

ANNOTATED MINUTES

Monday, October 25, 1993 - 8:30 AM - 12:00 PM
Portland Metropolitan Chamber of Commerce
221 NW Second Avenue, Boardroom

WORK SESSION

WS-1 The Multnomah County Board of Commissioners and Other County Elected Officials and Department Managers Will Meet to Review the Portland-Multnomah Progress Board Work on Multnomah County Benchmarks.

FACILITATOR JOE HERTZBERG. PARTICIPANTS
MEGANNE STEELE, MICHAEL SCHRUNK, BETSY
WILLIAMS, DAN SALTZMAN, JIM McCONNELL, BEVERLY
STEIN, ROBERT SKIPPER, STEVE TILLINGHAST,
SHARRON KELLEY, DWAYNE PRATHER, TANYA COLLIER,
JUDITH DUNCAN, SUSAN CLARK, GARY HANSEN, BILL
FARVER, JOHN LEGRY, DANA BROWN, HOWARD KLINK
AND LOLENZO POE. GROUP DISCUSSED AND
IDENTIFIED ADDITIONAL BENCHMARKS FOR CONSIDER-
ATION. EACH PARTICIPANT TO SELECT 10 URGENT
BENCHMARKS FROM LIST OF 54, USING RED AND GREEN
DOT SYSTEM, AT NOVEMBER 30, 1993 WORK SESSION.

Tuesday, October 26, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602

BOARD BRIEFING

B-1 Review of the Planning and Development Division's Fiscal Year 1992-93 Long Range Planning Work Program. Presented by R. Scott Pemble.

MR. PEMBLE OUTLINED STAFF WORK PROGRAM
REGARDING PERIODIC REVIEW, RURAL AREA PLAN AND
FOREST/AGRICULTURE ACTIVITIES.

Tuesday, October 26, 1993 - 1:30 PM
Multnomah County Courthouse, Room 602

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:35 p.m., with Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

P-1 CU 3-93a Review the October 13, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions and Subsequent Design Review, a Conditional Use Request to Raise Hogs on Property Located at 16631 SE FOSTER ROAD.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-2 CS 8-93 Review the October 12, 1993 Planning and Zoning

Hearings Officer Decision Approving, Subject to Conditions, a Community Service Use Amendment to Modify the Boundary and Construct a Seminary Building, Together with Associated On and Off-Site Improvements, for Property Located at 30304 SE LUSTED ROAD.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

P-3 DR 18-93 Review the October 12, 1993 Planning and Zoning Hearings Officer Decision Denying an Appeal of an Administrative Decision to Approve a Final Design Review Plan for a 7 Dwelling Unit Residential Development; and Approving, Subject to Conditions and Modifications, the Final Design Review Plan for DR 18-93, for Property Located at 2640 SE 141ST AVENUE.

DECISION READ, NO APPEAL FILED, DECISION STANDS.

Vice-Chair Gary Hansen arrived at 1:41 p.m.

P-4 Staff from the Department of Land Conservation and Development, Department of Geology and Mineral Industries and the Department of Environmental Quality Will Brief the Board on Responsibilities of Local Government and State Agencies in the Regulation of Mineral and Aggregate Uses.

PRESENTATION AND RESPONSE TO BOARD QUESTIONS FROM SCOTT PEMBLE, JIM SITZMAN AND JOHN BEAULEU. MR. PEMBLE AND MR. SITZMAN RESPONSE TO PUBLIC COMMENTARY FROM KLAUS HEYNE AND JOHN SHERMAN.

P-5 C 5-93 Continued First Reading of an ORDINANCE Which Amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding Significant Environmental Concern (SEC) Provisions and Adopting a Map of Significant Streams and Riparian Areas Which Are Designated "3-C" Resource Sites in the Multnomah County Goal 5 Inventory.

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. MR. PEMBLE PRESENTED STAFF REPORT, REFERRING TO OCTOBER 20, 1993 MEMO FROM PLANNER MARK HESS REQUESTING MODIFICATION OF C 5-93 REPORT AND PREPARATION OF AN AMENDED ORDINANCE FOR BOARD CONSIDERATION IN NOVEMBER OR DECEMBER, AND RESPONDED TO BOARD QUESTIONS. TESTIMONY AND RESPONSE TO BOARD QUESTIONS FROM KLAUS HEYNE, NANCY WILSON, CHRIS WRENCH, BILLY OSKAY, SUSAN FRY, ARNOLD ROCHLIN, MICHAEL CARLSON, LYN MATTEI, CHRIS FOSTER AND JOHN SHERMAN. AT THE DIRECTION OF THE BOARD, MR. PEMBLE RESPONDED TO CITIZEN QUESTIONS AND CONCERNS. BOARD COMMENTS AND DISCUSSION. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING OF P-5. MR. PEMBLE AND JOHN DuBAY EXPLANATION AND

RESPONSE TO BOARD QUESTIONS. MOTION FAILED, WITH COMMISSIONERS HANSEN AND SALTZMAN VOTING AYE AND COMMISSIONERS KELLEY, COLLIER AND STEIN VOTING NAY. MR. PEMBLE AND MR. DuBAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, THE FIRST READING OF P-5 WAS CONTINUED TO 1:30 PM, TUESDAY, DECEMBER 28, 1993, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND STEIN VOTING AYE AND COMMISSIONER SALTZMAN ABSTAINING. COMMISSIONERS KELLEY AND COLLIER TO ASSIST PLANNING DIRECTOR TO PREPARE OPTION AND FUNDING PROPOSALS CONCERNING PROCESS FOR DESIGNATING EAST COUNTY STREAMS, FOR BOARD BRIEFING ON TUESDAY, NOVEMBER 9, 1993.

There being no further business, the meeting was adjourned at 4:45 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By DEBORAH C. COLEMAN

Thursday, October 28, 1993 - 9:00 AM
Multnomah County Courthouse, Room 602

EXECUTIVE SESSION

E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h), for the Purpose of Consultation with Counsel Concerning Legal Rights and Duties Regarding Current Litigation. Presented by Laurence Kressel.

SESSION HELD. SESSION CONTINUED.

Thursday, October 28, 1993 - 9:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:40 a.m., with Vice-Chair Gary Hansen, Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

COMMISSIONER COLLIER REQUESTED THAT C-1 BE CONSIDERED WITH REGULAR AGENDA ITEM R-25.

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, CONSENT CALENDAR ITEMS C-2 THROUGH C-7 WERE UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- C-2 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 200414 Between Multnomah County and Oregon State Health Division, State Public Health Laboratory, Adding Hepatitis Prevacine Screens, Childhood Blood Lead Tests and HIV-Ab Tests for Health Department Clients, for the Period Upon Execution through June 30, 1994
- C-3 Ratification of Intergovernmental Agreement Contract 200944 Between Multnomah County and Oregon Health Sciences University, Providing OHSU Obstetrical-Gynecological Consultation for Health Department Clients, for the Period November 1, 1993 through October 31, 1994

DEPARTMENT OF SOCIAL SERVICES

- C-4 RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody

RESOLUTION 93-354.

- C-5 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 100274 Between Multnomah County and Oregon Health Sciences University, Adding State Funds to the Mental Health, Youth, and Family Services Division, Adult Mental Health Program for Non-Residential Adult Services, and Removing Assessment, Intervention, and Transition Program (AIP) Consultation Services Funds as of July 1, 1993
- C-6 Ratification of Intergovernmental Agreement Contract 103804 Between Multnomah County, Mental Health, Youth, and Family Services Division, Child and Adolescent Program, and Gresham Grade School District Number 4, Clear Creek Middle School, Wherein the School District Will Provide Funding for the County to Provide Mental Health Services for Students, Effective September 1, 1993 through June 30, 1994
- C-7 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 500453 Between the City of Portland, Multnomah County and Portland School District No. 1, Reducing the Amount of PILOT (Payment in Lieu of Taxes) Funds Available for Distribution to Support Direct Client Assistance for Homeless and Low Income People

REGULAR AGENDA

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-1 PUBLIC HEARING and Consideration of an ORDER in the Matter of the Execution of Deed D940935 for Certain Tax Acquired Property to the Housing Authority of Portland [Former 6102 SE 86th Avenue]

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-1. RICHARD PAYNE EXPLANATION OF ITEMS R-1 AND R-2 AND

**RESPONSE TO BOARD QUESTIONS. ORDER 93-355
UNANIMOUSLY APPROVED.**

- R-2 PUBLIC HEARING and Consideration of an ORDER in the Matter of the Execution of Deed D940936 for Certain Tax Acquired Property to the Housing Authority of Portland [Former 3814-3816 SE 26th Avenue]

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER KELLEY, ORDER 93-356 WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- R-3 Ratification of Intergovernmental Agreement Contract 200744 Between Multnomah County and Oregon Health Sciences University, Wherein the OHSU/VAH Joint Flow Cytometry Lab Will Provide Laboratory Services for T-Cell Subset Testing for Multnomah County Health Department, for the Period November 1, 1993 through September 30, 1994

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-3. TOM FRONK EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.

- R-4 Budget Modification HD #3 Requesting Authorization to Add Increases in Grant Funds to Three Existing Grants; Reduce a Grant and Reduce Water Testing Revenue

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-4. TOM FRONK EXPLANATION AND RESPONSE TO BOARD QUESTIONS. MR. FRONK TO PREPARE MEMO PROVIDING INFORMATION REQUESTED BY COMMISSIONER COLLIER. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

- R-5 Ratification of Intergovernmental Agreement Contract 103704 Between Multnomah County, the City of Gresham and the Housing Authority of Portland, for the Development of Affordable Rental Housing for Agricultural Workers in East Multnomah County, for the Period Upon Execution through September 30, 1996

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. CECILE PITTS EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-6 Budget Modification NOND #8 Requesting Authorization to Reclassify a Senior Office Assistant Position to a Risk Management Technician, within the Risk Management Division Budget

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-6. JEAN MILEY

**EXPLANATION AND RESPONSE TO BOARD QUESTIONS.
BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

R-7 RESOLUTION in the Matter of Referring Certain Proposed Zoning Code Amendments to the Planning Commission for Recommendations

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-7. COMMISSIONER SALTZMAN EXPLANATION AND SUBMISSION OF LETTER OF SUPPORT FROM LAKE OSWEGO NEIGHBORHOOD ACTION COALITION. TESTIMONY IN SUPPORT FROM PAUL DUDEN, BILL NAITO AND DOUG HARDESTY. BOARD COMMENTS AND LAURENCE KRESSEL RESPONSE TO PROCESS QUESTION. RESOLUTION 93-357 UNANIMOUSLY APPROVED.

R-8 RESOLUTION in the Matter of the Adoption of Rules of Procedure for the Conduct of Board Meetings and Repealing Prior Rules

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-8. DEBORAH BOGSTAD AND LAURENCE KRESSEL EXPLANATION. RESOLUTION 93-358 UNANIMOUSLY APPROVED.

GENERAL FUND CONTINGENCY REQUESTS

DEPARTMENT OF HEALTH

R-9 Budget Modification HD #2 Requesting Authorization to Appropriate \$222,065 to the Primary Care Division Budget to Extend Funding for Two Primary Care Medical Teams from Half to Full Year

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-9. COMMISSIONER COLLIER INITIATED BOARD DISCUSSION REGARDING NEED FOR REVISING CONTINGENCY CRITERIA GUIDELINES, ADDING UNFORESEEN NEEDS, AND NOT CONSIDERING REQUESTS WHICH DO NOT MEET CONTINGENCY CRITERIA. VICE CHAIR HANSEN ADVISED HE FEELS THESE CONTINGENCY REQUESTS REPRESENT A FINALIZATION OF THE BUDGET PROCESS FOR THIS FISCAL YEAR. COMMISSIONER KELLEY SUGGESTED THAT IN ADDITION TO CONTINGENCY CRITERIA GUIDELINES, THE BOARD REVIEW THE ENTIRE BUDGET PROCESS, AND CONSIDER CONDUCTING A BUDGET REVIEW TWO OR FOUR TIMES A YEAR. CHAIR STEIN SUGGESTED THAT A REVIEW BE CONDUCTED PRIOR TO THE NEXT QUARTERLY CONTINGENCY REQUEST PERIOD. DAVE WARREN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER COLLIER REQUESTED THAT DEPARTMENTS SUBMIT FUTURE BUDGET REQUESTS BY PRIORITY LISTS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-10 Budget Modification NOND #1 Requesting Authorization to

Appropriate \$25,000 to the Health Department Budget to Fund the Outside In Needle Exchange Program

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-10. COMMISSIONER HANSEN EXPRESSED APPRECIATION TO THE CITY OF PORTLAND FOR ITS \$10,000 CONTRIBUTION TO THE PROGRAM. COMMISSIONER SALTZMAN COMMENDED OUTSIDE IN FOR ITS FUNDRAISING EFFORTS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF SOCIAL SERVICES

R-11 Budget Modification DSS #9 Requesting Authorization to Transfer \$155,441 to the Juvenile Justice Division Budget to Add 5.2 Juvenile Groupworkers to Staff a Detention Post and Detention Youth Physical Exercise and Recreation

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. HAROLD OGBURN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, AMENDMENT TO R-11, TO ELIMINATE FULLTIME EXERCISE SPECIALIST AND REDUCE BUDGET MODIFICATION REQUEST TO \$111,600. BOARD COMMENTS. DAVE WARREN, CHIP LAZENBY AND MR. OGBURN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AMENDMENT UNANIMOUSLY APPROVED. COMMISSIONER COLLIER COMMENTS IN OPPOSITION TO R-11 ON BASIS IT DOES NOT MEET CONTINGENCY CRITERIA. CHAIR STEIN COMMENTS IN SUPPORT DUE TO EXPECTED STATE COURT SECURITY FUNDS. BUDGET MODIFICATION APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE AND COMMISSIONER COLLIER VOTING NO.

R-12 Budget Modification DSS #10 Requesting Authorization to Transfer \$33,000 to the Juvenile Justice Division Budget to Allow Participation with the Private Industry Council, the City of Portland, and Oregon Outreach to Form a Joint Partnership to Provide Educational and Employment Services to Juvenile Justice Clients through the Private Industry Council

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-12. COMMISSIONER KELLEY, MR. OGBURN AND DENNIS COLE EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

R-24 Budget Modification MCSO #8 Requesting Authorization to Transfer \$71,108 to the Sheriff's Budget to Pay for the Addition of Two JDH Court Services Deputies

COMMISSIONER HANSEN MOVED AND COMMISSIONER

KELLEY SECONDED, APPROVAL OF R-24. LARRY AAB, LT. JEANIE KING, MR. WARREN AND MR. OGBURN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER HANSEN SUGGESTED FUNDING TWO DEPUTIES FOR NOVEMBER AND DECEMBER AND DIRECTING STAFF TO ADDRESS OVERALL SECURITY NEEDS THE FIRST OF THE YEAR. COMMISSIONER COLLIER ADVOCATED LOOKING AT ALTERNATE WAYS TO SOLVE TRANSPORT ISSUES. COMMISSIONER KELLEY SUGGESTED APPROVING FUNDS UNTIL JANUARY, REVIEWING JOHN SCHWEITZER SECURITY PLAN FOR JDH, AND CONSIDER BORROWING FROM STATE COURTHOUSE SECURITY FUNDS. COMMISSIONER HANSEN SUGGESTED SCHEDULING A COURTHOUSE SECURITY BRIEFING PRIOR TO FIRST OF THE YEAR. CHAIR STEIN SUGGESTED LOOKING AT JUVENILE DETENTION HOME AND COURTHOUSE SECURITY PLAN TO SEE IF SOME OF STATE MONEY GOING TO COURTHOUSE, SHOULD GO TO JUVENILE DETENTION HOME INSTEAD. COMMISSIONER COLLIER COMMENTS IN OPPOSITION TO R-24. COMMISSIONER SALTZMAN REPORTED HE DOES NOT WANT THESE DISCUSSIONS TO DELAY PLANNED JANUARY 1 INSTALLATION OF METAL DETECTORS AND TRAINED GUARDS FOR THE COURTHOUSE. JUDGE LINDA BERGMAN PRESENTED COURT'S PERSPECTIVE ON JDH SECURITY AND RESPONDED TO BOARD QUESTIONS. MR. AAB AND LT. KING EXPLANATION IN RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE AND COMMISSIONER COLLIER VOTING NAY. COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, THAT JOHN SCHWEITZER AND JUDGE LONDER BE ASKED TO COME BEFORE THE BOARD PRIOR TO JANUARY 1, 1994 WITH RECOMMENDED SECURITY PLANS FOR JDH AND COURTHOUSE FACILITIES, INCLUDING POSSIBILITIES OF STAGING IMPLEMENTATION AT THE COURTHOUSE IN ORDER TO HAVE FUNDS AVAILABLE TO START UP AND LOOKING AT JDH AS AN OPTION. COMMISSIONER COLLIER SUGGESTED THAT TWO NEW DEPUTIES NOT BE HIRED AND TRAINED UNTIL AFTER PLAN IS REVIEWED. MR. AAB CONCURRED. MOTION UNANIMOUSLY APPROVED.

- R-13 Budget Modification DSS #11 Requesting Authorization to Increase Aging Services Division Budget by \$63,600 for One-Time Only Rental Charges Related to Capital Improvements for the New District Senior Activity Center in Southeast Portland, and the Related Indirect Costs of \$5,215

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-13. CHAIR STEIN COMMENDED DIVISION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-14 Budget Modification DSS #12 Requesting Authorization to Appropriate \$34,645 to the Mental Health, Youth and Family Services Division, Alcohol and Drug Program Budget, for Hooper COLA, Workers Comp, and Medical Supplies

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-14. ED BLACKBURN AVAILABLE FOR QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-15 Budget Modification DSS #13 Requesting Authorization to Appropriate \$30,190 to the Mental Health, Youth and Family Services Division, Child and Adolescent Mental Health Program Budget, to Centralize and Coordinate the Screening Process for Medicaid Eligible Children

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-15. SUSAN CLARK PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DISTRICT ATTORNEY

- R-16 Budget Modification DA #1 Requesting Authorization to Transfer \$61,841 to the Neighborhood Based Prosecution Budget to Provide Interim Funding for Gresham Neighborhood DA Program

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-16. MICHAEL SCHRUNK RECOMMENDED REDUCING REQUEST TO \$37,978 AND RESPONDED TO BOARD QUESTIONS. COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO AMEND TRANSFER AMOUNT TO \$37,978. COMMISSIONER COLLIER COMMENTS IN OPPOSITION TO R-16. BUDGET MODIFICATION APPROVED AS AMENDED, WITH COMMISSIONERS KELLEY, HANSEN, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER COLLIER VOTING NAY.

- R-17 Budget Modification DA #2 Requesting Authorization to Appropriate \$120,350 to the District Attorney's Budget to Cover the 3.25% COLA Wage Settlement for Multnomah County Prosecuting Attorneys Association 1993-1996 Bargaining Unit Contract

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-17 WAS UNANIMOUSLY APPROVED.

- R-18 Budget Modification DA #3 Requesting Authorization to Appropriate \$14,568 to the Multi-Disciplinary Team Budget for Consolidation of MDT Child Abuse Intervention Services Provided by Children's Services Division, Portland Police and Multnomah County District Attorney's Office

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-18. MR. SCHRUNK RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-19 Budget Modification DA #4 Requesting Authorization to Appropriate \$14,310 in Unanticipated Department of Justice Equitable Sharing Funds and Adding \$57,696 of Unanticipated

State Witness Fees to the General Fund Contingency

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-19 WAS UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

R-20 Budget Modification MCSO #4 Requesting Authorization to Transfer \$44,690 to the Sheriff's Budget to Pay for an Employee of the Police Activities League (PAL)

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, R-20 WAS UNANIMOUSLY APPROVED.

R-21 Budget Modification MCSO #5 Requesting Authorization to Appropriate \$1,262,498 to the Sheriff's Budget for the Multnomah County Corrections Officers' Association COLA

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-21 WAS UNANIMOUSLY APPROVED.

R-22 Budget Modification MCSO #6 Requesting Authorization to Transfer \$45,072 to the Sheriff's Budget to Cover the Cost of a Community Service Officer at the David Douglas Safety Action Team, with \$18,000 of the Funds to be Repaid by David Douglas School District

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-22. MR. AAB EXPLANATION AND RESPONSE TO BOARD QUESTIONS. MR. WARREN RESPONSE TO BOARD QUESTIONS AND DISCUSSION CONCERNING ITEMS R-22 AND R-25. COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, TO REDUCE TRANSFER REQUEST TO \$33,000. BUDGET MODIFICATION UNANIMOUSLY APPROVED, AS AMENDED.

R-23 Budget Modification MCSO #7 Requesting Authorization to Transfer \$11,487 to the Sheriff's Budget to Pay for the Reclassification of Two Employees

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-23 WAS UNANIMOUSLY TABLED.

C-1 Ratification of Intergovernmental Agreement Contract 800444 Between Multnomah County and the Regional Organized Crime and Narcotics (ROCN) Task Force, Wherein the Sheriff's Office Will Provide Word Processing Support for ROCN, for the Period July 1, 1993 through June 30, 1994

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER HANSEN, C-1 WAS UNANIMOUSLY APPROVED.

R-25 Budget Modification MCSO #9 Requesting Authorization to

Transfer \$15,000 to the Services Branch Division Budget to Appropriate ROCN Revenue for Word Processing Support [Proposed IGA Contract 800444]

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-25 WAS UNANIMOUSLY TABLED.

NON-DEPARTMENTAL

R-26 Budget Modification NOND #4 Requesting Authorization to Transfer \$15,600 to the Chair's Budget for Transitional Supplies and Equipment Costs

UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, R-26 WAS UNANIMOUSLY APPROVED.

R-27 Budget Modification NOND #5 Requesting Authorization to Transfer \$7,798 to the Chair's Budget to Fund Underbudgeted Dues and Land Use Assessments for the Association of Oregon Counties

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-27. BOARD DISCUSSION CONCERNING REQUEST FOR AOC SUPPORT IN PENDING LITIGATION CASE. CHAIR STEIN TO PREPARE LETTER FOR BOARD MEMBERS' SIGNATURE. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-28 Budget Modification NOND #7 Requesting Authorization to Transfer \$50,000 to the Purchasing Division Budget for Funding a Women and/or Minority Owned Business Disparity Study Jointly with the City of Portland

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-28. CHAIR STEIN AND COMMISSIONER SALTZMAN RESPONSE TO QUESTIONS AND CONCERNS OF COMMISSIONER COLLIER. CHAIR STEIN TO SEE THAT COMMISSIONER COLLIER'S REQUESTED INFORMATION IS FURNISHED. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

PUBLIC COMMENT

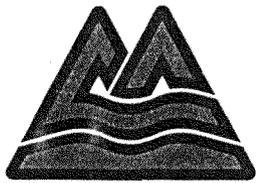
R-29 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

There being no further business, the meeting was adjourned at 12:30 p.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Deborah C. Coarista

0324C/1-11/db



MULTNOMAH COUNTY OREGON

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

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

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

OCTOBER 25 - 29, 1993

- Monday, October 25, 1993 - 8:30 AM - Work SessionPage 2
- Tuesday, October 26, 1993 - 9:30 AM - Board Briefing.Page 2
- Tuesday, October 26, 1993 - 1:30 PM - Planning Items.Page 2
- Thursday, October 28, 1993 - 9:00 AM - Executive Session. . .Page 3
- Thursday, October 28, 1993 - 9:30 AM - Regular Meeting. . . .Page 3

FUTURE MEETING CHANGES AND CANCELLATIONS

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| Tuesday, November 9 | Briefing, Regular Meeting and Planning Items |
| Thursday, November 11 | <u>Holiday/Meeting Cancelled</u> |
| Tuesday, November 16 | <u>AOC Conf/Meeting Cancelled</u> |
| Thursday, November 18 | <u>AOC Conf/Meeting Cancelled</u> |
| Tuesday, November 23 | Regular Meeting and Planning Items |
| Thursday, November 25 | <u>Holiday/Meeting Cancelled</u> |

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, October 25, 1993 - 8:30 AM - 12:00 PM

Portland Metropolitan Chamber of Commerce
221 NW Second Avenue, Boardroom

WORK SESSION

- WS-1 The Multnomah County Board of Commissioners and Other County Elected Officials and Department Managers Will Meet to Review the Portland-Multnomah Progress Board Work on Multnomah County Benchmarks.
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Tuesday, October 26, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

BOARD BRIEFING

- B-1 Review of the Planning and Development Division's Fiscal Year 1992-93 Long Range Planning Work Program. Presented by R. Scott Pemble. 30 MINUTES REQUESTED.
-

Tuesday, October 26, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 CU 3-93a Review the October 13, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions and Subsequent Design Review, a Conditional Use Request to Raise Hogs on Property Located at 16631 SE FOSTER ROAD.
- P-2 CS 8-93 Review the October 12, 1993 Planning and Zoning Hearings Officer Decision Approving, Subject to Conditions, a Community Service Use Amendment to Modify the Boundary and Construct a Seminary Building, Together with Associated On and Off-Site Improvements, for Property Located at 30304 SE LUSTED ROAD.
- P-3 DR 18-93 Review the October 12, 1993 Planning and Zoning Hearings Officer Decision Denying an Appeal of an Administrative Decision to Approve a Final Design Review Plan for a 7 Dwelling Unit Residential Development; and Approving, Subject to Conditions and Modifications, the Final Design Review Plan for DR 18-93, for Property Located at 2640 SE 141ST AVENUE.
- P-4 Staff from the Department of Land Conservation and Development, Department of Geology and Mineral Industries and the Department of Environmental Quality Will Brief the Board on Responsibilities of Local Government and State Agencies in the Regulation of Mineral and Aggregate Uses. 1:30 TIME CERTAIN, 1 HOUR REQUESTED.

P-5 C 5-93 Continued First Reading of an ORDINANCE Which Amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding Significant Environmental Concern (SEC) Provisions and Adopting a Map of Significant Streams and Riparian Areas Which Are Designated "3-C" Resource Sites in the Multnomah County Goal 5 Inventory. [PLEASE NOTE: PLANNING STAFF WILL SUGGEST MODIFICATION OF THE C 5-93 REPORT AND PREPARATION OF AN AMENDED ORDINANCE PROPOSAL FOR CONSIDERATION IN NOVEMBER OR EARLY DECEMBER.]

Thursday, October 28, 1993 - 9:00 AM

Multnomah County Courthouse, Room 602

EXECUTIVE SESSION

E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h), for the Purpose of Consultation with Counsel Concerning Legal Rights and Duties Regarding Current Litigation. Presented by Laurence Kressel. 9:00 AM TIME CERTAIN, 30 MINUTES REQUESTED.

Thursday, October 28, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

SHERIFF'S OFFICE

C-1 Ratification of Intergovernmental Agreement Contract 800444 Between Multnomah County and the Regional Organized Crime and Narcotics (ROCN) Task Force, Wherein the Sheriff's Office Will Provide Word Processing Support for ROCN, for the Period July 1, 1993 through June 30, 1994

DEPARTMENT OF HEALTH

C-2 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 200414 Between Multnomah County and Oregon State Health Division, State Public Health Laboratory, Adding Hepatitis Prevacine Screens, Childhood Blood Lead Tests and HIV-Ab Tests for Health Department Clients, for the Period Upon Execution through June 30, 1994

C-3 Ratification of Intergovernmental Agreement Contract 200944 Between Multnomah County and Oregon Health Sciences University, Providing OHSU Obstetrical-Gynecological Consultation for Health Department Clients, for the Period November 1, 1993 through October 31, 1994

DEPARTMENT OF SOCIAL SERVICES

- C-4 RESOLUTION in the Matter of Authorizing Designees of the Mental Health Program Director to Direct a Peace Officer to Take an Allegedly Mentally Ill Person into Custody
- C-5 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 100274 Between Multnomah County and Oregon Health Sciences University, Adding State Funds to the Mental Health, Youth, and Family Services Division, Adult Mental Health Program for Non-Residential Adult Services, and Removing Assessment, Intervention, and Transition Program (AITP) Consultation Services Funds as of July 1, 1993
- C-6 Ratification of Intergovernmental Agreement Contract 103804 Between Multnomah County, Mental Health, Youth, and Family Services Division, Child and Adolescent Program, and Gresham Grade School District Number 4, Clear Creek Middle School, Wherein the School District Will Provide Funding for the County to Provide Mental Health Services for Students, Effective September 1, 1993 through June 30, 1994
- C-7 Ratification of Amendment No. 1 to Intergovernmental Agreement Contract 500453 Between the City of Portland, Multnomah County and Portland School District No. 1, Reducing the Amount of PILOT (Payment in Lieu of Taxes) Funds Available for Distribution to Support Direct Client Assistance for Homeless and Low Income People

REGULAR AGENDA

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-1 PUBLIC HEARING and Consideration of an ORDER in the Matter of the Execution of Deed D940935 for Certain Tax Acquired Property to the Housing Authority of Portland [Former 6102 SE 86th Avenue]
- R-2 PUBLIC HEARING and Consideration of an ORDER in the Matter of the Execution of Deed D940936 for Certain Tax Acquired Property to the Housing Authority of Portland [Former 3814-3816 SE 26th Avenue]

DEPARTMENT OF HEALTH

- R-3 Ratification of Intergovernmental Agreement Contract 200744 Between Multnomah County and Oregon Health Sciences University, Wherein the OHSU/VAH Joint Flow Cytometry Lab Will Provide Laboratory Services for T-Cell Subset Testing for Multnomah County Health Department, for the Period November 1, 1993 through September 30, 1994
- R-4 Budget Modification HD #3 Requesting Authorization to Add Increases in Grant Funds to Three Existing Grants; Reduce a Grant and Reduce Water Testing Revenue

DEPARTMENT OF SOCIAL SERVICES

- R-5 Ratification of Intergovernmental Agreement Contract 103704 Between Multnomah County, the City of Gresham and the Housing Authority of Portland, for the Development of Affordable Rental Housing for Agricultural Workers in East Multnomah County, for the Period Upon Execution through September 30, 1996

NON-DEPARTMENTAL

- R-6 Budget Modification NOND #8 Requesting Authorization to Reclassify a Senior Office Assistant Position to a Risk Management Technician, within the Risk Management Division Budget
- R-7 RESOLUTION in the Matter of Referring Certain Proposed Zoning Code Amendments to the Planning Commission for Recommendations
- R-8 RESOLUTION in the Matter of the Adoption of Rules of Procedure for the Conduct of Board Meetings and Repealing Prior Rules

GENERAL FUND CONTINGENCY REQUESTS

DEPARTMENT OF HEALTH

- R-9 Budget Modification HD #2 Requesting Authorization to Appropriate \$222,065 to the Primary Care Division Budget to Extend Funding for Two Primary Care Medical Teams from Half to Full Year
- R-10 Budget Modification NOND #1 Requesting Authorization to Appropriate \$25,000 to the Health Department Budget to Fund the Outside In Needle Exchange Program

DEPARTMENT OF SOCIAL SERVICES

- R-11 Budget Modification DSS #9 Requesting Authorization to Transfer \$155,441 to the Juvenile Justice Division Budget to Add 5.2 Juvenile Groupworkers to Staff a Detention Post and Detention Youth Physical Exercise and Recreation
- R-12 Budget Modification DSS #10 Requesting Authorization to Transfer \$33,000 to the Juvenile Justice Division Budget to Allow Participation with the Private Industry Council, the City of Portland, and Oregon Outreach to Form a Joint Partnership to Provide Educational and Employment Services to Juvenile Justice Clients through the Private Industry Council
- R-13 Budget Modification DSS #11 Requesting Authorization to Increase Aging Services Division Budget by \$63,600 for One-Time Only Rental Charges Related to Capital Improvements for the New District Senior Activity Center in Southeast Portland, and the Related Indirect Costs of \$5,215

- R-14 Budget Modification DSS #12 Requesting Authorization to Appropriate \$34,645 to the Mental Health, Youth and Family Services Division, Alcohol and Drug Program Budget, for Hooper COLA, Workers Comp, and Medical Supplies
- R-15 Budget Modification DSS #13 Requesting Authorization to Appropriate \$30,190 to the Mental Health, Youth and Family Services Division, Child and Adolescent Mental Health Program Budget, to Centralize and Coordinate the Screening Process for Medicaid Eligible Children

DISTRICT ATTORNEY

- R-16 Budget Modification DA #1 Requesting Authorization to Transfer \$61,841 to the Neighborhood Based Prosecution Budget to Provide Interim Funding for Gresham Neighborhood DA Program
- R-17 Budget Modification DA #2 Requesting Authorization to Appropriate \$120,350 to the District Attorney's Budget to Cover the 3.25% COLA Wage Settlement for Multnomah County Prosecuting Attorneys Association 1993-1996 Bargaining Unit Contract
- R-18 Budget Modification DA #3 Requesting Authorization to Appropriate \$14,568 to the Multi-Disciplinary Team Budget for Consolidation of MDT Child Abuse Intervention Services Provided by Children's Services Division, Portland Police and Multnomah County District Attorney's Office
- R-19 Budget Modification DA #4 Requesting Authorization to Appropriate \$14,310 in Unanticipated Department of Justice Equitable Sharing Funds and Adding \$57,696 of Unanticipated State Witness Fees to the General Fund Contingency

SHERIFF'S OFFICE

- R-20 Budget Modification MCSO #4 Requesting Authorization to Transfer \$44,690 to the Sheriff's Budget to Pay for an Employee of the Police Activities League (PAL)
- R-21 Budget Modification MCSO #5 Requesting Authorization to Appropriate \$1,262,498 to the Sheriff's Budget for the Multnomah County Corrections Officers' Association COLA
- R-22 Budget Modification MCSO #6 Requesting Authorization to Transfer \$45,072 to the Sheriff's Budget to Cover the Cost of a Community Service Officer at the David Douglas Safety Action Team, with \$18,000 of the Funds to be Repaid by David Douglas School District
- R-23 Budget Modification MCSO #7 Requesting Authorization to Transfer \$11,487 to the Sheriff's Budget to Pay for the Reclassification of Two Employees
- R-24 Budget Modification MCSO #8 Requesting Authorization to Transfer \$71,108 to the Sheriff's Budget to Pay for the Addition of Two JDH Court Services Deputies

R-25 Budget Modification MCSO #9 Requesting Authorization to Transfer \$15,000 to the Services Branch Division Budget to Appropriate ROCN Revenue for Word Processing Support [Proposed IGA Contract 800444]

NON-DEPARTMENTAL

R-26 Budget Modification NOND #4 Requesting Authorization to Transfer \$15,600 to the Chair's Budget for Transitional Supplies and Equipment Costs

R-27 Budget Modification NOND #5 Requesting Authorization to Transfer \$7,798 to the Chair's Budget to Fund Underbudgeted Dues and Land Use Assessments for the Association of Oregon Counties

R-28 Budget Modification NOND #7 Requesting Authorization to Transfer \$50,000 to the Purchasing Division Budget for Funding a Women and/or Minority Owned Business Disparity Study Jointly with the City of Portland

PUBLIC COMMENT

R-29 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

MEETING DATE: October 26, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CU 3-93a, Review of Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 26, 1993

Amount of Time Needed: 1 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 4127/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

CU 3-93a Review of Hearings Officer Decision of October 13, 1993, approving, subject to conditions, determination of compliance with the conditions of the April 15, 1993 approval to raise hogs on this property, for property located at 16631 SE Foster Road

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 OCT 18 PM 3:07

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *pc [Signature] for B/W*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C43-93a

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 27
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Kline Hog Farm

NUMBER

CU 3-93a

1. Applicant Name/Address

Corey Kline
16631 SE Foster Road 97236

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

2. Action Requested by applicant

Approval to continue a commercial hog raising operation that was established without permits in a Rural Residential zoning district.

3. Planning Staff Recommendation

Denial

4. Hearings Officer Decision:

Approval

5. If recommendation and decision are different, why?

The main objections from neighbors regarding the operation were noise when the hogs were allowed to pasture and the odor resulting from spreading manure on the applicant's property. The Hearings Officer determined that the operation could continue if the pigs were confined inside the barn, and that manure spread were only on property zoned for Exclusive Farm Use (were such practices are common) and not on the applicant's property.

ISSUES
(who raised them?)

- a. Odor from manure spreading (neighbors)
- b. Noise (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

October 13, 1993

CU 3-93a, #534

**Conditional Use Request
(Hog Farm)**

Determination of compliance with the conditions of the April 15, 1993 approval to raise hogs on this property and consideration of renewal of the Conditional Use permit to allow the operation to continue.

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

Decision: Approved, subject to conditions.

14.16 AC



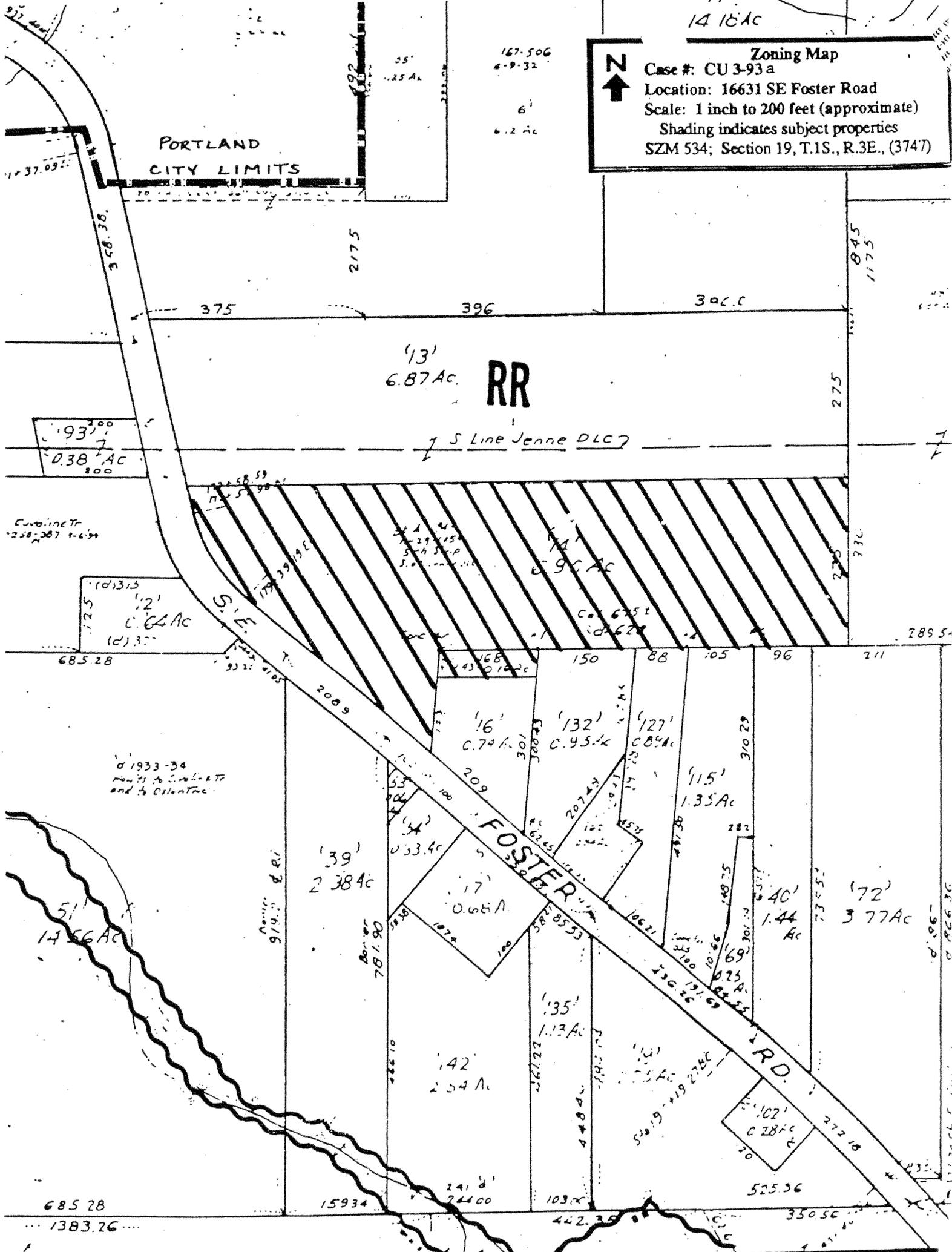
Zoning Map

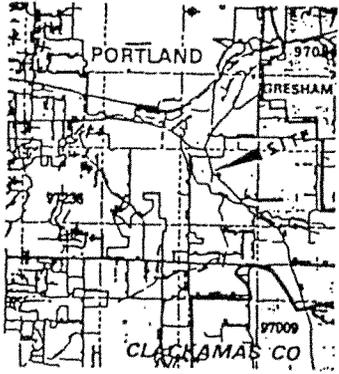
Case #: CU 3-93 a

Location: 16631 SE Foster Road

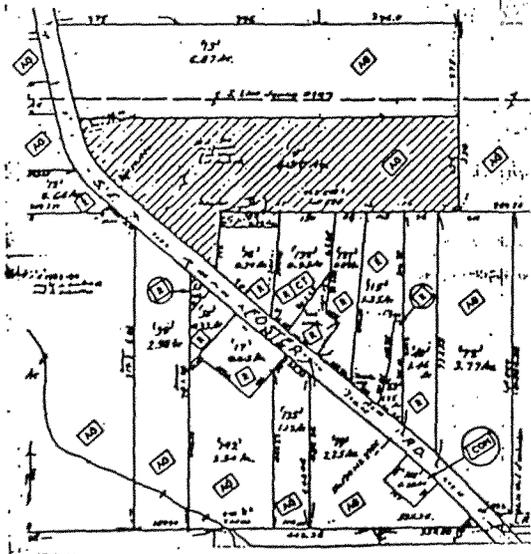
Scale: 1 inch to 200 feet (approximate)

Shading indicates subject properties
SZM 534; Section 19, T.1S., R.3E., (3747)





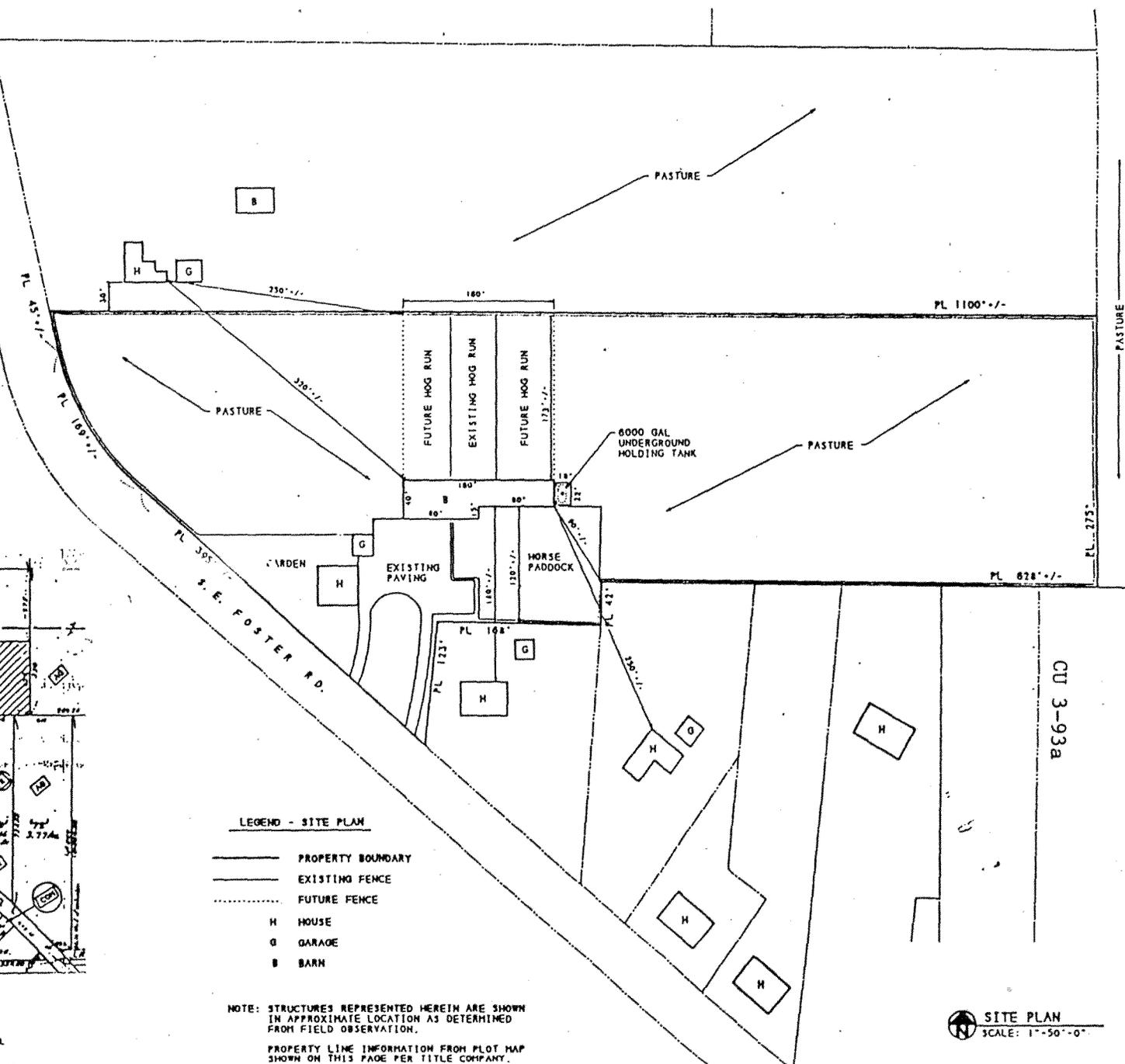
VICINITY MAP



PLOT MAP

LEGEND - PLOT MAP

- R RESIDENTIAL
- A AGRICULTURAL
- C COMMERCIAL
- T 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.

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

172 E. 37th
Portland, Oregon 97217
(503) 241-2121
FAX (503) 231-5121



COREY KLINE PROPERTY - C.U.P.

COREY KLINE
1403 NE LARRY
PORTLAND, OR 97232

1403 NE LARRY
PORTLAND, OR 97232

DATE	11/11/03
BY	JK
CHECKED	JK
SCALE	1"=50'-0"
TITLE	C.U.P.

64:

KLINE

II. PROCEDURAL MATTERS

A. Parties To The Proceeding

The present proceeding is so closely related to the original application proceedings conducted earlier this year, that I am treating parties to the earlier proceeding as parties to the renewal application proceeding.

1. Applicant and Proponents

The applicant's name and address are:

Corey Kline 16631 SE Foster Road, Portland, Oregon 97236

Persons who testified orally or in writing on their own behalf, in support of the original or the renewal application are:

Yvonne Amidon*	Staff Assistant to County Commissioner Sharron Kelly 1120 SW Fifth Suite 1500, Portland, Oregon 97204
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	" "
Loren Obrist	17070 SE Foster Road, Portland, Oregon 97236
Lowell Smith	???

* Testified in support at renewal application proceeding.

2. Opponents

The following persons testified orally or in writing in opposition to the proposed use during either the first or second application proceeding are:

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	" "
Charles Balkwill	16750 SE Foster Road, Portland, Oregon 97236
Dorothy Barnes	16717 SE Foster Road, Portland, Oregon 97236
Norma Barnes	" "
W. W. Barnes	" "
Alan Bauch	16520 SE Foster Road, Portland, Oregon 97236
David Bright	16520 SE Foster Road, Portland, Oregon 97236
DeAnn Bright	" "
Scott Campbell	7610 SE 162nd, Portland, Oregon 97236

Sandra Campbell	"	"
Eileen Calhoun	7845 SE 162nd, Portland, Oregon	97236
John Calhoun	"	"
Harold J. Davis	8001 SE 162nd Avenue, Portland, Oregon	97236
Vicki Davis	"	"
Mark Deegan	16710 SE Foster Road, Portland, Oregon	97236
Susan Deegan	"	"
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	"	"
Earl E. Hawks	7615 SE 162nd, Portland, Oregon	97236
June Hawks	"	"
Karen K. Hinkle	16005 SE Taggart, Portland, Oregon	97236
Wayne S. Hinkle	"	"
Mary E. Holscher	16530 SE Foster Road, Portland, Oregon	97236
Ronald G. Holscher*	"	"
Tamara Holscher	"	"
Ted Husky	7819 SE 162nd, Portland, Oregon	97236
Robert W. Iiams	16515 SE Foster Road, Portland, Oregon	97236
Donna Lee Iiams	"	"
Catherine Imhoff	16870 SE Foster Road, Portland, Oregon	97236
Ed Imhoff	"	"
Dolores (Dee) Kilby*	16801 SE Foster Road, Portland, Oregon	97236
John M. Kilby*	"	"
Cynthia A. Kruger	17424 SE McKinley Road, Portland, Oregon	97236
Michael E. Kruger	"	"
Philip Lithblom	16927 SE Foster Road, Portland, Oregon	97236
Faith Lynch	16927 SE Foster Road, Portland, Oregon	97236
James Lynch	"	"
Roslind Mickey	16517 SE Foster Road, Portland, Oregon	97236
Bill Miller	7803 SE 162nd, Portland, Oregon	97236
Sandy Miller	"	"
Thomas C. Mosser*	8031 SE 162nd, Portland, Oregon	97236
Sharon Mossman*	8031 SE 162nd, Portland, Oregon	97236
Cathy Moyer	17340 SE Foster Road, Portland, Oregon	97236
Donald Oakley*	16911 SE Foster Road, Portland, Oregon	97236
Marilyn Oakley*	"	"
Larry Oliver	16517 SE Foster, Portland, Oregon	97236
Mark Perrett	7815 SE 162nd, Portland, Oregon	97236
Erica Randol	9605 SE 190th Drive, Portland, Oregon	97236
Glen Randol*	"	"
Karen S. Randol	"	"
Ken Robb	16717 SE Foster Road, Portland, Oregon	97236
D. M. Robinson*	16780 SE Foster Road, Portland, Oregon	97236
Jerry Robinson*	"	"

Wade Robinson	"	"
Kim Rosenbalm*	3432 SE 143rd, Portland, Oregon 97236	
Kenneth C. Roth*	16935 SE Foster Road, Portland, Oregon 97236	
Sally Sandstrom	16940 SE McKinley Road, Portland, Oregon 97236	
A. M. Shrock	16809 SE Foster Road, Portland, Oregon 97236	
Lucille Shrock	"	"
Arvella Smith	16565 SE Foster Road, Portland, Oregon 97236	
Christine Smith	"	"
L. I. Stanton	17320 SE McKinley, Portland, Oregon 97236	
Juanita Strufl	16711 SE McKinley, Portland, Oregon 97236	
??? Strufl	"	"
Mayalaine Stump	17032 SE McKinley, Portland, Oregon 97236	
Ray Stump	"	"
Lyle D. Sumner	8015 SE 162nd Avenue, Portland, Oregon 97236	
Peggy Sumner	"	"
Joseph E. Twombly	16565A SE Foster Road, Portland, Oregon 97236	
Joe Whyll	16560 SE Foster Road, Portland, Oregon 97236	
Indecipherable	7801 SE 162nd, Portland, Oregon 97236	

* Testified in opposition during the renewal application proceeding.

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	President, PDG (Planning/Design Group), 122 SE 27th St., Portland, Oregon 97214 (representing the applicant)
Don Hardy	Planner with PDG (Planning/Design Group), 122 SE 27th St., Portland, Oregon 97214 (representing the applicant)
Larry Campbell	200 Warner-Milne Road, Oregon City, Oregon 97045-4096 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.

Marilyn and Donald Oakley allege bias on my part in their letter to Mr. Irv Ewen, dated September 24, 1993, stating (page 2):

Something that confuses and concerns us is that Mr. Kline also mentioned Mr. Liberty visited at his farm recently, but unfortunately not on a day when he was spreading manure. When Don commented that as far as he was concerned, Mr. Liberty should not be allowed to preside over any additional hearings, Mr. Kline asked, "Why because he's against you?" Don replied, "No, because he refused to authorize an on-site inspection with the actual use of the honey wagon spraying the liquid manure, so it seemed to him a bias on the part of Mr. Liberty, as it appeared that Mr. Liberty has already made up his mind to allow the spraying to continue. I think the very fact that Mr. Kline felt that Mr. Liberty was "against us" shows that Mr. Liberty appears not be objective.

I reject this challenge to my impartiality. First, I note that while a site inspection during the spreading of the manure would have been helpful to me in my decision making, I thought then, and think now, that it is more important for me to make my decision based on the testimony and other evidence of the residents of the area.

Second, Mr. Kline was not present during my site inspection on Friday September 3, so whatever impressions he has about my attitude toward his operation have been formed at public hearings, where Mrs. Oakley was present. To allow one party's unsupported assertions about a hearings officer's attitude to become the basis for recusal, is to create an avenue for shopping for hearings officers and to disrupt the administration of these proceedings. A decision disliked by one of the parties, by itself, does not indicate bias.

C. Alleged Procedural Error

At the renewal hearing Mr. Cox contended that the applicant's failure to submit the logs of his manure spreading operations one week before the hearing, was a violation of the conditions of approval. The condition of approval only required submission at the time of the hearing. To the degree this arrangement was in violation of ORS 197.763(4)(a), I find that the authorization of an additional fourteen days for the submission of evidence plus an additional fourteen days for rebuttal testimony cured any procedural defect.

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. Basis For The Decision

The evidence I considered in reaching the conclusions below, was the following:

Proponent's Testimony

- Letters from Corey Kline, dated; June 30, 1993, August 4, 1993, August 6, 1993, September 28, 1993
- Photographs of spreading equipment and process, apparently submitted by Corey Kline with his letter of June 30, 1993 (stamped as received by the County on July 1, 1993)
- Letters from Larry Campbell dated; June 29, 1993, September 16, 1993
- All oral testimony presented in support of the application at the renewal hearing on September 7, 1993.
- Letter from Yvonne Amidon, July 12, 1993
- Rebuttal testimony of David Kimmel, PDG, September 19, 1993, and the Woodburn auction yard.
- Videotape made by Mr. Corey Kline, submitted September 21, 1993 hearing.

Opponents' Testimony

- Letters from John and Dee Kilby dated; June 3, 1993, September 17, 1993
- Letters from Marilyn and Don Oakley dated; June 6, 1993, July 19, 1993, August 31, 1993, September 16, 1993, September 24, 1993, September 28, 1993.
- Letter from J. L. Robinson, September 1, 1993
- Letter from Sharon Mossman, August 24, 1993
- Letters from William Cox dated; September 1, 1993, September 7, 1993
- Letter from Ron Holscher, September 2, 1993
- Letter from Glen Randol, September 2, 1993
- Letter from [indecipherable] (Opponent's Exhibit E) September 2, 1993
- All oral testimony presented against the application at the renewal hearing on September 7, 1993.
- Annotated calendar (log of odors) submitted by Marilyn Oakley at September 7, 1993 hearing
- Letter from Arvella Smith, September 7, 1993 (presented at hearing)
- Letter from Kenneth Roth, September 28, 1993
- Letter from J.M and D.L Robinson, September 19, 1993
- Videotape made by Mrs. Marilyn Oakley, played at the September 7, 1993 hearing.

Evidence And Testimony Submitted By County Planning Staff Or The Hearings Officer

- Violation inspection request prepared by Sharon Cowley, June 1, 1993
- Report from Robert S. Hall to R. Scott Pemble describing video made by Bruce Gilbertson recording violation of the condition of approval relating to the method of spreading manure, June 14, 1993.
- Letter from Scott Pemble to Corey Kline regarding violation of condition of approval, June 25, 1993
- Violation complaint memo by Scott Pemble, July 16, 1993
- Field inspection reports and testimony by Irv Erwin
- My own site inspection on September 3, 1993
- Staff Report of September 7, 1993
- Memo to file from Sharon Cowley, September 27, 1993
- Information presented during the initial application. As stated at the hearing, I am incorporating by reference the entire record of the earlier proceeding.

B. The Proposed Use

I incorporate by reference my earlier findings of fact regarding the proposed use (decision of April 15, 1993 at pages 7) except as modified here:

- The applicant did not let swine into the outdoor pens during the initial six-month trial period.
- Swine manure has not been spread on neighboring properties but only on the applicant's own pasture.

C. Findings Of Fact The Surrounding Area And Its Zoning.

I readopt my earlier findings of fact describing the nature of the uses in the area in the vicinity of the proposed use and its zoning. Decision of April 15, 1993 at pages 7-8.

D. Standards In The Zoning Ordinance Governing The Decision

In the RR-2 zone, hog farms are authorized as a conditional 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
- Policy 38: Facilities

E. 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

I rely on my earlier interpretation of the "character of the area standard" articulated in my decision of April 15, 1993 at pages 9-10.

(b) Visual Character

Nothing in the additional testimony or in my site inspection requires me to modify the conclusion I reached in my earlier decision regarding the consistency of the use with the

visual character of the area, which I reproduce here:

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 unrebutted 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

Nothing in the testimony presented in the renewal hearing leads me to alter my earlier findings that the noise from livestock and farm machinery, 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). Decision of April 15, 1993 at 10.

At the initial application hearing there was testimony from Bruce Gilbertson and Arvella Smith objecting to the squealing sound made by the hogs during slaughtering. At the renewal application proceeding the applicant stated that the squealing could not have been from the pigs which were shot prior to slaughtering.

There was other testimony in opposition to the slaughtering of animals, including animals other than pigs, at the renewal hearing. I address this issue under a separate heading below, concerning the nature of the approved use.

With regard to the slaughtering of swine on-site, I adhere to my earlier determination: "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 re-adopting the condition that the applicant slaughter swine indoors, if at all."

(d) Olfactory Character

At the renewal hearing, like the original hearing, the bulk of the testimony presented by the opponents to the project concerned the smell from the swine, or more specifically the hog and pig manure. In addition, as during the first application proceeding, persons testified concerning the smell and smoke from materials burned on site.

I will address the potential sources of odor separately.

(i) Smell From The Animals And Their Waste In The Barn

At the original hearing, 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 during the late summer of 1992, including the installation of the manure holding tank. At that hearing 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 was being spread. At the first hearing, 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.

Information about the smell from manure inside the barn was collected during the site visit during the original proceeding; I found the smell inside the barn "tolerable." See April 15, 1993 decision at 11. This information has been supplemented by subsequent site inspections.

Mr. Irv Ewen, the County's Zoning Code Enforcement Official made a site inspection on August 3, 1993, around 3:00 PM. He testified that it was a windless and hot day, between 95 and 100 degrees. He walked through the barn with the applicant, where there were many pigs but no odor.

During my own, unannounced, site inspection on the evening of September 3, 1993 the smell in the barn itself was generally mild. I estimate that the temperature at 6:30 PM was in the high 70's or low 80's.

I conclude that the applicant's current mode of operation adequately controls the odors originating from the barn.

Odors from the hog runs in back of the barn were no longer an issue since, as Mr. Kline testified, those runs have not been used since the time of the original approval. Mr. David Kimmel, Mr. Kline's representative, has stated the applicant's willingness to accept a condition that "all hogs are to be kept inside the barn and there shall be no hog runs."

Because I believe this condition is necessary to maintain the olfactory character of the neighborhood under MCC 11.15.7120(A)(1), I adopt it as one of the conditions of approval.

To provide an added measure of protection both for the applicant's neighbors and also for residents in the area where the waste is ultimately disposed, I am requiring Mr. Kline to continue to treat the manure in the holding tank with lime, as described in paragraph 4 in Larry Campbell's letter of September 16, 1993, to reduce the odors.

(ii) Smell From The Liquid Manure Spread On The Applicant's Pasture

By far the most contentious issue in the renewal proceeding has been the smell from the spreading of the manure on Mr. Kline's pasture, using the chisel-plow/injection tube method, recommended by Mr. Larry Campbell of the OSU Extension Service, imposed as a condition of approval.

As a preliminary matter, although the applicant committed two violations of the conditions of approval applicable to manure spreading, occurring on May 1 and May 29, 1993, (caused by the time required to build the necessary implement), thereafter he has complied in good faith with the conditions imposed in the initial approval. The question now is whether this method was adequate to satisfy the standard in MCC 11.15.7120(A)(4).

The first information to be considered are the site inspections. This information is free from whatever interests or influences might affect the judgment of persons who are parties to the proceeding.

County staff performed two site inspections. In addition to Mr. Ewen's inspection on August 3, described above, he visited the site on July 27, 1993, between 2:30 and 3:00 PM. According to his testimony it was a warm day, with the temperature in the high 80's to low 90's, with no wind. Mr. Ewen did not smell any odor although he did not get out of his car, but talked to the applicant through the open car window. However, on this inspection, like the first, Mr. Ewen did not walk the pasture area where the manure was spread.

As noted above, I made my own, unannounced, site inspection on the evening of September 3, 1993. I estimate that the temperature at 6:30 PM was in the high 70's or low 80's, with a very slight breeze, chiefly from the south. I walked the entire perimeter of the applicant's pasture. The injection furrows were pointed out to me by Kyle Kline, and I walked over and beside this area. The distinctive smell of hog manure was barely detectable. However, I could see evidence of some dried manure on the surface.

However, the testimony about offensive odors all relate to the periods during and immediately after the liquid manure was injected. Neither Mr. Ewen nor I were present during these periods.¹ As a result of the lack of more objective data, I am obliged to evaluate the credibility of the opponents' testimony about the odor.

Most of the letters included in the list of evidence, concerned smells from manure spreading. See e.g. letters from J.L. Robinson dated September 1, 1993 detailing smell and dates of spreading or injection (page 1); letters from Marilyn and Don Oakley, dated July 19, 1993 and August 31, 1993 giving detailed information about the times and odors from injection carried out on the date. See also Marilyn Oakley's calendar, describing the days when the odor was strong and submitted a videotape showing the spreading operation on one of those days.

The applicant has challenged the credibility of the opponents' testimony through an experiment intended to demonstrate that the opponents' observations are affected by an underlying assumption that his operation generates smells. On September 26, 1993 he injected a mixture of water and lime into furrows on his field, using his manure spreading equipment. As he stated in his letter dated September 28, 1993:

*Let it be known that each fence line neighbor I spoke with complained about how bad the odor was, with the exception of Mr. Glen Randall [sic] * * **

The intent of this letter is to prove that when my neighbors see me with my honey

¹ Although I invited all parties in the earlier proceeding to submit scentometer readings in order to acquire more objective data, no one did so. (See decision of April 15, 1993 at pages 11-12.)

As 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 because detectable is called the "dilution to threshold" (D/T). Based on experience 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).

wagon, regardless of its content, they assume there is going to be an odor. This should also indicate that is not the pigs or odor that they object to, but has turned into a personal issue among my neighbors and myself.

The neighbors have responded by arguing that the spraying of water did generate foul odors due to the wetting down of manure on the surface. This may be the case, given the evidence that liquid manure splashed onto the ground during the injection process, contained both in Marilyn Oakley's videotape and the testimony by the applicant, who admitted that rocks and hard soil made the chisel and tube jump out of the furrow.

The applicant may be correct that his operation now is a "personal issue among my neighbors or myself" but, with respect to the bulk of the testimony about the odor, I find no reason for this animosity from his neighbors except the smell from the pig manure.²

Based on the evidence in the record, I find that the smell from the liquid pig manure injected into the applicant's land, although carried out according to the method recommended by OSU Extension Agent Larry Campbell, continues to interfere with the residential use of adjoining and nearby properties and is inconsistent with the olfactory character of the neighborhood. For that reason, I am adopting a condition limiting the disposal of the manure to lands inside an Exclusive Farm Use zone.

(iii) Smell From Burning Of Entrails Or Other Materials

As with the original approval, I am making it a condition of approval, that the applicant is prohibited from burning pig entrails or other waste from slaughtering on site.

Mr. Kline has testified that he burns wood chips from the stalls used as bedding by his other animals (horses, goats). Since this is not a part of the swine operation for which he has applied, I take no action on this matter. If it is a violation of the zoning ordinance or air pollution rules, it may be pursued through the appropriate enforcement mechanisms.

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

In the initial application proceeding there were 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

² I suspect it is the odor from swine operations which is the very reason why swine farms are treated as a conditional use in this zone, while other farm uses are as classified as "primary uses" which do not have to meet the conditional use criteria. MCC 11.15.2208(A), .2212(B)(5)).

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. The conditions I have imposed pursuant to MCC 11.15.7120(A)(1) should 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 in the first hearing process; 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. With respect to the first source, no new evidence has been presented and I continue to adhere to my original determination, reprinted here:

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 wet³, he has surrounded the buried tank with sand and gravel.

At the time of the initial 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.

³ *The 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."*

(As noted below) one opponent contended that the tank may have been contaminated with gasoline. 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, the applicant has agreed to accept, and I have imposed, a condition of approval that the swine remain indoors at all times. Therefore, the outdoor pens will not be a source of contamination of surface waters, either through direct run-off, or by seeping into the tank-perimeter drainage system, which carries off the water from around the holding tank.

With respect to waste materials inside the barn, I continue to rely and to incorporate as a condition of approval the waste management conditions in the applicants Confined Animal Feeding Operation (CAFO) permit issued by the Oregon Department of Agriculture, (Facility Identification Number 107570, Firm Number 10187, License 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):

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.*
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 the Departments of Agriculture and Environmental Quality, in combination with evidence supplied by the applicant at the initial

application hearing, are sufficient to carry his burden as against allegations of potential harm unsupported by any evidence regarding the impact of the swine waste generated inside the barn, on water quality. These standards and operating conditions are to govern, until and unless stricter standards and conditions are imposed through future permits issued by the Departments of Agriculture and/or Environmental Quality. (See Condition of Approval B.)

I also conditioning the reapproval of this use upon renewal of these permits (or their future equivalents) by the Departments of Environmental Quality and Agriculture. See Condition of Approval B.4.

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

In the earlier proceeding, 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. These concerns are addressed by the condition of approval prohibiting the spreading of manure in a Rural Residential zone.

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

With respect to this criterion, I readopt my earlier findings of April 15, 1993, which state:

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;*

As found previously, 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.

At the second hearing, some of the opponents testified regarding an incident in which law enforcement officers were summoned to the site. See letter of William Cox, dated September 7, 1993. I find that the source of conflict over the applicant's use is related to the spreading of manure on his pasture (and previously, nearby fields.) By eliminating this

source of conflict, the alleged demand for additional police protection created by the conflict should also be eliminated.

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;*

No new testimony was offered regarding this criterion. I find that the conditions of approval will eliminate any hazardous conditions created by the swine manure. I adhere to my earlier finding regarding the alleged hazard created by petroleum residues in the 500 gallon "honey wagon" tank. See decision of April 15, 1993 at page 16.

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 use in this renewal proceeding 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 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 in the April 15, 1993 decision, 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.

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. I conclude that the use is not a "noise sensitive use" nor is this area a "noise impacted area" based on the exemption for agricultural lands and agricultural uses in DEQ's noise regulations. OAR 340-35-015(38) (definition of "noise sensitive property"); 340-35-015(50) (definition of "quiet area"); 340-35-035(5)(1) ((exemption from agricultural activities from noise regulations.)

(c) Policy 16

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 at the initial application hearing 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 inside EFU zones 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.

(d) 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.**

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.

I adhere to my previous findings, analysis and conclusion on these criteria, which were:

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 applicant's 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.

As I found in the initial review, 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.

I find that the concluding paragraph of Policy 37, by its language, is inapplicable to quasijudicial proceedings.

(e) 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.

I adhere to my original finding that the proposed swine farm use does not require additional school facilities. For the reasons discussed under MCC 11.15.7120(A)(4), I find that it will not require additional police services.

The original application form indicates the property is already served by Rural Fire Protection District #10. The house has been on the site for many years so no new level of protection is required for that structure.

D. Other Issues Regarding Slaughtering Of Animals

The permissibility and conditions regarding the slaughtering of animals on the property was raised in the renewal proceeding. Parties testified to the presence of a mobile slaughtering service truck parked on the applicant's property. The applicant stated that it was parked there as a convenience to the owner.

As in the first decision, I make no decision regarding the slaughtering of animals other than hogs and pigs because they are not a part of the swine farm application. With respect to the slaughtering of the animals sold to buyers and for home consumption, I find this activity, carried out inside the barn, is authorized as being "customarily accessory [and] incidental to" the swine farm, and thus permitted under MCC 11.15.2214(D), but only so long as so long as it remains clearly incidental and subordinate to the primary use of the raising of swine.

The mobile slaughtering service truck parked on the applicant's property is intended to operate as an independent use; it is not specific to this site or use. Its use to slaughter pigs or hogs, on the Kline property, would not be incidental or subordinate to the primary use, and is therefore prohibited.

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 setforth [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, subject to the following conditions and subsequent design review.

A. Swine To Be Kept Inside Barn

As proposed by the applicant, the swine shall be kept inside the barn only; they are not to be permitted outside the barn.

B. The Collection And Treatment Of Swine Manure Inside The Barn

The disposal of animal wastes from the applicant's swine operation is subject to the following three conditions from his (original) CAFO and DEQ discharge permits or stricter conditions in subsequent permits, keeping these permits current, and a fifth condition, based on the September 16, 1993, letter from OSU Extension Agency Larry Campbell:

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. This condition shall apply until and unless a stricter standard for, or method of, operation is set by state law or a subsequently issued permit, in which case those stricter standards or methods shall apply.

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. This condition shall apply until and unless a stricter standard for, or method of, operation is set by state law or a subsequently issued permit, in which case those stricter standards or methods shall apply.
3. The applicant 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. This condition shall apply until and unless a stricter standard for, or method of, operation is set by state law or a subsequently issued permit, in which case those stricter standards or methods shall apply.
4. The operator shall renew all required permits from the Departments of Environmental Quality and Agriculture prior to expiration. He shall have one week from the date of receipt of a letter from the Division of Planning and Development, to submit a copy of his current permit(s). Failure to supply the a copy of the current permits will constitute a violation of this approval.
5. The swine manure shall be treated with lime sufficient to increase the Ph to 12, (estimated at 350 pounds of agricultural limestone in 150 gallons of water, mixed with 12,000 gallons of sewage.)

C. Location, Method And Conditions Governing The Spreading Of Swine Manure

The applicant must dispose of his 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.

D. Slaughtering Of Swine And Disposal Of Remains

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

E. Conditions Binding On Successors; Interruption Of Use

Subsequent owners and operators of the swine farm at this property shall be bound by these conditions of approval. Interruption of the use for a period in excess of three months will terminate this approval.

13 October 1993
Date


Robert Liberty, Hearing Officer

Filed With the Clerk of the Board on October 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 scheduled for the Board of County Commissioners review at 1:30 p.m. on Tuesday, October 26, 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, October 25, 1993. For further information, call the Multnomah County Planning and Development Division at 248-3043.

MEETING DATE: October 26, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: CS 8-93, Review of Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 26, 1993

Amount of Time Needed: 1 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182

BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

CS 8-93 Review of Hearings Officer Decision of October 12, 1993, approving, subject to conditions, of community service use amendment to modify the boundary and construct a seminary building, together with associated on and off-site improvements, all for property located at 30304 SE Lusted Road.

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 OCT 18 PM 3:06

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *[Signature]*

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. C58-93

- 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 7
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME LDS CHURCH SEMINARY BUILDING

NUMBER CS 8-93

1. Applicant Name/Address

Church of Jesus Christ of Latter Day Saints
PO Box 15309
Boise, ID 83715

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

2. Action Requested by applicant

a. *Approve Community Service Use Amendments (to allow a proposed Seminary building and reduce the CS boundary)*

3. Planning Staff Recommendation

Approve, subject to conditions

4. Hearings Officer Decision:

Approve, subject to conditions

5. If recommendation and decision are different, why?

not applicable

ISSUES

(who raised them?)

The decision concerns a Community Service Use amendment to modify the boundary and construct a seminary building together with a cross-walk for seminary students crossing SE 302nd Avenue to Barlow High School. The Hearings Officer decision allows the applicant to construct the larger, permanent seminary building. A neighbor raised objections to the exceptions to the 20-acre lot size in the area (CS uses are not subject to the limitation). The water district raised concerns about potential hazards from the elevated water storage tank on the property to the south.

Do any of these issues have policy implications? Explain.

The issues concern neighborhood effects of an expanded educational/religious facility, and the appropriate conditions to address those effects.



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

HEARINGS OFFICER DECISION
OCTOBER 12, 1993

CS 8-93

CONCERNING A PROPOSED AMENDMENT TO A COMMUNITY SERVICE USE (Related Prior Case: CS 12-84)

Proposal: **Community Service Use Amendments** (to allow a proposed Seminary building and reduce the CS boundary)

Location: 30304 SE Lusted Road (east of Gresham)

Property Description: Tax Lot '60'; Section 17, 1S-4E, 1991 Assessor's Map

Plan Designation: Multiple Use Agriculture

Zoning District: MUA-20, Multiple Use Agricultural District

Applicant: Church of Jesus Christ of Latter Day Saints
PO Box 15309
Boise, ID 83715

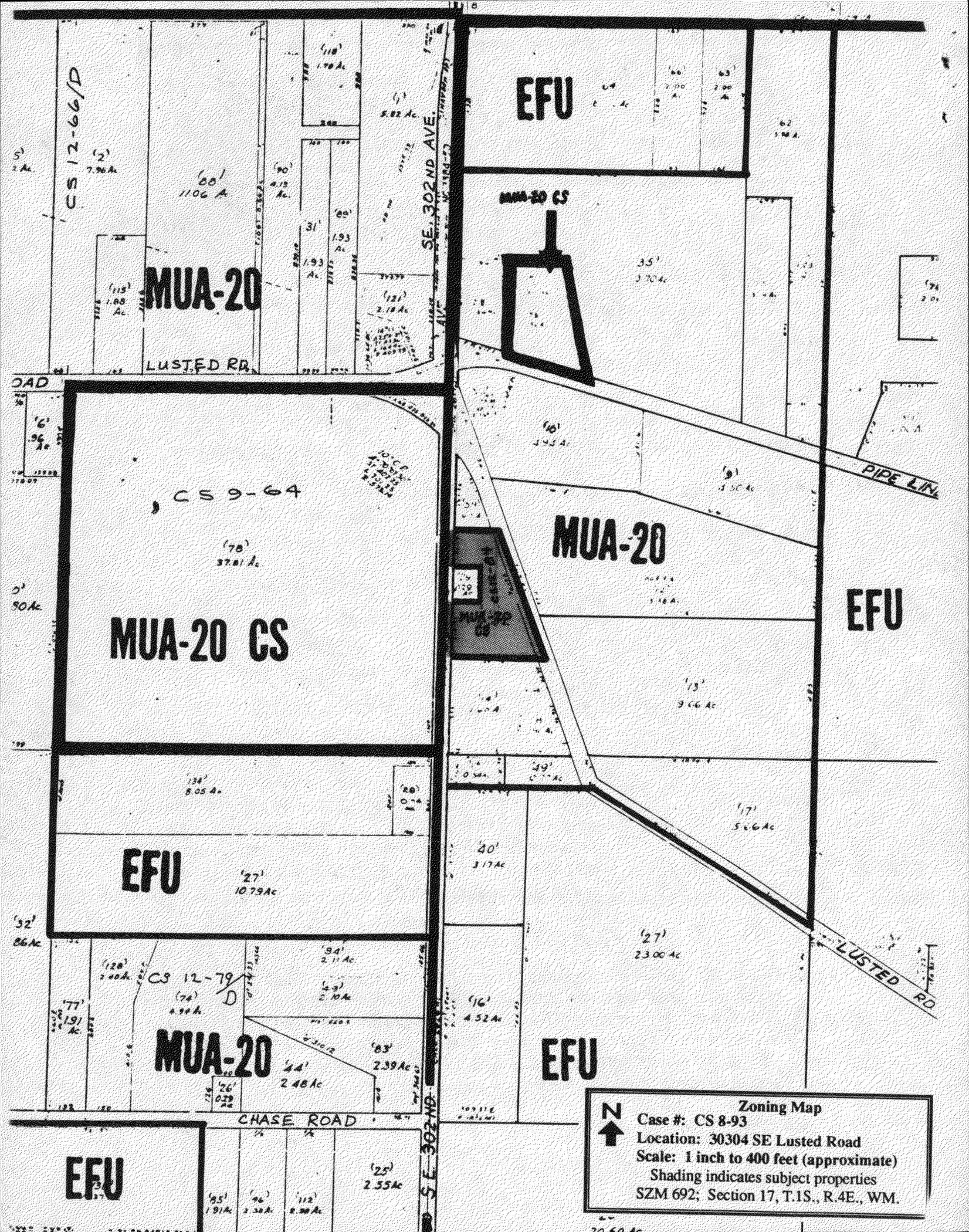
Property Owner: Alex Anderson
3034 SE Lusted Road
Gresham, Oregon 97080

HEARINGS OFFICER: Phillip E. Grillo

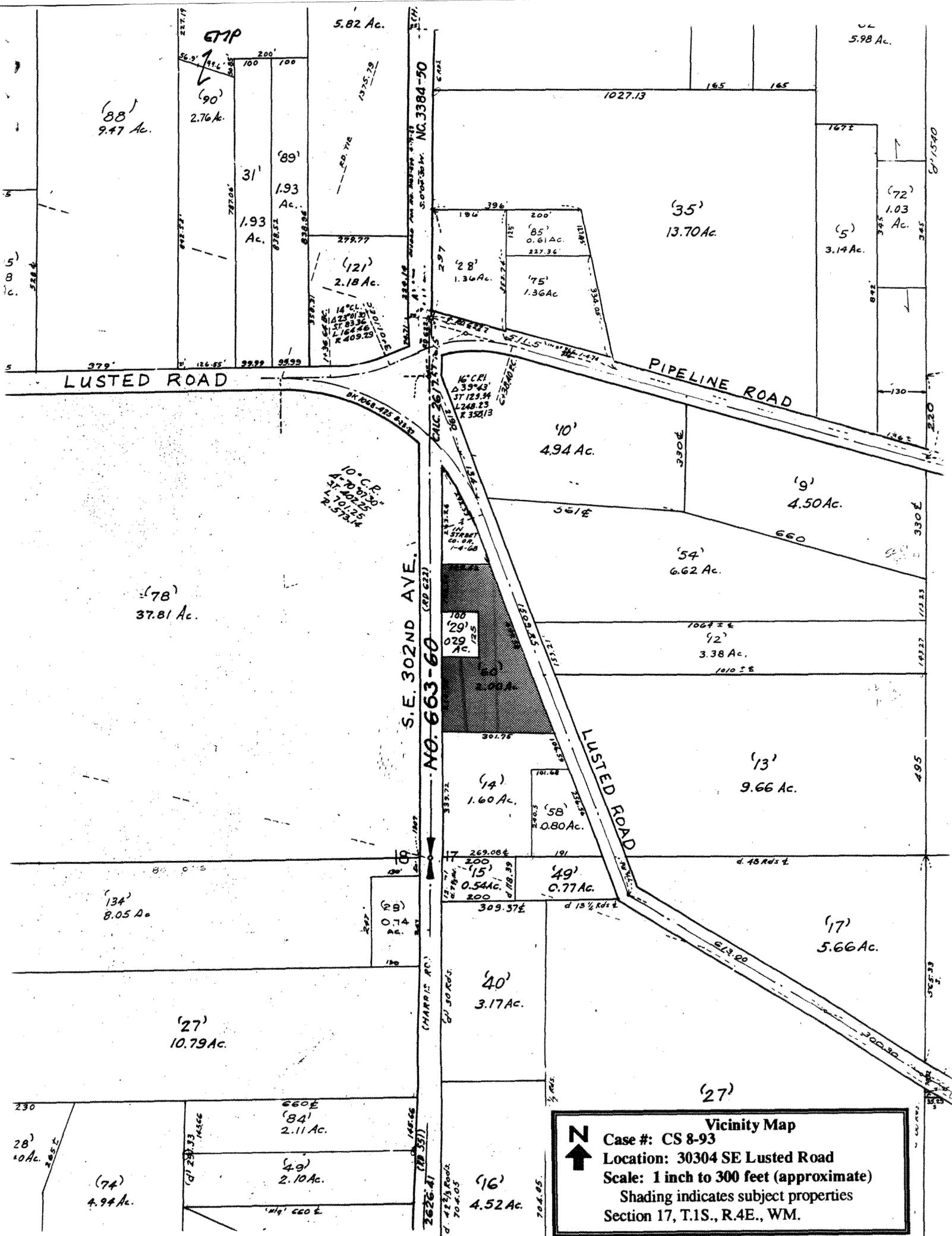
DECISION: **APPROVAL** of the proposed Community Service Use amendment to modify the boundary and construct a seminary building together with associated on and off-site improvements; subject to the following conditions of approval:

CONDITIONS OF APPROVAL

1. Obtain Design Review approval of proposed site improvements. Site preparation shall not begin and Building Permits shall not be issued until approval of the Final Design Review Plan. As part of Site Design Review, the applicant shall propose specific pedestrian improvements to facilitate safe pedestrian movements across SE 302nd Avenue for seminary students who will be required to park in the Barlow High School lot.



Zoning Map
 Case #: CS 8-93
 Location: 30304 SE Lusted Road
 Scale: 1 inch to 400 feet (approximate)
 Shading indicates subject properties
 SZM 692; Section 17, T.1S., R.4E., WM.



Vicinity Map

Case #: CS 8-93
 Location: 30304 SE Lusted Road
 Scale: 1 inch to 300 feet (approximate)
 Shading indicates subject properties
 Section 17, T.1S., R.4E., WM.

(88)
9.47 Ac.

(90)
2.76 Ac.

5.82 Ac.

5.98 Ac.

(89)
1.93 Ac.

(121)
2.18 Ac.

(35)
13.70 Ac.

(5)
3.14 Ac.

(72)
1.03 Ac.

(40)
4.94 Ac.

(9)
4.50 Ac.

(78)
37.81 Ac.

(54)
6.62 Ac.

(29)
0.29 Ac.

(12)
3.38 Ac.

(14)
1.60 Ac.

(58)
0.80 Ac.

(13)
9.66 Ac.

(134)
8.05 Ac.

(49)
0.77 Ac.

(17)
5.66 Ac.

(27)
10.79 Ac.

(40)
3.17 Ac.

(27)

(74)
4.94 Ac.

(84)
2.11 Ac.

(49)
2.10 Ac.

(16)
4.52 Ac.

APPLICANT

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
THE NORTH AMERICA NORTHWEST AREA
P.O. BOX 5305
BOISE, IDAHO 83715
PH. (208) 342-2135

PLANNING

DAVID EVANS AND ASSOCIATES, INC.
2828 S.W. CORDETT
PORTLAND, OREGON 97201-4830
PH. (503) 723-6663

LEGAL DESCRIPTION

TAX LOT 60 IN SW PORTION OF SECTION 17,
TOWNSHIP 1 SOUTH, RANGE 4 EAST,
WILLAMETTE MERIDIAN. SEE TAX MAP 1184E.

SURVEY BENCHMARK

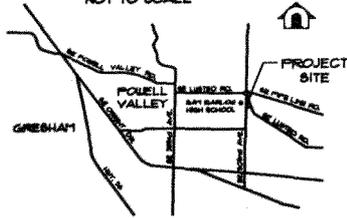
MULTNOMAH COUNTY VERTICAL DATUM
BENCHMARK AT SW CORNER OF RESIDENCE
CONCRETE PORCH 150' NORTH OF PIPE LINE
ROAD AND 63' EAST OF 302nd AVENUE AT
302nd RD. STA. 36+32 PER FIELD BOOK 1016
ON FILE AT THE MULTNOMAH COUNTY SURVEYORS
OFFICE. ELEVATION = 491.40

NOTE

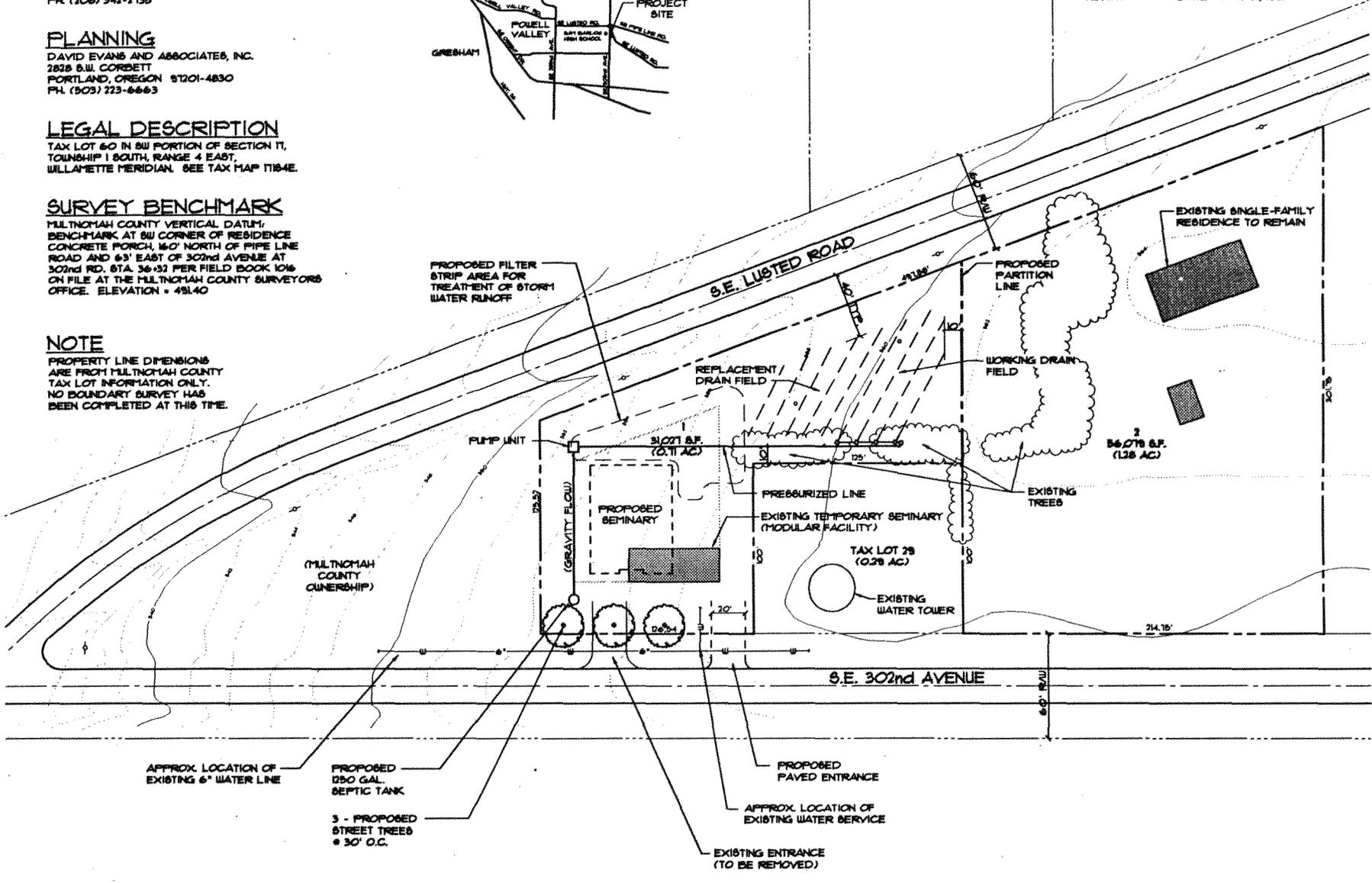
PROPERTY LINE DIMENSIONS
ARE FROM MULTNOMAH COUNTY
TAX LOT INFORMATION ONLY.
NO BOUNDARY SURVEY HAS
BEEN COMPLETED AT THIS TIME.

VICINITY MAP

NOT TO SCALE



SCALE: 1" = 40'
0 20 40 80
DATE: MAY 21, 1993

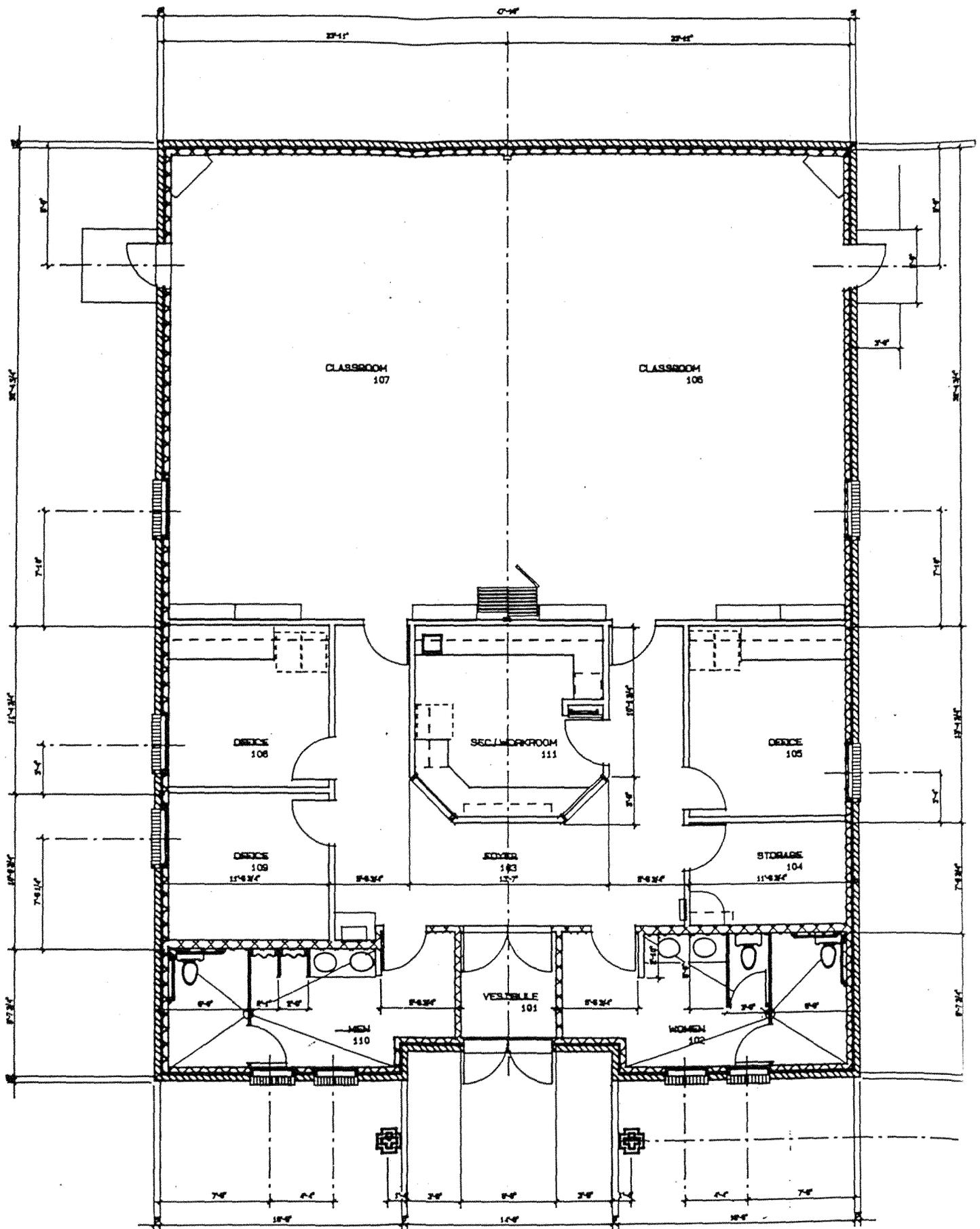


TENTATIVE PLAN MAP
SAM BARLOW SEMINARY
 CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
 MULTNOMAH COUNTY, OREGON

deen
 DAVID EVANS AND ASSOCIATES, INC.
 2828 S.W. CORDETT
 PORTLAND, OREGON 97201-4830
 PH. (503) 723-6663

L.D.S.0063 BXM 06/08/93 16:25:40 BXM D:\WORK\LD563PRT

1	2	DATE	PREPARED	CHECKED
		DATE	DATE	DATE
		DATE	DATE	DATE



CS 8-93
D3. FLOOR PLAN
 SCALE 1/4" = 1'-0"

2

3

4

2. As part of Design Review, obtain a Grading and Erosion Control Permit for proposed excavation, fill or drainage changes.
3. Prior to issuance of Building Permits, obtain approval of a Type III Land Division to partition the property along the amended boundary near the center of the site.
4. Complete or provide assurances that off-site improvements such as pedestrian access to Sam Barlow High School and any other improvements or access changes required within the right of way will be completed, prior to issuance of occupancy permits.
5. The proposed uses shall be subject to the following operational limitations:
 - A. No evening, weekend, or summer classes or activities on the site.
 - B. No student parking on site. All student parking shall take place at Barlow High School.
6. This decision supersedes and modifies the CS 12-84 decision dated July 9, 1984.

ANALYSIS OF THE REQUEST

I. PROJECT DESCRIPTION

The applicant is proposing to replace an existing modular seminary with a larger site-built facility with 2900 square feet, to house a larger classroom, three office spaces, a secretarial work space, two bathrooms and an indoor storage area. In order to accommodate these proposed improvements, the applicant is requesting a reduction in the CS boundary that was established in 1984. The proposed boundary change would alter the CS boundary on the south, eliminating the existing house on Tax Lot 60 from the CS boundary.

II. RELEVANT APPROVAL CRITERIA

Conditional uses in the MUA District include Community Service Uses. Philanthropic institutions are listed as a CS use in MCC

,7020(A) (11). The proposed seminary for the Church of Jesus Christ of Latter Day Saints qualifies as a philanthropic institution.

The following criteria constitute the applicable Community Service Use approval criteria (MCC .7015):

(A) Character of the area;

Findings: The seminary is an approved CS use and has been in operation on the site since 1984 in a modular facility. The proposed new building will be 2900 square feet in area and one story in height. The building itself will be subject to Design Review, which will help insure compatibility with the character of the area. Overall, the design, scale and function of the proposed use will be consistent with the character of the area, which has a mixture of rural residential and institutional uses. The brick material proposed for the seminary will be consistent with the brick construction of Sam Barlow High School across the street. This criteria is met.

(B) Natural resource protection

Findings: The only potential natural resource that could be affected by this proposed use is fact that the Lusted Water District would like to use this site for possible future expansion of its existing facility, located immediately to the south of the existing seminary facility. The hearings officer finds that the proximity of the water tower and the water resources below ground will not be adversely affected by this proposal. On site sewerage facilities will be developed as detailed in LFS 143-93, and will be review for adequacy prior to final approval of the septic system. The proximity of the water tower is not a natural resource issue, per se, and is discussed below under section (F).

(C) Conflict with farm or forest uses in the area;

Findings: The applicant has discussed potential conflicts with the scattered farm and forest uses in the area. The hearings officer incorporates and adopts by reference the response of the applicant concerning this criteria. The applicant's response is found on pages 4 -6 of its application, dated July 27, 1993, (attached).

(D) Public Services;

Findings: The use will require public water, police, fire, electricity and communication services, all of which are available to serve the site. The sewerage system and the storm drainage system will be a private, on site system. On-site sewerage disposal will be developed as detailed in LFS 143-93. Design Review and Grading permits will insure that on site drainage systems will be adequate. The existing seminary facility has functioned without overburdening the public facilities in this area, and this fact is an indication of the probable impact from the proposed use.

The remaining public service that will serve the site is the public transportation system. There was testimony at the hearing concerning the level of traffic that would be generated by the use. The hearing officer finds that most of the vehicle trips associated with this use will already be coming to the site to park in the Barlow High School lot, which will serve as the primary parking area for this use. The students who will use the seminary would otherwise be bound for Barlow High School. Therefore, there is substantial evidence in the whole record that the proposed use will not generate any significant additional vehicle trips in the area. Improvements to the access and pedestrian crossing will be required as conditions of approval. Overall, this criteria will be met.

(E) Big Game Winter Habitat;

Findings: This criteria does not apply because the site is not located in a big game habitat area.

(F) Hazardous Conditions;

Findings: Two potentially hazardous conditions have been identified. The first potentially hazardous condition concerns the proximity of the site to the existing Lusted Water District tank. The hearings officer finds that the proposed building is approximately 80 feet farther away from the tank than the existing seminary building. Furthermore, there is nothing in the local code or state law that requires a use to locate a particular distance away from a water tank. Normal setbacks apply. If the water district needs additional space, either for storage or safety reasons, it must act affirmatively to acquire the needed property. The hearings officer does not find that there is sufficient evidence in the record that the water tower will be a danger to the proposed use, or visa versa.

The second potentially hazardous condition involves the number of students that will be crossing 302nd Avenue, going to and from Barlow High School. This hazardous condition will be remedied by the condition requiring that improvements for pedestrian safety be made by the applicant.

(G) Comprehensive Plan Policies;

Findings: The hearings officer incorporates and adopts by reference the reposes to applicable plan policies as described in the applicant's July 27, 1993 development application(Attached), pages 9-11, as supplemented and amended herein:

Policy 10: The proposed community service use is compatible with adjacent farm and forest uses for the reasons set out in section A, B, and C, above.

Policy 13: Potential water quality effects will be addressed though the application of grading and erosion control provisions in Condition of Approval #2. In addition, on-site sewerage disposal will be regulated as noted in LFS 143-93.

Policy 19: Design Review will be required for this project as a condition of approval. Such review, in addition to the findings set out in section A, B, and C above, demonstrate that this policy will be met.

Policy 38: The public facility findings in section D above are incorporated here by reference.

(G) Other applicable criteria;

Findings: No other criteria are applicable at this time. However, The following additional reviews and permits will be required subsequent to this review: Grading and Erosion Control [MCC .6710], Land Division [MCC 11.45], and Design Review [MCC.7820].

III. CONCLUSIONS

The proposed amendment to the CS boundary to accommodate the larger seminary facility, meets the relevant criteria and is

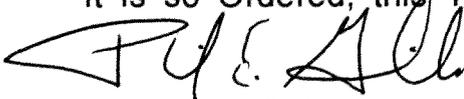
therefore approved, subject to the conditions of approval set out above.

There was concern expressed at the hearing regarding whether the approval of the modular facility in 1984 authorized the seminary as a temporary use only. The hearings officer has examined the planning commission decision in CS 12-84, #692, and finds that nothing in that order restricts the modular classroom as being temporary in nature only. The planning commission's order placed no time limitations on the CS use.

Concerns about possible contamination of the water district's underground wells in this area were also raised. There is substantial evidence in the record indicating that the proposed expansion of the seminary will produce a relatively small amount of effluent. The proposed drain field will be designed in accordance with generally accepted specifications, and there is no evidence in the record which causes the hearings officer to question whether the drain field will be adequate to protect ground water resources.

In summary, the proposed Community Service Use is approved, subject to the conditions stated above.

It is so Ordered, this 12th day of October, 1993



Phillip E. Grillo
Hearings Officer

In the matter of CS 8-93, an amendment of CS 12-84:

Signed by the Hearings Officer: October 12, 1993
[date]

Decision mailed to parties: October 15, 1993
[date]

Submitted to Clerk of the Board: October 15, 1993
[date]

Last day to Appeal to the Board: October 25, 1993
[date]

Appeal to the Board of County Commissioners

The Hearings Officer Decision 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 into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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

MEETING DATE: October 26, 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: DR 18-93, Review of Hearings Officer Decision

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 26, 1993

Amount of Time Needed: 1 Minutes

DEPARTMENT: DES DIVISION: Planning

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

DR 18-93 Review of Hearings Officer Decision of October 12, 1993, denying requested appeal; Affirming the Administrative Decision to approve Final Design Review and approve, subject to conditions and modifications, the final design review plan, all for property located at 2640 SE 141st Avenue.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: pc [Signature] Sr B/A

1993 OCT 18 PM 3:07
MULTIPLAAR COUNTY
OREGON
CLERK OF COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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



MULTNOMAH COUNTY OREGON

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

DIVISION OF PLANNING AND DEVELOPMENT

Board Planning Packet Check List

File No. DR-18-93

Agenda Placement Sheet No. of Pages 1

Case Summary Sheet No. of Pages 1
 Previously Distributed _____

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

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

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



CASE NAME **Appeal of a Final Design Review Plan**

NUMBER DR 18-93

1. Applicant Name/Address

Ted Ballis
14202 NE Brazee Street
Portland, Oregon 97230

APPELLANTS:

Timothy J. Tappert (representing 29 households)
2616 SE 141st Avenue
Portland, Oregon 97236

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

2. Action Requested by applicant

a. Approve the Final Design Review Plan for a 7 dwelling unit residential development

3. Planning Staff Recommendation

DR 18-93: APPROVED by the Planning Director

4. Hearings Officer Decisions:

AFFIRM AND MODIFY the Planning Director decisions; and,
DENY the Appeal

5. If recommendation and decision are different, why?

The Hearings Officer decision modifies conditions to respond to testimony received at the hearing and in the open record period. He required adjustments to the site plan to increase the setbacks along the north property line.

ISSUES

(who raised them?)

The decision concerns an appeal to the Hearings Officer of an administrative decision by the Planning Director. The decision in DR 18-93 approved a Final Design Review Plan for a seven dwelling-unit project allowed in this medium-density zone. The Hearings Officer decision allows the applicant to construct the dwellings (2 duplexes and 1 tri-plex), with modifications to the site plan. [issue raised by appellants]

Do any of these issues have policy implications? Explain.

The appellants raised issues of concerning effects of infill in urban neighborhoods, and the appropriate mix of uses and housing types.



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

HEARINGS OFFICER DECISION
OCTOBER 12, 1993

DR 18-93

Concerning an Appeal of an Administrative Decision which approved a FINAL DESIGN REVIEW PLAN for a 7 dwelling unit residential development

Location: 2640 SE 141st Avenue

Tax Roll Description: 1S 2E 11AA Lot 1500 and East 155.08 ft. of Lot 1600

Owner/Applicant: Ted Ballis
14202 NE Brazee Street
Portland, Oregon 97230

Appellants: Timothy J. Tappert (representing 29 households)
2616 SE 141st Avenue
Portland, Oregon 97236

Plan Designation: Medium Density Residential

Zoning District: MR-4, Urban Medium Density Residential District

HEARINGS OFFICER: Phillip E. Grillo

DECISION: **Deny** the requested appeal;

Affirm the Administrative Decision to approve Final Design Review ; and

Approve, subject to conditions and modifications, the Final Design Review Plan for DR 18-93.

CONDITIONS OF APPROVAL

1. Install public and private street improvements, structures, utility systems, fencing and landscaping as

illustrated on the Final Review Plan dated July 26,1993 **except** as modified below by conditions of approval; by notes on the "Plot Plan" submitted for building permit review on 7/23/93,; and as modified by the planning staff in the "Staff Suggested Adjustments" (Attached). The "Staff Suggested Adjustments" include the following changes to the applicant's plan:

- a. The side yard setback will be increased from 5 to 8 feet for unit #2;
 - b. The side yard setback will be increased from 5 to 10 feet for units #3 and 4;
2. Prior to issuance of building permits, complete or provide sufficient bond or other surety for required street and right-of-way improvements as detailed and authorized under a project agreement with the County Transportation Division.
 3. All landscaping, fencing, and all paved areas, curbs, exterior lighting, and sidewalks shall be completed and approved prior to final inspection approvals or occupancy of proposed dwellings. Plant species and sizes not identified on the Final Design Review Plan shall be ministerially approved by Design Review Staff, and shall at a minimum meet the size and spacing requirements detailed in "*A Developer's Handbook*", pg. 76.
 4. The following landscape details shall be completed prior to final inspection approvals or occupancy of the dwellings:
 - * Install and continuously maintain evergreen screening trees and/or hedge plants along the south, east and north boundaries of the property. Hogan Cedar - *Thuja plicata 'fastigiata'* - Incense Cedar - '*Calocedrus decurrens*' - are recommended species with a narrow growth habit. Generally, screening trees or hedge plantings shall be at least 4-foot height at the time of planting, and spaced not more than 10-feet on-center. The species, planting sizes, and spacing shall be sufficient to provide sight obscuring screening of the private outdoor spaces within one year.

- * The outer boundary of the parking area and access drive from SE 141st Avenue shall be defined with a curb, or other barrier at least 4-inches in height pursuant to MCC .6132(B)(2).
5. Drainage facilities shall be detailed in construction plans approved by the County Transportation Division for improvements within the 141st Avenue Right-of-Way, and by the Portland Building Bureau, Plumbing Section for on-site facilities.
 6. The 6-foot height privacy fence sections noted on the Final Design Review Plan and on the "Plot Plan" submitted for building permit review on 7/23/93 shall be continuously maintained by the owner (or successors) of the subject property.
 7. Provide plan details of exterior lighting of the parking area and dwelling entrances. Lighting shall be located, directed or shielded to minimize glare or "spillage" onto neighboring residences. Free standing light fixtures shall not exceed 25-foot height.
 8. Implement temporary erosion control measures as necessary to prevent off-site sedimentation during construction. Grading shall be limited to that required for the building foundations and to develop proposed street, parking, and utility improvements. Final grading plans shall be approved by the County Transportation Division for work associated with the 141st Avenue right-of-way improvements. If the volume of soil or earth material disturbed, stored, or used as fill on the site exceeds 50 cubic yards, it shall be authorized under a Grading and Erosion Control Permit [MCC .6710(B)].

I. EVALUATION OF ISSUES RAISED ON APPEAL

1. Potential Loss of Property Values

Findings: The hearings officer finds that the relevant criteria for Design Review do not include the preservation of surrounding property values. Furthermore, there is no reliable information in the record which demonstrates that this project will directly affect surrounding property values.

2. Potentially excessive traffic on SE 141st between Powell and Division streets.

Findings: The Design Review criteria do not require the applicant to demonstrate that traffic on streets serving the site will be adequate. The use proposed is a residential use that is allowed outright in this location. Furthermore, the appellants have provided no reliable evidence to support their assertion concerning traffic conditions.

3. Increase in the crime rate.

Findings: Design Review criteria #2 requires the applicant to provide substantial evidence in the record that its design review plan will provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces. The hearings officer finds that there is no evidence in the record that reliably demonstrates that this multifamily housing development will cause an increase in the crime rate in the area. On the contrary, this site will be fenced on the north, east, and southern boundaries. Security lighting will be provided in the parking and common access areas on the site, and the site will be otherwise be designed to permit the common areas to be viewed by the residents. There are no hidden common areas that would create unsafe conditions. To the extent that public safety is relevant to the approval criteria, no increase in public safety concerns are likely to result from this proposed development.

4. The ability of the surrounding property owners to create a stable neighborhood.

Findings: The relevant Design Review criteria do not directly speak to the issue of neighborhood stability, because multifamily dwelling are permitted outright in the zone. The proposed units help satisfy the relevant portions of the county's comprehensive plan by providing for a diversity of housing types, in various price ranges. Design Review is concerned primarily with the design of permitted uses. The county has previously made a legislative decision to permit multifamily dwellings in this location. That decision is not subject to review by the hearings officer during Design Review.

II. FINDINGS AND CONCLUSIONS

The hearings officer finds that the issues raised by the appellants on appeal do not constitute sufficient grounds for reversing the administrative decision rendered by the planning director. Furthermore, the hearings officer incorporates and adopts by reference the findings of fact and conclusions as set forth in the director's decision (Attached). All conditions of approval set forth in the director's decision have been incorporated into this decision of the hearings officer, except that condition #1 has been revised to incorporate additional side yard setback for units 2, 3 and 4, which are intended to help provide increased separation from the single family residences to the north.

III. DECISION

Based upon the evidence in the record and the findings and conclusions set out above, the hearings officer hereby **DENIES** the appeal, and **AFFIRMS** the decision of the Director, **APPROVING WITH CONDITIONS**, a modified Final Design Review Plan for the proposed use.

It is so Ordered, this 12th day of October, 1993.



Phillip E. Grillo
Hearings Officer

In the matter of DR 18-93, an appeal of an administrative decision:

Signed by the Hearings Officer: October 12, 1993
[date]

Decision mailed to parties: October 14, 1993
[date]

Submitted to Clerk of the Board: October 15, 1993
[date]

Last day to Appeal to the Board: October 25, 1993
[date]

Appeal to the Board of County Commissioners

The Hearings Officer Decision 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 into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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



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

STAFF REPORT

This Report consists of a Recommended Decision, Conditions, Findings of Fact, and Conclusions

HEARING DATE & TIME: SEPTEMBER 7, 1993 @ 12:00 P.M.

DR 18-93 Appeal of an Administrative Decision which approved a Line 6.
FINAL DESIGN REVIEW PLAN

This report concerns an appeal of a Final Design Review Plan approved for a 7 dwelling unit residential development. Applicant proposed to construct 2 duplex and one tri-plex structure (*i.e.*, 3 one-story structures). The proposed work includes an access drive and paved parking area. An existing house on the site would be removed. Notice of the administrative decision was mailed on July 26, 1993. The appeal of the decision was filed on August 4, 1993. Appellants cite Multnomah County Code (MCC) section .8230(d)(2)(a), and list concerns regarding potential loss of property value, excess traffic on SE 141st Avenue (Powell to Division), an increase in crime rate, and destabilization of the neighborhood environment as the grounds for appeal of the Director's decision to approve the Final Design Review Plan.

Location: 2640 SE 141st Avenue

Tax Roll Description: 1S 2E 11AA Lot 1500 and East 155.08 feet of Lot 1600

Owner/Applicant: Ted Ballis
14202 NE Brazee Street Portland, Oregon 97230

Appellants: Timothy J. Tappert (representing 29 nearby households)
2616 SE 141st Avenue Portland, Oregon 97236

Plan Designation(s): Medium Density Residential

Zoning District(s): MR-4, Urban Medium Density Residential District

**RECOMMENDED
HEARINGS OFFICER
DECISIONS:**

DENY the requested appeal;

AFFIRM the Planning Director decision to approve Final Design Review Plan for application DR 18-93; and,

APPROVE, SUBJECT TO CONDITIONS AND MODIFICATIONS, the Final Design Review Plan for application DR 18-93, all based on the following findings and conclusions.

SEE DRG. 513/1

ST.

PARKTOWN ADD.

DIVISION

ST. (SECTION LINE F)



Zoning Map

Location: DR 18-93

Scale: 1 inch to 100 feet (approximate)

Shading indicates subject property

SZM 407; A&T SID Map 1S2E11AA

9300 0.20 AC.	9200 0.20 AC.	9100 0.20 AC.
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500 0.20 AC.	400 0.20 AC.	300 0.20 AC.	200 0.20 AC.	0.20 AC.
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5.45 AC.

SC

CO. RD. 2374

AVE.

141ST.

SE.

MR-4

MR-3

SEE CS 28035

8800
0.31 AC.
SEE CS 10671

8500
0.16 AC.
SEE CS 41242
41871

8300
0.16 AC.

8000
0.16 AC.
41245

7900
0.16 AC.
25489
41251

7600
0.18 AC.
SEE CS 42666

2000
0.46 AC.
SEE CS 9353

2200
0.51 AC.

2300
0.11 AC.

7200
0.26 AC.

600
0.28 AC.

900
0.18 AC.

1000
0.28 AC.

1400
0.46 AC.

1500
0.46 AC.

1600
0.46 AC.

1700
0.46 AC.

1800
0.46 AC.

1900
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2000
0.46 AC.

2200
0.51 AC.

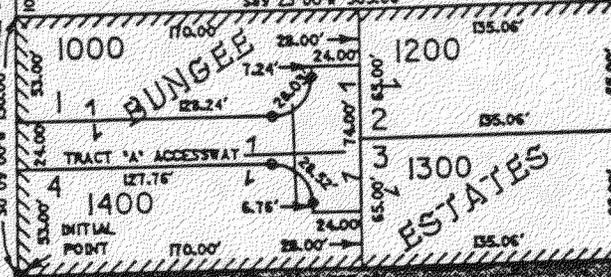
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0.11 AC.

2400
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2500
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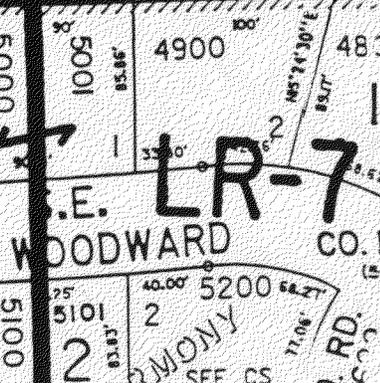


BUNGEE
ESTATES

2501
0.72 AC.

0.72 AC.

5000
5001
5100



LR-7

WOODWARD CO. F
HARMONY

RECOMMENDED
CONDITIONS OF APPROVAL

1. Except as modified by conditions below or by notes on the "PLOT PLAN" submitted for building permit review on 7/23/93, install the public and private street improvements, structures, utility systems, fencing and landscaping as illustrated and specified on the Final Design Review Plan dated July 26, 1993. [ref. Plan Check #26575]
2. Prior to issuance of building permits, complete or provide sufficient bond or other surety for required street and right-of-way improvements as detailed and authorized under a project agreement with the County Transportation Division.
3. All landscaping, fencing, and all paved areas, curbs, exterior lighting, and sidewalks shall be completed and approved prior to final inspection approvals or occupancy of proposed dwellings. Plant species and sizes not identified on the Final Design Review Plan shall be ministerially approved by Design Review Staff, and shall at a minimum meet the size and spacing requirements detailed in "*A Developer's Handbook*", pg. 76.
4. The following landscape details shall be completed prior to final inspection approvals or occupancy of the dwellings:
 - Install and continuously maintain evergreen screening trees and/or hedge plants along the south, east and north boundaries of the property. Hogan Cedar – *Thuja plicata 'fastigiata'* – or Incense Cedar – *Calocedrus decurrens* – are recommended species with a narrow growth habit. Generally, screening trees or hedge plantings shall be at least 4-foot height at the time of planting, and spaced not more than 10-feet on-center. The species, planting sizes, and spacing shall be sufficient to provide sight obscuring screening of the private outdoor spaces within one year.
 - The outer boundary of the parking area and access drive from SE 141st Avenue shall be defined with a curb, or other barrier at least 4-inches in height pursuant to MCC .6132(B)(2).
5. Drainage facilities shall be detailed in construction plans approved by the County Transportation Division for improvements within the 141st Avenue Right-of-Way, and by the Portland Building Bureau, Plumbing Section for on-site facilities.
6. The 6-foot height privacy fence sections noted on the Final Design Review Plan and on the "PLOT PLAN" submitted for building permit review on 7/23/93 shall be continuously maintained by the owner (or successors) of the subject property.
7. Provide plan details of exterior lighting of the parking area and dwelling entrances. Lighting shall be located, directed or shielded to minimize glare or "spillage" onto neighboring residences. Free standing light fixtures shall not exceed 25-foot height.
8. Implement temporary erosion control measures as necessary to prevent off-site sedimentation during construction. Grading shall be limited to that required for the building foundations and to develop proposed street, parking, and utility improvements. Final grading plans shall be approved by the County Transportation Division for work associated with the 141st Avenue right-of-way improvements. If the volume of soil or earth material disturbed, stored, or used as fill on the site exceeds 50 cubic yards, it shall be authorized under a Grading and Erosion Control Permit [MCC .6710(B)].

FINDINGS OF FACT

I. BACKGROUND

- A. Applicant, Ted Ballis, filed a Design Review application on June 14, 1993 (Reference DR 18-93) to construct 7 dwelling units within 3 buildings property located at 2640 SE 141st Avenue. The subject property is designated MR-4, Urban Medium Density Residential District on Sectional Zoning Map # 407.

MCC .2746 allows two-unit and multiplex dwelling structures as a *Primary Use* in the MR-4 district. MCC .0010 defines a multiplex as a *row house* or townhouse apartment structure. *Row House* is defined as a one story apartment structure having three or more dwelling units. Under MCC definitions, the DR 18-93 application proposes two two-unit structures (the 2 duplexes), and one three-unit *Row House* structure (the one story tri-plex).

MCC .2752(B) &(C) require 4000 square feet of land area is required for each dwelling unit in a duplex or multiplex structure. Plans indicates the site size is 29, 891 square feet. Therefore, the 28, 000 square foot minimum is satisfied by the 7 unit proposal.

MCC .7815 &.7820(A) require Design Review approval of a multiplex dwelling or apartment structure.

- B. Staff reviewed the documents and plans submitted and visited the site on July 13, 1993. Staff determined that certain details and minor modifications were necessary to satisfy Design Review Approval Criteria in MCC .7850 – .7860; these changes are indicated by notes on the plot plan.
- C. Notice of the administrative decision approving DR 18-93 was mailed on July 23, 1993 as prescribed in ORS 197.763. The approval was subject to conditions and modifications detailed in the Building Permit application filed July 23, 1993 and noted on the plot plan (ref. Portland Building Bureau Plan Check #'s: 26575, 26575B, & 26575C).
- D. Timothy Tappert, representing 29 neighboring households, filed an appeal of DR 18-93 on August 4, 1993. The grounds for appeal reference MCC .8230(d)(2)(a) and list concerns of potential loss of property value, excess traffic on SE 141st Avenue (Powell to Division), increase in crime rate, and the stability of the neighborhood.
- E. The Hearings Officer review of the matter is scheduled for a public hearing on September 7, 1993 @11:00 a.m. MCC .8295(A) limits the scope of review to the appellants' specific grounds relied on for a reversal or modification of the Director's decision. The evaluation sections below focus only on those issues described in the appeal.

2. EVALUATION OF APPELLANT'S GROUNDS FOR REVERSAL

- A. The following section presents appellants' grounds for reversal as described in the appeal, followed by Staff comment and evaluation.

"Pursuant to MCC .8230(D)(2)(a) the above named [appellants] have concerns regarding ...

Comment: The provisions of MCC .8240(D)(2)(a) govern a Planning Commission or Hearings Officer decision which attaches conditions to an approved use or proposed *Action*. The criteria do not apply to an application or an administrative decision to approve a Final Design Review Plan (ref. MCC .7845). However, certain issues raised in the appeal do relate to an extent to approval criteria relevant in this case. Refer to the Evaluation of the Application under Finding #3 below.

1. *...potential loss of property value ...*

Comment: The relevant criteria for a Final Design Review Plan do not directly speak to the issue of future property value changes. Further, appellants provide no expert testimony, facts, or argument to support the contention.

2. *...excess traffic on S.E. 141; between S.E. Powell & Division...*

Comment: The relevant criteria for a Final Design Review Plan do not directly speak to the issue of off-site traffic impacts from a residential use and scale which is allowed outright within the zone. Further, appellants provide no expert testimony or written argument to support the contention. Staff concludes the plan, as conditioned, satisfies applicable criteria. Refer to the Evaluation of the Application under Finding #3 below.

3. *...Increase in crime rate...*

Comment: The DR 18-93 Final Design Review Plan provides secured, enclosed storage units for each dwelling. The site will be fenced on the north, east, and south boundaries. Security lighting will be provided in the parking and common access areas on the site (reference Condition #7) Staff concludes the plan, as conditioned, satisfies applicable criteria. Further, appellants provides no expert testimony, facts, or argument to support a contention that 6 new rental dwelling units in this area has a relationship or effect on the *crime rate* of the larger community..

4. *...and our ability to create a stable neighborhood environment."*

Comment: The relevant criteria for a Final Design Review Plan do not directly

speak to the issue of neighborhood stability or environmental impacts associated with the proposed residential development which is of a scale and density allowed outright within the zone. Further, appellants provide no expert testimony, facts, or argument to support the contention. Staff concludes the plan, as conditioned, satisfies applicable criteria. Refer to the Evaluation of the Application under Finding #3 below.

3. EVALUATION OF THE FINAL DEVELOPMENT PLAN APPLICATION

The following sections identify approval criteria relevant to the grounds cited in the appeal. Staff comments include findings and conclusions regarding the evidence in the record which addresses applicable criteria.

11.15.7850 Design Review Criteria (relevant excerpts presented)

(A) Approval of a final design review plan shall be based on the following criteria:

(I) Relation of Design Review Plan Elements to Environment.

- 1(a) *The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship to the site.*

Comment: The Final Design Review Plan satisfies this criteria, as conditioned above and modified by notes on the "PLOT PLAN" submitted for building permit review on 7/23/93. The proposed design and associated landscaping planned on the site display a harmonious relationship to the natural environment and structures visibly related to the site. The one story duplex and tri-plex structures proposed are similar to adjoining residences in terms of their placement on the site and the scale of houses and other structures located immediately to the north, south, and west of the property. The proposed design relates to built features of the vicinity and will not dominate the streetscape or significantly change the neighborhood image by use of smaller scaled structures with only 2 or 3 dwellings each, one story heights, pitched roofs, wood siding similar to existing residential structures nearby. The placement of the parking areas to the rear of the front duplex also responds to and maintains the residential image and character along 141st Avenue (the area generally from Division Street to about 1/4 mile south of the site). The proposed project will also benefit the above described residential area by reducing the visual prominence of an older mobile home court located east of the site.

- 1(c) *Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.*

Comment: The proposed site design efficiently integrates 7 attached dwelling units into an underdeveloped urban site. The landscape plan and proposed fencing will attractively screen and soften the visual impact of the new residences on the site and minimize impacts to the privacy or living conditions of surrounding residents. This is accomplished through proposed installation of an evergreen hedge along the east, north, and south boundaries of the site.

2. ***Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.***

Comment: The DR 18-93 Final Design Review Plan provides secured, enclosed storage units for each dwelling. The site will be fenced on the north, east, and south boundaries. Security lighting will be provided in the parking and common access areas on the site (reference Condition #7) Staff concludes the plan, as conditioned, satisfies applicable criteria.

A fence and evergreen hedge along the boundary of the site will provide privacy for the adjoining and proposed residences. Transitions from public to private areas are provided by the proposed storage structures at the rear of the house to the south, and by hedge plants recommended for the perimeter. A hedge of "Hogan Cedar" (*Thuja plicata 'Fastigiata'*) is recommended to screen and buffer the private areas from adjoining residences. *The Western Garden Book* published by *Sunset Magazine* describes Hogan Cedar as ... "Very dense, narrow, erect; fine for tall screen."

5. ***Pedestrian and Vehicular Circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.***

Comment: The record indicates the proposed plan displays an efficient means of providing 6 new dwellings (1-unit replaces an existing house) while mitigating its impact on surrounding parcels through an internal access design relative to adjoining residences, and a plan which provides public and private street and sidewalk improvements for the residents of the 7 dwellings proposed.

7. ***Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the***

site and neighboring properties.

8. **Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

Comment: Conditions require new plantings to buffer and screen adjoining residences and restrict exterior exterior lighting to minimize glare onto surrounding parcels. No above ground utilities are indicated on the plans.

11.15.7855 Required Minimum Standards (relevant excerpts presented)

(A) Private and Shared Outdoor Recreation Areas in Residential Developments:

- (1) Private Areas - Each ground level living unit in a residential development subject to design review plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.**
- (2) Shared Areas - Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, ...**

Comment: The application indicates each dwelling will have an outdoor private space of not less than 48 square feet consistent with MCC .7855(A)(1) above. The standards of MCC .7855(A)(2) are satisfied by the shared outdoor recreation (open lawn) area proposed near the northeast corner of the site.

(B) Storage

Residential Developments - Convenient areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.

Comment: The application indicates each dwelling will have an enclosed storage unit of about 100 square feet. The Final Design Review Plans are consistent with this criteria.

C O N C L U S I O N S

1. Findings above and in the whole record demonstrates that the proposal, as conditioned, satisfies Final Design Review Plan approval criteria in MCC .7850-.7860.
2. The evidence in the whole record and findings above do not support the grounds for reversal specified in the appeal.

This Staff Report and recommendation was available on August 31, 1993, seven days

before September 7, 1993 public hearing scheduled before Phillip Grillo County Hearings Officer. The Hearings Officer may announce a decision on the item (1) at the close of the hearing; (2) upon continuance to a date and time certain; or (3) after the close of the record following the hearing.

A written decision is usually mailed to all parties and filed with the Clerk of the Board within ten days a decision by the Hearings Officer is announced.

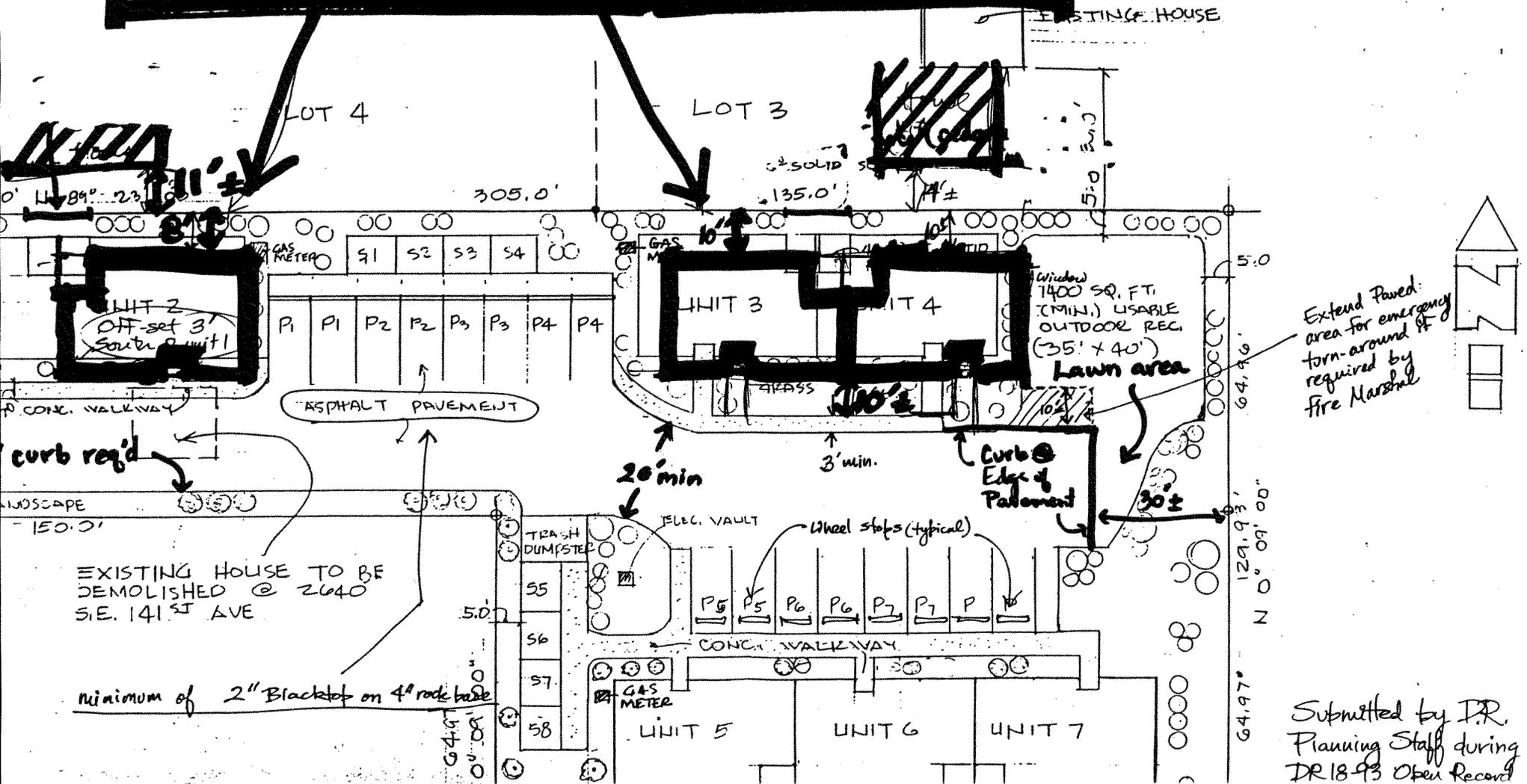
Appeal to the Board of County Commissioners

The Hearings Officer Decision 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 into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An appeal requires a completed "Notice of Review" form and a fee of \$300.00 plus a \$3.50-per-minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning and Development Office at 2115 SE Morrison Street (in Portland).

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

To appeal the Hearings Officer decision, a "Notice of Review" form and fee must be submitted to the County Planning Director. For further information call the Multnomah County Planning and Development Division at 248-3043.

Increase side setbacks for units 2,3,4
Staff Suggested adjustments
(BASED ON 9/13/93 Testimony)
perhaps add privacy fence
to entire north boundary - or
entirely fence behind units.



Extend Paved area for emergency turn-around as required by Fire Marshal

Submitted by I.R. Planning Staff during DR 18-93 Open Record

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

JOHN SHERMAN

ADDRESS

STREET

CITY

1912 NW ASPEN

PORTLAND, OR 97210

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

P-4

Public Commentary

DID NOT SPEAK

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

Wendy Payne

ADDRESS

41101 SE Center Rd

STREET

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

Aggeyak

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

P-4

HAD TO LEAVE

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

Neil Kagan

ADDRESS

522 SW 5th, #1050

STREET

Portland, OR

CITY

97204

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-4

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

MEETING DATE: October 26, 1993

AGENDA NO: 04

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Mineral/Aggregate - Briefing

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 26, 1993

Amount of Time Needed: 1 hour

DEPARTMENT: DES DIVISION: Planning and Development

CONTACT: R. Scott Pemble TELEPHONE #: 3182
BLDG/ROOM #: 412/103

PERSON(S) MAKING PRESENTATION: Jim Sitzman, Dept. of Land Conservation and Development

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

Staff from the Department of Land Conservation and Development, Department of Geology and Mineral Industries and the Department of Environmental Quality will brief the Board on responsibilities of local government and State agencies in the regulation of Mineral and Aggregate Uses. This briefing is intended to provide background for the forthcoming Mineral/Aggregate discussions required by the Land Conservation and Development Commission's Periodic Review Remand Order.

(Deb - This should be scheduled for 1:30 p.m. - the item following reported Decisions)

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: *[Signature]*

CLERK OF COUNTY COMMISSION
MULTNOMAH COUNTY
OREGON
1993 OCT 20 AM 9:00

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

MEETING DATE: October 26, 1993

AGENDA NO: _____

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Mineral/Aggregate - Briefing

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: October 26, 1993

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DEPARTMENT: DES DIVISION: Planning and Development

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(Deb - This should be scheduled for 1:30 p.m. - the item following reported Decisions)

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: 

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

0516C/63

6/93

1993 OCT 19 PM 1:31
MULTI-COUNTY
OREGON
CLERK OF BOARD OF
LAND MANAGEMENT



MULTNOMAH COUNTY

Planning & Development
2115 SE Morrison Street
Portland, Oregon 97214

Phone # (503) 248-304
Fax # (503) 248-3389

5262

Fax Transmittal

Date: 10/19/93

To: Debs

From: Shawn

Re: 10/26/93

Comments: Board Briefing
(Municipal/Aggregates)

Pages to Follow 1

MULTNOMAH COUNTY BOARD BRIEFING NOTES -- October 26, 1993
DLCD Staff

PURPOSE: Explain Aspects of the LCDC Periodic Review Remand Order

Your staff and we agreed that your periodic review should be completed this time around. So we are here to help move the deliberations in that direction. <Today is not the time or place to discuss specific Goal 5 resources.>

The LCDC and Department did not make a judgement in the remand order about any of the specific Goal 5 resources under review, even though the Commission makes final determination about the county plan's "...overall ability to protect and conserve **each** Goal 5 resource" (16-010).

The remand order has to do with the **partially incomplete** earlier periodic review order submitted to the DLCD by Multnomah County. What follows deals with the main points of incompleteness.

REMINDERS---

1 The remand is about compliance with Goal 5 and its implementing rule -- which give direction to a PLANNING activity. (Not permitting a use at this point.)

2 The Goal 5 procedure follows typical planning steps:

Inventory Significant Resources / Identify Conflicts to the Resources / Analyze the Conflicts / Decide the level and balance of protection for each resource / Devise and implement a program based on the protection decision. (See flow chart in your packet.)

3 The Goal 5 procedure should lead to a decision supported by facts and reasons.

4 The decision typically will entail choosing and balancing among competing resource values.

(Neither the Commission nor the Department had in mind any predetermined outcomes, made any choices, when issuing the remand.)

AREAS OF INCOMPLETENESS---

- 1 A criteria-based inventory of significant resources will help make the inventory defensible.
- 2 The conflicts analysis considers environmental, social, energy and economic (ESEE) factors.

The ESEE analysis is primarily a balancing exercise. The ESEE analysis is not set out to be a "no impact" test, especially when more than one Goal 5 resource is at issue.

("Compliance with Goal 5 shall also be based on the plan's overall ability to protect and conserve each Goal 5 resource." (16-010))

- 3 The final decision about whether or not to protect a significant resource must follow from the ESEE analysis. (This is where findings <facts and reasons> to support the decision come from.)

The final decision follows a hierarchy of decisions, **especially when there are competing Goal 5 resources:**

* Protect the resource fully (3-A); * Limit the conflicting uses or resources (3-C) * Allow the conflicting uses or resources fully (3-B)

Mitigation, or measures to balance values, should be attempted and rejected before reaching a decision not to protect.

- 4 When more than one Goal 5 resource is present in the analysis:

--The Goal 5 procedure must be completed for each resource.

--For a resource to be **fully protected**, all conflicts identified must be resolved. It is not sufficient to limit or omit some conflicts while allowing fully other conflicts.

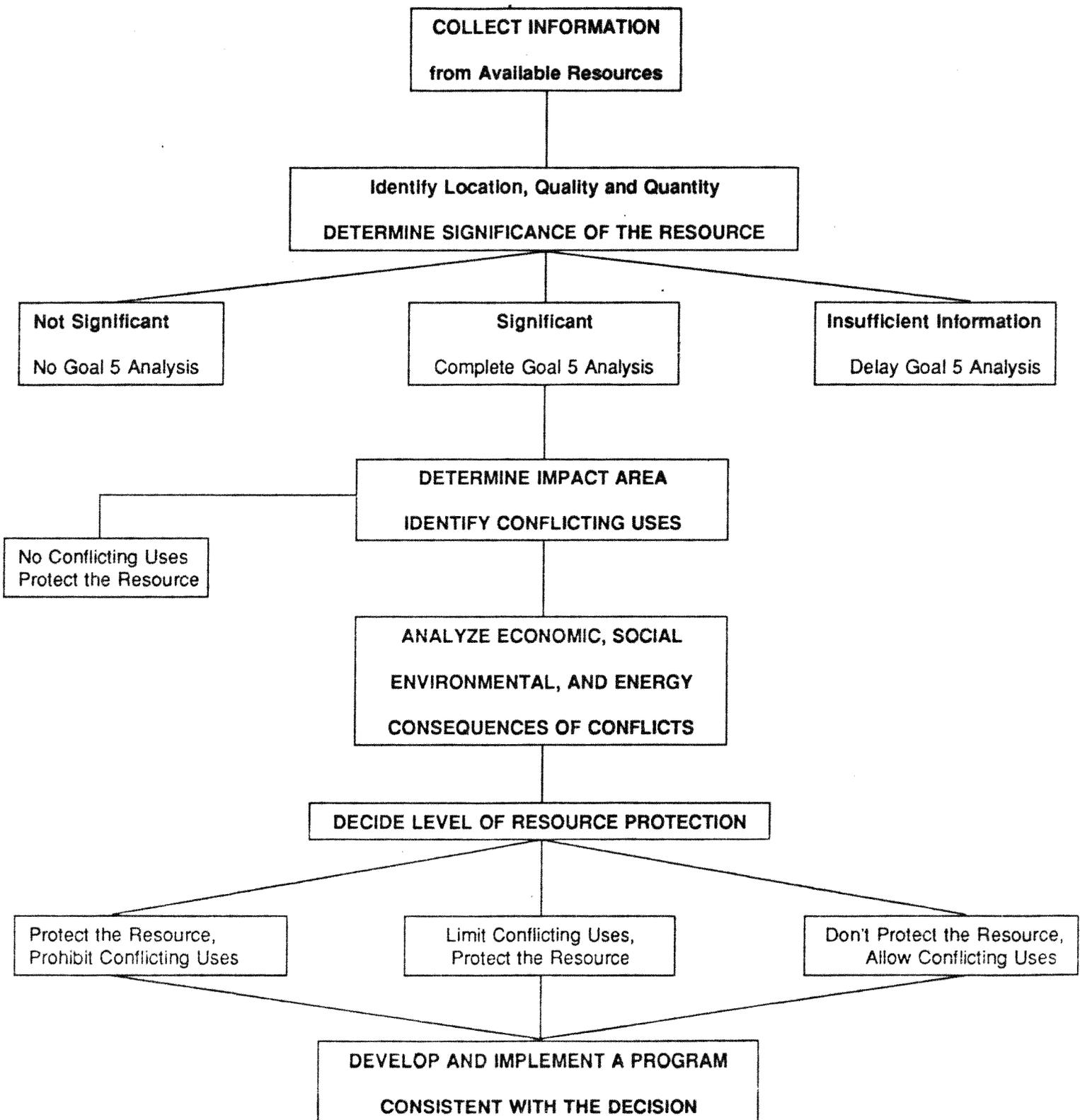
<"...plan and zone designations must be consistent with this decision" (16-010(1)).>

--A resource must be inventoried significant and protected in the county's plan to have a role in limiting or not protecting another resource.

(Treated like a permitted use. If a resource has value enough to "influence" the decision regarding a significant resource, then it is worth protecting.)

- 5 The final decision may not be based on presumptions about compliance or noncompliance with regulatory requirements of state or federal agencies.

THE GOAL 5 PROCESS



DOGAMI's Role

- **DOGAMI regulates reclamation, not aggregate siting.**
- **DOGAMI handles technical mining issues through coordination with other state agencies.**
- **1991 legislation (SB 97) clarifies coordination between local governments and DOGAMI.**
- **Reclamation plans and operating permits must be compatible with local decisions.**

Reclamation

- **State law requires reclamation for a subsequent beneficial use.**
- **Everyone must think beyond the short term effects of mine development.**
- **Look for reclamation opportunities:**
 - Wildlife habitat;**
 - Recreation;**
 - Developable land.**

#1

PLEASE PRINT LEGIBLY!

MEETING DATE

10-26-93

NAME

Klaus Heyne

ADDRESS

41101 SE Condon Rd

STREET

Corbett

OR

57015

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C5-93P-5

SUPPORT

OPPOSE

+

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 10-26-93

NAME NANCY WILSON

ADDRESS PO BOX 265-36817 E CROWN A

STREET Corbett

CITY 97019

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # C 593 P-5

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 10/26/93

NAME CHRIS WRENCH

ADDRESS 3103 NW Wilson

STREET Portland OR 97210

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT X **OPPOSE** _____

SUBMIT TO BOARD CLERK

4

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

BILLY OSKAY

ADDRESS

34805 SE HURLBURT RD

STREET

CORBETT, OR 97019

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C5-93^{P-5}

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#5

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

Susan Fry

ADDRESS

123 NE Littlepage Rd

STREET

Corbett

97019

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C593 P5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#6

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

Arnold Rocklin

ADDRESS

P.O. Box 83645

STREET

CITY

Portland, OR

97233

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-5

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#7

PLEASE PRINT LEGIBLY!

MEETING DATE 10/26/93

NAME Michael Carlson

ADDRESS 5151 Cornell

STREET
Portland, OR 97210

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT _____ **OPPOSE** _____
SUBMIT TO BOARD CLERK

#8

PLEASE PRINT LEGIBLY!

MEETING DATE 10-26-93

NAME Dyn MATTEI - ONRC

ADDRESS 522 SW 5th Suite 1010

STREET PORTLAND 97204

CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # 15-93

SUPPORT _____ **OPPOSE** RS

SUBMIT TO BOARD CLERK

#9

PLEASE PRINT LEGIBLY!

MEETING DATE 10/20/93

NAME Chris Foster

ADDRESS 15400 N.W. McNamee Rd

STREET Portland

CITY 97231

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-5

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

#10

PLEASE PRINT LEGIBLY!

MEETING DATE 10/26/93

NAME JOHN SHERMAN

ADDRESS 1912 NW ASPEN

STREET

PORTLAND, OR. 97210

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # ~~R 5-10-5~~

SUPPORT _____ **OPPOSE** _____

SUBMIT TO BOARD CLERK

HAD TO LEAVE

PLEASE PRINT LEGIBLY!

MEETING DATE

10/26/93

NAME

BARBARA STROSS

ADDRESS

2033 NW GLISAN

STREET

PORTLAND 97209

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

~~2~~ ~~GENERAL~~

SUPPORT

X **SUBMIT TO BOARD CLERK**

OPPOSE

05-93

P-5

OCT 26 1993

MEETING DATE: September 28, 1993 P-5

AGENDA NO: P-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: C 5-93 - First Reading, Ordinance Amendment

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: 1 Hour

REGULAR MEETING: Date Requested: September 28, 1993

Amount of Time Needed: 20 Minutes

DEPARTMENT: DES **DIVISION:** Planning

CONTACT: Sharon Cowley **TELEPHONE #:** 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Mark Hess

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

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

C 5-93 Public Hearing - First Reading

A recommended Ordinance which amends the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 regarding Significant Environmental Concern (SEC) provisions and adopting a map of Significant Streams and Riparian Areas. The proposal would change text in the plan and code in response to Remand Order 93-RA-876 from the State Land Conservation and Development Commission (LCDC). The proposed Ordinance also amends the County's Goal 5 inventory to include the streams map and add a list of the streams designated as "3-C" resources after ESEE Analysis were completed in 1990.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Betsy Williams

MULTNOMAH COUNTY
OREGON
1993 SEP 20 PM 3:07
BOARD OF
COUNTY COMMISSIONERS

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

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

1 The Multnomah County Comprehensive Plan Goal 5 Inventory of Significant
2 Wetlands is amended to include the following:

3
4 Table II on page 3 of Exhibit A, which is the list of streams in the "Northwest Hills
5 Wetlands/Riparian Areas" identified as "3-C" resource sites; and

6
7 The map depicting Significant Streams and Riparian Areas and attached as page 5
8 of Exhibit A.

9
10 Multnomah County Code Chapter 11.15 is amended to read as follows; new text is
11 **bolded and underlined**, text appearing in [brackets] is deleted.

12
13 **11.15.6404 Uses – SEC Permit Required**

14 * * *

15
16 (C) Any building, structure, or physical improvement **proposed** within 100 feet of the
17 normal high water level of a [~~Class I stream, as defined by the State of Oregon Forest~~
18 ~~Practice Rules~~] **stream or watercourse indentified on the Significant**
19 **Streams and Riparian Areas map or listed in the Multnomah County**
20 **Goal 5 Inventory of Significant Wetlands**, shall require an SEC Permit
21 under MCC .6412, regardless of the zoning designation of the site, **unless the**
22 **activity is an exception under MCC .6406.**

23
24 **11.15.6406 Exceptions**

25 An SEC Permit shall not be required for the following:

26 * * *



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. CL5-93

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 _____
(Hearings Officer/Planning Commission)
 Previously Distributed _____

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



CASE NAME Significant Streams and Riparian Areas

NUMBER C 5-93

1. Applicant Name/Address

Planning Division
2115 SE Morrison Street
Portland, Oregon 97214

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

2. Action Requested by applicant

Adopt Maps and Ordinance changes to designate the Significant Streams and Riparian Areas where SEC Permits are required.

3. Planning Staff Recommendation

ADOPTION

4. Planning Commission Action:

RECOMMEND ADOPTION OF PROPOSED ORDINANCE AND MAP

5. If recommendation and decision are different, why?

The Planning Commission added certain streams to the list of 1-B (future study) resources

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1993 SEP 21 PM 2:02

ISSUES

(who raised them?)

- a. *County stream protection measures and classifications should match adjoining jurisdictions (Residents of the Balch canyon requested the County adopt the streams map and extend SEC protections to the streams in the entire watershed. Commission members also noted that several streams in east Multnomah County and the Rock Creek watershed should have the Goal 5 inventory and ESEE analysis work performed as soon as possible to protect the potentially significant resources in those watersheds. The Planning Commission added all streams draining into Burlington Bottoms to the list of 1-B sites for futhre inventory and significance analysis.* This change appears in the text forwarded to the Board).*

Do any of these issues have policy implications? Explain.

This ordinance will update and clarify streategies to implement Plan Policy 16: Natural Areas. The Remand Order from the State LCDC requires the change to the stream classification system used by the County.

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS
2 FOR MULTNOMAH COUNTY, OREGON
3 ORDINANCE NO. _____
4

5 An Ordinance Which Amends the Multnomah County Comprehensive
6 Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 Regarding
7 Significant Environmental Concern (SEC) Provisions and Adopting a Map of
8 Significant Streams and Riparian Areas Which Are Designated "3-C" Resource
9 Sites in the Multnomah County Goal 5 Inventory.

10 Multnomah County Ordains as follows:
11

12 Section I. Findings.
13

14 (A). In 1988, the County conducted an inventory of significant wetland
15 and riparian habitiat areas in certain rural sections of the County and completed
16 the Economic, Social, Environmental, and Energy (ESEE) analysis required under
17 Statewide Planning Goal 5 for the inventoried sites. The inventory and ESEE
18 designations were adopted as part of the Local Review Order in 1990.
19

20 (B). On February 20, 1990, the County amended the "*Significant*
21 *Environmental Concern*" (SEC) subsection of MCC 11.15. Ordinance Number 643
22 § 2 added MCC 11.15.6404(C) which requires an SEC Permit for any building,
23 structure or physical improvement within 100-feet of the normal high water level
24 of a Class I stream as defined by the State of Oregon Forest Practice Rules. The
25 regulation was intended to protect significant wetland and riparian areas
26 identified in the County's Goal 5 inventory.

1 (C). Multnomah County's 1990 Local Review Order was reviewed by the
2 Land Conservation and Development Commission (LCDC) on April 23, 1993. The
3 LCDC determined that amendments to the County's comprehensive plan and
4 zoning code are required to comply with Statewide Planning Goals as detailed in
5 Remand Order 93-RA-876; item 8 orders the following:

6
7 *"The county shall amend the comprehensive plan to map or identify the*
8 *significant streams that are subject to the Significant Environmental*
9 *Concern (SEC) provisions. Amend MCC 11.15.6404(C) to reference this*
10 *plan inventory of significant streams rather than the FPA definition."*
11

12 (D). On August 2, 1993 the Multnomah County Planning Commission
13 held a public hearing and received oral and written testimony on proposed
14 revisions to the Comprehensive Plan and Zoning Ordinance intended to comply
15 with LCDC Remand Order 93-RA-876 (item 8.). The proposed ordinance would
16 amend the County's Goal 5 inventory by adding a map of Significant Streams and
17 Riparian Areas and a list of streams and riparian areas in the Northwest Hills
18 which were designated "3-C" as a result of the ESEE analysis completed in 1990.
19

20 (E). Planning Commission Resolution C 5-93, signed August 20, 1993,
21 recommends that the Board of Commissioners adopt proposed revisions to the
22 Comprehensive Plan and Zoning Ordinance to comply with LCDC Remand Order
23 93-RA-876. Findings in support of the recommendation are detailed in Exhibit A,
24 the Staff Report to the Board of Commissioners for Planning Case C 5-93.
25
26

1 Section II. Amendments.

2

3 Multnomah County Comprehensive Plan Policy 16, Strategy (C)16 is
4 amended as follows; new text is **bolded and underlined** , text appearing in
5 [~~brackets~~] is deleted.

6

7 POLICY 16

8 * * *

9

10 STRATEGIES

11 * * *

12

13 C. The following areas shall be designated as "Areas of Significant Environmental
14 Concern":

15 * * *

16

17 16. All [~~Class 1 Streams (Oregon State Forestry Department designation) and~~
18 ~~the adjacent~~] areas within 100 feet of the normal high water line **of a**
19 **stream or watercourse indentified on the Significant Streams and**
20 **Riparian Areas map or listed in the Multnomah County Goal 5**
21 **Inventory of Significnat Wetlands**, except those within an
22 ESEE designated "2A", "3A", or "3C" mineral and aggregate
23 resource site, and such other areas as may be determined under
24 established procedures to be suitable for this "area" designation.

25 * * *

26

1 The Multnomah County Comprehensive Plan Goal 5 Inventory of Significant
2 Wetlands is amended to include the following:

3

4 Table II on page 3 of Exhibit A, which is the list of streams in the “Northwest Hills
5 Wetlands/Riparian Areas” identified as “3-C” resource sites; and

6

7 The map depicting Significant Streams and Riparian Areas, a reduced copy of
8 which is attached as page 5 of Exhibit A.

9

10 Multnomah County Code Chapter 11.15 is amended to read as follows; new text is
11 **bolded and underlined**, text appearing in [brackets] is deleted.

12

13 **11.15.6404 Uses – SEC Permit Required**

14 * * *

15

16 (C) Any building, structure, or physical improvement **proposed** within 100 feet of the
17 normal high water level of a [~~Class I stream, as defined by the State of Oregon Forest
18 Practice Rules~~] **stream or watercourse indentified on the Significant
19 Streams and Riparian Areas map or listed in the Multnomah County
20 Goal 5 Inventory of Significant Wetlands**, shall require an SEC Permit
21 under MCC .6412, regardless of the zoning designation of the site, **unless the
22 activity is an exception under MCC .6406.**

23

24 **11.15.6406 Exceptions**

25 An SEC Permit shall not be required for the following:

26 * * *

1 (J) [~~These Class I streams~~] **Proposed development or physical improvements** located:

- 2
- 3 (1) Within mineral and aggregate resource areas designated "2A", "3A", or
- 4 "3C" by a Statewide Planning Goal 5 Economic, Social, Environmental, and
- 5 Energy (ESEE) analysis, or
- 6 (2) Within the Willamette River Greenway.

7

8 Section III. Adoption.

9

10 This ordinance, being necessary to comply with with LCDC Remand Order 93-RA-

11 876, an emergency is declared and the Ordinance shall take effect upon its execution

12 by the County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

13

14 ADOPTED THIS _____ day of _____, 199_, being the date of its

15 _____ reading before the Board of County Commissioners of Multnomah County.

16

17 (SEAL)

18

19 By _____

20 Beverly Stein, County Chair

21 MULTNOMAH COUNTY, OREGON

22 REVIEWED:

23

24 

25 _____

26 John DuBay, Chief Assistant County Counsel
of Multnomah County, Oregon

**BEFORE THE PLANNING COMMISSION
FOR MULTNOMAH COUNTY**

In the Matter of Recommending Adoption of)
Ordinances Amending the Comprehensive Plan)
and MCC Chapter 11.15 Concerning Streams)
and Riparian Resources in the Goal 5 Inventory)

**RESOLUTION
C 5-93**

WHEREAS, The Planning Commission is authorized by Multnomah County Code, Chapter 11.05 and by ORS 215.110, to recommend to the Board of County Commissioners the adoption of Ordinances to carry out and amend the Multnomah County Comprehensive Plan and its implementing ordinances; and

WHEREAS, Multnomah County's 1990 Periodic Review Order was reviewed by the Land Conservation and Development Commission (LCDC) on April 23, 1993; and,

WHEREAS, The LCDC Remand Order 93-RA-876 found that amendments to the county's comprehensive plan are required to comply with certain Statewide Planning Goals; and,

WHEREAS, Item 8 of the remand order requires the county to amend the comprehensive plan to map or identify the significant streams that are subject to the Significant Environmental Concern (SEC) provisions and amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the Forest Practices Act definition; and,

WHEREAS, In 1988 and 1989, the County completed inventory and analysis of Goal 5 Resources and identified the following watercourses and streams as Significant Wetlands in the Goal 5 inventory and designated as "3-C" (protect Goal 5) resources:

"Northwest Hills Wetlands/Riparian Areas",
"Dairy Creek, Gilbert River, and related drainageways"
"Ditches and Sloughs on Sauvie Islands"; and

WHEREAS, The Significant Streams identified above were listed and mapped by the Planning Staff and presented at a public hearing on August 2, 1993 where all interested persons were given an opportunity to appear and be heard by the Planning Commission; and,

WHEREAS, The Multnomah County Planning Commission considered and adopted the significant streams list and map as detailed in the C 5-93 Staff Report and as presented at a public hearing on August 2, 1993;

NOW, THEREFORE BE IT RESOLVED that proposed Ordinances which amend the Multnomah County Comprehensive Plan and Zoning Code Chapter 11.15 by changing regulations applicable to development activities within 100-feet of certain watercourses designated on the Significant Streams and Riparian Areas Map and included in the Multnomah County Goal 5 Inventory are hereby recommended for adoption by the Board of County Commissioners.

Approved this 20th day of August, 1993


Leonard Yoon, Chair
Multnomah County Planning Commission



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

C 5-93
Exhibit A

Staff Report for the Board of County Commissioners
Hearing on September 28, 1993

I. SUMMARY:

This report accompanies a recommended Ordinance which would amend the Multnomah County Comprehensive Framework Plan Policy 16 and Multnomah County Code Chapter 11.15 regarding Significant Environmental Concern (SEC) provisions and adopt a map of Significant Streams and Riparian Areas which were designated "3-C" resource sites in the 1990 Multnomah County Goal 5 Inventory. Proposed revisions to the Comprehensive Plan and Zoning Code (Chapter 11.15) respond to item number 8 in Remand Order 93-RA-876 from the State Land Conservation and Development Commission (LCDC).

II. FINDINGS

Multnomah County's 1990 Periodic Review Order was reviewed by the LCDC on April 23, 1993. The LCDC found that amendments to the County's comprehensive plan are required to comply with certain Statewide Planning Goals (Remand Order 93-RA-876). Item 8 orders the following:

"The county shall amend the comprehensive plan to map or identify the significant streams that are subject to the Significant Environmental Concern (SEC) provisions. Amend MCC 11.15.6404(C) to reference this plan inventory of significant streams rather than the FPA definition."

The County's most recent inventory of important water and wetland areas was performed in 1988. The County Planning Division contracted with Ester Lev, a Wildlife Biologist, to conduct a Goal 5 inventory and significance analysis of wetland resources and associated wildlife habitats. The constraints of the contract limited the inventory and "Economic, Social, Environmental, and Energy" (ESEE) analysis to certain portions of rural Multnomah County. As a result of this work, several watercourses and streams were added to the County's Goal 5 inventory and designated "3-C" (protect Goal 5) resources. The "Significance" of a wetland was in part determined using a "Wildlife Habitat Assessment" (WHA) rating system. Wetland areas scoring about 45 points or more on the WHA and which were designated "2A", "3A", or "3C" resources after the Goal 5 ESEE evaluation, were identified for SEC or WRG overlay zone protections. Table I below lists each significant resource site according to its score on the wildlife habitat rating system (maximum possible score: 96 points):

TABLE I
SIGNIFICANT WETLANDS

<u>Wetland</u>	<u>WHA Points</u>	<u>Zoning Designations*</u>
1. Sandy River Gorge	84	MUF-19 & 38, SEC, CS, FH
2. Virginia Lakes	79 - 81	EFU, WRG, FF
3. Rafton/Burlington Bottoms	74	MUA-20, WRG, FF
4. Sturgeon Lake	71-73	MUA-20, SEC, FF
5. Multnomah Channel	65	EFU & MUA-20, WRG
6. Government Island	64	MUF-19, SEC, CS, FF, NI
7. Northwest Hills Wetlands and Stream Riparian Areas	63	CFU, MUF-19 & 38, RR
8. Dairy Creek, Gilbert River, and Misc. Drainages on Sauvie Island	56	EFU
9. McGuire Island	55	MUF-19, SEC, CS, FF, NI
10. Sand Lake	49	EFU
11. Howell Lake	47	EFU, WRG, CS
12. Small Unnamed Lake/ Slough west of Wagon Wheel Hole Lake	47	EFU
13. Agricultural Ditches and Sloughs on Sauvie Island	37-40	EFU
14. Wagon Wheel Hole Lake	37	EFU, FF

*Note: Zoning designations are from 1990; MUF zoned areas were changed to CFU in 1993.

Significant Wetland sites 1-6, 9-12, and 14 receive protection from the County through application of "Significant Environmental Concern" or "Willamette River Greenway" overlay regulations and are not an issue at this time.

Wetland resource sites 7 ("Northwest Hills Wetlands/Riparian Areas"), 8 ("Dairy Creek, Gilbert River, and related drainageways"), and 13 ("Ditches and Sloughs on Sauvie Islands") were proposed to be protected by amending the zoning code to require an SEC Permit for any new building, structure, or physical improvement within 100 feet of the normal high water level of a Class I stream (Forest Practice Rules definition). However, the exact stream locations where this provision applies were not indicated on any official maps adopted by the County. The County's experiences administering the Zoning Ordinance since 1990 have shown that reliance on the Class 1 Stream definition in the State Forest Practices Act does not in fact extend SEC protections to several stream sections within the three *Significant Wetland* areas cited above. Further, the SEC provision adopted in 1990 applies a resource protection program to streams which are not listed as *Significant Wetlands* and for which the requisite Goal 5 inventory work and ESEE analysis has not been completed.

The LCDC Remand Order directs the County to identify the specific streams and land areas that are subject to the SEC provisions, and include the map or descriptive text in the Comprehensive Plan. Table II below lists the specific stream sections in the "Northwest Hills Wetlands/Riparian Areas" (from north to south) which were identified as "3-C" (protect Goal 5) resource sites. These streams appear on the proposed map of Significant Streams and Riparian Areas included with this report. The streams listed and indicated on the map were identified by Staff after detailed examination of the maps, aerial photographs, field notes, and other materials in Planning Division files on the 1988-1990 Goal 5 inventory of wetlands. Staff confirmed the streams listed and mapped through interviews with Ester Lev, the County's consultant in 1988-1989, and Gary Clifford, the Staff Planner who coordinated Periodic Review and the consultant contract for Goal 5 work. Ester Lev also testified before the Planning Commission on August 2, 1993 in support of the proposed map and list of streams.

TABLE II

**Northwest Hills Streams and Riparian Areas
Identified as 'Significant Wetlands' in the 1990 Goal 5 Inventory**

- Joy Creek
- Un-named creeks which flow together on Wildwood Golf Course site
- Un-named creek which flows into Rainbow Lake (south of Morgan Road)
- Un-named creeks south of Logie Trail Rd. (in sections 8, 13, 19, & 24)
- McCarthy Creek (and perennial tributaries)
- Un-named creeks south of Burlington (in sections 20, 28, 29, 30, 32 & 33)
- Miller Creek (sections outside Portland)
- Balch Creek (sections outside Portland; includes Thompson and Cornell forks)

III. RECOMMENDATIONS

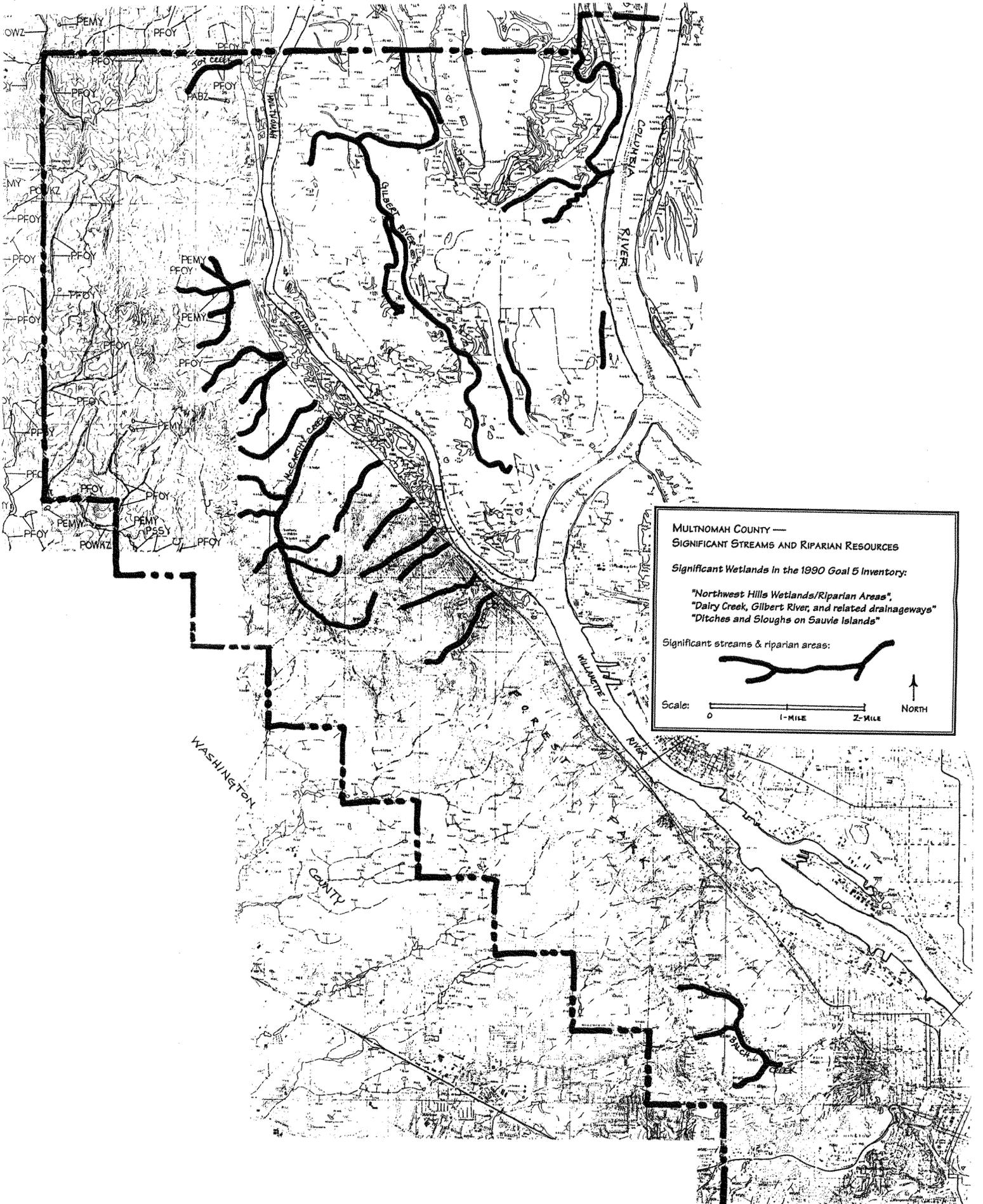
On August 2, 1993 the Planning Commission held a public hearing and received oral and written testimony on proposed legislative revisions to the Comprehensive Plan and Zoning Code (Chapter 11.15) which respond to Remand Order 93-RA-876 from the State LCDC. The proposed plan revision would supplement the County's Goal 5 inventory with a map of *Significant Streams and Riparian Areas* and a list of Northwest Hills streams which were designated "3-C" after ESEE analysis were completed in 1990.

The Planning Commission adopted the following recommendations for Board consideration:

1. Adopt the proposed ordinance for C 5-93 which would supplement the County's Goal 5 inventory with a map of Significant Streams and Riparian Areas and include a list of Northwest Hills streams described in Table II above.
2. Adopt the proposed ordinance for C 5-93 which amends text in Policy 16, Strategy (C)16 to delete the reference to "Class I Streams (Oregon State Forestry Department designation)" and instead refer to the Significant Streams and Riparian Areas map and list of streams proposed to supplement the Goal 5 inventory.
3. Adopt the proposed ordinance for C 5-93 to amend text in MCC 11.15.6404(C) to delete the reference to "Class I stream as defined by the Oregon Forest Practices Rules" and instead require the SEC permit for development proposed within 100-feet of the normal high water level of Significant Streams to be listed and mapped in the Goal 5 wetlands inventory.
4. Adopt the Goal 5 list of 1-B designated streams for further inventory and ESEE analysis, and add all streams which drain into the Burlington Bottoms wetland. Direct the Planning Division to conduct further inventory and ESEE evaluations during the on-going Rural Area Planning Program on other streams and watersheds which do not appear on the above list or map. Add SEC or equivalent protections to significant resource sites if so prescribed after ESEE evaluations and procedures are completed. Potential streams designated 1-B for further inventory and ESEE evaluation include:
 - a. Beaver Creek
 - b. Buck Creek
 - c. Big Creek
 - d. Trout Creek
 - e. Gordon Creek
 - f. Howard Canyon Creek
 - g. Pounder Creek
 - h. Rock Creek
 - i. Jones Creek
 - j. Streams which drain into the Rafton Tract/Burlington Bottoms site
(Site #3 on the Goal 5 Inventory of Significant Wetlands)

Note: *The Planning Commission encourages the Board to initiate an inventory and ESEE processes as soon as possible on 1-B designated streams and watersheds.*

COLUMBIA COUNTY





CASE NAME *Significant Streams and Riparian Areas*

NUMBER C 5-93

1. Applicant Name/Address

Planning Division
2115 SE Morrison Street
Portland, Oregon 97214

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

2. Action Requested by applicant

Postpone adoption of proposed Ordinance to clarify required map of Significant Streams and Riparian Areas.

3. Planning Staff Recommendation

CONTINUE

4. Planning Commission Action:

RECOMMEND ADOPTION OF PROPOSED ORDINANCE AND *Significant Streams and Riparian Areas* MAP

BOARD OF
 COUNTY COMMISSIONERS
 1993 OCT 20 PM 3:51
 MULTNOMAH COUNTY
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5. If recommendation and decision are different, why?

The Planning Commission added certain streams to the list of 1-B (future study) resources

ISSUES

(who raised them?)

- a. *County stream protection measures and classifications should match adjoining jurisdictions (Residents of the Balch canyon requested the County adopt the streams map and extend SEC protections to the streams in the entire watershed. Commission members also noted that several streams in east Multnomah County and the Rock Creek watershed should have the Goal 5 inventory and ESEE analysis work performed as soon as possible to protect the potentially significant resources in those watersheds. The Planning Commission added streams draining to Burlington Bottoms to the list of 1-B sites for futhre inventory and significance analysis.* This change appears in the text forwarded to the Board).*

Do any of these issues have policy implications? Explain.

The proposed ordinance will update and clarify streategies to implement Plan Policy 16: Natural Areas. The Remand Order from the State LCDC requires the change to the stream classification system used by the County.



MULTNOMAH COUNTY OREGON

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

BOARD OF COUNTY COMMISSIONERS
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GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
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M E M O R A N D U M

To: Board of County Commissioners
From: Mark R. Hess, Planner
Date: October 20, 1993
Subject: Significant Streams Project — LCDC Remand Order 93-RA-876 (Item #8)
Case File: C 5-93

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CLERK OF
COUNTY COMMISSIONERS

This memorandum supplements and modifies the September 28, 1993 report concerning proposed changes to Significant Environmental Concern (SEC) provisions in the County Comprehensive Framework plan and zoning code and a proposed map of Significant Streams and Riparian Areas. The Board of County Commissioners opened the hearing on this matter on September 28, 1993 and received oral and written testimony from interested parties (the staff presentation was deferred to October 26, 1993 due to the late hour).

Several people voiced concerns regarding proposed changes to SEC zoning provisions and the perceived loss of protection along many rural County streams. The Board directed Staff to identify options which maintain SEC zoning protections along "Class I streams" and if necessary, provide an estimate of the tasks and time needed to complete the Goal 5 inventory and ESEE evaluations of potentially significant streams.

Subsequently, County and Department of Land Conservation and Development (DLCD) staff met to clarify State directives and County requirements in order to comply with remand item #8. The results of these discussions will require modification of the C 5-93 staff report and a revised ordinance proposal. The outline below summarizes key tasks and products anticipated for Board review before December 31, 1993.

1. Amend the STRATEGIES section of Plan Policy 16-G to recognize all Class I streams identified by the Oregon Department of Forestry as significant resources (designate 1C under Goal 5).
2. Amend the Goal 5 Inventory in the Comprehensive Plan to include the following:
 - a. A GOAL 5 INVENTORY MAP indicating all significant streams and water resource sites with a 1C (significant resource) designation. Refer to Table 1 (attached) for a list of significant streams; Table 2 details 1C and 1B wetland and streams sites; Table 3 details those with completed ESEE analysis and subsequent designation as "2A" or "3C" resources. A map will be available at the Board hearing on October 26, 1993.

- b. A **PROTECTION PROGRAM MAP** identifying streams and wetland resource sites with Goal 5 designations: 2A, 3A, or 3C (*i.e.*, protect the resource) based on completed ESEE evaluations. Refer to Table 3 attached for a listing of sites and protection programs which have been applied. A map will be available at the Board hearing on October 26, 1993.
3. Amend the Goal 5 Inventory in the Comprehensive Plan to describe all 1B designated streams and water resource sites. Identify the potential 'public value' of the resource under Sub-policy 16-G [*i.e.*, economic, recreation, education, public safety, and natural area] for all 1B designated streams. Table 2 lists several streams and watersheds recommended for 1B designation by the Planning Commission.

County Staff will present the two maps noted above at the October 26, 1993 Board hearing and suggest strategies for advancing the Goal 5 process for significant streams. Based on the Board's direction, staff will modify the C 5-93 report and prepare an amended ordinance proposal for consideration in November or early December.

Enclosures:

- Table 1: List of wetland and stream resource sites with 1C designations;
- Table 2: Rural streams & riparian areas proposed for 1B or 1C designation (1993);
- Table 3: Protection Program Summary for wetlands and streams designated 2A, 3A, or 3C resources (1990);
- Goal 5 process flow chart
- Policy 16-G: Water Resources and Wetlands

If you have questions on these materials, please call (503) 248-3043.

Table 1

LIST OF SIGNIFICANT WETLANDS, STREAMS, & RIPARIAN RESOURCE SITES

[Rural Multnomah County sites designated 1C in the Goal 5 Inventory]

RESOURCE SITE/AREA

1. Sandy River Gorge
2. Virginia Lakes
3. Burlington Bottoms
4. Sturgeon Lake
5. Multnomah Channel
6. Government Island
7. Northwest Hills Streams:
 - Joy Creek
 - Un-named creeks which flow together on Wildwood Golf Course site
 - Un-named creek which flows into Rainbow Lake (south of Morgan Road)
 - Un-named creeks south of Logie Trail Rd. (in sections 8, 13, 19, & 24)
 - McCarthy Creek
 - Un-named creeks south of Burlington (in sections 20, 28, 29, 30, 32 & 33)
 - Miller Creek (sections outside Portland)
 - Balch Creek (sections outside Portland; includes Thompson and Cornell forks)
8. Dairy Creek, Gilbert River, and Misc. Drainageways on Sauvie Island
9. McGuire Island
10. Sand Lake
11. Howell Lake
12. Small Unnamed Lake/Slough west of Wagon Wheel Hole Lake
13. Agricultural Ditches and Sloughs on Sauvie Island
14. Wagon Wheel Hole Lake
15. Beaver Creek
16. Buck Creek
17. Big Creek
18. Trout Creek
19. Gordon Creek
20. Howard Canyon Creek
21. Pounder Creek
22. Rock Creek
23. Knieriem (or 'Ross') Creek
25. Johnson Creek
26. Jones Creek

Table 2
MULTNOMAH COUNTY GOAL 5 INVENTORY: 1993 UPDATE
RURAL STREAMS & RIPARIAN AREAS PROPOSED FOR 1B OR 1C DESIGNATION

STREAM OR GOAL 5 RESOURCE SITE/AREA	PROPOSED DESIGNATION	POTENTIAL ATTRIBUTES OR 'VALUES' (SUB-POLICY 16-G)	INFORMATION & SOURCES	CURRENT ZONING & OTHER PROTECTIONS IN PLACE
1. Beaver Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & economic (irrigation)	main stem is Class I on DOF map; SWCD study, 1990	EFU & MUA zones limit conflicts, Design Review of CU's & erosion stnds protect stream.
2. Buck Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I stream on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect resource.
3. Big Creek	1C	fish & riparian habitat; recreation; & education	Class I stream on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect resource.
4. Trout Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I stream on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
5. Gordon Creek (Corbett Water watershed watersheds)	1C 1C) 1B)	fish & riparian habitat; recreation; public safety (water supply)	Class I on DOF map; SWCD study, 1990	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
6. Howard Canyon Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I on DOF map; ODFW letter RE quarry	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
7. Pounder Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I stream on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
8. 'Knieriem' (or 'Ross') Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I stream on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
9. Rock Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I on DOF map; Lev notes (1989 air photos) SWCD study, 1990	CFU & rural zones limit conflicts, DR of CU's & Tualatin 100-ft buffer & erosion stnds protect.
10. Jones Creek (tributaries & watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	lower reach is Class I on DOF District map	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
11. Burlington Bottoms' watersheds	1B	riparian habitat public safety, recreation; & education	ODFW hydrology study, 1993	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
12. Johnson Creek (rural) (tributary: Kelly Creek (tributaries & watersheds)	1C 1C) 1B)	fish & riparian habitat; recreation; & education	Class I on DOF map (main stem); Portland BES watershed studies SWCD study, 1990 [Kelly Cr.]	Forest & rural zones limit conflicts, Design Review of CU's & erosion stnds protect.
13. Balch Creek tributaries (associated watersheds)	1C 1B)	fish & riparian habitat; recreation; & education	Class I on DOF map (main stem); SWCD study, 1990; and recent studies by Portland BES & BOP	CFU limits conflicts, DR of CU's; erosion control stnds & a grading season all protect.

Sources: DOF - Forest Grove office (T. Savage, FPF); & Clackamas-Marion Dist.: Sandy sub-unit (J. Zielbrow, FPF).

Summary of Goal 5 Designations:

- 1A = available data shows the resource is not significant, do not include the site in plan inventory;
- 1B = available data is insufficient to establish significance; set workplan for future inventory & ESEE;
- 1C = available data shows resource is significant, proceed with Goal 5 process (list conflicts & complete ESEE work);
- 2A = there are no conflicting uses identified, preserve the significant resource
- 2B = existing or possible uses conflict with the resource, weigh the economic, social, environmental, and energy effects of allowing conflicting uses vs. preserving the resource
- 3A = preserve the resource site (prohibit conflicting uses entirely);
- 3B = allow conflicting uses (don't protect the resource);
- 3C = allow conflicting uses within specific limits to minimize impact on resource.

Table 3

PROTECTION PROGRAM SUMMARY:

SIGNIFICANT WETLANDS, STREAMS, & RIPARIAN RESOURCES

[Rural Multnomah County sites designated 2A, 3A, or 3C in the 1990 Goal 5 Inventory]

SIGNIFICANT GOAL 5 RESOURCE SITE/AREA	ESEE DESIGNATION	SEC OR WRG OVERLAY PROTECTIONS	OTHER PROTECTION PROGRAMS: COMMENTS FOR EACH SITE/AREA
1. Sandy River Gorge	2A	SEC	Federal and State Scenic River programs protect resource; Design Review of Conditional Uses; and grading/erosion stnds all protect site
2. Virginia Lakes	3C	WRG	ODFW ownership and refuge management protects resource; Design Review of Conditional Uses & grading/erosion stnds all protect site
3. Rafton Tract (Burlington Bottoms)	3C	WRG	MUA & FF zone limits conflicts; Design Review of Conditional Uses & grading/erosion stnds all protect site
4. Sturgeon Lake	3C	SEC	ODFW ownership & FF zone limit conflicts; wetland stnds; DR of CU's; grading/erosion stnds all protect site
5. Multnomah Channel	3C	WRG	DSL, Army Corps & FF zone limit conflicts; wetland stnds; DR of CU's; grading/erosion stnds all protect site
6. Government Island	3C	SEC	Forest and Flood Fringe zones limit conflicts; wetland stnds; DR of CU's; grading/erosion stnds all protect site
7. Northwest Hills Streams and Riparian Areas	3C	No*	Forest and rural zones limit conflicts; *SEC on Class I protects some; DR of CU's & grading/erosion stnds protects
8. Dairy Creek, Gilbert River, and Drainages on Sauvie Island	3C	No*	EFU & MUA zones limit conflicts; *SEC on Class I protects some; DR of CU's & grading/erosion stnds protects
9. McGuire Island	3C	SEC	Forest and Flood Fringe zones limit conflicts; wetland stnds; DR of CU's; grading/erosion stnds all protect site
10. Sand Lake	3C	SEC	EFU zone & Significant wetland stnds. limits conflicts; DR of CU's; grading/erosion stnds all protect site
11. Howell Lake	3C	WRG	EFU zone limits conflicts; Cnty. Parks owns part; DR of CU's; grading/erosion stnds all protect site
12. Small Unnamed Lake/ Slough west of Wagon Wheel Hole Lake	3C	SEC	EFU zone & Significant wetland stnds. limits conflicts; DR of CU's; grading/erosion stnds all protect site
13. Agricultural Ditches and Sloughs on Sauvie Island	3C	No*	EFU & MUA zones limit conflicts; *SEC on Class I protects some; DR of CU's & grading/erosion stnds protects
14. Wagon Wheel Hole Lake	3C	SEC	EFU zone limits conflicts; Design Review of Conditional Uses & grading/erosion stnds all protects site.

Sources: Multnomah County 1990 Periodic Review Order; Framework Plan Policy 16: Natural Resources; Sub-policy 16-G: Water Resources and Wetlands; MCC 11.15 [zoning code in effect: 10/93]

POLICY 16-G: WATER RESOURCES AND WETLANDS

IT IS THE COUNTY'S POLICY TO PROTECT AND, WHERE APPROPRIATE, DESIGNATE AS AREAS OF SIGNIFICANT ENVIRONMENTAL CONCERN, THOSE WATER AREAS, WETLANDS, WATERSHEDS, AND GROUNDWATER RESOURCES HAVING SPECIAL PUBLIC VALUE IN TERMS OF THE FOLLOWING:

- A. ECONOMIC VALUE;**
- B. RECREATION VALUE;**
- C. EDUCATIONAL RESEARCH VALUE (ECOLOGICALLY AND SCIENTIFICALLY SIGNIFICANT LANDS);**
- D. PUBLIC SAFETY, (MUNICIPAL WATER SUPPLY WATERSHEDS, WATER QUALITY, FLOOD WATER STORAGE AREAS, VEGETATION NECESSARY TO STABILIZE RIVER BANKS AND SLOPES);**
- E. NATURAL AREA VALUE, (AREAS VALUED FOR THEIR FRAGILE CHARACTER AS HABITATS FOR PLANT, ANIMAL OR AQUATIC LIFE, OR HAVING ENDANGERED PLANT OR ANIMAL SPECIES).**

STRATEGIES

- A. Wetland areas that attain 45 or more points of the possible 96 points on the "Wildlife Habitat Assessment" (WHA) rating form will be designated "Significant". Sites with ratings of 35 or more may be determined "Significant" if they function in providing connections between and enhancement of higher rated adjacent habitat areas.**

The WHA is a standardized rating system for evaluating the wildlife habitat values of a site. The form was cooperatively developed by staff from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, The Oregon Department of Fish and Wildlife, the Audubon Society of Portland, The Wetlands Conservancy, and the City of Beaverton Planning Bureau.

- B. Significant water and wetland areas identified as a "2A", "3A", or "3C" site using the Statewide Planning Goal 5 "Economic, Social, Environmental, and Energy analysis" procedure as outlined in OAR 660-16-000 through 660-16-025 shall be designated as "Areas of Significant Environmental Concern" and protected by either the SEC or WRG overlay zone.**
- C. Wetlands information gathered by and made available to the County shall be utilized as follows:**
 - 1. The U.S. Fish and Wildlife National Wetland Inventory (NWI) maps should be consulted at the beginning stages of any development proposal in order to alert the property owner/developer of the U.S. Corps of Engineers and Division of State Lands permit requirements.**
 - 2. Wetlands shown on the NWI maps which are determined to not be important by the county after field study should be indicated as such on 1"=200' aerial photographs made part of the State Goal 5 supporting documents.**
 - 3. Boundaries of "Significant" wetlands located within the SEC and WRG overlay zones should be depicted on 1"=200' aerial photographs.**
 - 4. Additional information on wetland sites should be added to the plan and supporting documents as part of a scheduled plan update or by the standard plan amendment process initiated at the discretion of the county.**

STATEWIDE PLANNING PROGRAM

GOAL 5 PROCESS CHART

OPEN SPACE
 MINERAL & AGGREGATE
 ENERGY SOURCES
 FISH & WILDLIFE
 SIGNIFICANT NATURAL AREAS
 SCENIC VIEWS & SITES
 WATER AREAS
 WILDERNESS AREAS
 HISTORIC SITES
 CULTURAL AREAS
 RECREATION TRAILS
 SCENIC WATERWAYS

