. AMENDMENT AND SUSPENSION OF RULES

A. Any Rule of Procedure not required by law, Ordinance or the Charter of Multnomah County, may be amended, suspended or repealed at any hearing by the Hearings Officer as appropriate.

B. A procedural rule may be adopted to regulate a situation not provided for in these Rules or in County Ordinances.

## SECTION 11. RELATIONSHIP WITH COUNTY ORDINANCES

A. These Rules are intended to conform to the provisions of the County Code. Terms which are used herein shall have the same meaning as they have in those Ordinances.

B. Where these Rules are silent on any matter of procedure, the applicable Ordinance provisions shall be given effect as if fully set forth herein.

C. In the event of conflict between a rule as herein set forth and a provision of the applicable Ordinance, the latter provisions shall control.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY

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

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

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

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

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

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


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

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

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



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
\_\_\_\_\_  
Beverly Stein, Chair

REVIEWED:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

  
\_\_\_\_\_  
Sandra N. Duffy, Chief Assistant Counsel

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

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

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

**I. APPLICANT'S REQUEST**

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

**II. HEARING AND RECORD**

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

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

**III. PRELIMINARY ISSUES**

**1. Template Test**

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

Evans  
CU 7-95 HV 17-95  
70056397.1

**RECEIVED**  
JUL 1 1996

Multnomah County  
Zoning Division

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

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

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

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

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

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

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

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

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

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

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

3. Goal 5 Application

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

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

# Memorandum

**To:** Tricia Sears, Planner  
**From:** Scott Okell, PLS No. 2407, Survey Specialist  
**Date:** July 27, 1999  
**Re:** Case File CU 9-98

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Tricia,

This is in response to the request from the Hearings Officer regarding the determination of the position of the 160-acre template in the above case file.

The center of the subject property was determined by the following method:

The bulk of said property consists of a "box" approximately 1307 feet east-west by approximately 1316 feet north-south. The small amount of area cut off of the northeast corner was not taken into consideration. A line was drawn from the midpoint of the north boundary to the midpoint of the south boundary. Another line was drawn from the midpoint of the west boundary to the midpoint of the east boundary. Where these two lines intersect is the center of the "box". This method is also outlined in the Bureau of Land Management's "Manual of Surveying Instructions" as proper procedure to establish the legal center of section.

The subject property also has an access strip 24 feet wide by approximately 540 feet long connecting the northwest corner of the "box" to Trout Creek Road. This "stem" contains approximately 13,000 square feet, which does contribute to the overall area of the property. Since the "stem" is geographically located north of the "box" the center of said "box" was adjusted approximately 10 feet to the (due) north to compensate for the area of this strip. The center was not adjusted in an east-west position since the overriding question is the north-south position. Dividing 13,000 square feet by the east-west width of the property (approximately 1307 feet) arrived at the 10 foot dimension

ENVIRONMENTAL SVCS

Fax: 5038236905

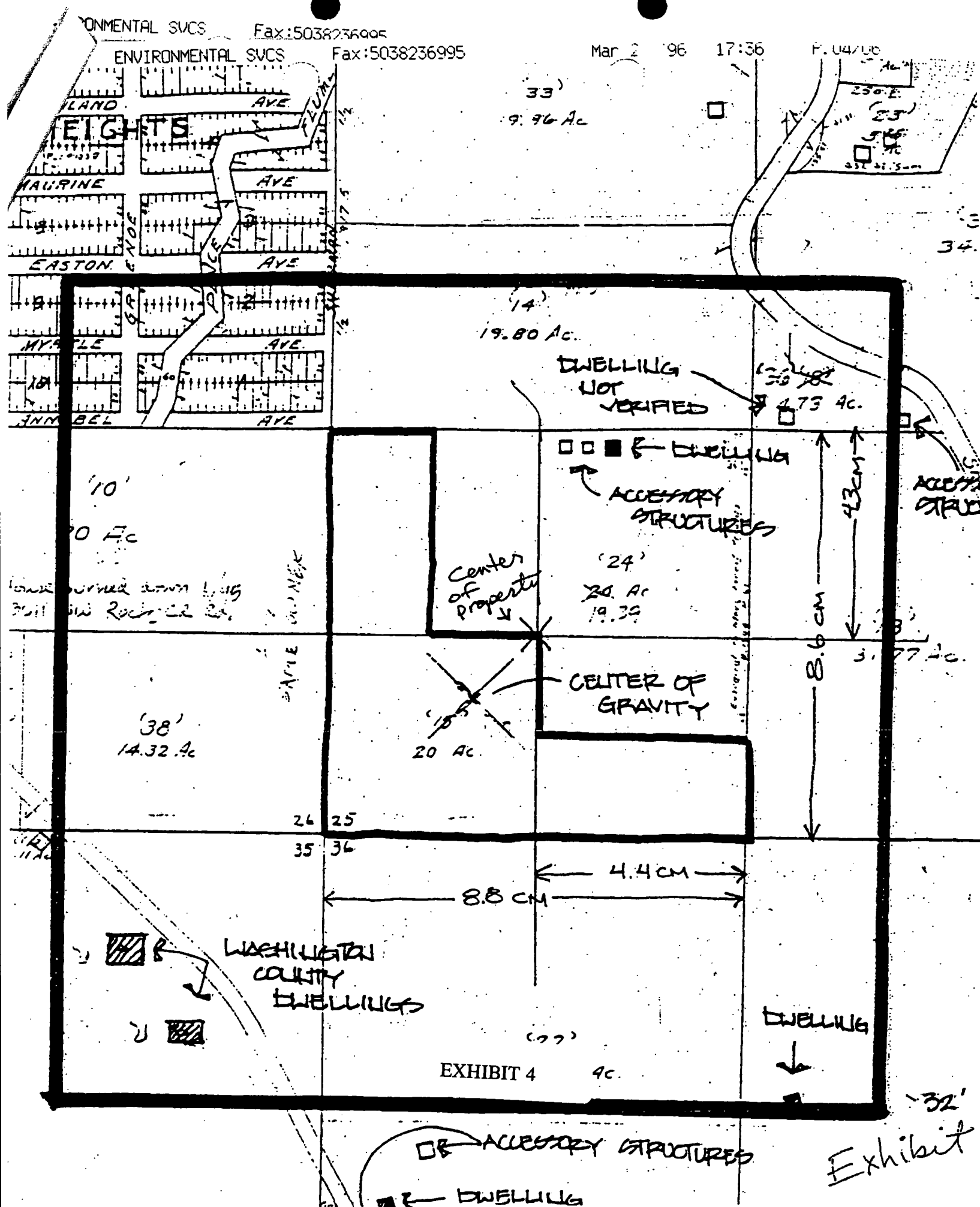
ENVIRONMENTAL SVCS

Fax: 5038236995

Mar 2 '96

17:36

P. 04/06





CITY OF  
**PORTLAND, OREGON**  
BUREAU OF BUILDINGS

1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
(503) 823-7300  
FAX: (503) 823-6983  
TDD: (503) 823-6868

January 28, 1998

ED HANNING  
43205 SE PAGH RD  
SANDY OR 97055

SITE EVALUATION REPORT  
LFS 5-98

In response to your application, a land feasibility study has been conducted to evaluate the site legally described as: TL 14, Sec. 18, 1S 5E, Troutcreek Rd., the purpose of using a subsurface sewage disposal septic tank/drainfield system in accordance with your proposed drainfield location.

Based upon the results of the on-site study, LFS 5-98, and soils studies of the natural soil by Phillip Crawford this site is considered **SUITABLE** for the use of a standard septic tank/drainfield disposal system in compliance with the standards set forth in On-Site Sewage Disposal Rules adopted on April 3, 1995.

The following minimum type and size of the system and absorption area is required:

- a) Serial distribution system.
- b) Septic tanks to serve single family dwellings shall be sized on the number of bedrooms in the dwelling as follows:
  - (I) 1 to 4 bedrooms.....1,000 gallons.
  - (II) 5 or more bedrooms.....1,500 gallons (dosing septic tanks shall be 1,100 gallons).
- c) 100 lineal feet of absorption trench per bedroom for first 3 bedrooms and 50 lineal feet per bedroom for any bedrooms over 3 (system needs to be sized for a minimum of 3 bedrooms).
- d) The drainfield must be a minimum of 100 feet from any well.

This letter does not constitute a permit to install this subsurface sewage system, however, an APPROVED SITE EVALUATION REPORT assures that the property owner will receive a permit to construct a system on that property provided procedures and conditions for permit issuance found in Rule 340-71-160 are met. Please note rule 340-71-160 (3)(A) requires an approved land-use compatibility statement from the local land-use authority. A scaled site plan submitted by owner or licensed installer is required.

Sincerely,

*Phillip Crawford*

Phillip Crawford, RS  
Environmental Soils Inspector

*To: Greg Rosen*  
*from*  
*SAT*

PC:lln



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF BUILDINGS

Margaret M. Mahoney, Director  
1120 S.W. 5th Avenue  
Portland, Oregon 97204-1992  
Mailing Address: P.O. Box 8120  
Portland, Oregon 97207-8120  
796-7790 (503) 796-7300

TO WHOM IT MAY CONCERN

SUBJECT: SITE PLAN INSTRUCTIONS

Based upon the results of a Land Feasibility Study (LFS: 5-98) your parcel of land has been found suitable for the installation of a subsurface sewage disposal system.

Your next procedure is to prepare or have prepared a site plan in accordance with the following:

A site plot plan drawn to scale completely dimensioned, showing a "birds eye view" of the house, septic tank and drainfield piping, or other approved treatment and distribution units; with an equal area replacement site for the subsurface sewage disposal system. The site plan should show the direction and approximate degree of slope in the drainfield area. This site plan should also include the location of all present or proposed retaining walls, drainage channels, water supply lines or wells, paved areas and structures on the plot, roof and footing drains, with an indication of the number of bedrooms or plumbing fixtures in each structure.

The prepared site plan should be submitted to the Environmental Soils Section in conjunction with the application for a building permit and/or a permit to install the above mentioned system. Permits cannot be issued until the site plan is approved.

NOTE: If this property is sold or transferred to a new owner please furnish the new owner with a copy of your approved Land Feasibility Study and this Site Plan Instruction sheet.

RE: ON-SITE DISPOSAL RULES of September 16, 1986

Brehoney

# MEMORY TRANSMISSION REPORT

TIME : 07-28-99 04:30PM  
TEL NUMBER1: 5032202480  
TEL NUMBER2:  
NAME : STOEL RIVES PDX

FILE NUMBER : 719  
DATE : 07-28 04:13PM  
TO : 52483389  
DOCUMENT PAGES : 24  
START TIME : 07-28 04:13PM  
END TIME : 07-28 04:30PM  
SENT PAGES : 24  
FILE NUMBER : 719

\*\*\* SUCCESSFUL TX NOTICE \*\*\*

23  
STOEL RIVES LLP  
ATTORNEYS  
STANDARD INSURANCE CENTER  
900 SW FIFTH AVENUE, SUITE 2600  
PORTLAND, OREGON 97204-1268  
Telephone (503) 224-3380  
Fax (503) 220-2480

Name:	Fax No.	Company/Firm:	Office No.
TO: Tricia R. Sears	248-3389	Multnomah County	248-3043
Name:	Sender's Direct Dial:		
FROM: Michael C. Robinson	(503) 294-9194		
Client:	Matter:		

DATE: July 28, 1999

No. of Pages (including this cover): 24

Originals Not Forwarded Unless Checked: ☐ First Class Mail ☐ Overnight Delivery ☐ Hand Delivery

In case of error call the fax operator at (503) 294-9508.

*This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. If the reader of this message is not the intended recipient or an employee responsible for delivering the facsimile, please do not distribute this facsimile, notify us immediately by telephone, and return this facsimile by mail. Thank you.*

COMMENTS: Please see attached.

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

ORDER NO. 99-211

Upholding the Hearings Officer Decision denying CU 9-98.

**The Multnomah County Board of Commissioners Finds:**

- a. On August 18, 1999 the Multnomah County Hearings Officer denied the Conditional Use, CU 9-98, for the request for a single-family dwelling (template dwelling) in the Commercial Forest Zone (CFU-4) for the subject property.
- b. On October 21, 1999, the Multnomah County Board of Commissioners held a De Novo Hearing regarding the appeal of the Hearings Officer's Decision denying CU 9-98.
- c. The concluding statement in MCC 11.15.2074 (C)(2) of the Hearings Officer Decision (page 24 of 38) issued on August 18, 1999 incorrectly states, "The application does not meet the criterion." The word "not" is a typo.

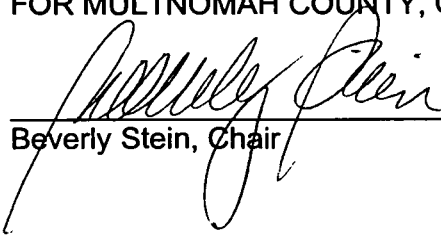
**The Multnomah County Board of Commissioners Orders:**

1. The Hearings Officer's findings of fact and conclusions in the decision dated August 18, 1999 denying the Conditional Use, CU 9-98, are hereby UPHELD and AFFIRMED, except that the concluding statement in MCC 11.15.2074(C)(2) of the Hearings Officer Decision (page 24 of 38) is modified to state "The application does meet the criterion."
2. The findings of fact and conclusions in the Staff Report issued April 14, 1999 are AFFIRMED and ADOPTED by reference as specified in the Hearings Officer's Decision issued August 18, 1999.

APPROVED this 28th day of October, 1999.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

  
Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

By:   
Jeffrey B. Litwak, Assistant County Counsel

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

Regarding a request for a Conditional )  
Use Permit by Carson Linker for a single )  
family template dwelling )  
)

**FINAL ORDER**  
**CU 9-98**  
**(Linker )**

**WHAT:** The applicant is applying for a Conditional Use Permit to establish a Template Dwelling on the existing vacant parcel. The Trout Creek North Branch stream runs through the subject parcel; the stream is designated as a significant stream under the East of Sandy River Rural Area Plan.

**WHERE:** 40200 SE Trout Creek Road.  
Tax Lot 14, Section 18, T1S, R5E, W.M. (R#99518-0140).

**APPLICANT/  
PROPERTY OWNER:** Carson Linker  
746 NE Sumner Street  
Portland, OR 97211

**PLAN DESIGNATION:** Community Forestry Use

**ZONING** Community Forestry Use (CFU-4)

**SIZE:** 39.73 acres

**HEARINGS OFFICER  
DECISION** Deny the request for conditional use to establish a template dwelling on the parcel because the parcel does not meet the template dwelling requirement that five dwellings exist within a 160-acre square centered on the center of the parcel.

## **I. HEARINGS AND RECORD**

1. A public hearing concerning this application was held on April 21, 1999. That hearing was continued to May 19, 1999. Before the May 19, 1999 hearing, the applicant requested a continuance. On May 19, 1999, the Hearings Officer in a telephonic hearing, continued the hearing to July 21, 1999. After the July 21, 1999 hearing the record was left open for 21 days. The written record was closed on August 4, 1999.
2. The exhibits listed in the staff report and submitted during the hearing process were reviewed by the Hearings Officer and received in reference to this application. A list of the exhibits is included at the end of this decision.
3. At the hearings, Tricia Sears, Multnomah County Planner, testified for the county, summarized the history of the application and her staff report. Ms. Sears entered Exhibits H1 through H6 into evidence. The primary issue in this application is whether there are five dwellings within the 160-acre square template centered on the property. According to the survey prepared by the County's staff by a registered surveyor the fifth dwelling is located forty feet outside the 160-acre square template. Ms. Sears noted that the County staff's survey included the stem or pole of the flag lot in determining the center of the center of the parcel.
4. Michael Robinson, attorney representing the applicant, entered exhibits H7 through H10 into evidence. He noted that the applicant had provided a written agreement to extend the 150-day period within which the County must make a decision to January 1, 2000. Exhibit H5. Mr. Robinson summarized the points in his letter to Tricia Sears, dated July 21, 1999. Exhibit H7.
5. Phil Bourquin, County Planner, provided a copy of Evans v. Mult. Co. Which he said represented a precedential decision by the Board of County Commissioners concerning how to interpret "center of the center of the subject tract" for purposes of template dwelling applications.
6. At the conclusion of the Hearing the Hearings Officer left the record open for receipt of additional information concerning the differences in the applicant's and the staff's location of the center of the center of the tract. The continuance was for a seven-day period for all parties, including a response from the surveyors, followed by seven days for all parties to respond and concluding with seven days for the applicant to rebut testimony or argument.

## II. BACKGROUND

The former owner of the parcel, SHT, Inc. represented by Ed Hanning, had a pre application conference with the County staff to discuss an application for a proposed template dwelling on May 27, 1998 (PA 16-98). The current owner, Carson Linker, used Mr. Hanning's Pre-Application Meeting narrative when he filed this application on September 23, 1998. Mr. Linker submitted an "Amendment to Application" letter on January 11, 1999 in response to a letter of incompleteness from Staff dated October 20, 1998.

The applicant parcel is located outside the Urban Growth Boundary of the City of Portland, on Trout Creek Road. The site has historically been used for timber production. The parcel has recently been reforested. Exhibit A1 is a site plan of the applicant parcel, denoting all property lines with dimensions, locations of buildings, abutting right-of-way, location and width of the proposed driveway, topography, and drainage. The parcel is not on the County "Slope Hazard Map."

Exhibit A7 is a vicinity map, showing approximate locations of surrounding buildings. The vicinity of the proposed dwelling is characterized by dwellings on parcels ranging in size from 3.00 acres to 80.00 acres. Activities on the parcels include forestry, farming, and general residential use.

The subject parcel is 39.73 acres in size and zoned Commercial Forest Use (CFU-4). The applicant proposes to establish a single-family dwelling on the existing, vacant parcel. The subject parcel is located outside of the Urban Growth Boundary (UGB) and is located on the south side of Trout Creek Road. The subject parcel is a flag lot, fronting on Trout Creek Road for 26.01 feet according to the Record of Survey dated May 12, 1988. The distance from Trout Creek Road to the main body of the parcel is 511.02 feet according to the Record of Survey dated May 12, 1988 for the subject parcel.

## I. CRITERIA AND FINDINGS

### A. SUMMARY OF APPLICABLE CRITERIA

#### Zoning Ordinance Requirements:

MCC 11.ES.2042 – Community Forest Use (CFU-4)

#### Comprehensive Plan Policies:

- 11 Commercial Forest Land
- 13 Air, Water and Noise Quality
- 14 Developmental Limitations

Hearings Officer Decision  
August 18, 1999

CU 9-98 (Carson Linker)  
Page 3 of 38

22	Energy Conservation
37	Utilities
38	Facilities
40	Development Requirements

East of Sandy River Rural Area Plan, Policy 21, 150-foot buffers from a significant stream to a proposed development

## **B. APPLICABLE MULTNOMAH COUNTY CODE PROVISIONS**

### **Commercial Forest Use (CFU-4)**

#### **11.ES.2042 Purposes**

The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

#### **11.ES.2050 Conditional Uses**

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

\* \* \*

- (B) A Template Dwelling pursuant to the provisions of MCC .2052 (A), .2053 (B) and .2074.**

\* \* \*

Findings and Conclusion. This application is based on the Template Dwelling provisions. The required sections of MCC .2052 and .2074 are addressed below. The appropriate application process to establish a single-family residence in the CFU zone is through the Conditional Use application for a Template Dwelling. The applicant has made the correct application. However, as discussed below, the application does not meet the Template Dwelling test criterion

in 11.ES.2052(A)(3)(c)(ii) that at least five dwellings exist within a 160-acre square template centered on the center of the subject tract.

### **11.ES.2052 Template and Heritage Tract Dwellings**

**(A) A template dwelling may be sited on a tract, subject to the following:**

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

Findings and Conclusions. Section MCC 11.ES.2062 is discussed below where the Hearings Officer concludes that the parcel meets the lot of record requirements. The subject parcel, in its current size and configuration, was created prior to January 25, 1990 according to Multnomah County Sectional Zoning Maps and Exempt Minor Partition case file EMP 5-19-88. The application meets the criterion.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075, as applicable;**

Findings and Conclusion. The site map provided by the applicant (Exhibit A1) shows the location of the proposed single-family residence on the subject parcel. The proposed location of the house meets the required front, rear, and side yard setback requirements of the CFU-4 zone. The application meets the criterion.

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

\* \* \*

- (c) The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and**

Findings and Conclusions. The applicant provided a copy of the soil map from the Multnomah County Soil Survey. The soil types on the site are 9B, 9C, 9D, and 9E. Type 9B, 9C, 9D, 9E are Cazadero silty clay loam, with a Douglas Fir site index of 165. Based on the site index of the soils on the parcel, the parcel is capable of producing 11,775 cubic feet of Douglas Fir.

- (i) **The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and**
- (ii) **At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.**

**Findings and Conclusions.** At issue is the appropriate method for determining the "center of the center of the subject tract." The County staff used two methodologies, the 'center of gravity' method and the 'pin point' (or 'balance point') method. In the center of gravity method the shapes of an irregular parcel are divided, the center of each piece is found, and then the average of those centers is found, weighted by the average of each piece. Here, the center of gravity of the flag of the flag lot and the center of gravity of the pole of the flag lot were determined and then the center of the parcel was adjusted considering the two areas. In the pin point (or balance point) method the subject parcel was plotted, printed on paper, cut to size and then balanced on a point to determine the center point of the property. Each of these methods resulted in locating the center of the center of the property at the same point. The result of the County's calculations are shown on Exhibit H1.

The applicant's methodology involved locating the center by drawing two intersecting diagonal lines from the extreme corners of the parcel, including the stem or pole of the flag lot and adjusting the point of intersection of the two lines so that the halves of each line are equidistant. The result of the applicant's calculations is shown on Exhibit H9.

The method used by the applicant locates the center of the parcel significantly more to the northwest than the method used by the County staff. The result of shifting the center of the center of the property to the north under the applicant's methodology is that a fifth existing dwelling falls within the applicant's template that does not fall within the Staff's template.

During the public hearing on July 21, 1999, Staff referred to a prior case at Multnomah County that involved a question regarding the determination of the center of the center of a parcel. Case files CU 7-95/HV 17-95, for a template dwelling in the Commercial Forest Use (CFU) zone. Staff submitted the Hearings Officer's findings on those cases and the Board of County Commissioners' Final Order 96-177 as Exhibit 12. The Hearings Officer's findings on those cases were supported by the Board Order on appeal, including findings that the subject parcel did not meet the template dwelling test criteria. Multnomah County staff has followed these cases as precedent regarding the applicability of the "pin test" or the "center of gravity test" for determining the center of the center of a parcel.

An issue in that case, as here, was the interpretation of the term "centered on the center of the subject tract" for purposes of applying the template test in OAR 660-06-027 and MCC 11.ES.2052(A)(3)(i). The Hearings Officer found that the so called "center of gravity" test, used by the County as a method for determining the center of the template, was a reasonable interpretation of the "center of the center" test for purposes of the County Ordinance and OAR 660-06-027. The Hearings Officer stated:

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

The analysis of Mr. Matthew A. Rochlin is included in the record as enclosure 4 to Exhibit H14.

According to a memorandum from Scott Okell, PLS, dated July 27, 1999, the County Staff determined the center of the subject property consistent with the precedent established in CU 7-95/HV 17-95, by the following method:

"The bulk of said property consists of a "box" approximately 1307 feet east-west by approximately 1316 feet north-south. The small amount of area cut off of the northeast corner was not taken into consideration. A line was drawn from the midpoint of the north boundary to the midpoint of the south boundary. Another line was drawn from the midpoint of the west boundary to the midpoint of the east boundary. Where these two lines intersect is the center of the "box". This method is also outlined in the Bureau of Land Management's "manual of Surveying Instructions" as property procedure to establish the legal center of section.

"The subject property also has an access strip 24 feet wide by approximately 540 feet long connecting the northwest corner of the "box" to Trout Creek Road. This "stem" contains approximately 13,000 square feet, which does contribute to the overall area of the property. Since the "stem" is geographically located north of the "box" the center of said "box" was adjusted approximately 10 feet to the (due) north to compensate for the are of this strip. The center was not adjusted in an east-west position since the overriding question is the north-south position. Dividing 13,000 square feet by the east-west width of the property (approximately 1307 feet) arrived at the 10 foot dimension."

In addition, the staff performed the "pin test" on the subject parcel. In the pin test Scott Okell, PLS, plotted the subject parcel to scale and printed the parcel. The subject parcel was cut to size

and then balanced on a pin to determine the center point of the property. The property's center point is marked on the cutout parcel piece and matches the plotted survey provided by Okell and marked as Exhibit H1 at the public hearing.

The applicant's registered land surveyor, Dale Hult of All County Surveying, revised the applicant's template map. Exhibit H9, oversized mounted map. Mr. Hult determined that the center of the line is established by locating the point of intersection of two lines drawn from the northwest to the south east extreme property lines and from the northeast to the southwest property lines, including the pole or stem of the flag lot. In support of this method the applicant submitted a copy of dictionary definitions of "center" which states:

"1. The point equidistant or at the average distance from the exterior points of a circle, sphere, or other geometric figure . . . "

The applicant also submitted a letter from Dale L. Hult, dated May 14, 1999 in which Mr. Hult stated:

"I have calculated the center point of the Tax Lot #14, also known as 40200 SE Trout Creek Road. This is determined by an equal distant from extreme property corners. Previously the center point was inaccurately identified because the odd area associated with the deeded access off Trout Creek Rd. was not taken into consideration. The property lines have been identified and marked for your edification. I have drawn on the template, which is perpendicular and parallel to the section lines per the template test requirements."

The applicant's surveyor calculated the center for this lot by including the lot stem connecting the main body of the lot to Trout Creek Road. The applicant notes that the MCC does not include a definition of "center" and argues that his surveyor's definition of the center is not contrary to any express language contained in the MCC. The applicant's attorney, Michael Robinson, argued in a letter to the Hearings Officer dated August 11, 1999 that the applicant's method is more reasonable than the staff's method for two reasons. "First, it does not require a complicated mathematical formula nor does it require a test that not all parties can be privy to. Moreover, it is clear that the applicant relied on the entire tract of land. It is also clear that the County's surveyor did not include the entire tract." In addition, Mr. Robinson argued that no precedent was created by the Board's Order in case file No. CU 7-95 (Board Order 96-177).

The Hearings Officer has not been cited to any reported opinion which addresses how the "center of the center of the subject tract" should be determined under state law. In her own research the Hearings Officer has found none. As the Hearings Officer has already stated, both the applicant's and the staff's methods take the pole of the flag lot into account. The Hearings Officer concludes that the staff's method is more reasonable for determining the center of the center of the property than is the applicant's. The staff's method considers only the subject

parcel to find the center whereas the applicant's method considers other parcels between the extreme property line of the subject parcel and its inner property lines. The fact that another Hearings Officer and the Board have previously considered this issue and found the staff's method to be reasonable adds further weight to the Hearings Officer's conclusion.

The applicant is required by subsection (i) to establish that "all or part of 11 lawfully created lots existed on January 1, 1993 within 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines." Under both the staff's and the applicant's methodologies, the Tax Assessor's Map (Exhibit H10) shows the following other parcels fall within the 160-acre square:

<u>Parcel</u>	<u>Section, Township, Range</u>
Tax Lot 18	18 1S5E
Tax Lot 19	18 1S5E
Tax Lot 20	18 1S 5E
Tax Lot 21	18 1S 5E
Tax Lot 22	18 1S 5E
Tax Lot 41	18 1S 5E
Tax Lot 50	18 1S 5E
Tax Lot 14 of Government Lot 4	19 1S5E
Tax Lot 19	19 1S5E
Tax Lot 21	19 1S5E
Tax Lot 13	13 1S4E
Tax Lot 2	13 1S4E

Although the record lacks documentary evidence concerning whether any of these 12 parcels were lawfully created before January 1, 1993, the staff report states that "there are at least all or part of 11 lawfully created lots that existed on January 1, 1993 within 160-acre square." The staff's statement of fact is not disputed. Consequently, the Hearings Officer concludes that the applicant meets this requirement.

The applicant is required by subsection (ii) to show "at least five dwellings lawfully existed on January 1, 1993 within the 160-acre square." The applicant provided a map of the 160-acre area (Exhibit A7 and revised map Exhibit H9). This map is composed of an aerial photograph overlaid with an Assessment and Taxation (A & T) map of the same area prepared by a State of Oregon surveyor, Dale Hult. Exhibit A6 illustrates the year-built date of each of the dwellings identified for inclusion in the Template Dwelling test. The applicant identified the following dwellings for the Template Dwelling test:

<u>House # on Map</u>	<u>Tax Lot #</u>	<u>Year Built</u>
1	41	1979
2	22	1978
3	20	1974
4	18	1975
5	19	1975
6	21	1986

The applicant originally included a second dwelling on Tax Lot 21 Section 18 1S5E. Multnomah County records (assessment and Taxation, land use cards, building permits, and land use maps) do not show a second dwelling on Tax Lot 21. Section .2052 establishes that a structure must lawfully exist to count for the template dwelling test. If a second dwelling exists on Tax Lot 21, the County finds that the dwelling does not lawfully exist. Based on the applicant's revised map (Exhibit H9), the house on Tax Lot 18 is directly on the north boundary line of the 160-acre area of the Template Dwelling test. Without deciding whether that dwelling qualifies to be counted for the Template Dwelling test, under the applicant's method of calculating the center of the center of the parcel, there are at least five dwellings within the 160-acre square.

Under the County staff's method, two of these six dwellings are located outside of the 160-acre square: the dwellings on Tax Lots 18 and 19. The difference in the County Staff's evidence and the applicant's evidence on whether there are five dwellings within the template rests on the method for determining the center of this flag lot. The Hearings Officer has concluded the staff's method is more reasonable. Based on the staff's method the Hearings Officer concludes that there are only four, not the required five, dwellings within the 160-acre square. Consequently, this criterion is not satisfied.

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

Findings and Conclusion. The parcels the applicant used to try to meet the Template Dwelling test are outside of the Urban Growth Boundary (UGB). This criterion is met.

- (e) **There is no other dwelling on the tract,**

Findings and Conclusion. The subject parcel is vacant land. No dwellings exist on the parcel. This criterion is met.

- (f) **No other dwellings are allowed on other lots (or parcels) that make up the tract;**

**Findings and Conclusion.** The subject parcel is not part of a tract. The subject parcel is vacant, the applicant proposes to construct one single-family dwelling for the subject parcel. The applicant meets this criterion.

- (g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and

**Findings and Conclusion.** This application is not for a replacement dwelling. The applicant's parcel is not part of a tract. The applicant meets this criterion.

- (h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;

**Finding and Conclusion.** The subject parcel is not part of a tract. The applicant meets this criterion.

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

**Finding and Conclusion.** The subject parcel is not located on the Multnomah County Big Game Winter Habitat Map. The criterion is not applicable.

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

**Finding and Conclusion.** The subject parcel accesses Trout Creek Road. The criterion is not applicable.

- (6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:

- (a) **The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;**
- (b) **The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;**
- (c) **Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;**

Finding and Conclusion. The applicant submitted a letter from Jeff Hepler, Forest Practices Forester, of the Oregon Department of Forestry. The letter from Mr. Hepler, dated April 8, 1998, states the parcel owned by the "SHT Group...has been planted with appropriate seedling[s] to meet the requirements of the Forest Practices Act."

Carson Linker submitted the following narrative statement on January 11, 1999 in response to Comprehensive Plan Policy #11:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the lands back to its healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The Code provision in (6) states that a "condition of approval" on a decision document will be written to ensure that the applicant provides documentation to the County that the subject parcel will meet the Department of Forestry requirements. This criterion can be satisfied by the

imposition of a condition. These criteria could be met by compliance with a condition of approval.

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

Finding and Conclusion. See Findings and Conclusions under Section .2074 below. The development standards of Section .2074 are either satisfied or could be satisfied by conditions of approval.

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

Finding and Conclusion. The applicant stated that he was willing to record with the Multnomah County Division of Records the required statement that acknowledges the rights of owners of nearby property to conduct their forest operations consistent with the Oregon Forest Practices Act and administrative rules and to conduct accepted farming practices. It is feasible to satisfy this criterion by a condition of approval.

- (9) Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**
- (a) The covenants, conditions and restrictions shall specify that:**
- (i) All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**
- (ii) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**
- (b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**

- (c) **Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December 1995).**

**Finding and Conclusion.** The subject tax lot is a Lot of Record. It is not part of a tract. No covenant or restriction as described above is required to be submitted by the applicant to Multnomah County.

#### **11.ES.2058 Dimensional Requirements**

- (A) **Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.**

**Finding and Conclusion.** The subject parcel is 39.73 acres in size and does not meet the 80-acre minimum lot size requirement for the CFU zone. Section .2062 is addressed below. The applicant meets an exception to this criterion.

- (B) **That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

- (C) **Minimum Yard Dimensions - Feet:**
- | Frontage on<br>County Main-<br>tained Road | Other Side | Rear |
|--|------------|------|
|--|------------|------|

60 from centerline	130	130	130
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**Maximum Structure Height - 35 feet**

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

**Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.ES.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.ES.2074 (A)(5)(c)(ii).**

**Finding and Conclusion.** The applicant's site plan, Exhibit A1, shows the proposed location of the dwelling on the parcel. The site of the proposed dwelling on the subject parcel meets the front, rear, and side yard setback requirements of the CFU zone. The proposed dwelling is more than 60 feet from the centerline of the county-maintained road, the side yards are more than 200 feet, and the rear yard is more than 200 feet. The front lot line length is more than 50 feet. The

applicant has submitted elevation drawings of the proposed structure that show the dwelling does not exceed the 35-foot height limit of the CFU-4 zone. No variances are requested. The applicant meets the required setback dimensions.

- (E) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by this ordinance.

Finding and Conclusion. There is not evidence that Trout Creek Road lacks sufficient right-of-way width. This criterion does not apply.

- (F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Finding and Conclusion. The applicant's proposed development on the subject parcel is for a single-family residence. No barns, silos, windmills, or other structures are proposed with this application. However, if they were, this section of MCC .2058 allows the listed structures to exceed the height requirements.

- (G) Yards for the alteration, replacement or restoration of dwellings under MCC .2048 (D), .2048 (E) and .2049 (B) need not satisfy the development standards of MCC .2074 if originally legally established to a lesser standard than that required by MCC .2074, but in no case shall they be less than those originally established.

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

- (H) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC .2048 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .22074 (A)(5)(c)(ii).

Findings and Conclusions. The proposed dwelling is a new dwelling. This criterion does not apply.

#### 11.ES.2062 Lot of Record

- (A) For the purposes of this district, a Lot of Record is

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**(2) A parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**
- (b) Which satisfied all applicable laws when the parcel was created;**
- (c) Does not meet the minimum lot size requirements of MCC .2058; and**
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or**

**Finding and Conclusion.** A tract is defined in MCC 11.15.2045 as one or more contiguous Lots of Record, pursuant to MCC .2062, in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract. The record shows this parcel contains 39.73 acres and was deeded and recorded in book 1922, page 2097 in 1986. The subject parcel obtained its current size and configuration as a result of an Exempt Minor Partition dated July 1986. Therefore, the parcel met applicable laws when created. The applicant has submitted a deed that corresponds to the size and configuration of the lot as created in 1986.

The applicant parcel is 39.73 acres; therefore, the minimum lot size requirements of MCC .2058 are not met. There are currently no contiguous tracts under identical ownership; therefore, this parcel is not part of a tract. Consequently, this parcel meets the requirements of this subsection. The applicant's parcel is a lot of record, as it was lawfully created before January 25, 1990. As a lot of record, this parcel qualifies pursuant to MCC .2062 as an exception to the requirements of MCC .2058. Since the lot size is less than 80 acres, the applicant is required to apply for a conditional use permit for a template dwelling.

**(B) For the purposes of this subsection:**

- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;**

- (2) **Substandard Parcel** refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
  - (3) **Same Ownership** refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.
- (C) **A Lot of Record** which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.

**Finding and Conclusion.** The subject parcel is not contiguous to any other parcel in the same ownership. The parcel is a substandard parcel because it contains less than the minimum 80 acres required in this zone. The parcel is a Lot of Record. The parcel has less than the minimum front lot line frontage to a public road. Under this Code provision, a template dwelling may be allowed so long as other applicable requirements have been met or will be complied with through conditions of approval.

#### **11.ES.2074 Development Standards for Dwellings and Structures**

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

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

**Finding and Conclusion.** Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will occur.

The proposed dwelling is at least two hundred (200) feet from all property lines. In correspondence dated February 28, 1990, ODF suggests that a 200-foot setback is typically effective in preventing serious conflicts between residential and forest uses. The proposed building site takes advantage of the site on the parcel that meets the required setbacks of at least sixty (60) feet from the road and 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while meeting the required setbacks. Section .2058 is addressed above. The site plan and narrative materials submitted by

the applicant show the setback requirements of Section .2058 (C) though (G) have been met. The applicant for CU 9-98, Carson Linker writes, "The rehabilitation of the land is of the utmost importance and shall take the highest priority...The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. The applicant's proposed structure would have minimum impact to nearby forest or agricultural lands. The application meets the criterion.

**(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Finding and Conclusion. The applicant's site plan shows the proposed dwelling to be located in the northwest corner of the property, very near (while still meeting setback requirements) where the long flag entrance portion of the parcel meets the main portion of the parcel. Only normal residential activities will be associated with the dwelling. The adverse impacts on the forest operations are minimized by siting the dwelling in a corner of the parcel nearest its access. The amount of forest land used to site access roads, service corridors, the dwelling, and structure is minimized.

The parcel was recent replanted with Douglas Fir trees. The subject parcel has a Forest Management Plan. Accepted forestry practices will not be curtailed nor impeded by the dwelling.

The application meets the criterion to minimize adverse impacts to the forest and farming practices on the site by establishing the appropriate setbacks for the site and by describing the compatibility of the proposed use with the surrounding area.

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

Finding and Conclusion. The required setbacks are met by the location of the proposed dwelling but not significantly exceeded. The access road is the "pole" of the flag lot plus approximately 150 feet to reach the dwelling site. The amount of land for the access is minimal, considering the shape of the parcel and the setback requirements. The application meets the criterion.

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

**Finding and Conclusion.** The site plan illustrates the driveway distance would be more than 500 feet from Trout Creek Road to the subject parcel. The applicant did not indicate the location of the driveway on the site plan. The driveway would follow the flag portion of the lot which extends, according to the Record of Survey dated May 12, 1988, 511 feet to Trout Creek Road and then extends an additional 150 feet to the proposed dwelling. The proposed development is subject to setback requirements of 130 feet from the property line. The applicant's site plan shows the location of the proposed dwelling is set away from the property line slightly more than the required setback. The flag portion of the lot is not an adequate site to meet the required property setbacks for the CFU-4 zone. The application meets the criterion.

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

**(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

**Finding and Conclusion.** The proposed dwelling is located within the Corbett RFPD #14. The applicant has provided a completed Fire District Review form (from PA 16-98) that says that the source of water for fire suppression will be provided by tankers and that the volume of water depends on the fire suppression needs. The fire District's Aims Fire Station is within five miles of the property. The station has two pieces of equipment with a total of 4,000 gallons of water capacity: a tanker that carries 3,000 gallons and a pumper that carries 1,000 gallons. The pumper can be used to withdraw water from Trout Creek North Branch which is located approximately 260 feet south of the proposed dwelling site. In addition, the Fire District has mutual response agreements with surrounding fire districts. The application meets the criterion.

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

**Finding and Conclusion.** This criterion requires access for a pumping fire truck to within 15 feet of any perennial water source on the lot. This criterion also requires that the access to the perennial water source meet the driveway standards of MCC .2074(D). The north branch of Trout Creek crosses east west through the center of the parcel. The record does not contain evidence concerning whether this is a perennial stream. The Hearings Officer assumes that it is.

The applicant has provided a letter from Eugene Smith, a Registered Professional Engineer, of All County Surveyors and Planners, Inc., dated August 4, 1998, to try to illustrate compliance for the driveway standards applicable to the access to a perennial stream. Smith states that the

driveway "will need approximately 12" of base rock to make it suitable for 52,000 lb. GVW loads."

If the stream is a perennial water source, it is feasible to construct a driveway to the stream meeting the driveway standards of MCC 11.15.2074(D). Compliance with this criterion can be assured by the imposition of a condition of approval.

(c) **Maintenance of a primary and a secondary fire safety zone on the subject tract.**

- (i) **A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.**
- (ii) **On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

<b>Percent Slope In Feet</b>	<b><u>Distance</u></b>
<b>Less than 10</b>	<b>Not required</b>
<b>Less than 20</b>	<b>50</b>
<b>Less than 25</b>	<b>75</b>
<b>Less than 40</b>	<b>100</b>

**Finding and Conclusion.** This criterion requires that the applicant maintain primary and secondary fire safety zones on the tract. The primary fire safety zone is to be a minimum of 30 feet in all directions. The applicant can satisfy a condition of approval requiring those trees within the safety zones be spaced with more than 15 feet between the crowns, that they be pruned to remove low branches within eight feet of the ground at the maturity of the tree and accepted silvicultural practices may allow and that all other vegetation be kept less than two feet in height.

If the slope around the dwelling is 20% or less, the primary zone increases to 50 feet and if the slope is less than 40%, a primary zone of 100 feet is required. The applicant does not provide slope information in sufficient detail to determine the slopes at the building site. The topographic information submitted as Exhibit 3, an attachment to Exhibit H7, only shows

topographic lines at 40 foot intervals. According to the soils survey map, the soils around the proposed dwelling are soil types 9B and 9C. 9B soils have 0 to 6 percent slopes and 9C soils have 8 to 15 percent slopes. This suggests that a primary fire zone of 50 feet may be required. Nonetheless, even if the maximum 100 feet were required for the primary fire zone, the maximum primary plus a secondary fire zone that may be required is 200 total feet and the dwelling is proposed to be set back from the north property line 200 feet and from the west property line 300 feet. Therefore, it is possible to comply with both the primary and secondary fire safety zone requirements. Compliance with the criterion could be assured by imposing a condition of approval.

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.ES.2058 (D) and .2075.

Finding and Conclusion. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowing would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads," dated March 1, 1991 and published by the Oregon Department of Forestry, the required secondary fire zone could be satisfied by compliance with a condition of approval.

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

- (v) **Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).**

Finding and Conclusion. The subject parcel is under a Forest Management Plan. The subject parcel is identified on the Multnomah County Assessment and Taxation records as a deferral account. The subject parcel is large enough, and the proposed dwelling is located on the site plan such that the primary and secondary fire safety zones could be accommodated on the subject parcel. The application could meet the criterion.

- (d) **The building site must have a slope less than 40 percent.**

Finding and Conclusion. This criterion requires that the building site have a slope of less than 40 percent. The applicant has not specifically provided documentation to verify that this criterion is satisfied. As already noted, the soil types around the proposed dwelling indicate the dwelling site has slopes less than 15 percent. This criterion has been met.

- (B) **The dwelling shall:**

- (1) **Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

Finding and Conclusion. The applicant's proposed dwelling shall comply with this criterion. The items in (1) through (5) would be verified at the time of building permit review,

- (2) **If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

Finding and Conclusion. According to the materials submitted by the applicant the proposed dwelling will be greater than 600 square feet in size and attached to a foundation. Building permits cannot be obtained until land use approval is received for the proposed development.

- (3) **[sic]**
- (4) **Have a fire retardant roof; and**
- (5) **Have a spark arrestor on each chimney.**

Finding and Conclusion. The applicant has stated that the dwelling will have a fire-retardant roof and a spark arrestor on each chimney. It is feasible to do so because the fire-retardant roof simply requires appropriate roofing materials and the installation of a spark arrestor. Typically

these requirements are verified at the time of submittal of the building permits. Compliance with these criteria can be assured by imposition of a condition of approval.

**(C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

**(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

Finding and Conclusion. These criteria require that the applicant provide evidence that the domestic water supply is from a groundwater or surface water source and not from a Class II stream, and that a water use permit is not required for the proposed dwelling. According to the applicant, a well for this property will be drilled on the subject property after the land use approval, at the building permit stage.

According to the Certification of Water Service form required by Comprehensive Plan Policy 37, "If you propose to use a private water system, a determination that the system is adequate must be made to satisfy Comprehensive Plan Policy 37. There are two different times a determination can be made: 1) In the initial review of your proposal if the on-site well or other form of private system is existing at the same time of the initial land use application, OR 2) After the initial review but before the issuance of a building permit when documentation is provided to the Planning Director that a water system is in place. At that time public notification will again be given which may result in a new public hearing. If the request for the Template Dwelling were approved, the application would be subject to a review, as a separate notification process, of the water source for the site." Thus, the staff report found that evidence of domestic water supply can be satisfied pursuant to Multnomah County Comprehensive Plan Policy 37 by either the existence of a private water system or after the discretionary land use review for the issuance of a building permit.

A condition of approval can insure satisfaction of the criterion if there is substantial evidence demonstrating that it is feasible to do so. Rhyne v. Multnomah County, 23 Or LUBA 442 (1992). The applicant submitted a letter from Brant Well Drilling, dated May 7, 1999. (Exhibit 4 to Exhibit H7. The letter states that this company has more than 50 years of well drilling experience in Oregon and has drilled a number of wells in the Trout Creek Road area. The letter further states:

"Drilled water wells are a very viable source of domestic water. I foresee no reason why potable water cannot be produced by a drilled well. However, depths may range between fifty and five hundred feet.

"There is not a permit requirement from the Water Resources Department for a domestic water well . . . "

The letter is substantial evidence demonstrating that it is feasible to provide a private water system serving the proposed dwelling on this lot.

Finally, ORS 537.545(1)(d) exempts single or group domestic wells up to 15,000 gallons per day from the water permit requirements. This criterion can be satisfied.

**(2) Evidence of a domestic water supply means:**

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Finding and Conclusion. According to the applicant, he will provide the well constructor's report upon completion of the well before he applies for a building permit. Subsection (a) is not applicable because the water source would be a private well. A water use permit is not required for domestic wells producing less than 15,000 gallons per day. But an average residential water consumption is only 450 gallons per day. Because the proposed well would be exempt from water permit requirements, the applicant can satisfy this criterion by submitting the well constructor's report. Compliance with this criterion could be assured by imposition of a condition of approval.

The application does not meet the criterion.

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**

Finding and Conclusion. The access to the dwelling is a driveway accessing a single dwelling. This criterion requires the driveway to be designed, built and maintained to support a gross vehicle weight of 52,000 pounds. If the driveway involves bridges or culverts, compliance with the gross vehicle weight standard is required to be verified by an Oregon Professional Engineer. The driveway to this proposed dwelling does not involve a bridge or a culvert. Therefore, verification of compliance of the bearing capacity of the driveway by an Oregon Professional Engineer is not required by the Code. Nonetheless, the staff requested written verification from an Oregon Professional Engineer of the compliance with the above noted criteria.

The applicant submitted a letter from Eugene L. Smith, PE, dated August 4, 1998, stating:

"I have made an on-site inspection of the driveway shown on the attached map, located in the SE 1/4 of section 13 and the SW 1/4 of section 18, off Trout Road. The driveway proceeds south from Trout Creek Road approximately 511' thence easterly into the parcel. The 511' is a "shot rock" base apparently used for logging purposes. It has no culverts or bridges and appears to be adequate for 52,000 GVW loads. The approximately 200' of driveway which proceeds easterly into the property is dirt with no rock. It will need approximately 12" base rock to make it suitable for 52,000 lb. of GVW loads.

"No culverts or bridges are presently installed in either portion of the driveway. No bridges are needed; if culverts are installed, they will need to be inspected by an Oregon Professional Engineer to verify at least 1' of cover exists over the installed culvert to meet the 52,000 GVW load requirement."

The driveway location is illustrated on the applicant's revised site plan. The applicant can improve the driveway to support a minimum gross vehicle weight of 52,000 pounds. Because there are no bridges or culverts, MCC 11.15.2074(D)(1) does not require written verification from an Oregon professional engineer. Compliance with this criterion could be assured by compliance with a condition of approval.

- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**

**Finding and Conclusion.** According to the applicant, the driveway will be 12 feet wide. The applicant illustrated the location of the driveway on the revised site plan. A Staff site visit on April 7, 1999 found the existing, gravel driveway extends from Trout Creek Road to the proposed building site, is less than 12 feet in length and is composed of gravel. In a letter from Michael Robinson, Attorney representing the applicant, dated July 21, 1999, the applicant agreed to widen the driveway so that it at least 12 feet wide its entire length and meets the other requirements of MCC 11.15.2074(D). The applicant demonstrated that it is feasible to make these improvements by the August 4, 1998 letter from Eugene L. Smith, P.E. The Hearings Officer can impose a condition of approval requiring that the driveway be improved before the County issues a building permit to assure compliance with this criterion

**(3) Provide minimum curve radii of 48 feet or greater;**

**Finding and Conclusion.** The applicant does not illustrate the above requirement on the site plan. The site plan shows the driveway will be straight down the "pole" of the flag lot and then veer southeast to the proposed dwelling. A condition of approval could assure satisfaction of the minimum curve radius requirement.

**(4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

**Finding and Conclusion.** The applicant states the requirement will be met. The driveway location is not illustrated on the site plan submitted by the applicant. This criterion can be satisfied by a condition of approval.

**(5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:**

- (a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;**
- (b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;**

**Finding and Conclusion.** The applicant states the grade of the driveway is less than 8 percent. A Staff site visit on April 7, 1999 indicates the slope is likely to be less than 8 percent but no documentation to support that has been submitted by the applicant. The driveway crosses areas composed of class 9B and 9C soils according to the Multnomah County Soils Survey. Class 9B soils have 0 to 6 percent slopes and class 9C soils have 9 to 15 percent slopes. From the evidence in the record, it appears feasible to construct a driveway that complies with this criterion. Compliance can be assured by a condition of approval.

- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

Finding and Conclusion. The applicant stated that the proposed driveway is less than 150 feet in length. The applicant's driveway is the entire length of the access from Trout Creek Road to the dwelling, approximately 661 feet, based on the evidence in the record. Consequently, the applicant is required to comply with this criterion. It appears feasible to comply with the turnaround requirement. Compliance can be assured by a condition of approval.

- (7) Provide for the safe and convenient passage of vehicles by the placement of:
- (a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or
  - (b) Turnouts measuring 20 feet by 40 feet along a driveway in excess of 200 feet in length at a maximum spacing of 1/2 the driveway length or 400 feet whichever is less.

Finding and Conclusion. According to the applicant, the proposed driveway is less than 200 feet in length. Based on the distance along the flag portion of the subject parcel (511.02 feet according to the Record of Survey dated May 12, 1988) and the required property setback, the driveway length exceeds 200 feet. The applicant is required to comply with this provision. The "pole" of the flag lot is 33 wide. It would be feasible to provide a 20-foot wide turnaround and turnout along the driveway. Compliance with these criteria could be assured by a condition of approval.

### C. APPLICABLE COMPREHENSIVE PLAN POLICIES

#### POLICY 11: COMMERCIAL FOREST LAND

THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:

- D. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, AND III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;
- E. SUITABLE FOR COMMERCIAL FOREST USE AND SMALL WOODLOT MANAGEMENT;

- F. POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY;**
- G. NOT IMPACTED BY URBAN SERVICES; AND**
- H. COHESIVE FOREST AREAS; OR**
- I. OTHER AREAS WHICH ARE:**
  - 1. NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR**
  - 2. WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.**

**THE COUNTY'S POLICY IS TO ALLOW FOREST MANAGEMENT WITH RELATED AND COMPATIBLE USES, BUT TO RESTRICT INCOMPATIBLE USES FROM THE COMMERCIAL FOREST LAND AREA, RECOGNIZING THAT THE INTENT IS TO PRESERVE FOREST LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.**

Finding and Conclusion. According to the applicant:

"The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

This comprehensive plan policy provides direction to the County in zoning properties and adopting implementing regulations. It is not a policy applicable to land use applications.

### **POLICY 13: AIR, WATER AND NOISE QUALITY**

**MULTNOMAH COUNTY ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. THEREFORE, IT IS MULTNOMAH COUNTY'S POLICY TO:**

**\* \* \***

- D. DISCOURAGE THE DEVELOPMENT OF NOISE-SENSITIVE USES IN AREAS OF HIGH NOISE IMPACT.**

**FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS. IF THE PROPOSAL IS A NOISE SENSITIVE USE AND IS LOCATED IN A NOISE IMPACTED AREA, OR IF THE PROPOSED USE IS A NOISE GENERATOR, THE FOLLOWING SHALL BE INCORPORATED INTO THE SITE PLAN:**

- 1. BUILDING PLACEMENT ON THE SITE IN AN AREA HAVING MINIMAL NOISE LEVEL DISRUPTIONS,**
- 2. LANDSCAPING OR OTHER TECHNIQUES TO LESSEN NOISE GENERATION TO LEVELS COMPATIBLE WITH SURROUNDING LAND USES.**
- 3. INSULATION OR OTHER CONSTRUCTION TECHNIQUES TO LOWER INTERIOR NOISE LEVELS IN NOISE-IMPACTED AREAS.**

**Finding and Conclusion.** The applicant's proposed development is for a single-family residence. The construction of a structure may briefly involve some noise but otherwise no noises other than those typically associated with single-family residential use is anticipated. There will be no unusual activities associated with the proposed dwelling. The DEQ air quality, water quality and noise standards must be met. The parcel is not in a noise impacted area, the proposed use is not a noise generator, nor is the use a noise sensitive use.

#### **POLICY 14: DEVELOPMENTAL LIMITATIONS**

**THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT**

**LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:**

**A. SLOPES EXCEEDING 20%;**

Finding and Conclusion. According to the applicant, the slopes of the proposed dwelling site do not exceed 20%. The subject parcel is not identified on the Multnomah County Slope Hazard Map. The subject parcel soil types, 9B, 9C, 9D, and 9E, do not indicate slopes greater than 20% according to the Soil Survey of Multnomah County, Oregon. The applicant meets this criterion.

**B. SEVERE SOIL EROSION POTENTIAL;**

Finding and Conclusion. The soils of this parcel are 9B, 9C, 9D, and 9E. The Soil Survey of Multnomah County rates the hazard of erosion for these soils as follows.

<u>Soil Type</u>	<u>Hazard of Erosion</u>
9B	Slight
9C	Moderate
9D	High
9E	High

None of the soils on this parcel has severe erosion potential. The proposed dwelling site is on soil type 9B, which has slight potential of erosion. The driveway is proposed to located on soils identified on the Multnomah County Soil Survey Map as "9B" and "C." These two soil types have, respectively, slight and moderate erosion potential, respectively. (Exhibit 5.) Because the soils do not have severe soil erosion potential, the applicant is not required to identify methods necessary to mitigate public or private harm.

**C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;**

Finding and Conclusion. The subject parcel is not within the 100-year flood plain according to Federal Emergency Map Agency (FEMA) maps on file at Multnomah County.

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

**Finding and Conclusion.** The Soil Survey of Multnomah County Soil and Water Features Table shows the following water table for soils on the parcel:

<u>Soil Type</u>	<u>Water Table</u>
9B	18" to 30"
9C	18" to 30"
9D	18" to 30"
9E	18" to 30"

According to the applicant, all the soils on the applicant parcel have a seasonal water table of 18-30 inches for December to April, the water table is not 0-24 inches on any of the soils of the subject parcel. Therefore, this requirement is met.

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

**Finding and Conclusion.** The Soil Survey of Multnomah County states the fragipan is to a depth of 60 inches or more for all the soil types on the applicant parcel. Therefore, this requirement is met.

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

**Finding and Conclusion.** The soil types of the subject parcel, according to the Soil Survey of Multnomah County, are not subject to slumping, earth slides, or movement.

**POLICY 22: ENERGY CONSERVATION**

**THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES AND TO SUPPORT GREATER UTILIZATION OF RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:**

- A. THE DEVELOPMENT OF ENERGY-EFFICIENT LAND USES AND PRACTICES;**
- B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT**

**CORRIDORS AND EMPLOYMENT, COMMERCIAL AND  
RECREATIONAL CENTERS;**

- C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM  
LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN  
AND BICYCLE FACILITIES;**
- D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT  
UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC  
CONDITIONS TO ADVANTAGE.**
- E. FINALLY, THE COUNTY WILL ALLOW GREATER  
FLEXIBILITY IN THE DEVELOPMENT AND USE OF  
RENEWABLE ENERGY RESOURCES.**

Finding and Conclusion. The application is for a dwelling on a Lot of Record. The density of dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the County. The dwelling is not in an urban area, therefore, sections A, B, C, and D above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions, in that the proposed dwelling is located close to the existing street (Trout Creek Road), while observing district setbacks, and is sited on the portion of the parcel that best maintains the competing goals identified in Development Limitations and the district requirements. The applicant meets these criteria.

**POLICY 37: UTILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO  
APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION  
THAT:**

**WATER AND DISPOSAL SYSTEM**

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

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

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

**Finding and Conclusion.** There is no public water or sewer system available to serve this property. A private well will be drilled prior to obtaining a building permit. A Land Feasibility Study (LFS) was conducted by Phillip Crawford, Environmental Soils Inspector, City of Portland Bureau of Buildings, to evaluate the site for use of a subsurface sewage disposal septic tank/drainfield system. The City of Portland Bureau of Buildings, an agent of DEQ, provides the services of county sanitarian on contract for Multnomah County. Based on the on-site study, LFS 5-98, Philip Crawford concluded that the site is suitable for the use of a standard septic tank/drainfield system in compliance with the standards set forth in On-Site Sewage Disposal Rules adopted on April 3, 1995. The LFS is not a permit to install a subsurface sewage system, however, it assures the property owner will receive a permit to construct a system provided the property owner meets the procedures and conditions for permit issuance in the On-Site Disposal Rules. The applicant has submitted documentation from DEQ that the water system and private sewage disposal systems are adequate. The applicant meets these criteria.

#### **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.**

**Findings and Conclusion.** No storm water facilities serve this area. The applicant stated that existing vegetation will continue to handle on-site water runoff, that a dry well on the parcel will be used to collect the runoff from the proposed structure, and that the driveway will have a permeable gravel surface. According to the applicant, water runoff will be handled on the site in accordance with the standards set forth by the City of Portland Environmental Soils Section. Thus the applicant argues that runoff from the site will not adversely affect the water quality in

Trout Creek North Branch. The application can meet the requirement of Comprehensive Plan Policy 37.

## **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.**

**FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.**

Findings and Conclusion. The service providers are Portland General Electric and General Telephone. The applicant meets these criteria.

## **POLICY 38: FACILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

### **SCHOOL**

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

Findings and Conclusions. The applicant has provided the school service provider form. The applicant meets the criterion.

## **FIRE PROTECTION**

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

**Findings and Conclusions.** This criterion requires a showing that "there is adequate water pressure and flow for firefighting purposes." The applicant submitted a letter from the fire service provider. (Exhibit 6.) The service provider has indicated there is no water system serving this area. Consequently, the fire district will have to use water tank trucks, or an on-site water source for fire fighting on the applicant parcel. The applicant submitted Exhibit 6 to Exhibit H7 which was a letter from Philip J. Dearixon, Assistant Fire Chief of Multnomah County Fire District #14, dated May 18, 1999, stating:

"In regard to the property owned by Carson Linker located at 40200 S.E. Trout Creek Road. Said property is within the boundaries of Multnomah County Fire District 14. Also, said property is within approximately five miles of the Aims Fire Station. There is no municipal water system in the area for fire suppression purposes. However, housed at the Aims station is a class A pumper carrying 1,000 gallons of water as well as a water tender with a capacity of 3,000 gallons. In the event of a reported fire in the area, two pumpers and a water tender with the same capacities would also respond from Corbett and Springdale. If the water carried on the initial apparatus is deemed insufficient a water relay would be used to shuttle water from Trout Creek to maintain an adequate supply of water for extinguishment."

The staff's report at page 30 states: "The lack of water alternatives for firefighting purposes is a concern to staff. The applicant has not provided specific details on how this problem can be addressed." This criterion does not require the applicant to demonstrate alternative water sources for firefighting purposes. The applicant has provided substantial evidence satisfying the criterion because the fire district's letter shows there is adequate water pressure and flow for fire fighting purposes. The fire district's Aims Fire Station is within five miles of this property. The station has two pieces of equipment with 4000 gallons of water capacity. In addition, the applicant is required to provide access for fire equipment to Trout Creek North Branch which crosses the parcel. This is substantial evidence demonstrating that the Plan policy is satisfied.

## **POLICE PROTECTION**

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

**Findings and Conclusions.** The Multnomah County Sheriff's Department has signed the form indicating that police service is adequate. This criterion is met.

## **POLICY 40: DEVELOPMENT REQUIREMENTS**

**THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

- A. PEDESTRIAN AND BICYCLE PATH CONNECTIONS TO PARKS, RECREATION AREAS AND COMMUNITY FACILITIES WILL BE DEDICATED WHERE APPROPRIATE AND WHERE DESIGNATED IN THE BICYCLE CORRIDOR CAPITAL IMPROVEMENTS PROGRAM AND MAP.**
- B. LANDSCAPED AREAS WITH BENCHES WILL BE PROVIDED IN COMMERCIAL, INDUSTRIAL AND MULTIPLE FAMILY DEVELOPMENTS, WHERE APPROPRIATE.**
- C. AREAS FOR BICYCLE PARKING FACILITIES WILL BE REQUIRED IN DEVELOPMENT PROPOSALS, WHERE APPROPRIATE.**

Findings and Conclusion. The applicant has addressed some of these issues under Comprehensive Plan Policy #22 Energy Conservation. The criteria are not applicable to the proposed development.

**D. EAST OF SANDY RIVER AREA PLAN**

The site contains a stream, Trout Creek North Branch, designated as a significant stream in the East of Sandy River Rural Area Plan. As a protected stream, new residential development is prohibited within "150 feet of a stream centerline" and "new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area" are limited. The revised site plan (Exhibit H9) shows the location of the significant stream, the dwelling location, the location of the driveway from Trout creek Road to the dwelling site and the setback from the significant stream. Note that "All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year." The inventory and analysis of wildlife habitat and streams in the East of Sandy River Rural Area can be found in the East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, completed in June 1995.

#### IV. CONCLUSION

Based on the findings and conclusions and the substantial evidence cited or referenced herein, I conclude that the application for conditional use approval does not satisfy MCC

11.ES.2052(A)(3)(c)(ii). Accordingly, Conditional Use Permit CU 9-98 is hereby denied.

IT IS SO ORDERED, this 18<sup>th</sup> day of August 1999.



DENIECE B. WON, Hearings Officer

#### V. LIST OF EXHIBITS:

##### List A: Staff/ Applicant Exhibits:

- A1. Applicant site plan showing dwelling location on the subject parcel.
- A2. Applicant site plan showing primary and secondary fire safety zone buffers.
- A3. Forest Practices Act and Rules statement form, to be recorded by the applicant at the County Recorder's office.
- A4. Stormwater Calculations sheet (3 pages).
- A5. 1987 Base County Land Use map.
- A6. Metro parcel map of the area adjacent to the subject parcel showing tax lots and year built of existing dwellings used in the Template Dwelling test.
- A7. Portion of the 160-acre square map submitted by the applicant for the Template Dwelling test (aerial photo with superimposed tax assessor's map)
- A8. Portion of the map and Policy 21 from the East of Sandy River Rural Area Plan. The map shows that Trout Creek North Branch runs through the subject parcel.
- A9. Elevation drawings of the proposed single-family residence.
- A10. 1998 Assessment and Taxation map for Section 18, 1S, 5E.

##### List B: Notification Information:

- B1. "Complete application" Letter, 3 pages.
- B2. Notice of Hearing, 4 pages.

##### List C: Multnomah County Documents

- C1. Staff Report - April 14, 1999

##### List D: Documents Submitted at April 21, 1999 Public Hearing:

- H1 Revised site plan map

- H2 Affidavit of Posting
- H3 Kay Finny Letter Dated April 15, 1999
- H4 E-Mail from John Christensen
- H5. May 20, 1999 Letter from Michael Robinson extending the 150-day period until September 1, 1999
- H6. Intended Use and Zoning Approval - Land feasibility study
- H7 Michael Robinson letter, dated July 21, 1999 responding to approval criteria
- H8 Multnomah County Soils Survey excerpt re 9B, 9C and 9D
- H9 Exhibit 1
- H10 Copy of Mult. Co. AT&T map 1S 5E Sec 18 11.15.8135(I)
- H11 Copy of recorded statement that the owner and his successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices;
- H12 Mult. Co. Board Final Order on Evans CU 7-95, HV 17-95
- H13 Evans v. Multnomah Co., 34 Or LUBA \_\_\_\_\_ (10/07/97)
- H14 Memorandum from Tricia Sears to Deniece Won, dated 7/28/99



DEPARTMENT OF ENVIRONMENTAL SERVICES  
LAND USE PLANNING DIVISION  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233 (503)-248-3043

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## STAFF REPORT

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This staff report consists of Findings of Fact, conclusions, and recommended Conditions if approved. Prepared for a Public Hearing to be held on April 21, 1999.

**Case File:** CU 9-98

**Scheduled Before:** One of following three County Hearings Officer's:  
Joan Chambers  
Liz Fancher  
Deniece Won

**Hearing Date, Time, & Place:** Wednesday, April 21, 1999, 1:00 PM  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

This building is wheel chair accessible. Multnomah County TDD line – (503)-248-5040.

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**WHAT:** To establish a single-family residence on the existing, vacant parcel. The subject parcel is 39.73 acres in size and is zoned Community Forestry Use (CFU-4). The applicant is applying for a Template Dwelling for the subject parcel. The request for approval for a Template Dwelling is a Conditional Use action in the CFU zone. A Pre-Application (PA 16-98) Meeting for the subject parcel was held on May 27, 1998.

**WHERE:** 40200 SE Trout Creek Road.  
Tax Lot 14, Section 18, T1S, R5E, W.M. (R#99518-0140).  
See attached map.

**WHO:** Applicant/ Property Owner:  
Carson Linker  
746 NE Sumner Street  
Portland, OR 97211

### Recommended Hearings Officer Decision:

CU 9-98  
Staff Report: April 14, 1999

1

Staff Planner: Tricia R. Sears  
Phone: (503) 248-3043

**Denial** of the proposed Conditional Use, CU 9-98, for the Template Dwelling application for a new single-family dwelling on the 39.73 acre parcel in the Commercial Forest Use (CFU-4) zone. The submitted application materials do not demonstrate that the application meets the applicable Multnomah County Code provisions and Comprehensive Plan Policies.

### **ZONING ORDINANCE REQUIREMENTS:**

MCC 11.ES.2042 – Community Forest Use (CFU-4)

### **COMPREHENSIVE PLAN POLICIES:**

11 Commercial Forest Land  
13 Air, Water and Noise Quality  
14 Developmental Limitations  
22 Energy Conservation  
37 Utilities  
38 Facilities  
40 Development Requirements

### **FINDINGS AND CONCLUSIONS:**

Staff has identified the Multnomah County Code and Comprehensive Plan Policies that are not met by the submitted application materials. The applicant and Staff responses are found in the Code and Policy provisions identified below.

- Template Dwelling test, Section .2050 (B), Section 2052 (A)(3)(c)(ii), and Section .2074.
- Location, length, and width of the driveway, and required turnouts, Section .2074.
- Primary and secondary fire safety zones, Section .2058(C) and Section .2074 (A)(5)(c).
- Comprehensive Plan Policies 37 and 38:
  - Septic tank/ drainfield (location and adequate capacity),
  - Stormwater detention mechanism (location and adequate capacity),
  - Watercourses on the subject parcel (proximity to development).
- East of Sandy River Rural Area Plan, Policy 21, 150-foot buffer from a significant stream to a proposed development.
- Location and type of erosion control measures to be installed.

### **Applicant:**

*The applicant for the Conditional Use, Carson Linker, has utilized the Pre-Application Meeting narrative from Ed Hanning. Mr. Linker submitted an "Amendment to Application" letter on January 11, 1999 and those statements are included below. The "Amendment to Application" letter was submitted in response to the letter of incompleteness from Staff dated October 20, 1998.*

The applicant parcel is located outside the Urban Growth Boundary of the City of Portland, on Trout Creek Road. The site has historically been used for timber production. The parcel has recently been reforested.

This proposal is for a conditional use dwelling in the CFU District. Activities associated with the proposed dwelling will include those typically found in conjunction with residential uses, such as eating, sleeping, gardening, occasional entertainment of guests, family activities, and the activities associated with caring for the forestry uses on the subject property. There will be no unusual activities associated with the proposed dwelling.

The vicinity of the proposed dwelling is characterized by dwellings on parcels ranging in size from 3.00 acres to 80.00 acres. Activities on the parcels include forestry, farming, and general residential use. Included as Exhibit 1 is a site plan of the applicant parcel, denoting all property lines with dimensions, locations of buildings, abutting right-of-way, location and width of the proposed driveway, topography, and drainage. The parcel is not on the County "Slope Hazard Map".

A vicinity map is also provided, showing approximate locations of surrounding buildings.

"Amendment to Application" from Carson Linker submitted on January 11, 1999.

1. Elevation drawings: See attached.
2. Location and type of erosion control: The site as shown in the pictures and drawings the land is relatively flat at the proposed building site. With regards to the site while the home is under construction all material that is cut, removed or manipulated shall be covered with plastic or blocked with hay to prevent erosion of the soil. These practices shall be maintained and repeated as needed until the construction has been completed and permanent drainage and erosion control measures are in place where necessary.
3. Copy of deed: See attached.
4. Comprehensive Plan #11: The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals.
5. Proposed stormwater calculations: A: Home gutters and down spouts shall be installed and routed to dry wells. B: Driveway: At this time the driveway is gravel and way constructed to meet the regulations for the logging of the property. The intentions of the developer of the property is to improve and maintain the gravel surface. Proposed storm water runoff should not be effected or altered by this type of access surface.
6. Template Dwelling Test: See attached.

**Staff:**

The subject parcel is 39.73 acres in size and zoned Commercial Forest Use (CFU-4). The applicant proposes to establish a new single-family dwelling on the existing, vacant parcel. The subject parcel is located outside of the Urban Growth Boundary (UGB) and is located on the south side of Trout Creek Road. The subject parcel fronts Trout Creek Road for 26.01 feet according to the Record of Survey dated May 12, 1988. The distance from Trout Creek Road to the main body of the parcel is 511.02 feet according to the Record of Survey dated May 12, 1988 for the subject parcel.

The site contains a stream, Trout Creek North Branch, designated as a significant stream in the East of Sandy River Rural Area Plan. As a protected stream, new residential development is prohibited within

"150 feet of a stream centerline" and "new roads, stream crossings, additions to existing structures, and other grading activities within this 150 foot area" are limited. Note that "All related ground disturbing activities within the 150 foot stream setback shall be confined to the period between May 1 and October 1 in any year." The inventory and analysis of wildlife habitat and streams in the East of Sandy River Rural Area can be found in the East of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, completed in June 1995. The applicant site plan does not include the location of the significant stream.

The Staff's main concern after reviewing the applicant's submitted materials and researching the subject parcel and surrounding parcels, is that the proposal meets the Template Dwelling test as described in Section .2052 (A)(3)(c). The applicant site plan has identified a 5<sup>th</sup> dwelling on Tax Lot 21 of Section 18 Map 1S, 5E. The site plan shows this parcel with two residential dwellings. Multnomah County records (Assessment and Taxation, land use cards, building permits, land use maps) do not show a 5<sup>th</sup> residential structure on Tax Lot 21. The Code provisions (Section .2052) establish that a structure must be lawfully existing to count for the Template Dwelling test. If a 5<sup>th</sup> structure exists on the parcel (Tax Lot 21) the County finds the structure does not lawfully exist. The site map showing this was originally submitted for PA 16-98 by the previous property owner, Ed Hanning of the SHT Group. The applicant for CU 9-98, Carson Linker, now the property owner of the subject parcel, submitted this map as the site plan for the Template Dwelling test for CU 9-98. In the Pre-Application Meeting Notes, dated May 27, 1998, Staff raised the concern of the accuracy of the 160-acre square submitted by Hanning. Under the Staff comment section (page 4) of the Notes, Staff states, "Staff requests a certified State of Oregon surveyor verify the measurements and provide the site map of the 160-acre square. Please see comments in Section .2052 for further details." In Section .2052 (page 7 of the Notes), Staff states, "The applicant shall provide a site map of the 160-acre square drawn by a State of Oregon certified surveyor, verifying the measurements and accounting for the addition of the different residence falling within the 160-acre square. The applicant does not meet the Template Dwelling criteria noted above. The applicant is not eligible to apply for the Conditional Use."

When the applicant for CU 9-98 submitted the site map (used in PA 16-98), the applicant identified House #6 on the map as falling within the boundaries of the 160-acre square for the purposes of the Template Dwelling test. The applicant identifies the five dwellings for the Template Dwelling test as Houses 1 (Tax Lot 41), 2 (Tax Lot 22), 3 (Tax Lot 20), 4 (Tax Lot 21), and 6 (Tax Lot 18) on the site plan (with surveyor's stamp). A portion of the map is attached as Exhibit A#7. The identified houses are listed on Assessment and Taxation records on file at Multnomah County; these are identified by tax lot and year built on Exhibit A#6. The applicant, at Staff's request, has provided a surveyor's verification of the distance from the south property line of Tax Lot 18 to the existing dwelling on that parcel. The applicant has provided a certified State of Oregon surveyor's signature on the site map as verification of the measurement of the distance noted on Tax Lot 18. However, the 160-acre square submitted by the applicant shows a photocopy of the seal of a State of Oregon surveyor. This photocopy does not show that the surveyor is providing verification of the submitted survey map of the 160-acre square. The 160-acre square, as submitted by the applicant, is a copy of a Multnomah County Assessment and Taxation map overlaying an aerial photo of the same area. Staff review of the subject map, including review by the Multnomah County Survey Division, reveals that the A & T map appears to be shifted slightly east and north of the map's true location. Staff noted shadow patterns on the site map. Indicators of the incongruity of the map include: the BPA easement on the A & T map appears to be to the right on the aerial photo map; Trout Creek Road does not match on the aerial photo and the A & T map; and the property measurements of Tax Lot 18 shown on the A & T map do not match the distance identified by the surveyor. Please see Staff comments in Section .2052 for further details.

*Based on evaluation by the Multnomah County Survey Division Staff and based on Land Use Planning Staff review of the submitted plans, the application does not meet the Template Dwelling test criteria. The application is not eligible for approval.*

The Pre-Application meeting for the request for a Template Dwelling (PA 16-98) on this site occurred on May 27, 1998. The Conditional Use application was submitted to Multnomah County Land Use Planning on September 23, 1998. The application, CU 9-98, was deemed incomplete on October 20, 1998. The application was deemed complete on April 5, 1999. The Notice of Public Hearing was sent April 6, 1999. Staff completed a site visit of the subject parcel on April 7, 1999. The Staff Report was made available to the public on April 14, 1999.

Please see the Staff comments below. A site plan is included within this document. A list of exhibits is included at the end of this decision document.

## **Applicable Multnomah County Code Provisions and Comprehensive Plan Policies**

### **Multnomah County Code**

#### **Commercial Forest Use (CFU-4)**

##### **11.ES.2042 Purposes**

The purposes of the Commercial Forest Use District are to conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement Comprehensive Framework Plan Policy 11, Commercial Forest Land, the Commercial Forest Use policies of the East of Sandy River Rural Area Plan; and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

*[Amended 1992, Ord. 743 § 2 and Amended 1996, Ord. 859 § 11]*

##### **11.ES.2050 Conditional Uses**

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

\* \* \*

(B) A Template Dwelling pursuant to the provisions of MCC .2052 (A), .2053 (B) and .2074.

\* \* \*

**Applicant:** This application is being applied using the Template Dwelling. The required sections of MCC .2052 and .2074 are addressed below.

**Staff:** The appropriate application process to establish a single-family residence in the CFU zone is through the Conditional Use application for a Template Dwelling. The applicant has made the correct application. Staff comments are found in Sections .2052, .2074, and other

sections. Staff's main concern is the ability of the subject parcel to meet the Template Dwelling test criteria. The applicant has identified the five houses on the surrounding parcels to be used as part of the Template Dwelling test. Exhibit A#7 shows the following houses and properties are identified by the applicant as qualifying the subject parcel for Template Dwelling eligibility:

<u>House # on Map</u>	<u>Tax Lot #</u>
House 1	Tax Lot 41
House 2	Tax Lot 22
House 3	Tax Lot 20
House 4	Tax Lot 21
House 6	Tax Lot 18.

The applicant has provided an aerial photo map with a parcel map overlay as the map for the Template Dwelling test 160-acre map. The map in Exhibit A#7 illustrates the house is within the 160-acre square as used for the Template Dwelling test. See Staff comments in the Findings and Conclusions section above for brief summary. Staff comments are included in more detail in Section .2052 and Section .2074.

*The application does not meet the Template Dwelling test criterion.*

#### **11.ES.2052 Template and Heritage Tract Dwellings**

**(A) A template dwelling may be sited on a tract, subject to the following:**

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

**Applicant:** The lot or lots in the tract shall meet the lot of record standards of MCC .2062 (A) and (B) and have been lawfully created prior to January 25, 1990.

**Staff:** The subject parcel, in its current size and configuration, was created prior to January 25, 1990 according to Multnomah County Sectional Zoning Maps and case file EMP 5-19-88. The subject parcel is considered a Lot of Record. The application meets the criterion.

- (2) The tract shall be of sufficient size to accommodate siting the dwelling in accordance with MCC .2074 with minimum yards of 60 feet to the centerline of any adjacent public or private road serving two or more properties and 130 feet to all other property lines. Exceptions to this standard shall be pursuant to MCC .2075, as applicable;**

**Applicant:** Section .2062 is discussed below. The site plan included shows the yard/ feet setbacks required. The proposed dwelling site meets the required setbacks of this section.

**Staff:** The site map provided by the applicant shows the location of the proposed single-family residence on the subject parcel. The proposed location of the house meets the required front, rear, and side yard setback requirements of the CFU-4 zone. The application meets the criterion.

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

\* \* \*

- (c) The tract shall be composed primarily of soils which are capable of producing above 85 cf/ac/yr of Douglas Fir timber; and
- (i) The lot upon which the dwelling is proposed to be sited and at least all or part of 11 other lawfully created lots existed on January 1, 1993 within a 160-acre square when centered on the center of the subject tract parallel and perpendicular to section lines; and
- (ii) At least five dwellings lawfully existed on January 1, 1993 within the 160-acre square.

**Applicant:** A copy of the soil map from the Multnomah County Soil Survey is attached. The soil types on the site are 9B, 9C, 9D, and 9E. Type 9B, 9C, 9D, 9E are Cazadero silty clay loam, with a Douglas Fir site index of 165. Based on the site index of the soils on the parcel, the parcel is capable of producing 11,775 cubic feet. A map of the 160-acre template test for this parcel shows that there are at least all or part of 11 lawfully created lots that existed on January 1, 1993 within 160-acre square. At least five (5) dwellings lawfully existed on those parcels prior to January 1, 1993. Included are the Assessment and Taxation records of the parcels, provided by Metro Scan.

**Staff:** The subject parcel contains the soils types identified in the applicant statement, 9B, 9C, 9D, and 9E with the productivity level as noted. The applicant is thus required by (i) to establish that "all or part of 11 lawfully created lots existed on January 1, 1993 within 160-acre square when centered on the center of the subject lot parallel and perpendicular to section lines." The applicant meets this requirement. The applicant is required by (ii) to show "at least five dwellings lawfully existed on January 1, 1993 within the 160-acre square." The applicant has provided a map of the 160-acre area. The map used for the 160-acre Template Dwelling test map is composed of an aerial photograph and an Assessment and Taxation (A & T) map of the same area. The map contains a photocopy of a stamp by a State of Oregon surveyor, Dale Hult. The applicant identifies the five dwellings for the Template Dwelling test as House 1 (Tax Lot 41), House 2 (Tax Lot 22), House 3 (Tax Lot 20), House 4 (Tax Lot 21), and House 6 (Tax Lot 18) on the map. Exhibit A#6 illustrates the year built date of each of the parcels identified for inclusion in the Template Dwelling test. The applicant has provided a surveyor's signature for the distance measured from the dwelling on Tax Lot 18 to the south property line of Tax Lot 18 (the shared property line with Tax Lot 14). Based on the submitted map, the house on Tax Lot 18 is directly on the north boundary line of the 160-acre area of the Template Dwelling test. As outlined in the Findings and Conclusions portion of this report, Staff does not believe the Template Dwelling test map of the 160-acre square provided by the applicant is accurate. The aerial photo and the A & T map do not match up and the most conspicuous differences show in the area of the BPA easement, Trout Creek Road, and the houses. Measurements of property line distances don't match the scale of the map. Based on the incongruities identified above, Land Use Planning Staff discussed the site map with Staff in the Survey Division of Multnomah County. The Survey Staff have produced a map that illustrates the dwelling on Tax Lot 18 is located outside "the 160-acre square." This map will be available for review at the public hearing on April 21, 1999.

*The subject parcel does not meet the requirement to have at least five (5) dwellings lawfully established prior to January 1, 1993 within the 160-acre square of the Template Dwelling test. The application, therefore, does not meet the Template Dwelling test. Staff has made a recommendation to the Hearings Officer of denial of the application, CU 9-98.*

As background, Staff provides this comment to a point of discussion in the Pre-Application Meeting (PA 16-98) of May 27, 1998. Two houses are shown on Tax Lot 21 of Section 18 Map 1S, 5E. Tax Lot 21 is owned by Paul Shippy according to the Assessment and Taxation (A & T) records of Multnomah County. The County records show one dwelling listed on the subject parcel; A & T does not list a second dwelling on the subject parcel. Land Use Planning records (land use cards, building permits, land use maps) do not show that a second dwelling has approval from Multnomah County. If a second dwelling exists on the subject parcel, Multnomah County does not find the structure to be *lawfully* (emphasis added) existing. Only one dwelling from Tax Lot 21 (House 4) is included in the five dwellings for the calculation for the Template Dwelling test. The applicant subsequently designated House #6 as part of the five dwellings for the Template Dwelling test and submitted the application for CU 9-98.

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

**Applicant:** None of the dwellings are within the urban growth boundary.

**Staff:** The parcels the applicant uses to try to meet the Template Dwelling test are outside of the Urban Growth Boundary (UGB).

- (e) There is no other dwelling on the tract,**

**Applicant:** There is no other dwelling on the tract.

**Staff:** The subject parcel is vacant land, no dwellings exist on the parcel.

- (f) No other dwellings are allowed on other lots (or parcels) that make up the tract;**

**Applicant:** The applicant parcel is not part of a tract.

**Staff:** The subject parcel is not a tract. The subject parcel is vacant, the applicant proposes to construct one single-family dwelling for the subject parcel.

- (g) Except as provided for a replacement dwelling, all lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**Applicant:** This application is not for a replacement dwelling. The applicant parcel is not part of a tract.

**Staff:** The applicant is proposing to construct a single-family residence on a vacant parcel. The subject parcel is not a tract.

- (h) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

**Applicant:** The subject parcel is not part of a tract.

**Staff:** The subject parcel is not part of a tract.

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

**Applicant:** The proposed dwelling is not in a big game winter habitat area.

**Staff:** The subject parcel is not located on the Multnomah County Big Game Winter Habitat Map. The criterion is not applicable.

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

**Applicant:** This criteria does not apply, the road access to the dwelling is via Trout Creek Road, which is a County Road.

**Staff:** The subject parcel accesses Trout Creek Road. The criterion is not applicable.

- (6) A condition of approval requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules, provided, however, that:

- (a) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;
- (b) The property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules. The assessor will inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;
- (c) Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372;

**Applicant:** A stocking report is included. *Carson Linker submitted the following narrative statement on January 11, 1999 in response to Comprehensive Plan Policy #11; "The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This*

shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the lands back to its healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

**Staff:** The applicant has submitted a letter from Jeff Hepler, Forest Practices Forester, of the Oregon Department of Forestry. The letter from Mr. Hepler, dated April 8, 1998, states the parcel owned by the "SHT Group...has been planted with appropriate seedling to meet the requirements of the Forest Practices Act." The Code provision in (6) states that a "condition of approval" on a decision document will be written to ensure that the applicant provides documentation to the County that the subject parcel will meet the Department of Forestry requirements.

*This Staff Report includes a recommendation for denial of the request of the Template Dwelling so no Conditions of Approval are included in this report.*

**(7) The dwelling meets the applicable development standards of MCC .2074;**

**Applicant:** Section MCC .2074 is addressed below.

**Staff:** See applicant and Staff comments of Section .2074 noted below.

*The application does not meet the development standards of Section .2074.*

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

**Staff:** The applicant has not submitted the above noted document. Exhibit A#3 is a copy of the Multnomah County form used for this purpose.

**(9) Evidence is provided, prior to the issuance of a building permit, that the covenants, conditions and restrictions form adopted as "Exhibit A" to the Oregon Administrative Rules (OAR), Chapter 660, Division 6 (December, 1995), or a similar form approved by the Planning Director, has been recorded with the county Division of Records;**

**(a) The covenants, conditions and restrictions shall specify that:**

**(i) All lots (or parcels) that are part of the tract shall be precluded from all future rights to site a dwelling; and**

**(ii) No lot (or parcel) that is part of the tract may be used to qualify another tract for the siting of a dwelling;**

**(b) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Multnomah County. That release may be given if the tract is no longer subject to protection under Statewide Planning Goals for forest or agricultural lands;**

(c) Enforcement of the covenants, conditions and restrictions shall be as specified in OAR 660-06-027 (December 1995).

**Staff:** The subject tax lot is a Lot of Record. No covenant or restriction as described above is required to be submitted from the applicant to Multnomah County.

\* \* \*

#### 11.ES.2058 Dimensional Requirements

(A) Except as provided in MCC .2060, .2061, .2062, and .2064, the minimum lot size shall be 80 acres.

**Applicant:** The applicant parcel is less than 80 acres. Section .2062 is addressed below.

**Staff:** The subject parcel is 39.73 acres in size and does not meet the minimum lot size requirement for the CFU zone. Section .2062 is addressed by the applicant and the Staff below.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

(C) Minimum Yard Dimensions - Feet:

<u>Frontage on</u> <u>County Main-</u> <u>tained Road</u>	<u>Other</u>	<u>Side</u>	<u>Rear</u>
60 from centerline	130	130	130

Maximum Structure Height - 35 feet

Minimum Front Lot Line Length - 50 feet.

Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 11.ES.2075, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 11.ES.2074 (A)(5)(c)(ii).

**Applicant:** The proposed site meets the criteria of .2058 (C). The proposed dwelling is over 60 feet from the centerline of the County maintained road, the side yards are over 200 feet, and the rear yard is over 200 feet. The proposed dwelling will not be over 35 feet in height, and the front lot line length is over 50 feet. No variances are requested.

**Staff:** The site of the proposed dwelling on the subject parcel meets the front, rear, and side yard setback requirements of the CFU zone. The applicant has submitted elevation drawings of the proposed structure that show the dwelling does not exceed the 35 foot height limit of the CFU-4 zone. The applicant has submitted a site plan that shows the primary and secondary fire safety zone standards as designated by the applicant for the site. The primary zone is shown at 25 feet on the north side, 50 feet on the east and west sides, and 100 feet on the south side. The

minimum primary fire safety zone is 30 feet on each side of the proposed structure. The applicant's different buffer zones lead Staff to believe the slope of each respective side varies from 10% (north), 20% (east and west), to 40% (south) based upon the slope/ distance requirements in Section .2074 (A)(5)(c)(ii). The secondary zone is shown at 100 feet on the north, east, west, and south sides. The applicant has not provided supporting documentation for the slope distances. In Staff's opinion, based on the Staff site visit on April 7, 1999, the slope of the building site area was less than 40%.

*The application does not meet the criterion.*

- (E) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by this ordinance.**

**Applicant:** The proposed site meets the criteria of .2058 (D). There is not a dwelling on an adjacent parcel within 100 feet of the proposed dwelling.

**Staff:** The applicant shall contact Alan Young of the Right-of-Way Division for street dedication requirements and driveway permits.

- (F) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.**

**Applicant:** The proposed site meets the criteria of .2058 (F). At this time, no barns, silos, windmills, antennae, or similar structures are proposed. However, if they are, this section of MCC .2058 allows those structures and chimneys to exceed the height requirements.

**Staff:** The applicant's proposed development on the subject parcel is for a single-family residence. No barns, silos, windmills, or other structures are proposed with this application.

- (G) Yards for the alteration, replacement or restoration of dwellings under MCC .2048 (D), .2048 (E) and .2049 (B) need not satisfy the development standards of MCC .2074 if originally legally established to a lesser standard than that required by MCC .2074, but in no case shall they be less than those originally established.**

- (H) Agricultural buildings, as specified in ORS 455.315 (2) and allowed under MCC .2048 (C), may have minimum side and rear yard setbacks of 30 feet, but in no case shall any setback be less than the minimum primary fire safety zone required by MCC .22074 (A)(5)(c)(ii).**

*[Amended and Renumbered 1992, Ord. 743 § 2]*

#### **11.ES.2062 Lot of Record**

- (A) For the purposes of this district, a Lot of Record is**

\* \* \*

- (2) A parcel of land:**

- (a) For which a deed or other instrument creating the parcel was recorded with the Department of General Services, or was in recordable form prior to February 20, 1990;**

- (b) Which satisfied all applicable laws when the parcel was created;
- (c) Does not meet the minimum lot size requirements of MCC .2058; and
- (d) Which is not contiguous to another substandard parcel or parcels under the same ownership, or

**Applicant:** Tract is defined in MCC 11.15.2045 as one or more contiguous Lots of Record, pursuant to MCC .2062, in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway. Lots that are contiguous with a common boundary of only a single point are not a tract. Enclosed is a copy of the ownership record pertaining to this parcel, obtained from the Multnomah County Department of Assessment and Taxation. The record shows this parcel as 39.73 acres, deeded 1986. A copy of the original deed, recorded in book 1922, page 2097, is included. The parcel is described as:

A south part of the Southeast one-quarter of Section 13, T1S, R1E, WM & part of the South one-half of the Southwest one-quarter of Section 18, T1S, R5E, WM, Multnomah County, Oregon.

The applicant parcel is 39.73 acres; therefore, the minimum lot size requirements of MCC .2058 are not met. This application falls under the criteria of subsection (2). This parcel was purchased by the applicant on 1/7/98. There are currently no contiguous tracts under identical ownership; therefore, this parcel is not part of a tract. Based on the above, this parcel meets the requirements of this subsection.

**Staff:** Records at Multnomah County show an Exempt Minor Partition (EMP) dated July 1986 for this parcel. The subject parcel obtained its current size and configuration as a result of an Exempt Minor Partition dated May 19, 1988. The applicant has submitted a deed that corresponds to the size and configuration of the lot. The subject parcel does not meet the minimum lot size requirement of the CFU zone. The parcel is considered a Lot of Record. The applicant for the Conditional Use, Carson Linker, submitted a copy of the deed on February 1, 1999. The date of the contract purchase as shown on the deed is October 2, 1998.

\* \* \*

**(B) For the purposes of this subsection:**

- (1) Contiguous refers to parcels of land which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels separated only by an alley, street or other right-of-way;
- (2) Substandard Parcel refers to a parcel which does not satisfy the minimum lot size requirements of MCC .2058; and
- (3) Same Ownership refers to parcels in which greater than possessory interests are held by the same person or persons, spouse, minor age child, single partnership or business entity, separately or in tenancy in common.

*[Amended and Renumbered 1990, Ord. 643 § 2]*

- (C) A Lot of Record which has less than the front lot line minimums required may be occupied by any permitted or approved use when in compliance with the other requirements of this district.**

**Staff:** The subject parcel owned by the applicant for CU 9-98, has less than the minimum front lot line frontage to a public road. The parcel is considered a Lot of Record and is thus considered legally established. Under this Code provision, subsection (C), the application is allowed to be reviewed so long as other requirements have been met or will be complied with through conditions of approval.

\* \* \*

#### **11.ES.2074 Development Standards for Dwellings and Structures**

**Except as provided for the alteration, replacement or restoration of dwellings under MCC .2048(D), .2048(E) and .2049 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the following: *[Amended 1996, Ord. 859 § II]***

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

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

**Applicant:** The proposed dwelling will be sited on the parcel so that it will have the least impact on nearby or adjoining agricultural and forest lands. Activities of the proposed dwelling are those customarily anticipated with a residence. It can be assumed that additional activities such as landscape maintenance, occasional entertainment of guests, and recreation activities outdoors will be encountered over the period of the dwelling existence. The proposed dwelling is at least two hundred (200) feet from all property lines. In correspondence dated February 28, 1990, ODF suggests that a 200 foot setback is typically effective in preventing serious conflicts between residential and forest uses. In addition, the ODF publication entitled Land Use Planning Notes No. 1 and No. 2 also supports that setbacks of 300 or more feet are effective in preventing conflicts between forest and residential uses. The property is accessed by Trout Creek Road. The proposed dwelling will be sited approximately eight hundred (800) feet from Trout Creek Road. This area takes advantage of the site on the parcel that meets the required setbacks of at least sixty (60) feet from the road and 200 feet from other farm or forestry activities. The proposed site also minimizes the amount of the parcel precluded from forestry, while observing the previously stated setbacks. The setback distance, varying topography, and existing vegetation mitigate any impacts due to the proposed dwelling. Section .2058 is addressed above. The applicant for CU 9-98, Carson Linker writes, "The rehabilitation of the land is of the utmost importance and shall take the highest priority...The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals."

**Staff:** The site plan and narrative materials submitted by the applicant show the setback requirements of Section .2058 (C) though (G) have not been met; Staff found the application did not meet the criterion of Section .2058. The fire safety buffer zones as illustrated on the site plan, are not in full compliance with the percent slope in feet and distance requirements

outlined in Section .2074 (A)(5)(c)(ii). The applicant's proposed structure may have minimum impact to nearby forest or agricultural lands. The applicant states the site will be replanted with vegetation.

*The application, at this time, does not meet the criterion.*

**(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

*[Amended 1996, Ord. 859 § 11]*

**Applicant:** The location of the proposed dwelling and access minimizes the amount of land taken from forest operations, while meeting the required setbacks. Only normal residential activities will be associated with the dwelling. The parcel is currently forested with reproduction fir trees that area at least 2-1's. The adverse impacts on the forest operations are minimized, as described above. Accepted forestry practices will not be curtailed nor impeded, the amount of forest land used to site access roads, service corridors, the dwelling, and structure is minimized. Activities associated with the proposed dwelling will include those typically found in conjunction with residential uses, such as eating, sleeping, gardening, occasional entertainment of guests, family activities, and the activities associated with caring for the forestry uses on the subject property. There will be no unusual activities associated with the proposed dwelling.

**Staff:** As described above in (1), the applicant's proposed development will have minimal impact to the adjoining forest and agricultural lands. The applicant proposes to replant and restore the site's vegetation and stream. Site photos from the applicant, received by Staff on January 20, 1999 illustrate that a great deal of the vegetation has been removed from the site under forest practices. Staff visited the site on April 7, 1999. The subject parcel has a Forest Management Plan. The applicant site plan shows the proposed dwelling to be located in the northwest corner of the property, very near (still meeting setback requirements) where the long flag entrance portion of the parcel meets the main portion of the parcel. The application meets the criterion to minimize adverse impacts to the forest and farming practices on the site.

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

**Applicant:** The required setbacks are met by the proposed dwelling. The proposed siting is the minimum necessary to locate all proposed structures and satisfy all applicable requirements.

**Staff:** The amount of forest land used to site the dwelling, access road, and service corridor is minimal as proposed by the applicant and illustrated in the site plan attached as Exhibit A#1. The site plan does not illustrate the location of the driveway. During the site visit on April 7, 1999, Staff noted the driveway location. The application meets the criterion. See (2) above for additional description.

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

**Applicant:** The access road is in excess of 500 feet due to easement and setback from property line. See map.

**Staff:** The site plan illustrates the driveway distance would be over 500 feet from Trout Creek Road to the subject parcel. The applicant did not however, indicate the location of the driveway on the site plan. The driveway would follow the flag portion of the lot which extends, according to the Record of Survey dated May 12, 1988. The proposed development is subject to setback requirements of 130 feet from the property line. The applicant site plan shows the location of the proposed dwelling is set away from the property line slightly more than the required setback. The flag portion of the lot is not an adequate site to meet the required property setbacks for the CFU-4 zone. The application meets the criterion.

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

- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**

*[Added 1996, Ord. 859 § II]*

**Applicant:** The proposed dwelling is located within the Corbett RFPD #14. The Service Provider affidavit included verifies service is provided to the applicant parcel.

**Staff:** The applicant has provided a completed Fire District Review form (from PA 16-98) that says, "water shuffle from water tenders. Depends on water at time of value."

*The application does not meet the criterion.*

- (b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC .2074(D) with permanent signs posted along the access route to indicate the location of the emergency water source; [Renumbered 1996, Ord. 859 § II]**

**Applicant:** There is no perennial water source on the lot.

**Staff:** The applicant has not addressed the water source criterion. The applicant has provided a letter from Eugene Smith of All County Surveyors and Planners, Inc. to try to illustrate compliance for the driveway standards stated herein. The letter is dated August 4, 1998; Smith is Registered Professional Engineer (State of Oregon). Smith states that the driveway "will need approximately 12" of base rock to make it suitable for 52,000 lb. GVW loads." The applicant has not provided documentation on water source and the driveway does not meet the required standards.

*The application does not meet this criterion.*

- (c) Maintenance of a primary and a secondary fire safety zone on the subject tract. [Renumbered and Amended 1996, Ord. 859 § II]**

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

should be kept less than 2 feet in height.

**Applicant:** The owners of the proposed dwelling will maintain a primary and a secondary fuel free fire break area surrounding all structures. This will include a minimum 30 feet in all directions around structures. Within the primary safety zone, fuels that will produce flame lengths in excess of one foot will be removed. Vegetation within the primary safety zone will include green lawns and low shrubs (less than 24 inches in height). Trees will be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches.

**Staff:** The applicant shall provide a to scale site map of the proposed primary and secondary fuel free fire break areas in relationship to the proposed structure(s). The applicant has illustrated the primary and secondary fire safety buffer zones in Exhibit A#2. The primary zone is shown as 25 feet instead of the required 30-foot buffer on north side of the property. According the chart below in (ii), if the slope of the site is 10% or less a 30-foot primary safety zone is required. If the slope is 20% or less, the primary zone is 50 feet and if the slope is less than 40%, primary zone of 100 feet is required. As the applicant has drawn the plan shown in Exhibit A#2, Staff states that the drawing would indicate that the slope of the north side is 10% or less (applicant shall provide 30-foot not 25-foot setback), the east and west sides have a slope of 20% or less, and the south side has a slope of 40% or less. Staff is uncertain if the applicant intended the drawing to reflect this because the applicant, Linker, does not address this criterion specific to the building site. The secondary zone is shown as 100 feet around the proposed structure, as is required by the Code.

*The application did not meet the criterion to establish the primary and secondary fire safety zone criterion in Section .2058, hence, the application does not meet this criterion (i).*

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

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

**Applicant:** The proposed dwelling will be sited on a level area, and slope will not cause the primary safety area to be increased.

**Staff:** The applicant has provided a site map illustrating the primary and secondary fire buffer zones. See Exhibit A#2. See Staff comments in (i) above and in Section .2052 (C). The applicant site plan shows a buffer for the primary fire safety zone on the north side of the proposed structure, as less than the minimum required. Also, the applicant does not provide the slope information.

*The application does not meet the criterion.*

- (iii) A secondary fire safety zone is a fire break extending a minimum of 100 feet in

all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 11.ES.2058 (D) and .2075.

**Applicant:** The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The secondary fuel break will reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowing would be reduced. Vegetation within the secondary fuel break will be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees will be removed to prevent spread of fire up into the crowns of the larger trees. This is in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads", dated March 1, 1991 and published by the Oregon Department of Forestry.

**Staff:** The applicant site plan attached as Exhibit A#2 shows the secondary fire safety zone extending from the primary fire safety zone for a distance of 100 feet as required by this criterion.

- (iv) No requirement in (i), (ii), or (iii) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
- (v) Maintenance of a primary and a secondary fire safety zone is required only to the extent possible within the area of an approved yard (setback to property line).

**Applicant:** The applicant is cognizant of the above criteria.

**Staff:** The subject parcel is under a Forest Management Plan. The subject parcel is identified on the Multnomah County Assessment and Taxation records as a deferral account. The subject parcel is large enough, and the proposed dwelling is located on the site plan such that the primary and secondary fire safety zones could be accommodated on the subject parcel. The application could meet the criterion.

*[Added 1996, Ord. 859 § II]*

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

*[Renumbered 1996, Ord. 859 § II]*

**Applicant:** The proposed dwelling is on a slope of less than ten (10) percent.

**Staff:** The applicant has not specifically provided documentation to this criterion but states the site is less than 40 percent. As has already been stated, the application does not contain supporting documentation regarding the slope of the proposed building site at the distance 30 feet away from the proposed structure in each direction (this is the

minimum primary fire safety zone). The applicant site plan shows a buffer zone at 100 feet on the south side of the proposed structure. According the chart in (c) (ii) above, the slope of the site at that point 30 feet from the proposed structure, the slope would be 40% or less. Without supporting documentation (narrative and plans), Staff cannot make a finding the criterion has been met.

*Therefore, the application does not meet the criterion.*

**(B) The dwelling shall:**

- (1) Comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;**

**Applicant:** The applicant dwelling will meet this criteria.

**Staff:** The applicant's proposed dwelling shall comply with this criterion. The items in (1) through (5) would be verified at the time of building permit review,

- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**

**Applicant:** The dwelling will be attached to a foundation. The building permit will be obtained after the development permit is approved.

**Staff:** The applicant's proposed structure is greater than 600 square feet in size according to the materials submitted by the applicant. Building permits cannot be obtained until land use approval is received for the proposed development.

**(3)**

- (4) Have a fire retardant roof; and [Added 1996, Ord. 859 § II]**

**Applicant:** The proposed dwelling will comply with this criteria.

**Staff:** The applicant shall comply with this criterion. The applicant has not provided any documentation as to how this requirement will be met. Typically this requirement would be verified at the time of submittal of the building permits.

- (5) Have a spark arrestor on each chimney. [Added 1996, Ord. 859 § II]**

**Applicant:** The proposed dwelling will comply with this criteria.

**Staff:** The applicant shall comply with this criterion. The applicant has not provided any documentation as to how the requirement will be met. Typically this requirement would be verified at the time of building permit submittal.

- (C) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.**

- (1) If the water supply is unavailable from public sources, or sources located entirely on**

**the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**

*[Renumbered 1996, Ord. 859 § II]*

**Applicant:** The well for this property will be drilled at the building permit stage. The private well will be located on the applicant parcel, no easements will be involved.

**Staff:** The applicant states that an easement will not be required. The applicant has not indicated on the site plan or in the narrative where the water supply is to be located on the subject parcel. According to the Certification of Water Service form required by Comprehensive Plan Policy 37, "If you propose to use a private water system, a determination that the system is adequate must be made to satisfy Comprehensive Plan Policy 37. There are two different times a determination can be made: 1) In the initial review of your proposal if the on-site well or other form of private system is existing at the same time of the initial land use application, OR 2) After the initial review but before the issuance of a building permit when documentation is provided to the Planning Director that a water system is in place. At that time public notification will again be given which may result in a new public hearing. If the request for the Template Dwelling were approved, the application would be subject to a review, as a separate notification process, of the water source for the site.

*The application partially meets the criterion.*

**(2) Evidence of a domestic water supply means:**

- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
- (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
- (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

*[Added 1996, Ord. 859 § II]*

**Applicant:** Certification of Water Service stating that the on-site well documentation will be provided prior to obtaining a building permit. The well constructor's report will be submitted to the county upon completion of the well.

**Staff:** The applicant states that the well constructor's report will be submitted to the County upon completion of the well. As noted on the Certification of Water Service form, upon receipt of the well constructor's report to the County, the County will send out a public notice of the information. The applicant defers the response to these requirements until after the Template Dwelling test review. While subsection (1) above allows for the submittal of documentation after the Template Dwelling test approval and before issuance of building permits, the requirement of subsection (2) does not necessarily get deferred to the post Conditional Use time. The applicant has not provided documentation as to how the site will comply with this criterion.

*The application does not meet the criterion.*

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

- (1) Support a minimum gross vehicle weight (GVW) of 52,000 lbs. Written verification of compliance with the 52,000 lb. GVW standard from an Oregon Professional Engineer shall be provided for all bridges or culverts;**

**Applicant:** The driveway to this single dwelling will meet the above requirements.

**Staff:** Staff requests written verification from an Oregon Professional Engineer of the compliance with the above noted criteria. The applicant submitted a letter from Eugene L. Smith, PE, dated August 4, 1998, stating, "The driveway proceeds south from Trout Creek Road approximately 511" thence easterly to into the parcel. The 511" is a "shot rock" base apparently used for logging purposes. It has not culverts or bridges and appears to be adequate for 52,000 GVW loads. The approximately 200" of driveway which proceeds easterly into the property is dirt with no rock. It will need approximately 12" base rock to make it suitable for 52,000 lb. of GVW loads. The driveway location is not illustrated on the applicant site plan. The driveway, as described by Smith, does not meet the minimum standard of 52,000 GVW.

*The application does not meet the criterion.*

- (2) Provide an all-weather surface of at least 20 feet in width for a private road and 12 feet in width for a driveway;**

**Applicant:** The driveway will be 12 feet in width.

**Staff:** The applicant does not illustrate the location of the driveway on the site plan. A Staff site visit on April 7, 1999 found the existing, gravel driveway extends from Trout Creek Road to the proposed building site. The existing driveway is less than 12 feet in length and is composed of gravel.

*The application does not meet the criterion.*

- (3) Provide minimum curve radii of 48 feet or greater;**

**Applicant:** The above requirement will be met.

**Staff:** The applicant does not illustrate the above requirement on the site plan.

*The application does not meet the criterion.*

- (4) Provide an unobstructed vertical clearance of at least 13 feet 6 inches;**

**Applicant:** The above requirement will be met.

**Staff:** The applicant states the requirement will be met. The driveway location is not illustrated on the site plan submitted by the applicant.

*The applicany does not demonstrate this criterion has been met.*

- (5) Provide grades not exceeding 8 percent, with a maximum of 12 percent on short segments, except as provided below:

(a) Rural Fire Protection District No. 14 requires approval from the Fire Chief for grades exceeding 6 percent;

(b) The maximum grade may be exceeded upon written approval from the fire protection service provider having responsibility;

**Applicant:** The proposed driveway has a grade of less than 8 percent.

**Staff:** The applicant states the grade of the driveway is less than 8 percent. The applicant site plan for fire buffer setbacks does not substantiate this statement. A Staff site visit on April 7, 1999 indicates the slope is likely to be less than 8 percent but no documentation to support that has been submitted by the applicant. The applicant does not show on the site plan the location of the driveway. The Fire Service Provider form submitted by the applicant does not identify the slope of the driveway.

*The application does not meet the criterion.*

- (6) Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length;

**Applicant:** The proposed driveway is less than 150 feet in length.

**Staff:** The driveway location is not illustrated on the applicant site plan. The applicant access would exceed 150 feet in length and the applicant is required to comply with this criterion.

*The application does not meet the criterion.*

- (7) Provide for the safe and convenient passage of vehicles by the placement of:

(a) Additional turnarounds at a maximum spacing of 500 feet along a private road; or

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

**Applicant:** The proposed driveway is less than 200 feet in length.

**Staff:** Based on the distance along the flag portion of the subject parcel (511.02 feet according to the Record of Survey dated May 12, 1988) and the required property setback, the driveway length exceeds 200 feet. The applicant is required to comply with this provision. The applicant has not illustrated the driveway on the site plan.

*The application does not meet the criterion.*

*[Amended and Renumbered 1992, Ord. 743 § 2]*

### **Comprehensive Plan Policies**

## **POLICY 11: COMMERCIAL FOREST LAND**

**THE COUNTY'S POLICY IS TO DESIGNATE AND MAINTAIN AS COMMERCIAL FOREST LAND, AREAS WHICH ARE:**

**A. PREDOMINANTLY IN FOREST CUBIC FOOT SITE CLASS I, II, AND III, FOR DOUGLAS FIR AS CLASSIFIED BY THE U.S. SOIL CONSERVATION SERVICE;**

**B.SUITABLE FOR COMMERCIAL FOREST USE AND SMALL WOODLOT MANAGEMENT;**

**C.POTENTIAL REFORESTATION AREAS, BUT NOT AT THE PRESENT USED FOR COMMERCIAL FORESTRY;**

**D.NOT IMPACTED BY URBAN SERVICES; AND**

**E.COHESSIVE FOREST AREAS; OR**

**F.OTHER AREAS WHICH ARE:**

**1.NECESSARY FOR WATERSHED PROTECTION OR ARE SUBJECT TO LANDSLIDES, EROSION OR SLUMPING; OR**

**2.WILDLIFE AND FISHERY HABITAT AREAS, POTENTIAL RECREATION AREAS OR OF SCENIC SIGNIFICANCE.**

**THE COUNTY'S POLICY IS TO ALLOW FOREST MANAGEMENT WITH RELATED AND COMPATIBLE USES, BUT TO RESTRICT INCOMPATIBLE USES FROM THE COMMERCIAL FOREST LAND AREA, RECOGNIZING THAT THE INTENT IS TO PRESERVE FOREST LANDS FROM INAPPROPRIATE AND INCOMPATIBLE DEVELOPMENT.**

**Applicant:** The property in question has been logged and is in poor shape. The rehabilitation of the land and stream is of the utmost importance and shall take the highest priority. This shall include but not be limited to reforestation, erosion control, and the reinstitution of native plants to the area. All efforts in this direction shall be completed with the advice and guidance of forest and stream rehabilitation specialists. The intentions of these efforts are to bring the land back to it's healthy homeostatic state prior to the interference and destruction of clear-cut logging. These efforts, it is hoped, shall reestablish the natural habitat for both native plants and animals.

**Staff:** The applicant has addressed the required Comprehensive Plan Policy.

## **POLICY 13: AIR, WATER AND NOISE QUALITY**

**MULTNOMAH COUNTY, RECOGNIZING THAT THE HEALTH, SAFETY, WELFARE, AND QUALITY OF LIFE OF ITS CITIZENS MAY BE ADVERSELY AFFECTED BY AIR, WATER AND NOISE POLLUTION, SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS.**

**THEREFORE, IT IS MULTNOMAH COUNTY'S POLICY TO:**

**A.COOPERATE WITH PRIVATE CITIZENS, BUSINESSES, UTILITIES AND PUBLIC AGENCIES TO MAINTAIN AND IMPROVE THE QUALITY OF AIR AND WATER, AND TO REDUCE NOISE POLLUTION IN MULTNOMAH COUNTY.**

**B.SUPPORT AND PARTICIPATE IN THE IMPLEMENTATION OF STATE AND REGIONAL PLANS AND PROGRAMS TO REDUCE POLLUTION LEVELS.**

**C.MAINTAIN HEALTHFUL AIR QUALITY LEVELS IN THE REGIONAL AIRSHED; TO MAINTAIN HEALTHFUL GROUND AND SURFACE WATER RESOURCES; AND TO PREVENT OR REDUCE EXCESSIVE SOUND LEVELS WHILE BALANCING SOCIAL AND ECONOMIC NEEDS IN MULTNOMAH COUNTY.**

**D.DISCOURAGE THE DEVELOPMENT OF NOISE-SENSITIVE USES IN AREAS OF HIGH NOISE IMPACT.**

**FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS. IF THE PROPOSAL IS A NOISE SENSITIVE USE AND IS LOCATED IN A NOISE IMPACTED AREA, OR IF THE PROPOSED USE IS A NOISE GENERATOR, THE FOLLOWING SHALL BE INCORPORATED INTO THE SITE PLAN:**

**1.BUILDING PLACEMENT ON THE SITE IN AN AREA HAVING MINIMAL NOISE LEVEL DISRUPTIONS,**

**2.LANDSCAPING OR OTHER TECHNIQUES TO LESSEN NOISE GENERATION TO LEVELS COMPATIBLE WITH SURROUNDING LAND USES.**

**3.INSULATION OR OTHER CONSTRUCTION TECHNIQUES TO LOWER INTERIOR NOISE LEVELS IN NOISE-IMPACTED AREAS.**

**Applicant:** The proposal is not located in a noise impacted area. There will be no unusual activities associated with the proposed dwelling. The quality of air, water and land resources and ambient noise levels will be preserved, as will the use of such resources. Exhaust from chimneys will meet DEQ standards, water resources will not be polluted, the septic system will receive approval from the County Sanitarian. The proposed dwelling will maintain ambient noise levels, as no unusual activities will be associated with the dwelling.

**Staff:** The applicant's proposed development is for a single-family residence. The construction of a structure may briefly involve some noise but otherwise no noises other than those typically associated with single-family residential use is anticipated.

## **POLICY 14: DEVELOPMENTAL LIMITATIONS**

**THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:**

### **A.SLOPES EXCEEDING 20%;**

**Applicant:** The slopes of the proposed dwelling site do not exceed 20%. The parcel is not on the "Hazards Area" map.

**Staff:** The subject parcel is not identified on the Multnomah County Slope Hazard Map. The subject parcel soil types, 9B, 9C, 9D, and 9E, do not indicate slopes greater than 20% according to the Soil Survey of Multnomah County, Oregon. As noted under Section 2058 (C) and 2074 (A)(5)(c), the application materials and the fire buffer setback information indicate there may be slopes on the site that exceed 20%. The applicant shows a primary buffer setback of 100 feet on the site plan for the south side of the subject development. According to Section .2074 (A)(5)(c), slope less than 40% requires a primary fire safety buffer zone of 100 feet.

### **B.SEVERE SOIL EROSION POTENTIAL;**

**Applicant:** The soils of this parcel are 9B, 9C, 9D, and 9E. The Soil Survey of Multnomah County rates the hazard of erosion for these soils as follows.

Soil Type	Hazard of Erosion
9B	Slight
9C	Moderate
9D	High
9E	High

Since none of the soils on this parcel has a severe erosion potential, this requirement is met. It should also be noted that the proposed dwelling site is on soil type 9B, which has the least potential of erosion.

**Staff:** The subject parcel contains the above noted soil types according to maps on file at Multnomah County. The soil types have the level of erosion described above as documented in the Soil Survey of Multnomah County, Oregon. Two of the parcels soil types, 9D and 9E, have a high level of potential erosion. This is a Staff concern. The applicant has not indicated on the site plan the location and type of erosion control measures for the subject parcel.

### **C.LAND WITHIN THE 100 YEAR FLOOD PLAIN;**

**Applicant:** The applicant parcel is not within the 100-year flood plain.

**Staff:** The subject parcel is not within the 100 year floodplain according to Federal Emergency Map Agency (FEMA) maps on file at Multnomah County.

### **D.A HIGH SEASONAL WATER TABLE WITHIN 0-24 INCHES OF THE**

**SURFACE FOR 3 OR MORE WEEKS OF THE YEAR;**

**Applicant:** The Soil Survey of Multnomah County Soil and Water Features Table shows the following water table for soils on the parcel:

Soil Type	Water Table
9B	18" to 30"
9C	18" to 30"
9D	18" to 30"
9E	18" to 30"

All the soils on the applicant parcel have a seasonal water table of 18-30 inches for December to April. The water table is not 0-24 inches on any of the soils of the applicant parcel; therefore, this requirement is met.

**Staff:** The applicant has addressed the Comprehensive Plan Policy.

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

**Applicant:** The Soil Survey of Multnomah County states the fragipan is to a depth of 60 inches or more for all the soil types on the applicant parcel; therefore, this requirement is met.

**Staff:** The applicant has addressed the Policy.

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

**Applicant:** The Soil Survey of Multnomah County does not list any of the soils of this parcel as being subject to slumping, earth slides, or movement; therefore, this requirement is met.

**Staff:** The soil types of the subject parcel, according to The Soil Survey of Multnomah County, are not subject to slumping, earth slides, or movement. The applicant has not provided a site plan indicating the location and type of erosion control measures to be installed on the subject parcel.

**POLICY 22: ENERGY CONSERVATION**

**THE COUNTY'S POLICY IS TO PROMOTE THE CONSERVATION OF ENERGY AND TO USE ENERGY RESOURCES IN A MORE EFFICIENT MANNER. IN ADDITION, IT IS THE POLICY OF MULTNOMAH COUNTY TO REDUCE DEPENDENCY ON NON-RENEWABLE ENERGY RESOURCES AND TO SUPPORT GREATER UTILIZATION OF RENEWABLE ENERGY RESOURCES. THE COUNTY SHALL REQUIRE A FINDING PRIOR TO THE APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE FOLLOWING FACTORS HAVE BEEN CONSIDERED:**

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

**B. INCREASED DENSITY AND INTENSITY OF DEVELOPMENT IN URBAN AREAS, ESPECIALLY IN PROXIMITY TO TRANSIT CORRIDORS AND EMPLOYMENT, COMMERCIAL AND RECREATIONAL CENTERS;**

**C. AN ENERGY-EFFICIENT TRANSPORTATION SYSTEM LINKED WITH INCREASED MASS TRANSIT, PEDESTRIAN AND BICYCLE FACILITIES;**

**D. STREET LAYOUTS, LOTTING PATTERNS AND DESIGNS THAT UTILIZE NATURAL ENVIRONMENTAL AND CLIMACTIC CONDITIONS TO ADVANTAGE.**

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

**Applicant:** The application is for a dwelling on a Lot of Record. The density of dwellings is determined by the underlying district. Mass transit, pedestrian, and bicycle facilities are not identified for this portion of the County. The dwelling is not in an urban area; therefore, sections B, C, and D above do not apply. The proposed dwelling site takes advantage of the existing street layout and the natural environmental conditions, in that the proposed dwelling is located close to the existing street (Trout Creek Road), while observing district setbacks, and is sited on the portion of the parcel that best maintains the competing goals identified in Development Limitations and the district requirements.

**Staff:** The applicant does not propose any special energy saving resources. The applicant's parcel is not identified for mass transit, bicycle facilities, pedestrian ways, or public recreation so that portion of the criteria is not applicable. The applicant proposes to utilize the existing access to Trout Creek Road by building a driveway to the standards identified in Section .2074.

### **POLICY 37: UTILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

#### **WATER AND DISPOSAL SYSTEM**

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

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

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

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

**Applicant:** A private well will be drilled prior to obtaining a building permit. The septic system has been approved by the County Sanitarian.

**Staff:** The applicant has provided an incomplete copy of the Certification of Private On-Site Sewage Disposal form. The form has not been signed by the sanitarian. The applicant submitted a copy of the Land Feasibility Study (LFS 5-98) from the City of Portland Bureau of Buildings and it states, "your parcel of land has been found suitable for the installation of a subsurface sewage disposal system." The applicant has not identified the location of the proposed private well. Staff notes the LFS requirements include a site plan "in accordance with the following: A site plot plan drawn to scale completely dimensioned, showing a 'birds eye view' of the house, septic tank and drainfield piping, or other approved treatment and distribution units; with an equal area replacement site for the subsurface sewage disposal system. The site plan should show the direction and approximate degree of slope in the drainfield area. This site plan should also include the location of all present or proposed retaining walls, drainage channels, water supply lines or wells, paved areas and structures on the plot, roof and footing drains, with an indication of the number of bedroom or plumbing fixtures in each structure." The site plan submitted by the applicant shows the proposed dwelling on the subject parcel. The primary and secondary fire safety buffer zones are shown on a separate map. The applicant has not submitted documentation from DEQ that the water system and private sewage disposal systems are adequate (C).

*The application does not meet the requirements of Comprehensive Plan Policy 37.*

#### **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.**

**Applicant:** Existing vegetation will continue to handle on-site water run-off. A dry well on the parcel will be used to collect the run-off from the proposed structure. Water run-off will be handled on site in accordance with the standards set forth by the City of Portland Environmental Soils Section. Thus, run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

**Staff:** The applicant shall identify the location of the dry well on the subject parcel on the site map. Is the drywell in existence now or is it proposed? See Code section Staff responses for additional narrative. In the October 20, 1998 letter of incompleteness from Staff to the applicant, Staff requested the applicant complete the stormwater calculations sheet to provide documentation that the proposed stormwater system was adequate for the site. The applicant did not submit the stormwater calculations for the site to show the proposed stormwater drainage system is adequate for the site. The applicant site plan does not illustrate the location of the proposed stormwater drainage systems. The subject parcel contains a significant stream, as designated by the East of Sandy River Rural Area

Plan. No indication of how the run-off of the site will not adversely impact the stream has been provided by the applicant.

*The application does not meet the requirement of Comprehensive Plan Policy 37.*

## **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.**

**FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.**

**Applicant:** The service providers are Portland General Electric and General Telephone.

**Staff:** Communication services and facilities are available to the site as indicated by the applicant.

## **POLICY 38: FACILITIES**

**THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

### **SCHOOL**

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

**Applicant:** The school service provider form is attached.

**Staff:** The applicant has provided the school service provider form.

### **FIRE PROTECTION**

**B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND**

**Applicant:** The fire service provider form is attached. The service provider has indicated there is no water flow in this area. Therefore, the fire district will have to use water tank trucks, or a water source for fire fighting will need to be established on the applicant parcel. Based on the alternatives, the lack of water flow can be mitigated.

**Staff:** The lack of water alternatives for fire fighting purposes is a concern to Staff. The applicant has not provided specific details on how this problem can be addressed.

*The application does not meet the requirements of Comprehensive Plan Policy 38.*

**C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY**

**TO REVIEW AND COMMENTS ON THE PROPOSAL.**

**POLICE PROTECTION**

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

**Applicant:** The police protection service provider form is attached.

**Staff:** The Multnomah County Sheriff's Department has signed the form.

**POLICY 40: DEVELOPMENT REQUIREMENTS**

**THE COUNTY'S POLICY IS TO ENCOURAGE A CONNECTED PARK AND RECREATION SYSTEM AND TO PROVIDE FOR SMALL PRIVATE RECREATION AREAS BY REQUIRING A FINDING PRIOR TO APPROVAL OF LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:**

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

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

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

**Applicant:** None.

**Staff:** The applicant has addressed some of these issues under Comprehensive Plan Policy #22 Energy Conservation. The criteria are not applicable to the proposed development.

**Case File:** CU 9-98

**Location:** Tax Lot 14, Section 18, Township 1 South, Range 5 East, WM.

**Application Timeline:**

Pre-Application Conference: May 27, 1998.

Application received with full fees: September 23, 1998.

Application incomplete letter mailed: October 20, 1998.

Determination that application is complete: April 5, 1999; letter mailed April 6, 1999 **Begin "120 day timeline" on April 5, 1999.**

Notice of a Public Hearing (mailed): April 6, 1999.

Staff Report available: April 14, 1999.

Public Hearing before Hearings Officer: April 21, 1999. **Day 16**

**List of Exhibits:**

**List A: Staff/ Applicant Exhibits:**

1. Applicant site plan (reduced copy) showing dwelling location on the subject parcel.
2. Applicant site plan showing primary and secondary fire safety zone buffers.

3. Forest Practices Act and Rules statement form, to be recorded by the applicant at the County Recorder's office.
4. Stormwater Calculations sheet (3 pages).
5. 1987 Base County Land Use map.
6. Metro parcel map of the area adjacent to the subject parcel showing tax lots and year built of existing dwellings used in the Template Dwelling test.
7. Portion of the 160-acre square map submitted by the applicant for the Template Dwelling test.
8. Portion of the map and Policy 21 from the East of Sandy River Rural Area Plan. The map shows that Trout Creek North Branch runs through the subject parcel.
9. Elevation drawings of the proposed single-family residence.
10. 1998 Assessment and Taxation map for Section 18, 1S, 5E.

**List B: Notification Information:**

1. "Complete application" Letter, 3 pages.
2. Notice of Hearing, 4 pages.

**List C: Multnomah County Documents**

1. Staff Report – April 14, 1999
- 2.

**List D: Documents Submitted at April 21, 1999 Public Hearing:**

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ESTIMATED START TIME: 11:00

# AGENDA PLACEMENT FORM

**BOARD BRIEFING:**

**REQUESTED BY:** Commissioners Linn and Naito

**AMOUNT OF TIME NEEDED: 40 minutes**

DATE REQUESTED:

**AMOUNT OF TIME NEEDED:**

***DIVISION:*** \_\_\_\_\_

TELEPHONE #:85217/85137

BLDG/ROOM #:106/1500

ACTION REQUESTED:

☐ INFORMATIONAL ONLY    ☒ POLICY DIRECTION    ☐ APPROVAL    ☐ OTHER

**SUGGESTED AGENDA TITLE:**

## Briefing on social service facility siting and proposals

**SIGNATURES REQUIRED:**

SIGNATURES REQUIRED

Deane M. J.

BOARD OF  
COUNTY COMMISSIONERS  
99 OCT 13 AM 11:30  
MULTI-COUNTY  
OREGON

***Any Questions: Call the Board Clerk @ 248-3277***

OFFICE OF MAYOR VERA KATZ

OFFICE OF CITY COMMISSIONER DAN  
SALTZMAN

OFFICE OF COUNTY COMMISSIONER DIANE  
LINN

OFFICE OF COUNTY COMMISSIONER LISA  
NAITO

# COMMUNITY RESIDENTIAL SITING PROPOSALS

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OCTOBER 13, 1999

## 1. THE COMMUNITY PROBLEM SOLVING ACTION PLAN

*Contact Person: David Lane, Ph.D. 823-4134*

*Email: [dlane@ci.portland.or.us](mailto:dlane@ci.portland.or.us)*

The Community Problem Solving Program would help citizens in Portland and Multnomah County, neighborhood associations, providers and agencies discuss questions, issues and concerns related to existing or proposed siting of residential group homes and facilities. Staff would triage inquiries to assess the most appropriate type of assistance, which may include facilitation, mediation and/or assistance in the development of good neighbor agreements and similar consensus agreements. The program would be staffed by a combination of a Senior Community Relations Specialist and trained volunteer mediators in the Neighborhood Mediation Center.

### *Goals of the Community Problem Solving Program:*

To meet the needs of citizens, neighborhood associations, providers and agencies for issues, questions, and concerns related to the siting and operations of residential group homes and facilities;

To increase the satisfaction of citizens, neighborhood associations, providers and agencies in siting of residential group homes and facilities;

To increase the skills of citizens, neighborhood associations, providers and agencies in problem solving around issues related to residential group homes and facilities.

**Public need / demand:**

Citizens in Portland and Multnomah County have expressed their frustration with the processes by which residential group homes and facilities are sited. Citizens say that they often feel there is not enough information shared in advance with neighbors and that neighbors' questions, concerns, and interests may not be understood or considered by providers. Neighbors also have concerns about the on going operations of such residential group homes and facilities and do not always feel they have an effective means of engaging in dialogue and problem solving with the providers. Providers similarly have expressed that the needs of and respect for their clients are not always recognized, understood or respected by neighbors.

The main goal of the Community Problem Solving Program would be to facilitate addressing questions, concerns, and issues related *before* the issue was elevated to a severe problem. In the past, it has often been relatively late in the siting process that the parties are brought together to discuss issues and express frustration. At that late stage, very often, the parties have established their "positions," trust, and openness between the parties can be quite low. Thus, the opportunity for effective dialogue and problem solving is diminished. This Community Problem Solving Program will facilitate productive dialogue and problem solving and improve the siting process.

**Brief description of services:**

This program would provide mediation services for the proposed siting and operations of residential group homes and facilities. The types of services appropriate and available for a particular case would vary on a case-by-case basis. The volume and complexity of active cases would directly affect how many cases can be handled and the timeliness of responding to requests for services.

Specifically, the Community Problem Solving Program will:

1. Provide a range of mediation services to neighbors, agencies, County agencies, providers and others involved in proposed siting or on-going operations of existing residential group homes and facilities. These services would include the development of good neighbor agreements and similar consensus documents.
2. Facilitate problem solving, discussion and resolution of specific issues that arise before and during the siting process.
3. Mediate siting issues that arise after a facility has been sited including ongoing concerns around operations.
4. Train community members, neighborhood staff and providers in problem solving and conflict resolution related to residential group homes and facilities.
5. Work with State and County Agencies to resolve issues relating to siting before siting plans are made.

## 2. THE NEIGHBORHOOD INFORMATION ON SITING AND REFERRAL (NISR) PROCESS ACTION PLAN

*Contact Person: David Lane, Ph.D. 823-4519*

*Email: [dlane@ci.portland.or.us](mailto:dlane@ci.portland.or.us)*

The primary impetus for this four-step action plan is to address the issues, questions and concerns of citizens around residential group homes and facilities in neighborhoods. These services are often funded, coordinated, and supervised by State and County agencies. The proposed system and process for addressing these issues would be called the Neighborhood Information on Siting and Referral (NISR) process. NISR would be an outreach and information process developed through an ongoing partnership with citizens, neighborhood associations, providers, social service agencies, public service representatives, and residential group homes and facilities residents and their advocates. NISR would enable assistance for citizens and providers and would be a centralized, coordinated source of information, guidance, referral, and assistance to citizens, neighborhood associations, providers and agencies with inquiries about siting-related issues and concerns. NISR would be coordinated out of the Office of Neighborhood Involvement (ONI) and the NISR system—developed, adapted, and improved over time--would triage calls and requests to determine the nature of the concern, provide relevant information and make appropriate referrals to a range of respondents.

### **Goals of the NISR system:**

- This proposed action plan is an outreach and communication *process*, coordinated through the Office of Neighborhood Involvement. A careful deliberate process is necessary to address the myriad of issues around siting due to the complexity of the siting process, ethical concerns around client confidentiality, legality of various siting issues, fairness issues, and lack of any national protocols or established governmental procedures addressing this issue. Consequently, as a process, NISR will be developed with the advice and guidance of an advisory group convened by ONI. However, in a broad sense, NISR will:

- Develop legal and ethical guidelines, protocols, and "best practices" to address citizen questions and issues involved in residential group homes and facilities siting. These guidelines would be developed using a broad-based and balanced advisory group comprised of neighborhood association representatives, providers, residents of residential group homes and facilities, advocates, legal experts, public service officials and other citizens. These practices and guidelines would form the basis for the outreach and information provided through the NISR process, would be framed within legal and ethical practice, and would ensure the fair treatment of all citizens.
- Provide information on a broad range of questions and issues related to proposed siting of residential group homes and facilities and the operations of existing residential group homes and facilities using the above guidelines.
- Advocate for the fair treatment of all citizens, including residential group homes and facilities and all other neighborhood residents, in Portland and Multnomah County around siting issues.
- Develop networks of County and State agency contacts, providers, residential group homes and facilities advocates, and public agency contacts that citizens and neighborhood associations would be linked to for addressing specific concerns, questions and issues. Respondents for citizen inquiries might include: appropriate agency or residential group homes and facilities contacts (based on the guidelines developed by NISR), elected officials, program funders, neighborhood and coalition leaders, and the managers of Multnomah County Public Affairs, the City of Portland's crime prevention program, the Community Problem Solving Program, and a wide variety of social service agencies and providers.
- Provide information and feedback about the issues and types of requests for information and assistance on siting-related issues for NISR advisors, elected officials, residential group homes and facilities providers, and other agencies to develop new or improve existing programs designed to meet these needs.
- Maintain a library of research, good practices, suggestions for addressing specific concerns, referral information, etc. which would be provided to citizens, neighborhood associations and residential group homes and facilities providers to inform them about specific questions.

- Facilitate implementation of the Good Neighbor Certification process and Senate Bill 1104 which will require neighborhood associations to assist providers in siting residential group homes and facilities for offenders.
- Address citizen concerns, specific complaints, questions, etc through a triage system developed in partnership with the advisory group. This system would address a citizen's question while maintaining the confidentiality of the residential group homes and facilities (where necessary and appropriate) and its residents.

**Public need / demand:**

In a variety of ways, people across Portland and Multnomah County have voiced their concerns about the siting and operation of residential group homes and facilities in their neighborhoods. A main frustration is the complex network of agencies and service providers, the lack of coordination among these entities, and the lack of accurate, complete and timely information about proposed siting and existing residential group homes and facilities. Ordinarily these services originate or are coordinated with State agencies or Multnomah County agencies. Neighbors with concerns about a proposed siting or the on-going operations of existing residential group homes and facilities are often unclear or confused about which provider or even which governmental agency to call to get information.

In addition, citizens are unclear about which types of residential group homes and facilities and services are protected by the Fair Housing Act, confidentiality laws and other regulations. The lack of clear facts and information about the siting process or a particular residential group homes and facilities may cause or increase citizen concerns, fear, or sense of powerlessness that could unnecessarily heighten the tensions among neighbors and providers.

The proposed NISR process will serve as a gateway for citizen, neighborhood association and provider inquiries around siting issues. The process will provide a County/City governmental liaison among citizens, neighborhood associations, providers, social service agencies, public service representatives and residential group homes and facilities residents and their advocates. It will advocate for best practices among the full range of siting issues present in Portland and Multnomah County.

### *Brief description of services:*

The NISR process would operate in the City of Portland's Office of Neighborhood Involvement (ONI) with the full support of Multnomah County officials, staff and providers. The program would be staffed by one community relations staff person whose main responsibility would include providing information and outreach to neighborhoods and providers around siting issues. The ONI staff person would convene, facilitate, and coordinate the advisory process for developing the NISR. In addition, this position would develop the guidelines, best practices and protocols in partnership with the advisory group. Other responsibilities for the staff person might include gathering research and information about existing Federal, State, and local statutes, best practices, protocols from social service agencies, and lists of residential group homes and facilities providers who had agreed or were mandated to report providing service in Portland and Multnomah County.

The staff person would advocate for best practices, answer calls and inquiries, provide information, make referrals to appropriate contacts, and develop and on-going relations with the full range of constituents, agencies and providers. This staff person would be the primary contact person for agencies and providers to communicate with regarding follow-up and status of all referrals and questions. The staff person would also help citizens and neighborhood associations with concerns, questions, or information they needed regarding specific or general siting-related issues.

### *Scope of services:*

The Neighborhood Information on Siting and Referral (NISR) outreach and communication process would be designed to serve the people of Multnomah County and Portland. The processes and guidelines developed would be related to proposed and existing residential group homes and facilities within Multnomah County and Portland. The types of information maintained and provided would be as comprehensive as is practicable, ethically, and legally allowable.

- This program's primary purpose would be to serve as a conduit to connect citizens and neighborhood associations with the appropriate agencies and providers responsible for notifying, involving and working with neighbors and groups on issues related to proposed siting and existing operation of residential group homes and facilities. The program would advocate for and assist parties in getting information and assistance to ensure a fair, sensitive, and legal process for proposed siting and the on-going operation of existing residential group homes and facilities.

### 3. THE GOOD NEIGHBOR CERTIFICATION PROCESS ACTION PLAN

*Contact: Commissioner Diane Linn's  
Office 248-5220*

*E mail: [RamsayWeit@co.multnomah.or.us](mailto:RamsayWeit@co.multnomah.or.us)*

This initiative will function as a certification of the siting process used by a prospective neighborhood provider, designed to verify that the process used meets threshold community standards and lays the groundwork for ongoing good neighbor relations. The outlined process incorporates provisions of SB 1104 (effective October 23, 1999) which mandate the creation of citizen advisory committees to review proposed neighborhood facilities.

The certification process is not designed to create legally enforceable or appealable rights or obligations but is intended to provide guidance to neighbors and providers on what is expected during the siting process. The assumption throughout is that there is a mutual responsibility of providers and neighbors to participate and cooperate in good faith toward the goal of effective communication.

#### **Who is covered:**

The Oregon Dept. of Corrections, Oregon Youth Authority, Oregon Office of Services to Children and Families, and any other city, county, or public agency establishing a post-incarceration "facility," either directly or through a contract agency.

#### **Which programs:**

A halfway house, work release center or any domiciliary facility for persons released from any penal or correctional facility but still in the custody of the public agency; and youth care centers or other facilities authorized to accept youth offenders under ORS 419C.478.

#### **How to earn certification:**

- Contact the Office of Neighborhood Involvement (ONI) to review the proposed site in the context of existing facilities and to inform staff of program plans. ONI will make available best practice materials to aid in designing an outreach plan.
- As soon as possible after site control is obtained and the population to be housed is known to the provider, provide documented evidence that the agency has approached the appropriate neighborhood and business associations, as well as the district coalition office, offering to make a presentation on the proposed program and the agency outreach strategy.
- Provide notice to property owners within 400 feet of the site by sending a mailer to all households, containing a description of the proposed program, the provider organization with contact names and numbers, and a Q&A sheet on the program. Include a preliminary drawing of the proposed building if possible.
- Make door-to-door contact with these same households, presenting program staff to explain facility operation and answer questions.
- Conduct a personal meeting with immediate neighbors to discuss building design, landscape issues, fencing.
- Send a courtesy notice to selected facilities beyond 400 feet, e.g. schools, churches.
- Ask the neighborhood association to nominate a citizen advisory committee (required by SB 1104). (If there is no neighborhood organization or they do not take on the task, either the City of Portland or Multnomah County will appoint a committee selected from area residents).
- Provide the appointed citizens advisory committee information on:
  1. The proposed location, estimated population, size, hours of operation and use of the site;
  2. The number and qualifications of resident professional staff;
  3. The proposed rules of conduct and discipline to be imposed on residents; and
  4. Other aspects of the program as considered appropriate or as requested by the committee.

- Considered written input from the committee (if a majority view) on the suitability of the proposed facility and changes in the proposal. If the advice is rejected, provide written explanation to the committee.
- ONI with the full support of Multnomah County will:
  1. Provide staffing to implement and monitor the providers in partnership with local, County and State Agencies;
  2. Assist in the process of nominating members to the committee;
  3. Facilitate dialogue between the agency and the committee;
  4. Provide resources on best practices in good neighbor siting; and
  5. Check to see if the required documentation is in order
  6. Evaluate the time/resources required for providers to comply with the certification process.

#### 4. AMEND PORTLAND CITY CODE TO INCLUDE AN “ALTERNATIVES TO INCARCERATION/POST- INCARCERATION” USE CATEGORY

*Contact Person: Betsy Ames 823-4799*

*Email: [bames@ci.portland.or.us](mailto:bames@ci.portland.or.us)*

The City of Portland Bureau of Planning could develop a new land use category for “alternatives to incarceration/post-incarceration.” Code language would be adopted through the legislative process. City Code has a number of Use Categories including, among others: Group Living and Household Living under Residential Uses; Community Service; and Detention Facilities.

Uses may be allowed outright, limited, allowed as conditional uses or prohibited in different zones. Use regulations for single-dwelling, multi-family, commercial, and industrial and employment zones would need to be

amended to include how uses falling under the "alternatives to incarceration/post-incarceration" use category would be treated in these zones.

These uses could be treated as conditional uses in some or all residential, commercial, industrial and employment zones. Conditional use approval criteria, based on land use impacts, would need to be developed.

The City Code could also define "saturation" for these uses to encourage the even dispersal of facilities throughout the City. Distance limitations between similar uses or between these uses and sensitive areas such as schools could also be developed.

Conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

#### **Goal of the City Code Changes:**

The goal would be to regulate facilities that house residents under the supervision and authority of the Oregon Youth Authority, Multnomah County Community Corrections, or other corrections departments or agencies, as alternatives to detention facilities. The facilities would house residents who would be on parole or probation, serving out the remainder of court-ordered detention, either found guilty or who had pled guilty to felonies or misdemeanors, and are still under the jurisdiction of the State or the County. The use category would not include facilities, such as group homes for the disabled or alcohol treatment programs, protected under the Fair Housing Act.

#### **Scope of the Process to Change the City Code:**

The scope of the potential zoning code changes would be defined by the elected officials who "send this project" to the Bureau of Planning. The proposed code amendments would only apply to a limited number of facilities (those serving residents guilty of criminal acts) and would not outright prohibit such uses from siting in residential zones.

Code amendments would need to be developed by the Bureau of Planning with public input. Careful consideration would need to be given to the definition of facilities covered to ensure compliance with the Federal Fair Housing Act and to ensure application to all facilities that should be included. Planning staff would need to seek input from state and county correction agencies including the Oregon Youth Authority, and Multnomah County Community Corrections. In addition, the City Attorney would need to advise staff on the legality of any proposals. The Code changes would need to go to the Planning Commission for approval with notification as required before the hearing. Public review of any proposed changes and opportunities to comment would also be required. The Planning Commission would forward their recommended Code changes to the City Council for review and adoption. Additional funding for Planning to conduct research, outreach, and write code may be necessary.

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**SPECIAL NOTE REGARDING GROUP HOMES OPERATED BY THE  
PSYCHIATRIC SECURITY REVIEW BOARD**

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Residential group homes under the supervision of the State of Oregon's Psychiatric Security Review Board (PSRB) pose unique questions for the elected officials. Under these proposals, PSRB homes are only included within the scope of the first and second Action Plans. There was no consensus reached among the elected officials to include PSRB homes in the third and fourth Action Plans (Good Neighbor Certification and Code Amendments) because of serious legal issues created by the Fair Housing Act (FHA).

No federal or state court has ruled on the question of whether residents under the jurisdiction of the PSRB because of prior dangerous conduct and disease must be protected from discrimination under the FHA.

The PSRB reports that there are no incidents in recent years of persons placed in PSRB residential group homes who have caused injury to persons or property. Also, advocates for the disabled and the PSRB claim that there is no direct threat that such injury may occur in the future because each resident is determined to be adequately controlled by treatment and an appropriate level of supervision when placed in the community by the PSRB.

Some or all of the elected officials will approach the PSRB to request that it contract with providers who will participate in the Good Neighbor Certification process. The U.S. Department of Justice may issue additional

guidance on the issue at the request of Congressman Blumenauer. Other options that some of the elected officials may consider appropriate are to withdraw opposition to future amendments to the Federal Fair Housing Act or inviting a test court case.

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## QUESTIONS AND COMMENTS

Please direct your questions to the contact persons listed under each Action Plan heading or to Frank Dixon in the Office of Commissioner Dan Saltzman, 823-4151. Please send your written comments to: Dan Saltzman, Commissioner of Public Affairs, City of Portland, 1221 SW 4<sup>th</sup> Ave, Room 230, Portland, OR 97204 or email: [dsaltzman@ci.portland.or.us](mailto:dsaltzman@ci.portland.or.us)