

**ANNOTATED MINUTES**

*Tuesday, September 29, 1992 - 9:30 AM  
Multnomah County Courthouse, Room 602*

**REGULAR MEETING**

*Vice-Chair Sharron Kelley convened the meeting at 9:30 a.m., with Commissioners Pauline Anderson and Gary Hansen present, Chair Gladys McCoy excused, and Commissioner Rick Bauman arriving at 9:40 a.m.*

- R-1 *Ratification of Intergovernmental Agreement Contract #103183 Between Multnomah County and the State Children's Services Division, Providing Services to High Risk Juvenile Offenders through the Gang Resource Intervention Team, Assessment, Intervention and Treatment Program and House of Umoja, for the Period October 1, 1992 through June 30, 1993*

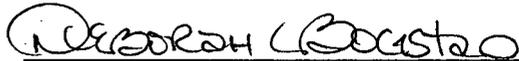
**HAL OGBURN, GARY SMITH, CALEB HEPNER AND STEVE ALEXANDER PRESENTATION AND RESPONSE TO BOARD QUESTIONS. COMMISSIONER HANSEN MOVED AND COMMISSIONER ANDERSON SECONDED, APPROVAL OF R-1. MR. SMITH RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.**

- R-2 *Budget Modification DSS #19 Authorizing Addition of \$168,654 in Dedicated State Children's Services Division Gang Resource Intervention Team Revenue to the Juvenile Justice Division Budget*

**MARIE EIGHMEY AND MR. OGBURN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER HANSEN, R-2 WAS UNANIMOUSLY APPROVED.**

*There being no further business, the meeting was adjourned at 9:50 a.m.*

**OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON**



**Deborah L. Bogstad**

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*Tuesday, September 29, 1992 - 9:30 AM  
Multnomah County Courthouse, Room 602*

**PLANNING ITEMS**

*Vice-Chair Sharron Kelley convened the meeting at 9:50 a.m., with Commissioners Pauline Anderson, Rick Bauman and Gary Hansen present, and Chair Gladys McCoy excused.*

The Following September 8, 1992 Decisions of the Planning and Zoning Hearings Officer are Reported to the Board for Review and Affirmation:

- P-1 HV 19-92 APPROVE, SUBJECT TO CONDITIONS, the Requested Variance, Allowing a Reduced Rear Yard Depth West of a Proposed Horticultural Building on the Berry Botanic Garden Site, for Property Located at 11505 SW SUMMERVILLE AVENUE.
- P-2 CU 16-92 APPROVE, SUBJECT TO CONDITIONS, the Requested Conditional Use to Allow the Keeping and Raising of Up to Six Adult Dogs Over Six Months of Age, for Property Located at 32400 NE MERSHON ROAD, CORBETT.
- P-3 CU 17-92 APPROVE, SUBJECT TO CONDITIONS, the Requested Conditional Use for a Non-Resource Related Single Family Dwelling in the Multiple Use Forest District, for Property Located at 5080 NW CORNELL ROAD.
- P-4 CU 18-92 APPROVE, SUBJECT TO CONDITIONS, Development of a 4.45 Acre Lot of Record with a Non-Resource Related Single Family Dwelling in the Multiple Use Forest District, for Property Located at 18375 NW JOHNSON ROAD.

**DECISIONS READ. SCOTT PEMBLE ADVISED NO APPEALS WERE FILED. COMMISSIONER BAUMAN MOVED AND COMMISSIONER HANSEN SECONDED, AFFIRMATION OF DECISIONS P-1 THROUGH P-4. IN RESPONSE TO A QUESTION OF COMMISSIONER ANDERSON, MR. PEMBLE EXPLAINED THERE WILL BE A LARGE NUMBER OF APPLICATIONS FOR NON-RESOURCE RELATED SINGLE FAMILY DWELLINGS IN THE MUF ZONE FILED UP TO 180 DAYS AFTER EFFECTIVE DATE OF FOREST GOALS AMENDMENTS ORDINANCE. PLANNING DECISIONS UNANIMOUSLY AFFIRMED.**

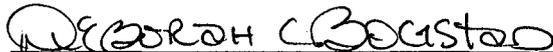
- P-5 MC 2-92  
LD 25-92 BOARD DISCUSSION AND DECISION in the Matter of an Appeal of an August 3, 1992 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, a Tentative Plan for a Type I Land Division, a Partition Resulting in Two Lots and APPROVING, SUBJECT TO CONDITIONS, a Request to Use Easements as the Means of Access to the New Lot Instead of Providing Frontage on a Dedicated Street, as Required in the MUF-19, Multiple Use Forest Zoning District, Per MCC 11.15.2188, for Property Located at 7025 NW SUMMITVIEW COURT. (Continued from Public Hearing and Testimony Held Tuesday, September 22, 1992.)

**MR. PEMBLE AND COUNTY COUNSEL PETER LIVINGSTON PRESENTATION AND RESPONSE TO BOARD QUESTIONS. UPON MOTION OF COMMISSIONER BAUMAN, SECONDED BY COMMISSIONER ANDERSON, IT WAS UNANIMOUSLY APPROVED THAT THE HEARINGS OFFICER DECISION BE OVERRULED AND THE APPLICATION BE DENIED.**

**MR. PEMBLE ADVISED THAT IN ADDITION TO NINE DECISIONS TO BE REPORTED TO THE BOARD IN THE NEAR FUTURE, PLANNING HAS SCHEDULED TUESDAY, OCTOBER 27, 1992 FOR THE FIRST READING OF THE FOREST GOAL AMENDMENTS ORDINANCE; THE FIRST READING OF THE ANGELL BROTHERS QUARRY SITE PLAN AMENDMENT ORDINANCE; AND THE MSD 2040 BRIEFING AND REQUEST FOR BOARD COMMENTS. MR. PEMBLE ADVISED THAT ITEMS TO BE SCHEDULED IN NOVEMBER INCLUDE THE COLUMBIA RIVER GORGE NATIONAL SCENIC ACT AMENDMENTS ORDINANCE, AND CONSIDERATION OF THE BRIDAL VEIL MILL SITE HISTORIC DESIGNATION.**

*There being no further business, the meeting was adjourned at 10:08 a.m.*

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

  
Deborah L. Bogstad

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*Tuesday, September 29, 1992 - 10:00 AM  
Multnomah County Courthouse, Room 602*

**AGENDA REVIEW**

*B-1 Review of Agenda for Regular Meeting of October 1, 1992*

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*Thursday, October 1, 1992 - 9:30 AM  
Multnomah County Courthouse, Room 602*

**REGULAR MEETING**

*Vice-Chair Sharron Kelley convened the meeting at 9:30 a.m., with Commissioners Pauline Anderson, Rick Bauman and Gary Hansen present, and Chair Gladys McCoy excused.*

**CONSENT CALENDAR**

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER ANDERSON, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-8) WAS UNANIMOUSLY APPROVED.**

**JUSTICE SERVICES**

**SHERIFF'S OFFICE**

*C-1 In the Matter of a Liquor License Package Store/Change of Ownership Application*

*Submitted by the Sheriff's Office with Recommendation for Approval, for BIG BEAR'S CROWN POINT MARKET, INC., 31815 E. CROWN POINT HIGHWAY, TROUTDALE*

- C-2 *Ratification of Intergovernmental Agreement Contract #800353 Between Multnomah County and the Oregon State Marine Board, Providing Boating Safety and Law Enforcement Services, for the Period July 1, 1992 through June 30, 1993*

DEPARTMENT OF HEALTH

- C-3 *In the Matter of the Appointment of Louis J. Perretta, M.D., to the Multnomah County Emergency Medical Services (EMS) Medical Advisory Board*
- C-4 *Ratification of Intergovernmental Agreement Contract #201043 Between Multnomah County and Open Meadow Learning Center, Providing Registered Sanitarian Inspection of the Center's Food Service Facilities, for the Period Upon Execution through August 31, 1994*
- C-5 *Ratification of Intergovernmental Agreement Contract #201073 Between Multnomah County and Tongue Point Job Corps Center, Providing Environmental Health Inspection Services and Guidance on Sanitary Standards, for the Period October 1, 1992 through September 30, 1993*

NON-DEPARTMENTAL

- C-6 *In the Matter of the Appointment of Jacqueline L. Wallace to the MULTNOMAH COUNCIL ON CHEMICAL DEPENDENCY, Term to Expire October, 1994*
- C-7 *In the Matter of the Appointments of Mimi Gray and Ruby Haughton to the MULTNOMAH COUNTY CHILDREN AND YOUTH SERVICES COMMISSION, Terms to Expire October, 1996*
- C-8 *In the Matter of the Appointments of John Jenkins and Susan Vega to the MULTNOMAH COUNTY DUII COMMUNITY PROGRAM ADVISORY BOARD, Terms to Expire October, 1994 and July, 1994*

REGULAR AGENDA

JUSTICE SERVICES

SHERIFF'S OFFICE

- R-1 *Ratification of Intergovernmental Agreement Contract #800433 Between Multnomah County, the City of Portland and the Oregon State Police, Providing Shared Purchase and Use of the Forcefield II System from XImage Corporation*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER ANDERSON SECONDED, APPROVAL OF R-1. MAJOR JAMES THACKER EXPLANATION IN RESPONSE TO BOARD QUESTION. AGREEMENT UNANIMOUSLY APPROVED.**

DISTRICT ATTORNEY

- R-2 *Ratification of Intergovernmental Agreement Contract #700043 Between the City of Portland and Multnomah County, Providing the Multnomah County District Attorney's Office with Three Full-Time Police Bureau Officers to Perform Investigative Duties in Connection with the Prosecution of Crimes, for the Period July 1, 1991 through June 30, 1992*

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER BAUMAN, R-2 WAS UNANIMOUSLY APPROVED.**

- R-3 *Ratification of Intergovernmental Agreement Contract #700053 Between the City of Portland and Multnomah County, Providing the Multnomah County District Attorney's Office with Three Full-Time Police Bureau Officers to Perform Investigative Duties in Connection with the Prosecution of Crimes, for the Period July 1, 1992 through June 30, 1993*

**UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER HANSEN, R-3 WAS UNANIMOUSLY APPROVED.**

NON-DEPARTMENTAL

- R-4 *PROCLAMATION in the Matter of PROCLAIMING October 5 - 9, 1992 as "CHILD HEALTH WEEK" in Multnomah County, Oregon*

**PEGGY HILLMAN PRESENTATION. MS. HILLMAN READ PROCLAMATION. UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER BAUMAN, PROCLAMATION 92-176 WAS UNANIMOUSLY APPROVED.**

- R-5 *RESOLUTION in the Matter of Appointing a Veteran's Service Officer to Volunteer their Services to the County to Assist Veterans*

**COMMISSIONER HANSEN MOVED AND COMMISSIONER BAUMAN SECONDED, APPROVAL OF R-5. COMMISSIONER HANSEN PRESENTATION AND RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS. RESOLUTION 92-177 UNANIMOUSLY APPROVED.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 *RESOLUTION in the Matter of the Construction of N.E. 207th Avenue Between I-84 and N.E. Halsey Street*

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER ANDERSON, RESOLUTION 92-178 WAS UNANIMOUSLY APPROVED.**

- R-7 *First Reading and Possible Adoption of an ORDINANCE Adding Chapter 5.20 (Personal Property Tax Sales) to the Multnomah County Code, Title 5 (Revenue) and Declaring an Emergency*

**PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER ANDERSON MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE FIRST READING AND ADOPTION. HEARING HELD, NO ONE WISHED TO TESTIFY. ORDINANCE 734 UNANIMOUSLY APPROVED.**

DEPARTMENT OF SOCIAL SERVICES

- R-8 *Budget Modification DSS #17 Authorizing Appropriation of \$1,807 City of Portland and \$19,540 Federal Office of Juvenile Justice and Delinquency Prevention Re-Granted Funds to the Juvenile Justice Division's Budget*

**UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER HANSEN, R-8 WAS UNANIMOUSLY APPROVED.**

- R-9 *Budget Modification DSS #20 Authorizing Transfer of \$68,709 from MED Contracts to MED Operations to Fund Hospital Liaison Functions as Recommended by the MED Task Force from the Quadrant Mental Health Agencies to Direct County Operations*

**UPON MOTION OF COMMISSIONER BAUMAN, SECONDED BY COMMISSIONER HANSEN, R-9 WAS UNANIMOUSLY APPROVED.**

PUBLIC CONTRACT REVIEW BOARD

*(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)*

- R-10 *ORDER in the Matter of an Emergency Exemption to Re-Roof the Upper Roof of the J.K. Gill Building*

**UPON MOTION OF COMMISSIONER ANDERSON, SECONDED BY COMMISSIONER BAUMAN, ORDER 92-179 WAS UNANIMOUSLY APPROVED.**

*(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)*

CU 11-92 HEARING, ON THE RECORD TO RECONSIDER THE BOARD ACTION TAKEN ON AUGUST 25, 1992, Upholding the Hearings Officer's Decision of July 6, 1992, APPROVING, Subject to Conditions, a Non-Resource Related Single Family Dwelling on a 7.80 Acre Lot of Record in the MUF-19 Zoning District, for Property Located at 43640 EAST LARCH MOUNTAIN ROAD

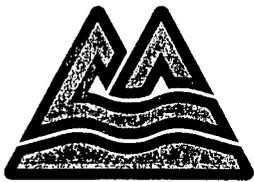
**COMMISSIONER BAUMAN ADVISED HE VISITED THE EAST LARCH MOUNTAIN ROAD SITE AND BASED UPON NEW EVIDENCE, IN THAT INACCURATE INFORMATION WAS GIVEN, MOVED TO BRING THE CAPTIONED MATTER BACK BEFORE THE BOARD FOR RECONSIDERATION. COUNTY COUNSEL JOHN DuBAY EXPLANATION IN RESPONSE TO BOARD QUESTIONS AND DISCUSSION. STAFF TO RESEARCH LEGALITIES CONCERNING COMMISSIONER BAUMAN'S REQUEST FOR RECONSIDERATION OF BOARD'S SEPTEMBER 22, 1992 ACTION FOLLOWING HEARING ON PLANNING ITEM CU 11-92.**

*There being no further business, the meeting was adjourned at 10:00 a.m.*

**OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad



# MULTNOMAH COUNTY OREGON

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

GLADYS McCOY • CHAIR • 248-3308  
PAULINE ANDERSON • DISTRICT 1 • 248-5220  
GARY HANSEN • DISTRICT 2 • 248-5219  
RICK BAUMAN • 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

SEPTEMBER 28 - OCTOBER 2, 1992

Tuesday, September 29, 1992 - 9:30 AM - Regular Meeting . . . Page 2  
Tuesday, September 29, 1992 - 9:30 AM - Planning Items. . . Page 2  
Tuesday, September 29, 1992 - 10:00 AM - Agenda Review. . . Page 2  
Thursday, October 1, 1992 - 9:30 AM - Regular Meeting . . . Page 3

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

Thursday, 10:00 PM, Channel 11 for East and West side subscribers  
Thursday, 10:00 PM, Channel 49 for Columbia Cable (Vancouver) subscribers  
Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers  
Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

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

Tuesday, September 29, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

- R-1 Ratification of Intergovernmental Agreement Contract #103183 Between Multnomah County and the State Children's Services Division, Providing Services to High Risk Juvenile Offenders through the Gang Resource Intervention Team, Assessment, Intervention and Treatment Program and House of Umoja, for the Period October 1, 1992 through June 30, 1993
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Tuesday, September 29, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

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- P-3 CU 17-92 APPROVE, SUBJECT TO CONDITIONS, the Requested Conditional Use for a Non-Resource Related Single Family Dwelling in the Multiple Use Forest District, for Property Located at 5080 NW CORNELL ROAD.
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- 

Tuesday, September 29, 1992 - 10:00 AM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

- B-1 Review of Agenda for Regular Meeting of October 1, 1992
-

Thursday, October 1, 1992 - 9:30 AM  
Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

JUSTICE SERVICES

SHERIFF'S OFFICE

- C-1 In the Matter of a Liquor License Package Store/Change of Ownership Application Submitted by the Sheriff's Office with Recommendation for Approval, for BIG BEAR'S CROWN POINT MARKET, INC., 31815 E. CROWN POINT HIGHWAY, TROUTDALE
- C-2 Ratification of Intergovernmental Agreement Contract #800353 Between Multnomah County and the Oregon State Marine Board, Providing Boating Safety and Law Enforcement Services, for the Period July 1, 1992 through June 30, 1993

DEPARTMENT OF HEALTH

- C-3 In the Matter of the Appointment of Louis J. Perretta, M.D., to the Multnomah County Emergency Medical Services (EMS) Medical Advisory Board
- C-4 Ratification of Intergovernmental Agreement Contract #201043 Between Multnomah County and Open Meadow Learning Center, Providing Registered Sanitarian Inspection of the Center's Food Service Facilities, for the Period Upon Execution through August 31, 1994
- C-5 Ratification of Intergovernmental Agreement Contract #201073 Between Multnomah County and Tongue Point Job Corps Center, Providing Environmental Health Inspection Services and Guidance on Sanitary Standards, for the Period October 1, 1992 through September 30, 1993

NON-DEPARTMENTAL

- C-6 In the Matter of the Appointment of Jacqueline L. Wallace to the MULTNOMAH COUNCIL ON CHEMICAL DEPENDENCY, Term to Expire October, 1994
- C-7 In the Matter of the Appointments of Mimi Gray and Ruby Haughton to the MULTNOMAH COUNTY CHILDREN AND YOUTH SERVICES COMMISSION, Terms to Expire October, 1996
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- R-5 RESOLUTION in the Matter of Appointing a Veteran's Service Officer to Volunteer their Services to the County to Assist Veterans

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 RESOLUTION in the Matter of the Construction of N.E. 207th Avenue Between I-84 and N.E. Halsey Street
- R-7 First Reading and Possible Adoption of an ORDINANCE Adding Chapter 5.20 (Personal Property Tax Sales) to the Multnomah County Code, Title 5 (Revenue) and Declaring an Emergency

DEPARTMENT OF SOCIAL SERVICES

- R-8 Budget Modification DSS #17 Authorizing Appropriation of \$1,807 City of Portland and \$19,540 Federal Office of Juvenile Justice and Delinquency Prevention Re-Granted Funds to the Juvenile Justice Division's Budget
- R-9 Budget Modification DSS #20 Authorizing Transfer of \$68,709 from MED Contracts to MED Operations to Fund Hospital Liaison Functions as Recommended by the MED Task Force from the Quadrant Mental Health Agencies to Direct County Operations

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

R-10 ORDER in the Matter of an Emergency Exemption to Re-Roof the Upper Roof of the J.K. Gill Building

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)



# MULTNOMAH COUNTY OREGON

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

GLADYS McCOY • CHAIR • 248-3308  
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CLERK'S OFFICE • 248-3277 • 248-5222

## SUPPLEMENTAL AGENDA

*Tuesday, September 29, 1992 - 9:30 AM*

*Multnomah County Courthouse, Room 602*

### PLANNING ITEM

P-5

MC 2-92

LD 25-92 BOARD DISCUSSION AND DECISION in the Matter of an Appeal of an August 3, 1992 Planning and Zoning Hearings Officer Decision APPROVING, SUBJECT TO CONDITIONS, a Tentative Plan for a Type I Land Division, a Partition Resulting in Two Lots and APPROVING, SUBJECT TO CONDITIONS, a Request to Use Easements as the Means of Access to the New Lot Instead of Providing Frontage on a Dedicated Street, as Required in the MUF-19, Multiple Use Forest Zoning District, Per MCC 11.15.2188, for Property Located at 7025 NW SUMMITVIEW COURT. (Continued from Public Hearing and Testimony Held Tuesday, September 22, 1992.)

0203C/6/db



# GLADYS McCOY, Multnomah County Chair

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

## M E M O R A N D U M

TO: Board of County Commissioners  
Office of the Board Clerk

FROM: Gladys McCoy *Gladys McCoy*  
Multnomah County Chair

DATE: August 27, 1992

RE: Absences

I plan to be out of my office from Monday, September 21 through Friday, October 16.

GM:mrj  
9325G

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP - 1 AM 8:44  
MULTNOMAH COUNTY  
OREGON

Meeting Date: SEP 29 1992

Agenda Number: R-1

(Above for Clerk's Office Use Only)

**AGENDA PLACEMENT FORM**  
(For Non-Budgetary Items)

Subject: CSD GRIT Contract

Board Briefing: September 22, 1992 Regular Meeting: September 24, 1992  
(date) (date)

Department: Social Services Division: Juvenile Justice

Contact: Jana McLellan Telephone: 248-3478

Person(s) Making Presentation: Harold Ogburn

**Action Requested**

Information Only  Policy Direction  Approval

Estimated Time Needed on Board Agenda: 15 Minutes

Check if you require official written notice of action taken: \_\_\_\_\_

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

The accompanying Bud Mod ( DSS 19 ) and this nine month contract replace an earlier contract (103 422-1) providing services through GRIT, AITP, and the House of Umoja. Services will continue to GRIT and will increase residential bed space and counseling services. A portion of AITP continues to be funded through this State CSD general fund money. The remainder now will be funded through a match of State general fund dollars to Title XIX Medicaid reimbursement.

*9/29/92 originals to Jana McLellan*

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 21 PM 3:18  
MULTNOMAH COUNTY  
OREGON

**Signatures**

Elected Official \_\_\_\_\_

OR

Department Director *Gary Nakao (cc)*

(All accompanying documents must have required signatures!)



# MULTNOMAH COUNTY OREGON

DEPARTMENT OF SOCIAL SERVICES  
JUVENILE JUSTICE DIVISION  
1401 N.E. 68TH  
PORTLAND, OREGON 97213  
(503) 248-3460

BOARD OF COUNTY COMMISSIONERS  
GLADYS McCOY • CHAIR OF THE BOARD  
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
RICK BAUMAN • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

TO: Gladys McCoy, Chair  
Multnomah County Chair

VIA: Dr. Gary Nakao, Director *Gary Nakao (adj)*  
Department of Social Services

FROM: *H* Harold Ogburn, Director  
Juvenile Justice Division

DATE: September 17, 1992

SUBJECT: Approval for Intergovernmental Revenue Agreement Between  
Juvenile Justice Division and Children's Services Division.

**RECOMMENDATION:** The Juvenile Justice Division recommends the County Board approval of a revenue contract between the State Children's Services Division and the Juvenile Justice Division for services to high risk juvenile offenders.

**ANALYSIS:** This contract replaces contract #103422-1 for services to high risk gang youth. The terms of this agreement are for nine months from October 1, 1992 through June 30, 1993 for a total of \$743,937. All services covered under the original award will be continued as well as enhancing residential bed space in the community and increasing resources available for counseling and behavior management services.

A portion of the Assessment, Intervention and Treatment Program continues to be funded through this State CSD General Fund money. The remainder now will be transferred through a match of State general fund dollars to Title XIX medicaid reimbursement.

The Juvenile Justice Division strongly recommends the Board's approval of this Intergovernmental Agreement.

MULTNOMAH COUNTY  
 INTERDIVISIONAL AGREEMENT  
 Between  
 JUVENILE JUSTICE DIVISION  
 and  
 MENTAL HEALTH, YOUTH AND FAMILY SERVICES

DURATION OF AGREEMENT: October 1, 1992

TO: June 30, 1993

The Agreement is made and entered into by and between the Juvenile Justice Division, hereafter referred to as the JJD, and Mental Health, Youth and Family Services Division, hereafter referred to as MHYFSD.

Services and Service Levels

Service Element	Fund Source	Total Annual Maximum Payable	Basis of Payment	Method of Payment
AITP	MHS 22 Medicaid	Total Available \$411,455		
		Available to JJD \$320,734	Fee for Service	Direct deposit upon receipt
		Available to MHYFSD \$90,721	Fee for Service	Direct deposit upon receipt

JJD proportion = 77.95%  
 MHYFSD proportion = 22.05%

NARRATIVE:

The Agreement establishes a mutually supportive relationship between Multnomah County Juvenile Justice Division and the Mental Health, Youth and Family Services Division for services provided through the Juvenile Justice Division's Assessment, Intervention, and Transition Program (AITP).

INTERDIVISIONAL AGREEMENT BETWEEN  
JUVENILE JUSTICE DIVISION AND  
MENTAL HEALTH, YOUTH AND FAMILY SERVICES DIVISION

CONDITIONS

I. Purpose

JJD and MHYFSD agree to work together to develop and maintain the capacity and relationship to serve the mental health needs of delinquent youth served through AITP in Multnomah County. This Agreement will allow JJD and MHYFSD to formally provide comprehensive mental health rehabilitative services as defined herein.

II. Funding

Funding for the development and maintenance of mental health services provided by the parties under the terms of this agreement will result from Medicaid billings processed by MHYFSD.

A. It is agreed that the total Medicaid allocation for AITP is \$411,455 during the contract. JJD's budget is \$320,734 and MHYFSD's budget is \$90,721.

B. Based upon the budget agreements in II.A., MHYFSD will record and deposit each OMAP payment upon receipt. Each receipt will be split proportionately between the parties.

C. Medicaid receipts received by MHYFSD will be recorded and a monthly report will be provided to JJD by the end of the following month.

D. JJD program staff will assist MHYFSD in researching and correcting any billings rejected by the Office of Medical Assistance Program (OMAP).

E. Any revenue excesses or shortfalls will be shared proportionately by both parties.

III. Program Values

A. The following is the Mission Statement of the AITP:

1. Provide each youth with a behavioral and mental health assessment of strengths and needs;
2. Stabilize the youth's behavior and continue the process toward skill development and treatment needs;
3. Facilitate the transition of youth to appropriate community resources.

B. The following is the Mission Statement of the Direct Service Mental Health programs of OCAMHS:

The direct service programs of child and adolescent mental health in Multnomah County exist to serve children and families in their natural environments who are disenfranchised

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MENTAL HEALTH, YOUTH AND FAMILY SERVICES DIVISION

by lack of access to private mental health services and are also in need of interdisciplinary, holistic mental health services. As related to the JJD's Medicaid project in AITP, these services include:

1. Prevention of more debilitating mental health problems;
2. Identification of current mental health problems;
3. Treatment of mental health problems;
4. Promotion of mental health through a sense of competency and mastery;
5. Education of the broader community including parents and other child serving professionals;
6. Advocacy;
7. Support.

Additionally, these programs exist to provide oversight, coordination and triage for a comprehensive and broad-based mental health service system existing in Multnomah County.

C. Individuals receiving services have certain rights guaranteed by law. Information will be kept confidential except in the following circumstances:

1. When permission is formally given through a signed release of information;
2. When required by law as specified below:
  - a. Reporting to Child Protective Services or other appropriate law enforcement agency when there is reason to suspect the abuse or neglect of a child as required by ORS 418.740 and following sections;
  - b. Reporting to law enforcement officers and the intended victim when there is a clear and serious threat of homicide or intent to do serious bodily harm to another person;
  - c. Reporting to a doctor or the hospital in the event of a medical emergency;
  - d. In the event of a court subpoena/order requiring the release of a client's records.

D. Clients and families have the following rights:

1. To be treated with consideration and respect.
2. To view all information regarding treatment including a complete interpretation by a qualified professional. This right applies to both custodial and noncustodial parents.
3. To be told of staff changes that affect the parent or child, and/or the family and to be assured that treatment will continue uninterrupted to the best of the program's ability.
4. To know the name and training of anyone who works with the parent or child. The parent can request to examine public records maintained by the appropriate licensing board, and to have the board confirm credentials of a licensee.
5. To be treated fairly and not be discriminated against because of race, sex, sexual orientation, religion, national origin, age, or disability. Children 14 or older may obtain mental health services without parental consent. However, the treatment

INTERDIVISIONAL AGREEMENT BETWEEN  
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provider shall involve the minor's parents before the end of treatment unless parents refuse or there are clear clinical indications to the contrary.

6. To lodge a complaint by notifying the consultant's supervisor at 248-3999, and/or the appropriate licensing board.

IV. Program Requirements

A. Objectives

The AITP is a secure corrections program situated at the Multnomah County Juvenile Detention Facility. The facility, including AITP, is overseen by the JJD Director, the Detention Superintendent, the Program Administrator and the Program Supervisor. AITP is formally composed of the following components:

- Security/safety policies and procedures;
- Social skills development;
- Behavioral management;
- Cognitive restructuring;
- Mental health assessment, intervention and treatment;
- Transition and placement facilitation;
- Family services;
- Alcohol and drug services.

Ultimately, a multi-disciplinary "team approach" is the described program design goal in AITP so as to provide the best opportunity to impact youth and families in a positive manner. The hope is that AITP graduates are successfully provided with the correct skills, accountability, information, assessments, interventions, and placement resources necessary to succeed on probation and in the community.

B. Staff Composition and Provision of Services

1. This Interdivisional Agreement pertains in this case, to the mental health component of the JJD AITP design. During the FY 92-93, County Mental Health, through the MHYFSD Director, OCAMHS Program Manager, and Direct Services Supervisor will provide the following mental health personnel and expertise so as to assist in training AITP personnel in assuring that mental health services, at Medicaid Billing levels, are provided within the AITP mental health component.
2. All mental health services provided through AITP will adhere to the General Administrative Standards for Mental Health Division, OAR 309-14-000 through OAR 309-14-040.
3. Multnomah County OCAMHS will provide the following staff:
  - a. Psychiatric Consultation  
Six to eight hours weekly. Serves as a consultant to authorize Mental

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Health Treatment Plans, provides assessment input, and functions as a team member;

b. Clinical Records Technician

Twenty hours weekly. Establishes clinical records for billing Medicaid and any other Third Party payments, assists in training staff on billable service recording, verifies completeness of records, follow-up on billing payments, and functions as a team member;

c. Clinical Supervisor Consultant

Twenty hours weekly. In conjunction with the AITP Supervisor, assures quality of Medicaid compliance, assists OCAMHS and MCJJD to work together in AITP, offer training and assistance to all QMHP and QMHA staff, and functions as a team member.

4. Regarding the Mental Health Component of AITP, the Clinical Supervisor's primary function is to teach, to foster professional development, to serve as consultant to the AITP Supervisor, experienced Qualified Mental Health Professional's (QMHP), and to assist at all levels in the provision of effective counseling services. A secondary function is to assist unlicensed QMHP's in gaining the level of supervision needed to obtain licensure. As a consultant to the JJD AITP, the Clinical Supervisor's specific duties will include providing one hour per week per QMHP of clinical supervision and 1.5 hours per week for group supervision including Qualified Mental Health Assistant (QMHA) staff. Additionally, all charting will be reviewed and a utilization review process implemented.

The above positions will be administratively supervised by OCAMHS, but the role regarding the mental health component of AITP will be jointly defined by the AITP Administrative staff and the OCAMHS Administrative Staff.

- C. The AITP component will be required to provide the following through the Director, the Detention Superintendent, the Program Administrator, and the Program Supervisor:
1. Overall supervision of AITP and personnel;
  2. Three to four QMHP's to be hired by the JJD who will address day-to-day issues relating to mental health and the many other components of AITP;
  3. QMHA's, hired by the JJD, present during each day shift to provide billable services under the direct supervision of a QMHP and to assist QMHP's.
- D. The provision of services provided by the QMHP will include mental health assessment, individual therapy, group therapy, family therapy, crisis intervention, consultation, daily structure and support. The QMHA will provide skills training to individuals and groups under the supervision of QMHP staff, as authorized by the consulting psychiatrist.

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Additional services and resources will include the following:

1. Consultation

Case screening, staffing, review, problem solving, and treatment planning with case manager, family or other individuals relevant to the case. Consultation also includes other client specific activities not defined elsewhere such as service coordination, resource development, networking activities, and accessing services that require mental health expertise.

2. Training

Will be designed jointly regarding the mental health issues of this population. The AITP staff will be invited to attend all training opportunities offered to the OCAMHS staff. See Clinical Supervision Section for further discussion regarding individual and small group training.

3. Maintaining Clinical Records

Record keeping and documentation for clients receiving direct services will be as required in OAR 309-16-000 through 309-16-128.

4. Program Review and Regular Meetings

A review of this Agreement will be conducted initially on a monthly basis for the first three months; thereafter, the meetings will occur no less than semi-annually. The reviewers will include, at a minimum, the supervisors of the AITP and OCAMHS. It is strongly suggested that other interested administrators also attend in order to maintain a common understanding and a team focused approach.

V. Reports

JJD and MHYFSD agree to work together to evaluate the impact of services. It is understood that the extent of any evaluation will be within the limits of each Division's resources and that the evaluation will be jointly designed.

VI. Confidentiality

JJD and MHYFSD are required to maintain confidentiality of information and records for participants in accordance with State and Federal laws and regulations.

VII. Amendments

This Agreement may be amended by either party with the concurrence of the other. Amendments must be in writing and signed by both MHYFSD and JJD.

INTERDIVISIONAL AGREEMENT BETWEEN  
JUVENILE JUSTICE DIVISION AND  
MENTAL HEALTH, YOUTH AND FAMILY SERVICES DIVISION

VIII. Term of Agreement

This Agreement covers the period from October 1, 1992 through June 30, 1993. Either party may terminate this Agreement upon delivery of a written notice 30 days in advance of the termination effective date.

MENTAL HEALTH YOUTH AND FAMILY SERVICES DIVISION    JUVENILE JUSTICE DIVISION

Gary Smith 9/28/92  
Gary Smith, Director    Date

Harold Ogburn, Jr. 9/28/92  
Harold Ogburn, Director    Date

DEPARTMENT OF SOCIAL SERVICES

Gary Nakao 9/28/92  
Dr. Gary Nakao, Director    Date



**CONTRACT APPROVAL FORM**  
(See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

Contract # 103183  
Amendment # \_\_\_\_\_

<p><b>CLASS I</b></p> <p><input type="checkbox"/> Professional Services under \$25,000</p>	<p><b>CLASS II</b></p> <p><input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption)</p> <p><input type="checkbox"/> PCRB Contract</p> <p><input type="checkbox"/> Maintenance Agreement</p> <p><input type="checkbox"/> Licensing Agreement</p> <p><input type="checkbox"/> Construction</p> <p><input type="checkbox"/> Grant</p> <p><input type="checkbox"/> Revenue</p>	<p><b>CLASS III</b></p> <p><input checked="" type="checkbox"/> Intergovernmental Agreement</p> <p>APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS</p> <p>AGENDA # <u>R-1</u> DATE <u>9/29/92</u></p> <p>DEB BOGSTAD</p> <p>BOARD CLERK</p>
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Department Social Services Division Juvenile Justice Date 17 Sept 1992

Contract Originator Dwayne McNanny Phone 3460 Bldg/Room 311/JJD

Administrative Contact Chris White Phone 2295 Bldg/Room 311/JJD

Description of Contract This contract replaces an earlier contract (103422-1) with the State CSD. This contract will continue services to GRIT, AITP, and House of Umoja and enhance residential beds as well as counseling and behavior management services.

RFP/BID # \_\_\_\_\_ Date of RFP/BID \_\_\_\_\_ Exemption Exp. Date \_\_\_\_\_

ORS/AR # \_\_\_\_\_ Contractor is  MBE  WBE  QRF

Contractor Name Children's Services Division  
Mailing Address 198 Commercial St, SE  
Salem, OR 97310-0450  
Phone 503 378 3542  
Employer ID# or SS# \_\_\_\_\_  
Effective Date October 1, 1992  
Termination Date June 30, 1993  
Original Contract Amount \$ 743,937  
Total Amount of Previous Amendments \$ -0-  
Amount of Amendment \$ -0-  
Total Amount of Agreement \$ 743,937

Remittance Address \_\_\_\_\_  
(If Different) \_\_\_\_\_

Payment Schedule \_\_\_\_\_ Terms \_\_\_\_\_

Lump Sum \$ \_\_\_\_\_  Due on receipt

Monthly \$ \_\_\_\_\_  Net 30

Other \$ \_\_\_\_\_  Other \_\_\_\_\_

Requirements contract - Requisition required.

Purchase Order No. \_\_\_\_\_

Requirements Not to Exceed \$ \_\_\_\_\_

**REQUIRED SIGNATURES:**

Department Manager Gary Nakao (ae)

Purchasing Director \_\_\_\_\_  
(Class II Contracts Only)

County Counsel [Signature]

County Chair / Sheriff [Signature]

Contract Administration \_\_\_\_\_  
(Class I, Class II Contracts Only)

Encumber: Yes  No

Date 9-18-92

Date \_\_\_\_\_

Date 9-21-92

Date September 29, 1992

Date \_\_\_\_\_

VENDOR CODE			VENDOR NAME							TOTAL AMOUNT	\$	
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND	
01.	156	010	2511			2319			CSD GRIT	\$183,489		
02.	156	010	2531			2319			CSD GRIT	560,448		
03.												
* If additional space is needed, attach separate page. Write contract # on top of page.												

INTERGOVERNMENTAL AGREEMENT

CSD Agreement Number: 2-192 D90847

Date: September 4, 1992

This agreement between the State of Oregon, Department of Human Resources, Children's Services Division, hereinafter referred to as the "Division" and

MULTNOMAH COUNTY,  
BOARD OF COMMISSIONERS

hereinafter referred to as the "County" begins October 1, 1992, and ends June 30, 1993, and includes the following that is attached hereto:

<u>Document</u>	
SCHEDULE	7
GENERAL PROVISIONS	10
EXHIBIT I	2
EXHIBIT II	1
EXHIBIT III	1

THIS AGREEMENT TERMINATES AGREEMENT NUMBER 1-645, DATED SEPTEMBER 25, 1992 AND UPON THE EFFECTIVE DATE OF THIS AGREEMENTS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT.

COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Reviewed by CSD Contracts Officer: *Rufus Johnson* Date: 9/4/92

AGREED:  
MULTNOMAH COUNTY,  
BOARD OF COMMISSIONERS  
1401 N.E. 68th  
Portland, Oregon 97213

AGREED: CHILDREN'S SERVICES DIVISION  
By \_\_\_\_\_  
Date \_\_\_\_\_

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

BUDGET: 91-93

WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers the date first written above.

MULTNOMAH COUNTY, OREGON

By: Sharron Kelley  
Gladys McCoy, Chair  
Board of County Commissioners  
Sharron Kelley, Vice-Chair

Date: September 29, 1992

By: Harald Oglwen  
Division Director

Date: 9/17/92

By: Deane M. Hannay  
Program Manager

Date: 9/17/92

REVIEWED:

LAURENCE KRESSEL, County Counsel  
for Multnomah County, Oregon

By: [Signature]  
Assistant County Counsel

Date: 9.21.92

415140.PS  
09/17/92

APPROVED MULTNOMAH COUNTY  
BOARD OF COMMISSIONERS  
AGENDA # R-1 DATE 9/29/92  
DEB BOGSTAD  
BOARD CLERK

## SCHEDULE

COUNTY: MULTNOMAH COUNTY, BOARD OF COMMISSIONERS

DATE: September 4, 1992

### I. Definitions

- A. Training School means MacLaren School for Boys, Hillcrest School of Oregon, Camp Tillamook, Camp Hilgard, Camp Florence, Corvallis House and Picture House.
- B. County Diversion Program is that array of services provided by the County using State down-sizing funds to youth under the jurisdiction of the County Juvenile Court, to maintain them in the community and reduce/sustain the rate of commitment to the state training school based on the county risk population ages 0 to 17 years of age.
- C. Community Programs means those programs serving delinquent youth including Division diversion programs and youth care centers, as well as programs developed in accord with approved County Diversion Plans.
- D. Restricted Funds are Division funds, including any interest accrued thereon, expendable only for costs identified in this agreement.
- E. Surplus Funds are that excess of restricted Division funds remaining after approved expenses have been deducted.
- F. Administrative costs are those support service costs incurred in provision of the services required by this agreement by County government organizational units other than the juvenile department. Included in administrative costs are such things as payroll administration costs, accounting services, and indirect overhead expenses.

### II. Services

- A. The County agrees to provide the following services directed to decreasing youth gang-related incidents and gang membership in the Portland area:
    - 1. Gang Resource Intervention Team (GRIT) The County's GRIT team will provide the following services:
      - a) Address internal/external communication between Juvenile Court units and law enforcement relative to youth gang members under the Court's jurisdiction.
      - b) Increase the Juvenile Court's ability to implement gang intervention strategies, programs and activities, particularly in conjunction with those law enforcement agencies charged with dealing with the gang population.
      - c) Develop coordinated services and treatment plans that are gang-specific and focus on decreasing involvement in illegal gang activities and behavior.
      - d) Development and implementation of gang-specific intervention curriculum that focuses on reducing gang involvement, recruitment efforts, and providing positive alternatives to gang involvement.
      - e) Develop specific intervention curriculum for gang-involved youth held in detention facilities.
- The "GRIT" team will gather information on gang trends, activities and on-street monitoring. Provide access to a computer software program that will allow street officers to determine probation status and probation conditions of youth gang members. Provide a street law skill curriculum that orients itself to active gang-involved youth.

2. Assessment, Intervention, and Transition Program (AITP) The County will operate a 30-day secure treatment program operated out of Donald E. Long Juvenile Detention Home.
  - a). This program will be targeted for youth who are exhibiting out-of-control behaviors and cannot be contained in the community without sufficient constraint, controls, and treatment.
  - b). The youth must be adjudicated and/or currently be on probation.
  - c). The purpose is to provide an intermediate treatment resource for youth who are a threat to the community and cannot be maintained and treated in non-secure residential treatment facilities. It is expected to serve 340 gang youth during a one year period.
  - d). The County shall maintain qualified professional Mental Health staff and comply with the State Mental Health and Disabilities Services Division Rules OAR 309-16-000 through 309-16-105.
  - e). Youth served in this program shall receive Medicaid reimbursable Mental Health Rehabilitative services in accord with the youths' treatment plan to include but not limited to:
    - (1). Mental Health Assessment
    - (2). Individual, Family, and Group Therapy
    - (3). Individual and Group Skill Training.
    - (4). Professional Consultation
  - f). Each youth shall have a written individual treatment plan developed and reviewed under direction of a physician from assessment data that specifies the type and duration of treatment needed to remedy the defined physical, social, and mental disorder of the youth.
  - g). The County will provide each youth with maintenance (room, board, clothing, personal incidentals, etc.) and structured supervision and behavior control twenty-four (24) hours per day, seven (7) days per week by professional staff on shift schedules in a secure facility.
  - h). The Division will enter into an Inter-Governmental Agreement with the State Mental Health and Developmental Disabilities Services Division for the transfer of State General Funds to be used for matching the Federal Funds needed to provide the Mental Health Services provided the youth in conjunction with the Multnomah County Social Services Division."
3. The County will work cooperatively with the various cultural and ethnic groups in the community including African-American, Hispanic, and Asian to provide the following services to youth who have been designated as gang involved to prevent their commitment to the State Training School, and/or to integrate or transition these youth successfully back into the community.
  - a) individual and group and family counseling.
  - b) social skill training
  - c) anger control and reduction of anti-social behavior
  - d) employment counseling, work training, and job placement
  - e) drug and alcohol, and other substance abuse counseling and rehabilitation
  - f) public school and other educational and vocational training opportunities
  - g) residential care/treatment facilities
  - h) other services identified to meet the needs of gang involve youth.
4. House of Umoja The County will work cooperatively with the Portland African-American community in the operation of a residential program offering a home environment to youthful gang members who are otherwise unable to remain at home and are not accepted into other community-based treatment programs. The program will serve boys' ages 15 to 18 years of age, providing them with the unique living milieu while offering individual counseling, employment, recreational, and educational opportunities. The projected length of stay is six

months to one year.

5. Alfred Alfred Yaun Child Care Centers
  - a. The County agrees to enter into a contract with Alfred Alfred Yaun Child Care Centers for the following services to gang involved youth:
    - 1) Monitoring youths' daily activities
    - 2) family/provider liaison
    - 3) tutorial and other educational opportunities
    - 4) drug and alcohol counseling
    - 5) support groups
    - 6) family counselingThese services shall be in addition to the services Yaun is providing to the Division under contract # 1-1746 D81978.
  - b. The County will also purchase one (1) ADP bed space at the Yaun Youth Care Center for gang involved youth who requires residential care/treatment.
6. The County will contract for one (1) ADP with each of the following Organizations to provide individual and family counseling to gang involved youth and their parents, and crisis and supportive services when needed.
  - a) Emmanuel Temple Full Gospel Pentecostal Church
  - b) Mt. Sinai Community Baptist Church
  - c) Christian Counseling CenterThe County shall assure that these contractors are in compliance with the standards and procedures outlined in Exhibit I as attached and made a part of this Agreement.
7. The County will sub-contract with the Minority Youth Concerns Action Program Inc. for management and counseling services for up to 43 ADP of gang involved youth. These services shall include: counseling for anger control management and behavior control, depression, grief and loss, skill building and self esteem, and social skill building and improved community integration. These services shall be in addition to the services provided to the Division under contract #1-1394 D56285
8. Discretionary Funds

The County will work cooperatively with the Asian, Hispanic and other cultural groups to identify and fund services as described in Section II. A,3. for those youth who have been designated as gang involved, and specific treatment needs are not otherwise met by services stated above or are not available in the community. These services may be child specific or sub-contracted for a program serving a target population.

### III. Reports

This project is closely aligned with and should be viewed as a component of the Community Alternative Program. County agrees to abide by the following Discretionary Bed Space Limitation at the state training school during the term of this agreement:

- A. No more than 76 children in close custody on any given day.
- B. The County will collect the information on each youth served by the Project and a "Quarterly High Risk Client Report" will be submitted along with your billings for payment. (See Exhibit II)
- C. The County will submit quarterly reports on activities and specific client services provided to the Asian, Hispanic, and other sub-culture groups served with the Discretionary Funds. This report shall be submitted to the Division's Office of Juvenile Corrections. Individual youth information shall also be included in the "High Risk

Client Report"

IV. Consideration

- A. As consideration for the services provided by the County during the period beginning October 1, 1992, and ending June 30, 1993, the Division will pay to the County by check(s), an amount not to exceed \$743,937.00, paid as follows:
1. An amount not to exceed \$270,177.00 paid at the rate of \$30,019.69 per month for the operation of the special staff and activities known as the "GRIT" team to increase the County Juvenile Justice Division and law enforcement abilities to implement gang intervention strategies, programs to improve on-street monitoring, close supervision of gang youth on probation, and providing a 12-week course to assist the gang youth to develop better community skills and sense of responsibility, anger management, and value clarification.
  2. An amount not to exceed \$183,057.00 paid at the rate of \$20,339.63 per month, for 9.0 ASP at the House of Umoja, a special residential/treatment facility for gang youth between the ages of 15 to 18 years of age.
  3. An amount not to exceed \$183,993.00 paid at the rate of \$20,443.66 per month for the operation of the Assessment, Intervention, and Transition Program (AITP), a 30 day secure residential treatment facility serving an ADP of 18 gang youth during the term of this Agreement in order to prevent their commitment to the State Training School. This payment is for maintenance and supervision only. The treatment services will be billed through the County Mental Health Program.
  4. An amount not to exceed \$26,197.00 for serving 1 ADP in residential care/treatment with Alfred Yaun Youth Care Centers, and counseling services to other designated gang involved youth. Payment shall be made as reimbursement for actual costs.
  5. An amount not to exceed \$24,300.00 to be billed at the rate of \$900.00 per month for each of the sub-contracts with Emmanuel Temple Full Gospel Pentecostal Church; Mt. Sinai Community Baptist Church; and Christian Counseling Center.
  6. An amount not to exceed \$22,361.00 for the sub-contract with "Minority Youth Concerns Action Program" for the purchase of special counseling and supportive services to an ADP of 43 gang involved youth. Payment shall be made at the rate of \$2,484.50 per month.
  7. An amount not to exceed \$33,852.00 for client specific services to Asian, Hispanic, and other sub-cultural gang youth. The County may bill this as needed.
- B. It is agreed that the amount to be paid under this agreement may be changed by the Division as the result of Legislative action. The Division shall provide the County written notice of any such change in payment.
- C. Payment will be made by the Division to the County, on or before the 1st of the month following the month in which services are provided, subject to receipt of the billing described in V. Billing, below.
- D. The funds paid by the Division to the County under this agreement are restricted funds. The County agrees to expend the agreement funds strictly in accordance with the terms of this agreement.
- E. It is agreed that the County may not expend more than 7.5% of the funds paid under this agreement for administrative costs in support of the provision of the services required by this agreement.

- F. The Division reserves the right to periodically audit and review the actual expenses of the County for the following purposes:
1. To document the relation between the County's budget contained in the approved project budget which is attached and made a part of this agreement and the amounts spent by the County.
  2. If it is determined from the County's expense statements or the audits referred to above that the County has made expenditures from the funds under this Agreement for costs which are not allowable under the agreement or have not been approved by the Division, the County agrees to promptly refund the moneys so expended to the Division upon request.
- G. If it is determined, from the County's expense statements or the audits referred to above, that funds remain at the end of the agreement term after approved expenses have been deducted from restricted funds paid under this agreement, such funds shall remain restricted and used to provide services during the subsequent agreement periods. The County agrees that if this agreement is terminated prior to the agreement term ending date, or if immediately following expiration of this agreement the Division and the County do not enter into a subsequent agreement for the services herein agreed, the County will promptly refund this surplus restricted funds.
- H. If the County fails to comply with the provisions of Sections D., E., F., and G., above, the Division may invoke the remedies available to it under General Provision clauses entitled, "Remedies" and "Recovery of Overpayments."

V. Billing

The County shall utilize the CSD 1017P "High Risk Client Report" or similar forms provided by the Division, for all youth served by this agreement. This form shall be submitted along with the billing form attached as Exhibit III. Billings shall be submitted by the 10th of each month to: Office of Juvenile Corrections Services, Children's Services Division, 198 Commercial St. S.E., Salem, OR 97310.

VI. County-Client Relationship

The County will establish a system through which a child and the child's parents or guardian may present grievances about the operation of the County's service program. At the time arrangements are made for the County's services, the County will advise the child and parents or guardian of this provision. The County shall notify the Division of all unresolved grievances.

VII. Services to Culturally Diverse Children and Families

Providing equal access to and maximum benefit from services for children and youth who are members of culturally diverse groups is a priority for the Division.

During the regularly scheduled review of the County's program, the Division shall review information regarding efforts to deliver services that benefit culturally diverse children and youth.

VIII. Program Records, Controls Reports and Monitoring Procedures

The County agrees to maintain program records including statistical records, and to provide program records to the Division at times and in the form prescribed by the Division. The

County agrees to establish and exercise such controls as are necessary to assure full compliance with the program requirements of this agreement. The County also agrees that a program and facilities review (including meetings with consumers, review of service records, review of policy and procedures, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services) may be conducted at any reasonable time by state and federal personnel and other persons authorized by the Division.

IX. Fiscal Responsibility, Records, Controls, Reports and Monitoring Procedures

The County agrees to establish and exercise such controls as are necessary to assure full compliance with federal regulations and the Division's guidelines on allowable use of funds paid by the Division under this agreement.

The County agrees to maintain fiscal records consistent with accepted accounting practices and controls, which will properly reflect all direct and indirect costs and funds expended in the performance of this agreement, and all revenue received for programs under this agreement.

The County agrees to collect financial statistics on a regular basis and to make financial reports at times and in the form prescribed by the Division.

X. Indemnification and Insurance

County agrees that it is an independent County and not an agent of the Division notwithstanding the hold harmless provisions in the General Provisions of this Agreement. The County and the Division shall not be responsible for any legal liability, loss, damages, costs and expenses arising in favor of any person, on account of personal injuries, death, or property loss or damage occurring, growing out of, incident to, or resulting directly or indirectly from the acts of omissions of the other party under this agreement.

Both the Division and the County shall obtain, and always keep in effect, comprehensive liability insurance and property damage insurance covering each respective party's own acts and omissions under this agreement. County may satisfy these requirements in any manner allowed by ORS 30.282. The Division shall satisfy this requirement through the Liability Fund established under ORS 278.100. Such liability insurance, whatever the form, shall be in an amount not less than the limits of public body tort liability specified in ORS 30.270. In the event of unilateral cancellation or restriction by the insurance company of the County's insurance policy referred to in this paragraph, the County shall immediately notify the Division verbally and in writing.

As evidence of the insurance coverage required by this agreement, and prior to execution of this agreement, the County shall furnish a certificate of insurance to Children's Services Division, ATTN: Contracts Manager, at 198 Commercial Street SE, Salem, Oregon 97310. The certificate form to be completed by the County's insurer will be maintained in the Division's file to this agreement.

There shall not be any cancellation, material changes or failure to renew such insurance policy (policies) without 30 days notice to the Division.

IX. AMERICANS WITH DISABILITIES ACT (ADA)

County and County's subcontractors shall comply with the Americans with Disabilities Act of 1990, 42 USC 12101 et. seq., as well as ORS 30.670 to 30.685, ORS 659.425, and ORS

659.430, and all rules and regulations implementing those laws. These laws may apply to, among other things, the construction, remodeling, maintenance and operation of any structure or facility, and the conduct of all programs, services and training of any type.

County and County's subcontractors shall make reasonable accommodation to permit participation in the service, program or activity, and shall operate these services, programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. They shall be provided in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

## GENERAL PROVISIONS

### 1. Extent of Agreement

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract, shall be deemed to exist or to bind any of the parties hereto.

### 2. Captions

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this contract.

### 3. Government Employment Status

The Contractor is engaged as an independent contractor. Contractor certifies that Contractor is not an employee of the State of Oregon. If payments under this contract are to be charged against federal funds, the Contractor certifies that it is not currently employed by the federal government.

### 4. Payments under this Contract; Retirement System Status

Payment as provided herein is the sole monetary obligation of the Division. Unless otherwise specified, the responsibility for payment of all operating costs, federal, state, county or city taxes/assessments and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Contractor is not a member of the Public Employees Retirement System unless otherwise stated. Payments under this contract do not entitle the Contractor to benefits under the Federal Social Security program, any unemployment insurance or workers' compensation program or the Public Employees Retirement System, except as a self-employed individual.

### 5. Compliance with Applicable Law, Licensing and Program Standards

The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work to be done under this contract. Contractor shall comply with all applicable state, county and municipal standards for licensing, certification and operation of required facilities, shall maintain any applicable professional license or certificate

required to perform the services described in this contract, and shall comply with any other standards or criteria described in this contract.

6. Safeguarding of Client Information

The use or disclosure by any party of any information concerning a recipient of services purchased under this contract for any purpose not directly connected with the administration of the Division's or the Contractor's responsibilities with respect to such services is prohibited except on written consent of the Division, or if the Division is not the recipient's guardian, on written consent of the recipient's responsible parent, guardian or attorney.

7. Equal Rights

The Contractor agrees to comply with all applicable requirements of Federal and State Civil Rights and Rehabilitation statutes, rules and regulations.

8. Access to Records

The Division, the Executive Department and the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access, upon request, to the books, documents, papers and records of the Contractor which are pertinent to the contract for the purpose of making audits, examinations, excerpts, copies and transcriptions. The Contractor agrees to include this provision in any subcontracts which may be authorized.

9. Retention of Records

The Contractor agrees to retain all books, records, and other documents relevant to this contract for three years after final payment is made under the contract or all pending matters are closed, whichever is later. If an audit, litigation or other action involving the contract is started before the end of the three year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three year period, whichever is later.

10. Subcontracting

Unless subcontracting is authorized elsewhere in the contract, the Contractor shall not enter into any subcontracts

for any of the work contemplated under this contract without obtaining prior written approval from the Division, which approval shall be attached to the original contract. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental but necessary for the performance of the work required under this contract (e.g. facilities maintenance). Approval by the Division of a subcontract shall not result in any obligations to the Division in addition to the agreed rates of payment and total consideration. Any subcontracts which the Division may authorize shall contain all requirements of this contract, and the Contractor shall be responsible for the performance of the subcontractor.

#### 11. Renegotiation or Modification

All alterations, variations, modifications and waivers of provisions of this contract shall be valid only when they have been reduced to writing, signed by all parties, and attached to the original of this contract.

#### 12. Excuses for Nonperformance

Neither party to this contract shall be held responsible for delay or failure in performance of the activities required herein when such delay or failure is due to causes beyond the control and without the fault or negligence of the party. Such causes may include, but are not restricted to, fire, flood, epidemic, strikes, acts of God, unusually severe weather, legal acts of public authorities, or delays or defaults caused by public carriers, which cannot reasonably be forecast or provided against. Either party may terminate the contract after reasonably determining that such delay or failure will prevent continued performance of the contract, and after giving written notice to the other party of the cause, its effect on contract performance, and effective date of termination. If the contract is so terminated, the obligation of the Division shall be limited to payment for services provided in accordance with the contract prior to the date of termination.

#### 13. Remedies

If the Contractor fails to provide the services or perform any of the other requirements under the contract, and such failure is not excused, the Division, after giving the Contractor written notice of such failure, may withhold part or all of the Contractor's payment for the services until such

failure is corrected. If the Contractor does not correct such failure within a reasonable time allowed by the Division, the Division may terminate the contract. This section, and any actions taken or not taken under it, shall not affect the Division's rights under the "Termination" section. The rights and remedies of the Division in this section are not exclusive and are in addition to any other rights and remedies provided to the Division by law or under this contract.

#### 14. Termination

a. This contract may be terminated by mutual consent of both parties, or by either party upon 60 days written notice, delivered personally or by certified mail.

b. The Division may also terminate this contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the Division, under any of the following conditions:

1. If Division funding from federal, state or other sources is not obtained, is decreased, modified or limited, or if Division expenditures are greater than anticipated, such that funds are insufficient to allow for the purchase of services as required in this contract. The contract may be modified to accommodate the change in available funds.

2. If federal or state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or no longer qualify for the funding proposed for payments authorized by this contract.

3. If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, not renewed or changed in such a way that the Contractor no longer meets requirements for such license or certificate.

Termination under this paragraph b. shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination, except that the Contractor shall be solely responsible for its obligations or liabilities after the termination date which obligations or liabilities result from the Contractor's failure to provide for termination of, or exercise the right to terminate, its commitments. No right of action or damages

shall accrue to the benefit of the Contractor if the contract is terminated under this clause.

c. The Division, by written notice of default (including breach of contract) to the Contractor, may terminate the whole or any part of this contract under any of the following conditions:

1. If the Contractor fails to provide services called for by this contract within the time specified or any extension thereof.

2. If the Contractor fails to perform any of the other requirements of this contract.

3. If the Contractor so fails to pursue the work required in this contract that performance of this contract in accordance with its terms is endangered, and after receipt of written notice from the Division specifying such failure, the Contractor fails to correct such failure within 10 days or such longer period as the Division may authorize.

If the contract is terminated under this paragraph c., the Division's obligations shall be limited to payment for services provided in accordance with the contract prior to the date of termination, less any damages suffered by the Division.

#### 15. Termination Arrangement

If the Contractor is providing child-care services and the contract is terminated, expires or is not renewed, the following apply:

a. Except as provided in paragraph b., the Division, through its liaison staff or other designated persons, shall assume responsibility for the planning, supervision and work required in moving and relocating the children who are under the Contractor's care on the termination date or at an earlier date if earlier removal is deemed necessary by the Division. The Contractor agrees to cooperate fully with Division staff in the preparation for and carrying out of the work necessary to remove the children from the Contractor's care.

b. Where the children being cared for are Unaccompanied Refugee Minors, the Contractor shall be responsible for providing appropriate care for children covered by this contract. The Contractor agrees to maintain a plan which does not obligate the Division for continuing care for each child.

16. Waiver of Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by all parties, and attached to the original contract.

17. Severability

The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

18. Fees Prohibited

The Contractor will not impose or demand any fees from any person or agency for services provided and paid for under this contract, unless the fees have been approved in advance by the Division.

19. State Tort Claims Act

Contractor is not an officer, employee, or agent of the state as those terms are used in ORS 30.265.

20. Hold Harmless Provision

To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Contractor agrees to defend, indemnify, save and hold harmless the State of Oregon, the Department of Human Resources, the Division and their officers, agents and employees from all claims, suits or actions of whatever nature and any resulting damage, loss, costs and expenses which they may sustain, incur or be required to pay resulting from or arising out of the acts, errors or omissions of the Contractor or its assignees, subcontractors, agents or employees under this contract.

The Contractor is not required to defend, indemnify, save or hold harmless the State of Oregon, the Department of Human Resources, the Division and their officers, agents and employees from all claims, suits or actions of whatever nature and any resulting damage, loss, costs and expenses which they may sustain, incur or be required to pay which result entirely from or arise entirely out of the acts, errors or omissions of the State of Oregon, the Department of Human Resources, the Division or their officers, agents or employees, or any third parties, including any persons receiving services under this contract.

21. Clean Air Act, Clean Water Act, and EPA Regulations

If the amount of this contract, including all amendments thereto, exceeds \$100,000, the Contractor agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(b)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The Contractor shall report any violations to the Division and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329). The Contractor agrees to include this provision in any subcontracts exceeding \$100,000 which may be authorized.

22. Equal Employment Opportunity

If the amount of this contract, including all amendments thereto, exceeds \$10,000, the Contractor agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). All subcontracts shall also be in compliance with the foregoing.

23. Oregon Energy Conservation Plan

The Contractor shall conform with any applicable mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. Law 94-165).

24. Truth in Lobbying

The Contractor certifies, to the best of the Contractor's knowledge and belief that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any such officer, employee or member in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

d. The undersigned is solely responsible for all liability arising from a failure by the undersigned to comply with the terms of this certification. Additionally, the undersigned promises to indemnify the Division for any damages suffered by the Division as a result of the undersigned's failure to comply with the terms of this certification.

This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this contract imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 25. Tax Compliance

No contract or other agreement for the purpose of providing goods, services or real estate space to any agency shall be entered into, renewed or extended with any person, unless the person certifies in writing, under penalty of

perjury, that the person is, to the best of the person's knowledge, not in violation of any tax laws described in Oregon Revised Statutes section 305.380(4).

By execution of this contract, I, an authorized official of Contractor, swear/affirm, under penalty of perjury as provided in ORS 305.385(6), that to the best of my knowledge that Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

26. Worker's Compensation

The Contractor, its subcontractors, if any and all employers providing work, labor or materials under this contract are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for all their workers who work at a single location within Oregon for more than 30 days in a calendar year.

27. Assignment of Contract

The Contractor shall not assign or transfer its interest in this contract without prior written approval of the Division which shall be attached to the original contract. Any such assignment, if approved, is subject to such conditions and provisions as the Division may deem necessary. No approval by the Division of any assignment or transfer of interest shall be deemed to create any obligation of the Division in addition to the agreed rates of payment and total contract consideration.

28. Funds Available and Authorized

The Division certifies that at the time of signing this contract sufficient funds are authorized and available or are anticipated to be available for expenditure to finance costs of this contract within the Division's current appropriation or limitation.

29. Recovery of Overpayments

If billings under this contract, or under any other contract between the Contractor and the Division, result in payments to the Contractor to which the Contractor is not

entitled, the Division, after giving written notification to the Contractor, may withhold from payments due to the Contractor such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

30. Approval by Attorney General's Office

If the amount of this contract, including all amendments thereto, exceeds \$25,000 or if this contract provides for the provision of human custodial care, approval for legal sufficiency by the Attorney General may be required.

31. Controlling State Law

This contract shall be construed and enforced in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of law rules or doctrine. If the Contractor is an out-of-state provider, any action or suit involving this contract shall be filed and tried in Marion County, Oregon.

32. Ownership of Work Product

To the extent the Contractor has the right to do so, the Contractor grants to the Division a royalty-free, nonexclusive and irrevocable license to use all materials delivered under this contract in any manner and for any purpose whatsoever, including to reproduce, publish, disclose, deliver, perform and dispose of, and to have others do so.

lry/5054Y/clr:2072F

### Purpose

The purpose of this program is to serve designated gang youth with counseling, crisis intervention services, and other support and related services to avoid further gang activities and to assist the youth to a more productive life style.

### Assessment

The programs offering this service shall conduct a comprehensive assessment and develop a treatment plan within 30 days of acceptance. The assessment shall be a written statement of conclusions about the following areas and their relevance to the current difficulties the youth presents.

- A. The youths physical, social, psychological, educational, and cultural aspects.
- B. The family's social, ethnic, economic, emotional, and interpersonal relationships.
- C. The community's involvement and concerns, relevant expectations of change or acceptance to allow the youth to function successfully.
- D. The conclusions shall include strengths and deficits as well as available resources.

The treatment plan shall identify the specific areas needing change, modification, enhancement, or elimination. It shall be time limited and goal directed, with measurable indicators of change. It must delineate the specific services to be provided.

### Services To Be Provided

A minimum of 8 hours per month shall be provided each youth by a combination of the following activities:

- A. Individual Counseling  
Each youth will be seen in a one to one situation for a minimum of four hours per month. These sessions will be planned, scheduled, and structured with specific treatment objectives to be accomplished. They are to be confidential and progress notes recorded for each session.
- B. Family Counseling  
Where parents or other significant adults in the life of the youth are

available and willing to participate, attempts shall be made to bring about a working relationship between the parent and the youth; resolution of parent/child conflict, and parental support for the youth efforts at rehabilitation and/or emancipation.

C. Group Discussions

Pre-arranged and planned sessions involving several youth including peers in the community shall be scheduled and conducted on a regular basis. Staff shall guide these discussions to a positive conclusion, focusing on positive outcomes and accomplishments, including motivation for positive change in behavior and attitudes.

Planned Activities

Positive interaction between youth, peers, parents, and other meaningful adults shall be encouraged through social, recreational, and cultural events.

Emergency/Crisis Services

Persons shall be available to assist, counsel, or provide support to a youth and/or parents in times of emergencies or personal crisis. This may be a direct service, or it may be provided by making appropriate connection with other agencies or resources within the community.

Case Reviews

A case review is to be held once a month on each youth. A summary of the past months activities and involvement with the youth shall be presented. The treatment plan shall be reviewed and up-dated at each review.

Written Reports

A written report shall be prepared every three months. A final report shall be written no later than 30 days after the services are terminated, summarizing the activities and services provided, making an assessment of the situation, describing any growth, progress or achievements the youth has made during involvement in the program. Recommendation should be made of any further needed services or resources that would be helpful in the future contacts with the youth.

*Exhibit 4*

**QUARTERLY HIGH RISK CLIENT REPORT**

COUNTY NAME: \_\_\_\_\_

Circle One 1 2 3 4 Quarter

YEAR: \_\_\_\_\_

NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							
NAME Last	First	MI	SEX <input type="radio"/> M <input type="radio"/> F	ETHNIC	DOB Mo Dy Yr	TYPE SERVICE	TYPE SERVICE	TYPE SERVICE	DETEN. DAYS
AKA Last	First	MI							

Send completed form by the 10th of January, April, July, October to: Office of Juvenile Corrections  
Children's Services Division  
198 Commercial St. S.E.  
Salem, Oregon 97310-0450

EXHIBIT III

BILLING FOR GANG PROJECT

COUNTY \_\_\_\_\_ FOR MONTH OF \_\_\_\_\_

I CERTIFY THAT THE GANG SERVICES AS SPECIFIED IN THE CURRENT CONTRACT WITH THE CHILDREN'S SERVICES DIVISION, HAVE BEEN PROVIDED TO THE TARGETED YOUTH DURING THE MONTH OF \_\_\_\_\_ 19\_\_\_\_. PLEASE PAY THE FOLLOWING AMOUNTS:

GANG RESOURCE INTEGRATION TEAM (G.R.I.T.)	\$ _____
HOUSE OF UMOJA	\$ _____
ASSESSMENT, INTERVENTION, AND TRANSITION PROGRAM	\$ _____
YAUN YOUTH CARE CENTER	\$ _____
EMMANUEL TEMPLE FULL GOSPEL PENTECOSTAL CHURCH	\$ _____
MT. SINIA COMMUNITY BAPTIST CHURCH	\$ _____
CHRISTIAN COUNSELING CENTER	\$ _____
MINORITY YOUTH CONCERNS ACTION PROGRAM	\$ _____
DISCRETIONARY	\$ _____
TOTAL	\$ _____

\_\_\_\_\_  
AUTHOTRIZED SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

BUDGET MODIFICATION NO. DSS 19

(For Clerk's Use) Meeting Date SEP 29 1992  
Agenda No. R-2

1. REQUEST FOR PLACEMENT ON THE AGENDA FOR \_\_\_\_\_ (Date)

DEPARTMENT: Social Services DIVISION: Juvenile Justice  
CONTACT: Marie Eighmey TELEPHONE: 248-3550  
\*NAME OF PERSON MAKING PRESENTATION TO BOARD: Harold Ogburn

SUGGESTED AGENDA TITLE:  
Budget Modification DSS # 19 adds \$168,654 in dedicated State CSD G.R.I.T. revenue to the Juvenile Justice Division.

(Estimated Time Needed On The Agenda)

2. DESCRIPTION OF MODIFICATION:  
{ } PERSONNEL CHANGES. Not applicable.

This budget modification adds \$134,802 revenue to the Gang Resource Intervention Team's contracted service. The funds buy four additional residential beds, and enhances tracker services, individual and family counseling services and behavior management services. It also provides \$33,852 for youth specific services or programs serving Hispanic, Asian, and other cultural groups designated as gang involved.

By prior County decision, the County covers the Indirect Cost, equal to \$4,871, which supports this State revenue.

3. REVENUE IMPACT:

Increases Fed/State by \$168,654 CSD G.R.I.T. revenue.  
Increases Cash Transfer to Fed/State by \$4,871.

1992 SEP 21 PM 3:18  
MULTNOMAH COUNTY  
OREGON  
BOARD OF COUNTY COMMISSIONERS

4. CONTINGENCY STATUS:

Originated By Harold Ogburn Date 9/17/92 Department Manager Gary Makso (ac) Date 9/18/92

Budget Analyst Kathleen James Date 9/21/92 Personnel Analyst \_\_\_\_\_ Date \_\_\_\_\_

Board Approval Deborah Coasta Date 9/29/92

ME/bdmdgrtr.sep

*Sent copy of Bud mod to Kathy James on 12-1-92. Original lost, never received*

EXPENDITURE

BUD MOD DSS # 19

TRANSACTION EB [ ] GM [ ] TRANSACTION DATE \_\_\_\_\_ ACCOUNTING PERIOD \_\_\_\_\_ BUDGET FY \_\_\_\_\_

DOCUMENT NUMBER	ACTION	FUND	AGENCY	ORGANI-ZATION	REPORT 'G ACTIVITY	REVENUE CATEGORY	OBJECT	CURRENT AMOUNT	REVISED AMOUNT	CHANGE	SUB-TOTAL	DESCRIPTION
		156	010	2530			6060			134,802		Inc Pass Thru Payments.
		156	010	2530			6110			33,852		Inc Professional Svcs.
		156	010	2530			7100			4,871		Inc Indirect Cost.
											173,525	SUBTOTAL ORG 2530.
		100	010	0106			7608				4,871	INC CASH TRANS TO F/S.
											-----	
											\$178,396	TOTAL EXPENSE.

REVENUE

TRANSACTION RB [ ] GM [ ] TRANSACTION DATE \_\_\_\_\_ ACCOUNTING PERIOD \_\_\_\_\_ BUDGET FY \_\_\_\_\_

DOCUMENT NUMBER	ACTION	FUND	AGENCY	ORGANI-ZATION	REPORT 'G ACTIVITY	REVENUE CATEGORY	SOURCE	CURRENT AMOUNT	REVISED AMOUNT	CHANGE	SUB-TOTAL	DESCRIPTION
		156	010	2530			2319			168,654		CSD G.R.I.T.
		156	010	2530			7601			4,871		COUNTY G/F.
											173,525	SUBTOTAL ORG 2540.
		100	045	7420			6602			4,871	4,871	INC SVC REIMB TO G/F.
											-----	
											178,396	TOTAL REVENUE

Meeting Date: September 29, 1992

Agenda No.: P-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Hearings Officer Decision

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

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minute

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

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

HV 19-92 Review the Decision of the Hearings Officer of September 8, 1991, approving, subject to conditions, requested variance, allowing a reduced rear yard depth, for property located at 11505 SW Summerville Avenue

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 21 PM 2:24  
MULTNOMAH COUNTY  
OREGON



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

**DECISION**

This Decision consists of Conditions, Findings, and Conclusions.

SEPTEMBER 8, 1992

**HV 19-92, #184 MAJOR VARIANCE TO REDUCE REAR YARD DEPTH  
(12-Foot Rear Setback For Building at the Berry Botanic Garden)**

The Berry Botanic Garden requests a Variance from the 30-foot rear yard dimension to construct a horticultural building northwest of an existing house on the property. A related proposal was conditionally approved by the Hearings Officer on August 3, 1992 to amend the Community Service (CS) designation and construct a horticultural building and replace a greenhouse [ref. CS 11-92]. The current request proposes a reduced rear setback from the west property line to construct the Horticultural Building within 12-feet of the boundary (at the closest point).

**Location:** 11505 SW Summerville Avenue

**Legal:** Tax Lot '38' of Lot 43, Plus Tax Lot '44' of Lot 42; Abernathy Heights  
1991 Assessor's Map

**Site Size:** 6.25 Acres

**Property Owners:** The Berry Botanic Garden  
11505 SW Summerville Avenue 97219

**Applicant:** Same

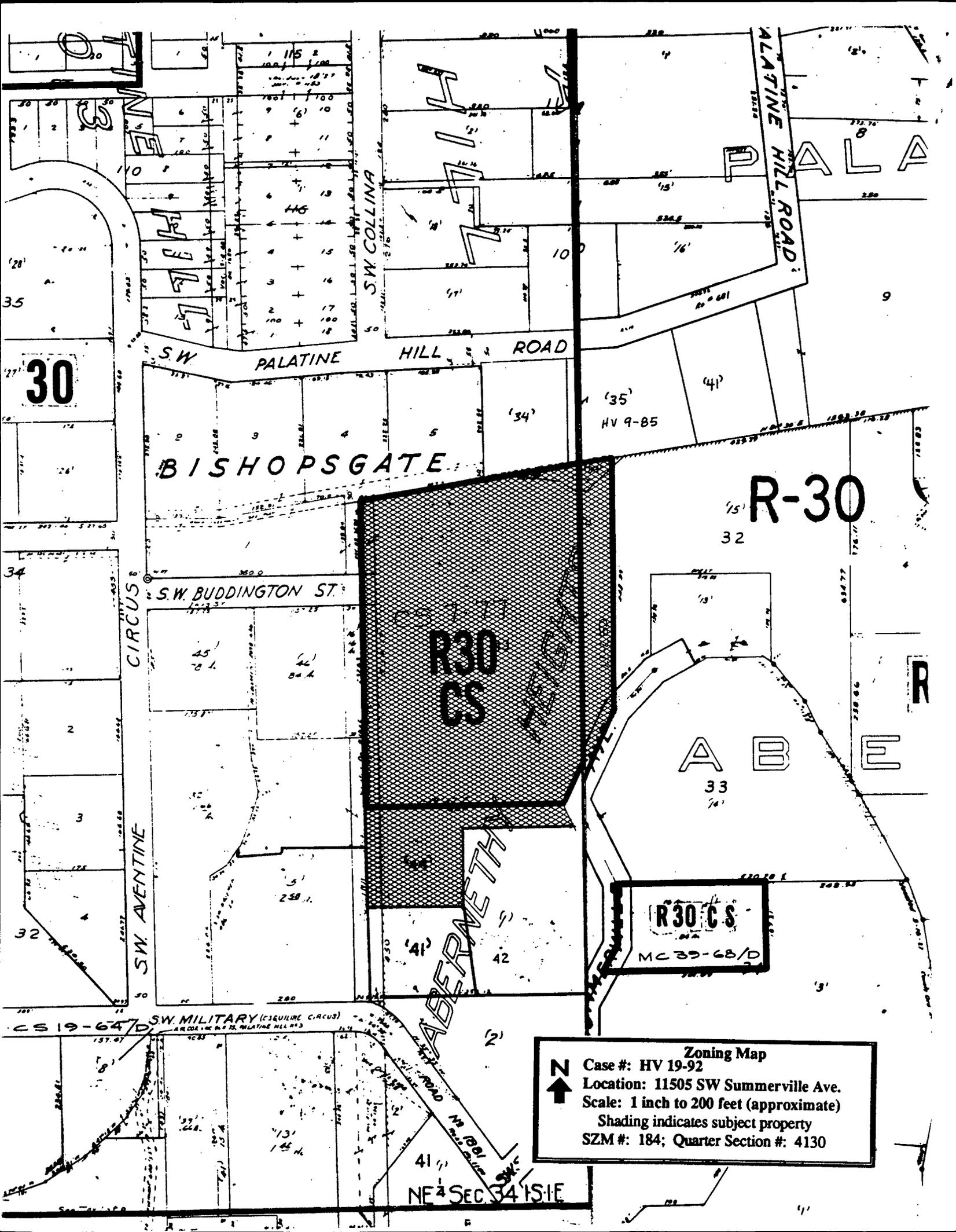
**Comprehensive Plan:** Single Family Residential

**Zoning:** R-30/ CS, Single Family Residential District/Community Service Use  
subdistrict (both parcels) — A Variance to dimensional standard shall  
be for the specific structure and placement proposed, subject to limits  
or conditions imposed by the approval authority.

**HEARINGS**

**DECISION:** APPROVE, SUBJECT TO CONDITIONS, the requested Variance, allowing a reduced rear yard depth west of a proposed Horticultural Building on The Berry Botanic Garden site; and based on the following Findings and Conclusions.

HV 19-92



30

R-30

R30  
CS

R30 CS  
MC 39-68/D

**Zoning Map**  
 Case #: HV 19-92  
 Location: 11505 SW Summerville Ave.  
 Scale: 1 inch to 200 feet (approximate)  
 Shading indicates subject property  
 SZM #: 184; Quarter Section #: 4130



30

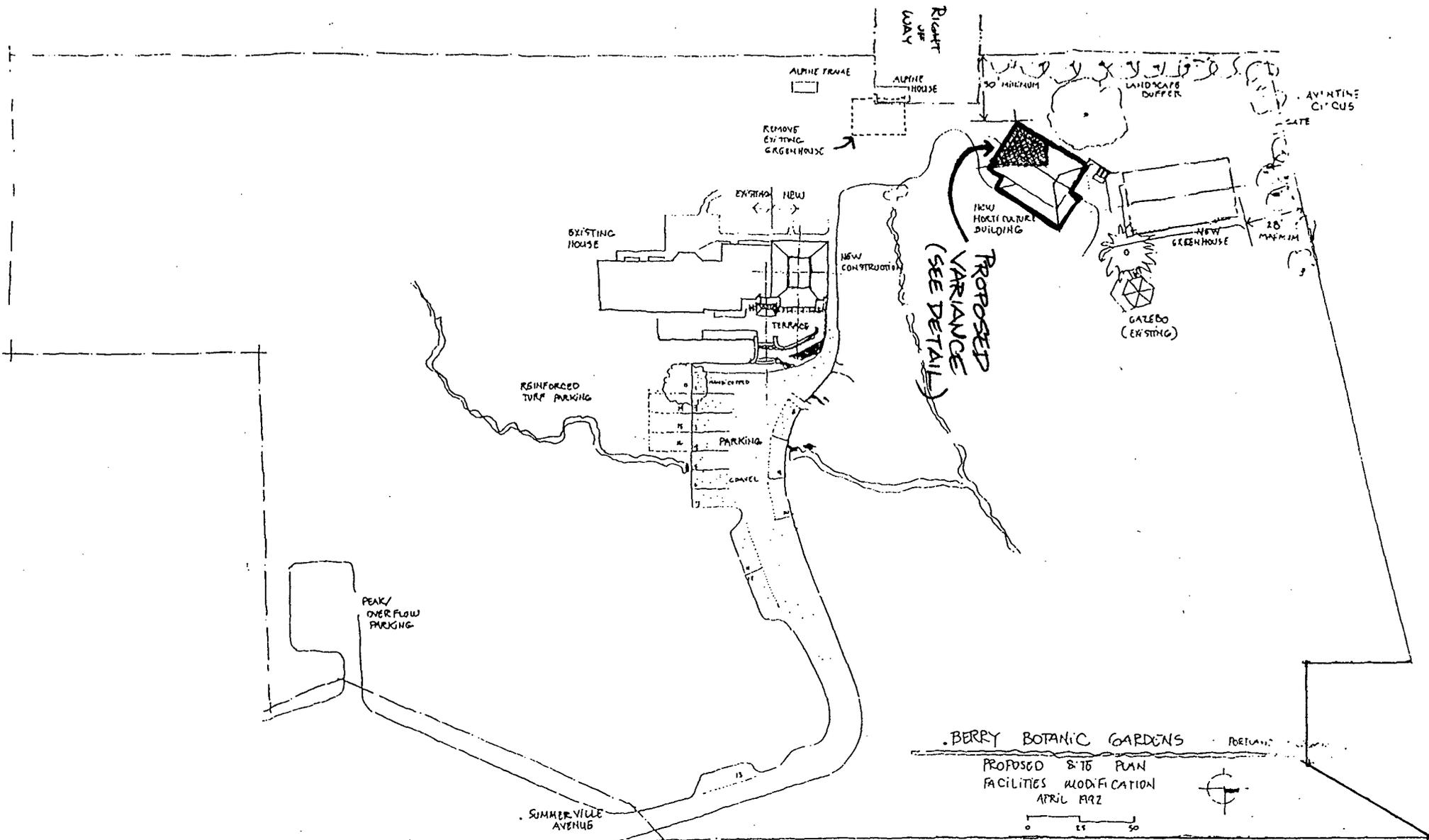
R-30

R30  
CS

R30 CS  
MC 39-68/D

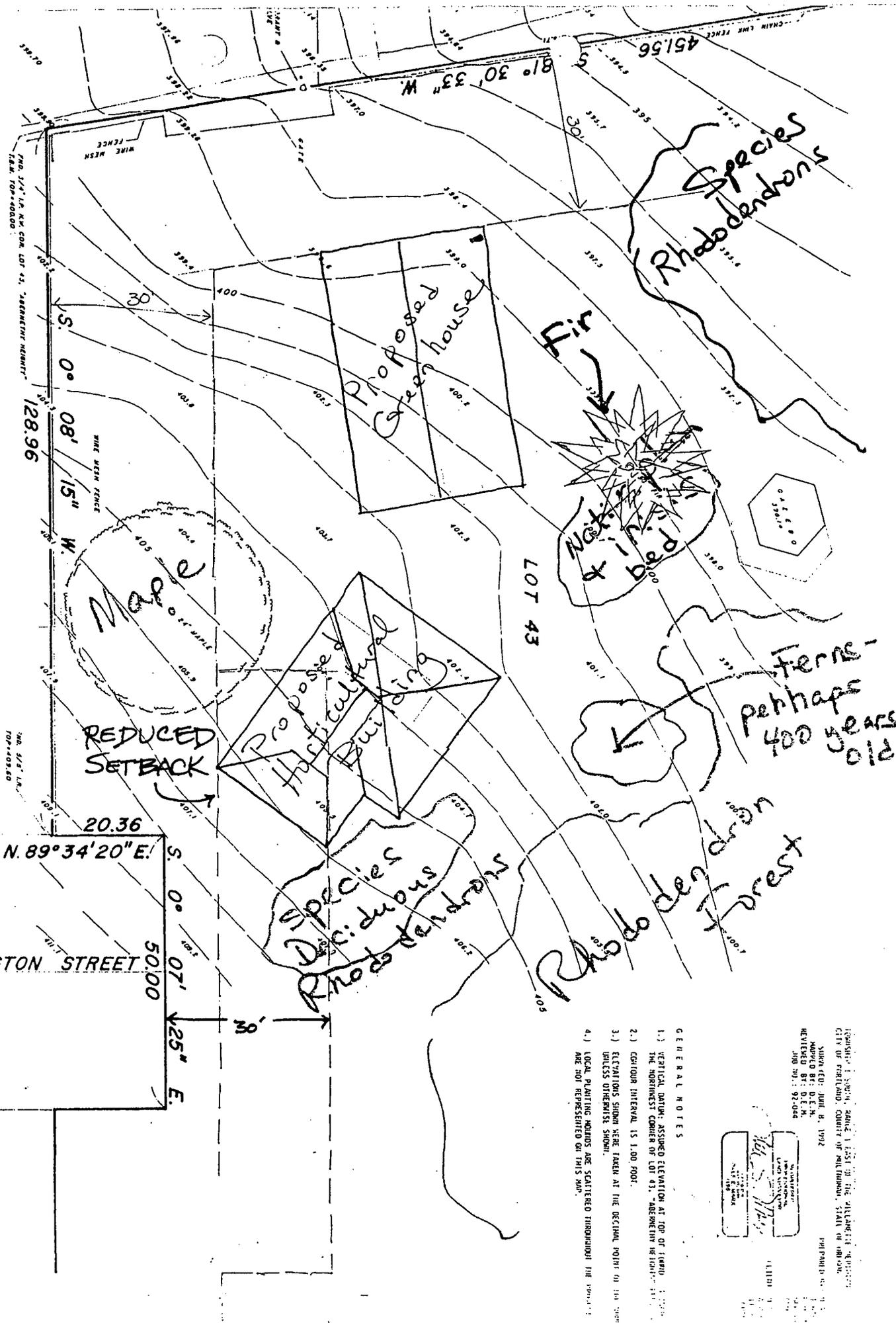
**Zoning Map**  
 Case #: HV 19-92  
 Location: 11505 SW Summerville Ave.  
 Scale: 1 inch to 200 feet (approximate)  
 Shading indicates subject property  
 SZM #: 184; Quarter Section #: 4130





HV 19-92

MICHAEL SECOR ARCHITECTS  
 1115 E. Grand Ave. Portland, Oregon 97232  
 503-241-1111



APPROVED FOR THE CITY OF PORTLAND, OREGON, BY THE PLANNING COMMISSION, JULY 1, 1992.

APPROVED BY: DELENA  
 REVISION NO. 01, 02, 03, 04  
 AND NO. 05, 06, 07, 08

PREPARED BY: [Signature]

GENERAL NOTES

- 1.) VERTICAL DATUM ASSUMED ELEVATION AT TOP OF FRONT CORNER OF THE NORTHWEST CORNER OF LOT 43, AGREEMENT BEARING 111° 15' 00" W. 100.00 FEET.
- 2.) CONTOUR INTERVAL IS 1.00 FOOT.
- 3.) ELEVATIONS SHOWN WERE TAKEN AT THE DECIMAL POINT OF THE CURVE UNLESS OTHERWISE SHOWN.
- 4.) LOCAL PLANTING HOLES ARE SCATTERED THROUGHOUT THE PROPERTY AND ARE NOT REPRESENTED ON THIS MAP.

## CONDITION OF APPROVAL

1. Prior to site preparation or issuance of Building Permits for the Horticultural Building, comply with Conditions #'s: 1., 2., 4., and 5. in the CS 11-92 Hearings Officer Decision (dated August 3, 1992).

## FINDINGS

### 1. PROPOSAL DESCRIPTION

Applicant requests a Variance from the 30-foot rear yard dimension to construct a horticultural building northwest of an existing house on the property. A related land use proposal was conditionally approved by the Hearings Officer on August 3, 1992. The CS 11-92 decision amends the Community Service (CS) designation and authorizes office additions to the main house, a new "horticultural building" and a greenhouse. The Board accepted the CS 11-92 decision on August 25, 1992.

The current request proposes a reduced rear setback from the west property line to construct the Horticultural Building within approximately 12-feet of the west boundary (at the closest point). Applicant's "Request for a Major Variance" text is incorporated by reference [dated July 31, 1992]. The introduction further describes the project history and variance proposal.

### 2. PLAN AND ZONE DESIGNATIONS

The 6.25-acre site is designated Single Family Residential on the Comprehensive Plan Map. The zoning designation is R-30/CS (Single Family Residential District/Community Service Use subdistrict). Most of the site (5.75-acres) was designated for CS-use in 1977 to establish "The Berry Botanic Garden" [ref. CS 7-77 decision dated June 21, 1977]. An additional 1/2 acre property to the south was added to the CS boundary by the CS 11-92 decision.

### 3. ORDINANCE CONSIDERATIONS:

MCC § .2844(B)(3) specifies a 30-foot minimum rear yard depth in the R-30 District. In addition, Condition #3 of the CS 11-92 decision provides three options to address the substandard rear setback illustrated on the CS plans. Applicant chose the Variance option, which requires "*...[A]s a part of Design Review, obtain a Variance as specified in MCC § .8505(A) for the reduced rear yard dimension west of the proposed Horticultural Building (illustrated on the CS-plan)...*".

The proposed horticultural building is partially within the 30-foot rear yard area. The closest corner is approximately 12-15 feet from the west property line (ref. site plans). The proposal is classified a "Major" Variance. MCC 11.15.8515(A) defines a Major Variance as one in excess of 25 percent of an applicable dimensional requirement. [emphasis added]. MCC 11.15.8505 specifies approval criteria.

#### 4. EVALUATION OF THE VARIANCE REQUEST (MCC 11.15.8505)

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

- (A) ***A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or district. The circumstance or condition may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses.***

*"...Siting of the buildings (greenhouse and horticultural building) have followed carefully planned criteria. The area for new construction is limited to the northwest corner of the property since significant plantings occur in all other areas. No large trees must be removed for this construction. ... The greenhouse is proposed to be constructed within the required setbacks... The horticultural building is sited further upslope, avoiding areas of high visibility to neighbors, and an area directly to the east of the proposed new construction, which is a 50-year old 'forest' of rhododendron species grown from seed collected in China in the 1930s...*

*"... Siting at any other location in the garden would require removing existing trees, removing botanically important plantings, require variances at other points, or would be in locations more objectionable to neighbors in that it would be more visible."*

**Staff Comment:** (Applicant's response #3; page 3) The line defining the west property boundary contains a 20-foot intrusion from an unimproved Right-of-Way (Buddington Street). This circumstance does not effect most other properties in the vicinity, or in the the R-30 District generally. The presence of the street 'stub' in part creates the need to reduce rear yard depth.

The proposed building site responds to the topography and natural features on the property. Site visits by Staff confirm that almost all of the 6.25-acre garden property has constraints (*i.e.*, steep slopes, drainage courses, dense forest, established gardens, or no vehicular access) which make the siting of a structure of this size and use difficult and less desirable in terms of potential adverse effects.

The overall project (approved by CS 11-92) includes removal of an existing greenhouse which encroaches into the rear yard setback at the east end of Buddington Court (ref. CS 11-92 site plan). The proposed 12–15 setback (for the horticultural building) is greater than the approximately 4–8 foot setback from the greenhouse to be removed.

The nature of the botanic garden use also differs from surrounding residential uses, in that rare or specimen plant collections limits the useable development area and warrant greater protection than would landscaping around a residence.

Based on the findings above, the proposal meets this approval criteria.

- (B) *The zoning requirement would restrict the use of the subject property to a greater degree that it restricts other properties in the vicinity or district.***

*"...Because of the undeveloped Buddington Ct., the zoning requirements do cause a greater restriction on our use, a restriction which does not apply to other property owners, especially in light of the expressed interest in vacating that portion of Buddington Ct. Although other property owners have plantings of shrubs, trees, and other garden plants, they are not the official collection of a botanic garden, as are the plants bordering the area [of] the horticultural building..."*

Staff Comment: (Applicant's response #4; page 3) Staff concurs that the 30-foot rear yard depth restricts this site more than others properties in the vicinity or district due to the 20-foot intrusion of a Right-of-Way 'stub' along the west boundary of the site. This fact, together with the unique site use and associated natural features, supports a reduced rear yard depth for the proposed structure. The proposal meets this approval criteria.

- (C) *The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which the property is located, or adversely affect the appropriate development of adjoining properties.***

Staff Comment: (Applicant's response #1; page 2) Transportation Division Staff indicate the Buddington Court Right-of-Way is not planned to extend further east into or through the site. Properties to the west along the unimproved street are not divisible under the R-30 Zoning. The Right-of-Way does not provide vehicular access to the Botanic Garden property, and two of three other lots with frontage are already developed with single family residences (*i.e.*, Lot 1, Bishopsgate and Tax Lot '46'). Staff concurs that the proposal, as conditioned, meets this approval criteria.

- (D) *The granting of the variance will not adversely affect the realization of the Comprehensive Plan nor will it establish a use which is not listed in the underlying zone.***

Staff Comment: (Applicant's response #2; page 2, and #5; page 3) Staff concurs with applicant's findings referenced above. The proposal, as conditioned, meets this approval criteria.

5. The Hearings Officer adopts the Staff's Findings as presented at the public hearing.

## CONCLUSIONS

1. Based on the findings above, the proposed horticultural building, as conditioned, satisfies approval criteria for a Major Variance from the required rear yard dimension.
2. A condition of approval is necessary to assure consistency with the prior CS 11-92 decision, avoid or reduce adverse effects from the project, and assure the structure and use are compatible with surrounding land uses.

Signed September 8, 1992



By: Paul Norr, Hearings Officer

**Filed With the Clerk of the Board on September 18, 1992**

### **Appeal to the Board of County Commissioners**

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or **before 4:30 p.m. on Monday, September 28, 1992** on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

*The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, September 29, 1992 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.*

Meeting Date: September 29, 1992

Agenda No.: P-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Hearings Officer Decision

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

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

CU 16-92 Review the Decision of the Hearings Officer of September 8, 1992, approving, subject to conditions, requested conditional use to allow the keeping and raising of up to six adult dogs over six months of age, for property located at 32400 NE Mershon Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 21 PM 2:25  
MULTNOMAH COUNTY  
OREGON



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

**Decision**

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

**September 8, 1992**

**CU 16-92, #657-A**

**Conditional Use Request  
(Animal Keeping - Dogs)**

Applicant is requesting approval for the keeping and/or raising of up to six dogs over six months of age as may be allowed under MCC 11.15.7205 through .7235.

**Location:** 32400 N E Mershon Road

**Legal:** Tax Lot 112, NW 1/4 Section 33, T1N, R4E, 1991 Assessor's Map.  
**Site Size:** 3.53 Acres  
**Size Requested:** Same  
**Property Owner:** Eugene R & Dorothy M Henderson  
PO Box 180, Corbett, Oregon - 97019-0180  
**Applicant:** Dorothy Henderson, PO Box 180, Corbett, Oregon - 97019-0180  
**Comprehensive Plan:** Multiple-Use Agriculture

**Present Zoning:** MUA-20, Multiple-Use Agriculture,  
SEC, Significant Environmental Concern

**Sponsor's Proposal:** Obtain approval under the CU, "Conditional Use" Section of the County Code (Chapter 11.15) as provided for under the MUA-20 District to keep up to six adult dogs (over six months of age) subject to the limitations or conditions as determined by the approval authority

**Hearings Officer  
Decision:** **Approve, subject to conditions,** requested conditional use to allow the keeping and raising of up to six adult dogs over six months of age, based on the following Findings and Conclusions.

**CU 16-92**

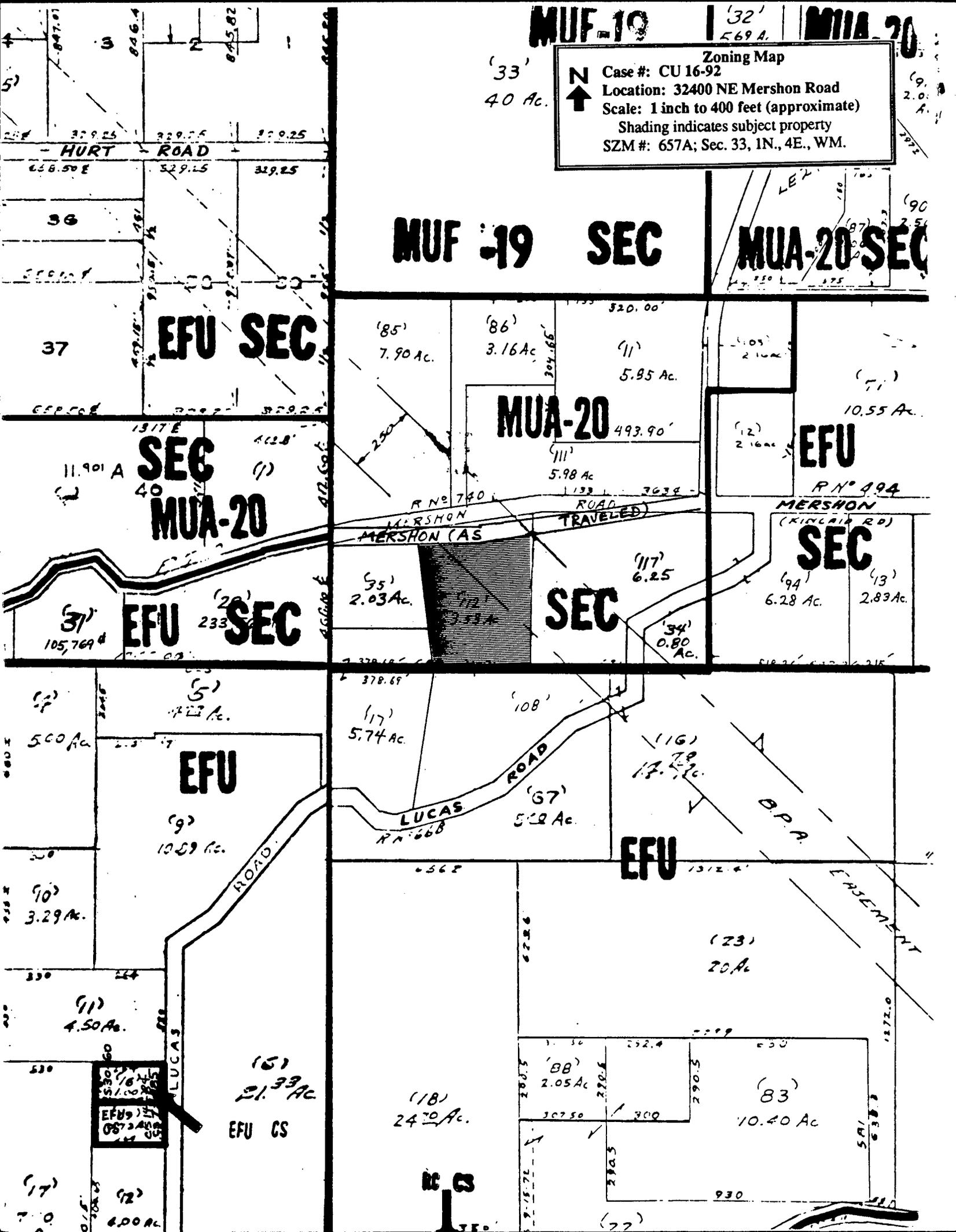
MUF-19

32' 569 A.

MUA-20

'33'  
40 Ac.

**Zoning Map**  
 Case #: CU 16-92  
 Location: 32400 NE Mershon Road  
 Scale: 1 inch to 400 feet (approximate)  
 Shading indicates subject property  
 SZM #: 657A; Sec. 33, 1N., 4E., WM.





Mershon Rd  
202.83'

No 740  
163.25'

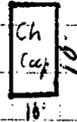
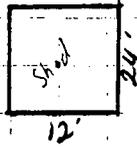
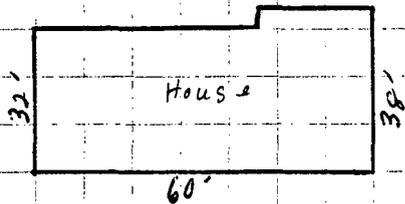
CU 16-92

BPA  
Easement

← 250 →

447.49'

474.49'



310.31'

## Conditions of Approval.

1. The number of adult dogs (ie: over six months of age) shall be limited to six.
2. Approval of this request excludes any activity normally associated with commercial dog kennels, such as:
  - A. Commercial boarding of dogs.
  - B. Signs identifying the site as a dog kennel.
  - C. Advertising dog kennel services by means of newspapers or flyers.
3. Meet licensing and other requirements of the Animal Control Section of the Department of Environmental Services (as set forth in the Animal Control Ordinance, Section 8.10.100-130).
4. Obtain approval from the Columbia Gorge Commission.
5. Meet any requirements of the Engineering Services Division regarding Mershon Road.
6. No new dog facilities shall be constructed (such as pens, kennels, or runs) without first obtaining an SEC permit.
7. All dogs must be kept within a fenced area.

## Findings of Fact.

### 1. Applicant's Proposal:

Applicant describes the request as follows:

*"Requesting to have more than 3 dogs at my private residence. No new buildings will be added to the present home sites"*

### 2. Site and Vicinity Information:

Applicant describes the site as follows:

*"The site in question is 3.53 acre located on Mershon Rd. There is a single family home on the site with a shed near the home."*

Staff Comment: The site is situated in the Columbia Gorge National Scenic area.

The site is located on the south side of Mershon Road, west of its intersection with Lucas and Chamberlain Roads. NE Mershon Road is classed as a rural collector road and has been improved to County standards (ie: two lanes paved with solid dual yellow divider stripes in the center) In the area of the subject site, the improved portion of the roadway is about twenty feet in width, paved with asphaltic concrete paving. There is a white "fog line" along both edges of the pavement, but no shoulders.

The land slopes downward, southerly from Mershon Road, towards the Columbia River. A gravelled driveway, two three hundred feet in length, leads down to the residence from Mershon Road.

### 3. General Comments by Applicant:

*"The general area is rural in its development, with single family homes on acres or farms."*

*The property will not be used for boarding or training. If we do have puppies it will not be more than one litter a year.*

*"There will be no noticeable changes in our property, as we will not be adding any new buildings for the dogs. There will not be any extra car traffic or road signs to our home.*

*"These are our pets and they live inside the home most of the time. This is a private residence and I would like to have more than 3 dogs at this time."*

### 4. Ordinance Considerations

Definitions, MCC 11.15.005 thru .0010

Kennel - Any lot or premises on which four or more dogs, more than six months of age, are kept.

MUA-20, "Multiple-Use Agriculture", MCC 11.15.2122 thru .2150:

.2132, "Conditional Uses;"

Subsection "(B)" specifies "Conditional Uses" under the provisions of MCC .7105 through .7640. Commercial Dog Kennels are a listed use under Item "(7)".

C U, "Conditional Uses", MCC 11.15.7105 thru .7140. Applicable Sections are:

.7110, "General Provisions"

Staff Comment - This section of the Code has to do with procedures for processing a request for public hearing.

Provisions outlined have been or will be followed, as appropriate.

.7115, "Conditions and Restrictions"

Staff Comment - This section deals with the ability to impose appropriate conditions to an approval for a Conditional Use request. Conditions may include a time limit, specific limitation of use, landscaping requirements, etc.

Such conditions have been included under the Conditions of Approval (as appropriate for "Animal Keeping - Dogs").

.7120, "Conditional Use Approval Criteria", Subsection "(A)".

See Item 5. below.

.7140, "Conditional Uses Permitted"

This section sets forth standards for specific uses such as "Waterfront Uses" (MCC 11.15.7505), "Mineral Extraction" (MCC 11.15.7305), "Animal Keeping - Dogs" (MCC 11.15.7205), etc.

MCC 11.15.7205 thru .7235, "Animal Keeping - Dogs"

This section provides the specifics (such as locational requirements, site size requirements, setback requirements, etc).

These are addressed below, beginning with Item 6.

NOTE: The following portion of this report presents the findings with respect to the proposed request to keep up to six adult dogs on the premises.

The applicable "Approval Criteria" (per MCC 11.15.7015) will be shown in ***bold italics***.

The applicant's responses will be shown in *italics*.

Staff Comments will be shown in ordinary type style.

5. ***Conditional Use Approval Criteria (MCC 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. . . .”***

Staff Comment: The MUA-20 District (which allows dog kennels) does not have specific approval criteria.

The “Conditional Use Approval Criteria” listed under this section (ie: MCC 11.15.7120) are not applicable.

Special approval criteria for dog kennels are contained under MCC 11.15.7205 thru .7235, CU, “Animal Keeping - Dogs” which deals with “... the “keeping or raising of four or more dogs over six months of age ...”

These will be addressed under Items “6.” through “9.” below.

6. ***Locational Requirements (MCC 11.15.7210)***

***“These uses shall be permitted only in the following areas and only where they will not conflict with the surrounding property uses:”***

(A). ***In CFU, F-2, MUA-20, MUF, and RR districts or those of similar low population density.***

Staff Comment: The property meets the locational requirement for “Animal Keeping -Dogs” in that it is zoned MUA-20

7. ***Minimum Site Size Requirements (MCC 11.15.7215)***

(A), ***Area: Two acres***

Staff Comment: The site has 3.53 acres which exceeds the minimum requirement by 1.53 acres.

(B). ***Width Two hundred fifty feet***

Staff Comment: The site has an average width of 350 feet. The frontage along Mershon Road is approximately 400 feet. The southerly width is 310 feet. The minimum width requirement is exceeded by 100 feet.

**(C). Depth Two hundred fifty feet.**

Staff Comment: The site has an average depth of 460 feet. The depth along the westerly property line is 447 ft. The depth along the easterly property line is 474 ft. The minimum depth requirement is exceeded by 210 ft.

**8. Minimum Setback Requirements (MCC 11.15.7220)**

***These uses shall be located no closer than one hundred feet to any lot line, in or adjacent to an F, R, or A district.***

*"These uses shall be located no closer than one hundred feet to any lot line."*

Staff Comment: The applicant's statement indicates that this requirement has been or will be met. By being no closer than 100 feet to any lot line (of the subject property) they are automatically greater than 100 feet from any F, R, or A district. There are no properties zoned F, R, or A within one hundred feet of the subject property.

**9. Other Requirements (MCC 11.15.7230)**

**(A). "All kennels, runs or pens shall be constructed of masonry, . . ."**

*"The area is so constructed."*

Staff Comment: This requirement does not apply since no new buildings will be constructed. The existing kennel, not shown on the site plan, is constructed of masonry.

**(B). "All kennels, runs and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. . . ."**

*The site is so constructed."*

Staff Comment: This requirement does not apply since there are no additional facilities to be constructed.

The existing kennel facility is located so that it is not visible from Mershon Road. It is situated below the roadway level and is obscured by vegetation.

- (C). *The owner or operator of a use approved under this section shall maintain the premises in a clean, orderly and sanitary condition at all times. . . .”*

*“The applicant’s will be living on the property and will be responsible for ensuring that this section is complied with at all times.”*

Staff Comment: It is not anticipated that the three additional dogs (over the three allowed, for a total of six dogs) would create any significant problems regarding garbage, offal, feces, or other waste material.

Since no new buildings, pens, or runs are to be constructed for the three additional dogs, there should be no significant additional maintenance problems.

- (D). *A separate housing facility, pen or kennel space may be required for each dog over six months of age kept on the premises over twenty-four hours.*

*“The applicant’s will have sufficient space available to comply with this condition.”*

Staff Comment: No comment.

## 10. Columbia Gorge National Scenic Area

### A. Land Use Application Form

- (1). Dorothy Henderson submitted a “Land Use Application Form” to the Gorge Commission on April 2, 1992
- (2). The Gorge Commission responded by letter dated April 29, 1992 to her request for a Dog Kennel. They noted the following:
  - a. The proposed kennel was for her own pets and not for commercial boarding, grooming, or training.
  - b. No new structures were proposed.
  - c. It was concluded that the kennel as proposed was insignificant and was therefore approved.

### B. No conditions of approval are required by the Gorge Commission.

**11. Significant Environmental Concern**

- A. The subject property is in an area designated as Significant Environmental Concern.
- B. The purpose of the SEC District is to assure that any proposed changes to properties within this district will be in compliance with the goals as stated under MCC 11.15.6400, "Purposes"
- C. Since there are no changes being proposed at this time to the site, other than adding three household pets, an SEC Permit is not deemed to be necessary.
- D. If in the future, additional buildings are proposed, commercial boarding of dogs is proposed (ie: any activity which causes a significant impact to the site and/or the area), then an application for an SEC Permit would be appropriate.

**12. Applicable Comprehensive Plan Policies:**

**Policy 2 - Off-Site Effects**

Staff Comment: There are no conceivable off-site effects anticipated with the addition of three household pets.

**Policy 13 - Air, Water, and Noise Quality.**

Staff Comment: Air -

The addition of up to three additional dogs, in addition to the three presently there, should not affect the air quality to any appreciable degree. No significant additional emissions are anticipated.

Water -

Effects of the three additional dogs living on the property regarding water quality should also be insignificant. The existing subsurface sewage disposal system will not need to be enlarged.

Noise -

No appreciable increase in noise levels are expected due to the presence of three additional dogs..

## Policy 14 - Development Limitations

Staff Comments: The applicant has stated that there will be no additional development of the site in addition to what is already there.

Therefore any possible limitations of the site with respect to construction will not need to be put to the test.

## Policy 19 - Community Design

Staff Comment: Use -  
No change .

Landscaping -

Not applicable

Traffic and Parking Lot Lighting -

This section does not apply.

## Policy 31 - Community Facilities and Uses

Staff Comment: This section does not apply to the requested Conditional Use (ie: the keeping of three additional dogs as household pets).

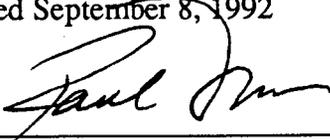
13. The Hearings Officer adopts the Staff's Findings as presented at the public hearing.

## CONCLUSIONS

1. Based upon the Findings, the proposal (subject to the Conditions of Approval), satisfies the criteria for approval of a Conditional Use.
2. The proposal, to have six dogs, which is three more per household than the ordinance allows (without special approval under the Conditional Use section of the Zoning Ordinance) causes the situation to be classified as a dog kennel by definition only.
3. The MUA-20 District provides for a Commercial Dog Kennel as a listed use. The requested use is for three additional dogs as household pets.
  - A. While this may be a "kennel" by definition, it does not make it a commercial kennel.
  - B. The approval limits the use to six adult dogs over six months of age.

4. The effect of keeping three additional dogs (as household pets) over and above the three allowed by ordinance is inconsequential. With respect to the Comprehensive Plan Policies:
  - A. The size of the property is 3.53 acres.
  - B. The effect upon air, water, and noise quality is not measurable.
  - C. There are no off-site effects.
  - D. There are no development limitations to be taken into account since no development is proposed.
5. The approval also limits the use of the property to the existing buildings. If additional buildings are proposed, an SEC permit must be obtained.
6. There will be no visible change in the appearance of the premises.

Signed September 8, 1992

By: 

Paul Norr, Hearings Officer

**Filed with the Clerk of the Board of County Commissioners on September 18 1992.**

#### **APPEAL TO THE BOARD OF COUNTY COMMISSIONERS**

Any person who appears and testifies at the public hearing hearing on Tuesday, September 8, 1992, or who submits written testimony in accord with the requirements on the prior Notice, and objects to the Hearings Officer's Decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. on Monday, September 28, 1992 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 S E Morrison Street.

The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 A M on Tuesday, September 29, 1992 in Room 602 of the Multnomah County Courthouse (1021 S W 4th Avenue). For further information 'phone the Multnomah County Planning and Development Office at 248-3043.

Meeting Date: September 29, 1992

Agenda No.: P-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Hearings Officer Decision

BCC Informal _____ (date)	BCC Formal _____ September 29, 1992 (date)
DEPARTMENT _____ DES	DIVISION _____ Planning
CONTACT _____ Sharon Cowley	TELEPHONE _____ 2610
PERSON(S) MAKING PRESENTATION _____	Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

CU 17-92 Review the Decision of the Hearings Officer of September 8, 1992, approving, subject to conditions, requested conditional use request for a non-resource related single family dwelling in the Multiple Use Forest zoning district, for property located at 5080 NW Cornell Road

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER *[Signature]*

(All accompanying documents must have required signatures)

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 21 PM 2:25  
MULTNOMAH COUNTY  
OREGON



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

## DECISION

September 8, 1992

This Decision consists of Conditions, Findings, and Conclusions.

CU 17-92, #134

### Conditional Use Request (Non-resource Residence in MUF-19 District)

Applicant requests conditional use approval to construct a single family residence in the Multiple Use Forest District. The 8.83-acre site is located on the south side of NW Cornell Road, immediately east and south of the Portland Audubon Society Center. The Portland city limits abuts the property on the north and part of the east boundary. The site is characterized by steep slopes, mostly forested with Fir and deciduous trees. The proposed house is in the northern part of the property, about 150-feet from Cornell Road.

**Location:** 5080 NW Cornell Road

**Legal:** Tax Lots '30' and '59', Section 31, 1N-1E, 1991 Assessor's Map

**Site Size:** 8.83 Acres                      **Size Requested:** Same

**Property Owner:** George and Betty Barton  
2559 NW Overton Street, Portland 97210

**Applicant:** K.J. Won, AICP – Planning Consultant  
8835 SW Canyon Lane, Suite 135-L; Portland 97225

**Comprehensive Plan:** Multiple Use Forest

**Zoning:** MUF-19; Multiple Use Forest District

**Proposal:** Conditional Use approval to establish a Non-resource Residence in the MUF-19; Multiple Use Forest District

#### HEARINGS OFFICER

**DECISION:** APPROVE, SUBJECT TO CONDITIONS, the requested Conditional Use for a Non-resource Residence in the Multiple Use Forest District; based on the following Findings and Conclusions.

CU 17-92





# Site Plan

# Exhibit A

Scale: 1"=100'

6-26-92

CU 17-92

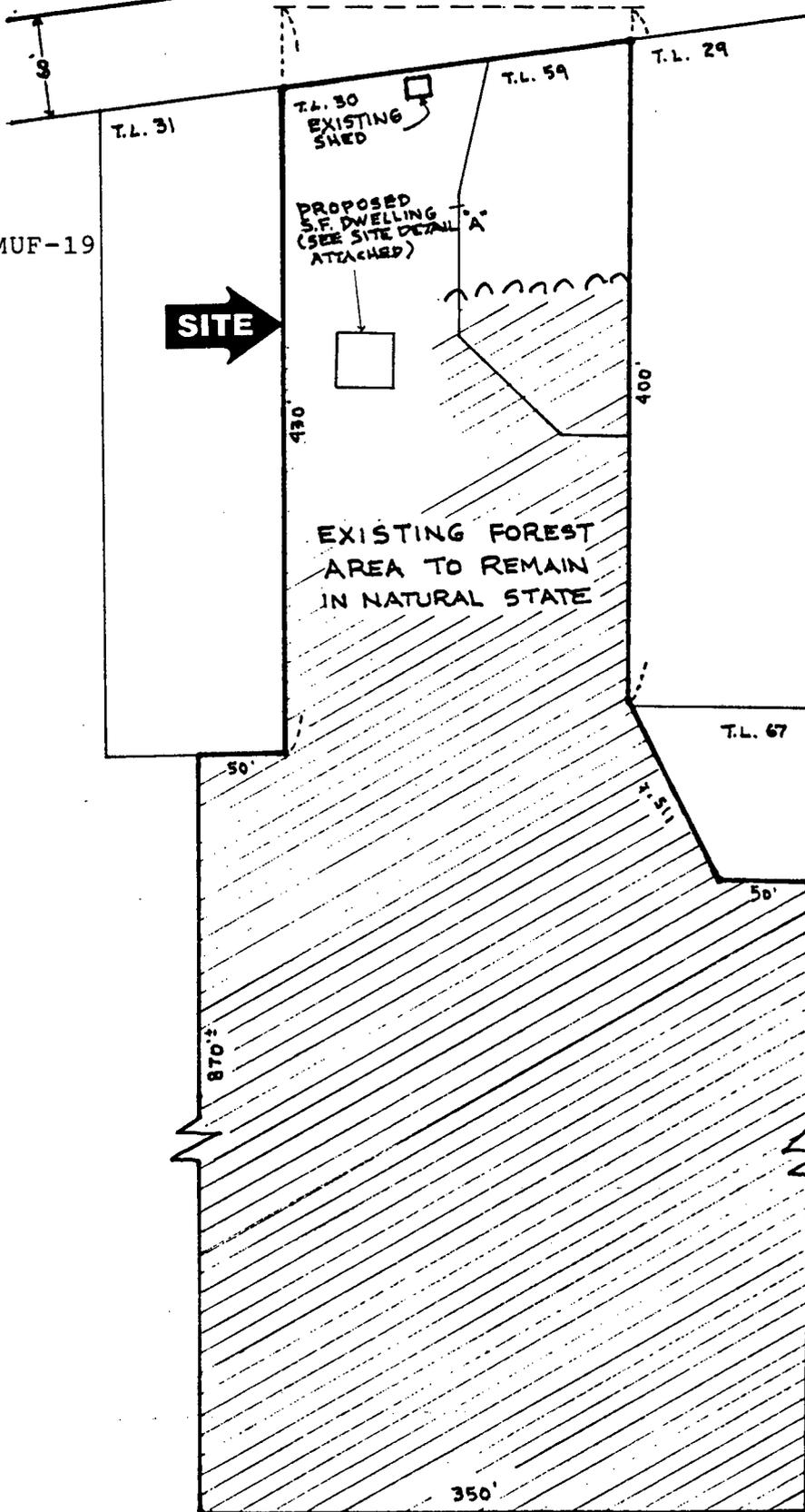
Legal Description: 1N 1E 31 T.L. 30 & 59

Site Area: 8.83 acres

NW CORNELL ROAD

Zoning: MUF-19

**SITE** →



### LEGEND

DENOTES STEEP SLOPE (20% OR MORE)

### Applicant:

K.J. Won, AICP  
Planning Consultant  
8835 SW Canyon Lane  
Suite 135-L  
Portland, OR 97225

### Property Owners:

George & Elizabeth  
Barton  
2559 NW Overton St.  
Portland, OR 97210-  
2440



## CONDITIONS OF APPROVAL

1. Prior to the issuance of building permits, provide the Planning Division a copy of the recorded restrictions required under MCC § .2012(B)(3)(j). A prepared form is available at the Planning Office.
2. Prior to issuance of a Building Permit for the house, obtain applicable permits or approvals of any driveway access improvements and/or restrictions in the Cornell Road Right-of-Way.
3. Prior to initiating any land disturbing activities, including grading, filling, or tree clearing, obtain a *Hillside Development Permit* or a *Grading and Erosion Control Permit* pursuant to MCC § .6710. All land disturbing activities shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun [ref MCC .6730(A)(2)(o)].
4. Prior to issuance of Building Permits, consolidate both properties into a single Tax Account (unless prevented by contract sales, mortgage terms, or other limits). Contact the County Assessment and Taxation Office at 248-3345 for assistance.
5. Only one single family residence is authorized on the entire Lot of Record. The existing "cabin" south of the proposed house site may not be occupied as a separate dwelling.

## FINDINGS

### 1. PROPOSAL AND SITE DESCRIPTION

Applicant proposes to construct a non-resource residence on an 8.83-acre property in the Multiple Use Forest District. The subject site is located on the south side of NW Cornell Road, immediately east and south of the Portland Audubon Society Center. The Portland city limits abuts the property on the north and part of the east boundary. The site is characterized by steep slopes forested with a mix of Fir and deciduous trees. The proposed house site is in the northern part of the property, about 150-feet from the Cornell Road frontage. An existing shed is situated near the road. Applicant indicates the gravel driveway on the site extends uphill to a "cabin", south of the proposed house site (not shown on site plans). Neither structure appears on County Tax Assessment descriptions [R-94131-0300; R-94131-0590].

Excerpts from the applicant's "Description of Proposal" provide additional information on the land use request and site conditions:

*"The applicant is requesting approval of a conditional use permit to allow a non-resource related single-family dwelling on adjoining properties classified as Multiple Use Forest MUF-19. The combined size of both properties amounts to 8.83 acres, and they are located on the south side of NW Cornell Road across from Macleay Park and near the Pittock Bird Sanctuary. The legal descriptions for these properties are 1N 1E Sec. 31, Tax Lots 30 and 59.*

*"Much of the site is densely wooded with a mixture of evergreen and deciduous trees, i.e., Douglas Fir, cedar, alder, maple, et. al. The site also exhibits a steep topography (20% slope or greater) on interior locations. However, the front portion of the site is open and mildly sloping upward from NW Cornell Road. This open area comprises the front half of T.L. 59, and most of the area is presently utilized as a family garden. There is also a small, old wood frame accessory building on T.L. 30 near the Cornell Road frontage..."*

## 2. PLAN AND ZONE DESIGNATIONS

The site is designated Multiple Use Forest on the Comprehensive Plan Map. The zoning designation is MUF-19 (Multiple Use Forest District).

## 3. ORDINANCE CONSIDERATIONS

Conditional uses allowed in the Multiple Use Forest District are specified in MCC 11.15.2172. Subsection (C) specifies ***"Residential use, not in conjunction with a primary use listed in MCC .2168...."*** Approval standards are specified in MCC .2172(C)(1-6).

## 4. EVALUATION OF THE NON-RESOURCE RESIDENCE REQUEST [MCC 11.15.2172(C)]

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

- A. A residential use, not in conjunction with a forest or farm use, may be permitted in the MUF zoning district as a Conditional Use subject to the following findings:

***(1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).***

*"The subject site satisfies the Lot of Record requirements as prescribed under MCC 11.15.2182 (3), i.e., contiguous parcels under same ownership as documented in Exhibit B. The site area is 8.83 acres, which is the Lot of Record size." (Application, pg. 2)*

**Staff Comment:** In addition to Exhibit B, applicant provides a copy of the deed to Tax Lot '59', verifying that both parcels are in the same ownership. Staff concurs that the two parcels are a single 8.83-acre "Lot of Record" in the MUF-19 District pursuant to MCC .2182. Condition #4 requires consolidation of the two tax accounts. The proposal satisfies this criteria.

**(2) The land is incapable of sustaining a farm or forest use, based upon one of the following:**

**(a) A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;**

**(b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or**

**(c) The lot is a Lot of Record under MCC 11.15.2192(A) through (C) and is ten acres or less in size.**

*"One of the adopted criterion for making this determination is that the lot of record be ten acres or less in size. As specified in paragraph 1 above, the Lot of Record is 8.83 acres in size, so this circumstance satisfies the criterion."*  
(Application, pg. 2)

**Staff Comment:** Staff concurs.

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

*"While much of the surrounding area is open space, there are existing single-family dwellings located on adjacent properties to the east, i.e., T.L. 29 (0.42 ac.), T.L. 55 (1.90 ac.) and T.L. 64 (2.09 ac.). The location of the proposed dwelling would be in the vicinity of these existing houses and away from the prime forest area. Also, by locating in the lower slope area, the proposal will have a minimal environmental impact in terms of soil/slope disturbance and tree removal.*

*"The dwelling site is not located in a slide hazard location according to the*

*County's geologic survey conducted for this area. In addition, the existing vegetation which presently screens the site from Cornell Road and adjacent residential properties will remain in place. Thus, from a visual standpoint, the property will appear relatively unchanged from the street view or adjacent properties." (Application, pg. 2)*

**Staff Comment:** Primary Uses in the MUF-19 District include private conservation areas for protection of wildlife and forest resources [MCC .2168(D)]. Portland Audubon Society owns Tax Lots '31' and '32', immediately west of the subject site. Audubon's MUF-19 property is primarily a forest conservation area, however, the north portion, near Cornell Road, includes Community Service uses (*i.e.*, trails, caretaker's house, and a 14-car parking lot and maintenance building under construction).

The Audubon Society center has operated on a site to the north for several years (inside Portland city limits). In May, 1992, the County approved CS 6-92, allowing expansion of Audubon facilities into the MUF-19 District, and on the south side of Cornell Road.

The proposed non-resource residence would be sited approximately 100 to 150-feet from Audubon's caretaker house on Tax Lot '32'. The caretaker house lies west of the proposed house, and is approximately 120-feet south of Cornell Road (ref. CS 6-92 plan maps).

The proposed non-resource residence on the subject site is compatible with resource uses on nearby lands in the MUF-19 District. The subject parcel is part of an rural resource enclave characterized by forest conservation areas, mixed with rural residential development. The 8.83-acre property is too small to be used for commercial agriculture or timber production. The 0.87-acre property immediately east has a single residence located a similar distance south of Cornell Road as is proposed on the subject site. Development of a single residence on the north portion of the property reinforces a pattern of low density urban and rural residences, and mixed CS uses clustered along Cornell Road; with the steeper forest slopes to the south and west devoted to resource conservation and passive recreation or educational use. The proposal, as conditioned satisfies this criteria.

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

*"The proposal does not require the provision of public services other than the existing ones for the area. In fact, the essential needs of water and sewage disposal will be provided on-site by a private well and septic tank/drainfield system. Utilities such as electricity, natural gas and telephone service are present-*

ly serving the area. Police protection is provided by the County Sheriff; fire protection by Fire District #1; public school education by the Portland School District."

**Staff Comment:** Staff concurs. Transportation Division Staff have not commented on the proposal as of this writing. However, Planning Staff observes that NW Cornell Road is improved to a rural-road standard (i.e., paved width for two travel lanes, gravel shoulders, no curbs or sidewalks). Condition #2 requires that applicable Right-of-Way approvals be secured for any access changes, and prior to issuance of building permits.

- (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.**

*"This action will be accomplished following final CUP approval by the County."*

**Staff Comment:** Condition #1 requires the owner to record the forest zone restrictions prior to issuance of building permits for the house.

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

**MCC .2194 stipulates that residences located in the MUF district after August 14, 1980 shall comply with the fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:**

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

*"The proposed use will adhere to the "Fire Safety Considerations for Development in Forested Areas" as published by the Northwest Interagency Fire Prevention Group, namely:*

- 1) Maintaining fire lanes at least 30 feet wide between the residential structure and the adjacent forested area; and*
- 2) Maintaining a water supply and fire fighting equipment sufficient to prevent fire from spreading from the dwelling to the adjacent forested area."*

**Staff Comment:** Planning Staff reviews building plans for compliance with forest zone restrictions prior to issuance of building permits.

- (b) *An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;***

*"An access drive at least 16 feet in width shall be maintained from the property access road to a perennial water source on the property."*

**Staff Comment:** There is no perennial water source identified on the site. Planning Staff reviews building plans for compliance with forest zone restrictions prior to issuance of building permits.

- (c) *The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC II.15.2058(B). The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;***

*"The site topography and location of the existing open area and driveway dictated the proposed dwelling's location on the site. This location provides a front setback of approximately 150 feet, which is in relatively close proximity to Cornell Road.*

*"The driveway serving the proposed dwelling will extend approximately 150 feet into the site. Thus, an explanation of physical limitation requiring a driveway in excess of 500 ft. does not apply in this case."*

**Staff Comment:** Planning Staff reviews building plans for compliance prior to issuance of building or grading permits.

- (d) *The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;***

*The proposed dwelling will be located on that portion of the site which was cleared in past years. The forestry areas are located on the upper slopes within the site and represent a higher land productivity, i.e., timber production compared to the open area (family garden).*

**Staff Comment:** No information was presented concerning soils, drainage or terrain relative to agricultural or forest suitability. However, based upon the location and size of the parcel, it is generally unsuitable for the production of farm crops, livestock, or commercial forest use. The criteria is met.

**(e) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:**

- i) a setback of 30 feet or more may be provided for a public road, or**
- ii) the location of dwelling(s) of adjacent lots at a lesser distance which allows for clustering of dwellings or sharing of access;**

*"The entire width dimension of the site at the building location is approximately 200 ft. Therefore, it is not possible to provide a 200 ft. setback to side lot lines. Moreover, the location of dwellings on adjacent lots to the east appear to have side yard setbacks of less than 200 ft.*

*"The proposed dwelling would be located in the vicinity of the existing houses and thereby provide for a clustering of dwellings at a lesser distance than 200 ft. as allowed under MCC 11.15.2194 (F) (2). The proposal does comply with the 30 ft. or more setback from a public road and the 200 ft. setback which is possible to the rear site boundary."*

**Staff Comment:** Refer to findings above for 4(A)(3) regarding compatibility with primary uses in the MUF District. Given the location, shape and size of the parcel, the proposed house site is consistent with the above criteria.

**(f) The dwelling shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 446.200, relating to mobile homes;**

*"Construction will comply with the appropriate Building Code standards and requirements."*

**Staff Comment:** The Portland Building Bureau administers the Building Code for this part of Multnomah County. Permits and inspections by Portland's building office will assure compliance.

**(g) The dwelling shall be attached to a foundation for which a building permit has been obtained;**

*"The proposal will adhere to the requirement that the dwelling be attached to a foundation for which a building permit has been obtained."*

**Staff Comment:** Reference the finding immediately above [item (f)].

**(h) The dwelling shall have a minimum floor area of 600 square feet; and**

*"The proposed dwelling will have more than 900 sq. ft. of floor area and thereby exceeds the minimum requirement of 600 sq. ft."*

**Staff Comment:** Planning Staff reviews building plans for compliance prior to issuance of building permits.

**(i) The dwelling will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.**

*"According to the County staff, the site is not located within a big game habitat area."*

**Staff Comment:** The site is not designated a Big Game Winter Habitat by the Comprehensive Plan or the Oregon Department of Fish and Wildlife. The criteria is met.

5. The Hearings Officer adopts the Staff's Findings as presented at the public hearing.

#### CONCLUSIONS

The proposed Conditional Use generally complies with approval criteria for a non-resource related residence in the MUF-19 District. Conditions of Approval are necessary to assure that the proposed development complies with applicable Zoning Code provisions and criteria.

Signed September 8, 1992



By Paul Norr, Hearings Officer

Filed With the Clerk of the Board on September 18, 1992

#### Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. on Monday, September 28, 1992 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

*The Decision on this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, September 29, 1992 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development Division at 248-3043.*

Meeting Date: September 29, 1992

Agenda No.: P-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: Hearings Officer Decision

BCC Informal \_\_\_\_\_ (date) BCC Formal September 29, 1992 (date)

DEPARTMENT DES DIVISION Planning

CONTACT Sharon Cowley TELEPHONE 2610

PERSON(S) MAKING PRESENTATION Planning Staff

ACTION REQUESTED:

INFORMATIONAL ONLY  POLICY DIRECTION  APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 2 Minutes

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

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

CU 18-92 Review the Decision of the Hearings Officer of September 8, 1992, approving, subject to conditions, conditional use request to allow development of this 4.45-acre Lot of Record with a non-resource related single family dwelling, for property located at 18375 NW Johnson Road

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 21 PM 2:25  
MULTNOMAH COUNTY  
OREGON

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)



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

## **Decision**

This Decision consists of Conditions, Findings of Fact and Conclusions

**September 8, 1992**

**CU 18-92, #34**

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

Applicant requests Conditional Use approval for a non-resource related single family dwelling on this 4.45 acre Lot of Record in the MUF-19 zoning district..

**Location:** 18375 NW Johnson Road

**Legal:** Tax Lot '26', Section 14, 2N, 2W, 1991 Assessor's Map

**Site Size:** 4.45 acres'

**Size Requested:** Same

**Property Owner:** Joseph and Dolores Satchell  
18425 NW Skyline Blvd.  
Portland, OR 97231

**Applicant:** Same

**Comprehensive Plan:** Multiple Use Forest

**Present Zoning:** MUF-19, Multiple Use Forest District

**Hearings Officer**

**Decision:** Approve, subject to conditions, development of this 4.45-acre Lot of Record with a non-resource related single family dwelling, based on the following Findings and Conclusion.

**CU 18-92**

**Zoning Map**  
 Case #: CU 18-92  
 Location: 18375 NW Johnson Road  
 Scale: 1 inch to 400 feet (approximate)  
 Shading indicates subject property  
 SZM #: 34; Section 14, T.2N., R.2W., WM.

**MUF-38**

**CFU**

**-80**

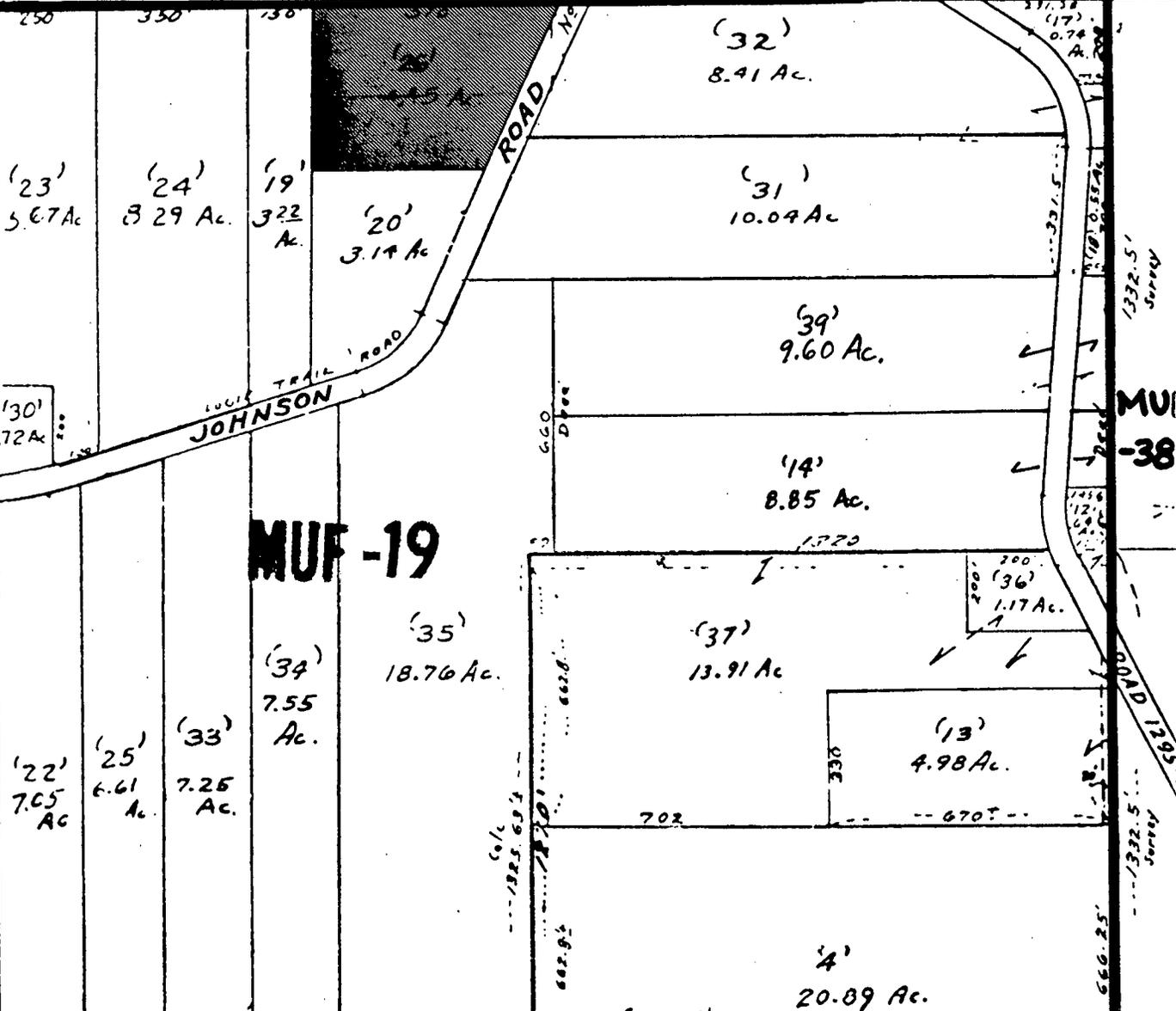
**MUF -38**

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**C/S**  
 15  
**MUF -19**

**MUF**

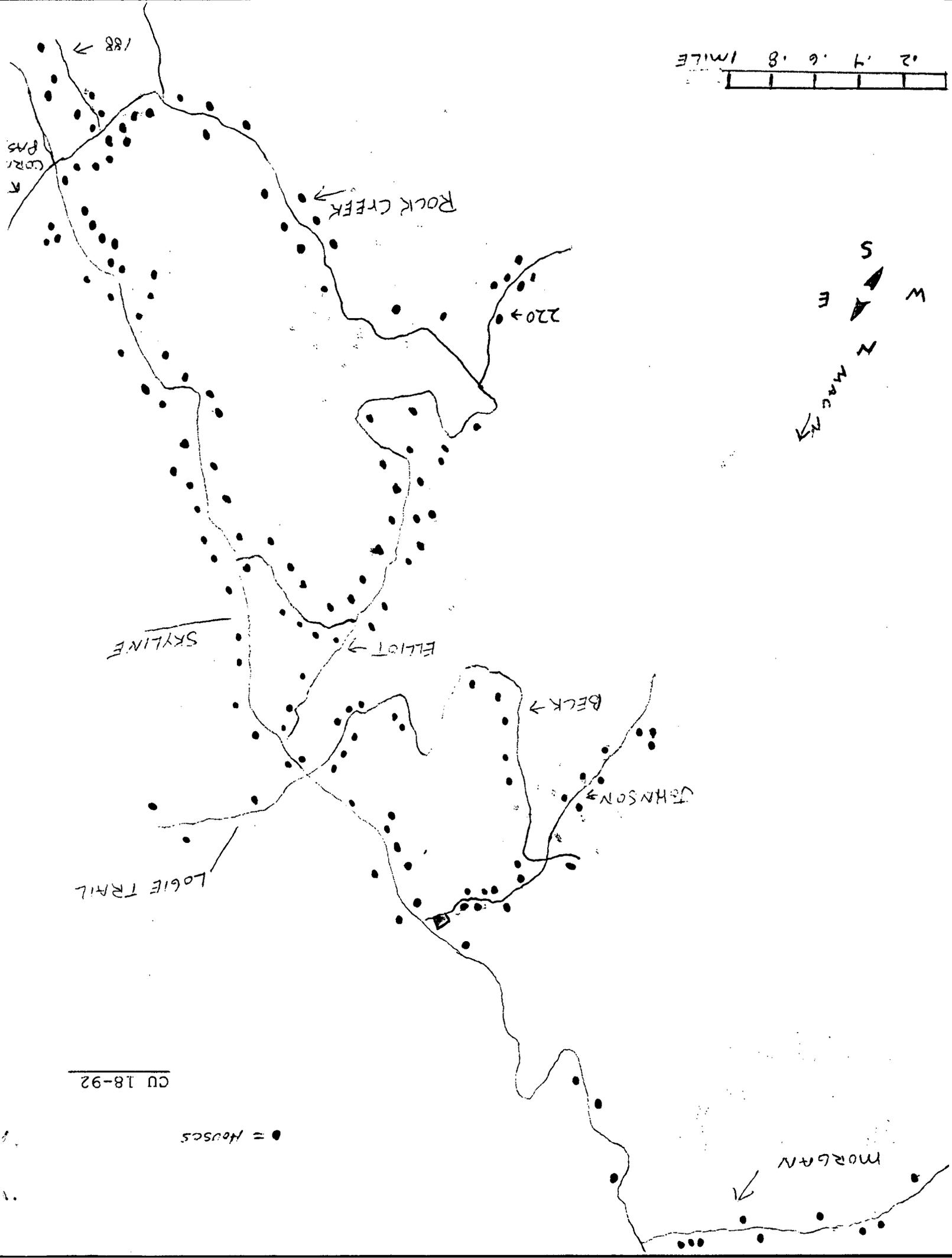
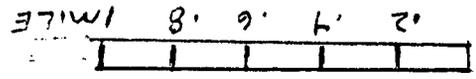
**-38**



**MUF -19**

**MUF -38**



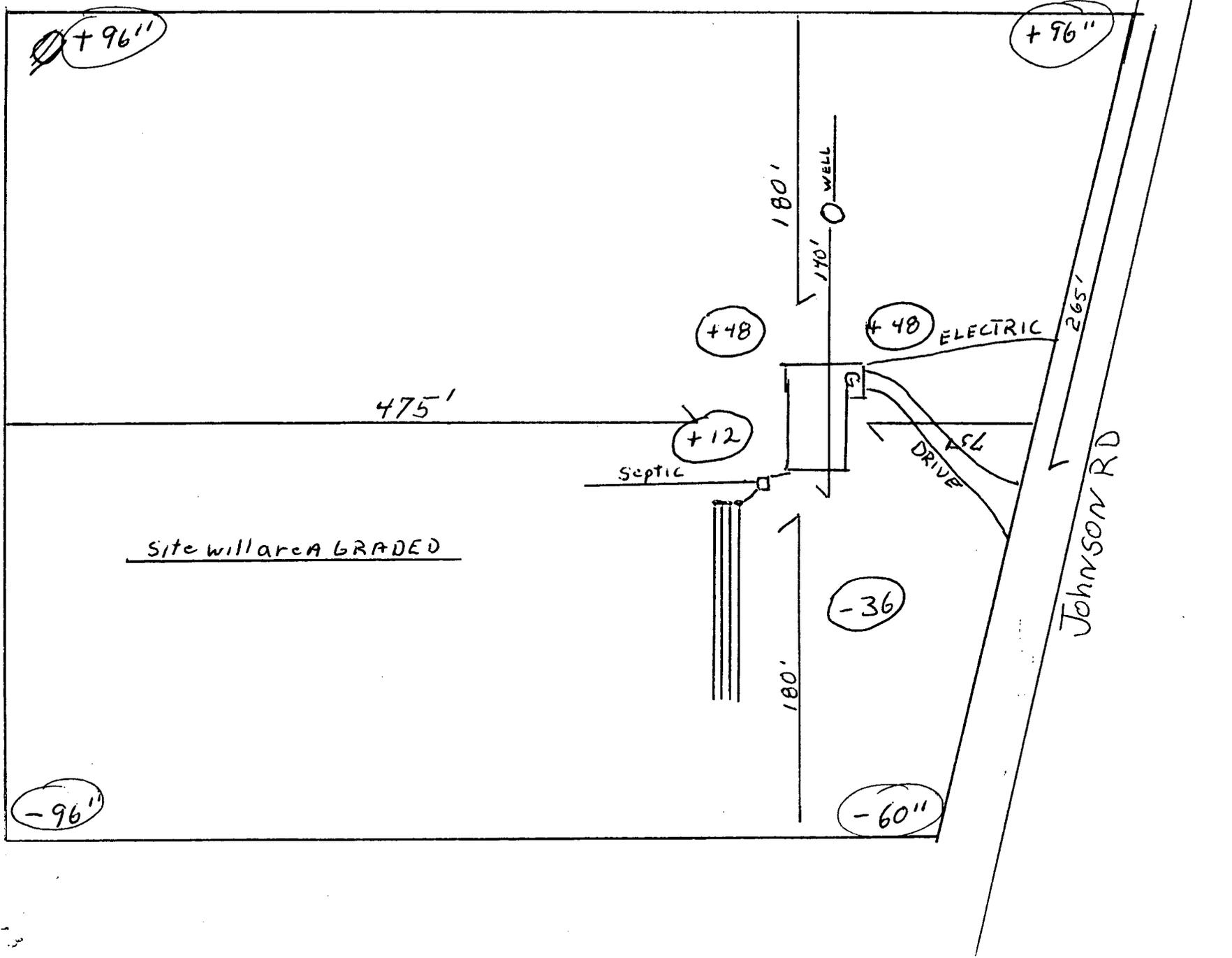


CU 18-92

● = HOUSES

CU 18-92

N ↑



+96"

+96"

475'

Site will be GRADED

+48

+48

ELECTRIC

+12

SEPTIC

DRIVE

265'

Johnson RD

-36

-96"

-60"

180'

140'

WELL

180'

## CONDITIONS OF APPROVAL:

1. Prior to any site clearing or grading, obtain a *Hillside Development and Erosion Control Permit* pursuant to MCC .6700-6730 if applicable. Contact the Planning Division at 248-3043 for application materials.
2. The final site plan shall demonstrate compliance with the Residential Use Development Standards of MCC .2194.

## FINDINGS OF FACT:

### 1. Applicant's Proposal:

The applicant requests Hearings Officer approval to develop the above described 4.45 acre Lot of Record with a non-resource related single family dwelling.

### 2. Ordinance Considerations:

- A. A non-resource related single family dwelling is permitted in the MUF zoning district as a Conditional Use [MCC .2172(C)] where it is demonstrated that:
  - (1) The lot size shall meet the standard of MCC 11.15.2178(A) or .2182(A) to (C).
  - (2) The land is incapable of sustaining a farm or forest use, based upon one of the following:
    - a) A Soil Conservation Service Agriculture Capability Class of IV or greater for at least 75% of the lot area, and physical conditions insufficient to produce 50 cubic feet/acre/year or any commercial trees species for at least 75% of the area;
    - b) Certification by the Oregon State University Extension Service, the Oregon Department of Forestry, or a person or group having similar agricultural and forestry expertise, that the land is inadequate for farm and forest uses and stating the basis for the conclusions; or
    - c) The lot is a Lot of Record under MCC 11.15.2182(A) through (C) and is ten acres or less in size.
  - (3) A dwelling, as proposed, is compatible with the primary uses as listed in MCC 11.15.2168 on nearby property and will not interfere with the resources or the resource management practices or materially alter the stability of the overall land use pattern of the area.
  - (4) The dwelling will not require public services beyond those existing or programmed for the area.
  - (5) The owner shall record with the Division of Records and Elections a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct accepted forestry or farming practices.

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

B. A residential use located in the MUF district after August 14, 1980 shall comply with the following (MCC.2194):

- (1) The fire safety measures outlined in the "Fire Safety Considerations for Development in Forested Areas", published by the Northwest Inter-Agency Fire Prevention Group, including at least the following:
  - a) Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and
  - b) Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;
- (2) An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot;
- (3) The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC 11.15.2178(B).
- (4) The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval;
- (5) The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subpart #3 above;
- (6) Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:
  - a) A setback of 30 feet or more may be provided for a public road, or
  - b) The location of dwelling(s) of adjacent lot(s) at a lesser distance which allows for the clustering of dwellings or the sharing of access;
- (7) Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
- (8) The dwelling shall be attached to a foundation for which a building permit has been obtained;
- (9) The dwelling shall have a minimum floor area of 600 square feet; and
- (10) The dwelling shall 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.

### 3. Site and Vicinity Characteristics:

The subject property is a Lot of Record 4.45 acres in size located on the west side of NW Johnson Road just south of Skyline Boulevard. The property is heavily wooded except for an area near Johnson Road which has been logged in the past. There is a 76 acre wooded parcel adjacent to the north, while the rest of the surrounding area is more parcelized with lots ranging in size from 3 to 20 acres, many containing rural residences.

The tentative site plan indicates compliance with the Residential Location Standards of the MUF zone. Water will be provided by private well, and the property has been found to be suitable for an alternative capping fill septic system. Telephone and power facilities are available along the Johnson Road frontage.

### 4. Compliance With Ordinance Considerations:

The applicant provides the following responses (in *italic*) to the applicable approval criteria:

#### 1. Lot Size Requirements

*This lot, Sec.14, T.S. 2N, R, 2W of W.M., Multnomah County Oregon, has lot of record status in compliance with MCC.2178 (A). Copy of the deed and Mult. Co. Div. of AT. printout is provided.*

Staff Comment: The parcel does not meet the dimensional requirement of 19 acres required by MCC.2178 (A). However, it is a Lot of Record under MCC.2182 (A) (2), thus meeting the required lot size standard.

#### 2. Land Incapable of Sustaining Farm or Forest Use

*No applicant response.*

Staff Comment: The parcel is a Lot of Record under MCC.2182 (A)(2) and is less than ten acres in size, so is incapable of sustaining a farm or forest use.

#### 3. Dwelling Compatible with Primary Uses in the Area

*This dwelling will be compatible with existing neighborhood as the 9 closest houses on Johnson road are built on an average of 7.3 acres. This site has an existing clear cut area of apr. 1 acre. No other intrusion will be necessary on remaining 3.45 acres.*

Staff Comment: Within a one mile vicinity, the majority of the area is in large forested parcels zoned MUF-38 and CFU, although the quarter section containing the subject property is parcelized into smaller lots ranging in size from 3 to 20 acres. The majority of these smaller parcels contain rural residences, so an additional dwelling in this area will not change the overall land use pattern. The proposed location of the new dwelling is on the southern portion of the parcel near Johnson Road, providing over 400 feet of buffer area between the dwelling and the large parcel to the north. Consequently the dwelling will not interfere with forest practices occurring in the area.

4. Public Services Other than Those Existing not Required

*Public services: Electricity at site (PGE) Telephone at site (U.S. West) School dist. (Portland public schools) Garbage service (Cedar Mills) Fire protection (Skyline Dist. 20)*

Staff Comment: A private well is proposed, and the site has been approved for an alternative type sewage disposal system. Johnson Road is a county maintained road and is capable of handling the traffic from an additional single family residence. No additional public services would be required.

5. Owner Record Acknowledgment of Forestry or Farming Practices

*A statement as to the rights of property owners to conduct forestry and farming practices has been recorded and is provided.*

Staff Comment: A signed and notarized deed restriction is on file.

6. Residential Use Development Standards

A. Fire Safety Measures

*Fire lanes will exceed 30 ft.*

B. Access Drive to Water Source, Water Supply and Fire Fighting Equipment

*Skyline dist. 20 has tanker stationed 1/4 mile S. on Johnson rd. There is no perennial water supply.*

C. Dwelling Located Close to a Publicly Maintained Street

*This dwelling will be located 75 to 100 ft. off Johnson rd.*

D. Driveway Less than 500 Feet

*Driveway will be less than 100 ft.*

E. Dwelling Location on Lot Portion Having Lowest Productivity

*The portion of land to be used is a clearing and no other intrusions will be needed.*

F. Building Setbacks of at least 200 Feet When Possible.

*This lot is 400 ft. by 750 ft. the dwelling will be centered on lot.*

G. Building Code Standards

*Adair Homes Inc. will meet all building codes to obtain needed permits.*

H. The dwelling shall be attached to a foundation for which a building permit has been obtained.

*This dwelling will be attached to a foundation as permit plans indicate.*

I. The dwelling shall have a minimum floor area of 600 square feet.

*This dwelling will have 2440 sft. as permit plans indicate.*

J. The dwelling shall be located outside of a big game habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.

*This site is not a big game habitat area.*

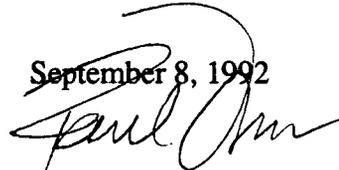
Staff Comment: Condition #2 will assure that the development standards are met.

6. The Hearings Officer adopts the Staff's Findings as presented at the public hearing.

### CONCLUSIONS:

1. The subject property is a Lot of Record less than ten acres in size, thereby incapable of sustaining a farm or forest use.
2. Conditions are necessary to insure compliance with all Code provisions.
3. The applicant has carried the burden necessary for the approval of a non-resource related single family dwelling in the MUF-19 zoning District.

September 8, 1992



By: Paul Norr, Hearings Officer

**Filed with Clerk of the Board on September 18, 1992**

### Appeal to the Board of County Commissioners

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. September 28, 1992 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

*The Decision in this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, September 29, 1992 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development at 248-3043.*

**Decision**

**September 8, 1992**

Meeting Date: ~~September 22, 1992~~ **SEP 29 1992**

Agenda No.: P-4 P-5

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM  
(For Non-Budgetary Items)

SUBJECT: MC 2-92/LD 25-92 Decision

BCC Informal _____ (date)	BCC Formal <u>September 22, 1992</u> (date)
DEPARTMENT <u>DES</u>	DIVISION <u>Planning</u>
CONTACT <u>Sharon Cowley</u>	TELEPHONE <u>2610</u>
PERSON(S) MAKING PRESENTATION _____	<u>David Prescott</u>

ACTION REQUESTED:

INFORMATIONAL ONLY       POLICY DIRECTION       APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 30 Minutes

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

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

MC 2-92/LD 25-92 Review the Decision of the Hearings Officer of August 3, 1992, approving, subject to conditons, a tentative plan for a Type II land division, a partition resulting in two lots plus approval subject to conditons, use of easements as the means of access to the new lot instead of providing frontage on a dedicated street as required in the MUF-19 zoning district (MCC 11.15.2188), all for property located at 7025 NW Summitview Court.

This Decision has been appealed by the opposition

(If space is inadequate, please use other side)

SIGNATURES:

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

Or

DEPARTMENT MANAGER 

(All accompanying documents must have required signatures)

BOARD OF COUNTY COMMISSIONERS  
1992 SEP 15 PM 4:51  
MULTNOMAH COUNTY  
OREGON



# 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  
GLADYS McCOY • CHAIR OF THE BOARD  
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
RICK BAUMAN • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

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**Date: 09/22/92    Time: 9:30 a.m.    Place: Room 602, Multnomah County Courthouse**

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**MC 2-92    Public Hearing - On The Record**  
**LD 25-92**

Review the Decision of the Hearings Officer of August 3, 1992, approving, subject to conditions, tentative plan for a type I land division, a partition resulting in two lots and approving, subject to conditions, request to use easements as the means of access to the new lot instead of providing frontage on a dedicated street, as required in the MUF-19, multiple use forest zoning district, per MCC 11.15.2188 all for property located at 7025 NW Summerview Court.

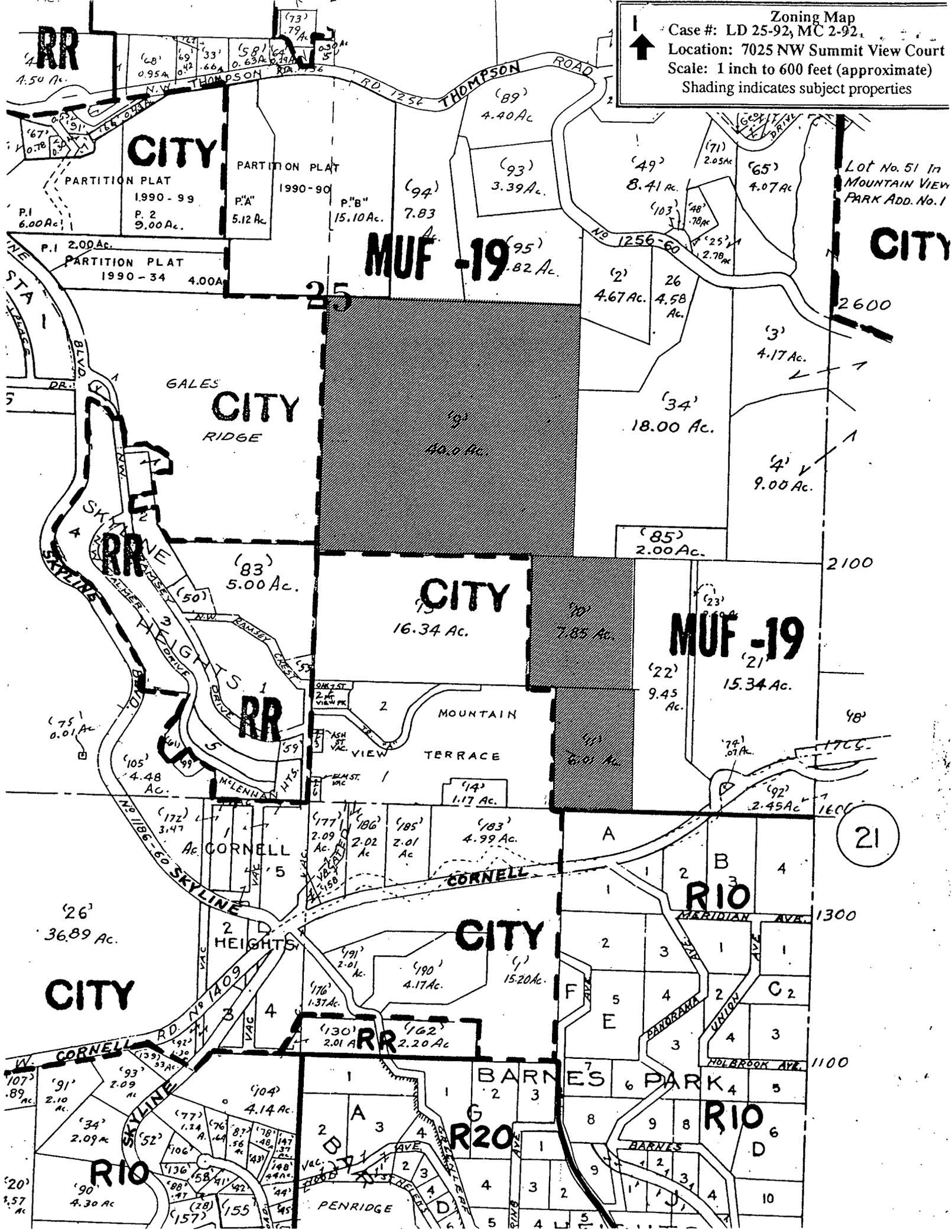
## **Scope of Review**

On The Record

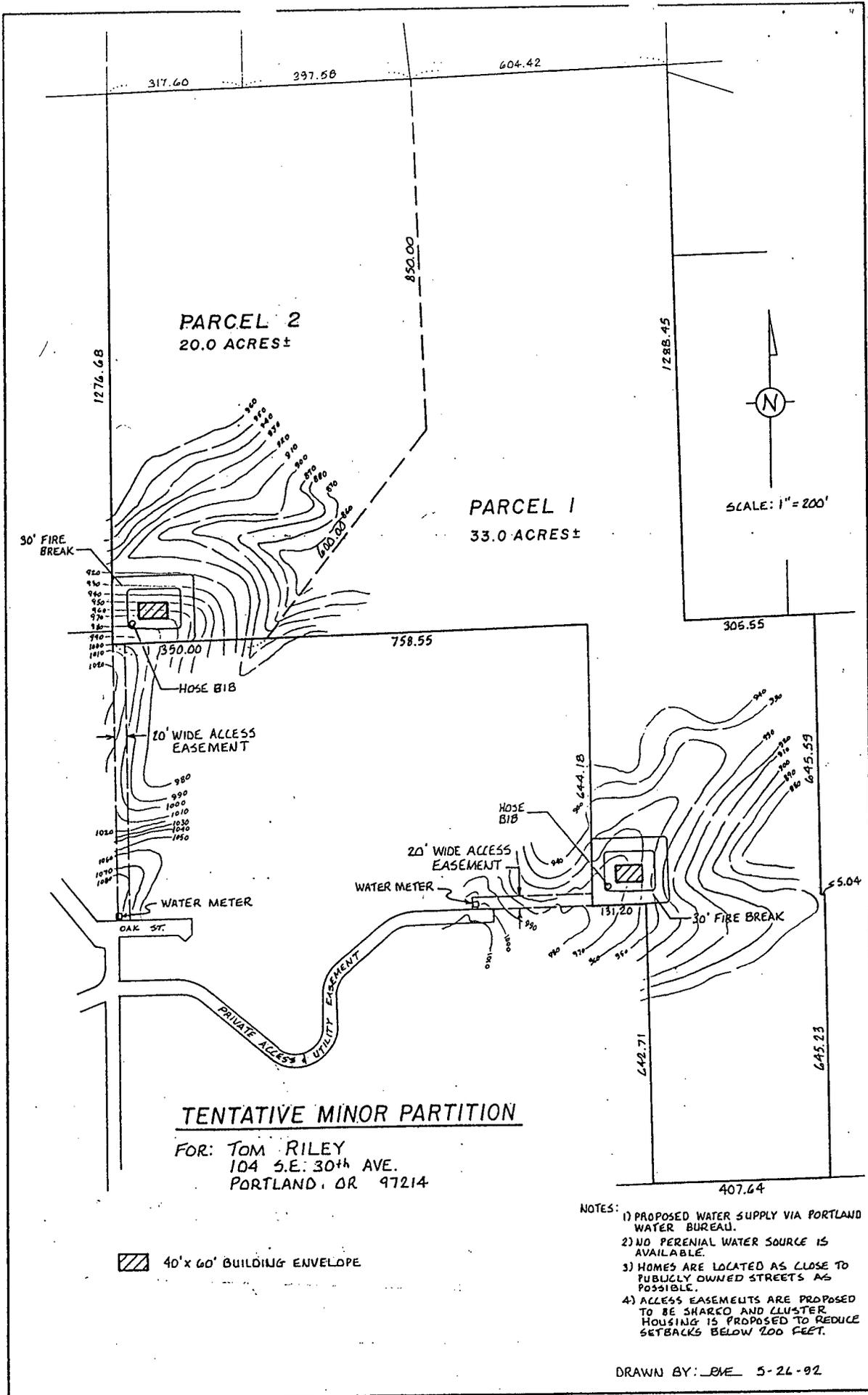
## **Oral Argument**

Each side has 10 minutes per side to present oral argument to the Board

Zoning Map  
 Case #: LD 25-92, MC 2-92,  
 Location: 7025 NW Summit View Court  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject properties







**TENTATIVE MINOR PARTITION**

FOR: TOM RILEY  
 104 S.E. 30th AVE.  
 PORTLAND, OR 97214

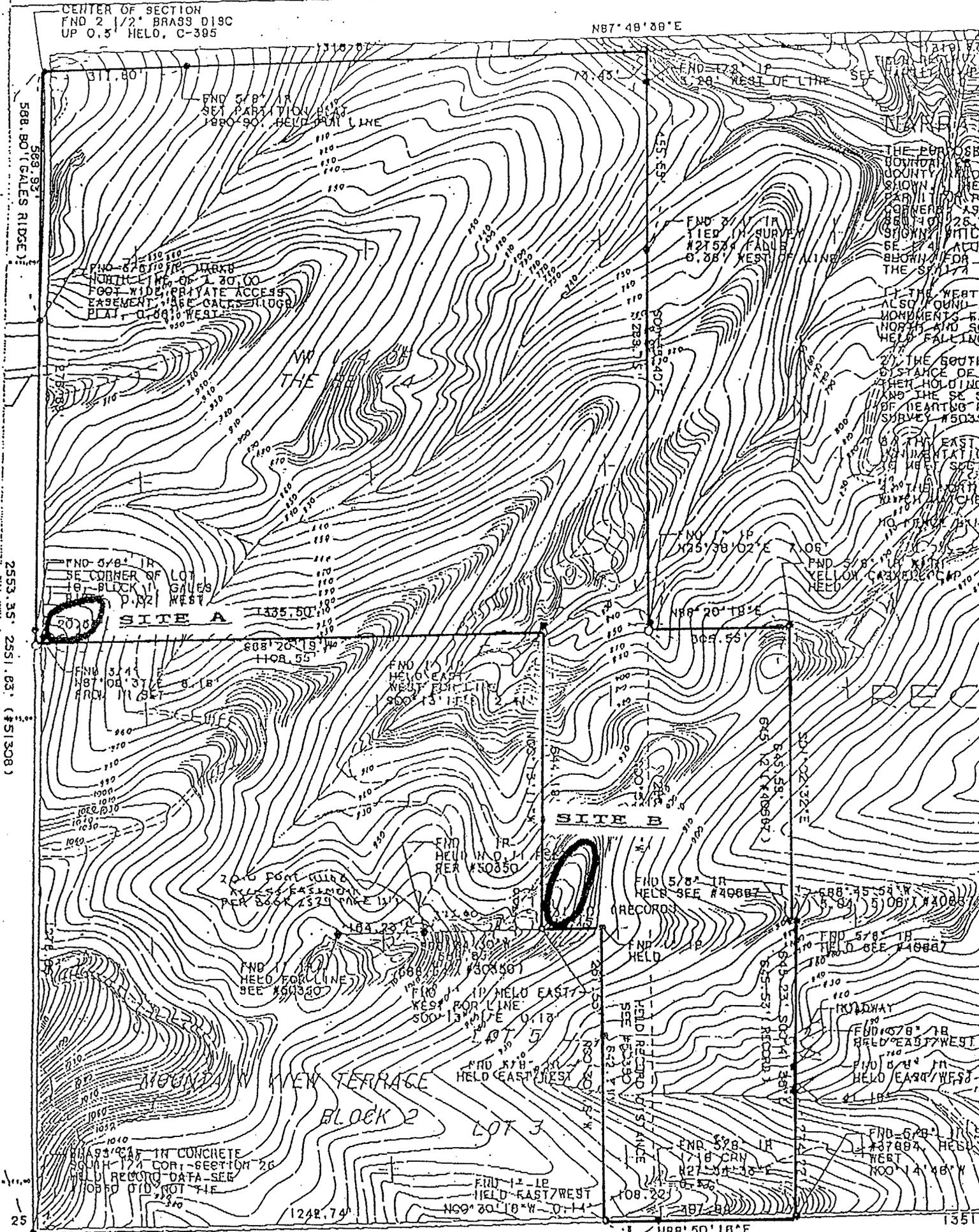
 40' x 60' BUILDING ENVELOPE

- NOTES:
- 1) PROPOSED WATER SUPPLY VIA PORTLAND WATER BUREAU.
  - 2) NO PERENIAL WATER SOURCE IS AVAILABLE.
  - 3) HOMES ARE LOCATED AS CLOSE TO PUBLICLY OWNED STREETS AS POSSIBLE.
  - 4) ACCESS EASEMENTS ARE PROPOSED TO BE SHARPO AND LLUSTER HOUSING IS PROPOSED TO REDUCE SETBACKS BELOW 200 FEET.

DRAWN BY: *DVE* 5-24-92

CENTER OF SECTION  
FND 2 1/2" BRASS DISC  
UP 0.5' HELD, C-395

N87°48'38"E



FND 5/8" IR  
SET PARTITION MARK  
1890-90' HELD FOR LINE

PNO-676710 IR  
NORTH LINE OF 30.00  
FOOT WIDE PRIVATE ACCESS  
EASEMENT TO GALE'S RIDGE  
PLAT, 0.88' WEST

FND 5/8" IR  
SE CORNER OF LOT  
18-BLOCK V  
GALES  
PLAT P. 82  
WEST

**SITE A**

FND 5/8" IR  
N87°08'37"E 0.18'  
ARCH IN SET

FND 1" IR  
HELD EAST  
WEST BOTTLE  
900' 13' 1/2"

20' FOOT WIDE  
ACCESS EASEMENT  
PER BOOK 2529 PAGE 131

FND 1" IR  
HELD FOR LINE  
SEE #64330

FND 1" IR HELD EAST  
WEST FOR LINE  
500' 13" WIDE 0.18'

FND 1" IR HELD EAST  
WEST

BRASS DISC IN CONCRETE  
SOUTH 1/4 CORN-SECTION 26  
HELD RECORD DATA-SEE  
10850 010' NOT 11'

FND 1 1/2" IR  
HELD EAST/WEST  
N89°30'16"W 0.14'

FND 5/8" IR  
N87°48'38"E  
3.29' WEST OF LINE SEE

FND 3/4" IR  
TIED IN SURVEY  
#21574 FADUB  
0.28' WEST OF LINE

FND 1" IR  
N85°38'02"E 7.06'  
OF  
FND 5/8" IR HELD  
YELLOW CANYON MAP

**SITE B**

FND 5/8" IR  
HELD SEE #49887  
RECORDS

FND 1" IR  
HELD

FND 5/8" IR  
HELD EAST/WEST

FND 5/8" IR  
HELD EAST/WEST

FND 5/8" IR  
HELD EAST/WEST

FND 5/8" IR  
1 1/8" CRN  
N27°34'18"W  
0.22'

FND 5/8" IR  
HELD  
N88°50'18"E

THE PURPOSE  
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AND THE SE SE  
OF HEATING P  
SUBVEY #50350

8) THE EAST  
ADJUTMENT OF  
THE WEST SE  
NORTH

NO. 11000 BY NE

FND 5/8" IR  
HELD

FND 5/8" IR  
HELD  
N88°50'18"E

588.80' (GALES RIDGE)

2553.35' 2551.83' (#51308)

25

1351'

HELD RECORD



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

## Decision

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

August 3, 1992

MC 2-92, #124  
LD 25-92, #124

Access by Easement  
Type 1 Land Division

Applicant requests approval of a two-parcel Type 1 land division plus approval of an access by easement for each parcel.

**Location:** 7025 NW Summitview Court

**Legal:** Tax Lots '9', '10' and '11', Section 25, 1N-1W, 1991 Assessor's Map

**Site Size:** Approximately 54 Acres'

**Size Requested:** same

**Property Owner:** Tom Riley / Julie Pinette  
104 SE 30th Place, 97214

**Applicant:** Same

**Comprehensive Plan:** Multiple Use Forest

**Present Zoning:** MUF-19, Multiple Use Forest District  
Minimum lot size of 19 acres

_____	Notices
34	Decision Notices
mailed on	8-13-92
by	M.B.

## HEARINGS OFFICER

**DECISION #1:**  
(LD 25-92)

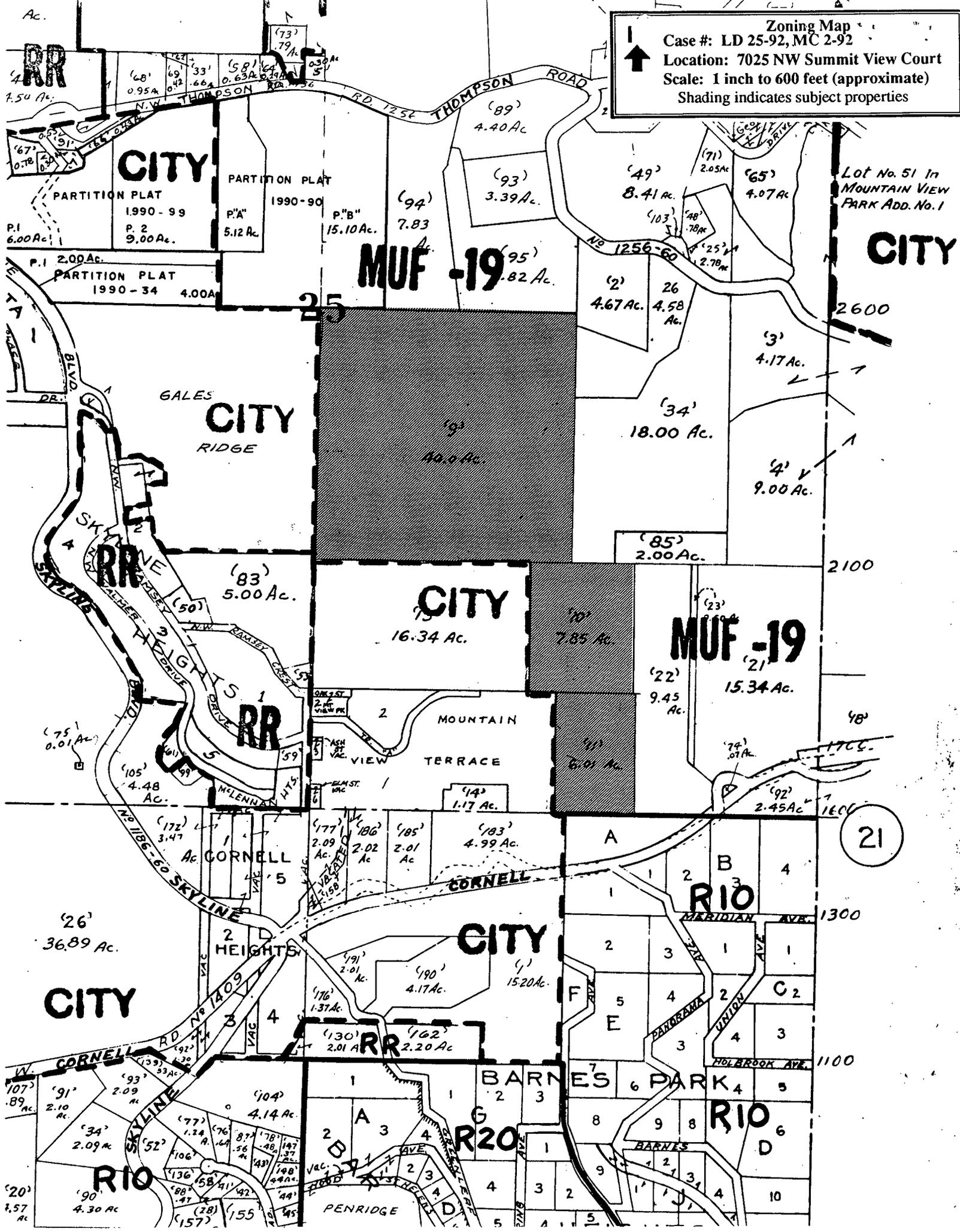
Approve, subject to conditions, the Tentative Plan for the Type I Land Division requested, a partition resulting in two lots in accordance with the provisions of MCC 11.45.080(D), all based on the following findings and conclusions:

**DECISION #2:**  
(MC 2-92)

Approve, subject to conditions, request to use easements as the means of access to the new lot instead of providing frontage on a dedicated street as required in the MUF-19, Multiple Use Forest district per MCC 11.15.2188, all based on the following findings and conclusions:

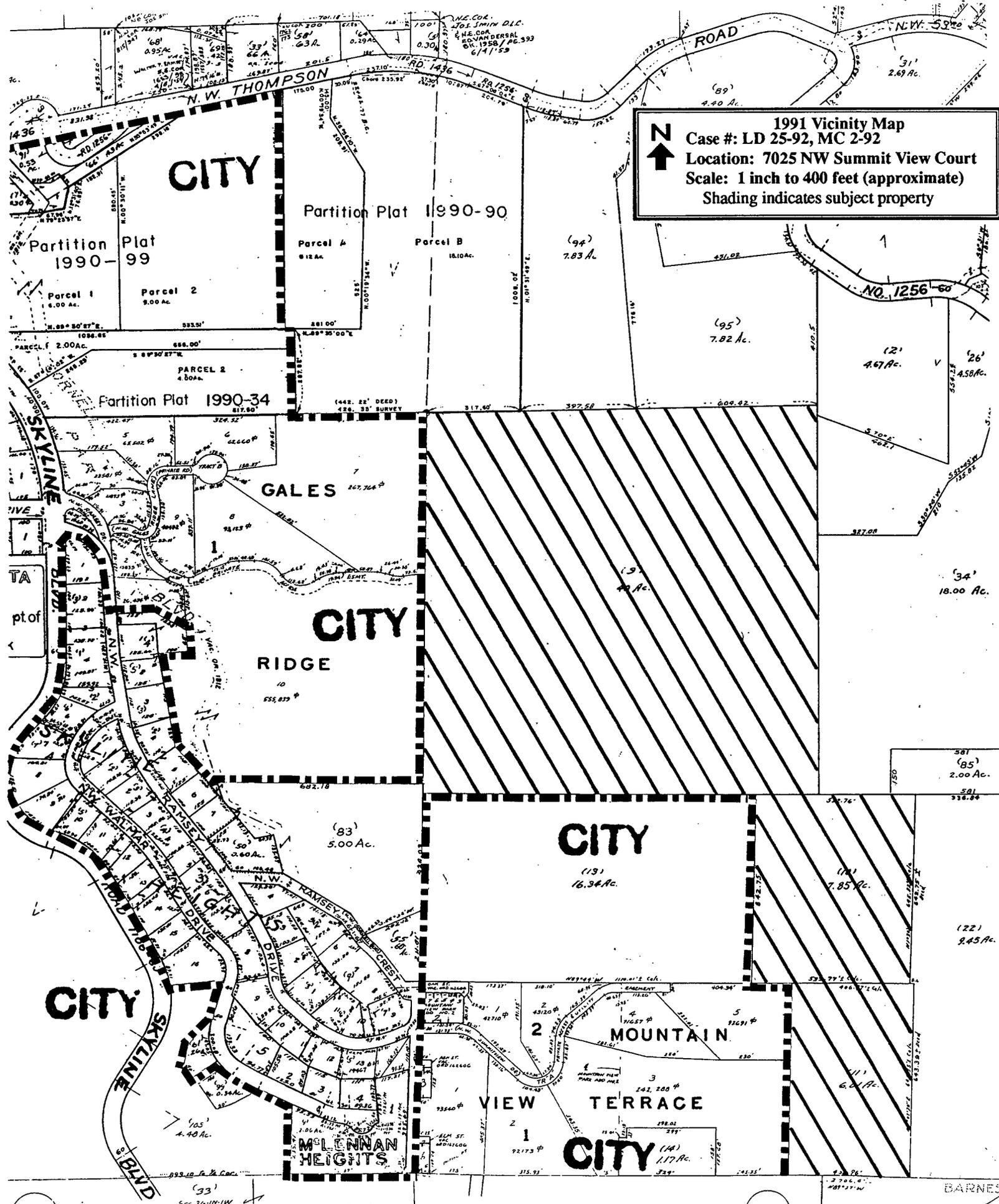
MC 2-92 / LD 25-92

**Zoning Map**  
 Case #: LD 25-92, MC 2-92  
 Location: 7025 NW Summit View Court  
 Scale: 1 inch to 600 feet (approximate)  
 Shading indicates subject properties





**1991 Vicinity Map**  
 Case #: LD 25-92, MC 2-92  
 Location: 7025 NW Summit View Court  
 Scale: 1 inch to 400 feet (approximate)  
 Shading indicates subject property

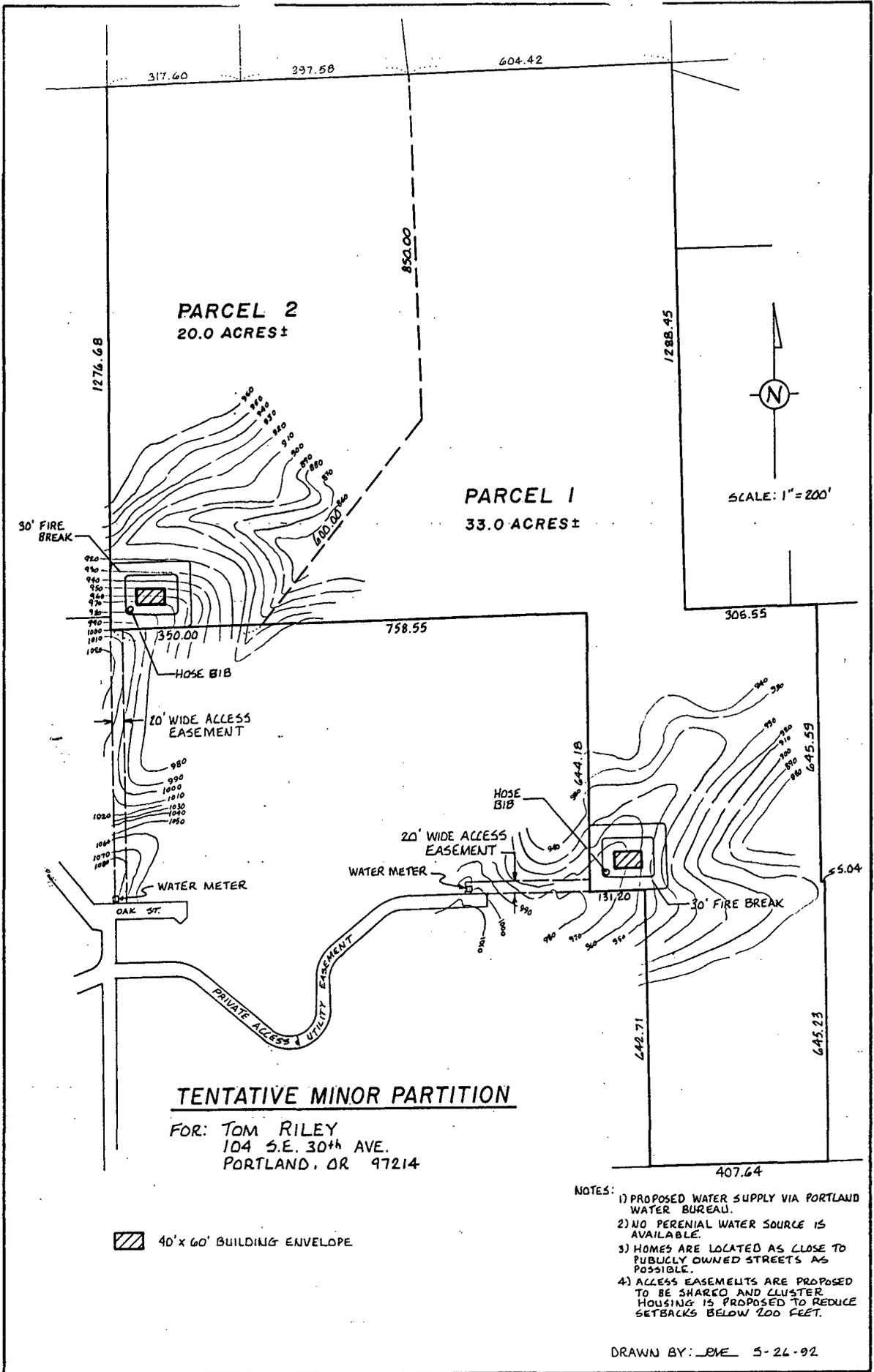


2921

2922

CORNELL HEIGHTS

BARNES



**TENTATIVE MINOR PARTITION**

FOR: TOM RILEY  
 104 S.E. 30th AVE.  
 PORTLAND, OR 97214

 40' x 60' BUILDING ENVELOPE

- NOTES:
- 1) PROPOSED WATER SUPPLY VIA PORTLAND WATER BUREAU.
  - 2) NO PERENIAL WATER SOURCE IS AVAILABLE.
  - 3) HOMES ARE LOCATED AS CLOSE TO PUBLICLY OWNED STREETS AS POSSIBLE.
  - 4) ACCESS EASEMENTS ARE PROPOSED TO BE SHARED AND CLUSTER HOUSING IS PROPOSED TO REDUCE SETBACKS BELOW 200 FEET.

DRAWN BY: BME 5-26-92



Conditions of Approval: (LD 25-92)

1. Within one year of the date of this decision, deliver the partition plat and other required attachments to the Planning and Development Division of the Department of Environmental Services in accordance with MCC 11.145.710. **Obtain applicant's and surveyor's Instructions for Finishing a Type III Land Division.**
2. In accordance with Decision #2 (MC 2-92) access to Parcel 2 shall be by way of the 30-foot easement that runs from a point about 500 feet south of the northwest corner of Parcel 2 in a westerly direction through the Gales Ridge Subdivision. Prior to final plat approval, the applicant shall obtain all necessary permits for access via this easement from the City of Portland.
3. Prior to signing of the partition plat by the Multnomah County Planning Division, apply for and obtain a Land Feasibility Study confirming the ability to use on-site sewage disposal system on Parcel 2.
4. Prior to signing of the partition plat by the Multnomah County Planning Division, *either* provide written confirmation from the Portland Water Bureau of commitment by the property owner to connect Parcel 2 to the existing water system, *or* drill a well on Parcel 2 and provide written confirmation from an appropriate lending institution the the well produces water in adequate quantities for domestic use.
5. Prior to issuance of a building permit for a house on Parcel 2 obtain county approval of a resource management program for at least 75 percent of the productive land on Parcel 2 pursuant to the "Use Under Prescribed Conditions" provisions of MCC 11.15.2170(A). ***As part of said application, the applicant shall provide written and/or mapped evidence demonstrating that siting of the any dwelling on Parcel 2 complies with the Residential Use Development Standards of MCC 11.15.2194***
6. Prior to signing of the partition plat by the Multnomah County Planning Division, provide written evidence of an agreement with the Ramsey-Walmar Road District for participation in maintenance said roads.
7. Prior to doing any road building or site clearing or preparation (including tree removal) obtain a Hillside Development Permit for any area that is identified on the "Slope Hazard Map" or that has slope exceeding 25 percent in accordance with MCC 11.15.6710.
8. Prior to signing of the partition plat by the Multnomah County Planning Division, obtain county approval of a resource management program for at least 75 percent of the productive land on Parcel 1 pursuant to the "Use Under Prescribed Conditions" provisions of MCC 11.15.2170(A)...***As part of said application, the applicant shall provide written and/or mapped evidence demonstrating that siting of the any dwelling on Parcel 2 complies with the Residential Use Development Standards of MCC 11.15.2194***
9. Approval of this land division neither guarantees the ability to build a dwelling on Parcel 2 nor constitutes approval to build a dwelling on Parcel 2.

## Findings Of Fact (LD 25-92)

1. **Applicant's Proposal:** Applicant proposes to divide a tract of about 54 acres into two parcels. Parcel 1 would contain about 34 acres and Parcel 2 would contain about 20 acres. Before the filing of this land division application, a building permit application was filed for a residence on what is now proposed as Parcel 1. As of the writing of the Staff Report in this case, the building permit for that house had not been issued. Construction of a residence is planned for Parcel 2.
2. **Site and Vicinity Information:** The site lies generally south of NW Thompson Road, east of NW Skyline Boulevard and north of NW Cornell Road. The Portland city limits adjoin all the west edge of the site and part of the south edge and access to the site will be through easements located in the City of Portland. Two Portland subdivisions, Mountain View Terrace and Gales Ridge, adjoin Parcels 1 and 2, respectively. Pursuant to MCC 11.15.2182(A)(3), the site is a single Lot of Record even though it currently consists of three tax lots under common ownership.
3. **Land Division Ordinance Approval Criteria (MCC 11.45)**
  - A. The proposed land division is classified as a Type I because it is “[A] . . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*” [MCC 11.45.080(D)]. The proposed land division is associated with an application to use an easement as a means of access to a proposed lot that will not have any frontage on a dedicated public road.
  - B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
    - (1) *The Tentative Plan is in accordance with:*
      - a) *the applicable elements of the Comprehensive Plan;*
      - b) *the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*
      - c) *the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]*
    - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*

- (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*
- (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
- (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11.45.230(E)]*
- (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*

#### 4. Findings for Type I Land Division

##### A. Applicable Elements of the Comprehensive Plan

- (1) **Statewide Goals and Regional Plan; Findings.** For the reasons stated below, the proposal satisfies the applicable policies of the Comprehensive Plan. The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. Therefore, Findings with regard to the Statewide Goals and the Regional Plan are not required.
- (2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposed land division. The proposal satisfies those policies for the following reasons:
  - (a) **No. 12 - Multiple Use Forest Lands**

**Findings.** The intent of Policy 12 is to encourage small woodlot management, forestry, reforestation and agriculture. Approval of a resource management program for at least 75 percent of the productive land on Parcel 2 will be required before a house can be built on that parcel. Approval of a resource management program for at least 75 percent of the productive land on Parcel 1 will be required before signing of the partition plat by the County Planning Division. Subject to those conditions, the proposed land division complies with Policy 12.

- (b) **No. 13 - Air and Water Quality and Noise Levels** This policy seeks to maintain and improve air and water quality and reduce noise pollution in the county

**Findings.** No significant impact on air pollution will result from the additional residence made possible by the proposed land division. Because of the size and location of these parcels relative to surrounding residences, noise will not be a factor. Therefore, the proposal satisfies Policy 13.

- (c) **No. 14 - Development Limitations**

**Findings.** This policy is concerned with mitigating or limiting the impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement. Topographic information presented by the applicant indicate that portions of the site contain slopes exceeding 25 percent. Portions of both proposed parcels are identified on the County Slope Hazard Map as being in hazard areas. Compliance with the Hillside Development and Erosion Control Ordinance pursuant to MCC 11.15.6700—.6735 in such areas will be a condition of approval. Subject to that condition requiring a Hillside Development Permit, the proposal can satisfy Policy 14 because development will be directed away from areas having identified development limitations and mitigation will be controlled by the provisions of MCC 11.15.6700-.6735.

- (e) **Policy 37 - Utilities** This policy requires adequate utilities to serve the site.

**Findings.** The Portland Water Bureau has estimated the cost of connecting Parcel 2 the city water system at about \$40,000, and has advised the applicant to install a well instead. Written evidence of either commitment to connect to the City water system or adequate

domestic water flow from a well installed on Parcel 2 is a condition to be met prior to final plat approval. Obtaining a Land Feasibility Study from the County Sanitarian regarding on-site sewage disposal for Parcel 2 is a condition to be met prior to final plat approval. Subject to those conditions, the proposed land division can satisfy Policy 37.

(f) **Policy 38 - Facilities**

**Findings.** The property is located in the Portland School District, which can accommodate student enrollment from houses located on the site. The City of Portland provides fire protection, and the Multnomah County Sheriff's Office provides police protection. The Portland Water Bureau has indicated that it can serve the site. If a well is constructed, the applicant shall demonstrate to the Planning Department and the Fire District that adequate water pressure and flow is available for fire fighting purposes. Such authorization shall be obtained prior to the final plat approval. For these reasons, the proposed land division satisfies Policy 38.

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

**Findings.** Approval of the request will not affect one way or the other the ability to develop, use or provide access to adjacent properties. Adjacent land inside the city limits is subject to City development regulations. Parcel sizes on adjacent unincorporated land outside the city limits are too small for further division. For these reasons for those stated by the applicant, the proposed land division satisfies MCC 11.45.230(B).

C. **Purposes and Intent of Land Division Ordinance [MCC**

(1) MCC 11.45.015 states that the Land Division Ordinance. . . *"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County."* The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:

- (a) The size and shape of the proposed lots will accommodate proposed uses that are allowed by the Zoning Ordinance. There will be no overcrowding.
- (b) The findings for Policies 37 and 38 address water and sewage disposal, education, fire protection and police protection.

- (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
  - (d) The proposal meets the purpose of *“providing classifications and uniform standards for the division of land and the installation of related improvements”* because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to . . . *“minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities.”* The proposal complies with the intent of the Land Division Ordinance for the following reasons:
- (a) The proposal minimizes street congestion by providing access to Parcel 1 from NW Summit View Drive by way of a private access road as shown on the Tentative Plan Map. Use of an existing easement over Gales Ridge for access to Parcel 2 is a condition of approval.
  - (b) The access to Parcel 2 will use a easement that for the most part already contains a roadway grade. In the areas where the easement and the established road grade diverge, the City of Portland has the regulatory authority and jurisdiction to review grading and other permits that may be required in order for this route to receive final approval from the City of Portland.
  - (c) Fire protection will continue to be available to the property. The property is not located within the 100 year floodplain. Obtaining a Hillside Development Permit as required by the Zoning Ordinance is a condition of approval. For these reasons, the proposal secures safety from fire, flood, geologic hazard, and pollution.
  - (d) The proposal meets the area and dimensional standards of the MUF-19 zoning district as explained in Finding 4.D and thereby prevents the overcrowding of land.

D. **Zoning Ordinance Considerations [MCC11.45.390]:** The applicable Zoning Ordinance criteria are as follows:

- (1) The site is zoned MUF-19, Multiple Use Forest, District.
- (2) The following minimum area and dimensional standards apply per MCC 11.15.2178:
  - (a) The minimum lot size shall be 19 acres. As shown on the Tentative Plan Map, both parcels exceed this requirement
  - (b) The minimum yard setbacks are 30 feet front, 10 feet side, and 30 feet rear. There is adequate area on each parcel for any structures to meet all yard requirements.
  - (c) **Residential Use Development Standards:** MCC 11.15.2194 states that *A residential use located in the MUF district after August 14, 1980, shall comply with the following:*
    - (A) *The fire safety measure outlined in the Fire Safety Considerations for Development in Forested Areas, published by the Northwest Interagency Fire Prevention Group, including at least the following:*
      - (1) *Fire lanes at least 30 feet wide shall be maintained between a residential structure and an adjacent forested area; and*
      - (2) *Maintenance of a water supply and of fire fighting equipment sufficient to prevent fire from spreading from the dwelling to adjacent forested areas;*

**Findings.** The information on the site plan submitted with the application does not indicate 30-foot fire lanes between the proposed residence and adjacent forested areas. Although fire protection for the site is available through the City of Portland, the site plan and other information submitted with the application do not indicate plans for maintaining an on-site water supply and fire-fighting equipment sufficient to prevent the spread of a fire from the residence to adjacent forested lands. Approval Condition #5 requires demonstration of compliance before approval of a Use Under Prescribed Conditions prior building a dwelling on Parcel 2.

- (B) *An access drive at least 16 feet wide shall be maintained from the property access road to any perennial water source on the lot or an adjacent lot. [MCC 11.15.2194(B)]*

**Findings.** The information on the site plan submitted with the application does not indicate whether there are any perennial water sources on the site or on adjacent land. Approval Condition #5 requires demonstration of compliance before approval of a Use Under Prescribed Conditions prior building a dwelling on Parcel 2.

- (C) *The dwelling shall be located in as close proximity to a publicly maintained street as possible, considering the requirements of MCC .2178(B). [MCC 11.15.2194(C)]*

**Findings.** Skyline Boulevard appears to be the closest publicly mainland road. Approval Condition #2 requires that access to Parcel 2 be by way of an easement that runs from from the west line of Parcel 2 through the adjacent Gales Ridge Subdivision to Gales Ridge Lane. Gales Ridge Lane intersects with Ramsey Drive which in turn intersects with Skyline. Siting a dwelling on Parcel 2 in close proximity to the Gales Ridge easement would appear to comply with this standard more closely than would the location shown on the Tentative Plan Map. Not only is total distance between the alternative site and the publicly maintained road shorter, but also there would be no need to construct nearly 650 feet of new private roadway over steep terrain, as there would be for the Parcel 2 site shown on the applicant's Tentative Plan Map. With the modified access, this Criteria is met

- (D) *The physical limitations of the site which require a driveway in excess of 500 feet shall be stated in writing as part of the application for approval. [MCC 11.15.2194(D)]*

**Findings.** The applicant has applied for a building permit for a house on Parcel 1. The location of that house is less than 500 feet from the property line where the easement road enters the property.

- (E) *The dwelling shall be located on that portion of the lot having the lowest productivity characteristics for the proposed primary use, subject to the limitations of subsection (C), above. [MCC 11.15.2194(E)]*

**Findings.** The information on the site plan submitted with the application does not indicate the relative productivity of the proposed building site. Approval Condition #5 requires demonstration of compliance before approval of a Use Under Prescribed Conditions prior building a dwelling on Parcel 2.

(F) ***Building setbacks of at least 200 feet shall be maintained from all property lines, wherever possible, except:*** [MCC 11.15.2194(F)]

(1) ***A setback of 30 feet or more may be provided from a public road, or***

(2) ***The location of dwelling(s) on adjacent lot(s) at a lesser distance will allow for the clustering of dwellings or the sharing of access.***

**Findings.** Approval Condition #5 requires demonstration of compliance before approval of a Use Under Prescribed Conditions prior building a dwelling on Parcel 2.

(G) ***Construction shall comply with the standards of the building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes.*** [MCC 11.15.2194(G)]

**Findings.** A mobile home is not proposed; this Criteria is not applicable.

(H) ***The dwelling shall be attached to a foundation for which a building permit has been obtained.*** [MCC 11.15.2194(H)]

**Findings.** A mobile home is not proposed, this Criteria is not applicable.

(I) ***The dwelling shall have a minimum floor area of 600 square feet.*** [MCC 11.15.2194(I)]

**Findings.** A mobile home is not proposed, this Criteria is not applicable.

(J) ***The dwelling shall be located outside a big game habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.*** [MCC 11.15.2194(J)]

**Findings.** The site is not in an area so designated; this Criteria does not apply.

- (c) **Access:** MCC 11.15.2188 states that all parcels in the MUF, Multiple Use Forest District shall abut a street or have other access determined be *“safe and convenient for pedestrians and passenger and emergency vehicles.”*

**Findings.** Subject to Decision #2 (MC 2-92) the proposed land division meets this standard.

- (c) **Management Plan:** MCC 11.15.2170(A) requires that a resource management plan be prepared and submitted for approval prior to issuance of a building permit on an MUF-zoned lot containing more than 10 but less than 39 acres.

**Findings.** No resource management plan was required for the house on what is now proposed as Parcel 1 when building plans were submitted because the building site consisted of the entire 54 acres. Approval of the proposed land division would create parcels containing about 34 and 20 acres for Parcels 1 and 2, respectively. Management plan approval will be required for Parcel 1 prior to signing of the partition plat. Management plan approval will be required for Parcel 2 prior to building permit issuance. Subject to those conditions, the proposed land division satisfies MCC 11.15.2170(A)

E. **Subdivision Name [MCC 11.45.230(E)]:**

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

F. **Street Layout [MCC 11.45.230(F)]:**

**Findings.** The proposed land division does not include any new public streets or extensions of existing streets. therefore, MCC 11.45.230(F) is not applicable.

G. **Private Streets [MCC 11.45.230(G)]:**

**Findings.** The proposed land division does not include any private streets. Therefore, MCC 11.45.230(G) is not applicable.

### **Conclusions (LD 25-92)**

1. The proposed land division satisfies the applicable elements of the Comprehensive Plan, including Policy 37 relating to utilities..
2. The proposed land division satisfies the approval criteria for Type I land divisions.
3. Subject to Decision #2 (MC 2-92) the proposed land division complies with the zoning ordinance.

### **Conditions of Approval (MC 2-92)**

1. When recording the partition plat, record an instrument that demonstrates the legal right of the owners of Parcels 1 and 2 to use the easements for access to Parcels 1 and 2.
2. When recording the partition plat, record deed restrictions regarding the easements which:
  - A. Reference the Planning Commission decision approving access by easement (MC 2-92) and the land division for the property (LD 25-92); and
  - B. Specify maintenance responsibilities for owners of Parcels 1 and 2.
3. When submitting the partition plat to the Planning and Development Division, include a copy of the documents referred to in Conditions 1 and 2 above
4. Access to Parcel 2 shall be by way of the 30-foot easement that runs from a point about 500 feet south of the northeast corner of Parcel 2 in a westerly direction through the Gales Ridge Subdivision.
5. Prior to signing of the partition plat by the County Planning Division, provide written evidence that the City of Portland has reviewed and approved all easement proposals for Parcels 1 and 2 with respect to use of roads inside the City limits.
6. Prior to signing of the partition plat, furnish the Planning and Development Division with plans for a private access road designed and stamped by an engineer licensed by the State of Oregon. The design of the road shall be:
  - A. with grades not exceeding an average of 10 percent with a maximum of 12 percent on short pitches, up to 15 percent with the approval of the Planning Director;
  - B. with a 20-foot wide all-weather road (gravel is permissible) with not less than a 45-foot radius at the dead end of the roadway;

- C. such that the road will be able to support a minimum wheel load of 12,500 pounds per square foot and a gross vehicle weight of 45,000 pounds; and
7. Prior to signing of the partition plat by the Planning and Development Division, provide written confirmation from the Portland Fire Bureau that the proposed easement roadways will be safe and convenient for emergency vehicle use. The report from the Fire Bureau shall address:
- A. Width of traveled surface;
  - B. Type of surfacing, including width, type and thickness of base rock;
  - C. Slope of roadway;
  - D. Adequate turning areas for fire-fighting apparatus;
  - E. Specifications for turn-outs at appropriate intervals along the private easement road to allow room for two-way vehicle traffic;
  - F. Specifications for keeping brush back from the traveled surface of the easement roadways;

#### **Findings of Fact (MC 2-92)**

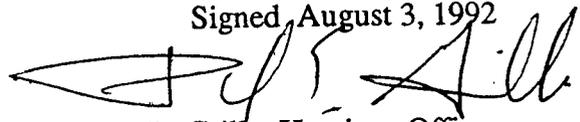
1. **Zoning Ordinance Considerations (MCC 11.15):** MCC 11.15.2188 states that all parcels in the MUF, Multiple Use Forest District shall abut a street or have other access determined be *“safe and convenient for pedestrians and passenger and emergency vehicles.”*
2. **Response To Approval Criteria**
  - A. The site is landlocked because it does not abut any public roads. Utilization of the easement road running from NW Summit View to Parcel 1 will provide adequate access to Parcel 1. However, approval from the City of Portland is required in order for owners of the new parcels to use roads inside the city limits to reach the new parcels.
  - B. The easement roads, as modified, would result in a more efficient use of the land than would occur if creation of a public road were attempted.
  - C. A condition of approval requires written confirmation from the Portland Fire Bureau that the road can handle fire-fighting apparatus with respect to width, type of base, top fill, surfacing, slope, turn-around areas, passing turn-outs and brush clearance. Subject to that condition, the request for access by easement satisfies MCC 11.15.2188.

- D. The applicant proposes access to Parcel 2 by way of an easement road running from a vacated section of NW Oak Street north along the west line of Tax Lot 13 a distance of about 640 feet to the southeast corner of Parcel 2. Parts of the easement are extremely steep, with a grade difference of as much as 100 feet in a distance of 100 feet in one area shown on the tentative plan map.
- E. A safer, more convenient and less expensive alternative for access to Parcel 2 is to utilize the existing easement running from the west line of Parcel 2 across Gales Ridge subdivision to Skyline Boulevard via Gales Ridge Lane. The easement was established through a condition imposed by the City of Portland for on the Gales Ridge development in 1989. Any necessary land use approvals must be obtained by the applicant from the City of Portland, prior to recording the final plat.

**3. Conclusions (MC 2-92)**

- A. The criteria for approval of an alternate means of access as required by MCC 11.15.2188 have been met subject to the stated approval conditions.
- B. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the landlocked nature of the site makes creation of a lots fronting on a public road impossible.

Signed August 3, 1992



By Phillip Grillo, Hearings Officer

**Filed with Clerk of the Board on August 13, 1992**

**Appeal to the Board of County Commissioners**

Any person who appears and testifies at the Planning Commission hearing, or who submits written testimony in accord with the requirements on the prior Notice, and objects to their recommended decision, may file a Notice of Review with the Planning Director on or before 4:30 p.m. Monday, August 24, 1992 on the required Notice of Review Form which is available at the Planning and Development Office at 2115 SE Morrison Street.

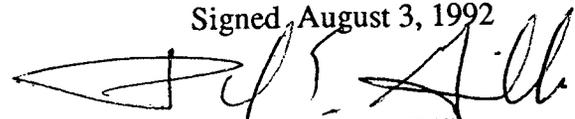
*The Decision in this item will be reported to the Board of County Commissioners for review at 9:30 a.m. on Tuesday, August 25, 1992 in Room 602 of the Multnomah County Courthouse. For further information call the Multnomah County Planning and Development at 248-3043.*

- D. The applicant proposes access to Parcel 2 by way of an easement road running from a vacated section of NW Oak Street north along the west line of Tax Lot 13 a distance of about 640 feet to the southeast corner of Parcel 2. Parts of the easement are extremely steep, with a grade difference of as much as 100 feet in a distance of 100 feet in one area shown on the tentative plan map.
- E. A safer, more convenient and less expensive alternative for access to Parcel 2 is to utilize the existing easement running from the west line of Parcel 2 across Gales Ridge subdivision to Skyline Boulevard via Gales Ridge Lane. The easement was established through a condition imposed by the City of Portland for on the Gales Ridge development in 1989. Any necessary land use approvals must be obtained by the applicant from the City of Portland, prior to recording the final plat.

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Signed, August 3, 1992



By Phillip Grillo, Hearings Officer

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

**NOTICE OF REVIEW**

1. Name: Rochlin, <sup>\*</sup> Arnold
2. Address: <sup>Last</sup> P.O. Box 83645, <sup>Middle</sup> Portland, <sup>First</sup> OR 97283-0645  
Street or Box City State and Zip Code
3. Telephone: (503) 289-2657
4. If serving as a representative of other persons, list their names and addresses:  
Forest Park Neighborhood Association,  
% Arnold Rochlin  
P.O. Box 83645  
Portland, OR 97283-0645
5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Approval of a partition and access by easement  
MC 2-92, #124 and LD 25-92, #124
6. The decision was announced by the <sup>Hearings Officer or</sup> ~~Planning Commission~~ on August 3, 1992  
 (Filed with the Clerk of the Board on ~~August 23,~~ August 13, 1992) or
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
Forest Park Neighborhood Association appeared at the Hearing  
on July 6, 1992, represented by Arnold Rochlin, and submitted  
written testimony on June 30, 1992 and July 24, 1992.  
We are an entity entitled to notice pursuant to ORS 197.763(2)(b)  
and therefore by MCC 11.15.220(c)

\* Middle name is not used, but is Robert, if required for record.

1992 AUG 13 4:58 PM  
 13

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

See Attachment (2 pages) AR  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Scope of Review (Check One):

- (a)  On the Record
- (b)  On the Record plus Additional Testimony and Evidence
- (c)  De Novo (i.e., Full Rehearing)

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

\_\_\_\_\_  
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Signed: Arnold Recklin Date: August 24, 1992

**For Staff Use Only**

Fee:

Notice of Review = \$300.00  
 Transcription Fee:  
 Length of Hearing 95 min x \$3.50/minute = \$ 332.50  
 Total Fee = \$ 632.50

Received by: SM Date: 8-24-92 Case No. MC2-92 4025-92

ATTACHMENT TO NOTICE OF REVIEW MC 2-92, #124 & LD 25-92, #294  
APPROVAL OF TYPE I LAND DIVISION AND ACCESS BY EASEMENT  
OF PROPERTY AT 7025 NW SUMMITVIEW COURT

8. Grounds for Reversal of a Decision:

A. The tentative plan does not comply with “applicable elements of the Comprehensive plan” as required by 11.45.230(A)(1).

Policy 14: All substantial evidence in the record, particularly the statement of the applicant’s geologist, indicates that hazards described in the Policy are pervasive on the property and are specifically present at the building sites proposed by the applicant. Thus there is a burden on the applicant to show that harm can be avoided or mitigated. The findings merely conclude that, because development will ultimately have to comply with zoning code sections not relevant to this proceeding, the proposal can satisfy Policy 14. This determination of potential for satisfaction is merely unsupported opinion of the Hearing Officer’s, and does not constitute present satisfaction of the Policy.

Policy 37 requires a finding prior to a quasi-judicial action, that adequate water and sewage disposal can be provided. The finding addressing Policy 37 recognizes that adequacy has not yet been determined by noting that conditions of approval require compliance after the decision, but before filing of the plat. All of the relevant evidence in the record supports a conclusion of non-compliance, and that conclusion is implicit in the Hearing Officer’s findings and conditions.

Policy 38 requires a finding prior to a quasi-judicial action, that there is adequate water pressure and flow for fire fighting purposes and that the appropriate fire district has had an opportunity to review and comment on the proposal. As with Policy 37, the finding addressing Policy 38 recognizes that adequacy has not yet been determined by implying that there is a condition of approval requiring compliance after the decision. There is, in fact, no such condition. In addition to placing the compliance after approval, rather than before, the findings do not address all substantive issues. The findings say that the Portland Water Bureau has indicated it can serve the site. That indication applied only to Parcel 1, and not to Parcel 2, regarding which there is no evidence. The implied conclusion that domestic service by the City of Portland is equivalent to assurance of adequate water pressure and flow for fire fighting purposes on Parcel 1 is not based on any evidence. The findings do not address the requirement that the fire district must have had an opportunity to review and comment on the proposal before the decision and there is no evidence in the record to support a finding of compliance.

B. The tentative plan does not comply with 11.45.230(C) which says:

“The tentative plan or future street plan complies with the applicable provisions, including purposes and intent of the Chapter.”

The Hearings Officer misconstrues the applicable provisions to be only the “purposes and intent”. Applicable provisions of Chapter 11.45 which the findings do not address, and with which the tentative plan does not comply are:

11.45.260(B)(4) requires that the plan map show contour lines at five foot vertical intervals for slopes exceeding 10%. Most of the property has slopes over 10%. No

*a.r. 5/24/92*

map or plan in the record shows vertical intervals of 5 feet. All maps which do show topography have contours at ten foot intervals.

11.45.260(C)(6) requires that the plan map show the proposed methods of sewage disposal. No plan map in the record shows this.

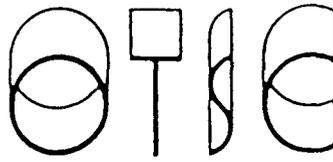
C. The tentative plan should not have been found to comply with the Zoning Ordinance, as required by 11.45.230(D). The use proposed is residential, a conditional or prescribed use in the MUF 19 zone.<sup>1</sup> Conditions #5 and #8 require county approval of a resource management plan pursuant to "the 'Use Under Prescribed Conditions' provisions of MCC 11.15.2170(A)." The conditions further require as a part of the process of getting prescribed condition approval, that the applicant show compliance with some of the requirements (only those pertaining to siting) of 11.15.2194, Residential Use Development Standards in the MUF zones. The Condition must be met for Parcel 1 prior to actual partition, but for Parcel 2, it can be done after partition, but before issuance of a building permit. Thus, approval is granted providing there is future compliance with the Zoning Ordinance. And, in the case of Parcel 2, compliance with the Condition is to take place after final plat approval. The Hearings Officer, not having taken note of any evidence that future compliance with the standards for a Prescribed Residential Use would not be met, incorrectly finds that the criterion is met. There are uncertainties in the process that preclude equating potential satisfaction with satisfaction. An application for a prescribed use should have been submitted and processed concurrently with the application for partition. Under no circumstances can final partition be conditioned on an event that can take place only after final partition, as is attempted in Condition #5.

D. Condition #8, even if it could otherwise satisfy the Hearings Officers intent to establish compliance with the Zoning Ordinance, would still fail because of an inconsistency. The first sentence of the Condition addresses Parcel 1. The second sentence, necessary to complete the intent of the Condition, addresses Parcel 2. The same inconsistency appeared in the staff report and was commented upon in testimony (Rochlin letter of June 30, 1992, p4, MISCELLANEOUS, paragraph #2). Because the Hearings Officer nevertheless chose to apply the recommended condition verbatim, it cannot be assumed to be a typographical error unless, at the same time, it is assumed that the Hearings Officer did not read the testimony. The latter assumption would imply there was a mere clerical acceptance of evidence, rather than a hearing, in a meaningful sense, as required by ORS 215.416(3)

E. The Hearings Officer did not place the burden of proof upon the applicant as required by MCC 11.15.8230(D) and 11.45.220(C). Findings and conclusions regarding approval criteria were made in favor of the applicant even when all of the relevant evidence in the record supports only a contrary conclusion. This conflicts with the requirement of 11.15.8235 that findings of fact and conclusions be based upon the record. The Hearings Officer misunderstood the approval criteria and the Multnomah County Comprehensive Plan and reached an incorrect conclusion that the application was in compliance. The error which pervades the decision is a false principle that, by use of conditions, the determination of compliance with approval criteria which must be made in a quasi-judicial process involving a public hearing can be deferred to a ministerial decision. This is an impermissible delegation of the authority of the Hearings Officer and a de facto nullification of the requirements of decision making through the public hearing and quasi-judicial procedure. It is in violation of MCC 11.15.8115, .8125, .8205, .8230, .8240(D)(1) and (2), 11.45.080(D), .220 and .230, Comprehensive Plan Policies 37 and 38, and ORS 215.416(4), (8), and (9).

<sup>1</sup> Because of the size and productivity of the proposed lots, conditional use permits are apparently precluded by regulation. The issue has not been raised and there has been no contention on this point.

AR 8/24/92



# OREGON TECHNICAL SERVICES CENTER INC.

1966 N.W. Ramsey Crest Portland, Oregon 97229  
503-292-9663

1992 JUL 25

HEARINGS OFFICER  
MULTNOMAH COUNTY DIVISION OF PLANNING  
2115 SE MORRISON STREET  
PORTLAND, OR 97214

SUBJECT: MC 2-92 #124  
LD 25-92 #124; 7025 NW SUMMITVIEW COURT -  
OWNER: TOM RILEY/JULIE PINETTE

## REPLY TO APPLICANT'S POST-HEARING SUBMISSION

This letter should be read in conjunction with the letter from Mr. Rochlin of 92JUL24 on this subject. Thanks to Mr. Rochlin I received a copy of his letter to you.

I agree with all of his data and conclusions.

The following are added to help emphasize some data from our standpoint as immediate neighbors to the Pollock property through which is proposed the road to the "southern building #2 site".

1. Identify the specific route of access that the applicant is proposing for Parcel 2.

Applicant refers to the "vacated Oak St.". In Rochlin, paragraph 3, "There is no indication of who owns that property or of how the applicant is assured the right to use it."

There is no street at that spot and never has been; it was only present in maps due to approval of a plat proposed in the 1920s. The "vacating" by the city of Portland erased that feature, among others, which had never been built. Specifically "that property" is not Pollock's, and its owner [or their owners] need to assure its availability to applicant. The Christensen letter [92JUL06] addresses this point.

4c]. Slope of proposed roadway.

Rochlin's letter under point 2. details the slope inadequacies in the application. He states "The extreme slopes [both lateral and xxxx]"; whereas the applicant's sketch, Section A-A, of a lateral minimizes the conditions. In reality at least one-third to one-

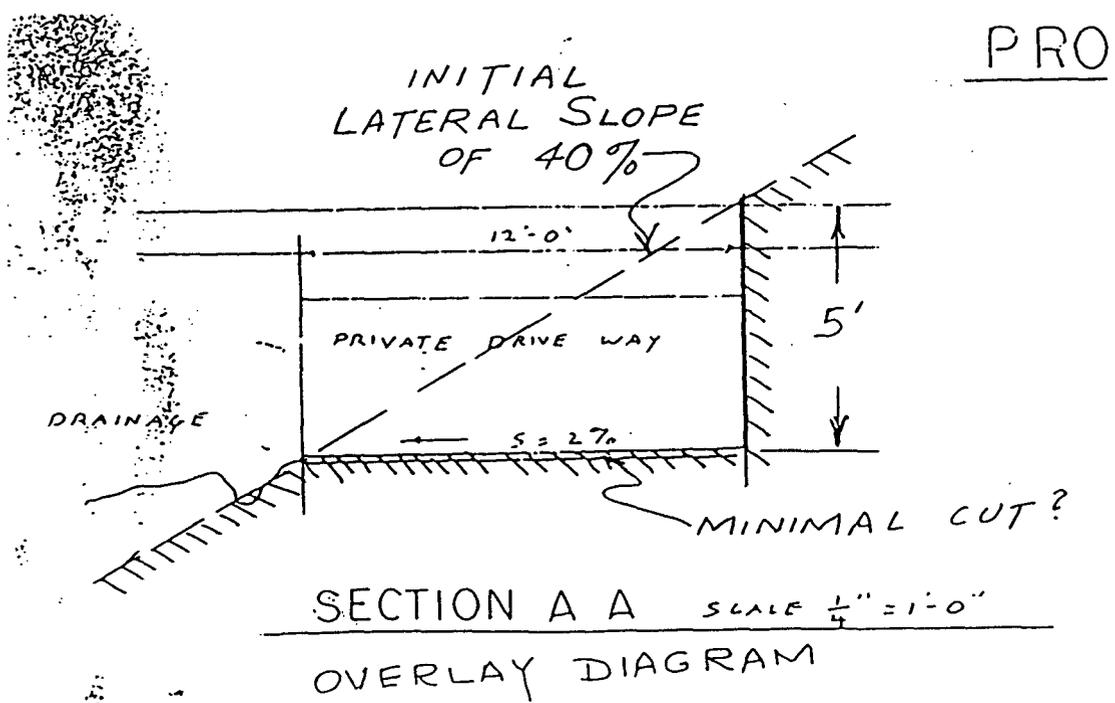
half of the length of the proposed road would be in lateral slopes of 40 percent. We are submitting an overlay diagram superimposed on the applicant's sketch. Our overlay shows the effect of a forty percent lateral slope. It emphasizes our concern over the absence of engineered design of specific retaining walls, road shoulders and right-of-ways, in addition to the other aspects listed in the Rochlin letter.

This letter is sent on behalf of the owners of tax lots 55 and 83, Skyline Heights; these border on the west of the Pollock lot through which applicant proposes the major portion of an easement for a road to his Parcel 2.

Cordially,

*Harry Czyzewski*  
Harry Czyzewski

HC/mck;MUC092



Fax: 503-228-4065

OREGON TECHNICAL SERVICES CENTER INC.



2245 S.W. Canyon Road  
Portland, Oregon 97201  
503-292-9663



# 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  
GLADYS McCOY • CHAIR OF THE BOARD  
PAULINE ANDERSON • DISTRICT 1 COMMISSIONER  
GARY HANSEN • DISTRICT 2 COMMISSIONER  
RICK BAUMAN • DISTRICT 3 COMMISSIONER  
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

## INTERMEDIATE RULING OF THE HEARINGS OFFICER

✓ MC 2-92 / LD 25-92

**Applicant:** Tom Riley and Julie Pinette  
**Location:** 7025 NW Summitview Court  
**Land Use Request** Access by Easement and Type I Land Division

*29 Katesis  
successful  
9/14/92  
DD*

This matter came before the Hearings Officer on July 6, 1992 for public hearing. After receipt of testimony and other evidence, the matter was continued until July 13, 1992 in order for the Hearings Officer to determine whether additional information regarding access was necessary, and if so, whether a joint hearing between the City of Portland and Multnomah County would be appropriate.

The Hearings Officer has determined that additional information regarding access is necessary in this case. However, a joint hearing between the City of Portland and Multnomah County is neither necessary nor practical at this time. The written record will be left open for a period of seven days to allow the applicant to submit additional information with regards to access. This information should address the following concerns of the Hearings Officer:

1. Identify the specific route of access that the applicant is proposing for Parcel 2.
2. With regard to the proposed access route for Parcel 2, identify slopes that must be traversed, any necessary cuts and fills, the existence of any protected natural resources that will be affected by the access and any and all City of Portland zoning designations or overlay zones that apply to the proposed access route for Parcel 2.
3. Demonstrate how the proposed access easement meets the standards described in MCC 11.15.2188 regarding safe and convenient access for pedestrians, passengers and emergency vehicles.

4. The applicant should identify:
  - a).The width of the proposed traveled surface;
  - b).The proposed type of surfacing;
  - c).Slope of the proposed roadway;
  - d).Demonstrate that adequate turning areas for fire fighting apparatus can be provided;
  - e).Indicate the locations for turnouts in appropriate intervals along the private easement to allow room for two-way vehicle traffic.
5. Compare the applicant's proposed easement to the route proposed by Staff in proposed Condition of Approval #2 of the Staff Report. The comparison of the two proposed routes should be based upon the Criteria and MCC 11.15.2188.

Any other party wishing to respond to the new information submitted by the applicant may do so within seven days.

In summary, the applicant shall submit any additional information as requested above no later than 4:30 p.m. on Monday, July 20, 1992. Any party wishing to respond to this additional information may do so in writing no later than 4:30 p.m. on Monday, July 27, 1992. The Hearings Officer shall announce a decision no later than Monday, August 3, 1992 and a final written decision will be issued in the normal course thereafter.

DATED THIS 13TH DAY OF JULY, 1992.



Phillip E. Grillo, Multnomah County  
Land Use Hearings Officer

Transcription of

MC 2-92/LD 25-92

Hearings Officer - Phil Grillo

Staff - S. Cowley, D. Prescott

---

Other Voice:

Thank you again, Dave Prescott, County Planning Staff and this particular request is a somewhat complicated one in that there are two actual actions being requested. The site is located in an area as Mr. Grillo stated in the northwest hills. It consists of three tax lots totalling about 54 acres. The property is zoned in multiple use forest NUF-19. Because of the county zoning code requirements concerning wats in the NUF zone that are under the minimum lot size, two of those existing tax lots are in effect segregated or combined if you will into the larger lots so that even though there are three tax lots, the applicant has presently one single building site. The request is for a land division which would allow creation of two parcels out of the 54 acre track - parcel 2 would be approximately 20 acres, parcel 1 would be approximately 34 acres and a key of consideration or a key factor in this particular case that you need to understand is that before this application was filed, the county received a building permit application was filed, the county received a building permit application for a single family residence on what appears on your site plan as parcel 1. But the site plan with that building application covered the entire 54 acres which it was required to do. Subsequent to that building permit application, which by the way the permit has not yet been issued. It is in the plan check process with the city of Portland After filing that building permit application, the applicants filed the application that you see here to divide the property into two pieces. The second aspect of the application is that because this particular site has no frontage on a public road, the county zoning code requires that the approval authority must access to the new wats to be safe and convenient for purposes of vehicular access and in other words, the request is to create two land lock parcels, neither which would have access to a public road and that is why you have the application that is described as MC2-2. That is a little bit of a background on why the application is taking the form that it is. We have visited the site, staff has visited the site. We took slides however we were unable to receive those back from the processing of shop beef and time for showing at this hearing. Staff has reviewed the application. The approval criteria for a Type 1 land division appear in the

staff report pages 7-8, the approval criteria for approval of access by easement appear on page 17 of the staff report. Staff has reviewed the application against the applicable approval criteria and finds that the request will satisfy those criteria subject to in some cases conditions of approval which I will summarize. I would like to start actually with the last condition which is really the condition #9, it is more of a warning or a statement rather than something that the applicant has to do in order to finalize this request, and that is that approval of the land division does not guarantee the ability to put a residence on a parcel 2 which is the vacant parcel nor does it constitute the approval of a residence on parcel 2. The requested land division is for the purpose of creating two parcels and that is what the approval would do. The actual citing of a residence on the proposed vacant parcel is going to be subject to other requirements which are not guaranteed by this staff report that you have in front of you. Having said that I will summarize the conditions of approval for the land division first. First is that within in a year of the affective date of this decision the applicant will have to file a partition plat with the county that meets the requirements for a partition plat.

The second condition is that the access for parcel 2 shall be by way of an existing easement which crosses the elder ridge subdivision, the location is not the one that was picked by the applicant when they filed the application in front of you, they were requesting permission to access parcel to by means of an easement across property located immediately south of parcel to and for reasons spelled out in the findings, the requested allocation for the access the parcel 2 that was made by the applicant is not appropriate. It would be more consistent with the relevant approval standards if that access came by way of the road easement that exists in Gale's Ridge subdivision.

The third condition of approval requires that prior to signing of the partition plat, the applicant will obtain approval from a county sanitarian of the land feasibility study. That is an action which indicates that there will be capability for an acceptable sewage disposal system for parcel 2. That must be done before the partition plat assigned.

Condition four states that before signing the partition plat the applicant will either provide assurance that they are going to connect to the City of Portland water lines for parcel 2 or in the alternative that they will dig a well for parcel 2 and provide evidence to the county that that well is capable of producing adequate water supply for residential purposes.

Condition number five requires that the applicant will apply for and obtain

approval of a use under prescribed conditions. That is an action that requires preparation of forest management plan for parcel to ----- and that will have to be done before a building permit can be issued for parcel 2. The zoning code requires that on an MUF 19 parcel that if you had a lot less than 38 acres a management plan is required before residence can be put on it. Parcel 2 is being proposed to be created with less than 38 acres therefore it will be required that that be, you know before they put a house on the property, or be permitted to put a house on the property, they will have to have approval of management plan.

Condition number six requires that the applicant will obtain, provided to the county ----- to the written agreement with the Ramsey and Walner Rd. District that grants the applicant permission to use those, Ramsey and Walner Roads to access the property. In fact, that is the only way to get into either parcel 1 or 2 and that the applicant will help pay their appropriate share of maintaining those two roads.

Other Voice: Question asked (cannot hear)

Other Voice: My understanding is they only control Ramsey and Walner Roads.

The next condition of approval, number seven requires that a hillside development and erosion control permit will be obtained before any site work, tree removal, building activity, road construction occurs when any portions of the site that are in slope hazard areas based on the county slope hazard map and point of fact building sites do appear on the county slope hazard map and so that will be a requirement.

Number eight requires that before the partition plat is signed, a management plan used under prescribed conditions will be obtained for parcel 1 and this is a little bit unusual because as I pointed out at the beginning the building permit application was filed for parcel 1 and at the time that that was filed there was no management plan required because at that time the property consisted of 54 acre site. The applicant now proposes to make the site that has got that house proposed on it, a site that has 34 acres, therefore it is under 38 acres, therefore in order to approve this partition plat there will first have to be a management plan approved for that house. ----- conditions for the land division. I already referred to #9 which basically says that this application, approval of this application does not guarantee the ability to put a house in parcel 2.

Summarizing the key conditions of approval for the access by easement request, we need to understand that in both the case of access to the proposed residence on parcel 1 and the access to parcel 2, sense both of

those proposed parcels are joint property that is in the city limits of Portland, the only way vehicle access would be possible, either of those parcels, by going over roads that are under the city's jurisdiction and in the case of parcel 1, you are looking at construction by the applicant of the sectionally road from the end of Mountain View Court, Summit View court, excuse me, to the westerly edge of parcel 1. The applicant has provided staff with documents which applicant states are applications to the City of Portland for approval of those roads. The condition required that before the partition plat is signed that the applicant will obtain full City of Portland approval for construction of all access roads inside by the City of Portland and that written confirmation will be provided to Multnomah Planning Office. Further, those access will meet the standards of the Portland Fire Bureau and written confirmation provided of the county concerning compliance with Portland Fire Bureau requirements. It is unusual. Normally we are dealing with property that is all in the unincorporated area and here we have two jurisdictions so the applicant has some dual responsibilities concerning whether they get approvals.

Our comments at this time and we are available to answer questions, as you may have them.

Question: -----

Other Voice: Sure. Okay, if you would like I can approach, and I will point it out.

Question: -----

Other Voice: Cannot hear.

At this point, why don't we hear from the applicant and then we will take ----- afterward.

Tom Riley: My name is Tom Riley. I am the applicant. The other applicant is Julie Pinette. It is misspelled on the staff report. It is Pinette. It is my wife's name. She is away at a family emergency right now. I would like to make a couple additional comments, because I did get a copy of the ----- I haven't seen the Christensen letter yet. I want to make a copy. Thank you.

I am going to go with the same subject headings as he had. He has topography and water courses and apparently it is required that ---- map be on 5 foot intervals rather than 10 foot intervals. I used the only ----- - I had available. I got it from the city. I suppose I could have hired a surveyor to do the whole area again but all I had was this particular -----

--. He also mentioned that the water was not identified. I have an additional ----- that has, a lot of people have tempos --- they have dots and dashes. -----.

His next comment was on the land suitability. I hired a geologist who said it could be done as perhaps that I won't have a standard sub--- and maybe the house design will have to have a thicker than normal retaining wall ----- . Those will be determined when I go for building permits. I am hoping to sell the property and hope that somebody ----- . I don't believe that I have to have the permits issued in order to split. I'll

Regarding the access, the staff has recommended an easement from the last Ridge. Once again, the only criteria I had to supply to get the land division was that one site was feasible. To tell you the truth that might not be where someone ----- to build, it is a little bit steeper but the city requires that the land study done and couldn't afford to do 2 land studies, ----- to the south of my property was already in for a land study by a geologist and biologist and we are going to write the easement to follow the contours so that it would be a fairly level road. In other words, we wouldn't just come along the, you know, due north from the Oak Street location. The other thing regarding easement is that....

Other Voice: Cannot hear.

Riley: It is in the city.

Other Voice: What the applicant is saying is correct, that a land study application to the county because of the location, ---- known property inside the city.

Other Voice: site....cannot hear.

Other Voice: That is correct.

Riley: For ----- purposes, I did have a geologist submittal for the particular land site.... To tell you the truth, I probably won't be where someone chooses to build. Okay, I wanted to choose something that did pass the criteria. And he said that you might have to have a different type of septic other than standard septic.

Other Voice: Is there any sort of land feasibility that ----- for building sites or parcels - -----?

There is two components. Right now we are talking about land on -----.

Is there any sort of ----- submit regarding the land.

Riley: Yes. It was part of the package.

Other Voice:

Riley: I believe I have a copy.

Other Voice: cannot hear.

Other Voice: The easement that has been suggested by staff... I don't know, you probably didn't walk to that site. You said yours is a site which you might not have gone to that if you didn't....

Riley: It will require a road similar to the one by Multnomah Falls, you know the one on stilts because it does cross the derange area. I can't afford to build, I think it is more feasible to come from the south. But, my home will probably be on parcel 1 and I am hoping to sell parcel 2 and let them decide what kind of home and road they want.

Other Voice: Did you see this drainage area here?

Riley: The easement is about 100 feet away from a road that has already been punched in. It is great. It is on top of a ridge about 100 feet away it goes into drainage. This existing road that comes on to my property was put in about 3 years ago by Will Venton who owns the adjacent 12 acres. It is a beautiful road. I would love to use it but it is off from the easement and the last third, almost 100 feet away to the end so there is a beautiful road but I can't use it. I was hoping the new buyer would be more reasonable because the way the easement is written, he has to split the costs of building a asphalt road with me.

Other Voice: Tell me about the situation about the proposed -----are they individual?

Riley: They are owned by my boss, one person, Don -----.

I actually have a total of four easements. Whereas an easement onto the building site that originally was 7.85 acres, that easement comes from a court case that was decided in 1908.

Other Voice: Are those easements .....

Riley: Yes, this easement has been reported from my house. The other easement

on the west boundary have a survey of land and forest because we wanted to follow the contours of the land rather than just come straight across, do west boundary, we were going to follow the contours. So, I haven't reported that one yet because the land hasn't been marked yet. But, I will.

I have it in my contract of purchase that he will write me that easement, I just haven't ordered it yet.

Other Voice: The easement that the staff is proposing-----the land-----

Riley: His name is Venton, it might be under a corporate name called Gale's Ridge Development. It is a twelve acre development. All of the easement follows the boundary line but the road doesn't follow the boundary line completely. There is a road in there but it doesn't follow the easement all the way.

Other Voice: Okay, maybe,-----

Riley: I have one from them. It is just 100 feet away and he will not move it. He wants just to outweigh me.

Other Voice: My question is the easement that the staff has proposed, is that easement..

Riley: I have it already.

Other Voice: You have a reported easement between in ----- Is that correct?

Riley: Yes. Two-thirds of the ---- is already in.

Other Voice: Do you have property documents to show that..

Riley: I have it with me today.

Other Voice: What I would like you to do is ----that showed that you have ---- direction and use that document that shows. -----

Riley: That is true. Although, I have recorded in my contract that one will be issued.

Other Voice: You don't ----- easement. Once you have a document that shows whether ----- .

Other Voice: Mr. L--- had a section on sewer disposal on parcel 2. It would be

something that had to be looked at. I did not dig ----- had to. It said that it could be -----standard.

Such a question that Mr. R---- that was regarding water. The city did say that they will provide water to both parcels -- \$1,400 dollars to where I want to put my house--- \$30 to 35,000 to parcel 2 and they said that I could have a well if I wished and there is a well to the north to the east and to south on the ----- . ----- I don't know if I did it correctly. I do have a forest land that has been approved by an approved forester. I haven't submitted it yet because I haven't -- just build one house.

Do you have any questions?

Other Voice: I don't have any questions. -----particular implications there. Why don't you go ahead and submit the -----.

Other Voice: I would have to copy it.

Other Voice: Okay.....maybe a copy of this letter as well.

Other Voice: Yea.

Other Voice: Is there anyone here to be in support of the application?

Why don't we go ahead and move to those who have questions and comments. Let me just say that the county does have a ten minute time limitation rule. I generally try and follow it. The rule indicates that everyone speaking on one point of view needs to consolidate their remarks ----- ten minutes. I have only got a few hearing ----. There obviously has already been some written information already submitted and so far today the information I think questions----- . How many folks here want to testify in opposition? 1, 2, 3. Okay why don't you come up in what ever order.

Rockland: Arnold Rockland, PO Box 83645 Portland, OR 97283 I am appearing for both myself and for the Forest Park Neighborhood Association and Development Committee. I have been identified earlier as the Chairman of the Neighborhood Association and the Chair of the Development Committee only. I would like to raise one point that I would like to see clarified either here or in the decision. The staff report on page 18 reports to know that the decision will be signed and I don't know if that is of any significance or not.

Other Voice: No, it is not.

Rockland: Thank you.

Other Voice: This is a form that is put together for my benefit so in case if I ----- I could, but no.

Other Voice: The application doesn't address all of the relevant criteria and doesn't show compliance with others. The staff nevertheless recommends approval on condition that some of the deficiencies be remedied later. The approval criteria and comprehensive plan don't allow that procedure. The plan must be found in compliance now or it should be denied. Criteria that involves issues of feasibility cannot be satisfied by conditions of future compliance. In some cases the language requiring demonstrated compliance before approval is beyond any possible misunderstanding. For example, comprehensive plan policies 37 and 38, both explicitly require findings of compliance prior to quasi-judicial approval.

The deficiencies in the plan include primarily access. One of the applicant's proposed route is proven the other is impossible with 90% grades. The applicant here, for the first time, has indicated that he does into plan to use the route which he delineated on the plan which he submitted. That is the route to the west of the Pollick property. That is as shown on his plan as a 20 foot wide easement going arrow straight up the west side of the Pollick property to parcel 2. If he has an alternate plan then he needs to be commended for finding something better. We must have the opportunity at public hearing to see that plan and to evaluate it. That is what this hearing is about. It is not something to be decided entirely by administrative procedure and camera later.

Mr. Riley has also indicated that he plans to submit a map showing the water courses. That is also something that should have been submitted earlier and been available to the public for comment. On the issue of land suitability, Mr. Riley's geologist Mr. Redfern. His report consist primarily of identifying problems, particularly with the proposed building site on parcel 2 which Mr. Redfern identifies as site A on his map. That site consists essentially of 50% raise. Mr. Redfern identifies that steepness, he identifies that the instability of the soil on the steep slope, the possibility of severe erosion, the probability of shallow ground water. These are precisely the conditions that 11.45460 in comprehensive policy plan 14 warn about as indications of unsuitability of development. There It's a large parcel, they are very likely suitable sites on it, but it is the burden of proof of the applicant to demonstrate in this hearing process that he has found such a suitable site, found suitable access to it. Regarding the septic problems, there is a requirement that the location of the site be shown. The hearings officer is required to evaluate that location and find

it to be suitable. The locations are not shown on the applicant's plan and need one of the proposal of parcel 2 has not been evaluated by any sanitarian.

Regarding water and fire protection. The application only indicates that there has been, there was a file on June 22nd, at least, indicating only the City of Review possibility of serving parcel 1 with water. Staff has added a condition 4. Staff's condition 4 makes note of it and establishes that the applicant provides some information about water to parcel 2. This is another area where comprehensive planning policy 37 requires that this be determined prior to project judicial approval. The issues of water for fire suppression are not addressed at all. That is a comprehensive plan policy 38. Policy 38C requires that a fire agency that be provided service be given an opportunity review the proposal and to comment. There is no indication in the record, at least when I reviewed it on June 22nd, that there was any referral to any fire agency or any reply. On the issue of compliance of the zoning, 45230D requires that the application comply with the zoning code. There is no showing in the application that there is probable qualification for conditional or prescribed use. It would seem most appropriate for the applicant to apply for one of those two things at this time. But, if not, at least the applicant should be required to aggress those criteria to show that the application of the land use would reasonably comply with the requirements.

In summary, the following approval criteria are not met: 1145230A1, which requires compliance with a comprehensive plan. I have identified policies 37 and 38, which explicitly require compliance before approval. 230-C which requires that the tentative plan comply with the applicable provisions of 11.45. On that subject, the staff report does not completely address those criteria. The staff report indicates, discusses only compliance with intent and purpose but the rule requires compliance with all applicable provisions of the chapter including intent and purpose and it is clear that those words including intent and purpose would not prepare to make it exclusively in -- purpose but to make it clear that preamble and other such things, these are to be addressed as part of the criteria.

And last the criteria regarding zoning ordinance which is pertinent with regard to access and intended use of the property. If you were to approve this application as it stands, one might ask why not approve every application? All that is needed is to include conditions that the applicant eventually comply with regulations. Actual compliance could be determined later by an administrator. Such a process would be an invasion of the requirements for a public hearing process in both chapters 1145 and ORS 215-4163 and such a process would not be legitimate.

This application should be denied. If the applicant comes back with a good application, he may find the property to be partitioned. But speculation at this point about possibly coming back with a good application is not justified and proven now.

Other Voices: unclear.

My name is Harry Gisesky. I live at 1966 NW Ramsey Crest. I am the president of Oregon Technical Services Center. The owner of lot #83 and the Technical Services Center is a family corporation. Our stock is held by the family members and is for after my wife and I owned the property now for a total of 25 years. My daughter, Tina Christensen owns lot #65 and these are the two lots that are on the west edge of the easement on this lot #55.

Other Voice: So lot 55 is just south of your lot?

Harry: Correct. But, basically our concern is because the proposed by the applicant Easement Road to the site on parcel 2. I am a little bit bothered because among things in the location, they made parcel 1 as site A parcel 2 has, I am trying to be clear in my statement. I would like to point out that on this map it shows that there is an overlap of lot 83 on the building site. In other words, there is an overlap between these boundaries. They don't come to a common corner and the overlap is 17 feet so we, what I am saying is that in addition to having a property adjacent to the proposed Easement road we also have for lot 83 a portion that the building site, parcel 2.

Other Voice: What you are saying is that you own that lot and your daughter owns the lot 55..... the lot where currently. Lot 83 and Lot --.

Harry: No, yes, yes that is right. Lot 9 and Lot 83 overlap by this amount.

Other Voice: Okay, why don't you bring that map. I am getting confused here.

So this is all his and 17 feet is shared.

Staff do you know -----?

Harry: My main point is that I have a legitimate concern of both the Easement Road and the building site.

Other Voice: For purposes of the record, if I have to stand there what actually occurs

is the lot in the northern lawn of lot 80 is extended approximately 17 feet or something. Excuse me. West property line is not actually an overlap, what it is lot 83 doesn't meet ----- of lot 9 - it actually ----- it.

Harry:

Right. Lot 83 and Lot 55 are in ..... that is not and so we do look to the county for our concerns. The other point is that lots 83 and lots 55 are higher in elevation in general through the abudding, the neighboring properties on the east of our lots. That means that we have a concern that is done and in particular the initially proposed Easement Road that it cause erosion, subsidenss, so on, that type of damage to our property. It is the component that Mr. Riley indicated that he recognizes the road is not, could not be filled really on that west border. But he doesn't indicate whether any partial - ---- would still be building in which case we still have a concern and we would like to know what road is proposed. That concern of ours would have been waived for ----- except the condition indicated by the staff of using the Gale's Ridge Easement Rd. As long as there is in the event of --- has the intention of making a road that would be abudding our property then we have a legitimate concern and in that regard we second the concerns expressed by the Forest Park Neighborhood Association representative in that we do not know where that road is so we cannot know present the information indicating whether we look out into favor or disfavor.

My daughter had a peculiar situation in that between the initial error in the submittal of the drawings to us, the correct drawings, and the fact that she never would see her copy of the staff report, she prepared a response that was short and in that the additional information that is necessary, but in her statement she had asked for second had asked for a second to Forest Park Neighborhood Association that this hearing be declared as that concluded at the end of the session today that missing portions that effect all of us be provided for us in a manner suitable for a public hearing and to that in the case of the property owner, that incidentally ran into over the 4th of July holidays, which we noticed that I received this letter at 7:00 a.m. this morning and this is sort of constraint we are placed in here. I did want to make one correction on her letter. She indicated that the properties that Riley had purchased from ----- they were purchased from Pollock. The other item in that regard on the conditions of approval on the staff report. On line 2, I believe that the 30 feet easement that runs from the point 500 feet south of the northwest corner of parcel 2 rather than the northeast corner. Appreciating that there are problems of that type that can develop, but reduce the amount of really effective time that the property owner has to prepare for a hearing of this type. My daughter has asked that in effect they continue and start a rejection of the application and that is the appropriate steps that the county has to take.

We are not returning this until we ----- . We certainly feel that we did not have the type of information to make a suitable response.

Other Voice: Thank you very much. Okay, I think we have one other individual. I have been pretty lenient on the ten minutes. I don't want to make you the ...

Other Voice: It seemed that happened to me last time

Other Voice: Well, we have to try to, the other people are hearings that we have ...

Other Voice: I will do my best.

Roseland: My name is Nancy Rosalyn, friends of Balch Creek 5900 NW Cornell Road, Portland, Oregon 97210

Mr. Grillo, I am opposed to the partition. I do feel that Mr. Riley should be happy with his one house and it is in an area that is extremely fragile as you well know the City of Portland has concluded that within the Balch Creek water shed there should be absolute minimal building sites approved. In the Balch Creek protection plan they went from 1400 down to 200 permitted all on the ridge and I think that it should be considered also in the Multnomah County portion. When property gets developed we urgently request and in some instances insist that the following criteria be included as conditions of approval to any permit. Since the property is in the Balch Creek water shed all the conditions listed in the Balch Creek protection plan in the Northwest hill studies apply. Multnomah County has used various portions of both plans in determining development conditions so that there is precedent. #1 - There must be a 90% -- for growth remaining on the land. This is absolutely vital in the continuation of the underground aquifer which feeds the springs which in turn feed Balch Creek. This also controls storm water run off as well as act as erosion control. Good cover also control siltation which even at what may seem quite a distance can still find its way into the creek. An example of this is the Gale's Ridge disaster which occurred a few years ago right up near Skyline a water main blew out when ----- was putting in the Gale's Ridge development. You could see from Skyline Rd., 20 feet, the mud from that ended up in Balch Creek and filled it to such a severe degree that it was about four years before it began to clean out and of course we had it clean for two months and this other slide - the Dan Bollem slide and we are back to square one. All of these happen at areas high on the hill or people didn't feel that there was much damage that could have happened to the creek because they were supposedly so close

to the creek. The conifers also add to the animal habitat within the water shed.

#2 - Any storm water run off from roofs, pothills or road must be collected in catch basins and allow to seep slowly into the landscape.

#3 - All outer surfaces should be graveled rather than be paved or asphalted. We feel very urgent upon this. A well maintained gravel road helps control storm water run off and further allows water to seep into the ground where trying to preserve the aquafir(?) for Balch Creek in another respect.

Strict criteria concerning septic must be carefully adhered to. The Bureau of Environmental Service is right now in the process of setting up new criteria for septic approval within the Balch Creek water shed. I think that Multnomah County is suppose to have people at these meetings and had they been there, they would have been aware of these new criteria. They are not about to give in on anything, which I will bring up later on. Since the Bull Run water is piped to the adjacent properties this development has also used piped water rather than digging up a well. Another well in the water shed will further deplete the quantity of water available to the service Balch Creek. It is noted that staff recommends wells. It distresses me that staff is seemingly oblivious to the environmental fragility and problems of the Balch Creek water shed. Every additional well further depletes that agrifir and the waters that support Balch Creek.

All planting should be ---- varieties listed on the preferable ---- list complied on the Balch Creek protection plan. All invasive plants also listed in the Balch Creek protection plan such as ivy must be avoided.

#7 - All construction must be during the building window - from May to October and all road construction must be mitigated as it is being constructed.

I request that you confer with the Bureau of Environmental Services regarding this development. They are in the process of developing several wetland areas within the water shed. The goal here is storm water control within both quality and quantity and improve and restoration of fish habitat. They have surveyed and mapped the entire water shed and are setting up certain criteria which they intend to see in place in the very near future. They are concerned both on the quantity and quality of development within the water shed. Since the city is responsible for all water flowing into the Willamette they have become very involved with

Balch Creek. Gene Oster and Tom Davis are the co-managers in case you are interested. I will leave this with you with their phone numbers. I have noticed on this map also that there are an awful lot of water courses on the property. This is an extremely steep, extremely fragile area dreadfully prone to land slides and water. I really think that site #2 is faster in the making especially. I don't know about site #1 but I do think really that one house on that piece of property is more than ample. Thank you.

Other Voice: Alright. Apparently you are submitting a copy of the comments ----

Is there anyone else here?

Wheary: My name is Dennis Wheary. I live at 2801 SW Troy in Portland, 97219. My wife and I, Elina own the property that is just to the east of Mr. Riley's on this southern part, lot 22. My comments are very brief. We are concerned about the access road coming into parcel 1 looks like it is just fine from our point of view. I was talking to another neighbor however, Bob Omev. Mr. Omev lives between the private access to Willamette View and what he calls Oak Street. If you notice Oak Street on your map. That map isn't there. It is just a lot of bushes. Mr. Omev is not here today. He was not informed of these hearings. He had one meeting he told me with Mr. Riley. They had a very pleasant meeting and discussed the possibility and having an easement to get into to parcel 2 but he would like to see a plan and like to know a little more about this. He told me that when he built his house, he has a new house that is right in there that he accessed Oak Street as part of his lot. There is no street there. He needs to be put on the list so that he is informed of whatever is going on with the hearings.

Other Voice: Voices conversating.

Wheary: He needs to be on the list and we want to continue the staff reports. I picked up a staff report this morning but we should probably have to this to review before the hearing.

Other Voice: Well, the staff reports are not mailed. -----

Wheary: Okay.

Other Voice: The only way to make contact with the staff ----- cut the costs, ----

Wheary: I appreciate it. Thank you.

Other Voice: Anyone else that needs to be heard?

Staff do you want to have..?

Is there a water course or something between the parcels?

Other Voice: Just looking briefly at this map, I am not really able to tell you specifically. It would take some time to study that. I don't have a quick answer but it looks like it could be one but on a map of this size it is a little difficult to tell right off the back. You are speaking of between Oak Street and the southwest corner of parcel 2 showing the house site.

Other Voice: And what about the proposed staff proposed ----- is that water ----

Other Voice: When we were on the site we followed the Easement road across Gale's Ridge and we followed that as close to the west edge of parcel 2 as we could. You know just looking at contours and so forth and we didn't go across any water courses on the way and didn't actually see any nearby. Staff isn't actually proposing any specific house site in conjunction with that alternative access across Gale's Road. However, on a larger version of the contour map that you see here I know that there are some water courses that the applicant referred to the broken and dotted lines that indicate those and they do exist but we do not encounter any water courses when we were out there but that certainly doesn't mean that they are not there. Did you have any other particular questions?

Other Voice: I guess I have a type of concern about moving forward to a decision on this application until we know what the City of Portland needs to do in terms of improving access to properties that are in ----- jurisdiction. Particularly if there are SEC overlay issues.

Other Voice: You are speaking of the properties within the city that the applicant would have to perverse to get...

Other Voice: Because it seems to me that if we were to approve this for the staff report recommendation over this other access, we may still be putting the city in the position of them having to essentially decide if that the actions that ---- -- or no access, because the city would have the ability of where it would decide.

Other Voice: Basically, the recommendation that is in this staff report is predicated on the the premise and may be debatable but the applicants saying we have got a land locked piece of property, we want to divide it in two pieces,

this is what we are proposing as ways to access those two parcels. Staff has found that the access to parcel 2 as the applicant proposed it on the map to be unacceptable - and I will stress that we took that line as we found it on the map and we have testimony today from the applicant that he does not necessarily intend to go straight as an arrow up the westside of the Pollock property.

Other Voice: But that definitely shows it.

Other Voice: We reacted to that line on the map and said that is not appropriate, and found further the City of Portland approval for the Gale's Ridge subdivision had in it specific language that set up the easement that staff is recommending be used for access to parcel 2. But the bottom line is that it is the applicant's responsibility to get the necessary approvals from the city of Portland to use those roads and without those he does not have partition plat signature and without that he doesn't have a project. This is a tentative plan approval but in order to actually create those two parcels requires signing and recording of a partition plat and that was what this is set up to occur only after written approval from the City of Portland is in hand. That may be an acceptable way to proceed but that is the way that we had premised that particular recommendation. And likewise, and there was some testimony concerning land feasibility study and water supply and again maybe there was some difference in what prior to approval and in our conditions we took that to be that before signing the partition plat which is actually the document that creates the lots that that would be an acceptable point of which to require adequacy of sewage disposal would be nailed down in terms of an actual land feasibility study and that is consistent with the manner in which the county has had these kinds of things happen rather than have. We have not in point of fact required an applicant to walk in with an approved feasibility study before tentative plan approval. But I understand and appreciate Mr. Rockwell's comments.

Other Voice: The county approved the site of the house but then the county contracts let the city to approve plans and the city is, we had our own plans drawn, because we wanted to put a basement in our house and they wanted an engineering study of the --- on the basement. The other thing the city asked for is to lay out on the contours of the map the....

Other Voice: Question.

Riley: Oh. The sixteen acre parcel of the roads you mean?

Re.: MC 2-92 and LD 25-92  
Public Hearing - On The Record  
Date: 09/22/92 Time: 9:30 a.m.

The enclosed original and copies of appellant's statement with attached documents are submitted for use with regard to the subject appeal hearing. It is hoped copies will be available to the commissioners in time for convenient use before the hearing.

BOARD OF  
COUNTY COMMISSIONERS  
1992 SEP 15 PM 11:34  
MULTNOMAH COUNTY  
OREGON

September 15, 1992

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

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1992 SEP 15 PM 1:34

Multnomah County Board of Commissioners  
Multnomah County Courthouse

Re: Appeal of Hearings Officer's Decision Approving a Land Partition  
MC 2-92, #124  
LD 25-92, #124 7025 NW Summitview Court--Owner: Tom Riley / Julie Pinette  
Testimony on behalf of myself and appellant, Forest Park Neighborhood Assoc

Dear Commissioners,

The case presents an unusual opportunity for you to examine the working of the land use decision making process. All issues deal with the question of whether or not the application and disposition were in compliance with the Comprehensive Plan, County Code, and State statutes.

We are admonished at the start of a land use hearing to direct testimony to the approval criteria. I pointed out how the applicant's proposal failed to comply with specific requirements (letter to the Hearings Officer of June 30, 1992 copy attached). The testimony, restricted to relevant issues, was disregarded. No consideration was given to the June 30th letter submitted 6 days before the hearing. Even where it addressed a simple error in the Staff Report that distorted the meaning of a proposed condition, it was ignored, and the error was copied verbatim. (See June 30th letter, p.4, MISCELLANEOUS, paragraph 2 and condition 8 of the Staff Report and of the Decision, where the first sentence refers to Parcel 1, and the last sentence inconsistently refers to Parcel 2.)

The Hearings Officer, Mr. Grillo, may not have even read the letter of June 30th. At the hearing on July 6, 1992, Mr. Grillo described one letter so far received from the public. It was not mine. Sharon Cowley, secretary for the hearing assured me it was in the file which was before Mr. Grillo, but she presented another copy to him. He looked at it and announced it's receipt, and then noted in a surprised tone that the date stamp indicated it had been received on June 30th. However, no reference to the letter or its contents was later made in his 18 page decision of August 3, 1992.

The Notice of Review and the attached copy of the June 30th letter, cover the issues. (Two points in the letter are not raised on appeal: access to Parcel 2, and designation of water courses.) Copies of Code, Statute and Comprehensive Plan sections referenced here are attached (referenced sections are highlighted).

A brief summary of issues follows. A pervading theme is deferral for administrative decision what the Hearings Officer was required to find in quasi-judicial proceeding:

1. Approval criterion 11.45.230(A)(1) requires compliance with applicable elements of the Comprehensive Plan.
  - a. Comprehensive Plan Policy 14 requires that harm be avoided or mitigated when developing in hazardous areas. Steep slopes, shallow fragipan and other considerations make this a hazardous site. The issue is addressed only by deferring it in Condition 2, for an administrative decision after partition, through processing of a Hillside Development Permit application.

- b. Comprehensive Plan Policies 37 and 38 each require appropriate findings “prior to approval of a legislative or quasi-judicial action”. Policy 37 requires adequate water and sewage disposal facilities and Policy 38 requires adequacy of water for fire suppression and an opportunity for Fire Bureau comment. In Conditions 3 and 4 the decision deferred the domestic water and sewage issues for decision by administrators. Fire Bureau participation was ignored.
2. MCC 11.45.230(C) requires that, to be approved, the tentative plan must comply with “applicable provisions, including purposes and intent of the Chapter” (referring to Chapter 45 of the MCC). The decision misconstrues this as requiring compliance with only the “intent and purpose”, ignoring all other “applicable provisions” of the Chapter. Specific deficiencies are inadequate plan maps, not showing contours at the required 5 foot vertical intervals (MCC 11.45.260(B)(4)) and failure to depict the proposed methods of sewage disposal (MCC 11.45.260(C)(6)).
3. Compliance with the Zoning Code is required by MCC 11.45.230(D). Because the use proposed, residential in the MUF 19 zone, is not a primary use, compliance cannot be determined until an application is made for a permit for a dwelling required for forest practices, a “Prescribed Use” under the code. Criteria must be met, and judgment exercised before approval. It is not a foregone conclusion. MCC 11.45.230(D) could only be met if the required Prescribed Use application were reviewed prior to, or as part of this quasi-judicial proceeding. The Decision merely defers the issue for administrative determination in Conditions 5 and 8.
4. The burden of proof of compliance with approval criteria is placed on the applicant by MCC 11.15.8230(D) and 11.45.220(C). The Hearings Officer ignored this requirement, making repeated findings in favor of the applicant, without regard to the absence of any evidence whatever in support of the findings, in the face of evidence to the contrary, and without any explanation of such findings under these circumstances. This is in violation of ORS 215.416(8) and (9) which require the decision to be based on the land use ordinances and the Comprehensive Plan and which require a statement of the facts relied on and an explanation of the justification of the decision in light of the requirements. In *Dennis v. Employment Division*, 302 Or 160, 170 (1986), the Oregon Supreme Court held that when a referee in a state administrative proceeding does not accept uncontradicted evidence, an explanation of the rejection of that evidence is required. This situation is analogous.
5. The deferral by conditions and findings of determination of compliance to some future administrative action is a nullification of the requirement that the decisions on this case be made in a public and quasi-judicial procedure. The decision is in violation of ORS 215.416(4) which requires approval to be based on compliance with the County Comprehensive Plan and Code provisions.

For whatever reason, the Hearings Officer did not apply the clear standards of law to this application. The issue to be decided is not just whether or not this partition shall occur. The issue is whether or not the land use process is governed by law or by the Hearings Officer. I have participated in a number of land use proceedings in the City and County, and on appeal. I haven't been happy with every decision, but this is the first time I felt that the law was subverted and that public participation was despised.

**Appellant requests that an improper decision be remedied by denial of the applications for reasons given herein, in the Notice of Review, and in the entire record, specifically including my letter to the Hearings Officer of June 30, 1992. Proposed amendments to the findings and conclusions of the Hearings Officer in the August 3, 1992 Decision are attached. By adopting the decision with the proposed amendments you would grant the appeal and deny the applications.**

*Arnold Rocklin*

**PROPOSED AMENDMENTS TO FINDINGS AND CONCLUSIONS OF THE  
AUGUST 3, 1992 DECISION RE. MC 2-92, # 124 AND LD 25-92, #124**

Proposed new text is printed in boldface type. Where an entire statement or finding is proposed to be deleted it is so indicated. Partial deletions are indicated by strike through print.

1. Page 1, DECISION #1 (LD 25-92): Delete all existing text and replace with: **Deny the application for partition based on the following findings and conclusions.**
2. Page 1, DECISION #2 (MC 2-92): Delete all existing text and replace with: **Deny the request to use easements as the means of access instead of providing frontage on a dedicated street. The reason for denial is that the request for access by easement is dependent on approval of a partition which is denied for unrelated reasons. Access by easement cannot stand by itself.**
3. Page 6, Conditions of Approval (LD 25-92): Delete heading and all conditions.
4. Page 8, (a) No. 12 - Multiple use Forest Lands

**Findings. The intent of Policy 12 is to encourage small woodlot management, forestry, reforestation and agriculture. Residential use, as the applicant requests, would require approval of a resource management program for at least 75 percent of the productive land on each of the 2 proposed parcels. ~~Parcel 2 will be required before a house can be built on that parcel. Approval of a resource management program for at least 75 percent of the productive land on Parcel 1 will be required before signing of the partition plat by the County Planning Division. Subject to those conditions, the proposed land division complies with Policy 12.~~ As approval of a program cannot be prospectively assured, and, as no resource management program has been approved or is before this proceeding, the intent of Policy 12 is not met.**

5. Page 9, (c) No. 14 - Development Limitations: Edit findings as follows:

**Findings: The policy is "to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties." This policy is concerned with ~~mitigating or limiting impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement.~~ Topographic Information presented by the applicant indicates that large portions of the site, including the proposed homesites and accesses, contain slopes ~~exceeding 25 percent~~ some or all of these hazards (except land within a floodplain). One of the proposed homesites is on slopes of 40% to 65%. Though the statement of Roger Redfern, geologist for the applicant, suggests that "the low level of development proposed" may be acceptable with appropriate controls, his statement is so qualified that it does not satisfy the applicant's burden of proof. The requirements of the policy are not met. ~~Portions of both proposed parcels are identified on the County Slope Hazard Map as being hazard areas. Compliance with the Hillside Development and Erosion Control Ordinance pursuant to MCC 11.15.6700—.6735 in such areas will be a condition of approval. Subject to that condition requiring a Hillside Development Permit, the proposal can satisfy Policy 14 because development will be directed away from areas having identified development limitations and mitigation will be controlled by the provisions of MCC 11.15.6700—.6735.~~**

- 6 Page 9, (e) Policy 37 - Delete all following text and replace with: **Water and Disposal System**

**Findings.** The policy requires a finding prior to a quasi-judicial decision that the project can be connected to a public water and sewer system, or that there is an adequate private water system and/or there can be an adequate subsurface sewage disposal system. The applicant has satisfied this policy only with regard to Parcel 1. No evidence whatever has been supplied regarding Parcel 2. The proposed building site on Parcel 2 is over 1/4 mile away from the proposed site on Parcel 1 by the shortest route not crossing other private property. The terrain is difficult, including steep slopes and potentially unstable ground. There can be no presumption that water service to Parcel 1 means it is available to parcel 2. There is no public sewer available and no evidence has been supplied that there can be adequate subsurface sewage disposal for the site on parcel 2 which has been described by the applicant's geologist as having slopes of 40% to 65%. The requirements of the policy are not met.

7. Page 10, (f) No. 38 - Facilities: Delete all following text and replace with:

**Findings.** The policy requires a finding prior to a quasi-judicial decision that the appropriate school district has had an opportunity to review and comment, that there is adequate water pressure and flow for fire fighting purposes and the appropriate fire district has had an opportunity to review and comment, and that adequate police protection can be provided. The situation of the property, in steep sloped forest, far from any major road makes fire protection a particularly important concern. There is no evidence in the record that there is adequate water pressure and flow for fire fighting purposes or that the appropriate fire district has been notified of the proposal and had an opportunity to review and comment. The requirements of the policy are not met.

8. Page 10. Add immediately following the above statement on Policy 38:

**Findings regarding MCC 11.45.230(A)(1).** This approval criterion requires that the tentative plan be in accordance with the applicable elements of the Comprehensive Plan. As the requirements of policies 12, 14, 37 and 38 are not met, the proposal does not comply with this approval criterion.

9. Page 10, (C) Delete all text and replace with:

**11.45.230(C) Applicable Provisions of Chapter 11.45.**

**Findings.** This approval criterion requires that the tentative plan comply with the applicable provisions, including the purposes and intent of MCC Chapter 11.15. There is no apparent conflict with the purposes and intent of the chapter. However, the tentative plan does not comply with other applicable provisions. 11.45.260(B)(4) requires that the plan map show contour lines at five foot vertical intervals for slopes exceeding 10%. Most of the property has slopes over 10%. No map or plan in the record shows vertical intervals of 5 feet. All maps which do show topography have contours at ten foot intervals. The tentative plan does not comply with this applicable provision. 11.45.260(C)(6) requires that the plan map show the proposed methods of sewage disposal. No plan map in the record shows this. The tentative plan does not comply with this applicable provision. The requirement that the tentative plan comply with the applicable

provisions is not met.

10. Page 12, (D) Delete all text and replace with:

**11.15.230(D) Compliance With Zoning Ordinance**

**Findings. This approval criterion requires that the tentative plan comply with the Zoning Ordinance. While no part of the plan is in certain conflict, the use proposed by the applicant is not a primary use in the MUF 19 zone on lots of less than 38 acres, as is proposed. Residential use is potentially available only as a conditional use or a use under prescribed conditions (MCC 11.15.2166 through .2184 and .2194). A permit for either would require a plan submitted by the applicant and a determination that the proposal is in conformance with the approval criteria. There can be no assurance in advance that the proposal will comply. The applicant can attempt to satisfy this criterion in the future by simultaneous application for residential use and partition. At this time, the criterion is not met.**

11. Page 16, Conclusions (LD) 25-92) Delete all existing text and replace with:

**The proposal does not satisfy MCC 11.45.230 Criteria for Approval, Type I Tentative Plan, provisions (A)(1), (C), and (D), pertaining respectively to compliance with the Comprehensive Plan, applicable provisions of MCC Chapter 45 (Land Divisions), and MCC Chapter 15 (Zoning Code). The application for partition is denied.**

12. Page 16, Conditions of Approval (MC 2-92). Delete this section.

13. Page 17, Findings of Fact (MC 2-92) Delete all following text and replace with:

**The terrain is difficult, and the applicant has not carried the burden of showing that his proposal for access by easement to both proposed parcels would be "safe and convenient for pedestrians and passenger and emergency vehicles" as required by MCC 11.15.2188. The problem of very difficult terrain, with apparent slopes of more than 50% is compounded by the fact that the existing and proposed easements are entirely within the City of Portland, and within an environmental overlay zone (EC) requiring a discretionary administrative proceeding to approve any road. Simultaneous processing of applications in the City and County does not appear practical. Alternative routes appear plausible, and the applicant has not presented substantial evidence that he has chosen the best. Planning staff indicates that an existing public easement through the Gales Ridge Subdivision west of the property would be a better choice. However, there is testimony by the applicant and an opponent that that route would traverse a more restrictive City EP zone. The applicant must give more thorough consideration to all plausible routes, and account persuasively for his rejections and preferences. He must provide detailed information to show that proposed roads can be built in compliance with all applicable requirements and practical limitations.**

**MC 2-92, access by easement is dependent on, and meaningless without, approval of LD 25-92, which is concurrently denied.**

14. Page 18, Conclusions (MC 2-92) Delete all following text and replace with:

**For reasons given above, the application for access by easement is denied.**

June 30, 1992

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

Hearings Officer  
c/o Multnomah County Division of Planning  
2115 S.E. Morrison St.  
Portland, OR 97214

Re: MC 2-92, #124  
LD 25-92, #124 7025 NW Summitview Court--Owner: Tom Riley / Julie Pinethe  
Hearing July 6, 1992

This testimony is submitted on behalf of myself and the Forest Park Neighborhood Association Development Committee.

We have concerns about the application, and urge denial because it does not meet, and conflicts with, requirements. The defects cannot be remedied by conditions of approval. Absence of information and substantial evidence makes it impossible to properly determine that all approval criteria are met. Specific development proposals must be so substantially changed as to require a new hearing. To approve this application with conditions would be to place essential elements beyond the public hearing process mandated by MCC Chapter 11.45 and ORS 215.416(3).

#### TOPOGRAPHY AND WATER COURSES

The topography of the site consists predominantly of grades in excess of 10 percent. Thus, MCC §11.45.260 is applicable and says:

“The tentative plan map shall indicated (sic) the following:

\* \* \* \* \*

(B) Existing conditions:

\* \* \* \* \*

(4) Ground elevations shown by contour lines at five foot vertical intervals \* \* \*” (emphasis added)

The plan map shows contours on only parts of the property, and then, only at 10 foot intervals. A letter from geologist Roger Redfern, dated May 29, 1992 and submitted by the applicant, has a contour map attached. It covers the entire parcel, but also shows only 10 foot intervals, and is an existing map of unknown accuracy. It may have been made from aerial photographs, a technique yielding data too crude for assessing suitability of a steep site with uneven forestation. The plan map also does not meet the requirement of §11.45.260(B)(7) that water courses be identified. There are water courses on the property (Mr. Redfern refers to drainageways in his letter). Steep sites present difficulties and hazards. Complete and precise delineation of conditions is required to evaluate the proposal. Approval criterion §11.45.230(C) requires that you find “The tentative plan or future street plan complies with the applicable provisions, including the purposes and intent

of this Chapter.”<sup>1</sup> The language is clear and it is mandatory. The requirement may not be waived. Observations and opinions by staff, the applicant, expert witnesses and other persons or agencies that support the application on any issues related to topography or drainage should not be considered as substantial evidence, as they are based on information that is defined by ordinance as deficient. Without proper delineation, it is also impossible for the applicant to address the drainage easement requirement of §11.45.550(B). The application is incomplete, and may not properly be approved.

## LAND SUITABILITY

§11.45.460 requires denial of a land division if it is found unsuitable for various reasons of topography and geology. As discussed above, the applicant’s tentative plan is deficient in contour and water course information required by §11.45.260(B)(4) and (B)(7). Mr. Redfern’s letter clearly states that his review is based on knowledge of other land in the area and a 1.5 hour walkover of only the proposed building areas designated sites A and B on Mr. Redfern’s map, on proposed parcels 2 and 1, respectively. He observes that slopes range from 40 to 65 percent on site A. He raises serious questions of suitability: “The problems at this site include marginal stability of the steeper (>50%) slopes, soil creep, potential for severe erosion of exposed soil, probable shallow ground water \* \* \*.” These are the characteristics listed in §11.45.460 and Comprehensive Plan Policy 14 as indications that development should not take place. Policy 14 requires a “showing” that the development can be harmlessly achieved and without public cost, neither of which has been done. Mr Redfern goes on to cite problems with “finding an (sic) safe location for disposal of septic effluent, and providing a stable access road.” Though the difficulties create a possibility of septic discharge, staff does not address this in discussion of Comprehensive Plan Policy 13. Site B is less difficult, but Mr. Redfern observed problems of “\* \* \* shallow ground water and assuring that disposal of septic effluent and storm water can be accomplished without reducing the stability of adjacent slopes.” Considering the inadequate tentative plan data and the acknowledged difficulty of the site, there is no basis to find that the site is not unsuitable.

Staff has found that the access to Parcel 2 is unacceptable, and Condition 2 requires access through Gales Ridge. By implication, a change of the homesite to some unspecified location is also required. A more suitable site is probably available, but it must be specified before it can be evaluated and found suitable.

## ACCESS

The proposed access by easements is not shown to be safe and convenient as required by §11.15.2188 for property not abutting a street. While the access to parcel 1 is not, on its face, impossible, the applicant has not shown that it meets the criteria. The proposed access to parcel 2 is unsuitable (I did not find evidence in the record as of June 22, 1992 that the applicant has actually secured that easement). In paragraph 5 of his narrative statement, the applicant enumerates some of the issues of access, and merely says he will address these issues in the final design. The applicant’s own evidence (contour maps and Redfern letter) acknowledge that access is very difficult. The tentative plan shows slopes over 90 percent. In the worst place, the road would run for 200 feet perpendicular to the 90+ percent slopes and over unstable terrain. The easements being only 20 feet wide, the

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<sup>1</sup> Staff mis-interprets §11.45.230(C) as applying only to the “purpose and intent” of the Chapter. The plain language of the code obviously refers to the entire chapter, with “purpose and intent” specifically referenced to avoid the practice of giving legislative preambles and statements of purpose less than binding authority.

proposed roads must run arrow straight for 300 and 650 feet over varying and precipitous contours. Safe and stable roads over the proposed routes would be a huge undertaking and not practical for a 2 parcel residential partition. It is obvious to a layman that a usable road could not have 90 percent grades. If fill were to be used to raise the lower elevations, it could not possibly be done within the 20 foot easement. Given the obviously difficult site conditions, the applicant must propose a practical method of access and the proposal must be subject to the examination and evaluation of the hearing process.

The roads would traverse the City of Portland Balch Creek Watershed EC zone and permits would require a Portland Type II land use review procedure. Staff says, on page 16, Findings of Fact #2, that the applicant has filed necessary documents with the City to obtain approval. There was no evidence to that effect in the record on June 22, 1992, and staff does not reveal what evidence is relied on. The City Bureau of Planning is required to notify the Forest Park Neighborhood Association of Type II procedures in progress, and we have not received notice. In any case, it is unlikely that the applicant could secure approval, as the proposal would conflict, at a minimum, with Portland City Code §33.430.340 G1 and §33.430.340 I3 (copy attached). The roads cannot reasonably be judged to comply with MCC §11.45.490 (A)(3) which requires that the street be designed "To assure the maximum possible preservation of existing slopes, vegetation and natural drainage. (emphasis added) Access via an existing public easement through the Gales Ridge subdivision is available and would appear to be safer and have less impact on the resource values. The applicant is not relieved of the burden of proving suitability of such an alternative, even when it is proposed by others, including planning staff.

#### SEWAGE DISPOSAL

There is a document in the file signed by Michael Ebling, Environmental Soils Specialist, regarding feasibility of a septic system. However, a required report is not attached, so it cannot be understood what he thought was feasible. I spoke with him by phone on June 23, 1992. He said he found two proposed septic drainage areas on lot 10 to be feasible. He was not asked to examine the site on parcel 2 (the applicant acknowledges approval of only one site). I generally described to him the parcel 2 site as depicted on the applicant's map as almost entirely 50 percent or greater slopes, and he replied (hypothetically) that septic systems could not be approved on such slopes. §11.45.260(C) requires that the tentative plan map show the proposed sewage disposal facilities. They are not shown. MCC §11.45.230 (H) specifies that the approval authority shall find that the sanitary sewage disposal system is located in a manner that will prevent improper discharge. Such a finding cannot reasonably be made without having information as to the location and without an informed staff and public having had the opportunity to comment. Comprehensive Plan Policy 37 B and C require a finding "prior to approval" that there is a DEQ approvable subsurface disposal system. The tentative plan requirements of approval criteria §11.45.230(A)(1) (compliance with Comprehensive Plan) and §11.45.230(C) (compliance with Chapter 11.45 provisions) are not met.

#### WATER AND FIRE PROTECTION

The applicant proposes to use City of Portland water. However, the report from the Portland Water Bureau indicates a cost of \$50,000 to bring city water to only one of the two sites. Water Bureau staff suggests use of wells, an option not examined by the applicant. Comprehensive Plan Policy 37 B and C require a finding of adequate public or private water "prior to approval". While it's fair to presume that, public water, if brought to the property would be adequate for domestic purposes, it is not clear that such a course is practical. Adequacy of private water sources has not been addressed by the applicant. Comprehensive Plan Policy 38 B and C require "prior to approval" a finding that "There is

adequate water pressure and flow for fire fighting purposes" that the "Appropriate fire district has had an opportunity to review and comments (sic) on the proposal". The applicant does not adequately address policy 37, and his comments purported to address policy 38 miss the point entirely. Staff also fails to adequately address policy 38. There is no verification that the City of Portland is the "appropriate" fire district, and no discussion of the Portland Fire Bureau's comments, if any. There is no indication that they were notified and invited to comment. Last, staff does not address water pressure and flow for fire fighting.

## ZONING

§11.45.230(D) requires that the tentative plan comply with the Zoning Ordinance. The property is zoned MUF 19. In compliance with §11.45.270(D), the applicant has identified the proposed use as being two residences. While a residence is a primary use on a lot of 38 or more acres, it is a conditional or prescribed use on lots of less than 38 acres (§11.15.2168(E), .2170(A) and .2172(C)). The proposed lots being less than 38 acres, compliance with approval criterion 11.45.230(D) can be shown only if the applicant has already obtained approval under 11.15.2170(A) or .2172(C), or is applying for such approval simultaneously with the land division. Neither has been done, and the mandatory language of §11.45.230, "\* \* \* the approval authority shall find that:", does not allow approval, even conditionally, without the requirement having been satisfied as a matter of fact, and not as a matter of speculation.

## MISCELLANEOUS

There are some minor points regarding the Staff Report.

1. On page 6, Condition 2, and page 15, Condition 4, I believe the references to northeast were intended to be northwest.
2. On page 6, Condition 8 is almost certainly in error. The reference to Parcel 2 in italic seems inconsistent with the reference to Parcel 1 in the third line. Also regarding page 6, conditions 5 and 8, and page 14, the second (c), the requirement of management plans for Parcel 1 before signing of the plat, and for Parcel 2 prior to a building permit is unclear in purpose. Reasonably, one would expect that since a permit has been applied for on Parcel 1 already, and the applicant is now proposing to reduce the proposed homesite to below 38 acres, thus requiring a conditional or prescribed use permit, that the partition process invalidates the permit application. A reasonable condition would be to require the plan as a condition of a building permit on Parcel 1, and as a condition of partition for both parcels.
3. On page 6 Condition 9, the limitation of the caveat regarding ability and approval to build to Parcel 2 may be interpreted as not applying to Parcel 1.

## CONCLUSION

§11.15.8230(D) and §11.45.220(C) place the burden of proof for all matters at issue on the applicant. Although it is conceivable that a proper application could be made in the future, the current application does not meet requirements. Even if all evidence supplied by the applicant were interpreted as favorably as possible for the applicant it would not be sufficient to establish compliance with approval criteria. In fact, there is substantial evidence that the proposal is in conflict with the criteria.

The staff recommendation is for approval with conditions. Staff has recognized some, but not all of the deficiencies described above and proposes to address them by conditions.

This would amount to approval of the application with implicit findings of non-compliance with approval criteria. The deficiencies and conflicts with regulations are proposed to be remedied later by what would be, in effect, a substantially revised proposal that would comply with approval criteria, but which would be approved or denied by administrative decision. Such a procedure would violate the public hearing requirements of Chapter 11.45 and ORS 215.416(3) and would violate Comprehensive Plan Policies 37 and 38 which explicitly require a finding of compliance before quasi-judicial approval. §11.45.230 requires that, with two possible exceptions, the approval authority shall find that the plan is currently in accord and compliance with requirements.<sup>2</sup> If the “approve now - comply later” process were permissible, any application could be approved even while being found to not comply with any and all approval criteria, providing only that there is a condition requiring compliance in the future. Thus, anything could, in meaningful substance, be judged and approved administratively, without a public hearing. Such a process has no legitimacy. This application may not be approved unless and until it complies with all criteria, and it does not.

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Chair, Forest Park Neighborhood Assoc.  
Development Committee

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<sup>2</sup> 11.45.230 (B) and (H) use the terms “will” and “shall” in a way that could allow them to be construed as calling for requirements of future compliance. It is clear, at a minimum, that regarding even these two regulations, there must be a present determination of future possibility, practicality, and even certainty, of attainment before there can be approval of the tentative plan.

POLICY 14: DEVELOPMENT LIMITATIONS

INTRODUCTION

Many natural features impose limitations on development and, if not recognized in the development process, they can create public health and safety hazards. For example, flood plains perform important water storage functions and, if filled, force the water into other lands formerly not affected. These newly affected areas may have buildings which will be flooded. Erosive soils create stream siltation and can affect water quality and fish life habitat. A high water table can preclude septic tanks from functioning properly and create ground water pollution. These are important features which must be considered.

The purpose of this policy is to protect the public health and safety and to ensure that development does not create an "on site" or "off site" public harm. It is not intended to prohibit development except where design and construction techniques cannot provide for a safe development.

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POLICY 14

THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:

- A. SLOPES EXCEEDING 20%;
- B. SEVERE SOIL EROSION POTENTIAL;
- C. LAND WITHIN THE 100 YEAR FLOOD PLAIN;
- D. A HIGH SEASONAL WATER TABLE WITHIN 0-24 INCHES OF THE SURFACE FOR 3 OR MORE WEEKS OF THE YEAR;
- E. A FRAGIPAN LESS THAN 30 INCHES FROM THE SURFACE;
- F. LAND SUBJECT TO SLUMPING, EARTH SLIDES OR MOVEMENT.

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Policy 14

**POLICY 37: UTILITIES**

INTRODUCTION

Utilities include sewer, water, storm water drainage, energy and communication systems. The need for public water, sewer and drainage systems varies, according to the density of development and the ability of the soil to absorb excess water. Therefore, there are different standards.

The Public Welfare requires installation of energy and related communication facilities in all areas and zones where people live, work or find recreation. TRANSMISSION LINES are required to transmit power to areas of use and to provide reliable service by utilizing alternative sources. BULK POWER SUBSTATIONS are required to provide a reliable source of power for Distribution Substations. DISTRIBUTION SUBSTATIONS and related lines are required to provide a reliable source of power for service to the customer. Additional facilities and modifications to existing facilities are required to meet the public need for energy due to population growth, conservation of energy, changes in energy source and consumption and reliability requirements.

The purpose of this policy is to ensure that no long range health hazard areas are created, and that excess water "runoff" will not damage property or adversely affect water quality. A second purpose of the policy is to ensure that a particular development proposal, because of its size and use, does not reduce the energy supply to a level which precludes the development of other properties in the area as proposed by the Comprehensive Plan.

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**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; OR
- D. THERE IS AN ADEQUATE PRIVATE WATER SYSTEM, AND A PUBLIC SEWER WITH ADEQUATE CAPACITY.

*Policy 37*

POLICY 38: FACILITIES

INTRODUCTION

Police protection is provided by the County's Sheriff's Office; however, fire protection and schools are provided by special service districts which operate independent of the County.

The purpose of this policy is to assure that adequate police and fire protection is available to new development and to provide the school districts with the opportunity to be advised of proposals which will affect their capital improvements programs.

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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 ON THE PROPOSAL.

POLICE PROTECTION

- D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICY PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.
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Policy 38



11.15.8205 Definition

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

- (A) Change of Zone Classification;
- (B) Community Service Uses;
- (C) Conditional Uses;
- (D) Variances, Except as otherwise provided herein;
- (E) Temporary Permits; and
- (F) Other requests for permits and other contested cases determining permissible uses of specific property.

11.15.8210 Initiation

- (A) An action, unless otherwise specifically provided by this Chapter, may only be initiated by order of the Board, a majority of the entire Planning Commission or by application of the record owner of the property which is the subject of the action or the authorized agent of the record owner.
- (B) An action initiated by a record owner or owner's agent shall be filed with the Planning Director on application forms provided by the Director which shall contain all information requested. The Planning Director may require submission of a certified land survey as part of the application.

11.15.8215 Pre-Initiation Conference

Prior to initiating an action under MCC .8210(B), the property owner or owner's agent shall confer with the Planning Director regarding the requisites of formal initiation.

11.15.8220 Notice of Hearing – Contents

- (A) Notice of hearing before the Planning

Commission or Hearings Officer shall contain the following:

- (1) The date, time and place of the hearing;
- (2) A legal description of the subject property;
- (3) A street address or other easily understood geographical reference to the subject property; *[Amended 1990, Ord. 643 § 2]*
- (4) The nature of the proposed action and the proposed use or uses that could be authorized; *[Amended 1990, Ord. 643 § 2]*
- (5) A listing of the applicable Zoning Code and comprehensive plan policies that apply to the application; *[Amended 1990, Ord. 643 § 2]*
- (6) A statement that all interested parties may appear and be heard; *[Amended 1990, Ord. 643 § 2]*
- (7) A statement that failure to raise an issue, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue; *[Added 1990, Ord. 643 § 2]*
- (8) A statement that the hearing shall be held pursuant to the adopted Rules of Procedure; *[Added 1990, Ord. 643 § 2]*
- (9) In the case of a hearing by the Planning Commission, the names of the members of the Commission and, in the case of a hearing by the Hearings Officer, the name of the Officer and the name of the staff representative to contact and the telephone number where additional information may be obtained; *[Added 1990, Ord. 643 § 2]*
- (10) A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reason-

- (1) Those persons entitled to notice under MCC .8220(C) who also make an appearance of record before the approval authority; or
- (2) Other persons who demonstrate to the approval authority at its hearing, under the Rules of Procedure, that they could be aggrieved or have interests adversely affected by the decision.

(B) Appearance of Record shall mean either:

- (1) Testimony by a party or the party's representative or counsel; or
- (2) A written statement giving the name and address of the person making the appearance, and setting forth in detail the person's evidence and argument either for or against the application being reviewed, signed by the person or the person's counsel, and filed with the Planning Director, at or prior to the hearing. The written statement must also contain facts showing in what manner the interests of the person would be adversely affected or in what manner the person would be aggrieved by a decision contrary to that person's position on an application.

(C) As used in this section, the term *Approval Authority* has the meaning specified in MCC .0010.

[Amended 1985, Ord. 486 §2]

**11.15.8230 Hearings**

- (A) The Hearings Officer or a quorum of at least three members of the Planning Commission, as is appropriate, shall conduct a hearing on the application within 90 days of the initiation thereof, under MCC .8210(B), unless such time is extended with the written consent of the one initiating the action.

[Amended 1982, Ord. 351 § 2]

- (B) Three members of the Planning Commission shall constitute a quorum in acting on applications under MCC .8115(B).

- (C) No action shall be heard unless a Staff Report is completed and available at the office of the Planning Director at least five

days prior to the date fixed for hearing. A copy of the Report shall be mailed, upon completion, to the one initiating the action and to the Planning Commission or Hearings Officer, as appropriate. In addition, a copy shall be furnished to other persons who request the same upon payment of the fee provided for under MCC .9020. The Staff Report may be supplemented only at the hearing.

(D) The burden of proof is upon the person initiating an action. Unless otherwise provided in this Ordinance, that burden shall be to persuade that:

- (1) Granting the request is in the public interest;
- (2) There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;
- (3) The proposed action fully accords with the applicable elements of the Comprehensive Plan; and
- (4) The factors listed in ORS 215.055 have been considered.

(E) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under subpart (D). above.

**11.15.8235 Findings of Fact – Conclusions**

In all cases, the Planning Commission or Hearings Officer shall cause written Findings of Fact and Conclusions, based upon the record, to be filed with Decisions. The Findings shall specifically address the relationships between the application and the factors listed in MCC .8230(D) and (E), to the extent they form the basis for decisions.

**11.15.8240 Decisions**

- (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

**11.45.220 Public Hearing and Action, Type I Tentative Plan and Future Street Plan**

- (A) Notice of a hearing on a Type I tentative plan or a future street plan shall be given as required by MCC 11.15.8220, provided that mailed and posted notice shall also include a sketch indicating the proposed lotting and street patterns, the proposed future street plan, if any, and the location of the proposed land division in relation to adjoining properties and nearby streets.
- (B) A decision on a Type I tentative plan and future street plan, if any, shall be deemed an *action* as defined in MCC 11.15.8205, and shall be determined in the manner prescribed for *action proceedings* in MCC 11.15.8225 through .8230(C), and MCC 11.15.8235 through .8250(H).
- (C) The burden of the applicant for a Type I Land Division shall be to satisfy the hearing body that the criteria for approval listed in MCC 11.45.230 of this Chapter have been met. The findings and conclusions adopted by the hearing body shall specifically address the relationships between the application and those criteria.
- (D) The written decision on a Type I tentative plan and future street plan, if any, shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced. The Clerk shall summarize each decision on the agenda for the next Board meeting on planning and zoning matters for which notice can be given according to the Charter.
- (E) Review of a decision on a Type I tentative plan or future street plan shall be according to the provisions of MCC 11.15.8260 through .8285(E).

**11.45.225 Rescheduled Hearings**

In the case of any hearing required under this Chapter which must be rescheduled at the request of or due to the neglect of the applicant, a fee in accordance with subsection (K) of MCC 11.45.810 shall be assessed against the applicant. Said fee may be waived in whole or part by the Planning Director if it is determined that the requested rescheduling was due to unavoidable circumstances or that the applicant proceeded

with all possible diligence to give adequate advance notice of the request for rescheduling.

**11.45.230 Criteria for Approval, Type I Tentative Plan and Future Street Plan**

In granting approval of a Type I tentative plan or future street plan, the approval authority shall find that:

- (A) The tentative plan or future street plan is in accordance with:
  - (1) The applicable elements of the Comprehensive Plan;
  - (2) The applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and
  - (3) The applicable elements of the Regional Plan adopted under ORS Chapter 197.
- (B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;
- (C) The tentative plan or future street plan complies with the applicable provisions, including the purposes and intent of this Chapter.
- (D) The tentative plan or future street plan complies with the Zoning Ordinance or a proposed change thereto associated with the tentative plan proposal;
- (E) If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words *town, city, place, court, addition* or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name or unless the applicant files and records the consent of the party that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.

(F) The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; and

(G) Streets held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets are set forth thereon.

(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:

- (1) The infiltration of flood waters into the system; and
- (2) The discharge of matter from the system into flood waters.

[Added 1982, Ord. 324 § 2]

#### 11.45.240 Contents of Type I Tentative Plan

A tentative plan shall consist of maps, written information and supplementary material adequate to provide the information required in MCC 11.45.250 through 11.45.280.

#### 11.45.250 Type I Tentative Plan Map Specifications

(A) For a subdivision, the tentative plan map shall be drawn on a sheet 18 x 24 inches in size at a scale of one inch to fifty feet, one hundred feet or two hundred feet. The map shall include one copy of a scaled drawing of the proposed subdivision, on a sheet 8<sup>1</sup>/<sub>2</sub> x 11 inches, suitable for reproduction, mailing and posting with the notices required by subsection (A) of MCC 11.45.220.

(B) For a major partition, the tentative plan map shall be drawn on a sheet 8<sup>1</sup>/<sub>2</sub> x 11 inches in size at a scale of one inch to fifty feet or one hundred feet.

(C) A future street plan may be combined with subsection (A) or (B) of this section or may be drawn on a sheet 8<sup>1</sup>/<sub>2</sub> x 11 inches or larger in size at a scale of one inch to one hundred feet.

#### 11.45.260 Type I Tentative Plan Map Contents

The tentative plan map shall indicated the following:

##### (A) General information:

- (1) In the case of a subdivision, the proposed name which shall be in accord with subsection (E) of MCC 11.45.230.
- (2) Date, north point and scale of drawing.
- (3) Description of the proposed land division sufficient to define its location and boundaries.
- (4) Identification as a tentative plan map.

##### (B) Existing conditions:

- (1) Streets: the location, name and present width of each street, alley or right-of-way in or serving the tract.
- (2) Easements: location, width and nature of any easement of record on or serving the tract.
- (3) Utilities: location and identity of all utilities on or serving the tract.
- (4) Ground elevations shown by contour lines at five foot vertical intervals for ground slopes exceeding 10%. Ground elevation shall be related to an established bench mark or other point of reference approved by the County Engineer.
- (5) The location of at least one temporary bench mark within the land division.
- (6) Any natural features such as rock outcroppings, marshes, wooded areas, major vegetation, etc., which may affect the proposal.
- (7) Water courses on and abutting the tract, including their location, width and direction of flow.
- (8) The approximate location of areas subject to periodic inundation or storm sewer overflow, the location of any designated Flood Hazard District, and all areas covered by water. [Amended 1982, Ord. 324 § 3]

(9) The location of any harbor line.

(10) Scaled location and present use of all existing buildings or other structures, and designation of any existing buildings or structures proposed to remain on the property after division.

(C) Proposed improvements:

(1) Streets: location, proposed name, right-of-way width and approximate radii of curves of each proposed street.

(2) Any proposed pedestrian path or bike-way.

(3) Easements: location, width and nature of all proposed easements.

(4) Lots or parcels: location and approximate dimensions of all lots or parcels, the minimum lot or parcel size and, in the case of a subdivision, the proposed lot and block numbers.

(5) Water supply: the proposed domestic water supply system.

(6) Sewage disposal: the proposed method of sewage disposal.

(7) Drainage: proposed methods for surface water disposal and any proposed drainage easements.

(8) Other utilities: the approximate location and nature of other utilities including the location of street lighting fixtures.

(9) Railroad rights-of-way, if any.

(10) Changes to navigable streams, if any.

(11) A street tree planting plan and schedule.

#### 11.45.270 Written Information; Type I Tentative Plan

Written information shall include:

(A) Name, address and telephone number of the record owner(s), owner's representative, and designer(s) of the proposed land division and the name of the engineer(s) or surveyor(s) and the date of the survey, if any.

(B) Proof of record ownership of the tract and the representative's authorization.

(C) Legal description of the tract.

(D) Present and proposed uses of the tract including all areas proposed to be dedicated to the public.

(E) Statements of the manner in which the criteria for approval listed in MCC 11.45.230 are satisfied.

(F) Statement of the improvements to be made or installed, including street tree planting, and the time such improvements are to be made or completed.

#### 11.45.280 Supplementary Material; Type I Tentative Plan

The following supplementary material may be required by the Planning Director:

(A) A survey of the tract.

(B) A vicinity map showing existing divided and undivided land adjacent to the proposed land division, the existing uses and structures thereon, and an indication of the manner in which the proposed streets and utilities may be extended to connect to existing streets and utilities or to serve future land divisions.

(C) Proposed deed restrictions and methods of proposed ownership.

(D) Such other material as the Planning Director deems necessary to assist in the review and assessment of the land division proposal according to the provision of this Chapter.

#### 11.45.290 Type II Tentative Plan Approval Procedures

Review and approval of a Type II tentative plan shall be in accordance with the provisions of MCC 11.45.300 through 11.45.340.

#### 11.45.300 Pre-Filing Conference

A pre-filing conference shall be requested and held prior to the filing of a tentative plan for a Type II Land Division, in the manner provided in MCC 11.45.200.

#### 11.45.310 Filing of Type II Tentative Plan

(A) Following the pre-filing conference the appli-

**215.416 Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing.** (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.428. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.

(3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation. Notwithstanding the requirements of this subsection, a limited land use decision shall be subject to the requirements set forth in ORS 197.195 and 197.828.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

(6) Notice of a public hearing on an application submitted under this section shall be provided to the owner of an airport defined by the Department of Transportation as a "public use airport" if:

(a) The name and address of the airport owner has been provided by the Aeronautics Division of the Department of Transportation to the county planning authority; and

(b) The property subject to the land use hearing is:

(A) Within 5,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport"; or

(B) Within 10,000 feet of the side or end of the runway of an airport determined by the Department of Transportation to be an "instrument airport."

(7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing need not be provided as set forth in subsection (6) of this section if the zoning permit would only allow a structure less than 35 feet in height and the property is located outside the runway "approach surface" as defined by the Department of Transportation.

(8) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(9) Approval or denial of a permit or limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(10) Written notice of the approval or denial shall be given to all parties to the proceeding.

(11)(a) The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as required by ORS 197.763 or 197.195, whichever is applicable. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be a de novo hearing.

(b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall not be in excess of \$100. If an appellant prevails at the hearing

ORS 215.416

Forest Park Neighborhood Association  
Development Committee

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

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**RILEY APPEAL NOTES BOARD OF COMMISSIONERS 9/22/92 MC 2-92 & LD 25-92**

Appearing for myself and the Forest Park Neighborhood Association Development Committee

The Hearings Officer made some minor edits to the Staff word processor file, and we have a decision. The deficiencies in this application are as clear as you will find. They were pointed out in testimony which was ignored. I don't mean the testimony was found to be wrong. I mean ignored, and to a degree that makes a mockery of the public hearing process.

I'm going to start with a small point that helps to explain why I am convinced that my testimony was not considered. Condition 8 of the Staff Report (p.6) has an error. The first sentence refers to parcel 1, and the second sentence incorrectly refers to parcel 2. My letter of June 30th identified this error (p.4, ¶2). Nevertheless, the Hearings Officer repeated the error verbatim (Decision p.6). This is not, in itself, a point of major controversy, but is revealing of the method that pervades the decision.

To approve the application, there must have been a valid finding that there was compliance with every one of the approval criteria. Failure of the application to comply with even one requires denial, and several criteria were not met. In a land use process, the burden of proof is placed on the applicant by both the Land Division and Zoning Codes, sections 11.45.220(C) and 11.15.8230(D). To obtain approval, the applicant must have proven compliance with every one of the criteria. I don't have to prove he didn't comply, although I have.

Criterion (A)(1) under 11.45.230 requires compliance with applicable elements of the Comprehensive Plan. Policies 37 and 38 both open with statements requiring that there be a finding of compliance prior to approval of a quasi-judicial action. 37 deals with water and sewage disposal and 38 with adequate services, fire protection being an issue in this case. Regarding both policies, the Hearings Officer did not find compliance, but nevertheless stated that there was satisfaction of the requirements because of conditions of approval. The conditions do not in fact address the requirements and more important, Policies 37 and 38 require compliance now, before approval, not someday if the applicant complies with conditions.

Policy 14 deals with development in difficult terrain. The relevant factors are slopes over 20%, severe erosion potential, fragipan within 30 inches of the surface, and land subject to slumping, earth slides or movement. These have been identified as actual or potential problems by the applicant's own geology report which described the homesite on parcel 2 as consisting of slopes of 40% to 65%. This is not worst case on the parcel. It's the terrain of the applicant's chosen homesite, 40 to 65% slopes. Compliance with the policy requires that the issues be addressed convincingly to show that there will be no harm or harm will be mitigated. The decision merely said that requirements of the policy can be addressed in the future by a Hillside Development Permit application. Implicitly, there is a finding of non-compliance. Otherwise, it would be unnecessary to require future compliance in a condition. The issue is not addressed at all by the applicant.

Criterion (C) requires that the tentative plan comply with applicable provisions of Chapter 11.45, including the "purposes and intent" of the Chapter. The Hearings Officer copied staff's recommendation and both misconstrued the requirement as being compliance with

only the “purposes and intent”. The plain language of the code says otherwise. Applicable provisions with which the application does not comply are 11.45.260(B)(4) and (C)(6) which require topographical maps showing at least 5 foot vertical intervals and that the plan depict the sewage disposal system. Though clearly identified in testimony (6/30 p1 & 3) the omissions were ignored in the decision.

Criterion (D) requires compliance with the Zoning Code. The property is MUF 19. The proposed partition would divide the property into 2 parcels, each less than 38 acres. A residence could be possible on either parcel only as a conditional use or a prescribed use necessary for resource management. Because of the productive forest character of the land, a conditional use is virtually impossible. Under the existing code, a prescribed use is not precluded. However, there are terms to be met, and approval is not automatic. Neither the applicant nor the decision addresses the requirements for approval of a prescribed use. It must be shown now, before partition, that there is compliance with the zoning code. The Hearings Officer devotes over 3 pages (12-15) to the exact detail of residential development standards, which have little if any bearing on the decision, but he defers the key issue of whether or not the properties would even qualify for residences to a later administrative decision. The approval criteria must be met now, not later.

Criterion (H) requires that development and utilities be safe from flood hazards, and that the sewage system be safe from infiltration by flood water and likewise not be subject to discharge from the system into floodwater. The Hearing’s Officer’s decision impermissably ignores this approval criterion, violating the state and county requirements that the decision be based on the approval criteria and that that basis be explained and documented. If he had addressed it, you would find it on page 15, below item G. This is another example of the decision process. There was a presumption that the staff report was correct, and the error of omission occurred from blind acceptance of the incomplete staff report . Testimony on this criterion (6/30 p.3) was ignored. The burden of proof wasn’t merely misplaced, it was non-existent. I omitted this lapse from the Notice of Review and my correspondence to you. It is part of the record properly subject to your consideration .

Revised proposed amendments to the decision show changes marked by bold lines in the margins of page 3.

## SUMMARY

There are 4 basic errors in the decision:

1st. The notion that whatever approval criteria are not met today can be met tomorrow, and that compliance can be judged privately by an administrator instead of publicly by a Hearings Officer is wrong. The findings of compliance with Comprehensive Plan Policies 14, 37 and 38, and with the zoning code are therefore wrong. All of those findings implicitly acknowledge that the requirements aren’t met by saying they should be met in the future.

2nd. The plain language of the Land Division code is ignored. It requires compliance with the applicable provisions of Chapter 11.45 including purposes and intent. The decision tortures this into only purposes and intent and ignores non-compliance with applicable provisions regarding topographical maps and sewage disposal.

3rd. Approval Criteria (H) concerning safety of sewage disposal was entirely ignored. It was not mentioned.

4th. The requirement of Oregon Revised Statutes 215.416 (8) (9) that the decision be based on the approval criteria and on the Comprehensive Plan and other relevant ordinances and regulations was not met. The requirement of ORS 215.416(9) that the decision explain

how it is based on the criteria and state the facts relied on, and state the justification for basing the decision on those criteria and relying on those facts was not met.

In all cases where the Hearings Officer failed to properly address an issue, the record shows that the application was deficient, and correct findings would result in denial. I ask you to adopt the proposed findings and deny the application.

PROPOSED AMENDMENTS TO FINDINGS AND CONCLUSIONS OF THE  
AUGUST 3, 1992 DECISION RE. MC 2-92, # 124 AND LD 25-92, #124

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Proposed new text is printed in boldface type. Where an entire statement or finding is proposed to be deleted it is so indicated. Partial deletions are indicated by strike through print.

1. Page 1, DECISION #1 (LD 25-92): Delete all existing text and replace with: **Deny the application for partition based on the following findings and conclusions.**
2. Page 1, DECISION #2 (MC 2-92): Delete all existing text and replace with: **Deny the request to use easements as the means of access instead of providing frontage on a dedicated street. The reason for denial is that the request for access by easement is dependent on approval of a partition which is denied for unrelated reasons. Access by easement cannot stand by itself.**
3. Page 6, Conditions of Approval (LD 25-92): Delete heading and all conditions.
4. Page 8, (a) No. 12 - Multiple use Forest Lands

~~Findings. The intent of Policy 12 is to encourage small woodlot management, forestry, reforestation and agriculture. Residential use, as the applicant requests, would require approval of a resource management program for at least 75 percent of the productive land on each of the 2 proposed parcels. Parcel 2 will be required before a house can be built on that parcel. Approval of a resource management program for at least 75 percent of the productive land on Parcel 1 will be required before signing of the partition plat by the County Planning Division. Subject to those conditions, the proposed land division complies with Policy 12. As approval of a program cannot be prospectively assured, and, as no resource management program has been approved or is before this proceeding, the intent of Policy 12 is not met.~~

5. Page 9, (c) No. 14 - Development Limitations: Edit findings as follows:

~~Findings: The policy is "to direct development and land form alterations away from areas with development limitations except upon a showing that design and construction techniques can mitigate any public harm or associated public cost, and mitigate any adverse effects to surrounding persons or properties." This policy is concerned with mitigating or limiting impacts of developing areas that have any of the following characteristics: slopes exceeding 20%; severe soil erosion potential; land within the 100 year floodplain; a high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement. Topographic information presented by the applicant indicates that large portions of the site, including the proposed homesites and accesses, contain slopes exceeding 25 percent some or all of these hazards (except land within a floodplain). One of the proposed homesites is on slopes of 40% to 65%. Though the statement of Roger Redfern, geologist for the applicant, suggests that "the low level of development proposed" may be acceptable with appropriate controls, his statement is so qualified that it does not satisfy the applicant's burden of proof. The requirements of the policy are not met. Portions of both proposed parcels are identified on the County Slope Hazard Map as being hazard areas. Compliance with the Hillside Development and Erosion Control Ordinance pursuant to MCC 11.15.6700—.6735 in such areas will be a condition of approval. Subject to that condition requiring a Hillside Development Permit, the proposal can satisfy Policy 14 because development will be directed away from areas having identified development limitations and mitigation will be controlled by the provisions of MCC 11.15.6700—.6735.~~

6 Page 9, (e) Policy 37 - Delete all following text and replace with: **Water and Disposal System**

**Findings.** The policy requires a finding prior to a quasi-judicial decision that the project can be connected to a public water and sewer system, or that there is an adequate private water system and/or there can be an adequate subsurface sewage disposal system. The applicant has satisfied this policy only with regard to Parcel 1. No evidence whatever has been supplied regarding Parcel 2. The proposed building site on Parcel 2 is over 1/4 mile away from the proposed site on Parcel 1 by the shortest route not crossing other private property. The terrain is difficult, including steep slopes and potentially unstable ground. There can be no presumption that water service to Parcel 1 means it is available to parcel 2. There is no public sewer available and no evidence has been supplied that there can be adequate subsurface sewage disposal for the site on parcel 2 which has been described by the applicant's geologist as having slopes of 40% to 65%. The requirements of the policy are not met.

7. Page 10, (f) No. 38 - Facilities: Delete all following text and replace with:

**Findings.** The policy requires a finding prior to a quasi-judicial decision that the appropriate school district has had an opportunity to review and comment, that there is adequate water pressure and flow for fire fighting purposes and the appropriate fire district has had an opportunity to review and comment, and that adequate police protection can be provided. The situation of the property, in steep sloped forest, far from any major road makes fire protection a particularly important concern. There is no evidence in the record that there is adequate water pressure and flow for fire fighting purposes or that the appropriate fire district has been notified of the proposal and had an opportunity to review and comment. The requirements of the policy are not met.

8. Page 10. Add immediately following the above statement on Policy 38:

**Findings regarding MCC 11.45.230(A)(1).** This approval criterion requires that the tentative plan be in accordance with the applicable elements of the Comprehensive Plan. As the requirements of policies 12, 14, 37 and 38 are not met, the proposal does not comply with this approval criterion.

9. Page 10, (C) Delete all text and replace with:

**11.45.230(C) Applicable Provisions of Chapter 11.45.**

**Findings.** This approval criterion requires that the tentative plan comply with the applicable provisions, including the purposes and intent of MCC Chapter 11.15. There is no apparent conflict with the purposes and intent of the chapter. However, the tentative plan does not comply with other applicable provisions. 11.45.260(B)(4) requires that the plan map show contour lines at five foot vertical intervals for slopes exceeding 10%. Most of the property has slopes over 10%. No map or plan in the record shows vertical intervals of 5 feet. All maps which do show topography have contours at ten foot intervals. The tentative plan does not comply with this applicable provision. 11.45.260(C)(6) requires that the plan map show the proposed methods of sewage disposal. No plan map in the record shows this. The tentative plan does not comply with this applicable provision.

**The requirement that the tentative plan comply with the applicable provisions is not met.**

10. Page 12, (D) Delete all text and replace with:

**11.15.230(D) Compliance With Zoning Ordinance**

**Findings. This approval criterion requires that the tentative plan comply with the Zoning Ordinance. While no part of the plan is in certain conflict, the use proposed by the applicant is not a primary use in the MUF 19 zone on lots of less than 38 acres, as is proposed. Residential use is potentially available only as a conditional use or a use under prescribed conditions (MCC 11.15.2166 through .2184 and .2194). A permit for either would require a plan submitted by the applicant and a determination that the proposal is in conformance with the approval criteria. There can be no assurance in advance that the proposal will comply. The applicant can attempt to satisfy this criterion in the future by simultaneous application for residential use and partition. At this time, the criterion is not met.**

- 10a. Page 15, below G., add: **H. Flood Hazards, Safety of Utilites and Sewage disposal, MCC 11.45.230(H):**

**The applicant's geology report identifies circumstances of terrain that pose serious difficulties for on site sewage disposal. (see above, #5 Development Limitations) The applicant has not identified the location of the proposed disposal systems; not at all for parcel 2, and not in detail for parcel 1. Nor has the applicant described the proposed systems and explained how, given slopes over 50 percent on one of the proposed homesites, and given other unstable conditions, integrity and safety of sewage disposal is assured. Approval from the county sanitarian has been given only for parcel 1, obviously the easier of the sites. The applicant has not carried his burden of proving the proposal to be safe. The criterion is not met.**

11. Page 16, Conclusions (LD) 25-92) Delete all existing text and replace with:

**The proposal does not satisfy MCC 11.45.230 Criteria for Approval, Type I Tentative Plan, provisions (A)(1), (C), (D) and (H), pertaining respectively to compliance with the Comprehensive Plan, applicable provisions of MCC Chapter 45 (Land Divisions), MCC Chapter 15 (Zoning Code), and flood hazards, utility and sewage safety. The application for partition is denied.**

12. Page 16, Conditions of Approval (MC 2-92). Delete this section.

13. Page 17, Findings of Fact (MC 2-92) Delete all following text and replace with:

**The terrain is difficult, and the applicant has not carried the burden of showing that his proposal for access by easement to both proposed parcels would be "safe and convenient for pedestrians and passenger and emergency vehicles" as required by MCC 11.15.2188. The problem of very difficult terrain, with apparent slopes of more than 50% is compounded by the fact that the existing and proposed easements are entirely within the City of Portland, and within an environmental overlay zone (EC) requiring a discretionary administrative proceeding to approve any road. Simultaneous processing of applications in the City and County**

does not appear practical. Alternative routes appear plausible, and the applicant has not presented substantial evidence that he has chosen the best. Planning staff indicates that an existing public easement through the Gales Ridge Subdivision west of the property would be a better choice. However, there is testimony by the applicant and an opponent that that route would traverse a more restrictive City EP zone. The applicant must give more thorough consideration to all plausible routes, and account persuasively for his rejections and preferences. He must provide detailed information to show that proposed roads can be built in compliance with all applicable requirements and practical limitations.

MC 2-92, access by easement is dependent on, and meaningless without, approval of LD 25-92, which is concurrently denied.

14. Page 18, Conclusions (MC 2-92) Delete all following text and replace with:

For reasons given above, the application for access by easement is denied.