

**ANNOTATED MINUTES**

Tuesday, October 12, 1993 - 1:30 PM  
Multnomah County Courthouse, Room 602

**PLANNING ITEMS**

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

**SCOTT PEMBLE ADVISED OF APPELLANT'S REQUEST TO RESCHEDULE PLANNING ITEM CU 21-93 FROM OCTOBER 26 TO TUESDAY, NOVEMBER 9, 1993. BOARD CONCURRED.**

P-1 **DR 14-93/**  
**CU 5-91a** PUBLIC HEARING, ON THE RECORD, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE, in the Matter of the August 20, 1993 Appeal to the Planning and Zoning Hearings Officer of Two Planning Director Administrative Decisions in which the Hearings Officer Affirmed, Subject to a Condition, the Final Design Review Plan, and Affirmed the Determination of Substantial Development to Allow Completion of a Non-Resource Dwelling Authorized by CU 5-91, for Property Located at 6125 NW THOMPSON ROAD

**MARK HESS PRESENTED STAFF REPORT. LARRY EPSTEIN PRESENTED CASE HISTORY AND CRITERIA USED FOR DECISION. JOHN DuBAY RESPONSE TO BOARD QUESTIONS.**

**ARNOLD ROCHLIN PRESENTED TESTIMONY IN OPPOSITION TO HEARINGS OFFICER DECISION. STEVE ABLE PRESENTED TESTIMONY IN SUPPORT OF HEARINGS OFFICER DECISION AND RESPONDED TO BOARD QUESTIONS. REBUTTAL TESTIMONY FROM MR. ROCHLIN. MR. EPSTEIN, MR. HESS AND MR. DuBAY EXPLANATION AND RESPONSE TO BOARD QUESTIONS. MR. DuBAY AND COMMISSIONER KELLEY DISCUSSED HER INTENT TO AFFIRM THE HEARINGS OFFICER DECISION BUT AMEND IT TO REQUIRE A BRIDGE RATHER THAN THE CULVERT.**

**UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT THE BOARD AFFIRM THE HEARINGS OFFICER DECISION, AMEND THE DESIGN REVIEW PLAN TO ADD THE CONDITION THAT A BRIDGE BE A REQUIREMENT, AND DIRECT THAT THE AMENDED DESIGN REVIEW APPLICATION COME BACK TO THE PLANNING DIRECTOR WHO WILL MAKE A DECISION AFTER PROPER NOTICE AND HEARING ABOUT THE DISPOSITION OF THAT AMENDED DESIGN PLAN. MR. HESS AND MR. DuBAY ADVISED THEY WILL PREPARE A FINAL ORDER (93-339) FOR CHAIR STEIN'S SIGNATURE.**

The Board recessed at 2:55 p.m. and reconvened at 3:00 p.m.

C 3-93 PUBLIC HEARING and Consideration of a Proposed RESOLUTION in the Matter of Determining Whether the West Hills are a Goal 5 Significant Scenic Resource

MR. PEMBLE EXPLAINED GOAL 5 PROCESS AND ADVISED STAFF RECOMMENDS 1-A DESIGNATION. SANDY MATHEWSON PRESENTED STAFF REPORT AND EXPLAINED CRITERIA USED IN RECOMMENDING 1-A DESIGNATION.

KARIN HUNT, LIZ CALLISON, RICHARD SHAFFER, CHRIS WRENCH, MATTHEW UDZIELA, DONNA MATRAZZO, NEIL KAGAN, JACK SANDERS, JOHN SHERMAN, LESLIE BLAIZE, LESLIE LUBBE, DAVID MORGAN, ARNOLD ROCHLIN, MICHAEL CARLSON AND JIM SJULIN TESTIFIED IN OPPOSITION TO A 1-A DESIGNATION AND IN SUPPORT OF A 1-C DESIGNATION. DOROTHY COFIELD AND DONIS MCARDLE TESTIFIED IN SUPPORT OF A 1-A DESIGNATION.

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, TO REJECT THE PLANNING COMMISSION'S 1-A DESIGNATION AND TO RECOMMEND DESIGNATION OF THE SCENIC RESOURCES AS 1-C.

COMMISSIONER SALTZMAN COMMENTED IN SUPPORT OF MOTION, SITING SPECIFIC FINDINGS RELATING TO QUALITY, QUANTITY, OUTSTANDING SCENIC FRAMEWORK AND VIEWING AREA IMPORTANCE OF THE WEST HILLS. COMMISSIONER KELLEY COMMENTED IN SUPPORT OF MOTION. MR. PEMBLE ADVISED STAFF WILL HAVE TO REWRITE FINDINGS DOCUMENT TO REFLECT BOARD DIRECTION IN LIGHT OF PUBLIC TESTIMONY AND TO PREPARE A RESOLUTION REFLECTING THE WEST HILLS A 1-C DESIGNATION. COMMISSIONER HANSEN COMMENTED IN SUPPORT OF THE MOTION.

CHAIR STEIN DIRECTED THAT STAFF PREPARE FINDINGS IN SUPPORT OF A 1-C DESIGNATION, CONTAINING SPECIFIC FINDINGS RELATED TO QUALITY, QUANTITY, OUTSTANDING SCENIC FRAMEWORK AND VIEWING AREA IMPORTANCE OF THE WEST HILLS AS DISCUSSED BY THE BOARD FOLLOWING PUBLIC TESTIMONY. COMMISSIONER SALTZMAN ADDED THAT THE \$200,000,000 DECISION MADE BY WEST SIDE LIGHT RAIL TO TUNNEL THROUGH THE SUNSET CANYON RATHER THAN DO A SURFACE ROUTE HINGED ON NO OTHER FACTOR EXCEPT PRESERVING THE AESTHETIC LOOK OF THE CANYON WHICH IS ONLY SEEN BY PEOPLE DRIVING ON HIGHWAY 26 INTO PORTLAND.

MOTION UNANIMOUSLY APPROVED.

MR. PEMBLE ADVISED STAFF WILL BRING A PROPOSED RESOLUTION AND FINDINGS TO THE BOARD'S NOVEMBER 9, 1993 MEETING.

The Board recessed at 4:45 p.m. and reconvened at 4:51 p.m.

C 4-93 PUBLIC HEARING and Consideration of a Proposed  
RESOLUTION in the Matter of Determining the Significance of  
Wildlife Habitat in the West Hills

STAFF EXPLANATIONS FROM MR. PEMBLE AND GORDON  
HOWARD, RECOMMENDING A 1-C DESIGNATION. MR.  
HOWARD DISCUSSED CITIZEN REQUEST TO INCLUDE  
BONNY SLOPE.

TESTIMONY IN SUPPORT OF 1-C DESIGNATION BY  
BRETT SCHULZ, NEIL KAGAN, CHRIS WRENCH, JOHN  
SHERMAN, ARNOLD ROCHLIN, MICHAEL CARLSON AND  
JIM SJULIN. GREG MALINOWSKI TESTIFIED IN  
SUPPORT OF INCLUDING BONNY SLOPE IN THE 1-C  
DESIGNATION. TESTIMONY IN OPPOSITION TO 1-C  
DESIGNATION BY RICHARD SHEPARD, DOROTHY  
COFIELD, DONIS MCARDLE AND JOSEPH KABDEBO.

MR. HOWARD RESPONSE TO BOARD QUESTIONS. BOARD  
DISCUSSION.

COMMISSIONER SALTZMAN MOVED, SECONDED BY  
COMMISSIONER KELLEY, TO ADOPT THE STAFF REPORT  
AND PLANNING COMMISSION RECOMMENDATION OF A 1-C  
SIGNIFICANT WILDLIFE HABITAT DESIGNATION, AND  
TO INCLUDE IN THAT 1-C DESIGNATION, THE AREA  
NORTH OF THE BONNY SLOPE SUBDIVISION. BOARD  
COMMENTS. RESOLUTION 93-340 UNANIMOUSLY  
APPROVED.

There being no further business, the meeting was adjourned  
at 5:50 p.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By DOROTHY C. Bogstad

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Thursday, October 14, 1993 - 9:30 AM  
Multnomah County Courthouse, Room 602

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:35 a.m., with  
Commissioners Sharron Kelley, Tanya Collier and Dan Saltzman  
present.

CONSENT CALENDAR

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

SHERIFF'S OFFICE

- C-1 In the Matter of a Request for Authorization to Transfer \$27,522.00 in Found and/or Unclaimed Money from Sheriff's Office Custody to the Multnomah County General Fund Pursuant to Multnomah County Code 7.70

NON-DEPARTMENTAL

- C-2 In the Matter of the Appointments of E. John Rumpakis, Chair; Sarah Mahler, Member; Donna Kelly, Member; and Basil Panaretos, Alternate, to BOARD 1 of the BOARD OF EQUALIZATION, for the Period January through June, 1994
- C-3 In the Matter of the Appointments of Doug Cowley, Chair; Joan Larsell, Member; William R. Gerald, Member; and Robert Correll, Alternate, to BOARD 2 of the BOARD OF EQUALIZATION, for the Period January through June, 1994
- C-4 In the Matter of the Appointments of Charles Sauvie, Chair; Esther Lewis, Member; Toni Sunseri, Member; and Cora Smith, Alternate, to BOARD 3 of the BOARD OF EQUALIZATION, for the Period January through June, 1994
- C-5 In the Matter of the Appointments of Bill Naito, William Failing, Yvonne Williams, Hilde Peterson-Fordyce, Pat Prendergast, Harriet Sherburne, Bob Forster, Alan Beard and Terry Beard, to the CENTRAL LIBRARY DESIGN AND CONSTRUCTION OVERSIGHT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-6 Ratification of Intergovernmental Agreement Contract 300824 Between Multnomah County and Mt. Hood National Forest, for Sponsorship of the 1993 Salmon Festival at Oxbow Park on the Sandy River
- C-7 ORDER in the Matter of the Execution of Deed D940924 Upon Complete Performance of a Contract to James A. Nelson
- ORDER 93-341.
- C-8 ORDER in the Matter of the Execution of Deed D940929 Upon Complete Performance of a Contract to Timothy Maxie for William Maxie and Freddie Maxie

ORDER 93-342.

Vice-Chair Gary Hansen arrived at 9:37 a.m.

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 Certificate of Achievement for Excellence in Financial Reporting Presented to Multnomah County Finance Office for its Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 1992; and Award of Financial Reporting Achievement Presented to Jean Uzelac, Multnomah County Accounting Manager. Presented by Kathy Tri, Government Finance Officers Association Representative



**KATHY TRI PRESENTATION. JEAN UZELAC COMMENTS  
AND STAFF INTRODUCTION. BOARD COMMENTS.**

- R-2 Presentation of the National Association of Counties (NACo) 1993 Achievement Awards to the Following Multnomah County Recipients: Department of Social Services - Vocational Development Project; Department of Social Services - Relocating Seniors in Nursing Homes Program; Department of Environmental Services - Natural Area Protection and Management Plan; Department of Health - Primary Care and Drug Abuse Linkage Program; Department of Community Corrections - Parole Transition Program; Department of Community Corrections - Drug Testing and Evaluation Program; and Department of Health - Innovative Methods in Syphilis Control Program

**LIAISON COMMISSIONER COMMENTS AND PRESENTATION  
OF AWARDS TO PROGRAM REPRESENTATIVES. STAFF  
COMMENTS AND INTRODUCTIONS.**

- R-3 Request for Approval of the 1993-1996 Agreement Between Multnomah County, Oregon, the Multnomah County District Attorney, and Multnomah County Prosecuting Attorneys Association

**KEN UPTON EXPLANATION. UPON MOTION OF  
COMMISSIONER KELLEY, SECONDED BY COMMISSIONER  
SALTZMAN, R-3 WAS UNANIMOUSLY APPROVED.**

**DEPARTMENT OF SOCIAL SERVICES**

- R-4 Ratification of Intergovernmental Agreement Contract 103794 Between Multnomah County and the City of Portland, Establishing the Regional Drug Initiative as a Separate Intergovernmental Organization for the Purpose of Fostering Community Actions, Social Attitudes and Individual Behaviors which will Establish a Community Free from Problems Related to Alcohol or Other Drugs

**CHIP LAZENBY EXPLANATION. UPON MOTION OF  
COMMISSIONER COLLIER, SECONDED BY COMMISSIONER  
HANSEN, R-4 WAS UNANIMOUSLY APPROVED.**

- R-5 Budget Modification DSS #6 Requesting Authorization to Shift Carry-Over Funds within the Partner's Project Budget, Creating a Data Analyst and an Office Assistant 2 Position, and Reclassifying a Program Development Technician to a Data Analyst, within the Mental Health Youth and Family Services Division Budget

**COMMISSIONER KELLEY MOVED AND COMMISSIONER  
SALTZMAN SECONDED, APPROVAL OF R-5. ELLEEN  
DECK EXPLANATION AND RESPONSE TO BOARD  
QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY  
APPROVED.**

- R-6 Budget Modification DSS #7 Requesting Authorization to Reclassify a Juvenile Education Coordinator to a Program Coordinator within the Juvenile Justice Division Budget

**COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-6. SUE LARSEN EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

**PUBLIC CONTRACT REVIEW BOARD**

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

- R-7 ORDER in the Matter of an Exemption from Public Bidding for the Purchase of One Passenger Van and Three Mid-Size Cars**

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-7. LARRY AAB EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 93-343 UNANIMOUSLY APPROVED.**

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

**DEPARTMENT OF ENVIRONMENTAL SERVICES**

- R-8 RESOLUTION in the Matter of Approval of the Multnomah County Five Year 1992-96 Transportation Capital Improvement Plan and Program**

**COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-8. KATHY BUSSE EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 93-344 UNANIMOUSLY APPROVED.**

- R-9 Ratification of Intergovernmental Agreement Contract 300744 Between Multnomah County and the City of Portland, Whereby \$9,750.00 from the County Bikeway Construction Fund will be Paid to the City for Intersection Improvements at SE 122nd Avenue and Springwater Corridor**

**COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-9. DAN LAYDEN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT UNANIMOUSLY APPROVED.**

- R-10 Budget Modification DES #5 Requesting Authorization to Fully Appropriate Exposition Center and Parks Division Budget Expenditures for the Remainder of Fiscal Year 1993-94**

**COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-10. BETSY WILLIAMS EXPLANATION FOR ITEMS R-10 AND R-11. BUDGET MODIFICATION UNANIMOUSLY APPROVED.**

- R-11 Budget Modification DES #6 Requesting Authorization to Appropriate the Natural Areas Acquisition Fund for Parks Services Division Budget Expenditures for the Remainder of Fiscal Year 1993-94**

**UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER COLLIER, R-11 WAS UNANIMOUSLY**

**APPROVED.**

- R-12 RESOLUTION in the Matter of Approving a Memorandum of Understanding Between Multnomah County and Metro Regarding the Transfer of Regional Parks, Natural Areas, Golf Courses, Cemeteries and the Expo Center

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-12. MS. WILLIAMS EXPLANATION. TESTIMONY IN OPPOSITION TO TRANSFER FROM JACK ADAMS AND TOM CROPPER. TESTIMONY IN SUPPORT OF TRANSFER WITH RECOMMENDATION THAT NATURAL AREA ACQUISITION FUND REMAIN WITH COUNTY FROM DONNA MATRAZZO, PAULINE ANDERSON, CHRIS WRENCH, JEAN RIDINGS AND MARTY McCALL. TESTIMONY IN SUPPORT OF TRANSFER FROM RENA CUSMA AND RICHARD DEVLIN. LAURENCE KRESSEL RESPONSE TO BOARD QUESTIONS. BOARD DIRECTED THAT NATURAL AREA ACQUISITION FUND ISSUE BE ADDRESSED IN INTERGOVERNMENTAL AGREEMENT. BOARD DISCUSSION AND COMMENTS. RESOLUTION 93-345 UNANIMOUSLY APPROVED.

- R-13 RESOLUTION in the Matter of Accepting the Report from the Multnomah County Fair Advisory Task Force and Discussion Regarding the 1994 Multnomah County Fair and Establishment of a Citizen Advisory County Fair Board

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-13. HANK MIGGINS EXPLANATION. PRESENTATIONS FROM RICK SANDERS, PAUL SUNDERLAND, SANDI MILLER, RICK PAUL, GREG FLAKUS AND DONALD ERCEG. MR. SANDERS AND MR. MIGGINS RESPONSE TO BOARD QUESTIONS. BOARD COMMENTS. RESOLUTION 93-346 ACCEPTING TASK FORCE REPORT UNANIMOUSLY APPROVED. UPON MOTION OF COMMISSIONER COLLIER, SECONDED BY COMMISSIONER KELLEY, THE 1994 FAIR WAS UNANIMOUSLY APPROVED. MR. MIGGINS WAS DIRECTED TO PREPARE A LETTER OF SUPPORT FOR BOARD SIGNATURES. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT STAFF BE DIRECTED TO SUBMIT RECOMMENDATIONS FOR AN INTERIM FAIR ADVISORY BOARD. CHAIR STEIN DIRECTED MR. MIGGINS TO SUBMIT A PROPOSED 1994 FAIR BUDGET AND A LIST OF PROPOSED FAIR ADVISORY BOARD MEMBERS TO THE BOARD PRIOR TO NOVEMBER 30, 1993.

PUBLIC COMMENT

- R-14 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

STEVE LILLY CAUTIONED AGAINST DOING AWAY WITH THE COMPETITIVE BID PROCESS IN CONNECTION WITH ESTABLISHMENT OF THE CENTRAL LIBRARY DESIGN AND CONSTRUCTION OVERSIGHT COMMITTEE TO OVERSEE

CONSTRUCTION AND DESIGN OF THE MULTNOMAH  
COUNTY CENTRAL LIBRARY AND MIDLAND BRANCH.  
BOARD MEMBERS ASSURED MR. LILLY THE COUNTY  
WOULD PURSUE THE PUBLIC BID PROCESS. MR. LILLY  
RESPONSE TO BOARD COMMENTS.

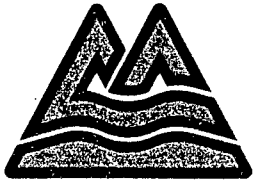
Chair Stein left at 12:20 p.m.

TOM CROPPER ANNOUNCED AND INVITED ATTENDANCE  
AT THE MULTNOMAH COUNTY DEMOCRATIC PLATFORM  
CONVENTION, NOVEMBER 6, 1993, AND ADVISED OF  
UPCOMING PUBLIC MEETINGS.

There being no further business, the meeting was adjourned  
at 12:25 p.m.

OFFICE OF THE BOARD CLERK  
for MULTNOMAH COUNTY, OREGON

By Deborah Bocister



# MULTNOMAH COUNTY OREGON

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

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

## AGENDA

### MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

#### FOR THE WEEK OF

OCTOBER 11 - 15, 1993

Tuesday, October 12, 1993 - 1:30 PM - Planning Items . . . Page 2

Thursday, October 14, 1993 - 9:30 AM - Regular Meeting . . . Page 2

#### FUTURE MEETING CHANGES AND CANCELLATIONS

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

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

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

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

Tuesday, October 12, 1993 - 1:30 PM

Multnomah County Courthouse, Room 602

PLANNING ITEMS

- P-1 DR 14-93/  
CU 5-91a PUBLIC HEARING, ON THE RECORD, WITH TESTIMONY LIMITED TO 15 MINUTES PER SIDE, in the Matter of the August 20, 1993 Appeal to the Planning and Zoning Hearings Officer of Two Planning Director Administrative Decisions in which the Hearings Officer Affirmed, Subject to a Condition, the Final Design Review Plan, and Affirmed the Determination of Substantial Development to Allow Completion of a Non-Resource Dwelling Authorized by CU 5-91, for Property Located at 6125 NW THOMPSON ROAD. 1 HOUR REQUESTED.
- P-2 C 3-93 PUBLIC HEARING and Consideration of a Proposed RESOLUTION in the Matter of Determining Whether the West Hills are a Goal 5 Significant Scenic Resource. 1 HOUR REQUESTED.
- P-3 C 4-93 PUBLIC HEARING and Consideration of a Proposed RESOLUTION in the Matter of Determining the Significance of Wildlife Habitat in the West Hills. 1 HOUR REQUESTED.
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Thursday, October 14, 1993 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

SHERIFF'S OFFICE

- C-1 In the Matter of a Request for Authorization to Transfer \$27,522.00 in Found and/or Unclaimed Money from Sheriff's Office Custody to the Multnomah County General Fund Pursuant to Multnomah County Code 7.70

NON-DEPARTMENTAL

- C-2 In the Matter of the Appointments of E. John Rumpakis, Chair; Sarah Mahler, Member; Donna Kelly, Member; and Basil Panaretos, Alternate, to BOARD 1 of the BOARD OF EQUALIZATION, for the Period January through June, 1994
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- C-4 In the Matter of the Appointments of Charles Sauvie, Chair; Esther Lewis, Member; Toni Sunseri, Member; and Cora Smith, Alternate, to BOARD 3 of the BOARD OF EQUALIZATION, for the Period January through June, 1994

- C-5 In the Matter of the Appointments of Bill Naito, William Failing, Yvonne Williams, Hilde Peterson-Fordyce, Pat Prendergast, Harriet Sherburne, Bob Forster, Alan Beard and Terry Beard, to the CENTRAL LIBRARY DESIGN AND CONSTRUCTION OVERSIGHT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL SERVICES

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- C-7 ORDER in the Matter of the Execution of Deed D940924 Upon Complete Performance of a Contract to James A. Nelson
- C-8 ORDER in the Matter of the Execution of Deed D940929 Upon Complete Performance of a Contract to Timothy Maxie for William Maxie and Freddie Maxie

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 Certificate of Achievement for Excellence in Financial Reporting Presented to Multnomah County Finance Office for its Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 1992; and Award of Financial Reporting Achievement Presented to Jean Uzelac, Multnomah County Accounting Manager. Presented by Kathy Tri, Government Finance Officers Association Representative
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- R-3 Request for Approval of the 1993-1996 Agreement Between Multnomah County, Oregon, the Multnomah County District Attorney, and Multnomah County Prosecuting Attorneys Association

DEPARTMENT OF SOCIAL SERVICES

- R-4 Ratification of Intergovernmental Agreement Contract 103794 Between Multnomah County and the City of Portland, Establishing the Regional Drug Initiative as a Separate Intergovernmental Organization for the Purpose of Fostering Community Actions, Social Attitudes and Individual Behaviors which will Establish a Community Free from Problems Related to Alcohol or Other Drugs

- R-5 Budget Modification DSS #6 Requesting Authorization to Shift Carry-Over Funds within the Partner's Project Budget, Creating a Data Analyst and an Office Assistant 2 Position, and Reclassifying a Program Development Technician to a Data Analyst, within the Mental Health Youth and Family Services Division Budget
- R-6 Budget Modification DSS #7 Requesting Authorization to Reclassify a Juvenile Education Coordinator to a Program Coordinator within the Juvenile Justice Division Budget

PUBLIC CONTRACT REVIEW BOARD

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

- R-7 ORDER in the Matter of an Exemption from Public Bidding for the Purchase of One Passenger Van and Three Mid-Size Cars
- (Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-8 RESOLUTION in the Matter of Approval of the Multnomah County Five Year 1992-96 Transportation Capital Improvement Plan and Program
- R-9 Ratification of Intergovernmental Agreement Contract 300744 Between Multnomah County and the City of Portland, Whereby \$9,750.00 from the County Bikeway Construction Fund will be Paid to the City for Intersection Improvements at SE 122nd Avenue and Springwater Corridor
- R-10 Budget Modification DES #5 Requesting Authorization to Fully Appropriate Exposition Center and Parks Division Budget Expenditures for the Remainder of Fiscal Year 1993-94
- R-11 Budget Modification DES #6 Requesting Authorization to Appropriate the Natural Areas Acquisition Fund for Parks Services Division Budget Expenditures for the Remainder of Fiscal Year 1993-94
- R-12 RESOLUTION in the Matter of Approving a Memorandum of Understanding Between Multnomah County and Metro Regarding the Transfer of Regional Parks, Natural Areas, Golf Courses, Cemeteries and the Expo Center
- R-13 RESOLUTION in the Matter of Accepting the Report from the Multnomah County Fair Advisory Task Force and Discussion Regarding the 1994 Multnomah County Fair and Establishment of a Citizen Advisory County Fair Board

PUBLIC COMMENT

- R-14 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.



TANYA COLLIER  
Multnomah County Commissioner  
District 3



1120 SW Fifth St., Suite 1500  
Portland, OR 97204  
(503) 248-5217

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

TO: Chair, Beverly Stein  
Commissioner Gary Hansen  
Commissioner Sharron Kelley  
Commissioner Dan Saltzman  
Board Clerks

FROM: Commissioner Tanya Collier

DATE: September 22, 1993

SUBJECT: Out of the Office Schedule for October

This memo is to inform you of days that I will be out of the office in October. I apologize for any inconvenience that these dates may present. My staff failed to provide you with my complete schedule of conflicts.

Out of the Office on:

October 1, 1993	All day
October 11, 1993	All day
October 12, 1993	All day
October 15, 1993	From Noon till October 24, 1993

RECEIVED  
COUNTY COMMISSIONER  
1993 SEP 22 AM 10:01  
MULTNOMAH COUNTY  
OREGON

#1

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

Arnold Rocklin

**ADDRESS**

P.O. Box 83645

**STREET**

Portland

97283

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

P-1

**SUPPORT**

for Appeal

**OPPOSE**

**SUBMIT TO BOARD CLERK**

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 10-12-93

NAME Steve Abel for Applicant

ADDRESS 1211 SW 5th Ave #1700

STREET Portland, OR

CITY 97204

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # DR 14-93

SUPPORT Hearings Offer Decision ~~OPPOSE~~

SUBMIT TO BOARD CLERK

MEETING DATE: October 12, 1993

AGENDA NO: P-1

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: DR 14-93 / CU 5-91a Public Hearing

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: October 12, 1993

Amount of Time Needed: 1 hour

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sharon Cowley TELEPHONE #: 2610  
BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Mark Hess

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

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

DR 14-93/CU 5-91a Public Hearing

Review the Decision of the Hearings Officer of August 20, 1993, affirming, subject to conditions, the final design review plan and affirming the Determination of Substantial Development, to allow completion of a non-resource dwelling authorized under CU 5091, all for property located at 6125 NW Thompson Road

11/2/93 copies to Mark Hess  
& Sharon Cowley

**SIGNATURES REQUIRED:**

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

OR

DEPARTMENT MANAGER: Betsy Willie

1993 OCT - 4 PM 2 27  
CLERK OF COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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

0516C/63

6/93

October 7, 1993

**RECEIVED**  
OCT - 7 1993

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

Multnomah County  
Board of Commissioners  
1120 SW Fifth Ave., #1510  
Portland, Or 97204

**Multnomah County**  
**Zoning Division**

Testimony re.: DR 14-93 Final Development Plans, and  
CU 5-91 Conditional Use for Non-Resource Residence Extension

For myself and the Forest Park Neighborhood Association:

In 1991, the county issued a Conditional Use permit for a forest dwelling and HDP and SEC permits for a bridge over the Thompson Fork of Balch Creek. The county cited McKenzie for installing a culvert instead of a bridge. He applied for amendments. The Planning Director approved the culvert. The Friends of Forest Park appealed. The Hearings Officer denied the culvert. On a 2/2 vote the Board denied it. On rehearing, the Board approved it, 3 to 2. LUBA reversed, reinstating denial of the culvert. The applicant wants an extension of the CU permit and needs a design review approval to proceed.

#### CONDITIONAL USE EXTENSION

The deadline for an extension request is 30 days before expiration (.7110(C)(3)(a)). It was filed March 26th. The dispute is over the expiration date. If it was April 26th, the application was on time; if April 23rd, it was late. 7110(C) says a Conditional Use Permit expires "... two years from the date of issuance of the Board Order in the matter, ...." The Planning Commission approval was presented to the Board on April 23, 1991. The minutes show the decision was acknowledged by the Board on that date. The acknowledgment is the "Board Order" intended by .7110(C). It has to be because when there's no review, it's the only Board action allowed by the code. But April 23rd makes the application 2 days late. So, the Hearings Officer said, if the Board Order wasn't in writing it doesn't count. He tried the date the Planning Commission decision became final which was ten days after it was submitted to the Clerk of the Board (.8260(A)). The decision says on it that it was filed with the Clerk on April 11th. Ten days later is April 21st. That makes the March 26th application even more late. Then the Hearings Officer tried the date the decision was stamped as received by the Clerk, April 16th. Ten days later is April 26th; the extension request would have to be in by March 27th. Eureka! To appreciate how twisted this rationale is, reverse it. Suppose the 10th day after it was stamped by the Clerk was the earlier date, April 23rd and suppose the Board acknowledged the decision later, on April 26th, so the application would have been on time measured from the Board Order and would have been late measured from 10 days after the Clerk received it. Would the Hearings Officer deny the extension request with the reasoning he used to approve it? On review, would you deny the applicant's plea that he's entitled to what the code says, two years from the date of the Board Order? The Hearings Officer's notion conflicts with LUBA's opinion in *Astoria Thunderbird v. City of Astoria*, 13 Or LUBA 297. LUBA rejected an argument that an action wasn't a decision because it was recorded only in the City Council Minutes. This CU expired two years from the Board Order, on April 23rd. The extension application was required to be received 30 days earlier by March 24th, but was not received until the 26th.

7110(C)(3)(b)(i) requires that "Final Design Review approval has been granted under MCC .7845 on the total project;" The Hearings Officer's approval was not for the total project. He said himself that the design doesn't have the required bridge.

7110(C)(3)(b)(ii) requires that "At least ten percent of the dollar cost of the total project value has been spent for construction or development authorized under a sanitation, building or other development permit." The Planning Director said the project cost is \$50,000. Mr. Epstein first defended the figure as an "educated guess", but later abandoned it. The Director considered only a bare manufactured home. He didn't think of site preparation, foundation, culvert, driveway, utilities, sewage system, well, water pumps and storage, storm drainage, and whatever else might be required. I said that I don't know everything needed, but just that short list had to put the figure over \$100,000 (transcript, p.14). That's how the Hearings Officer's decision came to \$100,000. That number wasn't an estimate. I was only saying that under \$100,000 was absurd. By the time Mr. Epstein decided, he had the LUBA decision requiring a bridge. The applicant has said a bridge would cost at least \$30,000. That sends it over \$130,000.

The regulation counts expenses only when authorized by permit. McKenzie was cited for installing a culvert without a permit. But the Hearings Officer counted culvert work of \$4287 and reached an expense total of \$15,917. Subtract the \$4287 and 11,630 is left, under the required 10%. And, \$130,000 is just a minimal guess. There is no real evidence of the cost of the total project. And, actually, none of the applicant's work was authorized by a lawfully issued permit. .7815 prohibits issuance of any permit before Design approval. None of the work was legally permitted; none of it can be counted. Whether you allow \$11,630 expenses or not, the applicant fails to reach the required 10%.

#### FINAL DESIGN REVIEW - DR 14-93

The Hearings Officer said, "The design review plan does not provide for the bridge. It violates the decisions noted above." \* \* \* \* "The Hearings Officer finds that MCC .7110(C)(3)(b)(i) does not contemplate the circumstances of this case, i.e., that a final design review plan is approved based on the permits issued for development shown on the plan, but those permits are voided by a LUBA decision while the final design review plan decision is under appeal." (p.6, 2 & 3a) He approved it. What if the situation were reversed? What if the Director had denied the design because of the culvert and it was the applicant who appealed? Suppose, LUBA meanwhile approved a culvert. Would Mr. Epstein approve the design with a culvert because anything else would be outrageously unfair to the applicant, or would he say that the regulation "does not contemplate the circumstances of this case". The actual permits require a bridge; the design doesn't have a bridge. The Hearings Officer's says it doesn't comply and tries to make the illegal legal by a condition that requires the applicant to change the design to the required bridge at some unspecified time in the future. The issue is whether the design before you now complies.

A dozen requirements of .7830 (D, E & F) are omitted, including the tree inventory, site contouring plan, delineation of landscaped areas including species to be retained and planted, wildlife habitat and natural features. The site is on Balch Creek, abuts Forest Park on 3 sides, and is part of the park ecosystem. If requirements for inventories of trees, wildlife habitat and and natural features aren't enforced even on a site like this, then end the pretence and repeal them.

MCC .7850(2) is addressed by the forest dwelling standards of .2194. .2194(F) requires 200 foot set backs from the side and rear property lines when possible. The lot is 863 feet deep, but the garage is only 86 feet from the rear line, 114 ft short of the requirement. .2194(A)(1) requires a 30 foot fire lane surrounding the house. But the site plan puts the

house 20 feet from the boundary. The 30 foot fire break is impossible. Ignoring the map scale and relying on the applicant's note, the Hearings Officer finds there is a 30 foot break (decision, p.10). 2194(C) requires the dwelling to be as close to the street as possible. It's 600 feet back with no proof of necessity.

.7830(G)(2) says "The preliminary landscape plan shall indicate "Proposed site contouring." That's not natural topography, but how the site is altered.

.7830(E)(2) requires the plan to include "location and species of trees greater than 6 inches in diameter. .7850(4) says: "The landscape and existing grade shall be preserved to the maximum practical degree". That's why a tree inventory, landscape and grading plan are required.

In Summary:

The extension request was filed after the deadline. Expenses toward 10% of the cost weren't for permitted work. There were no lawful permits because permits can't be issued until design approval. Even if you don't accept that, the culvert was a cited no-permit violation. That leaves \$11,630, or 9% of \$130,000. The record has no estimate from the applicant of cost of the total project, just prices for some bare modular structures. It's impossible to find that 10% of total cost was spent.

The Design Review fails for not meeting forest dwelling standards, not having a bridge, not having inventories of trees, wildlife habitat and natural features and not having a landscape plan showing that the existing landscape and grade are retained to the maximum practical extent. And, without a complete design review plan, CU regulations prohibit an extension.





**11.15.7105 Purposes**

Conditional uses as specified in a district or described herein, because of their public convenience, necessity, unique nature, or their effect on the Comprehensive Plan, may be permitted as specified in the district or described herein, provided that any such conditional use would not be detrimental to the adjoining properties or to the purpose and intent of the Comprehensive Plan.

**11.15.7110 General Provisions**

- (A) Application for approval of a Conditional Use shall be made in the manner provided in MCC .8205 through .8280.
- (B) The Approval Authority shall hold a public hearing on each application for a Conditional Use, modification thereof, time extension or reinstatement of a revoked permit.
- (C) Except as provided in MCC .7330, the approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless:
  - (1) The project is completed as approved, or
  - (2) The Approval Authority establishes an expiration date in excess of the two year period, or
  - (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:
    - (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
    - (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
      - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
      - (ii) At least ten percent of the dol-

lar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).

- (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
- (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

*[Amended 1990, Ord. 643 § 2]*

- (D) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority. Any change of use or modification of limitations or conditions shall be subject to approval authority approval after a public hearing.
- (E) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC .7120 and in the district provisions.

**11.15.7115 Conditions and Restrictions**

Except as provided for Mineral Extraction and Processing activities approved under MCC .7305 through .7325 and .7332 through .7335, the approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, off-street parking, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chap-



ter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

[Amended 1990, Ord. 643 § 2]

### 11.15.7120 Conditional Use Approval Criteria

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

- (1) Is consistent with the character of the area;
- (2) Will not adversely affect natural resources;
- (3) Will not conflict with farm or forest uses in the area;
- (4) Will not require public services other than those existing or programmed for the area;
- (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- (6) Will not create hazardous conditions; and
- (7) Will satisfy the applicable policies of the Comprehensive Plan.

(B) Except for off-site stockpiling, subpart (A) of this subsection shall not apply to applications for mineral extraction and processing activities. Proposals for mineral extraction and processing shall satisfy the criteria of MCC .7325.

[Amended 1990, Ord. 643 § 2]

### 11.15.7122 Exclusive Farm Use Conditional Use Approval Criteria

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

- (1) Will not force a significant change in

accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

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

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

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

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

[Added 1990, Ord. 643 § 2]

### 11.15.7125 Design Review

Uses authorized under this section shall be subject to design review approval under MCC .7805 through .7865.

### 11.15.7130 Conditional Use Permit

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

### 11.15.7135 Suspension or Revocation of Conditional Use Permit

(A) A Conditional Use permit may be suspended by the Planning Director upon a finding by the Director that any condition or restriction of use is not satisfied.

(B) The Director shall notify the owner by first class mail, return receipt requested, of the suspension, the reasons for the decision, the action necessary for reinstatement, and the time limit and appeal procedures of this sub-

**11.15.7805 Purposes**

MCC .7805 through .7865 provides for the review and administrative approval of the design of certain developments and improvements in order to promote functional, safe, innovative and attractive site development compatible with the natural and man-made environment.

**11.15.7810 Elements of Design Review Plan**

The elements of a Design Review Plan are: The layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas, outdoor storage areas, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.

**11.15.7815 Design Review Plan Approval Required**

No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this ordinance.

**11.15.7820 Application of Regulations**

The provisions of MCC .7805 through .7865 shall apply to all conditional and community service uses in any district and to the following:

- (A) A multiplex, garden apartment or apartment dwelling or structure;
- (B) A boarding, lodging or rooming house;
- (C) A hotel or motel;
- (D) A business or professional office or clinic;
- (E) A use listed in the BPO District;
- (F) A use listed in any commercial district; and
- (G) A use listed in any manufacturing district.

**11.15.7825 Compliance**

- (A) Non-compliance with a final approved design review plan, as approved, shall be a violation of this Chapter.
- (B) The Board of County Commissioners, Planning Commission, and Hearings Officer may, as a condition of approval of an action, as defined in MCC .8205, require that design review plan approval be obtained prior to issuance of any required permit.

**11.15.7830 Design Review Plan Contents and Procedure**

- (A) Any preliminary or final design review plan shall be filed on forms provided by the Planning Director and shall be accompanied by such drawings, sketches and descriptions as are necessary to describe the proposed development. A plan shall not be deemed complete unless all information requested is provided.
- (B) Prior to filing a design review plan, the applicant shall confer with the Planning Director concerning the requisites of formal application.
- (C) Following the pre-application meeting, the applicant shall file with the Planning Director a preliminary design review plan, which shall contain the items listed in subsection (D) through (G) below:
- (D) Contents:
  - (1) Preliminary Site Development Plan;
  - (2) Preliminary Site Analysis Diagram;
  - (3) Preliminary Architectural Drawings, indicating floor plans and elevations;
  - (4) Preliminary Landscape Plan;
  - (5) Proposed minor exceptions from yard, parking, and sign requirements; and
  - (6) Design Review Application Fee, as required under MCC .9025;

(E) A preliminary site analysis diagram may be in freehand form and shall generally indicate the following characteristics:

- (1) Relation to adjacent lands;
- (2) Location and species of trees greater than six inches in diameter at five feet;
- (3) Topography;
- (4) Natural drainage;
- (5) Significant wildlife habitat;
- (6) Information about significant climatic variables, including but not limited to, solar potential, wind direction and velocity; and
- (7) Natural features and structures having a visual or other significant relationship with the site.

(F) A preliminary site development plan may be in freehand form and shall generally indicate the following as appropriate to the nature of the use:

- (1) Access to site from adjacent rights-of-way, streets, and arterials;
- (2) Parking and circulation areas;
- (3) Location and design of buildings and signs;
- (4) Orientation of windows and doors;
- (5) Entrances and exits;
- (6) Private and shared outdoor recreation spaces;
- (7) Pedestrian circulation;
- (8) Outdoor play areas;
- (9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
- (10) Areas to be landscaped;
- (11) Exterior lighting;

(12) Special provisions for handicapped persons; and

(13) Other site elements and spaces which will assist in the evaluation of site development.

(G) The preliminary landscape plan shall indicate:

(1) The size, species, and approximate locations of plant materials to be retained or placed on the site; and

(2) Proposed site contouring.

#### **11.15.7835 Action on Preliminary Design Review Plan**

Within ten business days following filing of the preliminary design review plan, the Planning Director shall mail to the applicant summary findings and conclusions indicating the relationship between the preliminary design review plan and the criteria and standards listed in MCC .7850, .7855, and .7860.

#### **11.15.7840 Final Design Review Plan**

Following receipt by the applicant of the summary findings and conclusions under MCC .7835, the applicant may submit a revised preliminary design review plan or shall file with the Planning Director a final design review plan, which shall contain the following, drawn to scale:

- (A) Site Development and Landscape Plans, indicating the locations and specifications of the items described in MCC .7830(F) and (G), as appropriate;
- (B) Architectural drawings, indicating floor plans, sections, and elevations; and
- (C) Proposed minor exceptions from yard, parking, and sign requirements.

#### **11.15.7845 Decision on Final Design Review Plan**

- (A) The Planning Director may approve a final design review plan, disapprove it, or approve it with such modifications and conditions as may be consistent with the Comprehensive Plan or the criteria and standards listed in MCC .7850, .7855, and .7860.

- (B) When the Planning Director determines that immediate execution of any feature of an approved final design review plan is impractical due to climatic conditions, unavailability of materials or other temporary condition, the Director shall, as a precondition to the issuance of a required permit under MCC .7815 through .7825, require the posting of a performance bond, cash deposit, or other surety, to secure execution of the feature at a time certain.
- (C) Within ten business days following receipt of the final design review plan, the Planning Director shall file a decision with the Director of the Department of Environmental Services and mail a copy of the decision to the applicant and other persons who request the same.
- (D) A decision on a final design review plan shall include written conditions, if any, and findings and conclusions. The findings shall specifically address the relationships between the plan and the criteria and standards listed in MCC .7850 and .7860.

#### 11.15.7850 Design Review Criteria

- (A) Approval of a final design review plan shall be based on the following criteria:
  - (1) Relation of Design Review Plan Elements to Environment.
    - (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.
    - (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.
    - (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.
  - (2) Safety and Privacy – The design review plan shall be designed to pro-

vide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

- (3) Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.
- (4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.
- (5) Pedestrian and Vehicular circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.
- (6) Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.
- (7) Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.
- (8) Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.
- (9) Signs and Graphics – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other ele-

ments of the design review plan and surrounding properties.

- (B) Guidelines designed to assist applicants in developing design review plans may be adopted by the Planning Commission.

#### 11.15.7855 Required Minimum Standards

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

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

- (2) Shared Areas – Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:

- (a) One or two-bedroom units: 200 square feet per unit.
- (b) Three or more bed-room units: 300 square feet per unit.

##### (B) Storage

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

##### (C) Required Landscape Areas

The following landscape requirements are established for developments subject to design review plan approval:

- (1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.
- (2) All areas subject to the final design

review plan and not otherwise improved shall be landscaped.

- (3) The following landscape requirements shall apply to parking and loading areas:

- (a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totalling no less than 25 square feet per parking space.

- (b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

- (c) A landscaped strip separating a parking or loading area from a street shall contain:

- (i) Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;

- (ii) low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and

- (iii) vegetative ground cover.

- (d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

- (c) A parking landscape area shall have a width of not less than 5 feet.

- (4) Provision shall be made for watering planting areas where such care is required.

- (5) Required landscaping shall be continuously maintained.

- (6) Maximum height of tree species shall be considered when planting under overhead utility lines.



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. DR14-93  
CU 5-9/a

- ☒ Agenda Placement Sheet      No. of Pages 1
- ☒ Case Summary Sheet      No. of Pages 1  
☐ Previously Distributed \_\_\_\_\_
- ☒ Notice of Review      No. of Pages 3  
\*(Maybe distributed at Board Meeting)  
☒ Previously Distributed 3
- ☒ Decision      No. of Pages 22  
(Hearings Officer/Planning Commission)  
☒ Previously Distributed 22

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

(CL/1)



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. PR14-93  
CU 5-9/a

#### I. Materials Distributed to the Board

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

#### II. Materials Available Upon Request

- ☐ Minutes ( Pages)
- ☒ Transcript ( 40 Pages)
- ☒ Applicant's Application and Submittals ( 36 Pages)
- ☒ Case Correspondence ( 2 Letters)
- ☒ Slides - Wielke ( 20 Slides)  
shown at Board Hearing
- ☐ Exhibits/Maps ( Exhibits)  
( Maps)
- ☒ Other Materials ( 1 )  
model



CASE NAME Appeal of a Final Design Review Plan  
Appeal of a Determination of Substantial Development

NUMBER DR 14-93; CU 5-91a

1. Applicant Name/Address

Dan McKenzie (represented by Steven Abel)  
6125 NW Thompson Road Portland, Oregon 97210

APPELLANTS:

Forest Park Neighborhood Association  
(represented by Arnold Rochlin)

2. Action Requested by applicant

- a. Approve the Final Design Review Plan for a house and detached garage on a 3-acre property located within the Balch Creek Basin.
- b. Determine that sufficient site development was performed within 2-years of the Conditional Use decision authorizing a non-forest dwelling on the site [file: CU 5-91].

3. Planning Staff Recommendation

DR 14-93: APPROVED by the Planning Director

CU 5-91a: APPROVED by the Planning Director

4. Hearings Officer Decisions:

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

5. If recommendation and decision are different, why? (not applicable)

The Hearings Officer decision incorporates a condition which responds to a recent LUBA case. The LUBA decision changed the status of County permits approved for the driveway crossing over a fork of Balch Creek.

### ISSUES

(who raised them?)

These decisions concern an appeal to the Hearings Officer of two administrative decisions by the Planning Director. The decision in DR 14-93 approved a Final Design Review Plan for a non-resource dwelling allowed by conditional use permit (CU 5-91) in a forest zone. The decision in CU 5-91a determined that the applicant had undertaken substantial construction and development within two years from approval of the conditional use (CU) permit. This allows the applicant to complete the dwelling on the site. [issue raised by appellants]

Do any of these issues have policy implications? Explain.

The case is complicated by prior county decisions for a Hillside Development Permit and a Significant Environmental Concern permit for a driveway crossing of Balch Creek near the Thompson Road frontage of the property and by a recent LUBA opinion reversing the County decisions (case files: HDP 4-91a; SEC 6-91a).

ACTION REQUESTED OF BOARD

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





DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 SE Morrison Street  
Portland, Oregon 97214 (503) 248-3043

September 21, 1993

## NOTICE OF A PUBLIC HEARING

This notice concerns a public hearing scheduled to consider an appeal of the Hearings Officer decisions for land use applications cited and described below:

**Planning Division Case Files:** DR 14-93  
CU 5-91a

**Hearing Scheduled Before:** MULTNOMAH COUNTY BOARD OF COMMISSIONERS

**Hearing Date, Time, & Place:** OCTOBER 12, 1993; AT 1:30 P.M.  
Multnomah County Courthouse, Room 602  
1021 SW 4th Avenue, Portland

**Scope of Review:** On the record.

**Time Limit of Oral Argument:** 15 minutes for appellants (or their representative); and,  
15 minutes for the applicant (or representative).

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**Proposed Action(s) and Use(s):** DR 14-93: Appeal of a *Final Design Review Plan*  
CU 5-91a Appeal of a *Determination of Substantial Development* of a non-forest dwelling.

**Location of the Proposal:** 6125 NW Thompson Road Site Size 3.00 Acres

**Legal Description of Property:** Tax Lot '1' of Lot 37, Mountain View Park Addition #1

**Applicant(s):** Dan McKenzie (represented by Steven Abel)  
6125 NW Thompson Road Portland, Oregon 97210

**Appellant:** Forest Park Neighborhood Association  
(represented by Arnold Rochlin)

**Plan Designation(s):** Commercial Forest Use

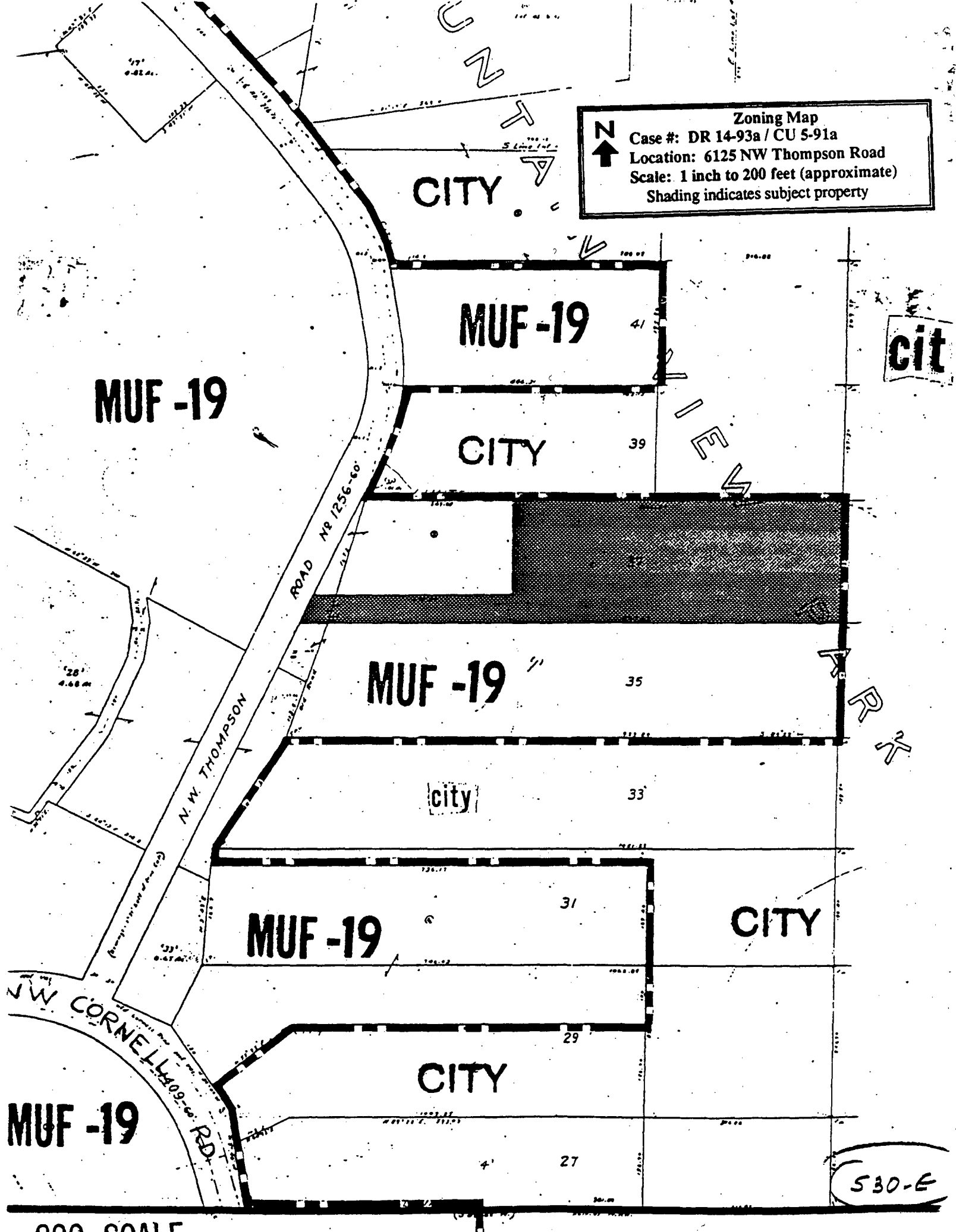
**Zoning District(s):** CFU (CU 5-91 was approved under former MUF-19 Zone)

**HEARINGS OFFICER**

**DECISIONS ON APPEAL:** DR 14-93: Affirm, subject to a condition, the Final Design Review Plan

CU 5-91a: Affirm, the *Determination of Substantial Development* to allow  
completion of a non-resource dwelling authorized by CU 5-91.

**Zoning Map**  
Case #: DR 14-93a / CU 5-91a  
Location: 6125 NW Thompson Road  
Scale: 1 inch to 200 feet (approximate)  
Shading indicates subject property

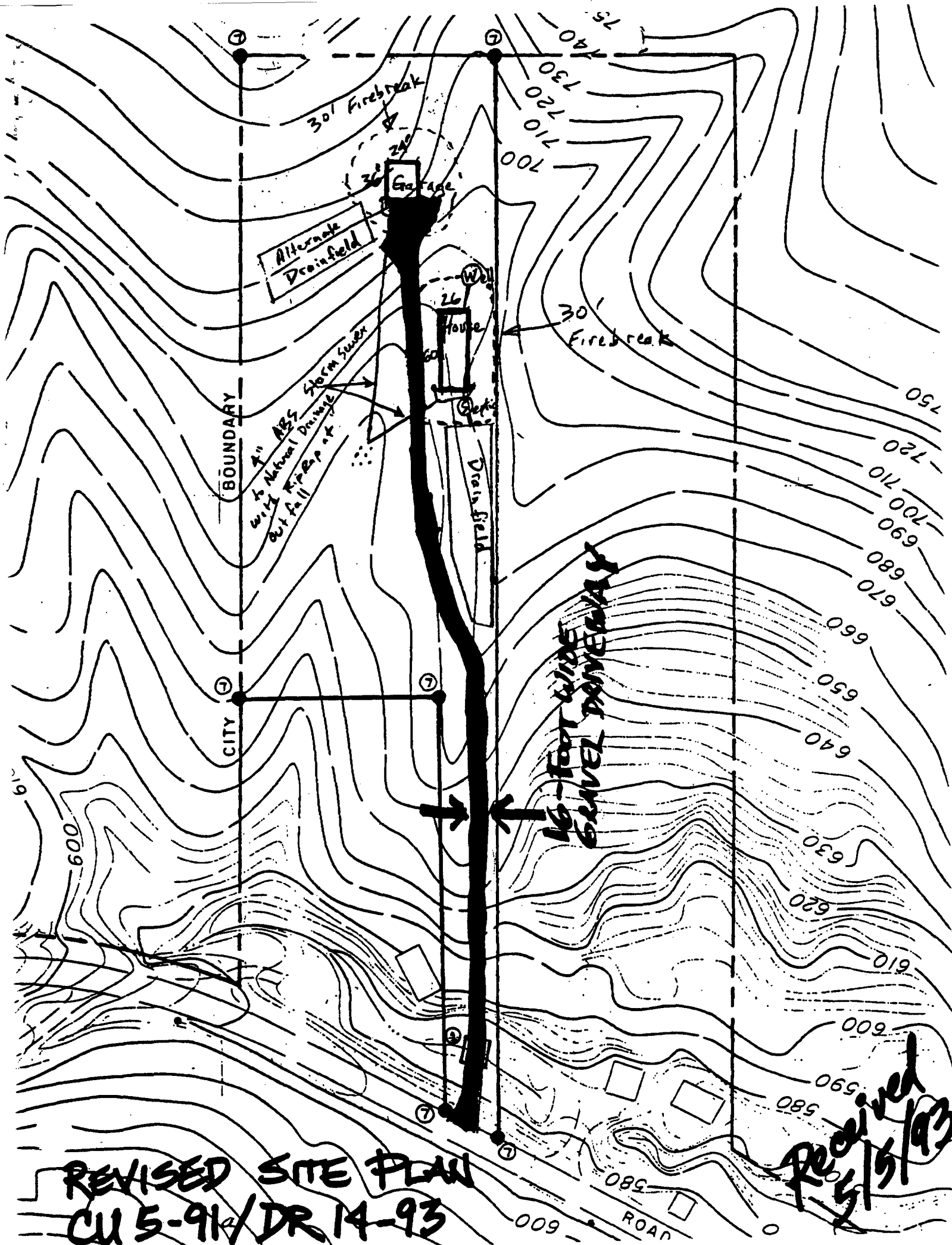


cit

R

530-E

200 SCALE



REVISED SITE PLAN  
CU 5-91/DR 14-93

Received  
5/15/93

**Proposal Summary:** Appellants challenge the August 20, 1993 Hearings Officer decisions which affirmed two administrative decisions by the Planning Director concerning the property cited above. The Hearings Officer affirmed the Director's decision for DR 14-93 which approved a Final Design Review Plan for a non-resource dwelling authorized by CU 5-91.

The decision in CU 5-91a determined that the applicant had undertaken substantial development of a house within two years of the approval of the conditional use (CU). This determination would allow the applicant to complete a dwelling on the site.

A *Notice of Review* (appeal) was filed on September 7, 1993. The decision and *Notice of Review* were reported to the Board of Commissioners (Board) on September 14, 1993. The Board scheduled a hearing to consider the appeal for October 12, 1993 @ 1:30 p.m.

**Public Participation and Hearing Process:** Appellants' grounds for appeal are attached to this notice. The application and materials in the record are available for inspection at the County Planning Division office prior to the hearing. Copies may be purchased for 30-cents per page. For further information on this case, call Mark Hess, Planner at 248-3043 [M-F, 8:30-4:30].

The Board limited the scope of review to the record of the Hearings Officer. Therefore, only those persons (or their representative) that submitted oral or written testimony at the prior hearing can testify or submit written argument to the Board of Commissioners. Testimony or argument submitted to the Board is confined to the record of the Hearings Officer decision and to the specific issues or criteria cited in the grounds for appeal (see MCC 11.15.8270). The appeal hearing will be conducted according to the Board's *Rules of Procedure* (enclosed) and explained at the hearing.

The Board may announce a decision at the close of the hearing, or upon continuance to a date and time certain. A written order will be mailed to the participants and filed with the Clerk of the Board usually within ten days after the decision is announced. The Board's decision may be appealed to the State Land Use Board of Appeals (LUBA) by either the applicant or other hearing participants.

Failure to raise an issue in person, or by letter, or failure to provide sufficient specificity to allow the Board an opportunity to respond to the issue precludes subsequent appeal to LUBA on that issue.

## **APPROVAL CRITERIA**

### **MCC 11.15.7850 Design Review Criteria**

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

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

- (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.
- (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.
- (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.

- (2) **Safety and Privacy** – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.
- (3) **Special Needs of Handicapped** – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.
- (4) **Preservation of Natural Landscape** – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.
- (5) **Pedestrian and Vehicular circulation and Parking** – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.
- (6) **Drainage** – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.
- (7) **Buffering and Screening** – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.
- (8) **Utilities** – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.
- (9) **Signs and Graphics** – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

#### **MCC 11.15.7855 Required Minimum Standards**

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

- (1) **Private Areas** – Each ground level living unit in a residential development subject to design review plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.
- (2) **Shared Areas** – Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:
  - (a) One or two-bedroom units: 200 square feet per unit.
  - (b) Three or more bed-room units: 300 square feet per unit.

##### **(B) Storage**

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

##### **(C) Required Landscape Areas** — The following landscape requirements are established for developments subject to design review plan approval:

- (1) A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.

- (2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.
- (3) The following landscape requirements shall apply to parking and loading areas:
  - (a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totalling no less than 25 square feet per parking space.
  - (b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.
  - (c) A landscaped strip separating a parking or loading area from a street shall contain:
    - (i) Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;
    - (ii) low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and
    - (iii) vegetative ground cover.
  - (d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.
  - (c) A parking landscape area shall have a width of not less than 5 feet.
- (4) Provision shall be made for watering planting areas where such care is required.
- (5) Required landscaping shall be continuously maintained.
- (6) Maximum height of tree species shall be considered when planting under overhead utility lines.
- (7) *Landscaped* means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

MCC 11.15.7110(C) – A CU permit expires 2 years after the date of the Board Order or a final resolution of subsequent appeals, unless:

- (1) The project is completed as approved, or
- (2) The CU decision established an expiration date in excess of the two year period, or
- (3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:
  - (a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.
  - (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:
    - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
    - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025(A) or .9027(A).

Note: Appellants' grounds for appeal of DR 14-93 and CU 5-91a are attached to this Notice. MCC 11.15.8270(G) limits the Board's review of the Hearings Officer decisions to the specific issues and grounds raised in the Notice of Review.

CU 5-91a & DR 14-93 - ATTACHMENT TO NOTICE OF REVIEW 9/7/93

7. Status as a party: The Forest Park Neighborhood Association appeared before the Hearings Officer on July 19, 1993, represented by Arnold Rochlin and submitted written testimony to the Hearings Officer on various dates. It is an entity entitled to notice pursuant to ORS 197.763(2)(b) and therefore entitled to notice under MCC 11.15.220(c).

8. Grounds for Reversal: The Hearings Officer made the following errors in the decision:

I. CU 5-91a - Extension of Conditional Use Permit (CU)

- a. Did not base determination of the time limit for requesting a CU extension on the date of the "Board Order" (11.15.7110(C) and (C)(3)(a). Alternatively, relying on the date the Planning Commission decision granting CU 5-91 became final, the Hearings Officer's wrongly used a date other than the date of submission of the decision to the Clerk of the Board as recorded on the decision itself.
- b. Accepted Final Design Review approval of other than the total project and, Final Design Review Approval was erroneous (11.15.7110)(C)(3)(b)(i).
- c. Counted costs of work done not under permit toward the 10% standard (11.15.7110)(C)(3)(b)(ii).
- d. Estimated the total cost of the project, in part, on guesses without foundation in substantial evidence (11.15.7110)(C)(3)(b)(ii).

II. DR 14-93 - Final Design Review Approval

- a. Approved a design review plan that did not include a bridge required by CU 5-91 and ancillary permits SEC 6-91 and HDP 4-91.
- b. Approved a design review plan which could not have adequately complied with approval criteria because it omitted features explicitly mandated by 11.15.7830(C) and (D)(1, 2, 3 & 4), (E)(2, 4, 5, 6 & 7), (F)(4, 5, 10 & 11) and (G)(1 & 2).
- c. Found compliance with 11.15.7850 (A)(1)(a, b & c) and (A)(2, 6, 7 & 8) without substantial evidence in the record in support of the conclusions.
- d. Relied on evidence not in the record, identified as exhibit 28 in the decision.
- e. Relied on a model to make findings and reach conclusions on the specific character of the design when the creator of the model had testified that it was a general representation of the proposal as conceived in 1991, and did not conform to actual site dimensions, number, design or placement of structures, or number and location of trees.
- f. Accepted oral statements of the applicant during the hearing as constituting a required and otherwise absent part of the plan addressing 11.15.7850(8). This violates requirements of 11.15.7815, 11.15.7830(A, E & F), and the implied requirement of 11.7840.

III. Concerning CU 5-91a and DR 14-93

- a. Concluded that the Hearings Officer lacked authority to apply procedural requirements of ORS 215.416(11) to this proceeding.
- b. Improperly admitted plan revisions and supplements through the day of the hearing. The hearing should have been restricted to consideration of the Design Review Plan and CU 5-91 extension request as earlier submitted by the applicant for consideration by the Director.

AK 9/7/93

MEETING DATE: SEP 14, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

**SUBJECT:** DR 14-93 and CU 5-91a Hearings Officer Decisions

**BOARD BRIEFING**      **Date Requested:** \_\_\_\_\_

**Amount of Time Needed:** \_\_\_\_\_

**REGULAR MEETING:**      **Date Requested:** September 14, 1993

**Amount of Time Needed:** 10 minutes

**DEPARTMENT:** D.E.S.

**DIVISION:** Planning and Development

**CONTACT:** Mark Hess

**TELEPHONE #:** 248-3043

**BLDG/ROOM #:** 412/106

**PERSON(S) MAKING PRESENTATION:** Mark Hess

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY      ☐ POLICY DIRECTION      ☒ APPROVAL      ☐ OTHER

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

Reporting the Decisions of the Hearings Officer in the matter of DR 14-93 and CU 5-91a regarding the non-resource dwelling proposed by Dan McKenzie at 6125 NW Thompson Road.

**SIGNATURES REQUIRED:**

**ELECTED OFFICIAL:** \_\_\_\_\_

**OR**

**DEPARTMENT MANAGER:** \_\_\_\_\_

*Betsy Wallian*

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 SEP - 7 PM 4:49

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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

0516C/63

6/93



Call 5-91a  
 DR 14-93  
 Filing #500  
 See back say  
 to file  
 notice of  
 Review -  
 8/27/93  
 4:30pm  
 JD



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

7771 11 500.00 20  
 253 7771 9/07/93 500.00 TL

## NOTICE OF REVIEW

1. Name: <sup>ar</sup> Arnold Rochlin, 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  


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5. What is the decision you wish reviewed (e.g., denial of a zone change, approval of a subdivision, etc.)?  
Extension of CV permit - CV 5-91a and Final Design Review approval - DR 14-93
6. The decision was announced by the <sup>(mailed) Hearings Officer</sup> Planning Commission on August 25, 1993  
and was submitted to the clerk of the Board August 26, 1993.
7. On what grounds do you claim status as a party pursuant to MCC 11.15.8225?  
See page 1 of attachment.

1993 SEP -9 PM 11 31  
 MULTNOMAH COUNTY  
 OREGON  
 CLERK OF COUNTY COMMISSIONERS

*Please file the original form*

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

See pages 1 + 2 of attachment

9. Scope of Review (Check One):

(a) ☒ On the Record

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

(c) ☐ De Novo (i.e., Full Rehearing)

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

Signed: Arnold Rocklin Date: 9/7/93

**For Staff Use Only**

Fee:

Notice of Review = \$300.00

Transcription Fee:

Length of Hearing 120 min x \$3.50/minute = \$ 420.00

Total Fee = \$ 500.00

Received by: Sharon Farley Date: 9/7/93 Case No. DL 14-93  
C45-9/a

CU 5-91a & DR 14-93 - ATTACHMENT TO NOTICE OF REVIEW 9/7/93

7. Status as a party: The Forest Park Neighborhood Association appeared before the Hearings Officer on July 19, 1993, represented by Arnold Rochlin and submitted written testimony to the Hearings Officer on various dates. It is an entity entitled to notice pursuant to ORS 197.763(2)(b) and therefore entitled to notice under MCC 11.15.220(c).

8. Grounds for Reversal: The Hearings Officer made the following errors in the decision:

I. CU 5-91a - Extension of Conditional Use Permit (CU)

- a. Did not base determination of the time limit for requesting a CU extension on the date of the "Board Order" (11.15.7110(C) and (C)(3)(a). Alternatively, relying on the date the Planning Commission decision granting CU 5-91 became final, the Hearings Officer's wrongly used a date other than the date of submission of the decision to the Clerk of the Board as recorded on the decision itself.
- b. Accepted Final Design Review approval of other than the total project and, Final Design Review Approval was erroneous (11.15.7110)(C)(3)(b)(i).
- c. Counted costs of work done not under permit toward the 10% standard (11.15.7110)(C)(3)(b)(ii).
- d. Estimated the total cost of the project, in part, on guesses without foundation in substantial evidence (11.15.7110)(C)(3)(b)(ii).

II. DR 14-93 - Final Design Review Approval

- a. Approved a design review plan that did not include a bridge required by CU 5-91 and ancillary permits SEC 6-91 and HDP 4-91.
- b. Approved a design review plan which could not have adequately complied with approval criteria because it omitted features explicitly mandated by 11.15.7830(C) and (D)(1, 2, 3 & 4), (E)(2, 4, 5, 6 & 7), (F)(4, 5, 10 & 11) and (G)(1 & 2).
- c. Found compliance with 11.15.7850 (A)(1)(a, b & c) and (A)(2, 6, 7 & 8) without substantial evidence in the record in support of the conclusions.
- d. Relied on evidence not in the record, identified as exhibit 28 in the decision.
- e. Relied on a model to make findings and reach conclusions on the specific character of the design when the creator of the model had testified that it was a general representation of the proposal as conceived in 1991, and did not conform to actual site dimensions, number, design or placement of structures, or number and location of trees.
- f. Accepted oral statements of the applicant during the hearing as constituting a required and otherwise absent part of the plan addressing 11.15.7850(8). This violates requirements of 11.15.7815, 11.15.7830(A, E & F), and the implied requirement of 11.7840.

III. Concerning CU 5-91a and DR 14-93

- a. Concluded that the Hearings Officer lacked authority to apply procedural requirements of ORS 215.416(11) to this proceeding.

AR 9/7/93

- b. Improperly admitted plan revisions and supplements through the day of the hearing. The hearing should have been restricted to consideration of the Design Review Plan and CU 5-91 extension request as earlier submitted by the applicant for consideration by the Director.



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. DR 14-93/CU 5-9/a

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review \*

No. of Pages 22 (11 backed)

\*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision

No. of Pages 22 (11 backed)

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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

(CL/1)



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. DR 14-93/CU 5-91a

#### I. Materials Distributed to the Board

- ☒ Agenda Placement Sheet ( / Pages)
- ☒ Case Summary Sheet ( / Pages)
- ☐ Notice of Review Application ( Pages)
- ☒ Decision ( 22 Pages)  
(Hearings Officer/Planning Commission)

#### II. Materials Available Upon Request

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



BOARD HEARING OF September 14, 1993

TIME 01:30 p.m.

CASE NAME Appeal of a Final Design Review Plan  
Appeal of a Determination of Substantial Development

NUMBER DR 14-93; CU 5-91a

1. Applicant Name/Address

Dan McKenzie (represented by Steven Abel)  
6125 NW Thompson Road Portland, Oregon 97210

APPELLANTS:

Forest Park Neighborhood Association  
(represented by Arnold Rochlin)

2. Action Requested by applicant

Approval to place a Single Family Residence on a 3-acre property  
located within the Balch Creek Basin.

3. Planning Staff Recommendation

APPROVED by the Planning Director

4. Hearings Officer Decision:

AFFIRM Planning Director; DENY the Appeal

5. If recommendation and decision are different, why? (not applicable)

**ISSUES**

*(who raised them?)*

These decisions concern an appeal to the Hearings Officer of two administrative decisions by the Planning Director. The decision in DR 14-93 approved a Final Design Review Plan for a non-resource dwelling allowed by conditional use permit (CU 5-91) in a forest zone. The The decision in CU 5-91a determined that the applicant had undertaken substantial construction and development within two years from approval of the conditional use (CU) permit. This allows the applicant to complete the dwelling on the site.

*[issue raised by appellants]*

Do any of these issues have policy implications? Explain.

The case is complicated by prior county decisions for a Hillside Development Permit (HDP 4-91 and 4-91a) and a Significant Environmental Concern permit (SEC 6-91 and 6-91a) for a driveway crossing of Balch Creek near the Thompson Road frontage of the property and by a recent LUBA opinion reversing SEC 6-91a and HDP 4-91a.

**ACTION REQUESTED OF BOARD**

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

BOARD OF  
COUNTY COMMISSIONERS

Multnomah County  
Board of Commissioners  
1120 SW 5th Ave #1510  
Portland, OR 97204

MULTNOMAH COUNTY  
OREGON

Dan McKenzie  
6125 NW Thompson  
Portland, OR 97210

Subject: 10/12/93 BCC hearing 1:30 PM  
CU 5-91 and DR 14-93 Applicant's testimony, and  
response to Mr. Rochlin's testimony

HEARING OFFICER'S DECISION

The Planning Director was correct to approve the Conditional Use extension and Final Design Review plan. The Hearing Officer (HO) was also correct to re-affirm the Planning Director's decision by again approving both the Conditional Use extension and Final Design Review plan.

Conditional Use extension

The application for a Conditional Use (CU) extension is required to be submitted 30 days prior to the expiration date. (Submitted meaning received by the County Planning Department). The application was submitted on March 26, 1993. At issue is the expiration date of the CU permit.

The CU file itself indicates that the CU permit became final on May 6, 1991. This is reiterated in the HDP 4-91a Planning Director's decision of 3/26/92 and the Hearing's Officer's HDP 4-91a decision of 6/16/92.

When I received an application for the CU extension, the county planner pulled the CU file and advised that the CU permit became final on May 6, 1991, and it would expire two years from that date on May 6, 1993. I was advised that the application for extension had to be submitted by April 6, 1993.

According to the county code, the CU permit actually expires two years from the date of the Board Order approving the permit. Since there was no Board Order, the CU decision was considered final at the close of business 10 days after it was reported to the Board. By the County Planning Department's interpretation, the CU permit was to become effective on the 11th day after it was reported to the Board.

In this case, the CU approval recommendation from the Planning Commission was reported to the Board on April 23, 1991. The 11th day following this date was a Saturday, so according to the Planning Department, the decision became



final on Monday May 6, 1991. This corresponds to the date on the actual CU file.

The Planning Director's and Hearing's Officer's decisions took an alternative approach. They considered the decision to become final 10 days after the Planning Commission's decision was submitted to the Clerk of the Board, according to MCC.11.15.8260(A). The decision was date stamped as received on April 16, 1991 by the Clerk. The decision could not have been considered submitted prior to it being actually received by the Clerk.

The Planning Commission's decision indicated it was filed with the Clerk on a certain date. According to the Clerk, this notation is typed on all decisions prior to the decision even being mailed to the Clerk. This notation does not represent an actual filing date. It merely indicates in anticipation of the filing date, when the decision is intended to be filed. It is impossible for the decision to be filed before it is received by the Clerk.

The Planning Commission's decision was received by, and hence submitted to, the Clerk on April 16, 1991. The Hearings Officer concludes the decision became final at the close of business 10 days later on April 26, 1991.

The application was received by and hence submitted to the Planning Department on March 26, 1991. The application must be submitted 30 days prior to the expiration of the permit. The permit was to expire two years from the date of the Board Order. Since there was no Board Order, there are two interpretations on when the CU permit became final:

1. Ten days after the decision was reported to the Board.
2. Ten days after the decision was submitted to the Clerk

Using either interpretation, the application was submitted on time.

In order for a CU extension to be granted, a determination must be made that substantial development occurred on the property. The HO accepted development expenses of \$15,916.85. This amount does not include a bill for \$2861.20 that was submitted at the *de novo* hearing on 7/19/93. This bill was for placing 6 inches of gravel on the 800 foot long driveway and excavating for the house site. The staff pictures indicate that this work was performed however the HO decision does not account for these expenses.

Including this expenses, the total becomes \$18,778.05. (This does not include additional expenses that the applicant incurred but does not have receipts for). The HO overestimated the cost of the manufactured home by \$10,000 to \$15,000. However even with this over estimate, the HO determined the project value at \$100,000, twice the amount of the Planning Director's estimate. Nevertheless with either estimate, the applicant accepts the Planning Director's and Hearing Officer's Determination that Substantial Development has occurred.

#### Final Design Review

There is substantial evidence in the record to support the HO and Planning Director's decisions approving the Final Design Review plan. The record contains over 1500 pages of information. Additional evidence was submitted at the de novo hearing on 7/19/93, including; a 3-dimensional landscape model indicating proposed developments and also indicating the trees to be retained in the area of the house site, a landscape plan showing where over 150 Douglas Fir trees have already been planted, a foundation plan, architectural drawings, pier and footing instructions, and a floor plan. Most of this information had been part of the valid building permit file since October 1992.

There were two errors however in the HO decision regarding the Final Design Review.

#### First error of HO decision

First of all, the HO suggested that HDP 4-91 and SEC 6-91 are required to be amended to approve the culvert design. This is in error because the SEC zone does not apply to the subject property and an SEC permit was never required. The HDP permit criteria have already been satisfied for the amended design.

The county admits they made an error and used the wrong map when they erroneously applied the SEC zone in the first place. There have recently been at least three other applications for permits in this area, and the county has determined that an SEC zone does not apply to these applications, and that SEC permits are not required. The Planning Commission has also acknowledged in their proposed amendment C 5-93, that an SEC zone does not apply to the subject area. This amendment was before the Board of County Commissioners (BCC) on 9/28/93.

Additionally, on 12/15/92 the BCC had agreed that an SEC permit was erroneously applied to the subject property and that an SEC permit was never required. Even though LUBA found that the BCC made a procedural error in applying this hearing to SEC 6-91a and HDP 4-91a, the outcome of the hearing still carries significance.

An SEC amendment is not required if an SEC zone does not apply to the subject property.

The Planning Director, the Hearings Officer, and the BCC found that all HDP criteria could be met with the culvert design, and that the culvert design was compatible and consistent with the CU permit. Since LUBA nullified the BCC rehearing due to a procedural error, the HO decision of June 16, 1992 is binding. The HO found that all HDP criteria could be met. The HO denied SEC criteria before it was discovered that SEC criteria did not apply.

As a result of the Planning Director's discovery on August 14, 1992, two months after the HO decision on SEC 6-91a, the SEC criteria was found to not apply to the subject property. Consequently, the HO decision of 6/16/92 is considered to have approved the amendment HDP 4-91a, since the HO found that all HDP criteria could be met. Nevertheless, the approved permits are not required prior to approval of the Design Review.

#### Second error of HO decision

The HO has erred in his interpretation of the LUBA decision on the SEC and HDP permits. On page 2, the third full paragraph of the HO decision, the HO stated that "The LUBA decision reinstated prior county decisions (SEC 6-91 and HDP 4-91) requiring the applicant to use a bridge to cross the creek.". Nowhere in the LUBA decision is this indicated. LUBA simply stated that the BCC made a procedural error when requesting a rehearing one day later than allowed by code. LUBA did not find that SEC 6-91 and HDP 4-91 were reinstated. Furthermore LUBA did not find that these permits required a bridge.

According to County Counsel John Dubay's memorandum to LUBA, on page 11, "Nothing in the SEC permit conditions requires construction of a bridge." He also states:

"Petitioner's claim that vacating the requirement for an SEC permit impliedly amends the CUP requirement for a bridge is, therefore, based on a false premise that the CUP (or the SEC permit for that matter) requires a bridge.".

The prior Planning Director's and Hearings Officer's decisions concluded none of the previous permits required a bridge.

LUBA did not accept the petitioner's claim that any of the previous permits required a bridge. I attempted to explain this to the HO at the hearing, however he replied that this was not relevant to the Conditional Use and Design Review decisions. See page 24 of the transcript. In reference to SEC 6-91, the transcript misquotes me as saying that "even though it required a bridge, [it] did not require a bridge". This obviously makes no sense. What I actually said was "even though it allowed for a bridge, it did not require a bridge". The misquotation in the transcript may account for the HO's error.

Since the SEC and HDP permits do not require a bridge, it follows that the SEC 6-91 and HDP 4-91 do not require amending for approval of the Final Design Review plan with the culvert design.

#### RESPONSE TO ROCHLIN TESTIMONY

Mr. Rochlin indicates that his testimony is on behalf of himself and the neighborhood association. The Neighborhood Association has a five man Development Committee that is permitted to submit appeals of any land use decisions without approval of the Neighborhood Association board or general membership. Mr. Rochlin is president of this Development Committee.

Mr. Rochlin is not a neighbor and he lives more than 5 miles from the subject property. Fifteen of the immediate neighbors to the property have sent a letter to the Neighborhood Association stating their opposition to the appeals submitted by Mr. Rochlin regarding the subject property. Over the last two years Mr. Rochlin has appealed eight (8) land use decisions regarding the applicant's property.

Mr. Rochlin's description of the history of the culvert installation is inaccurate. The applicant approached the county planning staff in June of 1991 to discuss the culvert design. The county planner gave the applicant a joint fill permit application for the culvert and indicated its compatibility with the Conditional Use permit. The county planner signed the application on 6/17/91.

The application was subsequently approved and received authorization from the United States Corps of Engineers and the Oregon Division of State Lands. The Planning Department then gave verbal approval to install the culvert and the culvert was installed. The applicant admits his mistake in receiving only verbal. The Planning Department later could not recall their verbal approval, and informed the applicant to apply for amended SEC and HDP permits.

These amendments were applied for and approved by the Planning Director. Mr. Rochlin appealed both permits. The HO found that the HDP criteria could be met but some SEC criteria could not. The Planning Department later determined that they were in error in applying the SEC criteria. The Planning Department had used the wrong map. Upon appeal to BCC, a tie vote was reached on a motion to reverse the HO decision.

By unanimous vote, the BCC agreed on a rehearing. The BCC agreed with the HO that all HDP criteria could be met, and they agreed with the Planning Department that an SEC permit was never required. Upon appeal by Mr. Rochlin, LUBA determined that the BCC made a procedural error when requesting the rehearing one day later than allowed by code. LUBA did not accept Mr. Rochlin's argument that a bridge was required.

Mr. Rochlin's hypothetical proposals regarding the expiration of the CU permit are not worth contemplating. Mr. Rochlin does not account for the 10 day waiting period required by MCC.11.15.8260(A), before the decision by the Board became final.

LUBA's opinion in *Astoria Thunderbird v. City of Astoria* does not indicate that the CU may have become final on April 23, 1991, as suggested by Mr. Rochlin. The action on April 23 may have been a decision, however the decision did not become final until the close of business 10 days later on May 3, 1991 (which would make it effective on Monday May 6, 1991 as interpreted by the Planning Department).

Mr. Rochlin has suggested adding the cost of a bridge to the total project value. This is based on an opinion that the LUBA decision required a bridge. Nowhere in the LUBA opinion is this indicated. Furthermore this opinion conflicts with all previous decisions by the Planning Director, the BCC, and the written opinions of County Counsel John Dubay.

Mr. Rochlin contends that the cost of the culvert should not count toward the accumulated expenses. The BCC Board Order of 12/30/92 approved the culvert, giving the applicant authorization for the expenses incurred with the culvert.

Mr. Rochlin does not have standing to appeal the Final Design Review plan pursuant to MCC 11.15.7865 and 11.15.8290(A). MCC 11.15.8290(A) allows only the applicant to appeal a decision on the Design Review. Land Use decisions that are appeal-able by a third party refer only to the Notice of Appeal section of MCC 11.15.8290(B). The Design Review is subject to all of MCC 11.15.8290, including 11.15.8290(A), and is appeal-able only by the applicant.

Mr. Rochlin debates the Hearings Officer's determination that the HDP and SEC permits may be amended to render the Final Design Review acceptable with the culvert design. The Final Design Review does not govern the approval or disapproval of the bridge or culvert designs. The HDP and other development permits govern the criteria and approval status of these developments. Also a Design Review does not require approved permits prior to approval of the Design Review. Furthermore, as stated earlier in this testimony, the culvert was approved by the BCC. LUBA found only that the BCC made a procedural error when their request for rehearing was made one day later than allowed by code.

Mr. Rochlin contends that certain required information is omitted including .7830(D)(E)&(F). Substantial evidence in the record show compliance with these criteria. Mr. Rochlin falsely states that the property abuts Forest on 3 sides.

Mr. Rochlin has made false statements regarding compliance with .2194. Compliance with .2194 is contained in the CU file and has been there since 1991. MCC.2194 calls for 200 feet setbacks where possible, however the lot is only 200 feet wide, and the 200 feet setback is not possible. Mr. Rochlin also has falsely represented the site plan as indicating a setback of 20 feet. Nowhere is this indicated on the site plan. The site plan indicates 30 foot fire breaks where required.

MCC 11.15.7830(E) states that "a preliminary site analysis diagram may be in freehand form and shall generally indicate" certain characteristics of the plan. Substantial evidence in the record show compliance with this criteria.

The proposed site contouring and the location of trees over six inches in diameter are indicated on the 3-dimensional

landscape plan that is part of the record. The wildlife habitat and natural features of the site are indicated in the record.

Submitted 10/11/93 by Dan McKenzie

Corrected copy submitted 10/12/93

Forest Park Neighborhood Association  
Portland Oregon

BOARD OF  
COUNTY COMMISSIONERS

10/11/93

1993 OCT 12 AM 9:26

Subject: CU 5-91 DR 14-93

McKenzie property  
MULTNOMAH COUNTY  
OREGON

BCC Hearing of October 12, 1993 1:30pm

We are aware that the Development Committee of the Neighborhood Association has been given authority to submit appeals of land use decisions without requiring approval of the Neighborhood Association Board or the general membership. This may allow for expeditious action when required, however it may also lead to appeals that do not represent the views of the neighborhood, but only reflect the opinions of some or all members of the five man Development Committee.

The position taken by the Development Committee regarding the McKenzie property, does not represent the views of the neighborhood, and is strongly opposed by the undersigned below. There is not one person on the Development Committee who lives closer to the McKenzie property than the undersigned. While we are not active in the Neighborhood Association, we are the immediate neighbors to this property, and we will be the most affected by any land use activity on this property.

The position taken by the Development Committee is to appeal the Hearings Officer's decisions which re-affirmed the Planning Director's decisions approving a Conditional Use extension and Final Design Review plans. What purpose does it serve the Association to appeal Mr. McKenzie's Conditional Use extension? Now that the new zoning requires 80 acres minimum lot size, does the Association support the Development Committee's attempt that could deny Mr. McKenzie the right to live on his property? We are strongly opposed to this attempt and we support Mr. McKenzie's effort to extend his Conditional Use permit.

We oppose the attempt by the Development Committee to reverse the Planning Director's and the Hearing Officer's approval of the Final Design Review plan.

We also oppose any attempt to force removal of Mr. McKenzie's culvert through litigation and legal intimidation by appealing every permit that he applies for, whether the permit is related to the culvert or not. We are troubled by these apparent attempts to burden Mr. McKenzie with substantial attorney's fees, and then offer to drop the appeals in exchange for replacing the culvert with a bridge.



This is most troubling when the appealed permit has nothing to do with the culvert, such as the Conditional Use permit extension.

This culvert received the approval or authorization from the United States Corps of Engineers, the Oregon Division of State Lands, the Oregon Department of Fish and Wildlife, and it meets our approval as well.

We hope that the Neighborhood Association Board will take our views under consideration and drop the appeals against Mr. McKenzie.

Rose Imbue	Cornell Rd
Angela Muller	Thompson Rd
Hermit Medoff	Thompson Rd
Virginia Kagan	Cornell Rd
David Kagan	Cornell Rd
James R. Bings	Cornell Rd
SWAN HAGEN - DICKS	Cornell Rd
Jan Holly	Thompson Rd
Charles C. O'Helly	Thompson Rd
Paul Murray	Thompson Rd
John S. Kome	Thompson Rd
Jim Shear	Cornell Rd
Alma Ungary	Cornell Rd
Bl K	Cornell Rd
Jodi Chasen	Cornell Rd

**Requirement:** Is the design a forest dwelling accessed by a bridge as authorized by the CU, SEC and HDP permits? yes\_\_ no\_\_  
 If no, and the deficiency is lack of a bridge, is the design for the total project as required for a CU extension? yes\_\_ no\_\_  
 If a condition is allowed to change the plan to add a bridge, should the time for compliance be unlimited? yes\_\_ no\_\_  
 If no, what should be the deadline (a CU extension is unlimited, i.e. approval is forever)? \_\_\_\_\_

Notes/evidence: \_\_\_\_\_

**Requirement:** *"The ... plan shall ... provide a safe environment, while offering appropriate opportunities for privacy ..."*  
 (.7850(A)(2), Safety and privacy requirements for a dwelling in the MUF 19 zone are in 11.15.2194, Residential Use Development Standards.)

.2194(A)(1): *"Fire lanes as least 30 feet wide shall be maintained between a residential structure and an adjacent forested area."*  
 The applicant's statement says the breaks are 30 feet wide. On the revised site plan, the home site measures 20 feet from the east boundary. (scale 90.1 feet per inch calculated from the 863.63 foot south boundary, 9 1/2 inches on the map). Is the east fire break at least 30 feet wide?

Notes/evidence: \_\_\_\_\_ Criterion met? yes\_\_ no\_\_

.2194(C): *"The dwelling shall be located in as close proximity to a ... street as possible ..."*  
 The dwelling is 580 feet from Thompson Rd. Is 580 feet as close as possible?

Notes/evidence: \_\_\_\_\_ Criterion met? yes\_\_ no\_\_

.2194(F): *"Building setbacks of at least 200 feet ... from all property lines, wherever possible ..."*  
 The garage is 84 feet from the rear line. Is the 200 foot rear setback impossible (lot is 863 feet deep)?

Notes/evidence: \_\_\_\_\_ Criterion met? yes\_\_ no\_\_

**Requirement:** .7830(G) *"The preliminary landscape plan shall indicate:*  
 (1) *The size, species, and approximate locations of plant materials to be retained or placed on the site; and*  
 (2) *Proposed site contouring."*  
 and .7830(E) *"A preliminary site analysis diagram ... shall generally indicate the following characteristics:*  
 (2) *Location and species of trees greater than six inches in diameter at five feet;*  
 (5) *Significant wildlife habitat;"*

Is this required evidence (or any evidence) of compliance with *"The landscape and existing grade shall be preserved to the maximum practical degree ..."* in the record? (.7850(A)(4))

Notes/evidence: \_\_\_\_\_ Criterion met? yes\_\_ no\_\_

CU 5-91a (extension) HEARING ON REVIEW 10/12/93 **CONDITIONAL USE EXTENSION:**

**Criterion:** "Application shall be made ... at least 30 days prior to the expiration date " (.7110(C)(3)(a))  
"Conditional Use shall expire two years from the date of issuance of the Board Order in the matter" (.7110(C))

Date of Board Order; decide: 1. Date minutes show the Board acted on the Planning Commission Decision, 4/23/91 \_\_\_\_\_, or  
2. Date Planning Commission Decision became final, 10 days after filed  
with the Clerk of the Board (recorded on the decision as 4/11/91) 4/21/91 \_\_\_\_\_, or  
3. 10 days after Planning Commission decision was receipt stamped  
by the Clerk of the Board (4/16/91) 4/26/91 \_\_\_\_\_

Application date (all agree): March 26, 1993

If #1 or #2, the application was late (filed after the 3/24 or 3/22/93 deadline). Criterion met? yes\_\_ no\_\_

Notes/evidence: \_\_\_\_\_

**Criterion:** "Final Design Review approval has been granted under .7845 on the total project" (.7710(C)(3)(b)(i))

Decide: 1. Design is not approved, or, not for the total project (because the culvert design was disallowed): \_\_\_\_\_  
2. The Board approved the design for the total project (either approving the culvert creek crossing  
design or finding that access, whether by culvert or bridge, is not part of the total project): \_\_\_\_\_

#1 does not meet the criterion. Criterion met? yes\_\_ no\_\_

Notes/evidence: \_\_\_\_\_

**Criterion:** "ten percent of the dollar cost of the total project value has been expended for construction or development  
authorized under a sanitation, building or other development permit." (.7110(C)(3)(b)(ii))

Project value: 1. The total project value is the amount decided by the Planning Director, \$50,000: \_\_\_\_\_  
2. \_\_\_\_\_ by the Hearings Officer, \$100,000: \_\_\_\_\_  
3. Undeterminable, but at least \$130,000 (Hearings Officer amount plus amount  
applicant said is minimum cost of bridge): \_\_\_\_\_

Expense counted: A. None, because no permit can be lawfully issued until design review approval (.7875): \_\_\_\_\_  
B. \$11,630 (Hearings Officer's total less \$4287 for culvert work cited for no permit): \_\_\_\_\_  
C. \$15,917 (Hearings Officer's total) \_\_\_\_\_

Complies if: (1 & B), (1 & C), (2 & B), (2 & C). Doesn't comply if: (A and anything), (3 & B) Criterion met? yes\_\_ no\_\_

Notes/evidence \_\_\_\_\_

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

3           In the Matter of the Review of the Hearings   )  
4           Officer decision which approved a Final       )  
5           Design Review Plan and a Determination of     )  
6           Substantial Development of a Conditional       )  
7           Use permit for a non-resource dwelling         )

**FINAL ORDER**  
                  **93-339**

8           This matter concerns an appeal to the Board of Commissioners (Board)  
9           filed by Arnold Rochlin on behalf of the Forest Park Neighborhood Association.  
10          The appeal challenges the August 20, 1993 decisions of the Hearings Officer for  
11          land use applications DR 14-93 and CU 5-91a concerning property located at  
12          6125 NW Thompson Road and owned by Dan McKenzie (applicant). The Hear-  
13          ings Officer decisions approved a Final Design Review Plan and found that suffi-  
14          cient site development was performed within 2-years of the Conditional Use deci-  
15          sion which authorized a dwelling on the subject site [file: CU 5-91]. The Board  
16          hereby affirms and modifies the decisions of the Hearings Officer regarding  
17          applications DR 14-93 and CU 5-91a based on the findings and conclusions con-  
18          tained in this Order and in the August 20, 1993 Hearings Officer decision.

19  
20       **I. PROCEDURAL HISTORY**

21  
22          The *Notice of Review* (appeal) was filed on September 7, 1993. On  
23          September 14, 1993, the Board limited the Scope of Review to the record of the  
24          prior proceedings, with 15 minutes oral argument allowed for the parties. The  
25          Board held a public hearing to consider the appeal on October 12, 1993. After  
26          considering the evidence, the Hearings Officer decision, staff recommendations,

1 and arguments from the parties, the Board, in a 4 – 0 unanimous vote, affirmed  
2 the Hearings Officer, and modified the condition attached to DR 14-93.  
3

## 4 **II. FINDINGS AND EVALUATION**

5

6 After hearing testimony, arguments and weighing the evidence, the  
7 Board concurs with the Hearings Officer's decisions but finds the Final  
8 Design Review Plan satisfies applicable criteria only if modified to include a  
9 bridge rather than a culvert/fill crossing over the Thompson Fork of Balch  
10 Creek. The Board finds the condition of approval as set out in Section III  
11 below should be substituted for the condition in the decision on appeal.  
12 Except as modified herein, the Hearings Officer's findings and conclusions  
13 are incorporated herein.  
14

## 15 **III. CONDITION OF APPROVAL**

16

- 17 1. The applicant shall amend the Final Design Review Plan for DR 14-93 to  
18 include a bridge for the driveway crossing over the Thompson Fork of  
19 Balch Creek. Construction plans and grading details for the bridge shall  
20 be consistent with related permits HDP 4-91 and SEC 6-91. The amend-  
21 ed Final Design Review Plan required herein shall be reviewed by the  
22 Planning Director pursuant to 11.15.7840-.7845. The Planning Director  
23 shall provide notice to the parties and opportunity for a public hearing as  
24 provided in ORS 215.416(11).  
25  
26

1  
2 **IV. CONCLUSION AND DECISION**  
3

4 Based on the above findings and evaluation, the Board hereby denies the  
5 appeal, affirms the Hearings Officer decision, approves DR 14-93, subject to a  
6 modified condition, and approves CU 5-91a.  
7

8  
9 DATED this Day of November, 1993  
10

11 (SEAL)  
12

13 Beverly Stein, Multnomah County Chair  
14

15 REVIEWED AS TO FORM:  
16 LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY, OREGON

17 By:   
18 John DuBay, Chief Deputy County Counsel  
19  
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1                   **BEFORE THE BOARD OF COUNTY COMMISSIONERS**  
2                   **FOR MULTNOMAH COUNTY**

3           In the Matter of the Review of the Hearings   )  
4           Officer decision which approved DR 14-93, a   )  
5           Final Design Review Plan; and CU 5-91a, a   )  
6           Determination of Substantial Development of)  
7           a Conditional Use permit for a dwelling       )

**FINAL ORDER**  
**93-339**

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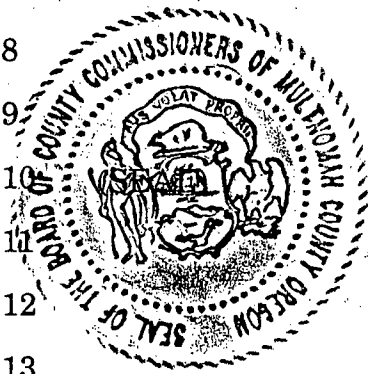
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22 Planning Director pursuant to 11.15.7840-.7845. Public notice of the  
23 Planning Director's decision on the amended plan shall be provided to the  
24 parties, with an opportunity for a public hearing as provided in ORS  
25 215.416(11).

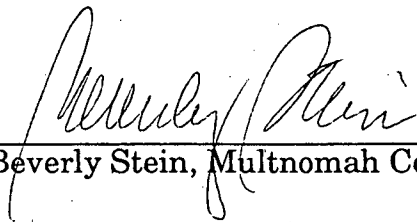


1     **IV. CONCLUSION AND DECISION**

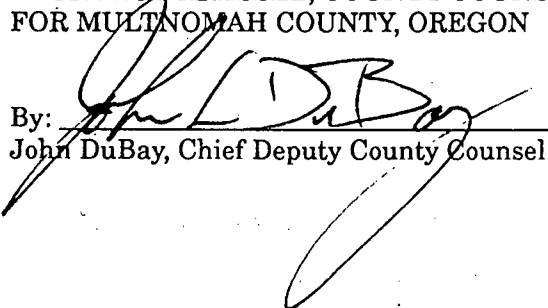
2  
3             Based on the above findings and evaluation, the Board hereby denies the  
4     appeal, affirms the Hearings Officer decision, approves DR 14-93, subject to a  
5     modified condition, and approves CU 5-91a.  
6

7  
8             DATED this   2nd day of November, 1993.



13  
14               
15             Beverly Stein, Multnomah County Chair

16             REVIEWED AS TO FORM:  
17             LAURENCE KRESSEL, COUNTY COUNSEL  
18             FOR MULTNOMAH COUNTY, OREGON

19  
20             By:   
21             John DuBay, Chief Deputy County Counsel  
22  
23  
24  
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DEPARTMENT OF ENVIRONMENTAL SERVICES  
DIVISION OF PLANNING AND DEVELOPMENT  
2115 S.E. MORRISON STREET  
PORTLAND, OREGON 97214 (503) 248-3043

HEARINGS OFFICER DECISIONS  
AUGUST 20, 1993

DR 14-93 Appeal of a *Final Design Review Plan*  
CU 5-91a Appeal of a *Determination of Substantial Development*

I. SUMMARY

Location: 6125 NW Thompson Road Site Size 3.00 Acres

Tax Roll Description: Tax Lot '1' of Lot 37, Mountain View Park Addition #1

Owner/Applicant: Dan McKenzie (represented by Steven Abel)  
6125 NW Thompson Road Portland, Oregon 97210

Appellant: Forest Park Neighborhood Association  
(represented by Arnold Rochlin)

Zoning District: CFU (formerly MUF-19; Multiple Use Forest District)

HEARINGS OFFICER

DECISIONS: DR 14-93: AFFIRM, SUBJECT TO A CONDITION, the *Final Design Review Plan*;

CU 5-91a: AFFIRM, the *Determination of Substantial Development* of a non-resource dwelling authorized by CU 5-91, and all based on the following Findings and Conclusions.

These decisions concern an appeal to the Hearings Officer of two administrative decisions by the Planning Director. The decision in DR 14-93 approved a Final Design Review Plan for a non-resource dwelling allowed by conditional use permit (CU 5-91) in a forest zone. See Multnomah County Code 11.15.7800, *et sec.*<sup>1</sup> for the design review regulations. The decision in CU 5-91a determined that the applicant had undertaken substantial construction and development within two years from approval of the conditional use (CU) permit. See MCC 11.15.7110(C). This allows the applicant to complete the dwelling on the site.

The case is complicated by prior county decisions for a Hillside Development Permit (HDP 4-91 and 4-91a) and a Significant Environmental Concern permit (SEC 6-91 and 6-91a) for a driveway crossing of Balch Creek near the Thompson Road frontage of the property and by a recent LUBA opinion reversing SEC 6-91a and HDP 4-91a.

In the written appeal regarding DR 14-93, the appellant alleged principally: (1) that the Final Design Review Plan did not contain required information; (2) that the decision approving the

<sup>1</sup> A section in Multnomah County Code Chapter 11.15 is hereafter abbreviated as MCC .xxxx consistent with the citation format in the chapter.

plan was inadequate and consisted of mere assertions; and (3) that the design review plan violates an earlier county decision, because it does not use a bridge to cross Balch Creek.

In the written appeal regarding the determination of substantial development for CU 5-91, the appellant alleged principally: (1) that the application was not timely filed and, therefore, cannot be approved; (2) that findings necessary for approval of the application could not be made; and (3) that the determination is not supported by substantial evidence in the record.

Hearings Officer Larry Epstein held a public hearing to receive testimony and evidence regarding the appeals on July 19, 1993 and held open the public record until August 2, 1993 to receive additional written testimony and evidence. The appellant and applicant presented additional written arguments after the hearing before the record closed.

The hearings officer also held open the record to receive a copy of a final order by the Land Use Board of Appeals (LUBA) in the matter of an appeal of a Board of Commissioners decision allowing the applicant to use a culvert and fill to cross Balch Creek (SEC 6-91a and HDP 4-91a). LUBA reversed the Board on procedural grounds. The LUBA decision reinstated prior county decisions (SEC 6-91 and HDP 4-91) requiring the applicant to use a bridge to cross the creek.

The appeal raises the following major procedural issues: (1) whether design review applies to the application; (2) whether a party other than the applicant has a right to appeal a design review decision; (3) whether the standard of review for the appeal is substantial evidence or *de novo*; (4) the scope of appeal (what issues can be raised in the appeal); (5) the effect of a LUBA decision about related county decisions rendered after the public hearing in this case; and (6) the impact of the timing of the planning director decision and decision notices.

The appeal raises the following substantive issues regarding design review: (1) whether a design review application can be approved if it does not contain all the information required for such a plan; (2) whether the site plan offered by the applicant complies with applicable design review approval criteria; and (3) whether the design review decision is consistent with other county actions.

The appeal raises the following substantive issues regarding the determination of substantial construction and development for the conditional use permit: (1) whether the request for the determination was timely filed; (2) whether there was a final design review decision before (or when) the request was approved; and (3) whether the evidence supports a conclusion that the applicant undertook substantial construction and development.

The hearings officer finds the final design review plan does not provide for a bridge. That is inconsistent with the conditions of approval of the prior county decisions regarding SEC 6-91 and HDP 4-91 which were reinstated by the LUBA decision. The design review plan should be affirmed subject to a condition that requires amendment of the design review plan to conform to SEC 6-91 and HDP 4-91 or their amendments. The hearings officer also finds that the applicant undertook substantial construction and development in conjunction with the conditional use permit before the permit expired consistent with MCC .7110(C). Therefore, the hearings officer affirms that determination by the planning director.

## **II. PROCEDURAL ISSUES**

### **A. Applicability of design review.**

1. County planner Mark Hess briefly argued at the hearing on July 19 that the conditional use permit in question should not be subject to the requirements of MCC .7800, *et seq.* (Design Review), based on comprehensive plan policies 12 and 19. He drew a distinction between two kinds of conditional uses: those specified as such in a given zone and those allowed in any district. He argued that where a conditional use is listed as such in a given zone subject to specific design standards, then design review should not apply, because the more use-specific design standards supplant the more general design review standards. Based on that rationale, he argued the conditional use permit in question would not be subject to design review.

2. The hearings officer recognizes that it has been the county's general practice not to subject to design review non-forest dwellings allowed as conditional uses. Although the hearings officer finds merit in the practice as a matter of policy, the hearings officer also finds MCC .7820 clear on its face. It provides that design review "shall apply to all conditional ... uses in any district" (emphasis added). Therefore, despite the merits of not applying design review to a conditional use that already is subject to use-specific design standards in the zone, the hearings officer finds that CU 5-91 is subject to design review by the plain meaning of the code and by the lack of any conflict or ambiguity in the code that warrants a conclusion to the contrary, notwithstanding county practice. If the county wants to waive design review for certain conditional uses, then it should amend MCC 11.15 to say so clearly.

### **B. Appellant's standing to appeal design review decision.**

1. The applicant alleged that the appellant cannot appeal a design review decision, because MCC .8290(A) does not authorize anyone but the applicant for a design review decision to appeal that decision.<sup>2</sup> See pp. 6-7 of Exhibit 22. The appellant addressed the issue of standing at pp. 5-6 of Exhibit 25.

2. The hearings officer finds that MCC .7865 authorizes a decision in a final design review plan to be appealed to the hearings officer.<sup>3</sup> It does not restrict who may file the appeal. Therefore, the design review decision is a "matter made appealable by this Section" of the code. The appellant in both cases is the Forest Park Neighborhood Association, based on the Notice of Appeal. Mr. Rochlin is the representative of that organization and has standing as a "party" as defined by MCC .8225.

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<sup>2</sup> MCC 11.15.8290(A) provides:

*A decision made by the Planning Director on an administrative matter made appealable under this Section by ordinance provision, shall be final at the close of business on the tenth calendar day following the filing of the written Decision, Findings and Conclusions with the Director of the Department of Environmental Services, unless prior thereto, the applicant files a Notice of Appeal with the Department, under subsections (B) and (C).*

<sup>3</sup> MCC 11.15.7865 provides:

*A decision on a final design review plan may be appealed to the Hearings Officer in the manner provided in MCC .8290 and .8295.*

### C. Standard of review.

1. The applicant argues the standard for review in this case is whether the planning director's decision is supported by substantial evidence in the record. See p. 7 of Exhibit 22. However the argument is not based on any reference to the code or other law.

2. The hearings officer notes that MCC .8295 provides that, generally, appeals to the hearings officer or to the Board of Commissioners are to be conducted according to the provisions of MCC .8239 through .8290. Scope of review is addressed in MCC .8270. It provides for *de novo* review if "additional testimony or evidence could not reasonably have been presented" in the action that preceded the appeal, in addition to other considerations.<sup>4</sup> See MCC .8270(E).

3. The hearings officer finds that the appeal of the decisions under review should be *de novo*, because the appellant had no opportunity to present any testimony or evidence regarding the two applications in this case before the planning director made his decisions; that lack of opportunity substantially prejudiced the appellant by impeding his participation; and the evidence offered by the appellant is generally competent, relevant and material (whether or not the hearings officer finds it is sufficient to prevail). Therefore, the hearings officer will except new evidence into the record and will conduct a *de novo* review.

4. MCC .8295(B) provides that MCC .8290(D) and (E) do not apply to an appeal filed under MCC .8230(A). MCC .8230(D) states that the burden of proof is on the person initiating the action. If MCC .8230(D) does not apply to the appeal, pursuant to MCC .8295(B), then it could be construed to waive the burden of proof regarding the decisions that are the subject of the appeal. However, the hearings officer finds that such a result is not consistent with the *de novo* character of the appeal hearing. MCC .8295(B) should not be construed to waive the burden of proof.

a. The burden of proof is to show that the applications comply with the applicable standards in the county code based on the evidence in the whole record to the extent the appellant has raised compliance with those standards as issues in the Notice of Appeal. See "Scope of Appeal."

b. It is not enough to show simply that the planning director's decision is supported by substantial evidence in the record before the appeal, because the planning director was not able to consider the evidence offered by the appellant. The "burden of coming forward" may shift from one party to another as first the applicant and then the appellant make a *prima facie* case about an issue, but the applicant bears the "burden of proof" throughout. The appeal hearing is the first opportunity the appellant has to address the challenged applications. Until a final decision has been rendered and appeals of that decision have been resolved in the applicant's favor, the burden of proof has not been met.

c. The hearings officer finds that MCC .8295(B) is ambiguous. It is not clear whether the Board intended to shift or waive the burden of proof on an appeal of an administrative decision to the hearings officer. The situation may be different in an appeal

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<sup>4</sup> MCC 11.15.8270(F) defines "de novo" hearing as follows:

[A] hearing by the [approval authority] as if the action had not been heard by the [inferior approval authority], and as if no decision has been rendered, except that all testimony, evidence and other material received by the [inferior approval authority] shall be included in the record.

to the Board of Commissioners after a duly noticed public hearing on the merits before an inferior approval authority, because evidence on both sides of an issue could be presented before the decision by the inferior approval authority. However, given the procedural posture of this case, the hearings officer construes MCC .8295(B) to waive MCC .8230(D) and (E), but not to waive the burden of proof.

5. The appellant argues that the appeal is being brought under Oregon statutes (ORS 215.416(11)) in addition to county law, and argues that, where the county code and state law differ about such issues as the standard of review and scope of appeal, the hearings officer should resolve that difference by reference to state law. See, e.g., pp. 1-2 of Exhibit 19. However, the hearings officer does not have jurisdiction to construe or apply state statutes. The hearings officer cannot bend the county code to comply with his understanding of state law even if the hearings officer agrees with the appellant about what the county and state laws say. If the county code violates state law, the Board of Commissioners is the authority responsible for changing it. If the appellant believes provisions of the county code violate state law, then he will have to pursue that appeal in another forum.

#### **D. Scope of appeal.**

1. The applicant argues the issues subject to the appeal are limited to the issues cited specifically in the written appeal. The applicant argues a blanket objection, such as a challenge to compliance with all requirements and criteria, is not sufficiently specific to raise anything on appeal. See p. 1 of Exhibit 22.

2. The hearings officer finds that MCC 11.15.8295(A) limits the appeal to the grounds relied on for the appeal in the Notice of Appeal.<sup>5</sup> General objections are not sufficient to raise an issue on appeal. However, given the *de novo* character of the hearing, additional evidence could be introduced to make the grounds stated in the Notice of Appeal more specific. Such evidence was introduced. See, e.g., pp. 5-6 of Exhibit 19.

#### **E. Impact of the LUBA decision.**

1. The record includes a final order by the Land Use Board of Appeals ("LUBA") in the matter of *Rochlin v. Multnomah County, et al*, LUBA No. 93-019 (July 22, 1993). In its final order, LUBA reversed two decisions by the Board of Commissioners ("BCC").

a. In one decision, the BCC found that a Significant Environmental Concern ("SEC") permit was not necessary to allow a driveway to cross Balch Creek (SEC 6-91). In a second decision, the BCC approved a modification to a Hillside Development permit ("HDP") to allow a culvert instead of a bridge to cross Balch Creek (HDP 4-91a).

b. The BCC's decisions were made after rehearing by the BCC pursuant to MCC .8280(D), which allows a rehearing if granted within 10 days after the BCC files its final order. LUBA found the BCC did not grant the rehearing within the 10-day period. Therefore, LUBA concluded the BCC never had jurisdiction to rehear the case and reversed the decisions made after the rehearing. LUBA did not otherwise address the merits of the appealed decisions.

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<sup>5</sup> MCC 11.15.8295(A) provides:

*A hearing before the Hearings Officer on a matter appealed under MCC .8290(A) shall be limited to the specific grounds relied on for reversal or modification of the decision in the Notice of Appeal.*

2. The hearings officer finds that the LUBA decision effectively reinstates the administrative decision approving HDP 4-91, (see pp. 537-543 of Exhibit 1), SEC 6-91, (see pp. 528-534 of Exhibit 1), and the conditions of approval of those decisions requiring the applicant to use a bridge to cross Balch Creek. Although the hearings officer assumes the applicant could apply to modify those permits, the hearings officer must make his decision based on the facts in the record. The design review plan does not provide for the bridge. It violates the decisions noted above.

3. The appellant argued that the LUBA decision requires the hearings officer to conclude that the applicant could not have complied with the approval criteria for a determination of substantial construction and development, because one of those criteria (MCC .7110(C)(3)(b)(i)) requires that a final design review plan has been approved for the total project, and the final design review plan in this case did not include a bridge that is necessary for the project following the LUBA decision. See Exhibit 25.

a. The hearings officer finds that MCC .7110(C)(3)(b)(i) does not contemplate the circumstances of this case, i.e., that a final design review plan is approved based on the permits issued for development shown on the plan, but those permits are voided by a LUBA decision while the final design review plan decision is under appeal.

b. The hearings officer assumes county officials are obligated to act on the basis of the decisions of the governing body of the county. At the time the planning director approved the design review plan, it complied with applicable permits as determined by the BCC.<sup>6</sup> The hearings officer finds there was a Final Design Review approval under MCC .7845 when the planning director made his decision that the applicant complied with MCC .7110(C)(3)(b)(i), assuming such decisions can be made concurrently. The parties agreed the decisions could be made concurrently.

c. That leaves the question of whether the LUBA decision requires the hearings officer to find the application cannot comply with MCC .7110(C)(3)(b)(i), because, now, a final decision review plan cannot be approved if it does not show the bridge required by CU 5-91 and SEC 6-91.

(i) Because the county code is ambiguous, the hearings officer must construe it. The hearings officer is guided by the purpose of the provision in question (i.e., MCC .7110(C)). That provision allows completion of development authorized by a conditional use permit without limiting the time for completion if the permittee has undertaken substantial construction and development within two years after the permit is approved. To find that substantial construction and development has occurred, the planning director must find (1) that the county has approved a final design review plan for the total project and (2) the applicant has spent a certain percentage of funds for the project.

(ii) The hearings officer finds that the purpose of requiring a conditional use permit to be implemented within two years is to ensure that conditions have not changed sufficient to warrant a new review. The purpose of requiring a final design review plan to be approved before recognizing an applicant has undertaken substantial construction and development is to ensure that development authorized by the permit can proceed. Submission of an approved design review plan and expenditure of funds to develop the site consistent with that plan or other permits is evidence of a diligent effort to implement the conditional use permit. The BCC determined as a matter of policy that, as

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<sup>6</sup> The appellant also argues that the design review plan violated a condition of approval of the decision in the matter of CU 5-91. That issue is addressed in finding III.C. It does not involve the LUBA decision.

long as such an effort is made, then, even though conditions could change subsequently, the applicant has made a sufficient effort to vest his rights to complete a project. The plan submitted by the applicant was consistent with the applicable permits as determined by the county at the time. The hearings officer finds that fulfilled MCC .7110(3)(b)(i).

(iii) The hearings officer concludes that the fact that the LUBA decision requires the plan to be changed should not change the fact that the applicant applied for and received approval of a final design review plan. Negating approval of the determination of significant construction and development because of the LUBA decision would not serve the purpose of MCC .7110(3). It would disregard the diligent effort the applicant made to implement the conditional use permit, and, thereby, it would derogate the purpose of MCC .7110(3) to allow completion of a conditional use permit if a diligent effort is made to implement the conditional use in a timely manner.

#### **F. Timing of notice and decision.**

1. The applicant filed the design review application with the county on March 25, 1993. The applicant filed the application for a determination of substantial construction and development with the county on March 26, 1993. The planning director mailed notice of the administrative decision on May 7. The date of the administrative decision was May 26.

2. The appellant argues the planning director violated MCC .7110(C)(3)(b), because the director did not issue a decision regarding the determination of substantial construction and development within 20 days. See pp. 8-9 of Exhibit 19 and p. 2 of Exhibit 21. The appellant is correct. Coincidentally, the hearings officer notes the planning director also violated MCC .7845(C), because the director did not issue a final design review decision within 10 days after the design review application. However, neither of these violations gives rise to an action by the appellant. Neither is a land use decision; rather, they are land use indecisions. Neither of these violations prejudiced the appellant; they may have prejudiced the applicant.

3. The appellant argues the planning director considered evidence that it cannot be shown was in the record when the May 7 notice was mailed or when the May 26 decision was filed. Whether or not that claim is correct, the hearings officer finds that any prejudice created thereby is remedied by the *de novo* nature of this appeal proceeding. Any evidence relevant to the matter and in the record was available to all parties during the course of the proceedings and could be challenged by competent evidence to the contrary.

### **III. MERITS OF THE APPEAL OF DR 14-93**

#### **A. Contents of the design review plan.**

1. The appellant argues the design review plan does not include all of the information listed by MCC .7830(D)-(G), and, therefore, the plan cannot be approved. See, e.g., pp. 3-5 of Exhibit 19 and pp. 1-2 of Exhibit 24. The applicant argues that all of the information listed in MCC .7830(D)-(G) is not required, and that adequate evidence is available regarding issues that are relevant to the design review standards and criteria.

2. The hearings officer agrees with the applicant. Although MCC .7830(D)-(G) require certain information to be provided in or with a design review plan, those sections do not constitute approval criteria or standards; they list information requirements. Failure to submit required information is not fatal to an application if the information that is submitted is sufficient to show that the plan complies with the applicable approval criteria and standards in the code.



## **B. Compliance with design review plan approval criteria and standards.**

1. In the written appeal, the appellant challenges the adequacy of the findings for the design review decision generally, but does not cite any specific standard that the design review plan violates. More specific citations are provided at pp. 5-6 of Exhibit 19. The appellant also argues the findings are mere assertions and information in the record is insufficient to substantiate findings of compliance with the design review standards.

2. The hearings officer finds that, in general, the findings adopted by the planning director in support of DR 14-93 are not mere assertions and are supported in the record. Many of the design review standards are ambiguous, highly subjective and conceptual in nature. Reasonable people can disagree about compliance with these standards, and no amount of evidence may be available to resolve such disputes with certainty. Substantial evidence to support findings addressing these standards consists generally of the design review plan application (which includes proposed development on the site and structures on adjoining property and topography); the aerial photograph and photographs of the site by county staff; the records in the matter of HDP 4-91 and 4-91a, SEC 6-91 and 6-91a, and CU 5-91; the model of the site; permits issued by other agencies; and architectural drawings, a foundation plan, and building elevations. The design review criteria are in MCC .7850. The hearings officer incorporates and adopts by reference the findings of the planning director in the May 26 administrative decision regarding DR 14-93 in response to those criteria. The hearings officer also adopts the following findings.

3. Regarding the relation of the design review plan to the environment (MCC .7850(A)(1)(a)),<sup>7</sup> the appellant argued there is no plan for the structures other than siting, and the director's decision is not justified. See p. 5 of Exhibit 19.

a. The hearings officer disagrees. The record includes sample home plans, a foundation plan and elevations. See Exhibits 15 and 28. The information about the size and shape of a dwelling, its location on the site, the distance to other dwellings, and the topography and forest cover is sufficient to warrant a finding that the design review plan relates harmoniously to the natural environment, e.g., by minimizing removal of trees, subsequent grading, and views of the proposed building. The lack of a specific house design is not fatal to the application where, as here, the general nature of the kind of home that will be placed on the site is described. Whether the home is a colonial or a tudor style in appearance will not affect the harmony in the relationship between the home and the site given the size of the site, its topography and vegetation, and the setbacks proposed given existing building locations in the area.

b. The appellant argued that window and door locations are needed to make a necessary finding under this criterion. The hearings officer disagrees. The size of the site and surrounding lots and the distance between existing and proposed structures in this case are such that the locations of doors and windows in the proposed home will not make an appreciable difference in the relationship of the home to the environment.

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<sup>7</sup> MCC .7850(A)(1)(a) provides:

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

4. Regarding MCC .7850(A)(1)(b),<sup>8</sup> there is little energy conservation or climatic information in the design review plan. But the applicant proposes to install a manufactured home that would be subject to energy conservation requirements. That promotes energy conservation. A home is not a significant noise producer, and the evidence about land uses in the vicinity (including the aerial photo) is sufficient to show that there are not significant noise sources in the vicinity. A home will not have a significant air quality impact, and the area is not subject to extraordinary air quality problems, based on the site inspection. The location of the home on the site minimizes exposure to adverse climatic conditions by using existing vegetation and topography to shield the homesite from at least two directions, based on the model of the site introduced at the hearing.

5. Regarding MCC .7850(A)(1)(c),<sup>9</sup> the appellant argued the planning director is wrong, and "the absence of required design elements is conclusive evidence the standard was not met." See p. 5 of Exhibit 19. However, the hearings officer finds the design review plan, the model of the site, and the photos of the site show proposed structures and other development and existing conditions sufficient to address this standard.

a. The proposed dwelling and accessory structure will be effective and efficient as such based on compliance with applicable building codes. The proposed access road provides access to the structures by a direct route, so that it, too, is efficient and effective given its intended purpose. The non-structural nature of the drive makes it of negligible visual impact. The placement of the structures within vegetated areas and preservation of vegetation outside of areas to be developed minimizes their impact on views and warrants a conclusion that the site will be attractive.

b. The drive and structures are inter-related and the development is orderly in that the drive leads to the structures and vice versa without meandering unnecessarily. There is spatial variety on the site, consisting of structures, forest and understory vegetation, and a drive that winds through them. From one area of the site to another, the relationship of structures, forest and earth varies. At all times, the major visual feature is the forested topography which dwarfs the road, structures and humans. The proposed development has a human scale in the forested topography, because the proposed structures are one story in height and are not crowded into substantial bulk or mass.

6. Regarding MCC .7850(2),<sup>10</sup> the appellant argues appropriate opportunities for privacy are not provided, because 200-foot setbacks are not provided. The appellant argues the plan does not promote safety, because there is no evidence the applicant will provide 30-foot fire breaks, maintain a water supply for fire fighting, or be as close as possible to Thompson Road.

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<sup>8</sup> MCC .7850(A)(1)(b) provides:

*The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.*

<sup>9</sup> MCC .7850(A)(1)(c) provides:

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

<sup>10</sup> MCC .7850(2) provides:

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

a. The hearings officer finds the design review plan provides appropriate opportunities for privacy, because the proposed dwelling is not visible from other dwellings in the vicinity due to the forested topography of the site and surrounding area. Because the dwelling is not visible from off-site, it provides privacy to the residents of the site and protects the privacy of residents of homes in the vicinity. The failure of the applicant to provide 200-foot setbacks does not necessarily mean the plan does not provide for privacy. Planting vegetation between the existing home to the south and the proposed home on the site will protect privacy. See condition of approval 5.

b. The hearings officer finds the design review plan provides for a safe environment by providing 30-foot fire breaks. The fire breaks are identified in sufficient detail on the plan to count as such. Ultimate compliance with the fire break standard can be verified as part of the building permit inspection process. The environment also is safe in that the applicant will provide a driveway improved to the extent required by the law. This ensures emergency vehicle access can be provided to the dwelling and to the area between the dwelling and Thompson Road, including the well in that area. By providing access to the well, the applicant provides access to a water supply system for fire fighting purposes. The fact that the dwelling is situated more than 30 feet from Thompson Road does not make the dwelling unsafe, because adequate vehicular access is provided to the dwelling. Additional safety is provided by condition of approval 4.

7. MCC .7850(3) is not relevant to the application, because the dwelling is not proposed to be used for handicapped housing. There is no dispute about this issue.

8. Regarding MCC .7850(4),<sup>11</sup> the appellant argues the planning director failed to make the requisite finding, and the application does not contain sufficient information to warrant that finding.

a. The hearings officer finds that the design review plan and conditions of approval 1 through 4 are sufficient to show that the applicant will preserve existing vegetation and grades to the maximum practical extent, because less than 10 percent of the site will be affected by the proposed development, and the remainder of the grades and vegetation on the site will be preserved in its existing condition. Development constraints on the site include its topography and vegetation and limits on where a septic drainfield and alternative drainfield are approved. The applicant proposes to place the structures to minimize grading and removal of trees, although the relatively even tree-cover on most of the developable area of the site necessitates removal of some trees. It is not practical to preserve more of the existing vegetation and grades, because it would preclude development of the site as otherwise permitted by the conditional use permit (CU 5-91).

9. Regarding MCC .7850(5), the hearings officer finds the planning director's finding adequacy addresses this issue. The appellant did not dispute the finding regarding this issue.

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<sup>11</sup> MCC .7850(4) provides:

*The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions...*

10. Regarding MCC .7850(6),<sup>12</sup> the appellant argues the applicant's drainage plan is inadequate. However, the hearings officer finds that the applicant's proposed surface drainage plan will not adversely affect neighboring properties or streets, because:

a. The applicant will collect storm water and direct it to existing storm water drainageways using rip rap to prevent erosion at discharge points. By using existing drainage channels, the applicant prevents adverse storm water effects in areas where such effects do not already occur. By protecting discharge points, the applicant prevents adverse effects due to erosion and sedimentation. By using a detention system recommended by the planning director, (see conditions of approval 6 of the planning director's decision), the potential for erosion and adverse off-site effects is further reduced.

b. The impervious area of the site will be very small compared to the remaining permeable area. Therefore, the volume of storm water run-off will be so small that its off-site effects, if any, will be insignificant.

c. Compliance with this criterion can be assured during the building permit inspection process through implementation of condition of approval 6 of the planning director's decision.

11. Regarding MCC .7850(7),<sup>13</sup> the appellant argues the planning director failed to address the impact of the dwelling on Forest Park. However the hearings officer finds the site development is buffered and screened by existing vegetation and topography to minimize adverse impacts on the site and neighboring properties, including Forest Park. The location of the structures on the west side of a ridge that climbs to the east helps isolate the structures from the park by topography. The preservation of a roughly 60-foot forested area east of the garage as a buffer helps minimize the adverse impacts on the park.

12. Regarding MCC .7850(8),<sup>14</sup> the appellant argues the planning director failed to make the requisite finding. The hearings officer finds that the design review plan does not identify proposed utilities. However, during the hearing in this matter, the applicant testified that utilities will be installed underground in or adjoining the proposed driveway. Therefore, MCC .7850(8) does not apply. To the extent it does apply, the hearings officer finds that installation of utilities below ground in or adjoining the driveway will minimize adverse impacts on the site and neighboring properties, because the utilities will not be visible, and grading and excavation for the utilities can be combined with grading and excavation of the driveway, thereby minimizing effects on the land.

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<sup>12</sup> MCC .7850(6) provides:

*Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.*

<sup>13</sup> MCC .7850(7) provides:

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

<sup>14</sup> MCC .7850(8) provides:

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

13. Regarding compliance with the minimum design standards of MCC .7855, the appellant argues the planning director's findings are wrong. But, other than disputing the reference in the planning director's decision to SEC 6-91a and HDP 4-91a, the appellant does not show in any specific way how the planning director's findings regarding this issue are wrong as a matter of fact. The hearings officer finds the design review plan complies with MCC .7855, because:

a. A condition of approval of the planning director's decision requires a deck, porch or patio containing at least 48 square feet to comply with the private area standard, and there is ample area on the site to provide this space.

b. The proposed detached garage provides convenient areas for storage of bulky items. The garage is fully enclosed.

c. More than 15 percent of the site consists of native vegetation. That vegetation will be retained. See condition of approval 1 of the planning director's decision. It fulfills the requirements for on-site landscaping. All areas of the site that are not being developed or retained in existing vegetation will be landscaped, based on proposed revegetation plans and condition of approval 2 of the planning director's decision.

d. The remaining findings of the planning director's decision are sufficient to address this criterion. MCC .7855(6) does not apply, because no overhead lines are proposed or exist that would be affected by the proposed development.

### **C. Compliance with conditions of approval.**

1. The appellant argued that CU 5-91 continues to require a bridge to be used regardless of HDP 4-91a and SEC 6-91a, because CU 5-91 incorporates by reference SEC 6-91, which required a bridge. CU 5-91 was not amended to refer to SEC 6-91a. Therefore, the final design review plan approved by the planning director violates that decision. See particularly pp. 2-4 of Exhibit 19. Although the LUBA opinion regarding SEC 6-91a and HDP 4-91a may make the issue moot, to provide as complete a decision as possible, the hearings officer addresses this issue based on the circumstances when the planning director made his decision.

2. The hearings officer finds the result urged by the appellant would be inconsistent with and conflict with the BCC's action. The hearings officer construes the BCC's decisions in SEC 6-91a and HDP 4-91a to allow the applicant to use a culvert and fill to cross the creek rather than a bridge. The conditions of approval of CU 5-91 do not provide to the contrary.

a. The only mention of a bridge in the conditions of approval of the final order regarding CU 5-91 reads as follows:

*Any activity within 100 feet of the creek, including but not limited to the bridge and/or driveway, which exposes soil or disturbs the ground surface on the site between October 1 and June 14 is prohibited --- unless required for emergency repairs.*

b. That condition does not require the applicant to use a bridge to reach the house authorized by the permit. The condition is intended to address potential soil erosion by limiting when soil can be disturbed near the creek. The condition uses the term "and/or" to refer to the activity that could be associated with such disturbance, but does not purport to limit the means of crossing the creek. That issue is addressed by SEC 6-91 and HDP 4-

91. The decision in CU 5-91 authorizes a non-forest dwelling. The creek crossing is not the subject of that decision per se and is not material to the approval criteria for a non-forest dwelling as a conditional use. It is material to the SEC and HDP decisions only.

c. The hearings officer acknowledges that condition of approval 3 of the decision in CU 5-91 requires compliance with SEC 6-91. However, the hearings officer finds that amending SEC 6-91 does not violate or require amendment of the condition of approval of CU 5-91. The condition of approval does not purport to prohibit such an amendment. It reflects an intention to coordinate permits for the development on the site. SEC 6-91a amended SEC 6-91. They deal with the same property. The subscript "a" simply reflects another administrative action regarding the same permit. Given the purpose for which SEC 6-91 is referenced in CU 5-91, it is consistent with CU 5-91 to require the conditional use to comply with whatever version of SEC 6-91 is effective when application is made for development authorized by the conditional use permit.

3. The design review decision is inconsistent with the permits reinstated by the LUBA decision, because it does not provide for a bridge to cross the creek. A condition of approval is warranted requiring the design review plan to be amended to be consistent with those permits (or their subsequent amendments) before the design review plan is approved in final form to conform the design review plan to the now-applicable permits (SEC 6-91 and HDP 4-91). This is effectively a remand of the design review decision to the planning director for a limited purpose. MCC .8280(A) does not provide for a remand per se; it does authorize conditions of approval to be imposed on appeal. The result is the same.

#### **IV. MERITS OF THE APPEAL OF CU 5-91a**

##### **A. Applicable standard.**

1. MCC .7110(C) provides as follows in relevant part:

*[T]he approval of a Conditional Use shall expire two years from the date of issuance of the Board Order in the matter, or two years from the date of final resolution of subsequent appeals, unless...*

*(3) The Planning Director determines that substantial construction or development has taken place. That determination shall be processed as follows:*

*(a) Application shall be made on appropriate forms and filed with the Director at least 30 days prior to the expiration date.*

*(b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on findings that:*

*(i) Final Design review approval has been granted under MCC .7845 on the total project; and*

*(ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other*

*development permit. Project value shall be as determined by MCC .9025(A) or .9027(A)...*

**B. Timing of the application: compliance with MCC .7110(C)(3)(a).**

1. There is a dispute about how to construe MCC .7110(C)(3). The dispute follows from the fact that the Board of Commissioners did not issue a "Board Order" in the matter of CU 5-91. Therefore there is no date of issuance of such an order from which to measure the expiration of the permit. The BCC does not issue a written order when acknowledging a decision that has not been appealed. Therefore, the use of the term "Board Order" in MCC .7110(C)(3) is ambiguous and must be construed. Part of the appeal of CU 5-91a turns on how the term is construed.

2. The appellant argues a Board Order was issued on April 23, 1991, when the BCC orally acknowledged the planning commission decision regarding CU 5-91. Therefore, the permit would expire April 23, 1993, and the applicant must have applied for the determination under MCC .7110(C) by March 24, 1993 to comply with MCC .7110(C)(3)(a). He did not do so; therefore, the application should have been denied. See pp. 6-7 of Exhibit 19, the annotated minutes of the BCC meeting of April 23, 1991 attached to Exhibit 19, and pp. 3-4 of Exhibit 24.

3. The applicant argues that a decision by the BCC is not final for 10 days after the decision, findings and conclusions have been filed with the Clerk of the Board. Therefore, assuming the oral acknowledgment of the BCC of April 23 was a Board Order, then it would not be a final order until May 3, 1991. Therefore, the permit would not expire until May 3, 1993 and the application for a determination could be filed before April 3, 1993. Alternatively, the applicant argues in support of the county staff interpretation. See pp. 2-5 of Exhibit 18.

4. County staff take a different approach. They focus on the issue of when the planning commission decision in CU 5-91 became a final order, reasoning that the purpose for referencing a "Board Order" in MCC .7011(C)(3) is to ensure that the expiration date for a permit reflects the final possible action by the county regarding the permit, i.e., a decision on appeal to the BCC. See pp. 9-10 of Exhibit 13.

a. Where no appeal is filed, the final county action is the decision of the planning commission. (The hearings officer notes that MCC .8255 requires notice of decisions to be included on the next BCC agenda for zoning matters, but does not require any specific action by the BCC regarding decisions that are not appealed.)

b. The planning commission decision in CU 5-91 is final at the close of business on the tenth day following submittal of the written decision to the Clerk of the Board unless an appeal is filed or the BCC issues an order for review. Staff note further that the planning commission decision was signed April 1, 1991, bears a statement that the decision was filed with Clerk on April 11, 1991, and was date-stamped as received by the Clerk of the Board on April 16, 1991.

c. Staff note that the term "submittal" is not defined by the code and is ambiguous. It is not clear from the plain meaning of the term whether it is intended to mean mailed or received. County staff conclude it should be construed to mean received, because only after receipt can the Clerk do anything with the decision. The applicant also argues for this construction of "submittal" noting the date stamp makes receipt a reliable date, and that the county uses the term "mailed notice" elsewhere in the code when it wants

to have mailing be sufficient to fulfill procedural requirements. Assuming this interpretation is adopted, then:

(i) The planning commission decision became final on April 26, ten days after the Clerk received it.

(ii) The permit expires on April 27, 1993.

(iii) To comply with MCC .7110(C)(3)(a), an application for a determination would have to be filed by March 27, 1993.

5. Given the ambiguity regarding MCC .7110(C)(3)(a), the hearings officer is swayed by the arguments of county staff and the applicant that the term "Board Order" should be construed to mean "the final order of the most superior county approval authority to address the merits of a proposed conditional use permit." This best reflects the legislative intent that a permit expire two years after it is approved. It is not approved until the county issues a final order. The most superior county approval authority to issue a final order in CU 5-91 was the planning commission. Their decision was final 10 days after submitted to the Clerk.

6. Given the ambiguity regarding the term "submittal", the hearings officer finds that it should be construed to mean "received", because:

a. The code does not expressly provide that mailing is sufficient for submittal in this context, as it does in other instances where that is the case.

b. It is more consistent with the purpose for submitting the decision to the Clerk than "mailed". The hearings officer finds that the purpose for providing a 10-day period between the date the decision is submitted and the date it becomes final is to ensure that all interested parties have an adequate opportunity to receive and review the decision and to determine whether to file a Notice of Appeal, and to ensure that the BCC members have ample time to determine whether to file a Board Order for Review. Until the Clerk actually receives the decision, the Clerk cannot distribute it. Therefore, the 10-day time should not begin to run until the Clerk actually receives the decision.

7. The hearings officer finds that the oral BCC acknowledgment on April 23 is not a Board Order, because it was not memorialized in any written form. All contested case decisions are required to be in writing and signed by the approval authority to protect all parties to a case and facilitate judicial review. Nowhere does MCC 11.15 provide for a decision to be made without a written decision containing findings and conclusions. In the absence of a written decision or an appeal of that decision by a party or BCC member, the reporting of a decision to the BCC and their subsequent acknowledgment of the decision is just that --- a report and acknowledgment of that report. It does not affect the permit decision. BCC acknowledgment of an unappealed decision is not required by MCC .8255 nor given any weight or meaning by another provision of MCC 11.15.

### **C. Adequacy of findings.**

1. The appellant argued the planning director could not find that the application complied with MCC .7110(C)(3)(b)(i), because the design review decision did not comply with conditions of approval of SEC 6-91 and CU 5-91. See pp. 7-8 of Exhibit 19 and pp. 4-5 of Exhibit 24.



a. The hearings officer largely addressed this issue in findings II.E.3 and III.D. In summary, the hearings officer found that the BCC decisions in SEC 6-91a and HDP 4-91a authorized the applicant to cross the creek using a culvert and fill instead of a bridge, and that action was consistent with the final order in CU 5-91. The hearings officer also found that the relevant date for determining whether the planning director's decision was correct is the date that decision was made: May 26. As of that date, SEC 6-91a and HDP 4-91a applied, notwithstanding their appeal to LUBA by the appellant in this case. There was no stay of the BCC decisions.

b. The hearings officer finds that final design review approval was granted under MCC .7845 on the total project as it existed and was approved at that time. LUBA's opinion has since effectively reinstated the decisions in SEC 6-91 and HDP 4-91. Therefore, the design review plan is no longer consistent with the applicable permits, and should be remanded for proceedings consistent with this decision. However, when the planning director made the determination, there was a final design review plan that complied with applicable permits and standards. That is the appropriate reference time for compliance with MCC .7110(C)(3)(b)(i), because that is when the decision being appealed was made. The subsequent LUBA decision should not void the design review decision for purposes of compliance with MCC .7110(C)(3)(b)(i), because it is not clearly required by the Code, and it would conflict with the purpose of MCC .7110(C)(3) generally.

2. The appellant argued the evidence is insufficient to sustain a finding that the applicant complied with MCC .7110(C)(3)(b)(ii). See p. 8 of Exhibit 19 and p. 2 of Exhibit 21.

a. The appellant argues there is no substantial evidence of the total cost of the project from which the 10% could be calculated, because the applicant has not purchased or contracted to purchase a specific home model of manufactured home.

(i) County staff concede at p. 10 of Exhibit 13 that the application does not include such evidence. However, the staff have computed a cost for the project based on MCC .9025(A), which requires cost to be determined in accordance with the Uniform Building Code or as otherwise determined by the Director.

(ii) The UBC does not have a value for manufactured dwellings, so the county staff considered the cost per square foot of typical manufactured homes based on reported sales costs and on sample manufactured homes displayed at the Manufactured Home Show. The planning director determined that the manufactured home for the site would cost about \$50,000, reflecting a "high-end" 1200 square foot manufactured home.

(iii) The hearings officer finds there is substantial evidence in the record to support that part of the determination, and the planning director was reasonable and rational in arriving at that figure. It is not necessary for the applicant to have purchased or contracted to purchase the dwelling in question, provided there is sufficient information in the record from which the planning director can determine what such a home is reasonably likely to cost.

(b) The planning director used this \$50,000 figure as the total cost for the project. The appellant argues that the total project includes costs for things other than the manufactured home, including the garage, well, septic system, driveway, and bridge, and that the planning director's decision did not consider these costs. The hearings officer agrees. The planning director erred by failing to consider costs for improvements other than the manufactured home when determining the total value of the project.

(i) The application for the determination includes the following receipts for work regarding the proposed project.

Building permit application	\$ 29.25
Work by Oleson & Oleson re: sanitation permit	\$ 8110.00
Road & culvert work by Medoff under HDP 4-91a	\$ 2844.20
Cost of culvert	\$ 1443.20
Road work by Frank Stone	\$ 1580.00
Boundary survey work by G & L Surveying	\$ 1500.00
Geotechnical services	\$ <u>410.20</u>
Total expenditures	\$ 15,916.85

(ii) These expenses are part of the cost of the total project. They should be added to the \$50,000 building cost figure, raising the cost of the project to about \$66,000.

(iii) Also added to the cost of the project should be the value of the garage, the well, utilities, building site preparation, and the driveway from the home to Thompson Road. There is not substantial evidence in the record about the cost of these features of the project, but reasonable estimates of expenses can be drawn from the proposal. The hearings officer estimates the garage would cost about \$20,000 (864 square feet x \$25/sq. ft); the well would cost not more than \$4000; and utility, site preparation and road work would cost not more than \$10,000, bringing the total project cost to about \$100,000.

(iv) If the total project cost is less than about \$160,000, then the applicant has spent more than 10% of the total project cost, based on the expenditures listed above. Therefore, based on those estimates and expenditures, the applicant complies with MCC .7110(C)(3)(b)(ii). Even if the estimates in the preceding paragraph are off by as much as 60%, the applicant complies with MCC .7110(C)(3)(b)(ii). Given such a large margin for error, the hearings officer concludes that the planning director's determination regarding this section was correct, notwithstanding the error identified above.

(c) The appellant also argues the expenses associated with the culvert and fill work under HDP 4-91a should not be counted, because that development was not consistent with CU 5-91 and SEC 6-91. However, the hearings officer concludes the appellant's argument is in error. That development was consistent with the BCC decision in HDP 4-91a and SEC 6-91a. When the planning director made his decision about substantial construction and development, those were the relevant permits for evaluating the expenses in question. If the expenses counted then, they count now notwithstanding the subsequent LUBA decision. See findings II.E.3, III.D, and IV.C.

(d) The appellant also argues the expenditures are not sufficiently documented, but the hearings officer finds that the receipts on their face reflect a sufficient relationship to permits and/or development on the site to be sufficiently documented except the receipt from Mr. Stone, which bears no relationship to the project on its face. Given the unrebutted representation by the applicant, the substantial grading that has occurred for the road on the site, and the lack of attribution of costs for that work to another contractor, the hearings officer finds it is reasonable to conclude that the expenses claimed by Mr. Stone are related to the development of the driveway.

(e) The appellant argues the expenditures do not count toward MCC .7110(C)(3)(b)(ii), because they were made before approval of the design review plan, and MCC .7815 prohibits development before approval of the plan.

(i) The hearings officer finds MCC .7110(C)(3)(b)(ii) and .MCC .7815 conflict. The former anticipates that certain development can occur before a final design review plan is approved. The latter does not. Therefore, the hearings officer must construe them.

(ii) The hearings officer finds that MCC .7110(C)(3)(b)(ii) is the more specific provision as it relates to the issue at hand. The cost of development consistent with that section should count toward the ten percent figure notwithstanding such development might not be permitted under MCC .7815 until a final design review plan is approved. The hearings officer finds such a result is more consistent with the scheme in MCC .7110(C) and recognizes that other permits have authorized development on the site (HDP 4-91 and 4-91a, SEC 6-91 and 6-91a, and sanitation permits) notwithstanding the lack of design review approval.

## **V. CONCLUSIONS AND DECISION**

### **A. Conclusions.**

1. The hearings officer concludes the application in question is subject to design review; the appellant has standing to appeal the design review decision in this case; the standard of review is *de novo*; the scope of appeal is limited to the issues cited specifically in the written appeal; the LUBA decision effectively reinstates HDP 4-91 and SEC 6-91 but does not void the prior design review approval or determination of substantial construction and development; and that errors regarding the timing of notice and the decision are remedied by the *de novo* character of the appeal proceeding, based on finding III.

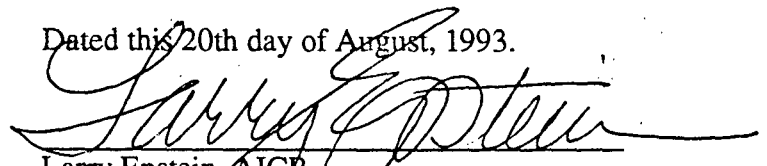
2. The hearings officer concludes the final design review plan should be approved, based on finding III, because it complies with the applicable provisions of MCC .7850 and .7855, subject to a condition of approval that requires the plan to be amended to be consistent with HDP 4-91 and SEC 6-91 or their subsequent amendment.

3. The hearings officer concludes the determination of substantial construction and development should be approved, based on finding IV, because it complies with the applicable provisions of MCC .7110(C).

### **B. Decision.**

In recognition of the findings and conclusions contained herein, and incorporating the public testimony and exhibits received in this matter, the hearings officer hereby denies the appeal and approves DR 14-93a, subject to a condition that the applicant amend the plan to conform with SEC 6-91 and HDP 4-91 or with their subsequent amendment (or with reinstatement of SEC 6-91a and HDP 4-91a by appellate courts), and denies the appeal and approves the planning director's determination in the matter of CU 5-91a.

Dated this 20th day of August, 1993.

  
Larry Epstein, AICP  
Multnomah County Hearings Officer

**CONTENTS OF EXHIBIT C**  
**WRITTEN EVIDENCE IN THE RECORD**  
**FOR DR 14-93a/CU 5-91a**

<i>Exhibit</i>	<i>Description</i>
1	Final Order and record in the matter of LUBA File No. 93-019 (2 bound volumes for HDP 4-91a and 2 bound volumes for SEC 6-91a); particularly pp. 35-37, 497-515, 528-534, 537-543, 672-682, and 732-737 of the record cited by the applicant
2	Road approach permit application dated April 9, 1991 with notations
3	Building permit computer printout dated October 5, 1992 with letter dated October 2, 1992 from Dan McKenzie to Mark Hess with site plan
4	Seven receipts for expenses incurred by applicant in conjunction with dwelling
5	Building permit application and inspection record
6	Application by Dan McKenzie received March 25, 1993 for design review approval
7	Application by Dan McKenzie received March 26, 1993 for determination that substantial development occurred
8	Letter dated April 6, 1993 from Arnold Rochlin to R. Scott Pemble
9	Letter dated April 19, 1993 from Michael Ebling to Dan McKenzie
10	Letter dated May 5, 1993 from Dan McKenzie to R. Scott Pemble
11	Notice of administrative decision with certification of mailing dated May 7, 1993
12	Notice of appeal of DR 14-93 and CU 5-91 by Arnold Rochlin for Forest Park Neighborhood Association received May 17, 1993
13	Administrative decision and certification of mailing dated May 26, 1993
14	Building permit computer printout dated May 25, 1993
15	Sample plans and costs for manufactured homes and Vol. 29, No. 2 of "Manufactured Homes" magazine
16	Copy of published notice for July 19, 1993 hearing
17	Notice of July 19 hearing and certification of mailing dated June 29, 1993
18	Memorandum dated July 12, 1993 from Mark Hess to hearings officer
19	Letter dated July 12, 1993 from Arnold Rochlin to hearings officer with exhibits
20	Letter dated July 16, 1993 from Margaret Mahoney to Arnold Rochlin
21	Letter dated July 19, 1993 from Arnold Rochlin to hearings officer
22	Applicant's hearing memorandum dated July 19, 1993 from Steven Abel
23	Letter dated July 26, 1993 from Steven Abel to hearings officer
24	Letter dated July 26, 1993 from Arnold Rochlin to hearings officer
25	Letter dated August 2, 1993 from Arnold Rochlin to hearings officer
26	Three-dimensional model of the site by the applicant
27	Photographic slides of the site by the planning division
28	Zoning approval map, architectural drawings, foundation plan and elevations

In the matter of DR 14-93 and CU 5-91a, an appeal of administrative decisions:

Signed by the Hearings Officer: August 20, 1993  
[date]

Decision mailed to parties: August 25, 1993  
[date]

Submitted to Clerk of the Board: August 26, 1993  
[date]

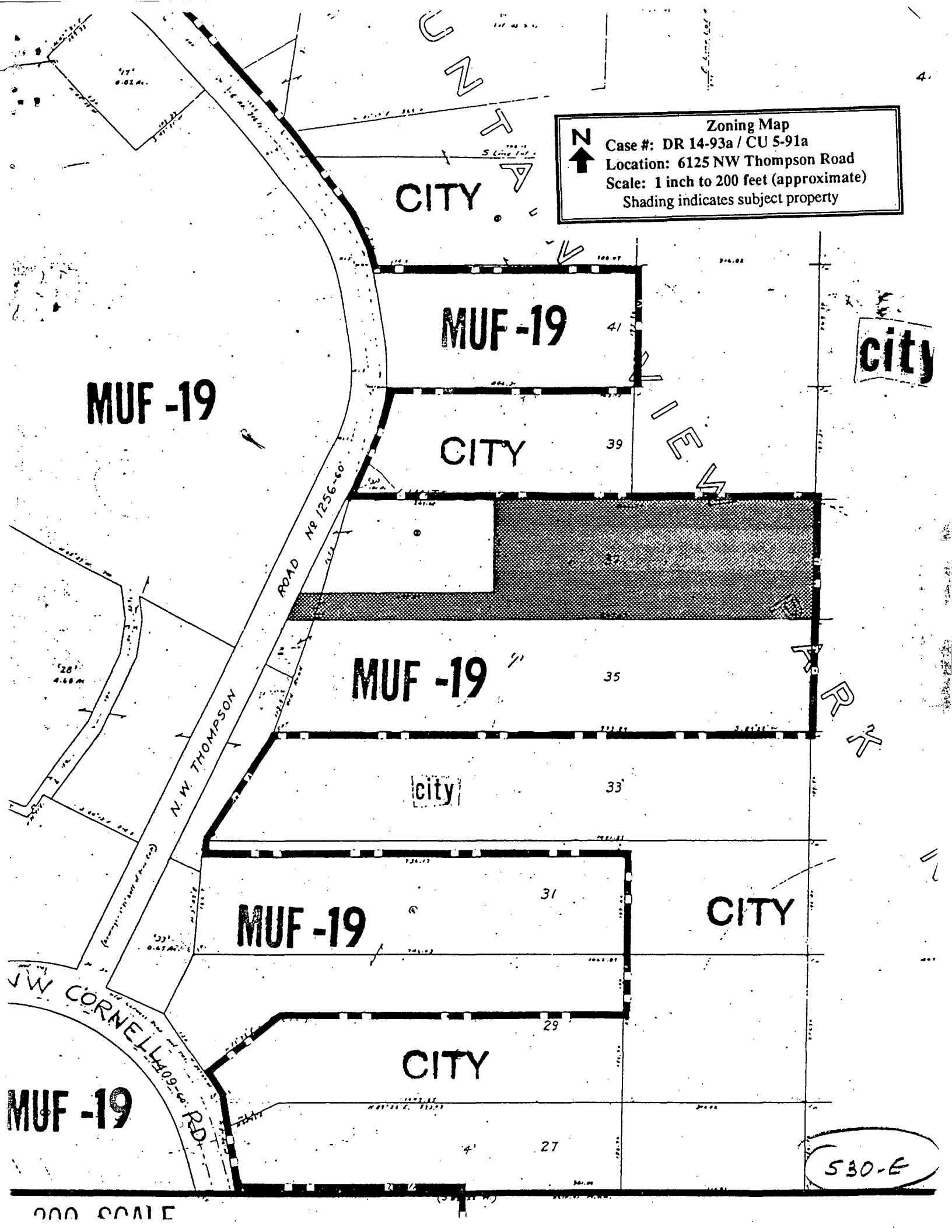
Last day to Appeal to the Board: September 7, 1993  
[date]

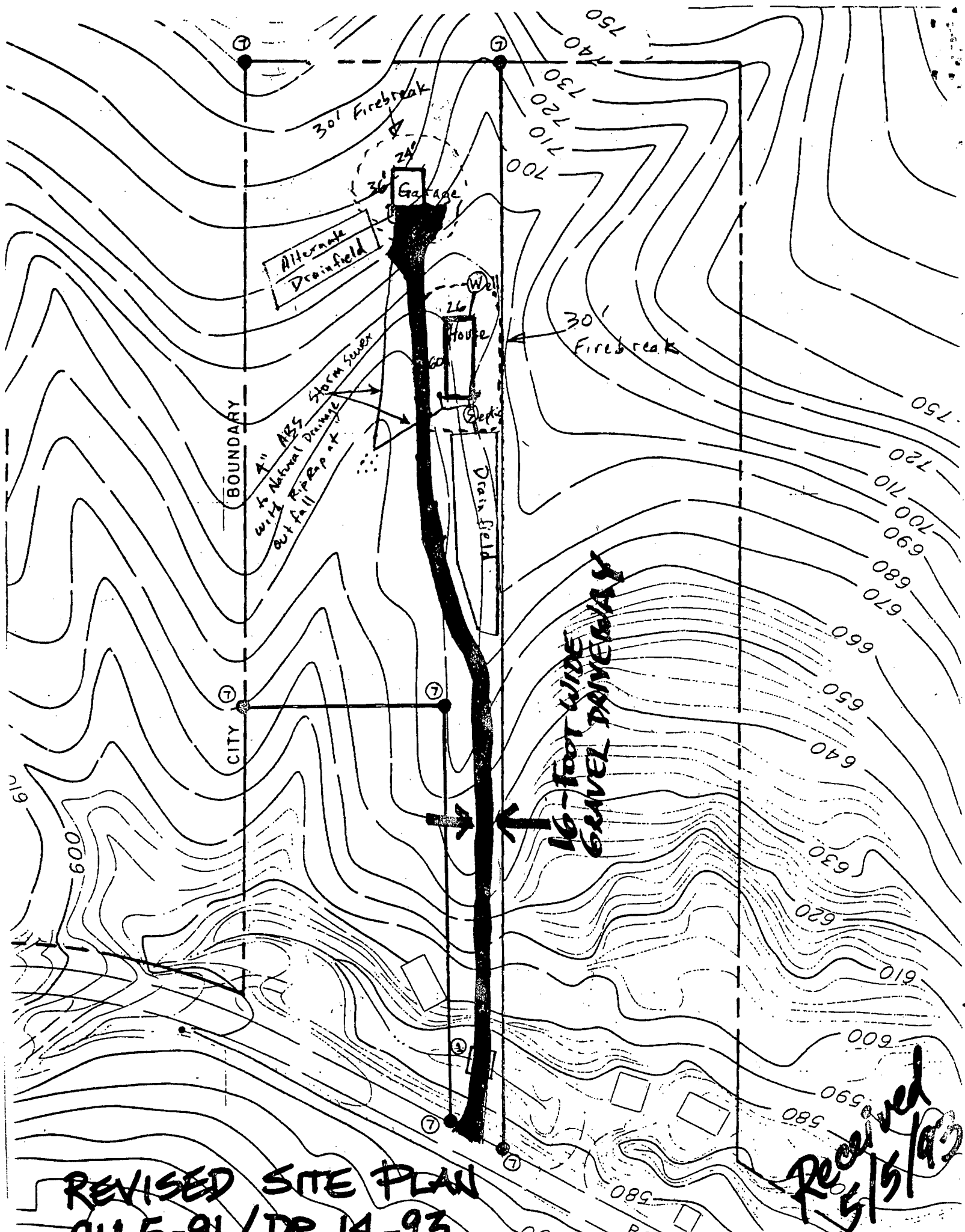
### ***Appeal to the Board of County Commissioners***

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

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

**Zoning Map**  
Case #: DR 14-93a / CU 5-91a  
Location: 6125 NW Thompson Road  
Scale: 1 inch to 200 feet (approximate)  
Shading indicates subject property





REVISED SITE PLAN

0115-91 / DR 14-93

Received  
5/5/93

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

Dan McKenzie, )  
Petitioner, )  
vs. ) LUBA No. \_\_\_\_\_  
Multnomah County, )  
Respondent. )

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled Final Order 93-339; which became final on November 12, 1993; and which affirms and modifies the Multnomah County Hearings Officer's decision in DR 14-93, approving a Final Design Review for a dwelling.

II.

Petitioner, Dan McKenzie, is represented by himself:

Dan McKenzie  
6125 NW Thompson Rd  
Portland, OR 97210  
(503) 292-6970

BOARD OF  
COUNTY COMMISSIONERS  
1993 NOV 24 AM 8:34  
MULTNOMAH COUNTY  
OREGON



Respondent, Multnomah County, has as its mailing address and telephone number:

Board of County Commissioners  
1120 SW Fifth Ave. Suite 1510  
Portland, OR 97204  
(503) 248-3277

and has as its legal counsel:

John L. Dubay  
Multnomah County Counsel  
1120 SW Fifth Ave. Suite 1530  
Portland, OR 97204  
(503) 248-3138

### III.

Applicant, Dan McKenzie, was represented in the proceeding by:

Steven W. Abel  
Schwabe Williamson & Wyatt  
Pacwest Center Suites 1600-1950  
1211 SW Fifth Ave.  
Portland, OR 97204  
(503) 222-9981

Other persons mailed written notice of the land use decision or limited land use decision by Multnomah County,

as indicated by its records in this matter, include:

Forest Park Neighborhood Association

c/o Arnold Rochlin

PO Box 83645

Portland, OR 97283

NOTICE:

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

Dan McKenzie  
Petitioner, Dan McKenzie

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 1993, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs II and III of this Notice pursuant to OAR 661-10-015(2) by first class mail.

Dated 11/23/93

Dan McKenzie  
Dan McKenzie

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

ARNOLD ROCHLIN, )  
 )  
Petitioner, )  
 )  
vs. ) LUBA No. \_\_\_\_\_  
 )  
MULTNOMAH COUNTY, )  
 )  
Respondent. )

NOTICE OF INTENT TO APPEAL

I

Notice is hereby given that petitioner intends to appeal that land use decision of respondent entitled Board of County Commissioners Final Order 93-339 which became final on November 12, 1993 and which approves DR 14-93 Final Design Review Plan and CU 5-91a Determination of Substantial Development extending conditional use permit 5-91.

II

Petitioner, Arnold Rochlin, is representing himself

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

Respondent, Multnomah County, has as its mailing address  
and telephone number:

Board of County Commissioners  
1120 S.W. Fifth Ave., Suite 1510  
Portland, OR 97204  
(503) 248-3277

and has, as its legal counsel:

John L. Dubay  
Chief Deputy County Counsel  
1120 S.W. Fifth Ave., #1530  
Portland, OR 97204  
(503) 248-3138

BOARD OF  
COUNTY COMMISSIONERS  
1993 NOV 30 PM 1:11  
MULTNOMAH COUNTY  
OREGON

III

Applicant, Dan McKenzie, was represented in the proceeding below by:

Steven W. Abel  
Schwabe Williamson & Wyatt  
1211 SW Fifth Ave., #1600-1950  
Portland, OR 97204-3795  
(503) 222-9981

Other persons mailed written notice of the land use decision by Multnomah County, as indicated by its records in this matter, include:

Dan McKenzie  
6125 NW Thompson Road  
Portland, Or 97210

City of Portland  
1120 SW Fifth Ave.  
Portland, Or 97204

Angela Miller  
6121 NW Thompson Road  
Portland, Or 97210-1056

Forest Park Neigh. Assoc.  
c/o John Rettig, Pres.  
8646 NW Skyline Blvd.  
Portland, Or 97231

Donald and Myrna Butler  
Royce and Judith Cameron  
4304 SE 47th Ave.  
Portland, Or 97206

Elaine Medoff  
6241 NW Cornell Road  
Portland, Or 97210-1083

Wallace Moore  
6700 NW Thompson Road  
Portland, Or 97229-4214

W. Doug Ripley  
6131 NW Thompson Road  
Portland, Or 97210-1056

NOTICE

Anyone designated in paragraph III of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

November 29, 1993

  
Petitioner, Arnold Rochlin

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 29, 1993, I filed the original of this Notice of Intent to Appeal, together with 1 copy, with the Land Use Board of Appeals, Room 306 State Library Building, 250 Winter Street NE, Salem, OR, 97310, by first class mail.

I further certify that on November 29, 1993, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs II and III of the Notice pursuant to OAR 661-10-015(2) by first class mail.

A handwritten signature in cursive script, appearing to read "Arnold Rochlin", is written over a horizontal line.

Arnold Rochlin

#1

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

Karin Hunt

**ADDRESS**

16340 NW Rock Creek Rd

**STREET**

Portland

97231

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

C3-93

**SUPPORT**

**OPPOSE**

Staff recommendation

**SUBMIT TO BOARD CLERK**

#2

PLEASE PRINT LEGIBLY!

MEETING DATE 10-12-93

NAME Liz Callison, SW.N.I. Parks Comm

ADDRESS 6039 SW Knight bridge Dr  
STREET

Portland 97219  
CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-2

SUPPORT \_\_\_\_\_ OPPOSE ☒ \_\_\_\_\_  
SUBMIT TO BOARD CLERK

#3  
**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10-12-93

**NAME** RICHARD SHAFFER

**ADDRESS** 14916 N.E. Newport St

**STREET**

Portland

**CITY**

97230

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-2

**SUPPORT** \_\_\_\_\_ **OPPOSE** ✓

**SUBMIT TO BOARD CLERK**



#24

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10/12/93

**NAME** CHRIS WRENCH

**ADDRESS** 3103 NW Wilson

**STREET** Portland OR 97210

**CITY** **ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-2C-3-93

**SUPPORT**  **OPPOSE** X staff report  
**SUBMIT TO BOARD CLERK**

#5

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

12  
October 18, 1993

**NAME**

Matthew Udziel - Metro Greenspaces

**ADDRESS**

600 N.E. Grand Ave.

**STREET**

Portland, OR

97232

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

C393 P-2

**SUPPORT**

**OPPOSE**

X

**SUBMIT TO BOARD CLERK**

#6

PLEASE PRINT LEGIBLY!

MEETING DATE OCT. 12, 1993

NAME DONNA MATRAZZO

ADDRESS 9300 NW SAWIE ISLAND RD

STREET

PORTLAND OR 97231

CITY

P-2

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-2 SCENIC VALUES  
OF WEST HILLS

SUPPORT \_\_\_\_\_ OPPOSE ☒ COUNTY STAFF  
SUBMIT TO BOARD CLERK REPORT

#7

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** Oct. 12, 1995

**NAME** Neil Kagan

**ADDRESS** 522 SW 5th #1050

**STREET**

Portland

**CITY**

97204

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-2 (CJ-93)

**SUPPORT** \_\_\_\_\_ **OPPOSE** ☒

**SUBMIT TO BOARD CLERK**

#8

PLEASE PRINT LEGIBLY!

MEETING DATE 10-12-93

NAME JACK W. SANDERS

ADDRESS 318 SW Palatine Hill Rd

STREET

Portland

CITY

97219

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-2

SUPPORT \_\_\_\_\_ OPPOSE X ~~AS~~

SUBMIT TO BOARD CLERK

#9

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

JOHN SHERMAN

**ADDRESS**

1912 NW ASPER

**STREET**

Portland

**CITY**

97210

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

A-2

**SUPPORT**

**OPPOSE**

**SUBMIT TO BOARD CLERK**

✓

#10

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 12 oct 93

**NAME** Leslie Blaize

**ADDRESS** 9630 NW SKYLINE

**STREET**

Port OR

**CITY**

97231

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-2

**SUPPORT**

☒ **OPPOSE**

**SUBMIT TO BOARD CLERK**

PLEASE PRINT LEGIBLY!

MEETING DATE 10/12

NAME DOROTHY COFIELD

ADDRESS 8255 SW Hunziker

STREET TIGARD

CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-2 & P-3

SUPPORT C <sup>scenic</sup> 398 OPPOSE Y-93 <sup>wildlife</sup>

SUBMIT TO BOARD CLERK



#12

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

1/10-12-93

**NAME**

Leslie Lubbe

**ADDRESS**

4935 S. W. Barnes Rd.

**STREET**

PORT OR 97221

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

C-3-93 P-2

**SUPPORT**

~~\_\_\_\_\_~~

**OPPOSE**

Staff report

**SUBMIT TO BOARD CLERK**

#3

PLEASE PRINT LEGIBLY!

MEETING DATE 10/12/93

NAME DAVID MORGAN

ADDRESS 2513 N.E. SKIDMORE ST.

STREET

PORTLAND

97211

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # C-3-93

SUPPORT                      OPPOSE X P-2

SUBMIT TO BOARD CLERK BOARD SHOULD

DESIGNATE A SCENIC  
RESOURCE.

#14

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

Arnold Rochlin

**ADDRESS**

P.O. Box 83645

**STREET**

Portland,

**CITY**

97283

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

8-2

**SUPPORT**

For scenic designation

**OPPOSE**

X (recommmendation against scenic

**SUBMIT TO BOARD CLERK**

designation

PLEASE PRINT LEGIBLY!

MEETING DATE

10/12/93

NAME

MICHAEL CARLSON

ADDRESS

5151 NW CORNELL

STREET

PORTLAND OR 97210

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C393 P-2

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#14

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

DON K MEARDLE

**ADDRESS**

17405 NW Skyline

**STREET**

Portland

**CITY**

97231

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

P-2

**SUPPORT**

☒

**OPPOSE**

☐

**SUBMIT TO BOARD CLERK**

#17

PLEASE PRINT LEGIBLY!

MEETING DATE

10/12/93

NAME

Jim Sjulian

ADDRESS

PORTLAND PARKS

STREET

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-2

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

MEETING DATE: October 12, 1993

AGENDA NO: P-2

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: C 3-93 Public Hearing

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: October 12, 1993

Amount of Time Needed: 1 hour

DEPARTMENT: DES DIVISION: Planning

CONTACT: Sharon Cowley TELEPHONE #: 2610  
BLDG/ROOM #: 412.109

PERSON(S) MAKING PRESENTATION: Sandy Mathewson

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

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

C 3-93 In the matter of determining whether the West Hills  
are a significant scenic resource

Public Hearing

BOARD OF  
COUNTY COMMISSIONERS  
MULTNOMAH COUNTY  
OREGON  
1993 OCT - 4 PM 2:28

**SIGNATURES REQUIRED:**

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

**OR**

DEPARTMENT MANAGER: Betsy Williams

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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

0516C/63

6/93



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. 23-93

☒ Agenda Placement Sheet      No. of Pages 1

☒ Case Summary Sheet      No. of Pages 1

☐ Previously Distributed      \_\_\_\_\_

☐ Notice of Review      No. of Pages \_\_\_\_\_

\*(Maybe distributed at Board Meeting)

☐ Previously Distributed      \_\_\_\_\_

☒ ~~Decision~~ *Resolution*      No. of Pages 1

(Hearings Officer/Planning Commission)

☐ Previously Distributed      \_\_\_\_\_

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

(CL/1)





## MULTNOMAH COUNTY OREGON

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

# DIVISION OF PLANNING AND DEVELOPMENT

## Board Planning Packet Check List

File No. C 3-93

### I. Materials Distributed to the Board

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

### II. Materials Available Upon Request

- ☒ Minutes ( 7 Pages)
- ☒ Transcript ( 52 Pages)
- ☐ Applicant's Application and Submittals ( Pages)
- ☒ Case Correspondence ( 26 Letters)
- ☒ Slides ( Slides)
- ☐ Exhibits/Maps ( Exhibits)  
( Maps)
- ☐ Other Materials ( )



CASE NAME: **Goal 5 Scenic Resources**  
**Study of West Hills**

TIME 2:30 pm  
NUMBER C 3-93

1. Proposal:

**Determine the significance of the West Hills as a scenic resource pursuant to Statewide Planning Goal 5.**

3. Staff Report Recommendation:

**Designate the West Hills as 1A, not a significant scenic resource under Goal 5.**

4. Planning Commission Recommendation:

**Same.**

**ACTION REQUESTED OF BOARD**

- ☒ Affirm Planning Commission
- ☒ Hearing
  - ☐ Scope of Review
    - ☐ On the record
    - ☒ De Novo
    - ☐ New Information allowed

**ISSUES**

*(who raised them?)*

1. Private property rights. Several people who testified at the Planning Commission hearing and/or submitted letters were concerned that the county would be placing restrictions on uses of their property if the West Hills were designated as a significant scenic resource. The first step of the Goal 5 process - determining significance - does not involve consideration of possible results of designation. If the resource is deemed significant, analysis of the economic, social, environmental and energy consequences of protecting or not protecting the resource is done in order to provide a rational basis for determining an appropriate level of protection. Measures, if any, that might be taken to provide protection would be considered at subsequent public hearings. Testimony concerning restrictions to property should be reserved for the later hearings since it does not address the criteria for determining significance.
2. Angell Brother's quarry. The existing quarry lies at the southern end of the scenic study area, and is highly visible from Highway 30 and Sauvie Island. Designation of the West Hills as a significant scenic resource would lead to an examination of the conflicts between quarrying activities and protection of scenic resources. Questions as to whether quarrying should or should not occur are inappropriate at this stage of the Goal 5 process. Consideration of the West Hills' scenic value, pursuant to OAR 660-16, should be based solely on the location, quality and quantity of the resource.

**DECISION OF THE  
MULTNOMAH COUNTY PLANNING COMMISSION**

In the Matter of determining whether the       )  
West Hills are a significant scenic resource       )

**RESOLUTION  
C 3-93**

**WHEREAS,** As part of Periodic Review, Multnomah County said it would complete the Statewide Planning Goal 5 process for scenic views of the West Hills; and

**WHEREAS,** OAR 660-16 requires that the location, quantity and quality of outstanding scenic views and sites be considered to determine whether the resource is significant; and

**WHEREAS,** A public hearing was conducted on July 26, 1993, at which time written and oral testimony was received. Additional written testimony was allowed until September 3, 1993; and

**WHEREAS,** An analysis of the quantity of scenic resources in the county shows that significant scenic landscapes make up 26 percent of the county's non-urban area, so that the West Hills are not significant due to rarity; and

**WHEREAS,** Analysis of the quality of the West Hills scenery shows that the area is not significant because it lacks visual variety, contains no striking visual features, and exhibits a lack of integrity due to logging, mining, housing, roads and other development; and

**WHEREAS,** The motion to adopt the Findings and Conclusions of the Staff Report and designate the scenic views of the West Hills as 1A, not a significant resource, received a vote of 4 in favor, 2 opposed and 1 abstained;

**NOW, THEREFORE BE IT RESOLVED** that the Planning Commission hereby recommends that the Board of County Commissioners designate the West Hills Scenic Study Area as 1A, not a significant scenic resource pursuant to OAR 660-16, based on the Findings and Conclusions of the Staff Report.

Approved this 7th day of September, 1993

By Leonard Yoon, Jr.  
Leonard Yoon, Chair  
Multnomah County Planning Commission

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF MULTNOMAH COUNTY, OREGON**

In the Matter of determining whether the West     )  
Hills are a Goal 5 significant scenic resource     )  
C 3-93

**RESOLUTION**

**WHEREAS,** As part of Periodic Review, Multnomah County must complete the Statewide Planning Goal 5 process for scenic views of the West Hills; and

**WHEREAS,** Complying with Goal 5 requires consideration of the location, quality and quantity of a resource, and analysis of whether a scenic area is outstanding, pursuant to Oregon Administrative Rule 660-16 ; and

**WHEREAS,** The Planning Commission, after holding a public hearing and accepting written and oral testimony, recommended that the West Hills Scenic Study Area not be designated a significant scenic resource based on the Findings and Conclusions of the Staff Report; and

**WHEREAS,** This matter came before the Board of Commissioners for a public hearing on October 12, 1993, at which time the Board considered testimony, evidence and the Planning Commission Recommendation ; and

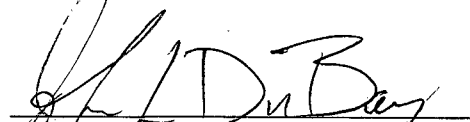
**WHEREAS,** The Board approved a motion to accept the Planning Commission Recommendation and designate the scenic views of the West Hills as "1A", not a significant resource, and adopt the Findings in Sections III, IV, and V and the Conclusions in Section VI of the Staff Report presented at the October 12, 1993 Board of Commissioner's hearing.

**NOW, THEREFORE BE IT RESOLVED** that the West Hills Scenic Study Area is not designated a significant scenic resource pursuant to OAR 660-16.

Approved this \_\_\_\_\_ day of October, 1993

By \_\_\_\_\_  
Beverly Stein, Chair  
Board of County Commissioners

REVIEWED:

  
\_\_\_\_\_  
John DuBay  
Chief Assistant County Counsel



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

**C 3-93  
STAFF REPORT**

**For the October 12, 1993 Public Hearing  
Board of County Commissioners**

**West Hills Study Area Scenic Resources  
Determination of Significance**

This issue came before the Planning Commission on July 26, 1993 for a public hearing. Written and oral testimony was received at the hearing, and additional written testimony was allowed until September 3, 1993. Staff wrote a Memorandum to the Planning Commission which addressed pertinent comments received by August 31. A copy of that Memorandum is attached. Copies of letters received are available upon request from the Planning Division.

The Planning Commission reconvened on September 7, 1993, at which time they approved a Resolution to recommend that the Board of County Commissioners not designate the West Hills Scenic Study Area a significant scenic resource, and adopted the Findings and Conclusions of the Staff Report.

The Board may accept or reject the Planning Commission recommendation. If it is determined that the West Hills are not significant (designated "1A"), no further action is required. If the Board determines that the West Hills are a significant scenic resource (designated "1C"), they should direct Staff to complete the Goal 5 process (identify conflicting uses, ESEE analysis, program to achieve appropriate level of protection). A Comprehensive Plan amendment to include the West Hills in the inventory of significant scenic resources will be required as part of the Goal 5 process.



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

**C 3-93**  
**STAFF REPORT**  
**For July 26, 1993 Planning Commission Hearing**

West Hills Study Area Scenic Resources  
Determination of Significance

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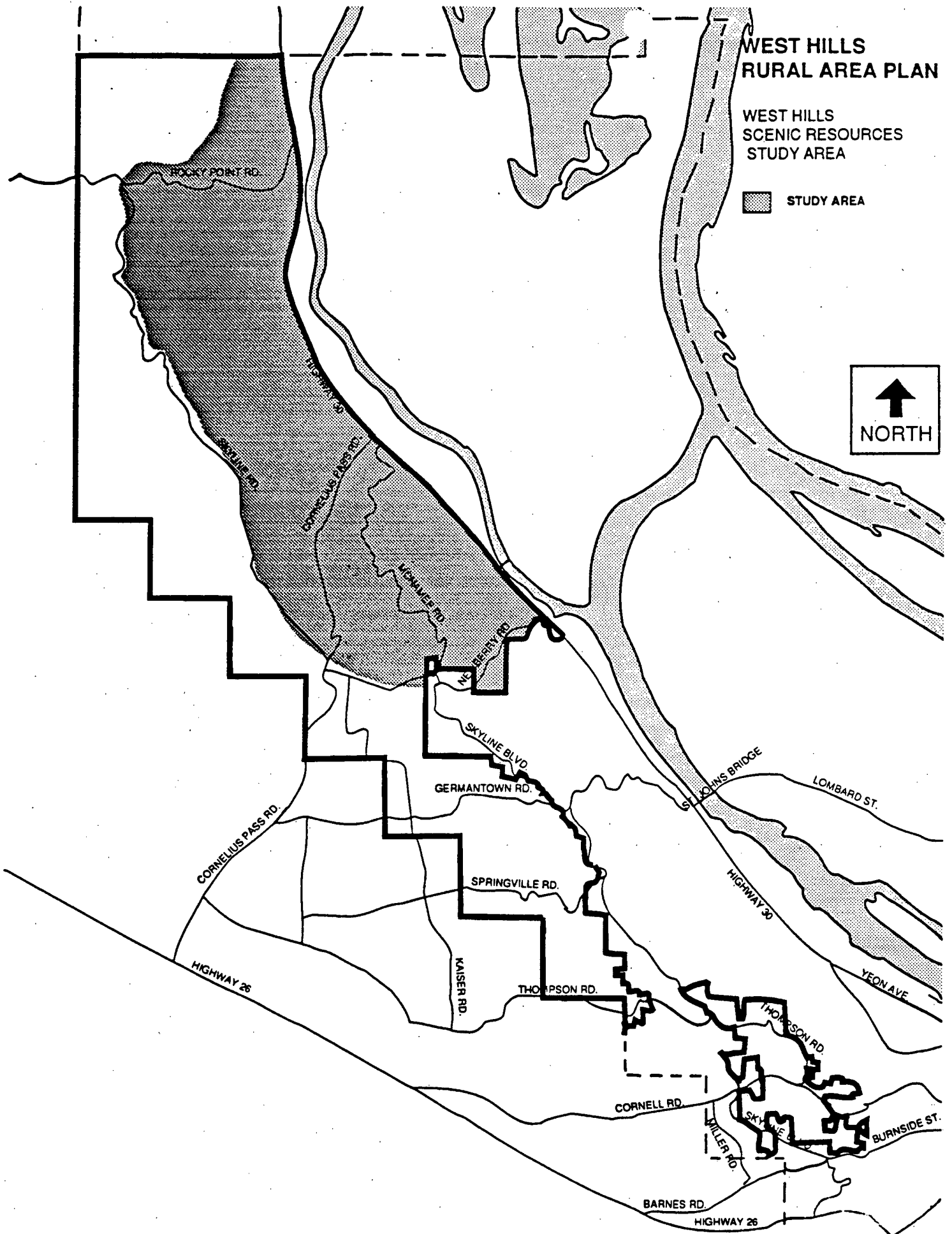
**TABLE and MAP**

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# WEST HILLS RURAL AREA PLAN

WEST HILLS  
SCENIC RESOURCES  
STUDY AREA

 STUDY AREA



## I. BACKGROUND

Multnomah County's Periodic Review Order was reviewed by the Land Conservation and Development Commission on April 23, 1993. The Commission found that amendments to the county's land use regulations are required in order to comply with Statewide Planning Goals (Remand Order 93-RA-876). The county had designated "Scenic Views West Hills" as a "1-B" (delay Goal 5) resource and indicated that resource identification and a protection program would be completed by early 1991. This work was never completed. Consequently, the county must now determine the extent and significance of visual resources in the West Hills. If a resource is not significant, it is designated 1A and no further action is required. If information on location, quality and quantity indicate that the resource is significant, it must be included in the Comprehensive Plan inventory, and the Goal 5 process (ESEE analysis and protection program) completed.

## II. RESOURCE DEFINITION:

Statewide Planning Goal 5 requires the county to inventory the location, quality and quantity of "outstanding scenic views and sites" (emphasis added). Scenic areas are defined in Goal 5 as "lands that are valued for their aesthetic appearance."

Scenic resources can be broken down into four categories:

**Key Viewing Area:** A viewpoint, travelway, park or other area open to the public that offers opportunities to view a significant scenic landscape or scenic feature.

**Scenic Landscape:** An area composed of a combination of landforms, vegetation and land use patterns which, when viewed from a distance, has an aesthetically appealing appearance.

**Scenic Feature:** A specific built object or natural feature that has aesthetic qualities, such as a bridge or waterfall.

**Scenic Corridor:** A public travelway which is significant based on its intrinsic aesthetic qualities and/or scenic views along it. May be a road, trail or navigable waterway such as a slough or river.

The West Hills study area is a scenic landscape. While the following analysis will consider the aesthetic appearance of the West Hills landscape from several different viewing areas, the significance of those viewing areas will not be considered as part of this report.

## III. LOCATION:

*OAR 660-16-000(2): For site-specific resources, determination of location must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.*



The area under consideration is within the West Hills Rural Study Area, but includes only that portion of the Study Area north of the Tualatin Mountains (West Hills) ridgeline. (The ridgeline roughly corresponds to Skyline Boulevard.) The area extends to Highway 30 on the north, and stretches from the Portland City Limits to the Columbia County line (see attached map).

#### IV. QUANTITY:

*OAR 660-16-000(3):...A determination of quantity requires consideration of the relative abundance of the resource (of any given quality).*

This analysis will only consider lands outside the Urban Growth Boundary (UGB). While scenic views exist in urban areas, their focus is usually on the city or on distant mountains. Natural appearing scenic landscapes, such as the West Hills, are almost exclusively located in non-urban areas. Total non-urban area of the county is approximately 252 square miles.

Large areas of Multnomah County have already been designated as scenic resources. The most extensive is the Columbia River Gorge National Scenic Area (NSA), which takes up 52 square miles of the county. The US Forest Service has also identified Larch Mountain as an important (Level 1) viewshed. The identified viewshed is 7977 acres, which can be seen from a 40 acre developed recreation area. However, almost all of this viewshed is within the NSA boundary, so it will not be considered separately for the purpose of considering quantity of scenic resources in the county.

The Sandy River Gorge is a designated state and federal scenic waterway. It is a six mile stretch of river between river miles 14 and 20, and includes 1/4 mile of land on both sides of the river channel. (The Sandy River from the scenic waterway to the Columbia River also has scenic qualities, but is part of the NSA.)

The Willamette River Greenway is recognized for its scenic values as well as its natural, historical and recreational qualities. The portion of the Greenway outside the UGB includes the northern portion of the Willamette River to its confluence with the Columbia, and the entire Multnomah Channel. The width of the Greenway varies, but the total non-urban area is approximately 10 square miles.

Rural agricultural and forested areas of the county are also considered to have scenic qualities, but have not been formally identified as significant. Based on EFU and CFU zoning, which only exist outside the UGB, agricultural and forest lands make up close to 90 percent of the non-urban land in the county. OAR 660-16-000(3) requires consideration of the total abundance of land which has scenic value, regardless of the quality of the resource. Using this approach, almost all of the non-urban land in Multnomah County could be considered to have some scenic value.

In order to narrow the focus of the quantity analysis, the West Hills scenic area can be compared solely to the three areas specifically recognized for their scenic value - the NSA, the Sandy River Scenic Waterway, and the Willamette River Greenway. The following table compares the sizes of these significant scenic areas with the West Hills study area.

TABLE 1.  
SCENIC RESOURCES IN MULTNOMAH COUNTY  
SIZE AND PERCENT OF NON-URBAN AREA

<u>SCENIC AREA</u>	<u>SIZE IN SQ. MILES</u>	<u>PERCENT OF NON-URBAN AREA</u>
Columbia Gorge NSA	52	21
Sandy River	3	1
Willamette River Greenway	<u>10</u>	<u>4</u>
TOTAL	65	26
West Hills	20	8

**SUMMARY:**

As the table above shows, just over 1/4 of the non-urban area of Multnomah County has already been recognized and protected because of scenic significance. If scenic resources were rare in the county, a higher value might be placed on the West Hills. But due to the relative abundance of land in the county recognized and protected for its scenic value, quantity alone does not make the West Hills significant pursuant to the quantity criteria of OAR 660-16. Significance can be more accurately determined by considering the quality of the resource.

**V. QUALITY:**

*OAR 660-16-000(3): The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself.*

**A. QUALITY CRITERIA**

Determining whether a site has significant scenic qualities is a subjective decision, based on individual ideas of beauty and enjoyment. A view some find beautiful may be uninteresting to others. However, certain attributes, or qualities which make a scenic view interesting, have been identified and used to classify scenic importance. Methods used by the US Dept. of Transportation, the US Forest Service, the Columbia River Gorge Commission and the City of Portland to determine scenic significance were reviewed. There was a great deal of similarity in criteria used by the different agencies. The following list is a combination of these criteria, which can be used to both describe and compare the scenic value of the West Hills with the scenic value of the other identified scenic resources.

Variety: A variety of visual features like landforms, waterforms, rock formations, and/or vegetation patterns are included in the kind of landscape that people find most visually appealing and interesting. May include the expectation of more information to be extracted from the view with additional time spent looking at it, or the potential for more

information when the viewpoint is changed. Includes distinctive or vivid visual patterns or dominant striking landmarks.

Intactness: The visual integrity of the landscape, or the degree of human modification that has occurred within the landscape. Major modifications may still rank high as long as the modifications fit into the context of the view.

Unity/Coherence: A view that appears to be part of a larger or extended landscape, exhibiting an internal unity that extends beyond the setting to imply continuity with other settings. The visual coherence and compositional harmony of the landscape. If the landscape is made up of different parts or patterns, they will appear to be linked forming one cohesive view. Transitions within the view will be harmonious and/or be expressed as patterns.

Viewing area importance/Accessibility: Viewed frequently and/or viewed by many people. Areas seen from well-travelled roads or places with high public use are more important than similar landscapes seen from less visited viewing areas. Ease of access, proximity. Viewing areas must be accessible to the public, and in the case of roads must have safe places to stop and enjoy the views.

## B. ANALYSIS OF WEST HILLS SCENIC QUALITIES

It should be remembered while doing the analysis of scenic values that Goal 5 only requires the county to recognize **outstanding** scenic areas.

Variety: The West Hills landform consists of the front of the Tualatin Mountains, a series of gentle mountains ranging in height from approximately 900' to 1500', with little variety in the landform. There are no visible rock outcroppings, waterfalls or other distinctive physical features to add variety. Vegetation in the area is mainly coniferous forest, interspersed with some deciduous trees. Logging activity has created variety in the vegetation pattern, with some areas heavily forested and other areas recently cut. This is an ephemeral quality, which will change over time as trees grow and new areas are cut.

Intactness: The amount of human modification that is visible depends upon the view point. From Hwy. 30, there is little scenic integrity. The view is mainly of the lower portion of the hillside, where there has been a substantial amount of development in the form of scattered houses, the Wildwood Golf Course, the Burlington community and several intersecting roads. Skyline Boulevard provides very little opportunity for intact landscape views, with immediate foreground vegetation and residential development making up the majority of the seen view. When viewed from a distance, such as from Gillihan Loop Road or the Sauvie Island Wildlife Refuge, the view expands. From this distance, the modifications caused by logging are very apparent. The BPA power line is very visible as it crosses the face of the hillsides. From the Pumpkin Patch and Gillihan Loop Road on the south end of Sauvie Island, the Angell Brothers quarry is highly visible, disrupting the intactness of the overall landscape. While logging activities are temporary and the vegetation can potentially be restored, the county has no control over forest practices. Consequently the patch-

work appearance caused by cutting trees will likely continue regardless of any action by the county regarding significance.

Unity/Coherence: The West Hills do exhibit unity and coherence, being part of a forested ridge which extends in both directions beyond the study area.

Viewing area Importance/Accessibility: There are no developed or recognized public viewpoints where the public goes to specifically view the West Hills. The area can be viewed in a very limited manner from Highway 30 and the Multnomah Channel, although in both places the immediate foreground vegetation and development are the dominant visual features. The best views are from Sauvie Island, where distance opens up a larger vista. The public areas along the west side of the island generally offer poor or very limited views of the West Hills. Views are available along Sauvie Island Road, the south and east portions of Gillihan Road and on Reeder Road, but these are narrow roads with limited areas where a car could safely pull over, or no stopping or parking allowed. This lack of safe places to stop makes these roads of limited value as viewpoints. There are only two other areas that offer a safe place to stop and view the West Hills landscape. Good views are available from the Pumpkin Patch, a private commercial fruit stand near the south end of the island. Views are also available from the wildlife refuge on Reeder Road. In most cases, however, people do not visit these places specifically to gain views of the West Hills. And it could be argued that the closer views of the Multnomah Channel and agricultural lands on Sauvie Island are more dominant scenic attractions, with the West Hills being a less significant backdrop.

### C. COMPARISON TO OTHER SCENIC AREAS

#### Columbia River Gorge and Larch Mountain:

Variety: The NSA contains a wide variety of landscapes and features. Landscapes range from river bottomlands to gorge walls, coniferous woodland to rural residential areas. A number of waterfalls and rock outcroppings provide striking visual appeal. Since I-84 extends through the length of the Gorge, there is a continuously changing vista with the expectation of new views as one travels east or west. The Larch Mountain area contains additional far-reaching vistas to the peaks of the Cascades, including views of Mt. Hood and Mt. Rainier.

Intactness: The Forest Service manages the NSA to retain naturally appearing vegetation patterns. Logging activities are strictly regulated to preserve the scenic qualities, with clear cutting not allowed in the most visible areas, so forested areas appear intact. There is human modification obvious in developed areas such as Corbett, agricultural areas and roads and parks, but overall the majority of the NSA has fairly intact scenic landscapes.

Unity/Coherence: The Multnomah County section of the NSA is part of the greater landscape of the Gorge. The visual coherence and unity of landscape features shows no fragmentation, and extends uninterrupted beyond mapped boundaries.

Viewing Area Importance/Accessibility: The US Forest Service identifies the Columbia Gorge and Larch Mountain as Level 1 Viewsheds. Viewsheds are identified in the following manner:

"Any landscape visible from designated travel routes or use areas is called a 'Viewshed.' The most heavily traveled routes, and the most popular use areas, are classified as Level 1 Viewsheds. Secondary routes and use areas less heavily visited by recreationists are classified Level 2 Viewsheds." (pg. 4-225, Proposed Land and Resource Management Plan, Mt. Hood National Forest, 1988.)

Thus both areas have the qualities of having high use, public accessibility, and well-travelled roads. The NSA has several very important viewing areas where enjoying scenic views is one of the primary reasons for visitation. These include Vista House, Rooster Rock and Multnomah Falls, among others.

#### Sandy River Gorge/Scenic Waterway:

Variety: The scenic waterway is located within a gorge, with walls rising up to 800 feet. In places, the canyon rises in a series of terraces. The river itself is a major visual feature. This combination of moving water, rocks, terraces and cliffs forms an interesting and varied landscape. Boaters have an increased benefit of viewing changes in the landscape as they move down river.

Intactness: There are few buildings or other built objects visible from the waterway. The landscape within the canyon is generally pristine in condition. Some degree of human alteration is visible due to past logging activities, where varying successional stages of forest cover exists. This alteration is temporary in the long run.

Unity/Coherence: Due to its very nature as a waterway, continuity is inherent. The gorge section is limited to the six mile stretch of the waterway, but the natural characteristics of the river and adjacent landscape extends the full length of the river.

Viewing Area Importance/Accessibility: The Sandy River and gorge receive heavy recreational use such as boating, fishing and swimming. There are several tracts of land along the river where there is access to river and gorge views, including Oxbow Park, the BLM's Sandy River Gorge Outstanding Natural Area, and the Nature Conservancy's Sandy River Gorge Preserve.

Willamette River Greenway: The Greenway falls into the category of a scenic corridor rather than a scenic landscape. The visual focus is the river and the immediate shoreline area, rather than the more distant, larger views associated with a landscape. Consequently the Greenway will not be used in the comparison of the quality of the West Hills with other scenic landscapes in the county.

#### **D. SUMMARY**

The Columbia River Gorge NSA has a variety of visual features, contains striking scenic features such as waterfalls and rock walls, receives a large number of visitors and has several important public viewing areas. The landscape is mostly intact, with little non-contextual human alteration. Unity and coherence are expressed by each view having an obvious connectedness with the rest of the gorge. It has outstanding scenic qualities.

The Sandy River Gorge Scenic River is made up of a canyon, terraces and the river, which make up an appealing variety of visual features. The landscape is visually intact except for some signs of logging activity. The gorge has a strong internal unity with continuity implied both up and down river beyond the actual boundaries of the scenic section. Heavy recreational use shows that the area is accessible and viewed frequently. It has outstanding scenic qualities.

The West Hills do not exhibit much variety of visual features, being fairly uniform in height and appearance. There are no striking landmarks or features. There has been some loss of intactness of the view due to roads, buildings, logging and mining. There are no important viewing areas where large numbers of people go to view the West Hills. The West Hills does not possess the scenic qualities to be considered outstanding.

#### **VI. CONCLUSIONS:**

An analysis of the quantity of identified scenic resources in the county shows that 26 percent of the non-urban area is of high scenic value. This relative abundance of scenic resources makes the West Hills less significant, unless the area is of such outstanding scenic quality that it warrants designation.

Analysis of the quality of the West Hills scenic landscape shows that it does not have outstanding scenic qualities due to a lack of variety and no striking visual features, obtrusive human alteration in the form of roads, buildings, logging and mining activities, and lack of safe, accessible, highly visited viewing areas. Compared to the scenic quality of the NSA and the Sandy River Gorge, which exhibit outstanding scenic qualities, the West Hills have less relative value.

Based on an analysis of the quantity and quality of the West Hills scenic landscape, and a comparison with other identified scenic areas in the county, the West Hills are not an outstanding scenic resource.

#### **RECOMMENDATION:**

Designate the West Hills 1A, not a significant scenic resource. No further action required by Goal 5.

## BIBLIOGRAPHY

"Draft Environmental Impact Statement", Proposed Land and Resource Management Plan, Mt. Hood National Forest, USDA Forest Service, 1988.

"Management Plan for the Columbia River Gorge National Scenic Area", Columbia River Gorge Commission, September 1992.

"Proposed Land and Resource Management Plan", Mt. Hood National Forest, USDA Forest Service, 1988.

"Scenic Views, Sites and Drives Inventory", Portland Bureau of Planning, City of Portland, March 1989.

"Visual Quality and Aesthetics", Technical Memorandum #20D, Tri-Met, February 1991.

OREGON ADMINISTRATIVE RULES  
CHAPTER 660, DIVISION 16 — LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 16

REQUIREMENTS AND APPLICATION  
PROCEDURES FOR COMPLYING WITH  
STATEWIDE GOAL 5

**Inventory Goal 5 Resources**

660-16-000 (1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant", or an open space area is "needed", or a scenic area is "outstanding", as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable".

(4) The inventory completed at the local level, including options (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of adequacy may be raised by the Department or objectors, but final determination is made by the Commission.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) **Do Not Include on Inventory:** Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information.

(b) **Delay Goal 5 Process:** When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed

through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment.

(c) **Include on Plan Inventory:** When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Identify Conflicting Uses**

660-16-005 It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(1) **Preserve the Resource Site:** If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which insure preservation of the resource site.

(2) **Determine the Economic, Social, Environmental, and Energy Consequences:** If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Develop Program to Achieve the Goal**

660-16-010 Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal". Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and



**OREGON ADMINISTRATIVE RULES**  
**CHAPTER 660, DIVISION 16 — LAND CONSERVATION AND DEVELOPMENT COMMISSION**

conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2) and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) **Protect the Resource Site:** Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-16-000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and planland zone designations must be consistent with this decision.

(2) **Allow Conflicting Uses Fully:** Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) **Limit Conflicting Uses:** Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Post-Acknowledgment Period**

660-16-015 All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-16-000(5)(a), 660-16-005(1), and 660-16-010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

If the local government has included in its plan items under OAR 660-16-000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the

Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Landowner Involvement**

660-16-020 (1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

**Policy Application**

660-16-025 OAR 660-16-000 through 660-16-025 are applicable to jurisdictions as specified below:

(1) **Category 1:** Compliance with OAR 660-16-000 through 660-16-025 is required prior to granting acknowledgment of compliance under ORS 197.251 and OAR 660-03-000 through 660-03-040 for those jurisdictions which:

(a) Have not submitted their comprehensive plan for acknowledgment as of the date of adoption of this rule;

(b) Are under denial orders as of the date of adoption of this rule;

(c) Are not scheduled for review prior to or at the June 1981 Commission meeting.

(2) **Category 2:**

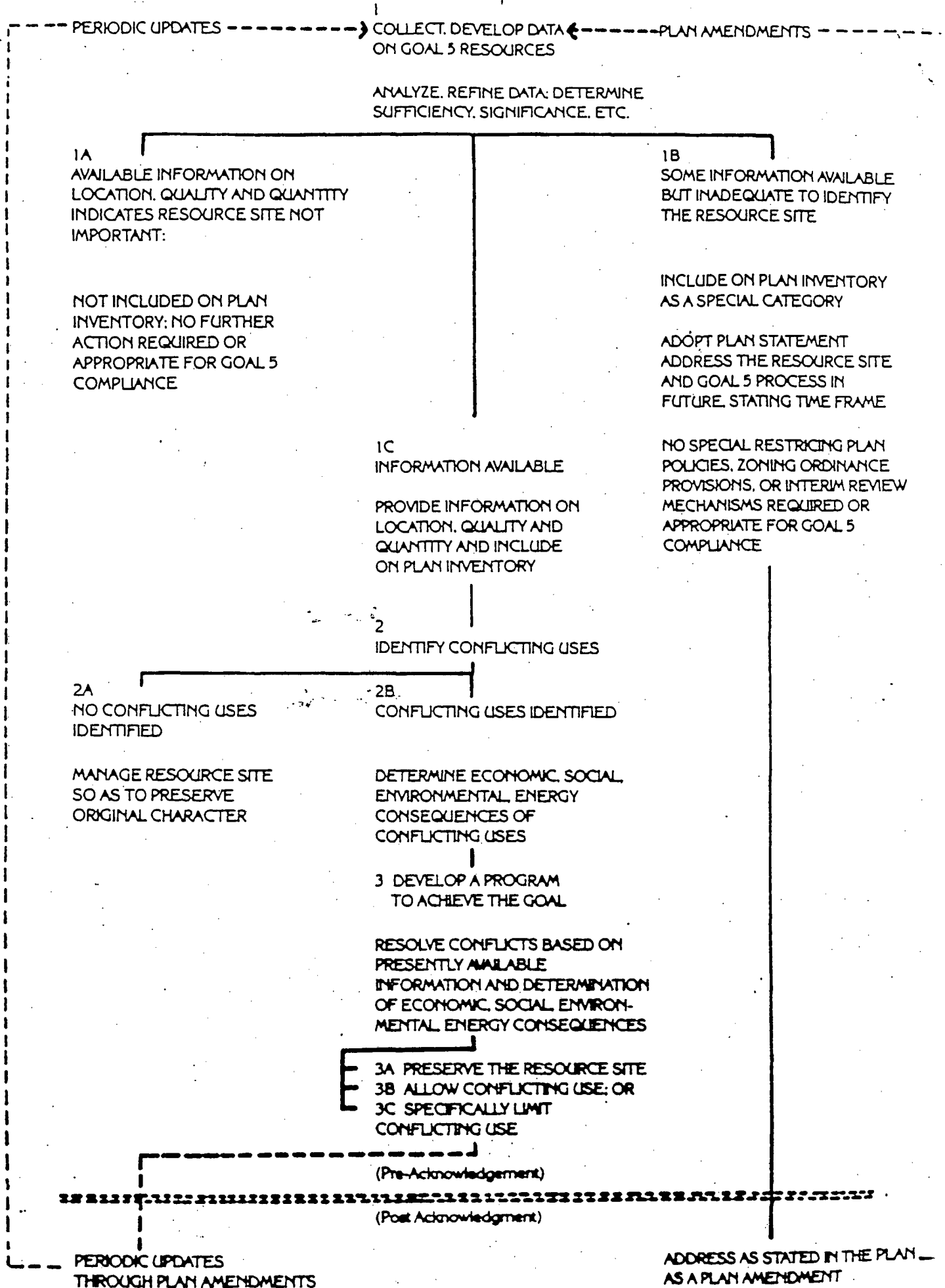
(a) Compliance with OAR 660-16-000 through 660-16-025 is required as outlined below for those jurisdictions which:

(A) Are under continuance orders adopted pursuant to OAR 660-03-040;

(B) Are scheduled for review at the April 30/May 1, May 29 or June 1981 Commission meetings.

(b) For these jurisdictions a notice will be given to all parties on the original notice list providing a 45-day period to object to the plan based on OAR 660-16-000 through 660-16-025.

(c) OAR 660-16-000 will be applied based on objections alleging violations of specific provisions of the rule on specific resource sites. Objections must be filed following requirements outlined in OAR 660-03-000 through 660-03-040 (Acknowledgment of Compliance Rule). Where no objections are filed or objections are not specific as to which elements of OAR 660-16-000 through 660-16-025 have been violated, and on what resource sites, the plan will be reviewed against Goal 5





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

September 1, 1993

MEMORANDUM

To: Planning Commission

From: Sandy Mathewson, Planner

Re: C 3-93. Written comments, staff response

As of August 31, 1993, sixteen written comments had been received concerning the county's Goal 5 scenic resource review of the West Hills. This includes written material submitted at the August 2 public hearing. Copies of this information have been forwarded to you.

Additional written testimony may be submitted until September 3, 1993. Any material received between the date of this memo and September 3 will be identified at the September 7 Planning Commission meeting.

Of the written comments received, ten were in support of designating the West Hills as a significant scenic resource, four were opposed, and two did not offer an opinion concerning designation. (Review of the transcript of the August 2 hearing shows that an additional four people testified in favor of significance but did not submit written comments, and seven people testified in opposition to significance.)

OAR 660-16-000 requires the county to analyze whether a scenic area is "outstanding", based on location, quantity and quality. This memo will respond primarily to the written comments that address these three criteria. Comments received are quoted below in *italic*, followed by staff response.

LOCATION:

*"Skyline is a designated "Scenic Drive" with good reason. It is beautiful!" (Robens Napolitan)*

*"...consideration of maintaining the significant ...scenic resources that we pass through as we travel the area. The beautiful natural drives along Cornell Road and Skyline Blvd have refreshed and revived my spirit many thousands of times..." (Mary Bywater Cross)*

*"Scenic Corridor applies; the entire Multnomah Channel is a scenic corridor (Staff Report p.4), its most important terrestrial feature being the West Hills." (Arnold Rochlin)*

*"The greatest scenic values of the Tualatin Mtns. are the exceptional views seen from vantage points along Skyline Blvd....The Tualatin Mtns. do offer a lot of nice scenery to drive through as well as a back drop for the City. However, I have found that the most spectacular attraction offered is the views, not of, but from the crest of the Tualatin Mountains. (Owen Cramer)*

*"....the value of the West Hills to the metropolitan area as an important component of the local landscape. Any metropolitan area in the nation should be proud to have a resource such as the West Hills. Imagine Portland without Forest Park as a steep, green slope forming the background of the city." (Richard Shaffer)*

Although a written description and map were part of the Staff Report, it appears that a number of commentators were unclear as to the location and boundary of the study area. The study area is north of the urban growth boundary. It is not visible from the Portland metropolitan area. It does not include the Multnomah Channel. It does not include Forest Park. It does not include, and is not visible from, the portions of Cornell Road and Skyline Boulevard that the city of Portland have designated as scenic drives. And the present study considers only whether the northeast face of the West Hills are a significant scenic landscape. Views from the West Hills to other landscapes are not part of this study. Consequently, none of the above comments pertain to the present Goal 5 study.

#### QUANTITY:

*"The concept of relative abundance of resources within a jurisdiction, as an inventory step of OAR 660-16-000, should not be considered as a measure of significance. An area of human occupancy with a paucity of scenic resources is a much less desirable place to live and work than one with a plethora of scenic resources." (Richard Shaffer)*

Regardless of whether one feels relative abundance is an adequate measure of significance, OAR 660-16-000 states that a valid inventory of a Goal 5 resource must include a determination of the location, quality and quantity of the resource site. A determination of quantity requires consideration of the relative abundance of the resource. An inventory does not comply with Goal 5 if it does not adequately address all three criteria. The Staff Report adequately considered the relative abundance of scenic resources in the county, as required by OAR 660-16.

*"Staff tries to minimize the importance of the West Hills by showing how much other rural land has been blessed with scenic value. Among other things, staff suggests we don't need the West Hills scenic value because we have the nearby Willamette Greenway." (Arnold Rochlin)*

The Staff Report considered the amount of land designated as scenic in the unincorporated areas of the county. The conclusion reached was that the relative abundance of scenic resources in the county makes the West Hills less significant based on quantity alone. Proximity of the West Hills to the Willamette River Greenway was not considered.

## QUALITY:

The Staff Report suggested using four criteria (variety, intactness, unity/coherence, and viewing area importance/accessibility) in considering the quality of the West Hills scenery. These criteria were a compilation of criteria used by various other governmental agencies. Comments relating to these criteria are categorized below.

### Variety:

*"....the hills are an essential backdrop for the beautiful views on Sauvie Island. The contrast of the hills provides exactly the variety of image that makes the scenic value of Sauvie Island and the Channel so high." (Arnold Rochlin)*

*"A study of the West Hills for their scenic qualities should have as a significant part of its context the Willamette River....The section of the West Hills associated with the viewshed of the Multnomah Channel and in particular Wappato State Park has a landform feature that provides greater diversity than other segments. The West Hills provides a skyline relief that is observable from the state park....It is that combination of being in a natural park setting, with a water interface and meditative view of a continuing landscape that makes the West Hills an integral scenic feature of the Greenway area..." (Oregon Parks and Recreation Department)*

*"The Tualatin Mountains are an extraordinary panorama of almost entirely green mountains that form the backdrop for Sauvie Island..."(Sauvie Island Conservancy)*

*"I do not agree with the staff report statement that these hills offer "little variety in landform." They have moderately steep slopes, well defined drainage dissection, and a mix of conifer and deciduous trees, which are common within the character type....While the West Hills do not exhibit "unique" scenic variety, they do exhibit a very good and typical variety for hills and mountains in the Willamette Basin. It would be inventoried as Variety Class B (common) if it were within the National Forest." (Richard Shaffer)*

The Staff Report considered the variety of the landform and vegetation of the West Hills themselves, not the combination of the West Hills with other landscapes and features outside the study area. The study area would have to be modified to include the Multnomah Channel and Sauvie Island if these areas are to be included in the analysis as suggested by the first two comments. Comments regarding the West Hill's value as a backdrop seems to imply a lack of visual variety unless the Hills are considered as part of a larger, more distant view. None of the comments indicated that there are any vivid visual patterns, dominant striking landmarks, water or rock formations to add visual variety. Staff agrees with the last comment, that the scenic variety of the West Hills is not unique or outstanding.

Intactness:

*"...the question of whether it is a significant view in the county should not be based on whether the hills have been clearcut in the past or in the future." (Audubon Society of Portland)*

*"....staff argues that development and logging have demeaned the value. That's true, but it hasn't demeaned it so much that it's not valuable." (Arnold Rochlin)*

*The most obvious alterations to the hills in question are caused by timber harvest. The powerline is evident from some viewpoints, but does not dominate the scene...The scenic qualities of the views, particularly from Sauvie Island, have been reduced. The patterns created by the clearcuts are not in harmony with the natural landscape character. No doubt such practices will continue in this area...The staff report implies that the area should not be considered significant because it has no control over logging activities. That should not be an inventory criteria." (Richard Shaffer)*

The Staff Report (pg. 6-7) recognizes that logging activities are temporary and vegetation can be restored, but also notes that the patchwork appearance caused by cutting trees will likely continue since the county has no control over forest practices. Logging was only one of the reasons Staff concluded that the West Hills are not intact. Other reasons include housing development, roads, the Angell Brothers Quarry and the BPA powerline.

Unity/coherence: No comments addressed this criteria.

Viewing area importance/Accessibility:

*"As to the scenic aspects, these may only be appreciated from a few vantage points, mostly from the houses in the area." (Dr. M.A.K. Khalil)*

*"...any scenic value, i.e. as seen from Hwy 30 or any place on Skyline Boulevard is non-existent." (Wesley Knauf)*

*"...does not consider the fact that waterways are public areas, from which the view of the West Hills is deeply satisfying and lovely. These waterways constitute a major part of the landscape from which the West Hills are seen. They include the Willamette River, the Columbia River, and the Multnomah Channel. They are obviously public." (Friends of Forest Park)*

*"The Staff Report talks about the lack of public viewing of the West Hills. This is completely incorrect. The Staff Report doesn't even mention the Wappato Access Greenway State Park..." (The Sauvie Island Conservancy)*

*"The viewshed is significant to various highly used public areas in Multnomah County. Smith and Bybee Lakes, Sauvie Island Wildlife Refuge, Burlington Bottoms, Bybee Howell Marsh, Heron Lakes Golf Course, Kelly Point Park, and Hayden Island all depend on preserving the scenic character of the NW Hills. The green forested hills are an integral part of the view from each of these locations."  
(Audubon Society of Portland)*

*"The West Hills are very visible from a number of very popular public use areas; including Sauvie Island, Kelley Point Park, the Willamette River, and Multnomah Channel. On Sauvie Island there are several sites where the public visit in great numbers: Bybee-Howell House, the Pumpkin Patch, the Sauvie Island Wildlife Area (with parking and fully accessible path), Wapato Access Greenway and Virginia Lake. All provide excellent views of the West Hills. In addition, thousands of people travel Sauvie Island, Reeder and Gillihan Roads by car and bicycle. It is not necessary that there be places to pull over and stop to enjoy the view. The West Hills form a scenic framework for the Island and the river channels, and no doubt the visitors are aware of it, whether consciously or not. Contrary to the staff report...the vast majority of views to the west are dominated by the West Hills."  
(Richard Shaffer)*

The main premise of the Staff Report regarding viewing area importance (pg. 7), is that there are no developed or recognized public viewpoints where the public goes to specifically view the West Hills (as compared to places like Vista House and many of the waterfalls in the Columbia River Gorge, where scenic viewing is the primary reason for the visit). Viewing the scenery of the West Hills is not the primary reason that people visit the areas mentioned in comments.

An additional consideration which some commentators felt was not adequately addressed in the Staff Report, is the proximity of the West Hills to the Portland metropolitan area:

*"This area is scenic, and of special value for its proximity to the metropolitan area."  
(Arnold Rochlin)*

*"The Report also ignores the remarkable nature of having such a green mountain panorama on the very outskirts of downtown Portland..." (The Sauvie Island Conservancy)*

The West Hill's study area begins approximately 9 miles from downtown Portland. As stated previously, the West Hills are not visible from downtown. Proximity to the city is very difficult to quantify, unless there is a determination of where the measurement of distance begins. If the entire Portland urban area is considered, the distances to any of the scenic areas used for comparison in the Staff Report is minimal.

A comment was received disagreeing with the Staff Report's comparison of the West Hill's scenic quality with the quality of other scenic landscapes in the county:

*"...it is very important that the variety of a landscape be compared within its own physiographic province, or in other words, the characteristic landscapes in that area...Sites from different character types cannot be fairly compared. To do so would be unfair...It is not technically correct to compare the eastern face of the Tualatin Mountains with the Cascade Mountains because they are two different landscape character types...I maintain that only sites within the same character type can be fairly compared as the same resource." (Richard Shaffer)*

OAR 660-16-000 states that "the determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself." The Staff Report categorized the West Hills as a scenic landscape (as opposed to a viewing area, scenic feature or scenic corridor), and went on to do a comparison with other scenic landscapes in the county. This was based on the method used by the city of Portland's scenic area studies. Portland categorized scenic resources into panoramas, views of the city, views of mountains, views of bridges, scenic sites and scenic corridors. Each resource was then considered and compared within its own category, with no cross comparison between different categories. Staff feels this is a valid method of complying with OAR requirements. The method suggested by Mr. Shaffer results in a rating within a specific landscape character type. But the possibility exists that nothing within that character type has outstanding scenic value. Even the highest quality scenery within a specific landscape character type may not be of sufficient value to warrant designation under Goal 5. The method of comparing the scenic quality of the West Hills with other scenic landscapes is valid and more appropriate for Goal 5 purposes.

#### OTHER COMMENTS:

*"Influences outside the corridor [Willamette River Greenway] and the landform outside the corridor are of significance to the experience and setting within the corridor....the West Hills [are] an integral scenic feature of the Greenway area and helps compensate for the often degraded manmade landscape along the shoreline...The West Hills contributes to the trip expectation, i.e. destination planning, is an important part of the travel experience, and creates a landform variety that ties the experience together." (Oregon Parks and Recreation Department)*

*"...importance to the scenic views of Sauvie Island and the Willamette River Greenway." (Sauvie Island Conservancy)*

*"The viewshed is significant to various highly used public areas in Multnomah County...The recreational value of these areas is enhanced by the view of the west hills, and would be diminished if the SIGNIFICANT designation is not recommended for this resource." (Audubon Society of Portland)*



The influence and/or importance of the West Hills scenery to other areas and recreational activities will be considered as part of the ESEE analysis if the West Hills are found to be significant. It is not a consideration under the location, quantity and quality criteria used to determine significance.

*"...staff emphasizes the word outstanding used in a Goal 5 statement of which scenic views and sites are to be inventoried (p.3). But, the state's Goal 5 definition of scenic areas is not in bold face: 'Scenic areas are defined in Goal 5 as "lands that are valued for their aesthetic appearance"' (p.3). That's the entire, unabridged definition. Surely you have to say the West Hills are "lands that are valued for their aesthetic appearance"."* (Arnold Rochlin)

*"Your attention is invited to the second paragraph of Goal 5..."Programs shall be provided that will: ...(3) **promote healthy and visually attractive environments in harmony with the natural landscape character.**" (emphasis added) This statement should suggest that jurisdictions should be doing a complete visual resource inventory, rather than looking only for another unique or "outstanding" landscape that everyone had somehow overlooked. It should suggest that the county would include in the inventory all those scenic landscapes that people consider important to their quality of life." (Richard Shaffer)*

Goal 5 defines scenic areas, and states that outstanding scenic areas shall be inventoried. OAR 660-16-000 states that local governments must analyze whether "...a scenic area is 'outstanding'." While the county might have the option to consider all areas that have scenic value (which would include most of the county), we are only required to inventory those areas that are outstanding.

July 23, 1993

Sandy Mathewson, Planner  
Department of Environmental Services  
Division of Planning and Development  
2115 S.E. Morrison St.  
Portland, OR. 97214

PARKS AND  
RECREATION  
DEPARTMENT

Re: West Hills Scenic Resources Study

REGION 1 OFFICE

Dear Ms. Mathewson;

I have reviewed the staff report regarding the West Hills Scenic Resources Study and would like to comment on the study as it relates to the Willamette River Greenway and in particular the Wappato Greenway Access (Virginia Lakes) State Park on Sauvie Island.

One of the goals of the Willamette River Greenway plan and the statewide planning goal, Goal 15, is to protect, enhance and maintain the natural, scenic, and recreational qualities of lands along the Willamette River. A study of the West Hills for their scenic qualities should have as a significant part of its context the Willamette River. The staff report fails to acknowledge the significance of the Willamette River as a scenic resources except as a greenway corridor. Influences outside the corridor and the landform outside the corridor are of significance to the experience and setting within the corridor. I would request that the West Hills Study take a more comprehensive look at the influence of the Willamette River.

The West Hills is also an important cultural landscape for the city of Portland. The mix of transitioning from the cultural landscape to a more natural, river greenway landscape needs to be considered in determining local significance of the West Hills for scenic protection.

Comparing the West Hills to the Columbia River Gorge is therefore out of context except as an inventory. The determination of scenic significance for the West Hills is one of local significance not national significance.

The section of the West Hills associated with the viewshed of the Multnomah Channel and in particular Wappato State Park has a landform feature that provides greater diversity than other segments. The West Hills provides a skyline relief that is observable from the state park riverside trail system within a natural setting. It is that combination of being in a natural park setting, with a water interface and meditative view of a continuing landscape that makes the West Hills an integral scenic feature of the Greenway area and helps compensate for the often degraded manmade landscape along the shoreline.

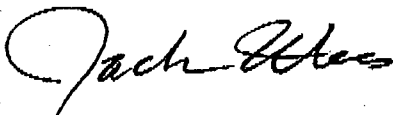


3554 SE 82nd Avenue  
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73410-801

Sauvie Island and Wappato State Park is an open space refuge for the city of Portland. It is the natural setting, opportunity to view interesting and varied landscapes and open space areas, the ability to access the river for a riverside walk, and to remove oneself from the confines of the enclosed urban landscape that draws people to the Island. The West Hills are an integral part of that experience and represents a significance landscape setting. The West Hills contributes to the trip expectation, i.e. destination planing, is an important part of the travel experience, and creates a landform variety that ties the experience together. In order to determine if the West Hills is a resource of local significance, then significance should be judged based in part on the experience setting.

I would request that the West Hills Scenic Resource Study take into account the significance of the local setting, the relationship to the Willamette River Greenway, the attraction of Sauvie Island and the landform nature that the West Hills contributes to that attraction, and finally, the importance that the West Hills contributes to the cultural and natural history identity of Portland.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Wiles".

Jack Wiles  
Northcentral Region Manager

Multnomah County Planning Commission

October 12, 1993

Public Hearing: Scenic Designation: West Hills Study Area

E. Callison (Vice-Chair, S W Neighborhood Assoc. Parks Committee)

I urge the Planning Commission to designate the West Hills Study Area a significant scenic resource.

The C 3-93 Staff Report to the Commission to deny status is objectionable in a number of ways, and its conclusion should be rejected.

Objections to the Staff Report are:

- 1) It is not coordinated with adjacent city and county resource uses.
- 2) It lacks technical referencing.
- 3) It shows no basic understanding of the soils, geomorphology, topography, history or actual appearance of the study landscape.

In the following report, I will detail these three major objections. I will also submit to the Commissioners' inspection, photographs of the area (taken within the area); and alternate research data including several descriptions of real estate from Oregon Multiple Listings, the Portland Planning Commission's Scenic Views, Sites and Corridors scenic resources protection plan, and the Scenic Resources Inventory Map, and a geomorphic description from the Soil Survey of Multnomah County, Oregon.

Objection 1) Report does not attempt coordination with other jurisdictions and plans:

At no time was there an attempt to engage cooperation between the relevant planning staff, parks staff or to attain coherence in plans between Portland, or Washington and Clark Counties, though state Goal 2 requires that plans...be coordinated with those of other jurisdictions and agencies...(Summary: Goal 2)

In determining quantity of scenic resources designated by Multnomah County, comparisons were made in the staff report with the Columbia Gorge and the Sandy River Gorge. However these areas have federal and state scenic designations, and were evaluated with federal and state guidelines. Multnomah County planners should not

claim them as part of the territory which the County protects. (There are other problems with the planners analysis of quantity determination, but I will limit my remarks to describing the worst cases.)

Scenic Drive status for three roadways end at boundaries between Mult./Washington Counties, and Mult. Co./Portland. Therefore Multnomah County Planning at present adversely impacts the "unity/coherence" of scenic resources of both Portland, and Wahington County. (Staff Rpt., p. 6)

Without elaborating on motives, it would appear that Multnomah County has no intention of complying with statewide planning goals to protect scenic resources. Long overdue by County planners as well, are archeological, historical, and cultural resource studies of the west hills, and these too are recommended in Goal 5.

Objection 2: Lack of technical referencing.

I respectfully suggest the County planners obtain testimony from professional artists and art historians to inform any future plans or reports attempting to assess scenery. The accomplishment of artistic works, in this case landscape painting or photography, is based on knowlege of artistic technique as well as personal talent. The planner responsible for your study report admitted she had no artistic background, nor had she attempted to obtain the opinion of artists as a reference for creating the categories used to define the nature of the scenic resource, or establishing criteria for assessing quality, or making the concluding assessment of the resource.

Your planner appeared to have only driven a North-South circuit around the resource area, on Skyline and Highway 30. However the best viewing areas are in the East-West crossing roads which run up or down the canyons.

For example, the planner omitted in her map of the study area one of the most scenic and historic roadways through the west hills: the Logie Trail. This roadway runs East-West from Skyline to Highway 30. It includes spectacular, cliff-hanger views from the forested ravines of the Tualatin Mountains to the lowlands and meadows in the northern study area.

There are a number of roadways through the west hills, and one does not have to get out and admire the view for a required length of

time, in order to appreciate the beauty of the scenic vistas. One may prefer instead to walk, and therefore will not need turnouts or viewpoints capable of parking a car or tourbus. One can simply stop and look, or indeed, continue walking, while looking. One may appreciate a view while biking. The planner who wrote the study report did not consider these options. (Staff Report, p. 7)

Another thing your planner did not consider is that Oregonians do not necessarily want hordes of international tourists cruising and busing through all the scenic attractions. Solitude, or company restricted to a few friends, greatly aids an experience of the outstanding scenic beauty of the west hills, and indeed the particular charms of much of Oregon.

An assessment of merit of a scenic landscape or corridor should be informed by opinions from practitioners in the field of art--just as real estate evaluations are done best by trained, experienced property assessors. This will not address the problem of whether one loves, hates, or is simply indifferent to the scenery or property. Your staff appears to be indifferent to the scenery of the west hills. (Staff Report, p. 5)

A subjective evaluation based on an attitude of indifference, is not equivalent to objectivity in decision-making. It is crucial that you get technical assessments from the artistic community in order to even approach a condition of objectivity.

My grandparents settled in St. Johns in 1915, and I lived at various times in my grandmother's house on Willamette Boulevard. Many times I drove across the St. John's bridge, between the west hills and the river and out along Sauvie's Island. It is always a shock to notice the Angell quarry, and the clearcuts, on these prehistoric hills.

The sight of the west hills is still beautiful to me, though, and it surprises and pains me to read the quibbles of county planners over whether this place that I love, is sufficiently "outstanding" to be accorded the respect of scenic designation. When someone does not see beauty in a true Oregon landscape, then no checklist of attributes will convince. And when one loves a subject, regardless of a few ravages, one still sees the beauty.

Long before my grandparents moved to St. Johns, but still only 150 years ago, a great population of Indians occupied the local hills and riverbanks--of a concentration here in the Columbia/Willamette river confluence that was more numerous than anywhere else in

America. Perhaps present-day Indians would have some opinions on the scenic significance of the west hills, if only they were asked.

Another perspective on the merits of a scenic landscape or corridor is that of real estate agents: in the attached descriptions from the Oregon Multiple Listings book, dated Oct. 7, 1993, properties are described as having "knock your eyes out view!...unbelievable view !...wild flowers in open fields, woods, distant views of water and mountain peaks!....serenity...zoned wildlife preserve...great view!...800 trees planted in 1983..."

Objection 3: study shows lack of understanding of topography, geomorphology and general landscape quality.

Your west hills study planner wrote a seven page staff commentary of the study area, which recommended denial of scenic status. Planner then added an equal amount--another seven pages--of staff refutations of public testimony favoring scenic designation (given at Aug. 2, 1993 Hearing). The planner made objection in the rebuttal section to citizens' descriptions of viewpoints in or near the study area.

Whether to be in the viewing area, viewing out; or to be outside the viewing area, viewing in, became a source of contention to the staff planner. If the staff planner had actually explored all the roads through the resource area, or had hiked some of it, this contentiousness would not have occurred.

The planner arbitrarily created standards for analyzing scenic landscape. For example, for "variety" as a prerequisite, the planner stated: "...a variety of visual features like landforms, waterforms, rock formations, and/or vegetation patterns...the kind of landscape that people find most visually appealing...May include the expectation of more information to be extracted from the view with additional time spent looking at it, or the potential for more information when the viewpoint is changed." (Staff Rpt., p. 5)

A good way to change one's viewpoint about the study area is to research its geomorphology in the U.S. Soil Conservation Service's Soil Survey of Multnomah County, Oregon, which is not referenced in the Staff Report. According to the geomorphic map, the study area comprises several ancient land surfaces. They are termed Eola, Senecal, Looney and Dolph. ( Following descriptions excerpted from Soil Survey, 1983)

The Senecal geological episode is preserved as a few terrace remnants along major streams deeply incised below the former late Pleistocene valley floor. Elevation ranges from 200 to 300 feet.

An underlying structure of fault-blocks and linear folds may have produced the initial step-sequence, along the Tualatin Mountains anticline, with subsequent onlap of Pleistocene sediment. These blocks form the core upon which the Bethel and Dolph surfaces developed.

The Dolph surface is the second oldest group of landforms in the survey area (entire Multnomah County). Topography of the Dolph surface varies but is well above the general level of valley floors. This surface occurs as remnants of extensive flats that have been dissected to form rolling topography. Landforms consist of a complex group of terraces, pediments, and upland remnants. The Dolph surface is underlain by bedrock, weathered gravel, saprolite, or clay deposits. The Dolph surface is considered to be middle Pleistocene because of its position in the landscape and the degree of weathering of underlying materials. Elevation commonly ranges from 450 to 600 feet.

The Eola surface consists of erosional remnants of the oldest stable geomorphic surface in the survey area (entire Mult. Co.). The crests and upper parts of...the Tualatin Mountains are representative of Eola. Typical remnants are rounded hills and valleys, and hanging valleys are common. Relief of the Eola surface is moderate; it ranges to as much as 150 feet. Slopes range from 2 to 20 percent, and elevation generally exceeds 600 feet.

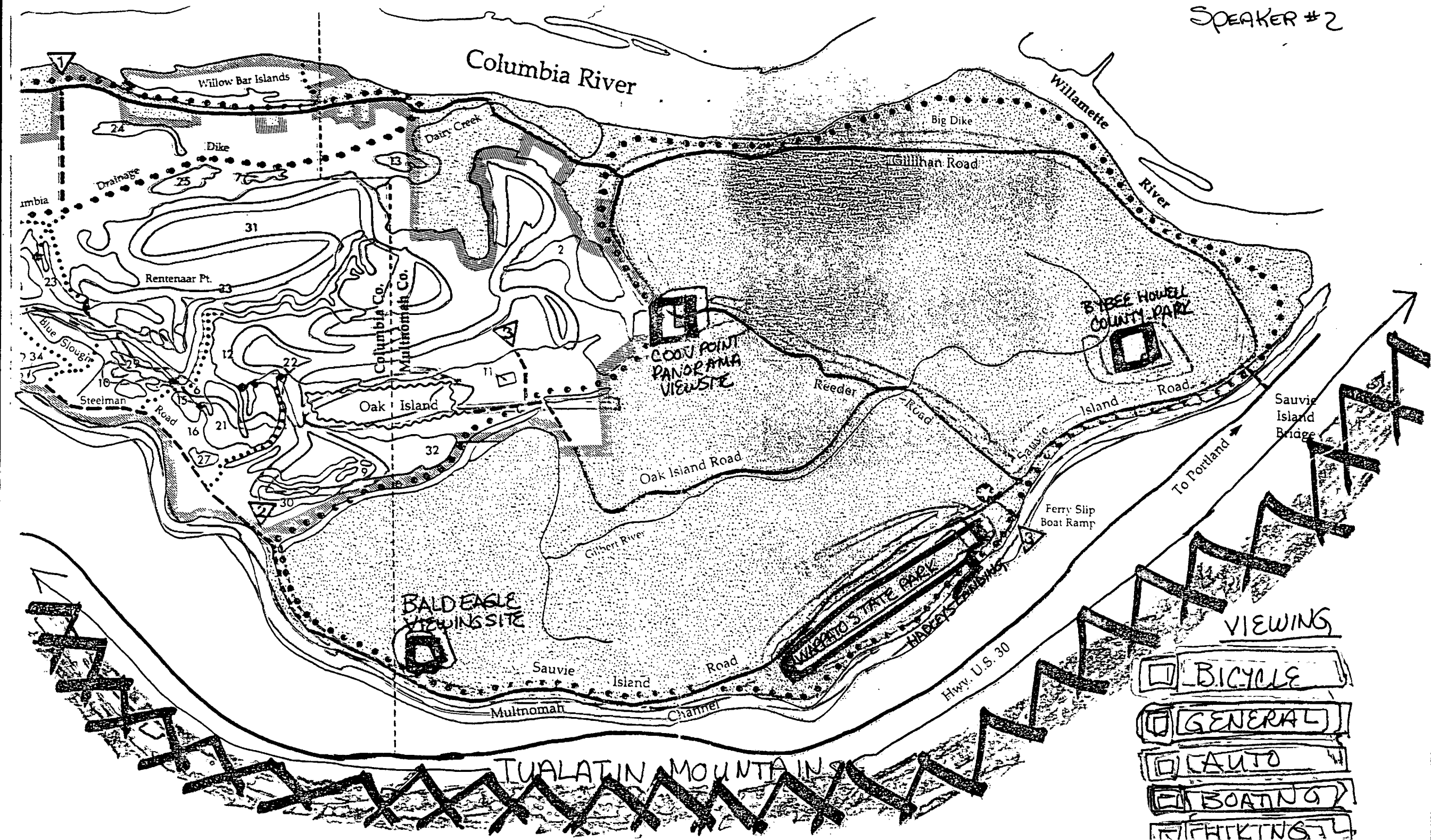
The Looney unit is not considered a geomorphic surface, as it has no designated age connotation. The characteristic topography is completely dissected and predominantly steeply sloping. Slope gradient exceeds 100 percent in places. The steep, broken topography may join any other two surfaces, or it may make up large area of mountainous terrain so thoroughly dissected that a geomorphic surface is not recognized. Erosion is active in much of the Looney unit, and in some areas mass movement is evident. In some areas, occasional remnants of some older geomorphic surfaces are present.

In an objective sense, it would seem that the study area does not lack variety.

I strongly hope the Multnomah County Planning Commission will grant Scenic Landscape designation to the West Hills study area.



SPEAKER #2



# PORTLAND PARKS AND RECREATION



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CHARLIE HALES, COMMISSIONER

CHARLES JORDAN, DIRECTOR

October 12, 1993

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

Dear Commissioners:

Calling your attention to the matter of West Hills Study Area Scenic Resources Determination of Significance, I ask you in this case to reject the Multnomah County Planning Commission's recommendation. The Planning Commission, I believe, concluded incorrectly that the West Hills area north of Forest Park was not a significant scenic resource. Viewing the County's portion of the West Hills from Kelley Point Park and from Smith and Bybee Lakes, it's simply impossible to accept that this is not a scenic resource. I suspect that many who view the West Hills from these vantage points and other points in North Portland believe that they are looking at Forest Park. As the attached map points out, what dominates the view from this area is the great mass of land north of Forest Park... the area that you are considering today. Your determination today should be that the West Hills Study Area is a significant scenic resource. Such a determination would simply give this scenic resource fair consideration in future land use deliberations.

Secondly, I ask that you accept the recommendation presented by the Multnomah County Planning Commission regarding the significance of wildlife habitat in the West Hills Rural Area. In this case, I believe that both County Planning and Development staff and the Planning Commission have correctly found that significant wildlife habitat covers most of the West Hills Rural Area. This finding is consistent with our own findings in Forest Park which is even more proximate to heavily urbanized areas.

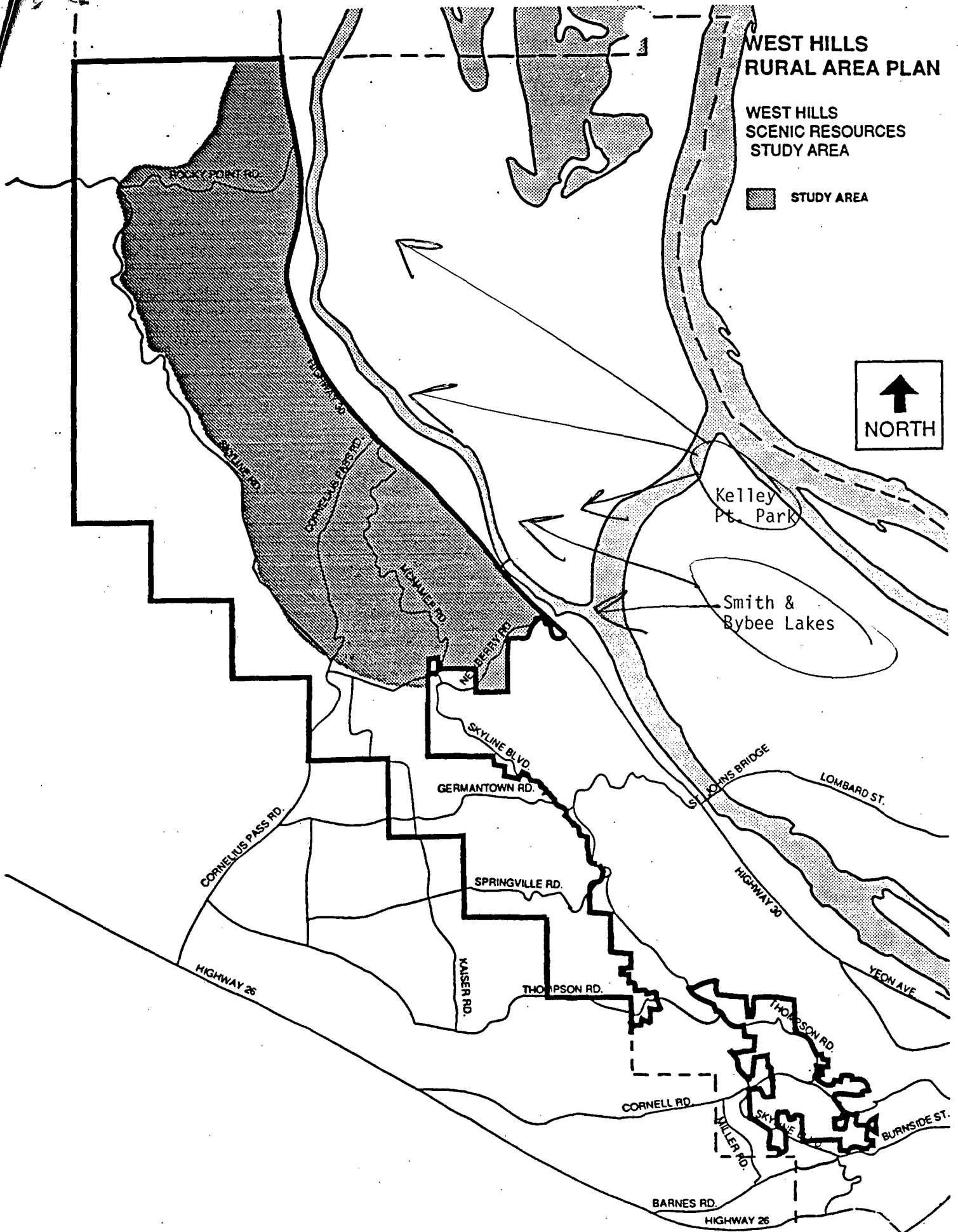
Sincerely,

Jim Sjulín  
Natural Resources Program

# WEST HILLS RURAL AREA PLAN

## WEST HILLS SCENIC RESOURCES STUDY AREA

STUDY AREA



SPEAKER #5



METRO

DATE: October 12, 1993

TO: Multnomah County Planning Commission

FROM: Jim Morgan and Matthew Udziela, Metro Environmental Planning

RE: Designation of West Hills as a Goal 5 Scenic Resource

Please accept these comments as part of the written testimony on the decision designating the northeast slope of the West Hills in unincorporated Multnomah County as an "outstanding scenic resource." We disagree with the Multnomah County Planning staff's recommendation for a 1A ("Not Significant") scenic designation for the West Hills, and instead urge that the Planning Commission designate the West Hills as a significant and outstanding scenic resource (1C). We have reviewed both the Staff Report which makes this 1A recommendation and the response to testimony which opposed this recommendation. We have the following comments, which are organized in terms of the criteria used to delineate outstanding scenic resources:

#### A. QUANTITY

Staff contends that the abundance of land that is already protected in the County as outstanding scenic resources, including the Columbia River Gorge National Scenic Area and the Willamette River Greenway, diminishes the significance of the West Hills as an important scenic area. We feel this is not a valid determination of importance.

First, this analysis is conducted at a different scale than the staff's analysis of the variety criterion. In terms of quantity, the staff contends that the entire County must be considered, that the West Hills aren't needed because there are other outstanding scenic resources available. However, when discussing variety, the staff state that adjacent sites can not be considered in determining the visual variety of a scenic landscape. This analysis in a regional context vs. site specific evaluation represents different premises on which to base this 1A designation.

We would instead recommend that the County evaluate scenic resources in terms of local availability. For example, St. Johns is in the same political jurisdiction as the Columbia River Gorge, but this has little bearing on this neighborhood's residents if they don't travel throughout

the County. In contrast, the West Hills are visible from St. Johns, are available to its residents, anchor the resource and community setting, and comprise a key amenity for this relatively low-income, built out community that has no other "scenic backdrop" immediately available. Should St. John's residents have to traverse the entire County just for some scenery? We feel that considering what is locally available to communities provides a much sounder basis for evaluating resource quantity.

A second comment on the staff's approach to the quantity criterion because it focuses on the West Hills' relative significance and ignores their absolute significance. The West Hills may indeed be of lower scenic quality than the Columbia Gorge, but that does not automatically mean they are "Not Outstanding." Two (or three or four) resources can all be outstanding, even if one is more outstanding than the others. The West Hills are not required to be the most outstanding scenic backdrop to receive a 1C designation; they only have to be sufficiently high quality, which we contend they are.

Thus, we now turn our comments to the staff's evaluation of the West Hills' quality as a scenic resource:

## **B. QUALITY**

**1. Variety:** Staff explains that the West Hills provide variety only in combination with other resources that are not a part of this inventory. As a site alone, staff states the scenic variety "is not unique or outstanding." We feel that the West Hills site should not be evaluated in isolation, first, because the County itself placed the site in a larger context when evaluating the quantity criterion; and second, because the site is viewed by residents as being part of a larger landscape and is valued as such.

Even if the West Hills are considered in isolation, they provide variability from the surrounding flat landscape of river bottom lands.

Finally, the West Hills themselves being uniform does not preclude their outstanding scenic quality. They are almost continuously forested and pristine, and while those qualities may not create variety it does make them beautiful.

**2. Intactness:** Staff states that the West Hills have no guarantee of remaining intact because the County has no control over activities such as logging and housing development. However, if the County designated these sites as "Significant" it would be authorized to develop a management program and develop regulations (under OAR 660-16) to protect those sites, and thus have increased control over those activities. For example, it could regulate residential development by use of a scenic resources overlay zone (as the City of Portland does). The threat of a site being lost to conflicting uses does not preclude including it on the inventory; it is for this reason that there is an ESEE analysis.

**3. Unity/Coherence:** Staff concedes that the West Hills "do exhibit unity and coherence, being part of a forested ridge which extends in both directions beyond the study area."

Note, however, that the wording here evaluates the West Hills beyond the isolated site, which differs in scale from the analysis of the variety criterion.

**4. Viewing area Importance/Accessibility:** The Planning staff states that there are "no developed or recognized public viewpoints where the public goes to specifically view the West Hills." The staff notes that there are also few areas where it is possible for a car to stop by the side of the road for viewing. In these statements is an assumption that there needs to be some sort of "destination" point to view the West Hills for its value as a scenic landscape to be realized. We would disagree for three reasons.

First, by the County's own definition, the West Hills are a "Scenic Landscape," and not a "Key Viewing Area." By this classification, we would conclude that formalized public viewing areas are not a requirement.

Second, staff indicate that for the West Hills to be an outstanding scenic resource, it is necessary for them to be valued as a destination, and not simply as scenery viewed while travelling along Highway 30. However, scenic resources that are viewed while driving or riding are still highly important. They add to the overall quality of the trip to other destinations such as Sauvie Island and thus are integral to those other resources. Part of the high quality of the Columbia Gorge is not only the beauty at its destination points, but also the beauty of the stretches of I-84 between those points, stretches which compose a majority of the Gorge.

In the City of Portland's scenic inventory, the view of downtown from the Vista Bridge was rated as a very high ranking scenic view, although the Vista Bridge is certainly not a destination point. The view of downtown is but a two-second glimpse as one drives over the bridge, but it is the accumulation of these little joys that create the overall uniquely high quality of life in Portland.

The forested canyon through which Sunset Highway runs right outside downtown has no places to park, but it is highly valued by commuters. It was one consideration in choosing to run Westside Light Rail underground rather than tear up the side of the south slope to provide an arterial for MAX.

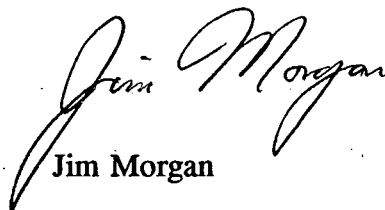
Third, there are many points from which the West Hills can be viewed while stationary: St. Johns community, Rivergate Industrial area, Smith and Bybee Lakes, and Sauvie Island. Residents see the West Hills every day and consider it a part of their community.

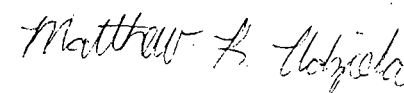
In conclusion, we feel that the West Hills meet the Quantity and Quality criteria, and therefore constitute an "Outstanding" scenic backdrop, one that merits inclusion on the inventory as a "Significant" Goal 5 resource. Thus, we urge the Planning Commission to give a 1C designation to this site.

The outstanding significance of the West Hills in their present or enhanced condition would become apparent in their absence, but we urge the Planning Commission to make this discovery unnecessary and include them on its Scenic Resources Inventory.

Thank you for your time and consideration.

Sincerely,

  
Jim Morgan

  
Matthew Udziela



METROPOLITAN  
**Greenspaces**

*Master Plan  
Summary*

*A Cooperative Regional System of Natural Areas,  
Open Space, Trails and Greenways  
for Wildlife and People*

METRO



**Metro** is the directly elected regional government that serves Clackamas, Multnomah and Washington counties and the 24 cities that make up the Portland metropolitan area.

Metro is responsible for solid waste management, operation of the Metro Washington Park Zoo, transportation and land use planning, urban growth boundary management, technical services to local governments and, through the Metropolitan Exposition-Recreation Commission, management of the Oregon Convention Center, Memorial Coliseum, Civic Stadium and the Portland Center for the Performing Arts.

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Rena Cusma

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District 8	Judy Wyers
District 9	Rod Monroe
District 10	Roger Buchanan
District 11	Ed Washington
District 12	Sandi Hansen
District 13	Terry Moore

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Sandi Hansen, *Metro councilor*  
Judie Hammerstad, *Clackamas County commissioner*  
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Eve Killpack, *Washington County commissioner*  
Bob Hathaway, *Tualatin Hills Park and Recreation District*  
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Shirley Huffman, *mayor of Hillsboro*  
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Jack Broome, *The Wetlands Conservancy*  
Anne Nickel, *Columbia Corridor Association*  
Robert Evans, *Robert Evans Company*  
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Susan A. Lamb, *citizen*  
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Paul Hennon, *city of Tualatin Parks and Recreation*  
Ron Klein, *Portland General Electric*  
Ivy Frances, *CPO 1, Washington County*  
Jack Wiles, *Oregon Department of Parks and Recreation*  
Pat Wright, *U.S. Fish and Wildlife Service*  
Mike Houck, *Audubon Society of Portland*  
Barbara Walker, *citizen*

*Scenic photographs by C. Bruce Forster, with thanks to PGE.*  
*Wildlife photograph by Michael Wilhelm.*

# METROPOLITAN Greenspaces

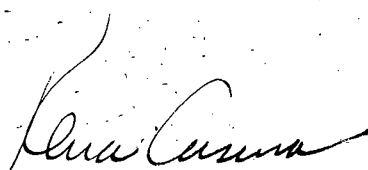
## *Master Plan Summary*

*Dear Friends,*

*Here it is after much staff and committee work, public involvement and council approval: the Metropolitan Greenspaces Master Plan.*

*The plan takes aim at a critical problem in our metropolitan region: how to purchase and protect vanishing natural areas. If they aren't protected soon, our region will lose much open space to the growth that is surely headed our way. Nearly a half-million people are expected to move here in the next 20 years. As the region grows, we need to be sure that our children and grandchildren can enjoy urban wildlife, community natural areas, wetlands, parks and open spaces.*

*I am proud to present a summary of this forward-looking plan to you. It will guide you through the major issues and policies concerning natural areas. I encourage you to take the time to read through this booklet, become familiar with the Greenspaces concept and talk to your friends and neighbors about this important program. If you would like more information, call us at 22-GREEN (221-7336).*



*Rena Cusma  
Metro Executive Officer*



**METRO**

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## *For more information*

This booklet outlines a summary version of the Metropolitan Greenspaces Master Plan. For more detailed information, call 22-GREEN (221-7336) for a copy of the full document.

## **The Need to Protect Open Space**

**T**he Portland-Vancouver metropolitan region is a dynamic, growing area. More than 480,000 people will move here by the year 2010, according to Metro's Regional Growth Forecast. More homes and businesses will be built to serve this growth. A crucial question is how the region's communities will work together to balance development with the protection of natural areas.

In 1989, Metro inventoried and mapped the remaining natural areas within a 372,682-acre region in urban Multnomah, Clackamas and Washington counties. At that time, approximately 29 percent of the metropolitan region's land was considered natural area (including the Columbia Gorge between the Sandy River and the Mt. Hood National Forest). Only about 8.5 percent of these natural areas are publicly owned parks or are currently protected as open space.

If we are to have greenspaces in the future, we need to change our planning and funding priorities now to reflect their importance in our urban environment. The protection, acquisition and active management of greenspaces must become just as important as other basic public services. If not protected now, most remaining natural areas will be lost to future generations.

## The Metropolitan Greenspaces Vision



The land and its scenic beauty lend a unique quality to life in the urban Portland-Vancouver metropolitan area. The region's broad river valleys stippled with wetlands, the narrow river canyons veiled by

green strips of riparian vegetation, the buttes and forests, the mountains and meadows, the foothills and farms all impart a special sense of place and character to this region.

Metro created the Metropolitan Greenspaces program to ensure a green legacy for future generations. It is a cooperative, regional approach among public and private organizations to establish an interconnected system of natural areas,

open space, trails and greenways for wildlife and people throughout the four-county metropolitan area.

The purpose of the Greenspace program is to provide long-term protection of the natural areas that lend character and diversity to our region as more and more people move here. The intent is to balance an urban landscape with wildlife habitat in the midst of a flourishing cosmopolitan region.

The Metropolitan Greenspaces master plan outlines a coordinated strategy to protect natural areas. By carrying out the recommendations in the plan, this region will keep its special sense of place. Future generations will inherit a legacy of natural areas protected forever for all to enjoy.



*Portland Skyline from Oaks Bottom*

## Purpose of the Metropolitan Greenspaces Master Plan

The Metropolitan Greenspaces Master Plan outlines cooperative methods to protect natural areas in the Portland/Vancouver area. It contains major themes and initial policy and implementation recommendations.

The plan is a policy document that includes specific tasks that need to be carried out in the coming years to achieve the goal of maintaining the quality of life for the region by protecting open space in perpetuity.

The first step toward a regional system of greenspaces, the master plan does not contain regulations or specific sites. It is based largely on ecological studies that identify the remaining natural areas within the urban parts of the region, evaluate their significance and propose a system of regional natural areas and connecting corridors to be designated for preservation and management.

The Metropolitan Greenspaces program is a national model of cooperative planning, involving more than 50 government agencies, many conservation organizations, businesses, neighborhood associations, "friends" groups and interested citizens in Washington and Oregon.

As a result of this cooperation, 22 of the 24 cities within the boundaries of Metro and all four counties involved in the project have passed resolutions of support for the Greenspaces program since 1990.

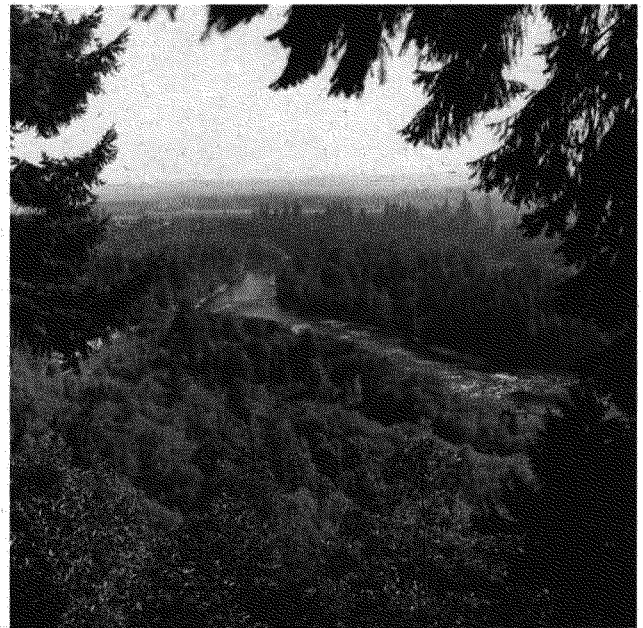
The master plan calls for cooperative efforts to:

- ◆ Acquire and protect a system of greenspaces for wildlife and people throughout the metropolitan area including natural areas of ecological and aesthetic value and a system of trails and greenway connections.

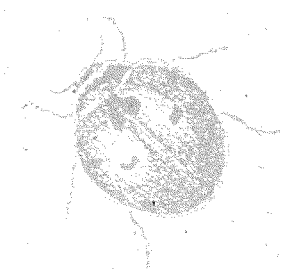
- ◆ Prepare management plans and standards for the Greenspaces system to guide facility development and management of sites to ensure that public access and passive recreational opportunities are provided while protecting the natural areas.

- ◆ Operate and maintain major components of the Greenspaces system.

Strong community support and stewardship will also be key to the success of the Metropolitan Greenspaces program.



*Sandy River*





## Goals for the Metropolitan Greenspaces System

*In summary, the master plan specifically recommends that Metro, as coordinator of the system, work with partners in the program to fulfill the following goals:*

- ♦ **Create a cooperative regional system** of natural areas, open space, trails and greenways for wildlife and people in the four-county metropolitan area (Multnomah, Clackamas, Washington and Clark counties).
- ♦ **Protect and manage significant natural areas** through a partnership with governments, nonprofit organizations, land trusts, interested businesses, citizens and Metro.
- ♦ **Preserve the diversity of plant and animal life** in the urban environment, using watersheds as the basis for ecological planning.
- ♦ **Establish a system of trails, greenways and wildlife corridors** that are interconnected.
- ♦ **Restore green and open spaces in neighborhoods** where natural areas are all but eliminated.
- ♦ **Coordinate management and operations** at natural area sites in the regional Greenspaces system.
- ♦ **Encourage environmental awareness** so that citizens will become active and involved stewards of natural areas.
- ♦ **Educate citizens** about the regional system of greenspaces through coordinated programs of information, technical advice, interpretation and assistance.

### *The planning basis: ecosystems*

Natural area planning and protection must be viewed from a regional perspective because wildlife and greenspaces cross political boundaries. This work cannot be carried out at the local level alone.

The landscape of the Portland-Vancouver region is a mosaic of land forms, plant life and animal habitat that has been modified by human uses. The region is composed of changing land features woven together into interdependent ecosystems. This regional landscape ecology has been the framework that has shaped planning for the Metropolitan Greenspaces system.

In defining the vision and priorities for the Greenspaces program, it is important to look at the structure and use of the surrounding landscape and how each natural area fits within the region as a whole. The following ecological principles are being pursued to protect and enhance natural areas.

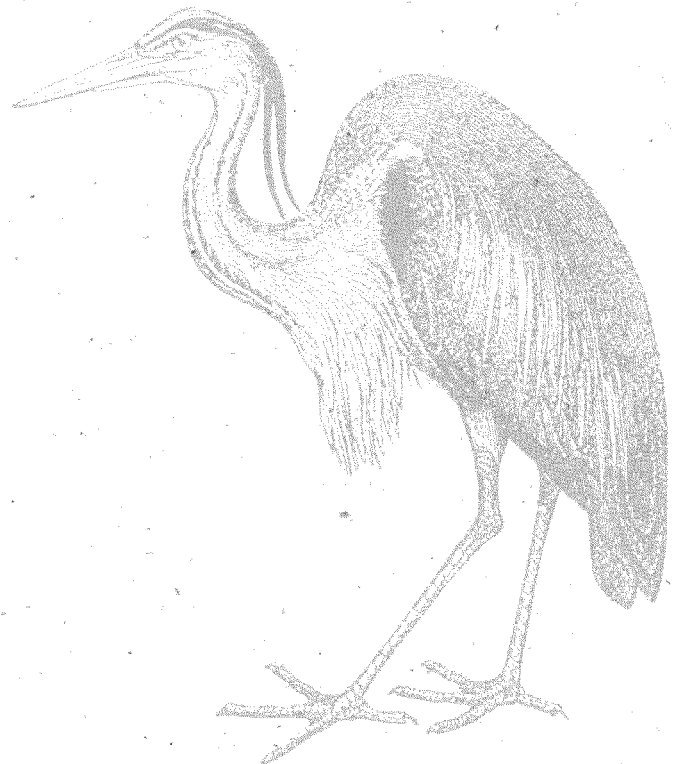
- ♦ Maintain biological diversity by protecting and enhancing a variety of habitats, including wetlands, riparian corridors, forests and agricultural lands throughout the metropolitan area.
- ♦ Consolidate natural areas as much as possible to create or maintain relatively large interconnected acreage. Large areas, especially when connected to natural habitats outside the urban area, generally have greater habitat diversity to support more species.
- ♦ Protect, restore and recreate stream corridor vegetation by replacing riparian plants where lacking or dominated by exotic species and removing barriers, to maintain connections with nearby upland habitats.

- ♦ Protect or restore natural vegetation connections between watersheds at headwater locations.

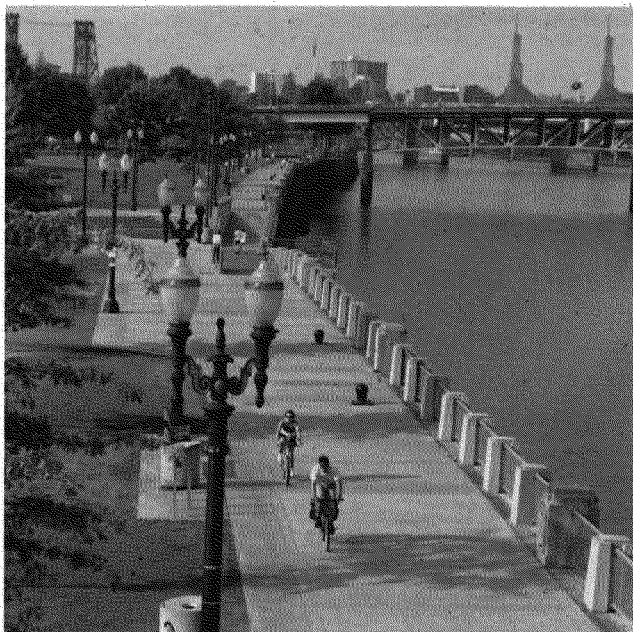
It is important to create a network of interconnecting corridors to preserve the quality of natural areas. The ultimate aim of such a system is to sustain resource use and species protection for the future.

Corridor links may occur through a variety of landscapes. Stream corridors and floodplains are among the best ecological links. Their value increases further when they connect to an upland or ridgeline habitat. These corridors extend beyond Oregon into Southwest Washington and include the Columbia River, Vancouver Lake and associated wetlands.

At this time, the plan focuses on the tri-county area in Oregon. It will be amended in the future to include Washington, once a similar planning effort by Clark County and the city of Vancouver is completed. The master plan and the regional system of Greenspaces will then serve the larger metropolitan area.







Tom McCall Waterfront Park

## *Relationship to urban growth management planning and goals*

Growth management is a priority for Metro and for most local jurisdictions in the region. Metro is responsible for coordinating the regional growth management issues among all agencies within its boundary. Metro's Regional Urban Growth Goals and Objectives (RUGGO) cover these issues, specifically listing natural areas, parks and wildlife habitat as crucial issues to be addressed within the regional perspective under Goal II, Objective 9:

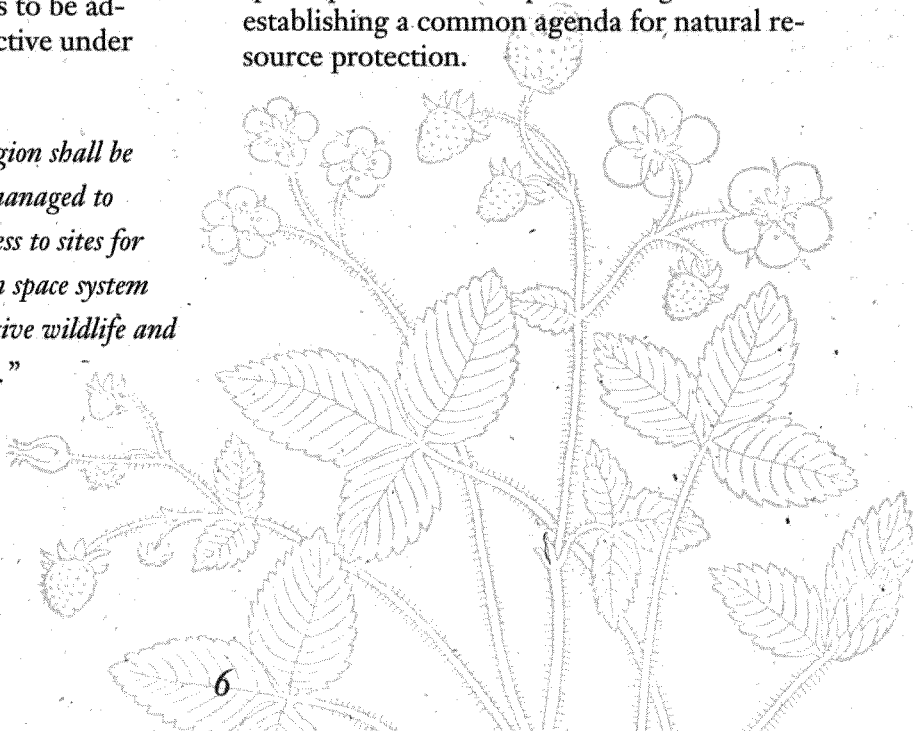
*"Sufficient open space in the urban region shall be acquired, or otherwise protected and managed to provide reasonable and convenient access to sites for passive and active recreation. An open space system capable of sustaining or enhancing native wildlife and plant populations should be established."*

The Greenspaces master plan is primarily a planning document needed to implement Objective 9. However, it also complements many other objectives and planning activities, including Objectives 7-8, 10 and 12-18.

The master plan is not a functional plan nor does it amend adopted urban growth boundary (UGB) policies. It does not affect local comprehensive plans, the UGB and adopted functional plans, including the Regional Transportation Plan. The information developed through the Greenspaces program will assist Metro and local governments in meeting requirements of state planning laws, including Goal 5.

Metro's Region 2040 project will consider several potential areas and activities of metropolitan significance in a common framework to guide the growth and the shape of the region. Because the Greenspaces master plan identifies landscape features of regional interest, its policies and priorities will be considered in shaping Region 2040 alternatives. In turn, the plan will be influenced by aspects of the Region 2040 recommendations.

While not a regulatory document, the Greenspaces master plan is recommended for voluntary consideration in preparation, administration and periodic review of comprehensive plans, implementing land-use regulations and regional functional plans. Agencies and local governments are encouraged to assist in implementing the Greenspaces plan and use its policies as guidance in establishing a common agenda for natural resource protection.



## *Coordinated land protection efforts*

The Metropolitan Greenspaces planning process has been characterized by three years of unparalleled cooperation among local governments, state and federal agencies, nonprofit conservation groups, neighborhood organizations and Metro.

Metro has planning coordination responsibilities (as described in ORS.268) with governments in the region and others interested in being active partners in the program. Included are all citizen groups, resource agencies and jurisdictions in the region that would need to continue the established planning partnership to successfully implement the regional plan.

Metro will work closely with resource agencies to develop and implement cooperative Greenspaces-oriented projects. Roles and responsibilities that partners in the program will assume (in regard to implementation of the plan) include:

- ♦ Metro should place a Greenspaces funding mechanism before the voters of the region that would establish a regional revenue source for acquisition and capital improvement of greenspaces. A regional general obligation bond measure was referred by Metro to voters at the November 1992 general election but it was defeated. Metro will continue to pursue funding options including grants from state and federal government agencies, private foundations and other organizations.
- ♦ Donations and dedications of greenspaces will continue to be accepted by public agencies and nonprofit land trusts in a coordinated strategy.
- ♦ Greenspaces to be administered at the local level will be the responsibility of local governments to secure and manage. Greenspaces to be administered by Metro will be this agency's responsibility to secure and manage.

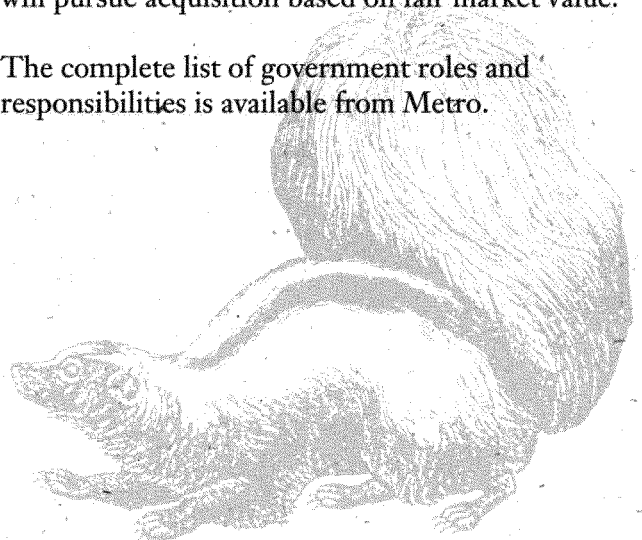
- ♦ Regional greenspaces administered by Metro will be the agency's responsibility to secure. Metro will offer a first right of refusal to acquire the property to the local government in which the sites are located. The first right of acquisition will be offered only to local governments providing park services. It will not be offered to local governments that have comprehensive planning responsibility but did not provide park services as of July 1, 1991.

- ♦ Greenspaces of common interest administered at the local level will be the responsibility of local governments to secure and manage. Lower priority will be given to acquire properties adequately protected by federal, state or local regulations.

- ♦ If a local government accepts acquisition responsibility, that government will be responsible for funding the acquisition of the greenspace with its own resources. If the local government expresses interest in acquiring a site, Metro may enter into an intergovernmental agreement with regional or joint funding. If the local government chooses not to acquire the property, Metro will be responsible for funding the acquisition of the greenspace with its own resources.

- ♦ In evaluating priorities for acquisition, Metro will first determine whether existing federal, state, regional and local land-use, environmental or other applicable regulations provide adequate protection. If not, Metro will then determine if new regulations could be adopted by appropriate government agencies within timeframes necessary to protect significant greenspaces. If not, Metro will pursue acquisition based on fair market value.

The complete list of government roles and responsibilities is available from Metro.



## *Policies Summary*

*A summary of policies related to cooperative land-use planning and implementation of the Greenspaces system. (From policies 1.1 – 1.28 in the master plan.)*

### **Metro and partners in the Metropolitan Greenspaces program will:**

- ♦ Establish a natural area system based on ecology to encourage biodiversity and watershed connections.
- ♦ Develop guidelines and standards for operation and management of natural areas.
- ♦ Prepare site-specific management plans for areas in the Greenspaces system.
- ♦ Prepare and update a five-year plan that will list land acquisition priorities and capital improvement projects.
- ♦ Execute agreements whenever Metro assumes responsibility for a Greenspaces site managed by another entity, or if another entity wishes to assume management responsibilities for a Metro-managed site.
- ♦ Initiate a study of long-term funding options for operating Greenspaces sites and programs.
- ♦ Review and improve planning policies and ordinances that support greenspaces.



- ♦ Develop model greenspaces ordinances that can be adopted by local governments.
- ♦ Coordinate policy development, implementation and enforcement of Greenspaces-related policy across jurisdictional boundaries.
- ♦ Convene a focus group of individuals in the building and development industry to suggest urban design measures that preserve greenspaces.
- ♦ Identify opportunities for streamlining the development review process related to natural resources.
- ♦ Emphasize coordination among government agencies with authority to regulate natural resource management.
- ♦ Identify opportunities to streamline the permit process involving several governments, such as regulation of stream-corridor protection, stormwater runoff, buffer zones and wetlands protection.

### **Metro will:**

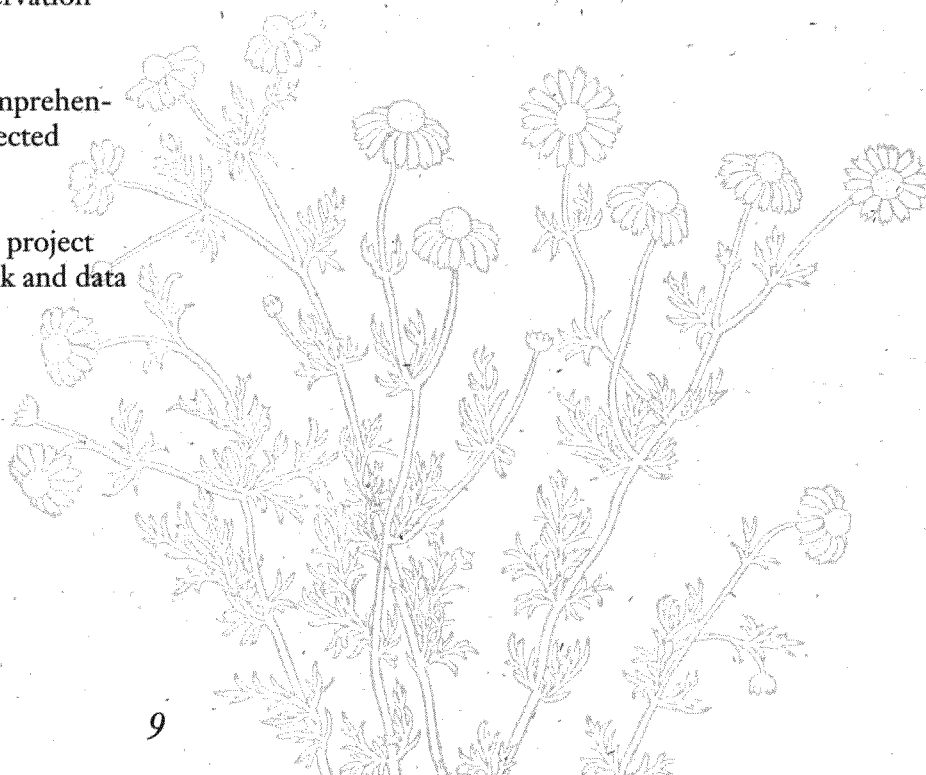
- ♦ Coordinate efforts by governments and citizen groups to create a regional system of natural areas in Multnomah, Washington, Clackamas and Clark counties. The geographic boundary for protection and acquisition efforts in Oregon will be bounded to the east by the Mt. Hood National Forest, to the south by Oregon State Route 211 and the Chehalem Mountains, to the west by the Coast Range and to the north by the Columbia River. (Clark County is responsible for the Washington portion of the system.)
- ♦ Consider lands outside the urban area for potential acquisition to the Greenspace system when they enhance and protect significant natural resources.
- ♦ Negotiate public access agreements at key sites within significant regional greenspaces if the land is privately owned.

- ◆ Potentially acquire and protect historic or cultural resource sites on or near natural areas.
- ◆ Acquire and protect land through purchase, gifts, dedication or conservation agreements. Also pursue government, foundation and private funding sources.
- ◆ Own and operate some of the acquired lands. Some sites will be owned and operated by other partners in the program, including local governments, water-quality agencies, nonprofit conservation organizations, business corporations and land trusts.
- ◆ Negotiate purchase agreements with willing sellers. Metro will use its powers of condemnation only in extraordinary circumstances.
- ◆ For operation and maintenance of sites and trails, use in-house services or contract with other agencies or private vendors.
- ◆ Assume management responsibilities of any park or natural areas owned by other groups only with their consent and Metro Council approval.
- ◆ Coordinate and publish acquisition and improvement plans to aid coordinated planning efforts.
- ◆ Update the Greenspaces Master Plan with the participation of appropriate committees, government agencies, land trusts, conservation groups and citizens.
- ◆ Use local park master plans and comprehensive plans to help develop an interconnected Greenspaces system.
- ◆ Update the natural areas inventory project every five years, with ongoing field work and data collection as resources allow.



*Powell Butte*

- ◆ Produce and update a regional parks directory/natural areas directory.
- ◆ Participate in park and open-space planning of various governments and assist with land acquisition and regulation, as resources allow.



### *Natural area sites*

Carrying out the master plan will protect a regional system of natural areas and open space that preserves some of the natural environment and native habitats that define the landscape. The following factors will determine the importance and timing of protection measures, including:

- ♦ The immediacy or threat of development
- ♦ Accessibility to residents
- ♦ Protection of large connected blocks of open space
- ♦ Potential for expansion and addition to existing regionally significant protected areas

Assembling the land for the Greenspaces system and developing appropriate facilities will be a step-by-step process accomplished over a number of years. While a five-year acquisition and capital improvement plan will be prepared and periodically updated, it is also recognized that new opportunities will affect the outcome.

After adoption of the master plan, much work will need to be done through continued planning. The boundaries of significant sites proposed for protection need to be defined to identify the best opportunities for connections among them by greenways and corridors and to locate specific trail alignments. This needs to be pursued using watersheds for analysis, as opportunities for building the system are identified.

Regionally significant lands for the Greenspaces system will be evaluated case by case. The maximum or minimum size of the land parcel to be purchased will be decided according to opportunities unique to each location. The natural areas described on the map supplement to this summary are the major components of the proposed Greenspaces system that have been



*Powell Butte*

identified through a cooperative planning process coordinated by Metro. As the community grows and opportunities arise, this list will likely change.

Existing regionally significant protected greenspaces have been identified, as well as general locations where Metro and partners in the Greenspaces program should aggressively pursue additional acreage. Being on this list does not mean that public acquisition, regulation or other form of public protection is automatic. Protection options through landowner stewardship or nonprofit land trusts are also encouraged.

Once assembled, these large sites will serve as "anchors" in the overall Greenspaces system. They will be connected by the existing and proposed regional trails system, also described on the map supplement.



## *Policies Summary*

*Policies related to regionally significant natural area sites (2.1 - 2.5)*

### **Metro and partners in the Metropolitan Greenspaces program will:**

- ♦ Develop a regionwide greenspaces system that provides passive recreation and protects existing habitats to conserve fish, wildlife and plants.
- ♦ Use ecology and watersheds in planning the greenspaces system to protect natural areas that cross political boundaries.
- ♦ Recommend programs to conserve, enhance and manage habitats and nature reserves.

### **Metro will:**

- ♦ Coordinate efforts to protect natural areas among governments and nonprofit land conservation groups, to complement acquisition programs and increase financial and land-resource potential.
- ♦ Determine the importance and timing of acquiring greenspaces case by case, weighing human and wildlife needs, as well as the potential loss of site, cost, availability, financing, etc. Criteria to be used in selecting sites include:

#### ***Biological criteria***

- Rarity of ecosystem
- Connection to other habitats
- Biological diversity
- Parcel size
- Wetlands and waterways
- Restoration possibilities

#### ***Human criteria***

- Geographic distribution
- Connection to other sites
- Natural qualities of the landscape
- Public access to sites
- Views and vistas
- Local public support
- Historical/cultural significance

### ***Land protection variables***

#### ***Short-term decisions***

- Inside urban growth boundary (UGB)
- Few physical constraints on development
- Transportation access
- Planning/zoning for development

#### ***Medium-term decisions***

- Outside UGB
- Relatively large parcel without services
- Limited transportation access
- Some physical limitations on construction

#### ***Long-term decisions***

- Extreme limitations on construction
- No current access to transportation
- Remote from existing development

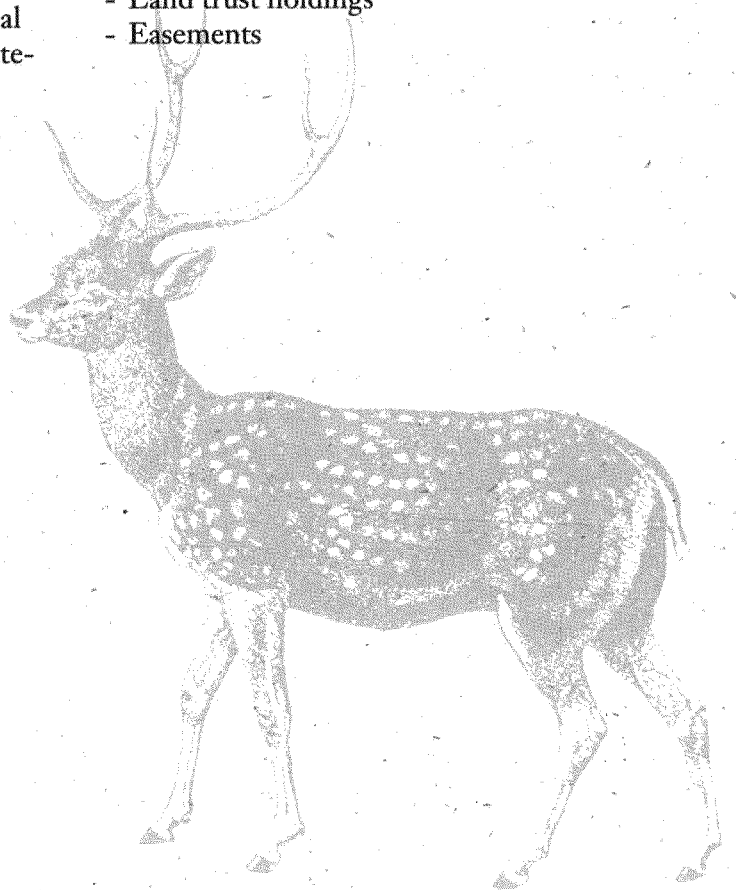
### ***Lands protected by other means***

#### **Regulation:**

- State and federal wetlands permitting programs
- Comprehensive plans and zoning, including those protecting Goal 5 resources

#### **Public control:**

- Lands currently in public ownership
- Land trust holdings
- Easements



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# *The Greenspaces Regional Trails System*

Establishing a network of trails and corridors is a major goal of the Greenspaces master plan. A system of trails for human recreation, transportation, wildlife movement and ecological linkage is proposed. Of importance to the Metropolitan Greenspaces system are multi-use trails that connect regionally significant sites, cross political boundaries, have many uses and connect to national or other regional trails.

The trails network should foster a sense of community throughout the region and strengthen the connection to the region's cultural, historical and natural heritage. Existing trail systems will be key elements serving as a foundation for the interconnected regional system. The accomplishments achieved through years of planning and implementation will be built upon to complete the system.

Implementation of the Greenspaces Regional Trails System will proceed step by step as funding allows. Initially, priority will be given to acquisition of corridors, easements and dedications that will enable development of continuous trails. Only when large portions of the overall system have been acquired will attention be given to capital improvements.

Local government and citizen participation will be encouraged at all stages of implementation. Development and management of transportation systems require a high degree of cooperation among all levels of government. Trails for hiking, biking and horseback riding are no exception. The degree of cooperation will influence priorities for trail development.

Trails of national importance pass through, or near, the metropolitan region. Some trails are renowned cultural resources that are nationally and internationally known. They could be considered "trunk lines" in potential pedestrian movement. These include the Lewis and Clark Trail, Oregon Trail/Barlow Trail, Pacific Crest National Scenic Trail, Pacific Coast Trail, Gifford

Pinchot National Forest trails, Mt. Hood National Forest trails and Columbia River Gorge trails.

State trails form a network connecting many of the cities and towns of Oregon. The current system is somewhat limited but will be supplemented by a series of newly proposed Rails-to-Trails projects. These regional trails include the Portland to the Pacific Trail, Banks Vernonia Trail, Chinook Trail, Willamette Greenway, Tillamook State Park Trails System and the state of Oregon Rails-to-Trails Study.

The Greenspaces Regional Trails System proposes that the region be laced with trails that provide means of access to commerce, recreation and natural areas. Bicycle and pedestrian commuting would be one benefit derived from development of a regional system.

There are several proposed and evolving trails and greenways that will be incorporated into the Greenspaces Regional Trails System, including the 40-Mile Loop system of trails (Wildwood Trail, Marquam/Terwilliger Trails, Springwater Corridor, Columbia Slough and Columbia Bikeway), the Springwater Corridor Trail, Tualatin River Greenway Trail, Clackamas River Greenway Trail, Sandy River Gorge Trail and Johnson Creek Greenway.

The system should also include river trails on navigable water courses that can provide links that might otherwise not be feasible. Since rivers are publicly owned, the accessibility of river trails can allow public uses while respecting private ownership of the shorelines. Staging areas for boat excursions could lessen the need for further acquisition along certain sections of inaccessible streams. Several rivers in the metropolitan area (including the Columbia River and Slough, the Sandy, Clackamas, Willamette and Tualatin rivers) are navigable by a variety of watercraft.

The proposed Greenspaces Regional Trails System is outlined on the map insert to this summary.



*Oxbow Park*

## *Policies Summary*

*Policies related to trails and greenways (2.6 - 2.15)*

### **Metro and partners in the Metropolitan Greenspaces Program will:**

- ♦ Use existing trails, including the 40-Mile Loop, the Willamette Greenway and trails in Clackamas, Clark and Washington counties, as the initial framework for the Greenspaces Regional Trails System.
- ♦ Connect the Greenspaces Regional Trails System to trails that link the urban region to other destinations, including:

**North:** to Mt. St. Helens, Gifford Pinchot National Forest via the Clark County and Washington state trails

**South:** along the Willamette Greenway to Salem and Eugene including landmarks in the Willamette Valley

**East:** to the Columbia River Gorge National Scenic Area via the Chinook Trail; the Mt. Hood National Forest Trails via the Springwater and Barlow Road; connecting to the Pacific Crest National Scenic Trail

**West:** to Astoria via the Portland to the Pacific Trail; Tillamook via the Banks-Vernonia Trail and other rail beds; and to Tillamook State Forest trails linking with the Oregon Coast Trail

- ♦ Link local trails to the Greenspaces Regional Trails System.
- ♦ Encourage the Greenspaces Regional Trails System to be included in local land-use plans.
- ♦ Integrate the Greenspaces Regional Trails System with on-road trails.
- ♦ Identify corridors via restoration projects that could link significant natural habitats.

### **Metro will:**

- ♦ Inventory, map and list trails, greenways and corridors for the region.
- ♦ Provide public information on the status of trails throughout the region.
- ♦ Coordinate planning, funding, acquisition, design, development, construction, operations and maintenance of the Greenspaces Regional Trails System, including:
  - Trail standards, surfacing and signs
  - Accessibility standards
  - User policies
  - Safety standards for trail design and development.





- ♦ Coordinate a standing committee composed of Metro staff, Greenspaces groups and citizens who will evaluate natural area developments and advise Metro on trails projects, review management guidelines and enlarge the system, as appropriate. The following criteria will be used in setting priorities:

- Inclusion in local government plans
- Potential for use as loop trails
- Trails and corridors that connect natural areas and parks
- Segments that complete major systems
- Length and continuity of trail
- Connections to inter-regional trails
- Wildlife use
- Local support for the trail or corridor
- Threat of development when opportunities to establish corridor may be lost
- Abandoned rail corridors
- Expanded access to river routes.



*Raccoon Family*

## *Restoration and enhancement of areas lacking greenspaces*

Some areas of the metropolitan region have been so intensely urbanized that former greenspaces are now gone. These natural areas must be restored in order to provide access to green and open spaces for every resident of the region.

Because an acquisition program will not benefit urban areas with little or no open space remaining to purchase, Metro will give priority to enhance neighborhoods that are deficient in open space. In some cases, restoration might involve opening culverted streams to daylight. It could also include enhancement of backyard wildlife habitats or tree planting along streets, which would help provide additional green to offset the city's "heat island" effects.

## *Policies Summary*

*Policies related to areas deficient in greenspaces (2.16 - 2.19)*

### **Metro and partners in the Greenspaces program will:**

- ♦ Identify locations lacking natural areas and identify opportunities for major restoration programs. Selection of restoration sites will be based on:

#### *Human aspects*

- Access to sites by a large number of people
- Near schools
- Potential links to regional trail system
- Community support for projects

#### *Ecological concerns*

- Feasibility of restoration
- Part of the existing open space system (i.e., park)
- Nearness to other habitats or corridors

- Effects of adjacent land use on future of ecosystem.
- Effect on other environmental functions, such as water quantity/air quality and floodplain protection.

**Metro will:**

- ♦ Work with government agencies, citizen groups and developers to identify potential restoration sites
- ♦ Provide assistance to local restoration projects, as resources allow.
- ♦ Extend the potential for wildlife to co-exist near developments by promoting land-use design and management that encourages ecological diversity and restoration.

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## *Protection through resource management plans*

Metro and local agencies will maintain green-spaces included in the metropolitan-wide system forever. Acceptable maintenance, types and levels of programmed use, and development standards will be established for all portions of the Greenspaces system by Metro, in conjunction with cooperating parks providers. These plans will serve as the basis for improvement and operation of the sites by local governments, special districts, nonprofit organizations or Metro.

Management practices for the operation and maintenance of greenspaces will be consistent with the adopted Greenspaces master plan and with specific site management plans. Metro will budget for and manage, operate and maintain the parts of the greenspaces system that are of regional significance. Metro may make provisions with local parks providers for management of regional greenspaces through intergovernmental agreements.

Metro will offer local governments the opportunity to commit first to the management responsibility by intergovernmental agreement in order to protect and manage greenspaces of common interest. Local agencies will budget and fund the operation and maintenance of those portions of the greenspaces program to be administered by local governments. Local governments, special districts and Metro may choose to contract with private entities, nonprofit organizations and other providers for development, operation and maintenance, provided improvements and activities are consistent with adopted Greenspaces management plans.

## *Policies Summary*

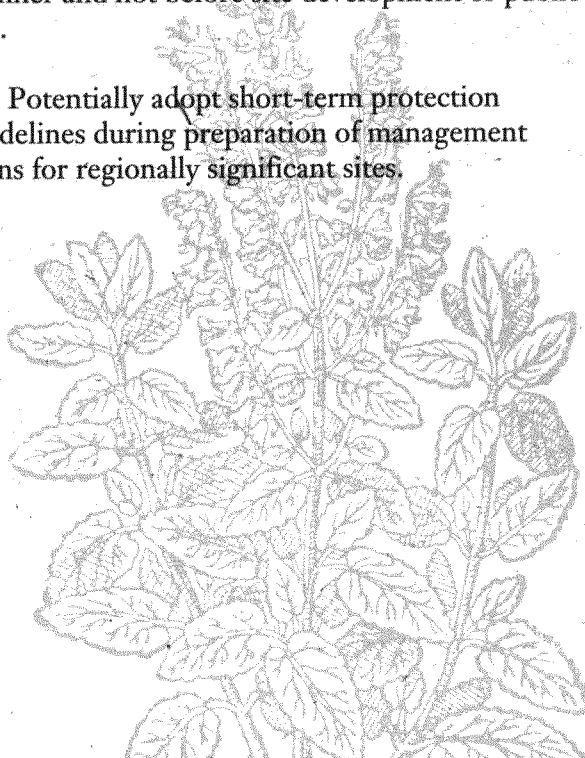
*Policies related to resource management plans (2.20 - 2.22)*

### **Metro and partners in the Greenspaces program will:**

- ♦ Require owners and operators of regionally significant natural area sites to comply with approved management plans.

### **Metro will:**

- ♦ Prepare resource management plans for all regional natural area sites, in cooperation with governments and nonprofit groups, in a timely manner and not before site development or public use.
- ♦ Potentially adopt short-term protection guidelines during preparation of management plans for regionally significant sites.





*Smith and Bybee Lakes*

## *Financing the Greenspaces system*

Acquisition, while only one of many tools to protect open space, is an essential strategy in developing a regional system of natural areas for the four-county region. With a dedicated source of funds, lands will be purchased as a means of protection; rights-of-way may be purchased to establish trails and wildlife corridors; restoration of degraded natural areas could be carried out, as well as negotiations of easements that preserve open space through a process that allows for continued private ownership of the majority of land.

Any financial solution and long-term plan must be developed on a regional basis, with funding for this regional system coming from throughout the Metro district. The major source of funding currently available is a regional general obligation bond. No other source of public revenues can generate adequate funds to finance the land purchasing process for the Greenspaces system.

Metro placed a general obligation bond measure on the Nov. 3, 1992 tri-county ballot. It did not pass; however, if any future bond measure is approved by voters in the district, bond funds

would become available for purchase of natural areas and development of a system of trails and greenways to connect greenspaces. Bond funds can only be used for acquisition of land and capital improvements.

Metro will establish a Metro/local government split of the initial capital and acquisition funds that are raised through the bonds. The regional (Metro) share of the net bond measure will be 75 percent; the local share will be 25 percent. Metro will use the regional portion of funds solely for acquisition and development of greenspaces of regional significance. The local share is to be used for any locally determined open space, parks and recreational acquisition and capital needs.

Metro would issue the bonds, coordinate all purchases and capital costs, and be the legal authority responsible to the U.S. Treasury and bond holders. The bonds would be secured by a tax on real property (land and improvements) within the Metro district.

The need to buy land before it is developed and before the purchase price increases is apparent. In the early phases of the Metropolitan Greenspaces program, Metro may choose to land bank (or hold) as many of its purchases as possible in order to protect significant areas, yet still be able to minimize operations and maintenance costs.

A long-term funding source for Greenspaces operations must be identified. It is assumed that the land will be left essentially undeveloped and, consequently, operating costs will be low. Basic maintenance costs assume that the land would be purchased and developed for passive recreational use, if any. The funding of operations must be a comprehensive approach that considers all pos-



sible resources, including revenue generated internally by Metro, public funds, volunteer services and fund raising efforts.

Operating resources may be augmented through memberships to a nonprofit Greenspaces organization, "adopt an acre" programs, auctions and other targeted fund raising activities. Earnings could be used to build a Greenspaces endowment for use in additional acquisition and capital improvements. An endowment could also be managed to return interest income each year that could be used for operation of regionally significant natural areas. A nonprofit support group for Greenspaces will enhance the efforts of Metro and expand its outreach and funding capabilities. It will encourage donations and dedications to the regional greenspaces system, as well as to local park/open space systems.

## *Policies Summary*

*Policies related to financing the Greenspaces system  
(2.23 - 2.30)*

### **Metro and partners in the Metropolitan Greenspaces program will:**

- ♦ Evaluate regional sites case by case to determine the best method to achieve system integrity, cost efficiency and good management.

### **Metro will:**

- ♦ Support development of new funding resources for the Metropolitan Greenspaces program and coordinate donations of land and related easements. Dedications of land, easements and cash to local jurisdictions will be promoted.
- ♦ Establish a Greenspaces acquisition and capital improvement fund to collect and manage such funds.
- ♦ Make funding decisions consistent with the Greenspaces master plan.
- ♦ Aid the startup of a Greenspaces foundation, a separate, private, nonprofit organization dedicated to the support of Greenspaces programs and

operations. It would encourage and accept private donations of land, easements and other assets such as cash, stocks or bonds, which would enhance the regional natural areas system. Acceptance of responsibility for areas needing restoration will be considered case by case.

- ♦ Establish, manage and fund a Metropolitan Greenspaces dedicated fund in the Metro budget for acquisition, operation and maintenance of sites and trails.
- ♦ Propose and implement a funding strategy for ongoing operation and maintenance of Metro owned or operated greenspaces.
- ♦ Serve as a regional clearinghouse for planning and financial information for all Greenspaces projects.



*Meadow Grass*

### *Protection and enhancement through citizen involvement and education*

Not all lands will be protected through public acquisition and protection. It will be important for Metro and others in the Greenspaces system to build and support a communication network among citizens and resource groups, establishing stewardship programs for private property owners, developers, builders, corporations, real estate industry and others so that privately held lands will be protected, developed or restored in a manner supportive of the Greenspaces program.

Building regional communication networks around programs related to greenspace issues will be vital to successful plan implementation and in building a better awareness of environmental options. As citizens gain an understanding of urban greenspace opportunities, they will become active partners in future planning choices and help conduct periodic public review of the Greenspaces master plan and other related plans.

In the early years of the Metropolitan Greenspaces program, energy and resources will be devoted to acquisition and preservation efforts, but we need to maintain a biologically and socially balanced approach to implementation. It will be important for Metro, as coordinator of the program, to integrate protection of natural resources with economic development, citizen involvement and recreational opportunities.

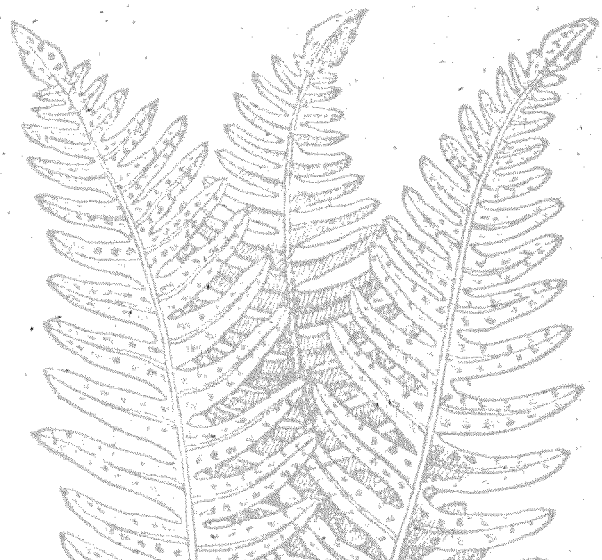
With a long-term commitment to establishing effective communications among environmental education providers, Metro will take a broad approach and work to ensure a greater awareness and understanding by the public of the



*Willamette River Greenway*

greenspaces in the region. To this end, Metro will work with Greenspaces partners to provide interpretive programs, materials and assistance to school districts, teachers and environmental education providers related to a variety of sites and school use of those sites.

Environmental education programs at regional sites and facilities should be designed to attract participants of different ages, ethnic groups, socio-economic levels and abilities. Environmental education programs also should be designed to become an integral part of everyone's lives.





## *Policies Summary*

*Policies related to citizen involvement and education  
(2.31 - 2.43)*

### **Metro and partners in the Greenspaces program will:**

- ◆ Provide public information and citizen involvement in master plan implementation, land acquisition, resource development and operation of Greenspaces-related programs.
- ◆ Serve as advocates for protection, restoration and management of urban natural areas, including passive recreational areas, where appropriate.
- ◆ Promote public understanding of a healthy environment coexisting with a growing economy and encourage public involvement in natural resource management decisions.
- ◆ Provide ways for the business community to be involved in the Greenspaces program.
- ◆ Promote volunteer support of operation and maintenance programs and encourage appropriate use of publicly owned natural areas.
- ◆ Initiate education programs to inform the public about protection, restoration or creation of greenspaces; soil and water quantity/quality challenges; responsible use and impact of sites; and how citizens can become involved in solving these problems.
- ◆ Work with environmental education groups to use natural areas for learning about the environment and to provide materials and facilities that interpret urban natural areas.

### **Metro will:**

- ◆ Continue to work with appropriate advisory committees, planners and policy-makers, to review key steps in greenspace acquisition and management planning.

- ◆ Host public forums to review site management plans and help people to learn about management and care of greenspaces in the region.
- ◆ Periodically conduct public-opinion polls and monitor the use of greenspaces and related programs by the general public.
- ◆ Coordinate environmental education groups through a communication network, including a clearinghouse for greenspaces environmental education.
- ◆ Establish partnerships with appropriate public and private land-holders, community land trusts and "friends" groups throughout the metropolitan area.
- ◆ Establish a clearinghouse, referral and information center to provide information on private land trusts and public agencies in charge of greenspaces.

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## *Protection and enhancement through technical assistance*

As coordinator of the Metropolitan Greenspaces program, Metro will develop technical assistance and advice to landowners, developers and public officials on environmentally sound land management practices and design concepts for sensitively integrating development with natural resources and the landscape. Advice on natural resource management capabilities will be provided to local governments, private organizations and individuals to encourage the best management practices for greenspaces.

Through the Greenspaces program, Metro will serve a clearinghouse function to help provide information on technical assistance provided by a variety of agencies. Assistance will also be given to the public and other agencies in locating information and advice on relevant environmental regulations.

## *Policies Summary*

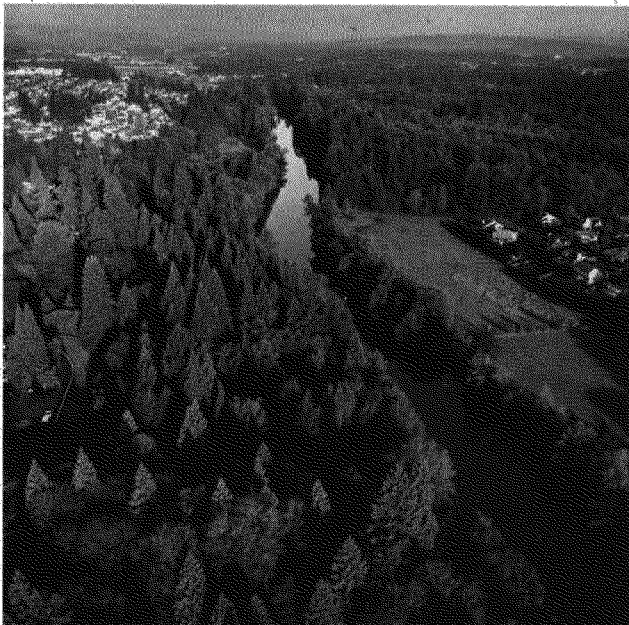
*Policies related to technical assistance (2.44 - 2.47)*

### **Metro and partners in the Greenspaces program will:**

- ◆ Propose incentives to conserve natural areas by private landowners, developers, resource agencies, governments and the public.
- ◆ Provide educational materials and opportunities for the general public to learn about conservation of natural resources, ecology and the effects of lifestyle choices on the environment.

### **Metro will:**

- ◆ Set management guidelines with partners for wildlife habitat and recreational use of greenspaces in the metropolitan area and set priorities on sites for conservation, preservation, acquisition and recreation.
- ◆ Provide assistance and education to the public, businesses and land development industries to encourage greenspace conservation.



*Tualatin River*

## *Protection of publicly owned, quasi-public and private tax-exempt lands*

Many lands are in public ownership as parks, highway and utility rights-of-way, as well as in quasi-public ownership, such as municipal facilities, schools, cemeteries and churches. These lands offer potential in extending the native plant cover into the heart of the city. In addition to providing environmental and visual enhancement, they could also provide habitat for wildlife.

The early settlers systematically replaced the region's original plants with exotic ones. This vegetation has continued to diversify as more imports have been introduced. Investigation of native plants should be done to identify those that would fulfill human needs while supporting the native landscape. Replacement of exotic trees and shrubs will restore some of the native landscape and provide cover along residential streets.

## *Policies Summary*

*Policies related to publicly owned, quasi-public and private tax-exempt lands (2.48 - 2.55)*

### **Metro and partners in the Greenspaces program will:**

- ◆ Encourage adoption of planting standards that promote the use of appropriate native plants in the highway and utility rights-of-way.
- ◆ Encourage management and maintenance practices that enhance the potential for wildlife along rights-of-way.
- ◆ Seek to prevent damage of natural areas that become part of the protected Greenspaces system and minimize disturbances to the ecology (such as by roads or utility linkages). When adverse impacts are unavoidable, advocate for mitigation

efforts to minimize losses at the expense of the responsible party.

- ◆ Encourage agencies to provide native plantings on publicly owned lands, such as transportation corridors, sewer and water rights-of-way, and to manage them for appropriate wildlife habitat.
- ◆ Inventory surplus government lands and tax-foreclosed properties and evaluate their potential as a part of the regional system of greenspaces. Lands suitable for the Greenspaces system should be retained in public ownership.
- ◆ Encourage holders of large tracts of open space, such as golf courses, underused public lands, cemeteries, churches and schools, to establish native plantings. Maintenance should include minimal chemicals and irrigation and maximum use of native materials.
- ◆ Consider disturbed sites, such as former mineral mines or landfills, as potential areas for restoration and integration into the Metropolitan Greenspaces system once activities causing disturbance cease.
- ◆ Consider case by case accepting mitigation sites into the Greenspaces system.

---

## *Protection and enhancement of waterways and floodplains*

The metropolitan area is endowed with rivers and streams of great natural beauty. Prominent in the region, the Columbia and Willamette rivers provide a myriad of visual, recreational and commercial benefits. Although greatly changed in the course of development, restoration of altered sections could improve their natural character as well as enhance fish and wildlife habitat and recreational potential.

If restoration is undertaken by the local communities, degraded sections could become significant scenic, fish and wildlife resources. Developing the region's waterways for recreation, education and tourism will be undertaken in a manner consistent with long-term conservation.

Stormwater management, water quality and flood control are basin-wide issues that should be coordinated among governments within each watershed. Rivers and watersheds are defined by natural features rather than political boundaries. Metro will look at detailed planning on a watershed basis, working with water resource agencies to ensure that benefits to habitat and water quality are properly coordinated.

## *Policies Summary*

*Policies related to waterways and floodplains*  
(2.56 - 2.59)

### **Metro and partners in the Greenspaces program will:**

- ◆ Promote the protection of natural areas along waterways and encourage continuous improvement of water quantity and quality through liaison with agencies that influence changes along streams and rivers in the metropolitan area.
- ◆ Promote access to rivers for public recreation, education and enjoyment consistent with protection of natural resources.
- ◆ Promote the inclusion of natural drainage systems into future planning and balance their contributions to the environment with recreation.
- ◆ Address the interrelated issues of greenspaces protection, land-use, transportation and water resources management.







*Native Evergreen*

## *Protection and enhancement of agricultural and timber lands*

Agricultural and timber lands provide valuable contributions to the regional economy. While both are a viable use of the land, they also complement the Greenspaces program by providing links to larger urban natural areas.

The Columbia, Tualatin and Willamette valleys have some of the most productive soils in the state. They provide potential for supporting an increasing population in the urban area as well as exporting food and timber. Because agricultural lands are usually well-drained and level, there is often competition for construction of homes or businesses. Forest lands may offer dramatic views over hilly terrain and are often desirable for rural view lots.

While there is a need to maintain an adequate urban land supply (required by Statewide Planning Goals 2 and 14), efforts should be made to

continue the productivity of lands outside the urban growth boundary until conversion to another use is appropriate.

## *Policies Summary*

*Policies related to agricultural and timber lands (2.60 - 2.63)*

### **Metro and partners in the Metropolitan Greenspaces program will:**

- ◆ Work with the Oregon Department of Land Conservation and Development, the Department of Agriculture's Extension Services and others to promote building patterns that retain agriculture in this region.
- ◆ Support practices that conserve prime agricultural lands outside the urban growth boundary, aid biodiversity and long-term productivity.
- ◆ Support sound farming practices, including erosion-control and protection of vegetation along rivers and streams connected to the Greenspaces system.
- ◆ Support sound management of forest lands in or near the urban region, and support strict enforcement of the state Forest Practices Act or local regulations relating to harvest on steep slopes, lands adjacent to rivers and lakes, and timely reforestation.





METRO

#1

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** OCT. 12, 1998

**NAME** BRETT SCHULZ

**ADDRESS** 2646 N.W. OVERTON ST.

**STREET**

PORTLAND

OR

97210

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-3 C4-93

**SUPPORT**

**OPPOSE**

**SUBMIT TO BOARD CLERK**

# 2

PLEASE PRINT LEGIBLY!

MEETING DATE

10-12

NAME

Greg Malinowski

ADDRESS

13450 N.W. Springville Ln

STREET

Point AP

CITY

97224

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

#3

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10-12-93

**NAME** Dr. Richard Shepard

**ADDRESS** 2404 SW 22

**STREET**

**CITY**

Troutdale, 97060

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-3

**SUPPORT** \_\_\_\_\_ **OPPOSE** ☒

**SUBMIT TO BOARD CLERK**

#4

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** Oct. 12, 1993

**NAME** Neil Kagan

**ADDRESS** 522 SW 5th, #1050

**STREET**

Portland

**CITY**

97204

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-3(C4-93)

**SUPPORT** ✓ **OPPOSE**                     

**SUBMIT TO BOARD CLERK**

#5

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10/12/93

**NAME** CHRIS WRENCH

**ADDRESS** 3103 NW Wilson

**STREET** Portland OR 97210

**CITY** \_\_\_\_\_ **ZIP CODE** \_\_\_\_\_

**I WISH TO SPEAK ON AGENDA ITEM #** P-3 C-4-93

**SUPPORT**       X       **OPPOSE** \_\_\_\_\_  
**SUBMIT TO BOARD CLERK**

#6

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10/12/93

**NAME** DOROTHY COFIELD

**ADDRESS** 8255 SW HUNZIKER

**STREET**

TIGARD, OR

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** P-3

**SUPPORT** \_\_\_\_\_ **OPPOSE** C4-93 wild-  
**SUBMIT TO BOARD CLERK** life



#7

PLEASE PRINT LEGIBLY!

MEETING DATE

10/12/93

NAME

DONIS McARDLE

ADDRESS

17405 NW SKYLINE

STREET

Portland

97231

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3

SUPPORT

OPPOSE

X

SUBMIT TO BOARD CLERK

#8

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

JOHN SHERMAN

**ADDRESS**

1912 NW ASSEN

**STREET**

PORTLAND

97210

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

P-3

**SUPPORT**

☒ **OPPOSE**

**SUBMIT TO BOARD CLERK**

#9

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12/93

**NAME**

Arnold Rochlin

**ADDRESS**

P.O. Box 83645

**STREET**

Portland, OR

**CITY**

97283

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #**

P-3

**SUPPORT**

X

**OPPOSE**

**SUBMIT TO BOARD CLERK**

#10

PLEASE PRINT LEGIBLY!

MEETING DATE

10/12/93

NAME

MICHAEL CARLSON

ADDRESS

5151 NW CORNELL

STREET

PORTLAND, OR 97210

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

C4-93

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

P-3

#11

"KAB DEE BO"

PLEASE PRINT LEGIBLY!

MEETING DATE 10/12/93

NAME Joseph - 2 Kab debi

ADDRESS 725 SW Viewmont Dr  
STREET  
Portland. OR. 97225  
CITY ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM # P-3

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_  
SUBMIT TO BOARD CLERK

#12

SHOOLIN

**PLEASE PRINT LEGIBLY!**

**MEETING DATE**

10/12

**NAME**

Jim Sholin

**ADDRESS**

PORTLAND PARKS

**STREET**

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON / AGENDA ITEM #**

P-3

**SUPPORT**

**OPPOSE**

**SUBMIT TO BOARD CLERK**

LEFT BEFORE TESTIFYING

PLEASE PRINT LEGIBLY!

MEETING DATE

10/12/93

NAME

Barbara Nelson

ADDRESS

12820 SW 20<sup>th</sup> Ct

STREET

Beaverton OR

97005

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

P-3 C4-93

SUPPORT

Wildlife

OPPOSE

Rock quarry

SUBMIT TO BOARD CLERK

LEFT BEFORE TESTIFYING

**PLEASE PRINT LEGIBLY!**

**MEETING DATE** 10-12-93

**NAME** Jerry Fugate

**ADDRESS** 2704 SETIBBETTS ST

**STREET**

PORTLAND

97202-2043

**CITY**

**ZIP CODE**

**I WISH TO SPEAK ON AGENDA ITEM #** C4-93

**SUPPORT**

X

**OPPOSE**

**SUBMIT TO BOARD CLERK**

P-3



MEETING DATE: October 12, 1993

AGENDA NO: P-3

(Above Space for Board Clerk's Use ONLY)

**AGENDA PLACEMENT FORM**

SUBJECT: C 4-93 Public Hearing

BOARD BRIEFING Date Requested: \_\_\_\_\_

Amount of Time Needed: \_\_\_\_\_

REGULAR MEETING: Date Requested: October 12, 1993

Amount of Time Needed: 1 hour

DEPARTMENT: DES

DIVISION: Planning

CONTACT: Sharon Cowley

TELEPHONE #: 2610

BLDG/ROOM #: 412/109

PERSON(S) MAKING PRESENTATION: Gordon Howard

**ACTION REQUESTED:**

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☐ OTHER

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

C 4-93 In the matter of determining the significance of  
wildlife habitat in the West Hills

Public Hearing

10/22/93 copies  
of Resolution  
93-340 to  
Gordon Howard  
& Sharon Cowley

MULTNOMAH COUNTY  
OREGON

1993 OCT - 4 PM 2:29

BOARD OF  
COUNTY COMMISSIONERS

**SIGNATURES REQUIRED:**

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

**OR**

DEPARTMENT MANAGER: Deborah Willian

**ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES**

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

0516C/63

6/93



# MULTNOMAH COUNTY OREGON

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C4-93

☒ Agenda Placement Sheet

No. of Pages 1

☒ Case Summary Sheet

No. of Pages 1

☐ Previously Distributed

☐ Notice of Review

No. of Pages \_\_\_\_\_

\*(Maybe distributed at Board Meeting)

☐ Previously Distributed

☒ Decision Resolution

No. of Pages 2

(Hearings Officer/Planning Commission)

☐ Previously Distributed

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

## DIVISION OF PLANNING AND DEVELOPMENT

### Board Planning Packet Check List

File No. C 4-93

#### I. Materials Distributed to the Board

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

#### II. Materials Available Upon Request

- ☒ Minutes ( // Pages)
- ☒ Transcript ( *52* Pages)
- ☐ Applicant's Application and Submittals ( Pages)
- ☒ Case Correspondence ( *40* Letters)
- ☐ Slides ( Slides)
- ☐ Exhibits/Maps ( Exhibits)  
( Maps)
- ☐ Other Materials ( )



MULTNOMAH COUNTY

BOARD HEARING OF October 12, 1993

TIME 3:30pm

CASE NAME WEST HILLS WILDLIFE HABITAT AREA  
DETERMINATION OF SIGNIFICANCE

NUMBER C 4-93

1. Applicant Name/Address

Division of Planning & Development  
2115 SE Morrison, Portland 97214

2. Action Requested by applicant

Designate most of the West Hills Rural Area as  
significant wildlife habitat

3. Planning Staff Recommendation

Same

4. Planning Commission or Hearings Officer Decision:

Same

5. If recommendation and decision are different, why?

ACTION REQUESTED OF BOARD

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

ISSUES

(who raised them?)

- a. Is enough information available to find that areas in the West Hills have significant wildlife habitat?  
(Opponents, Oregon Dept. of Land Conservation & Development, Oregon Dept. of Fish & Wildlife)
- b. Is the definition of significant wildlife habitat recommended by the Planning Commission  
appropriate? (Oregon Dept. of Land Conservation & Development, Opponents)
- c. Should the Bonny Slope area also be considered as significant wildlife habitat? (supporters)

Do any of these issues have policy implications? Explain.

Approval would require Multnomah County to continue to the next steps of the Goal 5 inventory and protection process, namely identification of conflicting uses, consideration of the environmental, social, economic, and energy consequences of conflicts, determination of the appropriate level of protection for the resource, and devising a program to protect the resource.

# DECISION OF THE MULTNOMAH COUNTY PLANNING COMMISSION

In the matter of determining the significance of wildlife )  
habitat in the West Hills )

**RESOLUTION**  
**C 4-93**

**WHEREAS,** As part of Periodic Review, Multnomah County said it would complete the Statewide Planning Goal 5 process for wildlife habitat in the West Hills; and

**WHEREAS,** OAR 660-16 requires that the location, quantity, and quality of wildlife habitat be considered to determine whether the resource is significant ; and

**WHEREAS,** A public hearing was conducted on July 26, 1993 to take testimony concerning the significance of wildlife habitat in the West Hills; and

**WHEREAS,** The West Hills has been divided into four subareas for analysis of significant wildlife habitat, the Northern Forested Area, the Western Agricultural Area, the Bonny Slope Area, and the Balch Creek Area; and

**WHEREAS,** A comparative analysis of rural areas with wildlife habitat values within Multnomah County shows that the West Hills constitutes 12 percent of such areas, and a comparative analysis of rural and park areas with wildlife habitat adjacent to the West Hills shows that the West Hills constitutes 12 percent of such areas -- which means that the West Hills do not contain a significant quantity of wildlife habitat; and

**WHEREAS,** Studies of wildlife in the West Hills show that the area has a good quantity and diversity of wildlife and their habitat; and

**WHEREAS,** The West Hills is a key part of a larger ecosystem with significant wildlife habitat values which includes Forest Park within the City of Portland and natural areas in Columbia and Washington Counties, eventually connecting with the Oregon Coast range; and

**WHEREAS,** Three of the four areas the Northern Forested Area, the Western Agricultural Area, and the Balch Creek Area are important parts of this larger ecosystem, while the fourth area, Bonny Slope, is not important because of its existing development patterns and location; and

**WHEREAS**, The motion to designate three subareas of the West Hills Rural Area as 1C, a significant resource, received a vote of six(6) in favor, none(0) opposed, and one(1) abstention;

**NOW THEREFORE BE IT RESOLVED** that the Planning Commission hereby recommends as follows:

1) The Board of Commissioners designate the following portions of the West Hills Wildlife Habitat Study Area:

- a) Northern Forested Area
- b) Western Agricultural Area
- c) Balch Creek Area

as 1.C., a significant Fish and Wildlife Habitat pursuant to OAR 660-16; and

2) The Board of Commissioners direct the Planning and Development Division staff to prepare an ESEE analysis of conflicting uses, to return to the Planning Commission and Board of Commissioners for further action pursuant to OAR 660-16.

Approved this 26th day of July, 1993

By Leonard Yoon, Jr.  
Leonard Yoon, Chair  
Multnomah County Planning Commission



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

**C 4-93**  
**STAFF REPORT**  
**For October 12, 1993 Board of County Commissioners Hearing**

**WEST HILLS WILDLIFE HABITAT AREA**  
**DETERMINATION OF SIGNIFICANCE**

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## **II. BACKGROUND**

### **PERIODIC REVIEW ORDER**

Multnomah County's Periodic Review Order was reviewed by the Land Conservation and Development Commission on April 23, 1993. The Commission found that amendments to the County's land use regulations are required in order to comply with Statewide Planning Goals (Remand Order 93-RA-876). The county had designated "Wildlife Habitat and Travel Corridor" as a "1-B" (delay Goal 5) resource and indicated that resource identification and a protection program would be completed by the end of 1991. While a wildlife study was commissioned and completed, the County has not yet made a determination of significance pursuant to Goal 5. Consequently the County must now determine the extent and significance of wildlife habitat in the West Hills. If a resource is not significant, it is designated 1A and no further action is required. If information on location, quantity, and quality indicate that the resource is significant, the County must include it in the Comprehensive Plan inventory, and complete the Goal 5 process (ESEE analysis and protection program).

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on the significance of wildlife habitat in the West Hills on July 26, 1993, and considered additional written testimony up until September 3, 1993. On September 7, 1993, the Planning Commission voted 6 to 0 with 1 abstention and 2 absent to recommend approval of a significant wildlife habitat designation over most of the West Hills Rural Area, excluding only the Bonny Slope area (see Exhibit 4).

## **III. ANALYSIS**

### **RESOURCE DESCRIPTION**

No precise definition for wildlife habitat is contained within the Oregon Statewide Planning Goals document or the Oregon Administrative Rules -- it is the responsibility of the local jurisdiction to make findings, based upon evidence, that an area is or is not significant for wildlife habitat. Multnomah County contains a number of existing areas which are identified as wildlife habitat, including areas which are important for big game, waterfowl, and sensitive bird species. However, recent studies have documented the importance of preserving whole ecosystems for a full range of wildlife, from insects to large carnivores, as opposed to identifying and preserving small areas for a certain target species of concern such as elk, or bald eagles. These studies (see bibliography for Wild About the City and A Study of Forest Wildlife Habitat in the West Hills, discussed later in this report) assert that the only way to preserve sensitive species from further



declines in population or extinction is to preserve large, contiguous areas of the entire ecosystem in which these species reside.

At the July 26, 1993 Planning Commission hearing, a very generalized definition of wildlife habitat was offered by staff. Subsequent to that hearing, the Oregon Department of Fish and Wildlife proposed an alternative definition of wildlife habitat, which was adopted by the Commission as part of its recommendation on September 7, 1993. That definition reads as follows:

""Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory wildlife species population for at least some part of their annual life cycle. Such an area is significant if it is large enough to sustain a viable population; or sustains the presence of unique, sensitive, threatened, or endangered species; or provides a critical component to a species' life requirements during some time during the year (i.e. nesting or roosting sites, big game winter range); or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem in whole or in part (i.e. wetland, old growth forest); or provides a connection between other areas of significant wildlife habitat (i.e. riparian or upland wildlife corridor)."

Staff recommends adoption of this definition of wildlife habitat as part of the proposed action.

## **LOCATION**

Wildlife are guided in their choice of locale and movement by natural features which may allow or hinder their movement (watercourses, terrain, type of vegetation) and built features which hinder them (roads, residences, fences, agricultural operations). Given the large population of the Portland Metropolitan Area, the latter set of constraints are far more important in the patterns of wildlife habitation and migration. The West Hills rural area has a limited number of built features due to its location outside of the urban limit line and its low intensity levels of agricultural and forestry operations, and rural residential development. This area has been identified as a potential wildlife habitat area, and is a portion of a contiguous wildlife habitat area which includes lands to the southeast (Forest Park in the City of Portland) and northwest (undeveloped lands in Washington and Columbia Counties, eventually reaching the Coast Range).

The West Hills Rural Area can be divided into several sub-areas for the purpose of analyzing the potential for quality and quantity of wildlife habitat (see Exhibits 1 and 3, Pgs. 12 and 14).

### Northern Forested Area

This area consists of lands north and west of Forest Park, lying to the west of Highway 30, and to the north of existing rural residential and agricultural development in the vicinity of Skyline Road, Cornelius Pass Road, and Rock Creek Road. The southern boundary of this forested area in the Rock Creek Road area continues into Washington County as the boundary between agricultural and forest lands. These lands are almost entirely designated for Commercial Forest Uses, which are in varying stages of growth and production. It should be noted that this area includes small "pockets" of developed rural lands along the west side of Highway 30 and along roads connecting Highway 30 with Skyline Blvd. such as Cornelius Pass Road, McNamee Road, Newberry Road, and Logie Trail. Also, a small area of developed rural lands lies along Gilkison Road in the far northern portion of Multnomah County(see Exhibit 3).

#### Western Agricultural Area

This area consists of lands along the western edge of Multnomah County, bounded to the north by the forested areas described above, to the west by Washington County agricultural lands, to the east by rural residential development and Forest Park in the City of Portland, and to the south by Springville Road. This area is primarily designated for agricultural uses, which are generally low-intensity in nature. Some commercial forestry areas and areas of rural residential development exist as well(see Exhibit 3).

#### Bonny Slope Area

This area consists of rural residential, forest, and agricultural lands, of a generally higher intensity than those lands to the north. It is bounded to the west and south by lands within the Urban Growth Boundary in Washington County designated for urban residential development of 4 to 7 dwelling units per acre, to the east by lands within the City of Portland's Urban Growth Boundary designated for densities of 4 dwelling units per acre, and to the north by agricultural and rural residential uses in Multnomah County and the City of Portland(see Exhibit 3).

#### Balch Creek Area

This area consists of the unincorporated, non -urban lands within the Balch Creek basin, as well as a small area to the far north which is within the Saltzman Creek watershed. It is mostly designated for Commercial Forestry uses, and also contains a significant amount of rural residential development. It is bounded to the west and south by urban lands both unincorporated and within the City of Portland, and to the north and east by Forest Park and MacLeay Park within the City of Portland(see Exhibit 3).

### **QUANTITY**

*OAR 660-16-000(3)...A Determination of quantity requires consideration*

*of the relative abundance of the resource (of any given quality).*

Some amount of wildlife habitat occurs in all non-urban portions of Multnomah County. In the absence of more specific data on wildlife resources within other non-urban portions of Multnomah County, the best available standard of comparison of wildlife abundance (quantity) is the total size of each non-urban area within Multnomah County. The West Hills Rural Area is 30 square miles (approximately 19,091 acres) in size. The following table compares the size of the West Hills rural area to other non-urban portions of Multnomah County:

TABLE 1: RELATIVE SIZE OF MULTNOMAH COUNTY NON-URBAN AREAS

<u>AREA</u>	<u>SIZE</u>	<u>% OF NON-URBAN AREAS</u>
West Hills	30 sq. mi.	12%
Sauvie Island	26 sq. mi.	10%.
West of Sandy River	16 sq. mi.	6%
East of Sandy River	128 sq.mi.	51%
<u>Columbia Gorge NSA Area</u>	<u>52 sq. mi.</u>	<u>21%</u>
TOTAL NON-URBAN AREA	252 sq. mi.	100%

In addition, the quantity of the wildlife habitat resource should be measured against three other areas outside Multnomah County and one area within the City of Portland. These areas are chosen because they are directly adjacent to the West Hills Rural Plan Area(see Exhibit 2).

#### Washington County Forest

This area, in Washington County, is a non-urban forested area bounded to the west by Highway 26, to the north by the Washington County line, to the east by the West Hills Rural Plan Area, and to the south by mixed agricultural and rural residential uses within Washington County. It is approximately 100 square miles in size and is almost entirely designated Washington County for non-urban, forest uses. It should be noted that west of Highway 26 lie the forested natural areas of the Oregon Coast range(see Exhibit 2).

#### Washington County Farm

This area, also in Washington County, is a non-urban area consisting primarily of agricultural and rural residential uses which is bounded to the south by Highway 26 and the community of North Plains, to the east by the West Hills Rural Plan Area, and to the north and west by forested lands within Washington County. It is approximately 40 square miles in size(see Exhibit 2).

#### Columbia County Forest

This area is within Columbia County and is designated primarily for non-urban

forest uses, with some rural residential pockets included. It is bounded to the north and east by the communities of Chapman and Spitzenberg along the Scappoose-Vernonia Road, to the west by State Highway 47 and the Community of Vernonia, and to the south by the West Hills Rural Plan Area. It is approximately 80 square miles in size. It should be noted that west of Highway 47 and Vernonia lie the forested natural areas of the Oregon Coast Range (see Exhibit 2).

### Forest Park

The Forest Park area within the City of Portland is a public "natural" park with significant quantities of wildlife as documented by various sources. It is bounded to the north by the West Hills Rural Plan Area, to the south by Cornell Rd., to the east by urban development within Northwest Portland, and to the west by the Balch Creek portion of the West Hills Rural Plan Area and low-density residential development within the City of Portland. It is approximately 8 square miles in size (see Exhibit 2).

The following table compares the size of the West Hills Rural Plan Area to these three areas outside of Multnomah County which are contiguous to the West Hills:

TABLE 2: RELATIVE SIZE OF NON-URBAN AREAS ADJACENT TO THE WEST HILLS

<u>AREA</u>	<u>SIZE</u>	<u>% OF AREA</u>
West Hills	30 sq. mi.	12%
Washington County Forest	100 sq.mi.	38%
Washington County Farm	40 sq. mi.	16%
Columbia County Forest	80 sq. mi.	31%
<u>Forest Park</u>	<u>8 sq. mi.</u>	<u>3%</u>
TOTAL AREA	258 sq. mi.	100%

### Summary

Based upon this measurement of quantity of non-urban areas with some value for wildlife habitat, the West Hills area constitutes 12% of the total non-urban areas of Multnomah County which have some quantity of wildlife habitat. It constitutes 12% of a contiguous non-urban and natural park area northwest of and within the City of Portland. Without regard to quality, this quantity of wildlife habitat does not appear to be significant.

### **QUALITY**

*OAR 660-16-000(3): The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself.*

This report uses two attributes to measure quality of the wildlife habitat resource in the West Hills, 1) the actual quantity and diversity of the species to be found in the West Hills area along with a comparison of the wildlife values of this area with the values found in other non-urban areas within Multnomah County and adjacent areas of Washington and Columbia Counties, and 2) the connectivity of the West Hills area to other wildlife habitat areas and its relative importance in the overall framework of this larger ecosystem.

#### West Hills Wildlife Quantity and Diversity

Multnomah County has commissioned two studies of wildlife in the West Hills, which, along with other relevant studies, are summarized below.

#### **WILD ABOUT THE CITY (Marcy Houle, 1990)**

This report discusses the concept of contiguous areas of natural habitat for wildlife and the results of the fragmentation of habitat into "islands." In the latter instance, numerous biological studies (see bibliography for "Wild About the City") have documented the diminishment and loss of native plants and animals due to a lack of connection to a larger ecosystem. Continued development in the West Hills wildlife area would result in the fragmentation, and therefore the degradation of both the West Hills' and Forest Park's natural systems, the loss of species diversity (particularly for larger mammals such as bears, elk, and cougars which require large habitat areas for each animal), the permanent loss of natural populations to catastrophe such as fire, and the weakening of plant and animal populations due to the lack of genetic diversity available in larger areas.

#### **A STUDY OF FOREST WILDLIFE HABITAT IN THE WEST HILLS (Esther Lev, Jerry Fugate, Lynn Sharp, 1992)**

This report provides a more in depth study of existing wildlife within the West Hills area. Research for the study included a series of six transects throughout the region, representing different types of land use (forested, residential, agricultural, clear-cut forest, quarry). A total of 19 species of mammals (including coyote, black bear, mountain beaver, trowbridge's shrew, and coast mole) and 34 species of birds (including Swainson's thrush, pine siskin, downy woodpecker, and black-headed grosbeak) were observed during the field study from both trapping and observations. The specific outcome of the transect evaluations are contained within the report; however, the transect with the most species diversity and numbers were found in the "control" transect within the boundaries of Forest Park. This indicates the high wildlife habitat values to be found within the park, and the importance of integrating Forest Park into a larger contiguous wildlife habitat area in order to protect this high value. The amount and diversity of wildlife within the rural West Hills area to the northwest of Forest Park is somewhat lower due to the impact of residential development, agriculture, quarry operations, and commercial forestry. However, each of the five transects outside

of Forest Park showed significant numbers and diversity of wildlife, indicating that this area remains an important area for native plants and animals.

The study documents the need for a contiguous natural area connecting Forest Park with the large undeveloped lands to the north and west in order to maintain species diversity. This contiguous natural area would need to be a minimum of one-half mile in width, with other areas as much as one and one-half miles wide, in order to maintain the natural connections. A continuous forested connection through the area is essential in providing "cover" for wildlife habitat and migration.

## OTHER STUDIES

The City of Portland has thoroughly studied the quality of wildlife habitat in the area of Forest Park to the south of the proposed West Hills wildlife habitat area/corridor. The "Northwest Hills Natural Areas Protection Plan," (adopted 1992) documents the abundance of wildlife habitat in Forest Park and the surrounding areas within the City of Portland. The "Balch Creek Watershed Protection Plan" (adopted 1990) provides information about the wildlife habitat values in the portions of the Balch Creek basin which are within the Urban Growth Boundary and the Portland City limits. Both reports provide information about wildlife habitat values within adjacent unincorporated areas west and north of Forest Park, and within the Balch Creek basin. These habitat values are significant, associated with forested lands and the wildlife which inhabit them (such as salamanders, frogs, snakes, lizards, over 80 species of birds, and 62 mammal species, from squirrels and chipmunks to bears and cougars).

The County has already identified two significant wildlife habitat areas within the West Hills Rural Area based upon information compiled by the Oregon Department of Fish and Wildlife, a big game wintering habitat within much of the Northern Forested Area, and a bald eagle roost in the vicinity of Dixie Mountain in the far northern portion of the County. Additionally, fish and riparian-based flora and fauna are a significant identified resource within major streams in the West Hills area.

### Comparison with Other Non-Urban Habitat Areas

#### Sauvie Island

Unlike the West Hills, the Multnomah County portion of Sauvie Island Area is generally flat, and approximately two-thirds is devoted to agricultural uses, of a significantly more intense nature than those in the West Hills, befitting the higher quality of soils on the island. Sauvie Island contains significant identified fish and wildlife habitat areas, including a large sensitive waterfowl area in the northern portion of the island. The Multnomah Channel Area, between Sauvie Island and Highway 30, contains significant identified wetland resources such as the Burlington Bottoms wetland located in the vicinity of the Sauvie Island bridge.

While Sauvie Island provides very important habitat for waterfowl, fish, and wetland flora and fauna, it is relatively unimportant for terrestrial wildlife due to the preponderance of agricultural uses on the island and the its isolation by water from nearby wildlife habitat areas within the West Hills (separated by Multnomah Channel) and in Washington (separated by the Columbia River)

#### Eastern Multnomah County Non-Urban Areas

Two of the eastern three rural areas (East of Sandy River and Columbia Gorge NSA Area) contain significant identified wildlife habitat areas, including large big game wintering areas and osprey nests. While no significant wildlife habitat areas have been identified by the Oregon Department of Fish & Wildlife in the West of Sandy River area, the Sandy River Gorge is identified as a significant natural area. These areas appear to maintain significant connectivity to each other and to adjacent areas of the Cascade Range -- however, this wildlife community is distinct from the wildlife in the Coast Range and West Hills area.

#### Washington County Adjacent Non-Urban Areas

The Washington County Forested area between the West Hills Rural Area of Multnomah County and Highway 26 is designated on the Washington County Rural/Natural Resource Plan as a Wildlife Habitat Area, which contains sensitive habitat identified by the Oregon Department of Fish & Wildlife and forested areas coincidental with water areas and wetlands. The Washington County Non-urban farm areas contain a small amount of sensitive wildlife habitat. These areas are connected and contiguous to Columbia County natural areas to the north, the West Hills of Multnomah County to the east, and the Coast Range to the west and southwest.

#### Columbia County Adjacent Non-Urban Areas

The Columbia County forested area to the north of the West Hills Rural Area is designated by the Columbia County Comprehensive Plan as a major big game habitat area. These areas are connected and contiguous to the Washington County natural areas to the southwest, the West Hills of Multnomah County to the southeast, and the Coast Range to the west.

#### Forest Park Area

Based upon comprehensive studies, the City of Portland has identified large areas within and around Forest Park as significant wildlife protection areas, and has protected these areas through implementation of an environmental overlay zone which restricts disturbance and development of sensitive areas. Forest Park is connected and contiguous to the West Hills area to the west and northwest.

#### West Hills Wildlife Connectivity

The West Hills Rural Area is directly connected to wildlife habitat areas to the south in the Forest Park Area of Portland, the west in Washington County, and the north in Columbia County. The two latter areas in turn are connected to a large area of wildlife habitat that extends to and throughout the Coast Range of Oregon, south of the Columbia River. Thus, elimination or degradation of wildlife habitat values in the West Hills Rural Area would break the link between the Forest Park natural areas and the larger wildlife habitat areas of the Oregon Coast Range. This would result in the degradation of natural habitat in Forest Park, due to its resultant isolation from other natural areas. Forest Park is of the highest quality of wildlife habitat, not necessarily because of its abundance of wildlife species compared to other natural areas of Western Oregon, but rather because of its abundance of wildlife species in an area immediately adjacent to the City of Portland, where wildlife has been extirpated or severely limited by urban development. The West Hills Rural Area itself is within several miles of significant metropolitan populations, which makes its wildlife habitat significantly more valuable than comparable areas in the remainder of Multnomah County, Washington County, or Columbia County. Thus, the West Hills provides the most important ability to maintain significant wildlife and natural areas in such close proximity to the populations of the Portland Metropolitan Area.

#### Summary

Based upon the available information regarding the quality of wildlife habitat, any portion of the West Hills Area should be considered an area with significant wildlife habitat if the following two conditions apply: 1) a generally good quality of wildlife habitat values in the area, and 2) important as part of a larger wildlife habitat area providing the link between the Forest Park area of the City of Portland and its important wildlife habitat and the Coast Range of Oregon.

### **IV. CONCLUSIONS**

Based upon an analysis of quantity and quality of wildlife habitat areas, the Planning Commission and staff recommend the following actions regarding the significance of wildlife habitat values within the four sub-areas of the West Hills Rural Area.

#### Northern Forested Area

This area is the prime focus of wildlife habitat in the West Hills. The Lev study shows clearly the superior wildlife values to be found in undisturbed forest habitat, which covers much of this area. While lesser values of habitat are found in clear-cut forest and rural residential areas, such areas also contain significant amounts of wildlife habitat value. This area includes the two existing Goal 5 significant wildlife habitat areas in the West Hills. Also, this area abuts Forest Park



to the south and the forested areas of Washington and Columbia Counties on the north and west, thus providing the key link in maintaining the wildlife habitat values of the Forest Park Area. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE HABITAT AREA.

#### Western Agricultural Area

This area is less significant than the Northern Forested Area in terms of wildlife habitat, due to the development of agricultural and rural residential uses, which are of lesser value to wildlife due to the presence of humans. However, the Lev study shows that agricultural and rural residential areas in the West Hills Rural Area contain some wildlife habitat value, which is confirmed by anecdotal observations of wildlife by residents in the area. Some fragmented forested areas also exist, providing cover for wildlife. This area is connected to a similarly developed area in Washington County to the west -- both of these areas provide a "buffer zone" between the higher quality wildlife habitat forested areas to the north and the urban areas to the south. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE HABITAT AREA.

#### Bonny Slope Area

This area contains lesser wildlife habitat value than the agricultural area to the north due to the higher intensity of residential and agricultural land uses (although some forest-designated lands exist in this area as well). Also, this area is bounded on three sides by lands within the urban growth boundary which are planned for residential densities of four units per acre or greater, and is not directly adjacent to any significant forest habitat areas. THIS AREA SHOULD NOT BE DESIGNATED A SIGNIFICANT WILDLIFE AREA.

#### Balch Creek Area

This area contains some habitat value associated with the relative lack of development in comparison to adjacent areas and the importance of the Balch Creek watershed, as documented by the City of Portland. It is also adjacent to the Forest Park area to the north and west, and provides an extension of wildlife habitat values existing in that area. Like Forest Park, its habitat value lies not in an absolute measure of wildlife abundance and diversity, but rather in its relative value as a forested watershed and wildlife area in close proximity to the Portland Metropolitan Area. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE AREA

#### Recommendation:

Adopt the attached resolution which takes tentative action to designate the West Hills Wildlife Habitat Area 1C, a significant wildlife habitat resource. Direct preparation of a report identifying conflicting uses, determining the economic, social, environmental, and energy consequences of these conflicting uses, and

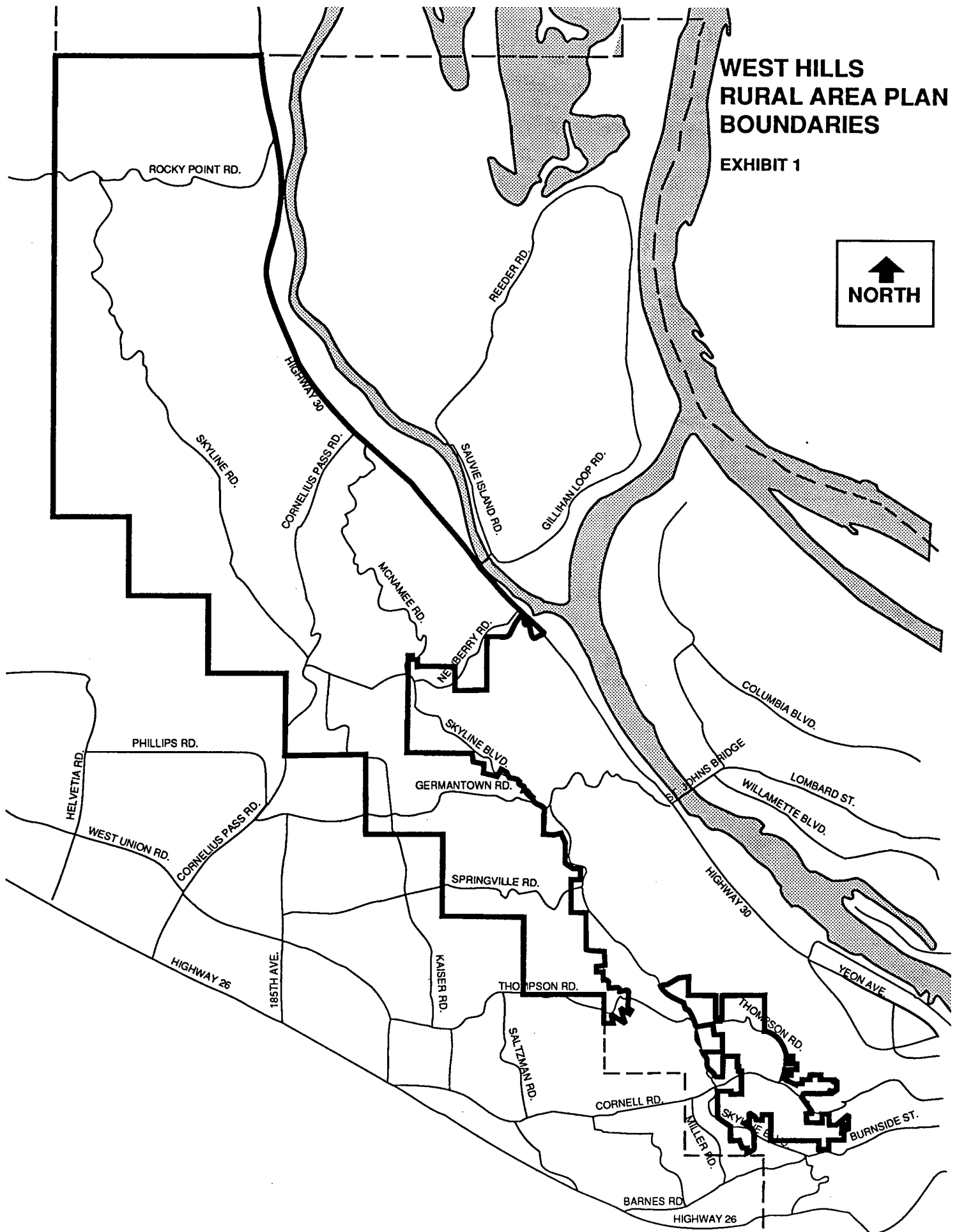
developing a program to achieve the goal and resolve conflicts by either protecting the resource site, allowing conflicting uses fully, or limiting conflicting uses.

## **V. COMMENTS ON ADDITIONAL WRITTEN TESTIMONY**

Attached to this report are all written comments received at or since the July 26 hearing, along with appropriate staff responses. Based upon a review of all of the testimony, staff has no changes to make in its recommendation. The Planning Commission considered all written testimony provided, along with the staff responses. The only change resulting from the written testimony regards the definition of Fish & Wildlife habitat, as discussed earlier in this report.

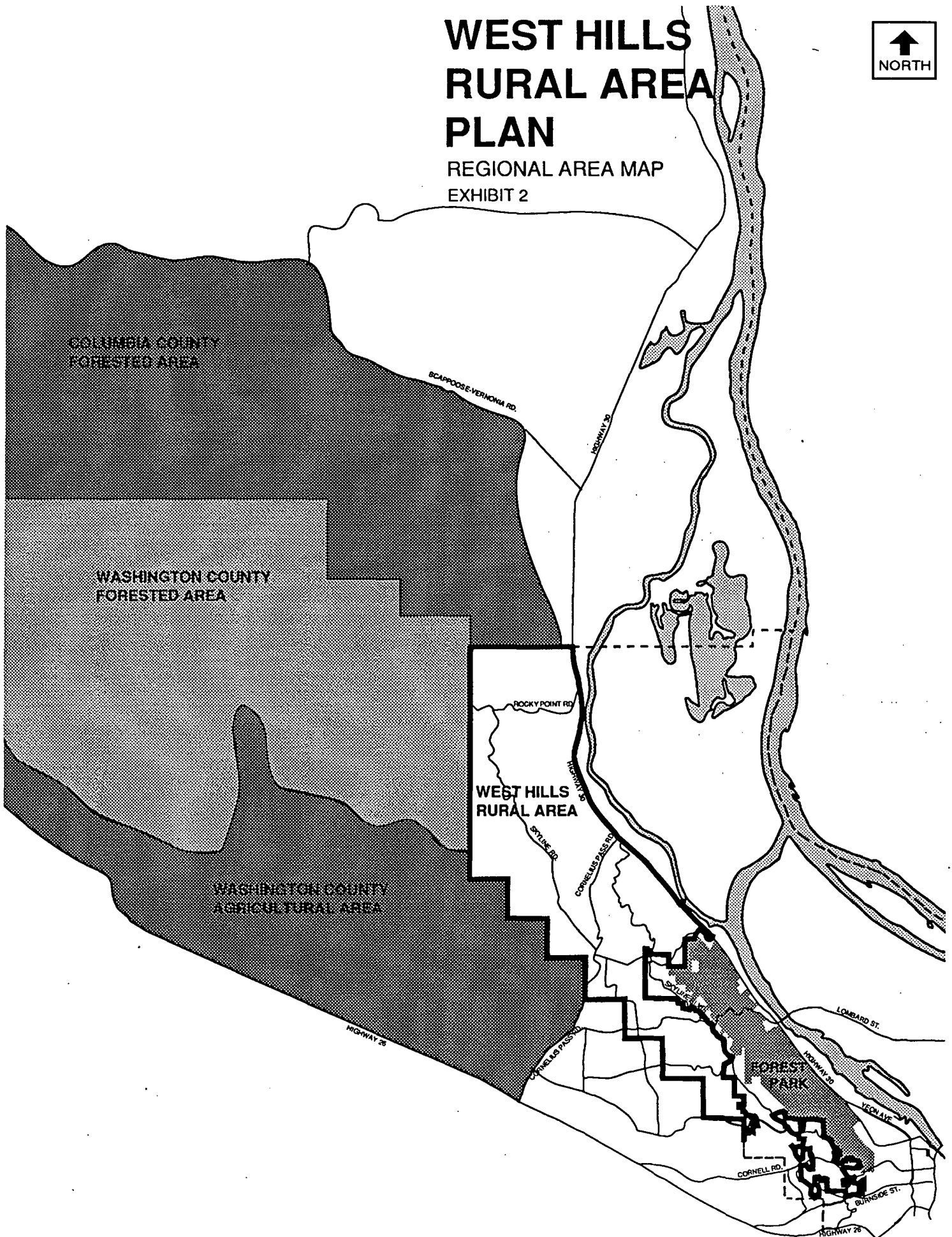
# WEST HILLS RURAL AREA PLAN BOUNDARIES

EXHIBIT 1



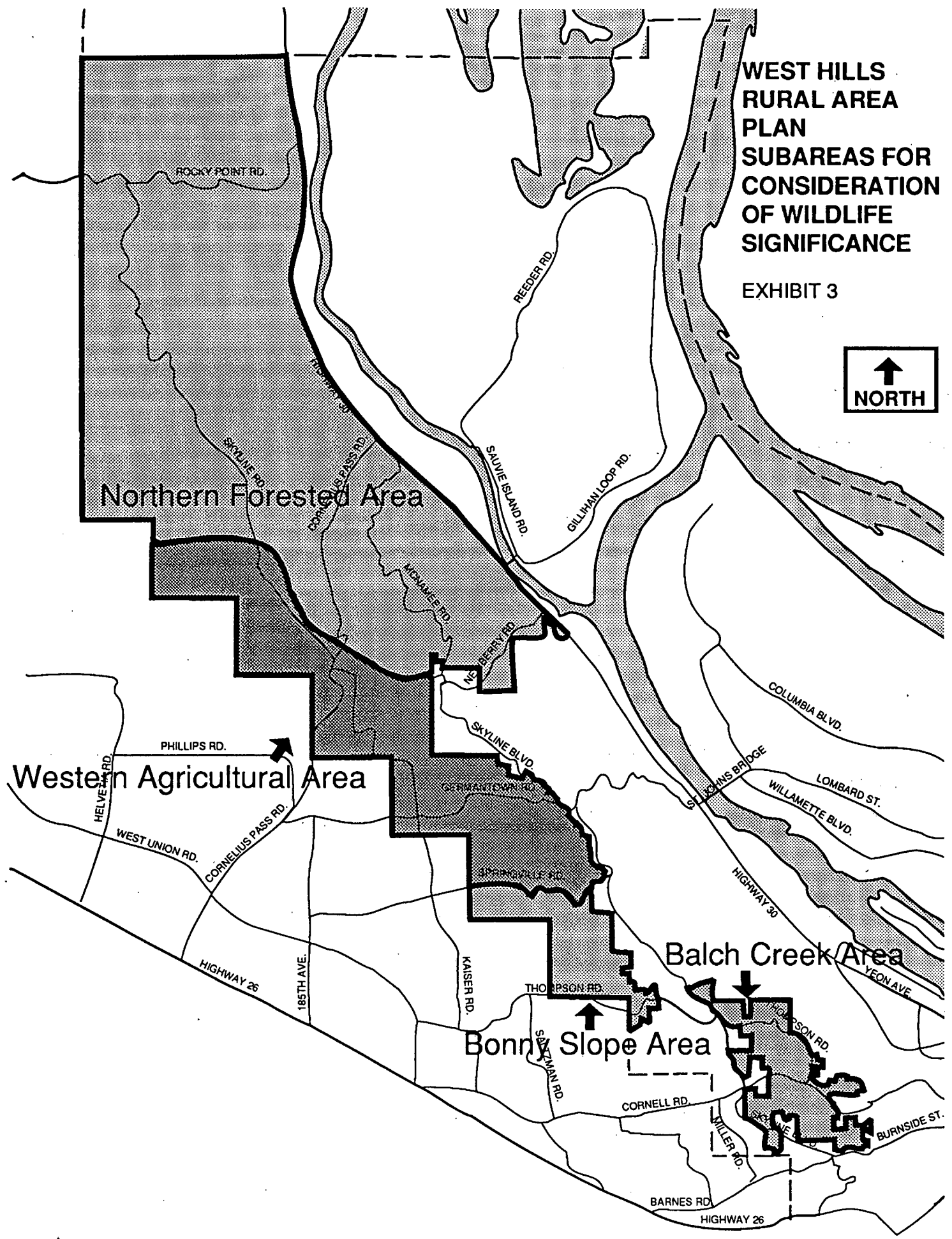
# WEST HILLS RURAL AREA PLAN

REGIONAL AREA MAP  
EXHIBIT 2



**WEST HILLS  
RURAL AREA  
PLAN  
SUBAREAS FOR  
CONSIDERATION  
OF WILDLIFE  
SIGNIFICANCE**

**EXHIBIT 3**



RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

In the matter of determining the significance of        )       RESOLUTION  
wildlife habitat in the West Hills                                )

**WHEREAS,** As part of Periodic Review, Multnomah County must complete the Statewide Planning Goal 5 process for wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** Oregon Administrative Rule Chapter 660 Division 16 requires that the location, quantity, and quality of wildlife habitat be considered to determine whether the resource is significant ; and

**WHEREAS,** The Planning Commission held a public hearing on July 26, 1993 to take testimony concerning the significance of wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** The Planning Commission considered additional written testimony until September 3, 1993, and

**WHEREAS,** The West Hills Rural Area has been divided into four subareas for analysis of significant wildlife habitat, the Northern Forested Area, the Western Agricultural Area, the Bonny Slope Area, and the Balch Creek Area; and

**WHEREAS,** On September 7, 1993, the Planning Commission approved a motion to designate three subareas of the West Hills Rural Area as significant wildlife habitat resources by a vote of six(6) in favor, none(0) opposed, and one(1) abstention, and

**WHEREAS,** A comparative analysis of rural areas with wildlife habitat values within Multnomah County shows that the West Hills Rural Area constitutes 12 percent of such areas, and a comparative analysis of rural and park areas with wildlife habitat adjacent to the West Hills shows that the West Hills constitutes 12 percent of such areas; and

**WHEREAS,** Wildlife studies in the West Hills Rural Area show the area has a good quantity and diversity of wildlife and their habitat; and

**WHEREAS,** The West Hills Rural Area is a key part of a larger ecosystem with significant wildlife habitat values which includes Forest Park within the City of Portland and natural areas in Columbia and Washington Counties, eventually connecting with

the Oregon Coast range; and

**WHEREAS,** Three of the four West Hills subareas, the Northern Forested Area, the Western Agricultural Area, and the Balch Creek Area, are important parts of this larger ecosystem. The fourth area, Bonny Slope, is not important because of existing development patterns and location; and

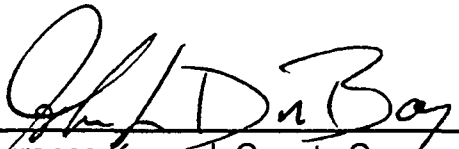
**THEREFORE BE IT RESOLVED,** that the Multnomah County Board of Commissioners directs the Planning and Development Division staff to determine whether conflicting uses to wildlife habitat exist in the three areas recommended for designation as significant wildlife habitat in the West Hills, prepare an ESEE analysis of conflicting uses, consider and, if appropriate, prepare a program for protection of wildlife habitat resources, and undertake any other necessary actions pursuant to Oregon Statewide Planning Program Goal 5 Natural Resources as outlined in Oregon Administrative Rule Chapter 660 Division 16.

**BE IT FURTHER RESOLVED,** that the Multnomah County Board of Commissioners indicates its intent, at the completion of the remaining steps in the inventory and consideration of Oregon Statewide Planning Goal 5 as outlined in Oregon Administrative Rule Chapter 660 Division 16, to designate wildlife habitat as a significant natural resource for those portions of the West Hills Rural Area as shown on the attached map labeled "Exhibit 4."

ADOPTED this 12th day of October, 1993.

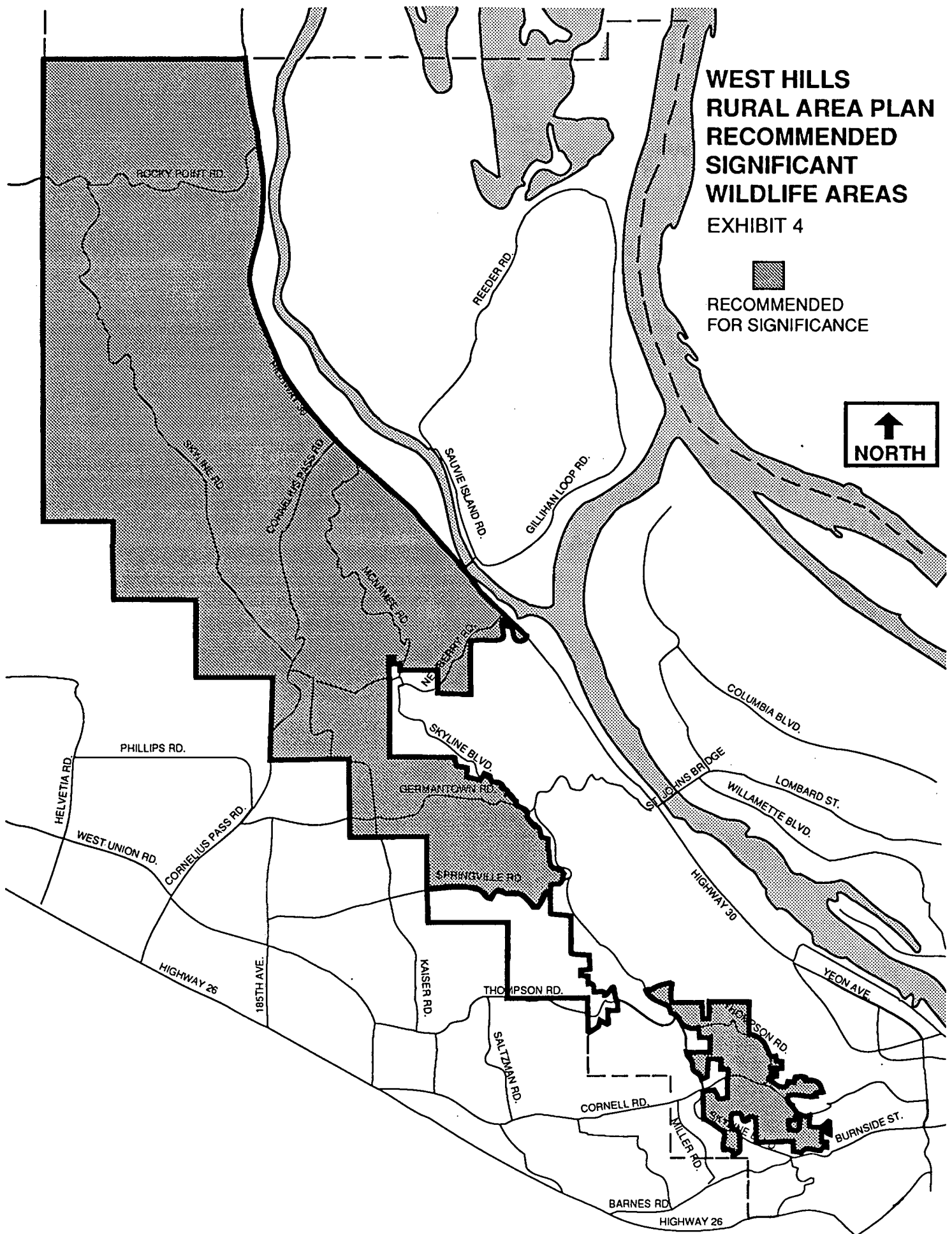
By \_\_\_\_\_  
BEVERLY STEIN, CHAIR  
MULTNOMAH COUNTY, OREGON

REVIEWED:

  
\_\_\_\_\_  
Laurence Kressel, County Counsel  
of Multnomah County, Oregon

# **WEST HILLS RURAL AREA PLAN RECOMMENDED SIGNIFICANT WILDLIFE AREAS EXHIBIT 4**

 **RECOMMENDED  
FOR SIGNIFICANCE**





# **LETTERS OF COMMENT & RESPONSES**

# LETTERS OF COMMENT AND RESPONSES

## WILDLIFE HABITAT SIGNIFICANCE IN THE WEST HILLS

LETTER DATED JULY 14, 1993 FROM MR. STEVE OULMAN, OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Thank you for providing draft staff reports for Goal 5 scenic and wildlife resources. Both reports are well-organized and easy to read.

I don't have comments about the staff's recommendation that scenic values in the West Hills are not significant. The following comments concern the analysis of significant or "I-C" wildlife habitat. I'm making these comments to point out aspects of the analysis that the county must be careful about.

The County needs to focus this analysis. You might ask what is significant -- the existing wildlife habitat or the desire to have habitat? The analysis does not conclusively show a significant wildlife habitat in the entire West Hills. The studies referenced in the staff report explain the need to maintain wildlife habitat. They are less conclusive about whether the desired habitat exists in the area. The county would be well-served by consulting the Department of Fish & Wildlife (ODF&W) for their opinion about habitat in the area.

The West Hills is not what it once was. Residential development, logging, quarrying and other activities have all contributed to habitat loss. The area may look like wildlife habitat, but may be missing many of the functional values. The studies referenced in the report identify the adverse effects of development in the West Hills. For example, the Lev study concludes that habitat fragmentation is temporarily due to logging, but probably permanent because of residential and agricultural development. This study also concluded that critical habitat is found only in a strip one-half mile long by 800 feet wide along McNamee Road.

The staff report recommends declaring the entire western unincorporated portion of the county as significant wildlife habitat. This determination must be more specific. All areas of the West Hills cannot be significant habitat based on the county's own working definition (p. 2 of the staff report). The county should refine the significant habitat determination by eliminating from consideration those areas that do not meet its definition of sensitive habitat. Declaring the entire area significant habitat requires the county to undertake analyses and implement programs which may be unnecessary.

Staff believes that the analysis does conclusively show that most of the West Hills Rural Area (excluding the Bonny Slope Area south of Springville Rd.) contains significant wildlife habitat when measured by quality. We believe this conclusion is supported by factual data in the Esther Lev study and in the materials available from the City of Portland through their Goal 5 analyses of immediately adjacent areas. The County has, and will continue to consult with the Oregon Department of Fish & Wildlife on this matter (see their letter of comment).

Despite the loss of some habitat value due to various activities, the Esther Lev study showed that a significant amount of wildlife is present in the West Hills Rural Area, due generally to the low level of human intrusion into the natural system because of the area's non-urban nature.

See Esther Lev's letter, which is in part a response to this and other representations of her report.

Staff will review different definitions of significant wildlife habitat provided by the Friends of Forest Park and submitted by professional biologists at the request of staff. The results will be reported to the Planning Commission at the September 7, 1993 hearing. (Please note, the use of the word "sensitive" in the original staff report is incorrect; the intended word was "significant."

A very precise delineation of the resource is critical. This step sets the stage for the remaining requirements of the Goal 5 process. At some point in the future, the identification of conflicting uses and analysis of ESEE consequences must match up. I suggest you review the Oregon Supreme Court's decision in the *Columbia Steel Castings v. the City of Portland*, 314 Or 424 (1992) for a discussion of this linkage. The county risks creating an unmanageable ESEE analysis if it uses a very general habitat determination.

In summary, the county needs to be very clear what and where the wildlife habitat is. The current approach to declare the western portion of the county as significant wildlife habitat is based on very general information about location, quality and quantity. Designating very broad areas of the county as significant wildlife will make later steps of the Goal 5 analysis extremely difficult.

LETTER DATED JULY 26, 1993 FROM MR.  
FRANK M. PARISI OF THE LAW FIRM  
LANE, SPEARS, POWELL, LUBERSKY.

Angell Bros. is happy to assist the County in promoting habitat protection in the West Hills Area. If the County will identify with precision what resources are potentially conflicting uses to mineral and aggregate production, Angell Bros. will work mitigation measures into its operating plan and reclamation plan. Unfortunately, the Staff Report does not provide sufficient data to support a finding of significance for any specific resource sites. In fact, the more closely one examines the Staff Report, the more it is apparent that the report is not based on data, but on assumption and conjecture. The balance of this letter will point to specific areas where the Staff Report is deficient, but I want to be clear up front that whether or not there are any specific wildlife habitat sites for Goal 5 purposes, Angell Bros. would be happy to cooperate in preserving habitat values. More detailed comments follow.

1. The primary document relied upon by the County is the Ester Lev Study. The Ester Lev Study makes it very clear that the scope of the study was not sufficiently broad for the authors to conclude that the area in question was (or was not) significant wildlife habitat. The Ester Lev Study simply collected limited baseline information on habitat value and species counts in the Study Area. It did not make any comparison of relative quantity or quality of species counts or habitat value of the Study Area. It is therefore incorrect to state that the Lev Study showed that any area has "superior" wildlife values or "inferior" wildlife values than any

Staff believes that its recommended area of significant wildlife habitat in the West Hills is precise, in that it identifies an ecosystem which has been shown to have wildlife habitat values. Staff acknowledges that this delineation will require a large-scale complex ESEE analysis, pursuant to guidelines suggested by the *Columbia Castings v. the City of Portland* case. While such an ESEE analysis will be difficult, staff does not believe that it will be "unmanageable."

Staff believes that our recommended significant wildlife habitat areas are clear. The information available to staff, while general in nature, is sufficient to complete this step of the Goal 5 process.

"A Study of Forest Wildlife Habitat in the West Hills", prepared by Esther Lev, Jerry Fugate, and Lynn Sharp, is one of several sources of background information used by staff in the preparation of the staff report. Its four objectives were as follows:

1. Identify the existing level of forest fragmentation in this peninsula of natural habitat within the urban area.
2. Provide limited baseline information on existing wildlife in several areas of the peninsula.

other area. The Lev Study only studied one area, made no comparisons, and drew no conclusions about significance, except to state that no conclusions were appropriate without further study.

2. The Lev Study also did not recommend a protected corridor of between one mile and one and one-half miles. On the contrary, the Lev Study referred to the theoretical possibility that wildlife corridors in some situations might have to be increased to maximum of a mile or a mile and a half, but in the West Hills Study Area, the Lev Study recommended only a 200-foot buffer zone. See Table 4 of the Esther Lev Study.

3. The Oregon Department of Fish & Wildlife has designated only a few isolated areas as "significant Goal 5 habitat areas." Angell Bros. has no problem with the eagle site near Dixie Mountain, or with Oregon Department of Fish & Wildlife designated waterfowl areas, or with the other areas that have been specifically identified by ODF&W.

4. On page 2 of the Staff Report, in the section labeled "Resource Description," the term "sensitive wildlife habitat" is defined as "an area which constitutes a large, mostly natural ecosystem, connected with other natural areas, which is home to large numbers of wildlife animal species." Staff Report, p 2. This definition is apparently based on the idea that large tracts of land are better than small ones for wildlife, and that ecosystem protection is better than no protection. This statement is no definition at all, because it does not permit the clear and objective articulation demanded by Goal 5. What is a "large" area? Large compared to what? What is a "mostly natural ecosystem?" "Natural" compared to what? What are "large" numbers of wildlife animal species? Large compared to what? The answers to these questions make a big difference. If no more precise

3. Predict, on the basis of a recent, rapidly developing body of scientific literature, what the probable impacts of the ongoing development will be over time if existing development trends continue; and

4. Make recommendations on how the risk of loss of species and therefore of biotic diversity can be reduced over time, and maintain the quality of wildlife and habitat in this unique urban wilderness.

The staff report does not assert that the Lev Study showed that this area had "superior" or "inferior" wildlife, but rather that "wildlife observed during the field studies were diverse and fairly representative of forested habitats in the Portland area." (See Executive Summary, Pg. iii)

To quote from the Lev Study, "The main recommendation of this study, which is designed to minimize or avoid this (Forest Park) isolation and eventual loss of species, is that the area lying between Newberry and Cornelius Pass Roads and extending eastward from the ridgeline to Highway 30, be managed in the future to always provide a band of contiguous forest at least 0.5 mi. wide, in order to provide suitable habitat and a secure travel lane for forest wildlife habitat." A subsidiary recommendation is "to provide forested corridors at least 200 ft. wide between forested patches where possible." (See Executive Summary, Pg. iii-iv.) Also see Esther Lev's letter, which is in part a response to this and other representations of her report.

In addition to the listed sites, the Oregon Department of Fish & Wildlife has designated a large portion of the West Hills, north of Cornelius Pass Road, as a "big game habitat area."

The use of the term "sensitive" describing wildlife habitat in the staff report is erroneous -- the proper term should be "significant." The definition is based upon an additional idea not stated by the commentor, which is that the preservation of individual endangered, threatened, or rare plant and animal species is best accomplished not through an attempt to preserve small areas just for that species, but rather through preservation of the entire ecosystem of which that species makes up a small, yet integral part. Clearly when dealing with an entire ecosystem it is much harder to offer a precise definition of "large," than when dealing with the size of, for example, an individual bald eagle nest. The commentor is not correct in his assertion that habitat in the West Hills is indistinguishable from habitat throughout the low elevation areas west of the Cascades, because, as discussed on Pages 9 and 10 of the staff report, the West Hills and adjacent Forest Park are located immediately adjacent to the largest metropolitan area

definition can be found, then the habitat sought to be protected will be indistinguishable from habitat throughout the low elevation areas west of the Cascades in the Pacific Northwest. These areas total hundreds of thousands of square miles. Are all of these areas "sensitive wildlife habitat?"

5. The statement on page 2 of the Staff Report that "fill features" such as roads, residences, fences hinder the movement of wildlife through the West Hills Area is a valid statement, but it appears to be ignored in the remainder of the Staff Report. The theory that a corridor exists from Forest Park to the Coast Range is not valid unless the animals in question are able to cross Rocky Point Road, Skyline Road, Cornelius Pass Road, McNamee Road, Newberry Road, Thompson Road, and other roads. If these roads are not barriers to wildlife and are not taken into question, then what activities in the Study Area are barriers?

6. The Staff Report divides the area in question into four subareas. This may or may not make sense for the Study Area in question. No data is presented one way or the other to explain the sub-area classification in the context of the supposed habitat values. Zoning boundaries are not boundaries to wildlife. In fact, many of the highest counts in the Lev Study were found in the clear cut areas, and in areas where the clear cuts bordered agriculture and residential uses. There is also evidence that the Skyline Blvd. area is the preferred travel route of large mammals. This route is the dividing line between the subareas, so the subarea classifications do not help resolve the problem.

7. On page 4 of the Staff Report, the statement is made that "In the absence of more specific data on wildlife resources within other non-urban portions of Multnomah County, the best available standard of comparison of wildlife abundance (quantity) is the total size of each non-urban area within Multnomah County." This statement is an assumption and is insupportable. There is no justification that I know of to use size of parcel as a pretext for value of habitat unless there is data available to show that areas of approximately equivalent terrain, flora, fauna and habitat value are being compared. Otherwise, size may or may not have a direct relationship to habitat value. The same is true of comparisons made between areas that are "directly adjacent" to one another. If areas are directly adjacent to one another but are separated by Cornelius Pass Road or Highway 30, is there any real habitat connection between them? For what species? An assumption is made that there is a connection, but there is no data presented to justify this assumption.

8. Why is the Sauvie Island agricultural area not

in Oregon. This makes the West Hills wildlife habitat more significant than similar habitat in other, rural areas.

As stated in the staff report, "The West Hills rural area has a limited number of built features due to its location outside of the urban limit line and its low intensity levels of agricultural and forestry operations, and rural residential development." Such built features include the rural roads listed by the commentor. These rural roads do not constitute the kind of major barrier to wildlife passage that an urban four-lane roadway or freeway would because they are narrow and are used by relatively small numbers of vehicles.

The four subareas were chosen using three factors, one of which is existing land use (which corresponds roughly to the zoning). The second factor was the location of the area relative to adjacent areas and land uses, and the third factor was the jurisdictional boundaries between Multnomah County unincorporated lands and the City of Portland/Washington and Columbia Counties. Skyline Blvd. serves as a boundary in two areas, one where it roughly approximates the jurisdictional boundary between the City of Portland and Multnomah County, and second, where it forms a boundary between forested uses to the north and east and agricultural uses to the south and west.

Given the level of data available in order to determine the significance of wildlife habitat, using size of non-urban areas within Multnomah County as a comparison of wildlife habitat quantity is entirely supportable. When the chosen study area is general in nature, as the West Hills Rural Area is, it can be compared to other general areas, which in this case are non-urban areas near to the Portland Metropolitan Area. In this case, where we are measuring quantity, size of the areas to be compared is certainly relevant. As for the issue of "directly adjacent" areas, unless a significant barrier to wildlife movement exists, such as a large urban concentration or, as exists to the east of the West Hills, the combination of a four-lane heavily traveled highway, a railway line, and Multnomah Channel, one can assume that some significant level of movement of wildlife between areas is occurring.

The issue of wildlife habitat on Sauvie Island and in eastern Multnomah County will be raised as the time Rural Area

significant for the adjacent sensitive water fowl area in the northern portion of the Island? Isn't it true that the same water fowl that live and feed in that area live and feed in the agricultural areas? Isn't it also true that the same mammals that are counted in the West Hills Study Area as being evidence of significant habitat value are also found in the agricultural areas of Sauvie Island (where they are treated as a nuisance)? Doesn't the same thing occur in the Eastern Multnomah County Non-Urban Area? Don't the same species that are sought to be protected in the West Hills Study Area also flourish there? Why are these areas not Sensitive Wildlife Areas? And isn't the same thing true in the Washington and Columbia Counties Adjacent Non-Urban Areas? Why are these adjacent areas not "connected?" And why is agricultural activity and forest activity not a threat to wildlife habitat in these areas?

9. Statements are made on pages 4 and 5 of the Staff Report about the relative value of the "Washington County Forest Area," the "Washington County Farm Area," the "Columbia County Forest Area," and the "Forest Park Area." Unfortunately, different standards were used by different jurisdictions to evaluate each of these different areas. Only portions of the Forest Park Area have been designated as protected Goal 5 habitat sites, so far as the Staff Report speaks to the issue and as far as Angell Bros. is aware, and even then, only for a few species. The other Areas that are mentioned in the Staff Report are areas that have more or less agricultural activities, more or less forest activities, and more or less natural activities. Perhaps the Staff realizes how difficult a comparison is solely on the basis of quantity and so the Staff concludes that "without regard to quality, this quantity of wildlife habitat does not appear to be significant." Angell Bros. agrees that the quantity of wildlife habitat is not significant. Angell Bros. also believes that the standards for a meaningful comparison of habitat quality in the absence of any comparative data on species have not been identified.

10. On Page 6 of the Staff Report, the Staff relies on two standards to prove that the West Hills Area has significant wildlife quantity. The first of these is the "quantity and diversity of the species" and the second of these is "connectivity." Unfortunately, Staff presents no evidence to support the use of these standards. As stated above, the Lev Study made no comparative findings about quantity and diversity one way or the other, and rejected any attempt to prove or disprove the connectivity argument in the West Hills Study Area as being outside the scope of the Study. The Houle Study says almost nothing specific on any subject. It was primarily a literature study and tried to promote the political agenda of protecting a large ecosystem as a basis of supporting Forest Park in the City of Portland.

Plans are prepared for these areas. Both the Washington County and Columbia County Comprehensive Plans identify forested areas adjacent to the West Hills as wildlife habitat areas. Local jurisdictions have no authority to regulate agricultural or forestry activities.

Staff acknowledges that measurement of quantity is difficult (is 12% a significant amount?). To suggest that Forest Park is not important as a wildlife area because only portions of it are designated as a Goal 5 resource is disingenuous given the well-known priority of the City of Portland to manage the Park for its natural values and wildlife habitat values, and the large amount of information available on the diverse flora and fauna of the park. The issue of quality will be discussed in response to points made by the commentor later in his letter.

Use by staff of these two standards is based upon the logic of the situation, given the importance not only of the actual quantity and diversity of the wildlife species found in the West Hills, but also, in light of the look at ecosystems rather than habitat for individual species, the connectivity, or adjacency, of portions of the West Hills to other natural areas with significant amounts of wildlife habitat. The Lev and Houle Studies are two pieces of the "collection of available data" cited in OAR 660-16-000(1) as being the starting point of the Goal 5 process. The merits of the Lev Study are discussed in the response to point No. 1 of the commentor's letter.

(Unfortunately, it missed a very serious issue that should have been apparent to someone concerned about wildlife, namely that luring wild animals into an urban environment like Forest Park leads to higher mortality rates for the animals.)

11. The Staff Report also misstates the emphasis that the Lev Study made in connection with conflicting uses. It found that residential development posed the highest conflict with wildlife habitat protection, that agricultural was the next-highest, that commercial forestry was a conflict, but only a temporary one (approximately 30 years) and that the Angell Bros. quarry presented the lowest level of conflict. The Lev Study also did not make any conclusion that the baseline information collected in the Lev Study proved that wildlife existed in the Study Area in "significant numbers and diversity." This was because the Lev Study had nothing else to compare its baseline findings to. Also, as stated above, the Lev Study did not recommend a corridor of one to one and a half miles for the West Hills Study Area. It recommended "200-foot vegetated corridors." See Table 4 of the Lev Study.

12. On page 8 of the Staff Report, a number of statements are made regarding other non-urban habitat areas for which comparisons are sought to be made. There are basically two problems with the Staff Report here. First of all, Staff does not make the distinction between habitat areas that have been identified under Goal 5 by the Oregon Department of Fish & Wildlife, and larger areas that have not been identified by ODF&W. Thus, the Staff's conclusions about the Washington County Adjacent Non-Urban Area, the Columbia County Adjacent Non-Urban Area, and the Forest Park Area are faulty. These areas may contain some significant Goal 5 resource sites within them, but the larger areas are not themselves significant Goal 5 resource sites, and the sites that are listed as significant Goal 5 resource sites are not connected. To maintain that connectivity presently exists between the larger areas is not factually supported. The second problem with the supposed comparison between the West Hills Study Area and the other Non-Urban Habitat Areas is that no real comparison is made. Presumably, a direct comparison could be made between, for example, the West Hills Study Area and the Eastern Multnomah County Non-Urban Area. The type of lands are virtually identical, forest production is equivalent, and the species are presumably similar, yet no actual comparative data is presented in the Staff Report. With respect to the Forest Park Area, again Staff alludes to smaller areas within Forest Park, but does not specify where these are, what

See staff response to point No. 1 of the commentor's letter. As regards the issue of the impacts of the quarry on wildlife, the executive summary states that "the impacts of the existing quarry appear minor, given its location adjacent to Highway 30." (Executive Summary, Pg. iii) Any expansion of the quarry would most likely change this sentiment, given the statement in the report that, "Mineral aggregate extraction (quarrying) has obvious and permanent impacts on the landscape and habitat of the area. The removal of top soil inhibits the regeneration of native vegetation similar to the original forests of the site. Blasting and/or low frequency vibration in the ground from heavy equipment may disturb moles and pocket gophers. these fossorial animals play an important role in maintaining soil viability and fertility. The quarry headwall itself is a formidable barrier, forcing animals downslope toward US Highway 30 or upslope toward a very narrow remaining strip of trees. The noise and human activity at the quarry may also be avoided by many wildlife species if alternative habitat is available." (Pg. 10)

In the areas of comparison analyzed on Page 8 of the staff report, the following officially identified Goal 5 wildlife habitat resources are present:

Sauvie Island

-- Waterfowl area in the northern portion of the island as identified in the Multnomah County Goal 5 inventory.

Eastern Multnomah County Non-Urban Areas

-- Big Game Wintering Areas and Osprey Nests as identified in the Multnomah County Goal 5 inventory.

Washington County Adjacent Non-Urban Areas

-- Virtually all of the Washington County forested area discussed in the staff report is designated by the Washington County Plan Map of Significant Natural Resources as "Wildlife Habitat" pursuant to Goal 5. The only exception to this designation are smaller areas designated "Mineral and Aggregate Overlay." The Washington County agricultural area has small areas designated "Wildlife Habitat" as well as larger areas designated "Water Areas and Wetlands & Fish and Wildlife Habitat" pursuant to Goal 5.

Columbia County Non-Urban Areas

Virtually the entire Columbia County Forested Area discussed in the staff report is designated as "Big Game Habitat" in the

species is the significant one, what the connectivity assumptions are about these areas, whether such assumptions have or have not been proven, and whether the connectivity of these areas have even been studied.

13. For all of the reasons stated above, the Conclusion Section of the Staff Report on pages 10 and 11 is not supportable. Even if one did not review the Staff Report closely, it must be obvious that when an area entitled the "Northern Forested Area" is sought to be protected as a "significant wildlife habitat area" some mention must be made of forest activities. As the County knows, the County has no power to regulate forest harvest activities outside the urban growth boundary. This means that clearcutting, road building, slash burning, herbicide spraying, and other typical forest practices will continue unabated in the area. Given this level of disruption, and given the County's total lack of control over it, any wildlife habitat value that is assigned to the Area must be at a level that contemplates these disruptions on a continual basis.

Given the disruption caused by logging, given the existing rural residential housing, given the existing agricultural activity, given six major roads, given the proximity of the largest urban area of the state, given the expected population explosion of an additional 500,000 new residents in this planning period, and given the County's inability to fund even the continuation of the one baseline study of wildlife habitat within the area, the conclusion to protect the West Hills Area for its existing wildlife habitat value is insupportable.

14. The real "solution," if you will, to the concern for wildlife habitat protection is to negotiate with individual landowners on individual projects. Angell Bros. has been ready to negotiate with the County and with concerned citizens for over four years now. Presumably other landowners will be willing to negotiate also, but few will be willing to accept regulatory overkill.

LETTER DATED JULY 24, 1993 FROM MR. LARRY W. BREWER OF WILDLIFE AND BIOSYSTEMS ASSOCIATES, INC.

I am a professional wildlife biologist currently employed as Senior Wildlife Scientist for WBA, Inc. a wildlife consulting firm. I have been employed as a wildlife scientist for 21 years, including 14 years with the Washington Department of Wildlife, 3 years with Western Washington University, and 3 years with Clemson University, Clemson, SC. I currently reside in

Columbia County Comprehensive Plan pursuant to Goal 5.

As regards the issue of comparison, staff used all available data to compare quality of wildlife habitat in different areas. Staff acknowledges that detailed studies of wildlife of the scale suggested by the commentor's argument have not been done for any other areas within Multnomah County.

Multnomah County has no regulatory authority over forest practices. Such practices are regulated by the State of Oregon. The County relies on the State to assure that forestry activities are compatible with wildlife habitat, and the state's ability to make such activities compatible is certainly a matter of contention. However, it should be pointed out that 1) the Lev study showed a diversity of wildlife in the West Hills despite the impacts of over a century of logging activities in the area, and 2) logged areas do eventually regenerate to provide wildlife habitat again.

In light of our responses to the commentor's points, staff does not agree with the commentor's conclusion that the staff conclusion is insupportable.

Negotiation with individual landowners is only appropriate when a plan to protect the entire ecosystem is in place. At that time, the impacts and mitigations related to individual property owners such as the Angell Bros. quarry will be measurable and justified, respectively.



Sisters, Oregon. I have incorporated my resume into this correspondence, as Appendix A, for your perusal and to establish my credentials as a wildlife professional in your records.

I have previously reviewed the Ester Lev Study referred to in the above referenced Staff Report. I have reviewed aerial photographs of the West Hills Rural Area referred to in the Staff Report and toured portions of the area to get a general understanding of the wildlife habitat in the area. Based on my experience as a wildlife professional and information contained in the Lev Study and other literature, I believe the staff report has several weaknesses in its Analysis and Conclusions Sections. My concerns are:

1. Insufficient wildlife data is presented in the Lev Study and the Staff report to determine whether the area is "significant wildlife habitat." While the Lev Study accomplished all that could be expected with the limited funds available, even the authors acknowledge that it provides minimal data. In fact, the data are not sufficient to provide a valid baseline for assessment of future trends or current comparisons to other areas. The Study does provide a data base on which to build for future evaluations of the area.

2. The significance of wildlife habitat should be based on habitat characteristics, not the size of an area. In commercial forest areas, stand conditions and stand age play a major role in wildlife use of the area. Habitat quality is determined by a complex combination of characteristics for which an assessment criteria (habitat suitability index) has been established by the U.S. Fish & Wildlife Service. Such an assessment should be applied prior to locating the boundaries of the travel corridor, and before designating "significant" habitat. The designation of significant habitat in the staff report is based on inadequate parameters, and is premature.

3. Significant habitat, relative to Goal 5 definitions, involves specifically located habitat for specific species of animals. Defining significant habitat in the broad terms presented in the Staff Report based on the size of an area and the species diversity will not meet the objectives of Goal 5 legislation, and will not withstand future legal challenges. The County could solve this problem by establishing a list of 6 to 10 indicator species for which it is establishing a habitat corridor between the park and the Coast Range.

4. The maintenance of wildlife travel corridors between larger habitat areas is a valid practice according to current wildlife management theory. However, as stated in the Lev Study and by the Advisory Board associated with that study, various species would require

The Lev Study, along with the other cited materials, contain all available written information to date on wildlife and wildlife habitat in the West Hills. Staff believes that the level of data in the Lev Study is adequate to make an "ecosystem" designation of significance for wildlife in the West Hills.

The Lev Study does contain limited information on habitat characteristics in the West Hills. However, size of an area is also an important factor in maintaining a viable ecosystem. Use of the "Habitat Suitability Index" would be more appropriate to a precise delineation of habitat for certain endangered, threatened, or rare species, which is not the focus of this analysis.

Staff disputes that Goal 5 language related to wildlife habitat requires designation of specifically located habitat for specific species of animals. Neither the Statewide Planning Goals nor the Oregon Administrative Rules contain such a definition of wildlife habitat, or in fact, any definition of wildlife habitat. Interpretation of Goal 5 to require designation of specifically located habitat for specific species of animals would mean that Goal 5 is inadequate to meet the requirements of the generally accepted ecosystem approach to preserving significant wildlife habitat.

The Lev Study does not postulate the existence of a wildlife "corridor," but rather the existence of a continuous area of land which is used by wildlife to disperse, migrate, forage, and generally engage in activities which ensure that populations of different species are not isolated. The Lev Study acknowledges that certain species, such as black bear

different habitat characteristics within the travel corridor. The degree to which various developments (roads, buildings, farms, etc.) influence the wildlife use of the corridor is not well understood at this time. By no means has it been established that the current habitat situation provides a travel corridor for wildlife between the Coastal Range and Forest Park. In reality, many important species may already be excluded from the area due to irreversible developments in the area. Additional wildlife survey and monitoring work must be completed to determine what species are resident in the "corridor" and which species, if any, are actually migrating or dispersing through it. At that point, the County may determine which species it wishes to provide a "travel corridor" for, and then the habitat needs (including corridor width) of those animals can be assessed. The assumption at this time that there is a functional corridor may be faulty, at least for several species.

5. Habitat corridors may be used by wildlife for regular migration, juvenile dispersal, immigration, emigration and seasonal or permanent residency. However, the "connectivity" concept is the focus of the Lev Report and the Staff Report. If big game animals are moving through the Western Hills Area, the primary species is black-tailed deer. I believe the deer are most likely to move along the ridge that Skyline Blvd. generally follows. This route appears to be no more developed than the area to the east sloping toward and along the river. This area is more likely to be avoided by big migrating game simply because they have to cross for valleys and ridges to get there. Oregon Department of Fish & N Wildlife biologists should be able to advise the County as the route most likely used by big game.

6. The areas recommended in the Staff Report for designation as significant wildlife habitat are primarily cut-over, fragmented forest areas. This type of habitat is extensive throughout lowland western Oregon and Washington. It is usually only fair to marginal wildlife habitat. The numbers of bird and mammal species reported in the Lev Study for the various areas do not appear to me to be unusually high for this type of habitat. Given these conditions, it may be very difficult to defend the designations as significant habitat. A more precisely defined habitat corridor established for a list of specific indicator species would provide objectives for which land management criteria could be established and the designation as significant habitat would be more defensible from a legal perspective. A more concise proposal would benefit wildlife, land owners, and the County in the long term.

7. Clear-cut logging and reforestation practices essentially remove land as wildlife habitat for 30-40 years once the young coniferous trees grow large enough

and elk, may no longer have a functional connection between the Coast Range and Forest Park.

Both the unincorporated area along Skyline Blvd, and the unincorporated area to the east between Skyline Blvd. and Highway 30 would be designated as significant wildlife habitat based upon the staff recommendation. The use of the relatively level areas near Skyline Blvd. by wildlife for migration and dispersal is certainly probable.

The Staff Report acknowledges that the quality of wildlife habitat in much of the West Hills which has been subject to forestry is not distinguishable from other areas in Western Oregon. However, the staff report also considers the quality of wildlife in the West Hills to be higher based upon location -- as part of a larger ecosystem which includes Forest Park, which along with the West Hills is an area immediately adjacent to the Portland. A finding of significance for wildlife habitat in the West Hills is not necessarily intended to result in the enhancement of wildlife habitat values in the area -- absent additional regulations on forest and farm practices, this is probably infeasible. A significance finding would instead help to maintain existing wildlife habitat values in the area, which though not pristine, are significant.

The County has no regulatory authority over forest practices. The County does have regulatory authority over residential development, and development of quarry operations. The suggestions made by the commentor are all valid, and would

to close the canopy. The development of homes essentially impact wildlife habitat values permanently. Dogs and cats associated with residential development dramatically increase wildlife fatality rates. It seems unrealistic at this time that the County will control either of these land uses in the area of concern. Until the County can define how they will control these types of land uses, the maintenance of a wildlife travel corridor is unrealistic. Certain mitigation measures can increase wildlife habitat quality around many land use activities. In some instances the result may be long-term improvement of habitat. For example, habitat specific reclamation following removal of rock (Angell Rock Quarry) can produce long term habitat conditions of much higher quality than currently exists. The County should consider implementing habitat mitigation requirements on a case-by-case basis. This approach could maximize the wildlife use of the area. Again, a well defined corridor, managed for specified indicator species would make the mitigation process more realistic with definable objectives.

8. There is a Sensitive Waterfowl Area in the northern portion of Sauvie Island. Many of the waterfowl using this area feed in the agricultural areas adjacent to the sensitive area. In fact the agricultural areas are critical to some waterfowl species. The agricultural area of Sauvie Island should be designated as significant wildlife habitat. Again, agricultural areas seem to be excluded more as a function of zoning boundaries rather than actual wildlife habitat needs.

Thank you for reviewing my comments and taking them into consideration on the matter at hand. I commend the County's efforts to maintain wildlife habitat and populations in the urban and suburban environment.

#### LETTER DATED JULY 26, 1993 FROM MS. DOROTHY S. COFIELD OF OREGONIANS IN ACTION

The following will serve as our testimony after reviewing the county's staff report (C 4-93 West Hills Wildlife Habitat Area) for Goal 5 wildlife resources. We find the inventory analysis deficient under the Goal 5 implementing rules for the following reasons.

##### 1. ANALYSIS

To comply with Goal 5, the county must first inventory the location, quality and quantity of Goal 5 resources located within its jurisdiction. Columbia Steel Castings Co. v. City of Portland, 314 Or 424, 426 n.1, 840 P2d 71 (1992). For site-specific resources such as wildlife habitat, natural areas, mineral sites, historic sites and scenic waterways, the determination of the location of

be considered as part of any analysis of conflicting uses and promulgation of regulations as part of a 3.c. designation (Limit Conflicting Uses) if wildlife habitat is found to be significant in the West Hills.

Wildlife habitat issues on Sauvie Island will be addressed by the future Sauvie Island/Multnomah Channel Rural Area Plan.

The Staff Report includes a map of the proposed significant wildlife habitat area in the West Hills.

the resource must include a description or map of the boundaries of the resource site and affected area. OAR 660-16-000(2).

The inventory must unambiguously describe, by either written descriptions or relevant maps, the precise location and extent of inventoried resource sites. Davenport v. City of Tigard, 23 Or LUBA 565, 569-570 (1992) (city may prepare maps to resolve ambiguities over precise location of inventoried Goal 5 resource sites).

#### LOCATION

The county's description of the location of wildlife habitat as a Goal 5 resource is too indefinite. Dividing the West Hills Rural Area into separate "sub-areas" does not identify the locational boundaries of the resource site sufficiently. (See Staff Report at page 3). The county must identify the location of the wildlife habitat unambiguously since it is not accurate to assume that wildlife habitat is found everywhere in the West Hills Rural Area, especially since much of some of the area is in residential use, commercial forestry, or commercial farming.

#### QUANTITY

As with the defect in identifying the location of wildlife habitat in the West Hills Rural Area, the county's identification of the quantity of wildlife is also deficient. Under the Goal 5 rules, the county cannot simply state that the area contains "salamanders, frogs, snakes, lizards, 80 species of birds and 62 mammal species, but must identify where, and in what estimated numbers, these species are primarily found on a site-specific basis. (See Staff Report at page 7). The entire ecosystem cannot be significant. The county confirms this by pointing out on Page 6 of the Staff Report that only 12% of the West Hills has some quantity of wildlife. Moreover, the inventory must be based on accurate data and be contained on resource site maps.

#### QUALITY

The county has not properly inventoried the resource site as to the quality of the Goal 5 resource. Only significant Goal 5 resources should be included in the inventory and undergo the ESEE analysis. While the county may feel that the entire ecosystem should be preserved, if it is not significant, it is a 1A resource and not a Goal 5 resource, subject to protection programs. Yamhill County v. LCDC, 115 Or App 468, 473 (1992) (where county makes error in determining significance of resource, LCDC will reject the county's inventory of a Goal 5

See response above.

The staff report identifies the entire West Hills Rural Area as having wildlife habitat values as an ecosystem. This ecosystem is impacted by various resource-related activities and man-made structures and public facilities, but it remains an ecosystem which has some wildlife habitat value.

The language quoted from the staff report is a very concise summary of work conducted by the City of Portland in the vicinity of Forest Park. For a more detailed description and location of these species, the "Northwest Hills Natural Areas Protection Plan" and the "Balch Creek Watershed Protection Plan" are available for review at the County Planning Division office, and from the City of Portland Bureaus of Planning and Environmental Services. The commentor has mis-interpreted the staff report -- the West Hills has only 12% of the total rural area potential wildlife habitat in Multnomah County and only 12% of the potential wildlife habitat in the natural area to the north and west of Portland. Based upon the information presented, staff does not agree with the statement made by the commentor that the entire ecosystem cannot be significant.

The Staff Report asserts that the entire West Hills ecosystem is a significant wildlife habitat resource, with the exception of some lands in the Bonny Slope area.

resource). The county must determine whether wildlife habitat is significant and must have adequate information o the wildlife habitat as to its significance and assign a quality range. Some of the identified wildlife will fall into the significant class and other wildlife that is not sensitive may not.

## CONCLUSION

After the county collects and analyzes its data on Goal 5 resources, it has three choices:

(1) The county can determine that a particular resource site is not important enough to warrant inclusion in its Goal 5 inventory. Unless challenged by an Objector, DLCD or LCDC, the county is not required to justify in its comprehensive plan its decision not to include a particular resource site in its Goal 5 inventory. OAR 660-16-000(5)(a). The rule allows the county to exclude a particular resource site from its inventory.

(2) When available information indicates the possible existence of a resource site, but the information is inadequate to identify with particularity the location, quality and quantity of the site, the county can place the site ina special category in its comprehensive plan and delay the Goal 5 process. Larson v. Wallowa County , 23 Or LUBA 527, 540, aff'd in part, rev'd and remanded in part on other grounds 116 Or App 96 (1992) (where county inventories resource site but delays the Goal 5 process, Goal 5 contemplates completion of process in legislative, not quasi-judicial, proceeding). The plan must include a policy to address that resource site and proceed through the Goal 5 process in the future. OAR 660-16-000(5)(b).

(3) Only if the resource site does not fall within categories (1) and (2), may the county include wildlife habitat resource sites in its plan inventory and proceed through the remainder of the Goal 5 process. OAR 660-16-000(5)(c).

Here the county has available information about the possible existence of wildlife resource sites, but the information is inadequate to identify with particularity the location, quality, and quantity of the sites. The county should not place wildlife habitat on its Goal 5 inventory.

## LETTER DATED JULY 14, 1993 FROM MR. MICHAEL CARLSON OF THE AUDOBON SOCIETY OF PORTLAND

I am writing on behalf of the Portland Audobon Society with its 7000 members and over 90 years of community service in Multnomah County. the task before your staff

Staff believes that adequate information exists in order to make a l.c. finding of significance pursuant to OAR 660-16.

is of critical importance as the Metro area braces for population increases that could drastically impact our region's natural areas. We are writing this memo to make preliminary recommendations to your staff regarding the NW Hills plan.

These comments are meant to be general. We look forward to working with you in the future as this project develops specific proposals.

#### WILDLIFE RESOURCES AS SIGNIFICANT IN THE NW HILLS

Designation and protection of the NW Hills as significant for wildlife is critical to the integrity of biological and habitat diversity at this time.

1) We recommend maximizing the width of a contiguous band of the habitat throughout the planning area from a minimum of .5 miles to 1.5 miles where possible. This concurs with the recommendation of the West Hills Wildlife Study by Lev, Fugate, and Sharp.

2) The integrity of Forest Park must be maintained and Multnomah County should utilize every available tool to protect and expand the boundaries of this nationally recognized treasure. Forest Park is part of a regional system that extends all the way to the coast. Land use decisions and development beyond the northernmost boundaries of the Park is vitally important to wildlife populations in the Park. With increasing development outside its boundaries, Forest Park is becoming more and more of an island, possibly leading to local extinctions of species.

3) The popularity of the Park is a mixed blessing. Skyrocketing usership is effectively shrinking the habitat available for wildlife. As the population of Multnomah County grows there will be more demands on the Park. The remainder of the NW Hills will become ever more important to wildlife and to residents in the future. Our community leaders, in the 1940's, had the vision to establish Forest Park, now is the time to take all steps possible to leave the legacy of an expanded Forest Park for future generations.

#### LETTER RECEIVED FROM MS. ESTHER LEV DATED AUGUST 3, 1993

I would like to respond to the comments made by Steve Oulman, Mineral and Aggregate Planner for the Department of Land Conservation and Development regarding the West Hills Wildlife Habitat Study.

Mr. Oulman's first suggestion is to consult with ODFW on their opinion of the habitat area. Three ODFW

If the staff recommendation to find wildlife habitat in the West Hills to be significant is adopted, staff will analyze the proper width of contiguous wildlife habitat areas.

This action is not intended as an expansion of Forest Park. Expansion of Forest Park would require purchase of lands, which is not contemplated as part of this action. One of the objectives achieved by a determination that West Hills wildlife habitat is significant would be the development of a program to protect wildlife habitat which would also protect Forest Park from isolation into a biological "island."

biologists, in addition to biologists from US Forest Service, Portland State University, and Oregon State University comprised the technical committee for the project, as mentioned in the forward of the report. The committee was formed at the beginning of the project and convened throughout the project in order to evaluate the process, methodology, results, and conclusions.

Secondly, Mr. Oulman comments that the West Hills Habitat area may look like a wildlife habitat area, but it may be missing some functional values. The number and diversity of the region's plant and animal species that reside and migrate through the West Hills Wildlife Habitat Area certainly suggest that a majority of functional values required are present. He also refers to the report conclusion that logging may cause temporary habitat fragmentation, while residential and agricultural development is probably permanent. Forest Park has grown back after clearcutting and currently provides significant wildlife habitat for many of the region's terrestrial wildlife species. It is very difficult for plant communities to re-establish and grow through asphalt, paving, roads and buildings. Lack of vegetative cover translates to lack of food, cover and shelter for wildlife species. Some small mammal, reptile and amphibian species are not as well adapted to roads and unprotected areas for travel as humans and other larger mammals. Fencing can block wildlife movements. Dogs, lights at night and human presence can deter wildlife from passing through the area.

The Executive Summary (page iv) recommends that the area lying between Newberry and Cornelius Pass Roads and extending eastward from the ridgeline to Highway 30 be managed in the future to always provide a band of contiguous forest at least 0.5 mi. wide, in order to provide suitable habitat and a secure travel land for forest wildlife species. Page 6, Section 4.1 of the report states, "The only contiguous forest route now remaining between Forest Park and the area to the north of Cornelius Pass Road is approximately 0.5 mile long and 800 ft. wide. Page 26; "The only portion of the peninsula between Cornelius Pass Road and Newberry Road, in which a contiguous forest area can be maintained over the long term, is on the east side of the ridgeline. I have a difficult time following how these statements in the report led to Mr. Oulman's conclusion that the 0.5 mile and 800 ft. long area is the only critical area in the West Hills Habitat Area! Maintenance of as much of the surrounding contiguous forested habitat and existing habitat, and recovery of clearcuts is critical to preventing Forest Park from becoming an island, as well as the future of sensitive species such as the bald eagle, Pacific Giant salamander, bobcat, black bear, elk, red-legged frog and sharp-skinned hawk in the Portland metro area.

The commentor's remarks reaffirm the staff assertion that significant wildlife habitat values currently exist in the West Hills.

Thank You for the opportunity to clear up any misunderstandings of our conclusions and recommendations in A Study of Forest Wildlife Habitat in the West Hills.

MEMORANDUM FROM NEIL S. KAGAN,  
ATTORNEY AT LAW, DATED JULY 26, 1993

On the second page of the report prepared by the staff for this hearing, in the last sentence under the heading "Resource Description," wildlife habitat is defined as follows:

"Therefore, sensitive wildlife habitat is best defined as an area which constitutes a large, mostly natural ecosystem, connected with other natural areas, which is home to large numbers of wildlife animal species."

Friends of Forest Park asks the Commission to adopt a motion substituting the following language for the foregoing language:

"Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory species for an indefinite period of time. Such an area is significant if it is large; or sustains the presence of unique, sensitive, threatened, or endangered species; or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem, in whole or in part; or provides a connection between other areas of significant wildlife habitat."

LETTER FROM JILL ZARNOWITZ,  
ASSISTANT DIRECTOR OF THE HABITAT  
CONSERVATION DIVISION OF THE  
OREGON DEPARTMENT OF FISH &  
WILDLIFE, DATED JULY 26, 1993

The Oregon Department of Fish & Wildlife (Department) has reviewed the staff report for the West Hills Wildlife Habitat Area determination of significance, and offers the following comments.

It is clear that portions of the West Hills Rural area contain significant wildlife habitat. For example, all areas except for Bonny Slope are identified in the County comprehensive plan as big game winter range. Other significant wildlife habitat (e.g., a bald eagle winter roost site and nest site and riparian habitat) is also located within the West Hills Rural Area.

In addition to the above areas, the county proposes to designate as significant wildlife habitat a larger

Staff will review different definitions of significant wildlife habitat provided by the Friends of Forest Park and submitted by professional biologists at the request of staff. The results will be reported to the Planning Commission at the September 7, 1993 hearing.

The big game winter range area in the West Hills is limited to areas north of Cornelius Pass Road.

Staff disagrees with the commentator and believes that enough information exists to make a determination of significance for wildlife habitat in the West Hills, based upon looking at the



geographic area which is utilized by a broad spectrum of big-game, small-game and non-game wildlife species. However, the County has not identified the habitat values within this broader geographic area with sufficient specificity to enable the County to identify potential conflicting uses and develop a program to meet Goal 5. Area size is not the sole criteria for determining the significance of an area as a wildlife habitat corridor. Additional information (such as radio collar studies or equivalent census methods) would be needed to determine significance. Other factors such as area topography and vegetative cover would also need to be considered.

The County comprehensive plan and implementing measures allow a variety of land uses in the West Hills Rural area, including residential development, mineral and aggregate extraction and adjacent industrial uses. Potential conflicts between wildlife habitat and these allowed uses can be minimized in a variety of ways, including but not limited to: density limitations on residential development, restrictions on fencing within travel corridors, protective buffers around riparian areas, eagle nests and other sensitive sites, and requirements for habitat restoration and enhancement activities. The habitat characteristics which would make an area "significant" must be clearly identified so that the county can accurately identify potential conflicting uses and choose appropriate protection measures.

The Department is willing to work with the county, affected landowners, and other interested parties to identify the information needed to more specifically identify the location of significant wildlife habitat within the West Hills Rural area and identify appropriate protection measures for the significant wildlife habitat.

#### LETTER FROM MR. & MRS. JAMES EMERSON, DATED AUGUST 20, 1993

This letter is written testimony submitted pursuant to the July 26, 1993 Planning Commission Public Hearing. Specifically, we wish to comment on Item # C 4-93: whether wildlife habitat in the West Hills are a "significant natural resource."

We concur with the staff conclusions that three of the four West Hills sub-areas are, indeed, significant wildlife habitat deserving of designation 1C leading to an ESEE requirement. The number and variety of wildlife living here is astonishing, considering both the proximity to the center of Portland and the large amount of suburban and agricultural land to the west and south. The valley between Germantown and Springville Roads (in the "western agricultural" sub-area) has been our home for eight years, and we can reliably report resident

entire ecosystem rather than individual species numbers. Staff expects the ESEE analysis and protection program for this resource to be complex and exhaustive.

The measures listed by the commentor are all valid methods which may be used to limit the conflicts between wildlife habitat and conflicting uses. If wildlife habitat is found significant and a general determination is made to prepare a protection program pursuant to a 3.c. finding (Limit Conflicting Uses) based on OAR 660-16, then these measures will be considered as part of that program.

The commentor provides anecdotal evidence that significant wildlife habitat values exist not only in forested areas north of Forest Park, but in predominately agricultural areas to the west as well.

populations of deer, fox, coyote, beaver, raccoon, skunk, rabbits, great horned owls, screech owls, pileated woodpeckers, grouse, doves, hummingbirds, varied thrush, and many other small mammals and birds too numerous to mention. There are snakes, frogs, salamanders, and small fish here too. Visitors regularly include red-tailed hawks, vultures, great blue heron, Canada geese, and on several occasions recently, elk. If this list is not significant for an urban county, we don't know what is!

Steve Oulman's letter from DLCD to County planners asks several questions we wish to comment upon:

1) Does desired habitat exist in the area?

While it is true that the West Hills are not in their virgin state, the presence of the wildlife year-round proves the existence of habitat. Much of the area has been undisturbed for many decades and is prime habitat.

2) Has ODFW tendered an opinion?

We don't know if they have as a body, but when we had Gene Herb of ODFW at our land to consult, he called it "perfect deer habitat." Mr. Herb was a contributor to the Lev, Fugate, Sharp report.

3) Should specific elements, rather than the entire area, be declared significant?

On one hand, it is obvious that wildlife populations use all the resources at their disposal, while generally keeping as far from people as possible. It is the people who are generally confined, by roads, to narrow strips of human development. To declare only small portions of the "best" habitat as suitable for protection would portend the gradual conversion of the West Hills into a suburb in which many or most of our current species will not find the cover, water, acreage, or freedom from human and canine molestation necessary to survive.

On the other hand, it is true that some areas are more critical than others: in particular the streams and surrounding bottomlands. They are not only critical to wildlife, especially in summer when the east slope (Forest Park) streams go dry, but also suffer heavy siltation from clearing. We conclude that very large areas should be considered significant.

LETTER FROM MRS. JANE JOHNSON, DATED AUGUST 18, 1993

Our property is between Cornell Road to the North and Barnes Road to the South and it is off Miller Road.

Mr. Herb was a member of the technical advisory committee for A Study of Forest Wildlife Habitat in the West Hills.

Streams and bottomlands on the west side of the Tualatin Mountains will be studied for protection as Goal 5 Wetlands and Water Areas during the West Hills Rural Area Plan process.

The area in which the commentor's property lies is unincorporated land within the urban growth boundary. Such properties are under a very different set of land use assumptions, since land within the urban growth boundary is

In our recent conversation, you said that the Wildlife Habitat Area includes the Balch Creek Basin and North and West of Forest Park.

We have a great deal of wildlife here on our property. Why cannot we be included in the Significant Wildlife Habitat Area also?

**LETTER FROM MR. OWEN CRAMER,  
DATED AUGUST 18, 1993**

As a property owner of 15 acres of forest land on NW Johnson Road near Skyline, and as a retired research forester I am greatly concerned with your planning for the overall management of private lands in the West Hills. I offer the following for your consideration, first the points I wish to make, followed by more detailed discussion.

**GENERAL**

1. Promote care in the uses of the land that enhance land and resource values, not prohibition of use.
2. Act in partnership with the land owners — not as oppressive dictators. Aid property owners in making the best use of their land.
3. Recognize the complexity of the resources involved and the way they may be expected to change with time.
4. Utilize professional forestry expertise in your decision making and planning.
5. Provide guidelines, examples, sources of professional forestry help for the property owners.
6. Allow for flexibility. Don't stifle innovation — operating strictly within a rigid rule structure helps assure mediocrity. Leave plenty of room for management options that are better than required and for exceptions to the rules.
6. Develop lines of communication with the property owners: to provide assistance, to let the owners know what is required, and to keep the county abreast of current and developing problems.

**WILDLIFE**

1. Wildlife in general are quite mobile and adaptable as evidenced by the elk and deer seen in the past year or so south of the Sunset Highway in the Portland hills. What specific wildlife require a special corridor? Do you really want to encourage more wildlife in the metropolitan area?
2. The greatest variety of wildlife is favored by a mosaic of land uses — a varied pattern that includes regenerating forest

where development is to be directed in the Portland area. Additionally, the County expects that unincorporated areas within the Urban Growth Boundary will eventually annex into adjacent cities, and thus such areas are not undergoing active County planning efforts.

The commentor's points are appropriate when considering an ESEE analysis and program for protection of significant wildlife habitat.

The proposed significant wildlife habitat area within the West Hills is entirely on non-urban lands outside of the Urban Growth Boundary.

These points are best addressed in an ESEE analysis and development of a protection program for significant wildlife habitat.

areas, forests of all ages, and agricultural land.

3. Any cover type or ecosystem changes with time. To assure a mosaic pattern of land use, you don't want solid forest, especially of the same age class.

## FORESTRY

1. For planning and managing land use in a commercial forest area of many ownerships, hilly terrain, with other resources, you should have professional forestry assistance.

2. Professional foresters are broad-based scientists with training in many aspects of environmental management over the long run: ecology, watershed management, wildlife management, and many others, but they are also trained in forest management, forest harvest, and reforestation. Many consulting foresters are available in the Portland area.

3. Forest harvest can be done in various ways besides clearcut - thinning, individual tree selection, small area harvest. But property owners need guidance in selecting management techniques that are both favorable to wildlife, pleasing to look at, profitable to the land owner, and gentle with the other resources.

With respect to WILDLIFE.

Most wildlife is quite mobile, and a lot of it is showing considerable adaptability. A year or so ago a herd of elk stopped traffic at Cornelius Pass. Last year we had several elk in lower slopes of the Council Crest area — at least one was in my back yard for about 10 days — the first time we have had elk in the 74 years I have been here. We also had our first coyote sighting, and the year before a deer. A mother bear and cub were seen several times in the vicinity of the zoo along Canyon Road about 5 years ago. These animals get into the city, where they are more of a problem than a value, without a protective corridor, and in fact through an environment that is generally considered to be increasingly hostile. The question is: How much of a corridor do you want and how much do the animals actually need? And what animals are you concerned about that are so sensitive to civilization? If they can make it to and across the Sunset freeway, they don't need much special help.

Recognize that most wildlife is very mobile, much of it is highly adaptive and does not require vast areas of wild land. Recognize also that habitat changes greatly with time. Today's clearcut makes excellent wildlife habitat for several years as many species of herbs, brush, and trees occupy it in combinations that change with time. As the habitat changes, so also do the wildlife.

Most desirable would be a mosaic of areas of varying cover types of varying ages. What you probably do not want is huge

The mobility of wildlife is one reason why designation of a broad ecosystem rather than specific areas as significant wildlife habitat is appropriate. This would also indicate that large wildlife habitat areas can co-exist with some level of humanity in the same area -- the question that must be answered in an ESEE analysis is the appropriate level of human presence.

contiguous areas of clearcuts of the same age. That is what you are getting in some areas now because of the fear of imposed by the prospect of a prohibition of any cutting, plus the current excellent market for logs. Allay these fears and provide some help through state farm foresters or a county forester, and you will have a much improved opportunity for sensible and attractive resource use.

Recognize that a forest of any age is a dynamic changing ecological system. Present old growth stands were once denuded burns. Present second growth stands now being logged were clearcuts 60-100 years ago. Open clear cuts today will become forest in a few years. The dynamics of the growing forest include the dynamics of changing wildlife habitat and changing scenery. Plans made for any forest land must be built around change with time. This is particularly important in mixed small ownerships. Good forestry practice is good for the land and natural resources, good for the land owner, and good for the viewing public. It is also good for the monetary values for all concerned, even the taxing entities.

Developing overall guiding plans for a large area of commercial forest without the direct participation of professional foresters seems a gross oversight. While the term "forester" may bring a vision of a logging consultant, that is a small part of a forester's expertise. A professional forester is a broad based practical scientist trained in the management of the various components of the forest environment. These include soil management, watershed management, wildlife management, forest ecology (silvics), recreation and scenery management, forest harvest and reforestation, forest economics, and forest protection from insects, disease, and fire. While it is desirable to have the basic values established by specialists in some of these areas, the forester is trained to integrate these many specialties into on-the-ground planning and management. Foresters should have an ongoing role in county participation in management of this excellent forest area with multiple resource values.

Forest property owners need to be informed of the possibilities for managing their lands in ways that are not damaging to the soil, water, scenic, and other resources. With the price of timber where it is now, the cost of doing a careful job of environmentally sound harvest becomes a very reasonable expense. Forest property owners should be urged to seek professional forestry assistance in planning logging, replanting, and assuring the protection of soil and water resources. Suggestions should be made, examples shown.

The ongoing practice of using heavy logging equipment to clearcut young timber when it is at its fastest growing age is just perpetuating the cut and get out of the early days of logging when no thought was given to effect on the land, to reforestation, to any other resources, and certainly not to appearance. If you are concerned about the public reaction to treatment of these resources, here is one place you need

The County has no authority to regulate forestry activities -- the State Department of Forestry regulates forestry.

professional forestry assistance.

#### With respect to MANAGING A FORESTED AREA

I understand that you are attempting to do a responsible job of planning for managing the environment and natural resources in the Multnomah County's Tualatin Mountains, while at the same time considering the values that the public responds to and the concerns of the individual property owners. I recognize that the simplest way to manage is through application of a series of rules and zones so that you don't have to go through a decision making process every time there is some question of land use. The zones and rules approach by itself is not going to do the job.

I realize that you are obligated to abide by LCDC and other rulings. But by your actions now, you are in the business of environmental management and you need some professional environmental practitioners to help you. You can't do a professional job simply by unthinking application of rules and zones, though these are of course a first step. There must be flexibility that allows application of informed common sense to unique situations beyond broad objectives and guidelines.

While I am not familiar with the intricacies of the legal requirements placed on you by existing regulations, I'm sure you are. With your knowledge I urge you to not impose additional rigid rule structures that remove the opportunity for flexibility in applying professional resource management advice and common sense. Minimize absolute prohibitions—leave room for the solution of apparent conflicting land uses to professionals looking at the resource, social, and economic values as well as at the rights of the property owner.

As was stated by several witnesses, you are actually the spokesmen of the people, the guardians of their rights and property. Grant them the most flexibility and provide the best advice and guidelines for achieving individual as well as the general public's objectives.

#### LETTER FROM DR. M.A.K. KHALIL, DATED AUGUST 19, 1993

Thank you for sending me information on the study of the West Hills regarding future land use. I believe that the residents of this area should be heard regarding any decisions on land use change. While public hearings are indeed a means to gauge opinion, they are not sufficient to understand the prevailing views. Only a referendum will give all residents a fair chance to decide the future of their land. I therefore ask that no final recommendations be made without a referendum.

Based on the information I have, I am opposed to any

Any decision to hold a referendum on land use issues in the West Hills would be the responsibility of the Board of County Commissioners.

It is the conclusion of staff that significant wildlife habitat lies

recommendations of classifying my land and the surrounding land, as either a "Significant Wildlife Resource" or a "Significant Scenic Resource." That is not to say that there is no wildlife on my land, or that the view is not beautiful. As to wildlife, there is no "wildlife resource" that would not exist on any open or sparsely populated land -- there are no large populations of any rare species. As to the scenic aspects, these may only be appreciated from a few vantage points, mostly from the houses in the area. Moreover there are precedents for using scenic views as a reason to increase housing and living areas. We believe, that when we bought the land, we had an agreement with Multnomah County and we have lived by it, but we are not certain that the County is now acting in our best interests by changing this agreement. I am opposed to any land use plan that, without compelling reasons, places restrictions on private lands and individual freedoms.

I hope that you will exercise good judgment in deciding future classifications of these lands and thus revoke or refrain from recommending any further restrictions or land use changes without the consensus of those who live here.

#### LETTER FROM ROBENS NAPOLITAN, RECEIVED AUGUST 19, 1993

I am writing in support of a "Significant Wildlife Habitat" and "Significant Scenic Resource" designation for the West Hills. My husband and I have been property owners on Skyline Blvd. for the past 17 years. Our piece of property is small, only .83 acre, but we nearly abut Forest Park and our neighbors have slightly bigger pieces of 2 acres each. I am an avid gardener and wildlife supporter who religiously feeds her bird friends and inadvertently her deer friends. Year-round I have close to 100 birds who frequent my bird feeders including not only the most common birds but up to 6 band-tailed pigeons, 3 pairs of mourning doves, and for a good part of the fall, winter, and spring, up to 19 quail. I also see hawks flying overhead and know they nest in near-by trees. Each year I also have returning pairs of humming birds who stay all summer. Recently we were visited by a mother raccoon and her three babies. The coyotes are regularly heard howling at the moon, and I have seen them on Skyline or in the surrounding meadows. I would very much hate to lose all these friends because overdevelopment drove them out.

Although a part of me would selfishly like to see the Skyline/West Hills not change at all, I know that is not realistic. Skyline is a designated "Scenic Drive" for good reason. It is beautiful! I would like to see the area tastefully utilized in a manner that would balance the many needs of man with those of his wild friends.

on the "open or sparsely populated land" of the West Hills -- it is significant in that it lies in close proximity to a large urban area.

The commentor offers anecdotal evidence of wildlife habitat values in the "Western Agricultural Area." However, many of the species she lists are not native flora and fauna.

Something that is too often overlooked while we are in our greed and growth mode is the need for places and things that will nurture our inner sense of peace and harmony with nature. It is up to you to help maintain the delicate balance that is needed for us to function fully, not only on a material level, but also on an emotional and spiritual level. In my opinion we Americans are in poor balance with our mother planet Earth. This is your chance to preserve the balance that is threatened in this area. Think of the future. Where will the animals go, and, in a lighter vein, where will the teenage neckers go?

Thank you for considering my views. Please make your decision one of vision rather than one of immediate material gain for a few people. the animals and the Earth have no lobbyists except those who listen. Please listen.

**LETTER FROM SANDI AND TERRY HART,  
DATED AUGUST 20, 1993**

As land owners at 10742 NW Quarry Rd., Portland, Oregon, 97231, for the past 23 years, we strongly support that the area be designated "Significant Wildlife Habitat Area."

In May and July of 1992 we had two bull elk in our field for a number of days. During this same time I saw them in other areas on Skyline. During every year that we have lived here we observe deer during much of the year. We see coyote on a frequent basis. We have had dens of fox. We have a few raccoons and of course the ever popular opossum. We have had the occasion to observe a bobcat a few times.

Thank you for hearing our opinion.

**LETTER FROM MR. EUGENE OSTER,  
DATED AUGUST 23, 1993**

I own tax lots 12, 14, and 26, Section 26, T.3N R.2W fronting on Watson Road and Gilkison Road.

I want to reiterate and emphasize two points in my letter dated July 23, 1993

1) There are miles of unbroken forest between the roads where human creatures make their habitat. You already know this. Human creatures are a part of nature and need habitat too, as much as any other creature.

2) The second growth forest in this area has grown since the late 1930's or mid 1940's. Prior to then it was pasture and cultivated fields.

The commentors offer anecdotal evidence of wildlife observed in the "Western Agricultural Area."

The northern portion of the West Hills Rural Plan area, north of Cornelius Pass Road, has a much lower existing level of residential development than the areas to the south of Cornelius Pass Road. Much of this area is designated as big game winter range by the Oregon Department of Fish & Wildlife.



LETTER FROM MR. GERALD  
GROSSNICKLE AND MR. BRUCE  
WAKEFIELD, DATED JULY 29, 1993

As homeowners in the "Western Agricultural Area" of the West Hills Rural Plan, we would like to state that we support the staff recommendation (Staff Report for the July 26 Planning Commission Hearing) that our area be designated a "significant wildlife habitat area."

Although Gerald Grossnickle gave oral testimony at the July 26 hearing, both he and Bruce Wakefield would like to expand on those comments with the following:

During the ten days prior to the hearing, the following sitings were made on our property: 3 deer, 2 coyotes, 1 great horned owl, 2 pileated woodpeckers, 5 great blue heron, and 2 skunks on a neighbor's property. Nearly every day we have sitings of black-headed grosbeaks, goldfinches and house finches, nuthatches, varied thrushes, juncos, swallows, hummingbirds, pine siskins, northern flickers, towhees, flycatchers, jays, downy woodpeckers, red-tailed hawks, and mourning doves. Occasionally we also see grouse, yellow-bellied sapsuckers, cedar waxwings, band-tailed pigeons, western meadowlarks, screech owls, quail, ducks, kingfishers, and evening grosbeaks. Very rarely we have even spotted western tanagers.

We believe that we live in a wonderfully significant wildlife habitat area, and we feel that the habitat should be given consideration when planning decisions are made.

However, we would like to also state that we feel the Commission ought to be very careful in its consideration of the matter of significant wildlife areas. We live on land in a watershed area, which is adjacent to several small streams characterized by heavy wooded swales with moderate to steep slopes and lush stream bottoms. This area provides great cover and habitat for wildlife, particularly because it remains nearly unbroken by development for the entire length of many of these streambeds to the top of the watershed.

This is the critical point. In regulating land use for wildlife protection, priority must be given to maintaining the integrity of these watershed corridors. To simply draw a map and designate all the land within its boundaries a significant wildlife area is not reasonable. We agree with the comment made by Steve Oulman (of the DLCDD) in his July 14 letter to you that rather than declare the whole area to be significant, a more precise delineation of the wildlife resource should be made.

It seems to us that a reasonable approach would be to

The commentators offer anecdotal evidence of wildlife in the "Western Agricultural Area."

Staff believes that a reasonable argument can be made, as outlined in the staff report, for designation of most of the West Hills Rural Area as significant wildlife habitat.

Staff believes analysis of this approach is more appropriate at

map out the watershed areas of the West Hills, specifically showing the swales and canyons that remain undeveloped. The greatest protection should be given to the canyons with streams, with attention paid to the many tributary swales with seasonal streams. Less protection is needed as you increase the distance from these natural wildlife corridors. It would seem logical to map different zones of protection around these corridors, requiring an ever higher burden on the landowner to mitigate or show no adverse impact the closer his development approached.

If the maps are drawn in this manner, your analysis would be much more site-specific and much less threatening to landowners in the area. Best of all, you may be able to prevent the kind of damage to the wildlife habitat that now occurs and is likely to increase as pressures to develop increase. No longer, for example, would a landowner be allowed as a matter of course to build his driveway alongside a stream or clear his land for a view of the water or cut the trees off a streambed canyon.

Of course this kind of watershed protection must not be accompanied by offsetting increases in the density of housing allowed. However well we protect the watershed, if human population increases, wildlife habitat will decrease. But please note that proper mapping of the watershed corridors for wildlife protection will necessarily limit housing development, especially in the higher elevations of the West Hills, since the area is filled with intermittent stream tributaries.

Thank you for your consideration of our comments. We would be delighted to escort you or your staff on a tour of our land if you would like to visit.

LETTER FROM MR. JOHN B. HALL,  
DATED AUGUST 23, 1993

I am writing to you as decisions are being made, and policies formulated, concerning the West Hills of Multnomah County.

I own property in the West Hills and feel strongly about their future. I would like to see the area designated both as "Significant Wildlife Habitat" and "Significant Scenic Resource," with a high p=rating priority, according to your scale.

The reasons that I am encouraging habitat and scenic protection is that we, Oregonians, are especially fortunate to have a bit of forest and wilderness so close to a major metropolitan area such as Portland, and it may well be the largest wild area in the United States, located

the ESEE analysis level, where consideration of a riparian or watershed-based protection program for wildlife habitat is an important option to consider.

Staff agrees that a site-specific ESEE analysis and wildlife habitat protection program in the context of a "3.c." designation for wildlife habitat ("Limit Conflicting Uses") would potentially meet the needs of both wildlife and property owners.

The commentor's property is located on McNamee Road, east of Skyline Blvd. and the Tualatin Mountains' ridgeline.

within and in close proximity to an SMSA.

The west part of the West Hills has not been thickly settled for its agricultural value is, by and large, marginal, though trees do grow quite well. Another reason that it has not been settled is that it is not an especially desirable place to live because of the dangerous driving conditions with winter ice and snow, not to fail to mention the cold gorge winds that can suck the heat out of a home.

There appear to be great efforts, on the part of local real estate developers, to ruin this land resource.

Hence, I would like to strongly encourage the individuals representing the Multnomah County Planning Commission to stand up, and not to cave into business pressures, which appear to me to be driven solely by their ignoble, profit-seeking interests, which they might realize while ruining what little bit of forest and wildlife corridor that we have left close to the Portland Metropolitan Area.

We have only to look at the neighborhood adjacent to Rock Creek Community College to visualize what plans so called "developers" have in store for the beautiful, forested West Hills.

Let us work together to protect this valuable natural resource.

LETTER FROM MR. WESLEY KNAUF, DATED AUGUST 23, 1993

The quantity and quality of any wildlife we have observed on the above property (TL 30, Section 22, TR 1N1W) is decidedly insignificant. Likewise any scenic value, i.e. as seen from Highway 30 or any place on Skyline Boulevard is non-existent.

Therefore, we certainly do not think this parcel of land can in any way be designated other than "1A, Not Significant Wildlife Habitat Area," or "1A, Not Significant Scenic Resource."

Further, any stringent restrictions regarding the personal use of my property would be protested.

I have owned this parcel of land for thirty-five (35) years.

Your earnest consideration and evaluation will be appreciated.

The neighborhood adjacent to Rock Creek Community College is within the Urban Growth Boundary, and thus is controlled by much different aspects of Statewide and local land use policies.

The commentor's property is located between Springville Rd. and Laidlaw Rd., in the Bonny Slope area. This area is not recommended by staff for designation as significant wildlife habitat.

LETTER RECEIVED FROM MS. MARY  
BYWATER CROSS, DATED AUGUST 19,  
1993

In response to request for input regarding the Goal 5 inventories, I write this letter.

I received a very slanted letter from Donis McArdle of Professionals 100 urging me to write about the quantities and qualities of wildlife on my property and the scenic view by property offers to drivers.

I think this avoids the important consideration of maintaining the significant wildlife habitat and scenic resources that we pass through as we travel the area. The beautiful natural drives along Cornell road and Skyline Blvd. have refreshed and revived my spirit many thousands of times over the last twenty-three years. These drives are what provides the quality of life we treasure in Portland as much as the cultural richness of our symphony and the spirit and thrill of our sports teams.

LETTER RECEIVED FROM MR. ARNOLD  
ROCHLIN, DATED JULY 26, 1993

The staff report is a learned and coherent document.

In county reports covering a large area with references to things in the City of Portland, there's a tendency to think of those subjects as ancillary to the county's business. They are not. I comment staff for recognizing the significance of Forest Park to the region and the importance of protecting and enhancing its resources without regard to a political boundary.

The staff report is attacked by DLCD staff. It's not the first time that state people have tried to intervene in a county matter. Some commissioners were here for the Angell Brothers quarry hearings. Jim Sitzman, from DLCD came in and was an outright advocate for Angell Brothers. He said how great the application was. His conduct was so improper that later, before an LCDC hearing, he would not admit that he did it. They're at it again. Steve Oulman, DLCD's Mineral and Aggregate planner, pretends to give you wise advice to be cautious. He tells you not to fall into a trap of identifying too large an area. LUBA or LCDC will get you, just like they got the city in Columbia Steel Castings V. Portland. He's trying to scare you off. I've had some experience in land use litigation and I've read all of the Columbia Steel Castings decisions, LUBA, Court of Appeals, Supreme Court, and LUBA again on remand. The law of that case is crystal clear, and it has absolutely nothing to do with the size of the area to be designated. All that case says is

The commentor's residence is located on the western edge of the Balch Creek basin, near the intersection of Skyline Blvd. and Cornell Rd.

Mr. Oulman's reference to the Columbia Steel Castings Case is appropriate in the context of his letter, which is to warn the County that we face a difficult and arduous ESEE analysis if such a large area is designated as Significant Wildlife Habitat.

that if you identify resources in a defined area, you must identify the conflicting uses that are in the same area. The City of Portland looked for conflicts in an area 5 times the size of the Columbia Steel resource study site. Also, even if you give credence to Mr. Oulman's distorted representation of the law, your staff has done exactly what he suggests. The West Hills are divided into sub-areas for consideration: Northern Forested, Western Agricultural, Bonny Slope, and Balch Creek. And, if you adopt the staff recommendation, I think staff will have the wisdom to define smaller sites for study as needed.

Mr. Oulman is the DLCD aggregate person. He's pushing for his constituency. They still resent your decision on the Angell Brothers quarry and are fighting the same battle again. That's what this is about, that's why LCDC ordered more review. It's not their business to intervene; don't let them intimidate. If we do it right, we can prevail.

I have one last thought for you about Mr. Oulman's letter. It tells you exactly where he's coming from and how you should regard his credibility. He criticizes and warns about the wildlife report because it addresses too big an area. He accepts the scenic report without one iota of criticism. The scenic report treats the entire West Hills as one site. The wildlife report breaks it down into 4 sites. Why does he criticize the wildlife report but accept the scenic, which should be worse by his standards? It's not subtle. The scenic report gives the result he wants; no resource to conflict with his aggregate. The more comprehensive report, which relies on more evidence, more objective evidence, scholarly studies and relatively detailed analysis, all accumulated over years of work, he rejects. He doesn't care two cents about the quality of the report, or whether it's legally correct. It's the result that he opposes.

There's more work to do, but for its scope, this is one of the best staff reports I have ever seen. It's clear, it's concise, and it's conclusive.

If the staff recommendation for designation of Significant Wildlife Habitat Areas is adopted, the ESEE analysis will result in the creation of numerous subareas.

Staff has found Mr. Oulman's participation in this process to be constructive and helpful in nature.

LETTER RECEIVED FROM MARK AND  
PEGGY DAY, DATED AUGUST 23, 1993

We live at 2452 NW Moreland Road. This is one mile South of Skyline Drive. Although our mailing address is Hillsboro, our property is in Multnomah County.

We understand you are in the process of determining if this area should be classified "Significant Wildlife Habitat" or "Significant Scenic Resource." We are in support of this classification. We do ask your support in allowing the land owners to selectively log their land. This selective logging does not damage the wildlife habitat.

We have 26 acres that we manage in this manner. Following is a list of the larger species that use our land.

Elk	Deer
Coyote	Blue Heron
Bobcat	Black Bear (not since '88)

All of the smaller species and birds thrive on our property. We want it to stay that way. Please continue with your efforts to maintain this high quality of life.

LETTER RECEIVED FROM MS. ELLEN  
ARTHUR, DATED AUGUST 26, 1993

This property is on Springville Road, close to the Washington County line, and is bordered on all sides by residences. Looking at the property from the road one would see a pile of brush that could, in no, way, be considered "scenic." As for wildlife, I don't recall ever seeing any, or evidence of any.

Because of the physical condition of this area I do not feel it could possibly qualify as Scenic or Wildlife area.

LETTER RECEIVED AUGUST 30, 1993 FROM MS.  
ROSE A. COLVIN

I am a property owner in the West Hills area, legal description Section 31 2N1W, TL 39, 10.18 acres.

I have received a letter stating you are deciding if the West Hills should be designated "Significant Wildlife Habitat 1A, 1B, 1C, and "Significant Scenic Resource 1A, 1B, or 1C."

I grew up in a house adjacent to this property. I spent my first 20 years in this area.

Regarding "Significant Wildlife Habitat, I saw only squirrels and chipmunks on the above mentioned property.

Multnomah County does not have any regulatory authority over forest practices on private lands in the West Hills.

The commentors offer anecdotal evidence of wildlife on their property, located in the far northwest portion of the County south of Dixie Mountain.

The commentor offers anecdotal evidence of a lack of wildlife along Springville Road. The commentor's property is located on the north side of Springville Road, and thus is recommended for designation as "significant wildlife habitat" for the "Western Agricultural Area."

The commentor offers anecdotal evidence of the lack of wildlife habitat values on property located along Cornelius Pass Road between Folkenburg and Skyline Blvd.

Regarding "Significant Scenic Resource," my property cannot be seen from Highway 30 or from the Skyline.

I do not want special interest groups or a few individuals to tell me what I can or can not do with my property. Designating my land "Significant Scenic Resource or Significant Wildlife Area" would make my property value zero, \$00.00. Such a designation would make my property so no one would want to buy my land, except a small chance of this special interest group and why would they, since they have full control over my property. I would have a piece of property to pay taxes and fire patrol on that I can't do anything with.

Please do not put my property in such a restricted zone. If the special interest groups have the power to tell me what I can or cannot do, it won't be long and they will be telling me to upgrade my property to protect the wildlife and scenic values. How much money will this cost me, this type of designation on private property will cause countless problems?

#### LETTER RECEIVED AUGUST 26, 1993 FROM ERIC AND VICKI STOLLBERG

We are in opposition to the West Hills being included in the inventories as either "Significant Scenic Resource" or "Significant Wildlife Habitat Area." Environmental law such as this strips the private property owners of their rights. We are strongly against the taking of private property for public use without giving compensation for all portions of land taken.

While we believe in protecting the beautiful environment along Skyline Blvd., this can be done without violating the private property owners' rights by requiring them to provide the general public with scenic view. Most wildlife is abundant and is not in danger.

#### LETTER DATED AUGUST 27, 1993 RECEIVED FROM MS. BARBARA LA MORTICELLA

In the past couple of years, we have observed the following wildlife on or in close proximity to our land:

deer	elk herd	bear
squirrels	coyotes	fox
raccoons	bats	skunk
newts	salamanders	giant pacific salamander
lizards	slugs	snails
snakes	gophers	star-nosed mole
rats	mice	rabbits
frogs		

Designation of this property or any other as Significant Wildlife Habitat does not ensure that a property will have "zero" value. Multnomah County does not have regulatory authority over forestry or agriculture. Impacts upon uses which Multnomah County does have regulatory authority over, such as new residences, will depend upon the outcome of a subsequent "ESEE" analysis and program to protect Significant Wildlife Habitat.

The commentators' residence, at 6140 NW Skyline Blvd, is within the City of Portland and thus is not directly affected by this action. Consideration of private property rights is not an issue in the designation of an area as "significant" under Statewide Planning Program Goal 5. It becomes an issue at the next stage of the process, where analysis of the environmental, social, economic, and energy (ESEE) impacts of the designation are considered, and the County makes a decision to protect, not protect, or partially protect the significant resource.

The commentator offers anecdotal evidence of wildlife, both native and exotic, on her property which is located west of Skyline Blvd. , north of Cornelius Pass Road, in the upper reaches of the Rock Creek watershed.

and a bevy of assorted and very busy denizens of the meadows who rattle the grass, eat the seeds & generally try to carry on their affairs as inconspicuously as possible.

Rare and remote visitors have included twenty years ago a mountain lion, and many years ago an ibis.

There is also a great variety of bird life. Without being birders or particularly knowledgeable about birds, we have observed:

pileated woodpecker	hummingbirds
purple martin	flickers
oregon junco	yellow canary-type birds
crows and ravens	several types of owls
grossbeaks	dragonflies
hawks & eagles	butterflies (painted ladies)

There are also many, many wild plants too numerous to list, and many, many different mushrooms, both edible and non-edible.

I hope this information helps you a little with your inventory.

LETTER DATED AUGUST 31, 1993,  
RECEIVED FROM MRS. M. L. WILKENING

It is entirely unnecessary for your commission to designate the West Hills as either a significant scenic resource or wildlife habitat area.

There is too much government involvement already and property owners must have the right to do whatever they wish with their land.

LETTER DATED AUGUST 24, 1993,  
RECEIVED FROM JANET AND JOHN  
BURNHAM, LEONA BURNHAM, LOREN,  
ROBERT AND VICKY BURNHAM, EVELYN  
HAHN, AND JOHN HAHN

We, the undersigned, who reside or own and manage our property all situated north of Springville Road in portions of Section 16, Township 1 North, Range 1 West, W.M., Multnomah County, do wish to go on record in vehement opposition to the inclusion of our property into the Planning Department's designation of West Hills Significant Wildlife Area under Goal 5 and more specifically OAR 660-16-000.

Under Exhibit 4 of Staff's Report C 4-93 of July 26, 1993, our property is now more commonly defined as the Western Agricultural Area, specifically those properties lying north of Springville Road within Section 16 range in size (Tax Lots) from 0.34 acre up to and including the largest being 40 acres. All but a few lots are occupied by residents, and those



unoccupied sites are intensely managed as farm and nursery operations. To the north in Section 9 lies "German Town" and "Old German Town Road(s)" which have been extensively subdivided into 5 acre rural home sites, while to the west lies Washington County with its R-5/R-7 "Kaiser Ridges," Portland Community College, and intensively managed nursery stock and more 5 acre rural home sites.

Planning Staff makes specific reference to A Study of Forest Wildlife Habitat in the West Hills (final report) March 1992. The supposition of that report's findings were based upon multiple transects (survey plots) which were conducted in the study area of Forest Park and the timbered corridor to the northeast ranging to the Columbia County line. To our knowledge, no surveys (transects) were ever conducted in or around Section 16 to support the supposition of significant wildlife or habitat currently existing in the area of our farms or residences.

The type of habitat suggested in the Lev, Fugate, and Sharp report on pages 9 and 10 specifically speaks to the conflict that arises to wildlife from the existing development in the form of domestic pets, non-native ornamental plants, lawn care and garden products from existing residential build up and conflict with agricultural activities arising from the existence of fencing, pesticides, and wild carnivore predation on domestic livestock, to mention a few.

The physical, man-made barriers in terms of roads, power lines, rural residential development, intensive farm use (row crops, nursery stock, fencing, livestock) do not resemble the ecosystem of Forest Park and the forested properties lying north and northwest of the park along Skyline Blvd.

Under Goal 5 reasonable people intended to preserve and protect the resource that exists. Those of us who have lived and cared for our property in this part of the county over the years -- in some cases over 50 years, can assure the Planning Department staff and Commissioners that the habitat does not exist to support the wildlife that thrives within the natural setting of Forest Park.

Only because of topography and slope distance did our ownerships remain well outside the proposed West Hills Scenic Resources Study Area. The issue of a potential Significant Wildlife Habitat Area overlay on our properties is not warranted by fact and should not be supported and enacted by this body. To do otherwise would be a taking of property rights without cause or compensation.

It is our belief that we are good stewards of our lands and, in fact, have for many years encouraged and sustained wildlife

Figure 3 following Page 6 of A Study of Forest Wildlife Habitat in the West Hills shows the location of the six transects analyzed in the document. None of these transects are on or near the area in which the commentors own property. However, the T4 agricultural transect, located adjacent to Skyline Blvd. in the vicinity of Newberry and McNamee Roads, was intended as a representative sample of wildlife habitat values in the agricultural areas of the West Hills.

Although there are clearly exceptions, most agricultural activity in the West Hills is low-intensity in nature, including significant amounts of range land and with smaller forested areas interspersed. While these areas are not the equivalent of forested lands north of Forest Park, they are also not necessarily the equivalent of the intensely farmed areas of such places as Sauvie Island, for example. The Lev Study showed the existence of wildlife habitat values along the agricultural transect studied.

It should again be noted that Multnomah County has no regulatory authority over agricultural activities on private lands.

habitat. We would recommend that the County, in and through its Planning Staff and County Agent, consider working with the land owners within the transitional zones around the area of Forest Park, as well as our neighbors, to educate and encourage as opposed to legislate compatible wildlife habitat environment.

We appreciate your time and deliberation of this matter and look forward to your decision.

LETTER DATED AUGUST 30, 1993,  
RECEIVED FROM FLOYD AND AGNES  
HENDREN

In regard to your letter concerning the West Hills as a Scenic Resource or Wildlife Habitat Area.

I've lived here in the West Hills over 41 years. We have some of our land in forestry and some in Christmas trees. It's beautiful here -- and when folks come to visit they enjoy its quiet.

We have seen 4 deer on our property and another one on Skyline Blvd. We have quail, owls, skunks, coyotes. We hate to see the West Hills built up into more houses.

LETTER DATED SEPTEMBER 3, 1993 FROM  
MR. ROGER MEYER

I am writing this letter to urge the Planning Commission to designate the West Hills as a Significant Wildlife Habitat Area 1C and a Significant Scenic Resource 1C.

I have lived at 396 Brynwood Lane, Portland, Oregon 97229, since 1966. Having traveled extensively throughout the world, there is no question that the West Hills have exceptional beauty and Portland is one of the few cities with such a magnificent resource within 3-5 miles of its downtown area. Because much of the West Hills has had measured development and its proximity to Forest Park, it is inhabited by wonderful wildlife, the habitat for which, however, has been slowly diminishing. Pheasant, quail, deer, raccoons, possum, band-tail pigeons, water fowl, owls, varied species of birds, and other wildlife are present. Unfortunately, natural fish runs have already been destroyed by development, but the West Hills still sustains a significant wildlife habitat and that should be preserved to its maximum.

Your consideration of this very important designation for the West Hills is appreciated.

The commentor's suggestion that wildlife habitat protection be accomplished through education and encouragement is a viable option for consideration in preparing a program for protection of significant wildlife habitat should wildlife habitat in the West Hills be found to be significant.

The commentors provide anecdotal evidence of wildlife near their property, which is located on Springville Road west of Skyline Blvd.

The commentor's residence is located immediately west of the Balch Creek Basin, which is recommended for designation as significant wildlife habitat.

LETTER DATED SEPTEMBER 3, 1993,  
RECEIVED FROM NANCY AND BRIAN  
MONTGOMERY

We are writing to protest most strenuously the manner in which decisions about our property are being made without proper notification to the owners of property that would be affected. What do the designations "Significant Wildlife Habitat 1A 1B 1C mean? What do the designations "Significant Scenic Areas 1A 1B 1C mean?

In the past we have cut a few trees for home heating purposes and there are several which need thinning because of their location next to our home. Is it really possible that people who know nothing about living where we do, know more about caring for what we have and about trying to live in balance with the environment?

How does this fit in with the CFU designation already sprung upon us without proper notice? What about the idea of planned cutting and reforestation?

LETTER DATED SEPTEMBER 3, 1993 FROM  
MR. MONTY MCKINNEY

"They should allow us to build homes the length of Forest Park, the way it was originally planned. It's stupid to tie up that much real estate for tree huggers..." I always knew some Portlanders believed this statement, but it was still shocking to hear it articulated by an acquaintance, a builder who otherwise seems sensitive and thoughtful. Knowing that such development sentiments are very much alive, and gaining strength, I believe I must say something on behalf of wildlife and scenic resources.

Having come to Portland many years ago from the industrial midwest, by way of Los Angeles, I am quite familiar with the appearance and effects of urban sprawl. I have always been amazed at Portland's ability to maintain a large urban forest given the typical pressures to develop attractive real estate. But as a newer resident of Skyline Blvd., I see ever increasing evidence of those development pressures and wonder if Portland will go the way of Los Angeles, a city which once attracted people and now repels them.

Growth seems inevitable, and as I have built a new home in a field on Skyline, others will want their own little piece of the countryside. So the question becomes: How can we have growth without destroying the scenic resources and wildlife habitat, both of which are much in evidence in the West Hills?

As I look out across my little field to the beautiful valley below, I see several versions of the future. On Kaiser Road I see acres and acres of green fields being converted to hip

While not legally required (because this is a "legislative" decision), individual notice to each property owner is desirable. All property owners will be sent notice of a workshop to be held on rural land use issues in late September.

Multnomah County does not have the authority to regulate forest practices.

The commentor's home is located within the City limits of Portland, to the west of Forest Park and between the Balch Creek unincorporated area and the Bonny Slope unincorporated area. He offers anecdotal evidence of wildlife habitat near his home.

roofs and pavement. A bit closer I see acres of manicured pasture and lawn, without a weed or other wild intrusion. Even closer I see a grubby pasture with encroaching brush and dead or dying fruit trees. In this pasture I see deer grazing, coyotes passing through, predatory birds perched in dead trees and swooping down to carry off snakes and gophers.

If Portland is to have development as well as scenic beauty and wildlife resources, we are going to have to decide if the beauty of manicured lawns and ornamental shrubbery should take precedence over the beauty of dead trees and brush, which are necessary habitat for wild creatures. And we are going to have to ask ourselves: Is it necessary to have black bears, coyotes and elk roaming free within city limits? After all, these things do not exist in Cleveland, Newark, or Los Angeles; why should Portland be any different?

If we choose to retain any wildlife in this city, other than skunks, possums, pigeons, and squirrels which seem to live in all cities, we will need to burden development with additional planning. We will have to consider biological inventories along with other factors in issuing new building permits. We will have to limit land owners' prerogative to bulldoze everything they please and probably require additional permits for clearing brush and cutting trees. New construction will have to be less intrusive and do more to share the natural environment rather than dominate it.

Some will say this is too much bureaucracy, it will stifle the economy and so forth. But without limitations, the inherent slash and burn mentality of the human creature will eventually reduce Portland to another crowded urban wasteland from which people only wish to move away.

For these reasons, I believe the Planning Commission should assign the West Hills designations which will maximize and preserve their unique scenic and wildlife resources.

#### LETTER DATED SEPTEMBER 3, 1993, FROM CONNIE COMER AND BRUCE NORTHRUP

We write to you to urge the designation of the Multnomah County Northwest Hills as a significant Wildlife Habitat Area. We have owned 21 acres in the N.W. hills for three years and have taken the opportunity to observe the ecosystem of these woods. We strongly believe that the rich diversity of wildlife will soon be in grave danger unless they receive more consideration and protection.

Our wildlife experiences on this property as well as on the BLM land directly to the south of us have been numerous. The wildlife that we have seen include elk, bobcat, deer, and coyote. Whenever we hike through the BLM land we see evidence of elk trails and scat. We also know there to be bear in these woods, for we have found bear scat on the trails on

The commentators offer anecdotal evidence of wildlife habitat near their home, which is located at the far north end of Multnomah County between Scappoose and Dixie Mountain.

three separate occasions.

It is a given fact that animals such as these need room to move and an environment that can support their existence. In order to ensure their survival they need protected lands where the ever increasing human population can not encroach, or, if we encroach, ever so lightly. For example, selected logging rather than clear cuts, homesteads with no fencing, and no logging near streams. They need a protected corridor from Forest Park to the Pacific Ocean so that they need not cross huge tracts of clear cut where there is no food, water, or shelter.

Is it possible for the humans and wildlife to survive side by side? We believe so, but only if the humans are willing to take the responsibility as guardians of the earth and share the goodies.

LETTER DATED SEPTEMBER 3, 1993 FROM  
DENNIS CREEL, TIMBERLAND MANAGER  
FOR HAMPTON TREE FARMS INC.

The West Hills should not be designated to be an area of significance for scenery, wildlife, or streams. This area is not particularly scenic. If there were houses in five or ten acre tracts it would not be any more or less scenic than it is today.

The wildlife and streams issue should be left with the experts in the State Department of Fish and Wildlife and the State Department of Forestry. Multnomah County can't even afford to send informational letters concerning potential zoning regulations to those who own property let alone staff wildlife biologist and legal defense for the resulting legal entanglements these zoning overlays will produce.

If your goal is to provide for fish, wildlife, and houses, then talk with those folks who have experience in dealing with this combination. Rural areas in Polk and Yamhill Counties have much experience. The Forest Practice Act in 1972 began to provide for protection of these same resources. This law has been upgraded several times including current revisions being made regarding streams. The state and private land owners have a vast amount of knowledge and experience on how best to manage timberland while at the same time protect and even enhance other values such as wildlife, fish, and water quality.

If you are to approve these attributes as significant then you will have to make rules that will deal with the resulting issues and hire biologists and attorneys to interpret and defend the rules.

The experts are already here to help in advisement and the rules are sufficient. Your current sanitarian will handle sewage contamination of streams. The planners set the neighborhood limit of density. The fish issue is taken care of

Multnomah County has no regulatory authority over forest practices. The suggestion regarding fencing will be considered if wildlife habitat is found significant as part of a program of protection.

Multnomah County has no regulatory authority over forestry; forestry and its impact upon wildlife is regulated by the State Forest Practices Act. Any program to protect significant wildlife habitat will analyze the conflicts with uses, such as residential development, over which Multnomah County has regulatory authority.

It is arguable that the current, fragmented authority for protection of wildlife among different, often contradictory authorities and regulations, will not adequately protect any significant wildlife habitat resource.

by the Fish & Wildlife Department. Forest Practices officers for the State Department of Forestry take care of road building and logging.

The influx of people coming into this area demand places to live. Density will increase as the population expands. Some wildlife such as bears will probably be incompatible with human beings. There is ample room for them outside of the county. Most of the other animals are compatible with 10 to 20 acre parcel subdivisions or clustered housing areas with room between the clusters.

We do not need another zoning overlay to ensure animal movement from Forest Park to the coast. A smarter move would look at Forest Park, taking inventory of the animals and the carrying capacity of such and provide for the variety of habitat for these critters as deems necessary. This quite possibly would include habitat manipulation and minimum road building for the necessary prescriptions. The West Hills should not be called upon to manage their lands due to the type of management currently being done in Forest Park.

I was chairman of the Yamhill County Planning Commission and find it amazing that you don't automatically notify landowners about these hearings. We own approximately 770 acres in Multnomah County and I have yet to receive the information requested at the public hearing. The landowners pay taxes to the county for services. A service I expect to have and do have in the other 14 counties in Oregon for which we have property is notification by mail to every landowner of record for any planning commission activity that may affect their property. Having a sign up list for mailing to interested parties only gives special interest groups, with no financial investment, the right to enact all kinds of planning proposals of which landowners are totally ignorant until it's too late. I have not had enough time to call other landowners in the area to discuss this matter but will do so soon. Please put me on your mailing list!

**LETTER DATED SEPTEMBER 3, 1993,  
RECEIVED FROM MR. STEVE BAKER**

My attention to these issues was brought by my in-laws who own property in potential affected areas. I would like to question where these decisions are headed...complete stop of any development; or, a thoughtful deliberative development of the area?

If the decision occupies the spectrum of no further development, I would question this given conclusion from the above staff reports. The area, in the Scenic Resource report was NOT a significant scenic resource, per the recommendation. In addition, tied to the Wildlife Habitat Area staff report, the conclusion that the area should be designated a SIGNIFICANT Wildlife Habitat Area seems to be driven by two factors: one, anecdotal observations (how

A counter-argument to the commentor's assertion is that Forest Park significant wildlife habitat is not sustainable if it becomes a biological "island" cut off from the larger Coast Range ecosystem.

Mr. Creel's name has been placed on the mailing list. See comments on Page 34 regarding the issue of proper notice.

If wildlife habitat is found significant, the option of allowing no further residential development (essentially, a 3-A finding under the Goal 5 process) is possible. Also possible is the option of placing no restrictions on residential development due to wildlife (A 3-B finding), and the option of limiting or regulating residential development so as to provide a fair and equitable balance between such development and wildlife habitat.

current are these observations?), and two, its location as a "buffer." If it is in fact a buffer, cannot the area be managed effectively satisfying private property concerns (some limited development, i.e. residential with 5-10 acre minimums), and the need for wildlife to have a pathway to some other habitat area. I must confess the designation of SIGNIFICANT bothers me; it appears to be significant to satisfy a perceived need, which could be doubtful.

The recommendation states that after designation, a program will be developed to achieve goals by protecting the resource (what is the resource we are protecting, and what are the resources' needs?); allowing conflicting uses fully (that will not work, and should not even be considered); or limiting conflicting uses (define the conflict and the amount of limitation...this would be a balanced decision making process).

Please consider that many sides must be taken into account on issues such as this. I ask that you do not consider the extremes, and find the middle ground for the designation and its consequences.

LETTER DATED SEPTEMBER 1, 1993 FROM  
MR. MICHAEL CARLSON REPRESENTING  
THE PORTLAND AUDOBON SOCIETY

I am writing on behalf of the Portland Audobon Society with its 7,000 members and over 90 years of community service in Multnomah County. The task before you is of critical importance as the Metro area braces for population increases that could drastically impact our region's natural areas.

WILDLIFE RESOURCES AS SIGNIFICANT IN THE  
NORTHWEST HILLS

We strongly support the planning staff recommendations to designate the entire NW Hills as a significant wildlife area. We agree with your designation, but are concerned with the staff's definition of sensitive wildlife habitat as inadequate. We participated in writing the following revised definition and strongly encourage its adoption.

"Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory species for an indefinite period of time. Such an area is significant if it is large; or sustains the presence of unique, sensitive, threatened, or endangered species; or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem, in whole or in part; or provides a connection between other areas of significant wildlife habitat."

Thank you for the opportunity to comment. We look forward

Evidence of significant wildlife habitat used to judge the staff recommendation includes is greater than anecdotal in nature. It includes the report "A Study of Forest Wildlife Habitat in the West Hills."

The outcome of any analysis of conflicting uses and program (if any) to protect wildlife habitat cannot be determined at this time. The commentor presents a reasonable sketch of some of the issues staff would have to address in considering a 3-A, 3-B, or 3-C finding pursuant to Statewide Planning Goal 5.

See letter from Oregon Department of Fish & Wildlife and staff response, found on Page 42.

to working on the rest of the plan.

LETTER DATED SEPTEMBER 3, 1993 FROM  
MR. TIM BROOKS, CITY PLANNER WITH  
THE PORTLAND BUREAU OF PLANNING

I am writing on behalf of the City of Portland's Long Range Planning Section to comment on the West Hills Wildlife Habitat Area Determination of Significance (C 4-93)/

In general, I support your recommendation for an inclusive determination which covers most of the area in question. This is, as I understand it, a recommendation for what the County should include in its Goal 5 inventory map; more precise analysis of Goal 5 resources will be undertaken in the next phase of the process.

As the staff report notes, the City of Portland has identified and protected significant Goal 5 resources adjacent to the County's West Hills Wildlife Habitat Area, both in the Balch Creek basin and at the northern boundary of Forest Park. I would also like to call your attention to an ongoing City Goal 5 project, known as the Skyline West Conservation Plan, which borders the County along the eastern edge of the "Western Agricultural Area" and the "Bonny Slope Area." In this area the City and County share the headwater tributaries of Rock and Beaverton Creeks, both of which are part of the Tualatin River basin.

I have one concern that I hope the County will consider before acting on the recommended determination (these may actually just be questions that have already been addressed and I am simply ignorant of the County's actions). The staff report appears to focus exclusively on wildlife without reference to other Goal 5 resources. Are these other resources addressed independently? For example, are "water areas, wetlands, watersheds and groundwater resources" addressed elsewhere? This is of interest to me for several reasons. First, to take an example, the Miller Creek watershed, part of which is in the County, supports cutthroat trout, coho salmon and steelhead and is one of the least disturbed basins in the City with some of the highest water quality. The basin was found by the City to be of high significance and was protected accordingly. This area (Northern Forested Area) is also identified as significant in the County staff report.

My concern is that an area such as the Bonny Slope Area, which is not recommended for significance, may have significant water or fisheries resources while perhaps not being significant habitat for terrestrial wildlife. The Skyline West Conservation Plan mentioned above borders the eastern boundary of the Bonny Slope Area. There are at least two headwater tributaries along with adjacent habitat that the City is likely to find significant and protect as part of the Skyline Plan. These tributaries leave the City and flow into the

Staff is coordinating with the Portland Planning Bureau to ensure consistency between the City's Skyline West Conservation Plan and the West Hills Rural Area Plan.

Staff is addressing the issue of wildlife habitat, along with several other Goal 5 issues, as a result of Multnomah County's periodic review order from the Land Conservation and Development Commission issued on April 23, 1993. Other Goal 5 issues not included in the periodic review order will be addressed as part of the West Hills Rural Area Plan. Wildlife habitat issues will also be "folded into" this plan.

This issue will be addressed in the preparation of the West Hills Rural Area Plan.



County.

I would urge the County to reconsider the Goal 5 significance of the Bonny Slope Area, particularly the significance of the headwater tributaries and any resident or downstream fisheries. The staff report states that "fish and riparian-based flora and fauna are a significant identified resource within major streams; but this resource is not mentioned in any of the conclusion statements for the resource areas, including Bonny Slope. I assume that the Tualatin River and its Rock Creek and Beaverton Creek tributaries are considered major streams. Based on the attached Metro "Regional Watersheds and Habitat Types" map, it would also appear that the Bonny Slope Area may contain significant habitat resources not identified in the staff report. It may be that habitat, fisheries, and water resources are not significant; my concern is that they each be identified and carefully considered before a determination of no significance is made.

I am pleased with the County's renewed efforts to protect West Hills resources and look forward to working closely with County staff as we develop our respective studies of these resources. Thank you for the opportunity to comment.

LETTER DATED SEPTEMBER 3, 1993 FROM  
MR. NEIL S. KAGAN

On behalf of the Friends of Forest Park, I am writing for two reasons. First, I want to re-submit the definition of "wildlife habitat" we submitted at your hearing on July 26, 1993. Friends of Forest Park requests that you adopt a motion substituting the following definition for the definition of wildlife habitat proposed by the staff in their report to you of July 26, 1993:

"Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory species for an indefinite period of time. Such an area is significant if it is large; or sustains the presence of unique, sensitive, threatened, or endangered species; or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem, in whole or in part; or provides a connection between other areas of significant wildlife habitat."

Second, I want to submit the enclosed 2-page letter from Dr. Reed F. Noss to you strongly endorsing our definition. Dr. Noss is a nationally eminent and highly qualified wildlife biologist, as his enclosed biological sketch demonstrates.

Please enter this letter and the enclosures in the record of your proceedings on this matter.

LETTER DATED AUGUST 30, 1993 FROM MR.

The Bonny Slope area was considered and recommended for rejection by staff as an area of significant wildlife habitat due to its "dead-end" location, surrounded on three sides by existing and future urban development. Staff will review the significance of streams in the Bonny Slope area as part of the preparation of the West Hills Rural Area Plan.

See letter from the Oregon Department of Fish & Wildlife, and staff response, on Page 42.

REED NOSS, ECOLOGIST AND  
CONSERVATION BIOLOGIST

I have been asked by the Friends of Forest Park to comment on the definitions of "wildlife habitat" being considered by the Multnomah County Planning Commission in its effort to identify resources pursuant to Statewide Planning Goal 5 in the West Hills Wildlife Habitat Area. I appreciate this opportunity to comment. A scientifically valid definition of wildlife habitat is central to any effort to conserve biological resources.

I examined two definitions, one offered by Commission staff and another by the Friends of Forest Park. The Friends of Forest Park definition is preferable for several reasons. First, the staff definition limits consideration of sensitive wildlife habitat to "an area which constitutes a large, mostly natural ecosystem, connected with other natural areas." This characterization of wildlife habitat is extremely exclusive. Ecosystems that are mostly natural, large (which suggest to me at least thousands of acres) and connected to other ecosystems are certainly of top priority for conservation, but they are exceedingly rare today. Indeed, by this definition, very few areas in Oregon would qualify as sensitive wildlife habitat. The Friends of Forest Park definition is more general in its characterization of wildlife habitat, but correctly notes that wildlife habitat is "significant" when it is large, contains rare or sensitive species or a high diversity of native species, comprises a functioning ecosystem, or provides an important connection between other areas of significant wildlife habitat.

The Friends of Forest Park definition of wildlife habitat is superior also because it defines wildlife broadly to include plants, i.e. significant wildlife habitat includes areas that sustain "a high diversity of native plant or animal species." Broad definitions of wildlife are accepted by virtually all conservation biologists today (Brussard, Murphy, and Noss, 1992, *Conservation Biology* 6: 157-159). For example, a standard text on conservation assessments (M.B. Usher, *Wildlife Conservation Evaluation*, Chapman and Hall, 1986) defines wildlife as "all non-domesticated species of plants, animals, or microbes." Similarly, a popular text on forest wildlife management (M. L. Hunter, Jr. *Wildlife, Forests, and Forestry*, Prentice Hall, 1990) defines wildlife as "all forms of life that are wild." In contrast, the Commission staff report definition of sensitive wildlife habitat encompasses only areas "home to large numbers of wildlife animal species." Plants -- the base of the food web -- are ignored in this definition.

Finally, I particularly like the Friends of Forest Park definition of wildlife habitat because it explicitly includes both the "content" and the "context" of an area in an evaluation. Traditional evaluations that consider only what occurs within the boundaries of a site are inadequate because sites are functional components of larger landscape

See letter from the Oregon Department of Fish & Wildlife, and staff response, on Page 42.

ecosystems. For example, many areas of relatively low habitat quality are absolutely critical as corridors or linkages between areas of higher value. In fact, several areas of low to moderate habitat quality, when considered individually, may be functionally united into a larger ecosystem that is of high significance. These functional linkages are especially important for animals with large home ranges (e.g. black bear, elk) and for animals that require large contiguous areas of forest interior habitat to maintain viable populations (e.g. many songbirds). As noted in the study commissioned by Multnomah County and conducted by Esther Lev, Jerry Fugate, and Lynn Sharp, "the ecological integrity of Forest Park is dependent upon the maintenance of forest habitat along the entire peninsula of which it is the southern portion." I agree with this statement and endorse the Friends of Forest Park definition of wildlife habitat, which explicitly includes both site-specific and landscape context considerations in determining whether wildlife habitat is significant.

LETTER DATED SEPTEMBER 3, 1993 FROM  
MS. JILL ZARNOWITZ, ASSISTANT  
DIRECTOR OF THE HABITAT  
CONSERVATION DIVISION OF THE OREGON  
DEPARTMENT OF FISH & WILDLIFE

The Oregon Department of Fish and Wildlife has reviewed the draft definitions of wildlife habitat contained in the staff report for the West Hills Wildlife Habitat Area, the revised draft definition we received from the county dated September 1, and the definition proposed by the Friends of Forest Park. We recommend that the county adopt the following definition which is a modification of the Friends of Forest Park proposal. The Department does not have its own definition of significant habitat, however we believe this revised definition would address the types of habitats we would recommend for protection.

"Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory wildlife species population for at least some part of their annual life cycle. Such an area is significant if it is large enough to sustain a viable population; or sustains the presence of unique, sensitive, threatened, or endangered species; or provides a critical component to a species' life requirements during some time during the year (i.e. nesting or roosting sites, big game winter range); or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem in whole or in part (i.e. wetland, old growth forest); or provides a connection between other areas of significant wildlife habitat (i.e. riparian or upland wildlife corridor)."

Please enter this letter of comment into the record of the

Based upon the authority and expertise of the Oregon Department of Fish & Wildlife, staff recommends that the definition of significant wildlife habitat provided by the Department be substituted for the staff-recommended definition stated on Page 2 of the July 26, 1993 staff report on significant wildlife habitat in the West Hills. The new recommendation does not change the staff recommendation for a finding of significance for most of the West Hills as wildlife habitat. Staff believes that the technical information available show that these areas of significance meet the definition provided by ODF&W.

Following is a strike-out - underline version of the ODF&W recommended definition which shows modifications to the definition provided by the Friends of Forest Park. (Strike-outs indicate deletions, underlining indicates additions)

"Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory wildlife species ~~for an indefinite period of time~~ for at least some part of their annual life cycle. Such an area is significant if it is large enough to sustain a viable population; or sustains the presence of unique, sensitive, threatened, or endangered species; or provides a critical component to species' life requirements during some time during the year (i.e. nesting or roosting sites, big game winter range); or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem in whole or in part (i.e. wetland, old growth forest);

Planning Commission hearing.

LETTER DATED SEPTEMBER 3, 1993 FROM  
MR. RICHARD P. BENNER, DIRECTOR,  
OREGON DEPARTMENT OF LAND  
CONSERVATION AND DEVELOPMENT

The 1993 Legislature declared that the balance between state and local government interests is best served by resolving conflicts with alternative dispute resolution techniques. The Legislature further declared that such techniques are well suited for disputes arising in periodic review.

The Land Conservation and Development Commission has directed the department to help Multnomah County complete periodic review. We have tried to set up a dispute resolution process to help the county define and identify possible wildlife habitat in the West Hills. However, county staff informed us in late August that some participants in the county's periodic review would not take part in dispute resolution. We regret this turn of events, and urge the county to promote dispute resolution as a way to complete periodic review.

Meanwhile the County needs to proceed with the Goal 5 process for potential wildlife habitat. The department's July 24 letter expressed our concerns about the lack of specific information about habitat in the West Hills. We agree with the Oregon Department of Fish & Wildlife's previous opinion that the county must clearly define and identify wildlife habitat in order to complete the Goal 5 process.

We have reviewed several proposed definitions of significant wildlife habitat. The department is reluctant to judge the technical adequacy of any of the definitions. The county needs the advice of trained biologists. More importantly, any definition must be applied on the ground to identify a significant resource. Future planning decisions demand clarity and precision in this determination.

Absent more specific information or agreement on habitat in the West Hills, the county should declare the area a potential, or 1-B resource. A 1-B decision recognizes that a Goal 5 resource may be present, but information is not adequate to identify with particularity the location, quality and quantity of the resource site, see OAR 660-16-000(5)(b). Such a decision means that the County would not perform additional work on the habitat issue at this time. The county would follow its plan policy and complete the Goal 5 process when specific information is available.

Please include this letter in the county's periodic review record. The department will continue to help the County planning staff address remaining work tasks in periodic review.

or provides a connection between other areas of significant wildlife habitat (i.e. riparian or upland wildlife corridor)."

The Department of Land Conservation and Development attempted to set up a process for mediation of the definition of "significant wildlife habitat." However, the Friends of Forest Park declined to participate in the mediation process, believing that their definition of significant wildlife habitat was appropriate. Staff believes that the definition discussed on page 42 provided by the Oregon Department of Fish & Wildlife is the best available definition, and should be adopted.

See staff response to the letter from Mr. Steve Oulman of the Department of Land Conservation and Development on Page 1 of the Comments and Responses. Staff believes that adequate information exists to make the recommended finding of significance for wildlife habitat in the West Hills.

Staff believes that the definition provided by the Oregon Department of Fish & Wildlife provides a rational and defensible definition of significant wildlife habitat. Its adoption does not change the staff recommended areas to be designated as Significant Wildlife Habitat.

Staff believes that adequate information is available on wildlife habitat in the West Hills to make a 1-C finding of significance for most of the West Hills.

It should be noted that adoption of a 1-B finding requiring additional information before a determination of significance could be made on the issue of wildlife habitat would not absolve the county from going forward with the remainder of the Goal 5 revisions directed by the Land Conservation and Development Commission on April 23. As a result, the County would be required to resolve the mineral and aggregate Goal 5 issue involving the Angell Bros. quarry without having a companion resolution to the wildlife habitat issue. Such a piecemeal approach to potentially conflicting Goal 5 resources would not serve the best interests of either Multnomah County nor the State of Oregon as expressed in the Statewide Planning Program.

# **APPENDICES**

## **5. OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES (Continued)**

2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.
3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.
4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.
6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.

7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(24).

### **B. IMPLEMENTATION**

1. Development should be planned and directed so as to conserve the needed amount of open space.
2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.
3. The efficient consumption of energy should be considered when utilizing natural resources.
4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.
5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.

6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.

7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.
8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.
9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.

## **6.**

## **AIR, WATER AND LAND RESOURCES QUALITY**

# 5.

## OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

### GOAL

To conserve open space and protect natural and scenic resources.

Programs shall be provided that will

- (1) insure open space;
- (2) protect scenic and historic areas and natural resources for future generations, and
- (3) promote healthy and visually attractive environments in harmony with the natural landscape character. The location, quality and quantity of the following resources shall be inventoried:
  - a. Land needed or desirable for open space;
  - b. Mineral and aggregate resources;
  - c. Energy sources;
  - d. Fish and wildlife areas and habitats;
  - e. Ecologically and scientifically significant natural areas, including desert areas;
  - f. Outstanding scenic views and sites;
  - g. Water areas, wetlands, watersheds and groundwater resources;
  - h. Wilderness areas;
  - i. Historic areas, sites, structures and objects;
  - j. Cultural areas;
  - k. Potential and approved Oregon recreation trails;
  - l. Potential and approved federal wild and scenic waterways and state scenic waterways.

Where no conflicting uses for such resources have been identified, such resources shall be managed so as to preserve their original character. Where conflicting uses have been identi-

fied the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

**Cultural Area** -- refers to an area characterized by evidence of an ethnic, religious or social group with distinctive traits, beliefs and social forms.

**Historic Areas** -- are lands with sites, structures and objects that have local, regional, statewide or national historical significance.

**Natural Area** -- includes land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitats for plant, animal or marine life, for the study of its natural historical, scientific or paleontological features, or for the appreciation of its natural features.

**Open Space** -- consists of lands used for agricultural or forest uses, and any land area that would, if preserved and continued in its present use:

- (a) Conserve and enhance natural or scenic resources;
- (b) Protect air or streams or water supply;
- (c) Promote conservation of soils, wetlands, beaches or tidal marshes;
- (d) Conserve landscaped areas, such as public or private golf courses, that reduce air pollution and enhance the value of abutting or neighboring property;

- (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
- (f) Enhance recreation opportunities;
- (g) Preserve historic sites;
- (h) Promote orderly urban development.

**Scenic Areas** -- are lands that are valued for their aesthetic appearance.

**Wilderness Areas** -- are areas where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. It is an area of undeveloped land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) may also contain ecological, geological, or other features of scientific, educational, scenic, or historic value.

### GUIDELINES

#### A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.

*(Continued on next page)*

DIVISION 16

REQUIREMENTS AND APPLICATION  
PROCEDURES FOR COMPLYING WITH  
STATEWIDE GOAL 5

Inventory Goal 5 Resources

660-16-000 (1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant", or an open space area is "needed", or a scenic area is "outstanding", as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable".

(4) The inventory completed at the local level, including options (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of adequacy may be raised by the Department or objectors, but final determination is made by the Commission.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) Do Not Include on Inventory: Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information.

(b) Delay Goal 5 Process: When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed

through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment.

(c) Include on Plan Inventory: When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Identify Conflicting Uses

660-16-005 It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(1) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which insure preservation of the resource site.

(2) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Develop Program to Achieve the Goal

660-16-010 Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal". Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and



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conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2) and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) **Protect the Resource Site:** Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-16-000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and planland zone designations must be consistent with this decision.

(2) **Allow Conflicting Uses Fully:** Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) **Limit Conflicting Uses:** Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

#### Post-Acknowledgment Period

660-16-015 All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-16-000(5)(a), 660-16-005(1), and 660-16-010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

If the local government has included in its plan items under OAR 660-16-000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the

Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

#### Landowner Involvement

660-16-020 (1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

#### Policy Application

660-16-025 OAR 660-16-000 through 660-16-025 are applicable to jurisdictions as specified below:

(1) **Category 1:** Compliance with OAR 660-16-000 through 660-16-025 is required prior to granting acknowledgment of compliance under ORS 197.251 and OAR 660-03-000 through 660-03-040 for those jurisdictions which:

(a) Have not submitted their comprehensive plan for acknowledgment as of the date of adoption of this rule;

(b) Are under denial orders as of the date of adoption of this rule;

(c) Are not scheduled for review prior to or at the June 1981 Commission meeting.

(2) **Category 2:**

(a) Compliance with OAR 660-16-000 through 660-16-025 is required as outlined below for those jurisdictions which:

(A) Are under continuance orders adopted pursuant to OAR 660-03-040;

(B) Are scheduled for review at the April 30/May 1, May 29 or June 1981 Commission meetings.

(b) For these jurisdictions a notice will be given to all parties on the original notice list providing a 45-day period to object to the plan based on OAR 660-16-000 through 660-16-025.

(c) OAR 660-16-000 will be applied based on objections alleging violations of specific provisions of the rule on specific resource sites. Objections must be filed following requirements outlined in OAR 660-03-000 through 660-03-040 (Acknowledgment of Compliance Rule). Where no objections are filed or objections are not specific as to which elements of OAR 660-16-000 through 660-16-025 have been violated, and on what resource sites, the plan will be reviewed against Goal 5

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standards as they existed prior to adoption of OAR 660-16-000 through 660-16-025.

(3) Jurisdictions which receive acknowledgment of compliance (as outlined in ORS 197.251) at the April 30/May 1, 1981 Commission meeting will not be subject to review procedures outlined above, but will be treated as other previously acknowledged jurisdictions.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & cf. 5-8-81; LCD 7-1981, f. & cf. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

(Periodic Updates) — — — — — 1 COLLECT, DEVELOP DATA ON GOAL 5 RESOURCES — — — — — (Plan Amendments)

ANALYZE, REFINE DATA; DETERMINE SUFFICIENCY, SIGNIFICANCE, ETC.

1A AVAILABLE INFORMATION ON LOCATION, QUALITY AND QUANTITY INDICATES RESOURCE SITE NOT IMPORTANT;

NOT INCLUDED ON PLAN INVENTORY;  
NO FURTHER ACTION REQUIRED OR APPROPRIATE FOR GOAL 5 COMPLIANCE

1B SOME INFORMATION AVAILABLE BUT INADEQUATE TO IDENTIFY THE RESOURCE SITE:

INCLUDE ON PLAN INVENTORY AS A SPECIAL CATEGORY;

JOPT PLAN STATEMENT TO ADDRESS THE RESOURCE SITE AND GOAL 5 PROCESS IN FUTURE, STATING TIME FRAME;

1C INFORMATION AVAILABLE:

PROVIDE INFORMATION ON LOCATION, QUALITY, AND QUANTITY AND INCLUDE ON PLAN INVENTORY

NO SPECIAL RESTRICTING PLAN POLICIES, ZONING ORDINANCE PROVISIONS, OR INTERIM REVIEW MECHANISMS REQUIRED OR APPROPRIATE FOR GOAL 5 COMPLIANCE

2 IDENTIFY CONFLICTING USES

2A NO CONFLICTING USES IDENTIFIED:

MANAGE RESOURCE SITE SO AS TO PRESERVE ORIGINAL CHARACTER

2B CONFLICTING USES IDENTIFIED:

DETERMINE ECONOMIC, SOCIAL, ENVIRONMENTAL, ENERGY CONSEQUENCES OF CONFLICTING USES

3 DEVELOP A PROGRAM TO ACHIEVE THE GOAL:

RESOLVE CONFLICTS BASED ON PRESENTLY AVAILABLE INFORMATION AND DETERMINATION OF ECONOMIC, SOCIAL, ENVIRONMENTAL, ENERGY CONSEQUENCES:

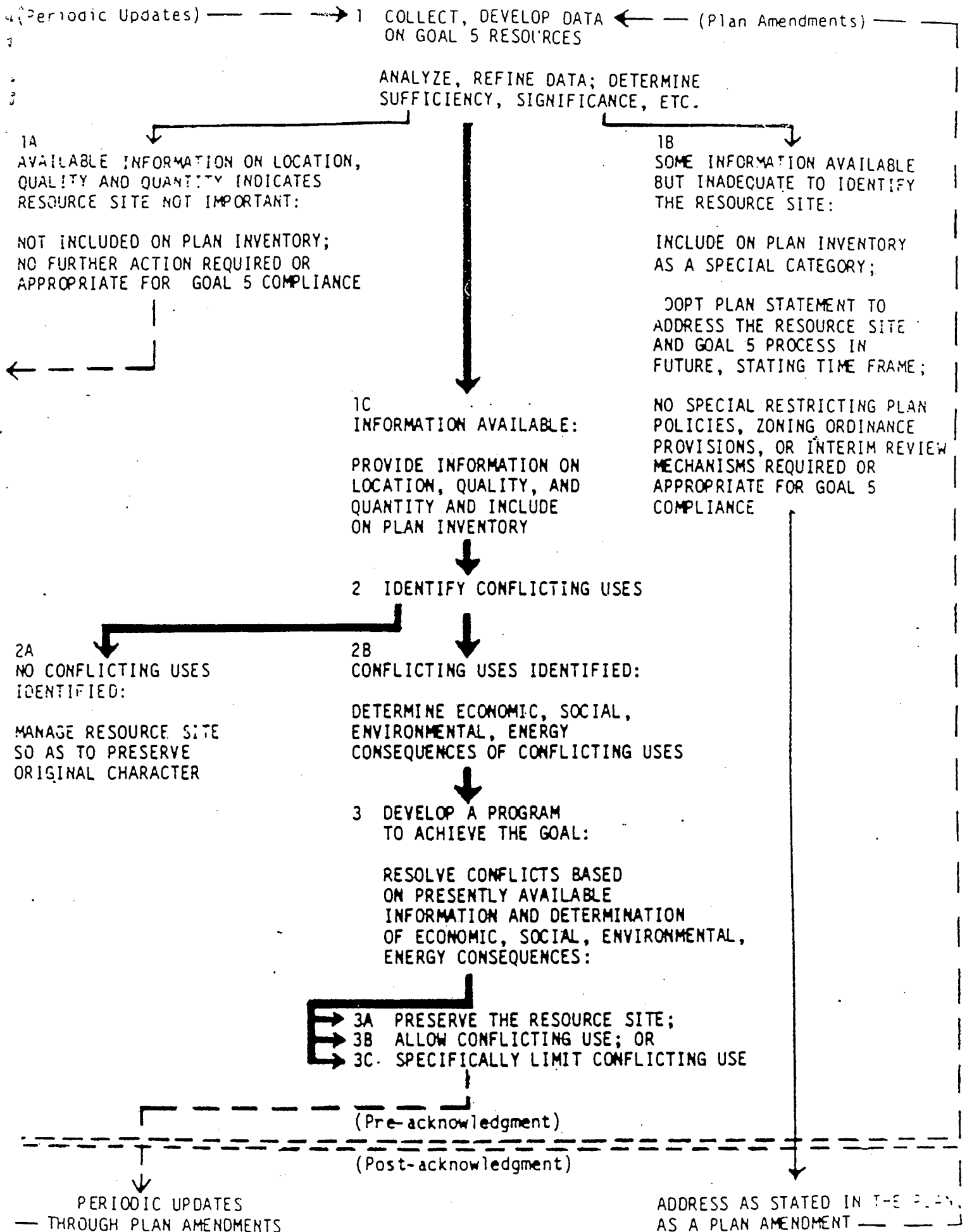
3A PRESERVE THE RESOURCE SITE;  
3B ALLOW CONFLICTING USE; OR  
3C SPECIFICALLY LIMIT CONFLICTING USE

(Pre-acknowledgment)

(Post-acknowledgment)

PERIODIC UPDATES  
— THROUGH PLAN AMENDMENTS

ADDRESS AS STATED IN THE PLAN,  
AS A PLAN AMENDMENT



4. The county shall determine a study area in the West Hills, and

a. Not later than May 30, 1993, the county shall identify the location, quality and quantity of possible Goal 5 resources in the West Hills area. The county shall specifically determine whether the wildlife habitat and scenic resources are significant in accordance with OAR 660-16-000.

b. Not later than June 30, 1993, the county shall determine the impact area and conflicting uses for the Angell Bros. aggregate site and any resources determined to be significant as a result of 4.a., above. In doing so, the county shall:

1) Designate the impact area(s) with a legal description or a map, showing with certainty land included in the impact area for all significant resources.

2) Identify conflicts with each significant resource and provide reasons why the identified uses or natural resources conflict with the significant resource.

c. Not later than September 15, 1993, the county shall analyze the ESEE consequences of conflicts within the impact areas identified in 4.b., above, for the Angell Bros. aggregate resource and significant resources identified in 4.a., above.

d. Not later than October 22, 1993, the county shall designate the level of protection for the Angell Bros. aggregate resource and significant resources identified in 4.a., above. The county shall develop an appropriate program, or programs, to protect the resource, or resources, to resolve consequences identified in 4.c., above.

5. The county shall reevaluate the Goal 5 analysis for the Howard Canyon site consistent with OAR 660, Division 16. Specifically, the county shall: 1) describe or map the impact area surrounding the site; 2) identify conflicting uses, if any, to the resource site and give reasons how the uses conflict with the resource; 3) analyze the ESEE consequences of identified conflicts based on factual information presented to the county; 4) designate the level of resource protection to be given the resource, and state the reasons that support the decision; and 5) develop and implement a program consistent with the decision reached following analysis of ESEE consequences.

6. The county shall: 1) amend the comprehensive plan for mineral and aggregate resource sites 2 and 5 to clarify the decision for each site. 2) If insufficient information exists about the resource, include the site on the 1-B inventory and identify when the Goal 5 process will be completed for the site. 3) If the resource is determined to be

significant, identify the impact area and conflicting uses, analyze the ESEE consequences of conflicting uses, and develop and implement a program to achieve the Goal.

7. The county shall: 1) revise the program to achieve Goal 5 for mineral and aggregate resources to be consistent with ESEE analyses for individual sites. 2) amend, as necessary, in accordance with Goal 5 and the Goal 5 rule the following provisions:

a. Comprehensive plan provisions to ensure planning and permit coordination with DOGAMI in accordance with OAR 660-16-030.

b. The provisions to protect aggregate resources from conflicting uses including, but not limited to, MCC 11.15.2016(F), .2096(K), .2138(F), .2218(F), .2360(H), .2480(I), .2692(K), .2834(J), .2844(J), .2854(J), .2864(J), .2874(J), .2884(J), .2894(J);

c. MCC 11.15.7325(C) requiring protection of fish and wildlife habitat without supporting justification in a site-specific ESEE analysis;

d. MCC 11.15.7325(F) requiring applicant for mining permits to obtain state agency permits before county issuance of conditional use permits;

e. MCC 11.15.7330 establishing a 10-year limit on mineral extraction conditional use permits.

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

9. The county shall report the progress of work on items 4 through 8, above, to the Land Conservation and Development Commission at its July 22-23, 1993 meeting.

10. Multnomah County shall resubmit work specified in tasks 4 through 8, above, to the Director pursuant to OAR 660-19-075 through OAR 660-19-090, at the Department of Land Conservation and Development's Salem office no later than October 29, 1993.

11. The Department of Land Conservation and Development shall provide assistance to the Multnomah County planning staff and planning commission, as appropriate and agreed upon, to complete the above-referenced tasks.

DATED THIS 30TH DAY OF APRIL 1993.



Richard P. Benner, Director  
Department of Land Conservation  
and Development

**NOTE:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482 and 197.650. Copies of all exhibits listed in Attachment A to Commission Orders 93-SUSTAIN-874, 93-RA-876 and 93-PR/POST-875 are available for review at the Department's office in Salem.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

In the matter of determining the significance of        )        RESOLUTION  
wildlife habitat in the West Hills        C 4-93        )

**WHEREAS,** As part of Periodic Review, Multnomah County must complete the Statewide Planning Goal 5 process for wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** Oregon Administrative Rule Chapter 660 Division 16 requires that the location, quantity, and quality of wildlife habitat be considered to determine whether the resource is significant ; and

**WHEREAS,** The Planning Commission held a public hearing on July 26, 1993 to take testimony concerning the significance of wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** The Planning Commission considered additional written testimony until September 3, 1993, and

**WHEREAS,** The West Hills Rural Area has been divided into four subareas for analysis of significant wildlife habitat, the Northern Forested Area, the Western Agricultural Area, the Bonny Slope Area, and the Balch Creek Area; and

**WHEREAS,** On September 7, 1993, the Planning Commission approved a motion to designate three subareas of the West Hills Rural Area as significant wildlife habitat resources by a vote of six(6) in favor, none(0) opposed, and one(1) abstention, and

**WHEREAS,** A comparative analysis of rural areas with wildlife habitat values within Multnomah County shows that the West Hills Rural Area constitutes 12 percent of such areas, and a comparative analysis of rural and park areas with wildlife habitat adjacent to the West Hills shows that the West Hills constitutes 12 percent of such areas; and

**WHEREAS,** Wildlife studies in the West Hills Rural Area show the area has a good quantity and diversity of wildlife and their habitat; and

**WHEREAS,** The West Hills Rural Area is a key part of a larger ecosystem with significant wildlife habitat values which includes Forest Park within the City of Portland and natural areas in Columbia and Washington Counties, eventually connecting with



the Oregon Coast range; and

**WHEREAS,** Three of the four West Hills subareas, the Northern Forested Area, the Western Agricultural Area, and the Balch Creek Area, are important parts of this larger ecosystem. The fourth area, Bonny Slope, is not important because of existing development patterns and location; and

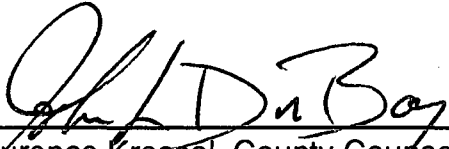
**THEREFORE BE IT RESOLVED,** that the Multnomah County Board of Commissioners directs the Planning and Development Division staff to determine whether conflicting uses to wildlife habitat exist in the three areas recommended for designation as significant wildlife habitat in the West Hills, prepare an ESEE analysis of conflicting uses, consider and, if appropriate, prepare a program for protection of wildlife habitat resources, and undertake any other necessary actions pursuant to Oregon Statewide Planning Program Goal 5 Natural Resources as outlined in Oregon Administrative Rule Chapter 660 Division 16.

**BE IT FURTHER RESOLVED,** that the Multnomah County Board of Commissioners indicates its intent, at the completion of the remaining steps in the inventory and consideration of Oregon Statewide Planning Goal 5 as outlined in Oregon Administrative Rule Chapter 660 Division 16, to designate wildlife habitat as a significant natural resource for those portions of the West Hills Rural Area as shown on the attached map labeled "Exhibit 4."

ADOPTED this 12th day of October, 1993.

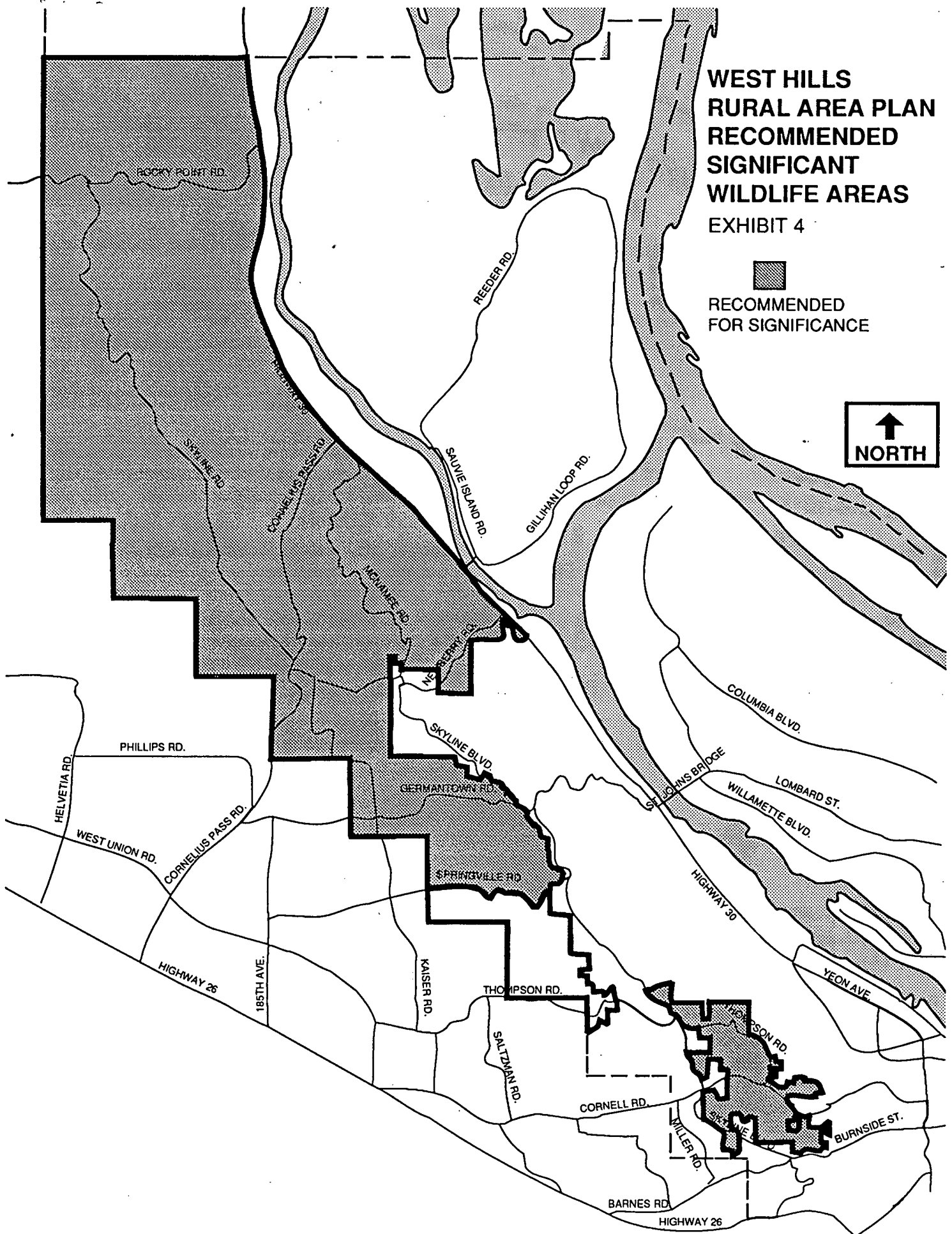
By \_\_\_\_\_  
BEVERLY STEIN, CHAIR  
MULTNOMAH COUNTY, OREGON

REVIEWED:

  
\_\_\_\_\_  
Laurence Kressel, County Counsel  
of Multnomah County, Oregon

**WEST HILLS  
RURAL AREA PLAN  
RECOMMENDED  
SIGNIFICANT  
WILDLIFE AREAS  
EXHIBIT 4**

  
RECOMMENDED  
FOR SIGNIFICANCE



C 4-93

SPEAKER #2

Letter Received

October 8, 1993

Department of Environmental Services  
Division of Planning and Development  
2115 SE Morrison St  
Portland, OR 97214

Re: Wildlife Significance Boundaries

Sirs:

We at Malinowski Farm are very concerned that the area south of Springville Road was removed from the western agricultural area and from the wildlife habitat area. Pictures of the western part of the area are provided. We are probably at least as intensely farmed as the north side of Springville. To the east, the ridge is carpeted with second growth timber and has streams in the canyons. We request the map be altered to show the south of Springville as agricultural. We are also currently working with several state and federal agencies to prove wildlife habitat is compatible with farming. We would not wish to be singled out as the one part of the West Hills unsuitable for help in enhancing wildlife. On our farm south of Springville, we have two ponds visited by great blue heron, belted kingfishers, red wing blackbirds, weasels or minks, muskrats, hawks, two kinds of owls, coyotes, bats, and several kinds of frogs.

We ask that you reconsider your placement of the boundary.

Thank you.

  
Gregory P. Malinowski

Malinowski Farm  
13450 NW Springville Ln  
Portland, OR 97229  
(503) 297-9398

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF MULTNOMAH COUNTY, OREGON

In the matter of determining the significance of wildlife habitat in the West Hills	) )	RESOLUTION 93-340
--	-----	----------------------

**WHEREAS,** As part of Periodic Review, Multnomah County must complete the Statewide Planning Goal 5 process for wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** Oregon Administrative Rule Chapter 660 Division 16 requires that the location, quantity, and quality of wildlife habitat be considered to determine whether the resource is significant ; and

**WHEREAS,** The Planning Commission held a public hearing on July 26, 1993 to take testimony concerning the significance of wildlife habitat in the West Hills Rural Area; and

**WHEREAS,** The Planning Commission considered additional written testimony until September 3, 1993, and

**WHEREAS,** The West Hills Rural Area has been divided into four subareas for analysis of significant wildlife habitat, the Northern Forested Area, the Western Agricultural Area, the Bonny Slope Area, and the Balch Creek Area; and

**WHEREAS,** On September 7, 1993, the Planning Commission approved a motion to designate three subareas of the West Hills Rural Area as significant wildlife habitat resources by a vote of six(6) in favor, none(0) opposed, and one(1) abstention, and

**WHEREAS,** A comparative analysis of rural areas with wildlife habitat values within Multnomah County shows that the West Hills Rural Area constitutes 12 percent of such areas, and a comparative analysis of rural and park areas with wildlife habitat adjacent to the West Hills shows that the West Hills constitutes 12 percent of such areas; and

**WHEREAS,** Wildlife studies in the West Hills Rural Area show the area has a good quantity and diversity of wildlife and their habitat; and

**WHEREAS,** The West Hills Rural Area is a key part of a larger ecosystem with significant wildlife habitat values which includes Forest Park within the City of Portland and natural areas in Columbia and Washington Counties, eventually connecting with

the Oregon Coast range; and

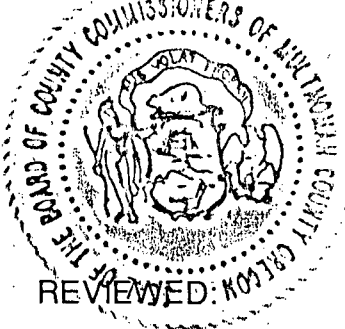
**WHEREAS**, Three of the four West Hills subareas, the Northern Forested Area, the Western Agricultural Area, and the Balch Creek Area, are important parts of this larger ecosystem; and

**WHEREAS**, the fourth West Hills subarea, the Bonny Slope area, can be further subdivided, the northern portion of the subarea consisting of mixed agricultural and forested areas with some wildlife habitat values, and the southern portion of the subarea, consisting of the Bonny Slope subdivision, consisting of rural residential uses with minimal wildlife habitat value;

**THEREFORE BE IT RESOLVED**, that the Multnomah County Board of Commissioners directs the Planning and Development Division staff to determine whether conflicting uses to wildlife habitat exist in the three areas recommended for designation as significant wildlife habitat in the West Hills, prepare an ESEE analysis of conflicting uses, consider and, if appropriate, prepare a program for protection of wildlife habitat resources, and undertake any other necessary actions pursuant to Oregon Statewide Planning Program Goal 5 Natural Resources as outlined in Oregon Administrative Rule Chapter 660 Division 16.

**BE IT FURTHER RESOLVED**, that the Multnomah County Board of Commissioners indicates its intent, at the completion of the remaining steps in the inventory and consideration of Oregon Statewide Planning Goal 5 as outlined in Oregon Administrative Rule Chapter 660 Division 16, to designate wildlife habitat as a significant natural resource for those portions of the West Hills Rural Area as shown on the attached map labeled "Exhibit 4," which modifies the Planning Commission recommendation to include that portion of the Bonny Slope subarea which is north of the Bonny Slope subdivision as significant wildlife habitat.

ADOPTED this 12th day of October, 1993.



By Beverly Stein  
BEVERLY STEIN, CHAIR  
MULTNOMAH COUNTY, OREGON

John L. DeB...  
Laurence Kressel, County Counsel  
of Multnomah County, Oregon



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

**REVISED PURSUANT TO OCT. 12 BOARD ACTION**

**(additions underlined)**

C 4-93

**STAFF REPORT**

**For October 12, 1993 Board of County Commissioners Hearing**

**WEST HILLS WILDLIFE HABITAT AREA  
DETERMINATION OF SIGNIFICANCE**

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## **II. BACKGROUND**

### **PERIODIC REVIEW ORDER**

Multnomah County's Periodic Review Order was reviewed by the Land Conservation and Development Commission on April 23, 1993. The Commission found that amendments to the County's land use regulations are required in order to comply with Statewide Planning Goals (Remand Order 93-RA-876). The county had designated "Wildlife Habitat and Travel Corridor" as a "1-B" (delay Goal 5) resource and indicated that resource identification and a protection program would be completed by the end of 1991. While a wildlife study was commissioned and completed, the County has not yet made a determination of significance pursuant to Goal 5. Consequently the County must now determine the extent and significance of wildlife habitat in the West Hills. If a resource is not significant, it is designated 1A and no further action is required. If information on location, quantity, and quality indicate that the resource is significant, the County must include it in the Comprehensive Plan inventory, and complete the Goal 5 process (ESEE analysis and protection program).

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on the significance of wildlife habitat in the West Hills on July 26, 1993, and considered additional written testimony up until September 3, 1993. On September 7, 1993, the Planning Commission voted 6 to 0 with 1 abstention and 2 absent to recommend approval of a significant wildlife habitat designation over most of the West Hills Rural Area, excluding only the Bonny Slope area (see Exhibit 4).

## **III. ANALYSIS**

### **RESOURCE DESCRIPTION**

No precise definition for wildlife habitat is contained within the Oregon Statewide Planning Goals document or the Oregon Administrative Rules -- it is the responsibility of the local jurisdiction to make findings, based upon evidence, that an area is or is not significant for wildlife habitat. Multnomah County contains a number of existing areas which are identified as wildlife habitat, including areas which are important for big game, waterfowl, and sensitive bird species. However, recent studies have documented the importance of preserving whole ecosystems for a full range of wildlife, from insects to large carnivores, as opposed to identifying and preserving small areas for a certain target species of concern such as elk, or bald eagles. These studies (see bibliography for Wild About the City and A Study of Forest Wildlife Habitat in the West Hills, discussed later in this report) assert that the only way to preserve sensitive species from further

declines in population or extinction is to preserve large, contiguous areas of the entire ecosystem in which these species reside.

At the July 26, 1993 Planning Commission hearing, a very generalized definition of wildlife habitat was offered by staff. Subsequent to that hearing, the Oregon Department of Fish and Wildlife proposed an alternative definition of wildlife habitat, which was adopted by the Commission as part of its recommendation on September 7, 1993. That definition reads as follows:

""Wildlife habitat is an area containing physical and biological features which supply resources sufficient to sustain the presence of a resident or migratory wildlife species population for at least some part of their annual life cycle. Such an area is significant if it is large enough to sustain a viable population; or sustains the presence of unique, sensitive, threatened, or endangered species; or provides a critical component to a species' life requirements during some time during the year (i.e. nesting or roosting sites, big game winter range); or sustains the presence of a high diversity of native plant or animal species; or comprises a functioning ecosystem in whole or in part (i.e. wetland, old growth forest); or provides a connection between other areas of significant wildlife habitat (i.e. riparian or upland wildlife corridor)."

Staff recommends adoption of this definition of wildlife habitat as part of the proposed action.

## **LOCATION**

Wildlife are guided in their choice of locale and movement by natural features which may allow or hinder their movement (watercourses, terrain, type of vegetation) and built features which hinder them (roads, residences, fences, agricultural operations). Given the large population of the Portland Metropolitan Area, the latter set of constraints are far more important in the patterns of wildlife habitation and migration. The West Hills rural area has a limited number of built features due to its location outside of the urban limit line and its low intensity levels of agricultural and forestry operations, and rural residential development. This area has been identified as a potential wildlife habitat area, and is a portion of a contiguous wildlife habitat area which includes lands to the southeast (Forest Park in the City of Portland) and northwest (undeveloped lands in Washington and Columbia Counties, eventually reaching the Coast Range).

The West Hills Rural Area can be divided into several sub-areas for the purpose of analyzing the potential for quality and quantity of wildlife habitat (see Exhibits 1 and 3, Pgs. 12 and 14).



## Northern Forested Area

This area consists of lands north and west of Forest Park, lying to the west of Highway 30, and to the north of existing rural residential and agricultural development in the vicinity of Skyline Road, Cornelius Pass Road, and Rock Creek Road. The southern boundary of this forested area in the Rock Creek Road area continues into Washington County as the boundary between agricultural and forest lands. These lands are almost entirely designated for Commercial Forest Uses, which are in varying stages of growth and production. It should be noted that this area includes small "pockets" of developed rural lands along the west side of Highway 30 and along roads connecting Highway 30 with Skyline Blvd. such as Cornelius Pass Road, McNamee Road, Newberry Road, and Logie Trail. Also, a small area of developed rural lands lies along Gilkison Road in the far northern portion of Multnomah County(see Exhibit 3).

## Western Agricultural Area

This area consists of lands along the western edge of Multnomah County, bounded to the north by the forested areas described above, to the west by Washington County agricultural lands, to the east by rural residential development and Forest Park in the City of Portland, and to the south by Springville Road. This area is primarily designated for agricultural uses, which are generally low-intensity in nature. Some commercial forestry areas and areas of rural residential development exist as well(see Exhibit 3).

## Bonny Slope Area

This area consists of rural residential, forest, and agricultural lands, of a generally higher intensity than those lands to the north. It is bounded to the west and south by lands within the Urban Growth Boundary in Washington County designated for urban residential development of 4 to 7 dwelling units per acre, to the east by lands within the City of Portland's Urban Growth Boundary designated for densities of 4 dwelling units per acre, and to the north by agricultural and rural residential uses in Multnomah County and the City of Portland(see Exhibit 3). The Bonny Slope Area can be further divided into two subareas, one consisting of the Bonny Slope Subdivision along both sides of Laidlaw Road, and a subdivided area along Thompson and McDaniel Roads (an area which contains over 100 residences), the other an area of primarily forested and agricultural areas south of Springville Road.

## Balch Creek Area

This area consists of the unincorporated, non -urban lands within the Balch Creek basin, as well as a small area to the far north which is within the Saltzman Creek watershed. It is mostly designated for Commercial Forestry uses, and also contains a significant amount of rural residential development. It is bounded to the west and south by urban lands both unincorporated and within the City of

Portland, and to the north and east by Forest Park and MacLeay Park within the City of Portland(see Exhibit 3).

## QUANTITY

*OAR 660-16-000(3)...A Determination of quantity requires consideration of the relative abundance of the resource (of any given quality).*

Some amount of wildlife habitat occurs in all non-urban portions of Multnomah County. In the absence of more specific data on wildlife resources within other non-urban portions of Multnomah County, the best available standard of comparison of wildlife abundance (quantity) is the total size of each non-urban area within Multnomah County. The West Hills Rural Area is 30 square miles (approximately 19,091 acres) in size. The following table compares the size of the West Hills rural area to other non-urban portions of Multnomah County:

TABLE 1: RELATIVE SIZE OF MULTNOMAH COUNTY NON-URBAN AREAS

<u>AREA</u>	<u>SIZE</u>	<u>% OF NON-URBAN AREAS</u>
West Hills	30 sq. mi.	12%
Sauvie Island	26 sq. mi.	10%.
West of Sandy River	16 sq. mi.	6%
East of Sandy River	128 sq.mi.	51%
<u>Columbia Gorge NSA Area</u>	<u>52 sq. mi.</u>	<u>21%</u>
TOTAL NON-URBAN AREA	252 sq. mi.	100%

In addition, the quantity of the wildlife habitat resource should be measured against three other areas outside Multnomah County and one area within the City of Portland. These areas are chosen because they are directly adjacent to the West Hills Rural Plan Area(see Exhibit 2).

### Washington County Forest

This area, in Washington County, is a non-urban forested area bounded to the west by Highway 26, to the north by the Washington County line, to the east by the West Hills Rural Plan Area, and to the south by mixed agricultural and rural residential uses within Washington County. It is approximately 100 square miles in size and is almost entirely designated Washington County for non-urban, forest uses. It should be noted that west of Highway 26 lie the forested natural areas of the Oregon Coast range(see Exhibit 2).

### Washington County Farm

This area, also in Washington County, is a non-urban area consisting primarily of agricultural and rural residential uses which is bounded to the south by Highway 26 and the community of North Plains, to the east by the West Hills Rural Plan

Area, and to the north and west by forested lands within Washington County. It is approximately 40 square miles in size(see Exhibit 2).

#### Columbia County Forest

This area is within Columbia County and is designated primarily for non-urban forest uses, with some rural residential pockets included. It is bounded to the north and east by the communities of Chapman and Spitzenberg along the Scappoose-Vernonia Road, to the west by State Highway 47 and the Community of Vernonia, and to the south by the West Hills Rural Plan Area. It is approximately 80 square miles in size. It should be noted that west of Highway 47 and Vernonia lie the forested natural areas of the Oregon Coast Range(see Exhibit 2).

#### Forest Park

The Forest Park area within the City of Portland is a public "natural" park with significant quantities of wildlife as documented by various sources. It is bounded to the north by the West Hills Rural Plan Area, to the south by Cornell Rd., to the east by urban development within Northwest Portland, and to the west by the Balch Creek portion of the West Hills Rural Plan Area and low-density residential development within the City of Portland. It is approximately 8 square miles in size(see Exhibit 2).

The following table compares the size of the West Hills Rural Plan Area to these three areas outside of Multnomah County which are contiguous to the West Hills:

TABLE 2: RELATIVE SIZE OF NON-URBAN AREAS ADJACENT TO THE WEST HILLS

<u>AREA</u>	<u>SIZE</u>	<u>% OF AREA</u>
West Hills	30 sq. mi.	12%
Washington County Forest	100 sq.mi.	38%
Washington County Farm	40 sq. mi.	16%
Columbia County Forest	80 sq. mi.	31%
<u>Forest Park</u>	<u>8 sq. mi.</u>	<u>3%</u>
TOTAL AREA	258 sq. mi.	100%

#### Summary

Based upon this measurement of quantity of non-urban areas with some value for wildlife habitat, the West Hills area constitutes 12% of the total non-urban areas of Multnomah County which have some quantity of wildlife habitat. It constitutes 12% of a contiguous non-urban and natural park area northwest of and within the City of Portland. Without regard to quality, this quantity of wildlife habitat does not appear to be significant.

## QUALITY

*OAR 660-16-000(3): The determination of quality requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself.*

This report uses two attributes to measure quality of the wildlife habitat resource in the West Hills, 1) the actual quantity and diversity of the species to be found in the West Hills area along with a comparison of the wildlife values of this area with the values found in other non-urban areas within Multnomah County and adjacent areas of Washington and Columbia Counties, and 2) the connectivity of the West Hills area to other wildlife habitat areas and its relative importance in the overall framework of this larger ecosystem.

### West Hills Wildlife Quantity and Diversity

Multnomah County has commissioned two studies of wildlife in the West Hills, which, along with other relevant studies, are summarized below.

#### WILD ABOUT THE CITY (Marcy Houle, 1990)

This report discusses the concept of contiguous areas of natural habitat for wildlife and the results of the fragmentation of habitat into "islands." In the latter instance, numerous biological studies (see bibliography for "Wild About the City") have documented the diminishment and loss of native plants and animals due to a lack of connection to a larger ecosystem. Continued development in the West Hills wildlife area would result in the fragmentation, and therefore the degradation of both the West Hills' and Forest Park's natural systems, the loss of species diversity (particularly for larger mammals such as bears, elk, and cougars which require large habitat areas for each animal), the permanent loss of natural populations to catastrophe such as fire, and the weakening of plant and animal populations due to the lack of genetic diversity available in larger areas.

#### A STUDY OF FOREST WILDLIFE HABITAT IN THE WEST HILLS (Esther Lev, Jerry Fugate, Lynn Sharp, 1992)

This report provides a more in depth study of existing wildlife within the West Hills area. Research for the study included a series of six transects throughout the region, representing different types of land use (forested, residential, agricultural, clear-cut forest, quarry). A total of 19 species of mammals (including coyote, black bear, mountain beaver, trowbridge's shrew, and coast mole) and 34 species of birds (including Swainson's thrush, pine siskin, downy woodpecker, and black-headed grosbeak) were observed during the field study from both trapping and observations. The specific outcome of the transect evaluations are contained within the report; however, the transect with the most species diversity and numbers were found in the "control" transect within the boundaries of Forest

Park. This indicates the high wildlife habitat values to be found within the park, and the importance of integrating Forest Park into a larger contiguous wildlife habitat area in order to protect this high value. The amount and diversity of wildlife within the rural West Hills area to the northwest of Forest Park is somewhat lower due to the impact of residential development, agriculture, quarry operations, and commercial forestry. However, each of the five transects outside of Forest Park showed significant numbers and diversity of wildlife, indicating that this area remains an important area for native plants and animals.

The study documents the need for a contiguous natural area connecting Forest Park with the large undeveloped lands to the north and west in order to maintain species diversity. This contiguous natural area would need to be a minimum of one-half mile in width, with other areas as much as one and one-half miles wide, in order to maintain the natural connections. A continuous forested connection through the area is essential in providing "cover" for wildlife habitat and migration.

## OTHER STUDIES

The City of Portland has thoroughly studied the quality of wildlife habitat in the area of Forest Park to the south of the proposed West Hills wildlife habitat area/corridor. The "Northwest Hills Natural Areas Protection Plan," (adopted 1992) documents the abundance of wildlife habitat in Forest Park and the surrounding areas within the City of Portland. The "Balch Creek Watershed Protection Plan" (adopted 1990) provides information about the wildlife habitat values in the portions of the Balch Creek basin which are within the Urban Growth Boundary and the Portland City limits. Both reports provide information about wildlife habitat values within adjacent unincorporated areas west and north of Forest Park, and within the Balch Creek basin. These habitat values are significant, associated with forested lands and the wildlife which inhabit them (such as salamanders, frogs, snakes, lizards, over 80 species of birds, and 62 mammal species, from squirrels and chipmunks to bears and cougars).

The County has already identified two significant wildlife habitat areas within the West Hills Rural Area based upon information compiled by the Oregon Department of Fish and Wildlife, a big game wintering habitat within much of the Northern Forested Area, and a bald eagle roost in the vicinity of Dixie Mountain in the far northern portion of the County. Additionally, fish and riparian-based flora and fauna are a significant identified resource within major streams in the West Hills area.

## Comparison with Other Non-Urban Habitat Areas

### Sauvie Island

Unlike the West Hills, the Multnomah County portion of Sauvie Island Area is generally flat, and approximately two-thirds is devoted to agricultural uses, of a

significantly more intense nature than those in the West Hills, befitting the higher quality of soils on the island. Sauvie Island contains significant identified fish and wildlife habitat areas, including a large sensitive waterfowl area in the northern portion of the island. The Multnomah Channel Area, between Sauvie Island and Highway 30, contains significant identified wetland resources such as the Burlington Bottoms wetland located in the vicinity of the Sauvie Island bridge. While Sauvie Island provides very important habitat for waterfowl, fish, and wetland flora and fauna, it is relatively unimportant for terrestrial wildlife due to the preponderance of agricultural uses on the island and the its isolation by water from nearby wildlife habitat areas within the West Hills (separated by Multnomah Channel) and in Washington (separated by the Columbia River)

#### Eastern Multnomah County Non-Urban Areas

Two of the eastern three rural areas (East of Sandy River and Columbia Gorge NSA Area) contain significant identified wildlife habitat areas, including large big game wintering areas and osprey nests. While no significant wildlife habitat areas have been identified by the Oregon Department of Fish & Wildlife in the West of Sandy River area, the Sandy River Gorge is identified as a significant natural area. These areas appear to maintain significant connectivity to each other and to adjacent areas of the Cascade Range -- however, this wildlife community is distinct from the wildlife in the Coast Range and West Hills area.

#### Washington County Adjacent Non-Urban Areas

The Washington County Forested area between the West Hills Rural Area of Multnomah County and Highway 26 is designated on the Washington County Rural/Natural Resource Plan as a Wildlife Habitat Area, which contains sensitive habitat identified by the Oregon Department of Fish & Wildlife and forested areas coincidental with water areas and wetlands. The Washington County Non-urban farm areas contain a small amount of sensitive wildlife habitat. These areas are connected and contiguous to Columbia County natural areas to the north, the West Hills of Multnomah County to the east, and the Coast Range to the west and southwest.

#### Columbia County Adjacent Non-Urban Areas

The Columbia County forested area to the north of the West Hills Rural Area is designated by the Columbia County Comprehensive Plan as a major big game habitat area. These areas are connected and contiguous to the Washington County natural areas to the southwest, the West Hills of Multnomah County to the southeast, and the Coast Range to the west.

#### Forest Park Area

Based upon comprehensive studies, the City of Portland has identified large areas within and around Forest Park as significant wildlife protection areas, and

has protected these areas through implementation of an environmental overlay zone which restricts disturbance and development of sensitive areas. Forest Park is connected and contiguous to the West Hills area to the west and north-west.

#### West Hills Wildlife Connectivity

The West Hills Rural Area is directly connected to wildlife habitat areas to the south in the Forest Park Area of Portland, the west in Washington County, and the north in Columbia County. The two latter areas in turn are connected to a large area of wildlife habitat that extends to and throughout the Coast Range of Oregon, south of the Columbia River. Thus, elimination or degradation of wildlife habitat values in the West Hills Rural Area would break the link between the Forest Park natural areas and the larger wildlife habitat areas of the Oregon Coast Range. This would result in the degradation of natural habitat in Forest Park, due to its resultant isolation from other natural areas. Forest Park is of the highest quality of wildlife habitat, not necessarily because of its abundance of wildlife species compared to other natural areas of Western Oregon, but rather because of its abundance of wildlife species in an area immediately adjacent to the City of Portland, where wildlife has been extirpated or severely limited by urban development. The West Hills Rural Area itself is within several miles of significant metropolitan populations, which makes its wildlife habitat significantly more valuable than comparable areas in the remainder of Multnomah County, Washington County, or Columbia County. Thus, the West Hills provides the most important ability to maintain significant wildlife and natural areas in such close proximity to the populations of the Portland Metropolitan Area.

#### Summary

Based upon the available information regarding the quality of wildlife habitat, any portion of the West Hills Area should be considered an area with significant wildlife habitat if the following two conditions apply: 1) a generally good quality of wildlife habitat values in the area, and 2) important as part of a larger wildlife habitat area providing the link between the Forest Park area of the City of Portland and its important wildlife habitat and the Coast Range of Oregon.

### IV. CONCLUSIONS

Based upon an analysis of quantity and quality of wildlife habitat areas, the Planning Commission and staff recommend the following actions regarding the significance of wildlife habitat values within the four sub-areas of the West Hills Rural Area.

## Northern Forested Area

This area is the prime focus of wildlife habitat in the West Hills. The Lev study shows clearly the superior wildlife values to be found in undisturbed forest habitat, which covers much of this area. While lesser values of habitat are found in clear-cut forest and rural residential areas, such areas also contain significant amounts of wildlife habitat value. This area includes the two existing Goal 5 significant wildlife habitat areas in the West Hills. Also, this area abuts Forest Park to the south and the forested areas of Washington and Columbia Counties on the north and west, thus providing the key link in maintaining the wildlife habitat values of the Forest Park Area. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE HABITAT AREA.

## Western Agricultural Area

This area is less significant than the Northern Forested Area in terms of wildlife habitat, due to the development of agricultural and rural residential uses, which are of lesser value to wildlife due to the presence of humans. However, the Lev study shows that agricultural and rural residential areas in the West Hills Rural Area contain some wildlife habitat value, which is confirmed by anecdotal observations of wildlife by residents in the area. Some fragmented forested areas also exist, providing cover for wildlife. This area is connected to a similarly developed area in Washington County to the west -- both of these areas provide a "buffer zone" between the higher quality wildlife habitat forested areas to the north and the urban areas to the south. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE HABITAT AREA.

## Bonny Slope Area

### BONNY SLOPE SUBDIVISION

This area contains lesser wildlife habitat value than the agricultural area to the north due to the higher intensity of residential and agricultural land uses (although some forest-designated lands exist in this area as well). Also, this area is bounded on three sides by lands within the urban growth boundary which are planned for residential densities of four units per acre or greater, and is not directly adjacent to any significant forest habitat areas. THIS AREA SHOULD NOT BE DESIGNATED A SIGNIFICANT WILDLIFE AREA.

### AREA SOUTH OF SPRINGVILLE ROAD

This area of approximately 400 acres consists primarily of forest and agricultural lands. It also contains wildlife habitat value in that it has the headwaters of a tributary of Beaverton Creek, pursuant to studies of the adjacent Skyline West area of the City of Portland conducted by the Portland Planning Bureau. Although the areas to the east of this subarea in the City of Portland are within the Urban Growth Boundary, they also contain areas of significant environmental



resources which are protected or planned to be protected by the City of Portland. Additionally, testimony of observed wildlife in this area was presented to the Board of Commissioners at the October 12 public hearing. For these reasons, THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE HABITAT AREA.

#### Balch Creek Area

This area contains some habitat value associated with the relative lack of development in comparison to adjacent areas and the importance of the Balch Creek watershed, as documented by the City of Portland. It is also adjacent to the Forest Park area to the north and west, and provides an extension of wildlife habitat values existing in that area. Like Forest Park, its habitat value lies not in an absolute measure of wildlife abundance and diversity, but rather in its relative value as a forested watershed and wildlife area in close proximity to the Portland Metropolitan Area. THIS AREA SHOULD BE DESIGNATED A SIGNIFICANT WILDLIFE AREA

#### Recommendation:

Adopt the attached resolution which takes tentative action to designate the West Hills Wildlife Habitat Area 1C, a significant wildlife habitat resource. Direct preparation of a report identifying conflicting uses, determining the economic, social, environmental, and energy consequences of these conflicting uses, and developing a program to achieve the goal and resolve conflicts by either protecting the resource site, allowing conflicting uses fully, or limiting conflicting uses.

### V. COMMENTS ON ADDITIONAL WRITTEN TESTIMONY

Attached to this report are all written comments received at or since the July 26 hearing, along with appropriate staff responses. Based upon a review of all of the testimony, staff has no changes to make in its recommendation. The Planning Commission considered all written testimony provided, along with the staff responses. The only change resulting from the written testimony regards the definition of Fish & Wildlife habitat, as discussed earlier in this report.

# WEST HILLS RURAL AREA PLAN SIGNIFICANT WILDLIFE AREAS

EXHIBIT 4

 SIGNIFICANT WILDLIFE  
HABITAT AREAS

