

ANNOTATED MINUTES

Tuesday, March 23, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

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

P-1 C 1-93 Second Reading an Possible Adoption of an ORDINANCE Amending Comprehensive Framework Plan Policy 34, Trafficways, and the Accompanying Functional Classification of Trafficways Maps

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. TESTIMONY FROM JEAN RIDINGS AND ED PICKERING. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER SALTZMAN, ORDINANCE 756 WAS UNANIMOUSLY APPROVED.

P-2 CU 1-93/
CU 2-93 HEARING, ON THE RECORD, PLUS ADDITIONAL TESTIMONY LIMITED TO COMPATIBILITY OF LAND USES, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE in the Matter of the January 21, 1993 Planning and Zoning Hearings Officer Decision DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13156 NW McNAMEE ROAD; and the January 21, 1993 Planning and Zoning Hearings Officer Decision DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13160 NW McNAMEE ROAD.

PLANNING DIRECTOR SCOTT PEMBLE EXPLAINED THE PROCEDURE FOR HEARING. PLANNER SANDY MATHEWSON PRESENTED THE STAFF REPORT AND DISCUSSED LOT OF RECORD, COMPATIBILITY AND OVERALL STABILITY POLICIES USED IN HEARINGS OFFICER DECISION.

APPELLANT'S ATTORNEY JEFF BACHRACH ADVISED THEY DECIDED NOT TO SUBMIT NEW EVIDENCE AND TESTIFIED IN SUPPORT OF A REVERSAL OF THE HEARINGS OFFICER DECISION.

RESPONSE TO BOARD QUESTIONS BY MR. BACHRACH, MS. MATHEWSON AND COUNTY COUNSEL JOHN DuBAY.

ARNOLD ROCHLIN TESTIFIED IN OPPOSITION TO APPROVING THE CONDITIONAL USE REQUESTS.

IN REBUTTAL, MR. BACHRACH TESTIFIED IN SUPPORT OF HIS CLIENT'S CONDITIONAL USE REQUESTS.

BOARD COMMENTS AND DISCUSSION. RESPONSE TO BOARD QUESTIONS BY MR. BACHRACH AND MR. PEMBLE.

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED TO AFFIRM THE HEARINGS OFFICER DECISION AND ADOPT THE FINDINGS AND CONCLUSIONS CONTAINED THEREIN. BOARD COMMENTS. VOTE ON MOTION UNANIMOUSLY APPROVED. (ORDER 93-81 [FINAL ORDER DENYING CU 1-93 AND CU 2-93] IN THE MATTER OF REVIEW OF THE HEARINGS OFFICER'S DECISION WHICH DENIED CONDITIONAL USE APPROVAL OF A NON-RESOURCE RELATED DWELLING IN THE MUF DISTRICT FILED WITH BOARD CLERK ON 3/25/93).

P-3 CU 5-93/
LD 6-93 Review the March 10, 1993 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Conditional Use Request for a Homestead Lot Plus a Two-Lot Land Division, for Property Located at 15007 NW GERMANTOWN ROAD.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-4 CU 14-93 Review the March 10, 1993 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Conditional Use Request to Allow Development of the Subject Site with a Non-Resource Related Single Family Residence, for Property Located at 37500 SE GORDON CREEK ROAD.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-5 CS 4-93 Review the March 11, 1993 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Change in Zone Designation from C-4 to C-4, C-S for the Proposed West Vent Shaft Facility for the Westside Light Rail Tunnel, for Property Located at 6441 SW CANYON COURT.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

There being no further business, the meeting was adjourned at 10:44 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah C. Boast

Tuesday, March 23, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602

BOARD BRIEFING

B-1 Briefing on False Alarm Reductions. Presented by Lieutenant Bill Goss, Mary Ann Inglesby and Kelly Mott.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS
BY BILL GOSS, MARY ANN INGLESBY, KELLY MOTT AND
KEVIN O'MALLEY.

Tuesday, March 23, 1993 - 2:00 PM
Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-2 Review of Agenda for Regular Meeting of March 25, 1993.
- R-2 COMMISSIONER KELLEY TO REQUEST ONE WEEK
CONTINUANCE.
- R-3 COMMENTS AND RESPONSE TO BOARD QUESTIONS BY
RICHARD LEVY, ANGEL OLSEN AND JOHN LEGRY.
- R-5 SURVEYOR DENNIS FANTZ PRESENTATION AND RESPONSE
TO CITIZEN CONCERN.
-

Thursday, March 25, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

Vice-Chair Gary Hansen convened the meeting at 9:37 a.m.,
with Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman
present and Chair Gladys McCoy excused.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER KELLEY, SECONDED
BY COMMISSIONER COLLIER, THE CONSENT CALENDAR
(C-1 THROUGH C-5) WAS UNANIMOUSLY APPROVED.

JUSTICE SERVICES
SHERIFF'S OFFICE

- C-1 Ratification of Intergovernmental Agreement, Contract
#800613, Between the Oregon Public Utility Commission and
Multnomah County, Providing Revenue for Sheriff's Office
Motor Carrier Safety Unit to Enforce Commercial Motor
Vehicle Safety Rules and Regulations, for the Period
October 1, 1992 through September 20, 1993
- C-2 Renewal Application for Business Certificate as a Wrecker
of Motor Vehicles Submitted by Sheriff's Office with
Recommendation for Approval, for Ron Barber Enterprise,
Inc., dba Division Street Auto Parts, 13231 SE DIVISION

DEPARTMENT OF HEALTH

- C-3 Ratification of Amendment #5 to Intergovernmental Revenue
Agreement, Contract #103982, Between Multnomah County and
the Oregon State Office of Medical Assistance Programs,
Extending the Physician Care Organization Agreement from
February 1, 1993 through March 31, 1993

- C-4 Ratification of Intergovernmental Revenue Agreement, Contract #201503, Between Multnomah County and Clackamas County, Providing Telephone Triage for Clients of Clackamas County Health Department, for the Period January 1, 1993 through December 31, 1993

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 ORDER in the Matter of the Execution of Deed D930860 for Certain Tax Acquired Property to ASSOCIATES FINANCIAL SERVICE COMPANY OF OREGON, INC.

ORDER 93-82.

REGULAR AGENDA

NON-DEPARTMENTAL
MANAGEMENT SUPPORT

- R-1 Recognition and Acknowledgement of JEFFREY B. BAER, CPPB, Purchasing, Contracts and Central Stores, as "BUYER OF THE YEAR" by the National Institute of Governmental Purchasing, Columbia Chapter. Award Presented by Chair Gladys McCoy.

PURCHASING DIRECTOR LILLIE WALKER AND
VICE-CHAIR HANSEN COMMENTS HONORING MR. BAER'S
ACCOMPLISHMENTS. BOARD ACKNOWLEDGEMENT.

NON-DEPARTMENTAL

- R-2 RESOLUTION in the Matter of the Preservation and Maximization of Jail Beds and Other Corrections Related Activities in Multnomah County, Oregon

UPON MOTION OF COMMISSIONER COLLIER, SECONDED
BY COMMISSIONER KELLEY, IT WAS UNANIMOUSLY
APPROVED THAT R-2 BE CONTINUED TO THURSDAY,
APRIL 1, 1993.

- R-3 First Reading of an ORDINANCE Designating the Citizens Steering Committee of the Citizens Convention as an Advisory Committee of Multnomah County

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES
AVAILABLE. COMMISSIONER KELLEY MOVED, AND
COMMISSIONER SALTZMAN SECONDED, APPROVAL OF THE
FIRST READING. TESTIMONY FROM JIM DUNCAN.
COUNTY COUNSEL JOHN DuBAY RESPONSE TO QUESTIONS
OF MR. DUNCAN. BOARD DISCUSSION AND COMMENTS.
VOTE ON MOTION WAS UNANIMOUSLY APPROVED.
SECOND READING SCHEDULED FOR 9:30 AM, THURSDAY,
APRIL 1, 1993.

- R-4 In the Matter of a Request for Exemptions from the Hiring Restriction Policy for Deputy District Attorney I, II, III, IV; Legal Assistant and Legal Intern Positions in the District Attorney's Office

UPON MOTION OF COMMISSIONER COLLIER, SECONDED

BY COMMISSIONER KELLEY, R-4 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-5 PUBLIC HEARING and Consideration of ORDER in the Matter of Legalization of Brower Road from Larch Mountain Road No. 1320 Northerly 19,925 Feet to the Switchback in the Road Near the Center of Section 27, T1N, R5E, W.M. as County Road No. 4999

NO ONE WISHED TO TESTIFY. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, ORDER 93-83 WAS UNANIMOUSLY APPROVED.

- R-6 RESOLUTION [to Consider Condemnation] in the Matter of the Improvement of the Intersection of S.E. Stark St., No. 3317, and S.E. 202nd Avenue, No. 561

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, RESOLUTION 93-84 WAS UNANIMOUSLY APPROVED.

- R-7 RESOLUTION [to Consider Condemnation] in the Matter of the Improvement of S.E. Bull Run Road, No. 1634

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, RESOLUTION 93-85 WAS UNANIMOUSLY APPROVED.

- R-8 RESOLUTION [to Consider Condemnation] in the Matter of the Improvement of N.E. Halsey Street, No. 4996

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, RESOLUTION 93-86 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

- R-9 RESOLUTION in the Matter of Submitting a 1993-95 County Diversion Plan in Order to Receive State Funds to Provide those Services

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER KELLEY, APPROVAL OF R-9. MULTNOMAH COUNTY CHILDREN AND YOUTH SERVICES COMMISSION MEMBER PAULINE ANDERSON TESTIFIED IN SUPPORT OF INCLUSION IN THE DIVERSION PLAN OF CCYSC TARGETED YOUTH AT RISK OF COMMITMENT TO A STATE TRAINING SCHOOL; REFERENCE TO THE SCOPE AND TRENDS OF JUVENILE CRIME IN MULTNOMAH COUNTY; REFERENCE TO PROGRESS OR REGRESS IN EFFORTS TO MANAGE THE COUNTY'S ASSIGNED CAP; COMMITMENT RATE DATA; INTEGRATION OF STATE AND COUNTY FUNDS AND THE COMBINATION OF COUNTY GENERAL FUNDS AND CCYSC MONIES. COMMISSIONER SALTZMAN MOVED, SECONDED BY COMMISSIONER COLLIER, ADOPTION OF THE PROPOSED CCYSC RECOMMENDATIONS TO THE PLAN AND DIRECTING HAL

OGBURN TO PREPARE AN ADDENDUM TO THE PLAN. FOLLOWING BOARD COMMENTS AND DISCUSSION WITH COUNTY COUNSEL JOHN DuBAY, COMMISSIONERS SALTZMAN AND COLLIER WITHDREW MOTION AND SECOND. VOTE ON RESOLUTION 93-87 UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT JJD STAFF BE DIRECTED TO BRING BACK AN ADDENDUM TO DIVERSION PLAN TO BE SUBMITTED TO CSD AT A LATER DATE, ADDRESSING THE RECOMMENDATIONS OF THE MULTNOMAH COUNTY CHILDREN AND YOUTH SERVICES COMMISSION.

JUSTICE SERVICES

COMMUNITY CORRECTIONS

- R-10 Ratification of Intergovernmental Agreement, Contract #900423, Between the Oregon Board of Parole and Post-Prison Supervision and Multnomah County, Providing Implementation of Sanction/Intervention Guidelines for Parole and Post-Prison Supervision Violations, for the Period October 1, 1992 through June 30, 1993

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

PUBLIC COMMENT

- R-11 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

There being no further business, the meeting was adjourned at 10:01 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By

Deborah C. Boast



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS

GLADYS McCOY •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

MARCH 22 - 26, 1993

Tuesday, March 23, 1993 - 9:30 AM - Planning Items. . . .Page 2
Tuesday, March 23, 1993 - 1:30 PM - Board Briefing. . . .Page 2
Tuesday, March 23, 1993 - 2:00 PM - Agenda ReviewPage 3
Thursday, March 25, 1993 - 9:30 AM - Regular Meeting. . . .Page 3

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

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers

Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers

Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

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

Tuesday, March 23, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 C 1-93 Second Reading an Possible Adoption of an ORDINANCE Amending Comprehensive Framework Plan Policy 34, Trafficways, and the Accompanying Functional Classification of Trafficways Maps
- P-2 CU 1-93/
CU 2-93 HEARING, ON THE RECORD, PLUS ADDITIONAL TESTIMONY LIMITED TO COMPATIBILITY OF LAND USES, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE in the Matter of the January 21, 1993 Planning and Zoning Hearings Officer Decision DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13156 NW McNAMEE ROAD; and the January 21, 1993 Planning and Zoning Hearings Officer Decision DENYING Applicant's Conditional Use Request to Allow a Non-Resource Related Single Family Residence for Property Located at 13160 NW McNAMEE ROAD.
- P-3 CU 5-93/
LD 6-93 Review the March 10, 1993 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Conditional Use Request for a Homestead Lot Plus a Two-Lot Land Division, for Property Located at 15007 NW GERMANTOWN ROAD.
- P-4 CU 14-93 Review the March 10, 1993 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, Conditional Use Request to Allow Development of the Subject Site with a Non-Resource Related Single Family Residence, for Property Located at 37500 SE GORDON CREEK ROAD.
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Tuesday, March 23, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Briefing on False Alarm Reductions. Presented by Lieutenant Bill Goss, Mary Ann Inglesby and Kelly Mott. 1:30 PM TIME CERTAIN, 30 MINUTES REQUESTED.

Tuesday, March 23, 1993 - 2:00 PM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

B-2 Review of Agenda for Regular Meeting of March 25, 1993.

Thursday, March 25, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

JUSTICE SERVICES

SHERIFF'S OFFICE

- C-1 Ratification of Intergovernmental Agreement, Contract #800613, Between the Oregon Public Utility Commission and Multnomah County, Providing Revenue for Sheriff's Office Motor Carrier Safety Unit to Enforce Commercial Motor Vehicle Safety Rules and Regulations, for the Period October 1, 1992 through September 20, 1993
- C-2 Renewal Application for Business Certificate as a Wrecker of Motor Vehicles Submitted by Sheriff's Office with Recommendation for Approval, for Ron Barber Enterprise, Inc., dba Division Street Auto Parts, 13231 SE DIVISION

DEPARTMENT OF HEALTH

- C-3 Ratification of Amendment #5 to Intergovernmental Revenue Agreement, Contract #103982, Between Multnomah County and the Oregon State Office of Medical Assistance Programs, Extending the Physician Care Organization Agreement from February 1, 1993 through March 31, 1993
- C-4 Ratification of Intergovernmental Revenue Agreement, Contract #201503, Between Multnomah County and Clackamas County, Providing Telephone Triage for Clients of Clackamas County Health Department, for the Period January 1, 1993 through December 31, 1993

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-5 ORDER in the Matter of the Execution of Deed D930860 for Certain Tax Acquired Property to ASSOCIATES FINANCIAL SERVICE COMPANY OF OREGON, INC.

REGULAR AGENDA

NON-DEPARTMENTAL

MANAGEMENT SUPPORT

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NON-DEPARTMENTAL

- R-2 RESOLUTION in the Matter of the Preservation and Maximization of Jail Beds and Other Corrections Related Activities in Multnomah County, Oregon
- R-3 First Reading of an ORDINANCE Designating the Citizens Steering Committee of the Citizens Convention as an Advisory Committee of Multnomah County
- R-4 In the Matter of a Request for Exemptions from the Hiring Restriction Policy for Deputy District Attorney I, II, III, IV; Legal Assistant and Legal Intern Positions in the District Attorney's Office

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-5 PUBLIC HEARING and Consideration of ORDER in the Matter of Legalization of Brower Road from Larch Mountain Road No. 1320 Northerly 19,925 Feet to the Switchback in the Road Near the Center of Section 27, T1N, R5E, W.M. as County Road No. 4999
- R-6 RESOLUTION [to Consider Condemnation] in the Matter of the Improvement of the Intersection of S.E. Stark St., No. 3317, and S.E. 202nd Avenue, No. 561
- R-7 RESOLUTION [to Consider Condemnation] in the Matter of the Improvement of S.E. Bull Run Road, No. 1634
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DEPARTMENT OF SOCIAL SERVICES

- R-9 RESOLUTION in the Matter of Submitting a 1993-95 County Diversion Plan in Order to Receive State Funds to Provide those Services

JUSTICE SERVICES

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PUBLIC COMMENT

- R-11 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

SHARRON KELLEY
Multnomah County Commissioner
District 4



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

MEMORANDUM

TO: Clerk of the Board
Multnomah County Commissioners

FROM: Sharron Kelley, Commissioners

RE: Absence from Meeting

DATE: March 1, 1993

I will be absent from the Board meeting on March 23rd
due to a personal appointment.

1678L-8

BOARD OF
COUNTY COMMISSIONERS
1993 MAR -2 AM 11:13
MULTNOMAH COUNTY
OREGON



GLADYS McCOY, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 248-3308

M E M O R A N D U M

TO: Vice Chair Gary Hansen
Commissioner Dan Saltzman
Commissioner Sharron Kelley
Commissioner Tanya Collier
Office of the Board Clerk

FROM: Gladys McCoy *GM*
Multnomah County Chair

DATE: March 4, 1993

RE: March Schedule

For the next couple of weeks, I will be concentrating on preparing the Executive Budget. I will be working from my home. While I will not be present in the Board room, I will listen in from time to time over the telephone.

I understand you will be sending me your written comments and recommendations via Hank for my consideration as I prepare the Executive Budget. I appreciate and look forward to your input.

The after effects of my treatment are more than I anticipated, but I am regaining my strength and am looking forward to returning to the Board room. I appreciate you keeping me in your thoughts and prayers.

BOARD OF
COUNTY COMMISSIONERS
1993 MAR - 4 PM 3:30
MULTNOMAH COUNTY
OREGON

GM:mrj
9963G



GLADYS McCOY, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 248-3308

M E M O R A N D U M

TO: Vice-Chair Gary Hansen
Commissioner Dan Saltzman
Commissioner Tanya Collier
Commissioner Sharron Kelley
Office of the Board Clerk

FROM: Gladys McCoy
Multnomah County Chair

DATE: March 25, 1993

RE: Absence From Board Meeting

I will not be attending the Board meeting Tuesday, March 23 and Thursday, March 25, due to the fact that I am working on the Executive budget from my home.

GM:mrj
0051G

BOARD OF
COUNTY COMMISSIONERS
1993 MAR 26 PM 3:15
MULTNOMAH COUNTY
OREGON

#1

PLEASE PRINT LEGIBLY!

MEETING DATE 3-23-93

NAME Jean Ridings

ADDRESS 21510 N.E. Black Rd

STREET
Troutdale OR 97060
CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P1

SUPPORT _____ OPPOSE _____

SUBMIT TO BOARD CLERK

Meeting Date: March 23, 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: C 1-93

BCC Informal _____ BCC Formal March 23, 1993
(date) (date)

DEPARTMENT DES DIVISION Planning and Development

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Ed Pickering/Mark Hess

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 5 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

C 1-93 Comprehensive Plan amendment of the Functional Classification of Trafficways Definitions and Map in Policy 34 (Trafficways)

Second Reading

#756

COPIES TO
4/12/93 Ordinance Distribution
List, Ed Pickering & Mark Hess

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER BH William

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 MAR 15 PM 2:42



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C 1-93

☒ Agenda Placement Sheet

No. of Pages 6

☒ Case Summary Sheet

No. of Pages 1

☒ Previously Distributed

2-23-93

☐ Notice of Review

No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☐ Decision

No. of Pages _____

(Hearings Officer/Planning Commission)

☒ Previously Distributed

January 26, 1993

Board Requested Materials

Four Letters

*Duplicate materials will be provided upon request.

Please call 2610. _____



OFFICE MEMORANDUM . . . DEPARTMENT OF ENVIRONMENTAL SERVICES

TO: R. Scott Pemble, Director
Planning & Development Division

FROM: Ed Pickering *EP*
Transportation Planning Administrator

DATE: March 11, 1993

SUBJECT: Agency Review and Comments: CFP Functional Classification Amendment

Enclosed, please find correspondence from City of Troutdale, ODOT, and City of Portland commenting on the proposed amendments to CFP Policy 34 and Functional Classification of Trafficways map. Also, enclosed in a letter to City of Gresham, inviting their review and comment on the County proposal.

Agency responses are positive. Requests for revisions have been previously resolved. Please add this material to File No. CI-93, and forward to the Board for consideration in their deliberations.

EP:vh

Enclosure

0296E

RECEIVED
MAR 12 1993

Multnomah County
Zoning Division



CITY OF

PORTLAND, OREGON

OFFICE OF TRANSPORTATION

Earl Blumenauer, Commissioner

Felicia Trader, Director

1120 S.W. Fifth Avenue

Suite 702

Portland, Oregon 97204-1957

(503) 796-7016

FAX (503) 796-7576

February 26, 1993

Ed Pickering, Transportation Planning Administrator
Department of Environmental Services, Transportation Division
1620 SE 190th Avenue
Portland, Oregon 97233

Dear Mr. Pickering:

We have reviewed the proposed amendments to the Multnomah County Comprehensive Plan, Policy 34, and to the street classifications for rural roads. We have no objections to the proposed changes.

An ongoing dialogue between the two jurisdictions will be necessary to assure continuity when improvements are anticipated where Multnomah County rural roads interface with City streets.

The Scenic Route designation for Marine Drive is consistent with the Natural Design Boulevard designation adopted by the City as part of the Transportation Element of the Portland Comprehensive Plan. Other streets with the Natural Design Boulevard designation are: Skyline Boulevard, Germantown Road, and NW Cornell Road.

Sincerely,

Jeanne Harrison, Senior Transportation Planner
Transportation Planning

JEH/jeh



CITY OF TROUTDALE

MARCH 5, 1993

Ed Pickering
Transportation Division
MULTNOMAH COUNTY DES
1620 SE 190th
Portland, OR 97060

RE: FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS - RURAL

City staff have reviewed the Multnomah County Planning Commission's Resolution C1-93, the proposal Multnomah County Ordinance amending Comprehensive Framework Plan Policy 34 (Trafficways), and the map entitled "Functional Classification of Trafficways-Rural East" dated January 22, 1993.

We concur with your proposed changes establishing rural trafficway classifications of "rural arterial" and "rural collector" and changing the scenic route designation from a classification to a designation overlaying the trafficway functional classification.

Thank you for allowing us to comment on this issue.

Sincerely,

CITY OF TROUTDALE

James E. Galloway
Public Works Director

D:\FUNCCLAS\CVLTR



DEPARTMENT OF
TRANSPORTATION

March 3, 1993

Ed Pickering
Transportation Planning Manager
Multnomah County
1620 SE 190th Avenue
Portland, OR 97233

Highway Division

Region 1

FILE CODE:

SUBJECT: Rural Road Functional Classifications

The Oregon Department of Transportation (ODOT) has reviewed the County's proposed amendments to Comprehensive Framework Plan Policy 34 and application to State Highways. ODOT has no objections to the proposed classifications as stated in your letter dated February 3, 1993, i.e. retention of the designations of US 30 and US 26 as principal arterials, and I-84 as a freeway, and reclassification of Crown Point Highway as a Rural Arterial west of Corbett Hill Road and as a Rural Collector east of Corbett Hill Road, with a scenic overlay designation.

We look forward to reviewing the rural road access and design standards as they become available. Since the rural classification applies only to Crown Point Highway, your contact person within ODOT will be Ms. Jeanette Kloos, 9002 SE McLoughlin Blvd., Milwaukie, OR 97222, phone 653-3222.

Thank you for providing us with the opportunity to review the County's proposal.


Lidwien Rahman
Regional Planning Representative



9002 SE McLoughlin
Milwaukie, OR 97222
(503) 653-3090
FAX (503) 653-3267



MULTNOMAH COUNTY OREGON

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION DIVISION
1620 S.E. 190TH AVE.
PORTLAND, OREGON 97233
(503) 248-5050

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

February 26, 1993

Mr. Richard Ross, Transportation Planner
City of Gresham
1333 NW Eastman Parkway
Gresham, OR 97030

Dear Richard:

The proposed County Rural Road Functional Classification Plan was reviewed during the Road Functional Classification Technical Advisory Committee meeting, February 16, 1993. A Gresham representative was not present at this meeting. It is my understanding that the city is requesting an opportunity to review the proposed plan, however, I have been unable to contact you by telephone.

We would be happy to meet with Gresham representatives to review the Rural Road Functional Classification Plan by March 16, 1993. Please contact me to set up a meeting time.

Sincerely,

KATHY BUSSE
Administrative Services Officer

Ed Pickering
Transportation Planning Manager

cc: Commissioner Kelley

EPVH0585.LTR

Meeting Date: February 23, 1993 **MAR 23 1993**

Agenda No.: P-6 **P-1**

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: Public Hearing - C 1-93

BCC Informal _____ BCC Formal February 23, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Jane McFarland

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

C 1-93 In the matter of recommending amendments to Comprehensive Framework Plan Policy 34 and the accompanying Functional Classification of Trafficways Maps

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER BH Willia

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 FEB 17 AM 9:05



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

Board Planning Packet Check List

File No. Q1-93

☒ Agenda Placement Sheet

No. of Pages 1☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

Notice of Review

No. of Pages _____


*** (Maybe distributed at Board Meeting)**

Previously Distributed

☒ Decision - *Ordinance*

No. of Pages 9

(Hearings Officer/Planning Commission

 Previously Distributed

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1983 FEB 17 AM 9:05

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

(CL/1)



CASE NAME Rural Roads Classification Maps

NUMBER C 1-93

1. Applicant Name/Address

Transportation Division
1620 SE 190th
Portland, Oregon 97233

2. Action Requested by applicant

Adopt Maps and Ordinance changes to classify rural roads by their function.

3. Planning Staff Recommendation

ADOPTION

4. Planning Commission Action:

RECOMMEND ADOPTION OF PROPOSED ORDINANCE AND MAPS

5. If recommendation and decision are different, why?

The Planning Commission corrected some errors on the maps (see 5a. for the one change resulting from public testimony).

ISSUES

(who raised them?)

- a. County road classifications should match to adjoining jurisdictions
(A resident on Troutdale Road, who is also a Troutdale City Council member, requested a change from Rural Arterial to Rural Collector from Division to Stark Street. The Planning Commission concurred that the Rural Arterial connection to urban arterial system should be via Troutdale Road to Division, and west to 257th. This change appears on the maps forwarded to the Board).

Do any of these issues have policy implications? Explain.

This ordinance will update and clarify the 1983 Functional Classification of Trafficways Map which is a part of Plan Policy 34: Trafficways. The 1983 map does not classify most rural area roads. Recent State legislation requires the rural road system to have a functional classification system. The classification of a road in part determines its relative importance within the county's road system. At the time a roadway is either built or reconstructed, the classification becomes the primary determinant for the road design.

ACTION REQUESTED OF BOARD

- ☒ Affirm Plan.Com /Hearings Officer
☒ Hearing/Rehearing *1/24 Reading*
☐ Scope of Review
☐ On the record
☒ De Novo
☐ New Information allowed

**BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY**

In the Matter of Recommending Amend-)
ments to Comprehensive Framework Plan)
Policy 34 and the Accompanying Func-)
tional Classification of Trafficways Map)

**RESOLUTION
C 1-93**

WHEREAS, County Transportation and Planning Divisions propose revisions to Comprehensive Framework Plan Policy 34 to address the road system for rural areas; and

WHEREAS, Policy 34 currently classifies most roads in the rural sections of Multnomah County as local streets, yet some rural roads function as collectors or arterials; and

WHEREAS, County standards for the design and improvement of local streets do not meet all safety and operational needs on some rural trafficways; and

WHEREAS, The existing Scenic Route classification does not represent the functional role of a trafficway as defined in Policy 34. Rather, it denotes roads identified for their visual or landscape qualities, or valued for recreational use; and

WHEREAS, The proposed functional classification system for rural Multnomah County roads is consistent with Statewide Planning Goal No. 12, Transportation and the Oregon Transportation Rule directive to develop a Transportation System Plan; and

WHEREAS, Proposed policy and trafficway classifications include roads within the Columbia River National Scenic Area; and

WHEREAS, The Multnomah County Comprehensive Framework Plan must be consistent with the Columbia River Gorge National Scenic Area Management Plan, and in the event of conflict, the Management Plan supercedes County plans or policies; and

WHEREAS, The Planning Commission heard testimony at a public hearing on February 1, 1993 on proposed amendments to Comprehensive Framework Plan Policy 34 and the accompanying Functional Classification of Trafficways Map; and,

WHEREAS, The Planning Commission recommended adoption of a proposed ordinance captioned "An Ordinance amending Comprehensive Framework Plan Policy 34, Trafficways, and the accompanying Functional Classification of Trafficways Map".

NOW, THEREFORE BE IT RESOLVED that Resolution C 1-93 and the corresponding Ordinance captioned "An Ordinance Amending Multnomah County Comprehensive Framework Plan Policy 34: Trafficways and the companion Functional Classification of Trafficways Map" is hereby recommended for approval by the Board of County Commissioners.

Approved this 1st day of February , 1993



Karin Hunt, Vice Chair
Multnomah County Planning Commission

Jean M. Ridings

2510 NE Blue Lake Road
Troutdale, Oregon 97060-9790
March 23, 1993

TO: Multnomah County Planning Commission

RE: Marine Drive

Recently I saw a map (I believe it is marked # 34) in which the designation of "Scenic" had been taken off Marine Drive = from 223rd East to Troutdale at it's connection with I-84 and the Scenic Drive in the Gorge.

This was a shock to me and others I have mentioned it to, and as I did a limited research on when this had occurred, I was told it was sometime prior to 1983. This fact was not brought to our attention when the Toombs issue was before the County (Fairview had rezoned the property at Marine Drive/Blue Lake Road, from Open Space/Parks to Heavy Industrial) in 1987/89. It was addressed in many letters as a Scenic Drive. This matter was NOT resolved and remains an eyesore to this day, with increasing potential for even more truck traffic than now exists at that dangerous intersection = with the Wirmar property and Chinook Landing in full swing, as well as all the other traffic on Marine Drive. Joggers, thousands of cyclists, passenger cars, RV's and every other type of recreation is competing with trucks on this very beautiful SCENIC Drive. Please reconsider and help protect this gateway to the gorge and do everything you can to keep it from continued degradation. I quote "Traffic use of Marine Drive is expected to change when I-205 is opened. Since I-205 connects to I-80 N, as well as NE Portland Hy, Columbia Blvd., and Airport Way and since I-80 N east of

102nd.Ave. WILL BE DIVERTED FROM Marine Drive to I-80N in the Columbia area = The State Highway Division's projection is 4,000 daily vehicles on Marine Drive."

This is quote from your own document of April, 1979. Since Interlachen, Inc was never notified about any change in the status of Marine Drive, nor has any evidence of any public meeting where any change occurred on Marine Dr., I appeal to you to keep the Scenic Drive designation on this beautiful drive, and PROTECT this TOURISM TREASURE as the ENTRANCE TO THE GORGE THAT IT HAS ALWAYS BEEN.

THANK YOU.

Attached: Map showing "Scenic" entire length of Marine Drive. Letter from Rick Bauman, Co. Commissioner, and copy of my testimony March 10, 1993 to City of Portland.

Submitted: Jean M. Ridings, Past President
Interlachen, Inc. Homeowners Assoc. (Since 1930)
21510 N.E. Blue Lake Rd.
Troutdale, OR 97060
(503) 666-6433

COLUMBIA COMMUNITY

ONE INCH EQUALS 2400 FEET

ORIGINAL MAP PROVIDED BY MULTNOMAH COUNTY FIRE DISTRICT NO. 10, JUNE, 1977

EXISTING TRANSPORTATION FACILITIES LEGEND

	FREEWAY	
	RAMP, ACCESS POINT	
	MAJOR ARTERIAL	STATE
	MINOR ARTERIAL	
	COLLECTOR	
	MAJOR ARTERIAL	COUNTY
	MINOR ARTERIAL	
	SCENIC	
	COLLECTOR	



RICK BAUMAN
Multnomah County Commissioner
District 3



606 County Courthouse
Portland, Oregon 97204
(503) 248-5217

January 18, 1989

Ms. Jean M Ridings
21510 NE Blue Lake Road
Troutdale, OR 97060

Dear Mrs. Ridings:

Thank you for your letter and information you sent to me on January 9, 1989 to further explain the Toombs Trucking operation and to let me know how you feel. As you know, I agree with your position and have taken some action.

The County is presently going through an appeal process and if we continue to work together, I know there should be an agreeable outcome for all concerned.

Sincerely,

Rick Bauman
County Commissioner
District No. 3

CM/kp

March 10, 1993

Testimony = City of Portland

RE: Dev. Standards for Columbia South Shore

Appendix G: Amendments to Scenic Resources Protection (?) Plan:

I have lived East of this stated area for many years, however I have had to attend meetings and hearings in Portland frequently - since what is approved by the Portland Planning, Columbia Corridor Assoc., Port of Portland, Tri-Met and the City of Portland Water Bureau has in the past - and can in the future - severely impact our neighborhood of Interlachen (between Blue and Fairview Lakes) - Inc. in 1930.

An example of this can be found on Pg. 38; i.e., "View of Mt. Hood from Interlachen Parkway".

We have some serious concerns about Marine Drive, continuing to remain a Scenic Drive. with the continuous degradation. I have been asked by 40 Mile Loop folks to let you know they are very concerned about the safety of the cyclists due to the lack of speed enforcement and increased traffic on Marine Drive. When the question was raised as to why the crosswalks were NO LONGER painted white where cyclists and joggers must cross Marine Drive - I was told that people are safer when the crossing is NOT painted since it gave them a FALSE sense of security while crossing and they were more likely to be hit = in other words, make it dangerous - it's safer for them ?????????? The cross walks are NOT painted white at this time. Marine Drive had 500 ft. buffers in the "Columbia Plan". If they were necessary for habitat and esthetics then; why are they not even more so now?? I have watched the wetlands of the once beautiful South Shore being destroyed = must be 100% gone now = Fairview Lake has become a refuge for many of the surviving species (list available from ODF/W =extensive); it is such a thrill to watch a bald eagle dive for fish in Fairview Lake, then rest on an oak tree on the So. shore = a sight I hope all of our grandchildren can experience!

Yesterday was spent in Salem hearing shocking news of forces working very hard to destroy what people come to Oregon to enjoy!! We will soon no longer be able to enjoy the rewards of the McCall legacy - SEC has become a dirty word in Oregon !

In Oregon's "Year of the Trail"

we have turned the rivers to sewers

- and KILLED THE FISH

turned the fields to factories

- and KILLED THE SOIL

fenced the range

- and KILLED the grassland

paved the valley

- and ~~KILLED~~ the AIR (cr.Jonathan Nicholas)

Portland and surrounding areas suffered thru the drought - and continue to suffer extensive storm water/sewer problems = or are we indeed suffering from LACK OF LONG RANGE PLANNING AND SEVERE CASE OF DESTRUCTION IN THE NAME OF EC.DEV. ????

Our tiny neighborhood association formed our own LID in the 60's and built a sewer to protect Blue and Fairview Lakes. Rick Holt told our group that we would be squeezed in like sardines - and since I have seen Citz. Inv. in So.Shore, Port of Portland and other areas becoming a JOKE, I may be forced to agree with him =

What a Shame!! Property owners should NOT have the right to cause severe environmental harm.

Thank you =

Jean M. Ridings
21510 N.E. Blue Lake Road
Troutdale, OR 97060
(503) 666-6433

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 756

An ordinance amending Comprehensive Framework Plan Policy 34, Trafficways, and the accompanying Functional Classification of Trafficways Maps.

Multnomah County Ordains as follows:

Section I. Findings.

(A) Comprehensive Framework Plan Policy 34: Trafficways states that a safe and efficient trafficway system should be developed by various means including establishing a street classification system; such trafficway classification system is defined and described in the Policy 34: Trafficways section of the plan.

(B) The Comprehensive Framework Plan: Functional Classification of Trafficways Map relates street classifications as defined and described in Policy 34: Trafficways to the existing and future county street system.

(C) The street classification system as defined and described in Policy 34: Trafficways section relates street and travel characteristics that are most closely associated with urban land uses and intensities such that rural road functional classifications are not described in terms of rural land uses and activities and the rural road functional hierarchy.

(D) Resource related development, rural center growth and increased recreational activities in rural areas of Multnomah County have resulted in increased traffic volumes on rural county roads since 1983 when the previous Functional Classification of Trafficways Map

1 was adopted.

2
3 (E) State-wide Planning Goal 12: Transportation has been promulgated by the Oregon
4 Department of Land Conservation and Development (OAR Chapter 660, Division 12, Section
5 660-12-020) and recommends that local governments, including Multnomah County, adopt
6 transportation system plans that include functional classifications for both urban and rural areas
7 so that road facilities and their functional classifications are closely coordinated with existing
8 and planned land uses.

9
10 (F) To provide for close coordination between the rural land use system and the rural
11 trafficway system serving areas outside of the regional Urban Growth Boundary, it is necessary
12 to define rural trafficway functional classifications with descriptions that reflect the operational
13 purposes and hierarchical organization of the system.

14
15 (G) The Scenic Route classification, as adopted in 1983, is a sub-category of collector
16 street. However, scenic qualities and scenic recreational uses of county roads may occur on
17 each functional classification of roads, for which restrictions may need to be imposed to
18 preserve the unique scenic qualities. Such restrictions can be applied as a Scenic Route
19 designation overlaying the trafficway functional classification.

20
21 (H) Comprehensive Framework Plan Policy 3: Citizen Involvement specifies that public
22 involvement, and information distribution of planning issues shall occur, consistent with State-
23 wide Planning Goal 1: Citizen Involvement. Public meetings were held to review proposed
24 rural road functional classifications at Corbett Fire Station, Sam Barlow High School and
25 Linnton Community Center for which meeting notices were published in newspapers of general
26 circulation and in various organization newsletters, as well as mailed by rural carrier routes to

mailing addresses throughout rural Multnomah County.

(I) Exhibit A, (the Staff Report) and Map Exhibits B and C (Functional Classification of Trafficways: Rural East and Functional Classification of Trafficways: Rural West, dated January, 1993), incorporated as part of these Findings, further explain how amendments to Policy 34: Trafficways comply with other Comprehensive Framework Plan Policies and are necessary to provide a safe, efficient and economical trafficway system in rural Multnomah County.

(J) Comprehensive Framework Plan Policy 41: Columbia River Gorge National Scenic Area, applies to approximately 33,280 acres in Multnomah County within the Columbia River Gorge National Scenic Area. All future development, including roads and other public facilities must be consistent with and support the purposes of the Management Plan for the Columbia River Gorge National Scenic Area. This management plan and Framework Policy 41 shall control over any potential conflicting provisions of Policy 34 or its accompanying Functional Classification of Trafficways Map.

Section II. Plan Amendments.

(A). Proposed amendments would add the following new functional classifications of rural trafficways, located outside the Urban Growth Boundary: Rural Arterials, and Rural Collectors; and would change the Scenic Route from a functional classification to an overlay designation. The Introduction to Policy 34: Trafficways of the Comprehensive Framework Plan is amended to read as follows; new text is **bolded and underlined**, sections appearing in ~~[brackets]~~ are deleted.

POLICY 34: TRAFFICWAYS

INTRODUCTION

Trafficways are a major part of the transportation system, and include seven general types of streets (local, collector, transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the land uses in the County and function to move people and goods. The traffic volumes given below serve as guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of classification — other factors include the character of the area, future land use, possible or existing traffic intrusion on neighborhoods, circulation patterns, and topographic constraints.

1. Local Streets provide access to abutting property and do not serve to move through traffic.

2. Collectors: Collector streets gather area traffic and connect it to the arterial system. They serve properties within a 1/2 mile radius and are not intended to serve through movement. The streets usually have traffic volumes less than 10,000 vehicles per day in the urban areas and less than 3,000 vehicles per day in the rural areas. Urban collectors generally have a continuous length shorter than that for minor arterials. Collectors are the lowest order streets designed to carry transit vehicles.

Major Collectors: Major collectors have traffic volumes greater than 4,000 vehicles per day. They are the standard collector for major industrial areas and other locations with high truck and oversized vehicle volumes.

Neighborhood Collectors: Neighborhood collectors have traffic volumes between 1,000 and 4,000 vehicles per day. Abutting land uses are usually residential in character.

Rural Collectors: Rural collectors typically have traffic volumes of less than 3,000 vehicles

per day. They are characterized by serving as the connection between local roads and the arterial(s) serving a rural area of the County.

~~[Scenic Routes: Scenic route denotes a street which offers unique scenic views and is used as a scenic and recreational drive. Restrictions may be imposed to preserve scenic character.]~~

3. Transit Corridor Streets: Transit corridor street denotes a street which serves a significant function of carrying high-grade transit service; its traffic carrying function is secondary to its transit function. Ease of pedestrian movement and pedestrian safety are main considerations on this type of street.

4. Arterial Streets carry higher volumes of traffic, are often four lanes in the urban areas, and are the main traffic arteries.

Principal Arterial streets are generally four lanes or more and can carry a large volume of traffic, usually in excess of 25,000 vehicles per day. A significant feature of the principal arterial is its function to carry "through" trips; that is, trips which have not originated in or are not destined for the County area.

Major Arterial streets are generally four lanes which can carry a large volume of traffic, usually in excess of 20,000 vehicles per day. Their function is to serve intra-county trips, but not through trips; i.e., trips which do not have at least one trip end within the county area

Minor Arterial streets can carry a daily traffic volume up to 14,000 or more. They can be two lane roads with right and left turn lanes at intersections, and left hand turn lanes where needed, or three lane roads. Minor arterials are to serve intra-county trips; i.e., trips with at least one trip ending within the surrounding county area. Minor arterials are streets characterized by their length and

their significance in acting as distributors to sizeable surrounding areas. They derive this distributor significance from the discontinuity of parallel routes, and thus assume more importance in distributing trips than collector streets.

Rural Arterial roads are generally two lanes which serve inter- and intra-county trips. They are characterized by their significance as traffic distributors between areas in the County, connecting cities and rural centers. They generally carry a daily traffic volume up to 10,000 vehicle trips.

5. Freeways are high speed roadways with grade separated interchanges. Their only function is to move traffic from one area to another, and they can generally carry traffic volumes in excess of 60,000 vehicles per day. A sizeable portion of freeway trips are "through" trips; i.e., trips which have not originated in or are not destined for the County area.

6. Transitway denotes an exclusive right-of-way for transit use, either bus or rail.

7. Scenic Routes: Scenic route is an overlay designation which denotes a street offering unique scenic views and which is used as a scenic and recreational drive. Restrictions may be imposed to preserve scenic character.

Historically, * * *

(B) The 1983 Functional Classification of Trafficways Map accompanying Policy 34: Trafficways is amended and supplemented by two maps entitled: Multnomah County Rural—East Functional Classification of Trafficways Map; and, Multnomah County Rural—West Functional Classification of Trafficways Map - each dated January 22, 1993 and adopted as a component of the the Multnomah County

Comprehensive Framework Plan. The Functional Classification of Trafficways Maps adopted by this ordinance supercede the 1983 Functional Classification of Trafficways Map for those trafficways outside of the Urban Growth Boundary.

(C) The Management Plan for the Columbia River Gorge National Scenic Area and Framework Policy 41 control over any conflicting provisions of Policy 34 or its accompanying Functional Classification of Trafficways Maps. Policy 34: Trafficways shall be amended as follows to reflect this precedence.

* * *

H. IMPLEMENTING THE STREET STANDARDS CHAPTER 11.60 AND ORDINANCE 162, INCLUDING ADHERENCE TO ACCESS CONTROL AND INTERSECTION DESIGN GUIDELINE CRITERIA, AND ESTABLISHING A PROCEDURE FOR ALLOWING VARIANCES FROM THAT ORDINANCE.

EXCLUDING THAT PORTION OF MULTNOMAH COUNTY INCLUDED IN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA, THIS POLICY AND THE FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS MAP ACCOMPANYING THIS POLICY SHALL CONTROL OVER CONFLICTING PROVISIONS OF COMMUNITY PLANS OR OTHER PRE-EXISTING PLANS IN DETERMINING THE FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS. TRAFFICWAYS LOCATED WITHIN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ARE SUBJECT TO AND SUPERCEDED BY PROVISIONS OF THE COLUMBIA RIVER GORGE SCENIC AREA MANAGEMENT PLAN.

ADOPTED THIS 23rd day of March, 1993, being the date of its second reading before the Board of County Commissioners of Multnomah County.



By Gladys McCoy
Gladys McCoy, County Chair
MULTNOMAH COUNTY, OREGON
Gary Hansen, Vice-Chair

REVIEWED:

John D. Bay
John D. Bay, Deputy County Counsel
of Multnomah County, Oregon
Laurence Kressel



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

STAFF REPORT

This Staff Report consists of Findings of Fact and Conclusions

FEBRUARY 1, 1993

**C 1-93 Adoption of an Ordinance Amending Multnomah County
Comprehensive Framework Plan Policy 34: TRAFFICWAYS, and the companion
Functional Classification of Trafficways Map**

Proposal Summary: The Multnomah County Transportation and Planning Divisions propose changes to Plan Policy 34, **Trafficways**. **Plan changes** proposed would expand the Functional Classification of Trafficways Map to areas outside the Urban Growth Boundary (UGB), and define and classify the rural road system. Text changes add definitions for rural roads, and modify the Scenic Route classification.

STAFF RECOMMENDATION:

Approve proposed amendments to the Comprehensive Framework Plan Policy 34 and supplements to the Functional Classification of Trafficways Map. Define and classify rural roads by their function within the transportation system which serves areas outside the Urban Growth Boundary (UGB). Change the *Scenic Route* designation to an overlay to the functional classification of the road.

Findings of Fact:

1. Compliance with Statewide Planning Goal No. 1, Citizen Involvement:

Goal: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

A. The proposed functional classifications of rural roads Plan amendment was presented for discussion at public workshops held in East Multnomah County (Sam Barlow High School, August 11, 1992; Corbett Fire Hall; September 1, 1992) and for the northwest Multnomah County/Sauvie Island area (Linnton Community Center; August 26, 1992). Every Multnomah County rural mailing address was sent notification of the workshops. Meeting notices were published in the Gresham Outlook and the Oregonian newspapers.

B. Printed forms to mail back comments were distributed through community centers and organizations. Responses received pertained to maintenance and capital improvement issues, and have been incorporated into the 1992-97 Capital Improvement Plan or the road maintenance schedule, as appropriate.

2. Compliance with Statewide Planning Goal No. 12, Transportation:

Goal: To provide and encourage a safe, convenient and economic transportation system.

A. The functional classification of trafficways supports systematic improvements through the County's Capital Improvement Program (CIP) process and the land development process. Improvements are based on design standards for each of the classifications that incorporate elements of safety and efficiency.

B. The Functional Classification Map adopted in 1983 identifies three scenic routes in the County; Crown Point Highway, Marine Drive and N.W. Cornell Road. These trafficways function to move people and goods in addition to offering unique scenic views and recreational opportunities. No specific improvement design standards exist for scenic routes.

3. Consistency with The Transportation Planning Rule (OAR 660.12):

The Transportation System Plan shall include a road plan for a network of arterials and collectors.

A. The rural road classification system amends the network of arterials and collectors that was adopted by the County primarily for the urban area.

B. Applying the scenic route designation as an overlay to the network of arterials and collectors, where appropriate, acknowledges unique scenic views and recreational uses while providing design standards for improvements within the road right-of-way through the primary functional classification designation.

4. Consistency with the Columbia River Gorge National Scenic Area (NSA) Management Plan and the Multnomah County Comprehensive Framework Plan (CFP) Policy 41:

A. In 1986, Congress passed the Columbia River Gorge National Scenic Area Act (Public Law 99-663) which designated approximately 33,280 acres in rural East Multnomah County as part of the National Scenic Area (NSA). All land uses and development (including roads and other public facilities) occurring within the NSA must be consistent with the Management Plan For the Columbia River Gorge National Scenic Area adopted by the Columbia River Gorge Commission on October 15, 1991. On January 7, 1993, Policy 41 of The Multnomah County Comprehensive Framework Plan was adopted, amending the CFP to recognize and

implement the Management Plan for the Columbia River National Scenic Area. All functional classifications of trafficways within the NSA proposed under this amendment are subject to and superseded by the above cited NSA management plan.

5. Consistency of revisions to the Functional Classification Map and definitions with the Multnomah County Comprehensive Framework Plan (CFP) Policy 34:

A. County trafficways are a major part of the regional transportation system which serve the land uses in the County and function to move people and goods. Policy 34 directs the development of a safe and efficient trafficway system using the existing road network.

B. Policy 34A directs the County to establish a street classification system. The CFP Functional Classification System and Map, adopted in 1983 reflects a hierarchical system of arterials, collectors, and local streets.

C. The adopted street classification system is generally applicable to the urban area of the County. With few exceptions, the trafficways in the rural areas are designated as local streets; without hierarchical differentiation. Many of these roads function as collectors and arterials within the rural land use framework.

D. Policy 34B directs the improvement of streets to standards established by the classification system. The current design standards for a local street do not ensure safety and efficiency for those rural trafficways functioning at a higher level than local street. No design standards exist for scenic routes; the purpose of the designation is to denote unique scenic and recreational characteristics of the trafficway.

6. Consistency of revisions to the Functional Classification of Trafficways definitions and Map with CFP Rural Growth Management Policies (7 through 12):

A. Strategies for rural growth management include correlating permitted land uses with the access, capacity and condition of the road system. The strategies identify the need to develop road standards appropriate to the function of a road within the rural context.

B. Classifying rural trafficways into a functional hierarchy leads to provision of a trafficway system that adequately supports the resource, rural center and recreational land uses permitted in the rural areas of the County.

7. Proposed text amendments to Policy 34: Trafficways, defining rural functional classifications, eliminating the scenic route designation as a functional classification and establishing it as an overlay classification:

A. Attachment A contains the proposed revisions to the text of Policy 34 that will make it inclusive of rural trafficways. The revisions are generally concentrated in the introduction section of the Policy where the definitions of functional classifications are found. The policy section is revised to acknowledge the jurisdiction of the Columbia River Gorge Commission and its Scenic Area Management Plan for that portion of Multnomah County included in the scenic area.

8. Criteria for functional classification of rural trafficways:

A. Criteria for functionally classifying rural trafficways include: the types of trips carried, permitted land uses in the area, circulation patterns, topographical constraints, and traffic volumes. Traffic volumes serve as guidelines for the functional classification, particularly in the rural areas where travel patterns are more important in the evaluation than actual volumes.

B. The following criteria were used in formulating the functional classification system for rural trafficways.

1. The Rural Arterial

- efficiently moves traffic between destinations;
- may carry traffic that neither originates or terminates in the County area;
- connects to rural centers, cities and/or higher order arterials and freeways;
- where serving inter-county travel and the road is designated an arterial in the adjacent county;
- where transitioning into an urban trafficway, is designated an arterial in the urban area;
- generally carries an average daily traffic volume between 3,000 and 10,000.

2. The Rural Collector

- carries traffic that originates and/or terminates within the County area;
- distributes traffic between local roads and arterials;
- connects to rural centers and higher density rural residential areas;
- where serving inter-county travel and the road is designated collector or minor arterial in the adjacent county;
- where transitioning into an urban trafficway, is designated collector or minor arterial in the urban area.
- generally carries between 500 and 3,000 vehicles per day.

Conclusion:

1. Rural trafficways serve diverse functions and operate as a hierarchical system.
2. Most rural trafficways are currently classified as local streets or are defined by urban road standards which do not represent the functional role of many rural roads.
3. The improvement and maintenance of rural trafficways to local street standards

does not promote a safe, efficient and economical system.

4. The scenic route designation does not represent the functional role of a trafficway; it identifies unique scenic and recreational characteristics of a trafficway more appropriately designated as an overlay.
5. The proposed rural functional classification system supports and is consistent with permitted land uses in the rural areas of the County.
6. The functional classification of trafficways system and its associated map should be amended to include the rural trafficway system in compliance with the stated policies of CFP Policy 34, and the DLCD Transportation Goal 12.
7. Trafficways located within the Columbia River Gorge National Scenic Area are subject to and superceded by provisions of the Columbia River Gorge Scenic Area Management Plan, consistent with CFP Policy 41.

ATTACHMENT A

This attachment contains proposed text changes to Policy 34: Trafficways, Introduction section and Policy statement. New text appears in ***bold italics***, sections appearing in [brackets] are deleted.

POLICY 34: TRAFFICWAYS

INTRODUCTION

Trafficways are a major part of the transportation system, and include seven general types of streets (local, collector, transit corridor streets, scenic routes, arterial streets, freeways and transitways) which serve the land uses in the County and function to move people and goods. The traffic volumes given below serve as guidelines for the functional classification. Traffic volumes are one aspect, but not the only aspect, of classification — other factors include the character of the area, future land use, possible or existing traffic intrusion on neighborhoods, circulation patterns, and topographic constraints.

1. Local Streets provide access to abutting property and do not serve to move through traffic.
2. Collectors: Collector streets gather area traffic and connect it to the arterial system. They serve properties within a 1/2 mile radius and are not intended to serve through movement. The streets usually have traffic volumes less than 10,000 vehicles per day ***in the urban areas and less than 3,000 vehicles per day in the rural areas.*** Urban collectors generally have a continuous length shorter than that for minor arterials. Collectors are the lowest order streets designed to carry transit vehicles.

Major Collectors: Major collectors have traffic volumes greater than 4,000 vehicles per day. They are the standard collector for major industrial areas and other locations with high truck and oversized vehicle volumes.

Neighborhood Collectors: Neighborhood collectors have traffic volumes between 1,000 and 4,000 vehicles per day. Abutting land uses are usually residential in character.

Rural Collectors: Rural collectors typically have traffic volumes of less than 3,000 vehicles per day. They are characterized by serving as the connection between local roads and the arterial(s) serving a rural area of the County.

~~[Scenic Routes: Scenic route denotes a street which offers unique scenic views and is used as a scenic and recreational drive. Restrictions may be imposed to preserve scenic character.]~~

3. Transit Corridor Streets: Transit corridor street denotes a street which serves a significant function of carrying high-grade transit service; its traffic carrying function is secondary to its transit function. Ease of pedestrian movement and pedestrian safety are main considerations on this type of street.

4. Arterial Streets carry higher volumes of traffic, are often four lanes *in the urban areas*, and are the main traffic arteries.

Principal Arterial streets are generally four lanes or more and can carry a large volume of traffic, usually in excess of 25,000 vehicles per day. A significant feature of the principal arterial is its function to carry "through" trips; that is, trips which have not originated in or are not destined for the County area.

Major Arterial streets are generally four lanes which can carry a large volume of traffic, usually in excess of 20,000 vehicles per day. Their function is to serve intra-county trips, but not through trips; i.e., trips which do not have at least one trip end within the county area

Minor Arterial streets can carry a daily traffic volume up to 14,000 or more. They can be two lane roads with right and left turn lanes at intersections, and left hand turn lanes where needed, or three lane roads. Minor arterials are to serve intra-county trips; i.e., trips with at least one trip ending within the surrounding county area. Minor arterials are streets characterized by their length and their significance in acting as distributors to sizeable surrounding areas. They derive this distributor significance from the discontinuity of parallel routes, and thus assume more importance in distributing trips than collector streets.

Rural Arterial roads are generally two lanes which serve inter- and intra-county trips. They are characterized by their significance as traffic distributors between areas in the County, connecting cities and rural centers. They generally carry a daily traffic volume up to 10,000 vehicle trips.

5. Freeways are high speed roadways with grade separated interchanges. Their only function is to move traffic from one area to another, and they can generally carry traffic volumes in excess of 60,000 vehicles per day. A sizeable portion of freeway trips are "through" trips; i.e., trips which have not originated in or are not destined for the County area.

6. Transitway denotes an exclusive right-of-way for transit use, either bus or rail.

7. Scenic Routes: *Scenic route is an overlay designation which denotes a street offering unique scenic views and which is used as a scenic and recreational drive. Restrictions may be imposed to preserve scenic character.*

Historically, with growth, communities constructed new streets or widened existing streets to alleviate congestion; however, three factors serve to alter this approach to providing for increased traffic volumes:

1. Neighborhood and community areas do not want new streets which cause traffic to pass through their area;
2. Air pollution problems in the Portland metropolitan area are serious, and increased traffic congestion increases the problem; and
3. The County has very limited resources to construct or widen streets.

Trafficways also act as barriers to pedestrian mobility. Stores and other types of activity centers have been located in places which are divided from residential areas by wide arterials, and traffic signals have not been provided.

The purpose of this policy is to direct the County to develop the existing trafficway system to maximize efficiency, and to consider the mobility of pedestrians by providing safe crossings.

POLICY 34

THE COUNTY'S POLICY IS TO DEVELOP A SAFE AND EFFICIENT TRAFFICWAY SYSTEM USING THE EXISTING ROAD NETWORK, AND BY:

- A. ESTABLISHING A STREET CLASSIFICATION SYSTEM;
- B. IMPROVING STREETS TO THE STANDARDS ESTABLISHED BY THE CLASSIFICATION SYSTEM, WHERE NECESSARY, AND/OR APPROPRIATE TO IDENTIFIED TRANSPORTATION PROBLEMS;
- C. PLACING PRIORITY ON MAINTAINING THE EXISTING TRAFFICWAYS;
- D. MAKING IMPROVEMENTS TO THE EXISTING SYSTEM WHICH MAXIMIZES ITS CAPACITY RATHER THAN CONSTRUCTING NEW FACILITIES;
- E. PROVIDING SAFE ROAD CROSSINGS FOR PEDESTRIANS;
- F. LIMITING THE NUMBER OF AND CONSOLIDATING INGRESS AND EGRESS POINTS ON ARTERIALS AND MAJOR COLLECTORS TO IMPROVE TRAFFIC FLOW;
- G. ENCOURAGING RIDE-SHARE AND FLEXTIME PROGRAMS TO HELP MEET THE PROJECTED INCREASE IN TRAVEL DEMAND. THE COUNTY WILL

Staff Report Attachment A

February 1, 1993

3 of 4

C 1-93

WORK WITH THE METROPOLITAN SERVICE DISTRICT AND TRI-MET TO DEVELOP RIDE-SHARE PROGRAMS, FLEXTIME AND OTHER APPROPRIATE STRATEGIES TO ACHIEVE THE RIDE-SHARE GOAL GIVEN IN THE REGIONAL TRANSPORTATION PLAN; AND

H. IMPLEMENTING THE STREET STANDARDS CHAPTER 11.60 AND ORDINANCE 162, INCLUDING ADHERENCE TO ACCESS CONTROL AND INTERSECTION DESIGN GUIDELINE CRITERIA, AND ESTABLISHING A PROCEDURE FOR ALLOWING VARIANCES FROM THAT ORDINANCE.

EXCLUDING THAT PORTION OF MULTNOMAH COUNTY INCLUDED IN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA, THIS POLICY AND THE FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS MAP ACCOMPANYING THIS POLICY SHALL CONTROL OVER CONFLICTING PROVISIONS OF COMMUNITY PLANS OR OTHER PRE-EXISTING PLANS IN DETERMINING THE FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS. TRAFFICWAYS LOCATED WITHIN THE COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ARE SUBJECT TO AND SUPERCEDED BY PROVISIONS OF THE COLUMBIA RIVER GORGE SCENIC AREA MANAGEMENT PLAN.

FUNCTIONAL CLASSIFICATION OF TRAFFICWAYS - RURAL EAST



MULTNOMAH COUNTY
DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION DIVISION

1620 S.E. 190th Ave. PORTLAND, ORE.

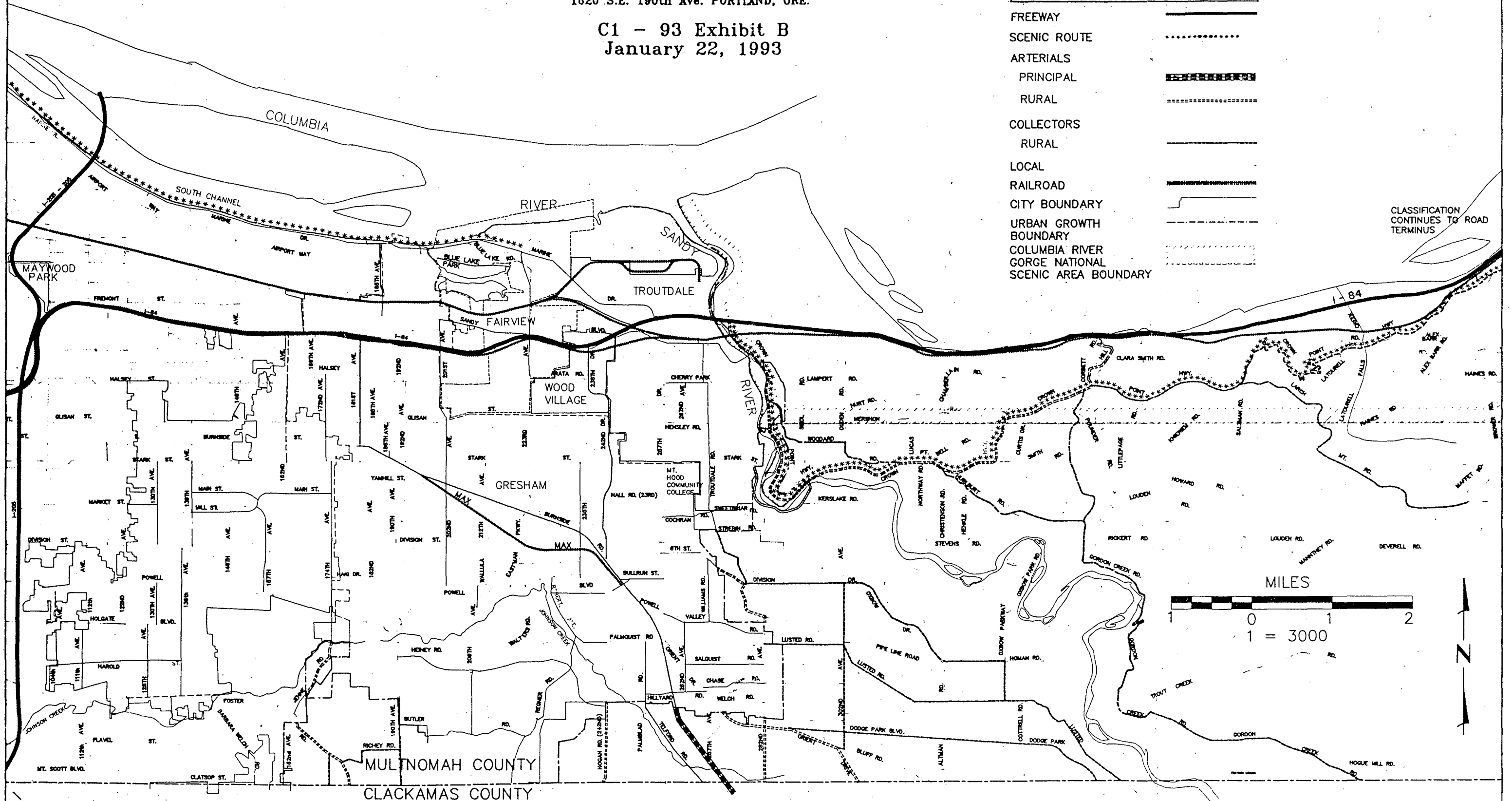
C1 - 93 Exhibit B
January 22, 1993

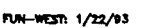
LEGEND

Note: For roadways within the Urban Growth Boundary refer to the 1983 Functional Classification of Trafficways Map

- FREEWAY
- SCENIC ROUTE
- ARTERIALS
- PRINCIPAL
- RURAL
- COLLECTORS
- RURAL
- LOCAL
- RAILROAD
- CITY BOUNDARY
- URBAN GROWTH BOUNDARY
- COLUMBIA RIVER GORGE NATIONAL SCENIC AREA BOUNDARY

CLASSIFICATION CONTINUES TO ROAD TERMINUS





PLEASE PRINT LEGIBLY!

MEETING DATE

3/23/93

NAME

Arnold Rochlin

ADDRESS

P.O. Box 83645

STREET

Portland, OR

CITY

97263

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P2

SUPPORT

the decision

OPPOSE

the appeal

SUBMIT TO BOARD CLERK

O'DONNELL, RAMIS, CREW & CORRIGAN

BOARD OF
COUNTY COMMISSIONERS

JEFF H. BACHRACH
MARK L. BUSCH
CHARLES E. CORRIGAN*
STEPHEN F. CREW
BARBARA A. JACOBSON*
KAREN E. JONES***
WILLIAM A. MONAHAN
NANCY B. MURRAY
MARK P. O'DONNELL
TIMOTHY V. RAMIS
SHEILA C. RIDGWAY*
MICHAEL C. ROBINSON**
WILLIAM J. STALNAKER

ATTORNEYS AT LAW
BALLOW & WRIGHT BUILDING
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

PLEASE REPLY TO PORTLAND OFFICE

1993 MAR 23

MULTNOMAH COUNTY
OREGON

CLACKAMAS COUNTY OFFICE
981 NW Grant, Suite 202
Canby, Oregon 97013
(503) 266-1149

JAMES M. COLEMAN
KENNETH M. ELLIOTT
Special Counsel

March 22, 1993

*ALSO ADMITTED TO PRACTICE IN STATE OF WASHINGTON
**ALSO ADMITTED TO PRACTICE IN WISCONSIN
***ALSO ADMITTED TO PRACTICE IN TEXAS

Mr. Gary Hansen, Vice Chairman
Board of County Commissioners
Multnomah County
1120 SW 5th Avenue, Room 1510
Portland, OR 97204

HAND DELIVERED

Re: McGrew Land Use Hearing

Dear Commissioner Hansen:

Enclosed with this letter is a colored map and a memorandum summarizing the main issues in the land use appeal by Jim and Elizabeth McGrew, which case you will hear Tuesday morning, March 23.

The McGrews applied for approval to construct two single-family houses on two adjoining lots they and Mr. McGrew's mother own on NW McNamee Road. The proposed houses are shown with red dots on the attached map. The area outline in blue shows the rural residential neighbor the lots are within.

A crucial factor in this case is that the planning staff recommended approval. Relying on that approval, the McGrews did not prepare their own presentation or hire professional assistance to present their case.

Unfortunately, without any prior notice to the McGrews, an experienced land use advocate appeared at the hearing and raised several technical objections to the McGrews' application. Based on the case presented to him, the hearings officer went against the staff and denied the application.

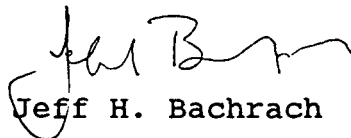
As the enclosed memorandum discusses, the main issue is whether the two proposed houses are compatible with surrounding uses in the area. There is no legally correct or legally mandated decision in this case. The County Commission has broad discretion. The staff ruled in favor of the McGrews; the hearings officer, who has been in that position less than a year, exercised his discretion and

O'DONNELL, RAMIS, CREW & CORRIGAN

Mr. Gary Hansen
March 22, 1993
Page 2

went against the McGrews. Hopefully, you will choose to side with the McGrews and your planning staff.

Very truly yours,


Jeff H. Bachrach

JHB/lf
Enclosure
jhb\mcgrew\commission.ltr

cc: James and Elizabeth McGrew
Mr. Scott Pemble, Planning Director
John L. DuBay, Multnomah County Counsel
✓ Ms. Debbie Bogstad, Board Clerk's Office

1993 MAR 23 AM 8:50

MULTNOMAH COUNTY
OREGON

MEMORANDUM

DATE: March 22, 1993

TO: Board of County Commissioners

RE: Summary of Issues in McGrew Appeal
To be Heard Tuesday, March 23, 1993

BACKGROUND

James and Elizabeth McGrew own tax lot 44-53 (6 acres) and Mr. McGrew's mother owns tax lot 52 (4.76 acres). They have requested approval to build one house on each lot. The lots are within a rural residential area (outlined in blue on the attached map) along a ridge following NW McNamee Road. There are 14 existing or approved houses in the immediate vicinity of the McGrews' lots. A number of these houses were approved in recent years through the same process the McGrews are now undergoing.

COMPATIBILITY

The main issue in this case is whether the proposed houses will be "compatible" with the forest uses in the area and whether the houses will "alter the stability of the overall land use pattern of the area." (Code § 11.15.2172(C)(3).)

The McGrews will present to the County Commission large-size exhibits which demonstrate that the two houses are compatible with other uses in the area and will not alter the overall land use patterns of the area. Unfortunately, the McGrews were not prepared with these exhibits when they appeared before the Hearings Officer.

In addition, the McGrews will present some additional testimony from surrounding property owners further demonstrating the compatibility between the two proposed houses and the other uses in the vicinity. Again, the McGrews did not realize they needed to present this kind of evidence before the Hearings Officer.

SOILS

The Hearings Officer's denial was based, in part, on the fact that the McGrew's application "does not include information regarding the productivity characteristics of the [soils on] the site." That defect has now been remedied. The McGrews will submit a letter from a soil expert confirming that the houses are to be sited on the least-productive soils on the site.

Memo re: Summary of Issues in McGrew Appeal
To be Heard Tuesday, March 23, 1993
March 22, 1993
Page 2

SETBACK

Another basis for the denial is the fact that the proposed home sites are not located 200 feet from the property lines. Because of the size of the sites, it is not physically possible to site the homes that far from the property lines. Most of the houses in the area are not 200 feet from property lines. The Hearings Officer mistakenly believed that the code mandates 200-foot setbacks. Rather, the code calls for setbacks of 200 feet only "wherever possible." (Code § 11.15.2194(F).)

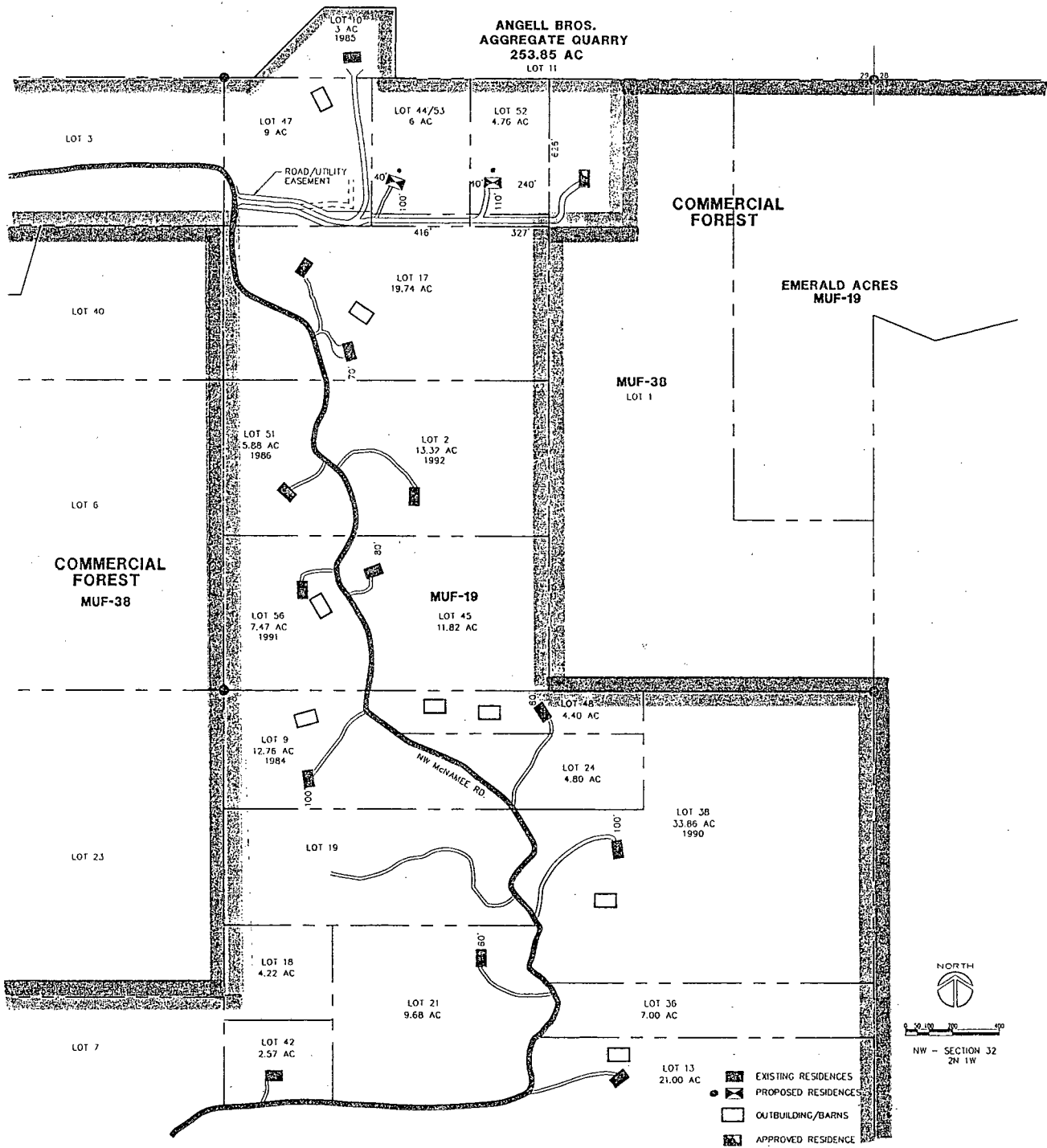
LOT OF RECORD

Finally, the Hearings Officer was concerned (and a bit confused) as to whether the McGrews' properties could be deemed "lots of record." This is a complex and confusing legal issue without a clear answer. The staff analyzed the issue and concluded that the two lots are lots of record. The Hearings Officer reached a different conclusion.

This law office - which serves as legal counsel for three cities in the region, one county and other municipal entities - concluded that the lots are legal lots of record.

Rather than attempting to set out the various legal theories, the County Commission should rule on the compatibility and related issues in making its decision. The county counsel and other appropriate legal counsel can then prepare the necessary legal findings to support whatever decision the County Commission reaches.

ANGELL BROS.
AGGREGATE QUARRY
253.85 AC
LOT 11



Christopher H. Foster
Construction Cost Consultant
Progress Certification/Budget Review
15400 N.W. McNamee Road
Portland, OR 97231
Phone: (503) 621-3564
FAX: (503) 621-3686

BOARD OF
COUNTY COMMISSIONERS
1993 MAR 19 PM 2:19
MULTNOMAH COUNTY
OREGON

Thursday, March 18, 1993

Multnomah County Board of Commissioners
1120 SW 5th
Portland, OR 97204

Re: CU 1-93 and CU 2-93 Appeal of Hearings Officer's Denial, Hearing 3/23/93, 9:30 am. This testimony is in support of the Hearings Officer's decision.

This applicant wants 3 dwelling permits on a 65 acre forest zone tract; A property entirely in timber tax deferral and, as such, declared by the present owner to be reserved for timber production. The various tax lots have been actively managed in common by current owner for the harvest and growing of trees. The Record shows that no one is disputing this. One building permit has already been granted under the old zoning provisions. No one is objecting to that permit. Before you today is a plea for two additional permits which a Hearings Officer (an attorney and himself a former Multnomah County Planning Director) has denied based upon several points of the applicable law. I'd like to comment on just one of the several legal problems of this application.

I ask that you carefully examine and consider the Record and zoning provisions on the compatibility and destabilization issue. You will no doubt have similar appeals before you in the coming months under the old and new forest zone rules of January 1993.

Under the old rules, the applicant is entitled the opportunity to prove why these dwellings are compatible and not destabilizing to the nearby primary uses no matter what the nearby circumstances are. The applicable county code assumes that non-resource dwellings are not compatible in most circumstances but, admits that there might be some exceptions. This provision applies to both MUF and CFU zones equally. If it were the intention of the code to allow a dwelling on most, or on each and every lot less than 10 acres, then the language would be very different. The applicant must be convincing in arguing why the circumstance here is exceptional on a county-wide basis. Lot sizes of the nearby properties or whether its MUF or CFU is irrelevant. Imposing conditions upon the applicant or relying upon agreement with nearby property owners is insufficient. The courts have been clear on these issues.

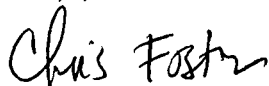
If this were a case of infill rather than expansion into forest interior, and if the applicant wasn't after 3 permits, I wouldn't be here in opposition. At least one State agency is opposed to ALL non-resource dwellings in forest zones. In the Multnomah County Periodic Review, the Dept. of Forestry has entered a "recommendation that no non-forest dwellings be permitted in forest zones" p.81. Similarly, the Legislature sponsored Forest Farm Study of 1991 confirms the conflicts and costs to all of us in permitting such

actions. The reasons for forest zoning regulation are varied and sound and have been thoroughly tested in the courts.

As you must realize, these proposed dwellings are in an area already experiencing resource conflict and their approval would aggravate the situation. They lie between the Angell Brothers Quarry and Forest Park, at a forest interior location some distance from the roadway. These dwellings would, in themselves, relegate the solution to the wildlife problem proposed in the most recent Angell Brothers Application useless. One end of the 600 ft. wildlife corridor the application proposed would be seriously compromised. This situation leads to one of my major concerns with this case. Nowhere in the record has the Applicant argued why these dwellings are not destabilizing to the existing overall land use pattern of the area. One obvious intention of the of the zone regulation is to protect against "creep" and a conversion of nearby properties to non-resource uses. Preservation of forestland for forest uses AND wildlife is the goal. Just as this applicant relies on the past issuance of nearby non-forest dwelling permits in arguing his case, these new houses would no doubt offer justification for still more non-resource dwellings. They will be sited on what are now actively managed and exceptionally productive commercial forest sites; just as is the case here. No one seems to be looking at the cumulative impact in analyzing the the stability factor. The Record shows that there is considerable potential for creep in this case, and that much of the nearby area is currently in commercial forest management.

I'm asking you to support the findings of the Hearings Officer on this issue and let this property remain in its current resource use rather than be converted to residential use.

Sincerely,

A handwritten signature in cursive script that reads "Chris Foster".

Christopher H. Foster PC

BOARD OF
COUNTY COMMISSIONERS

1993 MAR 18 PM 1: 26

March 18, 1993

MULTNOMAH COUNTY
OREGON

Arnold Rochlin
P.O. Box 83645
Portland, OR 97283-0645
(503) 289-2657

Multnomah County Board of Commissioners
1120 SW Fifth Ave.
Portland, OR 97204

Re: CU 1-93 and CU 2-93 Review of Hearings Officer's Denial - Hearing 3/23/93

The Hearings Officer denied the application for failure to show compliance with 6 regulations.¹ The developer has the burden of proof (MCC 11.15.8230(D)). If he fails to prove the Hearings Officer wrong on every issue, without any new evidence allowed, except on compatibility, the application must be denied! The most complicated issue is "lot of record" and is discussed last:

11.15.2172(C)(3) requires both compatibility with primary resource use and that residential use not alter the stability of the land use pattern.² The Hearings Officer explains that the primary nearby uses are forestry and conservation areas. He explains how spraying and other forest practices are incompatible with residential use, and that LUBA has ruled that a waiver of rights to object to the nuisance doesn't overcome the fact that a residence would interfere. Based on the record to date, there is no question that the applicant didn't prove that a residence wouldn't interfere. It doesn't even matter if the surrounding land is owned by the applicant or his family. As of 1:00 P.M. on March 12, 1993, the applicant had added no new evidence to the record since filing the appeal. I may respond later to any new evidence the applicant offers.

There are only three houses within a quarter of a mile of the proposed sites. And, those houses are much closer to McNamee Rd. The applicant's houses would be 500 and 1000 feet from the road, well into the forest. LUBA requires that the cumulative impact of each house be considered. Nearby houses are always used to justify more nearby houses. Thus, when non-resource related residences are allowed to expand into the forest, they "alter the overall land use pattern of the area." The code would tolerate some rural "infill", but not expansion of residential use in the actual forest use area. Again, not only did the applicant not prove his case, but all the substantial evidence proves the opposite. New evidence is allowed only on the compatibility part of .2172(C)(3).

11.15.2194(E) requires that the dwelling be located in the part of the lot with the lowest productivity for the proposed primary use. The applicant provided no actual evidence on productivity. The Hearings Officer observed that the applicant placed the dwelling on

¹ The Notice of Public Hearing listed 7 reasons for denial. The Notice is in error regarding 11.15.2172(C)(4), with which the Hearings Officer found compliance.

² The motion allowing additional evidence limits it to the "compatibility" issue. Evidence on stability of land use patterns would not be admissible. ORS 197.763(4)(a) requires "All documents or evidence relied on by the applicant be submitted to the local government and be made available to the public at the time notice * * * is provided". Notice was postmarked "Mar 10 '93". Per ORS 197.763(4)(b), any party will be entitled to a continuance if the applicant offers additional evidence after that date, e.g. at the hearing.

flatter land, which is usually more productive. In the absence of actual facts he found that the applicant failed to carry the burden of proof.³

11.15.2194(F) requires building setbacks of 200 feet where possible, except in some situations, e.g. "clustering". The applicant said that the dwellings are situated for the purpose of sharing access and clustering. One house is within 40 feet of the west boundary of CU 2-93, on the opposite side of the lot from CU 1-93, 350 feet from the boundary. Thus there is no clustering. CU 2-93 is over 400 feet wide, and substantial compliance would have been possible by either centering the house, or putting it near the east boundary to cluster with CU 1-93. Neither was done, and the Hearings Officer was correct.

Comprehensive Plan Policy 22 requires a finding "prior to quasi-judicial action" that specific energy factors "have been considered". The applicant didn't address it and staff said it's irrelevant. Two factors are relevant, energy efficient land use and urban development density. As the applicant offered no evidence, there was no choice but to find non-compliance.

The applicant's lots are 4.76 and 6 acres and do not qualify as regular lots in the MUF zone. Residential conditional use is not allowed unless the lots are "lots of record" under .2182(A). For a property to be a lot of record, it has to have met all legal requirements when it was created. (.2182(A)(1)(b)) The applicable code when these lots were purportedly created in the mid 70's provided:

"All lots in this district shall abut a street or shall have such other access held suitable by the Planning Commission." (3.1536)

Neither of the lots abuts a street. Access is proposed by easement over private land. Under the provision cited above, a hearing was required before these lots could have been legally created. (A similar provision is still in the code.) There was no hearing, so the lots cannot be lots of record. But, the third sub-section below the quoted one says:

"These requirements shall apply to lots that abut a future street as indicated on an approved and recorded subdivision plat." (3.1539)

One regulation requires streets and the other requires streets only when there are already streets. In grappling with this problem, keep in mind that the developer has the burden of proof; he has to prove compliance. There are several reasons why 3.1536, requiring a road, governs:

1. The language of 3.1536 is perfectly clear. There can be no possible doubt that its authors and enactors intended for there to be a requirement of access by road, allowing other access only on approval of the Planning Commission.

2. 3.1539 is ambiguous: "These requirements shall apply to lots that abut a future street". What are these requirements? It could refer to any or all of the 9 sub-sections under 3.153. Some of the sub-sections have nothing whatever to do with roads (rules on lot size, yard requirements, accessory buildings, and height restrictions). Obviously, there was no intent

³ The applicant identified the "productivity" requirement as one of the approval criteria and addressed it with an unsupported assertion. The Hearings Officer could have been more charitable and found that the applicant did not need to comply with .2194(E), as technically, the applicant was not proposing a primary use, but only a conditional use.

that 3.1539 nullify all of those restrictions. The wording is inclusive, not exclusive. It doesn't say that the regulations shall not apply where there is no street, but affirms that they apply where there is a street. It would make no sense that a requirement that a lot shall abut a street would be followed by one that says except when it doesn't abut a street.

3. From time to time regulations are revised and new sub-paragraphs are added, and they're renumbered. Sometimes, inadvertently, positions and numbers are changed so that regulations once clear in meaning become ambiguous or obsolete. Obviously, such a mistake occurred here. When that happens, principles of code interpretation must be applied. One principle is that an ambiguous provision cannot be interpreted as unnecessarily contradicting one of unmistakable meaning. Another is that, as much of the code as possible should be given meaning. That is, you try to avoid interpretations where one code section nullifies others (sometimes you can't avoid it).

4. The requirement that the lot abut a road is crystal clear. The application of 3.1539 is ambiguous, because most of the provisions of Section 3.153 don't have anything to do with roads, and we know that any intent to require a road only when there is a road is nonsensical. Most likely, 3.1539 at one time clearly referred to 2 or 3 subsections that may not even still exist.

All of this reaches the conclusion that the applicant's properties are not lots of record because they did not comply with the code requirement that they abut a road or be approved by the Planning Commission when they were created. If you are not fully persuaded, add to this that the applicant has the full burden of proving that the properties are lots of record. If the burden of proof is not carried, the application must be denied.

The applicant failed to prove compliance with half a dozen requirements. In some cases (setbacks, "lot of record" status, compatibility with nearby resource use, and stability of land use pattern) substantial evidence in the record proves that the conditional uses do not qualify. The Hearings Officer's decision was correct, the application has to be denied.

Sincerely Yours,



Arnold Rochlin



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CU 1-93

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 2

☐ Previously Distributed _____

☒ Notice of Review No. of Pages _____

*(Maybe distributed at Board Meeting)

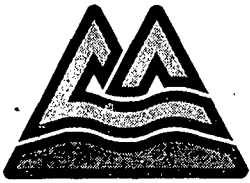
☒ Previously Distributed 203-93

☒ Decision No. of Pages 14

(Hearings Officer/Planning Commission)

☒ Previously Distributed 203-93

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Case File Record Check List

File No. CU 1-93

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (1 Pages)
- ☒ Case Summary Sheet (2 Pages)
- ☒ Notice of Review Application (1 Pages)
- ☒ Decision (16 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
- ☒ Transcript (Pages)
- ☒ Applicant's Application and Submittals (35 Pages)
- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
(Maps)
- ☐ Other Materials ()



BOARD HEARING OF MARCH 23, 1993

TIME 9:30 am

NUMBER CU 1-93

CASE NAME: McGREW NON-RESOURCE SFR

1. Applicant Name/Address: James McGrew
3706 SW Nevada Ct.
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource
related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

(1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.

(2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

ISSUES

(who raised them?)

1. New dwellings would alter the stability of the land use pattern in the area by being a precedent for approval of other non-resource dwellings in the vicinity *(raised by Chris Foster who testified in opposition of the request)*.

2. Parcel may not be a legal Lot of Record *(raised by Arnold Rochlin who testified in opposition to the request)*.

3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies *(raised by Arnold Rochlin)*.

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

ACTION REQUESTED OF BOARD

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

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.

Meeting Date: February 23, 1993

Agenda No.: 0-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 1-93 Decision

BCC Informal	<u>(date)</u>	BCC Formal	<u>February 23, 1993</u>
DEPARTMENT	<u>DES</u>	DIVISION	<u>Planning</u>
CONTACT	<u>Sharon Cowley</u>	TELEPHONE	<u>2610</u>
PERSON(S) MAKING PRESENTATION	<u>Planning Staff</u>		

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 1-93 Review the Decision of the Hearings Officer of January 21, 1993, denying applicant's conditional use request to allow a non-resource related single family residence for property located at 13156 NW McNamee Road

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER

BH Willia

(All accompanying documents must have required signatures)

CLERK OF
SCHOOL DISTRICT NO. 1
1993 FEB 17 AM 9:05
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C41-93

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 2

☐ Previously Distributed

☒ Notice of Review

No. of Pages 1

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 16

☒ (Hearings Officer/Planning Commission)

☐ Previously Distributed

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

(CL/1)



TULNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C 41-93

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (/ Pages)
- ☒ Case Summary Sheet (2 Pages)
- ☒ Notice of Review Application (/ Pages)
- ☒ Decision (16 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
- ☒ Transcript (Pages)
- ☒ Applicant's Application and Submittals (35 Pages)
- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
(Maps)
- ☐ Other Materials ()



BOARD HEARING OF FEBRUARY 23, 1993

TIME 9:30 am

NUMBER CU 1-93

CASE NAME: McGREW NON-RESOURCE SFR

1. Applicant Name/Address: James McGrew
3706 SW Nevada Ct.
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource
related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

- (1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.
- (2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

ISSUES

(who raised them?)

1. New dwellings would alter the stability of the land use pattern in the area by being a precedent for approval of other non-resource dwellings in the vicinity (*raised by Chris Foster who testified in opposition of the request*).
2. Parcel may not be a legal Lot of Record (*raised by Arnold Rochlin who testified in opposition to the request*).
3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies (*raised by Arnold Rochlin*).

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

ACTION REQUESTED OF BOARD

- ☐ Affirm Plan.Com./Hearings Officer
- ☒ ^{3/23/93} Hearing/Rehearing
- ☐ Scope of Review
- ☐ On the record
- ☐ De Novo
- ☒ New Information allowed ?

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 2-93

BCC Informal _____ (date)	BCC Formal _____ March 23, 1993 (date)
DEPARTMENT _____ DES	DIVISION _____ Planning and Development
CONTACT _____ Sharon Cowley	TELEPHONE _____ 2610
PERSON(S) MAKING PRESENTATION	Sandy Mathewson

ACTION REQUESTED:

xx DENIAL

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN:

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 2-93 Hear the appeal of the Hearings Officer Decision of January 21, 1993, denying applicant's conditional use request to allow a non-resource related single family residence in the Multiple Use Forest (MUF-19) zoning district, for property located at 13160 NW McNamee Road. Request was denied because it does not comply with MCC 11.15.2172(C)(1)(3) and (4) or with MCC 11.15.2194(E) or (F) and does not comply with Comprehensive Plan Policies 12 (Multiple Use Forest) and 22 (Energy Conservation). The hearing will be held On the Record, plus additional evidence will be allowed, however, limited to compatibility with the surrounding land use. Each side will have 15 minutes to present oral argument to the Board. Cases CU 2-93 and CU 1-93 will be heard together. **ED**

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL

Or

DEPARTMENT MANAGER

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1993 MAR 15 PM 2:33
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C42-93

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 2

☐ Previously Distributed _____

☒ Notice of Review No. of Pages 1

*(Maybe distributed at Board Meeting)

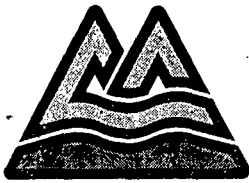
☒ Previously Distributed 2-23-93

☒ Decision No. of Pages 16

☒ (Hearings Officer/Planning Commission)

☒ Previously Distributed 2-23-93

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Case File Record Check List

File No. C4 2-93

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (1 Pages)
- ☒ Case Summary Sheet (2 Pages)
- ☒ Notice of Review Application (1 Pages)
- ☒ Decision (14 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
- ☒ Transcript (Pages)
- ☒ Applicant's Application and Submittals (35 Pages)
- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
(Maps)
- ☐ Other Materials ()



BOARD HEARING OF MARCH 23, 1993

TIME 9:30 am

CASE NAME: McGREW NON-RESOURCE SFR

NUMBER CU 2-93

1. Applicant Name/Address: James McGrew
3706 SW Nevada Ct.
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource
related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

(1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.

(2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

ISSUES

(who raised them?)

1. New dwellings would alter the stability of the land use pattern in the area by being a precedent for approval of other non-resource dwellings in the vicinity (*raised by Chris Foster who testified in opposition of the request*).

2. Parcel may not be a legal Lot of Record (*raised by Arnold Rochlin who testified in opposition to the request*).

3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies (*raised by Arnold Rochlin*).

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

ACTION REQUESTED OF BOARD

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

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.

Meeting Date: February 23, 1993

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 2-93 Decision

BCC Informal _____ BCC Formal February 23, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 10 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 2-93 Review the Decision of the Hearings Officer of January 21, 1993, denying applicant's conditional use request to allow a non-resource related single family residence for property located at 13160 NW McNamee Road

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER BH Willis

(All accompanying documents must have required signatures)

RECEIVED 117 AM 5-6-93
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C42-93

☒ Agenda Placement Sheet

No. of Pages

☒ Case Summary Sheet

No. of Pages

☐ Previously Distributed

☒ Notice of Review

No. of Pages

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages

☒ (Hearings Officer/Planning Commission)

☐ Previously Distributed

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



TULNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C42-93

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (1 Pages)
- ☒ Case Summary Sheet (2 Pages)
- ☒ Notice of Review Application (1 Pages)
- ☒ Decision (16 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
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- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (Exhibits)
(Maps)
- ☐ Other Materials ()



BOARD HEARING OF FEBRUARY 23, 1993

TIME 9:30 am

CASE NAME: McGREW NON-RESOURCE SFR

NUMBER CU 2-93

1. Applicant Name/Address: James McGrew
3706 SW Nevada Ct.
Portland, OR 97219

2. Action Requested by applicant:

Conditional Use approval for a non-resource
related residence in the MUF-19 district.

3. Staff Report Recommendation (January 4, 1993):

Approve subject to conditions

4. Hearings Officer Decision (January 21, 1993):

Denied

5. If recommendation and decision are different, why?

(1) Lot of record issue (see issue 2 below) was not raised until public hearing. Initial research by Staff had indicated that the parcel was a legal lot.

(2) Hearings Officer reached a different conclusion than Staff concerning the compatibility of the proposed dwelling with surrounding resource management activities and the effect on the surrounding land use pattern.

ISSUES

(who raised them?)

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2. Parcel may not be a legal Lot of Record (raised by Arnold Rochlin who testified in opposition to the request).

3. Parcel has no developed water source so is not in compliance with code requirements and Comprehensive Plan policies (raised by Arnold Rochlin).

Do any of these issues have policy implications? Explain.

Issue 1: The area in question has been rezoned from MUF to CFU. The CFU district includes a requirement that there must be 11 other lots and 5 houses within 160 acres for approval of a non-resource residence. Should

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

any consideration be given to whether approval of the present application (being considered under MUF criteria) would affect the ability to develop other parcels in the future (which would be considered under the CFU criteria)?

Issue 2: No policy implication.

Issue 3: The County recognizes that there is a substantial cost involved in drilling a well, and many applicants are unwilling to go to that expense until they have received approval for a dwelling. Policy has been to allow the decision of whether there is an adequate water supply to be delayed, usually until the time of application for building permits.



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

NOTICE OF REVIEW

SPED 11 482-33 18
2001 SPED 1/30/93 2001-33 1

1. Name: McGrew, James

2. Address: 3706 SW Nevada Ct., Portland, OR 97219

3. Telephone: () 246 - 3165

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

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

CU 1-93, denial of a conditional use for
a non-resource dwelling

6. The decision was announced by the ^(Hearings Officer) Planning Commission on 28 Jan, 1993

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

I am the applicant.

Please return this original form

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

The Hearings Officer misapplied applicable code provisions
and other legal standards in denying the conditional use request.

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*.

The Hearings Officer raised issues and cited lack of evidence in his decision to which the applicant could not respond. Because the staff recommended approval, the applicant believed sufficient evidence had been submitted. Failure to allow the applicant to present a full and fair case now would be prejudicial against the applicant.

Signed: James R. McInnes

Date: 8 Feb 93

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

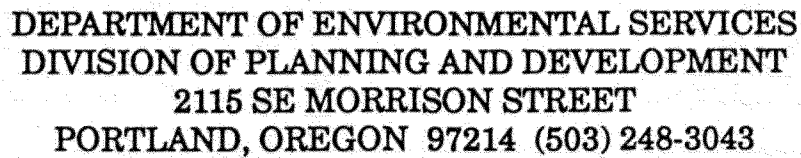
Length of Hearing 52 min x \$3.50/minute = \$ 182.00

Total Fee = \$ 482.00

Received by: _____

Date: _____

Case No. C241-93



57 CD .11

3.53 EC

- 59 11

92.3 41

- (Hearings Officer)

Please return this original form

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

The Hearings Officer misapplied applicable code provisions
and other legal standards in denying the conditional use request.

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*.

The Hearings Officer raised issues and cited lack of evidence in his decision to which the applicant could not respond. Because the staff recommended approval, the applicant believed sufficient evidence had been submitted. Failure to allow the applicant to present a full and fair case now would be prejudicial against the applicant.

Signed: James M. Grew Date: 8 Feb 93

For Staff Use Only

Fee:

Notice of Review = \$300.00 ✓

Transcription Fee:

Length of Hearing _____ x \$3.50/minute = \$ _____

Total Fee = \$ 300.00

Received by: _____ Date: _____ Case No. C22-93

BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding applications by James McGrew for conditional) use permits for a non-resource related dwellings in the) MUF-19 zone at 13156 and 13160 NW McNamee Road) in unincorporated Multnomah County, Oregon)	DECISION CU 1-93 and CU 2-93 (McGrew)
---	---

I. SUMMARY

The applicant requests approval of two conditional use permits that would allow a non-resource related single family detached dwelling to be built on each of two adjoining 6-acre and 4.76-acre "lots of record" in the MUF-19 zone. The lots also are subject to slope hazard regulations because of their steep slope. The applicant will provide access to the two dwellings by partially relocating and extending an existing private road that intersects McNamee Road about 500 feet west of the site. Each dwelling will be served by a private well and sanitation system.

Hearings officer Larry Epstein conducted a public hearing on January 4, 1993 to consider the applications. County staff recommended conditional approval. The applicant accepted the recommended conditions of approval. Two members of the public testified in opposition, arguing the applications fail to maintain the stability of the land use pattern of the area, fail to comply with Comprehensive Plan policy 37 requirements for proof an adequate water system exists, and fail to adequately address certain fire safety issues. Also disputed was whether the properties in question are legal lots of record. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record.

CASE:	<u>CU 1-93</u>	<u>CU 2-93</u>
ADDRESS:	13156 NW McNamee Road	13160 NW McNamee Road
LEGAL:	Tax lot '52' Both in Section 32, T2N-R1W, WM, Multnomah County	Tax lots '44' and '53'
SITE SIZE:	4.76 acres	6 acres
OWNER:	Elizabeth J. McGrew	James McGrew
APPLICANT:	James McGrew for both applications	

APPLICABLE LAW: Multnomah County Code (MCC) 11.15.2162, *et seq.* (MUF District); Comprehensive Plan policies 12 (Multiple Use Forest), 13 (Air and Water Quality and Noise), 14 (Development limitations), 22 (Energy Conservation), 37 (Utilities), 38 (Facilities) and 40 (Development Requirements)

STAFF RECOMMENDATION: Conditionally approve both conditional uses

HEARINGS OFFICER DECISION: Denied

Hearings Officer Decision --- CU 1-93 and CU 2-93 (McGrew)

129

N
↑

Case #: CU 1-93
Location: 13156 NW McNamee Road
Scale: 1 inch to 600 feet (approximate)
 Shading indicates subject property
SZM 81; Section 32, T.2N., R.1W., WM.

'11'

253.85 Ac.

'2'
20.0 Ac.

MUF -38

PARCEL 3
38.00 Ac

MUF
-19
'3'
20.0Ac

3.13 Ac.

(3)
18.62 Ac.

(47)
9.00 Ac.

(53)
3.00
Ac

(44)
3.00
Ac

4527
4.76
AC

MIF

-19

(17)
19.74 Ac.

(1)
55 Ac.

F M F R A I

46 47 48 49 50

'6'
80.00 Ac.

51'
5.88 Ac.

∴ (2)
13.32 Ac

56'
7.38 Ac.

(45)
11. B2 Ac

MUF-38

(78) 4.40 Ac

(9)
10.00 Ac.

(24)
4.80 Ac.

'23'

(10)

MUE - 19

(38)
33.86 A

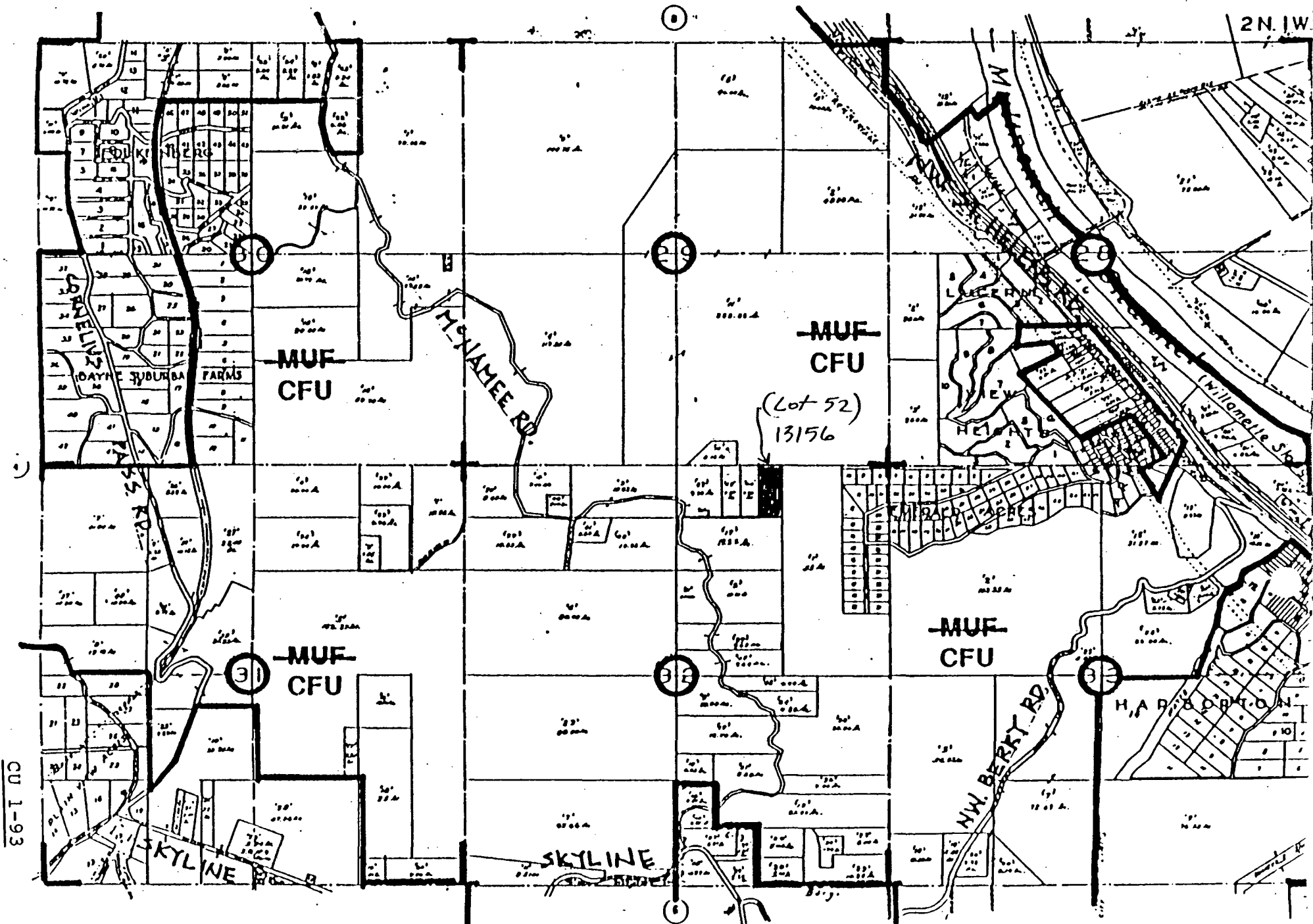
0 2000 FT. 4000 FT. 1 MILE



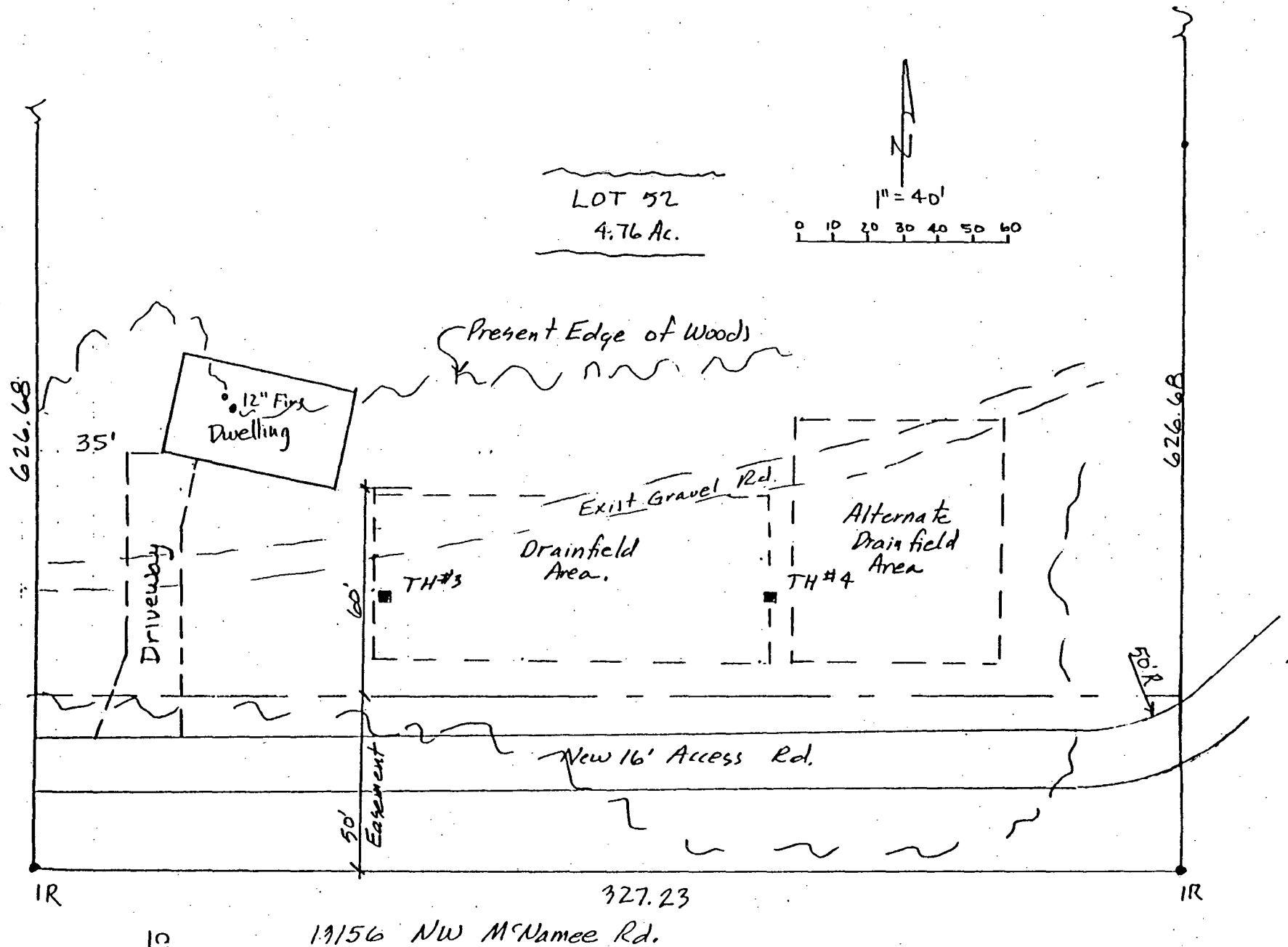
SECTION 28, 29, 30, 31, 32, 33

T.2N. R.1W.

APPROXIMATE SCALE



CU 1-93



CU 1-93

SITE PLAN

Elizabeth J. McGrew
45 Eagle Crest Dr
Lake Oswego, OR

JRM
10/23/92

PARCEL 2
38.00 Ac.

PARCEL 3
38.00 Ac.



Zoning Map

Case #: CU 2-93

Location: 13160 NW McNamee Road

Scale: 1 inch to 600 feet (approximate)

Shading indicates subject properties

SZM 81; Section 32, T.2N., R.1W., WM.

'11'
253.85 Ac.

'2'
20.0 Ac

MUF -38

MUF -19
'3'
20.0 Ac.

'10'
3.13 Ac.

'3'
18.62 Ac.

'47'
9.00 Ac.

'53'
3.00 Ac.

'44'
3.00 Ac.

'52'
4.76 Ac.

'41'
2.60 Ac.

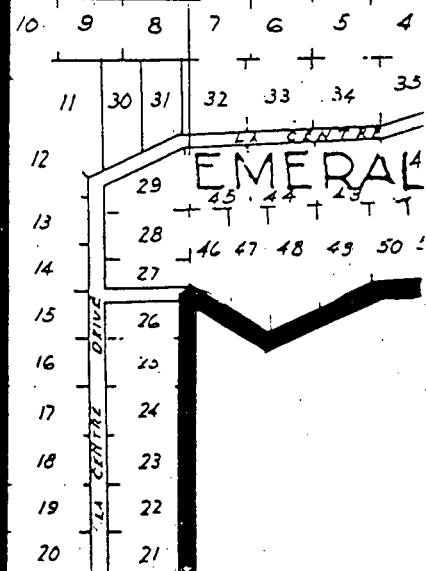
'40' **MUF -19**
16.32 Ac.

'17'
19.74 Ac.

'1'
55 Ac.

'51'
5.88 Ac.

'2'
13.32 Ac.



MUF -38

MUF -38

'56'
7.38 Ac.

'45'
11.82 Ac.

'48' 4.40 Ac.

'9'
10.00 Ac.

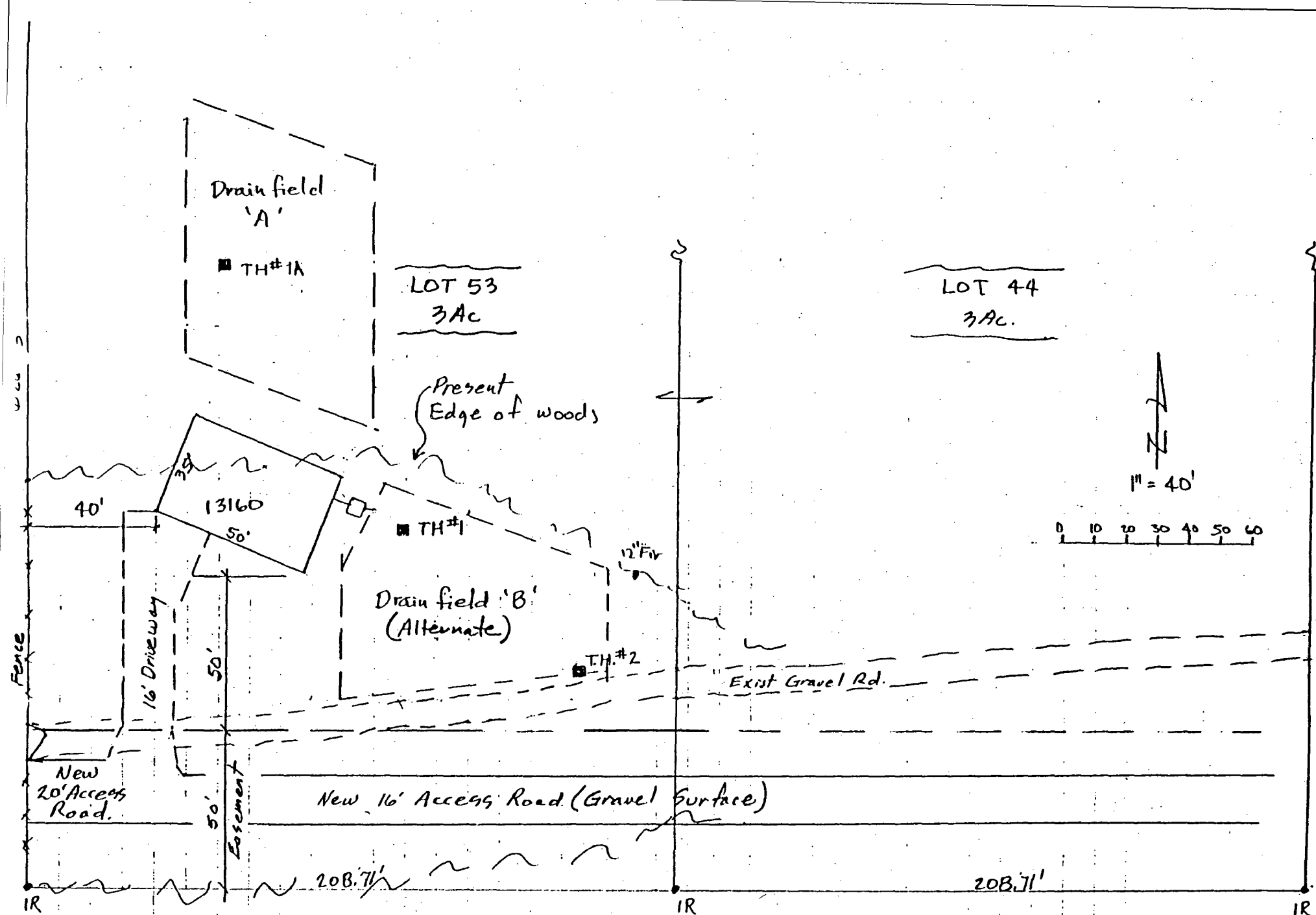
'24'
4.80 Ac.

'19'
12.76 Ac.

MUF -19

'38'
33.86 Ac.

'23'
30.00 Ac.



SITE PLAN

13160 NW McNamara Rd

James R & Elizabeth L McGrew
 3706 SW Nevada Ct
 Portland OR 97219

JRM
 10/23/92

II. FINDINGS ABOUT SITE AND SURROUNDINGS

A. *Site size and shape :*

Both parcels are rectangular. The parcel for CU 1-93 is 327 feet east-west and 626 feet north-south and contains 4.76 acres. The parcel for CU 2-93 is 417 feet east-west and 626 feet north-south and contains 6 acres.

B. *Site location :*

The parcel for CU 2-93 adjoins the west side of the parcel for CU 1-93 and is about 500 feet east of NW McNamee Road. The parcel for CU 1-93 is about 950 feet east of NW McNamee Road.

C. *Existing uses and structures :*

The site is not developed with structures. It consists principally of conifer forest.

D. *Proposed uses and structures :*

1. The applicant proposes to develop a single family detached dwelling on each lot of record. Each will have a private well and sanitary waste system.
2. The homesite for CU 1-93 is situated about 35 feet from the west lot line or about 985 feet east of NW McNamee Road. It is about 110 feet from the south lot line or about 60 feet from the north edge of a private road easement over the south 50 feet edge of the lot. It is more than 200 feet from east and north lot lines.
3. The homesite for CU 2-93 is situated about 40 feet from the west lot line or about 540 feet east of NW McNamee Road. It is about 100 feet from the south lot line or about 50 feet from the north edge of the private road easement. It is more than 200 feet from east and north lot lines.
4. To provide vehicular access, the applicant will improve a 16- to 20-foot wide private road with a gravel surface in the 50-foot easement from McNamee Road and across the south edges of the two lots of record and the lots between the site and McNamee Road. A narrow gravel road already exists west of the site and crosses the two lots of record north of the road easement. The applicant will relocate the improved section of road so it is roughly centered in the easement.

E. *Existing and proposed vegetation :*

Most of the site is forested except where the gravel road crosses the site. The applicant will have to remove trees from a relatively small area on the periphery of the treed area for the homesite and septic system drainfield for CU 1-93. More trees will have to be removed from the site for CU 2-93 to accommodate the primary drainfield, because the drainfield area is now entirely forested based on the preliminary site plan. More trees will have to be removed to extend the private road across the site for CU 1-93.

F. *Geology and soils :*

1. Based on the Geologic and Slope Hazard Maps (September, 1978), the site is subject to geologic or slope hazards. Based on the USDA SCS General Soil Map for Multnomah County (Sheet 6, August, 1974), the site contains two soil types.

- a. The majority of the site consists of Goble silt loam with slopes of 30 to 60 percent. The SCS describes this soil as being steep, moderately drained soil on convex side slopes of ridgetops. Permeability is moderate above the fragipan and slow in the fragipan. Runoff is rapid and erosion potential is high. The winter water table is within a depth of 4 feet. The soil has a Douglas fir site index of 145 to 155, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 30 to 45 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.
 - b. The remainder of the site consists of Cascade silt loam on slopes of 15 to 30 percent. The SCS describes this soil as being somewhat poorly drained soil on the convex side slopes of broad rolling ridgetops. Permeability is slow. Runoff is medium and erosion hazard is high. The winter water table is at a depth of 18 to 30 inches. The soil has a Douglas fir site index of 150 to 165, indicating it is productive. The main limitations for timber production are the slowly permeable fragipan at a depth of 20 to 30 inches and the resultant perched water table from December through April. Some windthrow is possible because of restricted rooting depth.
2. Based on the site plan accompanying the Land Feasibility Study application, the site slopes from a high of about 980 feet above mean sea level (msl) along the west edge of tax lot '53' and south edge of all three tax lots to a low of about 850 feet msl at the northwest corner of tax lot '52'. The site slopes down to the north-northeast.

G. Plan designation and zoning :

The Comprehensive Plan Map designates the site and surrounding property as Multiple Use Forest.¹ The site and land to the south and west is zoned MUF-19 (Multiple Use Forest-19). Land to the east and north is zoned MUF-38 (Multiple Use Forest-38). The site also is subject to the Hillside Development and Erosion Control subdistrict.

H. Public services and utilities :

1. The site is not served by public water and sewer systems. The applicant proposes to develop a well and subsurface sanitation system for each dwelling. The applicant argues that a well can be developed, based on the existence of three wells on nearby properties and the logs for those wells. The applicant argues a sand mound sanitation system can be developed on each lot of record, based on Land Feasibility Studies 267-92 and 268-92 and the written comment from Mike Ebeling dated November 6, 1992.
2. The site is in Multnomah County Rural Fire Protection District 20. The District Fire Chief advised the County that there is adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by 3000 gallon tank trucks. See the written comment dated November 9, 1992. The State Fire Marshal recommended certain measures regarding fire access if the application is approved. See the Special Inspection report dated October 23, 1992.

¹ Although a plan amendment enacted after the application was filed changed the designation of the site and surrounding area to Commercial Forest Use, and corresponding zoning changes were enacted to implement the plan designation, the application is subject to the plan designation and zoning that applied when the application was filed, based on ORS 215.428(3).

3. Adequate police service to the site can be provided by the City of Portland, based on the written comment from Sgt. Baxter dated November 6, 1992. Adequate school services can be provided by the Portland School District, based on the written comment from Donald Jeffrey dated November 6, 1992.

4. Underground power and telephone utilities are situated in the private road west of the subject site, based on the site plan accompanying the Land Feasibility Study application.

I. Streets and access :

The site is 500 feet east of NW McNamee Road. Access is provided by means of a private road within a 50-foot easement. See also finding II.D.4.

J. Surrounding land uses :

1. Within a 160-acre (i.e., 1/4-mile) square centered on the site, there are three single family dwellings. Immediately northwest of the site is a non-resource related single family home on a 3.13-acre parcel. Immediately south of the site is a roughly 20-acre lot of record that is developed with two single family dwellings situated near the McNamee Road frontage. The owner of that parcel filed a written statement dated November 9, 1992 in which she states that she will not be spraying, burning, or blasting on her property; therefore, she concludes the proposed dwellings will not affect her property.

2. There is a forested 55-acre parcel east of the site for CU 1-93. It is owned by James McGrew and others. Further east is a large, mostly undeveloped subdivision known as Emerald Acres.

3. There is a largely forested 253-acre parcel north of the site owned by the Linnton Rock Company. That parcel is part of a 283-acre site, the northeast 114 acres of which is developed as a rock quarry. The president of Angell Brothers, Inc., which operates the quarry, submitted a written statement dated November 18, 1992, in which he states that the unmined portion of the quarry property recently was logged and replanted; that no aerial spraying, large scale burning or chemical applications are planned on that property; and that blasting that occurs occasionally on the mining site is situated far enough away from the proposed CU site so that it is not likely to be a problem for residents of the CU site.

4. There is a forested 9-acre parcel west of the site for CU 2-93. The owner of that parcel filed a written statement dated November 17, 1992 in which she states that she does not anticipate aerial spraying, large slash burns, or application of chemicals to her property; therefore, she concludes forest practices on her property will not affect the proposed dwellings.

5. Land along McNamee Road generally is divided into parcels smaller than 20 acres; there are 14 such parcels within 1/4-mile of the site; four of those are developed with dwellings, including the 3 dwellings noted in finding II.J.1 above.

6. There was testimony that a wildlife easement and management plan applies to 459 acres northwest of the site, but other evidence of such an easement was not offered.

III. APPLICABLE APPROVAL STANDARDS

A. Multnomah County Code (MCC) title 11.15 (Zoning).

1. MCC 11.15.2172(C) allows a non-resource related single family dwelling in the MUF-19 zone if the applicant shows:

a. The lot size shall meet the standards of MCC 11.15.2178(A), .2180(A) to (C), or .2182(A) to (C).

(1) MCC 11.15.2182(A)(2) recognizes as a "lot of record" 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 .2178, (i.e., 19 acres); and

(d) Which is not contiguous to another substandard parcel or parcels under the same ownership. See also MCC 11.15.2182(B).

b. The land is incapable of sustaining a farm or forest use, because, among other reasons, it is a lot of record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.

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

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

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

f. The residential use development standards of MCC 11.15.2194 will be met.

2. The residential use development standards of MCC 11.15.2194 require the following:

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

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

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

- b. An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;*
- c. The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B);*
- d. The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;*
- e. The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitation of subpart #3 above;*
- f. Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:*
 - (1) A setback of 30 feet or more may be provided for a public road; or*
 - (2) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access...*
- j. The dwelling shall be located outside a big game winter wildlife habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.*

B. Multnomah County Comprehensive Plan Policies.

1. Policy 12 (Multiple Use Forest Area) provides:

The County's policy is to designate and maintain as Multiple Use Forest, land areas which are:

- a. Predominantly in forest site class I, II, III, for Douglas fir as classified by the U.S. Soil Conservation Service;*
- b. Suitable for forest use and small wood lot management, but not in predominantly commercial ownerships;*
- c. Provide (sic) with rural services sufficient to support the allowed uses, and are not impacted by urban-level services; or*
- d. Other areas which are:*
 - (1) Necessary for watershed protection or are subject to landslide, erosion or slumping; or*
 - (2) Potential reforestation areas, but not at the present used for commercial forestry; or*
 - (3) Wildlife and fishery habitat areas, potential recreation areas, or of scenic significance.*

The County's policy is to allow forest use along with non-forest use; such as agriculture, service uses, and cottage industries; provided that such uses are compatible with adjacent forest lands.

2. Policy 13 (Air and Water Quality and Noise) provides (in relevant part):

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.

3. Policy 14 (Development Limitations) provides:

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

- a. Slopes exceeding 20%;*
- b. Severe soil erosion potential;*
- c. Land within the 100-year flood plain;*
- d. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;*
- e. A fragipan less than 30 inches from the surface;*
- f. Land subject to slumping, earth slides or movement.*

4. Policy 22 (Energy Conservation) provides (in relevant part):

The county shall require a finding prior to approval of a legislative or quasi-judicial action that the following factors have been considered:

- a. The development of energy-efficient land uses and practices;*
- b. Increased density and intensity of development in urban areas...*
- 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...*

5. Policy 37 (Utilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

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

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 DEQ will approve a subsurface sewage disposal system; or

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

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

f. The 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 or lakes or alter the drainage on adjoining lands.

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.

6. Policy 38 (Facilities) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. The appropriate school district has had an opportunity to review and comment on the proposal.

b. There is adequate water pressure and flow for fire fighting purposes; and

c. The appropriate fire district has had an opportunity to review and comment on the proposal.

d. The proposal can receive adequate local police protection in accordance with the standards of the jurisdiction providing police protection.

7. Policy 40 (Development Requirements) requires the county to find, prior to approval of a legislative or quasi-judicial action, that:

a. Pedestrian and bicycle path connections to parks, recreation area and community facilities will be dedicated where appropriate and where designated in the bicycle corridor capital improvements program and map.

b. Landscaped areas 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.

IV. HEARING AND RECORD

A. Hearing.

Hearings Officer Larry Epstein received testimony at the public hearing about this application on January 4, 1993. The hearings officer held open the public record for seven days to receive additional information about the status of the properties as lots of record. A record of that testimony is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Multnomah County Department of Environmental Services.

B. Summary of selected relevant testimony.

1. Sandy Mathewson testified for the County and summarized the staff report and recommendation.
2. James McGrew testified on his own behalf. He accepted the staff report and recommendation without objection. He asked what would be involved in the planning director's review of the adequacy of the proposed water systems. Ms. Mathewson clarified that that review would be limited to the issue of the water system and would not involve other issues relating to the conditional uses. Mr. McGrew testified that there are no perennial water sources on adjoining property.
3. Chris Foster and Arnold Rochlin testified against the conditional use permit.
 - a. Mr. Foster introduced exhibits into the record for both CU applications, including soils information, a map illustrating dwellings in the vicinity of the site, a portion of the findings by the planning commission regarding PR 7-92 and CU 14-92 (the applications for a plan amendment and conditional use for the Angell Brothers quarry), a May 24, 1991 research report by DLCD, information about a conservation easement allegedly for nearby land, and a copy of *Champion International v. Douglas County* (16 Or LUBA 132 (1987)). He argued that approval of the conditional uses will be a precedent for other non-resource related dwellings in the vicinity, particularly for lots in the western portion of Emerald Acres; therefore, the conditional uses do not maintain the stability of the land use pattern of the area, because they will lead to an increase in non-resource related dwellings in the vicinity. He argued this is particularly important in this case, because the lots involved are distant from such major roads as McNamee Road.
 - b. Mr. Rochlin argued that the proposed conditional uses violate Comprehensive Plan policy 37, because neither lot of record contains an adequate water system. He also disputed whether the lots in question are lots of record, because the lots did not abut a public street when created and access by means of a private road was not approved; therefore, the lots did not comply with applicable laws when created. He also disputed whether the record contains sufficient evidence to address MCC 11.15.2194(B), because the record does not indicate whether there is a perennial water source on adjoining land. He also argued the proposed dwellings could conflict with a resource use on adjoining land, i.e., quarrying on the property north of the site, if that quarry is allowed to expand. He noted the Board of Commissioners would consider such an application in February.
4. At the request of the hearings officer, Ms. Mathewson provided a memorandum dated January 8, 1993 to address the issue of whether the lots in question qualify as lots of record. That memorandum offers the following information:

a. The site was zoned SR (Suburban Residential) from 1966 until October 6, 1977. The SR district regulations were in section 3.15 of the Multnomah County Zoning Ordinance. The minimum lot size in the district was 10,000 to 40,000 square feet depending on the circumstances (subsection 3.1531). Subsection 3.1536 provided as follows:

All lots in this district shall abut a street, or shall have such other access held suitable by the Planning Commission.²

Subsection 3.1539 provided as follows:

These requirements shall apply to lots that abut a future street as indicated on an approved and recorded subdivision plat.

b. In 1966, the site was part of a 39-acre parcel identified as tax lot '17'. A survey dated September 12, 1971 divided tax lot '17' into one 2-acre and six 3-acre parcels. It is unknown whether deeds or legal descriptions for these lots were recorded at that time. Two of these seven lots later were identified as tax lots '44' and '53' (i.e., the site for CU 2-93). Two others were combined as identified as tax lot '52' (i.e., the site for CU 1-93).

c. The 1971 survey did not create legal lots under the County Subdivision Ordinance in effect at that time, because division of a parcel into four or more lots for transfer or sale within a given calendar year was required to be approved by the planning commission. No such approval was applied for or given. However, because the lots created by this survey were not transferred, the survey may be irrelevant to whether the lots in question are lots of record.

d. A recorded Contract of Sale dated July 24, 1974 conveyed an 11-acre portion of what was tax lot '17' to Elizabeth J. McGrew, Elizabeth L. McGrew and James McGrew. A recorded Assignment of Interests and Division of Property dated October 24, 1975 divided this 11-acre parcel into three parcels. These three parcels are now identified as tax lots '44', '52' and '53'. Because the 1974 and 1975 contract and assignment did not create four or more parcels in a given calendar year, they were not subject to the subdivision ordinance.

e. The easement that provides access to the site was included in the 1974 contract. However, no application was made to the planning commission for approval of that access, and no such approval was granted. Therefore, the issue arises whether the 1974 contract and 1975 assignment complied with subsection 3.1536. Ms. Mathewson suggests that subsection 3.1536 should be read in conjunction with subsection 3.1539, so that the former applies only if the lots abut a future street indicated on an approved and recorded subdivision plat. If that is how section 3.153 is construed, then the lots did not violate subsection 3.1536 when created, because there is no subdivision plat for the land adjoining the site. Ms. Mathewson also suggests 3.1536 should not apply based on the purpose statement for the SR district, which provided:

² Ms. Mathewson did not provide a definition of the term "street" as it existed at that time. The hearings officer takes official notice that the term is defined in the current zoning ordinance to mean "a public way which provides vehicular and pedestrian access to adjacent properties.." (emphasis added) The Subdivision Ordinance in 1974-75 defined "street" to mean "a right of way ..." The hearings officer assumes that the term "street" would have been similarly defined by the Zoning Ordinance in 1974-75, and the easement in question would not have been considered a public way or right of way, because it was a private easement.

No provision of this section shall regulate lands used for grazing, agriculture, horticulture or for the growing of timber.

She reasons that, because the site was used for growing of timber, it could be divided without regard for the regulations of the district.

V. EVALUATION OF REQUEST

A. Compliance with MCC 11.15 (Zoning).

1. The first issue is whether the lots in question qualify as "lots of record" as defined by MCC 11.15.2182. If they are not, then the applications fail to comply with MCC 11.15.2172(C)(1).

a. The first sub-issue is whether the regulations of the SR district applied to the land division that created the subject lots.

(1) If, as suggested by County staff, the district did not apply because the land in question was used for growing timber, then the fact that the land division did not comply with subsection 3.1536 was irrelevant.

(2) Generally the purpose statement of a zoning district does not limit the application of the district; rather, it describes the legislative intent for the district. Therefore, as a general matter it is not reasonable to construe the SR regulations to be irrelevant to the land division in question.

(3) Even assuming the SR regulations did not apply to use of land used for growing timber, that does not mean it did not apply to the division of that land. Division of the land is not a use issue. Therefore, the hearings officer finds that divisions of land in the SR zone were subject to the regulations of that zone.

b. The second sub-issue is whether the lots in question comply with subsection 3.153.

(1) If, as suggested by County staff, subsection 3.1536 applies only if triggered by subsection 3.1539, then whether the lots created in 1974 and 1975 abutted a street is irrelevant to whether they were legally created.

(2) The hearings officer finds that subsection 3.1536 is ambiguous. It is not clear from the plain meaning of the words whether subsection 3.1536 applies if the lot does not abut a future street as indicated on an approved and recorded subdivision plat. Although County staff offer suggestions, they are unable to "positively conclude that there were any land division requirements in the SR district that had to be met." Therefore, the hearings officer must construe those sections.

(3) If subsection 3.1539 has the meaning suggested by County staff, then other provisions of subsection 3.153 would not apply except where the lot in question abuts a future street on an approved and recorded plat. Those other regulations address site size (subsection 3.1531), yard requirements (subsection 3.1532), accessory buildings, (subsection 3.1533), off-street parking (subsection 3.1534), height restrictions (subsection 3.1535), and sale of portions of a lot (subsection 3.1538).

(4) The hearings officer conceives of no reason why such issues should be waived simply because the lot in question does not abut a future public street. Issues of site size, setbacks, accessory buildings, parking and height are not directly affected by proximity to a future street (although setbacks may be increased as a result). Therefore, it would not be reasonable to construe that subsections 3.1531 through 3.1538 do not apply except where the lot in question abuts a future public street.

(5) The hearings officer concedes this leaves subsection 3.1539 with little if any meaning. Such a result should be avoided. There must have been some reason for adopting that subsection. However, either that subsection has little meaning or the rest of section 3.153 has little meaning. Faced with such a conflict, the hearings officer decides to give the most meaning to the most subsections.

(6) Therefore, the hearings officer finds that subsection 3.1536 did apply to the 1974-75 land divisions. Because the lots in question did not comply with that subsection, the hearings officer concludes they did not satisfy all applicable laws when created. Therefore, the lots in question are not "lots of record" and the applications must be denied for failure to comply with MCC 11.15.2182 and MCC 11.15.2172(C)(1).

Although this determination requires denial of the application, the hearings officer adopts the following findings to provide a complete decision in the event the Board of Commissioners chooses to construe MCC 11.15.2182 and the former SR regulations so that the two "lots of record" are recognized as legal.

2. Each purported lot of record is incapable of sustaining a farm or forest use, because it is smaller than 10 acres. (MCC 11.15.2172(C)(2))

3. The application fails to show that a dwelling on each of the purported lots of record would be compatible with primary uses listed in MCC 11.15.2168 on nearby property and would not materially alter the stability of the overall land use pattern of the area, based on the following. (MCC 11.15.2172(C)(3))

a. Primary uses on nearby land include forestry and private conservation areas. Accepted forest practices could include aerial spraying, application of chemicals and large-scale burning. Those practices could conflict with the peaceful enjoyment of the occupants of the proposed dwellings. The hearings officer accepts for what they worth the statements of owners of adjoining properties that they do not plan to undertake those practices. However, such practices could occur. They may in fact be necessary over time to manage the forest land that surrounds the site. Because the dwellings in this case are situated far more in the forest area and are separated far more from McNamee Road, forest practices on nearby land, if they do occur, would be far more likely to adversely affect residents of the proposed dwellings than if the dwellings were situated near the road, like most other dwellings in the vicinity.

b. The dwelling is not compatible with forest uses in the vicinity just because the applicant records a statement waiving rights to object to such practices. See *Champion International v. Polk County*, 16 Or LUBA 132 (1987).

c. The land use pattern of the area within a reasonable vicinity of the site is largely resource-oriented. The three dwellings within 1/4-mile of the site do not make the area primarily or significantly residential. Moreover, those and other residences in the area are situated much closer to McNamee Road than the proposed dwellings (except perhaps the home on tax lot '10'). If this application was for dwellings situated along McNamee Road, where significant non-resource residential dwellings exist, a different outcome may be warranted. However, because of the distance of the site from other non-source dwellings and because of the potential for dwellings on these purported lots of record to help justify dwellings on other land to the east, allowing the proposed dwellings would materially alter the land use pattern of the area. It would introduce two non-resource dwellings into the area. That could have a precedential effect contrary to the maintenance of the stability of the land-use character of the area. See *Blosser v. Yamhill County*, 18 Or LUBA 253 (1989).

4. Sanitation and water facilities are needed for the dwellings. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems. The applicant introduced substantial evidence from which the hearings officer concludes that such systems are feasible and will or are reasonably likely to be approved. The Land Feasibility Study is sufficient to show septic systems can be approved. The evidence of wells on adjoining properties is sufficient to show a water system can be installed on each purported lot of record. If the applications were approved, a condition would be warranted requiring the planning director to find the wells that are drilled are in fact adequate to supply water to the site, subject to appropriate notice and review. (MCC 11.15.2172(C)(4))

5. The applicant has prepared the statement required by MCC 11.15.2172(C)(5), and it can be recorded if the permit is approved.

6. The proposed dwelling will comply with some of the residential use development standards of MCC 11.15.2194 as provided below:

a. Fire lanes can be provided around the dwelling, consistent with MCC 11.15.2194(A)(1).

b. A water supply for fire fighting purposes and fire fighting equipment can be provided by Rural Fire Protection District 20, based on the written statement from the District chief, consistent with MCC 11.15.2194(A)(2).

c. There are no perennial water sources on the subject lot or adjacent property, based on the aerial photograph in the record. Therefore, the applicant is not required to provide access to such water.

d. The dwellings are proposed to be 985 and 540 feet from McNamee Road, the closest publicly-maintained street. They could be situated 25 to 30 feet closer to that street and still comply with the minimum side yard setback of MCC 11.15.2178(C). However, given the large distances involved between the site and McNamee Road, the hearings officer finds the difference is negligible. Therefore, the dwelling location complies with MCC 11.15.2194(C).

e. The driveways to each homesite is less than 500 feet long measured from the private road. Therefore, the proposed dwellings comply with MCC 11.15.2194(D).

f. The application does not include information regarding the productivity characteristics of the site. However, based on the slope map, the south portions of the site are the least sloped. The hearings officer assumes the greatest productivity occurs where the site is least sloped, because that land is easier to plant and manage for resource purposes. The land with the lowest productivity characteristics probably is the land with the most slope, because that land is harder to access for planting or management purposes. Because the dwellings and drainfields are proposed on the land with the least slope, the hearings officer finds the dwellings are not located on that portion of the lot having the lowest productivity characteristics, and the application fails to bear the requisite burden of proof under MCC 11.15.2194(E).

g. The proposed building locations are not at least 200 feet from property lines. Dwellings are to be situated within 40 feet of side lot line and within 110 feet of south lot lines. The dwelling locations are not necessary to provide a setback from a public road or to allow for sharing of access or clustering of homes. Therefore, the location of the proposed homes does not comply with MCC 11.15.2194(F).

h. The dwellings are located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwellings complies with MCC 11.15.2194(J).

B. Compliance with the Comprehensive Plan.

1. The proposal complies with Policy 12 (Multiple Use Forest Areas), to the extent the County has designated and is maintaining the site in its Multiple Use Forest zone. However non-forest use of the lots is not compatible with forest uses for the reasons given in finding V.A.3.

2. The proposal complies with Policy 13 (Air and Water Quality and Noise), because the application includes a statement from the applicable agency that all standards can be met with respect to water quality to the extent sanitary sewage is related to water quality. The dwellings will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The dwellings will not generate significant noise and is not a noise sensitive use. The dwellings will not generate significant air quality impacts. Therefore, no agency is required to find that the land division will comply with air quality or noise standards.

3. The proposal is subject to Policy 14 (Development Limitations), because it contains slopes in excess of 20 percent and land subject to earth movement. See finding II.F. Development of the site is subject to the Hillside Development regulations and/or UBC Chapter 70, pursuant to which design and construction techniques will be considered to protect against harm due to earth movement or erosion. Therefore, the proposed dwellings can comply with the policy.

4. The proposal does not comply with Policy 22 (Energy Conservation), because it does not increase the energy efficiency of land uses and practices and does not increase density in the urban area. There is not substantial evidence in the record to determine whether the site is served by mass transit. There are no pedestrian facilities in the area. There is not substantial evidence in the record to determine whether the proposed dwellings are sited to use natural environmental and climatic conditions to their advantage.

5. The proposal complies with Policy 37 (Utilities), because there is substantial evidence in the record that the purported lots of record are reasonably likely to be served by private water wells, based on the wells on adjoining property, and to be served by private sanitation facilities, based on the Land Feasibility Studies by Mr. Ebeling. To ensure that private water and sanitation systems are installed consistent with applicable ODEQ standards, conditions of approval would be warranted requiring the applicant to submit appropriate information from which the planning director can determine that actual water and sanitation systems are adequate, subject to the requisite notice and review procedures. The hearings officer finds storm water run-off can be accommodated on the site, because of the relatively small impervious area that will result from the proposed development and the applicability of county regulations regarding drainage and hillside erosion control. The hearings officer also finds that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along the private road west of the site. See finding II.H.

6. The proposal complies with Policy 38 (Facilities), because the applicable school district, fire district and law enforcement agency had an opportunity to review and comment on the proposal. The hearings officer finds there is adequate water pressure and flow for fire fighting purposes, based on the written comment from the fire district. See also findings II.H..

7. The proposal complies with Policy 40 (Development Requirements), because that policy does not require any dedications or improvements to implement the bicycle corridor capital improvements program and map, the site is not a commercial, industrial and multiple family development, and bicycle parking can be provided on the site.

VI. SITE VISIT

The hearings officer visited the site. His observations are reflected in Section II of the final order.

VII. CONCLUSIONS AND DECISION

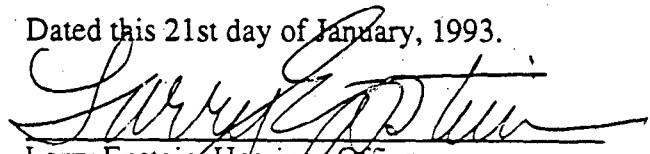
A. *Conclusions.*

The hearings officer concludes that the proposed conditional use permit does not comply with MCC 11.15.2172(C)(1), (3) and (4) or with MCC 11.15.2194(E) or (F) and does not comply with Comprehensive Plan policies 12 (Multiple Use Forest) and 22 (Energy Conservation).

B. *Decision.*

In recognition of the findings and conclusions contained herein, and incorporating the Staff Report and other reports of affected agencies and public testimony and exhibits received in this matter, the hearings officer hereby denies CU 1-93 and CU 2-93.

Dated this 21st day of January, 1993.


Larry Epstein, Hearings Officer

IN THE MATTER OF CU 1-93 and CU 2-93

Signed by the Hearings Officer: January 21, 1993

Decision Mailed to Parties: January 25, 1993

Submitted to Clerk of the Board January 28, 1993

Any appeals of this Decision must be filed within ten days after the Decision is filed with the Clerk of the Board.

The Decision of the Hearings Officer may be appealed to the Board of County Commissioners by any person(s) or organization who appears and testifies at the hearing, or by those who submit written testimony to the record. A Notice of Review form and fee must be submitted to the Planning Director within ten days after the Hearings Officer Decision is filed with the Clerk of the Board [MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50 per minute charge for a transcript of the initial hearing(s) [MCC 11.15.9020(B)]. Notice of Review forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street, Portland.

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

This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, February 23, 1993 at 9:30 a.m. in Room 602 of the Multnomah County Courthouse.

For further information, call the Multnomah County Division of Planning and Development at 248-3043.

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

In the Matter of Review of the Hearings Officer's)
Decision which denied Conditional Use approval of)
a non-resource related dwelling in the MUF district)

FINAL ORDER
Denying CU 1-93 93-81
and CU 2-93

On January 4, 1993 the Multnomah County Hearings Officer conducted a public hearing to consider a request for Conditional Use approval for two non-resource related single family dwellings on separate parcels in the Multiple Use Forest district (CU 1-93 and CU 2-93). Although the request involved two separate applications, they were considered in unison since only one applicant was involved and the properties are adjacent and face the same issues. After hearing testimony from the applicant and opponents, the Hearings Officer closed the hearing but left the record open for 7 days to allow additional information to be submitted concerning the Lot of Record status of the parcels. On January 21, 1993 the Hearings Officer issued a decision denying both requests.

On February 8, 1993 an appeal of the Hearings Officer Decision was filed. On February 23, 1993 The Board of County Commissioners (Board) scheduled a hearing to review the Hearings Officer Decision, the scope of review to be on the record with additional testimony allowed concerning the issue of compatibility of the proposed dwellings with resource activities in the area.

The Board conducted the review hearing on March 23, 1993. After considering evidence and arguments from the appellant's representative and opponents, the Board, in a 3-0 unanimous vote, hereby affirms the Hearings Officer's decision denying CU 1-93 and CU 2-93 and adopts the Findings and Conclusions of the Hearings Officer as set forth in his Decision dated January 21, 1993.

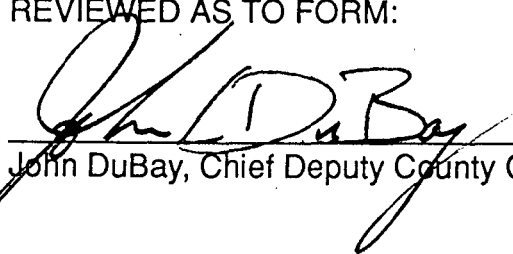


DATED this 25th day of March, 1993.



Gary Hansen, Vice-Chair

REVIEWED AS TO FORM:



John DuBay, Chief Deputy County Counsel

Filed with the Office of the Board Clerk on Thursday, March 25, 1993.

Meeting Date: March 23, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 5-93/LD 6-93

BCC Informal _____ BCC Formal March 23, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning and Development
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 5-93/LD 6-93 Review the Decision of the Hearings Officer of March 10, 1993, approving, subject to conditions, conditional use request for a homestead lot plus a two-lot land division, all for property located at 15007 NW Germantown Road.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER AC BH William

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1993 MAR 15 PM 2:33
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CU 5-93 / LD 6-93

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 1
☐ Previously Distributed _____

☐ Notice of Review No. of Pages _____
*(Maybe distributed at Board Meeting)
☐ Previously Distributed _____

☒ Decision No. of Pages 11
(Hearings Officer/Planning Commission)
☐ Previously Distributed _____

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



BOARD HEARING OF March 23, 1993

TIME 9:30am

CASE NAME: Walker Homestead Lot

NUMBER CU 5-93/LD 6-93

1. Applicant Name/Address

Frank Walker
13500 Monmouth Highway
Monmouth, OR

2. Action Requested by applicant

A Conditional Use Permit and a Land Division to allow creation
of a 2.6 acre Homestead Lot.

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Approval

5. If recommendation and decision are different, why?

ISSUES
(who raised them?)

a.

Do any of these issues have policy implications? Explain.



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

DECISION

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

Hearings Officer Decision

March 10, 1993

CU 5-93, #94
LD 6-93, #94

Conditional Use For a Homestead Lot
2-Lot Land Division

Applicant requests Conditional Use and Land Division approval to divide 2.6 acres from 41.1 acres for a Homestead Lot.

Location: 15007 NW Germantown Road
Legal: Tax Lots '15' and '29', Section 8, 1N-1W, 1991 Assessor's Map
Site Size: 41.1 acres
Size Requested: 2.6
Property Owner: George and Mary Jane Barker
15007 NW Germantown Road, 97231
Applicant: Same
Comprehensive Plan: Exclusive Farm Use
Present Zoning: EFU-38

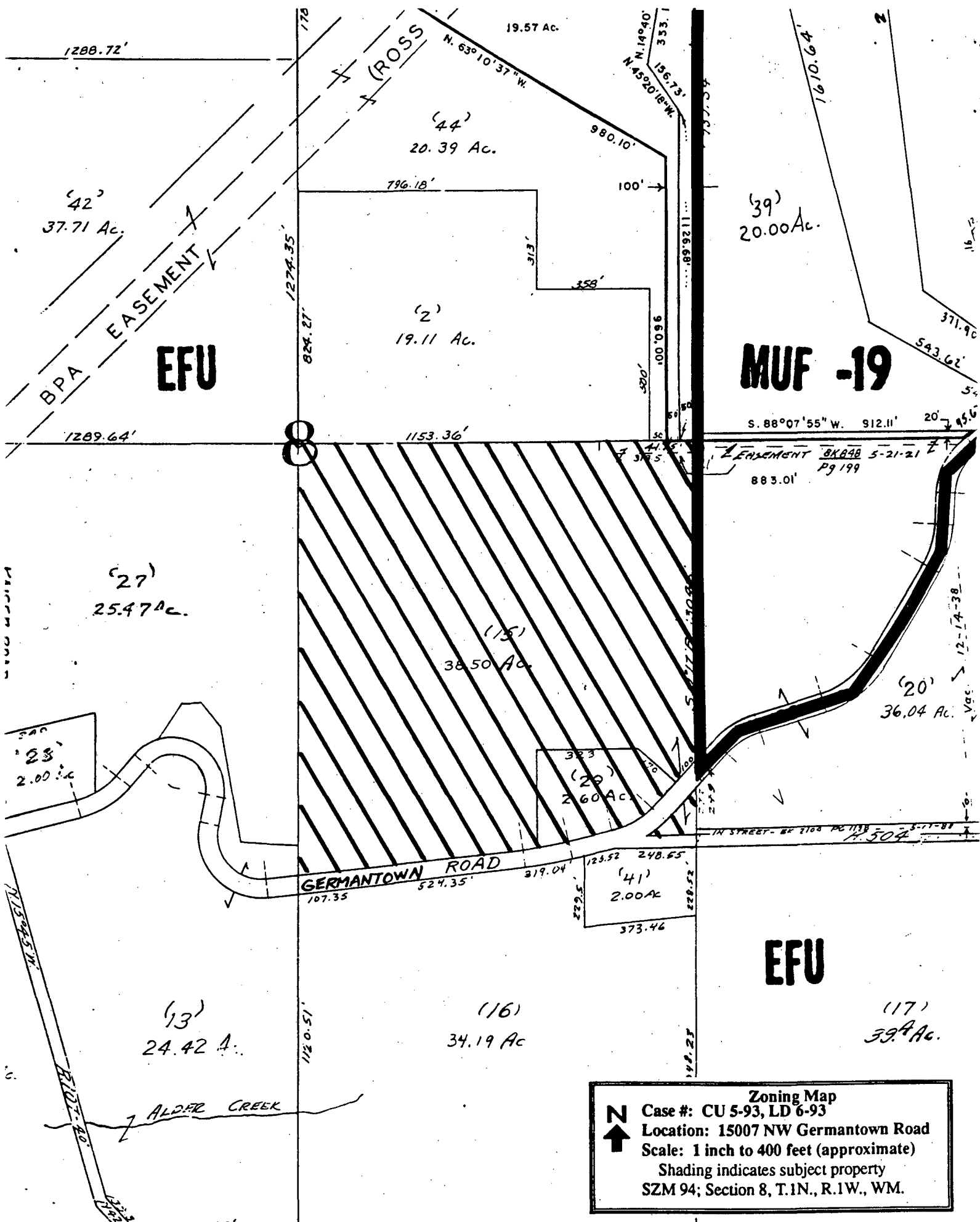
Decision #1:
(CU 5-93)

Approve Conditional Use request to divide 2.6 acres from 41.1 acres for a homestead lot, subject to conditions;

Decision #2:
(LD 6-93)

Approve Land Division request subject to conditions, all based on the following Findings and Conclusions.

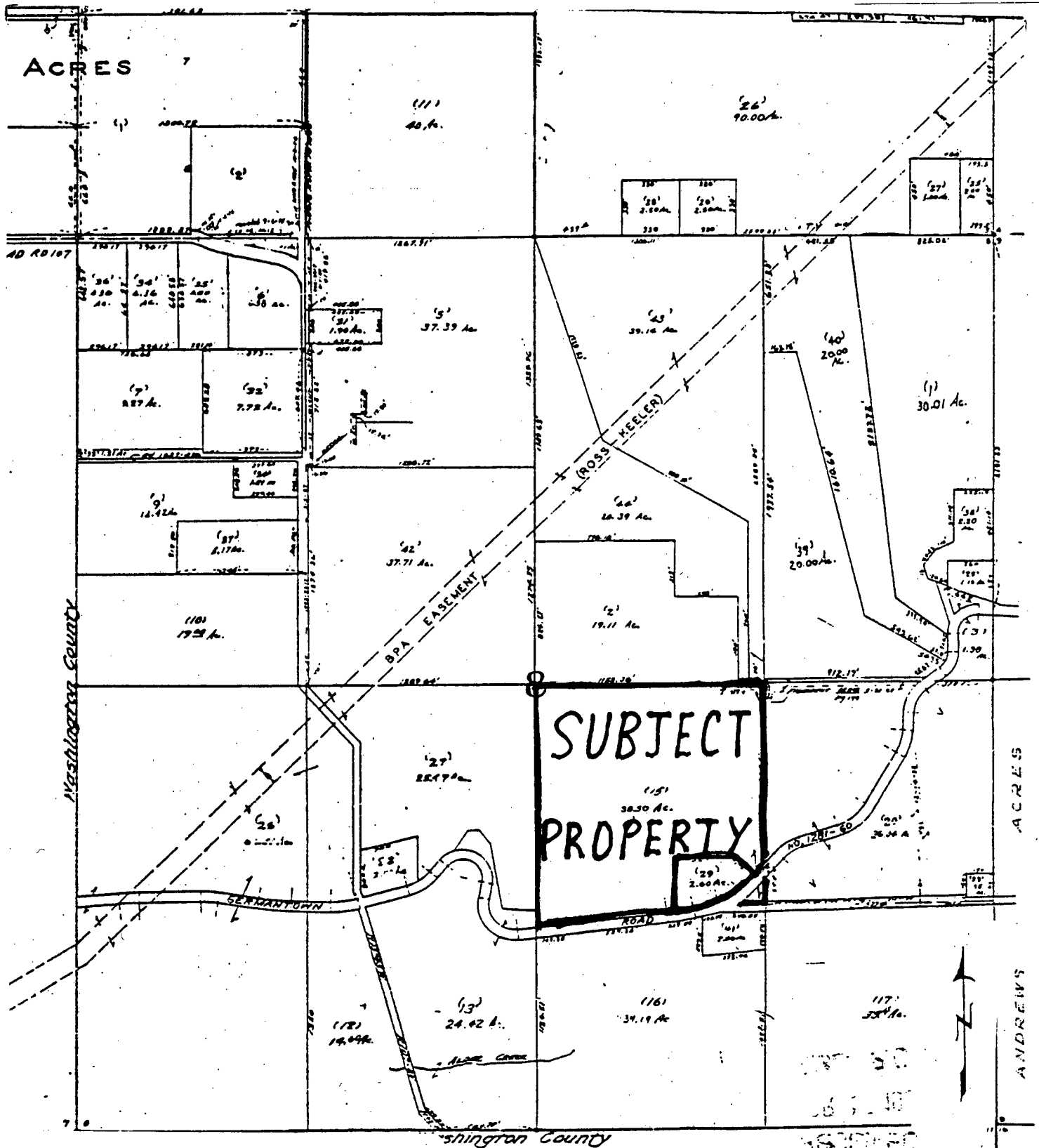
CU 5-93 and LD 6-93



Zoning Map
 Case #: CU 5-93, LD 6-93
 Location: 15007 NW Germantown Road
 Scale: 1 inch to 400 feet (approximate)
 Shading indicates subject property
 SZM 94; Section 8, T.1N., R.1W., WM.

Washington County

VICINITY MAP



SCALE 1" = 750'

CU 5-93 / LD 6-93

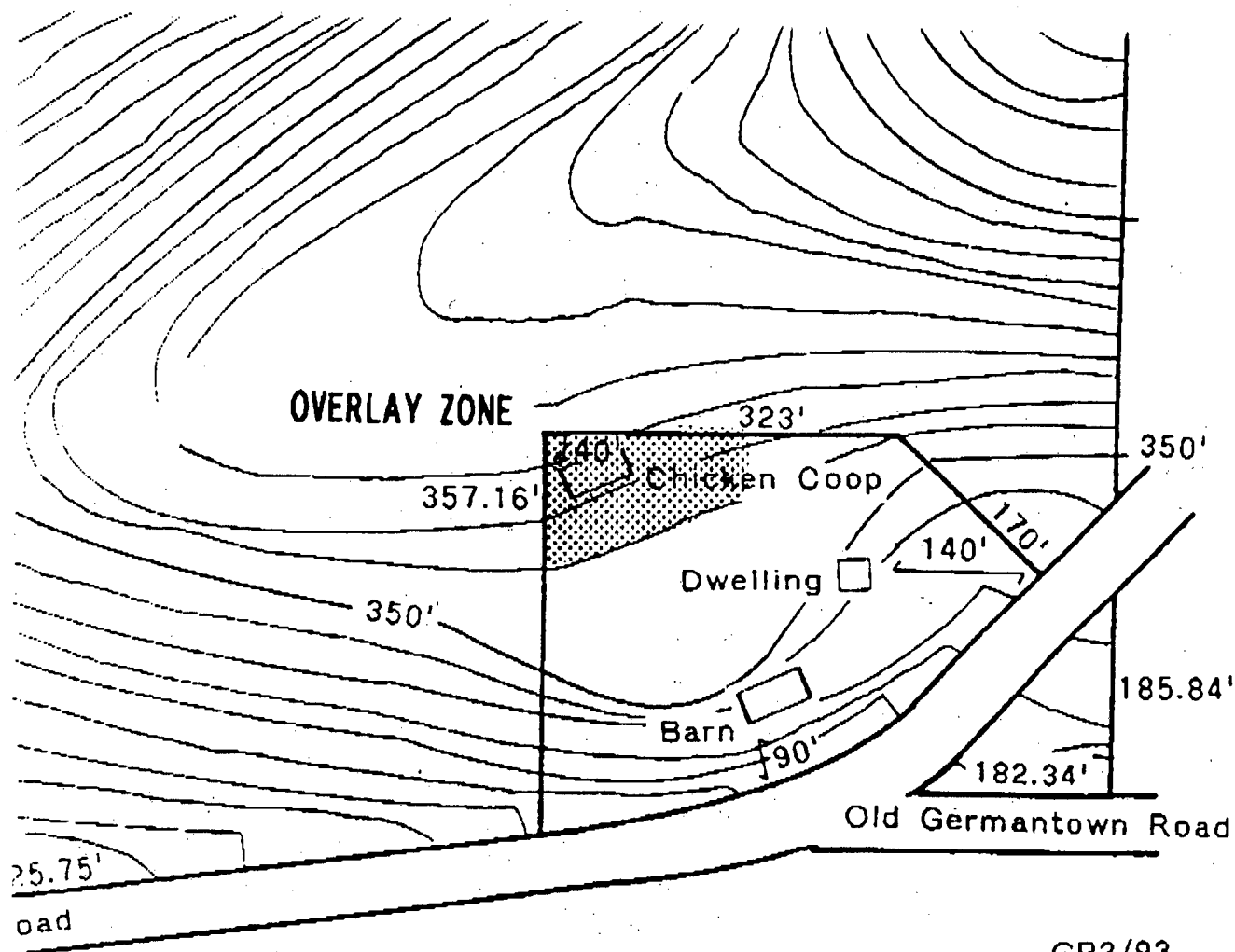
REVISED PLOT PLAN

C45-93/HP6-93

RECEIVED

MAR - 3 1993

Multnomah County
Zoning Division



GP2/93

**OVERLAY ZONE TO BE
RESERVED FOR FARM
USE ONLY**

Conditions of Approval:

1. Within one year of the date of this decision, deliver the partition plat and other required attachments to the Planning and Development Division of the Department of Environmental Services in accordance with MCC 11.145.710. **Obtain applicant's and surveyor's Instructions for Finishing a Type I Land Division.**
2. All existing structures on Parcel 2 shall maintain a minimum rear yard setback of 30 feet. Compliance with the setback requirement shall be verified on the final partition plat.
3. Prior to recording the final partition plat, comply with the Transportation Division requirement to commit to participate in future improvements on NW Germantown Road through deed restrictions. Contact Ike Azar at 248-5050 for additional information.
4. The owner shall record a revised final plat clearly indicating the area within the Homestead Lot to be Reserved for Farm Use. This Reserved area shall substantially conform to the area delineated in the applicant's revised plot plan, dated March 3, 1993.
5. The owner of the remainder parcel shall have the right of first refusal on the Homestead Lot. A covenant to this effect shall be recorded in the appropriate manner.

FINDINGS OF FACT (CU 5-93):

1. Applicant's Proposal:

Applicant requests Conditional Use approval to divide 2.6 acres from 41.1 acres for a Homestead Lot.

2. Ordinance Considerations:

MCC 11.15.2012(B)(8) (Homestead Lot), provides that:

The purpose of the Homestead Lot provision is to encourage the retention of agricultural lands in large parcels, while providing the opportunity for residents who are no longer able or who no longer desire to farm the land to retain their homes and sell the balance of the property. "Homestead Lot" means a lot of from two to five acres depending upon the conditions of soil, topography or other circumstances which govern parcel size on which the existing dwelling shall have been the principal farm dwelling for at least ten years prior to August 14, 1980. The Hearings Officer may approve a homestead lot division as a non-farm use, provided that all of the following criteria are satisfied:

- (A) The remainder of the parcel shall satisfy the lot size and other requirements of this district for farm use;
- (B) Not more than one homestead lot may be divided from a Lot of Record;
- (C) The owner of the parcel from which the homestead lot was divided shall have the first right of refusal to purchase the homestead lot;
- (D) The dwelling is compatible with farm uses described in paragraph (a) of subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in ORS 215.243;
- (E) The dwelling does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203 on adjacent lands devoted to farm use;
- (F) The dwelling does not materially alter the stability of the overall land use pattern of the area; and
215.203 and is consistent with the intent and purposes set forth in ORS 215.243;

- (E) The dwelling does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203 on adjacent lands devoted to farm use;
- (F) The dwelling does not materially alter the stability of the overall land use pattern of the area; and
- (G) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

In addition, MCC 11.15.7122 requires that the Hearings Officer must also find that: the Conditional Use:

1. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

NOTE: At the hearing on March 1, 1993, MR. Arnold Rochlin pointed out that section 7122 (A) seems to require that the general conditional use criteria in section 7120 (A) apply. This issue was not resolved at the hearing. Mr Rochlin is correct that section 7122 requires that the criteria in section 7120 also be applied when reviewing an application for a conditional use listed in section 2012(B).

MCC 11.15.7120(A) requires findings that the proposal:

1. Is consistent with the character of the area;
2. Will not adversely affect natural resources;
3. Will not conflict with farm or forest uses in the area;
4. Will not require public services other than those existing or programmed for the area;
5. Will be located outside a big game winter habitat;
6. Will not create hazardous conditions;
7. Will satisfy the applicable policies of the Comprehensive Plan.

3. Site and Vicinity Characteristics:

The subject property consists of two tax lots with a combined area of 41.1 acres located on the northwest corner of the intersection of NW Germantown and NW Old Germantown Roads. Properties in the surrounding area are generally large, ranging to 40 acres in size and are used mainly for agricultural and forestry purposes.

The majority of the subject property is used for pasture, with some of the perimeter used for timber production. These uses would not change if this application is approved. The property is not within a designated big game winter habitat area.

4. Compliance With Ordinance Considerations:

Homestead Lot Criteria (.2012 (B) (8))

- (a) **Findings:** The remainder parcel will be 38.5 acres. The minimum lot size in the EFU-38 District is 38 acres. This criteria is met.
- (b) **Findings:** No previous divisions have occurred and no further divisions will be permitted. This criteria is met.
- (c) **Findings:** The current owners of the parent parcel will be required to have the right of first refusal to purchase the homestead lot. This criteria will be met.
- (d) **Findings:** The dwelling has been compatible with all surrounding farm uses for over 44 years. No changes to the dwelling that will materially impact farm uses are expected. The intent of ORS 215.243 is to maintain agricultural land in large enough block to sustain the farm use. All areas in the parent property, and a small portion of the Homestead Lot which are capable of sustaining crops or livestock, will be reserved for farm use. This criteria will be met.
- (e) **Findings:** Adjacent lands have been farmed continuously for several decades with no adverse effects from the dwelling located on the parent parcel. This criteria is satisfied.
- (f) **Findings:** This proposal will not remove any agricultural land from crop or livestock production. Also, since the dwelling has existed for over four decades, the proposal will not materially alter the stability of the overall land use pattern in the area. This criteria is met.
- (g) **Findings:** The dwelling itself is located near an area that is steeply sloped. In addition, the dwelling and most of the surrounding residential compound is located within either a thickly wooded area or in the portion of the property that has adverse drainage conditions that preclude farming and livestock uses. However, a portion of the Homestead Lot does contain a old chicken coop. This area is relatively flat and is not subject to adverse drainage conditions. Therefore, based upon the historical evidence, this area has and still can support farming and or livestock uses and must be reserved for such uses.

The Hearings Officer notes that while the purpose of the Homestead Lot provisions in the code is to preserve agricultural land in large blocks, the specific criteria that apply, particularly section (g) under consideration here, focus on whether the dwelling itself is located upon generally unsuitable agricultural land. If this provision were read literally, Homestead Lots could be created that contain significant portions of agricultural land. I have chosen instead to read section (g) in light of the overall purpose of the Homestead Lot provision, and therefore have taken into account the agricultural potential of the entire Homestead Lot, not just the portion of the lot that the dwelling is situated upon. A condition of approval has been fashioned accordingly.

EFU Conditional Use Criteria (.7122 (A))

- (1) **Findings:** The impact of this proposal on surrounding farm and forest uses has been addressed above. Those findings are adopted by reference here. This criteria is met.
- (2) **Findings:** Since there will be no changes or impacts on surrounding farm or forest uses as a result of this proposal, this criteria is met.

General Conditional Use Criteria (.7120 (A))

- (1) **Findings:** The proposal is consistent with the character of the area for the reasons set out above.
- (2) **Findings:** There is no change in the development of the property or in the agricultural practices which have taken place on the remainder parcel . Therefore, the proposal will not adversely affect natural resources, because no change in use is proposed.
- (3) **Findings:** The proposal will not conflict with farm or forest uses for the reasons set out above.
- (4) **Findings:** This criteria has been addressed above.
- (5) **Findings:** At the hearing, staff submitted a map taken from the county's adopted comprehensive plan, which indicates that this site is not located within a big game winter habitat. This criteria is met.
- (6) **Findings:** Since no change of use is proposed, no hazardous conditions will be created by this use. This criteria is met.
- (7) **Findings:** The applicable provisions of the comprehensive plan are discussed below and are adopted by reference here. This criteria is met.

CONCLUSIONS (CU 5-93):

1. The applicant has carried the burden necessary for obtaining Conditional Use approval to divide 2.6 acres from 41.1 acres for a Homestead Lot, subject to the condition that the portion of the Homestead Lot that can be used for agricultural uses be reserved for such purposes. The owner is not required to conduct agricultural uses on this portion of the Homestead Lot, but they will be precluded from converting it to non farm uses. This condition is consistent with the purpose of the Homestead Lot provision, which is to retain agricultural land in large blocks. This farmable portion of the Homestead Lot is adjacent to the remainder lot which is productive farm land.

FINDINGS OF FACT (LD 6-93)

1. **Applicant's Proposal:** As stated in Finding 1 for CU 5-93, applicant seeks Conditional Use approval to divide 2.6 acres from 41.1 acres for a Homestead Lot. The proposed land division is related to the conditional use request. Parcel 1 is vacant and contains about 38.5 acres. Parcel 2 has a house and barn and contains about 2.6 acres. The proposed parcels have existed as separate tax lots since 1969. Because they both have the same owner, the two tax lots are considered as one Lot of Record under MCC 11.15.2018(A)(3)(c). No new development or change in use is proposed for either parcel.
2. **Site and Vicinity Information:** See above for description of the site and vicinity.
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type I because it is "[A]. . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application for a conditional use to create a homestead lot. This staff report addresses the conditional use application under Decision # 1 (CU 5-93).
 - B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
 - (1) *The Tentative Plan is in accordance with:*
 - a) *the applicable elements of the Comprehensive Plan;*
 - b) *the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*
 - c) *the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
 - (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
 - (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the*

words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]

- (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*
- (8) *Approval will permit development to be safe from flooding and known flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood water into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:*
 - (a) *The infiltration of floodwater into the system; and*
 - (b) *The discharge of matter from the system into flood waters [MCC 11.45.230(H)]*

4. Compliance with Ordinance Criteria

A. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan:** For the reasons stated below, the proposal satisfies the applicable policies of the Comprehensive Plan. The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission.
- (2) **Applicable Comprehensive Plan Elements:** The following Comprehensive Plan Policies are applicable to the proposed land division. The proposal satisfies those policies for the following reasons:
 - (a) **Policy 9 - Agricultural Land Area;** The intent of this policy is to preserve the best agricultural lands from non farm development. The proposal, as conditioned, preserves all of the farmable land for farm related uses. This policy is met.
 - (b) **Policy 13 - Air and Water Quality and Noise Levels;** This policy seeks to maintain and improve air and water quality and reduce noise pollution in the county. No impact on air pollution or water quality or noise levels will result from the proposed land division as no development or change in use will occur as a result of the division. The request meets Policy 13.

- (c) **Policy 14 - Development Limitations:** This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement. No development will occur as a result of the division. Policy 14 is not applicable
- (e) **Policy 37 - Utilities:** This policy requires adequate utilities to serve the site. The existing house on Parcel 2 has adequate water supply and sewage disposal facilities. Development on Parcel 1 is neither proposed by the applicant nor permitted under the current zoning. For these reasons, the proposal meets Policy 37.
- (f) **Policy 38 - Facilities:** Approval of the proposed land division will not affect schools or police protection or fire protection as no new development is either proposed and none will be allowed under present zoning. For these reasons, the proposal meets Policy 38.

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

Findings: Approval of the request will not affect the ability to develop, use or provide access to adjacent properties. Parcel sizes on adjacent land are too small for further division. Adjacent lands have adequate access independent of the subject site. The proposed land division meets MCC 11.45.230(B) requirements

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

Findings:

- (1) MCC 11.45.015 states that the Land Division Ordinance. . . *"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County."* The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:
 - (a) Parcels 1 and 2 have existed as separate tax lots for 24 years. The size and shape of the parcels are not expected to change as a result of the land division. The parcels will accommodate current uses that are allowed by the Zoning Ordinance. There will be no overcrowding.
 - (b) The finding for Plan Policies 37 and 38 address water supply and sewage disposal, and education, fire protection and police protection, respectively. For the reasons stated in those findings, the proposal does not impact the health, safety, and general welfare of the people of Multnomah County.
 - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development

Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.

- (d) The proposal meets the purpose of ***"providing classifications and uniform standards for the division of land and the installation of related improvements"*** because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.

- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . . ***"minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities."*** The proposal complies with the intent of the Land Division Ordinance for the following reasons:

- (a) Approval of the proposed land division will not affect street congestion because no additional development or change in use will occur as a result of the division.
- (b) Fire protection will continue to be available to the property. The property is not located within the 100 year floodplain. Geologic hazards are not a consideration because no development will occur as a result of the proposed land division. The proposal is secure from fire, flood, geologic hazard, and pollution.
- (c) Subject to Decision #1 (CU 5-93) the proposal meets the area and dimensional standards of the EFU zoning district as explained in Finding 4.D and thereby prevents the overcrowding of land. No new development will be allowed per the Homestead Lot land division.

- D. **Zoning Compliance [MCC 11.45.390]:** The applicable Zoning Ordinance criteria are as follows:

Findings:

- (1) The site is zoned EFU, Exclusive Farm Use District.
- (2) The following minimum area and dimensional standards apply per MCC 11.15.2016 and .2012(B)(8):
 - (a) The minimum lot size shall be 38 acres, except that a homestead lot may contain between 2 and 5 acres. As shown on the Tentative Plan Map, Parcel 1 contains 38.5 acres and Parcel 2 (the homestead lot) contains 2.6 acres.
 - (b) The minimum front lot line length shall be 50 feet. As shown on the Tentative Plan Map, both parcels exceed the minimum front lot line length requirement.

- (c) The minimum yard setbacks are 30 feet front, 10 feet side, and 30 feet rear. As shown on the Tentative Plan Map, the existing structures on Parcel 2 meet all yard requirements with the exception of the structure identified as a chicken coop. The rear yard setback of the chicken coop scales to less than 30 feet. A condition of approval requires that all existing structures on Parcel 2 shall maintain a minimum rear yard setback of 30 feet as verified on the final partition plat.

E. Subdivision Name [MCC 11.45.230(E)]

Findings: Since the proposed land division is not a subdivision, MCC 11.45.230(E) is not applicable.

F. Street Layout [MCC 11.45.230(F)]

Findings: The proposed land division includes no new public streets or extensions of existing streets; thus, MCC 11.45.230(F) is not applicable.

G. Private Streets [MCC 11.45.230(G)]

Findings: The proposed land division includes no private streets. Therefore, MCC 11.45.230(G) is not applicable.

H. Flooding and Flood Hazards [MCC 11.45.230(H)]

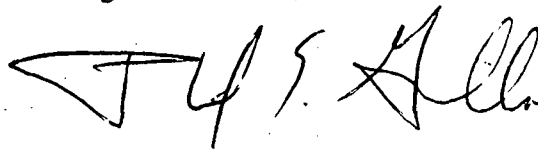
Findings: The site is not in a floodplain. The criterion is not applicable.

CONCLUSIONS (LD 6-93)

1. The proposed land division satisfies the applicable elements of the Comprehensive Plan..
2. The proposed land division satisfies the approval criteria for Type I land divisions.
3. In order to preserve all the farmable land in both the parent parcel and in the Homestead Lot, a condition of approval has been included requiring the owner to reserve a portion of the Homestead Lot for farm use, as described in the applicants Revised Site Plan, dated March 3, 1993.

IN THE MATTER OF CU 5-93 / LD 6-93:

Signed March 10, 1993

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

By Phil Grillo, Hearings Officer

Filed With the Clerk of the Board on March 11, 1993

Appeal to the Board of County Commissioners

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the Record. Appeals must be filed within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board (ref. MCC 11.15.8260[A][1]). The appeal fee is \$300.00 plus a \$3.50-per minute charge for a transcript of the initial hearing(s) (ref. MCC 11.15.9020[B]). "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SEMorrison Street, Portland.

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, March 23, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m., Monday, March 22, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

Meeting Date: March 23, 1993

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 14-93

BCC Informal _____ BCC Formal March 23, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning and Development
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CU 14-93 Review the Decision of the Hearings Officer of March 10, 1993, approving, subject to conditions, conditional use request to allow development of the subject site with a non-resource related single family residence, for property located at 37500 SE Gordon Creek Road.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER pc BH Willia

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 MAR 15 PM 2:32



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C4 14-93

☒ Agenda Placement Sheet No. of Pages 1

☒ Case Summary Sheet No. of Pages 1

☐ Previously Distributed _____

☐ Notice of Review No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed _____

☒ Decision No. of Pages 8

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

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



BOARD HEARING OF March 23, 1993

TIME 9:30am

CASE NAME: Finney SFR

NUMBER CU 14-93

1. Applicant Name/Address

William & Kay Finney
43900 SE Deverell Road
Corbett 97019

2. Action Requested by applicant

A Conditional Use Permit for a non-resource related single
family residence

ACTION REQUESTED OF BOARD

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

3. Planning Staff Recommendation

Approval

4. Planning Commission or Hearings Officer Decision:

Approval

5. If recommendation and decision are different, why?

ISSUES

(who raised them?)

- a. Sandy River Scenic Waterway – County Parks is concerned that the property is in the Scenic Waterway, however, a map provided by the applicant from ODOT Parks Division indicates that it is not.

Do any of these issues have policy implications? Explain.

No.



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

DECISION

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

March 10, 1993

CU 14-93, #716 **Conditional Use Request** **Non-Resource Related Single Family Residence**

Applicant requests conditional use approval of a non-resource related single family residence on this 6.68 acre Lot of Record that was in the MUF-38 zoning district at the time of application.

Location: 37500 SE Gordon Creek Road
Legal: That portion of Tax Lot '1', Sec. 23, T.1S., R.4E. (1992 Assessor's Map) lying south of Gordon Creek Road
Site Size: 6.68 Acres
Size Requested: Same
Property Owner: William C. Weeks
3563 NE 121st 97220
Applicant: William L. Finney
43900 Sedeverell Road, Corbett 97019

Comprehensive Plan: Multiple Use Forest (at time of application)

Present Zoning: MUF-38/SEC (at time of application)

Decision: **APPROVE**, subject to conditions, development of this property with a non-resource related single family residence, based on the following Findings and Conclusions.

(5)
78.31 Ac.

(6)
39.76 Ac.

(18)
36.58 Ac.

MUF-38 SEC

MUF -38

MUF-38

(1)
48.61 Ac.

TROUT CREEK ROAD

(12)
32.91

MUF -19
CS
7.76 Ac.
CS-76

(26)
76.00 Ac.

GORDON CREEK ROAD

MUF -38

(2)
80 Ac.

MUF-38 SEC CS

FH

23

FH

(25)
3.00 Ac.
Sandy

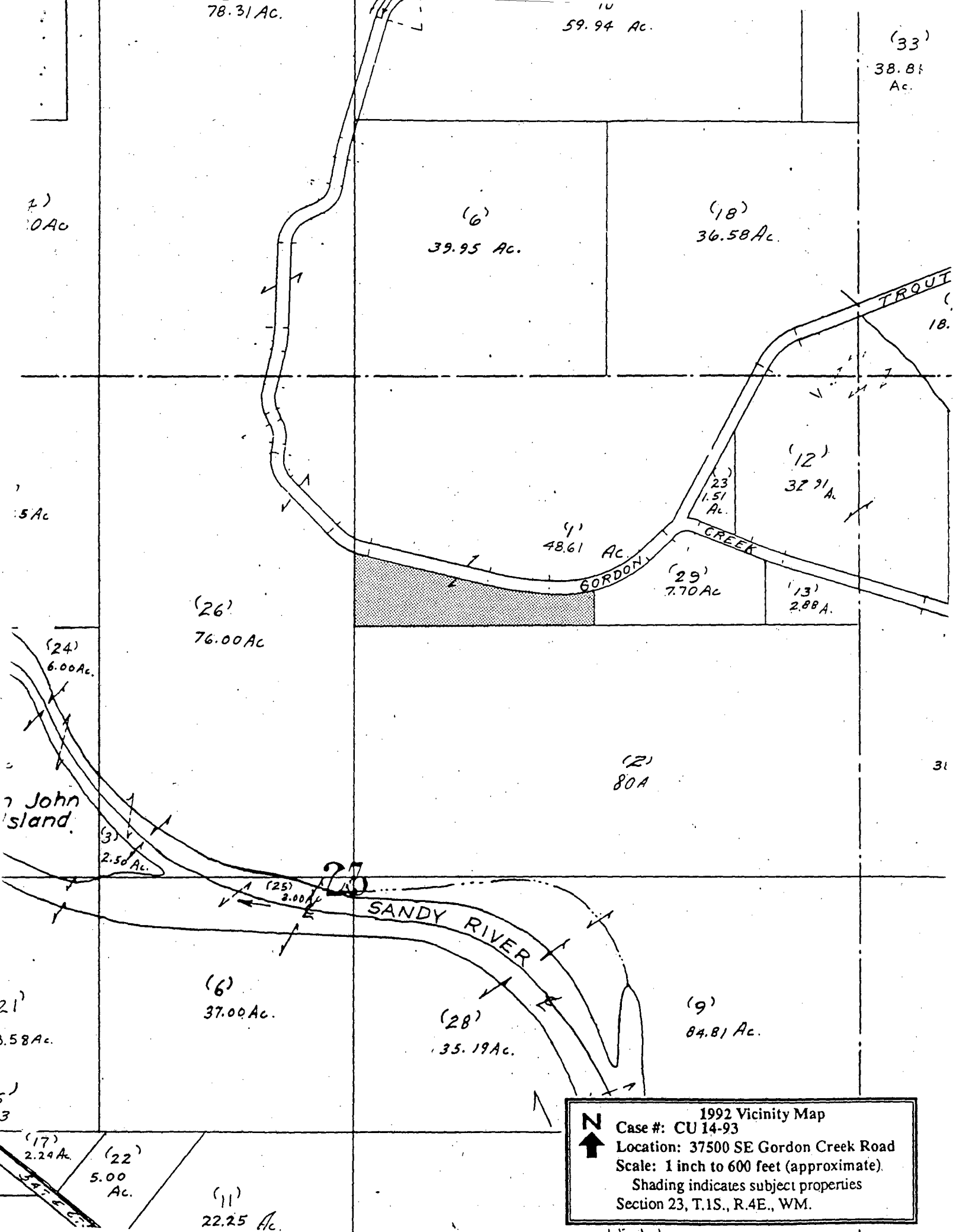
River

FH

MUF-38 SEC

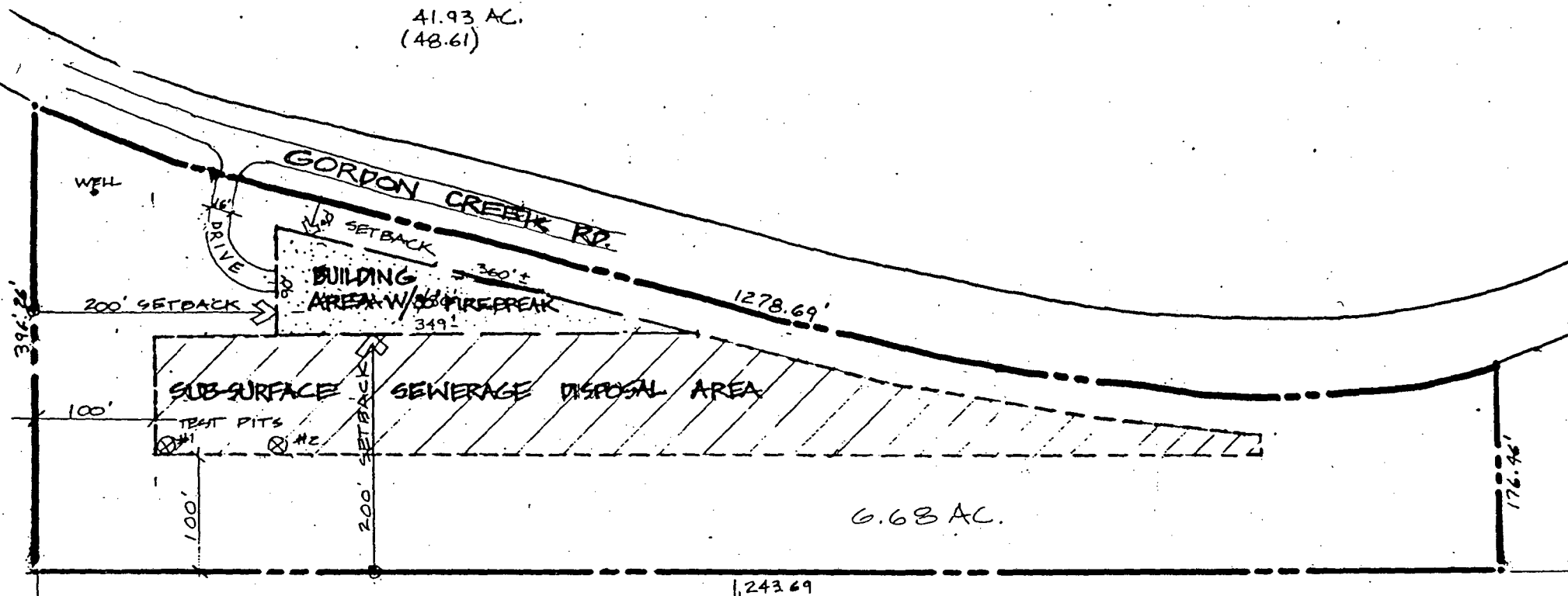
(16)
37.00 Ac.

Zoning Map (1/6/93)
Case #: CU 14-93
Location: 37500 SE Gordon Creek Road
Scale: 1 inch to 400 feet (approximate)
Shading indicates subject property
SZM 716; Section 23, T.1S., R.4E., WM.



1992 Vicinity Map
Case #: CU 14-93
Location: 37500 SE Gordon Creek Road
Scale: 1 inch to 600 feet (approximate).
Shading indicates subject properties
Section 23, T.1S., R.4E., WM.

41.93 AC.
(48.61)



FINNEY PROPERTY
SOUTHERLY PORTION OF TL. '1',
SECTION 23, 155E

SCALE: 1" = 100'



CU 14-93

LOT '2'
80 AC.

Conditions of Approval:

1. Prior to the issuance of building permits, the applicant shall obtain an SEC permit.
2. Site clearing or grading may require a *Hillside Development and Erosion Control Permit* pursuant to MCC .6700-6730. Contact the Division of Planning and Development for application materials.
3. Record deed restrictions ensuring that the owner shall not object to farm or forest practices on surrounding parcels.
4. The applicant shall demonstrate full compliance with all development related standards prior to issuance of a building or occupancy permit.

FINDINGS OF FACT:

1. Applicant's Proposal:

The applicant requests Planning Commission approval to develop the above described 6.68 acre "Lot of Record" with a non-resource related single family dwelling.

2. Ordinance Considerations:

A. A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use pursuant to MCC 11.2172 (C) where it is demonstrated that:

- (1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).
- (2) The land is incapable of sustaining a farm or forest use, based upon one of the following:
 - (a) A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;
 - (b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or
 - (c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.
- (3) A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.
- (4) The dwelling will not require public services beyond those existing or programmed for the area.
- (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.
- (6) The residential use development standards of MCC .2194 will be met (section B below).

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

- (1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:
 - (a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area;
- (2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;
- (3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2058(B). The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;
- (4) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;
- (5) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:
 - (a) a setback of 30 feet or more may be provided for a public road, or
 - (b) the location of dwelling(s) of adjacent lots at a lesser distance which allows for clustering of dwellings or sharing of access;
- (6) The dwelling shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes;
- (7) The dwelling shall be attached to a foundation for which a building permit has been obtained;
- (8) The dwelling shall have a minimum floor area of 600 square feet; and
- (9) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.

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

- (1) Policy No. 13, Air, Water and Noise Quality
- (2) Policy No. 22, Energy Conservation
- (3) Policy No. 37 Utilities
- (4) Policy No. 38 Facilities
- (5) Policy No. 40, Development Requirements

3. Site and Vicinity Characteristics:

- A. This property is located on the south side of Gordon Creek Road approximately 600 west of its intersection with Trout Creek Road. Gordon Creek Road has a 60 feet in right-of-way width and paved with two lanes.

- B. The subject property is a Lot of Record of 6.68 acres. The dimensions of the site are not shown on the County Assessor's map. It is identified as that portion of Tax Lot '1', Sec. 23, T.1S., R.4E. (1992 Assessor's Map) lying south of Gordon Creek Road
- C. The property is not located within the Sandy River Scenic Waterway, according to the applicant's exhibit #2, received on 1/21/93, which delineated the boundary of the Scenic Waterway.
- D. The site is vegetated with a mixture of deciduous and coniferous vegetation.
- E. All surrounding properties are undeveloped, with the exception of the one to the east. That and other properties at the intersection of Trout Creek Road are developed with the Trout Creek Bible Camp.

4. Compliance With Ordinance Considerations:

A. MCC 11.15.2172 (C).

- (1) The lot size shall meet the standards of MCC .2178(A) or .2182(A) to (C);

Findings: This parcel was created by the August 14, 1980 MUF zoning designation of a lot of record which provides that whenever a county maintained road intersects a parcel of land, a separate lot of record shall be created. The original parent lot is intersected by Gordon Creek Road, and a new 6.68 acre lot of record was created. The criteria set forth in MCC .2182 (C) has been met.

- (2) The land is incapable of sustaining a farm or forest use, based upon one of the following:
 - (c) The lot is a Lot of Record under MCC.2182 (A) through (C), and is ten acres or less in size.

Findings: The lot is 6.68 acres in size and is a lot of record. This criteria is met.

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

Findings: The nearby properties are forested. However, the evidence indicates that only one parcel immediately north of the site (Lot 1), is likely to be used for timber production. Adjacent to the east of the site is a 7.70 acre residential parcel (Lot 29) and two Community Service designated parcels containing a private conference center (Lot 13) and a religious organization retreat compound (Lot 12). The dominant feature in the area is the Sandy River Gorge and the scenic area associated with the river.

The land south and west of the site is owned by the Bureau of Land Management and is held as part of the scenic area. This land cannot be used for timber production. These parcels have vertical cliffs of approximately 650 feet.

The proposal involves the clearing of only a small portion of the site near the road for a homesite. The remainder of the site will remain as a forest and will not be logged or otherwise cleared. The dwelling as proposed will actually

help stabilize and reinforce the scenic area because the limited residential use will ensure that the vast majority of the site will remain forested and will not be logged. This criteria will be met.

- (4) Not require public services beyond those existing or programmed for the area:

Findings: The site is served by Corbett School District, Multnomah County Sheriff's Dept. and the Corbett Fire District. Water will be provided by well and an on-site sewerage disposal system will be used. This criteria will be met.

- (5) Acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

Findings: A condition of approval requiring that the owner to file a deed restriction acknowledging the rights of nearby owners to conduct farm and forestry practices will be required. This criteria will be met.

- (6) The residential use development standards of MCC .2194 will be met.

Findings: See section B below. This criteria will be met.

- B. A residential use located in the MUF district after August 14, 1980, shall comply with the residential use development standards of MCC 11.15.2194.

Findings:

1. Fire safety measures as outlined in the fire code are required and will be reviewed for full compliance prior to the issuance of building and occupancy permits. A fire lane of at least 30 feet will be maintained.

2. A 16 foot wide access drive will be maintained, and if any perennial water source exists on the lot or any adjacent lot, the required access shall be provided.

3. The dwelling is as close to a publicly maintained street as possible given other required setbacks.

4. The driveway is not in excess of 500 feet.

5. The dwelling is located on the portion of the property closest to the road and farthest from the scenic area boundary.

6. Building setbacks of 200 feet will be maintained except for a 30 foot setback from the roadway, as required.

7. Construction standards shall be reviewed prior to issuance of building and occupancy permits.

8. The dwelling shall be attached to a foundation and will require a building permit.

9. The dwelling shall have a minimum floor area of at least 600 square feet.

10. The dwelling is located outside a big game habitat area as defined by ODF&W. The Hearings Officer takes judicial notice of a map showing the location of the nearest big game habitat. The map is part of the county's adopted comprehensive plan. On that map, Section 23, 1S, 4E is well outside the nearest habitat area as defined by the county and ODF&W.

C. The Comprehensive Framework Plan requires that the relevant plan policies be addressed:

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

Findings: The proposed use will not be a noise generator. Water and air quality will not be affected so long as the development of the site complies with all development standards.

(2) Policy No. 22, Energy Conservation.

Findings: The subject site is in a rural area adjacent to Gordon Creek Road. Although transportation costs and resulting energy consumption are better served by concentrating residential development in urban areas, county and state planning regulations permit limited levels of rural development. In this case, the location of the dwelling as close as possible to Gordon Creek Road, and the fact that urban services will not be extended, demonstrates that this policy will be satisfied.

(3) Policy No. 37, Utilities.

Findings: Water and Sewerage disposal have been discussed above. Drainage plans will be reviewed as part of the building permit approval process. The owner will be required to construct on-site water retention and/or control facilities that are adequate to ensure that surface runoff volumes do not exceed pre-development levels. This policy will be met.

(4) Policy No. 38, Facilities.

Findings: Schools, fire and police protection have been discussed above. This policy is met.

(5) Policy No. 40, Development Requirements.

Findings: The proposed use will meet all development requirements as discussed above. This policy will be met.

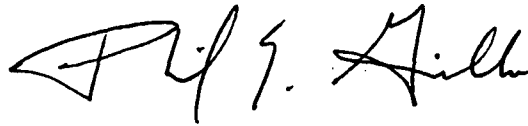
Conclusions.

The applicant has demonstrated that with the proper conditions of approval, this proposed development will satisfy the relevant approval criteria.

On March 3, 1993, the Hearings Officer received a memo from Mr. Charles Ciecko, who is an employee of Multnomah County's Department of Environmental Services. Mr. Ciecko's memo was not considered by the Hearing's Officer because it was received after the record was closed on March 1st. . In addition , this memo was rejected because it did not raise any new issues , nor did it provide and substantiative evidence that would cause me to reconsider my inital oral decision made on March 1st.. To the extent this memo addresses the relevant approval criteria, such issues have been addressed in the findings set out above.

IN THE MATTER OF CU 14-93:

Signed March 10, 1993



By Phillip Grillo, Hearings Officer

Filed With the Clerk of the Board on March 11, 1993

Appeal to the Board of County Commissioners

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the Record. Appeals must be filed within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50 per minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(B)]. "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SEMorrison Street, Portland.

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, March 23, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 p.m., Monday, March 22, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

Hearings Officer Decisions are typically reported to the Board for review on the first Tuesday following the ten day appeal period. The Board meets at 9:30 a.m. in room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Division of Planning and Development at 248-3043.

Meeting Date: March 23, 1993

Agenda No.: P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CS 4-93

BCC Informal	<u>(date)</u>	BCC Formal	<u>March 23, 1993</u>
DEPARTMENT	<u>DES</u>	DIVISION	<u>Planning and Development</u>
CONTACT	<u>Sharon Cowley</u>	TELEPHONE	<u>2610</u>
PERSON(S) MAKING PRESENTATION	<u>Planning Staff</u>		

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: xx

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

CS 4-93 Review the Decision of the Hearings Officer of March 11, 1993, approving, subject to conditions, change in zone designation from C-4 to C-4, C-S for the proposed West Vent Shaft facility for the Westside Light Rail Tunnel, for property located at 6441 SW Canyon Court

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER gc BH Wallian

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1993 MAR 15 PM 2 32
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. CS-4-93

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages _____

*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 15

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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



MULTNOMAH COUNTY

BOARD HEARING OF March 23, 1993

TIME 09:30 a.m.

CASE NAME Light Rail Tunnel West Vent Shaft

NUMBER CS 4-93

1. Applicant Name/Address

TRI-MET (Tri-County Metropolitan Transportation District)
710 NE Holladay Street,
Portland, Oregon 97232

2. Action Requested by applicant

Community Service (CS) designation of a site proposed
for the "West Vent Shaft" of the Westside Light Rail tunnel.

3. Planning Staff Recommendation

APPROVAL, WITH CONDITIONS

4. Hearings Officer Decision:

APPROVE, WITH CONDITIONS

5. If recommendation and decision are different, why?

The Hearings Officer added a condition to insure that noise from the vent shaft fans will not exceed
State DEQ standards.

ISSUES

(who raised them?)

a. None (no opponents appeared)

Do any of these issues have policy implications? Explain.

This decision would authorize a ventilation shaft which is accessory to the Westside Light Rail
Tunnel. The vent shaft facility is proposed beneath a parking lot for an existing office building on
the site. It is north of Highway 26, immediately east of the Multnomah/Washington County line.

ACTION REQUESTED OF BOARD

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



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

DECISION

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

MARCH 11, 1993

CS 4-93, #138 Community Service Use Request
(West Vent Shaft facility for the Westside Light Rail Tunnel)

This application was presented at a public hearing on February 1, 1993, before Robert Liberty, Hearings Officer. Applicant requests a change in zone designation from C-4, local commercial district, to C-4, C-S, local commercial, community service district, for a portion of the subject site. The CS designation would apply to the area proposed for the "west vent shaft facility", a component of the Westside Light Rail Tunnel project.

Location: 6441 SW Canyon Court

Legal: Portions of Tax Lots '234' and '213', Section 8, 1S-1E,
Described by the Attached Metes and Bounds Description

Site Size: .213 Acre

Size Requested: Same

Property Owner: Bingham Investment
3939 NW St. Helens Road, 97210

Applicant: Tri-County Metropolitan Transportation District
710 NE Holladay Street, 97232

Comprehensive Plan: Commercial

Sponsor's Proposal: C-4, C-S, Local Commercial, Community Service Use subdistrict

HEARINGS OFFICER

DECISION: APPROVE, SUBJECT TO CONDITIONS, the requested change in zone designation from C-4, local commercial district, to C-4, C-S, local commercial, community service district for the proposed West Vent Shaft facility for the Westside Light Rail Tunnel. Satisfaction of certain applicable code provisions is deferred to a subsequent Planning Director review before or in conjunction with issuance of building permits, subject to notice and the opportunity for a hearing as indicated below.

CS 4-93

Metes and Bounds Description

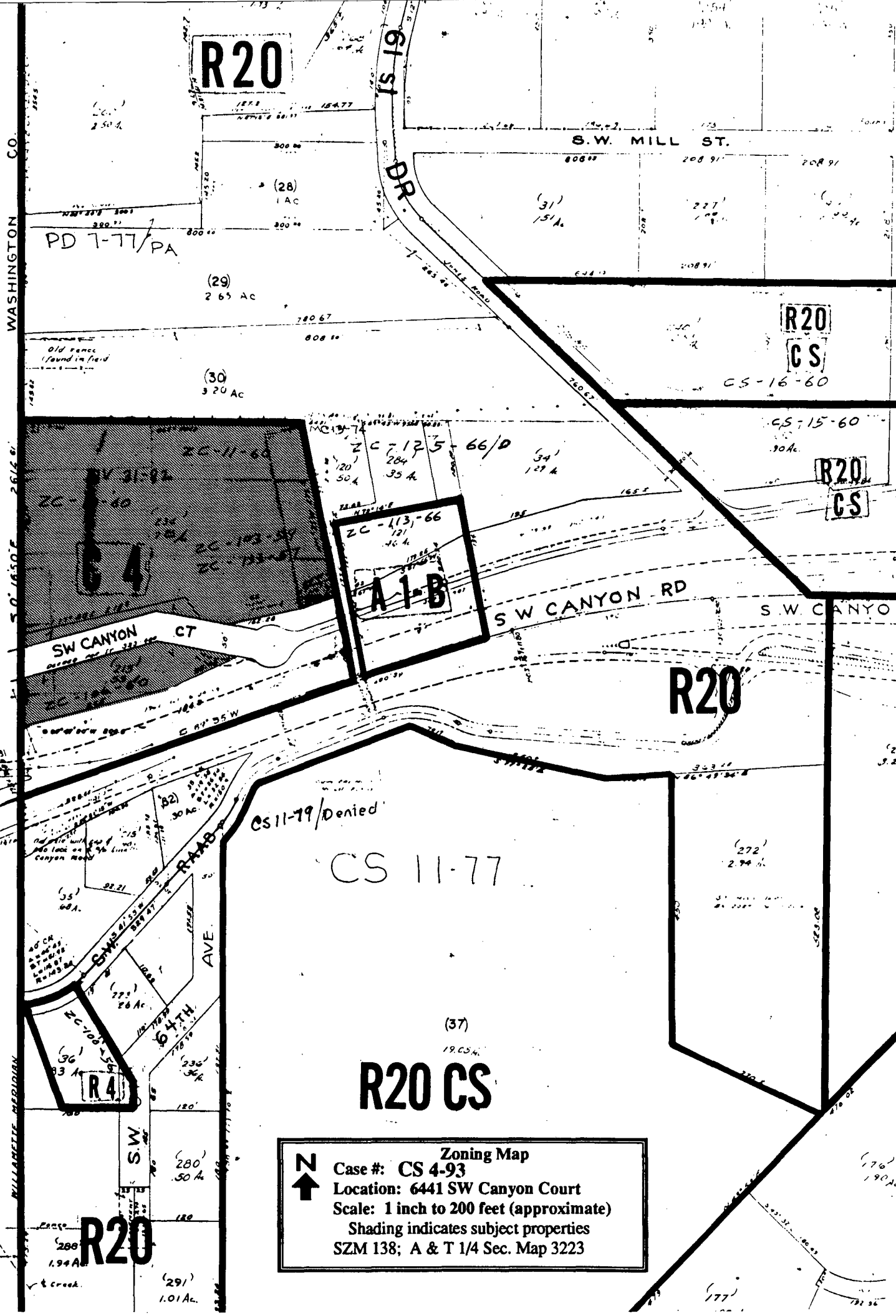
PARCEL 1 - Fee - West Vent Shaft

A parcel of land lying in the Southwest one-quarter of Section 6, Township 1 South, Range 1 East, W.M., Multnomah County, Oregon and, being a portion of that property conveyed in the deed to Selwyn A. Bingham Jr. Et Al, recorded December 29, 1976 in Book 1148, Page 1012, Multnomah County Record of Deeds, being more particularly described as follows:

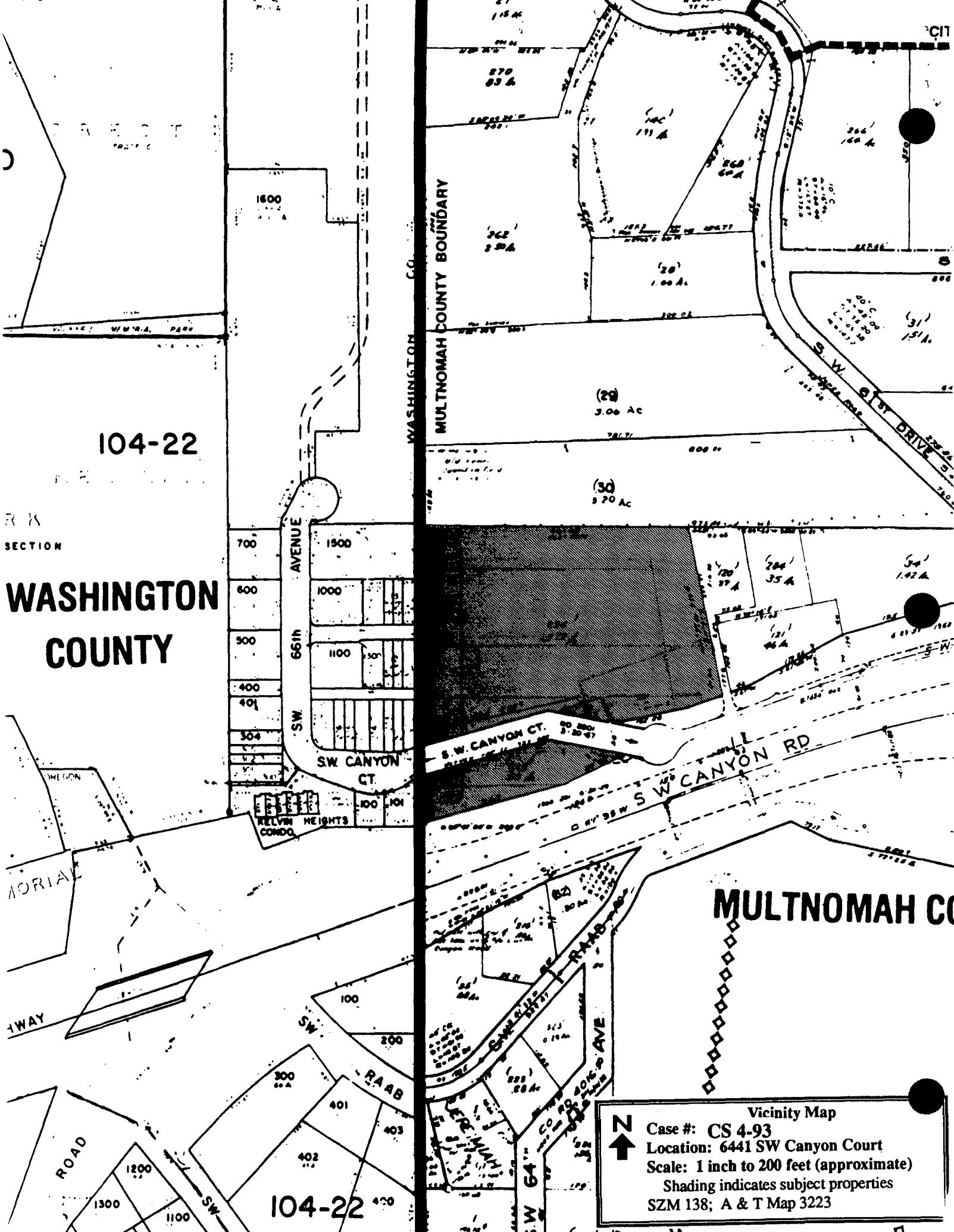
Beginning at a point on the west line of said Southwest one-quarter of Section 6, said point being South 1 degree 17 minutes 55 seconds West, 1,337.77 feet of the west one-quarter of said Section 6; thence North 80 degrees 53 minutes 45 seconds East of 15.84 feet; thence North 23 degrees 04 minutes 42 seconds East 51.61 feet; thence North 75 degrees 48 minutes 25 seconds East 104.63 feet; thence South 14 degrees 11 minutes 35 seconds East 68.83 feet, more or less, to the northerly line of S.W. Canyon Court as dedicated in the deed recorded July 12, 1965, in Book 333, Page 480, Multnomah County Record of Deeds; thence along said northerly line South 75 degrees 48 minutes 25 seconds West 159.74 feet to the west line of said Southwest one-quarter of Section 6; thence along said west line North 1 degree 17 minutes 55 seconds East 30.27 feet to the point of beginning.

Bearings are based upon the Oregon Coordinate System of 1927.

The parcel of land to which this description applies contains 0.213 acres, more or less, outside of the existing right of way.



Zoning Map
Case #: CS 4-93
Location: 6441 SW Canyon Court
Scale: 1 inch to 200 feet (approximate)
Shading indicates subject properties
SZM 138; A & T 1/4 Sec. Map 3223



SECTION

WASHINGTON
COUNTY

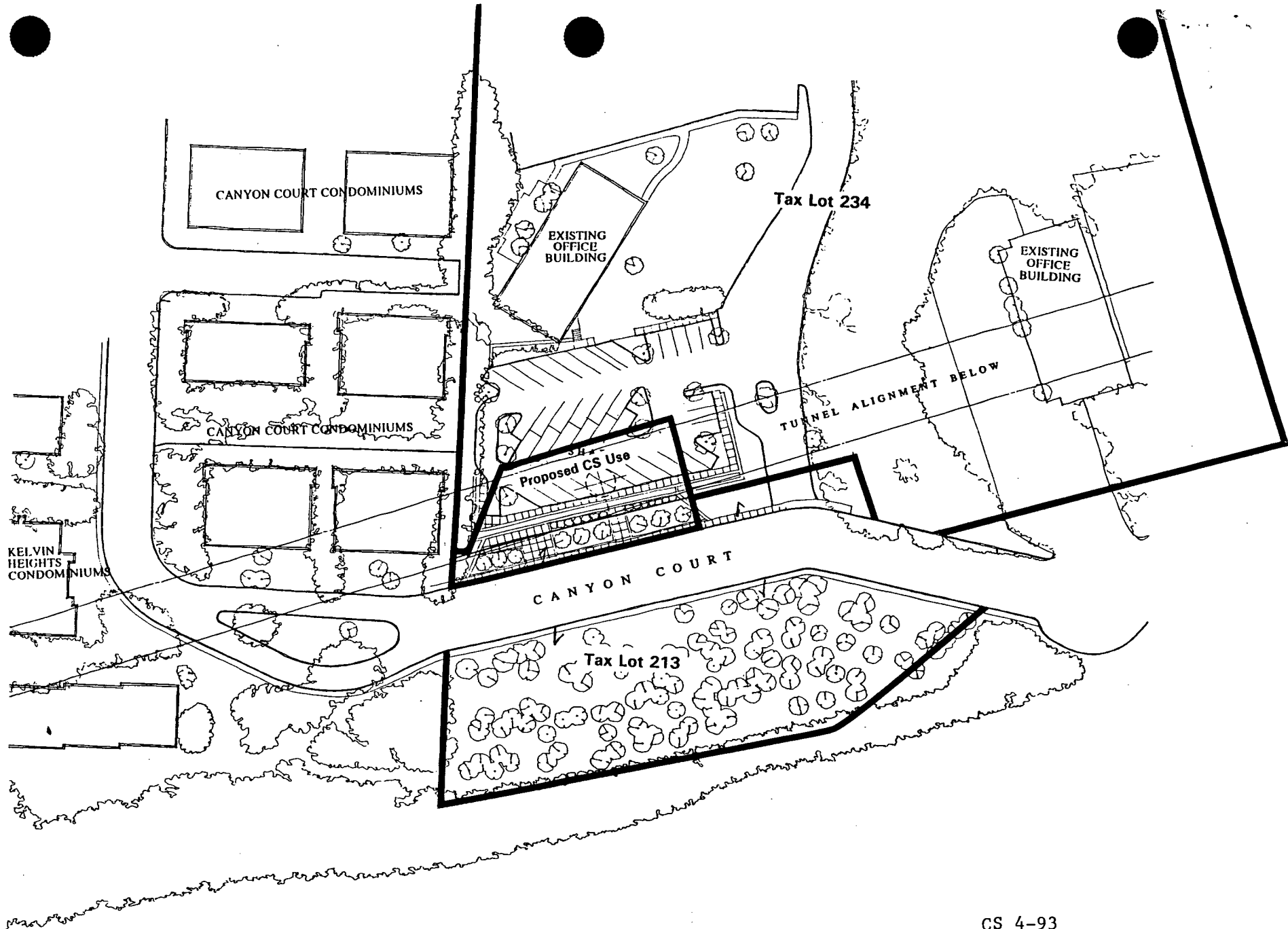
WASHINGTON CO.
MULTNOMAH COUNTY BOUNDARY

MULTNOMAH CO.

Vicinity Map

N

Case #: CS 4-93
Location: 6441 SW Canyon Court
Scale: 1 inch to 200 feet (approximate)
Shading indicates subject properties
SZM 138; A & T Map 3223



SITE PLAN

WEST VENT SHAFT
TRI-MET WESTSIDE CORRIDOR PROJECT

CS 4-93

SCALE:
0' 10' 25' 50' 75'

NORTH
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CONDITIONS OF APPROVAL

1. Obtain Design Review approval of proposed site improvements or alterations. Site preparation or Building Permits shall not proceed before approval of the Final Design Review Plan [ref. MCC § .7845]. Specific site improvements represented in the CS application may be developed in separate phases. Final Design Review Plans must demonstrate compliance with applicable noise control provisions in OAR 340-35 regarding noise control. Final plans may include changes to: landscaping; parking areas; exterior lighting; exterior materials or colors, and other revisions consistent with MCC § .8240(E).
2. As a part of the administrative Design Review, obtain applicable permits for any excavation, fill, drainage facilities, and erosion control plans. Final plans shall comply with applicable **Hillside Development and Erosion Control** provisions in MCC § .6710(A) & (B).
3. Prior to issuance of Building Permits, complete Land Division or Property Line Adjustment procedures for the proposed property.
4. Prior to occupancy of the structure or reconfigured parking area, complete Transportation Division requirements (or provide a bond or other assurance) for improvements and access to SW Canyon Court Right-of-Way.
5. Any subsequent decision(s) by the Director on Conditions #1 or #2 or the Final Design Review Plan, which requires the exercise of legal or factual judgment shall include notice and opportunity for a hearing before a Hearings Officer as provided in ORS 215.416(11).

FINDINGS

1. SITE AND PROJECT DESCRIPTION:

Applicant requests a Community Service (CS) designation to authorize construction of a tunnel ventilation shaft and associated facilities as part of the Tri-Met Westside Light Rail Project. The vent shaft facility is proposed beneath the parking lot of an existing office building on the north side of SW Canyon Court immediately east of the Multnomah/Washington County line. The CS designation would apply to approximately 1/4-acre of tax lots '234' and '213', Section 6, 1S 1E Applicant's "**Description of the Proposal**" section on pages 2-3 of the application text [dated November 19, 1992] is incorporated by reference.

2. PLAN AND ZONE DESIGNATIONS:

The Comprehensive Framework Plan designates the site Commercial. The zoning designation is C-4 (Local Commercial District).

3. ORDINANCE CONSIDERATIONS:

The "Introduction" section (application, pages 1-2) notes the following:

"...Senate Bill 573 (Chapter 3, Oregon Laws 1991) declares that approval of the Project is consistent with applicable statewide planning goals, and requires amendment of comprehensive or functional plans, including public facility plans, and land use regulations to make them consistent with Tri-Met's 'Final Order'. The Final Order determines the light rail alignment, location of associated light rail facilities and highway improvements. Section 7(1) (b) of the Act requires the state and local governments to: 'Issue the appropriate permits, licenses and certificates necessary for the construction of the project or project extension consistent with a final order. Permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, either by themselves or cumulatively, prevent the implementation of the final order' [emphasis added].

Conditional uses allowed in the C-4 District are specified in MCC § .4652. Subsection (D) specifies *"...Any use permitted in an R-7 ... District."*

Uses permitted in the R-7 District are specified in MCC § .2872. Subsection (D) specifies *"...special uses, such as parks, ... community centers, ... and uses of similar nature, as provided in MCC .7005 through .7041..."*

MCC § .7020(A)(6) identifies a *Government building or use* as a Community Service (CS) use and MCC .7020(A)(23) provides for accessory uses to a CS use. The Hearings Officer interprets the application to request an accessory structure (the vent shaft) associated with a public transportation facility (a government use).

Applicants must demonstrate compliance with the several additional standards and criteria from the County Code and Plan prior to constructing the facility, including: Design Review, Hillside Development, and Erosion Control subsections. The reviews prescribed by Conditions #1 and #2 will require the exercise of legal or factual judgment to determine satisfaction of a criteria or standard, and therefore the County must provide public notice of its decision(s) on these matters and an opportunity for appeal pursuant to ORS 215.402(4) and 215.416(1),(3), (11)(b). Condition #5 addresses this issue.

The following section presents findings regarding the proposal. Each criteria is presented first in *bold italics*, followed by a reference to applicant's response (by Application page #) or excerpts in *italics*. Hearings Officer comments for each criteria supplement or modify findings in the application.

4. EVALUATION OF THE COMMUNITY SERVICE USE REQUEST (MCC .7015)

(A) *Is consistent with the character of the area;*

"...The majority of land uses in the area are residential and commercial, with the commercial use dominated by office buildings. There are residential uses located approximately 17-feet west of the proposed facility. The residential uses are multifamily condominium buildings. The proposed plans for this facility call for a 20-foot front yard setback from S.W. Canyon Court as well as appropriate landscaping to screen the vent shaft wall and a 5-foot setback from the west side yard, which is consistent with Washington County standards for a multifamily zone. Provision of native vegetation will help to minimize any visual impact of the vent shaft wall on the surrounding area. Specifically, there will be planting areas containing native vegetation located along the vent shaft wall.

"The proposed vent shaft wall is generally considered appropriate in scale and design for integration with the surrounding uses. Specifically, the existing use is a parking lot and the proposed use will be located beneath a reconfigured parking lot. Overall, the parking lot will remain a parking lot resulting in no significant change to the visual integrity of the area. The introduction of the vent shaft wall will be visually softened by the provision of landscaping along the wall." (Application, pp. 3-4)

Comment: The proposed site design and the intensity of use are sensitive to and consistent with the area character. The proposed facility will essentially be constructed beneath an existing parking lot, and, *"...except for the 15-foot wall ..., the vent shaft will not be visible from the street and therefore will have minimal impact on the visual quality of the area.*

In addition, conditions further address the criteria. Condition #1 requires Design Review of the site development. Design Review criteria stipulate that designs shall provide for privacy and screening of adjacent residences, and preserve natural features and existing grades to the degree practical [MCC § .7850(A)]. The Hearings Officer concurs that the proposal, as conditioned, meets this approval criteria.

(B) *Will not adversely affect natural resources;*

"The proposed building site is currently a parking lot supporting an adjacent office building within an urban area. The tunnel will be located 200-feet below the surface in Boring Lava, a hard, stable rock that provides excellent tunneling conditions. Generally, this Boring Lava is found 45-feet below the surface. Above the Boring Lava is a mantle of soil consisting of clay, silt and gravel. On the southern boundary of the site, there is a slope greater than 20%. Although the site will be regraded, this existing slope serves as the

chosen location for the vent shaft wall and therefore minimizes the visual effect of the wall. Currently, there are no erosion problems on the site and none are anticipated as a result of this project. The project site does not lie within the 100-year floodplain.

No adverse impacts on the existing drainage and stormwater management systems are anticipated. There is only a minimal increase in impervious surface anticipated.” (Application, pg. 4)

Comment: In addition to findings above, conditions further address this criteria. Condition #1 requires Design Review of the plans to assure they preserve the site’s natural features and existing grades to the maximum practical degree [MCC § .7850(A)(4)].

The site is within the Tualatin River Drainage Basin. Condition #2 specifies that final plans and permits shall comply with applicable **Hillside Development and Erosion Control** provisions in MCC § .6710(A) & (B).

Given the conditions of approval, the application adequately demonstrates that the use of the site will not adversely effect natural resources.

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

“As the area is located within the Urban Growth Boundary and is zoned C4 for commercial use, no impacts to farm or forest uses are anticipated. The site is not adjacent to, or near, designated farm or forest land.” (Application, pg. 4)

Comment: There are no farm nor forest designated districts near the site. Moreover, the nearest commercial farm or forest uses are several miles from the site. The Hearings Officer concurs that the proposal satisfies this criteria.

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

“Water requirements at the West Vent Shaft are for fire suppression activities within the tunnel. This facility is one of the feed points for the tunnel dry standpipe system. This line is usually empty and is filled when a fire is reported in the tunnel. The source of the water at this point is a 6-inch steel main with its source at the Calvery Tank. The fire system design flow is 750 gallons per minute, although transient flows up to 3,000 gallons per minute may be seen during line filling. These high flows would occur from the initial valve opening for about one minute. After that the flows drop considerably as pipeline resistance builds up. The pipelines have been sized specifically to minimize the demand from the municipal system during this time. The on-site water system will meet all of the City of Portland Water Bureau engineering requirements.” (Application, pg. 8).

Comments: Transportation Division Staff have not provided written comment on the street improvement requirements (if any) to SW Canyon Court. Street improvements may in part provide drainage facilities for the project. Condition #4 requires completion of street improvements (or sufficient assurance) and access permits prior to issuance of building permits for the project.

The adequacy of all *public services* and design solutions for the proposed use may be deferred to the Design Review stage. Refer to Conditions #1, #2, and discussion under Policies 37 and 38 below.

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

(Application, pg. 5)

Comment: The site is not identified as a big game habitat area in the Comprehensive Plan or by the Oregon Department of Fish and Wildlife. The Hearings Officer concurs that the proposal meets this approval criteria.

- (F) *Will not create hazardous conditions;***

"The proposed design for the site will avoid potential hazardous conditions that could occur with the existing site design. The existing parking area on the site will be reconfigured to provide a parking area with an improved circulation pattern on a flatter grade. There are currently no sidewalks adjacent to the site; the new design will provide sidewalks on site frontage on S.W. Canyon Court. Also, the existing diagonal parking in the street will be eliminated, reducing potential traffic hazards from autos backing out into the street." (Application Supplement, pg. 1)

Comment: The Hearings Officer concurs that the proposal, as conditioned, meets this approval criteria.

- (G) *Will satisfy the applicable policies of the Comprehensive Plan.***

The following policies of the County's Comprehensive Plan are found applicable to this request:

- Policy 2 – Off-site Effects;
- Policy 13 - Air, Water and Noise Quality,
- Policy 14 - Developmental Limitations,
- Policy 16 - Natural Resources,
- Policy 31 - Community Facilities and Uses,
- Policy 33a - Transportation System,
- Policy 37 - Utilities, and
- Policy 38 - Facilities.

1. Policy 2 – Off-site Effects.

Comment: When approving a new or expanded CS use, the County may impose conditions to prevent or minimize adverse off-site effects to neighboring properties or uses. Conditions of approval address a variety of potential off-site effects. The Hearings Officer concludes that the proposal, as conditioned, is consistent with this policy.

2. Policy 13 – Air, Water, and Noise Quality.

"The proposed facility will not create air or water quality impacts during operation. When in operation, either during an emergency or during the monthly testing period, the fans in the vent shaft produce a noise level of 45 decibels. This is well below the midday highway noise levels of 63 decibels on the adjacent Highway 26, as reported by the Oregon Department of Transportation .

"Once constructed, the operation of the facility would not have an affect on air and water quality, except in a temporary emergency situation if it were removing smoke from a fire in the tunnel. In addition, the facility would not affect ground or surface water quality. The facility will not discharge any materials harmful to the area requirements." (Application, pg. 6).

Comment: In addition to findings above, conditions further address the policy. Potential noise effects from the monthly operation of the exhaust fans would be addressed by Condition # 1. Final plans must demonstrate compliance with applicable noise control provisions in OAR 340-35. Potential water quality effects would be addressed by Condition # 2. Final plans and permits shall comply with applicable **Hillside Development and Erosion Control** standards pursuant to. MCC § .6710(A) & (B).

The Hearings Officer concludes that the proposal, as conditioned, is consistent with this policy.

3. Policy 14 – Development Limitations.

"Multnomah County's policy limits and in some cases prohibits development in areas with 'slopes greater than 20%; severe soil erosion; within the 100-year floodplain; high seasonal water table areas; and in land subject to slumping unless the project can show that design and construction techniques would mitigate any adverse effects to the surrounding areas' .

Overall, most of the characteristics cited above do not apply to this proposed project. However, on the southern boundary of the site, there is a slope greater than 20%. Although the site will be regraded, this existing slope serves as the required location for the vent shaft wall. But the facility is being built mainly

underground and is not being constructed on the slope. As stated in the introduction, the tunnel alignment has been located so that the tunnel can be constructed in hard, stable rock. Operational and safety factors require an emergency ventilation shaft to be constructed at the proposed site. Currently, there are no erosion problems on the site and none are anticipated as a result of this project. Design and construction techniques are being employed to mitigate any adverse effects of construction on this site. The project site does not lie within the 100-year floodplain nor is it in a landslide area."

(Application, pg. 7)

Comment: In addition to findings above, conditions further address the policy. Condition # 2 requires that final plans comply with applicable **Hillside Development and Erosion Control** provisions in MCC § .6710(A) & (B). These Code subsections require geotechnical analysis, and address slope stability and erosion issues associated with site development. The Hearings Officer concludes that the proposal, as conditioned, is consistent with this policy.

4. Policy 16 – Natural Resources.

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

"Although the project requires the removal of some of the existing trees in order to construct the vent shaft and vent shaft wall, the project would not significantly impact natural resources in the area. There will be new trees planted on the site as a mitigation for those that are being removed. The vent shaft facility will be buried in the hillside and only visible from the south side. The vent shaft wall will only be visible from the street and will be buffered by landscaping which will include native vegetation.

"This site is not the location of any known or documented historic areas or sites." (Application, pg. 7)

Comment: The proposal, together with the above noted conditions, adequately addresses the County's Natural Resources policies.

5. Policy 31 – Community Facilities and Uses

"...The County's Community Facilities and Uses policy includes provisions for community service foundations. The West Vent Shaft is similar in concept and scale to a water storage area or an electrical generation, distribution and transmission area and therefore is considered a community service foundation. The construction of the light rail alignment and associated facilities is consistent with the County's policy in that is a community service, supports

orderly and timely development and encourages land use development which supports the efficient use of existing and planned community facilities."

(Application, pg. 7)

Comment: The County Policy is to support the siting of community facilities which meet public needs, reinforce community identity, and are located on sites with the physical features, access, and size to accommodate the scale of use with minimal adverse off-site effects. [paraphrased and edited]

Based on the discussions in Finding #3 and #4 regarding CS uses and approval criteria, and the limits imposed through conditions of approval, the proposal adequately addresses Policy 31.

6. Policy 33a - Transportation Systems

"Policy 33a states, in part, 'The County's policy is to implement a balanced, safe and efficient transportation system.'

"Multnomah County's policy is a reflection of its commitment to the provision of a balanced, safe and efficient transportation system. The proposed west vent shaft supports this policy as it is part of the proposed extension of the existing light rail system. The west vent shaft is necessary for ventilation of the proposed tunnel alignment and for the provision of electricity to the light rail trains." (Application, pg. 8)

Comment: The Hearings Officer concurs.

7. Policy 37 - Utilities

"... The County's policy specifically requires adequate capacity to handle additional storm water run-off as a result of a project. Either the additional run-off needs to be handled at the site or provisions to handle storm water run-off must be made. ...

"... This proposed facility will not create significant additional run-off compared to what now occurs on the site. Any increase in impervious surface and subsequent increase in stormwater will be effectively managed on the site within the current stormwater management system and in accordance with existing Multnomah County requirements.

"The provision of water service to the site is addressed above under 'Requirements for Additional Public Services' and in the attached Service Provider letter from the City of Portland Water Bureau.

"Energy and communications needs for the site are related to the light rail system operation. Energy needs relate to train operation and not to needs

generated by the site itself; the traction power provided to the trains is fed from commercial sources emanating from the tunnel. No external electrical service from the site itself is required. There are no communications needs to serve the site itself." (Application, pg. 8)

Comment: The excerpt above and supplemental materials in the application do not satisfy the policy. Policy 37, "Utilities" requires findings "prior to approval of a legislative or quasi-judicial action" (emphasis added) demonstrating the availability of adequate water supply, and facilities for: stormwater drainage, sewage disposal, energy, and communications. Some required findings can be made at this stage (e.g. water supply). Determinations and findings required for any remaining utilities and facilities prescribed in Policies 37 and 38 may be deferred to the Design Review process. These determinations may require the exercise of judgment as to facts and interpretation of the policies. Consequently, notice of the decision(s) should be provided, with an opportunity for appeal pursuant to ORS 215.416(11). Refer to 4(D) and Condition #5 above. The proposed CS use, as conditioned, adequately addresses the Utilities policy.

8. Policy 38 - Facilities

"... The proposed facility would be provided protection by the County's Sheriff's Office. Tualatin Valley Fire and Rescue, District No. 4, would provide fire protection to the site. The fire suppression system for the light rail tunnel is being designed with the input of the Fire, Life, Safety Committee which includes the Fire Marshalls from the City of Portland, the Portland Emergency Management Bureau, the Portland Police Bureau, and the Tualatin Valley Fire and Rescue. During both construction and operation, emergency access will be provided at all times.

"Since the site is a public facility there is no impact to the school district."

Comment: Refer to Policy 37 discussion above [finding #4(G)(7)]. Again, the determination of whether procedural and substantive requirements of the policy are satisfied can be deferred to the administrative review stage. Compliance with subsections (A) and (C) of Policy 38 can be demonstrated if the appropriate notification letters are submitted and the subsequent staff determination(s) regarding these requirements provide notice to the public and opportunity for appeal since some involve exercise of judgment as to fact or interpretation of the policy. Refer to Condition #5.

The proposed CS use, as conditioned, adequately addresses the Facilities policy.

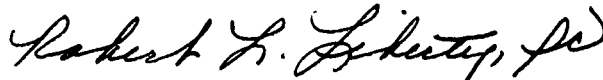
(H) Will satisfy such other applicable criteria as are stated in this section

There are no additional criteria specified in the CS section for the proposed use [MCC § .7020-.7072]. However, conditions address several other applicable Statutory and County Code sections, including: OAR 340-35, Noise Control; Hillside Development and Erosion Control [MCC § .6710]; Property Line Adjustment or Land Division [MCC § .4654]; and, Design Review [MCC .7820]. The proposed CS use, as conditioned, meets this criteria.

CONCLUSIONS

1. Findings above sufficiently demonstrate that the proposal, as conditioned, satisfies approval criteria necessary to designate the site for Community Service Use.
2. Conditions of approval are necessary to minimize potential adverse impacts from the use and assure compatibility with surrounding land uses and consistency with applicable Zoning Code provisions and Plan Policies.

Signed March 11, 1993


By Robert L. Liberty, Hearings Officer

Filed With the Clerk of the Board on March 11, 1993

Appeal to the Board of County Commissioners

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the record. Appeals must be filed within ten days after the Hearings Officer decision is submitted to the Clerk of the Board [ref. MCC 11.15.8260(A)(1)]. The appeal fee is \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s) [ref. MCC 11.15.9020(B)]. "Notice of Review" forms and instructions are available at the Planning and Development Office at 2115 SE Morrison Street (in Portland).

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, March 23, 1993 in Room 602 of the Multnomah County Courthouse. To appeal, a "Notice of Review" form and fee must be submitted to the County Planning Director on or before 4:30 pm. on Monday, March 22, 1993. For further information call the Multnomah County Planning and Development Division at 248-3043.