

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

APRIL 26 - 30, 1993

Monday, April 26, 1993 - 9:30 AM - Budget Work Session. . .Page 2
Monday, April 26, 1993 - 1:30 PM - Budget Work Session. . .Page 2
Tuesday, April 27, 1993 - 9:30 AM - Planning Items. . . .Page 2
Tuesday, April 27, 1993 - 1:30 PM - Agenda ReviewPage 2
Wednesday, April 28, 1993 - 9:30 AM - Budget Work Session .Page 3
Wednesday, April 28, 1993 - 1:30 PM - Budget Work Session .Page 3
Thursday, April 29, 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.

Monday, April 26, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-1 The Board of County Commissioners, Sitting as the Budget Committee, to Review the 1993-94 Budget. Work Sessions are Open to the Public, No Public Testimony.
-

Monday, April 26, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-2 The Board of County Commissioners, Sitting as the Budget Committee, to Review the 1993-94 Budget. Work Sessions are Open to the Public, No Public Testimony.
-

Tuesday, April 27, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- Appeal Filed
Hearing on the
Second 10 min per
side 5-*
- P-1 CU 20-92 Review the April 13, 1993 Planning and Zoning Hearings Officer Decision, APPROVING, Subject to Conditions, Development of this 9-Acre Lot of Record with a Non-Resource Related Single Family Dwelling, for Property Located at 8282 SE RODLUN ROAD
- P-2 CU 3-93 Review the April 15, 1993 Planning and Zoning Hearings Officer Decision, APPROVING Conditionally for 6 Month Trial Period, Subject to Testing of the Efficacy of the Conditions and an Automatic Renewal Hearing, Conditional Use Request to Allow for a Maximum of a 50 Sow Plus 250 Offspring Hog Farm, for Property Located at 16601 SE FOSTER ROAD
- P-3 CU 22-92 HEARING, ON THE RECORD, WITH NEW INFORMATION, TEN MINUTES PER SIDE, in the Matter of an Appeal of a January 14, 1993 Planning and Zoning Hearings Officer Decision to DENY, Conditional Use Request to Allow a Non-Resource Related Single Family Dwelling for Property Located at 22401 NW ST. HELENS ROAD
-

Tuesday, April 27, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-1 Review of Agenda for Regular Meeting of April 29, 1993.
-

Wednesday, April 28, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-3 The Board of County Commissioners, Sitting as the Budget Committee, to Review the 1993-94 Budget. Work Sessions are Open to the Public, No Public Testimony.
-

Wednesday, April 28, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

BUDGET WORK SESSION

- WS-4 The Board of County Commissioners, Sitting as the Budget Committee, to Review the 1993-94 Budget. Work Sessions are Open to the Public, No Public Testimony.
-

Thursday, April 29, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointments of ROBERT D. MCNEIL, MARTIN WINCH, SID BIRT, and HELEN RICHARDSON to the MULTNOMAH COUNCIL ON CHEMICAL DEPENDENCY, Terms to Expire 4/95
- C-2 In the Matter of the Appointment of ALESANDRA HDE SOLORIO to the COMMUNITY HEALTH COUNCIL, Term to Expire 6/30/95

DEPARTMENT OF HEALTH

- C-3 Ratification of Amendment No. 1 to Intergovernmental Agreement, Contract #200092, between the Oregon Health Division, Office of Medical Assistance Programs and Multnomah County Health Department to Provide State Approval and Funds to Allow the County to Advertise and Provide Outreach Services for the MCH Hotline Program, for the Period March 1, 1993 through June 30, 1993

DEPARTMENT OF SOCIAL SERVICES

- C-4 Ratification of Amendment No. 4 to Intergovernmental Agreement, Contract #100183, between Multnomah County Mental and Emotional Disabilities Program Office and the Oregon Health Sciences University to Decrease Non-Residential Adult Services by \$28,230 in State Funds to Purchase Medicaid Matching Funds, for the Period July 1, 1992 through June 30, 1993

- C-5 Ratification of Amendment No. 1 to Intergovernmental Agreement, Contract 101903, to provide \$7,000 in Funds for the Continuation of Electronic Monitoring as an Alternative to Detention Through June 30, 1993

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-6 ORDER in the Matter of Contract 15728 for the Sale of Certain Real Property to Jerry Tjepkes
- C-7 ORDER in the Matter of Contract 15739 for the Sale of Certain Real Property to Roslyn B. Hill
- C-8 ORDER in the Matter of Contract 15744 for the Sale of Certain Real Property to Michael D. Summers
- C-9 ORDER in the Matter of the Sale of Property Acquired by Multnomah County Through the Foreclosure of Liens for Delinquent Taxes
- C-10 ORDER in the Matter of the Execution of Deed D930881 Upon Complete Performance of a Contract to Charles D. Burroughs
- C-11 ORDER in the Matter of the Execution of Deed D930882 Upon Complete Performance of a Contract to Charles D. Burroughs
- C-12 ORDER in the Matter of Contract 15747 for the Sale of Certain Real Property to Wyona M. Clement and Randall J. Henrichs
- C-13 ORDER in the Matter of Contract 15754 for the Sale of Certain Real Property to R. Michael Dyer
- C-14 ORDER in the Matter of the Execution of Deed D930856 for Certain Tax Acquired Property to John H. Hart and Ora L. Hart
- C-15 ORDER in the Matter of Cancellation of Land Sale Contract 15302R between Multnomah County, Oregon and George Golden and Mary Golden Upon Default of Payments and Performance of Covenants
- C-16 ORDER in the Matter of Cancellation of Land Sale Contract 15499R between Multnomah County, Oregon and Janice C. O'Neal Upon Default of Payments and Performance of Covenants
- C-17 ORDER in the Matter of Cancellation of Land Sale Contract 15244R1 between Multnomah County, Oregon and William J. Jelinek and Dorothy M. Jelinek Upon Default of Payments and Performance of Covenants
- C-18 ORDER in the Matter of the Execution of Deed D930883 Upon Complete Performance of a Contract to Phyllis Simmons

REGULAR AGENDA

SERVICE DISTRICTS

(Recess as the Board of County Commissioners and convene as the Governing Body of Dunthorpe-Riverdale Sanitary Service District No. 1)

- R-1 PUBLIC HEARING and First Meeting of the Board of County Commissioners Sitting as the Budget Committee for Dunthorpe-Riverdale Sanitary Service District No. 1, Regarding Acceptance and Approval of Fiscal Year 1993-94 Budget

(Recess as the Governing Body of Dunthorpe-Riverdale Sanitary Service District No. 1 and convene as the Governing Body of Mid-County Street Lighting Service District No. 14)

- R-2 PUBLIC HEARING and First Meeting of the Board of County Commissioners Sitting as the Budget Committee for Mid-County Street Lighting Service District No. 14, Regarding Acceptance and Approval of Fiscal Year 1993-94 Budget

(Recess as the Governing Body of Mid-County Street Lighting Service District No. 14 and reconvene as the Board of County Commissioners)

NON-DEPARTMENTAL

- R-3 RESOLUTION in the Matter of Honoring and Remembering GLADYS MCCOY
- R-4 PROCLAMATION in the Matter of Proclaiming April 25 through May 1st, 1993 as MULTNOMAH COUNTY VOLUNTEER WEEK
- R-5 PROCLAMATION in the Matter of Proclaiming the Period of May 1 through May 9, 1993 as COMMUNITY LAW WEEK in Multnomah County, Oregon
- R-6 RESOLUTION in the Matter of Co-Hosting the 1998 National Association of Counties Convention
- R-7 RESOLUTION in the Matter of Affirming Mutual Agreements with the City of Troutdale for Sharing Property Tax Revenue for Fiscal Year 1993-94
- R-8 RESOLUTION in the Matter of Philosophical Support and Endorsement of Measure 26-1 to Renew the Serial Levy to Fund the Multnomah County Library System
- R-9 RESOLUTION in the Matter of Philosophical Support and Endorsement of Measure 26-2 to Renew the Serial Levy to Fund Jails and Drug Treatment Services in Multnomah County

- R-10 RESOLUTION in the Matter of Philosophical Support and Endorsement of Measure 26-3 to Issue a General Obligation Bond to Support Construction and Renovation of the Central and Midland Branch Libraries
- R-11 Second Reading and Possible Adoption of an ORDINANCE Relating to Benefits for Employees Not Covered by Collective Bargaining Agreement, and Amending Ordinance No. 740

DEPARTMENT OF HEALTH

- R-12 PROCLAMATION in the Matter of Proclaiming May 2, 1993 as PUBLIC HEALTH NURSES DAY in Multnomah County

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-13 PROCLAMATION in the Matter of Proclaiming the Week of May 2-8, 1993 as BE KIND TO ANIMALS WEEK in Multnomah County, Oregon
- R-14 ORDER in the Matter of the Quitclaim of any Interest of Multnomah County in Tax Lot 129, Section 25, T1N, R3E, WM, Multnomah County, Oregon
- R-15 Ratification of an Intergovernmental Agreement, Contract 302103 between Multnomah County Transportation Division and the City of Portland for Right-of-Way Easement for SE Hogan Road, Crossing of the Springwater Corridor, and Authorizing of Payment of Fee

NONDEPARTMENTAL

- R-16 Request for Policy Direction to Address the Necessity for Additional Space for Mental Health in the Pittock Building and Remodel Issues Related to the Walnut Park Building (30 MINUTES REQUESTED, CONTINUED FROM APRIL 22, 1993)
- R-17 RESOLUTION in the Matter of Authorizing and Approving of the Issuance and Negotiated Sale of Certificates of Participation, Series 1993C, as Additional Certificates in an Amount Not to Exceed \$1,480,000; Approving and Authorizing a Supplement to the County Health Systems Facilities Master Lease-Purchase Agreement; Approving of a Certificate Purchase Agreement and a Final and Preliminary Official Statement; and Designating an Authorized Representative, Appointing Underwriter, Trustee, Bond Counsel and Financial Advisor (CONTINUED FROM APRIL 22, 1993)
- R-18 RESOLUTION in the Matter of the Declaration of Official Intent to Reimburse Capital Expenditures with Proceeds of the Certificates of Participation, Series 1993C, Issued to Finance the Expansion, Remodeling and Equipping of the North Portland Health Clinic (CONTINUED FROM APRIL 22, 1993)

R-19 RESOLUTION in the Matter of Accepting the Executive 1993-94 Budget and Preparing the Approved Multnomah County Budget for Submittal to the Tax Supervising and Conservation Commission

PUBLIC COMMENT

R-20 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

Meeting Date: April 27, 1993

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 20-92 Decision

BCC Informal _____ BCC Formal April 27, 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: 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 20-92 Review the Decision of the Hearings Officer of April 13, 1993, approving, subject to conditions, development of this 9-acre Lot of Record with a non-resource related single family dwelling, for property located at 8282 SE Rodlun Road.

(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 APR 19 PM 1:18



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. CY 20-92

☒ 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 22

(Hearings Officer/Planning Commission)

☐ Previously Distributed _____

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

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 APR 19 PM 1:13
(2/1)



BOARD HEARING OF APRIL 27, 1993

CASE NAME: PLANT

TIME 9:30 am

NON-RESOURCE RESIDENCE

NUMBER CU 20-92

1. Applicant Name/Address: David and Joann Plant
1701 River Loop #1
Eugene, OR 97404

2. Action Requested by applicant:

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

3. Staff Report Recommendation (November 2, 1992):

Approve, subject to conditions

4. Hearings Officer Decision (April 13, 1993):

Approved, subject to conditions

5. If recommendation and decision are different, why?

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

ISSUES

(who raised them?)

None.



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

Decision

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

April 13, 1993

CU 20-92, #544

**Conditional Use Request
(Non-Resource Related Single Family Dwelling)**

Applicant requests Conditional Use approval for a non-resource related single family dwelling on this 9 acre Lot of Record in the MUF-19 zoning district..

Location: 8282 SE Rodlun Road

Legal: Tax Lot '32', Section 21, 1S, 3E, 1991 Assessor's Map

Site Size: 9 acres

Size Requested: Same

Property Owner: David and Joann Plant
1701 River Loop #1
Eugene, OR 97404

Applicant: Same

Comprehensive Plan: Multiple Use Forest

Present Zoning: MUF-19, Multiple Use Forest District

Hearings Officer

Decision: Approve, subject to conditions, development of this 9-acre Lot of Record with a non-resource related single family dwelling, based on the following Findings and Conclusion.

N

↑

Zoning Map

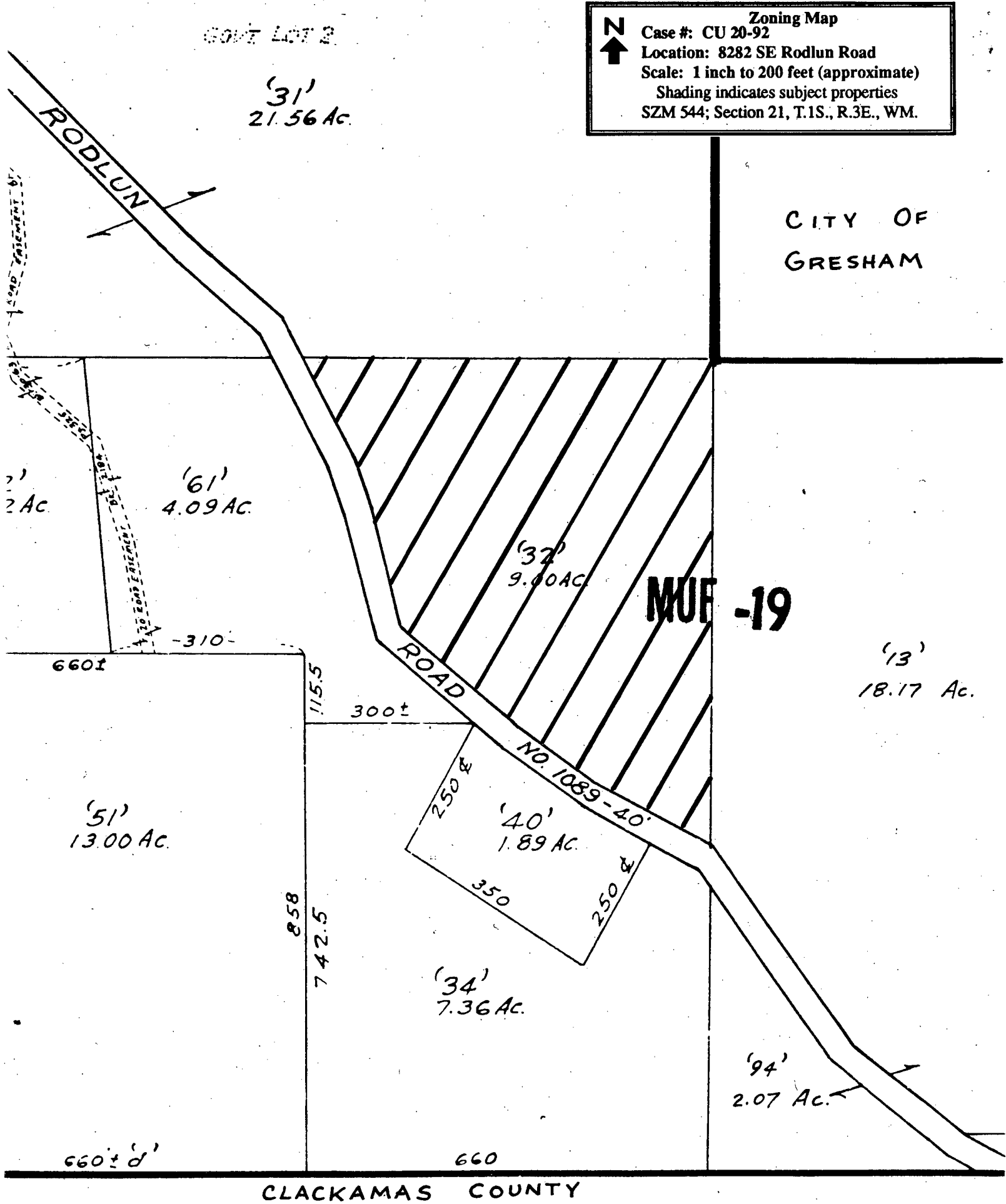
Case #: CU 20-92

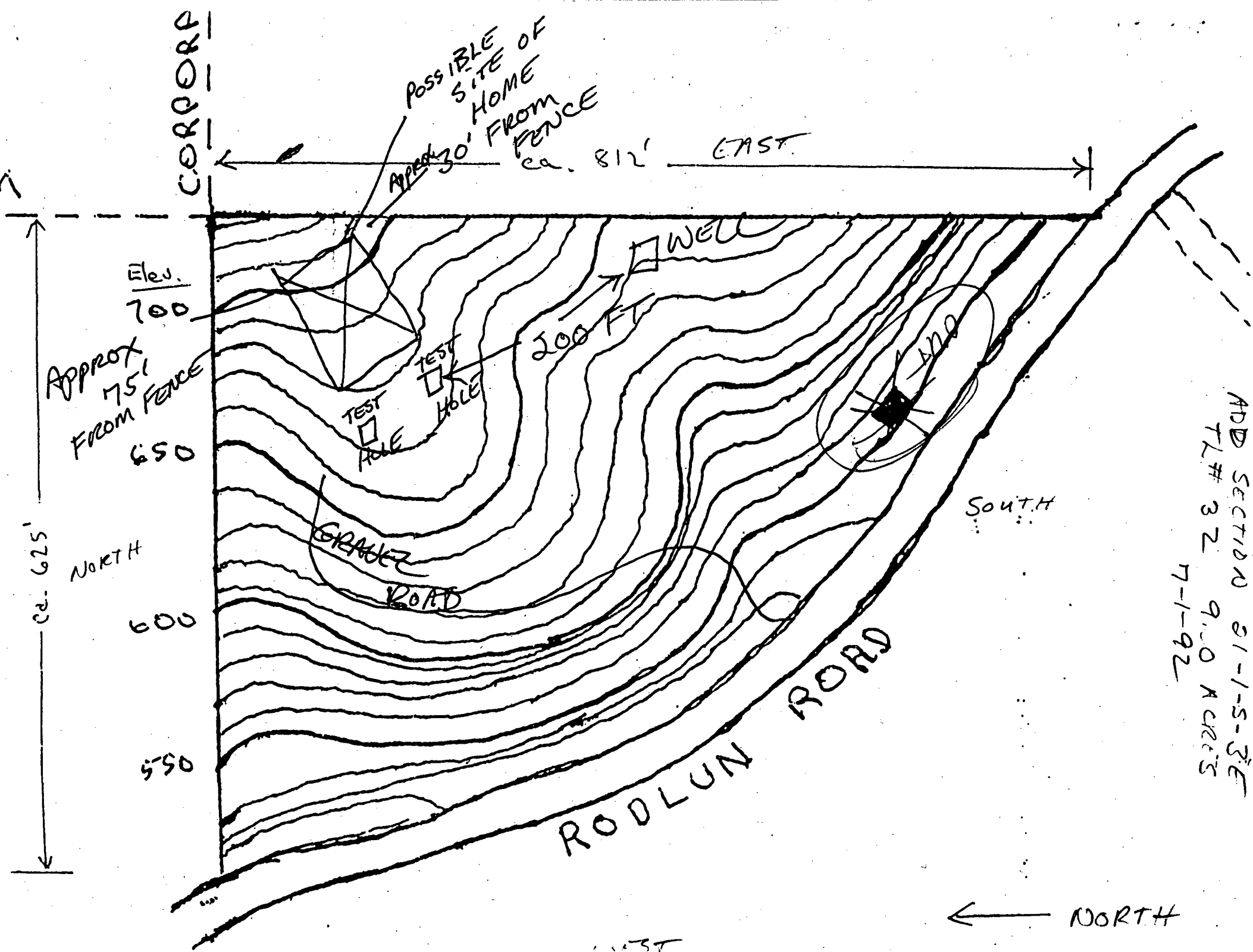
Location: 8282 SE Rodlun Road

Scale: 1 inch to 200 feet (approximate)

Shading indicates subject properties

SZM 544; Section 21, T.1S., R.3E., WM.





ADD SECTION 31-1-S-3E
TL# 32 9.0 ACRES
7-1-92

I. INTRODUCTION; NATURE OF THE DECISION

This is an application for a conditional use permit to build a nonforest dwelling within the Multiple Use Forest District, 19-acre minimum lot size.

II. PARTIES TO THE PROCEEDING

The only persons who participated in this proceeding was the applicant, David Plant, representing himself and his wife, Joann Plant. As a result, the applicants are the only parties to this proceeding. MCC 11.15.8225(A)(1).

III. PROCEDURAL ISSUES

A. Impartiality Of The Hearings Officer

Prior to the hearing I had no *ex parte* contacts with the applicants or anyone else concerning the merits of this application. Subsequent communications with the applicant's representatives have concerned the applicable criteria, schedules for decision and the height of the proposed house. Most of these contacts were made, or are reflected in, letters in the record.

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

B. Other Procedural Issues

The applicants did not allege any procedural violations by the County, prior to, or during, the hearing.

IV. BURDEN OF PROOF

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

V. REVIEW OF THE STANDARDS, ANALYSIS OF THE EVIDENCE, FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. MCC 11.15.2172(C); Conditional Uses: Residential Uses Not In Conjunction With A Primary Use

In the Multiple Use Forest District a residence not in conjunction with one of the

primary uses listed in MCC 11.15.2168, such as forest practices and wood processing, can be allowed subject to findings addressing six sets of criteria. Each criterion is addressed separately below.

1. MCC 11.15.2172(C)(1)

Subsection (C)(1) requires a finding that:

- (1) *The lot size shall meet the standards of MCC .2178(A), .2180(A) to (C) or .2182(A) to (C);*

The minimum lot size in this District is 19 acres. MCC 11.15.2178(A). The applicants' parcel does not satisfy this requirement.

MCC 11.15.2180(A)(2) requires that a house on a subminimum parcel "be situated upon land generally unsuitable for commercial forest use * * * ." For the reasons given below, addressing MCC 11.15.2172(C)(2), I conclude the applicant cannot meet this standard.

Consequently, in order to qualify for a residential use, the applicant must satisfy MCC 11.15.2182(A) to (C). Those provisions are addressed below.

2. MCC 11.15.2172(C)(2)

Subsection (C)(2) requires a finding that:

- (2) *The land is incapable of sustaining a farm or forest use, based upon one of the following:*
- (a) *A Soil Conservation Service Agricultural Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year of any commercial tree species for at least 75% of the lot area,*
 - (b) *Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusion, or*
 - (c) *The lot is a Lot of Record under MCC .2182(A) though (C), and is ten acres or less in size;*

As required by this subsection, the parcel is less than 10 acres in size.

The applicant stated the property was less than 10 acres in size and thus incapable of sustaining a farm or forest use.

The applicant's original submittal materials did not contain evidence of unsuitability or the certification required under subsection (C)(2)(b) to support this assertion. The slides taken by the staff showed a second growth forest, with heavy cover of Big Leaf Maple, alder and Douglas Fir, so there is no question that the soil has the productive capacity to grow trees.

Materials submitted after the hearing, including photographs from ground level and an aerial photo show heavily forested hillsides of what appear to be second growth Douglas Fir and possibly some western red cedar. These materials also show that portions of the applicant's property are receiving preferential forest use assessment while the remainder is receiving farm use deferral. (Letter from Anne C. Davies, 8 March 1993 at page 1.)

Because the evidence does not support a finding of satisfaction of either subsections (2)(a) or (2)(b), the applicant must qualify under (C)(2)(c), in order to receive approval.

Compliance with MCC .2182(A) through (C) is addressed below.

3. MCC 11.15.2172(C)(3)

Subsection (C)(3) requires a finding that:

- (3) *A dwelling as proposed is compatible with the primary uses as listed in MCC .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.*

Subsection (3) contains four criteria; (i) compatibility with the primary uses in the zone; (ii) noninterference with "resource management"; (iii) noninterference with "resources" and; (iv) a prohibition of a material alteration of the overall land use pattern in the area. I find no difference between the evidence needed to address (i) and (ii) and treat them together, below.

(i) Noninterference And Compatibility

It has been suggested that I rely on the siting standards in MCC 11.15.2194, (which include setback requirements) and the covenant not to object to forest and farm management practices (MCC 11.15.2172(C)(5)) to assure noninterference and compatibility. This would be an error in law and logic.

The siting standards in MCC 11.15.2194 were not adopted to prevent conflicts with resource management. While potentially useful in addressing such activities as spray drift and timber felling, setbacks alone cannot address all the conflicts between forest management and residential activities. For example smoke from slash drift, traffic safety concerns when roads are used for logging trucks and equipment, and potential interference with drinking water taken from surface streams, are not addressed by buffering. More generally, these standardized requirements are not tailored to reflect site-specific information about future potential management activities and address the ways in which conflicts can be avoided.

Nor do deeds and covenants prevent conflicts over forest management activities. If the County regarded the deed and covenant requirements in MCC 11.15.2172(C)(5) as sufficient to assure compatibility of residential uses with forest management practices it would not have adopted separate requirements for each. Regardless of the legal distinction made in the Code between findings of compatibility and noninterference and the acknowledgment of the right to "conduct accepted forestry or farming practices", such an acknowledgment does not constitute, and perhaps cannot be treated as, waivers of potential tort claims. Even if a tort claim against a forest manager is unsuccessful, defense against the claim can cost thousands of dollars.

In order to address these criteria, I must either (a) be satisfied that the dwelling will not interfere with nearby primary uses: the production, management and harvesting of timber, the raising of crops and livestock, MCC 11.15.2168) or (b) determine that these primary uses are not being conducted within the area which might be effected by the proposed dwelling. The applicants have submitted evidence in support of both theories of compliance.

In order to understand my findings regarding noninterference and compatibility it is necessary to describe the terrain in the area. As Rodlun Road proceeds south out of the Gresham city limits, it begins to follow the course of Kelly Creek. The Creek lies in a valley between steep hills on both sides of the Road, with summits 500 to 700 feet above the terrain to the north and west. Thus, properties southwest across from Rodlun Road, are separated from the applicant's property by this valley, the creek and the road.

On land southwest of Rodlun Road is divided into smaller parcels and ownerships of less than 10 acres, which occupy slopes of the hill rising to the south. Several of these are already the site of homes. None of the properties are receiving preferential farm or forest use assessment. With the exception of Christmas tree production on Tax Lot 94, the property owners have stated that they have no intention of engaging in forest management activities. I find that the proposed use need not be compatible with or not interfere with the use of these properties because they are not in farm or forest use.

There are three larger properties, with timber, on the same side of Rodlun Road (and the same hill or ridge) which adjoin or touch the Plant parcel; tax lots 13, 31 and 77. These are the focus of my chief concerns about compatibility and noninterference.

The adjoining property to the east, tax lot 13, is receiving farm deferral, (in 1992 it was assessed at less than \$1,000.00 acre.) The aerial photo (undated) shows that the southern half of the property is open land, possibly used for grazing.

In their application, the applicants stated: "Adjacent lots to north and east are lightly forested. They are very steep and could not be farmed. They have been selectively logged." During his testimony at the hearing, the applicant stated that the property to the east had been commercially thinned last year and that his neighbor had used the applicant's road to haul the logs out.

After the hearing, the applicant's representative submitted a letter from Scott Ferguson, a consulting forester with Individual Tree Selection Management Inc., dated 2 March 1993. Mr. Ferguson supervised the selective thinning on the neighboring property (Tax Lot 13). He state that he received no fee for his letter from the applicants. He qualifies as an impartial expert witness who is familiar with the property.

Ferguson's letter states that given the steep slopes, fragmentation of ownerships and infiltration of houses, the forest management which may occur in the area is not likely to entail slash burning, the aerial application of pesticides or other activities which will conflict with this or the other already present residential uses. On the other hand, some selective logging on this an other properties will remain possible using low-impact harvest methods. In this regard, Ferguson states:

I've worked on dozens of thinning projects where this has been a concern because of inadequate setbacks -- I would recommend siting the house at least two tree lengths (slope distance) from the property line.

However, according to the letter from Ms. Davies, "the contract os sale requires that the purchasers not conduct any forest activities, other than thinning fore firewood , until the property is paid off."

Tax lot 31, owned by Mr. Plant's mother, Margaret Barker, adjoins the property to the north. According to the Assessor's records submitted by the applicant, it is 16.31 acres (not the 21.56 acres shown on the annotated tax lot map submitted by the applicants.) The applicants report that Ms. Barker "has no intention of harvesting any trees on her property, and said that 'she plans to just watch them grow.'" Despite this denial, the tax records submitted by the applicants show that her property is receiving farm and forest deferral.

Tax lot 77, touches the northeast corner of the Plant property. It is 29.95 acres in

size, (not the 40.090 acres shown on the annotated tax lot map) and lies within the City of Gresham. Both the aerial and ground photos show that this hilly property is heavily timbered with second growth Douglas fir. According to the applicant, cutting trees more than 25 inches in diameter requires a City permit and the owner, Thomas Higgins told Ms. Davies "that he has no intention of logging on his property. In fact, his plans are to build a house on that property." Davies letter at page 2. The annotated tax lot map identifies a house :under construction" on the property.

Despite these promises of non-management, Mr. Thomas' property is receiving forest deferral. His property was assessed in 1993 slightly less than \$1,000/acre, even though the property is zoned LDR-7 with a 7,000 square foot minimum lot size.

In western Oregon there are two preferential forest use assessment programs, the Western Oregon Forest Land Assessment and Severance Tax ("WOFLAST", codified at ORS 321.257 to 321.375) and the Western Oregon Small Tract Optional Tax ("WOSTOT", codified at ORS 321.705 to 321.765). The record does not disclose under which of these programs Ms. Barker and Mr. Thomas' property is receiving deferral.

Under ORS 321.358 (a part of WOFLAST) the land must qualify under the following definition of "forestland:"

*"Forestland" means land in western Oregon (a) which is being held or used for the predominant purpose of growing and harvesting trees of a marketable species or (b) the highest and best use of which is the growing and harvesting of such trees and has been designated as forestland * * * * .*

ORS 321.257(3). Lands enrolled in the WOSTOT program must meet a somewhat different definition of forestland:

*(3) "Forestland" means land which, in the judgment of the State Forester, is suitable for the production of timber or cultured Christmas trees and is being utilized primarily for that purpose. * * * **

ORS 321.705(3). A portion of the eligibility requirements for WOSTOT requires the land to be:

held or used for the predominant purpose of growing and harvesting trees of a marketable species or (b) the highest and best use of which is the growing and harvesting of such trees.

ORS 197.725(1)(c). (This is very similar to the qualifying definition of "forestland" under WOSTOT.

This record requires me to choose between the use of property which their preferential property tax qualification implies and the statements (albeit second-hand) of the property owners. I will rely on the property owners' assertions of fact about the use of their property rather than the legal implication drawn from their assessments.¹

Based on this record, I conclude that the land adjoining the Plants' property is not, and will not be, managed for forestry.

With respect to farming activities, the record suggests these are not of a commercial scale, are isolated by intervening slopes and forests from the Plant property, Therefore the Plant's resident will not conflict with any commercial farm uses.²

(ii) Noninterference With "Resources"

This subsection requires findings that the proposed use *will not interfere with the resources or the resource management practices* in the area.

¹ This choice has some legal, if not factual logic to it, given the absurd distinctions drawn by the Court of Appeals between the land use and preferential assessment programs. *Springer v. Oregon Department of Revenue*, 11 Or App 262, ___ P2d ___ (1992).

² Land which is not within an EFU zone may receive preferential assessment under ORS 308.370(2), 308.372 and 308.375. ORS 308.370(2) provides in relevant part:

*(2) Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use as defined in ORS 215.203(2) shall, upon compliance with ORS 308.375, for purposes of assessment, be valued under ORS 308.232 at its true cash value for farm use and not at the true cash it would if applied to other than farm use. * * *.*

ORS 215.203(2)(a) provides (in pertinent part):

2(a) As used in this section 'farm use' means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use thereof.

The Oregon Supreme Court (and Tax Court) have held that this standard is to be used to distinguish and exclude hobby farms from genuine commercial farming operations. *Capsey v. Dept. of Rev.*, 294 Or 455, 657 P2d 680 (1983).

The Multnomah County Code does not define "resources." MCC 11.15.0010. The second time the word "resource" is used, it apparently refers to farm and forest lands which are the subject of "resource management." Assuming that a distinction is made between "managed" and unmanaged "resources" I interpret the first use of the term refers to natural resources.

As noted below, this area is outside the big game habitat range mapped by the Department of Fish and Wildlife. Construction of the road, which might affect Kelly Creek, has already been built. Any additional impacts from improvement of the road or construction of the house which might affect the Creek or other natural resources can be addressed in Design Review under MCC 11.15.7830 and .7850.

(iii) No Material Alteration Of The Stability Of The Overall Land Use Pattern In The Area

The applicants have provided substantial documentation of the overall land use pattern of the area, which consists of homes generally unrelated to farming or forestry, located on lots from 2 to 30 acres in size. A large share of these lots already have been sited with homes. The largest properties, to the northeast, are within the regional urban growth boundary.

Any home alters the land use pattern. A first home introduced into an undeveloped area or the first home on a small lot may change the stability of the land use pattern. However, I find that the addition of one proposed house, among many houses, on a parcel within the range of prevailing parcel sizes within the area, will not materially alter the stability of the overall land use pattern of the area.

4. MCC 11.15.2172(C)(4)

Subsection (C)(4) requires a finding that:

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

The Multnomah County Sheriff's Office completed a County "Police Services Review" form, stating that the "level of police service available is adequate to serve the proposed project, signed by Sergeant M. Pajer, dated 17 November 1992.

Multnomah County Fire District #10 completed a County "Fire District Review" form, stating that "There is adequate water pressure and flow at the subject property for fire fighting services;" with the appended comment "Water for fire fighting supplied by Fire Department tanker. No additional requirement." The Fire District also commented: "Access road from public road to within 150' of structure shall be minimum 12' wide and

provided with an all weather surface." The form was completed and signed by Fire Protection Engineer Jim Schwager, dated 19 November 1992.

Centennial School District completed a County "School District Review" form, stating in response to the inquiry about "the level of service available to the property and potential impact on service levels;" "Centennial School District has no objection to this building." The form was completed and signed by Administrative Assistant Carol Thornbury, but was undated.

Sewage disposal will be provided through an on-site septic system. The City of Portland's Environmental Soils Specialist, Phil Crawford, determined that the site was suitable for the use of a standard septic tank/drainfield disposal system * * * . " Site Evaluation Report LFS: 141-92 dated June 11, 1992.

Domestic water will be provided by an on-site well with a yield of 8 gallons per minute, which should be ample for domestic use.

I conclude the propose house does not require public water and sewer services and will not require fire, police or school services beyond the level of services currently provided for the area.

5. MCC 11.15.2172(C)(5)

Subsection (C)(5) requires a finding that:

- (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; and*

The applicants' attorney has submitted the unsigned form they intend to use to record their acknowledgment (i.e. acceptance) of nearby farming and forest practices. The form is sufficient to implement the standard. However, the ordinance requires this form to be signed and recorded.

Signing and recording the form is made a condition of approval which must be met before a building permit may be issued. Because the determination of whether this form has been signed and recorded does not require the exercise of legal discretion, this determination does not require notice and an opportunity for a hearing.

6. MCC 11.15.2172(C)(6)

Subsection (C)(5) requires a finding that:

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

These provisions are discussed in D., below.

B. MCC 11.15.2178; Dimensional Requirements

1. MCC 11.15.2178(A); Minimum Lot Size

The minimum lot size in this zone is 19 acres, MCC 11.15.2178(A), absent qualification under MCC 11.15.2189, .2182, .2184 and .7720. This application is being processed pursuant to MCC 11.15.2182, "Lot of Record."

2. MCC 11.15.2178(C); Minimum Yard Dimensions

This subsection has three components; minimum front, back and side yards, maximum building height and minimum "front lot line."

The 200' setback requirements established by MCC 11.15.2194(F), (discussed below) more than satisfy the 30' and 10' front, back and side yard dimensions.

The description of the proposed design submitted by the applicant, does not disclose whether the house will meet or exceed the 35 foot maximum. This matter can be addressed during Design Review.

I interpret the phrase "front lot line" as applied to the applicant's (roughly) triangular lot, as the lot's frontage on Rodlun Road. According to the site map submitted by the applicants after the hearing, their lot has an approximately 1,000' frontage on Rodlun Road, in excess of the 50' required by this subsection.

3. MCC 11.15.2178(B), (D), (E)

Subsections (B) and (D) of the dimensional requirements are not relevant. Subsection (E), can be addressed through Design Review.

C. MCC 11.15.2182(A) through (C); Lot of Record

1. MCC 11.15.2182(A)(2)

MCC 11.15.2182(A) defines three kinds of "lots of record," which are entitled to a dwelling in the MUF District notwithstanding other criteria limiting and restricting dwellings and minimum lot sizes. Subsection MCC 11.15.2182(B) contains definitions of key terms and (C) provides defines circumstances when a separate lot of record is "deemed created" by a zoning district line or County road.

The applicants' parcel does not qualify under MCC 11.15.2182(A)(1), because .2182(A)(1)(c) requires the parcel to "satisfy the minimum lot size requirements of .2178 * * *."

The applicants' parcel does not qualify under MCC 11.15.2182(A)(3) because that provision is applied to a "group of contiguous parcels of land" which, in the aggregate, satisfy the minimum lot size standards in MCC .2178.

This leaves MCC 11.15.2182(A)(2). To qualify under this definition, the lot must be "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, and*
- (d) *Which is not contiguous to another substandard parcel or parcels under the same ownership;*

According to information submitted on behalf of the applicants, the parcel was created sometime between 1931 and 1936, before any county zoning of the area. During that period the only applicable laws regulated the creation and sale of subdivision lots. The identification of this property as a separate tax lot in 1936 was apparently not associated with the creation of any other lots and thus the parcel was not a part of a subdivision. (This is consistent with the irregular sizes of nearby properties.) The property is not listed in the county's inventory of illegal lots.

The preceding evidence is sufficient to satisfy subsections (a) and (b).

According to the Planning Division's records, the applicant's testimony, and estate settlement order from 1947, the property is 9.00 acres, less than the minimum lot size. This evidence satisfies subsection (c).

The records from the Tax Assessor's office shows that none of the neighboring tax lots (and thus none of the neighboring parcels) are owned by David or Joanne Plant. This evidence satisfies subsection (d).

D. MCC 11.15.2194 Residential Development Standards

(1) MCC 11.15.2194(A): Fire Safety Measures

The applicants have identified 10 fire safety measures they intend to take, including clearing of brush from around the house, a small water storage pond (approximately 1000 gallons) with a gas pump and a 30 foot "defensible perimeter" around the house, with 200 feet in front of the house (presumably the existing clearing.)

I find the fire safety measures are satisfied by making the implementation of these 10 precautions conditions or approval.

(2) MCC 11.15.2194(B): Access Road To Perennial Water Source On The Lot

A minimum of a 16 foot wide "access drive" is required to "any perennial water source on the lot or an adjacent lot." "Perennial water source," "access drive" and "adjacent" are not defined in MCC 11.15.0010. If the "water source" means the well (shown on the site plan as approximately 150' from the home site, then such access can be provided by the applicants. However, if the "perennial" used with "water source" means surface water, and the Plants' lot is "adjacent" to the lots over which Kelly Creek runs, then the "access drive" might be their road. If so, the road width may be wider than originally planned.

These issues may be addressed as a part of Design Review.

(3) MCC 11.15.2194(C): Proximity To Publicly Maintained Street

The dwelling is to be located "in as close proximity to a publicly maintained street as possible." For the reasons cited in addressing MCC 11.15.2194(D), it is not possible to locate the house in closer proximity to Rodlun Road.

(4) MCC 11.15.2194(D): Driveway Length

The maximum driveway length of 500 feet may be exceeded provided the applicants describe in their written application materials "the physical limitations which require a driveway in excess of 500 feet ..."

The applicants originally stated "we will not require a driveway in excess of 500 feet." However, the applicants' revised site plan shows that the driveway from Rodlun Road will be approximately 800 feet. The reasons for this longer length appear in several of the submissions including topographical maps and photographs; the homesite is within a clearing on the only relatively level portion of the property, a bench halfway up the hill.

This information satisfies MCC 11.15.2194(D).

(5) MCC 11.15.2194(E): Siting On Least Productive Portion Of The Property

Since the proposed dwelling is not being approved as being in conjunction with any

primary farm or forest use, I conclude that this provision is inapplicable.

(6) MCC 11.15.2194(F): Building Setback

The applicants' site plan shows the "house site" about 150' from the north and east property lines and 400 feet from the southwest boundary.

This subsection requires 200' setbacks from all property lines, whenever possible, except for setbacks as little as 30' from a public road or when it will allow for the "clustering of dwelling or sharing of access" on adjacent lots.

Neither of these exceptions applies. In addition, this 200' setback requirement is the minimum necessary to maintain the "two tree-length" setback (along the slope) needed to allow for proper tree felling, recommended by the forester, Scott Ferguson. (See discussion of MCC 11.15.2172(c)(3), above.)

(7) MCC 11.15.2194(G): Building Code Standards

Compliance with the building code will be addressed through Design Review.

(8) MCC 11.15.2194(H): Foundation

Compliance with the building code, as applicable to the foundation, will be addressed through Design Review.

(9) MCC 11.15.2194(I): Minimum Floor Area

The house plan description submitted by the applicant (American Institute of Building Design, plan no. 1005-1A) shows that the proposed dwelling will have a floor area of 1,535 square feet, which exceeds the minimum of 600 square feet established by this section.

(10) MCC 11.15.2194(J): Big Game Habitat Area

The house is outside of any big game habitat area as defined by the Oregon Department of Fish and Wildlife.

E. Plan Policies 37 And 38

1. In General

Both policy 37, "Utilities" and Policy 38, "Facilities" are prefaced begin with the statement: "The county's policy is to require a finding prior to approval of a legislative or

quasi-judicial action that * * * ." "Action" is defined in MCC 11.15.8205 as a

*a proceeding in which the legal rights, duties or privileges of specific parties are determined only after hearing in which such parties are entitled to appear and be heard, including requests for: * * **

(C) Conditional uses;

* * * *

(F) Other requests for permits and other contested cases determining permissible uses of specific property.

I find that this proceeding is an "action" and that consequently both of these policies apply.

As noted below, some of the required findings can be made at this stage. A determination concerning satisfaction of the remaining required findings in those policies will be determined by the Planning Director before, or in conjunction with, the placement permitting process. Because compliance with Policies 37 and 38 may require the exercise of judgment as to facts and interpretation of the policies, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, cited above.

2. Plan Policy 37: "Utilities"

Multnomah County Plan Policy 37, "Utilities" provides:

POLICY 37

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR***
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A***

SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR

- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR*
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.*

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 167.

The evidence discussed above under MCC 11.15.2172(C)(4) shows that the applicants will make use of well water and an approved on-site septic disposal system. This evidence is sufficient to demonstrate compliance with the first four subsections of Policy 37.

The remainder of Policy 37 provides:

DRAINAGE

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR*
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND*
- G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.*

ENERGY AND COMMUNICATIONS

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND*
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE*

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE

COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 168.

I conclude that subsection E applies to urban areas and is inapplicable to this area, zoned MUF.

There is no evidence in the record concerning energy and communications facilities, subsections F, G, H and I. These matters are deferred for an administrative determination by the Planning Director in conjunction with the building permit decision.

The concluding paragraph of Policy 37 is relevant only to legislative decisions creating a regulatory system for groundwater; it is inapplicable to this quasijudicial proceeding.

4. Plan Policy 38: "Facilities"

Multnomah County Plan Policy 38, "Facilities" provides:

POLICY 38

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND*
- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] ON THE PROPOSAL.*

POLICE PROTECTION

- D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF*

THE JURISDICTION PROVIDING POLICE PROTECTION.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983)
at 169-170.

The evidence offered with respect to MCC 11.15.2172(C)(4), discussed above, is sufficient to carry the applicants' burden of proof with respect to Policy 38.

G. State Statutes, Goals And Administrative Rules Applicable To The Decision

The provisions of state law governing county quasijudicial decisions, found in ORS 197.763 and 215.416 apply to this proceeding. They have been fulfilled through the notice of, and conduct of, the hearing on this matter.

No other provisions in ORS Chapters 197 and 215 are applicable.

Goal 4 and the Goal 4 Rule, as amended, do not apply to quasijudicial decisions made on applications submitted before the adoption of changes to plans and regulations made as part of periodic review, even if those changes were adopted before final action on the application. OAR 660-06-003(1)(f). No other statewide planning goals and no Oregon Administrative Rules interpreting those goals apply to this quasijudicial permitting proceeding.

VI. ORDER AND CONDITIONS

The application is approved, subject to subsequent proceedings and conditions specified below.

A. Matters Deferred For Later Determination In Design Review Or In Conjunction With The Issuance Of A Building Permit.

The proposed use is a conditional use. MCC 11.15.2172(C). Design Review is required for all conditional uses in all districts. MCC 11.15.7820.

As part of Design Review, the following standards and related interpretive questions need to be satisfied:

- MCC 11.15.2172(C)(3) Impacts of home and road improvements on "resources."
- MCC 11.15.2178(C) Building height limitation
- MCC 11.15.2178(E) Other structure height limitation
- MCC 11.15.2194(D) Access to "perennial water source."
- MCC 11.15.2194(B) Minimum road (driveway) width of 16 feet for fire safety

- MCC 11.15.2194(F) Compliance with the 200' set-back requirement & condition
- Plan Policy 37(F),(G) Run-off and its impacts
- Plan Policy 37(H),(I) Energy and Communications

Because compliance with these provisions may require the exercise of judgment as to facts and interpretation of the code provisions, notice of this subsequent decision and an opportunity for a hearing should be provided. ORS 197.763(2), 215.416, *Rhyne et al vs. Multnomah County, Swan & Trotter*, ___ Or LUBA ___ (LUBA No. 92-058, slip opinion of 10 July 1992 at 8-9 and cases cited there.)

Compliance with the provisions listed below, in the manner specified, does not require the exercise of discretion and therefore the County's determination on these points does not require notice and opportunity for a hearing. ORS 197.015(10)(b)(A), (B); ORS 215.402(4), 215.416. These decisions may be made in conjunction with the decision to issue a building permit.

- MCC 11.15.2172(C)(5) Applicants submit signed covenant acknowledging farm and forest management practices nearby.
- MCC 11.15.2194(G) Certification of compliance with building code.
- MCC 11.15.2194(H) Foundation meets requirements for a building permit.

B. Conditions

The applicants shall comply with the following conditions:

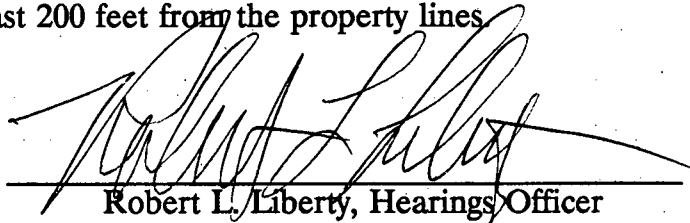
A. Fire Safety Standards

Initial and continuing satisfaction of the ten fire safety measures described by the applicants on page 5 of the letter from their attorney, dated March 8, 1993 (copy attached.)

B. Building Setbacks

The house shall be set back at least 200 feet from the property lines

13 April 1993
Date


Robert L. Liberty, Hearings Officer

Filed With the Clerk of the Board on April 15, 1993

Appeal to the Board of County Commissioners

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

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, April 27, 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, April 26, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.



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

NOTICE OF REVIEW

4-27-93

Filed for
P-1

1. Name: Davies, Colby, Anne

2. Address: 767 Willamette St. Suite 203 Eugene, OR 97401

3. Telephone: (503) 687 - 1004

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

David & Jo Ann Plant 1701 River Loop 1 Eugene 97404

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

Approval of conditional use request for
non-resource related single family dwelling, with conditions

Hearings Official

6. The decision was announced by the Planning Commission on April 15, 1993

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

David Plant, representing himself and his wife, Jo Ann,
appeared and participated in the hearing before the hearings
official. Both appellants, David and Jo Ann Plant, and their
representative submitted additional written materials following
the hearing. Appellants are, therefore, parties to the
proceeding pursuant to MCC 11.15.8260(B)(2).

Please return this original form. AS

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

see attached sheet

9. Scope of Review (Check One):

(a) ☒ On the Record

(b) ☐ On the Record plus Additional Testimony and Evidence

(c) ☐ De Novo (i.e., Full Rehearing)

10. If you checked 9(b) or (c), you must use this space to present the grounds on which you base your request to introduce new evidence (Use additional sheets if necessary). For further explanation, see handout entitled *Appeal Procedure*.

Signed: Anne C. Davis Date: Apr 122, 1993

For Staff Use Only

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 58 min x \$3.50/minute = \$ 203.00

Total Fee = \$ 503.00

Received by: AC

Date: 4/26/93 Case No. C2420-9-2

BEFORE THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF THE)
APPROVAL OF A NONFOREST)
DWELLING FOR DAVID AND) CU 20-92, #544
JO ANN PLANT)
(Assessor's Map 1S-3E, Section 21, tax lot 32))

BASIS FOR APPEAL

BY DAVID & JO ANN PLANT

INTRODUCTION

The setback requirement set forth in Multnomah County Code 11.15.2194(F) is a recommended setback; it recognizes that the terrain, the soil or some other natural features might create a situation where conformity with the 200-foot recommended setback is not possible. Other siting criteria and the topography of the tract must be considered. It is clear that the 200-foot setback will not be possible in this situation.

MULTNOMAH COUNTY CODE CRITERIA

Multnomah County Code 11.15.2194(F) provides: "Building setbacks of at least 200 feet shall be maintained from all property lines, **wherever possible**, except:

- (1) A setback of 30 feet or more may be provided from a public road, or
- (2) The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access." (Emphasis supplied).

The hearings official approved this application for a conditional use permit with several conditions. One of those conditions, Condition B, provides, "The house shall be set back at least 200 feet from the property lines." (p. 21). Appellants challenge this condition.

DISCUSSION

Setback Requirement

A plot plan was prepared and submitted as part of the record. It is a very detailed plan of the intended location of the dwelling on the property. The siting of the house, as shown on the plot plan, approximately 150 feet from the eastern property line and approximately 115-125 feet from the northern property line was not a mistake. The planning of the location and the design of the intended dwelling, including the attached garage, were both carefully considered by appellants before an application was even filed.

Distance from Septic and Drainfield

The intended location of the house is on a flat portion on the northeast corner of the property and of the clearing. The contour lines show clearly that the available locations on the property for siting a dwelling are extremely limited by the steep slopes on the western portion of the property and by a ravine along the northern side. The hearings official concluded, "the homesite is within a clearing on the only relatively level portion of the property, a bench halfway up the hill." (p. 15).

The dwelling is sited on the top portion of the level part of the clearing. This leaves just enough room to locate the septic and drainfield at a sufficient distance from the house, but still on a level part of the property. A siting of the house 200 feet from the property lines would require moving the location of the septic and drainfield further down the hill, onto a very steep portion of the parcel, which would be unacceptable as well as unfeasible.

Access to Water Source

MCC 11.15.2194(B) provides: "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." (Emphasis supplied). The hearings official decision points out that "perennial water source" is nowhere defined in the code. (p. 15). Therefore, it is unclear whether it is Kelly Creek along Rodlun Road or the well that must be accessible. The well and pond will serve the fire suppression needs on the property; appellants have, therefore, provided in their plot plan for a 16-foot access to those water sources. It is the pathway to those sources that must be clear.

When the well was dug, an access was made from the end of the driveway to the well. The siting of the house as indicated on the plot plan will allow access to the well and pond, located on the southeast corner of the clearing, along that pathway. If appellants were required to site the dwelling 200 feet from the property line, the dwelling would cut off the desired, indeed necessary, access for fire suppression equipment to reach the well and pond.

Excavation and Fill

Aside from the aforementioned concerns, locating the dwelling as required by the condition would necessitate additional excavation and filling on the property that would not only add to the expense but would further degrade the natural condition of the property.

Tree-Length Setback

The hearings official decision adds that the 200-foot setback is "the minimum necessary to maintain the 'two tree-length' setback (along the slope) needed to allow for proper tree felling, recommended by the forester, Scott Ferguson." (p. 16). However, the decision also

Appellants' Statement of Basis for Appeal

states, "The siting standards in MCC 11.15.2194 were not adopted to prevent conflicts with resource management." (p. 7). Nothing in the record indicates whether the trees are 100 feet tall, 50 feet tall, or any other particular height. Nothing in the record, therefore, supports the conclusion that only the 200-foot setback would satisfy a two-tree length setback. The house is located as far from the property lines as possible while still allowing for feasible construction on the parcel.

Minimum Floor Area

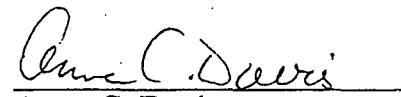
The building design to be used by appellants will be American Institute of Building Design, plan no. 1005-1D, not plan no. 1005-1A, as specified in the hearings official decision. (p. 16). The proposed dwelling will still exceed the minimum of 600 square feet per MCC 11.15.2194(I).

CONCLUSION

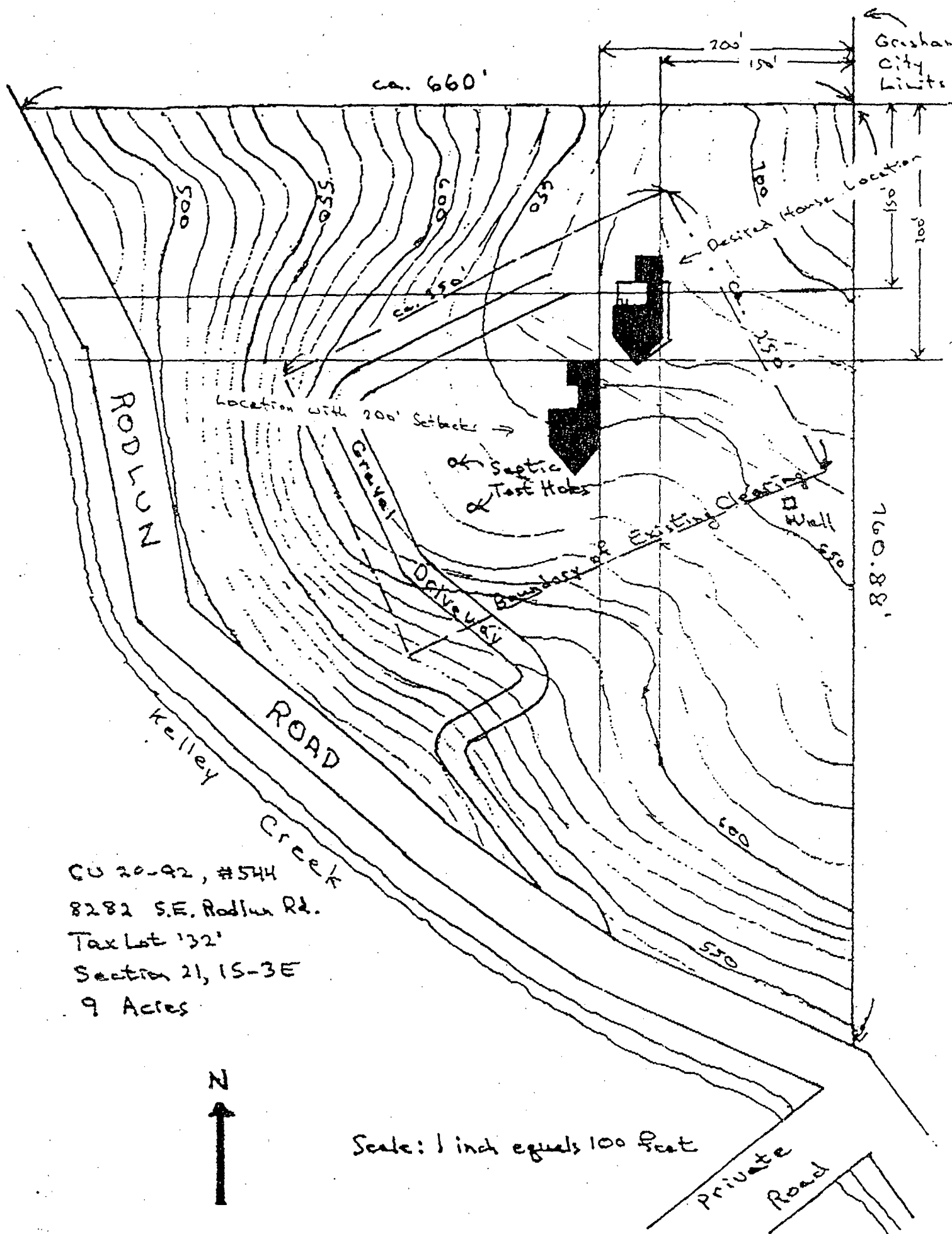
The siting of the dwelling as required by Condition B set forth in the hearings official decision is not possible or feasible. A setback of 200 feet from the property line would block the intended access to the water supply for fire suppression, it would interfere with the septic and drainfield location and would require intensive excavation and filling that would otherwise be unnecessary. The setbacks provided in appellants' plot plan satisfy the minimum yard dimensions and other requirements set forth in MCC 11.15.2178.

DATED: April 22, 1993

JOHNSON & KLOOS
Attorneys at Law


Anne C. Davies
Of Attorneys for Appellants

Phone 687-1004
FAX 687-1021



CU 20-92, #544
 8282 S.E. Rodlun Rd.
 Tax Lot '32'
 Section 21, 1S-3E
 9 Acres



Scale: 1 inch equals 100 feet

Meeting Date: April 27, 1993

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 3-93 Decision

BCC Informal (date) BCC Formal April 27, 1993 (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: 5 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 3-93 Review the Decision of the Hearings Officer of April 15, 1993, approving conditionally for 6 month trial period, subject to testing of the efficacy of the conditions and an automatic renewal hearing, conditional use request to allow for a maximum of a 50 sow plus 250 offspring hog farm, for property located at 16601 SE Foster Road.

(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
1993 APR 19 PM 11:19
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. 043-93

☒ 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 25

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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

BOARD OF
COUNTY COMMISSIONERS
1993 APR 19 PM 1:19
MULTNOMAH COUNTY
OREGON

(CL/1)

CASE NAME: Kline Hog FarmNUMBER CU 3-93

1. Applicant Name/Address

Corey Kline
16631 SE Foster Road
Portland 97236

ACTION REQUESTED OF BOARD

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

2. Action Requested by applicant

Conditional Use approval for a maximum of 50 sow, plus 250 offspring, hog farm. The hogs will reside within an existing barn and an outside fenced area measuring 160 x 173 feet located north of the barn.

3. Planning Staff Recommendation

Denial

4. Hearings Officer Decision:

Approval, subject to a conditions

5. If recommendation and decision are different, why?

The Hearings Officer found the evidence sufficient to satisfy the applicable approval criteria.

ISSUES

(who raised them?)

- a. Smell, noise and possible groundwater contamination (neighbors).

Do any of these issues have policy implications? Explain.

No



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

Decision

This Decision consists of Findings of Fact and Conclusions

April 15, 1993

CU 3-93, #534

**Conditional Use Request
(Hog Farm)**

I. APPLICANT'S REQUEST

Applicant requests Conditional Use approval for a maximum of 50 sow, plus 250 offspring, hog farm. The hogs will reside within an existing barn and an outside fenced area measuring 160 x 173 feet located north of the barn.

Location: 16631 SE Foster Road

Legal: Tax Lots '14' and '168', Section 19, 1S-3E, 1991 Assessor's Map

Site Size: 7.3 acres'

Size Requested: Same

Property Owner: Corey W. Kline
16631 SE Foster Road 97236

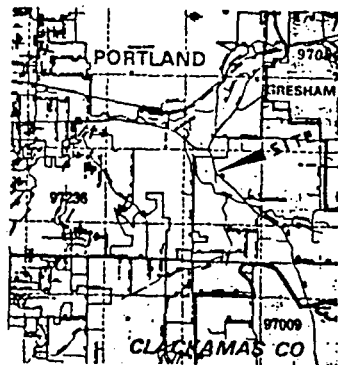
Applicant: Same

Comprehensive Plan: Rural Residential

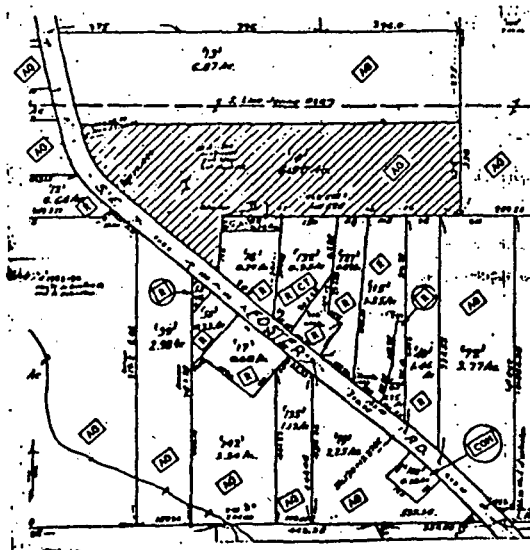
Present Zoning: RR

Hearings Officer

Decision: Approve conditionally for 6 month trial period, subject to testing of the efficacy of the conditions and an automatic renewal hearing.



VICINITY MAP



PLOT MAP

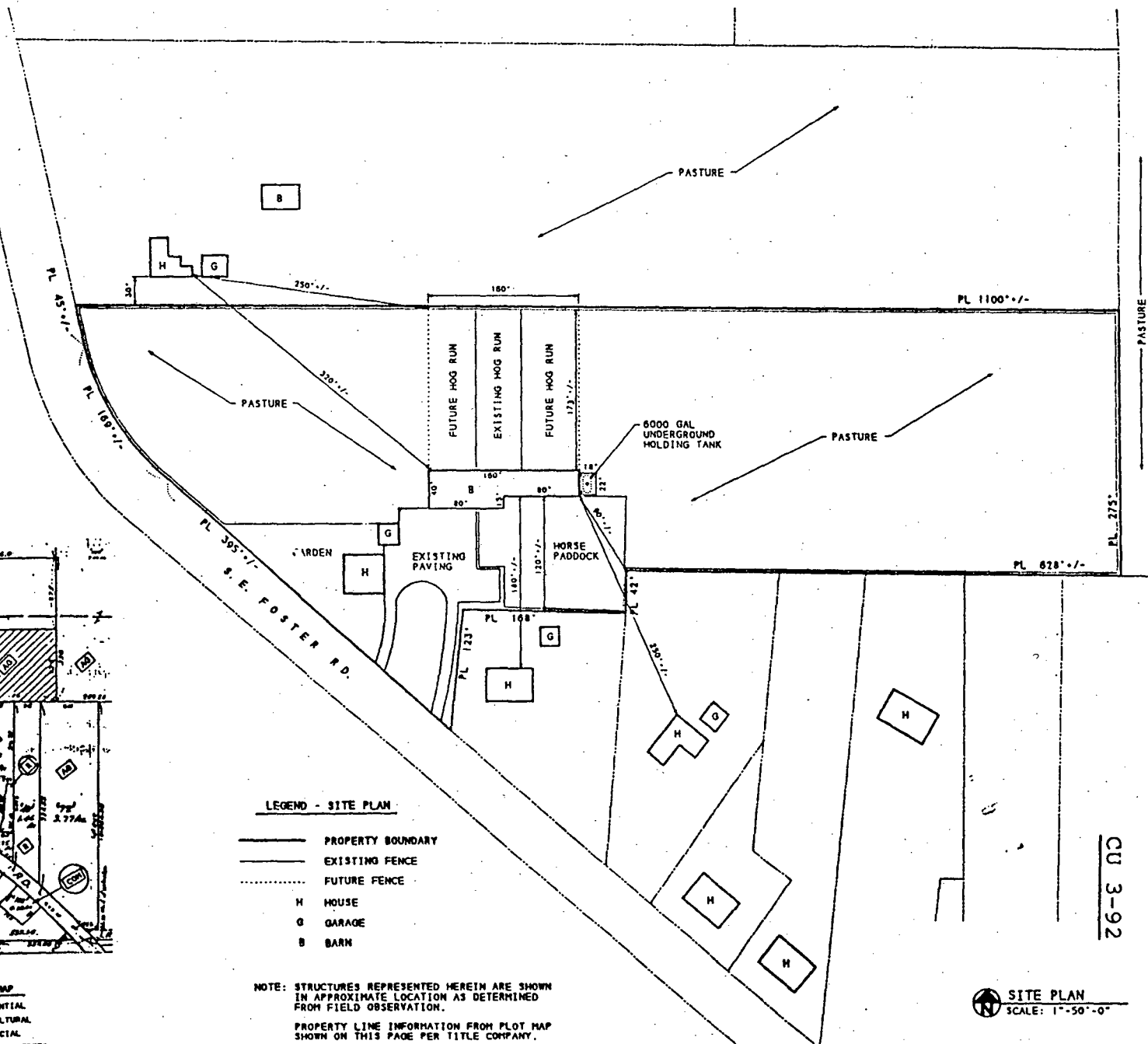
LEGEND - PLOT MAP

- [R] RESIDENTIAL
- [AO] AGRICULTURAL
- [COM] COMMERCIAL
- [CT] CHRISTMAS TREES

- LEGEND - SITE PLAN
- PROPERTY BOUNDARY
 - EXISTING FENCE
 - FUTURE FENCE
 - H HOUSE
 - G GARAGE
 - B BARN

NOTE: STRUCTURES REPRESENTED HEREIN ARE SHOWN IN APPROXIMATE LOCATION AS DETERMINED FROM FIELD OBSERVATION.

PROPERTY LINE INFORMATION FROM PLOT MAP SHOWN ON THIS PAGE PER TITLE COMPANY.



CU 3-92

SITE PLAN
SCALE: 1"=50'-0"

COREY KLINE PROPERTY - C.U.P.

PAID
14211 SE FOSTER
4803 NE SANDY
COREY KLINE

112 S.E. 27th
Portland, Oregon 97215
(503) 234-7272
BX 15041 97215



II. PROCEDURAL MATTERS

A. Parties To The Proceeding

1. Applicant and Proponents

The applicant's name and address is:

Corey Kline 16631 SE Foster Road, Portland, Oregon 97236

The following persons testified orally or in writing on their own behalf, in support of the application:

Dan Frasier	???
Ron Kotje	???
Craig Lukesh	16610 SE Foster Road, Portland, Oregon 97236
Doris Obrist	16600 SE Foster Road, Portland, Oregon 97236
Alfred (Fritz) Obrist	<i>ibid.</i>
Loren Obrist	17070 SE Foster Road, Portland, Oregon 97236
Lowell Smith	???

The following persons testified orally or in writing in opposition to the proposed use:

Bob Allen	16900 SE McKinley, Portland, Oregon 97236
Scott Ally	17036 SE McKinley, Portland, Oregon 97236
Leland Armstrong	17522 SE McKinley, Portland, Oregon 97236
Marlene Armstrong	<i>ibid.</i>
Charles Balkwill	16750 SE Foster Road, Portland, Oregon 97236
Dorothy Barnes	16717 SE Foster Road, Portland, Oregon 97236
Norma Barnes	<i>ibid.</i>
W. W. Barnes	<i>ibid.</i>
Alan Bauch	16520 SE Foster Road, Portland, Oregon 97236
David Bright	16520 SE Foster Road, Portland, Oregon 97236
DeAnn Bright	<i>ibid.</i>
Scott Campbell	7610 SE 162nd, Portland, Oregon 97236
Sandra Campbell	<i>ibid.</i>
Eileen Calhoun	7845 SE 162nd, Portland, Oregon 97236
John Calhoun	<i>ibid.</i>
Harold J. Davis	8001 SE 162nd Avenue, Portland, Oregon 97236
Vicki Davis	<i>ibid.</i>
Mark Deegan	16710 SE Foster Road, Portland, Oregon 97236
Susan Deegan	<i>ibid.</i>
Bruce Gilbertson	16517 SE Foster Road, Portland, Oregon 97236
Veryl Gelison	7800 SE 162nd, Portland, Oregon 97236
Joyce S. Hansen	17030 SE McKinley, Portland, Oregon 97236
Lawrence A. Hansen	<i>ibid.</i>
Earl E. Hawks	7615 SE 162nd, Portland, Oregon 97236
June Hawks	<i>ibid.</i>
Karen K. Hinkle	16005 SE Taggart, Portland, Oregon 97236

Wayne S. Hinkle
Mary E. Holscher
Ronald G. Holscher
Tamara Holscher
Ted Husky
Robert Williams
Donna Lee Williams
Catherine Imhoff
Ed Imhoff
Dolores (Dee) Kilby
John M. Kilby
Cynthia A. Kruger
Michael E. Kruger
Philip Lithblom
Faith Lynch
James Lynch
Roslind Mickey
Bill Miller
Sandy Miller
Thomas C. Mosser
Cathy Moyer
Donald Oakley
Marilyn Oakley
Larry Oliver
Mark Perrett
Ken Robb
D. M. Robinson
Jerry Robinson
Wade Robinson
Erica Randol
Glenn Randol
Karen S. Randol
Sally Sandstrom
A. M. Shrock
Lucille Shrock
Arvella Smith
Christine Smith
L. I. Stanton
Juanita Strufl
??? Strufl
Mayalaine Stump
Ray Stump
Lyle D. Sumner
Peggy Sumner
Joseph E. Twombly
Joe Why
INDECIPHERABLE

ibid.
16530 SE Foster Road, Portland, Oregon 97236
ibid.
ibid.
7819 SE 162nd, Portland, Oregon 97236
16515 SE Foster Road, Portland, Oregon 97236
ibid.
16870 SE Foster Road, Portland, Oregon 97236
ibid.
16801 SE Foster Road, Portland, Oregon 97236
ibid.
17424 SE McKinley Road, Portland, Oregon 97236
ibid.
16927 SE Foster Road, Portland, Oregon 97236
16927 SE Foster Road, Portland, Oregon 97236
ibid.
16517 SE Foster Road, Portland, Oregon 97236
7803 SE 162nd, Portland, Oregon 97236
ibid.
8031 SE 162nd, Portland, Oregon 97236
17340 SE Foster Road, Portland, Oregon 97236
16911 SE Foster Road, Portland, Oregon 97236
ibid.
16517 SE Foster, Portland, Oregon 97236
7815 SE 162nd, Portland, Oregon 97236
16717 SE Foster Road, Portland, Oregon 97236
16780 SE Foster Road, Portland, Oregon 97236
ibid.
ibid.
9605 SE 190th Drive, Portland, Oregon 97236
ibid.
ibid.
16940 SE McKinley Road, Portland, Oregon 97236
16809 SE Foster Road, Portland, Oregon 97236
ibid.
16565 SE Foster Road, Portland, Oregon 97236
ibid.
17320 SE McKinley, Portland, Oregon 97236
16711 SE McKinley, Portland, Oregon 97236
ibid.
17032 SE McKinley, Portland, Oregon 97236
ibid.
8015 SE 162nd Avenue, Portland, Oregon 97236
ibid.
16565A SE Foster Road, Portland, Oregon 97236
16560 SE Foster Road, Portland, Oregon 97236
7801 SE 162nd, Portland, Oregon 97236

3. Party Status

In the absence of any challenges to their standing, I find the preceding persons to be parties to the appeal, as specified by MCC 11.15.8225. These persons, or their representative(s), should receive notice of this decision.

4. Representatives And Witnesses

In addition to these persons testifying on their own behalf, the following persons testified in person and/or in writing, but only as representatives on behalf of the parties:

David Kimmel
Don Hardy

122 SE 27th St., Portland, Oregon 97214
President, Planning Consultant, PDG (Planning/Design Group), representing the applicant

Larry Campbell

OSU Extension Agent, appearing as a witness on behalf of the applicant

William C. Cox

0244 SW California Street, Portland, Oregon 97219 Attorney representing opponents Smith, Randol, Iiams, Robinson and Holscher.

B. Impartiality Of The Hearings Officer

Before and after the hearing I had no *ex parte* contacts with any of the parties during which I received evidence or arguments relevant to this application.

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

C. Alleged Procedural Error

During the course of the public hearing on February 1, 1993, Robert Iiams testified that the County had committed a procedural error by failing to provide individual written notice to potentially affected persons, who lived or owned property beyond the 250 foot notice area. Mr. Iiams felt a wider notice area was necessary given the distance over which the hog farm's odors could be smelled, (which would include properties near the fields which were used as the site for spreading the manure) and given the large lot sizes in the area.

I find that no procedural error was committed because: (1) The County has no duty to provide individual written notice beyond 250 feet, MCC 11.15.8120(b), .8220(C)(2)(b), ORS 197.763(2)(a)(B); (2) A notice about the hearing was posted on the property and published in the January 15, 1993 issue of *The Oregonian*, thereby reaching persons beyond the 250 foot notice area; (3) There was no evidence of prejudice, given the participation of many people at the December 29, 1992, community meeting and the February 1, 1993 hearing, who lived beyond the 250 foot notice area.

D. Burden of Proof

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

III. Review Of The Standards, Analysis Of The Evidence, Findings Of Fact And Conclusions Of Law

A. Introduction: The Proposed Use

The applicant describes his swine (hog and pig) farm, and the methods for controlling odors from this operation, as follows:

*The property has historically been used to raise hogs as well as other farm animals. The owners' intent is to meet the requirements of the zoning code and to receive conditional use approval for a maximum 50 adults and 250 juveniles hog farm. * * * **

** * * * **

The hogs on the site currently reside within the enclosed barn with a concrete floor, and in good weather are allowed within a 50 foot by 173 foot outdoor area on the north side of the barn enclosed by an electrical fence. The outdoor fenced hog runs are to be 160 feet by 173 feet in area. The hog feeding areas are within the barn and the manure is washed twice a day into 4 inch sewer lines within the barn floor, and then conveyed to a 6,000 gallon underground holding tank.

The holding tank is covered with an upper and a lower manhole cover which eliminated odors escaping from the tank. Bacteria and enzymes are added to the holding tank to liquefy the manure and eliminate approximately 85% of its odor. The hog manure within the hog runs is harrowed into the surrounding pasture land in accordance with accepted agricultural practices.

The hog manure from the holding tank is pumped to a honey wagon and spread as a fertilizer on the site as well as on the Kelly Creek Strawberry Farm property. Currently the Kelly Creek Farm has been taking all the hog manure that is available from the existing operation. Additionally, other neighbors have requested manure from the site to fertilize their property, which comprises a total of approximately 100 acres.

** * * * **

The method of manure collection and use as fertilizer in accordance with acceptable management and agricultural standards. Swine manure is considered a natural or organic fertilizer which naturally breaks down in the soil and provides nutrients to be absorbed by the crops. Rather than being detrimental, swine manure is actually helpful to the soils and crops.

B. The Area And Its Zoning

The applicant's property is 7.3 acres on the east side of SE Foster Road, about 500 feet to the south of the Portland city limits, which at his point is coterminous with the regional urban growth boundary (UGB). The regional UGB continues bends to the north and east, parallel to, and about 1,300

feet north of the applicant's northern property line. The portion of the UGB west of the City of Gresham, lies a mile or two to the east.

Properties in the area have a Rural Residential designation in the Comprehensive Plan, implemented by Rural Residential (RR) zoning. In the RR zone, single family residences are allowed on all existing Lots of Record regardless of size and on newly created lots five acres or greater.

The properties within the City of Portland are currently zoned for 20,000 square foot lots.

C. Standards In The Zoning Ordinance Governing The Decision

In the RR-5 zone, hog farms are authorized as a condition use by MCC 11.15.2212(B)(5): "Raising of four or more swine more than four months of age;". There are no separate criteria in the zone for this use, but MCC 11.15.2212(B)(5) cross-references the following conditional use standards in 11.15.7120:

(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;*
- (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 area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;*
- (6) Will not create hazardous conditions;*
- (7) Will satisfy the applicable policies of the Comprehensive Plan.*

Pursuant to MCC 11.15.7120(7) and the terms of the Comprehensive Plan itself, I find that the applicant must satisfy the following policies in the Comprehensive Plan:

Policy 2: Off-Site Effects

Policy 13: Air, Water and Noise Quality

Policy 16: Natural Resources

Policy 37: Utilities

D. Findings Of Fact And Conclusions Of Law Addressing The Conditional Use Standards In MCC 11.15.7120(A)(1) The Zoning Ordinance

1. MCC 11.15.7120(A)(1): The proposed use *Is consistent with the character of the area.*

(a) Interpreting The "Character Of The Area" Standard

Recent appellate decisions require reviewable interpretations of local ordinances¹. There are two questions of interpretation of MCC 11.15.7120(A)(1) which have arisen in the course of this proceeding.

The first concerns how "character" is measured. Both parties have referred to elements in the Rural Residential zone as the proper basis for interpreting character.

The applicant stated:

The character of the area is defined by the Primary Uses listed in section 11.15.2208 MCC of the Rural Residential Zone. Those being "Raising and harvesting of crops, raising of livestock and honeybees, or any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC 2212(B).

Applicant's Rebuttal Narrative at page 1.

The opponents argue that because a hog farm is not one of the primary uses, but a conditional use allowed under MCC 11.15.2212(B), the proposed use is not consistent with the character of the area. Letter from William Cox, dated February 15, 1993, at page 1.

I conclude that "character of the area" refers, first, to actual conditions in the area and only secondarily to uses authorized in the zone. The statements of purpose in the zone and the lists of authorized uses become significant only when the proposed use would only be consistent with nonconforming or illegal uses. Under those circumstances, consistency cannot be measured against existing uses, but against allowed uses.

The second issue is whether the odor from the swine must be "consistent with the character of the area." During the hearing I queried whether the "character" standard referred only to the

¹The Court of Appeals has made it clear that while it is obligated by the Supreme Court's decision in *Clark v. Jackson Co.*, to defer to any reasonable local interpretation of a local standard (that does not carry out a state mandate), then as a corollary of that decision, the Court of Appeals has held that local governments must make an interpretation of ambiguous ordinance provisions and that interpretation must be appropriately articulated and logically supported to permit LUBA's review; in the absence of a adequate interpretation of the ordinance, LUBA's duty is to remand the decision to the local government. *Citizens for Responsible Growth v. City of Seaside*, 114 Or App 233, ___ P2d ___ *recon* 116 Or App 275, 277-278, ___ P2d ___ (1992); *Larson v. Wallowa County*, 116 Or App 96, 103, ___ P2d ___ (1992); *Weeks v. City of Tillamook*, 117 Or App 449, 453, ___ P2d ___ (1992); *West v. Clackamas County*, *supra*, 116 OR App at 89 n 2. And see *Multnomah County v. City of Fairview*, 18 Or LUBA 8 (1989) regarding this County's obligation to clarify this conditional use standard.

appearance of the proposed use. The applicant's representative averred the standard was "primarily aesthetic." The staff and parties did not provide any information about County precedents addressing the components of "character" under the conditional use standard.

I hereby interpret the "character" standard in MCC 11.15.7120(A)(1) as encompassing the consistency of the visual, auditory and olfactory aspects of a proposed use with those in the area.

(b) Visual Character

Based on the application, the Staff Report, testimony at the hearing and my inspection of the site and surrounding properties, I make the following findings concerning the visual character of swine farm, the area and their consistency:

The subject property is nearly flat, with a slight slope to the west. Except for the area around the house, the property is fenced pasture used for cattle and horses. The outdoor area used by the hogs is a fenced area north of and adjacent to the barn.

Properties within 1/2 mile range in size from 0.25 to 15 acres. There are homes on many of the parcels; there are 24 single family residences within 1000 feet of the property. Much of the surrounding area is rolling hills, used for a mixture of commercial and hobby farming.

To the southeast is what appears to be a commercial farm owned by Fritz and Doris Obrist producing strawberries (Kelly Creek Strawberry Farm) and to the south of the property is a Christmas tree farm. Many of the properties nearby are grazed by horses, cattle or both. According to un rebutted testimony of the applicant, property south of Foster Road owned by Fritz and Doris Obrist is being used to raise 85 horses. Loren Obrist owns property southeast of the site which he is using to raise 15 racing horses. The Randol's property, adjoining the Kline property to the north is being used to raise 7 head of cattle. Other properties in the area include horse boarding stables.

Many of the properties are the site of wooden or metal structures, which presumably used as barns and for equipment storage.

There are also some commercial uses in the vicinity including a gas station at the intersection of SE Foster and Jenne Roads and signs for retail sales are found on some of the properties.

While there are no other hog farms nearby, I find that the applicant's use (the hog farm and grazing of other animals on his property) "is consistent with the visual character of the area."

(c) Auditory Character

The noise from the animals inside the barn during the site inspection was intermittently very loud but outside the sound was effectively muffled by the building.

John Kilby challenged the noise level from machinery used to apply the manure to nearby fields.

I find that these livestock and machinery noises, as heard off-site, are neither so loud or so different in character as to fail the "consistency" test in MCC 11.15.7120(A)(1).

There was testimony from Bruce Gilbertson and Arvella Smith objecting to the squealing sound made by the hogs during the slaughtering. Since there was no indication that other animals were slaughtered nearby and because this sound would be both distinctive and intrusive and thus inconsistent with the character of the area, I am imposing a condition that the applicant slaughter animals indoors, if at all.

(d) Olfactory Character

The bulk of the testimony presented by the opponents to the project concerned the smell from the hogs, or more specifically the hog and pig manure. The odor emanates both from the swine waste on site and from the manure spread on adjoining fields in the vicinity. In addition, two persons testified concerning the smell and smoke from pig entrails burned after slaughtering on site.

I will address each source of odor separately.

(i) Smell From The Animals And Their Waste On The Site

Testimony from several of the opponents indicated that smells from the animals on the property had been reduced as a result of the applicant's construction of various improvements late last summer, including the installation of the manure holding tank. Dolores Kilby, who testified that her home is 150 feet from the Kline property line, commented on the "stench" from the operation during the summer but noted that since the installation of the holding tank in late summer, she has not smelled the manure except when it is being spread. Bruce Gilbertson could not recall whether he had been able to smell the manure after the tank installation and Robert Iiams, who lives 200 yards away from the site (according to his estimate) did not recall smelling manure during October or November.

During the site inspection the smell in the barn itself was tolerable and the smell outside on the applicant's property, approximately 50 feet from the barn door, was only faintly detectable. The temperature inside the barn, with the doors open, was only in the mid 40's (fahrenheit) on that day.

The applicant testified that scentometer readings, using a scentometer borrowed from DEQ², showed dilution readings of 2 (out of a maximum dilution factor of 172) from just aside the barn. This reading would be consistent with the "0" rating standard (D/T reading of 1 to 2) for odors in "residential and commercial areas" in OAR 340-28-090(1), although agricultural uses are exempt from these standards. ORS 468A.020(1); OAR

²As described in technical literature from Barneby-Cheney, the manufacturer, submitted by the applicant, the scentometer is an ingenious measurement device developed by the U. S. Public Health Service. Air is drawn into the device and odors are removed by being passed through activated charcoal filters. This filtered, scentless air, is then mixed with unfiltered air. The degree of dilution of the odors is controlled through the size of the apertures regulating the mix of filtered and unfiltered air. The point at which the odor becomes detectable is called the "dilution to threshold" (D/T). Based on experience

While there was testimony to the contrary³, on balance this evidence leads me to conclude that the applicant's recent improvements may have controlled most of the odors originating on-site. However, the true test of the efficacy of these odor control measures will occur during the summer months.

Based on the qualified evidence suggesting control of odors from the site, I am granting approval for a six month trial period, from the date of this order, subject to an unannounced site inspection for the purposes of evaluating odor from the site during summer months and a public hearing on renewal of the permit. The renewal hearing will determine whether the hog farm has operated in conformance with the conditions of this approval and whether these conditions have been sufficient to assure compliance with the standards in the zoning ordinance.

The nature of the inspection and the renewal hearing are described in Condition D, below.

(ii) Smell From The Liquid Manure Spread On The Fields

Opponents testified that the smell from hog manure spread on the fields during the summer was intense.

Even some of the persons testifying on behalf of the applicant conceded that the smell from hog manure can be intense. Craig Lukesh, who lives next to the Obrist's strawberry field where some of the manure was spread, the smell was "intense", but that while he disliked the smell, it lasted only for a day or two and that he accepted such smells as part of the rural lifestyle. Lowell Smith, a pig farmer from Clackamas County has an operation of comparable size and admitted his operation can "smell up Pleasant Valley."

I find that the smell from the liquid pig manure spread on the fields, although lasting only a few days, has interfered with the residential use of adjoining and nearby properties. For that reasons, I am adopting conditions intended to control how and where the liquid manure can be spread, described in Condition A, below.

(iii) Smell From Burning Of Entrails

As a condition of approval, the applicant is not permitted to burn pig entrails or other waste from slaughtering on site.

with the device, odors at D/T levels of 7 "will probably cause complaints" while a D/T of 31 can be described as a "serious nuisance." The Oregon Department of Environmental Quality has incorporated scentometer D/T ratings into its air quality standards. OAR 340-28-090(1).

³For example, Ron Holscher, who testified that he lives 500 to 700 feet away, stated that he smelled odors from the operations in the "last few weeks" before the February 1, 1993 hearing. He estimated that he smelled the hog farm on six occasions since September.

2. MCC 11.15.7120(A)(2): The proposed use *Will not adversely affect natural resources*;

There have been four allegations concerning adverse effects on natural resources: (a) Adverse impacts on air quality because of odors from pig manure; (b) The contamination of surface waters with pig manure on Kline's farm; (c) The contamination of ground water resources due to spreading of the liquid manure in areas or during periods of a high water tables and/or poor soil percolation; (d) contamination of ground water from the chemical used to treat the hog manure; and (e) contamination of ground water with gasoline or gasoline distillates from the tank used to store the manure. I address each of these allegations in turn.

(a) Adverse Effects On Air Quality

The issue of the smell from hog manure on the hog farm has been addressed above. It is the intention of the conditions I have imposed pursuant to MCC 11.15.7120(A)(1) will be sufficient to satisfy the requirements of MCC 11.15.7120(2) with respect to odors.

(b) Contamination of Surface Waters

Two potential sources of contamination of surface waters from the hog farm itself were identified; the water collection and drainage system surrounding the manure tank and the hog runs, either directly through surface runoff or indirectly via system used to drain water from around the storage tank.

The applicant's subterranean manure holding tank, formerly used as a gasoline tank, has a capacity variously described as 6,000 and 6,600. In order to prevent flotation of the tank when the ground becomes wet⁴, he has surrounded the buried tank with sand and gravel.

At the time of the hearing he was in the process of installing a perforated plastic drainage pipe in a ditch running slightly downhill to the west to draw off water which seeps down around the gravel surrounding the tank. The bottom of the ditch was filled with crushed rock and over the top of the pipe and surrounding rock, plastic was to be laid to prevent surface water from infiltrating the drainage system. The pipeline terminates a few yards from a drainage ditch bordering Foster Road. This ditch in turn drains into other ditches and conduits which drain into seasonal Kelly Creek, about 500 feet from Kline's property line. Kelly Creek empties into a decorative pond less than a mile away. The pond in turn drains into Johnson Creek.

The opponents of the permit contend the applicant's drainage system would contaminate Kelly and Johnson Creeks, either through holes in the tank itself or from the swine manure in the outdoor pens north of the barn. The hog runs are about 250 feet from the ditch bordering Foster Road.

There was no evidence offered concerning the integrity of the holding tank. (As noted below) one opponent contended that the tank may have been contaminated with gasoline.

⁴The applicant's Water Pollution Control Facilities Permit warns the permittee: "Caution should also be taken with inground tanks in high groundwater conditions to prevent flotation of tanks."

However, he said nothing to rebut the applicant's testimony that the tank was sound. While the evidence on this issue is slight, I find there is no evidence that the holding tank will leak to oppose the testimony concerning its integrity. I conclude that the tank itself will not be a source of contamination of Kelly Creek or Johnson Creek.

With regard to the issue of surface water contamination of the drainage way, it makes no difference how manure comes to contaminate water, whether through surface run-off or percolation down to the drainage pipe.

I find that the opponents have raised the issue with sufficient specificity to require a response. However, no evidence was offered about what the identity of the natural resources⁵, other than clean water, the types or levels of contaminants or their effect on the natural resources.

In support of his position⁶, the applicant relies on his Confined Animal Feeding Operation (CAFO) permit, issued by the Oregon Department of Agriculture (Facility Identification Number 107570, Firm Number 101871, License Number 72839-99, dated December 2, 1992) and the associated Water Pollution Control Facilities Permit (Permit Number: 0800; Identification Number 107570, dated October 8, 1990) issued by the Oregon Department of Environmental Quality, issued pursuant to ORS 468.740.

The applicant's DEQ permit includes three special conditions relevant to this criterion:

1. *No direct discharge or potentially harmful indirect discharge to state waters is permitted. All manure, silage pit drainage, washdown waters, contaminated precipitation, and other contaminated wastewater shall be distributed on land for dissipation by evapotranspiration at agronomic application rates. For purposes of planning, designing, and implementation of a resource management system, components should be extracted from the Oregon Animal Waste Installation Guidebook, written by the Soil Conservation Service and distributed by the Natural Resources Division of the Oregon Department of Agriculture.*

⁵Johnson Creek is listed in the County's Goal 5 Inventory as "Site 7." The type of the resources present in the near Johnson Creek is described as "Open space, fish and wildlife habitat, water areas, wetlands, watershed and groundwater resources." *Id.* Within Errol Heights, Powellhurst, and Centennial communities, "the lands 100 feet on either side of the centerline of Johnson Creek have been identified and designated as areas of Significant Environmental Concern" to be protected with a SEC overlay zoning. *Id.* There is no SEC overlay zoning on properties within the land subject to RR zoning in the vicinity of the swine farm.

⁶In discussing this issue, the applicant noted that many of the properties nearby are used for grazing horses, cattle or both and these properties contain piles of unprotected manure. The applicant may be correct that his farm operation's effect is no different or worse than other operations. He may also be correct in his contention that other properties nearby may not be collecting and holding animal wastes to the same degree as he is. However, my decision must be based not on the relative impacts on natural resources or the distribution of the burden of their protection. This application can be evaluated only against the standard in MCC 11.15.7120(A)(2).

2. *Adequate waste storage shall be provided which will be sufficient to store all manure and wastewater during periods when it cannot be safely applied to cropland without contaminating waters of the state.*
3. *The permittee shall properly manage all parts of the wastewater disposal system. Prior to the wet winter months of each year, the wastewater containment or storage facilities shall be dewatered if necessary and cleaned of solids accumulations so that the full design capacity of the system is available for winter storage. Care should be taken during dewatering so that pond liners are not disturbed. Caution should also be taken with inground tanks in high groundwater conditions to prevent flotation of tanks.*

I find that these conditions, administered by DEQ and the Department of Agriculture, in combination with evidence supplied by the applicant, are sufficient to carry his burden as against allegations of potential harm unsupported by any evidence regarding the impact of the hog farm on water quality, until additional information becomes available.

However, because of the modest level of evidence offered on this important criteria, I am imposing a condition requiring the testing of the runoff from the applicant's property, including the water emptying into the ditch along Foster Road, during a rainy period. The circumstances of this testing are described in Condition B, below. The results of the test, and any suggestions concerning the control of pollutants from the swine operation, will be presented to the County for consideration at the renewal hearing, described in Condition D.

(c) Contamination Of Groundwater By Liquid Manure Spread On Fields

Testimony was offered by Ronald Holscher and other that many properties in the vicinity suffer from seasonal high water tables and/or poor percolation, as evidenced by problems with septic drain fields. This testimony was unrebutted.

During the site inspection, I observed puddles of standing water on the Obrist's strawberry field, which is bordered by Kelly Creek.

It is my hope the conditions I have imposed pursuant to MCC 11.15.7120(A)(1) regarding the times and methods of disposal of the liquid manure will be sufficient to satisfy the requirements of MCC 11.15.7120(2) with respect to the protection of groundwater in the area of the hog farm.

To confirm their adequacy, I am requiring testing of Kelly Creek above and below the Obrist's strawberry field, before and after manure is applied to the field, (if the applicant continues to use this site for this purpose), as described in Condition B.

(d) Contamination Of Groundwater By Gasoline Or Motor Oil Remaining In Tank

The allegation regarding residual gasoline in the tank is addressed below, under MCC 11.15.7120(A)(6) (relating to "hazardous conditions.")

3. MCC 11.15.7120(A)(3): The proposed use *Will not conflict with farm or forest uses in the area;*

The applicant's proposed use, the production of swine, is itself, a farm use. His manure is being used by some nearby farm operators. No argument or testimony was offered that his use would conflict with the growing of crops and raising of animals being conducted nearby or in the area.

There are small groves of trees nearby and on hills in the area there was no testimony that these lands were in forest use. Even if they were, the applicant's farm activities would have no conflicts with timber management and harvest in the area.

4. MCC 11.15.7120(A)(4): The proposed use *Will not require public services other than those existing or programmed for the area;*

The proposed use does not require any public services beyond those already provided to the applicant's house, which relies on a well for water and septic tank and drainfield for sewage disposal.

5. MCC 11.15.7120(A)(5): The proposed use *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;*

I find that the property is outside any of the big game winter habitat areas as shown on County maps.

6. MCC 11.15.7120(A)(6): The proposed use *Will not create hazardous conditions;*

Bruce Gilbertson testified that the applicant's manure holding tank had been previously used as a gasoline tank and that the 500 gallon "honey wagon" tank contained traces of motor oil. Mr. Gilbertson contended these traces of gasoline or motor oil could contaminate ground water supplies.

Mr. Kline responded that the storage tank had been cleaned prior to its installation. He also testified that Mr. Gilbertson himself conducted the welding on the tank, which Gilbertson believes would never have been undertaken if there had been any residual gasoline in the tank, given the risk of explosion.

It was also clear from the record that the "honey wagon" has already been used many times.

I find the applicant's rebuttal testimony on the issue of the cleanliness of the tanks convincing. The tanks will not create "a hazardous condition."

7. MCC 11.15.7120(A)(7): *The proposal will satisfy the applicable policies of the Comprehensive Plan.*

(a) Policy 2: Off-Site Effects

Policy 2 of the Multnomah County Comprehensive Framework Plan provides:

THE COUNTY'S POLITY IS TO APPLY CONDITIONS TO ITS APPROVAL OF LAND USE ACTIONS WHERE IT IS NECESSARY TO:

- A. PROTECT THE PUBLIC FROM THE POTENTIALLY DELETERIOUS EFFECTS OF THE PROPOSED USE; OR
- B. FULFILL THE NEED FOR PUBLIC SERVICE DEMANDS CREATED BY THE PROPOSED USE.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 14.

I find that the conditions imposed on the proposed use and its limited term of approval will protect the public from the potentially deleterious effects of the proposed use. As noted in the findings addressing MCC 11.15.7120(A)(4), the proposed use will not create any new or additional demands for public services.

(b) Policy 8: Rural Residential Land Area

I find Policy 8 inapplicable to quasijudicial land use decisions. By its terms, it is implemented through the adoption and application of rural residential zoning. When plan policies are to be applied to individual land use decisions, the text of the Plan makes express provision for this application.

(c) Policy 13: Air, Water and Noise Quality

Policy 13 of the Multnomah County Comprehensive Framework Plan provides, in relevant part:

FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASIJUDICIAL 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: (Etc.)

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 56.

The record contains the applicant's Contained Animal Feeding Operation permit (Facility Identification Number 107570, dated December 7, 1992) and the associated Water Pollution Control Facilities Permit (Permit Number 0800, Identification Number 107570, dated October 8, 1990).

As noted above, although there are air quality standards applicable to a region including Multnomah County limiting the production of odors to scentometer readings of 0 or 2,

depending on the land uses in the area, OAR 340-28-090 (1979), agricultural operations are excluded from this standard. ORS 468A.020(1); OAR 340-20-003(1) (1993).

Based on the review of the contents of these permits and the statutes and rules which the permittee must satisfy conducted in addressing MCC 11.15.7120(2), above, I find that the applicant has satisfied this policy.

I find that the use is not a "noise sensitive use" nor is this area a "noise impacted area."

While this use, like all uses, generates some noise, it does not generate noises which are greater or different than noise normally associated with agricultural operations allowed in the rural residential zone.

(d) Policy 16: Natural Resources

Policy 16 of the Multnomah County Comprehensive Framework Plan provides:

THE COUNTY'S POLICY IS TO PROTECT NATURAL RESOURCE AREAS AND TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT THE LONG-RANGE AVAILABILITY AND USE OF THE FOLLOWING WILL NOT BE LIMITED OR IMPAIRED:

- A. MINERAL AND AGGREGATE SOURCES;
- B. ENERGY RESOURCE AREAS;
- C. DOMESTIC WATER SUPPLY WATERSHEDS;
- D. FISH HABITAT AREAS; AND
- E. WILDLIFE HABITAT AREAS; AND
- F. ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT NATURAL AREAS.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 66.

There is nothing in the County's plan or the testimony presented or the record submitted to indicate that the resources listed in sections A., B., and F., are present on or near the site. (See the description of the Goal 5 inventory for Johnson Creek in footnote 5, in connection with the discussion of MCC 11.15.7120(A)(2), above.)

The conditions of approval regarding the disposal of manure and the testing of run-off are intended to assure protection of water supplies and streams. With those conditions and given the DEQ permitting process and criteria, I find these policies satisfied.

(e) Policy 37: Utilities

Multnomah County Plan Policy 37, "Utilities" provides:

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

WATER AND DISPOSAL SYSTEM

- A. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC SEWER AND WATER SYSTEM, BOTH OF WHICH HAVE ADEQUATE CAPACITY; OR
- B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- C. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE; OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

DRAINAGE

- E. THERE IS ADEQUATE CAPACITY IN THE STORM WATER SYSTEM TO HANDLE THE RUN-OFF; OR
- F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 167-168.

Based on the terms and context of the Policy, I interpret these elements of Policy 37 as applying to water supplies, sewage disposal and storm water disposal capacity for dwellings and uses other than farm use.

With respect to the residence on the property, according to the report from Phillip Crawford, Environmental Soils Specialist, dated October 27, 1992, sewage from the preexisting home is disposed of through an existing septic tank and drain field.

This evidence is sufficient to carry the applicants' burden of proof with respect to this portion of Policy 37.

The remainder of Policy 37 provides:

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

ENERGY AND COMMUNICATIONS

- H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND
- I. COMMUNICATIONS FACILITIES ARE AVAILABLE

FURTHERMORE, THE COUNTY'S POLICY IS TO CONTINUE COOPERATION WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, FOR THE DEVELOPMENT AND IMPLEMENTATION OF A GROUNDWATER QUALITY PLAN TO MEET THE NEEDS OF THE COUNTY.

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 168.

The findings addressing MCC 11.15.7120(A)(2), above, are sufficient to satisfy the first part of subsection G. With respect to the issue of the alteration of drainage on adjoining land, the use has already been in operation and there has been no observable effect on drainage.

According to the application form, the residence and breeding operation already have electric power supplied by Portland General Electric and telephone communications. This satisfies subsections H and I.

The concluding paragraph of Policy 37 is inapplicable to this quasijudicial proceeding.

(f) Plan Policy 38: Facilities

Multnomah County Plan Policy 38, "Facilities" provides:

THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:

SCHOOL

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

FIRE PROTECTION

- B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND

- C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENTS [sic] ON THE PROPOSAL.

POLICE PROTECTION

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

Multnomah County Comprehensive Framework Plan; Volume 2: Policies (September 1983) at 169-170.

The proposed swine farm use does not require additional school or police services.

The application form indicates the property is already served by Rural Fire Protection District #10. The house has been on the site for many years.

I find Policy 38 is inapplicable to the swine farm use.

E. Other Issues Raised Regarding Compliance With The County Zoning Ordinance

1. The Status Of The Operation As A "Feedlot."

On behalf of several of the opponents, Mr. Cox contended that the applicant's proposed use meets the following definition of "feed lot" contained in MCC 11.15.0010: "An pen, corral or structure wherein livestock are maintained in close quarters for the purpose of fattening for market."

Since feed lots are allowed only conditionally in the RR-5 zone, MCC 11.15.2212(B)(4), Mr. Cox contends that the applicant's failure to request a conditional use permit for a feedlot is grounds for denial.

I conclude that Mr. Kline's operation meets the definition of "feed lot." However, there is no difference in the application process or criteria governing this use. Feed lots and raising swine are both uses in the Rural Residential zone allowed conditionally under MCC 11.15.2212(B) subject to the "provisions of MCC .7105 through .7640." This omission did not change the procedures used, the type or relevant of the evidence introduced or the standards used in making the decision.

I find no error in the applicant's failure to apply for a "feed lot" as well as permission to raise "four or more swine." To the extent the applicant erred in failing to list "feedlot" as well as "swine farm" on his application, it was an error in form only, not substance.

2. Signs Advertising Animals And Meat

The opponents have raised issues about signs used to advertise the applicant's products, live animals and meat. Opponents Exhibit G (photographs of the signs.)

MCC 11.15.2214 allows as an accessory use in the Rural Residential zone, "(A) Signs, pursuant to the provisions of MCC 11.15.7902-.7982."

As explained in the following subsection, signs for the purpose of advertising wholesale and retail sales are subject to review by the Planning Director through the design review process. The signs will be reviewed pursuant to MCC 11.15.7902-.7982 in the course of design review.

3. Wholesale And Retail Sales

Donald and Marilyn Oakley questioned the legality of the applicant's wholesale and retail sales of animals and meat. Letter from Mr. and Mrs. Donald Oakley, dated February 2, 1993.

MCC 11.15.2210(C) lists as a "use permitted under prescribed conditions:"

(C) Wholesale or retail sales, limited to those products raised or grown on the premises, subject to the following condition:

The location and design of any building, stand or sign in conjunction with wholesale or retail sales shall be subject to approval of the Planning Director on a finding that the location and design are compatible with the character of the area; provided that the decision of the Director may be appealed to the Hearings Officer pursuant to MCC .8290 and .8295.

The sales of hogs, pigs and meat products produced on the premises is permitted. As noted above, the signs used for this purpose are subject to the design review process of MCC 11.15.8290 to .8295.

4. Permit For Spreading Manure

At the hearing Mr. Cox raised the issue of whether a separate permit was needed for spreading the liquid manure.

I find the spreading of manure is authorized as a use "customarily accessory" to the swine farm. MCC 11.15.2214(D).

IV. SUBSEQUENT PROCEEDINGS

A. Design Review

MCC 11.15.7125, a subsection of the conditional use section of the zoning ordinance, provides that "[u]ses authorized under this section shall be subject to design review approval under MCC .7805 through .7865."

The applicant must submit a design review plan addressing the standards for advertising signs found in MCC 11.15.2210(C) and the standards in MCC 11.15.7942 and the other applicable provisions of 11.15.7902 to .7982, parking, landscaping and other matters addressed by MCC 11.15.7805 to .7870.

B. Renewal Hearing Prior To Conclusion Of Six Month Trial Approval Period

As noted in the conditions of approval, this matter will be set for a subsequent hearing before a county Hearings Officer, prior to the expiration of the six-month trial approval period.

V. CONDITIONS OF APPROVAL

MCC 11.15.7115 allows the approval authority to:

*attach conditions and restrictions to any use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use * * * performance standards, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.*

MCC 11.15.8240 provides in pertinent part:

(A) The Planning Commission or Hearings Officer may approve an application as submitted, deny it, or approve it with such modifications or conditions as may be necessary to carry out the Comprehensive Plan or to obtain the objectives of (D)(2) below.

** * * * **

(D) The following limitations shall be applicable to conditional approvals:

(1) Conditions shall be fulfilled within a time limitation set forth [sic] in the approval thereof, or if not time limit is set, within a reasonable time.

(2) Conditions shall be reasonably designed to fulfill public needs emanating from the proposed land use in either of the following respects:

*(a) Protection of the public from the potentially deleterious effects of the proposed use; * * **

Based on these authorizations, I approve the use for a limited time, subject to the following conditions and subsequent design review.

A. Location, Method And Conditions Governing The Spreading Of Hog And Pig Manure

If the applicant spreads swine manure within a Rural Residential zone, it shall be injected by tube, into a furrow and the furrow immediately recovered, in the manner described by OSU Extension Agent Larry Campbell. If the applicant chooses not to use this method, he shall dispose of the swine manure within an Exclusive Farm Use zone, where agricultural uses have priority over residential use.

Swine manure shall not be spread in any area or during any weather conditions in which this method of disposal might contaminate domestic groundwater supplies.

The applicant shall maintain a log identifying when and how manure from the operation is disposed off, giving the address, date and the volume disposed. A copy of the log shall be transmitted to the county, at the renewal hearing.

B. Testing For Contamination of Surface Waters

Runoff water from the field containing the hog runs shall be tested during a rainy period, by a public or private laboratory. At least one of the samples shall be taken from the ditch along Foster Road, during a rainy period. The sample or samples to be tested will be collected without prior notice to any of the parties.

In addition, if the applicant continues to use the Obrist's strawberry field as a manure spreading site, water samples shall be taken from Kelly Creek, above and below the Obrist's strawberry field, before and after manure is applied to the field. The samples shall be tested by the same laboratory.

The water shall be tested for coliform bacteria, biochemical oxygen demand and such other contaminants for which tests of agricultural runoff are normally tested.

The public or private laboratory or firm which conducts the tests shall be selected by mutual consent of the parties or their representatives. In the absence of agreement as to the laboratory, I will pick the testing laboratory. The applicant shall pay the costs, if any, of the tests.

The results of the tests, and any suggestions concerning the control of pollutants from the swine operation, shall be presented to the County for consideration at the renewal hearing.

C. Slaughtering Of Animals And Disposal Of Remains

Any on-site slaughtering shall be carried out indoors to prevent or reduce offensive sounds. Remains shall not be disposed off by burning.

D. Six-Month Trial Period, Unannounced Summer Site Inspection And Subsequent Renewal Hearing

During June, July or August, at least one un-announced site inspection shall be made by a Hearings Officer during warm weather, to determine whether odors have remained under control. The parties are invited to arrange for scentometer tests conducted by DEQ or another impartial testing entity.

The renewal of the permit will be automatically scheduled for a regular monthly hearing before a Hearings Officer, prior to expiration of the six month period. The subject of the hearing will be whether the hog farm has operated in conformance with the conditions of this approval and whether these conditions have been sufficient to assure compliance with the standards in the zoning ordinance.

At least two weeks prior to the hearing, a Staff Report will be issued, containing a statement from the Hearings Officer who conducted the site inspection, giving the date and time of the site

visit and her or his perceptions concerning the odor. The staff report will also summarize the results of the water quality testing described in Condition B and the applicant's log specifying when and where manure was spread, specified in condition A.

Signed April 15, 1993



By Robert Liberty, Hearings Officer

Filed With the Clerk of the Board on April 15, 1993

Appeal to the Board of County Commissioners

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

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

The Hearings Officer Decision on this item is tentatively scheduled for the Board of County Commissioners review at 9:30 a.m. on Tuesday, April 27, 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, April 26, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

✓
PLEASE PRINT LEGIBLY!

MEETING DATE

4-27-93

NAME

BRUCE VINCENT, SIM CRIFATTI ASSN

ADDRESS

1820 S.W. VERMONT

STREET

CITY

PORT. OR

97219

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

CE 22-92

SUPPORT

☒ **OPPOSE**

SUBMIT TO BOARD CLERK

R-3

PLEASE PRINT LEGIBLY!

MEETING DATE

4-27-93

NAME

Dwayne J. Kaptur

ADDRESS

17300 S.E. Troge Rd

STREET

Boring, OR

97009

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

CU 22-92

SUPPORT

✓

OPPOSE

SUBMIT TO BOARD CLERK

P-3

PLEASE PRINT LEGIBLY!

MEETING DATE 4-27-93

NAME Glen Wright

ADDRESS 2807 NE Hoyt

STREET

Portland 97232

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # CU22-92

SUPPORT X **OPPOSE**

SUBMIT TO BOARD CLERK

P-3

✓
PLEASE PRINT LEGIBLY!

MEETING DATE

4/27/93

NAME

Arnold Rochlin

ADDRESS

P.O. Box 83645

STREET

Portland, OR

CITY

97283-0645

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3

SUPPORT

Hi. Decision

OPPOSE

Appeal

SUBMIT TO BOARD CLERK

Meeting Date: April 27, 1993

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Public Hearing

BCC Informal _____ BCC Formal April 27, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Sandy Mathewson

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

xx DENIAL

☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 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 22-92 Public Hearing - On the Record Plus New Information

Review the Decision of the Hearings Officer of January 14, 1993, denying conditional use request to allow a non-resource related single family dwelling for property located at 22401 NW St. Helens Road.

This item has been appealed by the applicant

Scope of Review is 10 minutes per side, with new information

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER pc

BH Willie

(All accompanying documents must have required signature)

1993 APR 19 PM 16:19
MULTIOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS



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. C422-92

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages 3

*(Maybe distributed at Board Meeting)

☒ Previously Distributed

1/26/93

☐ Decision

No. of Pages 10

(Hearings Officer/Planning Commission)

☒ Previously Distributed

1/26/93

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

BOARD OF
COUNTY COMMISSIONERS
(CE)
1993 APR 19 PM 1:19
MULTNOMAH COUNTY
OREGON



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. C242272

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (1 Pages)
- ☒ Case Summary Sheet (1 Pages)
- ☒ Notice of Review Application (3 Pages)
- ☒ Decision (12 Pages)
(Hearings Officer/Planning Commission)

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
- ☒ Transcript (10 Pages)
- ☒ Applicant's Application and Submittals (34 Pages)
- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (/ Exhibits)
(Maps)
- ☐ Other Materials ()

BOARD OF
COUNTY COMMISSIONERS
1993 APR 19 PM 1:19
MULTNOMAH COUNTY
OREGON



BOARD HEARING OF APRIL 27, 1993

CASE NAME: KAPTUR APPEAL
NON-RESOURCE RESIDENCE

TIME 9:30 am
NUMBER CU 22-92

1. Applicant Name/Address: Dwayne and Stephen Kaptur
4409 N. Willamette Blvd.
Portland, OR 97203

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):

Deny

4. Hearings Officer Decision (January 14, 1993):

Denied

5. If recommendation and decision are different, why?

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 checked="" type="checkbox"/>	On the record
<input type="checkbox"/>	De Novo
<input checked="" type="checkbox"/>	New Information allowed

ISSUES

(who raised them?)

1. Compatibility and non-interference of proposed dwelling with surrounding forest resource activities (*raised by Chris Foster who testified in opposition of the request*).

2. Zoning of property amended from MUF to CFU on 1-6-93. The stated grounds for appeal are that the county considered the CFU requirements rather than the MUF requirements (*raised by James Purcella, representative of Dwayne Kaptur and the estate of Stephen Kaptur*).

Do any of these issues have policy implications? Explain.

Issue 2: County policy and state law require that the ordinance requirements in effect at the time a complete application is submitted are used in considering the application. This policy was followed by Staff and the Hearings Officer.



Notice of Public Hearing Board of County Commissioners

Multnomah County
Board of County Commissioners

1021 SW 4th Avenue
Portland, Oregon 97204

The Board of County Commissioners will hear the following item on the date and at the time and place indicated below. The exact time may be later depending on the agenda schedule. The hearing will be conducted pursuant to the Board of Commissioners' *Rules of Procedure* (enclosed). Interested parties will have opportunity to appear and testify at the hearing. Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board an opportunity to respond to the issue precludes appeal to LUBA on that issue. The Board of Commissioner's Decision on the item may be announced at the hearing, or upon continuance to a time certain.

All materials submitted in the record are available for inspection and review prior to the hearing, and copies may be purchased at reasonable cost. For further information, call the Clerk of the Board at 248-3277 or the Planning Division at 248-3043.

Board of County Commissioners Members:
Gladys McCoy, Chair - Tanya Collier - Gary Hansen - Sharron Kelly - Dan Salzman

Date: 04/27/93 **Time:** 9:30 a.m. **Place:** Room 602, Multnomah County Courthouse

CU 22-92 Public Hearing - On The Record Plus Additional Evidence

Review the Hearings Officer Decision of January 14, 1993, denying a conditional use request for a non-resource related single family dwelling in the MUF-19, multiple use forest zoning district, based on the conclusion that the proposed conditional use request does not comply with MCC 11.15.2172[C][3] or [4] or with MCC 11.15.2194[C], [D] or [E] and does not comply with Comprehensive Plan Policy 13 (Air and Water Quality and Noise), Policy 22 (Energy Conservation), Policy 37 (Utilities) or Policy 38 (Facilities), all for property located at 22401 NW St. Helens Road.

This item has been appealed by the applicant.

Scope of Review - On the Record Plus Additional Evidence supporting Approval Criteria MCC 11.15.2172[C]{3} and [4].

Oral Argument: Each side will have 10 minutes to present oral argument to the Board.

N
↑

SZM 19; Section 1, T.2N., R.2W., WM.

59.02 Ac

MUF-19

MUA-20 WRG

(7)
151.96 Ac.

CFU-80CS

(5)
65.16 Ac.

MAU -19 CS

FF

Meeting Date: February 23, 1993

Agenda No.: P-8

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Public Hearing

BCC Informal (date) BCC Formal February 23, 1993 (date)
DEPARTMENT DES DIVISION Planning
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: xx

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

CU 22-92 Public Hearing - On The Record Plus New Information

Review the Decision of the Hearings Officer of January 14, 1993, denying conditional use request to allow a non-resource related single family dwelling for property located at 22401 NW St. Helens Road.

This item has been appealed by the applicant

Scope of Review is 10 Minutes per side, with new information
(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 9:06

JIM GRIFFITH & ASSOCIATES, INC.

LAND/BUILDING USE STRATEGIES

1820 S.W. VERMONT STREET
SUITE K
PORTLAND, OREGON 97219
503 293-0805
FAX 293-2216

February 23, 1993

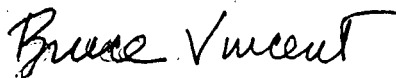
Multnomah County Board of Commissioners
1021 SW 4th
Portland, OR 97204

RE: Request for Continuance of a Public Hearing for CU 22-92
(Kaptur) at 22401 N.W. St. Helens Road

Dear Ms. McCoy and Commission members,

As the owner's representative in this matter, we are formally requesting a continuance of the hearing on CU 22-92. On February 22nd we were ask to represent Mr. Kaptur, and we respectfully ask a continuance so we may have sufficient time to present findings that will address the issues raised in the Staff Report and Hearings Officer's Report on this case.

Sincerely,



Bruce Vincent
Associate

encl. n/a

cc. Dwanyne Kaptur, Jim Purcella, Glen Wright
BAV/bav
File: 332.000

February 23, 1993

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

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

Re: CU 22-92 22401 NW St. Helens Rd. - Dwayne & Stephen Kaptur, owner

This testimony is in opposition to the application and in support of the Hearings Officer's denial.

This hearing is closed to new evidence, except concerning compliance with approval criteria MCC 11.15.2172(C)(3) and (4). Those issues aside, based on the record, it is impossible for the applicant to prove compliance with the other approval criteria. MCC .8230 places the burden of proof entirely on the applicant. For most requirements, the applicant has provided no evidence at all. As decided by the Hearings Officers, these include the following:

1. MCC 11.15.2194 Residential Use Development Standards (compliance is a requirement of .2172(C)(6). *Note: Alphabetical designations below correspond to the MCC, not the Hearings Officer's decision.*

(C) The requirement that the dwelling would be located as close as possible to a public street is not met.

(D) The required explanation of the need for a driveway over 500 feet long is absent.

2. While the approval criteria for a conditional residential use in the MUF zone do not explicitly incorporate the Comprehensive Plan, some Plan provisions use express language requiring a finding of compliance in land use decisions. The Hearings Officer found non-compliance with several policies because of an absence of any evidence or of pertinent and credible evidence:

Policy 13, regarding Air, Water Quality and Noise, the policy requires prior to a quasi-judicial decision a statement from "the appropriate agency" that all standards can be met. No statement is in the record or can be added at this time.

Policy 22, regarding energy conservation, requires consideration prior to a quasi-judicial decision, of various energy impact issues, e.g. efficient land use, density of development and efficient transportation. The applicant has provided no evidence and the record is closed to new evidence.

Policy 37, regarding water and sewage disposal, again, a finding is required prior to quasi-judicial decision that there is adequate water and a satisfactory available method of sewage disposal. There is no evidence to show that site characteristics are suitable for on site disposal. Evidence of availability of sufficient water is entirely heresay; i.e., the applicant says neighbors and well drillers, who may or may not have qualifications and familiarity with the site, say there should be no problem. (see discussion of MCC .2172(C)(4) below)

Policy 38, regarding schools, fire and police protection, again requires findings prior to a quasi-judicial decision. It is required that school and police agencies are given an opportunity to review and comment. There is no evidence whatever, and none can now be provided, that the applicant submitted his proposal to those agencies.

If the applicant failed to carry his burden of proof regarding any single one of these, the application must be denied.

The applicant was allowed to submit additional evidence regarding MCC .2172(C)(3), concerning compatability with forest practices and stability of land use.¹ This is the big one. It's why we're here. Where you have farms and forests, if you let people build houses wherever they want, eventually you don't have productive farms and forests. LCDC, Planning Staff, the Planning Commission, this Board and private citizens labored exhaustively on this issue, and you adopted new regulations to more clearly protect forest land: Fire, not even a Tillamook burn, is as destructive as a dwelling. The forest grows back after a fire, but development is forever.

Large acreage tracts near the applicant's property are devoted to forest use. The applicant submitted a letter from the owner of adjoining property saying there would be "no serious interference to the resource management activities on our property from the construction of a dwelling on this property." This is the only evidence on compliance with the requirement of .2172(C)(3) that the dwelling not interfere with resources or resource management. LUBA has rejected waivers by an owner, or statements of support from neighbors, as evidence that there is no interference with resource management. As the Hearings Officer said, *Champion International v. Polk county*, 16 Or LUBA 132 (1987) establishes that the applicant's waiver of a right to object does not prevent incompatibility, it merely precludes a remedy for injury. We have to consider how the land may be used, the potential of noise, dust, erosion, chemical spraying and other practices incompatible with a dwelling surrounded by such practices on three sides. And, if the land is suitable for forestry, we don't know who will own the adjacent land next year, or what accepted practices will be implemented. The Hearings Officer observed that "the issue is not whether neighbors object", and he found that "The lack of substantial evidence in the record regarding this issue, particularly given the significant commercial timber operations west of the site, makes it impossible for the hearings officer to make the requisite finding about compatibility and non-interference."

MCC .2172(C)(3) also requires that the proposed use not "materially alter the stability of the overall land use pattern of the area". The Hearings Officer found that there is no small parcel housing nearby. Of the two houses within a half-mile, one is resource related, and the other is on a golf course. Approval of this house would justify another and the two justify a few more and then no more forest. There is no reasonable conclusion but that a dwelling on this site would alter the stability of the land use pattern of the area. The applicant's new letter offers no substantial evidence. There is no rebuttal of the facts relied on, that there are only two dwellings within a half-mile, and neither one is on a comparable site. In effect, the applicant has nothing but his opinion that only one more house will not affect the land use pattern. This is how it happens, first one house. *Blosser v. Yamhill*

¹ The applicant submitted two undated letters addressed to the Hearings Officer, but received by the Planning Division on January 26, 1993, 12 days after his decision. I believe the applicant intended for them to be new evidence in this proceeding. A letter from Dwayne Kaptur, addresses issues in the Staff Report, rather than the findings of the Hearings Officer. Again, I believe the intent was to address the proper concern of this hearing, the Hearings Officer's decision.

County, 18 Or LUBA 253 (1989) establishes that the precedential and incremental effect of each development can and should be considered to determine the effect on resource use in the area. One little house doesn't hurt anything, but eventually, the destruction of established land use patterns can be traced back to one little house. The land use pattern of the area is clear and the proposed dwelling is clearly not compatible.

The applicant also addresses requirements to prove availability and adequacy of water and sewage disposal facilities implied by MCC 2172(C)(4) and expressly required by Comprehensive Plan Policy 37. The Hearings Officer found that the evidence submitted on water lacked any substantial value and there is no evidence in the record regarding the suitability of the site for sub-surface disposal. All of the applicant's new evidence is the following from his letter:

"An application for a percolation test for septic disposal is currently pending with the city of Portland. In accordance with county staff guidance a form has been enclosed stating that a well will be installed of suitable depth at the time of dwelling construction to provide domestic water source."

This does not constitute evidence of availability of water or of suitability for on site sewage disposal. Even the purported form concerning intent to put in a well, was not in the record on February 22, 1993. There was and remains no evidence of compliance.

The land owners just want one house. You owe them fair consideration. But they are not the only people entitled to your help and protection. All of us in this county have a right to our heritage and to enforcement of the code. On the law, this is an easy one. That we wish the applicant no harm is no reason to break the law.

The Hearings Officer's denial should be affirmed.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Arnold Rucklin".



MULTNOMAH COUNTY OREGON

DIVISION OF PLANNING & DEVELOPMENT / 2115 SE MORRISON / PORTLAND, OREGON 97214

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C422-92

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages 3

*(Maybe distributed at Board Meeting)

☒ Previously Distributed

1-26-93

☐ Decision

No. of Pages 10

(Hearings Officer/Planning Commission)

☒ Previously Distributed

1-26-93

*Duplicate materials will be provided upon request.

Please call 2610.

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

(CL/1)



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C922-92

I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet (/ Pages)
- ☒ Case Summary Sheet (/ Pages)
- ☒ Notice of Review Application (3 Pages)
- ☒ Decision (12 Pages)
Hearings Officer/Planning Commission

II. Materials Available Upon Request

- ☒ Minutes (2 Pages)
- ☒ Transcript (10 Pages)
- ☒ Applicant's Application and Submittals (34 Pages)
- ☒ Case Correspondence (Letters)
- ☐ Slides (Slides)
- ☐ Exhibits/Maps (/ Exhibits)
(Maps)
- ☐ Other Materials ()



BOARD HEARING OF FEBRUARY 23, 1993

CASE NAME: APPEAL HEARING,
KAPTUR NON-RESOURCE RESIDENCE

TIME 9:30 am

NUMBER CU 22-92

1. Applicant Name/Address: Dwayne and Stephen Kaptur
4409 N. Willamette Blvd.
Portland, OR 97203

2. Action Requested by applicant:

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

3. Planning Staff Recommendation:

Deny

4. Planning Commission or Hearings Officer Decision:

Denied

5. If recommendation and decision are different, why?

ACTION REQUESTED OF BOARD

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

ISSUES

(who raised them?)

1. Compatibility and non-interference of proposed dwelling with surrounding forest resource activities (*issue raised in Staff Report and by Chris Foster and Arnold Rochlin who testified in opposition of the request*).
2. Zoning of property amended from MUF to CFU on 1-6-93. The stated grounds for appeal are that the county considered the CFU requirements rather than the MUF requirements. *Issue raised by James Purcella, representative of Dwayne Kaptur and the estate of Stephen Kaptur.*

Do any of these issues have policy implications? Explain.

Issue #2: County policy and state law require that the ordinance requirements in effect at the time a complete application is submitted are used in considering the application. This policy was followed by Staff and the Hearings Officer.

Meeting Date: January 26, 1993

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: CU 22-92 Decision

BCC Informal _____ BCC Formal January 26, 1993
(date) (date)
DEPARTMENT DES DIVISION Planning
CONTACT Sharon Cowley TELEPHONE 2610
PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

☐ INFORMATIONAL ONLY

☐ POLICY DIRECTION

xx DENIAL

☐ APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 1 Minute

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 22-92 Review the Decision of the Hearings Officer of January 14, 1992³ denying a conditional use permit for a non-resource related single family dwelling on a 4.34-acre Lot of Record in the MUF-19 zoning district, for property located at 22401 NW St. Helens Road

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER AC RSP JTB BW

(All accompanying documents must have required signatures)

1993 JAN 20 AM 9:25
HOLLAND COUNTY
OREGON



BOARD HEARING OF JANUARY 26, 1993

TIME 9:30 am

NUMBER CU 22-92

CASE NAME: KAPTUR NON-RESOURCE SFR

1. Applicant Name/Address: Dwayne and Stephen Kaptur
4409 N. Willamette Blvd.
Portland, OR 97203

2. Action Requested by applicant:

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

3. Planning Staff Recommendation:

Deny

4. Planning Commission or Hearings Officer Decision:

Denied

5. If recommendation and decision are different, why?

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

ISSUES

(who raised them?)

1. Compatibility and non-interference of proposed dwelling with surrounding forest resource activities (*issue raised in Staff Report and by Chris Foster and Arnold Rochlin who testified in opposition of the request*).

Do any of these issues have policy implications? Explain.

No.

BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON

Regarding a request by Dwayne and Stephen Kaptur for a)	FINAL ORDER
conditional use permit for a non-resource related dwelling)	
in the MUF-19 zone at 22401 NW St. Helens Road)	CU 22-92
in unincorporated Multnomah County, Oregon)	(Kaptur)

I. SUMMARY

The applicant requests approval of a conditional use permit for a non-resource related single family detached dwelling on a 4.34-acre lot of record in the MUF-19 zone.

LOCATION: 22401 NW St. Helens Road; Tax lot '14', Section 1, T2N-R2W, WM, Multnomah County

APPLICANT AND OWNERS: Dwayne and Stephen Kaptur

SITE AREA: 4.34 acres

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

STAFF RECOMMENDATION: Deny

HEARINGS OFFICER DECISION: Denied

II. FINDINGS ABOUT SITE AND SURROUNDINGS

A. *Site size and shape :*

The size is an irregularly-shaped parcel that is as much as 800 feet north-south and 400 feet east-west. It contains 4.34 acres.

B. *Site location :*

The site is situated on the west side of NW St. Helens Road (US Highway 30) about 1500 feet north of the Wildwood Golf Course.

C. *Existing uses and structures :*

The site is not developed with structures other than those associated with high power electric transmission lines that cross the west portion of the site.

D. *Proposed uses and structures :*

The applicant proposes to develop a single family detached dwelling roughly centered on the site. The homesite is situated about 400 feet from NW St. Helens Road. A roughly 600-foot long driveway is proposed from the homesite to the southeast corner of the site. The driveway will cross a small section of the adjoining property to the south to reach NW St. Helens Road. The applicant proposes to develop a well due north of the homesite and to provide a sanitary waste system on the site.

E. Existing and proposed vegetation :

Where the electric transmission lines cross the west portion of the site, substantial vegetation has been removed. The remainder of the site is forested. The applicant will remove vegetation from the homesite and septic system drainfield.

F. Geology and soils :

Based on the Geologic and Slope Hazard Maps (September, 1978) and the USDA SCS General Soil Map for Multnomah County (August, 1974), the site is underlain by siltstone and claystone of the Troutdale formation and contains Gable-Cascade soils with moderately steep to steep slopes (down) from west to east. The site is not identified as having geologic or slope hazards.

G. Plan designation and zoning :

The Comprehensive Plan Map designates the site as Multiple Use Forest, and it is zoned MUF-19 (Multiple Use Forest-19).

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 on the site. The applicant argues that a well can be developed, based on the existence of two wells on nearby properties and opinions of owners of those wells and of two well drilling companies. The applicant argues a sanitation system can be developed, based on soils on the site. The applicant did not provide substantial evidence to support these arguments.

2. The site is in the Scappoose Rural Fire Protection District. The District Fire Chief advised the County that there is not adequate water pressure and flow at the site for fire fighting purposes. Water for fire fighting is provided by a tank truck, supplemented by ponds and creeks if any. The fire chief recommended certain mitigating measures regarding fire access if the application is approved.

I. Streets and access :

The site is due west of NW St. Helens Road, although it does not adjoin the road right of way. To gain access to the site, the applicant will have to cross a small portion of the lot to the south or negotiate a lot line adjustment with the Oregon Department of Transportation to provide road frontage.

J. Surrounding land uses :

1. Immediately north, west and south of the site is a roughly 59-acre parcel that is designated Commercial Forest Use and is zoned CFU-80 (Commercial Forest Use-80). That parcel contains a single family dwelling and agricultural outbuildings situated about 600 feet south of the site. West of the 59-acre parcel are large tracts used for commercial timber purposes by owner Longview Fiber Company.

2. About 1500 feet south of the site is the Wildwood golf course and associated structures. About 3000 feet south of the site is a relatively small concentration of single family homes; more homes are situated along the highway further south.

3. East of the site is a roughly 6-acre tract owned by the Oregon Department of Transportation (ODOT) Highway Division. That tract is used to facilitate slope stability adjoining the highway; it is not developed with structures. Across St. Helens Road east of the ODOT tract is a roughly 150-acre parcel used principally for pasture.

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 zone if the applicant shows:

a. The lot complies with MCC 11.15.2178(A), .2180(A) to (C), or .2182(A) to (C). MCC 11.15.2182(A)(2) recognizes as a "lot of record" a parcel of land:

(1) 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;

(2) Which satisfied all applicable laws when the parcel was created;

(3) Does not meet the minimum lot size requirements of MCC .2178, (i.e., 19 acres); and

(4) Which is not contiguous to another substandard parcel or parcels under the same ownership.

MCC 11.15.2182(C) provides that separate lots of record shall be deemed created when a County maintained road or an EFU, CFU, MUA-20, RR or RC zoning district boundary intersects a parcel or aggregated group of contiguous parcels of land.

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...

g. 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 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.

2. 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...

3. 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.

4. 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.

5. 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. 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. Dwayne Kaptur testified on his own behalf. He argued that the proximity of the subject site to NW St. Helens Road, together with the setbacks and vegetation on the subject site, are sufficient to ensure the dwelling will be compatible with surrounding farm and forest uses. Realtor Glenn Wright also testified in support of the proposal. He stated that the owners of tax lot '2' (Joseph and Roberta Miller) are in favor of the proposal, and that tax lot '10' is used for erosion control and slope stability. Richard Allison, who plans to purchase the subject the property and build the proposed dwelling, also testified in favor. He noted there are homes north and south of the site along NW St. Helens Road; therefore, the proposed dwelling is consistent with and will not materially alter the land use pattern in the area. He also testified sanitary waste system test holes have been dug on the property. He also noted that tax lot '2' separates the site from the Longview Fiber timberland further west, suggesting that the intervening lot would help prevent forest practices on the commercial timber land from conflicting with the proposed dwelling.
3. Chris Foster and Arnold Rochlin testified against the conditional use permit. Mr. Foster noted that roughly 3000 acres west of the site is used for commercial timber purposes, and he argued the applicant failed to show how the proposed dwelling would be compatible with timber practices. Mr. Rochlin noted that the site does not adjoin NW St. Helens Road except at the southeast tip of the site; the dwelling will not be situated near the road.

V. EVALUATION OF REQUEST

A. *Compliance with MCC 11.15 (Zoning).*

1. The lot is a lot of record of less than 10 acres, based on the deed at page 2130 of Book 1900 of the Division of Records and Elections. Also, based on County Assessment records, the applicant does not own contiguous properties. (MCC 11.15.2172(C)(1))

2. The land is incapable of sustaining a farm or forest use, because it is a lot of record smaller than 10 acres. (MCC 11.15.2172(C)(2))
3. The applicant did not bear the burden of proof that a dwelling on the subject site would be compatible with farm and forest uses on commercial timber land west of the site and would not materially alter the stability of the overall land use pattern of the area. (MCC 11.15.2172(C)(3))
 - a. The applicant did not describe accepted forest practices on that land and did not show how the proposed dwelling would be compatible with those practices.
 - 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). Hearsay testimony by the applicant and Mr. Allison that neighbors do not object to the proposed dwelling is not responsive to the applicable criterion, because the issue is not whether neighbors object. The issue is what uses occur in the area and whether a dwelling is compatible with them. Such hearsay also has little probative value.
 - c. The lack of substantial evidence in the record regarding this issue, particularly given the significant commercial timber operations west of the site, makes it impossible for the hearings officer to make the requisite finding about compatibility and non-interference. Such accepted forest practices as aerial and other chemical spraying, clear-cutting, and transportation of timber on land west of the site could conflict with residential use of the subject site, due to noise, odor, dust, visual and other impacts, and could be incompatible with a dwelling on the site.
 - d. The land use pattern of the area within a reasonable vicinity of the site is exclusively resource-oriented. The two dwellings within 1/2-mile of the site do not make the area primarily or significantly residential. One of those dwellings is resource-related; the other is related to a golf course, which is at least partially a resource-oriented use in that it is characterized by planting and maintenance of turf. The existence of additional dwellings more than 1/2-mile south of the site is not relevant, because of their distance from the site. Allowing the proposed dwelling would materially alter the land use pattern of the area from one which is exclusively resource-oriented. It would introduce a non-resource dwelling 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. The applicant did not bear the burden of proof that the dwelling will not require public services beyond those existing or programmed for the area. Sanitation and water facilities are needed for the dwelling. Public facilities do not exist in the area and are not planned or programmed. The applicant proposes to use private systems, but failed to introduce substantial evidence from which the hearings officer could conclude that such systems will or are reasonably likely to be approved. (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 the Scappoose Rural Fire Protection District, 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 dwelling is proposed to be as close to NW St. Helens Road as possible while providing a 200-foot setback from the east property line. However, given that MCC 11.15.2194(F) allows the dwelling to be 30 feet from the road, it could be closer. Therefore, the dwelling location violates MCC 11.15.2194(C).
- e. The driveway to the homesite is more than 500 feet long. The application does not describe physical limitations that warrant such an excessive driveway length. Therefore, the proposed dwelling violates MCC 11.15.2194(D).
- f. The application does not include information regarding the productivity characteristics of the site. Therefore, the hearings officer is unable to determine whether the dwelling is 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 location is at least 200 feet from property lines. Therefore, the location complies with MCC 11.15.2194(F).
- h. The dwelling is located outside a big game winter wildlife habitat identified by the Oregon Department of Fish and Wildlife, based on the staff report. Therefore, the dwelling complies with MCC 11.15.2194(J).

B. Compliance with the Comprehensive Plan.

1. The proposal does not comply with Policy 13 (Air and Water Quality and Noise), because the application fails to include a statement from the applicable agency that all standards can be met with respect to water quality. The hearings officer assumes the proposed use will have negligible water quality impacts, because there are no perennial water sources on or adjoining the site. The proposed use will not generate significant noise and is not a noise sensitive use. Although traffic on NW St. Helens Road could have high noise levels, there is not substantial evidence in the record from which to conclude that the site is in a noise impacted area.
2. 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. Bicycles commonly travel on the shoulders of NW St. Helens Road. There is not substantial evidence in the record to determine whether the proposed dwelling is sited to use natural environmental and climatic conditions to its advantage.

3. The proposal does not comply with Policy 37 (Utilities), because there is not substantial evidence in the record that shows the proposed dwelling is reasonably likely to be served by public or private water and sanitation facilities. The hearings officer assumes 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 assumes that adequate energy supplies and communications facilities exist or can be provided to serve the proposed dwelling, because such facilities exist along NW St. Helens Road.

4. The proposal does not comply with Policy 38 (Facilities), because there is no evidence in the record that the applicable school district or the applicable law enforcement agency had an opportunity to review and comment on the proposal. The proposal complies with the policy regarding fire protection and fire district review, based on the written comment from the RFPD chief.

5. 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

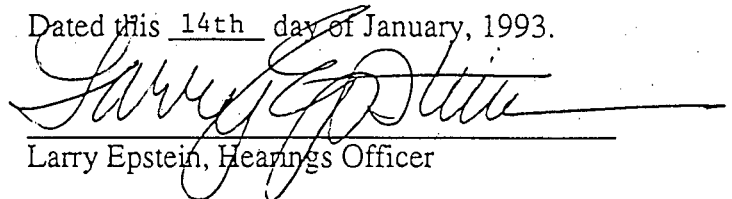
A. *Conclusions.*

The hearings officer concludes that the proposed conditional use permit does not comply with MCC 11.15.2172(C)(3) or (4) or with MCC 11.15.2194(C), (D) or (E) and does not comply with Comprehensive Plan policies 13 (Air and Water Quality and Noise), 22 (Energy Conservation), 37 (Utilities) or 38 (Facilities).

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 22-92 (Kaptur).

Dated this 14th day of January, 1993.


Larry Epstein, Hearings Officer

IN THE MATTER OF CU 22-92

Signed by the Hearings Officer: January 14, 1993
Decision mailed to parties: January 14, 1993
Submitted to Clerk of the Board: January 14, 1993

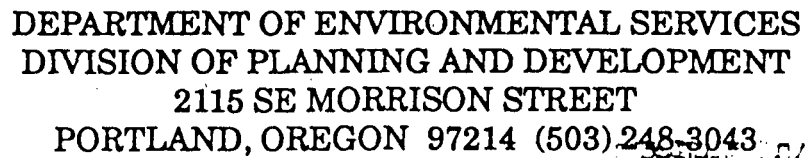
ANY APPEALS OF THIS ACTION MUST BE FILED WITHIN TEN DAYS AFTER THE DECISION IS SUBMITTED TO THE CLERK OF THE BOARD.

Decisions of the Hearings Officer may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony to the record. A "Notice of Appeal" form and fee must be submitted to the County Planning Director within ten days after the Hearings Officer Decision is submitted to the Clerk of the Board [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 Appeal" forms and instructions are available at the Planning and Development office at 2115 SE Morrison Street, Portland.

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

This Hearings Officer Decision will be reported to the Board of County Commissioners on Tuesday, January 26, 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.



1124/93

1. Name: Kaptur J. Dwayne
Individually and as Personal Representative
Last Middle First
2. Address: 4409 N. Willamette, Portland, Oregon 97203
Street or Box City State and Zip Code
3. Telephone: (503) 289 - 7962
4. If serving as a representative of other persons, list their names and addresses:
Estate of Stephen N. Kaptur
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?
Conditional use of MUF-19 zoning
6. The decision was announced by the Planning Commission on 1-14, 1993
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?
Owner and Personal Representative of Estate of Stephen N. Kaptur

Joseph and Roberta Mellor
22037 NW St Helens Rd.
Portland, OR
621-3123

Multnomah County Planning
2115 SE Morrison St.
Portland, OR 97214
Attn: Larry Epstein, Hearings Officer

RE: CU 22-92 Concerning 2N2W Sec. 1 TL 14

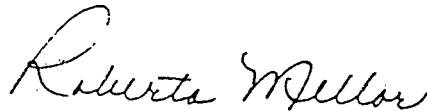
Dear Larry,

We are the owners of Tax Lot 2 in the above described section, which surrounds on three sides the above mentioned Parcel. We understand that one of the concerns of the county is the possibility that a dwelling on tax lot 14 will "be compatible with and not seriously interfere with the resource management activities on adjacent parcels". Since our property surrounds tax lot 14 on all sides for at least 500 feet, excepting those sides bordering land owned by the State Highway Division, we feel that you should take into consideration our approval of a dwelling being placed on tax lot 14.

There will be no serious interference to the resource management activities on our property from the construction of a dwelling on this property.

If you have any questions please feel free to contact us.

Sincerely,



Roberta Mellor

RECEIVED
JAN 26 1993

Multnomah County
Zoning Division

Dwayne Kaptur
4409 N Willamette Blvd.
Portland, OR 97203
289-7962

RECEIVED
JAN 26 1993

Multnomah County Planning
2115 SE Morrison Street
Portland, Oregon 97214
Attn: Larry Epstein, Hearings Officer

Multnomah County
Zoning Division

RE: CU 22-92 concerning 2N2W Sec. 1 TL 14

Dear Larry,

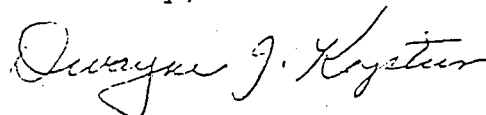
After careful examination of the staff report and their conclusions, we feel there are some points that need to be addressed.

Item #2 of the staff conclusions suggests insufficient evidence has been submitted that the dwelling will be compatible with and not seriously interfere with resource management activities on adjacent parcels. Please find enclosed a letter addressed to your attention from Mr. and Mrs. Joseph Mellor who are the adjacent property owners on three sides of subject property (fourth side of subject property is bordered by property owned by Oregon State Highway Division-Tax Lot 10). We feel that the installation of one dwelling on this parcel will not negatively effect the overall land use pattern of the area, especially considering the close proximity of this parcel to the rural residential zoning and the golf course.

Item #3 of the staff conclusions suggests that insufficient evidence has been submitted to show that water and sewage disposal is available. An application for a percolation test for septic disposal is currently pending with the city of Portland. In accordance with county staff guidance a form has been enclosed stating that a well will be installed of suitable depth at the time of dwelling construction to provide domestic water source. We believe that this form has been previously submitted, however if it wasn't we are submitting it at this time.

We would appreciate your careful consideration of this additional information. We would like to thank you in advance for your courtesies.

Sincerely,



Dwayne J. Kaptur

required transcript fee.

Failure to comply with this subsection shall be a jurisdictional defect and shall preclude review by the Board.

- (D) Notice of Review shall be a condition precedent to judicial review of final orders, except in the case of Board review on its own motion.

11.15.8265 Board Order for Review

A Board Order for Review of a decision must be made at the meeting at which the Board's Agenda included a summary of that decision under MCC .8255, unless specifically continued, which continuance shall not be later than the next regular Board meeting on planning and zoning matters.

11.15.8270 Scope of Review

- (A) The Board, upon receipt of Notice of Review or upon its own motion to grant review, shall, at the appropriate meeting, determine whether review shall be:

- (1) On the record; or
- (2) Under subsection (E) below, *de novo* or by additional testimony and other evidence without full *de novo* review.

- (B) Prior to such determination, the Board may conduct a hearing at which the parties shall be afforded an opportunity to appear and present argument On the Scope of Review under subsection (E) below. Notice of such hearing shall be mailed to the parties no less than ten days prior to the hearing.

- (C) Unless otherwise provided by the Board under subsection (D) and (E) below, review of the action shall be confined to the record of the proceeding below, which shall include:

- (1) All materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered by the Planning Commission or Hearings Officer;
- (2) All materials submitted by the Planning Director with respect to the proposal;
- (3) The transcript of the hearing below;

- (4) The findings and decision of the Planning Commission or Hearings Officer, and the Notice of Review, when applicable.

- (D) When permitted by the Board, review before the Board may include argument by the parties or their authorized representatives.

- (E) The Board may hear the entire matter *de novo*; or it may admit additional testimony and other evidence without holding a *de novo* hearing if it is satisfied that the additional testimony or other evidence could not reasonably have been presented at the prior hearing. The Board shall, in making such decision, consider:

- (1) Prejudice to parties;
- (2) Convenience or availability of evidence at the time of the initial hearing;
- (3) Surprise to opposing parties;
- (4) The competency, relevancy and materiality of the proposed testimony or other evidence.

- (F) *De Novo* Hearing means a hearing by the Board as if the action had not been heard by the Planning Commission or Hearings Officer, and as if no decision had been rendered, except that all testimony, evidence and other material received by the Planning Commission or Hearings Officer shall be included in the record.

- (G) Review by the Board, if upon Notice of Review by an aggrieved party, shall be limited to the grounds relied upon in the Notice of Review under MCC .8260(B) and any hearing permitted under MCC .8270(B).

- (H) At the meeting at which the Scope of Review is determined pursuant to MCC .8270(A) and (B), the Board shall further determine the time and place for the review, which shall not be later than 45 days from the date of the Board determination.

11.15.8275. Notice of Board Hearing

- (A) Notice of Board hearing shall be given in the same manner as required for hearings by the Planning Commission and Hearings Officer

CONDITIONAL USE APPLICATION STATEMENT

FOR A NON-RESOURCE RELATED DWELLING IN
A MULTIPLE USE FOREST ZONE (MUF-19)

Prepared for

Dwanye Kaptur and the Estate of Stephen Kaptur

c/o James C. Purcella, Atty. at Law
11157 N.E. Halsey St.

Portland, OR. 97220

Prepared by

Jim Griffith & Associates, Inc.
1820 SW Vermont, Suite K
Portland, Oregon 97219

BOARD OF
COUNTY COMMISSIONERS
1993 APR 21 PM 1:55
MULTNOMAH COUNTY
OREGON

REQUEST: The owners are requesting a permit to construct a non-resource related dwelling on a 4.34 acre parcel of land located on the west side of Highway 30.

SITE INFORMATION

The site is a 4.34 acre parcel of land located approximately nine miles North of the St. Johns Bridge. (See vicinity map.) There is no existing exclusive access road to the property, however, an existing BPA access road traverses the site's western property boundary. (See site plan.) If this application is approved, the owner will exercise his right to use the existing BPA access road across his property to gain access to the homesite. The owner also has an agreement with the adjoining property owner for access to the same BPA road that traverses through Tax Lot 2. Through existing easements and use of the existing BPA road, the owner will have access to St. Helens Hwy.

The property generally slopes from West to East. The elevation in the northwest property corner is approximately 250 feet. The elevation along the eastern property line is approximately 100 feet. (See topog map.) The easterly property line roughly follows the top of a long cutbank that appears to have been engineered by the State for the construction of St. Helens Hwy. The cutbank shows up on the enclosed aerial photos as a light blue area east of the site and abutting the southbound lanes of the highway. (See enclosed site plan.)

The site is occupied with a mixture of alder, western red cedars, big leaf maples, and a scattering of douglas fir. The remainder of the site is a mixture of open meadow, and brushy undergrowth.

REASON FOR REQUEST

On March 9, 1993, the applicant asked the Multnomah County Board of Commissioners to continue the hearing on this matter until April 27, 1993. (See Case File CU-22-92.)

The property owner wants to reside on the remainder of his father's estate. The Kaptur family once owned hundreds of acres of property in and around the subject site, from the 59 A. parcel to the west of the subject site to the banks of the Multnomah Channel. In fact, the State of Oregon purchased R.O.W. property to construct the present Highway 30 that travels past the parcel. The State's purchase of the R.O.W. property has a great bearing on the resulting lot configuration on the subject site and adjacent Tax Lot 10.

In 1969 the State of Oregon purchased approximately 6.72 acres of property from the Kaptur family for the widening of the highway. The parcel became Tax Lot 10 which is just east of the subject site. (See site plan.) According to Mr. Kaptur, the State needed additional property for bank stabilization of the new highway, and purchased the 4.34 A. of the subject site for that purpose. (See enclosed deed records.)

According to Mr. Kaptur, the State determined that they no longer needed the subject site for bank stabilization, and offer to sell the lot back to the Kaptur family. A lot line adjustment parcelled the 4.34 A. parcel from the original purchase, and the State retained

the present 6.72 A. Tax Lot 10 for bank stabilization. On site observations by the applicant and review of aerial photos indicate that there is a long and steep embankment that abuts the Kaptur property. The embankment is approximately 150' wide and 700-800' long, sloping upward from the southbound lanes of the existing highway. (See site plan.) The sloped embankment is not a natural embankment; it has all the appearances of being engineered for slope stabilization.

The history of this site reveals that the resulting lot configuration was not initiated by the Kaptur family, but was the result of purchase and resale of property by the State. The subject site is an unusually small parcel for MUF-19 zoning, and this should have some bearing on the decision to grant a non-resource dwelling on the property. Based on the history of this parcel, it is clear that the lot can serve no economic benefit to the owners as it presently exists. It is too small to be a resource parcel.

Planning staff and the Hearings Officer have already concluded that the parcel is too small to be a resource parcel. If the State purchase had never occurred, the subject site would have remained

part of the 59 A. parcel west of the subject site, which could have been a more productive resource parcel. If the site cannot be used for a resource relating use, then its use for a single family dwelling seems a reasonable alternative. The only other alternative is to leave the parcel as vacant land which would not allow Mr.Kaptur to reside on the last remaining portion of the family estate. The following information will substantiate that the inclusion of the proposed dwelling will not disrupt the surrounding resource related uses. The spatial separation from active forest management properties, and the inactivity of other resource properties, minimizes the dwelling's impact. More importantly, the adjacent commercial timberland owner had no objection to the proposed dwelling. (See enclosed survey response from Longview Fibre.)

APPLICABLE REGULATIONS

According to the Staff and Hearings Officer's Reports, the following Multnomah County Development Code regulations were not addressed in the original application and/or testimony before the Hearings Officer:

- I. Dwelling Compatibility and Non Interference with Primary Uses MCC.2172 C.(3)
- II. Public Services Other than Those Existing Not Required MCC.2172 C. (4)

Each of the applicable regulations listed above will be responded to in this application.

I. DWELLING COMPATIBILITY

INTRODUCTION

The applicant believes that the following information is substantial evidence which a reasonable mind could accept as adequate to support a conclusion that the proposed use will not force a significant change in accepted farm or forest practices on lands devoted to farm or forest use.

According to MCC.2172 C.(3), it is the applicant's responsibility to prove that a dwelling as proposed is compatible with the MUF-19 Zone's primary uses as they exist on nearby properties. The applicant must also prove that the dwelling will not interfere with the resource management practices or materially alter the stability of the overall land use pattern of the area.

Webster's dictionary defines "compatible" meaning capable of living together, or getting along together. Compatibility, as it applies to this application, does not require that a residential use, introduced adjacent to a resource use, "get along" with the resource use with no change to each others activities. It is the applicant's opinion that compatibility test should analyzes only those changes that are significant enough to interfere with resource activities.

Something that "materially alters" is something that alters to a great extent, or substantially changes. As it applies to this situation, it is not the applicant's responsibility to discuss all changes that the proposed dwelling will have on adjacent resource management practices, only those changes that are significant enough to interfere with resource management practices need to be discussed. It is the applicant's contention that the mere presence of the proposed dwelling, situated next to an existing dwelling, and approximately 1,000' from commercial forest uses to the north and west, will not significantly interfere with those activities. The analysis process present in this application will substantiate that above mentioned statement.

Viewed in the balance of all adjacent land uses, forest uses predominate in the area. If forest uses predominate, then how can the addition of a single dwelling, taking all the precautions and standards to buffer and orient itself from any interference with adjacent resource lands, materially alter forest management practices ? In relative terms, the square footage of land area devoted to a structure, yards and driveway are minute, compared to the hundreds of acres of adjacent resource land. Moreover, the applicant is not introducing a new use into the area that has never existed before this conditional use application.

An existing dwelling and outbuildings are located approximately 250-300' south of the site on Tax Lot 2. An 18 hole golf course covering approximately 180 A. abuts resource land some 700-800' south of the dwelling on Tax Lot 2. To the south of the golf course is approximately 40 A. of rural residentially zoned property. Two recently constructed

dwelling along Logie Trail Road to the south are centered far more within the Commercial Forest Zone than the applicant is proposing. (See enclosed area map.) Based on existing pattern of residential land uses abutting resource lands, the applicant is merely continuing a pattern of low density non-resource use adjacent to resource lands.

VICINITY AREA ANALYSIS

An analysis of land uses within a chosen vicinity area will provide a basis from which to judge whether or not the addition of a dwelling will significantly change or increase the cost of established patterns of farm or forest practices surrounding the site. For the purposes of this analysis, the lots depicted on the enclosed vicinity map will serve as the area of analysis. (See vicinity map) Determination of vicinity area size was primarily based on whether the pattern of land uses in the surrounding area beyond the chosen map border differed substantially in character from the uses within the map border.

As an integral part of vicinity area analysis, adjacent property owners received surveys requesting information on their land use activities. (See enclosed copies of surveys) The names of the survey respondents have been placed on the enclosed vicinity and area maps next to their properties for easy reference. (See enclosed maps.)

After careful review of the surveys, aerial photographs, and on-site observations, it was apparent that there was no substantial difference in the pattern of land uses inside or outside of the vicinity area. If existing uses within the vicinity area have apparently co-existed without any known or apparent conflicts, then the inclusion of one more dwelling will not substantially impede the on-going farm and forest practices on adjacent sites. The survey results substantiate the aforementioned conclusion.

The following discussion will describe the types of land uses inside the vicinity area. It should be noted that the applicant's representative holds a Bachelors degree in Forest Management from Oregon State University. The following statements concerning identification of tree species, common forest practices, and comments concerning on-site observations are based on training and experience gained from the forestry program and forestry work experience.

LAND USES IN THE VICINITY AREA

Wooded parcels similar in character to the subject site and clearcuts occupy the majority of land 2/3 of a mile north of the test area (Tax Lots 3,15,1,4 and 14). On site observations conclude that the wooded area on Tax Lot 1 is primarily a mixture of Alder and Big Leaf Maples, with a small number of Western Red Cedars and Douglas Fir. The same mixture of tree species occupies Tax Lot 2 and the subject site. On the enclosed aerial photos, the Alders and Maples show up as a lighter blue color, and have a more rounded appearance than the darker blue color of Douglas Firs. (See enclosed aerials.)

Although there are no clearcuts on the subject site and Tax Lot 2, it is apparent that the site and Tax Lot 2 were logged in the past. There are some old Douglas fir stumps scattered about the property, with some mature Alders and Maples that appear to have been there for a long time. On-site observations and discussions with the owner indicate that Tax Lot 2 (which was part of the Kaptur estate), was logged approximately 20-25 years ago.

Directly to the North and West of the test area lies two Tax Lots owned by Longview Fibre; Tax Lot 3 is 291.46 A. and Tax Lot 15 is 52.82 A. (See vicinity map) Longview Fibre was sent a survey requesting specific information concerning their timber management practices. The timber manager for the area chose not to directly answer all the survey questions, but he did respond to the survey. He stated that Longview Fibre has no objection to the proposed dwelling. (See enclosed survey response.)

If Longview Fibre raised no objection to the proposed dwelling then one can conclude that the proposal meets the test of compatibility. Apparently a commercial timber company reasoned that they could go about their timber management practices without having to substantially alter their existing practices. If compatibility means "getting along" with the resource use with no significant change to each others activities, then the proposal has met the test. Furthermore, the adjacent timberlands do not appear to be intensively managed.

On site observations of Tax Lot 15 indicate that approximately 31 A. of the 52.82 acres were logged within the last 3-4 years. The logged area shows up as the lighter blue eastern portion of the lot. (See enclosed aerial.) According to the owner, the area was logged in 1990. Approximately 12 A. of Tax Lot 3 that adjoins Tax Lot 15 were also logged in 1990.

A dense thicket of 6-8' tall Scotch Broom has taken over the 31 A. logged area of Tax Lot 15 and 12 A. of the adjoining portion of Tax Lot 3. The Scotch Broom on both lots has over topped the remaining Douglas Fir that were planted after the sites was logged. The applicant observed very few young trees that overtopped the prevailing height of the Scotch Broom. It is the applicant's opinion that implementation of an active forest management program would have eliminated the existing Scotch Broom before it obtained a height that surpassed the prevailing height of young Douglas Fir.

The most logical way to eliminate the Scotch Broom now is by mechanical means (i.e. cutting with chain saws), which is very labor intensive and costly. Based on the lack of physical evidence that would substantiate active forest management, it appears that at least the 31 A. area closest to the subject site is not being actively managed. The non-managed portion of Tax Lot 15 adds 1350' of spatial separation between the northern border of the subject site and actively managed resource land on land north of Tax Lot 15. (See vicinity map.) Measured from the enclosed vicinity map, there is approximately 2,500-2600' (1/2 mi.) between the southern end of the timberland to the north and the proposed homesite. The distance between the homesite and the actively managed forest lands will be minimize the noise and dust impact.

Although not absolutely quantifiable, the noise level from logging equipment will be less at 2,000' away than it would be 1,000' away. A similar analogy can be followed for the amount of dust and spray drift that may reach the proposed dwelling. Furthermore, the Forest Practices Act requires a 60' wide no-spray zone between an existing dwelling and the sprayed site. (See enclosed pages from Act.) In addition, the existing stand of Alder and Maple that abuts the site's northern, southern and western borders will act as a vegetative buffer to trap airborne dust particles as they drift towards the subject site.

According to discussions that Mr. Kaptur had with the Mellors, owners of the adjacent Tax Lot 2, they have no intention of logging any of their property. Furthermore, the Mellors responded to the survey and restated their lack of interest in logging the property. If the adjacent owners do not intend to remove their trees, then the visual and physical barrier that the trees create will remain for the entire ownership of the property. Tax Lot 2 was purchased by the present owners in 1992, therefore those trees should remain for many years to come. More importantly, Alder and Maple are not the primary merchantable species in Western Oregon. By far, Douglas Fir, Western Red Cedar, and Hemlock are the primary commercial timber species.

When logging Douglas Fir, Alder and Maple are sometimes harvested if they are large trees. Alder and Maple have limited markets as material for wood pallets, furniture frames, and wood chips. However, no one exclusively logs Alder and Maple for their timber value because the market price for their timber is much lower in comparison to the market value of Douglas Fir and Western Red Cedar. It would not be economically feasible to invest the capital in purchase of the trees, road building, movement of large logging equipment, labor costs, etc. just to harvest a marginally valued tree specie. In addition, it would not be economically feasible to invest the capital to log a 59 A. parcel, burn the slash, replant with Douglas Fir, and wait 50-60 years before the trees reached a harvestable age. Most private landowners owning a single lot would not sink the capital into a single piece of property and wait 50-60 years for a payoff. The point of the preceding discussion is to show that the existing Alder and Maple on the Mellor property has a minimal value, therefore future logging of the property is very unlikely. If future logging is unlikely, then the existing separation from Longview's land, and the vegetative buffer that the trees provide will be in place for many years to come.

The applicant and owners recognizes that there will a noise and dust impact from any proposed logging operation on Longview's land, however there is no factual evidence to substantiate that the timber company plans any logging operation in the near future. Furthermore, the mere fact that someone owns commercial forest land does not necessarily mean that the land will be, or is constantly and intensively managed. Based on site observations by the applicant, Tax Lot 15 and 3 have witnessed some activity, but there is no substantial evidence to conclude that the property is intensively managed. If Longview Fibre continues the low level of forest activity on these lands, then the off-site impact on the subject site will be minimized.

Even if future forest management activity occurs on the remainder of Tax Lot 3, the existence of non-resource uses adjacent to timberlands is a common occurrence along the west side of St. Helens Hwy. In fact, a scattering of rural residential uses are situated along a 2/3 of a mile strip of rural residentially zoned property 4/10 of a mile south of the subject site. (See area map.) The rural residentially zoned property abuts a 132 parcel, (Tax Lot 1), zoned for commercial forest use. (See vicinity and area map.) The northern and western border of the Wildwood Golf Course (Tax Lot 5) abuts Longview Fibre land. The golf course is 800' south of the subject site. The park-like atmosphere and passive recreational nature of golfing could easily be disturbed by the noise and dust generated from adjacent logging activities. However, the County must have reasoned that there was enough compatibility between the uses to allow construction of the relatively new golf course. It is apparent that non-resource and resource uses are co-existing in the general vicinity of the subject site, with no evidence of incompatibility. Furthermore, two newly constructed dwelling within the general area are placed farther into adjacent commercial forest land than the proposed dwelling on the subject site.

A large three story white home, and another dwelling are located in CFU zoned land along Logie Road (19863 & 19875 Logie Trail Rd.). These dwellings were approved in 1988. The dwellings are adjacent to a large clearcut that surrounds both sites. (See enclosed area map.) As with the new golf course, the County must have reasoned that there was enough compatibility between the uses to allow construction of two new dwellings in the midst of a large parcel devoted to a resource use. Although the Logie Trail Road dwellings are approximately two miles south of the subject site, there proximity to a resource use, and there ability to be compatible with the adjacent resource do have a bearing on this application. These dwellings were allowed to be situated much farther into a resource area than Mr.Kaptur is proposing. If their placement was considered compatible, then there is no reason why Mr. Kaptur's will be any less compatible.

The predominate land uses east of the subject site are pasture, open field areas, and some wooded areas (Tax Lot 7). The Multnomah Channel and Sauvie Is. are farther to the east. The Kaptur estate recently sold Tax Lot 7 to a Mr. Hegele. The sale of the property is necessary to settle the estate of his father Stephen Kaptur. The new owner responded to the survey. He is presently grazing cattle on the land, but is contemplating other non-resource developments including large a acreage rural residential developments and marina. The development of an RV park is also possible. All of the above mentioned proposals are in their conceptual stages, and no one has applied for the appropriate land use requests to allow such development. The applicant is merely supplying these statements to substantiate that the property has been sold by the estate, and is not available to Mr. Kaptur for his own personal use. Furthermore, it indicates that land adjacent to the subject site will inevitably be changed from an agricultural to residential/commercial use. The inevitable development of this parcel will increase the amount of non-resource acreage in the area.

If anything represents the most concrete piece of evidence for a non-resource use in a resource area, the highway certainly qualifies. As stated previously, St. Helens Highway cuts a wide swath through this area, separating the flatter lowlands in agricultural, residential and

river oriented uses from the hills west of the highway. Not only is the actual paved surface a non-resource use, smaller Tax Lots along the westbound and eastbound lanes are owned by the State Highway Dept., and are being used for bank stabilization. As stated previously, creation and purchase of bank stabilization lots led to the odd configuration of a few small lots in the midst of large resource lots. The owner of the subject site would not be saddle with such a difficult development situation if more acreage were connected to the subject site.

A golf course, and large lot residential developments lie to the south of the Kaptur property (Tax Lots 5,1,22 & 28). The golf course consists of a club house, parking lot, large open lawn areas (greens and fairways) and wooded, non-fairway areas. As stated previously, the northern end of the course abuts resource land (Tax Lot 3). Two rural residences lie south of the golf course (Tax Lots 22, 28). The test area southern end consists of a rural residence, wooded areas and open fields.

SUMMARY OF VICINITY ANALYSIS

In summary, the request for a non-resource dwelling on the Kaptur property will not alter, change or substantially impact an already established pattern of rural residential uses abutting forest uses. Survey results substantiate that other adjacent residents are engaged in similar activities, and they do not feel that the proposed residence will interfere or impede their operations. The proposed rural residence is similar in character to other existing residences. The proposed dwelling will be engaged in domestic activities similar to other residences to the South and West.

The preceding discussion substantiates similarity in the pattern of land uses within the vicinity area. In almost every case, rural dwellings and non-resource uses are co-existing alongside of resource lands. A golf course, and large lot residential developments lie to the south of the subject site. Two, recently constructed dwellings are nestled into a large portion of CFU land along Logie road. The dwellings are adjacent to a large clearcut that surrounds both sites.

It is apparent from the analysis of surrounding land uses that the placement of rural dwellings adjacent to resource lands has been approved, or at the very least, condoned by the County. Without evidence to the contrary, it appears the existing dwellings are not interfering with the predominant resource lands that surround them. To reiterate, compatibility, as it applies to this application, does not require that a residential use, introduced adjacent to a resource use, "get along" with the resource use with no change to each others activities. In addition, the owner has been in contact with the neighborhood association in the area, and there seems to be little opposition from that group.

Mr. Kaptur had a recent telephone conversation with Ms. Patty Larson, Chair of the West Hills/Sauvie Is. neighborhood group. Mr. Kaptur explained his request to her, and she concluded that the majority of the members in the West Hills/Sauvie Is. group would not

oppose construction of a single family dwelling on the subject site. Unfortunately, there was not sufficient time to organize a neighborhood meeting to discuss the proposal. However, Ms. Larsons' summation concerning the opinions of her organization is significant.

The applicant has shown that from a timber producing point of view that the lot surrounding the site (Tax Lot 2), is unproductive and non-marketable land. If future logging of the abutting parcel is unlikely, then the existing separation from Longview's land, and the vegetation buffer that the trees provide, will be in place for many years to come.

Reviewing all the aerial photos enclosed with this application, it is apparent that most residences are buffered by the distance between them and resource lands, and/or trees and other vegetative screening that screen the adjacent forest activities. If the proposed residence on the subject site will be placed in a manner similar to other existing dwellings, then it will be as compatible as those dwellings. If compatibility means "getting along" like other dwellings in the area, then there will be no unusual or unique circumstances that prohibit the placement of a home on the subject site.

II. PROVISION OF PUBLIC SERVICES

As stated earlier in this application, the original application did not adequately address how public services would be provided to the proposed homesite. The following paragraphs will address those issues.

ACCESS

As stated previously, There is no existing exclusive access road to the property, however, an existing BPA access road traverses the site's western property boundary. (See site plan.) If this application is approved, the owner will exercise his right to use the existing BPA access road across his property to gain access to the homesite. The owner also has an agreement with the adjoining property owner for access to the same BPA road that traverses through Tax Lot 2. Through existing easements and use of the existing BPA road, the owner will have access to St. Helens Hwy.

PROVISION OF WATER

The owner has received well logs on wells recently drilled in the area. (See enclosed well logs.) The well logs show that there is adequate water available for domestic purposes. If on-site well tests indicate a low gallon per minute flow or low pressure for domestic purposes, pumping systems with a pressurized holding tank could adequately facilitate domestic water service.

PROVISION OF SANITARY WASTE DISPOSAL

The owner has employed a sewer system contractor to analyze the existing soils' ability to support a drain field for sanitary sewage disposal. (See enclosed letter from Kessi Bros.) The contractor concluded that the site soil can support a drain field to accommodate the average domestic needs of a standard single family household. There is suitably sloped property on-site to place a drain field.

CONCLUSION

The request for a non-resource dwelling on the Kaptur property will not alter, change or substantially impact an already established pattern of rural residential uses abutting forest uses. Survey responses from Longview Fibre and others substantiate that they are engaged in similar activities, and/or they do not feel that the proposed residence will interfere or impede their operations. The applicant has shown that from a timber producing point of view that the lot surrounding the site (Tax Lot 2), is unproductive and non-marketable land. If future logging of the abutting parcel is unlikely, then the existing separation from Longview's land, and the vegetative buffer that the trees provide, will be in place for many years to come. The owner has been in contact with the West Hills/Sauvie Is. neighborhood group, and there appears be little opposition from that group.

Unfortunately, the original application and testimony did not address the most critical aspect of citing a dwelling in a resource zone: compatibility. The original applicant was a perspective buyer who did not understand the importance of addressing this most fundamental criteria. Mr. Kaptur and his representatives also did not totally grasp the significance of the compatibility issue. Despite their lack of understanding of the issues, the compelling evidence to substantiate compatibility were always there, it just needed to be presented in a factual and analytical way. Based on all the information presented in this application, the dwelling request is a reasonable one, and will grant Mr. Kaptur the use of his property that his neighbors already enjoy.

SALE OF SUBJECT SITE TO STATE

BOOK 1874 PAGE 2095

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, by and through)
its State Highway Commission,)
composed of Glenn L. Jackson,)
Fred W. Hill and Thaddeus B.)
Bruno,)

Plaintiff,)

vs.)

NAPOLEON STEPHEN KAPTUR,)

Defendant.)

Case No. 384-705 L

JUDGMENT ORDER

ENTERED IN JOURNAL

MAR 2 1973

This matter coming on upon Stipulation of the parties,
plaintiff acting by and through Donald J. Howe of its attorneys;
defendant acting by and through George W. Mead, their attorney;
and

It appearing to the Court and the Court now finds that the
acquisition described in paragraph III of the plaintiff's
complaint is necessary for a public purpose and that prior to
commencement of this action plaintiff by resolution so declared;
and

It appearing to the Court and the Court now finds that the
plaintiff prior to commencement of this action and pursuant to
its resolution attempted to acquire said acquisition by agreement
and purchase but was unable to do so; and

It appearing to the Court and the Court now finds based upon
the records and files herein and the Stipulation, that just
compensation should be awarded to the defendants for appropriation
of the property hereinafter described is the sum of \$8,800 and
it further appearing that the plaintiff has heretofore deposited
with the Clerk of this Court the sum of \$7,600 and there is now
due and owing an additional sum of \$1,200; and

It further appearing to the Court that upon payment of the
said sum of \$1,200 the acquisition hereinafter described shall
be appropriated for public purposes in fee simple, free of all

1 liens and encumbrances,

2 NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

3 I.

4 That upon payment to the Clerk of this Court of the sum of
5 \$1,200, the acquisition hereinafter described shall become
6 appropriated for a public purpose and title to said acquisition
7 shall become vested in the State of Oregon by and through its
8 State Highway Commission in fee simple, free of all liens and
9 encumbrances except as hereinafter set forth:

10 Title in fee simple to the following described real property for
11 right of way purposes including its use for slide control:

12 A parcel of land lying in the SW 1/4 of Section 1, Township 2 North, Range 2 West, W.M., Multnomah
13 County, Oregon: the said parcel being that portion of said
14 subdivisions lying between lines at right angles to the
15 center line of the relocated Columbia River Highway at Engineer's
16 Stations 142+00 and 152+00; Westerly of that property acquired
17 by the State of Oregon, by and through its State Highway
18 Commission, in that certain Final Judgment dated July 30,
19 1970, entered as Circuit Court Case No. 358497, Multnomah
20 County, Oregon and included in a strip of land variable
21 in width lying on the Westerly side of said center line,
22 which center line is described in said Final Judgment.

23 The widths in feet of the strip of land above referred
24 to are as follows:

Station	to Station	Width on Westerly Side of Center Line
142+00	145+50	250 taper to 260
145+50	146+50	260 taper to 600
146+50	151+00	()
151+00	152+00	600 taper to 120

25 The parcel of land to which this description applies
26 contains 4.34 acres, more or less.

27 All rights of access of every nature to the right of way of said
28 highway project, except as set forth in the Final Judgment entered
29 in Circuit Court Case No. 358497, Multnomah County; provided, however
30 that there shall be reserved for the benefit of the remaining land
31 a right to pass across the westerly 125 feet of the above described
32 real property where the terrain permits in order to move in a
north-south direction from either side of said real property to the
other. The grant of this right of passage shall in no way be
construed as a representation that the terrain will continue to
permit passage and the right shall in any event continue only as
long as the remaining property served by the passage on each end
is held under a common ownership.

100 State Office Building
Salem, Oregon 97310
Phone 325-4400

II.

That the acquisition described in paragraph I hereof is encumbered by and plaintiff will take said acquisition subject to the interests of others than the within named defendant in the following encumbrances:

EXISTING
EASEMENTS

Easement recorded December 19, 1940, in Book 580, Page 316, Deed Records, in favor of United States of America for power lines.

Easement recorded September 19, 1960, in Book 2028, Page 644, Deed Records, in favor of Portland General Electric Company, an Oregon corporation, for utility purposes.

III.

That none of the parties shall recover interest, attorney fees or their costs and disbursements incurred herein.

Dated this 2nd day of MARCH, 1973.

William M. Dale
CIRCUIT JUDGE

ORIGIN STATE HIGHWAY DIVISION
RIGHT OF WAY SECTION
STATE HIGHWAY BLDG. ROOM 119
SALEM, OREGON 97310

Highway Division
File 47285
PM: 526-6017
98-4-23

BOOK 1900 PAGE 2130

DEED

The STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, Grantor, hereby conveys unto DWAYNE J. KAPTUR and STEPHEN N. KAPTUR, Grantees, the following described property, to wit:

A parcel of land lying in the SW¹/₄ and the NW¹/₄ of Section 1, Township 2 North, Range 2 West, W.M., Multnomah County, Oregon and being that property acquired by the State of Oregon, by and through its State Highway Commission in that certain judgment dated March 2, 1973, entered as Circuit Court Case No. 384-705, Multnomah County, Oregon, containing 4.34 acres, more or less.

This conveyance is made and delivered upon the following express conditions, reservations, and restrictions:

1. That there is reserved unto the State of Oregon, its successors, and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing such minerals and geothermal resources, provided, however, that the right hereby reserved to use the surface for any of the above activities shall be subordinate to that actual use of the surface of the premises deeded herein, or any part thereof, being made by the surface rights owner at the time that the State's lessee conducts any of the above activities. In the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the State's lessee conducts any of the above activities.
2. That there is reserved to Grantor, and waived by Grantees, all access rights between the above described real property and the right of way of the relocated Columbia River Highway abutting on said parcel. This reservation shall run with the land and shall not be subject to modification, cancellation, or destruction by adverse user or estoppel, no matter how long continued. Nothing in this conveyance contained shall be construed as conveying any estate, right, title, or interest in and to said abutting public highway right of way or any rights of reversion therein or thereto.
3. That the above described land shall never be used for the placing or maintenance of any advertising sign, display, or device, except such sign, display, or device used to advertise the activities on said land, or the lease or sale of said land or any portion thereof. In the event of violation of this condition, Grantor shall

Tax statements are to be sent to the following address:

22037 N.W. St. Helens Rd.
Portland, OR 97231

4-10-86

SALE OF SUBJECT SITE FROM THE STATE
BACK TO THE KAPTURS.

APR 23 1986

Highway Division
File 47285
PM: 526-6017
98-4-23

BOOK 1900 PAGE 2131

have the right, through its authorized officers, agents, or employees to enter upon said land and remove, destroy, or obliterate any unauthorized sign, display, or device, without liability for damage or injury thereto, and to recover the cost of such removal, destruction or obliteration from the owner of said land.

4. That no junk, scrap, junked motor vehicles, or parts thereof, debris, trash, waste, or other such materials shall be placed on said land for whatever purpose in any manner so as to be visible from a state highway, provided that such items as listed above can otherwise be placed on said land without violating any applicable law, ordinance, or regulation. In the event of violation of this condition, Grantor shall have the right, through its authorized officers, agents, or employees, to enter upon said land and remove or destroy any unauthorized junk, scrap, or other material mentioned above and recover the cost of such removal or destruction from the owner of said land.

5. That this property shall not be used for the operation of any garbage dump or sanitary land fill. If such use is made of the property, Grantor may, at its election, enter upon said land and restore it to the condition that existed prior to said use for garbage dump or sanitary land fill purposes and recover the cost thereof from the owner of said land.

It is understood that the conditions, reservations, restrictions, and covenants herein set out have been considered in determining the amount of consideration of this conveyance.

The rights and remedies herein reserved or provided shall not be exclusive and shall not be in derogation of any other right or remedy which Grantor may have. The conditions and restrictions herein contained shall run with said land and shall forever bind Grantees, their heirs and assigns. Where any action is taken to enforce the above mentioned conditions and restrictions, Grantor shall not be liable for any trespass or conversion as to any real or personal property. Where legal proceedings are commenced by Grantor to enforce the foregoing conditions and restrictions or for the recovery of the aforementioned removal or destruction costs, the successful party shall be entitled to reasonable attorney fees and court costs.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

The true and actual consideration received by Grantor for this conveyance is \$7,600.

Dated this 14 day of April, 1986.

APPROVED AS TO
LEGAL SUFFICIENCY

[Signature]
Asst. Attorney General

Date 4-11-86

4-10-86

Page 2 - Deed

STATE OF OREGON, by and through its
DEPARTMENT OF TRANSPORTATION,
Highway Division

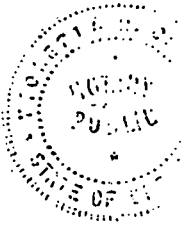
[Signature]
J. B. Boyd, Right of Way Manager

Highway Division
File 47283
PM: 526-6017
SB-4-23

BOOK 1900 PAGE 2132

STATE OF OREGON, County of Marion

April 14, 1986. Personally appeared J. B. Boyd, who being sworn, stated that he is the Right of Way Manager for the State of Oregon, Department of Transportation, Highway Division, and that this document was voluntarily signed on behalf of the State of Oregon by authority delegated to him. Before me:



Violeta R. Osborne
Notary Public for Oregon

My Commission expires 1-20-89

4-10-86
Page 3 - Deed
slb/ky

30083

STATE OF OREGON
Multnomah County

I, a Deputy for the Recorder of Conveyances, in and for said County, do hereby certify that the within instrument of writing was received for record and recorded in the record of said County

1986 APR 23 PM 1:07

RECORDING SECTION
MULTNOMAH COUNTY OREGON

In Book 803X 1900 PAGE 213D

Witness my hand and seal of office at said
Recorder of Conveyances

M Butnd
Deputy

13
10

APR 23 1986

HEGELE TAX LOT 7, SEC. 1

RECEIVED APR 14 1993

March 26, 1993

RE: Survey of land uses within a test area for a non-resource dwelling in a resource zone for Dwayne Kaptur

Dear Property owner:

We are conducting a survey to collect information on the agricultural, forest management practices or other land uses that occur on your property. Mr. Kaptur's property is located at 22401 N.W. St. Helens Hwy. (see enclosed map).

The Multnomah County zoning code requires that applicants applying for a permit to construct a non-resource dwelling in a resource zone show that the proposed dwelling will be compatible with surrounding uses. Gathering accurate land use information from adjacent property owners is one way to analyze compatibility.

Answers to the survey questions will help the County to determine whether the proposed dwelling will interfere with existing and accepted farm, forest practices, or other land uses on neighboring lands. Please be as accurate and precise as possible in your responses to the questions. The information you provide will be extremely valuable in determining whether or not your neighbor will receive permission to construct a dwelling on their property.

After answering the survey questions, please go to the end of the survey and sign your name in the space provided. Your cooperation in this survey will be greatly appreciated.

Thank you,



Bruce Vincent
Associate

SURVEY QUESTIONS

- I. Where is your property located? (P.O. Box number, street address, road, town, village, etc.) Please indicate Tax Lot number if known.

2 N 2 W Sec. T407

- II. Where are you located in relation to the subject property? (Circle one.)

☒ North

South

East

West

- III. What type of activity occurs on your property? (Circle one or more, if applicable.)

☒ Agriculture

Forest-related

Other

- IV. If you raise a crop or livestock, please answer the following questions. If you are involved in a forest related activity, please go to question V.

- V. If you are not in agricultural or a forest related activity please go to question VI.

- A. What type of crop, or livestock breed, do you raise?

Cattle

- B. Approximately how many acres are devoted to that use?

150

- C. Starting at the beginning of the calendar year, (January), list all the major seasonal activities that are important to the success of your crop, or herd. As an example, if you grow hay, list when the ground lies fallow, when you first break ground, when the seed is planted, fertilized, sprayed, 1st cutting, 2nd cutting, etc.

CATTLE GRASSING ALL YEAR

- D. What types of equipment are used to carry out the type of activities listed in Question C. (Generic names of equipment and/or implements are fine.)

HAY TRUCK

- E. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

NO

- V. If you are involved in a forest related activity please respond to the following questions. If you are not in agricultural or a forest related activity please go to question VI. If you raise a crop and/or livestock, please go to the end of the survey.

- A. Approximately how many acres are devoted to timber?

- B. Is there an existing road to the property? What public road does it connect to?

Hwy 30

- C. If you know what year the property was most recently logged, please enter it here.

- D. In what year will the next forest management activity occur? (i.e., planting, spraying, pre-commercial thinning, slash burning, road building, logging, etc.)

E. If you have a timber management plan, please list the years in which each harvest/thinning activity will occur.

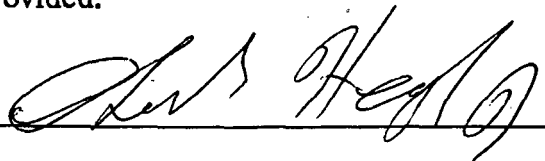
F. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

no

VI. If you are not involved in agriculture or a forest related activity, please briefly summarize what type of activities occur on your site. (i.e. maintenance of the dwelling, landscape maintenance, outdoor recreation, entertainment of guests, raising of domestic animals, burning of residential yard debris, etc.)

Thank you for completing this survey. Please sign your name in the space provided.

NAME



HUBER, TAX LOT 7, SEC. 12 (SEE AREA MAP)

March 26, 1993

RE: Survey of land uses within a test area for a non-resource dwelling in a resource zone for Dwayne Kaptur

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Answers to the survey questions will help the County to determine whether the proposed dwelling will interfere with existing and accepted farm, forest practices, or other land uses on neighboring lands. Please be as accurate and precise as possible in your responses to the questions. The information you provide will be extremely valuable in determining whether or not your neighbor will receive permission to construct a dwelling on their property.

After answering the survey questions, please go to the end of the survey and sign your name in the space provided. Your cooperation in this survey will be greatly appreciated.

Thank you,


Bruce Vincent
Associate

SURVEY QUESTIONS

- I. Where is your property located? (P.O. Box number, street address, road, town, village, etc.) Please indicate Tax Lot number if known.

20417 N. W. Mann Ave.
Portland, Or 97231

- II. Where are you located in relation to the subject property? (Circle one.)

North

South

East

West

- III. What type of activity occurs on your property? (Circle one or more, if applicable.)

Agriculture

Forest-related

Other

- IV. If you raise a crop or livestock, please answer the following questions. If you are involved in a forest related activity, please go to question V.

- V. If you are not in agricultural or a forest related activity please go to question VI.

A. What type of crop, or livestock breed, do you raise?

B. Approximately how many acres are devoted to that use?

C. Starting at the beginning of the calendar year, (January), list all the major seasonal activities that are important to the success of your crop, or herd. As an example, if you grow hay, list when the ground lies fallow, when you first break ground, when the seed is planted, fertilized, sprayed, 1st cutting, 2nd cutting, etc.

D. What types of equipment are used to carry out the type of activities listed in Question C. (Generic names of equipment and/or implements are fine.)

E. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

V. If you are involved in a forest related activity please respond to the following questions. If you are not in agricultural or a forest related activity please go to question VI. If you raise a crop and/or livestock, please go to the end of the survey.

A. Approximately how many acres are devoted to timber?

B. Is there an existing road to the property? What public road does it connect to?

C. If you know what year the property was most recently logged, please enter it here.

D. In what year will the next forest management activity occur? (i.e., planting, spraying, pre-commercial thinning, slash burning, road building, logging, etc.)

E. If you have a timber management plan, please list the years in which each harvest/thinning activity will occur.

F. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

VI. If you are not involved in agriculture or a forest related activity, please briefly summarize what type of activities occur on your site. (i.e. maintenance of the dwelling, landscape maintenance, outdoor recreation, entertainment of guests, raising of domestic animals, burning of residential yard debris, etc.)

*I have no objection Dwayne Kapter
building a house on that land!
In fact I think that would be quite an
asset to this community.*

Thank you for completing this survey. Please sign your name in the space provided.

NAME

Arthur W. Huber
Margaret Huber

RECEIVED APR 16 1993

LARRY HURLEY, LONGVIEW FIBRE,
TAX LOTS 3+4, SEC. 36, TAX LOTS 3+15, SEC 1
TAX LOT 17, SEC. 12

March 26, 1993

RE: Survey of land uses within a test area for a non-resource dwelling in a resource zone for Dwayne Kaptur

Dear Property owner:

We are conducting a survey to collect information on the agricultural, forest management practices or other land uses that occur on your property. Mr. Kaptur's property is located at 22401 N.W. St. Helens Hwy. (see enclosed map).

The Multnomah County zoning code requires that applicants applying for a permit to construct a non-resource dwelling in a resource zone show that the proposed dwelling will be compatible with surrounding uses. Gathering accurate land use information from adjacent property owners is one way to analyze compatibility.

Answers to the survey questions will help the County to determine whether the proposed dwelling will interfere with existing and accepted farm, forest practices, or other land uses on neighboring lands. Please be as accurate and precise as possible in your responses to the questions. The information you provide will be extremely valuable in determining whether or not your neighbor will receive permission to construct a dwelling on their property.

After answering the survey questions, please go to the end of the survey and sign your name in the space provided. Your cooperation in this survey will be greatly appreciated.

Thank you,



Bruce Vincent
Associate

E. If you have a timber management plan, please list the years in which each harvest/thinning activity will occur.

F. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

VI. If you are not involved in agriculture or a forest related activity, please briefly summarize what type of activities occur on your site. (i.e. maintenance of the dwelling, landscape maintenance, outdoor recreation, entertainment of guests, raising of domestic animals, burning of residential yard debris, etc.)

Longview Fibre Co. has no objection to Duane Kaptur building a personal residence on his property

Thank you for completing this survey. Please sign your name in the space provided.

NAME

Laurel C. Hardy

Office Held by Official

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

(START CARD) # 30183

(1) OWNER:

Name Wildwood Golf Course Bill OMEARA
Address 21881 NW St Helens Rd
City Portland State OR Zip _____

(2) TYPE OF WORK:

☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD

☒ Rotary Air ☐ Rotary Mud ☒ Cable
☐ Other _____

(4) PROPOSED USE:

☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

(5) BORE HOLE CONSTRUCTION:

Special Construction approval Yes ☐ No ☒ Depth of Completed Well _____ ft.

Explosives used ☐ Yes ☒ No ☐ Type _____ Amount _____

HOLE			SEAL			Amount sacks or pounds
Diameter	From	To	Material	From	To	
10	1	18	Cement	1	18	10 Bags
6	14	160				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E

☐ Other _____

Backfill placed from _____ ft. to _____ ft. Material _____

Gravel placed from _____ ft. to _____ ft. Size of gravel _____

(6) CASING/LINER:

Diameter	From	To	Gauge				
				Steel	Plastic	Welded	Threaded
Casing: 6"	1	155		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liner:				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Final location of sheets: 155

(7) PERFORATIONS/SCREENS:

☐ Perforations Method _____
☒ Screens Type _____ Material Stainless Steel

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
150	160	8		5 3/4	5 1/4	<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☒ Bailer ☐ Air ☐ Flowing
☐ Artesian

Yield gal/min	Drawdown	Drill stem at	Time
15 gpm	0		1 hr.

Temperature of water 52° Depth Artesian Flow Found _____

Was a water analysis done? ☐ Yes By whom _____

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other _____

Depth of strata: _____

(9) LOCATION OF WELL by legal description:

County Mult Latitude _____ Longitude _____
Township 2N N or S. Range 2W E or W. WM. _____
Section 12 SW 1/4 NW 1/4
Tax Lot 47 Lot _____ Block _____ Subdivision _____
Street Address of Well (or nearest address) 21881 NW St Helens Rd
Portland OR

(10) STATIC WATER LEVEL:

140 ft. below land surface. Date 8 May
Artesian pressure _____ lb. per square inch. Date _____

(11) WATER BEARING ZONES:

Depth at which water was first found		10 Ft	
From	To	Estimated Flow Rate	SWL
140	160	15 gpm	140

(12) WELL LOG:

Ground elevation			
Material	From	To	SWL
clay Brown	1	5	
silt clay Brown	5	120	
heavy sand silt	120	135	
heavy sand small	135	160	140
amount gravel			
Set screen/160			
pull back casing			
5FT, Develop			
well (15 gpm)			
grout casing			

RECEIVED

RECEIVED

JUN 18 1991

JUL 09 1991

WATER RESOURCES DEPT.
WATER RESOURCES DEPT SALEM, OREGON
SALEM, OREGON

Date started 3 May 91 Completed 8 May 91

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my knowledge and belief.

Signed _____ WWC Number _____
Date _____

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

Signed [Signature] WWC Number 666
Date 3-24-92

006358

monitor

SALEM, OREGON 1-T

9809C 10/86



Forest Practice Rules

August 3, 1992

Published by the Forest Practices Section
Oregon Department of Forestry
2600 State Street • Salem, Oregon • 97310



The Oregon Forest Practices Act regulates forest operations on private and state forest lands. The Act is implemented with administrative rules. The rules encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species. This leading use of privately owned forest land is consistent with the sound management of soil, air, water, and fish and wildlife resources. The Forest Practice Act has statutory authority in ORS 527.710. Oregon Administrative Rules have been adopted by the Board of Forestry. The Oregon Administrative Rules, Chapter 629, Division 24, regulate forest operations in Oregon.

They are arranged as:

GENERAL RULES 629-24-101 through 629-24-117; APPLICATION OF CHEMICALS 629-24-200; DISPOSAL OF SLASHING 629-24-300; REGIONAL RULES: REFORESTATION 629-24-500; ROAD CONSTRUCTION AND MAINTENANCE 629-24-520 through 629-24-524; HARVESTING 629-24-540; SPECIFIED RESOURCE SITES ON FOREST LANDS 629-24-690 through 629-24-699; SPECIES USING SENSITIVE BIRD NESTING, ROOSTING AND WATERING SITES 629-24-700; RESOURCE SITES USED BY THREATENED AND ENDANGERED SPECIES 629-24-800; and SIGNIFICANT WETLANDS ON FOREST LANDS 629-24-1000.

Eastern and Southwest Oregon Regional rules can be obtained by calling 378-2533. Rules covering Administration (Division 55) and the Process to Inventory and Protect Special Resources on Forest Lands (Division 56) are also available.

Rule changes of July 22, 1992 are in **boldface** for ease of reference.

GENERAL RULES

629-24-101 DEFINITIONS. As used in OAR Chapter 629, Division 24, unless otherwise required by context:

- (1) "Abandoned resource site" means a resource site that the State Forester determines is not active.
- (2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. 'Recent past' shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.
- (3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.
- (4) "Aquatic area" means the wetted area of streams, lakes, and wetlands up to the high water level. Oxbows

and side channels are included if they are part of the flow channel or contain fresh water ponds.

- (5) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or nonforested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.
- (6) "Buffer strip" means a protective area adjacent to an area requiring special attention or protection.
- (7) "Chemicals" means and includes herbicides, insecticides, rodenticides, fertilizers, and adjuvants.
- (8)(a) "Class I waters" means any portions of streams, lakes, or other waters of the state which are significant for:

NW REGION

Northwest Oregon Region Forest Practice Rules

authority to suspend the further use of such equipment until the deficiency has been satisfactorily corrected.

629-24-202 PROTECTION OF WATER QUALITY DURING MIXING OF CHEMICALS.

Whenever water is taken from any stream or water impoundment for use in the mixing of chemicals, precautions shall be taken to prevent contamination of the source:

- (1) Provide an air gap or reservoir between the water source and the mixing tank; or
- (2) Use a portable pump with the necessary suction hose, feed hoses, and check valves to supply tanks with water from streams, such equipment to be used only for water.

629-24-203 PROTECTION OF WATERWAYS, AREAS OF OPEN WATER, AND DWELLINGS WHEN SPRAYING.

- (1) The operator shall protect waterways and areas of open water such as swamps or impoundments from contamination when spraying chemicals by aircraft by leaving an unsprayed strip of at least 60 feet on each side of every Class I water or area of open water.
- (2) When applying chemical spray from the ground, the operator shall leave unsprayed a strip of at least ten (10) feet on each side of every waterway or area of open water.
- (3) Chemical spray application in or adjacent to the riparian area of influence shall be made parallel to waterways, and must be made prior to application to the remainder of the area to be treated.
- (4) When applying herbicides by aircraft near inhabited dwellings, the operator shall leave an unsprayed strip of at least 60 feet adjacent to such dwellings.
- (5) No untreated strip is required to be left by the operator when applying fertilizers, except that precautions shall be taken to avoid direct application of fertilizers to Class I waters or areas of open water.

629-24-204 SELECTION AND MAINTENANCE OF MIXING AND LANDING AREAS.

Mix chemicals or clean tanks or equipment only where the chemicals will not contaminate waters of the state. Mixing areas and aircraft landing areas shall be located where spillage of chemicals will not contaminate waters of the state. If any chemical is spilled, immediate and appropriate action shall be taken to contain or neutralize it.

629-24-205 APPLICATION OF CHEMICALS IN ACCORDANCE WITH LIMITATIONS.

Apply chemicals only in accordance with currently recognized limitations of temperature, humidity, wind, and other factors specified by the State Forester.

629-24-206 RE-USE AND DISPOSAL OF CHEMICAL CONTAINERS.

Rinse chemical containers with the carrier used in mixing at least three (3) times. Apply the flushing solution in the

form of spray to the area. Do not re-use chemical containers unless properly treated. Disposal of chemical containers shall be in accordance with approved state disposal requirements.

629-24-207 DAILY RECORDS OF CHEMICAL APPLICATIONS.

- (1) Whenever insecticide or herbicide sprays are applied on forest land, the operator shall maintain a daily record of spray operations which includes:
 - (a) Name of monitor or name of applicator (pilot or ground applicator);
 - (b) Location of project;
 - (c) Temperature (hourly);
 - (d) Wind velocity and direction (hourly);
 - (e) Contractor's name and pilot's name when applied aerially; contractor's name and/or employer's name for ground application;
 - (f) Insecticides or herbicides used, including name, mixture, application rate, and carrier used;
 - (g) Disposal method/location of containers.
- (2) Whenever rodenticides or fertilizers are applied, the operator shall maintain a daily record of such application which includes subsections (1)(a), (b), and (e) of this rule, the name of the chemical and application rate.
- (3) The records required in sections (1) and (2) of this rule shall be kept for three (3) years and be made available at the request of the State Forester.

629-24-208 LANDOWNER'S RESPONSIBILITY TO DETERMINE WHETHER OR NOT CHEMICALS ARE CONTAMINATING STREAMS.

Whenever chemicals are applied to forest land, it is the responsibility of the landowner to determine whether or not chemicals are contaminating streams or other bodies of water.

629-24-209 REPORTING OF CHEMICAL ACCIDENTS.

Immediately report all chemical accidents to the State Forester.

629-24-210 NOTIFICATION, POSTING OF ACCESS ROUTES AND ROAD CLOSURE WHEN AERIALLY APPLYING 2,4,5-T OR SILVEX.

- (1) The landowner shall make every reasonable effort to notify contiguous landowners of record and residents, and downstream water users of record within one-half mile of the intended spray area, at least fifteen (15) days prior to the spray application. Notification shall be by registered letter and/or direct personal communication and by advertising in the local newspaper.
- (2) Boundaries of an aerial spray area shall be posted by the landowner with a sign provided by the State Forester at all points of regular access at least five (5) days prior to spraying. Posting shall remain at least fifteen (15) days after spraying is completed.

NW REGION

Kessi. Bros
PO Box 452
Scappoose, OR 97056
(503) 543-2914

To whom it may concern:

4/19/93

I walked the 4.34 acres Kaptur property and examined the suitability of the soil on the site. In my opinion, this soil would accomodate a standard septic system.

If you have any further questions please contact me at 543-3818 or 543-2914

Sincerely,

Will 36/

Planning
4-27-93
P-3
Handout #1

March 26, 1993

RE: Survey of land uses within a test area for a non-resource dwelling in a resource zone for Dwayne Kaptur

Dear Property owner:

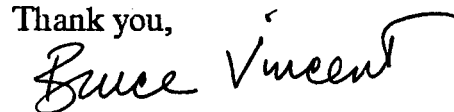
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The Multnomah County zoning code requires that applicants applying for a permit to construct a non-resource dwelling in a resource zone show that the proposed dwelling will be compatible with surrounding uses. Gathering accurate land use information from adjacent property owners is one way to analyze compatibility.

Answers to the survey questions will help the County to determine whether the proposed dwelling will interfere with existing and accepted farm, forest practices, or other land uses on neighboring lands. Please be as accurate and precise as possible in your responses to the questions. The information you provide will be extremely valuable in determining whether or not your neighbor will receive permission to construct a dwelling on their property.

After answering the survey questions, please go to the end of the survey and sign your name in the space provided. Your cooperation in this survey will be greatly appreciated.

Thank you,



Bruce Vincent
Associate

SURVEY QUESTIONS

- I. Where is your property located? (P.O. Box number, street address, road, town, village, etc.) Please indicate Tax Lot number if known.

22037 musthens Rd

- II. Where are you located in relation to the subject property? (Circle one.)

North & South East West

- III. What type of activity occurs on your property? (Circle one or more, if applicable.)

Agriculture ← Forest-related Other

- IV. If you raise a crop or livestock, please answer the following questions. If you are involved in a forest related activity, please go to question V.

- V. If you are not in agricultural or a forest related activity please go to question VI.

- A. What type of crop, or livestock breed, do you raise?

Livestock for personal use

- B. Approximately how many acres are devoted to that use?

The Bark

- C. Starting at the beginning of the calendar year, (January), list all the major seasonal activities that are important to the success of your crop, or herd. As an example, if you grow hay, list when the ground lies fallow, when you first break ground, when the seed is planted, fertilized, sprayed, 1st cutting, 2nd cutting, etc.

- D. What types of equipment are used to carry out the type of activities listed in Question C. (Generic names of equipment and/or implements are fine.)

none

- E. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

no

- V. If you are involved in a forest related activity please respond to the following questions. If you are not in agricultural or a forest related activity please go to question VI. If you raise a crop and/or livestock, please go to the end of the survey.

- A. Approximately how many acres are devoted to timber?

55 acres

- B. Is there an existing road to the property? What public road does it connect to?

*St Helens rd
Rachael rd*

- C. If you know what year the property was most recently logged, please enter it here.

approx 1980

- D. In what year will the next forest management activity occur? (i.e., planting, spraying, pre-commercial thinning, slash burning, road building, logging, etc.)

1993 or Spring 1994

- E. If you have a timber management plan, please list the years in which each harvest/thinning activity will occur.

not available yet

- F. Do you think that the addition of the proposed residence will conflict with your existing operation, or add to the cost of the operation?

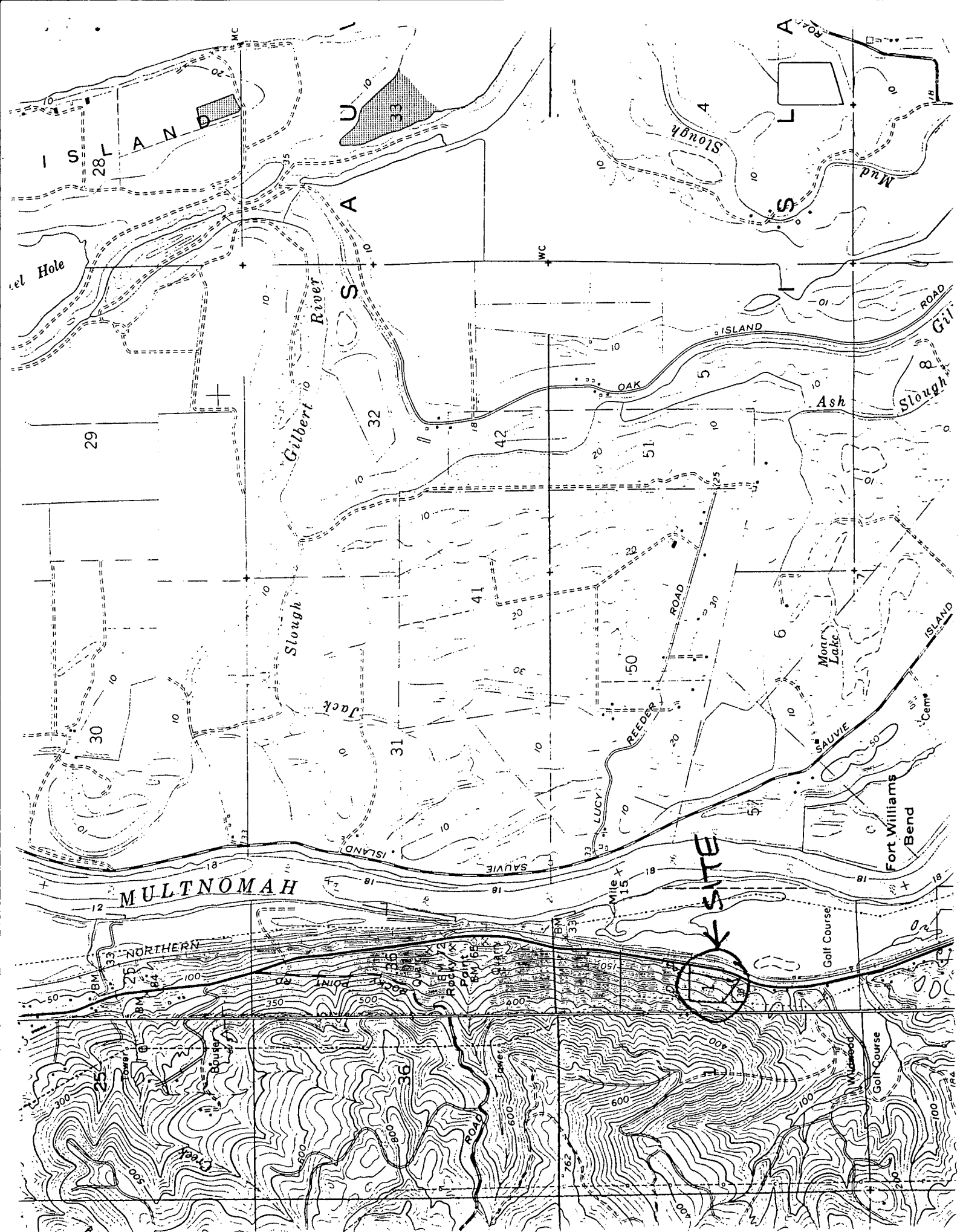
No

- VI. If you are not involved in agriculture or a forest related activity, please briefly summarize what type of activities occur on your site. (i.e. maintenance of the dwelling, landscape maintenance, outdoor recreation, entertainment of guests, raising of domestic animals, burning of residential yard debris, etc.)

Thank you for completing this survey. Please sign your name in the space provided.

NAME

Joel nee



March 26, 1993

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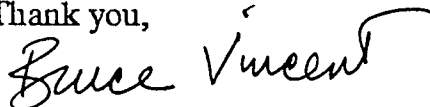
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Thank you,

A handwritten signature in cursive script that reads "Bruce Vincent".

Bruce Vincent
Associate

SURVEY QUESTIONS

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22037 musthelen Rd

- II. Where are you located in relation to the subject property? (Circle one.)

North

South

East

West

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Agriculture

Forest-related

Other

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Livestock for personal use

- B. Approximately how many acres are devoted to that use?

The Barn

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1993 & Spring 1994

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No

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Thank you for completing this survey. Please sign your name in the space provided.

NAME

Joel nee

Appellant

Bruce Vincent

CONTINUENCE

1. COMPATABILITY
2. Provision of Public Services

Lack of substantial evidence
(just wasn't presented)

HISTORY: '69 State purchase

'73 The subject site

186 State didn't need

Shouldn't be left vacant

Alder and maple - not commercial

Small as a resource property

Lack of public services

neighbors don't object

Summary:

Respondant

Arnold Brooklyn (Rockin?)

evidence ^{NOT} submitted so " " could review

Issue of compatibility + land use pattern

Waived the right for a continuance

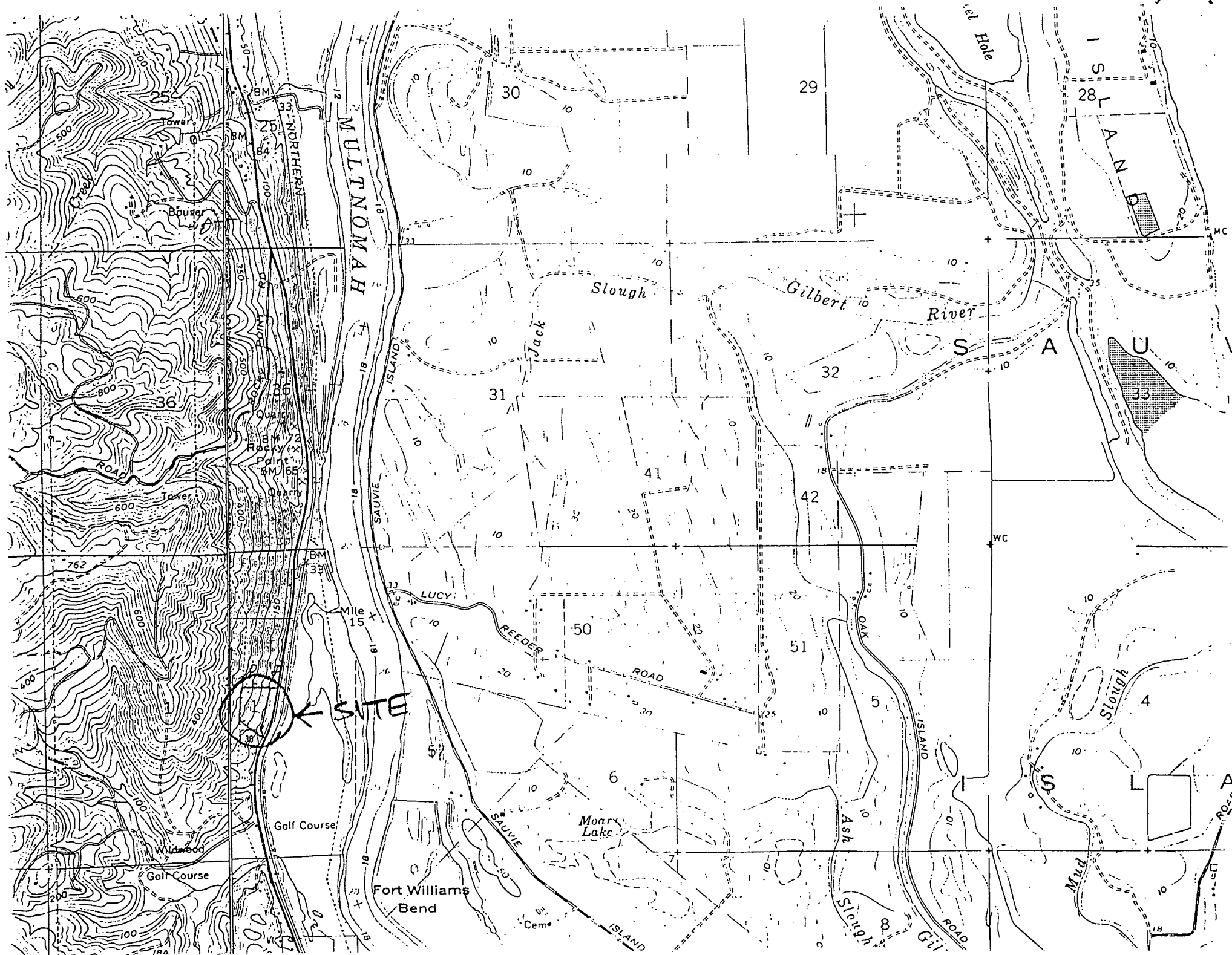
neigh intend to build

Code protects the land

applicant didn't submit evidence

incremental impact

Rebuttal Bruce Vincent



Rules 1982 - John Hubay

1. Staff report
2. appellant 1st Can reserve 10 min for rebuttal
3. Respondant 10 min

AFFIRM REVERSE MODIFY
FINDINGS Submitted to Bce for appll + put on council

YES NO
1 - Hansen

Sandy Matthews - FACTS

NEW impact on prop

Denied

approval criteria set forth in Hearings

22401 NW St Helen's Rd.

4.34 acres in size

Criteria (Reasons for denying)

#3 dwelling be compatible w/ surdy res. uses
not interfere w/ resource mgmt
(forest practice issue)

lots of forest land to a west.

addn of this dwelling wld alter the
land use pattern in the area

no water source on the property +
no septic availability

** [Sic levels are adequate Policy #38
Correct

not b/c a Bd

new evidence on access not allowed

Beyond the Scope of the Record

- NEW EVIDENCE -

- MOVE to NOT consider new-



CARTER (GOLF COURSE)

SPENCER & CROSS, INC.
Photogrammetric Engineering
1500 N. Second St., Suite 200
Portland, OR 97228 (503) 222-1111

90 08 740

SBG-MET 100 100

SN37

23
CFU-80
LONGVIEW FIBRE
185.6 A

KOENNECKE TIMBER CO.
14
MUF-19
51.78 A

22
MUF-19
1.93 A

4
MUF-19
39.26 A

LONGVIEW FIBRE

21
MUF-19
7.77 A

27
MUA-20

HEERMAN
MUA-20

15
CFU-90
52.82 A

LONGVIEW FIBRE

LONGVIEW FIBRE

3
CFU-90
241.6 A

2
CFU-90
3.662 A

5
CFU-90
O'MEARA
166.16 A

GOLF

COURSE

1
CFU-90
132.92 A

17
CFU-90
20.0 A
LONGVIEW FIBRE

C. HEGELE

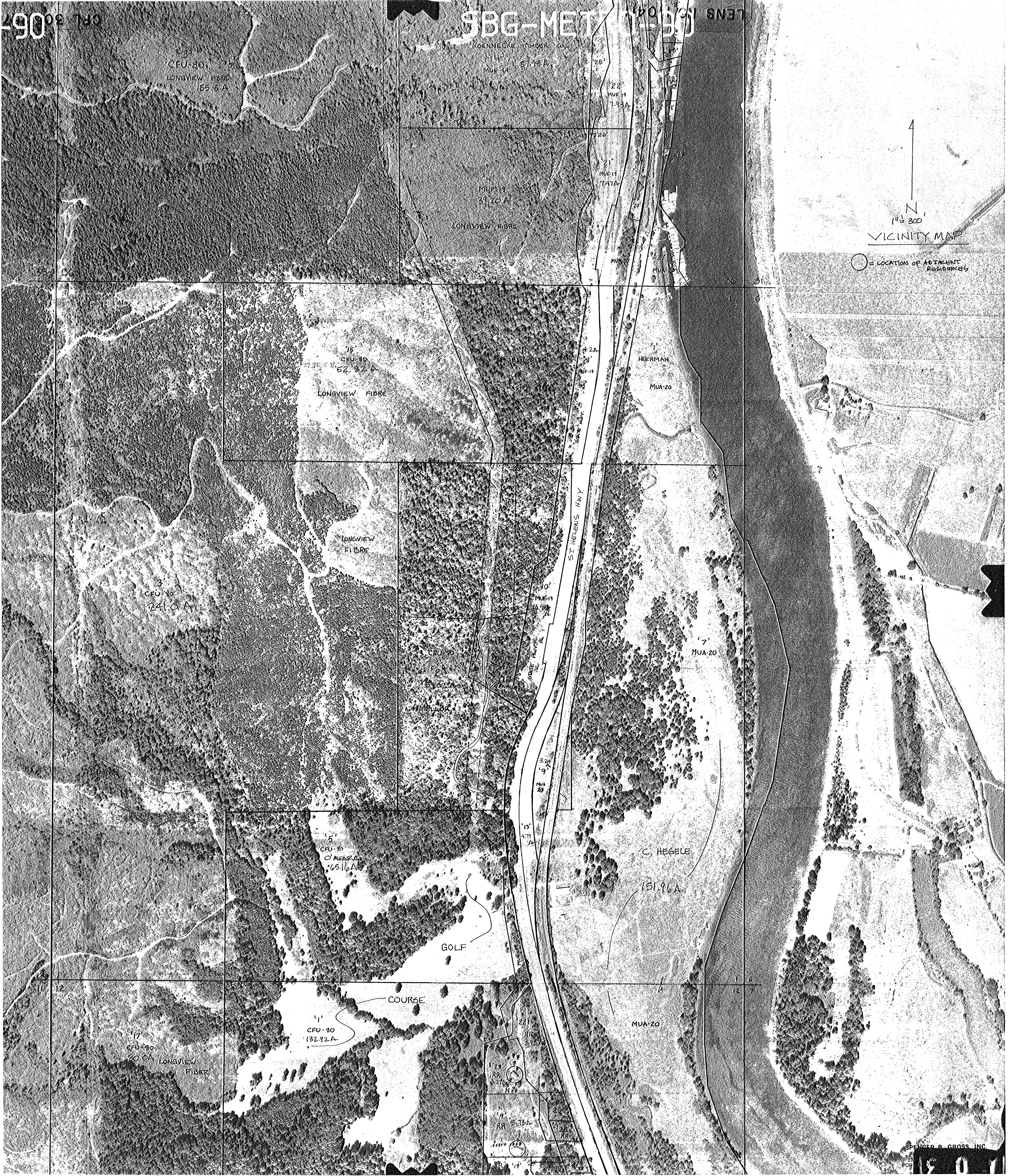
151.96 A

MUA-20

4
N
1" = 300'
VICINITY MAP

○ = LOCATION OF ADJACENT RESIDENCES

SPENCER B. GROSS, INC.
FOR A.D. 90 100



SBG-METRO

N
1" = 300'
VICINITY MAP

○ = LOCATION OF ADJACENT RESIDENCES

3
CFU-80
LONGVIEW FIBRE
165.8 A

COENNECKE TIMBER CO.
MUE-19
57.98 A

MUE-19
39.20 A
LONGVIEW FIBRE

15
CFU-40
52.82 A
LONGVIEW FIBRE

LONGVIEW FIBRE

3
CFU-40
24.0 A

CFU-40
24.0 A

5
CFU-30
O'NEILL
65.16 A

GOLF

COURSE

17
CFU-30
20.0 A
LONGVIEW FIBRE

4
CFU-30
132.92 A

C. HEGELE
151.96 A

MUA-20

1"=500'
N
AREA MAP
○ = RESIDENCES LOCATED IN
OR ADJUTING RESOURCES ZONES

ST HELENS HWY.

HUBER

2000' 200'

200' 200'

100' 100'

100' 100'

100' 100'

