

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

In the Matter of the Review of the Hearings Officer)
Decision which denied a proposed commercial)
activity in conjunction with farm use in the EFU district)

FINAL ORDER 93-387
Approving
CU 21-93

This matter came before the Board of Commissioners (Board) for a review hearing on November 9, 1993. After considering the Hearings Officer's reasons for denial, and evidence and arguments presented by the appellant's representatives, the Board, in a 3-2 vote, determined to reverse the Hearings Officer decision and approve CU 21-93.


The Board adopts by reference the Conditions of Approval, Findings of Fact and Conclusions on CU 21-93 found in the Staff Report dated August 2, 1993. In addition, the Board adopts the following additional Condition of Approval:

3. This approval does not authorize the delivery, storage or disposal of spent brewers yeast or yeast by product on this property. Any such activity shall cease until separate approval is granted by the county.

Based on the foregoing, the Hearings Officer's decision is hereby reversed and the application is approved.

DATED this 9 day of December, 1993.





Beverly Stein, Chair
Board of County Commissioners
Multnomah County, Oregon

REVIEWED:



John DuBay, Chief Deputy County Counsel



Department of Environmental Services
Division of Planning and Development
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STAFF REPORT

For the August 2, 1993 Public Hearing

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

CU 21-93, **Conditional Use Request** **Line 3.**
(Commercial Use in Conjunction with Farm Use)

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

Location: 24315 NW Oak Island Road

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

Site Size: 117 acres

Size Requested: Same

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

Applicant: Same

Comprehensive Plan: Agriculture

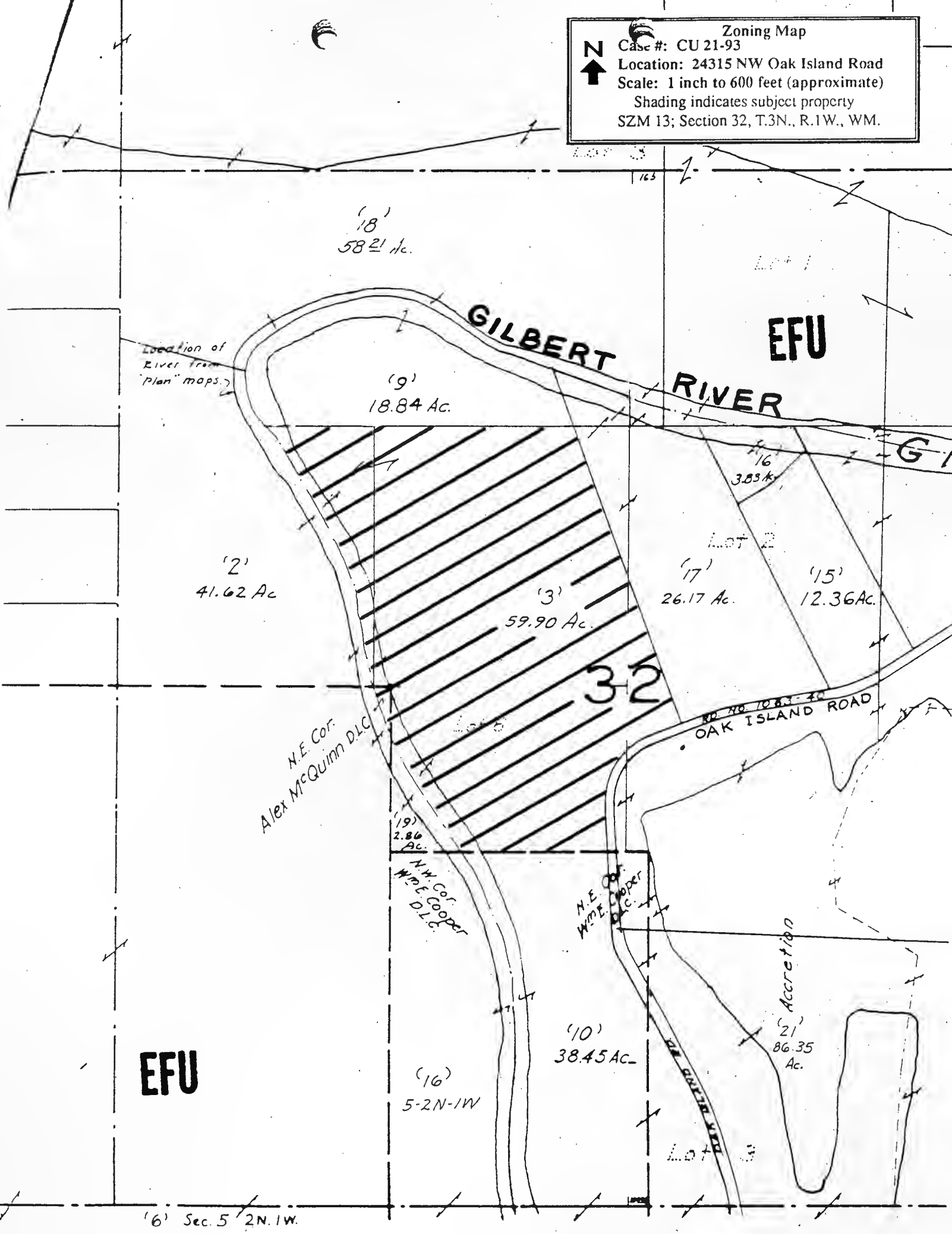
Present Zoning: EFU, Exclusive Farm Use District

**Recommended
Hearings Officer**

Decision: **APPROVE, subject to conditions,** this request for a commercial activity in conjunction with farm use, based on the following Findings and Conclusion.

N

Zoning Map
Case #: CU 21-93
Location: 24315 NW Oak Island Road
Scale: 1 inch to 600 feet (approximate)
Shading indicates subject property
SZM 13; Section 32, T.3N., R.1W., WM.



LEGEND

- PROPERTY LINE
- IRRIGATION DITCHES
- RIVERS

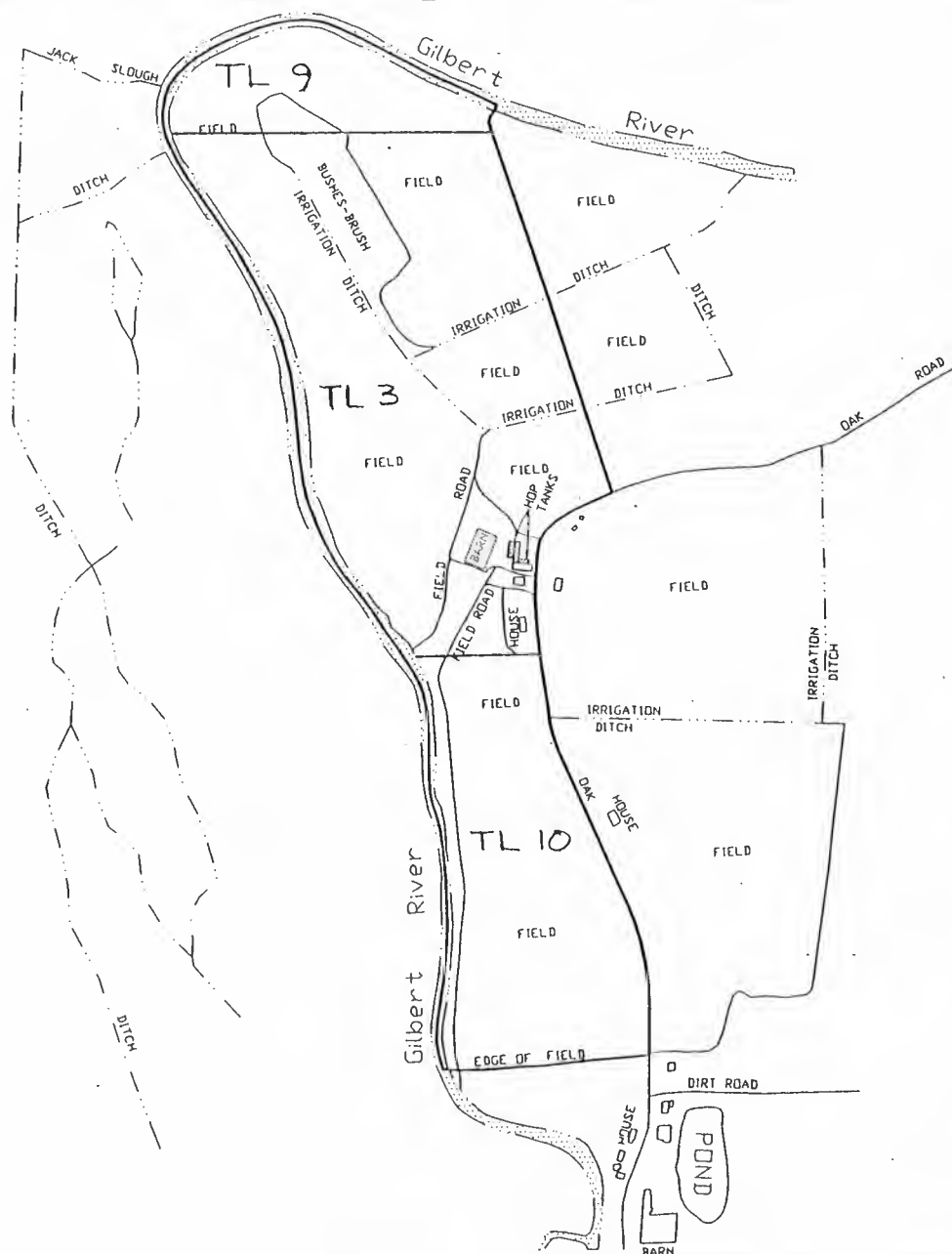
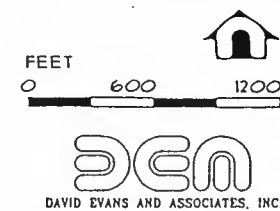


FIGURE 1
SITE MAP

CU 21-93

CONDITIONS OF APPROVAL:

1. Comply with all DEQ requirements as outlined in the Stipulation and Final Order No. WQIW-NWR-93-055.
2. Obtain building permits for the new structures, if required by the Portland Building Bureau. Any structure shall meet the dimensional requirements of MCC .2016, and shall be located at least 100 feet from the Gilbert River as required by MCC .6404 (C).

FINDINGS OF FACT:

1. Applicant's Proposal:

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

2. Site and Vicinity Characteristics:

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

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

3. Ordinance Criteria:

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

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

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

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

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

MCC .7120 Conditional Use Approval Criteria

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

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

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

(2) Will not adversely affect natural resources;

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

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

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

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

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

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

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

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

(6) Will not create hazardous conditions; and

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

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

Comprehensive Plan policies are addressed in Section 4, below.

MCC .7122 Exclusive Farm Use Conditional Use Approval Criteria

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

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

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

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

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

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

- (1) Parcels with a single family residence approved under MCC .2012 (B) (3);**
- (2) Exception areas; or**
- (3) Lands within the Urban Growth Boundary.**

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

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

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

4. Comprehensive Plan Policies:

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

- A. Predominantly agricultural soil capability I, II, III, and IV, as defined by U.S. Soil Conservation Service;**
- B. Of parcel sizes suitable for commercial agriculture;**
- C. In predominantly commercial agriculture use; and**
- D. Not impacted by urban service; or**
- E. Other areas, predominantly surrounded by commercial agriculture lands, which are necessary to permit farm practices to be undertaken on these adjacent lands.**

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

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

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

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

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

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

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

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

Water and Disposal System

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

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

Drainage

- (1) There is adequate capacity in the storm water system to handle the run-off; or
- (2) The water run-off can be handled on the site or adequate provisions can be made; and
- (3) The run-off from the site will not adversely affect the water quality in adjacent streams, ponds, lakes or alter the drainage on adjoining lands.

Energy and Communications

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

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

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

School

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

Fire Protection

- (1) There is adequate water pressure and flow for fire fighting purposes; and
- (2) The appropriate fire district has had an opportunity to review and comment on the proposal.

Police Protection

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

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

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

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

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

CONCLUSIONS:

1. The proposed grain storage facility is a commercial activity related to farm uses.
2. The proposed wastewater lagoon is required by DEQ to prevent runoff and protect the water quality of the Gilbert River, which is a significant wetland.
3. The applicant has carried the burden necessary for the approval of a commercial use in conjunction with farm use in the EFU zoning District.